

## PROPERTY AND LAND LAWS 2A

1st Semester, A.Y. 2025-2026

Consolidated codal, case law, and commentary

Codal

Commentary

Case law

### BOOK II

### Property, Ownership, and its Modifications

### TITLE I

### Classification of Property

### Chapter 1

### Immovable Property

### Art. 414

All things which are or may be the object of appropriation are considered either:

- (1) Immovable or real property; or
- (2) Movable or personal property

**Property** – A thing which may be the object of appropriation.

### Art. 415 ★

The following are immovable property:

- (1) Land, buildings, roads and constructions of all kinds adhered to the soil;
- (2) Trees, plants, and growing fruits, while they are attached to the land or form an integral part of an immovable;
- (3) Everything attached to an immovable in a fixed manner, in such a way that it cannot be separated therefrom without breaking the material or deterioration of the object;
- (4) Statues, reliefs, paintings, or other objects for use or ornamentation, placed in buildings or on lands by the owner of the immovable in such a manner that it reveals the intention to attach them permanently to the tenements;
- (5) Machinery, receptacles, instruments or implements intended by the owner of the tenement for an industry or works which may be

carried on in a building or on a piece of land, and which tend to directly meet the needs of said industry or works;

- (6) Animal houses, pigeon-houses, beehives, fish ponds or breeding places of similar nature, in case the owner has placed them or preserves them with the intention to have them permanently attached to the land, and forming a permanent part of it; the animals in these places are included;
- (7) Fertilizer actually used on a piece of land;
- (8) Mines, quarries, and slag dumps, while the matter thereof forms part of the bed, and waters either running or stagnant;
- (9) Docks and structures which, though floating, are intended by their nature and object to remain at a fixed place on a river, lake, or coast;
- (10) Contracts for public works, and servitudes and other real rights over immovable property.

### Four types of immobilization

1. Nature
2. Incorporation
3. Destination
4. Analogy

### Lands and buildings

### Lopez v. Orosa, G.R. No. L-10817-18, February 28, 1958

A building is by itself an immovable property. This is obvious by the fact that in the enumeration in Art. 415 (1), buildings are separated from land.

### Associated Insurance & Surety v. Iya, G.R. No. L-10837-38, May 30, 1958

A building 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 otherwise, the nature of the building will change as the ownership of the land changes hands.

### Bicerra v. Teneza, G.R. No. L-16218, November 29, 1962

A demolished house is no longer immovable.

- A house (building) is classified as immovable property by reason of its adherence to the soil on which it is built.

### Leung Lee v. Frank L. Strong Machinery Co., G.R. No. 11658, February 15, 1918

The building of strong materials was real property, and the mere fact that the parties seem to have dealt with it separate and apart from the land on which

it stood in no wise changed its character as real property.

**Punzalan v. Lacsamana, G.R. No. L-55729, March 28, 1983**

Buildings are always immovable under the code.

**Prudential Bank v. Panis, G.R. No. L-50008, August 31, 1987**

A building is by itself an immovable property. Hence, a building by itself may be mortgaged apart from the land on which it has been built.

*Stipulation as to the nature of the property*

**Standard Oil Co. v. Jaramillo, G.R. No. 20329, March 16, 1923**

Property may have character different from that imputed to it in said articles (Arts. 415-417). The parties to a contract may agree to treat as personal property that which by nature would be real property.

*Doctrine of estoppel*

**Navarro v. Pineda, G.R. No. 18456, November 30, 1963**

Once parties have agreed in a mortgage to consider a property (e.g., house) as a personal property (though it is real property under Art. 415), the parties are estopped from denying the stipulation.

Parties to a contract may, by agreement, treat as personal property that which by nature would be real property.

**Tumalad v. Vicencio, G.R. No. 30173, September 30, 1971**

The view that parties to a deed of chattel mortgage may agree to consider a house as personal property for the purposes of said contract, is good only insofar as the contracting parties are concerned. It is based, partly, upon the principle of estoppel.

**Makati Leasing and Finance Corp. v. Wearever Textile Mills, G.R. No. L-58469, May 16, 1983**

The parties to a contract may by agreement treat as personal property that which by nature would be real property, as long as no interest of third parties would be prejudiced thereby.

- The characterization of the machinery as a chattel is indicative of intention and impresses upon the property the character determined by the parties.

**Serg's Products Inc. v. PCI Leasing and Finance Inc., G.R. No. 137705, August 22, 2000**

After agreeing to a contract stipulating that a real or immovable property be considered as personal or movable, a party is estopped from subsequently claiming otherwise. Hence, such property is a proper subject of a writ of *replevin* obtained by the other contracting party.

*Stipulations do not affect third persons*

**Manarang v. Ofilada, G.R. No. L-8133, May 18, 1956**

Sales on execution affect the public and third persons. The regulations governing sales on execution are for public officials to follow.

- Hence, when these rules speak of personal property, property which is ordinarily so considered is meant; and when real property is spoken of, it means property which is generally known as real property.

**Evangelista v. Alto Surety, G.R. No. L-11139, April 23, 1958**

The holding in *Maranang* (*supra*) applies with equal force to the conditions for the levy of attachment, for it similarly affects the public and third persons.

*Par. 5: Machinery, receptacles, instruments or implements*

**Davao Sawmill Co. Inc. v. Castillo, G.R. No. 40411, August 7, 1935**

Machinery which is movable in its nature **only becomes immobilized when placed in a plant by the owner** of the property or plant, but **not when so placed by a tenant**, a usufructuary, or any person having only a temporary right, unless such person acted as the agent of the owner.

- Hence, machinery placed by a tenant is a *personal property*.

**Tsai v. CA, G.R. No. 120098, October 2, 2011**

Even if machinery may be immovable by nature under Art. 415, parties may, by stipulation, treat it as personal property for purposes of a chattel mortgage, and such agreement is binding under the principle of estoppel.

**Mindanao Bus Co. v. City Assessor, G.R. No. L-17870, September 29, 1962**

So that movable equipment to be immobilized must first be **essential and principal elements of an industry or works** without which such industry or works would be unable to function or carry on the industrial purpose for which it was established.

- Hence, there must be a **distinction** between movables which become immobilized by destination because they are **essential and principal elements**; and those so considered immobilized because they are **merely incidental**.

**Caltex v. Central Board of Assessment Appeals, G.R. No. L-50466, May 31, 1982**

The ruling in *Davao Sawmill Co. Inc.*, where a machinery which is movable does not become an immovable when so placed by a person having only a temporary right applies **only for the purposes of execution of a judgment against the lessee**.

- Hence, machineries to the gas station and fixtures which are necessary to the operation of the gas station are considered as realty.

*Effect on taxation purposes*

**MERALCO v. City Treasurer of Lucena, G.R. No. 166102, August 5, 2015**

For determining whether machinery is real property subject to real property tax, the definition and requirements under the Local Government Code are controlling.

- The LGC prevails over the NCC because it is a special law granting local government units the power to impose real property tax.

**Capitol Wireless v. Provincial Treasurer of Batangas, G.R. No. 180110, May 30, 2016**

Submarine or undersea communications cables are akin to electric transmission lines, as held in *MERALCO (supra)*, and are no longer exempted from RPT and may qualify as “machinery” subject to RPT under the LGC.

- This is because electric lines and communications cables, in the strictest sense, are not directly adhered to the soil but pass through posts, relays or landing stations, but both may be classified under the term “machinery” as real property under Art. 415(5).

## Chapter 2 Movable Property

### Art. 416 ★

The following things are deemed to be personal property:

- Those movables susceptible of appropriation which are not included in the preceding article;
- Real property which by any special provision of law is considered as

personalty;

- Forces of nature which are brought under control by science; and
- In general, all things which can be transported from place to place without impairment of the real property to which they are fixed.

*Stipulation;*

*Exception-relativity*

**Piansay v. David, G.R. No. L-19468, October 30, 1964**

Regardless of the validity of a contract constituting a chattel mortgage on a house, as between the parties to said contract, the same **cannot and does not bind third persons**, who are not parties to the aforementioned contract or their privies.

*Growing crops*

**Sibal v. Valdez, G.R. No. 26278, August 4, 1927**

The Chattel Mortgage Law was enacted on the assumption that “growing crops” are personal property.

- The existence of a right on the growing crop is a mobilization by anticipation.

*Ships*

**Rubiso v. Rivera, G.R. No. 11407, October 30, 1917**

Ships or vessels, whether moved by steam or by sail, partake, to a certain extent, of the **nature and conditions of real property**, on account of their value and importance in the world commerce.

- Hence, the rule in the Civil Code with reference to acquisition of rights over immovable property can be applied to vessels.

**Philippine Refining Co. Inc. v. Jarque, G.R. No. 41506, March 25, 1935**

Vessels are considered personal property under the civil law.

- The difference between a chattel mortgage of a vessel and other personalty is that for the former (vessel), it has to be recorded in the Collector of Customs at the port of entry.

*Electricity and gas*

**US v. Carlos, G.R. No. 6295, September 1, 1911**

Electricity, the same as gas, is a valuable article of merchandise, bought and

sold like other **personal property** and is capable of appropriation by another.

- This is because the true test of what is a proper subject of larceny seems to be not whether the subject is corporeal or incorporeal, but whether it is capable of appropriation by another than the owner.

**US v. Tambunting, G.R. No. 16513, January 18, 1921**



Gas is a **personal property**. It is a valuable article of merchandise, bought and sold like other personal property, susceptible of being severed from a mass or larger quantity and of being transported from place to place.

**Art. 417 ★**

The following are also considered as personal property:

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

**Strochecker v. Ramirez, G.R. No. 18700, September 26, 1922**

Such interest is a personal property capable of appropriation and not included in the enumeration of real property. Thus, it may be the subject of mortgage as all personal property may be mortgaged.

- Thus, a one-half interest in a drug store may be mortgaged.

**Art. 418**

Movable property is either consumable or non-consumable. To the first class belong those movables which cannot be used in a manner appropriate to their nature without their being consumed; to the second class belong all the others.

**Classifications**

1. By their nature
  - a. Consumable
  - b. Non-consumable
2. By the intention of the parties
  - a. Fungible
  - b. Non-fungible

**Chapter 3**

**Property in Relation to the Person to Whom it Belongs**

**Art. 419**

Property is either of public dominion or private ownership.

**Classification by ownership**

1. Public
2. Private

**Art. 420**

The following things are property of public dominion:

- (1) Those intended for public use, such as roads, canals, rivers, torrents, ports and bridges constructed by the State, banks, shores, roadsteads, and others of similar character;
- (2) Those which belong to the State, without being for public use, and are intended for some public service or for the development of the national wealth.

**Public dominion** – Ownership by the state, in that the state has control and administration.

- In another sense, public dominion means ownership by the *public in general*, in that not even the state or its subdivisions may make them object of commerce as long as they remain properties for public use (like a river or a town plaza).

**Three kinds of property of public dominion**

1. For public use – May be used by anybody.
2. For public service – May be used *only* by duly authorized persons
3. For the development of national wealth – *e.g.*, natural resources

**Characteristics of properties of public dominion**

1. They are outside the commerce of man, and cannot be leased, donated, sold, or be the object of any contract (except contracts for repairs or improvements)
2. They cannot be acquired by prescription, no matter how long the possession of the properties has been
3. They cannot be registered under the Land Registration Law and be the subject of a Torrens Title
4. They cannot be levied upon by execution, nor can they be attached

5. They can be used by anybody
6. They may be real or personal property (the law makes no distinction)

**Public lands** – They are that part of government lands which are thrown open to private appropriation and settlement by homestead and other like general laws (e.g., mineral, forest, and agricultural lands).

#### Reclamation

##### **Chavez v. Public Estates Authority, G.R. No. 133250, July 9, 2002**

The government must formally declare that the property of public dominion is no longer needed for public use or public service, before the same could be classified as patrimonial property of the state.

Government reclaimed and marshy lands of the State, even if not employed for public use or public service, if developed to enhance the national wealth, are classified as property of public dominion.

#### Action of the sea

##### **Republic v. CA & Morato, G.R. No. 100709, November 14, 1997**

When the sea moved toward the estate and the tide invaded it, the invaded property became foreshore land and passed to the realm of the public domain.

- The subject land being foreshore land, it should be returned to the public domain.

##### **Lanzar v. Director of Lands, G.R. No. L-31934, July 29, 1977**

Lands formed by the action of the sea belong to the public domain. Lands added to the shores by accretion and alluvial deposits caused by action of the sea, form part of the public domain.

##### **Ignacio v. Director of Lands, G.R. No. L-12958, May 30, 1960**

Ownership by accretion only refers to accretion or deposits on the banks of rivers. Hence, accretion or deposits on a bay (which is a part of the sea) is part of the public domain, not available for private appropriation or ownership.

- Only the executive, and possibly Congress, can make the declaration that any land so gained by the sea is not necessary for purposes of public utility or for the establishment of special industries.

#### Forest lands

##### **Sps. Villarico v. CA, G.R. No. 105912, June 28, 1999**

Forest lands cannot be owned by private persons.

- Possession thereof, no matter how long, does not ripen into a registrable title.
- The adverse possession which may be the basis of a grant of title or confirmation of an imperfect title refers only to alienable or disposable portions of the public domain.

##### **Art. 421**

All other property of the State, which is not of the character stated in the preceding article, is patrimonial property.

**Patrimonial property** – It is property which the state owns, but is not devoted to public use, public service, or the development of the national wealth.

- It is wealth owned by the state in its private capacity.
- Compared with property of public dominion, patrimonial properties may be acquired by private individuals or corporations through prescription (see Art. 1113)

##### **Art. 422**

Property of public dominion, when no longer intended for public use or for public service, shall form part of the patrimonial property of the State.

#### Withdrawal from public use

##### **Cebu Oxygen & Acetylene Co. Inc. v. Bercilles, G.R. No. L-40474, August 29, 1975**

The city is empowered to close a city road or street.

Since that portion of the city street subject of petitioner's application for registration of title was withdrawn from public use, it follows that such withdrawn portion becomes patrimonial property which can be the object of an ordinary contract.

- This is because property of public dominion, when no longer intended for public use or for public service, shall form part of the patrimonial property of the State.

##### **Laurel v. Garcia, G.R. No. 92013, July 26, 1990**



The Rappongi property is a property of public dominion, hence, it is outside the commerce of man. It cannot be alienated. Its purpose is not to serve the state as a juridical person, but the citizens.

- The fact that the Roppongi site has not been used for a long time for actual Embassy service does not automatically convert it to patrimonial property.
- It is not for the president to convey valuable real property of the government on her own sole will. It must be authorized and approved by a law enacted by Congress. It requires executive and legislative concurrence.

#### **Art. 423**

The property of provinces, cities, and municipalities is divided into property for public use and patrimonial property.

#### **Properties of political subdivisions**

1. Property for public use
2. Patrimonial property

By analogy (applying Art. 422), when a municipality's property for public use is no longer intended for such use, the properties become patrimonial and may now be the subject of a common contract.

#### **Art. 424**

Property for public use, in the provinces, cities, and municipalities, consist of the provincial roads, city streets, municipal streets, the squares, fountains, public waters, promenades, and public works for public service paid for by said provinces, cities, or municipalities.

All other property possessed by any of them is patrimonial and shall be governed by this Code, without prejudice to the provisions of special laws.

#### *Public plaza*

#### **Villanueva v. Casatneda Jr., G.R. No. L-61311, September 21, 1987**

Town plazas are properties of public dominion, to be devoted to public use and to be made available to the public in general.

- Hence, they are outside the commerce of man and cannot be disposed of or even leased by the municipality to private parties.

#### *Streets and roads*

#### **Dacanay Jr. v. Asistio Jr., G.R. No. 93654, May 6, 1992**

A public street is property for public use hence outside the commerce of man. Being outside the commerce of man, it may not be the subject of lease or other contract.

- The right of the public to use the city streets may not be bargained away through contract.

#### **Properties of LGUs may also be classified as:**

1. Those acquired with their own funds – Here, the political subdivision has ownership and control
2. Those not in (1) – These are subject to the control and supervision of the state.

**Rule with respect to properties for public use** – They may not be leased to private individuals.

- If possession has already been given, the lessee must return the possession to the municipality.
- In turn, the municipality must reimburse him for whatever advanced rentals had been given.

**Rule with respect to patrimonial properties** – The town's patrimonial property is administered in the same way as property of a private corporation.

- Hence, the town is *not* immune to suits involving this kind of property.

#### **Art. 425**

Property of private ownership, besides the patrimonial property of the State, provinces, cities, and municipalities, consists of all property belonging to private persons, either individually or collectively.

#### **Private properties other than patrimonial**

- Other private properties are those that belong to private persons, individually or collectively.
  - Collectively – Refers to ownership by private individuals as co-owners, or by corporations, partnerships or other juridical persons
- By virtue of Art. 425, the Code recognizes rights to private property

#### **Art. 426**

Whenever by provisions of the law, or an individual declaration, the expression “immovable things or property,” or “movable things or property,” is used, it shall be deemed to include, respectively, the things enumerated in Chapter 1 and in Chapter 2.

Whenever the word “muebles,” or “furniture,” is used alone, it shall not be deemed to include money, credits, commercial securities, stocks and bonds, jewelry, scientific or artistic collections, books, medals, arms, clothing, horses or carriages and their accessories, grains, liquids and merchandise, or other things which do not have as their principal object the furnishing or ornamenting of a building, except where from the context of the law, or the individual declaration, the contrary clearly appears.

## TITLE II Ownership

### Chapter 1 Ownership in General

#### ART. 427

Ownership may be exercised over things or rights.

**Ownership** – The independent and general right of a person to control a thing particularly in his possession, enjoyment, disposition, and recovery, subject to no restrictions, except those imposed by the state or private persons, without prejudice to the provisions of the law.

#### Two kinds of ownership:

1. Full ownership (*dominium* or *jus in re propria*) – This includes all the rights of an owner.
2. Naked ownership (*nuda pripietas*) – This is ownership where the right to use and the fruits has been denied.
  - a. Naked + usufruct = Full
  - b. Full - naked = Usufruct
  - c. Full - usufruct = Naked
3. Sole ownership – The ownership is vested in only one person.
4. Co-ownership – The ownership is vested in two or more owners.

#### ART. 428

The owner has the right to enjoy and dispose of a thing, without other

limitations than those established by law.

The owner has also a right of action against the holder and possessor of the thing in order to recover it.

#### Attributes of ownership ♥

1. *Jus possidendi* – Right to possess the property
2. *Jus utendi* – Right to use the property
3. *Jus fruendi* – Right to enjoy the property, including its fruits
4. *Jus abutendi* – Right to abuse or exercise full dominion over the property.
5. *Jus disponendi* – Right to dispose of the property
6. *Jus vindicandi* – Right to vindicate, protect, defend and recover one's property
7. *Jus accessionis* – Right to the accessions of the property as provided by law

#### Actions to recover ♥

1. Recovery of *personal* property – Writ of Replevin (Rule 60, Rules of Court).
2. Recovery of *real* property
  - a. **Accion interdical** – Forcible entry or unlawful detainer
    - i. *Forcible entry* – A summary action to recovery material possession of real property when a person originally in possession was deprived thereof by force, intimidation, strategy, threat or stealth (FISTS).
      1. It must be brought within one year from the dispossession.
      2. The issue involved is mere physical possession and *not* juridical possession *nor* ownership.
    - ii. *Unlawful detainer* – An action that must be brought when possession by a landlord, vendor, vendee or other person of any *land or building* is being unlawfully withheld after the expiration or termination of the right to hold possession.
      1. The complainant must show that the withholding of possession or refusal to vacate is unlawful.
      2. The action must be brought within one year from the time possession becomes unlawful (e.g., from the expiration of lease, or demand to vacate).
  - b. **Accion publiciana** – Plenary action to recover the better right of possession
    - i. It is intended for the recovery of the better right to possess, and must be brought in an ordinary civil

proceeding before an MTC or RTC, depending on the assessed value of the property.

ii. It must be brought within a period of 10 years.

iii. The issue is possession *de jure*.

c. **Accion reivindicatoria**

i. An action to recover ownership over real property.

ii. It must be brought within 10 or 30 years, as the case may be, whether the other party seeks to obtain ownership by ordinary or extraordinary prescription.

iii. The issue involved is ownership.

1. But, adjudication over ownership is not tantamount to adjudication over possession.

3. Additionally:

a. **Writ of preliminary mandatory injunction**

i. This may be availed of in the *original case* of forcible entry and during *appeal* in case of unlawful detainer

b. **Writ of possession**

i. This is an order directing the sheriff to place a successful registrant under the Torrens system in possession of the property covered by a decree of the court.

ii. It may be issued only against the person defeated in the registration case, and against anyone unlawfully and adversely occupying the land or any portion thereof, during the proceedings, up to the issuance of the final decree

c. **Writ of demolition**

i. If the writ of possession implies the delivery of possession of the land to the successful litigant, a writ of possession must likewise issue.

ii. A writ of demolition is merely a complement of a writ of possession.

**Limitations on ownership**

1. Those given by the state or the law
2. Those given by the owner himself
3. Those given by the person who have the thing to its present owner

*Writ of Replevin*

**Chiao Liong Tan v. CA, G.R. No. 106251, November 19, 1993**

The action of replevin is possessory in character and determines nothing more than the right of possession.

However, when the title to the property is distinctly put in issue by the defendant's plea and by reason of the policy to settle in one action all the conflicting claims of the parties to the possession of the property in

controversy, the question of ownership may be resolved in the same proceeding.

**Rivera v. Vargas, G.R. No. 165895, June 5, 2009**

Replevin is both a form of principal remedy and of provisional relief.

- The action is primarily possessory in nature and generally determines nothing more than the right of possession.
- Procedure for execution: The sheriff, upon receipt of the writ and prior to the taking, must serve a copy thereof to the adverse party, together with the application, the affidavit of merit, and the replevin bond (twice the value of the property).

*Accion interdictal*

**Javelosa v. Tapus, G.R. No. 204361, July 4, 2018**

The following jurisdictional facts must be alleged and proven in a case for unlawful detainer:

1. Initially, the possession of property by the defendant was by contract with or by tolerance of the plaintiff
2. Eventually, such possession became illegal upon notice by plaintiff to defendant of the termination of the latter's right of possession
3. Thereafter, the defendant remained in possession of the property and deprived the plaintiff of the enjoyment thereof
4. Within one year from the last demand on defendant to vacate the property, the plaintiff instituted the complaint for ejectment

Hence, when the complaint fails to aver the facts constitutive of forcible entry or unlawful detainer, as where it does not state how entry was effected or how and when dispossession started, the remedy should either be an *accion publiciana* or *accion reivindicatoria*.

**Penta Pacific Realty Corp. v. Ley Construction & Development Corp., G.R. No. 161589, November 24, 2014**

In an action for forcible entry or unlawful detainer, principal issue must be possession *de facto*, or actual possession, and ownership is merely ancillary to such issue.

- Consequently, any issue on ownership arising in forcible entry or unlawful detainer is resolved only provisionally for the purpose of determining the principal issue of possession.

*Accion publiciana*

**Cabling v. Dangcalan, G.R. No. 187696, June 15, 2016**

It is no longer good law that all cases for recovery of possession or *accion publiciana* lie with the RTC, regardless of the value of the property.

- If the assessed value of the real property does not exceed P400,000, the case falls under the exclusive original jurisdiction of the MTC. If the value exceeds P400,000, it is with the RTC.

Hence, in *accion publiciana* and *reivindicatoria*, the complaint must allege the assessed value of the real property subject of the complaint. The jurisdiction would now be determined by the assessed value of the disputed land, or of the adjacent lots if it is not declared for taxation purposes.

- If the assessed value is not alleged, the action should be dismissed for lack of jurisdiction.

**Filinvest Land Inc. v. Adia, G.R. No. 192629, November 25, 2015**

An *accion publiciana* or a case for recovery of possession determines who between the parties has the better and legal right to possess the properties, independently of title.

- Hence, farmers will have a better right of possession, because any transfers of possessory rights over landholdings awarded under agrarian laws are void.

**Heirs of Cullado v. Gutierrez, G.R. No. 212938, July 30, 2019**

There is ample jurisprudential support for upholding the power of a court hearing an *accion publiciana* to also rule on the issue of ownership. Nonetheless, this resolution on the question of ownership was not a final and binding determination of ownership, but merely provisional.

- Hence, the defense of ownership (in an *accion publiciana*) will not trigger a collateral attack on the plaintiff's Torrens or certificate of title because the resolution of the issue of ownership is done only to determine the issue of possession.
- To note, a Torrens title may not be attacked collaterally.

*Accion reivindicatoria*

**Heirs of Yusingco v. Busilak, G.R. No. 210504, January 24, 2018**

**Accion reivindicatoria** – An action whereby the plaintiff alleges ownership over a parcel of land and seeks recovery of its full possession. The judgment in such a case determines the ownership of the property and awards the possession of the property to the lawful owner.

An action to recover a parcel of land is a real action but it is an action *in personam*, for it binds a particular individual only although it concerns the right to a tangible thing.

**Exception:** A judgment in an ejectment suit may be bound a non-party if he is:

1. A trespasser, squatter, or agent of the defendant fraudulently occupying the property to frustrate the judgment
2. Guest or occupant of the premises with the permission of the defendant
3. Transferee pendente lite
4. Sublessee
5. Co-lessee
6. Member of the family, relative or privy of the defendant

*No litis pendentia in simultaneous accion interdictal and reivindicatoria*

**Sps. Tobias v. Gonzales, G.R. No. 232176, February 17, 2021**

The causes of action between *accion interdictal* and *accion reivindicatoria* are different.

- Accion interdictal – The sole issue is the right of physical or material possession over the subject real property independent of any claim of ownership.
- Accion reivindicatoria – The case seeks to resolve the ownership of the property.
  - Indeed, *accion reivindicatoria* is an action for the recovery of ownership which includes the recovery of possession.

Parenthetically, the requisites of *litis pendentia* are:

1. Identity of the parties
2. Identity of rights asserted and relief prayed for, the relief being founded on the same facts
3. The identity with respect to the two preceding particulars in the two cases is such that any judgment that may be rendered in the pending case, regardless of which party is successful, would amount to *res judicata* in the other case

*Doctrine of self-help*

**ART. 429 ★**

The owner or lawful possessor of a thing or has the right to exclude any person from the enjoyment and disposal thereof. For this purpose, he may use such force as may be reasonably necessary to repel or prevent an actual or threatened unlawful physical invasion or usurpation of his property.

**Requisites:**

1. There is an *actual* or *threatened* unlawful physical invasion or usurpation of the property
2. The owner or the lawful possessor uses force *reasonably necessary* to repel or prevent the invasion or usurpation of the property

**German Management & Services Inc. v. CA, G.R. No. 76216, September 14, 1986**

The doctrine of self-help can only be exercised at the time of actual or threatened dispossession.

- Hence, when possession has already been lost, the owner's remedy is a judicial process for the recovery of property.

**Caisip v. People, G.R. No. L-28716, November 18, 1970**

There must be an actual or threatened unlawful physical invasion or usurpation.

- Hence, the doctrine of self-help may not be used if the aggrieved parties were still legally possessing the property, e.g., a deadline to vacate has not yet come.

**ART. 430**

Every owner may enclose or fence his land or tenements by means of walls, ditches, live or dead hedges, or by any other means without detriment to servitudes constituted thereon.

As part of her *jus vindicandi*, an owner may protect her land by enclosing or fencing it, provided she complies with applicable laws and respects any encumbrance or servitude constructed on her land.

- This is not a source of claim for damage against the landowner.

**ART. 431**

The owner of a thing cannot make use thereof in such manner as to injure the rights of a third person.

This is one of the fundamental bases of police power, and constitutes a *just restriction* on the right of ownership.

- Hence, one cannot burn 🔥 her own house if she is located in the middle of a crowded district.

**ART. 432**

The owner of a thing has no right to prohibit the interference of another with

the same, if the interference is necessary to avert an imminent danger and the threatened damage, compared to the damage arising to the owner from the interference, is much greater. The owner may demand from the person benefited indemnity for the damage to him.

**State of necessity**

- This is considered a *justifying circumstance*, which eliminates criminal liability of the person, provided the following requisites are present:
  - The evil sought to be avoided actually exists
  - The injury feared be greater than that done to avoid it
  - There be no other practical and less harmful means of defending it

**ART. 433**

Actual possession under claim of ownership raises a disputable presumption of ownership. The true owner must resort to judicial process for the recovery of the property.

**Requirements to raise a *disputable* presumption of ownership**

1. Actual possession
2. Claim of ownership

*Writ of preliminary mandatory injunction*

**Sps. Castro v. Sps. Dela Cruz, G.R. No. 190122, January 10, 2011**

For an injunctive writ to issue, a **clear showing of extreme urgency to prevent irreparable injury** and a **clear and unmistakable right** to it must be proven by the party seeking it.

- The primary objective of a preliminary injunction, whether prohibitory or mandatory, is to preserve the status quo until the merits of the case can be heard.

The contemplated judicial process in Art. 433 is not through an ex-parte petition as what petitioners availed of, but a process wherein a third party is given an opportunity to be heard.

**Sps. Batolino v. Yap-Rosas, G.R. No. 206598, September 4, 2019**

A successful buyer of a foreclosed property bought at a public auction sale is authorized to apply for a writ of possession:

1. During the redemption period upon filing of the corresponding bond

2. After the expiration of the redemption period without any need of a bond

When no redemption is made within one year from the date of registration of the cert. of sale, the purchaser is already entitled to the possession of the subject property, unless a third party is holding it adversely to the judgment debtor.

- If there is a third party, the issuance of a writ of possession is *not* ministerial.

#### *Writ of demolition*

#### **Lucero v. Loot, G.R. No. L-16995, October 28, 1968**

If the writ of possession issued in a land registration proceeding implies the delivery of possession of the land to the successful litigant therein, a writ of demolition must, likewise, issue, especially considering that the latter writ is but a complement of the former which, without said writ of demolition, would be ineffective.

- A writ of possession and a writ of demolition are partners, like Batman and Robin.

#### **ART. 434**

In an action to recover, the property must be identified, and the plaintiff must rely on the strength of his title and not on the weakness of the defendant's claim.

#### **Requisites in an action to recover**

1. Property must be identified
2. Reliance on the title of the *plaintiff*, *e.g.*,
  - a. Torrens certificate
  - b. Titles granted by the Spanish Government
  - c. Long and actual possession
  - d. Occupation of a building for a long time without paying rentals therefor
  - e. Testimony of adverse and exclusive possession of ownership corroborated by tax declaration, payment of taxes, and deeds of mortgage

#### **Belmonte v. Magas, G.R. No. 240482, May 5, 2021**

Under Art. 434, the person who claims of having a better right to it must prove two things:

1. The identity of the land claimed
2. Their title to the land claimed

Tax declarations *per se* cannot be deemed a title to the land claimed. In the absence of actual, public, and adverse possession, the declaration of the land for tax purposes does not prove ownership.

- Hence, there must be possession and a tax declaration to constitute title.

#### **Republic v. Alba, G.R. No. 169710, August 19, 2015**

Under the Land Registration Decree, it is mandatory for the applicant for original registration to submit to the trial court not only the original or duplicate copies of the muniments of title but also the copy of the duly approved survey plan of the land sought to be registered.

- Nevertheless, an approved plan and technical description satisfies this requirement for ascertaining the identity or location of the lands subject of the application for registration.

Requisites for the filing of an application for registration of title under § 14 (a), PD 1529:

1. The property in question is alienable and disposable land of the public domain
2. The applicant or his predecessors-in-interest have been in open, continuous, exclusive and notorious possession and occupation
3. That such possession is under a bona fide claim of ownership since June 12, 1945 or earlier

#### **Gemina v. Espejo, G.R. No. 232682, September 13, 2021**

The identity of the disputed land sought to be recovered or of the subject property in this case may be established through a survey plan of the said property.

- A technical description that provides for the metes and bounds of a parcel of land cannot stand alone.

#### **ART. 435**

No person shall be deprived of his property except by competent authority and for public use and always upon payment of just compensation.

Should this requirement be not first complied with, the courts shall protect and, in a proper case, restore the owner in his possession.

#### **Power of eminent domain**

### Requisites

1. Taking by competent authority
2. Observance of due process of law
3. Taking for public use
4. Payment of just compensation

### ART. 436

When any property is condemned or seized by competent authority in the interest of health, safety or security, the owner thereof shall not be entitled to compensation, unless he can show that such condemnation or seizure is unjustified.

### Seizure as an exercise of police power

- Unlike eminent domain, which requires the giving of just compensation, police power needs no giving of a financial return.

**Abatement of nuisances** – The exercise of police power allows the state to abate nuisances

1. Public nuisance
2. Private nuisance
3. Nuisance *per se*
4. Nuisance per accidens

### ART. 437

The owner of a parcel of land is the owner of its surface and everything under it, and he can construct thereon any works or make any plantations and excavations which he may deem proper, without detriment to servitudes and subject to special laws and ordinances. He cannot complain of the reasonable requirements of aerial navigation.

### Surface right of a land owner

- If a person owns a land, he also owns its surface, up to the boundaries of the land, with the right to make thereon allowable constructions, plantings, and excavations, subject to:
  - Servitudes or easements
  - Special laws (i.e., Regalian doctrine vis-a-vis Mining Law)
  - Ordinances
  - Reasonable requirements of aerial navigation
  - Principles on human relations and the prevention of injury to the rights of third persons

### Hidden treasures

### ART. 438 ★

Hidden treasure belongs to the owner of the land, building, or other property on which it is found.

Nevertheless, when the discovery is made on the property, or of the State, or any of its subdivisions, and by chance, one-half thereof shall be allowed to the finder. If the finder is a trespasser, he shall not be entitled to any share of the treasure.

If the things found be of interest to science or the arts, the State may acquire them at their just price, which shall be divided in conformity with the rule stated.

### ART. 439 ★

By treasure is understood, for legal purposes, and hidden and unknown deposit of money, jewelry, or other precious objects, the lawful ownership of which does not appear.

### Where hidden treasure may be found

1. Land
2. Building
3. Other property

**“By chance”** – There must be *no purpose or intent* to look for the treasure. It could also be “by good luck.”

- Majority view – by accident
- Minority view – using a treasure map, device; with deliberate intent

### Requisites of a hidden treasure

1. Hidden and unknown deposit
2. Consists of money, jewelry or other precious objects
3. Their lawful ownership does not appear

## Chapter 2 Right of Accession

**Accession** – The right of the property owner to everything which is:

- a. Produced thereby (accession discreta)
- b. Incorporated or attached thereto (accession continua) which can be:
  - i. Accession natural

ii. Accession industrial

**Classification of accession ♥**

1. Accession discreta
  - a. Natural fruits
  - b. Civil fruits
  - c. Industrial fruits
2. Accession continua
  - a. With respect to real property
    - i. Accession industrial
      1. Building
      2. Planting
      3. Sowing
    - ii. Accession natural
      1. Avulsion
      2. Alluvium
      3. Change of course of rivers
      4. Formation of islands
  - b. With respect to movables
    - i. Adjunction/conjunction
      1. Inclusion
      2. Soldadura
      3. Tejido
      4. Pintura
      5. Escritura
    - ii. Mixture
      1. Confusion (liquids)
      2. Commixtion (solids)
    - iii. Specification

*Jus accessionis*

**ART. 440**

The ownership of property gives the right by accession to everything which is produced thereby, or which is incorporated or attached thereto, either naturally or artificially.

**ART. 441**

To the owner belongs:

1. The natural fruits;
2. The industrial fruits;
3. The civil fruits.

**ART. 442**

Natural fruits are the spontaneous products of the soil, and the young and other products of animals.

Industrial fruits are those produced by lands of any kind through cultivation or labor.

Civil fruits are the rents of buildings, the price of leases of lands and other property and the amount of perpetual or life annuities or other similar income.

Two kinds of natural fruits:

1. Spontaneous products of the soil
2. Young and other products of animals

**To whom does the offspring of animals belong when the male and female belong to different owners?**

- The owner of the female animal, for two reasons:
  - Oftentimes, it is not known who the male is.  
During the pregnancy of the female, its owner is greatly burdened by the consequential expenses and virtual uselessness of the animal, and it is only fair that when the young is born, the owner should gain, or at least recover his loss.
- This is the principle of *pratus sequitur ventrem* (the offspring follows the mother).

**ART. 443**

He who receives the fruits has the obligation to pay the expenses made by a third person in their production, gathering, and preservation.

**Who is “he?”**

- The owner.

Art. 443 does not apply when the planter is in good faith, because in this case, he is entitled to the fruits already received (Art. 554)

**ART. 444**

Only such as are manifest or born as considered natural or industrial fruits.

With respect to animals, it is sufficient that they are in the womb of the mother, although unborn.

#### *Accessio cedit principali*

##### **ART. 445**

Whatever is built, planted or sown on the land of another and the improvements or repairs made thereon, belong to the owner of the land, subject to the provisions of the following articles.

##### **ART. 446**

All works, sowing, and planting are presumed made by the owner and at his expense, unless the contrary is proved.

##### **Two presumptions:**

1. The improvements were made by the owner.
2. Said works and improvements were done at the owner's expense.

#### *Chart I*

##### **ART. 447**

The owner of the land who makes thereon, personally or through another, plantings, constructions or works with the materials of another, shall pay their value; and, if he acted in bad faith, he shall also be obliged to the reparation of damages. The owner of the materials shall have the right to remove them only in case he can do so without injury to the work constructed, or without the plantings, constructions or works being destroyed. However, if the landowner acted in bad faith, the owner of the materials may remove them in any event, with a right to be indemnified for damages.

#### *Chart II*

##### **ART. 448 ★**

The owner of the land on which anything has been built, sown or planted in good faith, shall have the right to appropriate as his own the works, sowing or planting, after payment of the indemnity provided for in articles 546 and 548, or to oblige the one who built or planted to pay the price of the land, and the one who sowed, the proper rent. However, the builder or planter cannot

be obliged to buy the land if its value is considerably more than that of the building or trees. In such case, he shall pay reasonable rent, if the owner of the land does not choose to appropriate the building or trees after proper indemnity. The parties shall agree upon the terms of the lease and in case of disagreement, the court shall fix the terms thereof.

##### **ART. 449**

He who builds, plants or sows in bad faith on the land of another, loses what is built, planted or sown without right to indemnity.

##### **ART. 450**

The owner of the land on which anything has been built, planted or sown in bad faith may demand the demolition of the work, or that the planting or sowing be removed, in order to replace things in their former condition at the expense of the person who built, planted or sowed; or he may compel the builder or planter to pay the price of the land, and the sower the proper rent.

##### **ART. 451**

In the cases of the two preceding articles, the landowner is entitled to damages from the builder, planter or sower.

##### **ART. 452**

The builder, planter or sower in bad faith is entitled to reimbursement for the necessary expenses of preservation of the land.

##### **ART. 453**

If there was bad faith, not only on the part of the person who built, planted or sowed on the land of another, but also on the part of the owner of such land, the rights of one and the other shall be the same as though both had acted in good faith.

It is understood that there is bad faith on the part of the landowner whenever the act was done with his knowledge and without opposition on his part.

##### **ART. 454**

When the landowner acted in bad faith and the builder, planter or sower proceeded in good faith, the provisions of Article 447 shall apply.

##### **Types of indemnities:**

1. Necessary – Those made for the preservation of the thing.

2. Useful – Those made to augment the income of the thing upon which they are spent.
3. Luxurious – Those which are for pure pleasure.

**Pecson v. CA, G.R. No. 115814, May 26, 1995**

Art. 448 does not apply to a case where the LO-BPS loses ownership of the land by sale or donation.

- When the true owner himself is the builder of works on his own land, the issue of good faith or bad faith is entirely irrelevant.

Nevertheless, the provision in Art. 448 concerning indemnity may be applied by analogy, considering that the primary intent of the provision is to avoid a state of forced co-ownership.

**Sps. Benitez v. CA, G.R. No. 104828, January 16, 1997**

Art. 448 is unequivocal that the option to sell the land on which another in good faith builds, plants or sows on belongs to the landowner. Not even a declaration that the BPS is in bad faith shifts the option to the BPS per Art. 450.

- This advantage in Art. 448 is accorded the LO because his right is older, and because, by the principle of accession, he is entitled to the ownership of the accessory thing.

**Technogas Phil. Manufacturing Corp. v. CA, G.R. No. 108894, February 10, 1997**

Under Art. 448, the BPS can compel the LO to exercise either of two options:

1. To appropriate the building by paying the indemnity required by law
2. To sell the land to the BPS

**Manotok Realty Inc. v. Tecson, G.R. No. L-47475, August 19, 1988**

Under Art. 448, the only right given to the builder in good faith is the right to reimbursement for the improvements; the builder cannot compel the owner of the land to sell such land to the former.

**Sarmiento v. Agana, G.R. No. 5788, April 30, 1984**

The LO cannot refuse both to pay for the building and to sell the land, and compel the BPS to remove or demolish what has been built. The LO is entitled to remotion only when the BPS failed to pay for the land.

**Depra v. Dumlao, G.R. No. L-57348, May 16, 1985**

It is the LO who is authorized to exercise the option—either to appropriate or sell the encroaching part—because his right is older, and because, by the

principle of accession, he is entitled to the ownership of the accessory thing.

- Hence, the BPS is only entitled to removal of his kitchen only when, after having chosen to sell his encroached land, the BPS fails to pay for the same.
- The case must be remanded for the trial court to assess the respective values of the improvement and of the land, the reasonable rentals and indemnity, terms of the lease, and other matters.

**Ballatan v. CA, G.R. No. 125683, March 2, 1999**

If the value of the land is much more than the BPS's improvements, the BPS must pay reasonable rent. If they do not agree on the terms of the lease, the courts may fix the same.

**Briones v. Sps. Macabagdal, G.R. No. 150666, August 3, 2010**

Art. 448 covers cases in which the BPS believe themselves to be owners of the land or, at least, to have a claim of title thereto. BPS is also entitled to be indemnified for the necessary and useful expenses they may have made on the property.

**Benedicto v. Villaflores, G.R. No. 185020, October 6, 2010**

The BPS in good faith must be reimbursed for the necessary and useful expenses he incurred. A contrary ruling would unjustly enrich the LO.

- In any case, the question of whether a BPS is in good or bad faith is a factual matter.

**Sps. Belvis v. Sps. Erola, G.R. No. 239727, July 24, 2019**

An example of an LO in bad faith is, despite knowledge that the BPS possessed, cultivated and constructed various improvements on the lot for years, it never opposed or objected to the BPS's introduction of improvements.

A BPS in bad faith, meanwhile, is even though they are aware that they have no right to retain possession of the property, they still planted, built or sown on the property.

- Being both in bad faith, the rules in Art. 448 applies.

*Co-ownership;*

*Effect of partition*

**Sps. Del Campo v. Abesia, G.R. No. L-49219, April 15, 1988**

Art. 448 cannot apply where a co-owner builds, plants or sows on the land owned in common for he is a co-owner of the land.

**Ignao v. IAC, G.R. No. 72876, January 18, 1991**

When the co-ownership is terminated by a partition and it appears that the house of an erstwhile co-owner has encroached upon a portion pertaining to another co-owner which was however made in good faith, then the provisions of Art. 448 should apply to determine the respective rights of the parties.

*Chart III*

**ART. 455**

If the materials, plants or seeds belong to a third person who has not acted in bad faith, the owner of the land shall answer subsidiarily for their value and only in the event that the one who made use of them has no property with which to pay.

This provision shall not apply if the owner makes use of the right granted by Article 450. If the owner of the materials, plants or seeds has been paid by the builder, planter or sower, the latter may demand from the landowner the value of the materials and labor.

*Good faith is not absence of negligence!*

**ART. 456**

In the cases regulated in the preceding articles, **good faith does not necessarily exclude negligence**, which gives right to damages under Article 2176.

*Lessee or BPS?*

**ART. 1678**

If the lessee makes, in good faith, useful improvements which are suitable to the use for which the lease is intended, without altering the form or substance of the property leased, the lessor upon the termination of the lease shall pay the lessee one-half of the value of the improvements at that time. Should the lessor refuse to reimburse said amount, the lessee may remove the improvements, even though the principal thing may suffer damage thereby. He shall not, however, cause any more impairment upon the property leased than is necessary.

With regard to ornamental expenses, the lessee shall not be entitled to any reimbursement, but he may remove the ornamental objects, provided no damage is caused to the principal thing, and the lessor does not choose to

retain them by paying their value at the time the lease is extinguished.

**Geminiano v. CA, G.R. No. 120303, July 24, 1996**

Lessees are estopped to deny their landlord's title, or to assert a better title not only in themselves, but also in some third person while they remain in possession of the leased premises and until they surrender possession to the landlord.

- Hence, being mere lessees, Art. 448 in relation to Art. 546 does not apply as it is only applicable to a possessor in good faith.
- Otherwise, it would always be in the power of the tenant to "improve" his landlord out of his property.

The right to indemnity under Art. 1678 arises only if the lessor opts to appropriate the improvements.

**Sulo sa Nayon v. Nayong Pilipino Foundation, G.R. No. 170923, January 20, 2009**

The introduction of valuable improvements on the leased premises does not give the petitioners the right of retention and reimbursement which rightfully belongs to a builder in good faith.

A lessee is neither a builder in good faith nor in bad faith that would call for the application of Articles 448 and 546 of the Civil Code. His rights are governed by Article 1678 of the Civil Code.

- Hence, the lessor has the option of paying one-half of the value of the improvements which the lessee made in good faith.
- The lessee may remove the improvements should the lessor refuse to reimburse.

**Forms of accession natural**

1. Alluvium
2. Avulsion
3. Change of course of rivers
4. Formation of islands

*Alluvium*

**ART. 457**

To the **owners of lands adjoining the banks of rivers** belong the accretion which they gradually receive from the effects of the current of the waters.

**Alluvium** – The soil deposited or added to (accretion) the lands adjoining the banks of rivers, and gradually received as an effect of the current of the waters. By law, the accretion is owned by the estate fronting the river bank (riparian owner)

- **Accretion** – The *process* whereby soil is deposited. *Alluvium* is the *soil deposited*.

“Owners of lands adjoining the banks of rivers” – **Riparian owner.**

**Requisites of alluvium**

1. The deposit should be gradual and imperceptible
2. Cause is the current of the river
3. Current must be that of a river
4. The river must continue to exist (if the river disappears → Art. 461)
5. The increase must be comparatively little

**Agustin v. IAC, G.R. Nos. 66075-75, July 5, 1990**

Accretion benefits a riparian owner when the following requisites are present:

1. That the deposit be gradual and imperceptible.
2. That it resulted from the effects of the current of the river.
3. The land where the accretion takes place is adjacent to the bank of a river.

*Rationale for the rule:* If lands bordering on streams are exposed to floods and other damage due to the destructive force of the waters, it is only just that such risks or dangers as may prejudice the owners thereof should in some way be compensated by the right of accretion.

**Viajar v. CA, G.R. No. 77294, December 12, 1988**

The registration under the Torrens System does not protect the riparian owner against the diminution of the area of his registered land through gradual changes in the course of an adjoining stream.

- The change of course of the river *trumps* a Torrens title!

**Grande v. CA, G.R. No. L-17652, June 30, 1962**

Ownership of a piece of land is one thing, and registration under the Torrens system is another. Ownership over accretion is governed by the New Civil Code, while imprescriptibility of registered land is in the Registration Law.

If not registered, the increment will not be entitled or subject to the protection of imprescriptibility enjoyed by registered property under the Torrens system.

- Consequently, it was subject to acquisition through prescription by third persons

**Reynante v. CA, G.R. No. 95907, April 8, 1992**

Accretion to registered land does not preclude the acquisition of the additional area by another person through prescription.

**Republic v. CA & Tancinco, G.R. No. L-61647, October 12, 1984**

The requirement that the deposit should be due to the effect of the current of the river is indispensable. Alluvion must be the exclusive work of nature.

- Hence, *artificial reclamation* is not alluvion.

**Ronquillo v. CA, G.R. No. L-43346, March 20, 1991**

If the change in the course of the river was caused not by natural forces, but due to the dumping of garbage, then, the rules on alluvion do not apply.

- Hence, the resulting land is part of the land of public domain.

**Office of the City Mayor v. Ebio, G.R. No. 178411, June 23, 2010**

The Spanish Law of Waters, Art. 84 specifically covers ownership over alluvial deposits along the banks of a creek.

- The alluvial deposits along the bank of a creek do not form part of the public dominion as the alluvial property automatically belongs to the owner of the estate to which it may have been added.

**ART. 458**

The owners of estates adjoining ponds or lagoons do not acquire the land left dry by the natural decrease of the waters, or lose that inundated by them in extraordinary floods.

Art. 458 applies when the estate *adjoins*:

1. A pond
2. A lagoon

*Avulsion*

**ART. 459**

Whenever the current of a river, creek or torrent segregates from an estate on its bank a known portion of land and transfers it to another estate, the owner of the land to which the segregated portion belonged retains the ownership

of it, provided that he removes the same within two years.

**Avulsion** – The process whereby the current of a river, creek or torrent segregates from an estate on its bank a known portion of land and transfers it to another estate.

- The removal of a considerable quantity of earth upon or annexation to the land of another, suddenly and by the perceptible action of the water.

**River** – A natural stream of water, of greater volume than a creek, in a more or less permanent bed or channel, between defined banks or walls, with a current which may either be continuous in one direction or affected by the ebb and flow of the tide.

**Creek** – A small stream less than a river.

**Torrent** – A violent, rushing, or turbulent stream.

Alluvium	Avulsion
Deposit of soil is gradual	Sudden or abrupt process may be seen
Soil cannot be identified	Identifiable or verifiable
Belongs to owner of property to which it is attached	Belongs to the owner from whose property it was detached

#### ART. 460

Trees uprooted and carried away by the current of the waters belong to the owner of the land upon which they may be cast, if the owners do not claim them within six months. If such owners claim them, they shall pay the expenses incurred in gathering them or putting them in a safe place.

#### Illustrative examples

1. Because of the force of the river current, some trees on the estate of A were uprooted and cast on the estate of B. Who owns the trees?
  - a. Still A. If unclaimed within 6 months, B will become the owner. If A claims, A will cover the expenses.
2. If the trees carried away have been transplanted by B, ownership still pertains to A, provided that the claim was made properly.

#### Change of course of rivers

#### ART. 461

River beds which are abandoned through the natural change in the course of waters *ipso facto* belong to the owners whose lands are occupied by the new course in proportion to the area lost. However, the owners of the land adjoining the old bed shall have the right to acquire the same by paying the value thereof, which value shall not exceed the value of the area occupied by the new bed.

#### Requisites for change of river bed to apply

1. The change must be sudden in order that the old river bed may be identified
2. The changing of the course must be more or less permanent, and not temporary overflowing of another's land
3. The change of the river bed must be a natural one
4. There must be a definite abandonment by the government
5. The river must continue to exist

#### How should *ipso facto* be construed?

- It means that the prejudiced landowner automatically becomes the owner of the abandoned river bed, once the conditions stated in the article are fulfilled or manifest, without the necessity of any action.

#### Sps. Baes v. CA, G.R. No. 108065, July 6, 1993

If the government caused the river to change course artificially (as in streamlining a creek), then, it may give the riparian owner who lost land another parcel of land with the exact same value and dimension.

- In such a case, the landowner has already been compensated and can no longer claim a portion of the dried-up riverbed as that would amount to double compensation and unjust enrichment at the expense of the state.

#### ART. 462

Whenever a river, changing its course by natural causes, opens a new bed through a private estate, this bed shall become of public dominion.

The new river bed becomes a land of public dominion, by operation of law.

#### ART. 463

Whenever the current of a river divides itself into branches, leaving a piece of land or part thereof isolated, the owner of the land retains his ownership. He also retains it if a portion of land is separated from the estate by the current.

**Illustrative example:** A's estate adjoins a river, but the river divides itself into branches, thus affecting A's property. A remains the owner of the portion which:

- May be isolated from the rest
- May be separated from the rest

This article refers to the formation of islands by branching off a river, as distinguished from the formation of islands by alluvial deposits (Arts. 464-465).

The rule applies whether the river is navigable or not.

#### Formation of islands

#### ART. 464

Islands which may be formed on the seas within the jurisdiction of the Philippines, on lakes, and on navigable or floatable rivers belong to the State.

#### ART. 465

Islands which through successive accumulation of alluvial deposits are formed in non-navigable and non-floatable rivers, belong to the owners of the margins or banks nearest to each of them, or to the owners of both margins if the island is in the middle of the river, in which case it shall be divided longitudinally in halves. If a single island thus formed be more distant from one margin than from the other, the owner of the nearer margin shall be the sole owner thereof.

#### Ownership of island formed by unidentifiable accumulated deposits:

1. If formed on the sea
  - a. Within Philippine territorial waters – State (patrimonial property)
  - b. Outside of territory – First country to occupy
2. If formed on lakes, or navigable or floatable rivers – State
3. If formed on non-navigable or non-floatable rivers
  - a. If nearer in margin to one bank, owner of nearer margin is sole owner

- b. If equidistant, the island shall be divided longitudinally in halves, each bank getting half

**Navigable or floatable river** – Useful for floatage and commerce, whether the tides affect the water or not; should benefit trade and commerce.

#### Jagualing v. CA, G.R. No. 94283, March 4, 1991

If an island forms in the middle of a non-navigable and non-floatable river, the closer riparian owner gains ownership of said island, *ipso jure*. No specific act of possession over the accretion is required.

If, however, the riparian owner fails to assert his claim, the same may yield to the adverse possession of third parties, as indeed even accretion to land titled under the Torrens system must itself still be registered.

#### Section 3. – Right of accession with respect to movable property.

#### Three types of accession with respect to movable property:

1. Adjunction
2. Mixture (commixtion or confusion)
3. Specification

#### ART. 466

Whenever two movable things belonging to different owners are, without bad faith, united in such a way that they form a single object, the owner of the principal acquires the accessory, indemnifying the former owner thereof for its value.

**Adjunction** (or conjunction) – The process by virtue of which two movable things belonging to different owners are united in such a way that they form a single object.

#### Kinds:

1. Inclusion
2. Soldering
  - a. Ferruminatio – objects are of the same metal
  - b. Plumbatura – objects are of different materials
3. Escritura (writing)
4. Pintura (painting)
5. Weaving

### Rules for determining the principal

#### ART. 467

The principal thing, as between two things incorporated, is deemed to be that which the other has been united as an ornament, or for its use or perfection.

#### ART. 468

If it cannot be determined by the rule given in the preceding article which of the two things incorporated is the principal one, the thing of the greater value shall be so considered, and as between two things of equal value, that of the greater volume.

In painting and sculpture, writings, printed matter, engraving and lithographs, the board, metal, stone, canvas, paper or parchment shall be deemed the accessory thing.

#### The principal is:

1. That to which the other has been united as an ornament or for its use, or perfection (intention)
2. That of greater value
3. That of greater volume
4. That which has greater merits

### Adjunction

#### ART. 469

Whenever the things united can be separated without injury, their respective owners may demand their separation.

Nevertheless, in case the thing united for use, embellishment or perfection of the other, is much more precious than the principal thing, the owner of the former may demand its separation, even though the thing to which it has been incorporated may suffer some injury.

#### ART. 470

Whenever the owner of the accessory thing has made the incorporation in bad faith, he shall lose the thing incorporated and shall have the obligation to indemnify the owner of the principal thing for the damages he may have suffered.

If the one who has acted in bad faith is the owner of the principal thing, the owner of the accessory thing shall have a right to choose between the former

paying him its value or that thing belonging to him be separated, even though for this purpose it be necessary to destroy the principal thing; and in both cases, furthermore, there shall be indemnity for damages.

If either one of the owners has made the incorporation with the knowledge and without the objection of the other, their respective rights shall be determined as though both acted in good faith.

*See movables accession chart I.*

#### ART. 471

Whenever the owner of the material employed without his consent has a right to an indemnity, he may demand that this consist in the delivery of a thing equal in kind and value, and in all other respects, to that employed, or else in the price thereof, according to expert appraisal.

#### Indemnity-how paid:

1. Delivery of a thing equal in kind and value; or
2. Payment of price as appraised by experts

In any case, sentimental value must be considered. The *right to indemnity* applies only if material was employed *without* the OM's consent.

### Mixture

#### ART. 472

If by the will of the owners two things of the same or different kinds are mixed, or if the mixture occurs by chance, and in the latter case things are not separable without injury, each owner shall acquire a right proportional to the part belonging to him, bearing in mind the value of the thing mixed or confused.

#### ART. 473

If by the will of only one owner, but in good faith, two things of the same or different kinds are mixed or confused, the rights of the owners shall be determined by the provisions of the preceding article.

If the one who caused the mixture or confusion acted in bad faith, he shall lose the thing belonging to him thus mixed or confused, besides being obliged to pay indemnity for the damages caused to the owner of the other thing with which his own was mixed.

**Two kinds of mixture:**

1. Commixtion (solids are mixed)
2. Confusion (liquids are mixed)

See movables accession chart II.

**Santos v. Bernabe, G.R. No. 31163, November 6, 1929**

When the palay of two individuals mixed, inadvertently, in a warehouse and there were no more means to separate the palay, then the two individuals became co-owners. A *commixtion* occurs.

- Hence, the two co-owners are in good faith.
- The two will have a share in proportion to the original quantities they had.

**Siari Valley Estate v. Lucasan, G.R. No. L-7046, August 31, 1955**

Where the goods are so mingled that they cannot be properly identified or divided, all the inconvenience or loss is thrown on the party who caused it.

- In other words, the party in bad faith cannot recover for his own proportion, or for any part of the intermixture, but the entire property vests in the party in good faith whose right is invaded.

**Specification****ART. 474**

One who in good faith employs the material of another in whole or in part in order to make a thing of a different kind, shall appropriate the thing thus transformed as his own, indemnifying the owner of the material for its value.

If the material is more precious than the transformed thing or is of more value, its owner may, at his option, appropriate the new thing to himself, after first paying indemnity for the value of the work, or demand indemnity for the material.

If in the making of the thing bad faith intervened, the owner of the material shall have the right to appropriate the work to himself without paying anything to the maker, or to demand of the latter that he indemnify him for the value of the material and the damages he may have suffered. However, the owner of the material cannot appropriate the work in case the value of the latter, for artistic or scientific reasons, is considerably more than that of the material.

**Specification** – Is the giving of a new form to another's material through the

application of labor. The material undergoes a transformation or change of identity.

**Aguirre v. Pheng, G.R. No. L-20851, September 3, 1966**

It is a case of accession by specification when a person introduces improvements upon a movable (such as embellishing a water tank) and thereafter its value increases.

- Hence, the laborer is entitled to reimbursement of the expenses it incurred for the improvements.

⚠ However, here, the tank remained as a tank. It has not undergone a transformation or change of identity.

Adjunction	Mixture	Specification
Involves at least two things	Involves at least two things	May involve only one thing, but the form is changed
Accessory follows the principal	Co-ownership	Accessory follows the principal
The things joined retain their nature	The things mixed may either retain or lose their respective natures	The new object retains or preserves the nature of the original object

**ART. 475**

In the preceding articles, sentimental value shall be duly appreciated.

**Chapter 3  
Quieting of Title****ART. 476 ★**

Whenever there is a cloud on title to real property or any interest therein, by reason of any instrument, record, claim, encumbrance or proceeding which is apparently valid or effective but in truth and in fact invalid, ineffective, voidable, or unenforceable, and may be prejudicial to said title, an action may be brought to remove such cloud or to quiet the title.

**Quieting of title** – It is a common-law remedy for the removal of any cloud upon or doubt or uncertainty with respect to title to real property.

- Purpose: To secure an adjudication that a claim of title to or an interest in property, adverse to that of the complainant, is invalid.

**Kinds of action:**

1. Remedial
2. Preventative (actio quia timet)

**Clouds:**

1. There is an instrument or record or claim or encumbrance or proceeding
2. Which is apparently valid or effective
3. But is, in truth and in fact, invalid, ineffective, voidable, unenforceable, or extinguished or barred by extinctive prescription
4. Prejudicial to the title

**Reasons for allowing the action:**

1. Prevention of litigation
2. Protection of the true title and possession
3. The promotion of right and justice

**Serrano v. Espejo, G.R. No. 210338, March 17, 2021**

**Requisites for an action to quiet title:**

1. The plaintiff or complainant has a legal or an equitable title to or interest in the real property subject of the action
2. The deed, claim, encumbrance, or proceeding claimed to be casting a doubt in their title must be shown to be in fact invalid or inoperative despite its prima facie appearance of validity or legal efficacy.

**Vda. de Aviles v. CA, G.R. No. 95748, November 21, 1996**

An action to quiet title or to remove cloud may not be brought for the purpose of settling a boundary dispute.

- The proper remedy would be an action for recovery of possession or ownership, as the case may be.

**Oblea v. CA, G.R. No. 117389, May 11, 1995**

An ejectment case and an action for quieting of title are distinct remedies.

- The issue in an ejectment case is possession de facto.
- Hence, there is *no litis pendentia* between the two actions.

**Ney v. Sps. Quijano, G.R. No. 178609, August 4, 2010**

An action for reconveyance seeks to transfer property wrongfully registered in another's name to the rightful owner. This is different from quieting of title, which is used to remove a "cloud" on ownership created by an apparently valid but actually invalid or unenforceable claim.

- **Exception:** However, courts may treat reconveyance as quieting of title when the plaintiff is already in possession of the property.

**ART. 477**

The plaintiff must have legal or equitable title to, or interest in the real property which is the subject-matter of the action. He need not be in possession of said property.

The plaintiff must have either *legal* (registered) or *beneficial* (equitable) ownership for the action to prosper.

Plaintiff in possession	Plaintiff out of possession
Action is imprescriptible	Action prescribes
Only right is to remove or prevent cloud	Right to remove cloud + <i>accion indertictal, publiciana or reivindicatoria</i>

**ART. 478**

There may also be an action to quiet title or remove a cloud therefrom when the contract, instrument or other obligation has been extinguished or has been terminated, or has been barred by extinctive prescription.

**Two instances where the action may be used:**

1. When the contract has ended
2. When the action is barred by extinctive prescription

**ART. 479**

The plaintiff must return to the defendant all benefits he may have received from the latter, or reimburse him for expenses that may have redounded to the plaintiff's benefit.

#### ART. 480

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

#### ART. 481

The procedure for the quieting of title or the removal of a cloud therefrom shall be governed by such rules of court as the Supreme Court shall promulgate.

#### Rule 67 of the Rules of Court governs quieting of title.

- It will be denominated as a petition for declaratory relief.

#### When the action to quiet title will *not* prosper:

1. If it is merely an action to settle a boundary dispute
2. If the case merely involves the proper interpretation and meaning of a contract or document
3. If the plaintiff has no title
4. If the action has prescribed and the plaintiff is not in possession of the property
5. If the contract is void on its face
6. If it is a mere claim or assertion, unless such claim has been made in a court action or the claim asserts that an instrument or entry in behalf of the plaintiff is not really what it appears to be

#### Chapter 4

#### Ruinous Buildings and Trees in Danger of Falling

#### ART. 482

If a building, wall, column, or any other construction is in danger of falling, the owner shall be obliged to demolish it or to execute the necessary work in order to prevent it from falling.

If the proprietor does not comply with this obligation, the administrative authorities may order the demolition of the structure at the expense of the owner, or take measures to insure public safety.

#### ART. 483

Whenever a large tree threatens to fall in such a way as to cause damage to the land or tenement of another or to travelers over a public or private road,

the owner of the tree shall be obliged to fell and remove it; and should he not do so, it shall be done at his expense by order of the administrative authorities.

#### ART. 1723

The engineer or architect who drew up the plans and specifications for a building is liable for damages if within fifteen years from the completion of the structure, the same should collapse by reason of a defect in those plans and specifications, or due to the defects in the ground. The contractor is likewise responsible for the damages if the edifice falls, within the same period, on account of defects in the construction or the use of materials of inferior quality furnished by him, or due to any violation of the terms of the contract. If the engineer or architect supervises the construction, he shall be solidarily liable with the contractor.

Acceptance of the building, after completion, does not imply waiver of any of the causes of action by reason of any defect mentioned in the preceding paragraph.

The action must be brought within ten years following the collapse of the building.

**Period for liability by engineer/architect** – Up to 15 years from completion.

**Period for contractor's liability** – Up to 15 years from completion.

#### When does the action prescribe?

- 10 years after the collapse.

#### What may be recovered?

- Damages.

#### Juan F. Nakpil & Sons v. CA, G.R. No. L-47851, October 3, 1986



If both contractor and the architectural firm are guilty of negligence (i.e., by failing to observe the required workmanship, and committed substantial deviations from the plans), then they will be solidarily liable for indemnity to the structure's owner.

**Uniwide Sales v. Titan-Ikeda Construction, G.R. No. 126619, December 20, 2006**

Art. 1723 will not apply if the building is structurally sound. In any case, the

owner of the building has the burden of proving the defective construction.

### TITLE III Co-Ownership

**Co-ownership** – The right of common dominion which two or more persons have in a spiritual part of a thing, not materially or physically-divided.

Sources of co-ownership

1. Law
2. Contract
3. Chance (commixtion, confusion, hidden treasure)
4. Occupation
5. Succession

#### ART. 484 ★

There is co-ownership whenever the ownership of an undivided thing or right belongs to different persons.

In default of contracts, or special provisions, co-ownership shall be governed by the provisions of this Title.

*Unanimous consent required*

#### Sps. Rol v. Racho, G.R. No. 246096, January 13, 2021

A sale of a definite portion of a co-owned property requires the consent of all the co-owners. Without such unanimous consent, a co-owner can only convey his undivided, aliquot interest over a co-owned property. He has no right to divide and thereafter convey definite portions thereof.

- Proportionate share – The undivided interest of a co-owner. This is also known as the ideal or abstract quota.

#### ART. 485

The share of the co-owners, in the benefits as well as in the charges, shall be proportional to their respective interests. Any stipulation in a contract to the contrary shall be void.

The portions belonging to the co-owners in the co-ownership shall be presumed equal, unless the contrary is proved.

The share in the benefits and charges is *proportional* to the interest of each.

- A contrary stipulation is void.

#### ART. 486

Each co-owner may use the thing owned in common, provided he does so in accordance with the purpose for which it is intended and in such a way as not to injure the interest of the co-ownership or prevent the other co-owners from using it according to their rights. The purpose of the co-ownership may be changed by agreement, express or implied.

**General rule:** Each co-owner has the right to use the property for the purpose intended.

**Qualifications:**

1. The interest of the co-ownership must not be injured/prejudiced
2. The other co-owners must not be prevented from using it.

#### ART. 487 ★

Any one of the co-owners may bring an action in ejectment.

**“Ejectment” here covers:**

1. Forcible entry
2. Unlawful detainer
3. Accion publiciana
4. Accion reivindicatoria
5. Quieting of title
6. Replevin

#### Sering v. Plazo, G.R. No. L-49731, September 29, 1988

A co-owner may thus bring an ejectment action without joining the other co-owners, the suit being deemed instituted for the benefit of all.

#### Plasabas v. CA, G.R. No. 166519, March 31, 2009

Art. 487 applies to all actions for the recovery of possession, including an *accion publiciana* and a reivindicatory action.

#### Adlawan v. Adlawan, G.R. No. 161916, January 20, 2009

When the suit is for the benefit of the plaintiff alone who claims to be the sole owner and entitled to the possession of the litigated property, the action should be dismissed.

#### ART. 488

Each co-owner shall have a right to compel the other co-owners to contribute to the expenses of preservation of the thing or right owned in common and to the taxes. Any one of the latter may exempt himself from this obligation by renouncing so much of his undivided interest as may be equivalent to his share of the expenses and taxes. No such waiver shall be made if it is prejudicial to the co-ownership.

**Expenses for preservation** – The co-owner has the right to compel others to share in the expenses of preservation, even if incurred without prior notification to them.

- These pertain to necessary expenses only.

#### What if the co-owner doesn't want to share?

- Then, he may exempt himself by renouncing so much of his undivided share as may be equivalent to his share of the expenses and taxes.

#### ART. 489

Repairs for preservation may be made at the will of one of the co-owners, but he must, if practicable, first notify his co-owners of the necessity for such repairs. Expenses to improve or embellish the thing shall be decided upon by a majority as determined in Article 492.

Act	Voting requirement
Repairs for preservation Ejectment action	One co-owner
Acts of administration (e.g., to embellish or improve the thing)	Financial majority or controlling interest (Art. 492)
Acts of dominion (e.g., to lease)	Unanimous consent

#### ART. 490

Whenever the different stories of a house belong to different owners, if the titles of ownership do not specify the terms under which they should contribute to the necessary expenses and there exists no agreement on the subject, the following rules shall be observed:

1. The main and party walls, the roof and the other things used in common, shall be preserved at the expense of all the owners in proportion to the value of the story belonging to each;
2. Each owner shall bear the cost of maintaining the floor of his story; the floor of the entrance, front door, common yard and sanitary works common to all, shall be maintained at the expense of all the owners pro rata;
3. The stairs from the entrance to the first story shall be maintained at the expense of all the owners pro rata, with the exception of the owner of the ground floor; the stairs from the first to the second story shall be preserved at the expense of all, except the owner of the ground floor and the owner of the first story; and so on successively.

*Alterations;*

*Acts of dominion*

#### ART. 491

None of the co-owners shall, without the consent of the others, make alterations in the thing owned in common, even though benefits for all would result therefrom. However, if the withholding of the consent by one or more of the co-owners is clearly prejudicial to the common interest, the courts may afford adequate relief.

**Alterations** – An alteration is a change:

- a. Which is more or less permanent
- b. Which changes the use of the thing
- c. Which prejudices the condition of the thing or its enjoyment

**Alteration is an act of ownership, which requires unanimous consent.**

*Acts of administration*

#### ART. 492

For the administration and better enjoyment of the thing owned in common, the resolutions of the majority of the co-owners shall be binding.

There shall be no majority unless the resolution is approved by the

co-owners who represent the controlling interest in the object of the co-ownership.

Should there be no majority, or should the resolution of the majority be seriously prejudicial to those interested in the property owned in common, the court, at the instance of an interested party, shall order such measures as it may deem proper, including the appointment of an administrator.

Whenever a part of the thing belongs exclusively to one of the co-owners, and the remainder is owned in common, the preceding provision shall apply only to the part owned in common.

**Acts of administration or management** – They are those:

- a. That do not involve an alteration
- b. Those that may be renewed from time to time
- c. Those that have transitory effects
- d. Those that do not give rise to a real right over the thing
- e. Those which do not affect the substance or nature of the thing
- f. Those for the common benefit of all the co-owners and not for only one/some of them

**Only a controlling or financial majority is required.**

#### **ART. 493**

Each co-owner shall have the full ownership of his part and of the fruits and benefits pertaining thereto, and he may therefore alienate, assign or mortgage it, and even substitute another person in its enjoyment, except when personal rights are involved. But the effect of the alienation or the mortgage, with respect to the co-owners, shall be limited to the portion which may be allotted to him in the division upon the termination of the co-ownership.

**Rules regarding the ideal (or metaphysical) share:**

1. Each co-owner has full ownership of his part, and of his share of the fruits and benefits.
2. Each co-owner may alienate, assign, or mortgage his ideal share.

**What if the co-owner sells the entire estate?**

- The sale is only valid insofar as his share is concerned, unless the other co-owners consented to the sale.

#### **ART. 494 ★**

No co-owner shall be obliged to remain in the co-ownership. Each co-owner may demand at any time the partition of the thing owned in common, insofar as his share is concerned.

Nevertheless, an agreement to keep the thing undivided for a certain period of time, not exceeding ten years, shall be valid. This term may be extended by a new agreement.

A donor or testator may prohibit partition for a period which shall not exceed twenty years.

Neither shall there be any partition when it is prohibited by law.

No prescription shall run in favor of a co-owner or co-heir against his co-owners or co-heirs so long as he expressly or impliedly recognizes the co-ownership.

#### **Delima v. CA, G.R. No. 46296, September 24, 1991**

An action to compel partition may be filed at any time by any of the co-owners against the actual possessor.

However, from the moment one of the co-owners claims that he is the absolute and exclusive owner of the properties and denies the others any share therein, the question involved is no longer one of partition but of ownership.

The imprescriptibility of the action for partition can no longer be invoked or applied when one of the co-owners has adversely possessed the property as exclusive owner for a period sufficient to vest ownership by prescription.

**To be considered adverse possession:**

1. The trustee has performed unequivocal acts amounting to an ouster of the cestui que trust (beneficiary)
2. Positive acts of repudiation had been made known
3. Evidence thereon should be clear and conclusive

#### **Adille v. CA, G.R. No. 44546, January 29, 1988**

If the adverse possessor has not made known his repudiation, then, the right of the co-owners to recover the property accrues only from the time of discovery.

#### **Mariategui v. CA, G.R. No. 57062, January 24, 1992**

Inasmuch as defendants registered in their names in fraud of their co-heirs,

prescription can only be deemed to have commenced from the time the plaintiff discovered such fraud.

**General rule:** Action for partition is imprescriptible.

**Exception:** The action for partition prescribes in 10 years if one of the co-owners validly repudiates.

- The 10-year period runs from the registration of title.
- **Exception:** The period runs from the discovery of the registration (if not made known), or from the discovery of the fraud.

**When may a co-owner not successfully demand a partition?**

- a. If by agreement (for a period not exceeding 10 years), partition is prohibited
- b. When partition is prohibited by a donor or testator for a period not exceeding 20 years
- c. When partition is prohibited by law (e.g., CPG/ACP)
- d. When a physical partition would render the property unserviceable, but in this case, the property may be allotted to one of the co-owners, who shall indemnify the others, or it will be sold, and the proceeds distributed
- e. When the legal nature of the common property does not allow partition (e.g., party walls)

#### Requisites of adverse possession ♥

1. The trustee has performed unequivocal acts amounting to an ouster of the cestui que trust (beneficiary)
2. Positive acts of repudiation had been made known
3. Evidence thereon should be clear and conclusive (*Delima v. CA*)

*Partition; succession law*

#### ART. 1078

Where there are two or more heirs, the whole estate of the decedent is, before its partition, owned in common by such heirs, subject to the payment of debts of the deceased.

#### ART. 495

Notwithstanding the provisions of the preceding article, the co-owners cannot demand a physical division of the thing owned in common, when to do so would render it unserviceable for the use for which it is intended. But the co-ownership may be terminated in accordance with Article 498.

#### ART. 496

Partition may be made by agreement between the parties or by judicial proceedings. Partition shall be governed by the Rules of Court insofar as they are consistent with this Code.

#### Kinds of partition:

1. Extrajudicial
2. Judicial

#### The law governing partition:

1. The Civil Code
2. Suppletorily, the Rules of Court (Rule 69)

#### ART. 497

The creditors or assignees of the co-owners may take part in the division of the thing owned in common and object to its being effected without their concurrence. But they cannot impugn any partition already executed, unless there has been fraud, or in case it was made notwithstanding a formal opposition presented to prevent it, without prejudice to the right of the debtor or assignor to maintain its validity.

**General rule:** A creditor who has not participated in the partition can no longer impugn a partition already executed.

#### Except:

1. The creditor was defrauded
2. The creditor was prevented to present a formal opposition

#### ART. 498

Whenever the thing is essentially indivisible and the co-owners cannot agree that it be allotted to one of them who shall indemnify the others, it shall be sold and its proceeds distributed.

#### Procedure for the legal partition of an indivisible object:

1. Give the whole to one co-owner who will now be required to indemnify the rest
2. If this is *not* agreed upon, there must be a sale (where strangers are allowed to purchase)

3. The proceeds, then, will go to the co-owners

#### **ART. 499**

The partition of a thing owned in common shall not prejudice third persons, who shall retain the rights of mortgage, servitude or any other real rights belonging to them before the division was made. Personal rights pertaining to third persons against the co-ownership shall also remain in force, notwithstanding the partition.

#### **Partition must protect a third person's (i.e., a mortgagor)**

1. Real right
2. Personal right

#### **ART. 500**

Upon partition, there shall be a mutual accounting for benefits received and reimbursements for expenses made. Likewise, each co-owner shall pay for damages caused by reason of his negligence or fraud.

#### **ART. 501**

Every co-owner shall, after partition, be liable for defects of title and quality of the portion assigned to each of the other co-owners.

#### **Effects of partition**

1. Mutual accounting for benefits received
2. Mutual reimbursement for expenses
3. Indemnity for damages in case of negligence or fraud
4. Reciprocal warranty for:
  - a. Defects of title (eviction)
  - b. Quality (hidden defects)
5. Each former co-owner is deemed to have had the exclusive possession of the part allotted to him for the entire period during the co-ownership (Art. 543)
6. Partition confers upon each, the exclusive title over his respective share

#### **How co-ownership is extinguished**

1. Judicial partition
2. Extrajudicial partition
3. When a co-owner has acquired the whole property by usucapcion

4. When a stranger acquires by prescription the thing owned in common
5. Merger in one co-owner
6. Loss or destruction
7. Expropriation

#### *Legal redemption*

#### **ART. 1620**

A co-owner of a thing may exercise the right of redemption in case the shares of all the other co-owners or of any of them, are sold to a third person. If the price of the alienation is grossly excessive, the redemptioner shall pay only a reasonable one.

Should two or more co-owners desire to exercise the right of redemption, they may only do so in proportion to the share they may respectively have in the thing owned in common.

#### **ART. 1623**

The right of legal pre-emption or redemption shall not be exercised except within thirty days from the notice in writing by the prospective vendor, or by the vendor, as the case may be. The deed of sale shall not be recorded in the Registry of Property, unless accompanied by an affidavit of the vendor that he has given written notice thereof to all possible redemptioners.

The right of redemption of co-owners excludes that of adjoining owners.

#### *Who may redeem*

#### **Villanueva v. Florendo, G.R. No. L-33158, October 17, 1985**

Within the meaning of Art. 1620, the term "third person" or "stranger" refers to all persons who are not heirs in succession. A third person is anyone who is not a co-owner.

#### **Tan v. CA, G.R. No. 79899, April 24, 1989**

When the heirs allowed the one year redemption period to expire without redeeming their parents' former property and permitted the consolidation of ownership and the issuance of a new title, the co-ownership was extinguished.

- Hence, a redemption (which, actually, is now repurchase) by one of the heirs will only be for her sole benefit.

#### *Period to redeem*

##### **Baltazar v. Miguel, G.R. No. 239859, June 28, 2021**

So long as the party seeking to redeem has actual knowledge of the sale, the 30-day period to redeem begins.

- In the absence of proof of actual knowledge, it may be assumed that the 30-day period began when the redeemer filed a suit.
- The period of legal redemption is not a prescriptive period, but a condition precedent to the exercise of the right of redemption.

Redemption entails the **filing of the action and consignation** of the price.

#### *Some acts of dominion*

##### **ART. 1648**

Every lease of real estate may be recorded in the Registry of Property. Unless a lease is recorded, it shall not be binding upon third persons.

##### **ART. 1878 (8)**

Special powers of attorney are necessary in the following cases:

xxx

(8) To lease any real property to another person for more than one year;

#### *Condominium Act-special type of co-ownership*

##### **Republic Act 4726 The Condominium Act**

**Section 2.** A condominium is an interest in real property consisting of separate interest in a unit in a residential, industrial or commercial building and an undivided interest in common, directly or indirectly, in the land on which it is located and in other common areas of the building. A condominium may include, in addition, a separate interest in other portions of such real property. Title to the common areas, including the land, or the appurtenant interests in such areas, may be held by a corporation specially formed for the purpose (hereinafter known as the "condominium corporation") in which the holders of separate interest shall automatically be members or shareholders, to the exclusion of others, in proportion to the appurtenant interest of their respective units in the common areas.

The real right in condominium may be ownership or any other interest in real property recognized by law, on property in the Civil Code and other

pertinent laws.

**Section 5.** Any transfer or conveyance of a unit or an apartment, office or store or other space therein, shall include the transfer or conveyance of the undivided interests in the common areas or, in a proper case, the membership or shareholdings in the condominium corporation: Provided, however, That where the common areas in the condominium project are owned by the owners of separate units as co-owners thereof, no condominium unit therein shall be conveyed or transferred to persons other than Filipino citizens, or corporations at least sixty percent of the capital stock of which belong to Filipino citizens, except in cases of hereditary succession. Where the common areas in a condominium project are held by a corporation, no transfer or conveyance of a unit shall be valid if the concomitant transfer of the appurtenant membership or stockholding in the corporation will cause the alien interest in such corporation to exceed the limits imposed by existing laws.

**Section 10.** Whenever the common areas in a condominium project are held by a condominium corporation, such corporation shall constitute the management body of the project. The corporate purposes of such a corporation shall be limited to the holding of the common areas, either in ownership or any other interest in real property recognized by law, to the management of the project, and to such other purposes as may be necessary, incidental or convenient to the accomplishment of said purposes. The articles of incorporation or by-laws of the corporation shall not contain any provision contrary to or inconsistent with the provisions of this Act, the enabling or master deed, or the declaration of restrictions of the project. Membership in a condominium corporation, regardless of whether it is a stock or non-stock corporation, shall not be transferable separately from the condominium unit of which it is an appurtenance. When a member or stockholder ceases to own a unit in the project in which the condominium corporation owns or holds the common areas, he shall automatically cease to be a member or stockholder of the condominium corporation.

**Section 11.** The term of a condominium corporation shall be co-terminus with the duration of the condominium project, the provisions of the Corporation Law to the contrary notwithstanding.

#### *Condominium restrictions*

##### **Twin Towers Condominium Corp. v. CA, G.R. No. 123552, February 27, 2003**

The Condominium Act, § 9 expressly empower the condominium corporation to promulgate house rules.

- Hence, it may impose reasonable assessments on its members to maintain the common areas and facilities of the condominium.
- The Master Deed also binds members since it is annotated on the condominium certificate of title of each unit. **The Master Deed is the**

contract with all condominium members who are all co-owners of the common areas and facilities of the condominium.

**BNL Management Corp. v. Uy, G.R. No. 210297, April 3, 2019**

Under Condominium Act, § 9, the owner shall register a declaration of restrictions over the certificate of title included within the project.

- These restrictions are imposed for the common interest and safety of the occupants.
- The declaration of restrictions is enforceable by the management body of the condominium.

*Jurisdiction over disputes*

**Manila Bankers Life Insurance v. Ng Kok Wei, G.R. No. 139791, December 12, 2003**

The Human Settlements Adjudication Commission (HSAC) has exclusive jurisdiction over complaints for specific performance with damages by a lot or condominium unit buyer against the owner or developer.

**Christian General Assembly v. Sps. Ignacio, G.R. No. 164789, August 27, 2009**

When it is the buyer who sues the owner, the HSAC has jurisdiction. The RTC's jurisdiction, meanwhile, is limited only to cases filed by subdivision owners or developers against its buyers.

- A compulsory counterclaim by the developer still belongs with the HSAC (since it is ancillary to the main action [i.e., buyer vs. owner]).

**Lim v. Moldex Land Inc., G.R. No. 206038, January 25, 2017**

**For condominium corporations, quorum for NSNP corporations** – Majority of the actual, living members with voting rights.

A corporation can only act through natural persons duly authorized for the purpose or specific act of its Board of Directors. Hence, for Moldex to exercise its membership rights and privileges, it has to appoint its representatives.

- However, individual representatives who are non-members cannot be elected as directors and officers of the condominium corporation.
- The power of the proxy is merely to vote—it is not a member in his own right, preventing him from being a director.

**TITLE V  
Possession**

**Chapter 1  
Possession and the Kinds Thereof**

**ART. 523 ★**

Possession is the holding of a thing or the enjoyment of a right.

**Viewpoints of possession**

1. Right to possess (*jus possidendi*) – An incident of ownership.
  - a. Example: The owner of a house has the right to possess it.
2. Right of possession (*jus possessionis*) – An right in itself independent of ownership.
  - a. Example: A lessee, though not the owner, has the right of possession of the premises by virtue of the lease contract.
  - b. This is recovered in *accion interdictal*.

**Requisites of possession**

1. There must be a holding or control of a thing or right, which may be actual or constructive
2. There must be a deliberate intention to possess (*animus possidendi*)
3. The possession must be by virtue of one's own right

**Types of holding or detention**

1. Actual occupation
2. Constructive occupation

**Classes of possession**

1. In one's own name or in that of another (art. 524)
2. In the concept of owner and in concept of holder (art. 525)
3. In good faith or in bad faith

Possession is not equivalent to ownership!

**Heirs of Soriano v. CA, G.R. No. 128177, August 15, 2001**

Possession and ownership are distinct legal concepts. A person may be declared owner but he may not be entitled to possession. A judgment for ownership, therefore, does not necessarily include possession as a necessary incident.

- Hence, a tenant under the Tenancy Act is protected from ejectment,

even by the legal owner who has a Torrens title.

#### *Doctrine of constructive possession*

##### **Ramos v. Director of Lands, G.R. No. 13298, November 19, 1918 ♥**

**Doctrine of constructive possession** – The general rule is that the possession and cultivation of a portion of a tract under claim of ownership of all is a constructive possession of all, if the remainder is not in the adverse possession of another.

##### **Somodio v. CA, G.R. No. 82680, August 13, 1994**

Hence, an owner may leave from time to time and visit only his property intermittently and he will not lose possession thereof (this is an ejectment case).

Possession in the eyes of the law does not mean that a man has to have his feet on every square meter of ground before it can be said that he is in possession.

It is sufficient that the possessor was able to subject the property to the action of his will.

##### **Lasam v. Director of Lands, G.R. No. 42859, March 17, 1938**

**Exception to the doctrine:** The application of the doctrine of constructive possession is subject to certain qualifications, among which is “one particularly relating to the size of the tract in controversy with reference to the portion actually in possession of the claimant.”

- Hence, the mere planting of a sign or symbol of possession cannot justify a Magellan-like claim of dominion over an immense tract of territory.

#### *Material vs. juridical possession (theft vs. estafa)*

##### **Guzman v. CA, G.R. No. L-9572, July 31, 1956**

An agent has both physical and juridical possession of the goods received in the agency, or the proceeds thereof, which takes the place of goods after their sale by the agent.

- An agent can assert, even as against his own principal, an independent, autonomous, right to retain the money or goods received in consequence of the agency.

##### **Chua-Burce v. CA, G.R. No. 109595, April 27, 2000**

Unlike an agent, who acquires juridical possession over money or property

received on behalf of a principal, a bank teller or cash custodian only has mere material possession, and thus misappropriation of funds by the latter does not constitute estafa.

- When she receives funds from a third person, her receipt is payment to the bank itself.

##### **Benabaye v. People, G.R. No. 203466, February 25, 2015**

A sum of money received by an employee on behalf of an employer is considered to be only in the material possession of the employee.

The material possession of an employee is adjunct, by reason of his employment, to a recognition of the juridical possession of the employer. So long as the juridical possession of the thing appropriated did not pass to the employee-perpetrator, the offense committed remains to be theft, qualified or otherwise.

- Hence, a collector of payment does not have juridical possession.

#### **ART. 524**

Possession may be exercised in one's own name or in that of another.

#### **Names under which possession may be exercised**

1. One's own name (owner)
  - a. This is required in adverse possession (possession in the concept of owner)
2. Name of another (holder)
  - a. Example: A lessee.

#### **Types of possession in another's name**

1. Voluntary (e.g., when an agent possesses for the principal)
2. Necessary (e.g., when a mother possesses a fetus)
3. Unauthorized (this will become the principal's possession only after there has been a ratification without prejudice to the effects of *negotiorum gestio*)

#### **ART. 525**

The possession of things or rights may be had in one of two concepts: either in the concept of owner, or in that of the holder of the thing or right to keep or enjoy it, the ownership pertaining to another person.

**Concept of owner** – Other people believe through my actions that I am the

owner of the property. It is one who claims and acts to be an owner.

- This is the possession that may ripen into ownership.

**Concept of holder** – I recognize another to be the owner.

#### ART. 526 ★

He is deemed a possessor in good faith who is not aware that there exists in his title or mode of acquisition any flaw which invalidates it.

He is deemed a possessor in bad faith who possesses in any case contrary to the foregoing.

Mistake upon a doubtful or difficult question of law may be the basis of good faith.

#### When does this article apply?

- If there is a flaw in the possessor's title or mode of acquisition.
  - If he is aware → *bad faith*
  - If he is unaware → *good faith*

**Good faith** – One who is not aware that there exists in his title or mode of acquisition any flaw which invalidates it.

- The belief must be reasonable, not capricious.

**Bad faith** – One who is not in good faith. Hence, if circumstances exist that require a prudent person to investigate, he will be in bad faith if he does not investigate.

**Mistake on a doubtful or difficult question of law** – It may be the basis of good faith, *provided* that such ignorance is *not gross* and therefore inexcusable.

- *Compare with* Art. 3: The person does not know about the law, and that is not excusable.
- Here in Art. 526, the person knows the law, but he has a different interpretation. Wrong interpretation is excusable.

#### Sps. Espinoza v. Sps. Mayandoc, G.R. No. 211170, July 3, 2017

To be deemed a builder in good faith, it is essential that a person asserts title to the land on which he builds. That he be a possessor in the concept of an owner, and that he be unaware that there exists in his title or mode of acquisition any flaw which invalidates it.

- Hence, a BPS who built improvements *prior* to the filing of a complaint against her *is in good faith*.

In contrast, bad faith does not simply connote bad judgment or negligence.

- Bad faith imports a dishonest purpose or some moral obliquity and conscious doing of a wrong.
- It means breach of a known duty through some motive, interest or ill will that partakes of the nature of fraud.

#### Pen Development Corp. v. Martinez Leyba Inc., G.R. No. 211845, August 9, 2017

A BPS may be considered in bad faith if, having been appraised of his encroachment on another's parcel of land, he still continued to build on the disputed area.

#### ART. 527

Good faith is always presumed, and upon him who alleges bad faith on the part of the possessor rests the burden of proof.

**Presumption of good faith** – Every person should be presumed honest until the contrary is proven.

- If there is no evidence presented proving bad faith, the presumption of good faith *remains*.

#### ART. 528

Possession acquired in good faith does not lose this character except in the case and from the moment facts exist which show that the possessor is not unaware that he possesses the thing improperly or wrongfully.

#### When possession in good faith is converted to bad faith

- From the moment facts exist showing the possessor's knowledge of the law, from that time should he be considered a possessor in bad faith.
- It does not matter whether the facts were caused by him or by some other person.

#### When bad faith begins

- May begin from the receipt of judicial summons (*see* Art. 1123)
- When a letter is received from the true owner (*Pen Development v. Las Brisas Resort*)

### ART. 529

It is presumed that possession continues to be enjoyed in the same character in which it was acquired, until the contrary is proved.

#### Some presumptions regarding possession

1. Good faith is always presumed
2. Continuing of character of possession (whether in good or bad faith)
3. Non-interruption of possession
4. Presumption of just title
5. Non-interruption of possession of property unjustly lost but legally recovered
6. Possession during the intervening period
7. Possession of movables in a real property
8. Exclusive possession of common property

### ART. 530

Only things and rights which are susceptible of being appropriated may be the object of possession.

Only **property** may be the subject of possession. Hence, the following **cannot** be possessed:

1. Property of public dominion
2. Res communis
3. Easements
4. Things specifically prohibited by law

#### What is res nullius?

- It means abandoned or ownerless property. It may be possessed, but it cannot be acquired by prescription. *Res nullius* may be acquired by occupation.

### Chapter 2 Acquisition of Possession

### ART. 531

Possession is acquired by the material occupation of a thing or the exercise of a right, or by the fact that it is subject to the action of our will, or by the proper acts and legal formalities established for acquiring such right.

#### How is possession acquired?

1. By *material occupation* (detention) of a thing or the exercise of a right (quasi-possession).
  - a. Constitutum possessorium – Exists when a person who possessed property as an owner, now possess it in some other capacity.
  - b. Traditio brevi manu – Exists when a person who possessed property *not* as an owner, now possesses it as an owner.
2. By subjection to our will
  - a. Traditio longa manu – Delivery by consent or mere pointing.
  - b. Traditio simbolica
3. By constructive possession

#### Essential requirements for possession

1. Corpus (the thing physically detained)
2. Animus or intent to possess

#### Degrees of possession

1. Grammatical degree – The mere holding or having, without any right whatsoever.
2. Juridical possession – Possession with a legal title, but not that of an owner (e.g., lessee, pledgee, depositary)
3. Real possessory right – Possession with a just title, but not from the true owner (e.g., A bought a thing from B, though B is not the owner).
4. Ownership – Possession with a title of *dominium*, that is, with a just title from the owner.

### ART. 532

Possession may be acquired by the same person who is to enjoy it, by his legal representative, by his agent, or by any person without any power whatever, but in the last case, the possession shall not be considered as acquired until the person in whose name the act of possession was executed has ratified the same, without prejudice to the juridical consequences of *negotiorum gestio* in a proper case.

#### Acquisition of possession from the viewpoint of who possess

1. Personal
2. Through authorized person
3. Through unauthorized person

Personal acquisition	Authorized person	Unauthorized person
1. Intent to	1. Intent to	1. Intent to

possess	possess for principal	possess for another
2. Capacity to possess	2. Authority or capacity to possess	2. Capacity of the 'principal' to possess
3. Object must be capable of being possessed	3. Principal has intent and capacity to possess	3. Ratification by 'principal'

#### *Succession mortis causa*

##### **ART. 533**

The possession of hereditary property is deemed transmitted to the heir without interruption and from the moment of the death of the decedent, in case the inheritance is accepted.

One who validly renounces an inheritance is deemed never to have possessed the same.

##### **Time of acquisition of possession**

1. If heir accepts – From the moment of death, without interruption
2. If heir refuses or incapacitated to inherit (or validly renounced the inheritance) – Deemed to have never possessed the same

##### **ART. 534**

One who succeeds by hereditary title shall not suffer the consequences of the wrongful possession of the decedent, if it is not shown that he was aware of the flaws affecting it; but the effects of possession in good faith shall not benefit him except from the date of death of the decedent.

If the father/decedent was in bad faith, it does not necessarily mean that the son was also in bad faith. The son is presumed to be in good faith. However, the consequences of the son's good faith should be counted only from the date of the father's death.

*N.B. 3 years of possession in bad faith = 1 year possession in good faith.*

#### *Tacking*

**South City Homes v. Republic, G.R. No. 76564, May 25, 1990**

Tacking of possession is allowed only when there is a privity of contract or relationship between the previous and present possessors.

- In the absence of such privity, the possession of the new occupant should be counted only from the time it actually began and cannot be lengthened by connecting it with the possession of the former possessors.
- What may be tacked are only the lands that were possessed by both possessors.

**Sps. Fahrenbach v. Pangilinan, G.R. No. 224549, August 7, 2017**

Tacking of possession only applies to possession de jure, or that possession which has for its purpose the claim of ownership. The law allows a present possessor to tack his possession to that of his predecessor-in-interest to be deemed in possession of the property for the period required by law.

- Hence, tacking is irrelevant in the issue of ejectment, because material possession is the only issue in the latter.

##### **ART. 535**

Minors and incapacitated persons may acquire the possession of things; but they need the assistance of their legal representatives in order to exercise the rights which from the possession arise in their favor.

##### **Persons covered by art. 535**

1. Unemancipated minors
2. Minors emancipated by parental concession or by marriage (not applicable anymore)
3. Others:
  - a. Insane
  - b. Prodigal or spendthrift
  - c. Under civil interdiction
  - d. Deaf-mutes

These persons need a legal representative to exercise their rights.

##### **ART. 536**

In no case may possession be acquired through force or intimidation as long as there is a possessor who objects thereto. He who believes that he has an action or a right to deprive another of the holding of a thing, must invoke the aid of the competent court, if the holder should refuse to deliver the thing.

#### ART. 537

Acts merely tolerated, and those executed clandestinely and without knowledge of the possessor of a thing, or by violence, do not affect possession.

#### Modes through which possession *cannot* be acquired

1. Force or intimidation
2. Tolerance (permission)
3. Clandestine or secret possession (stealth/hidden or disguised)

#### How to recover possession?

- Request the usurper to give up the thing.
- If refused, the person deprived must invoke the aid of the proper and competent court.
  - Otherwise, the *owner* can become the defendant in a forcible entry case!

#### What are the effects of these instances on possession? *None.*

1. The intruder acquires *no* rights
2. The legal possessor remains as such, hence-
  - a. Still entitled to the benefits of prescription
  - b. Still entitled to the fruits
  - c. Still entitled as possessor for all purposes favorable
3. The intruder cannot acquire the property by prescription

#### ART. 538

Possession as a fact cannot be recognized at the same time in two different personalities except in the cases of co-possession. Should a question arise regarding the fact of possession, the present possessor shall be preferred; if the dates of the possession are the same, the one who presents a title; and if all these conditions are equal, the thing shall be placed in judicial deposit pending determination of its possession or ownership through proper proceedings.

**General rule:** Possession as a fact *cannot* be recognized at the same time in two different personalities.

#### Exceptions:

1. Co-possessors
2. Possession in different concepts or degrees

#### Rules to be used in case of conflict or dispute regarding possession

1. Present possessor preferred

2. If both present: longer in possession
3. If same length: the one who has a title
4. If both has title: the court will decide
  - a. In this case, the property will be judicially deposited or sequestered.

#### ART. 1120

Possession is interrupted for the purposes of prescription, naturally or civilly.

#### ART. 1121

Possession is naturally interrupted when through any cause it should cease for more than one year.

The old possession is not revived if a new possession should be exercised by the same adverse claimant.

#### ART. 1122

If the natural interruption is for only one year or less, the time elapsed shall be counted in favor of the prescription.

#### ART. 1123

Civil interruption is produced by judicial summons to the possessor.

#### De Morales v. CFI, G.R. No. L-52278, May 29, 1980

Two kinds of prescription:

1. Acquisitive – The acquisition of a right by lapse of time. This is also known as adverse possession and usucapcion.
2. Extinctive — Rights and actions are lost by lapse of time.

The requisites of usucapcion are:

1. A just title
2. Good faith
3. The lapse of time fixed by law

	Usucapcion	Extinctive prescription
Nature	Vests ownership and raises a new title in the occupant	Bars the right of action of the owner

Focus	Acts of the possessor	Neglect or inaction of owner
Effect	Creates a new, independent title	Prevents enforcement of the old owner's claim
Consequence	Possession produces legal consequences	Bars the right to sue

#### OCEAN

##### **San Miguel Corp. v. CA, G.R. No. 57667, May 28, 1990**

Open, exclusive, and undisputed possession of alienable public land for the period prescribed by law creates the legal fiction whereby the land, upon completion of the requisite period *ipso jure* and without need of judicial or other sanction, ceases to be public land and becomes private property.

- Tax declarations are not conclusive proof of ownership or right of possession—they are merely an indicia of ownership.
- They become a strong evidence of ownership when coupled with proof of actual possession.

##### **Republic v. Northern Cement, G.R. No. 200256, April 11, 2018 ♥**

- Open – Patent, visible, apparent, notorious and not clandestine.
- Continuous – When uninterrupted, unbroken and not intermittent or occasional
- Exclusive – The adverse possessor can show exclusive dominion over the land and an appropriation of it to his own use and benefit
- Notorious – It is so conspicuous that it is generally known and talked of by the public or the people in the neighborhood

The **burden of proof** is on the person seeking original registration of land to prove by **clear, positive and convincing evidence** that his possession and that of his predecessors-in-interest was of the nature and duration required by law.

Hence, “intermittent and sporadic assertions of ownership,” such as random tax declarations and episodic tax payments, do not prove the continuous and notorious possession required by law.

Likewise, to prove possession in the concept of an owner, acts of occupation, cultivation, or development must be shown.

- Hence, cogon grass and unirrigated rice are *not* acts of occupation.

#### Just title

##### **Doliendo v. Biarnesa, G.R. No. 2765, December 27, 1906**

In the context of ordinary acquisitive prescription, the law does not require a true and valid title. Rather, the law contemplates a colorable title (*titulo colorado*), as opposed to a mere putative title (*titulo putativo*).

#### Good faith and just title

##### **Titong v. CA, G.R. No. 111141, March 6, 1998**

The good faith of the possessor consists in the reasonable belief that the person from whom he received the thing was the owner thereof, and could transmit his ownership.

There is just title when the adverse claimant came into possession of the property through one of the modes recognized by law for the acquisition of ownership or other real rights but the grantor was not the owner or could not transmit any right.

- A survey is not just title. Neither are tax declarations per se.

#### **Chapter 3 Effects of Possession**

##### **ART. 539**

Every possessor has a right to be respected in his possession; and should he be disturbed therein he shall be protected in or restored to said possession by the means established by the laws and the Rules of Court.

A possessor deprived of his possession through forcible entry may within ten days from the filing of the complaint present a motion to secure from the competent court, in the action for forcible entry, a writ of preliminary mandatory injunction to restore him in his possession. The court shall decide the motion within thirty (30) days from the filing thereof.

#### Acquisition of possession

##### **Wong v. Carpio, G.R. No. 50264, October 21, 1991**

In a sale, the execution of a public instrument shall be equivalent to the delivery of the thing. If, however, the buyer cannot have the enjoyment of the thing because such tenancy and enjoyment are opposed by another, then, delivery has not been effected.

- Hence, the possession will not pass.

**Hidalgo v. Velasco, G.R. No. 202217, April 25, 2018**

To allege a cause of action for unlawful detainer, the complaint must recite the following:

1. That initially, the possession of the property by the defendant was by contract with or by tolerance of the plaintiff;
2. That eventually, such possession became illegal upon notice by plaintiff to defendant of the termination of the latter's right of possession;
3. That thereafter, the defendant remained in possession of the property and deprived the plaintiff of the enjoyment thereof; and
4. That within one year from the last demand on defendant to vacate the property, the plaintiff instituted the complaint for ejectment

**One-year period** – The one-year period within which to bring an action for forcible entry is generally counted from the date of actual entry on the land, except that when the entry is through stealth, the one-year period is counted from the time the plaintiff learned thereof.

**Penas v. CA, G.R. No. 112734, July 7, 1994**

The one-year period within which a complaint for unlawful detainer can be filed should be counted from the last letter of demand to vacate.

- Rationale: The lessor has the right to waive his right of action based on previous demands and let the lessee remain meanwhile.

Cause of action	Where the one-year period begins
Unlawful detainer	From last demand
Forcible entry, except stealth	From the actual entry on the land
Forcible entry – stealth	From discovery of the entry

*Is there litis pendentia/res judicata?*

**Wilmon Auto Supply Corp v. CA, G.R. No. 97637, April 10, 1992**

The fact that the tenant (defendant in an unlawful detainer) filed a separate action in the RTC is not a valid reason to frustrate the summary remedy of ejectment. Ejectment does not involve the question of title.

- The MTC has the competence to resolve the issue of ownership only to determine the issue of possession.

**Javier v. Veridiano, G.R. No. L-48050, October 10, 1994**

There is *no res judicata* between a complaint for forcible entry and quieting of title (*accion reivindicatoria*).

- The issue in a forcible entry case is possession de facto, while in quieting of title, it is in reality an *accion reivindicatoria* under Art. 434.
- *Accion reivindicatoria* or *accion de reivindicacion* is thus an action whereby a plaintiff alleges ownership over a parcel of land and seeks recovery of its full possession.

*Stealth; forcible entry*

**Lim Kieh Tong Inc. v. CA, G.R. No. 93451, March 18, 1991**

An action for forcible entry is the proper remedy in case a possessor was prevented from enjoying his rights by depriving him of the right of egress and ingress through the main door of the building (i.e., by changing the key to the main door).

*Ejectment in the airspace*

**Barber v. Chua, G.R. No. 205630, January 12, 2021**

An aggrieved owner/possessor of a property can properly resort to a case for ejectment in order to remove structures affecting his right to possess the entirety of his property, including his firewall.

- Hence, a plaintiff who had his airspace dispossessed by stealth (by building a second storey) may avail an action for ejectment to enforce his possession.

*Collateral attack on a TCT*

**Sps. Esmaquel v. Coprada, G.R. No. 152423, December 15, 2010**

The sole issue for resolution in an unlawful detainer case is physical/material possession of the property. Any adjudication over ownership is merely provisional.

The issue of the validity of the Torrens certificate of title can only be assailed in an action expressly instituted for that purpose. Whether or not the defendant has the right to claim ownership over the property is beyond the power of the MTC to determine in an action for unlawful detainer.

- The age-old rule is that the person who has a Torrens title over a land is entitled to possession thereof.

**Tuazon v. Sps. Isagon, G.R. No. 191432, September 2, 2015**

A person who possesses a title issued under the Torrens system is entitled to

all the attributes of ownership, including possession. A TCT cannot be the subject of a collateral attack in an unlawful detainer.

- Hence, a defense that a TCT was fraudulently obtained cannot be entertained in an unlawful detainer case.

**Collateral attack** – When in an action to obtain a different relief, the validity of a title is questioned.

*Boundary dispute may not be adjudicated in an ejectment case*

**Sarmiento v. CA, G.R. No. 116192, November 16, 1995**

The action (rooted on a boundary dispute) is neither one of forcible entry nor of unlawful detainer but essentially involves a boundary dispute which must be resolved in an *accion reivindicatoria* on the issue of ownership over the disputed area involved.

Forcible entry into the land is an open challenge to the right of the lawful possessor, the violation of which right authorizes the speedy redress in the inferior courts.

*MTC vs. HSAC (Human Settlements Adjudication Commission)*

**Francel Realty Corp. v. CA, G.R. No. 117051, January 22, 1996**

Generally, a complaint for unlawful detainer is with the MTC. However, the determination of the ground for ejectment requires a consideration of the rights of a buyer on installment basis of real property.

- Since the determinative question is exclusively cognizable by the HLURB, the question of the right of the agency must be determined by HLURB.
- FRC's cause of action should instead be filed as a counterclaim.
- Hence, the MTC did not have jurisdiction.

**ART. 540**

Only the possession acquired and enjoyed in the concept of owner can serve as title for acquiring dominion.

*Presumptions*

*'Deemed' = presumption*

**ART. 541**

A possessor in the concept of owner has in his favor the legal presumption

that he possesses with a just title and he cannot be obliged to show or prove it.

**ART. 542**

The possession of real property presumes that of the movables therein, so long as it is not shown or proved that they should be excluded.

**ART. 543**

Each one of the participants of a thing possessed in common shall be deemed to have exclusively possessed the part which may be allotted to him upon the division thereof, for the entire period during which the co-possession lasted. Interruption in the possession of the whole or a part of a thing possessed in common shall be to the prejudice of all the possessors. However, in case of civil interruption, the Rules of Court shall apply.

**Presumptions:**

1. A possessor in the concept of an owner has just title.
2. The possession of real property is possession of the movables therein.
3. A co-possessor has exclusive possession of the part allotted him after partition.

*Chart I*

**ART. 544**

A possessor in good faith is entitled to the fruits received before the possession is legally interrupted.

Natural and industrial fruits are considered received from the time they are gathered or severed.

Civil fruits are deemed to accrue daily and belong to the possessor in good faith in that proportion.

**ART. 545**

If at the time the good faith ceases, there should be any natural or industrial fruits, the possessor shall have a right to a part of the expenses of cultivation, and to a part of the net harvest, both in proportion to the time of the possession.

The charges shall be divided on the same basis by the two possessors.

The owner of the thing may, should he so desire, give the possessor in good faith the right to finish the cultivation and gathering of the growing fruits, as

an indemnity for his part of the expenses of cultivation and the net proceeds; the possessor in good faith who for any reason whatever should refuse to accept this concession, shall lose the right to be indemnified in any other manner.

**Azarcon v. Eusebio, G.R. No. L-11977, April 29, 1959**

A person ordered to leave certain premises is ordinarily not prohibited from taking with him his own effects and possession, unless there is an express prohibition to this effect.

- Hence, a possessor is entitled to harvest the fruits already existing (e.g., palay) which he cultivated during his possession.

*Chart II*

**ART. 546**

Necessary expenses shall be refunded to every possessor; but only the possessor in good faith may retain the thing until he has been reimbursed therefor.

Useful expenses shall be refunded only to the possessor in good faith with the same right of retention, the person who has defeated him in the possession having the option of refunding the amount of the expenses or of paying the increase in value which the thing may have acquired by reason thereof.

**ART. 547**

If the useful improvements can be removed without damage to the principal thing, the possessor in good faith may remove them, unless the person who recovers the possession exercises the option under paragraph 2 of the preceding article.

**ART. 548**

Expenses for pure luxury or mere pleasure shall not be refunded to the possessor in good faith; but he may remove the ornaments with which he has embellished the principal thing if it suffers no injury thereby, and if his successor in the possession does not prefer to refund the amount expended.

**ART. 549**

The possessor in bad faith shall reimburse the fruits received and those which the legitimate possessor could have received, and shall have a right only to the expenses mentioned in paragraph 1 of Article 546 and in Article

443. The expenses incurred in improvements for pure luxury or mere pleasure shall not be refunded to the possessor in bad faith, but he may remove the objects for which such expenses have been incurred, provided that the thing suffers no injury thereby, and that the lawful possessor does not prefer to retain them by paying the value they may have at the time he enters into possession.

*Homesteader may require the removal of the useful improvements (art. 547)*

**Calagan v. CFI, G.R. No. L-30402, January 28, 1980**

The homesteader desiring repurchase should be given the option to require the vendee a retro to remove the useful improvements on the land.

To allow a vendee a retro of a homestead of the right of retention until payment of useful expenses by the redemptioner would be to render nugatory the right of repurchase granted by law to a homesteader because all a vendee a retro can do to prevent repurchase is to build something on the homestead beyond the capacity to pay of the homesteader who seeks repurchase.

*No rights at all for possessor in bad faith*

**MWSS v. CA, G.R. No. L-54526, August 25, 1986**

As a builder in bad faith, NAWASA lost whatever useful improvements it had made **without the right to indemnity** (art. 449).

*The loser pays for the costs*

**ART. 550**

The costs of litigation over the property shall be borne by every possessor.

*The winner gets the improvements caused by nature or time*

**ART. 551**

Improvements caused by nature or time shall always inure to the benefit of the person who has succeeded in recovering possession.

**ART. 552**

A possessor in good faith shall not be liable for the deterioration or loss of the thing possessed, except in cases in which it is proved that he has acted

with fraudulent intent or negligence, after the judicial summons.

A possessor in bad faith shall be liable for deterioration or loss in every case, even if caused by a fortuitous event.

	Good faith	Bad faith
Deterioration or loss	Not liable, except if he acted in fraud or negligence after summons.	Always liable.

#### ART. 553

One who recovers possession shall not be obliged to pay for improvements which have ceased to exist at the time he takes possession of the thing.

#### Presumption

#### ART. 554

A present possessor who shows his possession at some previous time, is presumed to have held possession also during the intermediate period, in the absence of proof to the contrary.

A was in possession in January. She lost possession in February. She recovered possession in December. *Under Art. 554, it is presumed that she possessed the thing for the entire year.*

#### ART. 555

A possessor may lose his possession:

1. By the abandonment of the thing;
2. By an assignment made to another either by onerous or gratuitous title;
3. By the destruction or total loss of the thing, or because it goes out of commerce;
4. By the possession of another, subject to the provisions of Article 537, if the new possession has lasted longer than one year. But the real right of possession is not lost till after the lapse of ten years.

No. 4 is the reason why the period for filing an action under Rule 70 is one

year, and why an *accion publiciana* must be filed within 10 years.

**Abandonment** – The voluntary renunciation of a thing.

#### Requisites for abandonment:

1. The abandoner must have been a possessor in the concept of an owner
2. The abandoner must have the capacity to renounce or to alienate
3. There must be a physical relinquishment of the thing or object
4. There must be no expectation to recover or intent to get back

*In abandonment, both possession de facto and de jure are lost.*

- It converts the thing into res nullius (except for land).

#### ART. 556

The possession of movables is not deemed lost so long as they remain under the control of the possessor, even though for the time being he may not know their whereabouts.

#### ART. 557

The possession of immovables and of real rights is not deemed lost, or transferred for purposes of prescription to the prejudice of third persons, except in accordance with the provisions of the Mortgage Law and the Land Registration laws.

#### ART. 558

Acts relating to possession, executed or agreed to by one who possesses a thing belonging to another as a mere holder to enjoy or keep it, in any character, do not bind or prejudice the owner, unless he gave said holder express authority to do such acts, or ratifies them subsequently.

#### ART. 559

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 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.

#### *Recovery from third persons—cars*

##### **Cruz v. Pahati, G.R. No. L-8257, April 13, 1956**

Whoever may have been deprived of his property in consequence of a crime is entitled to the recovery thereof, even if such property is in the possession of a third party who acquired it by legal means.

- Hence, the owner may recover a car which has been sold without his authorization (by falsifying a deed of sale).

##### **Aznar v. Yapdiangco, G.R. No. L-18536, March 31, 1956**

The rule is to the effect that if the owner has lost the thing, or if he has been unlawfully deprived of it, he has a right to recover it, not only from the finder, thief or robber, but also from the third person who may have acquired it in good faith from such finder, thief or robber

#### *Recovery from third persons—jewelry*

##### **De Garcia v. CA, G.R. No. L-20264, January 30, 1971**

The right of the owner cannot be defeated even by proof that there was good faith in the acquisition by the possessor. The right of the owner to recover personal property acquired in good faith by another, is based on his being dispossessed without his consent.

- Hence, the owner may recover a ring which she saw being worn by another person.

##### **Two reasons for Art. 559:**

1. The third person's possession is not a title, because possession in good faith does not really amount to title.
  - a. The title of the possessor in good faith is not that of ownership, but is merely a presumptive title to serve as basis for acquisitive prescription.
2. The possessor is not yet the owner, until such time that she has acquired it via acquisitive prescription. At that point, the owner would no longer be able to recover it.

##### **Dizon v. Suntay, G.R. No. L-30817, September 29, 1972**

The owner's right to recover prevails even against a good faith buyer, and the common law rule that loss falls on the party enabling the fraud cannot override Article 559's explicit statutory protection for the owner.

- Hence, the owner may even recover her missing ring from a pawnshop.

#### *Unlawful deprivation*

##### **EDCA Publishing & Distributing Corp. v. Santos, G.R. No. 80298, April 26, 1990**

Ownership in the thing sold shall not pass to the buyer until full payment only if there is a stipulation to that effect. Otherwise, the general rule applies that ownership shall pass to the vendee upon actual or constructive delivery of the thing sold, even if the purchase price has not yet been paid.

Nonpayment only creates a right to demand payment or to resolve the sale. But absent the stipulation, delivery will effectively transfer ownership to the buyer who can, in turn, transfer it to another.

Actual delivery of the books having been made, Cruz acquired ownership over the books which he could then validly transfer to Santos.

- Hence, there was no unlawful deprivation.

##### **Ledesma v. CA, G.R. No. 86051, September 1, 1992**

The subsequent dishonor of the check because of the alteration merely amounted to a failure of consideration which does not render the contract of sale void, but merely allows the prejudiced party to sue for specific performance or resolution.

The failure of the buyer to make good the price does not, in law, cause the ownership to revert in the seller until and unless the bilateral COS is first resolved.

##### **Chua Hai v. Kapunan, G.R. No. 11108, June 30, 1958**

*This is wrong:* The court below directed Chua Hai to surrender the chattel to the claimant before the latter has proved that he was illegally deprived thereof, without taking into account that the mere filing of a criminal action for estafa is no proof that estafa was in fact committed.

Assuming that the consent of the hardware was obtained by fraud, the contract is not void, but merely voidable.

Until ordered by the court to restore the thing to the one who was illegally deprived thereof, the possessor—as presumptive owner—is entitled to hold and enjoy the same thing.

**Owner may recover**

→

Without reimbursement

From possessor in bad faith

		From possessor in good faith, if owner had lost the property or been unlawfully deprived
	With reimbursement	Possessor acquired the object in good faith at a public sale or auction
<b>Owner cannot recover</b> →	<ol style="list-style-type: none"> <li>1. Possessor had acquired it in good faith by purchase from a merchant's store, or in fairs, or markets (Art. 1505[3])</li> <li>2. The owner is by his conduct precluded from denying the seller's authority to sell (estoppel, <i>Id.</i>)</li> <li>3. possessor had obtained the goods because he was an innocent purchaser for value and holder of a negotiable document of title to the goods (Art. 1518)</li> </ol>	

#### ART. 560

Wild animals are possessed only while they are under one's control; domesticated or tamed animals are considered domestic or tame if they retain the habit of returning to the premises of the possessor.

**Wild animals** – They have natural freedom and part of the res nullius.

- One possesses wild animals when they are placed under one's control.

**Domesticated or tamed animals** – Subject to man's control. As long as they habitually return to the owner's premises, they are still considered in possession.

#### ART. 561

One who recovers, according to law, possession unjustly lost, shall be deemed for all purposes which may redound to his benefit, to have enjoyed it without interruption.

**Illustrative example:** If on Mar. 1, 2002 I bought a diamond ring, and the ring was subsequently stolen Apr. 1, 2002 but I was able to lawfully recover it on May 1, 2003, then I am supposed to have possessed the ring continuously

from Mar. 1, 2002 up to now, for all purposes that may redound to my benefit.

#### **Applicability:**

- Applies to both good and bad faith possessors.
- Only for their benefit.