**Sales 1975-2004 BAR**

**08; Sales & Donation; ownership of the thing sold**

**2003 No** XV.

(a) May a person sell something that does not belong to him? Explain.

(b) May a person donate something that does not belong to him? Explain.

5%

SUGGESTED ANSWERS:

(a) Yes, a person may sell something which does not belong to him. For

the sale to be valid, the law does not require the seller to be the owner of the

property at the time of the sale. (Article 1434, NCC). If the seller cannot transfer

ownership over the thing sold at the time of delivery because he was not the owner

thereof, he shall be liable for breach of contact.

(b) As a general rule, a person cannot donate something which he cannot

dispose of at the time of the donation (Article 751, New Civil Code).

**08; Sales; Art. 1592**

**2003 No** XVI.

X sold a parcel of land to Y on 01 January 2002, payment and delivery to be

made on 01 February 2002. It was stipulated that if payment were not to be made by

Y on 01 February 2002, the sale between the parties would automatically be

rescinded. Y failed to pay on 01 February 2002, but offered to pay three days later,

which payment X refused to accept, claiming that their contract of sale had already

been rescinded. Is X’s contention correct? Why? 5%

SUGGESTED ANSWER:

No, X is not correct. In the sale of immovable property, even though it may

have been stipulated, as in this case, that upon failure to pay the price at the time

agreed upon the rescission of the contract shall of right take place, the vendee may

pay, even after the expiration of the period, as long as no demand for rescission of

the contract has been made upon him either judicially or by a notarial act (Article

1592, New Civil code). Since no demand for rescission was made on Y, either

judicially or by a notarial act, X cannot refuse to accept the payment offered by Y

three (3) days after the expiration of the period.

ANOTHER SUGGESTED ANSWER:

This is a contract to sell and not a contract of absolute sale, since as there

has been no delivery of the land. Article 1592 of the New Civil code is not applicable.

Instead, Article 1595 of the New Civil Code applies. The seller has two alternative

remedies: (1) specific performance, or (2) rescission or resolution under Article 1191

of the New Civil code. In both remedies, damages are due because of default.

ALTERNATIVE ANSWER:

Yes, the contract was automatically rescinded upon Y’s failure to pay on 01

February 2002. By the express terms of the contract, there is no need for X to make

a demand in order for rescission to take place. (Article 1191, New Civil Code, Suria

v. IAC 151 SCRA 661 [1987]; U.P. v. de los Angeles 35 SCRA 102 [1970]).

**08; Sales; Art. 1592**

**1988 No**. 13:

(a) A sold to B a house and lot for P50,000.00 payable 30 days after the

execution of the deed of sale. It was expressly agreed in the deed that the sale

would ipso facto be of no effect upon the buyer's failure to pay as agreed. B failed to

pay on maturity, and A sued to declare the contract of no force and effect. If B

tendered payment before the action was filed, but subsequent to the stipulated date

of payment, would the action prosper? Why?

Answer:

(a) The action would not prosper in such a case. According to the law, "in

the sale of immovable property, even though it may have been stipulated that upon

failure to pay the price at the time agreed upon the rescission of the contract shall of

right take place, the vendee may pay, even after the expiration of the period, so long

as no demand for the rescission of the contract has been made upon him either

judicially or by notarial act. After the demand, the court may not grant him a new

term." (Art. 1592, CC.) Here, at the time B tendered payment of the purchase price,

there was still no demand made upon him by A for the payment of said purchase

price either judicially or by notarial act.

**08; Sales; assignment of credit**

**1993 No**, 14:

Peter Co, a trader from Manila, has dealt business with Allied Commodities in

Hongkong for five years. All through the years. Peter Co accumulated an

indebtedness of P50O,OOO.OO with Allied Commodities. Upon demand by its

agent in Manila, Peter Co paid Allied Commodities by check the amount owed. Upon

deposit in the payee's account in Manila, the check was dishonored for insufficiency

of funds. For and In consideration of P1.00, Allied Commodities assigned the credit

to Hadji Butu who brought suit against Peter Co in the RTC of Manila for recovery of

the amount owed. Peter Co moved to dismiss the complaint against him on the

ground that Hadji Butu-was not a real party in interest and, therefore, without legal

capacity to sue and that he had not agreed to a subrogation of creditor.

Will Peter Co's defense of absence of agreement to a subrogation of creditor

prosper?

Answer:

No, Co's defense will not prosper. This is not a case of subrogation, but an

assignment of credit. Assignment of credit is the process of transferring the right of

the assignor to the assignee. The assignment may be done either gratuitously or

onerously, in which case, the assignment has an effect similar to that of a sale (Nyco

Sales Corp.v.BA Finance Corp. G.R No.71694. Aug.16, 1991 200 SCRA 637). As a

result of the assignment, the plaintiff acquired all the rights of the assignor including

the right to sue in his own name as the legal assignee. In assignment, the debtor's

consent is not essential for the validity of the assignment (Art. 1624; 1475. CC;

Rodriguez v. CA, et al, G. R No. 84220, March 25. 1992 207 SCRA 553).

Alternative Answer:

No. the defense of Peter Co will not prosper. Hadji Butu validly acquired his

right by an assignment of credit under Article 1624 of the Civil Code. However, the

provisions on the contract of sale (Article 1475 Civil Code) will apply, and the

transaction is covered by the Statute of Frauds. (Art. 1403 par. (2) Civil Code)

**08; Sales; conditional sale vs absolute sale**

**1997 No**. 15:

(b) Between a conditional sale, on the one hand, and an absolute sale, on

the other hand.

Answer:

(b) A conditional sale is one where the vendor is granted the right to

unilaterally rescind the contract predicated on the fulfillment or non-fulfillment, as the

case may be, of the prescribed condition. An absolute sale is one where the title to

the property is not reserved to the vendor or if the vendor Is not granted the right to

rescind the contract based on the fulfillment or non-fulfillment, as the case may be,

of the prescribed condition.

**08; Sales; contract of sale vs agency to sell**

**1999 No** XV.

(b) A granted B the exclusive right to sell his brand of Maong pants in Isabela,

the price for his merchandise payable within 60 days from delivery, and promising B

a commission of 20% on all sales. After the delivery of the merchandise to B but

before he could sell any of them, BOs store in Isabela was completely burned

without his fault, together with all of A's pants. Must B pay A for his lost pants? Why?

(5%)

ANSWER:

(b) The contract between A and B is a sale not an agency to sell because the

price is payable by B upon 60 days from delivery even if B is unable to resell it. If B

were an agent, he is not bound to pay the price if he is unable to resell it.

As a buyer, ownership passed to B upon delivery and, under Art. 1504 of the

Civil Code, the thing perishes for the owner. Hence, B must still pay the price.

**08; Sales; contract of sale vs contract to sell**

**1988 No**. 15:

(c) Distinguish between a contract of sale and a contract to sell.

Answer:

(c) The two may be distinguished from each other in the following ways:

(1) In the first, title passes to the vendee upon delivery of the thing sold,

whereas in the second, by agreement, ownership is reserved in the vendor and is

not to pass until full payment of the price.

(2) In the first, nonpayment is a negative resolutory condition, whereas in the

second, full payment is a positive suspensive condition.

(3) In the first, the vendor has lost and cannot recover ownership until and

unless the contract is resolved or rescinded, whereas in the second, title remains in

the vendor, and when he seeks to eject the vendee because of noncompliance by

such vendee with the suspensive condition stipulated, he is enforcing the contract

and not resolving the same. (Santos vs. Santos, CA,47 Off, Gaz,6372.)

**08; Sales; contract to sell**

**2001 No** XVI

Arturo gave Richard a receipt which states:

"Receipt

Received from Richard as down payment

For my 1995 Toyota Corolla with

plate No. XYZ-1 23.............. P50.000.00

Balance payable: 12/30/01........ P50 000.00

September 15, 2001.

(Sgd.) Arturo

Does this receipt evidence a contract to sell? Why? (5%)

SUGGESTED ANSWER

It is a contract of sale because the seller did not reserve ownership until he

was fully paid.

**08; Sales; contract to sell vs contract of sale**

**1997 No**. 15:

State the basic difference (only in their legal effects) -

(a) Between a contract to sell, on the one hand, and a contract of sale, on

the other;

Answer:

(a) In a contract of sale, ownership is transferred to the buyer upon delivery

of the object to him while in a contract to sell, ownership is retained by the seller until

the purchase price is fully paid. In a contract to sell, delivery of the object does not

confer ownership upon the buyer. In a contract of sale, there Is only one contract

executed between the seller and the buyer, while in a contract to sell, there are two

contracts, first the contract to sell (which is a conditional or preparatory sale) and a

second, the final deed of sale or the principal contract which is executed after full

payment of the purchase price.

**08; Sales; double sales**

**2001 No** XII

On June 15,1995, Jesus sold a parcel of registered land to Jaime. On June

30. 1995, he sold the same land to Jose. Who has a better right if:

a) the first sale is registered ahead of the second sale, with knowledge of

the latter. Why? (3%)

b) the second sale is registered ahead of the first sale, with knowledge of

the latter? Why? (5%)

SUGGESTED ANSWER:

(a) The first buyer has the better right if his sale was first to be registered,

even though the first buyer knew of the second sale. The fact that he knew of the

second sale at the time of his registration does not make him as acting in bad faith

because the sale to him was ahead in time, hence, has a priority in right. What

creates bad faith in the case of double sale of land is knowledge of a previous sale.

b) The first buyer is still to be preferred, where the second sale is registered

ahead of the first sale but with knowledge of the latter. This is because the second

buyer, who at the time he registered his sale knew that the property had already

been sold to someone else, acted in bad faith. (Article 1544, C.C.)

**08; Sales; double sales**

**2004 No. IV**

A. JV, owner of a parcel of land, sold it to PP. But the deed of sale was not

registered. One year later, JV sold the parcel again to RR, who succeeded to

register the deed and to obtain a transfer certificate of title over the property in his

own name.

Who has a better right over the parcel of land, RR or PP? Why? Explain the

legal basis for your answer. (5%)

**08; Sales; double sales**

**1986 No**. 18:

Mapusok sold his lot to Masugid under a pacto de retro sale. The lot was

registered under the Torrens system but the pacto de retro sale was not registered.

Subsequently, Masigla obtained a money judgment against Mapusok. Pursuant to a

writ of execution, the lot was attached, the attachment being annotated on the

certificate of title. The purchaser at the public auction was Masigla himself. When

Masigla sought to register his title, Masugid opposed the registration on the ground

of the prior pact de retro sale to him.

Who as between Masugid and Masigla has the better right to the land?

Explain.

Answer:

Under the doctrine of Campillo vs. CA, 129 SCRA 513, Masigla has a better

right because at the time of attachment and sale at public auction, the property was

still registered in name of Mapusok - hence the rule on Torrens Titled land and Art.

1544 Civil Code of the Philippines (double sale) will apply:

Answer - Masigla has a better right because he is an innocent purchaser for

value. He cannot be required to go beyond or outside of the four corners of the

certificate of title presented to him.

Answer - Although the Torrens system requires registration of conveyances

and other instruments affecting registered lands as the "operative act" to convey and

affect the property, and if not registered, the contract is binding only as between the

parties, still the purchaser at an execution sale under the Rules of Court merely

acquires the rights of the judgment debtor in the property, and "steps into the shoes"

of the judgment debtor (Mapusok). Therefore, Masugid is entitled to the land as a

vendee a retro and Masigla (purchaser) merely acquired Mapusok's (judgment

debtor) right to redeem the land under the pacto de retro sale, from Masugid.

**08; Sales; double sales**

**1987 No**. 8:

Miguel, Carlos and Lino are neighbors. Miguel owned a piece of registered

land which both Carlos and Lino wanted to buy. Miguel sold the land to Carlos. The

sale was not registered upon the request of Miguel. Later on, the same property was

sold by Miguel to Lino. Miguel told Carlos about the second sale. Carlos immediately

tried to see Lino to discuss the matter and inform him of the previous sale to him

(Carlos) of the same property but Lino refused to see Carlos. Thereupon Carlos

annotated in the Registry of Property his adverse claim on the property. A week

later, Lino registered the sale on his favor and had a new transfer certificate of title

issued in his name. However, the adverse claim of Carlos was duly annotated in the

title. Notwithstanding, Lino took possession of the property and built a small

bungalow thereon.

(a) Who is the rightful owner of the property? Explain.

(b) To whom would the bungalow built by Lino on the property belong?

Explain,

A rawer:

a, In double sales, under Article 1544 the land sold belongs to the first

registrant in good faith. If none, it belongs to the first possessor in good faith. If none

it belongs to the person with the oldest title, provided there is good faith. Carlos, who

has the oldest title, is therefore the rightful owner of the' property, because there was

no registration in good faith by Lino.

b. The bungalow built by Lino belongs to Carlos. Lino is a builder in bad faith.

Article 449 provides that he who builds in bad faith on the land of another loses what

it built without right to indemnity.

**08; Sales; double sales**

**1988 No**. 13:

(b) In 1950, A executed a power of attorney authorizing B to sell a parcel of

land consisting of more than 14 hectares. A died in 1954. In 1956, his four children

sold more than 12 hectares of the land to C. In 1957, B sold 8 hectares of the same

land to D, It appears that C did not register the sale executed by the children. D, who

was not aware of the previous sale, registered the sale executed by B, whose

authority to sell was annotated at the back of the Original Certificate of Title.

(1) What was the effect of the death of A upon B's authority to sell the land?

(2) Assuming that B still had the authority to sell the land—who has a better

right over the said land, C or D?

Answer:

(b) (1) B’s authority subsisted notwithstanding the principal’s death because

he was unaware of such death and he contracted w/ 3rd persons who apparently

acted in good faith.

(2) As the case at bar is a case of double sale of registered land he who

recorded the sale in good faith has a better right in conformity with Art. 1544 of the

Civil Code. Since D was not aware of the previous sale, he had to rely on the face of

the certificate of title of the registered owner. Hence, he now has a better right to the

land. (Buason vs. Panuyas, supra.)

**08; Sales; double sales**

**1989 No**. 9:

(1) If the same thing should have been sold to different vendees, to whom

shall the ownership be transferred?

Answer:

If the same thing should have been sold to different vendees, the ownership

shall be transferred to the person who may have first taken possession thereof in

good faith, if it should be movable property.

Should it be immovable property, the ownership shall belong to the person

acquiring it who in good faith first recorded it in the Registry of Property.

Should there be an inscription, the ownership shall pertain to the person who

in good faith was first in the possession; and, in the absence thereof, to the person

who presents the oldest title, provided there is good faith.

**08; Sales; effect of oral sale**

**1988 No**. 15:

(b) One-half of a parcel of land belonging to A and B was sold by X to Y for

the amount of P1,500.00. The sale was executed verbally. One year later, A and B

sold the entire land to X. Is the sale executed verbally by X to Y valid and binding?

Reasons.

Answer:

(b) The sale, although not contained in a public instrument or formal writing,

is nevertheless valid and binding for the time-honored rule is that even a verbal

contract of sale of real estate produces legal effects between the parties. In the

premises, Art. 1434 of the Civil Code, which declares that when a person who is not

the owner of a thing sells or alienates and delivers it, and later the seller or grantor

acquires title thereto, such title passes by operation of law to the buyer or grantee, is

applicable, (Bucton vs. Gabar, 55 SCRA 499.)

Suggested Alternative Answers To: No, 15 (b):

(b) 1) The contract of sale is valid and enforceable in view of the payment of

the price of P1,500 but there is no showing the problem that there was delivery of

the land. Accordingly, Article 1434 does not apply. However, Y can compel under

Article 1357 to observe the proper form of a deed of sale involving real property and

simultaneously compel specific performance to deliver.

2) The verbal sale of land is unenforceable since there is no statement in the

problem that the agreed price of P1,500 was paid, nor was the land delivered.

Being, Article 1434 will not apply since it is predicated on a valid or enforceable

contract of sale.

**08; Sales; equitable mortgage**

**1991 No** 10;

On 20 December 1970, Juliet, a widow, borrowed from Romeo P4,000.00

and, as security therefore, she executed a deed of mortgage over one of her two (2)

registered lots which has a market value of P15,000.00. The document and the

certificate of title of the property were delivered to Romeo.

On 2 June 1971, Juliet obtained an additional sum of P3,000 from Romeo.

On this date, however, Romeo caused the preparation of a deed of absolute sale of

the above property, to which Juliet affixed her signature without first reading the

document. The consideration indicated is P7,000.00. She thought that this document

was similar to the first she signed. When she reached home, her son X, after

reading the duplicate copy of the deed, informed her that what she signed was not a

mortgage but a deed of absolute sale. On the following day, 3 June 1971, Juliet,

accompanied by X, went back to Romeo and demanded the reformation it, Romeo

prepared and signed a document wherein, as vendee In the deed of sale above

mentioned, he obligated and bound himself to resell the land to Juliet or her heirs

and successors for the same consideration as reflected in the deed of sale (P7,000)

within a period of two (2) years, or until 3 June 1973. It Is further stated therein that

should the Vendor (Juliet) fail to exercise her right to redeem within the said period,

the conveyance shall be deemed absolute and irrevocable. Romeo did not take

possession of the property. He did not pay the taxes thereon.

Juliet died in January I973 without having repurchased the property. Her only

surviving heir, her son X, failed to repurchase the property on or before 3 June 1973.

In 1975, Romeo sold the property to Y for P50,000.00. Upon learning of the sale, X

filed an action for the nullification of the sale and for the recovery of the property on

the ground that the so-called deed of absolute sale executed by his mother was

merely an equitable mortgage, taking into account the inadequacy of the price and

the failure of Romeo to take possession of the property and to pay the taxes

thereon. Romeo and Y maintain that there was a valid absolute sale and that the

document signed by the former on 3 June 1973 was merely a promise to sell.

(a) If you were the Judge, would you uphold the theory of X?

(b) If you decide in favor of Romeo and Y, would you uphold the validity of the

promise to sell?

Answer:

A. I will not uphold the theory of X for the nullification of the sale and for the

recovery of the property on the ground that the so-called sale was only an equitable

mortgage. An equitable mortgage may arise only if, in truth, the sale was one with

the right of repurchase. The facts of the case state that the right to repurchase was

granted after the absolute deed of sale was executed. Following the rule in Cruzo

vs. Carriaga (174 SCRA 330), a deed of repurchase executed independently of the

deed of sale where the two stipulations are found in two instruments instead of one

document, the right of repurchase would amount only to one option granted by the

buyer to the seller. Since the contract cannot be upheld as a contract of sale with

the right to repurchase, Art. 1602 of the Civil Code on equitable mortgage will not

apply. The rule could have been different if both deeds were executed on the same

occasion or date, in which case, under the ruling in spouses Claravall v. CA (190

SCRA 439), the contract may still be sustained as an equitable mortgage, given the

circumstances expressed in Art. 1602. The reserved right to repurchase Is then

deemed an original intention.

B, If I were to decide in favor of Romeo and Y, I would not uphold the

validity of the promise to sell, so as to enforce it by an action for specific

performance. The promise to sell would only amount to a mere offer and, therefore,

It is not enforceable unless it was sought to be exercised before a withdrawal or

denial thereof

Even assuming the facts given at the end of the case, there would have been

no separate consideration for such promise to sell. The contract would at most

amount to an option which again may not be the basis for an action for specific

performance.

**Obligations and contracts; 1991 No** 11:

A is the lessee of an apartment owned by Y. A allowed his married but

employed daughter B, whose husband works in Kuwait, to occupy it. The

relationship between Y and A soured. Since he has no reason at all to eject A, Y, in

connivance with the City Engineer, secured from the latter an order for the

demolition of the building. A Immediately filed an action in the Regional Trial Court to

annul the order and to enjoin its enforcement. Y and A were able to forge a

compromise agreement under which A agreed to a twenty percent (20%) increase in

the monthly rentals. They further agreed that the lease will expire two (2) years later

and that in the event that Y would sell the property, either A or his daughter B shall

have the right of first refusal. The Compromise Agreement was approved by the

court. Six (6) months before the expiration of the lease, A died. Y sold the property

to the Visorro Realty Corp. without notifying B. B then filed an action to rescind the

sale in favor of the corporation and to compel Y to sell the property to her since

under the Compromise Agreement, she was given the right of first refusal which, she

maintains is a stipulation pour atrui under Article 1311 of the Civil Code.

Is she correct?

Answer;

B is not correct. Her action cannot prosper. Article 1311 requires that the third

person intended to be benefited must communicate his acceptance to the obligor

before the revocation. There is no showing that B manifested her acceptance to Y at

any time before the death of A and before the sale. Hence. B cannot enforce any

right under the alleged stipulation pour atrui.

**08; Sales; equitable mortgage**

**1977 No**. XVI-c

When may a contract of sale of realty be presumed to be an equitable

mortgage? Cite five (5) instances,

Answer

The contract shall be presumed to be an equitable mortgage, in any of the

following cases:

(1) When the price of sale with right to repurchase is unusually inadequate;

(2) When the vendor remains in possession as lessee or otherwise;

(3) When upon or after the expiration of the right to repurchase another

instrument extending the period of redemption or granting a new period is executed;

(4) When the purchaser retains for himself a part of the purchase price;

(5) When the vendor binds himself to pay the taxes on the thing sold;

(6) In any other case where it may be fairly inferred that the real intention of

the parties is that the transaction shall secure the payment of a debt or the

performance of any other obligation; and

(7) When there is a doubt as to whether the contract is a contract of sale

with right of repurchase or an equitable mortgage. (Arts. 1602, 1603, Civil Code).

**08; Sales; equitable mortgage**

**1979 No**. VIII

In a document dated June 10, 1960 and expressly denominated "Deed of

Sale with Right to Repurchase," AB sold his land to CD. Substantially, the document

provided among others: "I, AB, being in great need of money, hereby sell my 10-

hectare coconut land to CD for P2.000 00. It is agreed that I have the right to

repurchase this land in 10 years. If I fail to buy back the property, I shall deliver

possession thereof to CD." Upon failure of AB to repurchase the property, CD, in

1971, consolidated his title and files an action to recover possession, AB files an

answer offering to return the P2,000.00 plus interest at the legal rate. Will the action

of CD prosper? Why?

Answer

The action of CD will not prosper. The contract in the instant case is not a

true contract of sale with right of repurchase. The purchase price is unusually

inadequate and the vendor is still in possession of the property. There is now a

presumption that the real covenant or agreement is an equitable mortgage. This is

strengthened by the fact that AB, the vendor, was in dire straights: he was in great

need of money. The land, therefore, is merely the security for the loan.

Alternative Answer

The action of CD will not prosper. Whether we look at the deed of sale as a

true contract of sale with right of repurchase or a mere contract of equitable

mortgage, the effect in the instant case will be the same.

If it is a true contract of sale with right of repurchase, according to the Civil

Code, the vendor may still exercise the right to repurchase within thirty days from

the time final judgment was rendered in a civil action on the basis that the contract

was a true sale with right to repurchase.

If it is a mere equitable mortgage, which we believe it is because of the gross

inadequacy of the purchase, the fact that the vendor is still in possession of the

property, and the fact that AB was in great need of money, the vendor (mortgagor)

may still exercise his right to redeem the property by paying the mortgage loan plus

interest.

**08; Sales; equitable mortgage**

**1980 No**. VI

(a) "S" executed a Deed of Sale of a parcel of land in favor of "T" reserving

for himself the right to repurchase the same within five years from the date of the

contract. The contract provided that during the repurchase period "S" will retain

possession of the land as lessee and pay the land taxes thereon. The consideration

for the sale was P10,000.00 but the land was worth double the price. "S" failed to

repurchase the land within the agreed period and "T" applied to the Court for the

consolidation of his title. "S" opposed the application and claimed that he had the

right to repurchase the land.

Whose stand should be upheld?

Answer

(a) The stand of "S" should be upheld.

In reality, the contract in the instant case is an equitable mortgage. The land

is merely the collateral or security for the payment of a loan of P10,000.00. This is

obvious from the deed of sale itself. In the first place, it says that "S" will retain

possession of the land as lessee; in the second place, it says that "S", the vendor,

shall pay the taxes thereon; and in the third place, the purchase price is unusually

inadequate. According to the Civil Code, the presence of any of these will be

sufficient to raise the presumption that the contract is an equitable mortgage.

(Note: The above answer is based on Art 1602, Civil Code. See also Gardner

vs. CA, 80 SCRA 399; Gloria-Diaz vs. CA, 84 SCRA 483; Labasan vs. Lacuesta, 86

SCRA 16.)

**08; Sales; Maceda law**

**2000 No** XIII

Priscilla purchased a condominium unit in Makati City from the Citiland

Corporation for a price of P10 Million, payable P3 Million down and the balance with

interest thereon at 14% per annum payable in sixty (60) equal monthly installments

of P198,333.33. They executed a Deed of Conditional Sale in which it is stipulated

that should the vendee fail to pay three (3) successive installments, the sale shall be

deemed automatically rescinded without the necessity of judicial action and all

payments made by the vendee shall be forfeited in favor of the vendor by way of

rental for the use and occupancy of the unit and as liquidated damages. For 46

months, Priscilla paid the monthly installments religiously, but on the 47th and 48th

months, she failed to pay. On the 49th month, she tried to pay the installments due

but the vendor refused to receive the payments tendered by her. The following

month, the vendor sent her a notice that it was rescinding the Deed of Conditional

Sale pursuant to the stipulation for automatic rescission, and demanded that she

vacate the premises. She replied that the contract cannot be rescinded without

judicial demand or notarial act pursuant to Article 1592 of the Civil Code.

a) Is Article 1592 applicable? (3%)

b) Can the vendor rescind the contract? (2%)

SUGGESTED ANSWER:

a) Article 1592 of the Civil Code does not apply to a conditional sale. In

Valarao v. CA, 304 SCRA 155, the Supreme Court held that Article 1592 applies

only to a contract of sale and not to a Deed of Conditional Sale where the seller has

reserved title to the property until full payment of the purchase price. The law

applicable is the Maceda Law.

SUGGESTED ANSWER;

b) No, the vendor cannot rescind the contract under the circumstances.

Under the Maceda Law, which is the law applicable, the seller on installment may

not rescind the contract till after the lapse of the mandatory grace period of 30 days

for every one year of installment payments, and only after 30 days from notice of

cancellation or demand for rescission by a notarial act. In this case, the refusal of

the seller to accept payment from the buyer on the 49th month was not Justified

because the buyer was entitled to 60 days grace period and the payment was

tendered within that period. Moreover, the notice of rescission served by the seller

on the buyer was not effective because the notice was not by a notarial act. Besides,

the seller may still pay within 30 days from such notarial notice before rescission

may be effected. All these requirements for a valid rescission were not complied with

by the seller. Hence, the rescission is invalid.

**08; Sales; Maceda law**

**1976 No**. IX-b

If A and B fix the price at F50.000.00 payable in installment, secured by a

chattel mortgage on the car and a real estate mortgage by a third party, upon

foreclosure of the chattel mortgage, may A foreclose the real estate mortgage for the

unpaid balance? Explain.

Answer

No, according to the decided cases of Cruz and Reyes v. Filipinas Investment

and Financing Corporation and Pascual v. Universal Motors, the seller cannot

recover the deficiency by foreclosing the real estate mortgage given by the 3rd party

because the latter would have a right to be indemnified by B and therefore indirectly

the seller would be recovering the deficiency from B which is prohibited by law,

(Article 1484).

**08; Sales; Maceda law**

**1977 No**. V-a

A bought on installment a residential subdivision lot, but after the 5th year,

was unable to make further payments. Can the developer cancel the sale

unilaterally, or must he go to court to obtain rescission? Is A entitled to any refund?

Answer

Yes, the developer can cancel the sale unilaterally. He need not go to court in

order to obtain rescission, provided that the actual cancellation of the contract shall

take place after thirty days from receipt by the buyer of the notice of cancellation or

the demand for rescission of the contract by a notarial act and upon full payment of

the cash surrender value to the buyer. (Rep. Act No. 6552, Sec. 8, (b).)

A shall be entitled to the cash surrender value, which is fifty per cent (60%) of

the total payment made by him to the seller (Ibid).

**08; Sales; Maceda law; Recto law**

**1999 No** XIII

What are the so-called "Maceda" and "Recto" laws in connection with sales

on installments? Give the most important features of each law. (5%)

ANSWER:

The Maceda Law (R.A. 655) is applicable to sales of immovable property on

installments. The most important features are (Rillo v. CA, 247 SCRA 461):

(1) After having paid installments for at least two years, the buyer is entitled

to a mandatory grace period of one month for every year of installment payments

made, to pay the unpaid installments without interest.

If the contract is cancelled, the seller shall refund to the buyer the cash

surrender value equivalent to fifty percent (50%) of the total payments made, and

after five years of installments, an additional five percent (5%) every year but not to

exceed ninety percent (90%) of the total payments made.

(2) In case the installments paid were less than 2 years, the seller shall give

the buyer a grace period of not less than 60 days. If the buyer fails to pay the

installments due at the expiration of the grace period, the seller may cancel the

contract after 30 days from receipt by the buyer of the notice of cancellation or

demand for rescission by notarial act.

The Recto Law (Art. 1484} refers to sale of movables payable in installments

and limiting the right of seller, in case of default by the buyer, to one of three

remedies:

(a) exact fulfillment;

(b) cancel the sale if two or more installments have not been paid;

(c) foreclose the chattel mortgage on the things sold, also in case of default

of two or more installments, with no further action against the purchaser.

**08; Sales; option contract**

**2002 No** XIV.

A.Explain the nature of an option contract. (2%)

SUGGESTED ANSWERS:

An option contract is one granting a privilege to buy or sell within an

agreed time and at a determined price. It must be supported by a consideration

distinct from the price. (Art. 1479 and 1482, NCC)

**08; Sales; option contract**

**1975 No**. XV

A agreed to sell to B a parcel of land for P5,000. B was given up to May 6,

1975 within which to raise the necessary funds. It was further agreed that if B could

not produce the money on or before said date, no liability would attach to him.

Before May 6, 1976, A backed out of the agreement Is A obliged to sell the property

to B? Explain.

Answer

This is an option given by A to B for the latter to buy A's property. As it is not

supported by a consideration distinct from the price of the sale, the option can be

withdrawn at anytime before it is accepted. (Art. 1324, 1479).

On the other hand, if D bound himself to buy it for the price stated at the time

the agreement was entered into, then it became a bilateral promise to buy and sell

which is reciprocally demandable.

**08; Sales; option; earnest money; Art. 1592**

**1993 No**. 8:

LT applied with BPI to purchase a house and lot In Quezon City, one of its

acquired assets. The amount offered was Pl,000,000.00 payable, as follows:

P200,000.00 down payment, the balance of P800,000.00 payable within 90 days

from June 1, 1985. BPI accepted the offer, whereupon LT drew a check for

P200,000.00 in favor of BPI which the latter thereafter deposited in its account. On

September 5, 1985, LT wrote BP'I requesting extension until October 10, 1985.

within which to pay the balance, to which BPI agreed. On October 5, 1985, due to

the expected delay in the remittance of the needed amount by his financier from the

United States, LT wrote BPI requesting a last extension until October 30, 1985,

within which to pay the balance. BPI denied LTs request because another had

offered to buy the; same property for P1,500,000.OO. cancelled its agreement with

LT and offered to return to him the amount of P200,200.00 that LT had paid to it. On

October 20, 19!85, upon receipt of the amount of P800,000.00 from his US financier,

LT offered to pay the amount by tendering a cashier's check therefor but which BPI

refused to accept. LT then filed a complaint against BPI in the RTC for specific

performance and deposited in court the amount of P800,OOO.OO.

Is BPI legally correct in canceling its contract with LT?

Answer;

BPI is not correct in canceling the contract with LT. In Lina Topacio v Court of

Appeals and BPI Investment (G. R No. 102606, July 3. 1993, 211 SCRA 291). the

Supreme Court held that the earnest money is part of the purchase price and is

proof of the perfection of the contract. Secondly, notarial or judicial rescission under

Art. 1592 and 1991 of the Civil Code is necessary (Taguba v. de Leon, 132 SCRA

722.)

Alternative Answer:

BPI is correct in canceling its contract with LT but BPI must do so by way of

Judicial rescission under Article 1191 Civil Code. The law requires a judicial action,

and mere notice of rescission is insufficient if it is resisted. The law also provides

that slight breach is not a ground for rescission (Song Fo & Co, vs, Hawaiian Phil

Co., 47 Phils. 821), Delay in the fulfillment of the obligation (Art. 1169, Civil Code) is

a ground to rescind, only if time is of the essence. Otherwise, the court may refuse

the rescission if there is a just cause for the fixing of a period.

**08; Sales; pacto de retro; when not**

**1977 No**. XIV-a

For only P100,000.00, V sold to C a house and lot valued at P200,000.00. A

month later, C stipulated in writing that V may repurchase in 2 years for P120,000.

After 4 years, C refused to reconvey and V sued for reformation. What legal grounds

should be sustained? How should C resist the suit? Who should prevail and why?

Answer

V may try to sustain his position by claiming that the instrument executed by

C stipulating that V may repurchase the property for P120,000.00 is a part or

continuation of the previous absolute sale, and that the two transactions taken

together constitute a contract of sale with right of repurchase. Hence, because the

price is unusually inadequate, the contract is in reality a contract of equitable

mortgage.

C, on the other hand, should resist the suit by claiming that the two

transactions taken together are separate and distinct from each other. The first is an

absolute sale, while the second, wherein C stipulated that V may repurchase the

property, is merely an option to buy. Hence, the presumption of an equitable

mortgage cannot be sustained. Besides, even assuming arguendo that there is

indeed a contract of sale with right of repurchase, such right has already prescribed

(Art. 1606, Civil Code).

Because of the ground stated by C, he should prevail. (Villarica vs. Court of

Appeals, 26 SCRA 189)

**08; Sales; perfected sale**

**2002 No** XIV.

Bert offers to buy Simeon’s property under the following terms and

conditions: P 1 million purchase price, 10% option money, the balance payable in

cash upon the clearance of the property of all illegal occupants. The option money is

promptly paid and Simeon clears the property of illegal occupants in no time at all.

However, when Bert tende4rs payment of the balance and ask Simeon for the deed

for absolute sale, Simeon suddenly has a change of heart, claiming that the deal is

disadvantageous to him as he has found out that the property can fetch three time

the agreed purchase price. Bert seeks specific performance but Simeon contends

that he has merely given Bert an option to buy and nothing more, and offers to

return the option money which Bert refuses to accept.

B.

Will Bert’s action for specific performance prosper? Explain. (4%)

C. May Simeon justify his refusal to proceed with the sale by the fact that

the deal is financially disadvantageous to him? Explain. (4%)

SUGGESTED ANSWERS:

B.

Bert’s action for specific performance will prosper because there was a

binding agreement of sale, not just an option contract. The sale was perfected upon

acceptance by Simeon of 10% of the agreed price. This amount is in really earnest

money which, under Art. 1482, “shall be considered as part of the price and as proof

of the perfection of the contract.” (Topacio v. CA, 211 SCRA 291 [1992]; Villongco

Realty v. Bormaheco, 65 SCRA 352 [1975]).

C. Simeon cannot justify his refusal to proceed with the sale by the fact

that the deal is financially disadvantageous to him. Having made a bad bargain is

not a legal ground for pulling out a biding contract of sale, in the absence of some

actionable wrong by the other party (Vales v. Villa, 35 Phil 769 [1916]), and no such

wrong has been committed by Bert.

**08; Sales; perfected sale**

**1989 No**. 13:

(1) "X" offered to buy the house and lot of "Y" for P300,000. Since "X" had

only P200,000 in cash at the time, he proposed to pay the balance of P1OO.OOO in

four (4) equal monthly installments. As the title to the property was to be immediately

transferred to the buyer, "X", to secure the payment of the balance of purchase

price, proposed to constitute a first mortgage on the property in favor of "Y". "Y"

agreed to the proposal so that on April 15, 1987, the contract of sale in favor of "X"

was executed and on the same date (April 15,1987), "X" constituted the said first

mortgage. When the first installment became due. "X" defaulted in the payment

thereof, "Y" now brings an action to rescind the contract of sale, which "X" opposed.

How would you decide the conflict? Give your reasons.

Answer:

Either of the following answers should be given full credit:

A. "Y" cannot rescind. The relationship is no longer that of buyer and seller

because the sale was already perfected and consummated. The relationship is

already that of mortgagor and mortgagee. Rescission is not a principal action

retaliatory in character but a subsidiary one available only in the absence of any

other legal remedy. Foreclosure is not only a legal but a contractual remedy. The

debtor must pay and, in case of breach, the mortgagee may foreclose.

B. "Y" can rescind. Specific performance and rescission are alternative

remedies in breach of reciprocal obligations. The contract is only partly

consummated. The price is not fully paid. The mortgage is an accessory contract of

guarantee and can be waived by the creditor who can avail of his remedies in the

principal contract.

Alternative Answers:

C. Considering that the default covers only P25,000.00 and the sum of

P206,000.00 has already been paid, there is only, a slight or casual breach negating

the right of the seller to rescind the contract of sale.

D. Rescission is available provided that the vendor give the vendee the 60-

day period as required by the Maceda Law or the Realty Installment Buyers Law.

**08; Sales; perfected sale**

**1989 No**. 13:

(2) "X" came across an advertisement in the "Manila Daily Bulletin" about the

rush sale of three slightly used TOYOTA cars, Model 1989 for only P200,000 each.

Finding the price to be very cheap and in order to be sure that he gets one unit

ahead of the others, "X" immediately phoned the advertiser "Y" and place an order

for one car. "Y" accepted the order and promised to deliver the ordered unit on July

15,1989. On the said date, however, "Y" did not deliver the unit. "X" brings an action

to compel "Y" to deliver the unit. Will such action prosper? Give your reasons.

Answer;

The contract in this case has been perfected. However, the contract is

unenforceable under the statute of -frauds, The action will prosper if there is no

objection to the oral evidence, which amounts to a waiver of the statute of frauds.

**08; Sales; perfected sale**

**1980 No**. V

(b) "Q", the owner of a house and lot in Quezon City, gave an option to "R" to

purchase said property for P100,000.00 within ninety days from May 1, 1979. "R"

gave "Q" one (Pl.00) peso as option money. Before the expiration of the ninety-day

period, "R" went to "Q" to exercise his option and to pay the purchase price but "Q"

refused because somebody wanted to buy his property for P150,000 and because

there was no sufficient consideration for the option. "R" sued "Q" to compel him to

accept payment and execute a deed of sale in his favor.

Decide the case.

Answer

(b) "Q" should be compelled to accept the purchase price of P100,000 and

to execute a deed of sale of the subject property hi favor of "R". The reason is that

there is already a perfected contract of sale.

Undoubtedly, in the instant case, there is a unilateral offer of "Q" to sell the

subject property to "R". For that purpose, the latter is given an option of ninety days

from May 1, 1979 within which to exercise the option. The consideration for the

option is P1.00. Since there is a consideration for the option, "Q" is now bound by

his promise to sell the property to "R" so long as the latter will exercise the option

within the agreed period of ninety days (Arts. 1324, 1479, par. 2, Civil Code). "R"

exercised his option. Therefore, there is already a perfected contract of sale.

At any rate, even assuming that there is indeed an insufficient consideration,

or that there is no consideration whatsoever, the result would still be the same.

Since "R" accepted the offer before it could be withdrawn or re-voiced by "Q", there

is already a perfected contract of sale. (Sanchez vs. Rigos 45 SCRA 368).

**08; Sales; Recto law**

**1976 No**. IX-c

May it be stipulated that in a foreclosure of the chattel mortgage to secure the

purchase of a car on installment, the installments paid will not be refunded? Explain,

Answer

Yes, such a stipulation may be construed as a penalty clause and shall be

valid insofar as the sum is not unconscionable. (Article 1486)

**08; Sales; Recto Law**

**1981 No**. 10

"O", owner of a copying machine, leased it to "L" at a rental of P4,OOO.OO a

month for a period of one year with option on the part of "L" to buy the copying

machine at the end of the year for P80,000.00, to be paid by applying the rentals, so

that "L" needs only to pay P32,OOO.OO.

"L" failed to pay rentals for the 4th, 5th and 6th months so that "0" terminated

the lease and repossessed the copying machine, the sued "L" for the unpaid rental

of three months, or P12,000.00.

Is "0’s” suit legally tenable? Explain.

Answer

"0's" suit is legally untenable.

By express provisions of Art. 1485 of the Civil Code, the preceding article

(Art. 1484) shall be applied to contracts purporting to be leases of personal property

with option to buy, when the lessor has deprived the lessee of the possession or

enjoyment of the thing. Consequently, applying Art. 1484, upon taking possession of

the copying machine, "O" has no further action against "L" to recover the unpaid

rents.

(Note: The above answer is based on the Recto Law (Arts. 1484, No. 3, and

1485, Civil Code) and on U.S. Commercial Co, vs. Halili, 93, Phil. 371.1

**08; Sales; Recto law; recovery of deficiency**

**1984 No** 16

A bought a truck from B payable in installment secured by a chattel mortgage

executed by A on the truck. As additional security, A's brother, C, executed a real

estate mortgage in favor of B.

A defaulted in the payment of several installments. Consequently, B filed an

action for replevin, repossessed the truck, and foreclosed the chattel mortgage.

Can B proceed against the other properties of A and the real estate mortgage

executed by C to recover the deficiency, if any, after the chattel mortgage

foreclosure sale? Explain.

Answer;

A. Furnished by the Office of Justice Planet.

No. Under Art. 1484, in a contract of sale of personal property the price of

which is payable in installments, if the seller elects to foreclose after buyer defaults,

he shall have no further action against the purchaser to recover any unpaid balance.

Since the principal obligation is extinguished, the mortgage executed by C as

security therefore will also necessarily be released. (Art. 2086).

B. Comments and Suggested Answer

We agree with the answer of the Bar Examiner.

**08; Sales; redemption**

**2002 No** XII.

Adela and Beth are co-owners of a parcel of land. Beth sold her undivided

share of the property to Xandro, who promptly notified Adela of the sale and

furnished the latter a copy of the deed of absolute sale. When Xandro presented the

deed for registration, the register of deeds also notified Adela of the sale, enclosing

a copy of the deed with the notice. However, Adela ignored the notices. A year later,

Xandro filed a petition for the partition of the property. Upon receipt of summons,

Adela immediately tendered the requisite amount for the redemption. Xandro

contends that Adela lost her right of redemption after the expiration of 30 days from

her receipt of the notice of the sale given by him. May Adela still exercise her right of

redemption? Explain. (5%)

SUGGESTED MAIN ANSWER:

Yes, Adela may still exercise her right of redemption notwithstanding the

lapse of more than 30 days from notice of the sale given to her because Article 1623

of the New Civil Code requires that the notice in writing of the sale must come from

the prospective vendor or vendor as the case may be. In this case, the notice of the

sale was given by the vendee and the Register of Deeds. The period of 30 days

never tolled. She can still avail of that right.

(FIRST) ALTERNATIVE MAIN ANSWER:

Adela can no longer exercise her right of redemption. As co-owner, she had

only 30 days from the time she received written notice of the sale which in this case

took the form of a copy of the deed of sale being given to her (Conejero v. CA, 16

SCRA 775 [1966]). The law does not prescribe any particular form of written notice,

nor any distinctive method for notifying the redemptioner (Etcuban v. CA, 148 SCRA

507 [1987]). So long as the redemptioner was informed in writing, he has no cause

to complain (Distrito v. CA, 197 SCRA 606, 609 [1991]). In fact, in Distrito, a written

notice was held unnecessary where the co-owner had actual knowledge of the sale,

having acted as middleman and being present when the vendor signed the deed of

sale.

**08; Sales; redemption; conventional and legal**

**1977 No**. XVI-b

When do conventional redemptions and legal redemptions take place?

Answer

Conventional redemption takes place when the vendor reserves the right to

repurchase the thing sold with the obligation to reimburse to the vendee the price of

the sale, the expenses of the contract, other legitimate payments made by reason of

the sale, as well as necessary and useful expenses made on the thing sold. (Arts.

1601, 1616, Civil Code).

Legal redemption takes place when there is a right to be subrogated upon the

same terms and conditions stipulated in the contract, in the place of one who

acquires a thing by purchase or dation in payment, or by any other transaction

whereby ownership is transmitted by onerous title. (Art. 1619, Civil Code).

(NOTE: Enumeration of the different instances when the right of redemption

takes place should also be accepted as sufficient answers.)

**08; Sales; redemption; legal**

**2001 No** XIX

Betty and Lydia were co-owners of a parcel of land. Last January 31, 2001,

when she paid her real estate tax, Betty discovered that Lydia had sold her share to

Emma on November 10, 2000. The following day, Betty offered to redeem her share

from Emma, but the latter replied that Betty's right to redeem has already prescribed.

Is Emma correct or not? Why? (5%)

SUGGESTED ANSWER:

Emma, the buyer, is not correct. Betty can still enforce her right of legal

redemption as a co-owner. Article 1623 of the Civil Code gives a co-owner 30 days

from written notice of the sale by the vendor to exercise his right of legal redemption.

In the present problem, the 30-day period for the exercise by Betty of her right of

redemption had not even begun to run because no notice in writing of the sale

appears to have been given to her by Lydia.

**08; Sales; redemption; legal**

**1982 No**. 18

"A", "B" and "C" bought a parcel of land. Subsequently, "A" sold his share to

"X".

(a) What right, if any, do "B" and "C" have with respect to the sale? Reason.

(b) May "B" exercise the same right if "A" had sold his share to "C" instead of

to "X"? Reason,

(c) Assume that in question (a) neither "B" nor "C" had exercised the right

and later "B" sold his share to "Y", may "X" exercise that right referred to in question

(a) ? Reason.

Answer

(a) "B" and "C" may exercise the right of legal redemption. In other words,

they can be subrogated to all of the rights of "X" under the same terms and

conditions stipulated in the contract. Should the two desire to exercise the right, they

may only do so in proportion to their respective shares in the thing owned in

common.

(b) No, "B" cannot exercise the same right if "A" had sold his share to "C"

instead of to "X". The reason is obvious. "C" cannot be classified as a third person

within the meaning of the law.

(c) Yes, "X" may exercise the right of legal redemption. For all legal

purposes, he has already become a co-owner. Being a co-owner, he is, therefore

entitled to all of the rights of a co-owner, including the right of legal redemption.

(Note: The above answers are based on Arts. 1619 and 1620 of the Civil

Code.)

**08; Sales; redemption; legal; by co-owners**

**1986 No**. 17:

Mayroon, Magari and Kilalanin Sr. are co-owners in equal shares of a piece

of land. Kilalanin Sr. sold his undivided interest to his son Kilalanin Jr. A week later,

Mayroon and Magari served notice on Kilalanin Jr. of their intention to redeem the

portion sold. However, Kilalanin Jr. refused to allow redemption arguing that being

the son of Kilalanin Sr., he was not a third person in contemplation of law with

respect to redemption by co-owners.

Is the refusal by Kilalanin Jr. justified? Explain. Answer:

The son is still a stranger, and under the C.C. when a share of a co-owner is

sold to a third person, the other co-owners may exercise the right of legal

redemption.

A third person is defined by the court in one case as "one who is not a co-

owner."

Answer - No. He is a 3rd person in contemplation of law. The law considers

as a 3rd person any purchaser who is not one of the co-owners. The fact that he is

the son of the vendor — co-owner does not make him a co-owner as in fact the son

had acquired the interest of his father by purchase.

Answer - Yes. the son is not a third person (Villanueva vs. Florendo, 139

SCRA 329).

**08; Sales; right of first refusal in favor of lessee; effect thereof**

**1998 No** X.

In a 20-year lease contract over a building, the lessee is expressly granted a

right of first refusal should the lessor decide to sell both the land and building.

However, the lessor sold the property to a third person who knew about the lease

and in fact agreed to respect it. Consequently, the lessee brings an action against

both the lessor-seller and the buyer (a) to rescind the sale and (b) to compel specific

performance of his right of first refusal in the sense that the lessor should be ordered

to execute a deed of absolute sale In favor of the lessee at the same price. The

defendants contend that the plaintiff can neither seek rescission of the sale nor

compel specific performance of a "mere" right of first refusal. Decide the case. [5%]

Answer:

The action filed by the lessee, for both rescission of the offending sale and

specific performance of the right of first refusal which was violated, should prosper.

The ruling in Equatorial Realty Development, Inc. vs. Mayfair Theater, Inc. (264

SCRA 483), a case with similar facts, sustains both rights of action because the

buyer in the subsequent sale knew the existence of right of first refusal, hence in

bad faith.

Another Answer:

The action to rescind the sale and to compel the right to first refusal will not

prosper. (Ang Yu Asuncion vs. CA, 238 SCRA 602). The Court ruled in a unanimous

en banc decision that the right of first refusal is not founded upon contract but on a

quasi-delictual relationship covered by the principles of human relations and unjust

enrichment (Art. 19, et seq. Civil Code). Hence the only action that will prosper

according to the Supreme Court is an "action for damages in a proper forum for the

purpose."

**08; Sales; right of first refusal in favor of the lessee; effect thereof**

**1996 No**. 14:

Ubaldo is the owner of a building which has been leased by Remigio for the

past 20 years. Ubaldo has repeatedly assured Remigio that if he should decide to

sell the building, he will give Remigio the right of first refusal. On June 30, 1994,

Ubaldo informed Remigio that he was willing to sell the building for P5 Million. The

following day, Remigio sent a letter to Ubaldo offering to buy the building at P4.5

Million. Ubaldo did not reply. One week later, Remigio received a letter from Santos

Informing him that the building has been sold to him by Ubaldo for P5 Million, and

that he will not renew Remigio's lease when it expires. Remigio filed an action

against Ubaldo and Santos for cancellation of the sale, and to compel Ubaldo to

execute a deed of absolute sale in his favor, based on his right of first refusal.

1) Will the action prosper? Explain. Answer:

No, the action to compel Ubaldo to execute the deed of absolute sale will not

prosper. According to Ang Yu v. Court of Appeals (238 SCRA 602), the right of first

refusal is not based on contract but is predicated on the provisions of human

relations and, therefore, its violation is predicated on quasi-delict. Secondly, the right

of first refusal implies that the offer of the person in whose favor that right was given

must conform with the same terms and conditions as those given to the offeree. In

this case, however. Remigio was offering only P4.5 Million instead of P5 Million.

Alternative Answer:

No, the action will not prosper. The lessee's right of first refusal does not go

so far as to give him the power to dictate on the lessor the price at which the latter

should sell his property. Upon the facts given, the lessor had sufficiently complied

with his commitment to give the lessee a right of first refusal when he offered to sell

the property to the lessee for P5 Million, which was the same price he got in selling it

to Santos. He certainly had the right to treat the lessee's counter-offer of a lesser

amount as a rejection of his offer to sell at P5 Million. Thus, he was free to find

another buyer upon receipt of such unacceptable counter-offer (Art. 1319. NCC).

2) If Ubaldo had given Remigio an option to purchase the building instead of

a right of first refusal, will your answer be the same? Explain.

Answer;

Yes, the answer will be the same. The action will not prosper because an

option must be supported by a consideration separate and distinct from the

purchase price. In this case there is no separate consideration. Therefore, the option

may be withdrawn by Ubaldo at any time. (Art. 1324, NCC)

**08; Sales; right of repurchase**

**1993 No**. 12:

On January 2, 1980, A and B entered into a contract whereby A sold to B a

parcel of land for and in consideration of P10.000.00. A reserving to himself the right

to repurchase the same. Because they were friends, no period was agreed upon for

the repurchase of the property.

1) Until when must A exercise his right of repurchase?

2) If A fails to redeem the property within the allowable period, what would

you advise B to do for his better protection?

Answer:

1) A can exercise his right of repurchase within four (4) years from the date of

the contract (Art. 1606, Civil Code).

2} I would advise B to file an action for consolidation of title and obtain a

judicial order of consolidation which must be recorded in the Registry of Property

(Art. 1607. Civil Code).

**08; Sales; tradition**

**1977 No**. VI-b

What is tradition and give five (5) kinds of tradition which are provided and

recognized in the Civil Code.

Answer

Tradition is a derivative mode of acquiring ownership and other real rights by

virtue of which they are transmitted from the patrimony of the grantor, in which they

had previously existed, to that of the grantee by means of a just title, there being

both the intention and the capacity on the part of both parties (3 Sanchez Roman

238).

The different kinds of tradition which are recognized in the Civil Code are:

(1) Real tradition, which takes place by the delivery or transfer of a thing from

hand to hand if it is movable, or by certain material and possessory acts of the

grantee performed in the presence and with the consent of the grantor if it is

immovable.

(2) Constructive tradition, which takes place by the delivery of a movable or

immovable thing by means of acts or signs indicative thereof. This delivery may take

place in the following ways:

a. Traditio symbolica, which consists in the delivery of a symbol representing

the thing which is delivered, such as the key to a warehouse;

b. Traditio longa manu, which consists in the grantor pointing out to the

grantee the thing which is delivered which at the time must be within sight;

c. Traditio brevi manu, which takes place when the grantee is already in

"possession of the thing under a title which is not of ownership, such as when the

lessee purchases from the lessor the object of the lease; and

d. Traditio constitutum possessorium, which takes place when the

grantor alienates a thing belonging to him, but continues in possession thereof under

a different title, such as that of a lessee, pledgee or depositary.

(3) Quasi-tradicion, which is used to indicate the exercise of a right by the

grantee with the acquiescence of the grantor; and

(4) Tradicion por ministerio de la ley, which refers to delivery that takes

place by operation of law. (See Arts. 1497-1501, Civil Code; 2 Castan 208-209; 3

Sanchez Roman 209-210).

(NOTE: The above kinds of tradition may be stated only, without defining

them.)

**08; Sales; transfer of ownership**

**1990 No** 5:

D sold a second-hand car to E for P150,000.00 The agreement between D

and E was that half of the purchase price, or P75,000.00, shall be paid upon delivery

of the car to E and the balance of P75,000.00 shall be paid in five equal monthly

installments of P15,000.00 each. The car was delivered to E. and E paid the amount

of P75.000.00 to D. Less than one month thereafter, the car was stolen from E's

garage with no fault on E's part and was never recovered. Is E legally bound to pay

the said unpaid balance of P75.000.0O? Explain your answer.

Answer:

Yes, E is legally bound to pay the balance of P75,000.OO. The ownership of

the car sold was acquired by E from the moment it was delivered to him. Having

acquired ownership, E bears the risk of the loss of the thing under the doctrine of res

peril domino. [Articles 1496. 1497, Civil Code).

**08; Sales; transfer of ownership**

**1991 No** 17:

Pablo sold his car to Alfonso who issued a postdated check in full payment

therefor. Before the maturity of the check. Alfonso sold the car to Gregorio who later

sold it to Gabriel. When presented for payment, the check issued by Alfonso was

dishonored by the drawee bank for the reason that he, Alfonso, had already closed

his account even before he issued his check.

Pablo sued to recover the car from Gabriel alleging that he (Pablo) had been

unlawfully deprived of it by reason of Alfonso's deception.

Will the suit prosper?

Answer:

No. The suit will not prosper because Pablo was not unlawfully deprived of

the car although he was unlawfully deprived of the price. The perfection of the sale

and the delivery of the car was enough to allow Alfonso to have a right "of ownership

over the car, which can be lawfully transferred to Gregorio. Art. 559 applies only to a

person who is in possession in good faith of the property, and not to the owner

thereof. Alfonso, in the problem, was the owner, and. hence, Gabriel acquired the

title to the car.

Non-payment of the price in a contract of sale does not render ineffective the

obligation to deliver.

The obligation to deliver a thing is different from the obligation to pay its price.

EDCA Publishing Co. v. Santos (1990)

**08; Sales; vendor’s lien**

**1985 No**. 13

A) A sold to B a piano for P10,000, payable in monthly installments of

P1,000 each. After paying the first installment, B resold the piano to C who paid

P2,-000.00, leaving a balance of F8,000.00. Thereafter, X sued B for the value of

services rendered to him and had the credit of P8,000, due B from C garnished. A

thereupon filed a third-party claim with the sheriff for P20,000.00, representing the

balance of the price of the piano still unpaid and a loan of P11,000.00 he gave B.

Discuss who between A or X should prevail.

Answers:

A) 1, This is a question of priority between the vendor's lien and the

garnishment order. Concurrences and preferences of credits are not applicable for

the simple reason that there is no special proceeding to convene the creditors, but

since both are preferred in the sense that one is the vendor and the other has a

garnishment order, it is a question of who is preferred between the two. Therefore,

the vendor's lien of A is superior because the sale occurred before. The moment he

sold the piano, there already arose the vendor's lien.

2. The right of X should prevail over that of A. The problem relates to the

efficacy of the garnishment order on B's receivables from the sale and not on the

piano itself. Accordingly, the unpaid seller's lien which is a lien on the piano as the

object of A's sale, not being really involved in the garnishment order, will not allow A

to question said garnishment order.

**08; Sales; who bears risk of loss**

**1981 No**. 11

"S", an American resident of Manila, about to leave on a vacation, sold his

car to "B" for U.S. $2,000.00, the payment to be made ten days after delivery to "X",

a third party depositary agreed upon, who shall deliver the car to "B" upon receipt by

"X" of the purchase price. It was stipulated that ownership is retained by "S" until

delivery of the car to "X". Five days after delivery of the car to "X", it was destroyed

in a fire which gutted the house of "X", without the fault of either "X" or "B".

a) Is buyer "B" still legally obligated to pay the purchase price? Explain.

Answer

(a) Yes, buyer "B" is still legally obligated to pay the purchase price. It must

be observed that "S" had already delivered the car to "X", the third party depositary

or bailee. It was agreed that ownership is retained by "S" until delivery to "X".

Therefore, in effect, there was already a transfer of the right of ownership over the

car to "B". Consequently, "B" shall assume the fortuitous loss of the car. As a matter

of fact, even if it was agreed that "S" shall retain the ownership of the car until the

purchase price has been paid by "B", the end result will still be the same. Since

eventually, the purpose is to secure performance by the buyer of his obligation to

pay the purchase price, by express mandate of the law, the fortuitous loss of the car

shall be assumed by "B".

(Note: The above answer is based on Art. 1504 of the Civil Code.)