Secured Transactions in the Philippines

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SECURED TRANSACTIONS IN THE PHILIPPINES*  

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Philippine law on secured transactions is primarily statutory. Special laws dealing with chattel mortgages have been in effect since August 1, 1906.¹ Title XV of the Philippine Civil Code deals with guaranty transactions and title XVI covers pledges and mortgages, with its major emphasis on pledges. The Chattel Mortgage Law was enacted by the Philippine Commission² and is, thus, American in nature, while the Civil Code provisions are largely Spanish in origin.³  

Other security devices such as conditional sales, trust receipts, warehouse receipts, letters of credit, assignment of credits and contract rights, are not unknown but there are no special laws dealing with these individually, or altogether, as security devices.⁴ As law develops with economic activity, it will undoubtedly create pressure for legislation in this area. Suffice it to observe that there is increasing commercial, industrial and manufacturing activity,⁵ a greater demand for

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* Excluding real estate mortgages.

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¹ Phil. Chattel Mortgage Law, P.A. No. 1508 (1906), (hereinafter cited Chattel Mortgage Law), PHIL. ANN. LAWS tit. 16 (1956). Laws enacted while the Philippines was under the United States of America but before the inauguration of the Commonwealth of the Philippines on November 15, 1935, are known as "Public Acts" (P.A.); those enacted during the Commonwealth are known as "Commonwealth Acts" (C.A.); those enacted after the proclamation of Philippine independence on July 4, 1946, are known as "Republic Acts" (R.A.).

² Members were appointed by the President of the United States, by and with the advice and consent of the United States Senate. Philippine Bill of July 1, 1902, ch. 1369 § 1, 32 Stat. 691.

³ The Spanish Civil Code was extended to the Philippines by Royal Decree of July 31, 1889, and took effect on December 7, 1889. Mijares v. Nery, 3 Phil. 195 (1904). With some amendments, it was effective until August 30, 1950, when the present Philippine Civil Code took effect. PHIL. CIVIL CODE, R.A. No. 386 (1949), (hereinafter cited Civil Code). See CIVIL CODE art. 2270; Casubar v. Sino Cruz, Gen. Reg. L-6882 (Dec. 29, 1954); Ilejay v. Ilejay, 49 Off. Gaz. 4903 (1953). This code is often referred to as the New Civil Code.

⁴ As to conditional sales, see text accompanying notes 121-29 supra. With respect to warehouse receipts in general, see Warehouse Receipts Law, P.A. No. 2137 (1906), (hereinafter cited as Warehouse Receipts Law), PHIL. ANN. LAWS tit. 79 (1957). As to letters of credit, see CODE OF COMMERCE arts. 567-72 (1888). The Code of Commerce was extended to the Philippines by Royal Decree of Spain in 1888. It is cited herein as CODE OF COMMERCE. As to assignment of credits and other incorporeal rights, see CIVIL CODE arts. 1624-37.

⁵ See Appendix I for a comparative index of the physical volume of production for the period 1949-1963.
extension of credit, and a consequent need and willingness to rely on security devices other than real estate mortgages.

If a comparison were to be made between Philippine law and article 9 of the *Uniform Commercial Code*, the relative inadequacy of Philippine law would be stunning. This is understandable since the problems which gave impetus to the formulation of the *Uniform Commercial Code* have not reached, and are not likely to reach, the same demanding proportions that they must have in the United States. For one thing, the Philippine form of government completely obviates all questions arising from divergent laws or rules in the various states. With only one legislature, the Philippines has only one enactment enforceable throughout the entire country on any given question at any one time. Thus, a section by section comparison of article 9 of the *Uniform Commercial Code* and Philippine law would hardly be enlightening at this time. It is useful to stress, however, that the approach under Philippine law to questions in this field is not likely to proceed on a basis similar to that laid down in section 9-202 of the *Uniform Commercial Code*. While location of title to collateral is given no significance under the *Uniform Commercial Code*, it is likely to be determinative of the rights, obligations and remedies of the debtor, creditor and third parties under Philippine law.

It is also important to point out that there are no filing systems and no filing requirements in the Philippines except in the case of chattel mortgages. With regard to other non-possessory liens, this lack of filing requirements is likely to produce vexing questions concerning time of perfection, priority, problems of estoppel, and fraudulent transfers.

Broadly speaking, the following may be stated:

1. What is properly the object of a secured transaction under the *Uniform Commercial Code* (including accounts and contract rights, chattel paper, documents and instruments, consumer goods, equip-

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6 See Appendix II.
7 E.g., in the year 1963, out of a total of P4,130.7 millions of secured credits granted by commercial banks, P1,671.4 millions were on merchandise security, P167.9 millions on plant and equipment, P1,144.1 millions on real estate, P242.9 millions on stocks and bonds, P352.5 millions on current savings and time deposits, P9.2 millions on jewelry and other personal property, and P532.7 millions on other collaterals. 14 Stat. Bull., Cent. Bank of the Phil., table 25, at 75.
8 Reference to the *Uniform Commercial Code* in this article is to the 1962 Official Text published jointly by the American Law Institute and the National Conference of Commissioners on Uniform State Laws.
9 PHIL. CONST. art. VI.
ment, farm products and inventory), also can be the object of a secured transaction under Philippine law.\textsuperscript{12}

2. Subject to the inherent nature of the secured transaction\textsuperscript{13} and its object,\textsuperscript{14} the perfection of the agreement generally will be contractual, governed primarily by Philippine contract law.\textsuperscript{15} The \textit{Uniform Commercial Code}, on the other hand, has specific, uniform rules on the matter.

3. Under Philippine law, the incidents of the relationship, especially as between the immediate parties, also will have to be determined primarily by the agreement of the parties, with the exception of the chattel mortgage and pledge. The \textit{Uniform Commercial Code}, by contrast, states in some detail the rights, obligations and remedies of the parties.

4. Because of the absence of filing requirements under Philippine law, the rights of third parties will be governed by the same rules, and consequently, will depend on location of title and priority of liens.\textsuperscript{16}

In summary, the absence of special rules dealing particularly with most security devices means that the incidents of the relationship as between the parties, and likewise, conflicts arising among creditors or lienholders, will have to be resolved largely by the contract itself. Location of title to the security, notice of existing liens and claims of estoppel are bound to be determinative of questions in this field. Thus, the formulation of the agreement by which the security is

\textsuperscript{12} The \textit{Civil Code} provides for the general object of contracts:

\textbf{Art. 1347.} All things which are not outside the commerce of men, including future things, may be the object of a contract. All rights which are not intransmissible may also be the object of contracts.

No contract may be entered into upon future inheritance except in cases expressly authorized by law.

All services which are not contrary to law, morals, good customs, public order or public policy may likewise be the object of a contract.

\textbf{Art. 1348.} Impossible things or services cannot be the object of contracts.

\textbf{Art. 1349.} The object of every contract must be determinate as to its kind. The fact that the quantity is not determinate shall not be an obstacle to the existence of the contract, provided it is possible to determine the same, without the need of a new contract between the parties.

\textsuperscript{13} \textit{E.g.}, chattel mortgages will be governed by the Chattel Mortgage Law, pledges by specific provisions of the \textit{Civil Code}, and "trust receipts" would be subject to the principles of the general law of trusts. (See \textit{Civil Code} art 1442).

\textsuperscript{14} \textit{E.g.}, if "warehouse receipts" are used as security, then their nature as such—as determined by the Warehouse Receipts Act—would influence the incidents of the relationship. If the security was timber to be cut, then rules and regulations of the Department of Agriculture and Natural Resources would be relevant to the incidents of the agreement.

\textsuperscript{15} \textit{Civil Code} arts. 1305-1422.

\textsuperscript{16} Should the debtor become insolvent, title XIX on "Concurrence and Preference of Credits" of the \textit{Civil Code} and the Insolvency Law (P.A. No. 1956) (1909) will govern.
created is most important, for it is the "law" as between the parties.\textsuperscript{17}

The security agreement may, however, be subject to certain forms.\textsuperscript{18} Contracts which fall under the statute of frauds, \textit{i.e.}, a special promise to answer for the debt, default, or miscarriage of another, must be in writing.\textsuperscript{19} Some are required to be in a public document.\textsuperscript{20} An assignment of credit,\textsuperscript{21} for example, must appear in a public instrument\textsuperscript{22} if it is to be effective against third persons.

There are other laws which have general relevance to secured transactions. A Usury Law\textsuperscript{28} controls the rate of interest for loans or forbearance of money, goods, or credits. Also, a recently enacted Truth In Lending Act\textsuperscript{24} requires creditors to furnish each person to

\textsuperscript{17} \textit{Civil Code} art. 1159: "Obligations arising from contracts have the force of law between the contracting parties and should be complied with in good faith." By virtue of this provision, the Philippine Supreme Court has held parties strictly accountable to the terms of their agreement. Hanlon v. Hausserman, 41 Phil. 276 (1920); Ollendorf v. Abrahamson, 38 Phil. 585 (1918); Co General de Tabacos v. Obel, 13 Phil. 391 (1905); Alcantara v. Alina, 8 Phil. 111 (1907); Borromeo v. Franco, 5 Phil. 49 (1905); Salonga v. Concepcion, 3 Phil. 563 (1904); Co-Tiangco v. To-Jamco, 3 Phil. 210 (1904).

\textsuperscript{18} \textit{Civil Code} arts. 1356-57.

\textsuperscript{19} \textit{Civil Code} art. 1403.

\textsuperscript{20} \textit{Civil Code} art. 1358.

\textsuperscript{21} Assignment of credit is defined as follows:

Assignment of credit is an agreement by virtue of which the owner of a credit, known as the assignor, by a legal cause, such as sale, dation in payment, exchange or donation, and without the need of the consent of the debtor, transfers his credit and its accessory rights to another, known as the assignee, who acquires the power to enforce it to the same extent as the assignor could have enforced it against the debtor.

The Code covers not only assignment of credits, but also of other incorporeal rights, which include all real rights other than ownership. Such application of the concept of assignment is incomplete. The assignment may refer to all kinds of rights even those which are doubtful, present, and future, so long as they are licit and can be exercised by a third person. 5 \textsc{Toletino, Civil Code of the Philippines} 165 (1959).

\textsuperscript{22} A public instrument is one which is acknowledged before a notary public or a competent public official with the solemnities required by law. United States v. Asensi, 34 Phil. 750 (1916); Cacnio v. Baens, 5 Phil. 742 (1906). A private document has been defined as "every deed or instrument executed by a private person, without the intervention of a notary public or of other person legally authorized, by which document some disposition or agreement is proved, evidenced or set forth." United States v. Orera, 11 Phil. 596, 597 (1907). See P.A. No. 2103 (1917), \textit{Phil. Ann. Laws} tit. 1, § 1 (1956) for formalities of notarizing a document.

\textsuperscript{23} Sections 2-4 of the Interest and Usury Act prescribe the maximum rates of interest. P.A. No. 2655, §§ 2-4 (1916), as amended, C.A. No. 399, §§ 1-2 (1938), \textit{Phil. Ann. Laws} tit. 40, §§ 2-4 (1956). Real estate mortgage financing is limited to 12%; other loans and credit are limited to 14%, except for loans from building and loan associations which are also 12%.

\textsuperscript{24} R.A. No. 3765 (1963). Section 4 provides:

Any creditor shall furnish to each person to whom credit is extended, prior to the consummation of the transaction, a clear statement in writing setting forth, to the extent applicable and in accordance with rules and regulations prescribed by the Board, the following information: (1) The cash price or delivered price of the property or service to be acquired; (2) The amounts, if any, to be credited as down payment and/or trade-in; (3) The difference between the amounts set forth under clauses (1) and (2); (4) The charges, individually itemized, which are paid or to
whom credit is extended certain information which should make the debtor aware of the true cost of the credit extended.25

Pledge

Creation. The pledge agreement must be executed with the usual requirements of a contract.26 However, because of the special nature of the pledge agreement, there are some additional requirements essential to valid creation: (1) the pledge must be constituted to secure the fulfillment of a principal obligation;27 (2) the pledgor must be the absolute owner of the thing pledged;28 and (3) the thing pledged must be placed in the possession of the creditor (pledgee), or of a third person by common agreement.29

Because a contract of pledge must secure a principal obligation, the principal obligation itself must be validly constituted. However, by express provision, the Philippine law permits the creation of a pledge to secure performance of a voidable or an unenforceable contract, or a natural obligation.30

Although the pledgor is required to be the absolute owner of the thing pledged, he need not be the debtor. A third person who is not a party to the principal obligation may be the pledgor.31

Being a possessory lien, delivery of the thing pledged is essential.32 The Philippine Supreme Court has held that delivery of the keys to

be paid by such person in connection with the transaction but which are not incident to the extension of credit; (5) The total amount to be financed; (6) The finance charge expressed in terms of pesos and centavos; and (7) The percentage that the finance charge bears to the total amount to be financed expressed as a simple annual rate on the outstanding unpaid balance of the obligation.

26 CIVIL CODE art. 1318 provides: "There is no contract unless the following requisites concur: (1) Consent of the contracting parties; (2) Object certain which is the subject matter of the contract; (3) Cause of the obligation which is established." Certain pledges are, however, created by operation of law (CIVIL CODE art. 2121), such as the lien in favor of possessors who have advanced certain expenses (CIVIL CODE art. 546), a mechanics lien (CIVIL CODE art. 1731), or those in favor of depositaries for certain charges (CIVIL CODE art. 1994).
27 CIVIL CODE art. 2085.
28 Ibid.
29 CIVIL CODE art. 2093.
30 CIVIL CODE arts. 2052, 2086. See Appendix III for CIVIL CODE arts. 1390 (voidable contracts), 1403 (unenforceable contracts), and 1423 (natural obligations).
31 CIVIL CODE art. 2085.
32 Referring to this requirement, the Philippine Supreme Court observed in Betita v. Ganzon, 49 Phil. 87, 93 (1926):
This requisite is most essential and is characteristic of a pledge without which the contract cannot be regarded as entered into or completed, because, precisely, in this delivery lies the security of the pledge. Therefore, in order that the contract of pledge may be complete, it is indispensable that the aforesaid delivery take place....
a warehouse containing the stock of merchandise pledged is adequate transfer of possession. When rights evidenced by instruments or documents of title are pledged, the instruments or documents must be delivered to the creditor, and if negotiable, must be indorsed.

While the foregoing may be adequate to create a valid pledge as between the immediate parties, Philippine law now explicitly provides that a pledge has no effect against third persons unless a description of the thing pledged and the date of the pledge appear in a public instrument. There are no other requirements.

Subject matter. In general, movables susceptible of possession may be pledged. These include incorporeal rights, evidenced by negotiable instruments, bills of lading, shares of stock, bonds, warehouse receipts and similar documents. Although specific mention of these rights was not made expressly in the Civil Code before its revision, shares of stock and pawn tickets have been held to be proper

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33 Banco Español Filipino v. Peterson, 7 Phil. 409 (1907). But in Betita v. Ganzon, supra note 32, at 93, it was stated that "a mere symbolic delivery is not sufficient." The facts in the Betita case do not, however, show even "symbolic delivery."

34 Civil Code art. 2095.

35 Civil Code art. 2096. Under the Spanish Civil Code only the date was required to appear in a public instrument. The purpose of this requirement was explained thus: Considering the effects of a contract of pledge, it is easily understood that, without this warranty demanded by law, the case may happen wherein a debtor in bad faith from the moment that he sees his movable property in danger of execution may attempt to withdraw the same from the action of justice and the reach of his creditors by simulating, through criminal confabulations, anterior and fraudulent alterations in his possession by means of feigned contracts of this nature; and, with the object of avoiding or preventing such abuses, almost all the foreign writers advise that, for the effectiveness of the pledge, it be demanded as a precise condition that in every case the contract be executed in a public writing, for, otherwise, the determination of its date will be rendered difficult and its proof more so, even in case in which it is executed before witnesses, due to the difficulty to be encountered in seeking those before whom it was executed. Betita v. Ganzon, 49 Phil. 87, 91 (1926).

It is to implement this purpose more effectively that not only is the date but also the description of the thing pledged now required to appear in a public instrument if the pledge is to affect third persons. For a definition of a public instrument see note 22 supra.

36 Civil Code art. 2094. Civil Code art. 416 enumerates what are considered personal property or movables, as follows: (1) Those movables susceptible of appropriation which are not included in the preceding article; (2) Real property which by any special provision of law is considered as personality; (3) Forces of nature which are brought under control by science; and (4) In general, all things which can be transported from place to place without impairment of the real property to which they are fixed.

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." Civil Code art. 417.

37 Civil Code art. 2095.

38 Bachrach Motor Co. v. Ledesma, 64 Phil. 681 (1937).

39 Serrano v. Chua, 54 Phil. 10 (1929).
objects of pledge, while warehouse receipts were implicitly authorized by statute to be pledged. When what is pledged yields a return, the pledge also extends to these earnings unless there is a stipulation to the contrary. As to animals that are pledged, the offspring also are subject to the pledge without contrary stipulation.

**Incidents of pledgor-pledgee relationship.** The rights of the pledgee are the following: (1) to retain the chattel pledged in his possession or in that of the third person to whom it has been delivered, until the debt is paid; (2) to have the chattel sold if the obligation secured is not satisfied in due time; (3) to reimbursement for expenses incurred in preserving the chattel pledged; (4) to recover or defend possession of the chattel against a third person; (5) to cause the chattel to be sold at public auction and to keep the proceeds as security should the security pledged, without fault of the pledgee, be in danger of destruction, impairment or diminution in value; (6) to claim other security or to demand immediate payment of the principal obligation if the creditor is deceived on the substance or quality of the chattel pledged; (7) to appropriate the security pledged should there be no buyers two auctions after default; (8) to collect a credit that is pledged which

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41 CIVIL CODE art. 2102.
42 Ibid.
43 CIVIL CODE arts. 2098, 2105.
44 CIVIL CODE art. 2112: "The creditor to whom the credit has not been satisfied in due time, may proceed before a Notary Public to the sale of the thing pledged. . . ."
45 CIVIL CODE art. 2099. Serrano v. Chua, 54 Phil. 10 (1929) held that since the pledgee of a pawn ticket is bound to renew the ticket from time to time by the payment of interest or premium as required by the pawnbroker, to prevent the rights of the pledgor under the pawn ticket from being foreclosed, he is entitled to recover from the pledgor whatever amount he pays.
46 CIVIL CODE art. 2103.
47 CIVIL CODE art. 2108: "The proceeds of the auction shall be a security for the principal obligation in the same manner as the thing originally pledged."
48 CIVIL CODE art. 2109.
49 CIVIL CODE art. 2112: The creditor to whom the credit has not been satisfied in due time, may proceed before a Notary Public to the sale of the thing pledged. This sale shall be made at a public auction, and with notification to the debtor and the owner of the thing pledged in a proper case, stating the amount for which the public sale is to be held. If at the first auction the thing is not sold, a second one with the same formalities shall be held; and if at the second auction there is no sale either, the creditor may appropriate the thing pledged. In this case he shall be obliged to give an acquittance for his entire claim.

As a rule, a creditor may not appropriate the chattel pledged or mortgaged. Article 2112 provides for the only instance where the pledgee is allowed to do so.

Under CIVIL CODE art. 2088, it is provided that: "The creditor cannot appropriate the things given by way of pledge or mortgage, or dispose of them. Any stipulation to the contrary is null and void." This provision expressly outlaws what is known as pacto comisório. But even before stipulations allowing the mortgagor or pledgor to
becomes due before it is redeemed; and (9) to select which of two or more chattels pledged will be sold to satisfy the principal obligation, unless there is a stipulation to the contrary.

The pledgee’s obligations are: (1) to take care of the security pledged with the “diligence of a good father of the family;” (2) to advise the pledgee of any flaws in the chattel pledged; (3) to abstain from using the chattel pledged without the authority of the owner; and (4) to advise the pledgor of any damage to the chattel pledged.

The pledgor continues to be the owner of the chattel pledged. He is then given the right, with the consent of the pledgee, to sell the chattel subject to the pledge. The earnings, interest, and fruits of the chattel accrue in his favor, and he may require it to be deposited with a third person should it be in danger of being lost or impaired through the negligence or wilful act of the pledgee. Moreover, if

appropriate the chattel pledged or mortgaged were expressly prohibited, Philippine courts have held such stipulations contrary to public policy and therefore null and void. Mendoza v. Santos, 39 Off. Gaz. 738 (1941); Tan Chun Tic v. West Coast Life Ins. Co., 54 Phil. 361 (1930).

60 Civil Code art. 2118: “He shall apply the same to the payment of his claim, and deliver the surplus, should there be any, to the pledgor.”

61 Civil Code art. 2119: “He may demand the sale of only as many of the things as are necessary for the payment of the debt.”

62 Civil Code art. 2099:

The creditor shall take care of the thing pledged with the diligence of a good father of a family; he has a right to the reimbursement of the expenses made for its preservation, and is liable for its loss or deterioration, in conformity with the provisions of this Code.

See Serrano v. Chua, 54 Phil. 10, 15 (1929) where the Supreme Court held that a pledgee of pawn tickets is obligated to renew the ticket from time to time by the payment of interest, or premium, as required by the pawnbroker to prevent the rights of the pledgor from being finally foreclosed.

But where the chattel pledged is lost on account of theft or robbery without fault or negligence on the part of the pledgee, the pledgor may not be held liable for the loss of the chattel. San Jose & Carlos v. Ruiz, 71 Phil. 541 (1941).

63 Civil Code arts. 2101, 1951.

64 Civil Code art. 2104:

If he should do so, or should misuse the thing in any other way, the owner may ask that it be judicially or extra-judicially deposited. When the preservation of the thing pledged requires its use, it must be used by the creditor but only for that purpose.

65 Civil Code art. 2107.

66 Civil Code art. 2103.

67 Civil Code art. 2097:

The ownership of the thing pledged is transmitted to the vendee or transferee as soon as the pledgee consents to the alienation, but the latter shall continue in possession.

68 Civil Code art. 2102:

If the pledge earns or produces fruits, income, dividends, or interests, the creditor shall compensate what he receives with those which are owing him; but if none are owing him, or insofar as the amount may exceed that which is due, he shall apply it to the principal ....

69 Civil Code art. 2106.
there are reasonable grounds to fear destruction or impairment of the chattel even without fault by the pledgee, the pledgor can demand its return upon offering in pledge another chattel of the same kind and quality.\textsuperscript{60} On the other hand, the pledgor cannot ask for the outright return of the chattel pledged until the debt, interest, and expenses for proper care have been paid.\textsuperscript{61}

**Enforcement and extinction of pledge.** Upon default of the debtor, the creditor or pledgee may appear before a Notary Public and initiate the sale of the chattel pledged. The sale is subject to the following rules:

- (1) The sale has to be made at a public auction, and the debtor and the owner of the chattel pledged must be notified of the amount for which the public sale is being held.\textsuperscript{62}
- (2) If at the first auction the chattel is not sold, a second one with the same formalities must be held. If at the second auction there is no sale, the creditor may appropriate the chattel pledged, and in this situation he will be obliged to give a release of his entire claim.\textsuperscript{63}
- (3) At the public auction, the pledgor or owner may bid and will have a better right if he should offer the same terms as the highest bidder. The pledgee may also bid, but his offer is not valid if he is the only bidder.\textsuperscript{64}
- (4) All bids must offer to pay the purchase price immediately, but if any bid not offering to make immediate payment is accepted, the pledgee is deemed to have received the purchase price insofar as the pledgor or owner is concerned.\textsuperscript{65}

Article 2115 of the *Civil Code* lays down a most significant rule regarding the effects of the sale of the thing pledged:

The sale of the thing pledged shall extinguish the principal obligation, whether or not the proceeds of the sale are equal to the amount of the principal obligation, interest and expenses in a proper case. If the price of the sale is more than said amount, the debtor shall not be entitled to the excess, unless it is otherwise agreed. If the price of the sale is less, neither shall the creditor be entitled to recover the deficiency, notwithstanding any stipulation to the contrary.\textsuperscript{66}

\textsuperscript{60} *Civil Code* art. 2107.
\textsuperscript{61} *Civil Code* art. 2105.
\textsuperscript{62} *Civil Code* art. 2112. See note 49 supra.
\textsuperscript{63} *Ibid.*
\textsuperscript{64} *Civil Code* art. 2113.
\textsuperscript{65} *Civil Code* art. 2114.
\textsuperscript{66} This provision was not in the *Spanish Civil Code*. Explaining its inclusion in the new *Philippine Civil Code*, the Code Commission states: [I]t will be noted that if the price of the sale is more than the amount of the principal obligation, interest and ex-
However, with respect to pledges created by operation of law, the lien-holder is required to pay to the obligor any excess of the sale proceeds remaining after payment of the debt and expenses.

If the pledge is executed in the manner required by law, the right of the pledgee over the chattel pledged is superior to that of third persons. However, claims for duties, taxes and fees levied against the chattel in favor of the state or any subdivision are preferred even over the claim of the pledgee.

Once the chattel pledged is sold by the pledgee, the pledge is extinguished. The pledge also is extinguished if the chattel is returned by the pledgee to the pledgor or owner despite any stipulation to the contrary. If subsequent to the perfection of the pledge, the chattel is in the possession of the pledgor or owner, or of a third person who has received it from the pledgor or owner, there is a prima facie presumption that it has been returned by the pledgee.

**Chattel Mortgages**

Chattel mortgages are governed primarily by the Chattel Mortgage Law, which has been in effect since August 1, 1906. The Civil Code, however, clarifies the nature of a chattel mortgage and makes the provisions of the Civil Code on pledge applicable to chattel mortgages insofar as they are not in conflict with the Chattel Mortgage Law.

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67 See note 26 supra.
68 Civil Code art. 2121.
69 Civil Code art. 2214-A.
70 See Te Pate v. Ingersoll, 43 Phil. 394 (1922) “third person” includes the “assignee” of the estate of an insolvent debtor-pledgor; Tec Bi & Co. v. Chartered Bank, 41 Phil. 596 (1916) “third person” includes other creditors of the pledgor, the vendor of the goods or merchandise on credit.
71 Civil Code arts. 2241(4), 2247.
72 Civil Code art. 2110: “Any stipulation to the contrary shall be void.”
74 Civil Code art. 2140.
75 Civil Code art. 2141: “The provisions of this Code on pledge, insofar as they are not in conflict with the Chattel Mortgage Law, shall be applicable to chattel mortgages.”
Nature of the chattel mortgage. Article 2140 of the Civil Code defines a chattel mortgage as follows:

By a chattel mortgage, personal property is recorded in the Chattel Mortgage Register as a security for the performance of an obligation. If the movable, instead of being recorded, is delivered to the creditor or a third person, the contract is a pledge and not a chattel mortgage.\(^7\)

This definition supersedes that found in section 3 of the Chattel Mortgage Law, which stated that:

A chattel mortgage is a conditional sale of personal property as security for the payment of a debt, or the performance of some other obligation specified therein, the condition being that the sale shall be void upon the seller paying to the purchaser a sum of money or doing some other act named. If the condition is performed according to its terms the mortgage and sale immediately becomes void, and the mortgagee is thereby divested of his title.\(^7\)

This reference to a chattel mortgage as a conditional sale "resulted in terrible confusion."\(^7\) As observed by a noted author on the matter:

The definition given by the Chattel Mortgage Law sometimes resulted in terrible confusion. The definition considered a chattel mortgage both as a conditional sale and as a security. Some cases emphasized the conditional sale aspect of the contract with the result that the mortgagor was considered to have relinquished his title to the property mortgaged. This view led to ridiculous consequences.\(^7\) Other cases\(^8\) correctly viewed the chattel mortgage as a mere security with the mortgagor retaining title to the property mortgaged.\(^8\)

The Civil Code definition is an attempt to avoid this confusion. Title remains in the mortgagor.\(^8\) The chattel mortgage is merely security for the "fulfillment of a principal obligation."\(^8\)

\(^7\) In adopting this definition the Code Commission which drafted the Civil Code explained:

The definition of a chattel mortgage given in the Chattel Mortgage Law is inaccurate, for it considers a chattel mortgage as a conditional sale. Therefore, a new definition is given in article 2160. . . . Rep. of Code Comm'n 158 (1948).

\(^7\) PHIL. ANN. LAWS tit. 16, § 3 (1956).

\(^7\) Santos, Statutory Provisions, Cases and Text on Credit Transactions 220 (1961).

\(^7\) Citing, e.g., Levy Hermanos, Inc. v. Ramirez, 60 Phil. 978 (1934); Bachrach v. Mantel, 25 Phil. 410 (1913); Meyers v. Thein, 15 Phil. 303 (1910).

\(^8\) Citing, e.g., Bank of P.I. v. Olutanga Lumber Co., 47 Phil. 20 (1924); Bachrach Motor Co. v. Summers, 42 Phil. 3 (1921).

\(^8\) Santos, op. cit. supra note 78, at 220.

\(^8\) CIVIL CODE art. 2103, made applicable to chattel mortgages by CIVIL CODE art. 2141. See text accompanying note 56 supra.

\(^8\) CIVIL CODE art. 2085:

The following requisites are essential to the contracts of pledge and mortgage:

(1) That they be constituted to secure the fulfillment of a principal obligation. . . .
Subject matter and creation. All personal property may be the object of a chattel mortgage. Interest in business, shares of stock in a corporation, growing crops, vessels, inventory or stock in trade and machinery installed on leased land have been held to be personal property which may properly be the object of a chattel mortgage. Some decisions have intimated that buildings constructed on growing crops may be considered personal property and may properly be subject to a chattel mortgage notwithstanding the provisions of article 334 (2) of the Spanish Civil Code (now article 415 of the Philippine Civil Code) which includes "...ungathered products, while they are attached to the land..." as among the enumerated immovable property. The planting of sugar cane continues to be mostly financed by banks on the security of chattel mortgages executed on the sugar cane itself and there does not seem to be any doubt about the legality of this arrangement.

Chattel Mortgage Law, P.A. No. 1508 (1906); Phil. Ann. Laws tit. 16 (1956); Civil Code art. 2140. As to what is considered as personal property, by statutory provision, see Civil Code arts. 416-17, note supra. See also Civil Code art. 2095.

Bachrach Motor Co. v. Ledesma, 64 Phil. 681 (1937); Chua Guan v. Samahang Magsasaka, Inc., 62 Phil. 472 (1935); Monserrat v. Ceron, 58 Phil. 469 (1933).

See also Civil Code art. 2095.

In Sibal v. Valdez, 50 Phil. 512 (1927), it was held that sugar cane may be considered personal property and may properly be subject to a chattel mortgage notwithstanding the provisions of article 334 (2) of the Spanish Civil Code (now article 415 of the Philippine Civil Code) which includes "...ungathered products, while they are attached to the land..." as among the enumerated immovable property. The planting of sugar cane continues to be mostly financed by banks on the security of chattel mortgages executed on the sugar cane itself and there does not seem to be any doubt about the legality of this arrangement.

Philippine Refining Co. v. Jarque, 61 Phil. 229 (1935); Arroyo v. Yu de Sane, 54 Phil. 511 (1930); McMichcck v. Banco Espanol-Filipino, 13 Phil. 429 (1909). In Philippine Refining Co. the Supreme Court observed at 231-32:

Vessels are considered personal property under the civil law. . . Similarly under the common law, vessels are personal property although occasionally referred to as a peculiar kind of personal property. . . Since the term "personal property" includes vessels, they are subject to mortgage agreeably to the provisions of the Chattel Mortgage Law. . . Indeed, it has heretofore been accepted without discussion that a mortgage on a vessel is in nature a chattel mortgage. . . The only difference between a chattel mortgage of a vessel and a chattel mortgage of other personality is that it is not now necessary for a chattel mortgage of a vessel to be noted in the registry of the register of deeds, but it is essential that a record of documents affecting the title to a vessel be entered in the record of the Collector of Customs at the port of entry. . . Otherwise a mortgage on a vessel is generally like other chattel mortgages as to its requisites and validity.

See Torres v. Limjap, 56 Phil. 141 (1931), where a chattel mortgage was executed on three drug stores and the mortgagor was expressly authorized to sell the goods covered thereby and to replace them with other goods thereafter acquired. The issue was whether the stipulation was valid and whether the mortgage could be deemed to cover "after-acquired property" in view of § 7 of the Chattel Mortgage Law which provided that,

A chattel mortgage shall be deemed to cover only the property described therein and not like or substituted property thereafter acquired by the mortgagor and placed in the same depository as the property originally mortgaged, anything in the mortgage to the contrary notwithstanding. P.A. No. 1509 (1906), Phil. Ann. Laws tit. 16, § 7 (1956).

In Torres the Philippine Supreme Court held in the affirmative and said at 144-45:

When said Act was placed in our statute books . . . the primary aim . . . was undoubtedly to promote business and trade in these Islands and to give impetus to the economic development of the country. Bearing this in mind, it could not have been the intention of the Philippine Commission to apply the provision . . . to stores open to the public for retail business, where the goods are constantly sold and substituted with new stock. . . If . . . intended to apply to this class of business, it would be practically impossible to constitute a mortgage on such stores without closing them, contrary to the very spirit and purpose of said Act.

Davao Sawmill Co. v. Castillo, 61 Phil. 709 (1935).
rented land may be the object of a chattel mortgage. However, this seems to be doubtful since buildings "adhered to the soil" are explicitly declared by the Civil Code to be immovable property without distinction as to whether they are built on rented or owned land.

Philippine law explicitly suggests a form of the chattel mortgage contract which should contain a specific description of the property mortgaged and the obligation secured. An affidavit of good faith must be appended to the mortgage; without it the mortgage is not effective as against third persons.

To be valid against persons other than the mortgagor, the Chattel Mortgage Law requires that the property be delivered to and retained by the mortgagee or the mortgage recorded in the proper registry. Article 2140 of the Civil Code now explicitly requires that the mortgage instrument be "recorded in the Chattel Mortgage Register" and that if, instead of recordation, the chattel is delivered to the creditor or a third person, the contract shall be considered a pledge.

It, therefore, follows that delivery of the property to the mortgagee can no longer be a substitute for registration if a chattel mortgage is not valid against third persons.

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91 See Tomines v. San Juan, 45 Off. Gaz. 2935 (1949); Evangelista v. Abad, 36 Off. Gaz. 2913 (1938). In Standard Oil Co. v. Jaramillo, 44 Phil. 630 (1923), where a chattel mortgage was executed on a house built on leased land, the Supreme Court did not rule on the validity of the mortgage but directed the register of deeds to register the mortgage on the ground that the duty of the register of deeds to register documents presented for registration is ministerial and he had no jurisdiction to rule on the nature of the property.


93 Chattel Mortgage Law §§ 5-7, P.A. No. 1508 (1906), PHIL. ANN. LAWS tit. 16, §§ 5-7 (1956). See Appendix IV.

94 Chattel Mortgage Laws § 7, PHIL. ANN. LAWS tit. 16 § 7 (1956). See Appendix IV. See Giberson v. Jureidini Bros., 44 Phil. 216, 219 (1922), where the following description was held insufficient:

1. A store No. 79 on Magallanes Street, Municipality of Cebu, formerly belonging to T. Thakurdas, with all the merchandise, effects, wares, and other bazaar goods contained in the said store. 2. A store No. 19 on Real Street, Iloilo, Panay, P.I., formerly belonging to Guillermo Asayas, with all the merchandise, effects, wares and other bazaar goods contained in the said store.

But the following was held sufficient in Strochecker v. Ramirez, 44 Phil. 933, 935 (1922):

. his half interest in the drug business known as Antigua Botica Ramirez (owned by Sra. Dolores del Rosario and the mortgagor herein referred to as the partnership), located at Calle Real Nos. 123 and 125, District of Intramuros, Manila, Philippine Islands.

See also Torres v. Limjap, 56 Phil. 141 (1931).

95 Chattel Mortgage Law § 5, PHIL. ANN. LAWS tit. 16, § 5 (1956). See Appendix IV.

96 Benedicto v. Yap Tico & Co., 46 Phil. 753 (1923); Giberson v. Jureidini Bros., 44 Phil. 216 (1922).

97 Chattel Mortgage Law § 4, PHIL. ANN. LAWS tit. 16, § 4 (1956). See Appendix IV.
to be created. While under the mortgage law, registration clearly was essential if the mortgage was to be effective as against third persons, the Civil Code provision appears to suggest that registration is indispensable to the creation of the mortgage itself.

In order for registration of the chattel mortgage to be fully effective, it must be recorded in the chattel mortgage registry of the proper Register of Deeds.\(^9\) Mere inscription of the chattel mortgage in the Day Book is not sufficient.\(^9\)

With respect to chattel mortgages on motor vehicles, the Philippine Supreme Court has held that, to be effective as against third persons, the chattel mortgage should also be registered in the Motor Vehicles Office\(^{100}\) as required by section 5(e) of the Motor Vehicles Law.\(^{101}\)

With respect to the mortgaging of vessels, it is not necessary that the mortgage be registered with the register of deeds, but only in the record of transfers and incumbrances of vessels of the Collector of Customs at the port of entry.\(^{102}\)

There is in each province and chartered city a register of deeds.\(^{103}\) A question of crucial importance is: in what province or city must registration be made to be effective?

Registration must be in the following location:

(1) in the province (or city) where the mortgagor resides at the time of creation of the mortgage, or, if he does not reside in the

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The duty of the Register of Deeds to register documents of chattel mortgage presented is ministerial and he has no authority to determine whether or not the property described in the document is real or personal. Standard Oil Co. v. Jaramillo, 44 Phil. 630, 632 (1923):

... and no provision of law can be cited which confers upon him any judicial or quasi-judicial power to determine the nature of any document of which registration is sought as a chattel mortgage. ...

The efficacy of the act of recording a chattel mortgage consists in the fact that it operates as constructive notice of the existence of the contract, and the legal effects of the contract must be discovered in the instrument itself in relation with the fact of notice. Registration adds nothing to the instrument, considered as a source of title, and affects nobody's rights except as a species of notice.


What is referred to as the "primary entry book" in § 198 of the Rev. Admin. Code, Phil. Ann. Laws § 198 (Supp. 4, 1964), is often actually entitled "Day Book of Chattel Mortgage Registry" and the "registration book for chattel mortgages" is known as the "Chattel Mortgage Registry." Some registers of deeds (especially those in provinces) maintain only one day book for both chattel and real estate mortgages.

\(^{100}\) P.A. No. 3992 (1933), Phil. Ann. Laws tit. 50, § 5(e) (1956).

\(^{101}\) Philippine Refining Co. v. Jarque, 61 Phil. 229 (1935); Arroyo v. Yu de Sane, 54 Phil. 511 (1930); Rubiso v. Rivera, 37 Phil. 72 (1917).

Philippines, then in the province where the mortgaged property is situated;\textsuperscript{104}

(2) if the property is situated in a different province from that in which the mortgagor resides, then in the office of the register of deeds of both the province in which the mortgagor resides and that in which the property is situated;\textsuperscript{105}

(3) with respect to mortgage of shares of stock, then in the province where the corporation has its principal place of business. If this province is also the mortgagor's place of residence, a single registration is sufficient; if not, then the chattel mortgage should be registered both at the mortgagor's place of residence and in the province where the corporation has its principal office.\textsuperscript{106}

\textbf{Foreclosure of mortgage and its incidents.} Section 14 of the Chattel Mortgage Law sets forth the procedure for foreclosing a chattel mortgage, as follows:

The mortgagee, his executor, administrator, or assign, may, after thirty days from the time of condition broken, cause the mortgaged property, or

\begin{footnotes}
\item[104] Chattel Mortgage Law § 4, PHIL. ANN. LAWS tit. 16, § 4 (1956). See Appendix IV.
\item[105] Ibid.
\item[106] Monserrat v. Ceron, 58 Phil. 469 (1933). But in Chua Guan v. Samahang Magasasaka, Inc., 62 Phil. 472, 481-82 (1935), the Supreme Court made the following interesting observations:

Apart from the cumbersome and unusual method of hypothecating share of stock by chattel mortgage, it appears that in the present state of our law, the only safe way to accomplish the hypothecation of share of stock of a Philippine corporation is for the creditor to insist on the assignment and delivery of the certificate and to obtain the transfer of the legal title to him on the books of the corporation by the cancellation of the certificate and the issuance of a new one to him. From the standpoint of the debtor this may be unsatisfactory because it leaves the creditor as the ostensible owner of the shares and the debtor is forced to rely upon the honesty and solvency of the creditor. Of course, the mere possession and retention of the debtor's certificate by the creditor gives some security to the creditor against an attempted voluntary transfer by the debtor, provided the by-laws of the corporation expressly enjoin that transfers may be made only upon the surrender of the certificate. It is to be noted, however, that section 35 of the Corporation Law (Act No. 1459) enacts that shares of stock "may be transferred by delivery of the certificate endorsed by the owner or his attorney in fact or other person legally authorized to make the transfer." The use of the verb "may" does not exclude the possibility that a transfer may be made in a different manner, thus leaving the creditor in an insecure position even though he has the certificate in his possession. Moreover, the shares still standing in the name of the debtor on the books of the corporation will be liable to seizure by attachment or levy on execution at the instance of other creditors. (Cf. Uy Piaoco vs. McMicking, 10 Phil., 286, and Uson vs. Diosomito, 61 Phil., 535.) This unsatisfactory state of our law is well known to the bench and bar. (Cf. Fisher, The Philippine Law of Stock Corporations, pages 163-168.) Loans upon stock securities should be facilitated in order to foster economic development. The transfer by endorsement and delivery of a certificate with intention to pledge the shares covered thereby should be sufficient to give legal effect to that intention and to consummate the juristic act without necessity for registration.
\end{footnotes}
any part thereof, to be sold at public auction by a public officer at a public place in the municipality where the mortgagor resides, or where the property is situated, provided at least ten days' notice of the time, place, and purpose of such sale has been posted at two or more public places in such municipality, and the mortgagee, his executor, administrator, or assign, shall notify the mortgagor or person holding under him and the persons holding subsequent mortgages of the time and place of sale, either by notice in writing directed to him or left at his abode, if within the municipality, or sent by mail if he does not reside in such municipality, at least ten days previous to the sale. . . .

The mortgagor validly may waive the procedural requirements in section 14, such as the thirty-day waiting period and the ten-day notice. Otherwise, the requirements must be carefully observed. In one case, the Philippine Supreme Court held irregular a sale made in a place other than mortgagor's residence or where the property was situated.

Should the mortgagor refuse to deliver possession, the creditor may not proceed extrajudicially but must institute an action, either to effect a judicial foreclosure directly, or to secure possession (as by replevin) as a preliminary step to the sale contemplated under section 14.

Unlike a pledge, the mortgagor is entitled to any excess proceeds from the sale after payment of the costs and expenses of the sale and the obligation secured by the mortgage; and while article 2115

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207 Chattel Mortgage Law § 14, PHIL. ANN. LAWS tit. 16, § 10 (1956). See also note 111 infra.
209 Bachrach v. Golingco, 39 Phil. 138 (1918). But it is a felony for a mortgagor to remove the mortgaged property to any province or city other than the one in which it was located at the time of the execution of the mortgage without the written consent of the mortgagee. REV. PENAL. CODE art. 319(1).
210 Bachrach Motor Co. v. Summers, 42 Phil. 3, 6-7 (1921):

The debtor . . . may claim in good faith, and rightly or wrongly, that the debt is paid, or that for some other reason the alleged default is nonexistent . . . To allow the creditor to seize the property against the will of the debtor would make the former to a certain extent both judge and executioner in his own cause—a thing which is inadmissible in the absence of unequivocal agreement in the contract itself or express provision to that effect in the statute.

211 Compare CIVIL CODE art. 2115, with Chattel Mortgage Law § 14, PHIL. ANN. LAWS tit. 16, § 10 (1956):

The officer making the sale, shall within thirty days thereafter, make in writing a return of his doings and file the same in the office of the register of deeds where the mortgage is recorded, and the register of deeds shall record the same. The fees of the officer for selling the property shall be the same as in the case of sale on execution as provided in Act Numbered One hundred and ninety, and the amendments thereto, and the fees of the register of deeds for registering the officer's return shall be taxed as a part of the costs of sale, which the officer shall pay to the register of deeds. The return shall particularly describe the articles sold, and state the amount received for each article, and shall operate as a discharge of the lien thereon created by the mortgage. The proceeds of such sale shall be applied to the payment, first, of the costs and expenses of keeping and
of the Civil Code on pledge explicitly denies to the creditor the right to recover any deficiency, the Chattel Mortgage Law is silent on the point. Following the view that a chattel mortgage is a mere security, the Supreme Court held in Bank of P.I. v. Olutanga Lumber Co.,112 that a mortgagee may recover the deficiency. This view was reiterated in Ablaza v. Ignacio,113 decided in 1958 after the new Civil Code made its provisions on pledges applicable to chattel mortgages insofar as they are not in conflict with the Chattel Mortgage Law.114

Instead of foreclosing the mortgage, the creditor may decide to sue on the indebtedness and then levy by attachment or writ of execution on the property subject to the mortgage. Institution of the action for collection and subsequent levy on the property does not dissolve or waive the mortgage.115

However, with respect to sale of personal property the price of which is payable in installments, the above rules can not apply. Should the mortgagee foreclose the mortgage, he may not recover any deficiency,116 and any agreement to the contrary is void. As such, where the value of the property mortgaged is grossly inadequate to cover the obligation, it may be more advisable to bring an ordinary action for collection and then levy on the property by attachment or execution.117

Subsequent mortgages or sale of mortgaged property. While the Philippine Chattel Mortgage Law does not delineate any specific rules regarding subsequent mortgages or sales, it speaks of a person holding “a subsequent mortgage, or a subsequent attaching creditor.”118

Indeed, to be consistent with the concept of the mortgage as a mere security, mortgaged property may be subsequently mortgaged or sold, subject to the earlier mortgage. However, before any subsequent sale or mortgage can validly be made, it is necessary first to obtain the consent of the mortgagee written on the back of the mortgage

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112 47 Phil. 20 (1924).
114 Civil Code art. 2141.
115 Tizon v. Valdez, 48 Phil. 910 (1926).
116 Civil Code art. 1484(3); Bachrach Motor Co. v. Millan, 61 Phil. 409 (1935).
117 Under these circumstances, the institution of the ordinary action for collection would mean a waiver of the mortgage. The advisability of the suggested action would, therefore, depend also on whether there are any supervening liens, such as prior levies or attachments.
118 Chattel Mortgage Law § 13, PHIL. ANN. LAWS tit. 16, § 9 (1956).
and noted on the record of the register of deeds of the province where the property is located.\textsuperscript{119}

Where a subsequent mortgage or sale is made, the subsequent mortgagee or vendee may only "redeem [the property] ... by paying or delivering to the mortgagee the amount due on such mortgage and the reasonable costs and expenses incurred."\textsuperscript{120} When this is done, the subsequent mortgagee may, if the conditions so warrant, foreclose on the mortgage.

**CONDITIONAL SALES**

*Civil Code* provisions on sales\textsuperscript{121} state the following:

Art. 1503. Where there is a contract of sale of specific goods, the seller may, by the terms of the contract, reserve the right of possession or ownership in the goods until certain conditions have been fulfilled. The right of possession or ownership may be thus reserved notwithstanding the delivery of the goods to the buyer or to a carrier or other bailee for the purpose of transmission to the buyer.

\textsuperscript{119}REV. PENAL CODE art. 319(2). While the provision refers to the register of deeds of the province where the property is located, it is submitted that the sale or mortgage must also be registered in all the places where the mortgage is registered, if registered elsewhere.

\textsuperscript{120}Chattel Mortgage Law § 13, PHIL. ANN. LAWS tit. 16, § 9 (1956); Tizon v. Valdez, 48 Phil. 910 (1926).

\textsuperscript{121}Title VI of Book IV of the *Civil Code* deals with sales. Many provisions of the "new" *Civil Code* were based on the *Uniform Sales Act* of the United States. Among these provisions are articles 1503 and 1505. Said the Code Commission in its report to the President of the Philippines:

A majority of the provisions of the Uniform Sales Law, which is in force in 31 States and Territories of the American Union, have been adopted in the proposed Civil Code with modifications to suit the principles of Philippine Law. This incorporation of a goodly number of American rules on sale of goods has been prompted by these reasons;

(1) The present Code does not solve questions arising from certain present-day business practices. Among them are: the sale of "future goods" (art. 1482); sale of goods by description or by sample (art. 1501); when goods are delivered "on sale or return" (art. 1522); sale of goods by negotiation or transfer of a document of title (arts. 1527 to 1540); and the rights of the unpaid seller of goods (arts. 1545 to 1555).

(2) The present Code fails to regulate many incidents and aspects of delivery and acceptance of goods, of warranty of title and against hidden defects, and of payment of the price.

(3) It is probable that a considerable portion of the foreign trade of the Philippines will continue for many years to be with the United States. In order to lessen misunderstanding between the merchants on both sides of the Pacific, their transactions should, as far as possible, be governed by the same rules. This desirable condition will not only facilitate trade but will also perpetuate the sentiments of esteem and goodwill between the two peoples. It is but a truism to say that fair and mutually beneficial trade in calculably enhances international friendship.

REP. OF CODE COMM'N 60-61 (1948).

The combination of provisions of the Spanish *Civil Code* and the *Uniform Sales Act* has been criticized. For example, while article 1505 mentions factors acts and recording laws, there are not any in the Philippines directly pertinent to the sale of movables contemplated therein.
Where goods are shipped, and by the bill of lading the goods are deliverable to the seller or his agent, or to the order of the seller or of his agent, the seller thereby reserves the ownership in the goods. But, if except for the form of the bill of lading, the ownership would have passed to the buyer on shipment of the goods, the seller's property in the goods shall be deemed to be only for the purpose of securing performance by the buyer of his obligations under the contract.

Where goods are shipped, and by the bill of lading the goods are deliverable to order of the buyer or of his agent, but possession of the bill of lading is retained by the seller or his agent, the seller thereby reserves a right to the possession of the goods as against the buyer.

Where the seller of goods draws on the buyer for the price and transmits the bill of exchange and bill of lading together to the buyer to secure acceptance or payment of the bill of exchange, the buyer is bound to return the bill of lading if he does not honor the bill of exchange, and if he wrongfully retains the bill of lading he acquires no added right thereby. If, however, the bill of lading provides that the goods are deliverable to the buyer or to the order of the buyer, or is indorsed in blank, or to the buyer by the consignee named therein, one who purchases in good faith, for value, the bill of lading, or goods from the buyer will obtain the ownership in the goods, although the bill of exchange has not been honored, provided that such purchaser has received delivery of the bill of lading indorsed by the consignee named therein, or of the goods, without notice of the facts making the transfer wrongful.

Art. 1505. Subject to the provisions of this Title, where goods are sold by a person who is not the owner thereof, and who does not sell them under authority or with the consent of the owner, the buyer acquires no better title to the goods than the seller had, unless the owner of the goods is by his conduct precluded from denying the seller's authority to sell.

Nothing in this Title, however, shall affect:

(1) The provisions of any factors' acts, recording laws, or any other provision of law enabling the apparent owner of goods to dispose of them as if he were the true owner thereof;

(2) The validity of any contract of sale under statutory power of sale or under the order of a court of competent jurisdiction;

(3) Purchases made in a merchant's store, or in fairs, or markets, in accordance with the Code of Commerce and special laws.

And with respect to installment sales, article 1484 of the Civil Code provides:

In a contract of sale of personal property the price of which is payable in installments, the vendor may exercise any of the following remedies:

(1) Exact fulfillment of the obligation, should the vendee fail to pay;
(2) Cancel the sale, should the vendee's failure to pay cover two or more installments;

(3) Foreclose the chattel mortgage on the thing sold, if one has been constituted, should the vendee's failure to pay cover two or more installments. In this case, he shall have no further action against the purchaser to recover any unpaid balance of the price. Any agreement to the contrary shall be void.

Other aspects of the sale not covered particularly by these provisions will be governed by provisions generally applicable to "contracts" and "sales." There is no Philippine law dealing specifically with conditional sales, particularly the conditional sale as a security device. While the provisions quoted deal in general with sales of specific goods or movables where the full purchase price is not immediately paid, they are pertinent to conditional sales which, of course, are created by agreement of the parties. Since the creation of conditional sales is primarily contractual, the incidents of the relationship, including the buyer's duty pertaining to the removal of the goods, will be governed by the contract.

Unlike a chattel mortgage, in a conditional sale transaction, title is retained by the seller. However, as in a chattel mortgage arrangement, possession is in the buyer. Whether the contract is one of conditional sale or of sale with a chattel mortgage should be determined by the terms of the contract. With the clarified definition of chattel mortgage in the Civil Code, the requirement of an affidavit of good faith and registration of chattel mortgages, it should be a simple matter to differentiate the two instruments.

From the vendor's standpoint, the choice between a conditional sale and a chattel mortgage involves an evaluation of advantages and disadvantages incident to each arrangement. A conditional sale may appear to give the greatest protection to the vendor for he retains title, he continues to be the owner, and he can exercise his rights effectively and expeditiously. Moreover, the vendor is saved from the expense
and inconvenience of chattel mortgage registration. On the other hand, the vendor must consider problems which arise when the property is transferred to a third person, or if it is concealed, pledged or mortgaged to another without the vendor's knowledge or consent. In weighing the probabilities of the occurrence of these contingencies and the resultant difficulties, a most relevant consideration is that the removal, sale or pledge of already mortgaged property without the mortgagee's consent is made subject to penal liability.

This restraining factor is not present in conditional sales. Should a third person nonetheless acquire the property, or any right to it, a conflict will result between the vendor's and third person's rights. In this event the chattel mortgage has a definite advantage for the vendor in that there are registration requirements for the mortgage but not for the conditional sale. Thus if the mortgage is properly registered there can be no successful attack made upon the vendor's rights by subsequent lienholders or transferees. This is not true in the case of the conditional sale.

While article 1505 of the Philippine Civil Code explicitly lays down the rule that "where goods are sold by a person who is not the owner thereof, and who does not sell them under authority or with the consent of the owner, the buyer acquires no better title to the goods than the seller had," the rights of the owner may be defeated if the owner is "by his conduct precluded from denying the seller's authority to sell." In a recent case, the Philippine Court of Appeals declared a vendee in

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show by his own affidavit or that of some other person who personally knows the facts:

(a) That the plaintiff is the owner of the property claimed, particularly describing it, or is entitled to the possession thereof;
(b) That the property is wrongfully detained by the defendant, alleging the cause of detention thereof according to his best knowledge, information, and belief;
(c) That it has not been taken for a tax assessment or fine pursuant to law, or seized under an execution, or an attachment against the property of the plaintiff, or, if so seized, that it is exempt from such seizure; and
(d) The actual value of the property.

The plaintiff must also give a bond, executed to the defendant in double the value of the property as stated in the affidavit aforementioned, for the return of the property to the defendant if the return thereof be adjudged, and for the payment to the defendant of such sum as he may recover from the plaintiff in the action.

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125 Rev. Penal Code art. 319.
126 See note 94 supra.
127 Gutierrez v. Santos, Gen. Reg. No. 31102-R (Nov. 25, 1964). Briefly, the owner of a motor vehicle was by fraud (amounting to a felony) persuaded to execute a deed of conveyance and to deliver possession of a motor vehicle to R.S. without receiving any consideration. The sale was recorded in the motor vehicles registry. R.S. then conveyed the car to H.V, who in turn transferred it to E.S., who later transferred it to defendant. Said the Court of Appeals in holding for the defendant:

Moreover, plaintiff is now estopped by reason of her own acts of negligence, an
good faith to have better title than the owner of a motor vehicle. The
court found that the owner was negligent and by her negligence clothed
the vendee's predecessor in interest with apparent title notwithstanding
the fact that the sale to vendee's predecessor in interest was void and
criminally fraudulent. The decision extends the scope of the exception
in that the conduct which may preclude recovery can be the result of
negligence rather than positive representations.

Other situations mentioned in article 1505 which may defeat an
owner's right are of little significance with the possible exception of
paragraph (3) which refers to purchases made in a merchant's store,\textsuperscript{128}
or in fairs or markets in accordance with the Code of Commerce and
special laws. A commentator on the Civil Code states in regard to this
exception:

Under paragraph (3) of this article, a person who buys a thing at a
merchant's store after the same has been put on display thereat, acquires
a valid title to the thing although his predecessors in interest did not have
any right of ownership over it. This is a case of an imperfect or void title
ripening into a valid one, as a result of some intervening causes. The
policy of the law has always been that where the rights and interests of a
vendor come into clash with that of an innocent buyer for value, the

\textsuperscript{128} No definition is given of a "merchant's store," but a "merchant" is defined in
Code of Commerce art. 1, thus:

1. Those who, having legal capacity to engage in commerce, habitually devote
themselves to it; 2. The commercial or industrial companies which may be created
in accordance with this Code.
latter must be protected. The rule appears to be a wise and necessary rule not only to facilitate commercial sales on movables but to give stability to business transactions, for a buyer cannot be reasonably expected to look behind the title of every article when he buys at a store.

Where one sends a chattel to another whose business it is to sell similar articles, and permits it to be exposed for sale in his salesroom, where it and other similar articles are indiscriminately offered for sale, and there is nothing to indicate any limitation on his right to sell it, and no record affording constructive notice of any lien on, or title to it in any person other than the person offering it for sale, a bona fide purchaser from such person without notice obtains a title superior to that of the true owner.129

Indeed, there is no question but that the situations mentioned in article 1505 which create title superior to that of the vendor-owner do facilitate commerce; however, the problem is that while facilitating commerce, they also discourage use of the conditional sale by vendors. The absence of registration facilities undoubtedly handicaps the vendor in meeting the claims of third persons; however, it is noteworthy that it is the chattel mortgage registration requirement that has discouraged use of that instrument in installment sales of comparatively low cost articles such as refrigerators, radios, televisions, etc. and limited its use to the sale of automobiles, airplanes, or in outright loans of substantial amount.

LETTERS OF CREDIT AND TRUST RECEIPTS

In the Philippines, use of letters of credit and trust receipts is limited largely to the import trade. Nearly all imports are financed by means of letters of credit opened through commercial banks.130 During the period of exchange controls,131 some importation was either done on

130 Circular No. 133 of the Central Bank of the Philippines (issued on January 21, 1962, pursuant to R.A. Nos. 265 (1948) and 2609 (1959)) provides in part:
2. Only authorized agent banks may sell foreign exchange for imports. Such exchange should be sold at the prevailing free market rate to any applicant without requiring prior specific licensing from the Central Bank, subject to the following conditions:
a. All imports must be covered by letters of credit except small transactions involving not more than $100.00.
b. Import letters of credit must be accompanied by a special time deposit in the following cases:
   Unclassified items, non-essential consumer goods ................. 150%
   Non-essential producers goods, semi-essential consumer goods .... 100%
   Semi-essential producers goods ........................................ 50%
   Essential consumer goods, essential producer goods, decontrolled items . 25%
These time deposits shall be kept for periods no shorter than 120 days, and shall have a reserve requirement of 100%.
131 Exchange controls were instituted in the Philippines on December 9, 1949, by means of Circular No. 20 of the Central Bank of the Philippines. Restrictions on transactions involving gold and foreign exchange were gradually lifted (Circular No.
what was popularly known as a "no-dollar" basis because this did not require the remittance of foreign exchange, or some was done by barter. Under these forms of importation, the strict exchange license requirements of the Central Bank of the Philippines were relaxed in certain limited cases.

With the lifting of exchange controls on January 21, 1962, importation may now be done freely through normal commercial means. Opening of letters of credit for imports is no longer subject to prior licensing and is now a matter of private agreement between the bank and the importer. At present, no specific law governs and the procedure has become standardized by practice rather than by formal rules.

An importer addresses and files with a bank what is usually denominated "Application and Agreement for Commercial Letter of Credit." As its name indicates, it is at once both an application and an agreement. It is a request for the bank to open in the importer's behalf through the bank's correspondent or head office (if a foreign bank with branch in the Philippines) a credit, usually irrevocable and without recourse, available in favor of the exporter for a definite sum on their draft accompanied by shipping and other documents indicated therein.

In consideration of opening a letter of credit, banks normally require the importer to make a marginal deposit. The amount of the deposit required varies and is a matter of agreement. Credit is then in effect extended to the amount of the letter of credit not covered by the deposit.

To assure payment, the bank requires that the bill of lading covering the goods be made out to the order of the opening bank. By way of additional security, the personal guaranty of other individuals is sometimes required.

Drafts drawn under the credit may be payable on demand or within a time provided. Should payment on the drafts not be made upon

105, April 25, 1960; Circular No. 117, November 28, 1960; Circular No. 121, March 2, 1961) until prior specific licensing from the Central Bank for the sale of foreign exchange was finally abolished by Circular No. 133 on January 21, 1962.

122 R.A. No. 1410 (1955), entitled "An Act to Prohibit the So-called 'No-Dollar' Imports Except under Certain Conditions." Although prohibitory in its title, the purpose was actually to allow certain importations without prior licensing by the Central Bank.

123 R.A. No. 2261 (1959), entitled "An Act to Promote Economic Development by Giving Incentives to Marginal and Sub-Marginal Industries." Marginal products were allowed to be exported on a "commodity-to-commodity trade basis"; otherwise, all proceeds from exportations were required to be sold to the Central Bank at the rate of P2.00 to $1.00 and no importation could be made without prior licensing by the Central Bank.

124 See note 124 supra. Special time deposits are required to be made before import letters of credit may be opened.
arrival of the goods (which is usually the case), then the goods can be released on trust receipts and the drafts drawn on the letter of credit substituted with non-negotiable notes or new drafts in favor of the bank.

Under the trust receipt, the bank is acknowledged to be the owner of the goods which the importer (now the trustee) then acknowledges to have received and agrees to hold in trust as the property of the bank. The importer is given the right to sell the goods for cash and is required to turn over the proceeds of the sale to the bank to be applied against acceptances of the importer to the bank.135

Misappropriation of the goods or the proceeds by the importer (trustee) would give rise to criminal liability.136 This in itself may provide additional security against non-payment. As a means of further securing itself against loss, in addition to the trust receipt, banks may require personal guaranties, surety bonds issued by acceptable surety companies, pledges, or chattel or real estate mortgages.

There is no Philippine law comparable to the Uniform Trust Receipts Act dealing specifically with trust receipts.137 However, the Philippine Supreme Court has given clear recognition to the trust receipt as a security device.138 In explaining its nature, the Court relied upon American authorities,139 and stressed the right of the parties to make

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135 See note 142 infra, for usual terms of trust receipt used by banks in the Philippines.
137 The Civil Code contains no detailed provisions on trust but a sweeping adoption of the "principles of the general law of trusts" (art. 1442). It is doubtful whether the trust referred to is the trust receipt as a security device.
139 In People v. Yu Chai Ho, supra note 138, at 876-77 the Court stated:

The trust receipt is in the usual form and, among other things, contains the following provisions:

"I/We hereby agree to hold said goods in trust for the said corporation and as its property with liberty to sell the same for its account, but without authority to make any other disposition whatever of the said goods or any part thereof (or to proceeds thereof) either by way of conditional sale, pledge, or otherwise.

In case of sale I/We further agree to hand the proceeds, as soon as received, to the International Banking Corporation to apply against the relative acceptances (as described above) and for the payment of any other indebtedness of mine/ours to the International Banking Corporation."

That under this trust receipt the title to the merchandise remained in the International Banking Corporation and did not pass to the defendant, is almost too elementary for discussion. It is sufficient to quote the language of the court in the case of In re Dunlap Carpet Co. (206 Fed., 726), in regard to trust receipts:

"By this arrangement a banker advances money to an intending importer, and thereby lends the aid of capital, of credit, or of business facilities and agencies abroad, to the enterprise of foreign commerce. Much of this trade could hardly be carried on by any other means, and therefore it is of the first importance that
freely any agreements and set such terms and conditions as they think appropriate.\textsuperscript{140}

In other words, it is clear that the relation of the parties, and even the rights of other persons (such as attaching creditors of the vendee), will be governed by the specific terms of the trust receipt. Thus, the right of a bank (in whose favor the trust receipt was executed) to the proceeds of the sale of the goods subject to a trust receipt has been held superior to those of an attaching creditor of the trustee.\textsuperscript{141} In so holding, the Court relied principally on the terms of the trust receipt rather than its general nature as such.\textsuperscript{142}

the fundamental factor in the transaction, the banker's advance of money and credit, should receive the amplest protection. Accordingly, in order to secure that the banker shall be repaid at the critical point—that is, when the imported goods finally reach the hands of the intended vendee—the banker takes the full title to the goods at the very beginning; he takes it as soon as the goods are brought and settled for by his payment or acceptances in the foreign country, and he continues to hold that title as his indispensable security until the goods are sold in the United States and the vendee is called upon to pay for them. This security is not an ordinary pledge by the importer to the banker, for the importer has never owned the goods, and moreover he is not able to deliver the possession; but the security is the complete title vested originally in the bankers, and this characteristic of the transaction has again and again been recognized and protected by the courts. Of course, the title is at bottom a security title, as it has sometimes been called, and the banker is always under the obligation to reconvey; but only after his advances have been fully repaid and after the importer has fulfilled the other terms of the contract." (Italics ours.) \textit{(See also Moors vs. Kidder, 106 N.Y. 32; Farmers & Mechanics' Nat. Bk. vs. Logan, 74 N.Y, 568; Barry vs. Boninger, 46 Md., 59; Moors vs. Wyman, 146 Mass., 60; and New Haven Wire Co. Cases, 5 L.R.A., 300.)

And in Samo v. People, supra note 138, it was ruled:

A trust receipt is considered as a security transaction intended to aid in financing importers and retail dealers who do not have sufficient funds or resources to finance the importation or purchase of merchandise, and who may not be able to acquire credit except through utilization, as collateral, of the merchandise imported or purchased (53 Am. Jur. 961).

\textsuperscript{140} The court in Philippine Nat'l Bank v. Viuda e Hijos de Angel Jose, 63 Phil. 814, 820-21 (1935), stated:

It is reasonable that contracts contained in trust receipts, as the one entered into between the plaintiff-appellant and Coleman Petroleum Products Co., Inc., should be recognized and protected by the courts because they are permitted by law, all the more so because there is a cardinal principle that the contracting parties may establish any agreements, terms and conditions they may deem advisable, provided they are not contrary to law, morals, or public order (article 1255, Civil Code); and certainly the agreements, terms and conditions of the trust receipt agreement, Exhibit A-1, under consideration are not contrary to law, morals, or public order.

\textsuperscript{141} Id.

\textsuperscript{142} The terms of the trust receipt involved in this case seem to be in standard use to the present:

... to hold said merchandise in storage as the property of said bank, with the liberty to sell the same for cash for its account and to be handed the proceeds thereof to the said bank to apply against its acceptance on account of the undersigned and/or under the terms of the letter of credit noted below; and further agrees to hold said merchandise and the proceeds thereof in trust for the payment of said acceptance and of any other indebtedness of the undersigned to the said bank.

The said bank may at any time cancel this trust and take possession of said
While this brief description is confined to the use of the letters of credit and trust receipts in the import trade, it should be stressed that they have been used in other areas as well. For example, domestic letters of credit have been utilized to assure prompt payment where goods are delivered over a period of time. In such cases, the sale is actually perfected on the credit of the bank issuing the letter of credit. With regard to the trust receipt, it appears that a lack of familiarity with its nature rather than its limitations has prevented its wider use in purely domestic transactions.

CONCLUSION

Philippine law seems to be sufficiently broad and flexible for the effective utilization of personal property as security. However, because of its breadth and flexibility it does not foretell specifically all of the

merchandise or of the proceeds of such the same as may then have been sold, wherever the said merchandise or proceeds may then be found, and all the provisions of this trust receipt shall apply to and be deemed to include said above mentioned merchandise if the same shall have been made up or used in the manufacture of any other goods, or merchandise, and the same said bank shall have the same rights and remedies against the said merchandise in its manufactured state, or the product of said manufacture as it would have had in the event that such merchandise had remained in its original state, and irrespective of the fact that other and different merchandise is used in completing such manufacture. In the event of any suspension or failure of the assignment for the benefit of creditors on the part of the undersigned, or of the non-fulfillment of any obligation, or of the non-payment at maturity of any acceptance made under said credit issued by the said bank on account of the undersigned or of the non-payment of any indebtedness on the part of the undersigned to the said bank, all obligations, acceptances, indebtedness and liabilities whatsoever shall thereupon without notice, mature and become due and payable.

The undersigned further agrees to keep said merchandise insured against fire to its full value, loss if any, payable to the said bank, at the proper cost and expense of the undersigned, who hereby agrees to pay all charges for storage on said merchandise, or any and all other expenses incurred thereon.

It is further agreed that any failure on the part of the undersigned to fully carry out any of the provisions, terms or conditions of this trust receipt or agreement under which the said bank issued the letter of credit by which said merchandise was purchased, even if known to the said bank, shall not be deemed a waiver of performance of any such provision, term or condition or otherwise by said bank, or a waiver of any of its rights or remedies under either said trust receipt or agreement under which the said bank issued the letter of credit noted below; and any waiver in order to operate as such, must be in writing and also indorsed hereon and properly signed by the said bank and nothing in this agreement contained shall in any way affect, vary or impair any of the provisions of the letter of credit under which said merchandise was purchased, and of term, conditions or provisions of the agreement under which said letter of credit was issued.

The undersigned hereby agrees to deliver to the said bank, upon demand, collateral security to its satisfaction should the market value of the merchandise referred to herein suffer any decline and also gives to the said bank a lien on all property given unto or left in the possession of or hereafter given or left in the possession of the said bank, by or for the account of the undersigned, and also upon any present or future balance on the deposit account of the undersigned with the said bank, for the amount of any liability hereunder or otherwise of the undersigned to the said bank. Philippine Nat'l Bank v. Viuda e Hijos de Angel Jose, 63 Phil. 814, 816-18 (1935).
consequences that utilization of the various security devices may bring. Too much is left for the parties to stipulate; too little is standardized by rules. This situation presents considerable problems for interested third persons.

Easy and convenient extension of credit is essential if business transactions are to multiply. Customers must be attracted by liberal installment plans. However, just as credit must be liberally extended, those who extend it must be adequately protected against defaulting debtors. Herein lies the paradox of security transactions—the security must be easily established and at the same time it must be formidable.

Registration requirements may be the answer. But they can be too cumbersome to be "easy." Indeed, the solution is not easily suggested for the law can never be an adequate substitute for the good intentions of man.

The direction in which Philippine law will move in this area is difficult to predict. Whether it will tend to strengthen the rights of the security holder or maximize the rights of debtors will somehow depend upon prevailing conditions. Whether more creditors are defrauded and more debtors abscond, or whether security holders become abusive and exploiting, will influence the development of the law.

Philippine courts have indicated a strong willingness to protect the security holder where there is good faith, but will just as readily set a foot to those who would utilize security devices to abuse and exploit debtors. While Philippine law may not have all the answers, the courts have no doubt the means and mind to resolve equitably all resulting conflicts.
### APPENDIX I*  

<table>
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<th>Period</th>
<th>Agriculture</th>
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<td>136.3</td>
<td>138.0</td>
<td>177.9</td>
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### APPENDIX II

(a) Domestic Credits of the Commercial Banking System in millions of pesos:*  

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<th>Year</th>
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<tr>
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<td>293.1</td>
</tr>
<tr>
<td>1946</td>
<td>348.6</td>
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<tr>
<td>1948</td>
<td>689.5</td>
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<tr>
<td>1952</td>
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<td>1,565.7</td>
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<td>1960</td>
<td>2,052.5</td>
</tr>
<tr>
<td>1963</td>
<td>4,554.2</td>
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</table>


(b) Loans granted by Non-Bank Financial Institutions in millions of pesos:**  

<table>
<thead>
<tr>
<th>Year</th>
<th>Loans</th>
</tr>
</thead>
<tbody>
<tr>
<td>1947</td>
<td>0.81</td>
</tr>
<tr>
<td>1949</td>
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</tr>
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</tr>
<tr>
<td>1962</td>
<td>398.60</td>
</tr>
<tr>
<td>1963</td>
<td>428.16</td>
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</tbody>
</table>


### APPENDIX III

**Civil Code** art. 1390 enumerates *voidable contracts* thus: “(1) Those where one of the parties is incapable of giving consent to a contract; (2) Those where the consent is vitiated by mistake, violence, intimidation, undue influence or fraud.”

**Civil Code** art. 1403, which deals with *unenforceable* contracts, reads: “[T]he following contracts are unenforceable, unless they are ratified:
(1) Those entered into in the name of another person by one who has been given no authority or legal representation, or who has acted beyond his powers;

(2) Those that do not comply with the Statute of Frauds as set forth in this number. In the following cases an agreement hereafter made shall be unenforceable by action, unless the same, or some note or memorandum thereof, be in writing, and subscribed by the party charged, or by his agent; evidence, therefore, of the agreement cannot be received without the writing, or a secondary evidence of its contents:

(a) An agreement that by its terms is not to be performed within a year from the making thereof;

(b) A special promise to answer for the debt, default, or miscarriage of another;

(c) An agreement made in consideration of marriage, other than a mutual promise to marry;

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

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

(f) A representation as to the credit of a third person.

(3) Those where both parties are incapable of giving consent to a contract."

Civil Code art. 1423 defines natural obligations to be those “... not being based on positive law but on equity and natural law, do not grant a right of action to enforce their performance, but after voluntary fulfillment by the obligor, they authorize the retention of what has been delivered or rendered by reason thereof. ...”
APPENDIX IV

Chattel Mortgage Law § 4, Phil. Ann. Laws tit. 16, § 4:

A chattel mortgage shall not be valid against any person except the mortgagor, his executors or administrators, unless the possession of the property is delivered to and retained by the mortgagee or unless the mortgage is recorded in the office of the register of deeds of the province in which the mortgagor resides at the time of making the same, or, if he resides without the Philippines, in the province in which the property is situated: Provided, however, That if the property is situated in a different province from that in which the mortgagor resides, the mortgage shall be recorded in the office of the register of deeds of both the province in which the mortgagor resides and that in which the property is situated, and for the purposes of this Act the city of Manila shall be deemed to be a province.

Chattel Mortgage Law § 5, Phil. Ann. Laws tit. 16, § 5:

A chattel mortgage shall be deemed to be sufficient when made substantially in accordance with the following form, and shall be signed by the person or persons executing the same, in the presence of two witnesses, who shall sign the mortgage as witnesses to the execution thereof, and each mortgagor and mortgagee, or, in the absence of the mortgagee, his agent or attorney, shall make and subscribe an affidavit in substance as hereinafter set forth, which affidavit, signed by the parties to the mortgage as above stated, and the certificate of the oath signed by the authority administering the same, shall be appended to such mortgage and recorded therewith.

FORM OF CHATTEL MORTGAGE AND AFFIDAVIT

"This mortgage made this............day of........, 19........, by................, a resident of the municipality of............., Province of............., Philippines, mortgagor, to............., a resident of the municipality of ............., Province of............., Philippines, mortgagee, witnessesth:

"That the said mortgagor hereby conveys and mortgages to the said mortgagee all of the following-described personal property situated in the municipality of............., Province of............., and now in the possession of said mortgagor, to wit: (Here insert specific description of the property mortgaged.)"
"This mortgage is given as security for the payment to the said........, mortgagee, of promissory notes for the sum of........pesos, with (or without, as the case may be) interest thereon at the rate of........per centum per annum, according to the terms of..........certain promissory notes, dated...............; and in the words and figures following (here insert copy of the note or notes secured).

"(If the mortgage is given for the performance of some other obligation aside from the payment of promissory notes, describe correctly but concisely the obligation to be performed.)

"The conditions of this obligation are such that if the mortgagor, his heirs, executors, or administrators shall well and truly perform the full obligation (or obligations) above stated according to the terms thereof, then this obligation shall be null and void.

"Executed at the municipality of..........., in the Province of..........., this........day of..........., 19........

"........................................................................

(Signature of mortgagor.)

"In the presence of

"........................................................................

"........................................................................

(Two witnesses sign here.)

FORM OF OATH

"We severally swear that the foregoing mortgage is made for the purpose of securing the obligation specified in the conditions thereof, and for no other purpose, and that the same is a just and valid obligation, and one not entered into for the purpose of fraud."

"At..........., in the Province of..........., personally appeared..........., the parties who signed the foregoing affidavit and made oath to the truth thereof before me............(Notary public, justice of the peace, or other officer, as the case may be.)"

Chattel Mortgage Law § 6, PHIL. ANN. LAWS tit. 16, § 6:

When a corporation is a party to such mortgage the affidavit required may be made and subscribed by a director, trustee, cashier, treasurer, or manager thereof, or by a person authorized on the part of
such corporation to make or to receive such mortgage. When a part-
nership is a party to the mortgage the affidavit may be made and
subscribed by one member thereof.

Chattel Mortgage Law § 7, PHIL. ANN. LAWS tit. 16, § 7:

The description of the mortgaged property shall be such as to enable
the parties to the mortgage, or any other person, after reasonable
inquiry and investigation, to identify the same.

If the property mortgaged be “large cattle,” as defined by section
one of Act Numbered Eleven hundred and forty-seven, and the
amendments thereof, the description of said property in the mort-
gage shall contain the brands, class, sex, age, knots of radiated hair
commonly known as remolinos, or cowlicks, and other marks of
ownership as described and set forth in the certificate of ownership
of said animal or animals, together with the number and place of
issue of such certificates of ownership.

If growing crops be mortgaged the mortgage may contain an agree-
ment stipulating that the mortgagor binds himself properly to tend,
care for and protect the crop while growing, and faithfully and with-
out delay to harvest the same, and that in default of the performance
of such duties the mortgagee may enter upon the premises, take all
the necessary measures for the protection of said crop, and retain
possession thereof and sell the same, and from the proceeds of such
sale pay all expenses incurred in caring for, harvesting, and selling
the crop and the amount of the indebtedness or obligation secured by
the mortgage, and the surplus thereof, if any, shall be paid to the
mortgagor or those entitled to the same.

A chattel mortgage shall be deemed to cover only the property de-
scribed therein and not like or substituted property thereafter ac-
quired by the mortgagor and placed in the same depository as the
property originally mortgaged, anything in the mortgage to the con-
trary notwithstanding.