ATENEO de MANILA LAW SCHOOL

**LAW ON SALES – 2E Dean Cesar L. Villanueva**

**Final Examinations 22 December 2020, Tuesday**

**INSTRUCTIONS**

**This is an “open book” exam, which means you can refer to text books, your notes and internet sources to profound your answers in accordance with the guidelines provided below each question. BUT YOU CANNOT WORK WITH ANY OF YOUR BLOCKMATES OR ANYBODY ELSE TO COME-UP WITH THE ANSWERS. You are bound by the Integrity Pledge that you executed pursuant to the instructions of the Dean.**

**This Questionnaire has a total of Eight (8) pages, covering FIVE (5) PROBLEMS (17 Questions in all) that you will solve, take a photo of each page of the Answer Sheets and email to me, all within a period of Three (3) hours and Fifteen (15) minutes.**

***Manually Write Your Answers:* You have Two (2) hours and Forty-five (45) minutes (165 minutes total), from 1:00 PM to 3:45 PM of 22 December 2020) to answer the PROBLEMS in accordance with following instructions:**

**1. You must use a pen or ballpen (*must write in thick line*) to manually write your answers *IN BIG LETTERS*, as follows:**

**(a) Manually write your answers on ruled intermediate pads (white paper not yellow legal paper)**

**(b) Write your EXAM NUMBER AND SECTION at the top left-hand corner *of every page,* of the first page and writing prominently the Problem you are answering, *e.g.,* “PROBLEM I” (bold, center);**

**(c) You must place two (2) blank lines between answers and sub-answers so they can easily be seen and corrected;**

**(d) Make sure that each sheet has a clear and prominent page number at the top-right hand corner; and**

**(e) On the very last last page of your Answer Sheets, place after your last answer the term: “—END; NO MORE—“ (bold, all caps);**

**2. Take a photo of each page of your Answer Sheets at the end of the three (3) hours period; and**

**3. Save your original answer sheets and place them in a sealed envelope for your (not mine) future reference.**

***Submit Your Answers:* You have Half (1/2) an hour from 3:46 PM to 4:16 PM of 22 December 2020 to comply with the following instructions:**

**(1) Sequentially scan/photograph each page of your Answer sheets, and submit them in *PDF Format*, using the file naming convention as follows: <EXAM NUMBER><Subject\_ Section><Page # of Total # of Pages>; *e.g.* 12345678 (Sales\_2E)(3 of 5).**

**(2) Email your photocopied Answer Sheets to ALS Indicated Email Address—secured Google Forms;**

**(3) Only emailed answers that enter the ALS Indicated Email Address on 9:16 PM of 22 December 2020, shall be considered for correction and receiving a Final Exams grade in SALES. NO EXTENSION SHALL BE GRANTED.**

**(4) Students who have not submitted their Answers by the end of the above-indicated deadline shall receive a grade of 60% for the Final Exams in SALES.**

**HOW TO ANSWER THE QUESTIONS**

**To maximize your chances of getting all of the points provided for each of the Questions below, please follow the following format in writing down your answers:**

**1. First Sentence should answer directly the question that is being asked:** *“No, the seller is not bound to deliver the subject matter of the sale.”*

**2. The next set of sentences should state academically the laws, doctrine or policy in the Law on Partnerships that would be applicable in the problem/case that would demonstrate your understanding of the law (as well as clearly demonstrate that you know how to locate the applicable law):** *“Article 1191 of the Civil Code provides that since a contract of sale constitutes bilateral and reciprocal obligations between the buyer and the seller, then the power to rescind becomes effective the moment one obligor should not comply with what is incumbent upon him.”*

**3.****Apply the law you cited in #2 above to the relevant facts of the problem/case in order to arrive at the resolution/conclusion you did in #1 above:** *“Since the facts show that the buyer refuses to tender the purchase price when the seller has signified that he is ready to deliver the subject matter, then the seller may thereupon rescind the contract and refuse to deliver the subject matter of the sale and still recover damages from the buyer for any injury sustained.”*

**!—Good Luck—!**

**Problem I**

**(26%)**

The Pasadena Autosphere Co., acting through its President, sold to Carlos Pineda under a Deed of Sale a brand new Mitsubishi Montero Sports, with chassis number #12345 for a total consideration of P1.8 Million, with downpayment of P600,000, and the balance payable in twelve equal quarterly installments of P200,000 each. In order to secure the balance of the purchase price, Carlos executed a promissory note with a Chattel Mortgage over the vehicle in favor of Pasadena Autosphere. The car company then assigned both the promissory note and the Chattel Mortgage to the Zion Finance Co.

When Carlos defaulted in its installments, Zion Finance filed an action for foreclosure of the mortgage with a prayer for the issuance of writ of replevin on the vehicle. When Zion Finance obtained the writ of replevin and its service resulted in its taking possession of the vehicle, Carlos offered and actually paid one quarterly installment for return of possession and enjoyment of the vehicle with a promise to update the installments past due within thirty (30) days. When Carlos failed to update the installments past due and in fact filed his answer opposing the complaint on the ground that it has been barred by receipt of the P200,000 settlement, Zion Financed revived the foreclosure suit, and not being able to find the vehicle which had been hidden away by Carlos, Zion Finance assigned both the promissory note and the Chattel Mortgage to Bargain Hunters, Inc. for P500,000.00, in spite of the fact that the promissory note had an unpaid balance of P1 Million.

**1.** When Bargain Hunters sought to be substituted as plaintiff in the foreclosure suit against Carlos, Carlos filed a motion to dismiss on the ground that assignee Zion Finance having taken possession of the motor vehicle, this was equivalent to either foreclosure or rescission under Article 1484 of the Civil Code which prevented Zion Finance, as well as assigned Bargain Hunters, from seeking any further recovery of any amount from Carlos. Bargain Hunters opposed the motion to dismiss on the ground that as mere assignee from Zion Finance of the promissory note and the Chattel Mortgage, the situation is not covered by Article 1484 of the Civil Code.

**(a)** Is the situation of Bargain Hunters vis-à-vis on the claims on the promissory note and the Chattel Mortgage governed by Article 1484 of the Civil Code covering the sale of movables on installments? *As trial judge over the case, decide with proper reasoning and legal authority to support your conclusions.* **(5%)**

**(b)** *On the premise that the situation is covered by Article 1484 of the Civil Code*, has the horizontal barring effects of rescission or foreclose taken effect. *As trial judge over the case, decide with proper reasoning and legal authority to support your conclusions, explaining the horizontal barring effects under Article 1484.* **(5%)**

**(c)** *On the premise that the situation is covered by Article 1484 of the Civil Code*, if Bargain Hunters is allowed to effect foreclosure on the vehicle which was recovered from hiding after much efforts effected by Bargain Hunters through private detective work, and there is deficiency of the proceeds of the auction sale, may Bargain Hunters recover any amount outstanding from the other properties of Carlos Pineda? *Decide with proper reasoning and legal authority to support your conclusions.* **(5%)**

**2.** If the day after the filing of substitution in the foreclosure case by Bargain Hunters, Carlos Pineda comes to your law office to ask your well-considered advice on:

**(a)** Whether he could recover from Pasadena Autosphere the P200,000 paid after the latter had already chosen the remedy of foreclosure. *Your decision and the conclusions therein must be supported by legal authority and full reasoning.* **(5%)**

**(b)** What is the best course of action to take under the circumstances. *Your decision and the conclusions therein must be supported by legal authority and full reasoning.* **(6%)**

*Please support your advice with proper reasoning and legal authority.*

**Suggested Answers:**

**1. (a)** Yes, the situation is covered by Article 1484 of the Civil Code. Under the principle that an assignee merely steps into the shoes of the assignor, it should be noted that the original assignor, Pasadena Autosphere actually sold the vehicle on installments to Carlos Pineda. Under Article 1484 of the Civil Code, in a contract of sale of personal property the price of which is payable on installments, the seller may exercise any of the following remedies, namely, specific performance to recover the purchase price, rescission of the sale, and foreclosure of the chattel mortgage that may have been constitute on the object of the sale (this is the original Recto Law), and that in the last remedy the sale on auction of the subject matter mortgaged prevents any recover of any other amount by the seller against the buyer. It may be true that Zion Finance was merely an assignee of Pasadena Autosphere of the promissory note and Chattel Mortgage, nonetheless the financing activities of Zion Finance proceeded from an original sale of movable on installment, and the strictures under Article 1484 as they applied to Pasadena Autosphere also pertain to Zion Finance as the assignee of the original seller. *Zayas v. Luneta Motors,* 117 SCRA 726 (1982). Consequently, as Zion Finance was bound by the strictures of Article 1484, so would it be its assignee, Bargain Hunters, Inc. **(5%)**

**1. (b)** Under the facts of the case, none of the horizontal barring effects of rescission or foreclosure under Article 1484 had taken place. The foreclosure on the chattel mortgage constituted on the subject movable of the sale would prevent the seller from recovering any amount due from the buyer, but this only happens when there has been an actual sale at public auction of the movable; the mere filing of the suit for foreclosure, and even obtaining possession of the movable as preliminary matter for foreclosure, do not produce the horizontal barring effect, *Macondray & Co. v. Eustaquio*, 64 Phil. 446 (1937). In this case, no actual foreclosure sale has taken place.

Although not specifically provided for in Article 1484, when the unpaid seller has chosen rescission as the remedy, then by law it produces the effect of mutual restitution, as to prohibit the seller from recovering any unpaid balance from the buyer. However, the remedy of rescission is deemed to have taken place when either a formal action for rescission has been filed or when the seller obtains possession of the subject movable as a demand for rescission. In this case, the action filed was for foreclosure of the chattel mortgage, and possession was obtained by the seller for purposes of foreclosure. **(5%)**

**1. (c)** The injunction under Article 1484 is clear, when the unpaid seller has effected foreclosure on the chattel mortgage constituted on the subject movable of the sale on installments, any amount not covered by the proceeds of the auction sale cannot be recovered from the other properties of the buyer, *Macondray & Co. v. Eustaquio*, 64 Phil. 446 (1937). The only exception to this near-absolute rule would be in the case of the “perverse buyer”, *Filipinas Investment. v. Ridad*, 30 SCRA 564 (1969). In *Filipinas Investment*, the Supreme Court held that the Recto Law was never intended to protect the actuations of a buyer who hides the chattel subject matter of the sale from the foreclosure proceedings of the unpaid seller. Therefore, Bargain Hunters may recover all expenses it has incurred in trying to discover the whereabouts and take back possession of the vehicle in order to be able to proceed with foreclosure. **(5%)**

**2. (a)** Although Carlos Pineda had paid the P200,000 at the time the foreclosure suit was pending, it should be pointed out that Pasadena Autosphere was not legally barred to recovering any amount of the unpaid price since this is consistent with the remedy of foreclosure the main objective of which is to recover through the auction sale the unpaid balance of the price (same ultimate objective as an action for specific performance), and that in fact the barring effect under Article 1484 when it comes the remedy of foreclosure on the chattel mortgage constituted on the subject movable of the sale does not come into effect until the public auction sale is conducted. *Northern Motors v. Sapinoso*, 33 SCRA 356 (1970). **(5%)**

**2. (b)** I would advise Carlos Pineda to exercise his legal right of redemption against Bargain Hunters under Article 1634 of the Civil Code, which provides that where the credit or other incorporeal right in litigation is sold (assigned), the debtor shall have a right to extinguish it by reimbursing the assignee for the price the latter paid therefor, the judicial costs incurred by him, and the interest on the price from the day on which the same was paid*.* It is clear from the facts that when Pasadena Autosphere assigned the promissory note (credit) with the accessory Chattel Mortgage to Bargain Hunters, such credit was “in litigation”. Under Article 1484, a credit shall be considered in litigation from the time the complaint concerning the same was answered. Indeed, Carlos Pineda had filed his answer at the time Pasadena Autosphere revived the action.

The exceptions under Article 1635 to the legal redemption right in the assignment of credit in litigation does not apply in this case, since Bargain Hunters is not a co-owner of the right assigned, or a creditor of Pasadena Autosphere, much less a possessor of any tenement which is the subject to the right in litigation.

Finally, the 30-day period for the exercise of the right of redemption only began when Bargain Hunters sought his substitution in the foreclosure case, pursuant to the last paragraph of Article 1634. **(6%)**

**Problem II**

**(30%)**

**Proven Facts:**

On 02 January 2015, Jose Ganapin sold his 800 square meter parcel of land in Guiguinto, Bulacan covered by TCT No. 23456 with his residential house standing thereon under a “*Deed of Sale with a Right to Repurchase*,” to Dante Tambon for P1,800,000 (which he paid to Jose upon the notarization of the Deed), under the following terms and conditions:

(1) That Jose has a right to repurchase the property sold within five (5) years from the date of the Deed;

(2) That Jose shall remain in possession and enjoyment of the property as lessee thereof, paying a monthly rental of P1,800, and that in the event of repurchase, then P1,000 thereof shall be credited as part of refund of the purchase price paid by Edwin;

(3) That in the event Jose fails to pay any of the monthly rentals for five (5) months, then Edwin by mere written notice and without need of any court action may rescind the lease arrangement and take over possession of the subject property.

The tax declaration of the property showed that it had a market value of P4,000,000.

On 02 February 2015, TCT No. 23456 was cancelled and a new TCT No. 65432 was issued in the name of Dante Tambon, with no reference at all to the right of redemption of Jose Ganapin.

**Questions Based on Additional Facts:**

*As the Presiding Judge, rule separately and independently on the merits of the following separate cases brought supporting your decision with complete legal reasoning and authority. Please treat each question below on the basis of the additional facts given, and as being independent of the other questions and the additional facts given therein. In other words, each question below presents its own scenario.*

**3.** On the third year after the execution of the Deed, Jose failed for six months to pay the rentals due on the property. Whereupon, brought an action for ejectment against Jose and his family members before the courts. Jose resisted the ejectment suit on the ground that the Deed really covered an equitable mortgage, and the proper remedy of Dante was to foreclose on the property; otherwise, title remained with Jose and for which he continued to have the owner’s right to possession and enjoyment of the property. How would you rule on the legal contention of Jose which he interposes on the basis that under Article 1602 of the Civil Code, he has remained in possession of the property even after the sale and that in fact the property was sold for much less than its market value? **(5%)**

**4.** On the third year after the execution of the Deed, Dante sold the Guiguinto property under a *Deed of Absolute Sale* in favor of Thirdy Tarnate for a total consideration of P4 Million. No reference at all was made in the Deed with respect to the right of redemption of Jose. The following year, Jose sought to exercise his right to repurchase with Dante, who then directed him to Thirdy as the registered owner of the property. When Thirdy refused to heed Jose’s right to redeem the property on the ground that he is a buyer in good faith and for value over the absolute title to the property, Jose brought suit against both Dante and Thirdy, to annul the sale of the property to Thirdy, and to exercise the right of redemption, and consigning the purchase price and other amounts required with the trial court.

**(a)** If the original transaction between Jose and Dante was a *true sale a retro*, how would you rule on the merits of the suit brought by Jose against Dante and Thirdy. *First, was the sale by Dante to Thirdy a valid and effective sale? And can the right of redemption be exercised against Thirdy? Your decision and the conclusions therein must be supported by legal authority and full reasoning.*  **(5%)**

**(b)** If the original transaction between Jose and Dante was *an equitable mortgage*, how would you rule on the merits of the suit brought by Jose against Dante and Thirdy. *First, was the sale by Dante to Thirdy a valid and effective sale? And can the right of redemption be exercised against Thirdy? Your decision and the conclusions therein must be supported by legal authority and full reasoning.*  **(5%)**

**5.** Throughout the whole five (5) year redemption period, Jose faithfully paid the rentals due to Dante under the Deed. However, it was only a month after the lapse of the five (5) year redemption that Jose was able to gather the amount of money required to properly exercise the redemption right, which he tendered to Dante, but who refused to receive the same. Dante brought an action to eject Jose and his family from the premises, which suit Jose opposed based on the ground that arrangement between them was an equitable mortgage.

**(a)** If the original transaction between Jose and Dante was a *true sale a retro*, how would you rule on the merits of the ejectment suit brought Dante against Jose? *Your decision and the conclusions therein must be supported by legal authority and full reasoning.* **(5%)**

**(b)** If the original transaction between Jose and Dante was a *true sale a retro*, how would you rule on the merits of the ejectment suit brought Dante against Jose? *Your decision and the conclusions therein must be supported by legal authority and full reasoning.* **(5%)**

**6.** ***Proceeding from Question 5:***If the judgment rendered by the court, is to the effect that the transaction between Jose and Dante was *a true sale a retro* and rejecting Jose’s bona fide assertions that it was an equitable mortgage, what can Jose legally do to preserve his proprietary rights over the Guiguinto property? *Your answer should be supported by legal authority and full reasoning.* **(5%)**

**Suggested Answers:**

**3.** I would rule in favor Jose in that the arrangement must be construed as an equitable mortgage. The weight of the legal presumption is in favor of Jose since under Article 1602 of the Civil Code, every sale *a retro* shall be presumed to be an equitable mortgage when any of the “*badges of equitable mortgage*” are present. In the case at bar, there are in fact two badges present: (a) the price of a sale with right to repurchase is unusually inadequate; and (b) the seller remains in possession as lessee or otherwise. In addition, the terms of the Deed indicate the lease arrangement were really meant to cover part of the installments on a loan, since a large part of the rentals paid are credited towards paying off the repurchase price. **(5%)**

**4. (a)** Since the transaction between Jose and Dante was *a true sale a retro* then indeed the subsequent sale of the Guiguinto property to Thirdy would be valid and effective as to have transferred title to Thirdy. A sale *a retro* constitute a valid sale that when accompanied with delivery would transfer title to Dante, but that the buyer *a retro’s* title would be subject to a resolution condition. *Vda. De Rigonan v. Derecho,* 463 SCRA 627 (2005).

Nonetheless, the effectivity of the right of repurchase is valid and binding not only on the buyer, but also on the successors in interest of the buyer *a retro.* Article 1608 of the Civil Code provides that the seller *a retro* may bring his action against every possessor whose right is derived from the buyer *a retro* , even if in the second contract no mention should have been made of the right to repurchase. Even the exception provided in Article 1608 on registration under the Torrens System would not benefit Thirdy, since he was a buyer in bad faith, since he could not have bought the property without knowledge of Jose’s possession of the property under the principle that no buyer of real property buys without having conducted an ocular visit of the property to be bought. **(5%)**

**4. (b)** Since the transaction between Jose and Dante was *an equitable mortgage*, then title of Dante to the Guiguinto property was void under the general principle of *Nemo Potest Nisi Quod De Jure Potest* – “*No man can do anything except what he can do lawfully*.” – When the sale is void (since it is an equitable mortgage), even when there is delivery, no valid title over the subject matter is conveyed to the buyer. *Traders Royal Bank v. Court of Appeals,* 269 SCRA 15 (1997).

Consequently, although the sale between Dante and Thirdy was a valid contract of sale having all the essential requisites of a valid sale, and considering that ownership of the subject matter of sale in Dante was not necessary requisite for its validity, nonetheless no title to the Guiguinto property could have been conveyed to Thirdy under principle of *Nemo Dat Quod Non Habet* – “*No man can give that which he does not have*.” Even when the sale is valid, if the seller had no ownership over the subject matter at the time of delivery, no valid title can pass in favor of the buyer. *Tsai v. Court of Appeals A*, 366 SCRA 324 (2001).

Finally, Jose can certainly exercise his so-called “right of redemption” on the Guiguinto property since it is held under an equitable mortgage scheme by Dante and Thirdy, and payment of the main loan obligation by the consignment of the amounts due, has the effect of *ipso jure* extinguishing the accessory contract of equitable mortgaged and restoring full ownership back to Jose. To rule otherwise would be equivalent to *pactum commissorium* prohibited under Article 2088 of the Civil Code. **(5%)**

**5. (a)** Since the transaction between Jose and Dante was *a true sale a retro*, then indeed Dante’s title to the Guiguinto property has consolidated and become absolute. Indeed, once the seller *a retro* fails to redeem the property within the stipulated period, irrevocable title shall be vested in the vendee by operation of law.*Vda. de Rigonan v. Derecho*, 463 SCRA 627 (2005).

Under a sale *a retro*, failure of buyer to consolidate title under Article 1607 of the Civil Code does not impair such title and ownership because the method prescribed thereunder is merely for purpose of registering and consolidating titles to the property. In fact, failure of a seller *a retro* to exercise the redemption right within the period agreed upon or provided for by law, vests upon the buyer *a retro* absolute title and ownership over the property sold by operation of law. *Cadungog v. Yap*, 469 SCRA 561 (2005). **(5%)**

**5. (b)** Since the transaction between Jose and Dante was *an equitable mortgage*, there is really no consolidation of title with the purported buyer *a retro,* since it would otherwise constitute *pactum commissorium* contrary to the provisions of Article 2088 of the Civil Code which prohibits the creditor from appropriating title to the property given by way of security of the primary obligation upon mere failure to comply therewith by the debtor. *Briones-Vasquez v. Court of Appeals,* 450 SCRA 644 (2005).

In a *sale a retro* which really disguises an equitable mortgage situation, the redemption period is a mere indication of the period within which to pay the primary obligations being secured, which merely renders the debtor in default, but does not serve to consolidated any title to the property given by way of security in the person of the creditor. Even beyond the so-called “redemption period,” the debtor has the ability to pay and extinguish the primary obligation secured, and which thereby extinguishes the accessory contract of equitable mortgage. **(5%)**

**6.** Jose should exercise within thirty (30) days from finality of the judgment, a right to redeem the Guiguinto property based on Article 1606 of the Civil Code which provides that the seller in a *true sale a retro* may still exercise the right to repurchase within thirty days from the time final judgment was render in a civil action on the basis that the contract was a true sale with right to repurchase. The facts of the judgment do indicate that Jose *bona fide* took the position that the transaction with Dante was an equitable mortgage, which position was based on circumstances which are considered under Article 1602 as “badges of equitable mortgage.” In fact, Jose had supported his *bona fide* position by consigning the amounts due with the court. *Abilla v. Gobonseng,* 374 SCRA 51 (2002); *Tapas v. Court of Appeals,* 69 SCRA 393 (1976). **(5%)**

**Problem III**

**(20%)**

**Proven Facts:**

On 01 April 2015, Jose Ganapin sold the *same 800 square meter parcel of land with his residential house in Guiguinto, Bulacan* covered by a another TCT No. 45678 (also issued in the name of Jose Ganapin) a “*Deed of Conditional Sale*,” to Edwin Sarate for a total purchase price P3,800,000, under the following terms and conditions:

(a) A downpayment of P800,000, with the balance of the purchase price payable over five (5) years at installments of of P50,000 per month;

(b) That although possession of the subject property shall be transferred to Edwin with the payment of the P800,000 downpayment, ownership shall remain with Jose until full payment of the balance of the purchase price;

(c) That in the event Edwin fails to pay any of the monthly installments on due date, Jose may rescind the contract by mere written notice to Edwin, and without need of any court action, and all payments made by Edwin shall be forfeited in favor of Jose by way of liquidated damages.

Possession of the subject property was taken over by Edwin who began to live there with his family.

**Questions Based on Additional Facts:**

*Solve Problem III completely oblivious of the Facts and the Proceedings in Problem II.*

*As the Presiding Judge, rule separately and independently on the merits of the following separate cases brought supporting your decision with complete legal reasoning and authority. Please treat each question below on the basis of the additional facts given, and as being independent of the other questions and the additional facts given therein. In other words, each question below presents its own scenario.*

**7.** At the start of the third (3rd) year since the execution of the Deed, Edwin began to default in the payment of his monthly installments*.* After 6 months of failing to pay the installments, Jose sent a notarial written notice of cancellation of the Deed and forfeiting all amounts paid on the sale. When three months later Jose brought an ejectment case against Edwin and his family to vacate the premises, Edwin consigned with the court all the unpaid installments to update his account, plus accrued interests. Jose opposed the consignment of the amount on the ground that being a contract to sell, the mere non-happening of the suspensive condition extinguished the sale and there was nothing more to pursue payments for.

**(a)** Was the *Deed of Conditional Sale* between Jose and Edwin a contract of sale or contract to sell? *Decide with full reasoning and supporting legal authority?* **(6%)**

**(b)** *What are the important commercial and legal considerations that make it crucial to determine whether the sale of immovable on hand is a contract OF SALE or a contract to SELL?* **(6%)**

**8. *Proceeding from Question 7:***  Jose interposes that Edwin could not validly update his default in the purchase of the Guiguinto property because of the express provisions of the Deed which is a *true contract to sell* with a forfeiture clause of all amounts paid. On the other hand, Edwin posits that based on the Maceda Law, he is entitled to update the installments in default for as long as cash surrender value has not been tendered by Jose. *Decide the basic issue of whether there has been a valid termination of the Deed by Jose, or whether Edwin is entitled to cash surrender value, and unless and until paid back, the termination of the Deed would not have happened to allow Edwin to have validly consigned the amounts covering the defaulted installments.* based on his allegation that the sale is covered by the Maceda Law. *Your decision and the conclusions therein address all issues raised and must be supported by legal authority and full reasoning.* **(10%)**

**Suggested Answers:**

**7. (a)** The *Deed of Conditional Sale* between Jose and Edwin is a *contract TO SELL.* It is now settled in jurisprudence that when it comes to sales of immovable where the obligation of the seller to deliver the realty is subject to the condition that the buyer will pay the price in full, it will be considered a *contract TO SELL* when two conditions appear as part and parcel of the sale: A contract is one of sale, absent any stipulation therein (a) reserving title over the property to the vendee until full payment of the purchase price, and (b) giving the vendor the right to unilaterally rescind the contract in case of non-payment. *Valdez v. Court of Appeals*, 439 SCRA 55 (2004); *De Leon v. Ong*, 611 SCRA 381 (2010). The stipulations in the *Deed of Conditional Sale* shows both requisites: there was a reservation of ownership in the person of Jose in spite of delivery of possession of the Guiguinto property, and there was an express provision on the right of Jose as seller to cancel the sale by mere written notice to buyer in the event of failure to pay the installments when due. **(6%)**

**7. (b)** In general a contract of sale of immovable is governed by the rules of rescission, which means that delivery of the subject matter effects transfer of ownership to the buyer in spite of buyer not having yet paid the price in full; and that in the event of default on the part of the buyer to pay the purchase price, the remedy of rescission may only be pursued by the seller through a judicial action unless there is a stipulation allowing extrajudicial exercise of the right to rescind. On the other hand, in a contract to sell immovable, delivery of the subject matter transfers merely possession to the buyer, but ownership remains with the seller since there is as yet no valid contract of sale that would constitute title to support the mode of tradition. Therefore, if the buyer fails to comply with the obligation to pay the price, technically speaking to remedy need to be pursued by the seller because the non-happening of the suspensive condition *ipso jure* extinguishes the sale, and the only action that seller needs to take is an action for recovery of possession in the event the buyer does not surrender possession voluntarily of the subject matter.

In particular, Article 1592 of the Civil Code provides that in a contract of conditional sale of an immovable, and although it has been stipulated that in the event the buyer fails to pay the installments, the sale is automatically rescinded, nonetheless, the buyer may still pay the installments due and update his account for as long as the seller has not rescinded the sale either by notarial act or by judicial rescission. There is no such thing as *ipso jure* rescission in a contract of conditional sale. Article 1592 has not application to contracts to sell non-residential immovable, *Valarao v. Court of Appeals,* 304 SCRA 155 (1999); and the rule is that failure of the buyer to pay the installments on due date *ipso jure* extinguishes the sale. **(6%)**

**8.**  On the merits I will render judgment in favor of Edwin, his consignation of the amounts of the defaulted installments had validly prevented the cancellation of the Deed. The Maceda Law applies to the resolution of the issues in this case because it applies to both contracts of sale and contracts to sell involving sale of residential immovable on installments.

The rights to which Edwin is entitled to under the Maceda Law would be a buyer who has paid installments for more than two years. Although Edwin defaulted on his installments at the beginning of the third year, *Orbe v. Filinvest Land, Inc.,* 839 SCRA 72 (2017), has held in determining which classification a buyer falls into, the formula to be applied would be both time of payment (two year or more), as well as the value of the installments, with all payments being made (downpayment, reservation fee, etc.) being included in the total numerator. In this case, the denominator is the monthly installments of P50,000, and the total amount paid would be the downpayment (P800,000), plus all the installments paid for two years (24 x P50,000) or a total of P2 Million, which when divided by P50,000 would be 40 months, which is definitely more than two (2) years of installment. As such, aside from the 60 day grace period, Edwin was entitled to update his default at any time until cancellation has been effected, not only with the notarial notice, but also with the tender of the cash surrender value, which is a minimum of at least 50% of the total amounts paid. *Villdara, Jr. v. Zabala*, 545 SCRA 325 (2008). Under the Maceda Law, any stipulation against its provisions would be void; and therefore the forfeiture clause in the Deed could not overcome Edwin’s right to receive cash surrender value. Since no cash surrender value has been tendered by Jose to Edwin, no cancellation/rescission has taken place and with Edwin having successfully updated his defaulted installments by consignment thereof in court. **(10%)**

**Problem IV**

**(12%)**

**(Proceed to Solve Problem IV based on the Proven Facts of Problem II and III – the Additional Facts Therein Do Not Exist for Purposes of Solving Problem IV)**

**Additional Proven Facts for Problem IV:**

#1. The *Deed of Sale with Right to Repurchase* executed by Jose Ganapin on 02 January 2020 in favor of Dante Tambon is a *true sale a retro* with Dante Tambon having duly inspected the premises and found Jose living therein with his family; and that the owner’s copy of TCT No. 23456 being verified with the Registry of Deeds of Guiguinto as having been officially issued with the original TCT on file with said office.

#2. The *Deed of Conditional Sale* executed by Jose Ganapin on 01 April 2020 in favor of Edwin Sarate was executed at the residence of Jose, whom Edwin verified to be living in said premises with his family; and that the owner’s copy of TCT No. 45678 being verified with the Registry of Deeds of Guiguinto as having been officially issued with the original TCT on file with said office.

#3. Both TCT No. 23456 and TCT No. 45678 were issued inadvertently by the Register of Deeds of Guiguinto over the same property of Jose Ganapin, without realizing that they both covered the same property; Jose Ganapin was well aware of the mistake, however.

**Question Based on Additional Facts:**

When Edwin Sarate had fully paid the purchase price, a *Deed of Absolute Sale* was executed by Jose Ganapin in his favor with the turn-over of the owner’s original copy of TCT 45678. When he went to the Registry of Deeds of Guiguinto for the transfer of the title in his name, he saw Dante Tambon who was having a notice of adverse claim annotated on TCT No. 45678 on the ground that the land that it covered pertained to him under TCT No. 65432. Dante related to Edwin that during the Christmas holiday, he had visited the Guiguinto property to talk with Jose who had been paying dutifully all the rentals during the last five years, in preparation for end-of-lease term and that was when he saw another family (Edwin’s) living on th premises. When Dante confronted Jose, the latter admitted that he had sold the property to Edwin. Edwin was able to get new TCT No. 87654 in his name but with the adverse claim of Dante annotated therein.

Eventually, Dante filed a case for quieting of title over the Guiguinto property and to have both TCT No. 87654 cancelled on the ground that it covered a property already registered in the name of Dante under TCT No. 65432.

*As Presiding Judge over the case, please rule with proper reasoning and supported by legal authority on the following:*

**9.** *Are the requisites for the application of Article 1544 present? Under* Article 1544, *who is considered to be the first buyer, and who is the second buyer between Dante and Edwin; what are the preference rules for double sales of immovable under Article 1544 and how does jurisprudence provides for the application in relation to the first and second buyers? Your rulings should be supported by full legal reasoning and supporting authority.* **(6%)**

**10.** On the premise that Article 1544 applies, and Dante never registered his purchase of the Guiguinto property not until he found out of the sale to Edwin and after he annotated the adverse claim on Edwin’s title, would Edwin now have preference over the Guiguinto property using each of the three preference rules under Article 1544? *Your decision and conclusions should be supported by full legal reasoning and supporting authority* **(6%)**

**Suggested Answers:**

**9.** The rules on double sales under Article 1544 of the Civil Code are applicable when the following four requisites are present: (a) The two sales constitute valid sales, meaning they are not contracts to sell within the *policitacion* stage, or they are not void contracts of sale; (b) Both valid sales must cover exactly the same subject matter; (c) Both buyers must have bought from the same seller; and (d) Each of the buyer is sui generis representing his own rightful claim to the property bought. While it is clear that the last three requisites are present based on the facts of the case, the first requisite is also present at the time the case reached the courts. In other words, although the contract of Edwin was a contract to sell, but having fulfilled the suspensive condition of paying in full the purchase price, the effect was to convert the transaction into a valid, binding and absolute sale by the time the case was filed in court.

Under Article 1544, in the double sales of immovable, the rules of priority between the two contending buyers is that the first to register in good faith is preferred; absence such registration, the first to take possession in good faith shall be preferred; and in the absence of possession in good faith, then the buyer who presents the oldest title in good faith shall prevail. Jurisprudence has ruled that the priority rules in Article 1544 are really addressed to the second buyer who must take an active role in fulfilling each of those acts in good faith. The first buyer should be preferred under the universal principle of “*first in time, priority in rights”.* Article 1544 provides an exception to that general rule as to allow the second buyer to win over the first buyer but only when he is able to do the acts required ahead of the first buyer registering his sale.

Under Article 1544, the first buyer is the buyer who in point of time was the first to have a valid and perfected contract of sale. From the facts it is clear that Dante was the first buyer since he had a sale *a retro*, *where Edwin had only a contract to sell which transformed into a contract of sale only after five years when Edwin had been able to fully pay the purchase price.* **(6%)**

**10.** Edwin would find no preference on the Guiguinto property under any of the three rules provided under Article 1544. *Firstly*, on the first to register in good faith, it should be noted that it was Dante who first registered with the annotation on the title pertaining to Edwin of the adverse claim which has been decreed to constitute a manner of registration under Article 1544 in *Carbonnel v. Court of Appeals,* 69 SCRA 99 (1976). Even though Dante was aware of the second sale to Edwin, that did not place him in bad faith because the first buyer is always in good faith, and that such knowledge does not operate to be registration in favor of Edwin as second buyer. *Uraca v. Court of Appeals*, 278 SCRA 702 (1997).

*Secondly,* on the first to take possession in good faith, it was clear Dante was the first to take possession by the constructive delivery of execution of the public instrument and *constitutum possessorium* where the seller stayed on the Guiguinto property as the lessee of Dante. Possession in good faith under Article 1544 does not only cover physical possession, but also symbolic/constructive possession. *The Roman Catholic Church v. Pante,* 669 SCRA 234 (2012).

*Finally,* even in the event of absence of the first two rules of priority, the rule of oldest title in good faith would pertain to Dante, as indeed his contract of conditional sale was the first in time, and that in fact the contract to sell of Edwin was transformed into a contract of sale only upon full payment of the purchase price on the fifth year. **(6%)**

**Problem V**

**(10%)**

MS Department Stores, Inc., a domestic corporation owned by the Ney family (100% Chinoy Ilocanos) owns and operates five (5) department stores located in key areas of Metro Manila. They received an offer from Cheng Wa Marts of Hong Kong to buy three departments stores for a whooping price of US$500 Million. The President of Cheng Wa Marts is now consulting with you on how best to structure their purchase of the three department stores to ensure that the deal would not be in violation of any applicable laws in the Philippines. The parcels of land on which the department stores are operating are being rented from owners of the land under a long-term leases.

**11.** *Please write down your well-considered advise to Cheng Wa Marts on ensuring that:*

**(a)**The transaction will be valid and binding as against MS Department Stores, Inc. and all the properties being purchased will transfer valid title to Cheng Wa Marts; **(5%)** and

**(b)** Cheng Wa Marts would be able to legally operate the three department stores bought well protected from extraneous claims.**(5%)**

**Suggested Answers:**

**11. (a)** I would advise them that the transaction is covered by the Bulk Sales Law, which imposes certain regulatory requirement on every “bulk sale” which covers: (a) a sale of goods, wares, merchandise, provisions or materials by a merchant that it not in the ordinary course of business; (b) sale of all or substantially all of the fixtures and equipment used in and about the business of a merchant of goods, wares, commodities; or (c) sale of all or substantially all of the business or trade conducted. Certainly, the department stores fall within the definition of merchandising enterprises and that MS Department Stores, Inc. falls within the category of being a “merchant” or “merchandiser”. The nature of the transaction clearly falls within the terms of “bulk sale” since it would constitute the sale of all the merchandise and inventory in the department stores not in the ordinary course of business, and essentially the sale of the three department stores is a sale of the business with all the fixtures and equipment therein. Cheng Wa Marts should be well aware that even when they pay full consideration for the purchase of the three department stores, the sale would be considered “fraudulent and void” under the Bulk Sales Law unless MS Department Stores, Inc. complies with the following undertakings: (1) 10 days before the intended sale, it must take an inventory of the stocks in the three department stores and advise all his creditors of the same; (2) At the time of sale, it must give to Cheng Wa Marts a certified schedule of his debts, including the names of the creditors, amounts owing to each and the nature of the debt; and (3) it must apply the purchase price paid by Cheng Wa Marts proportionately to these debts. If any of such undertaking are not complied with, the sale to Cheng Wa Marts is fraudulent and void, and it receives no ownership over the three department stores, and the creditors of MS Department Stores, Inc. may levy on the contents thereof. To be safe, Cheng Wa Marts should make it a condition for closing of the transactions that MS Department Store should turn-over waivers of all the creditors—which is one way provided by the Law to exempt the transaction from its coverage. **(5%)**

**(b)** I would have to advise them that the transaction is covered by the Retail Trade Liberalization Act of 2000, which regulates foreign investment and foreign retailing activities within the Philippines. First ownership of the three department stores would constitute both investment in and engagement in retail trade, which RTLA defines as an act or occupation of habitually selling consumer goods directly to the public. Since the RTLA limits to Filipino citizens and domestic entities 100% Filipino equity retail trade where the paid-up capital invested is less than US$2.5 Million, then the purchase and operation of the three department stores at US$500 Million with actually allows 100% foreign equity provided that the following conditions are complied with: (a) the investment in every department store must not be less than US$830,000, and the net worth of at least US$200 Million; (b) Cheng Wa Marts must have at least 5 retailing branches in the world, *unless one store capitalized at minimum of US$25 Million;*  (c) Cheng Wa Marts must have 5-year track record at retailing; and (d) there must be official proof that Hong Kong provides reciprocity rights to Filipino retailers. **(5%)**

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