

REPUBLIC OF THE PHILIPPINES, PETITIONER, VS. PASIG RIZAL CO., INC., RESPONDENT.*G.R. No. 213207. February 15, 2022*Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-213207/>**CAGUIOA, J:****The Case**

This is a petition for review on certiorari[1] (Petition) filed under Rule 45 of the Rules of Court against the Decision[2] dated February 25, 2014 (assailed Decision) and Resolution[3] dated June 27, 2014 (assailed Resolution) in CA-G.R. CV. No. 98531 rendered by the Court of Appeals (CA) First Division and Special First Division, respectively.

The assailed Decision and Resolution stem from an appeal from the Decision[4] dated December 1, 2011 rendered by the Regional Trial Court of Pasig City, Branch 167 (RTC) in LRC Case No. N-11633, confirming the title of respondent Pasig Rizal Co., Inc. (PRCI) over a 944-square meter parcel of land situated in Barangay Caniogan, Pasig City (Subject Property), and directing the issuance of the corresponding Decree of Registration.[5]

The Facts

Sometime in 1958, Manuel Dee Ham (Manuel) caused the survey of the Subject Property under Plan Psu-169919.[6] The plan was subsequently approved by the Director of Lands, and the Subject Property was declared in Manuel's name for tax purposes.[7]

Manuel died in 1961. Consequently, the Subject Property was inherited by his surviving wife Esperanza Gerona (Esperanza), and their children, who, in turn, collectively transferred their beneficial ownership over the Subject Property to the Dee Ham family corporation, PRCI.[8] Thereafter, PRCI began paying the real property taxes due in its name.[9]

On November 6, 2009, Esperanza executed an Affidavit to formalize the transfer.[10]

RTC proceedings

In 2010, Esperanza, as President of PRCI, filed before the RTC an application for original registration of title over the Subject Property, for and on behalf of the latter.[11] There, Esperanza asserted that PRCI is the owner of the Subject Property and all improvements found thereon, and that PRCI and its predecessors in interest have been in open, continuous, exclusive, and notorious possession of the Subject Property for more than fifty (50) years.[12] Esperanza also averred that the Subject Property has neither been encumbered, nor has it been adversely possessed or claimed by any other party.[13]

No opposition was entered against the application after due notice and publication.[14] Thus, an order of general default was entered against the whole world, with the exception of the Republic of the Philippines (Republic).[15] Subsequently, PRCI presented its evidence ex-parte.[16]

The evidence presented by PRCI was summarized by the CA, as follows:

x x x [PRCI] appended the following documents, to wit: a) the Approved Survey Plan, Technical Description and Surveyor's Certification of [the Subject Property] showing its area and boundaries; b) Tax Declarations and Tax Receipts proving that since 1956, [the Subject Property] was already declared for tax purposes and the corresponding realty taxes were paid; c) Affidavit of Esperanza Gerona establishing the transfer of ownership and possession of the subject realty to [PRCI]; d) Certification of the Regional Technical Director of Forest Management Service of the Department of Environment and Natural Resources (DENR) proving that the subject lot is within the alienable and disposable land of public domain, as verified under Project No. 21 of Pasig pursuant to [Land Classification] Map 639 which was approved on [March 11, 1927 and] per ocular inspection on the ground on [September 12, 2011]; and e) Affidavit of Bernarda Lu, a friend and neighbor of the Dee Ham family, attesting to [PRCI's] ownership of the [Subject Property] and its uninterrupted possession as well as the payment of land taxes thereon.[17]

After trial, the RTC issued a Decision[18] dated December 1, 2011 (RTC Decision) "confirming and affirming" PRCI's title over the Subject Property.[19] The dispositive portion reads:

WHEREFORE, affirming the Order of general default heretofore entered, judgment is hereby rendered CONFIRMING and AFFIRMING the title to [PRCI] under the coverage and operation of PD 1529 otherwise known as the Property Registration Decree.

After this decision shall have become final and executory, the Order for the issuance of a Decree of Registration shall accordingly issue.

SO ORDERED.[20]

The RTC found that the evidence on record convincingly established that PRCI and its predecessors in interest had been in open, actual, continuous, adverse, and notorious possession of the Subject Property in the concept of an owner for the period required by law for the acquisition of title.[21]

On January 3, 2012, the Republic, through the Office of the Solicitor General (OSG), assailed the RTC Decision before the CA via Rule 41 (Appeal).[22]

CA proceedings

On February 25, 2014, the CA issued the assailed Decision dismissing the Appeal, thus:

WHEREFORE, foregoing considered, the [RTC Decision] is AFFIRMED.

SO ORDERED.[23]

The CA held that the evidence presented by PRCI sufficiently established that the Subject Property is alienable and disposable.[24]

In so ruling, the CA particularly relied on (i) the Certification dated September 15, 2011 (2011 Certification) issued by the Regional Technical Director of the Forest Management Bureau[25] (FMB) of the Department of Environment and Natural Resources (DENR) attesting to such fact,[26] and (ii) the Certification dated March 18, 2013 (2013 Certification) subsequently issued by the DENR Regional Executive Director for the National Capital Region (RED-NCR) affirming and validating the statements in the 2011 Certification.[27]

The CA found that the RED-NCR possessed the authority to issue certifications of land classification status pursuant to DENR Administrative Order No. 09, series of 2012[28] (DENR AO 2012-09), and that consequently, the 2011 and 2013 certifications constitute competent and convincing proof of the status of the Subject Property.[29] The CA also found that the 2011 and 2013 certifications refer to Land Classification (LC) Map No.

639[30] (LC Map 639), which was approved on March 11, 1927.[31]

According to the CA, the approval of LC Map 639 had the effect of placing the Subject Property within the contemplation of private lands subject of prescription,[32] giving PRCI the right to have it registered in its name under Section 14(2) of Presidential Decree No. (PD) 1529.[33]

The CA also upheld the RTC's findings on the nature and period of PRCI's possession.[34]

Aggrieved, the Republic filed a Motion for Reconsideration[35] (MR) on March 19, 2014. The CA denied said MR through the Assailed Resolution,[36] which the Republic received on July 7, 2014.[37]

On July 22, 2014, the Republic filed a Motion for Extension of Time to File Petition,[38] praying for an additional period of thirty (30) days within which to file its petition for review on certiorari before the Court.

Finally, the Republic filed the present Petition on August 22, 2014. PRCI filed its Comment[39] on September 25, 2014, to which the Republic filed its Reply.[40]

Following a thorough review of the records, the Court found that the issues raised in the Petition could be resolved by delving into two significant points — the requirements for original registration of land acquired through prescription, and the evidence sufficient to prove the alienable and disposable status of land for purposes of registration under PD 1529. However, since these matters were not squarely addressed in the proceedings below and in the submissions of the parties, the Court, on August 3, 2021, issued a Resolution[41] requiring the parties to file their respective memoranda within a non--extendible period of thirty (30) days from notice. Moreover, due to the nature of the issues involved, the Court also designated the Land Registration Authority (LRA) as *amicus curiae* and requested it to file its brief within the same period.

Based on the records, the August 3, 2021 Resolution was served on the OSG, PRCI, and LRA by personal service on August 13, 2021, giving said parties until September 13, 2021 to comply with the Court's directives, considering that the 30[th] day from August 13, 2021, that is, September 11, 2021, falls on a Saturday.

On September 9, 2021, counsel for PRCI, Atty. Severino T. De Guzman (Atty. De Guzman) filed a "Notice of Retirement from the Practice of the Law Profession" informing the Court that he has retired from the legal profession after having attained the age of eighty (80). Atty. De Guzman explained that all his former clients, including PRCI, have been informed of such fact and were advised to engage the services of another counsel to take over pending cases. Nevertheless, upon notice of the Court's August 3, 2021 Resolution, PRCI requested his assistance to file the necessary pleading praying for additional time to look for substitute counsel.[42]

The records further show that Atty. Joseph Vernon B. Patano and Aeron Aldrich B. Halos subsequently filed a motion for extension to file the required memorandum on behalf of PRCI since they only started their engagement with PRCI on September 6, 2021. PRCI, through said counsels, timely filed its Memorandum[43] on September 13, 2021.

In its Memorandum, PRCI maintains that the classification of the Subject Property as alienable and disposable means that it has become patrimonial property of the State which may be acquired by prescription.[44] Hence, it has complied with the statutory requirements for judicial confirmation of title.

Relating its claim to the requirements for registration set forth in *Heirs of Mario Malabanan v. Republic*[45] (Malabanan), PRCI adds:

x x x The 2011 and 2013 [certifications] from the DENR along with LC Map 639 are sufficient proof not only of the fact that the State has classified the [S]ubject [P]roperty as alienable and disposable for the last ninety-four years, but also that the same is not intended for public use.

x x x While [PRCI] maintains that the statement in the 2011 and 2013 certifications "[h]ence not needed for forest purposes" satisfies the requirement in Malabanan that there should be an express declaration from x x x the State [that] the [S]ubject [P]roperty is no longer intended for public use, public service, or the development of national wealth, it is respectfully submitted that the very act of classifying the land as alienable and disposable should be deemed as the express State declaration that the particular land is no longer retained for public use, as the act of classifying it into alienable and disposable makes it no longer beyond the commerce of man and therefore susceptible to acquisitive prescription.

x x x The Honorable Court in Malabanan classified land as either of public dominion or of private ownership. Lands that are of public dominion are further classified between those held by the State in its public capacity for public use or intended for public service and patrimonial property, which are held by the State in its private capacity.

x x x Articles 421 and 422 of the Civil Code further classifies patrimonial properties of the State between those that are inherently patrimonial in nature and those that are of the public dominion but are no longer intended for public use or public service, respectively.

x x x From the foregoing, it may be interpreted that Article 422 pertains to those lands which were formerly part of the public dominion but were classified as alienable and disposable, thus converting them into patrimonial properties of the State. Since patrimonial property is held by the State in its private capacity, they are rid of their inalienability and cease to be beyond the commerce of man upon their classification as alienable and disposable. At the same time, the public land becomes susceptible to prescription.

x x x This is not without basis in jurisprudence. In *Spouses Modesto v. Urbina*,^[46] the Honorable Court ruled that classification of public land as alienable and disposable renders it susceptible to the possessory rights of private persons, to wit:

"Unless a public land is shown to have been reclassified as alienable or actually alienated by the State to a private person, that piece of land remains part of the public domain, and its occupation in the concept of owner, no matter how long, cannot confer ownership or possessory rights. It is only after the property has been declared alienable and disposable that private persons can legally claim possessory rights over it."

x x x Justice Edgardo L. Paras also had the same view on the effect of classifying public lands as alienable and disposable, thus:

"Upon the other hand, public agricultural lands before being made available to the general public should also be properties of public dominion for the development of the national wealth (and as such may not be acquired by prescription); but after being made so available, they become patrimonial property of the state, and therefore subject to prescription. Moreover, once already acquired by private individuals, they become private property[.]"

x x x It should also be noted that agricultural free patents operate on the same principle, i.e.,^[.] the classification of public land as alienable and disposable already amounts to the State's [express] declaration that a subject land is no longer intended for public use.

x x x From the foregoing, it is respectfully submitted that the act of classifying public lands as alienable and disposable operates as an express State declaration by the State that the public dominion property is no longer intended for public service or the development of the national wealth.

x x x As such, the mere act of classifying public lands as alienable and disposable should be deemed sufficient proof that the land is no longer intended for public use, especially in particular circumstances similar to the instant case, where the land has been classified as alienable and disposable for the last ninety-four (94) years and the occupants thereof have openly occupied the subject property and constructed structures thereon without any

opposition from either public or private entities.

x x x At the very least, given its ramifications, the act of classifying public land as alienable and disposable must have the effect of shifting to the State the burden of proof that the public land so classified is intended for public service or the development of the national wealth.

x x x [PRCI] is mindful that the foregoing interpretation of what constitutes "express State declaration", if it is to be applied, may be tantamount to a relaxation of the requirements set forth in Malabanan. This "relaxation" of the requirements, however, does not mean that the process for original registration of title will be vulnerable to fraudulent and/or inaccurate claims as the proceedings will still be subject to the participation and scrutiny of the State.

x x x By applying the foregoing interpretation, the only difference is that the applicant will not be unduly burdened [with] proving the intentions (sic) of the State which is, most of the time, beyond the knowledge of ordinary citizens.[47] (Emphasis omitted)

The Republic also filed its Memorandum[48] on September 13, 2021.

For its part, the Republic argues that the classifications of land pertaining to the State under the Civil Code are mutually exclusive, thus:

x x x The classifications of land pertaining to the State under the Civil Code are mutually exclusive. Property under the Civil Code may belong to the public dominion (or property pertaining to the State for public use, for public service or for the development of the national wealth) or it may be of private ownership (which classification includes patrimonial property or property held in private ownership by the State). Significantly, the Civil Code expressly provides that "property of public dominion, when no longer intended for public use or for public service, shall form part of the patrimonial property of the State."

x x x The classification of a land into a public dominion or public land automatically prevents it from being acquired by private individuals without complying with the process of converting it to patrimonial property. On the other hand, when a land is classified as a patrimonial property, it can be freely acquired by private individuals. The classification of a land to any of these two would prevent or allow its alienability.[49]

In this connection, the Republic asserts that lands of the public domain become patrimonial only when there is an express government manifestation that the property is no longer retained for public service or the development of national wealth.[50] It explains:

x x x In exploring the effects under the Civil Code of a declaration by the President or any duly authorized government officer of alienability and disposability of lands of the public domain[,] [o]ne may [ask]: would such lands so declared alienable and disposable be converted, under the Civil Code, from property of the public dominion into patrimonial property? After all, by connotative definition, alienable and disposable lands may be the object of the commerce of man; Article 1113 provides that all things within the commerce of man are susceptible to prescription; and the same provision further provides that patrimonial property of the State may be acquired by prescription.

Nonetheless, Article 422 of the Civil Code states that "[p]roperty of public dominion, when no longer intended for public use or for public service, shall form part of the patrimonial property of the State." It is this provision that controls how public dominion property may be converted into patrimonial property susceptible to acquisition by prescription. After all, Article 420 (2) makes clear that those [properties] "which belong to the State, without being for public use, and are intended for some public service or for the development of the national wealth" are public dominion property. For as long as the property belongs to the State, although already classified as alienable or disposable, it remains property of the public dominion if when (sic) it is "intended for some public service or for the development of the national wealth."

x x x Accordingly, there must be an express declaration by the State that the public dominion property is no longer intended for public service or the development of the national wealth or that the property has been converted into patrimonial. Without such express declaration, the property, even if classified as alienable or disposable, remains property of the public dominion, pursuant to Article 420(2), and thus incapable of acquisition by prescription. It is only when such alienable and disposable lands are expressly declared by the State to be no longer intended for public service or for the development of the national wealth that the period of acquisitive prescription can begin to run. Such declaration shall be in the form of a law duly enacted by Congress or a Presidential Proclamation in cases where the President is duly authorized by law.[51]

With respect to proof of land classification status, the Republic echoes the requirements set forth in *Republic v. T.A.N. Properties, Inc.*[52] (*T.A.N. Properties*) and *Republic v. Hanover Worldwide Trading Corporation*[53] (*Hanover*), as follows:

x x x [PRCI] did not present as evidence a copy of the classification of the land approved by the DENR Secretary, and certified as a true copy by the legal custodian of the official records as required by *Hanover*. It is not enough for the DENR RED[-NCR] to certify that a land is alienable and disposable. The applicant for land registration must prove that the DENR Secretary had approved the land classification and released the land of the public domain as alienable and disposable, and that the land subject of the application for registration falls within the approved area per verification through survey by the PENRO, CENRO or the RED[-NCR] (for lands situated in the NCR). [PRCI] failed to do so because the certifications presented by it did not prove that the land is alienable and disposable.

x x x More importantly, the government officers who issued the certifications were not presented before the trial court to testify on their contents. The trial court should not have accepted the contents of the certifications as proof of the facts stated therein. Even if the certifications are presumed duly issued and admissible in evidence, they have no probative value in establishing that the land is alienable and disposable. Hence, even if admitted in evidence, the certification is useless to prove the facts stated therein unless the proper government officers are presented before the court to testify on its contents.[54]

In sum, the Republic maintains that the CA erred when it affirmed the RTC Decision granting PRCI's application for registration in the absence of proof that: (i) the government officials who issued the certifications on land classification status testified on their contents pursuant to the Court's ruling in *T.A.N. Properties* and *Hanover*; and (ii) the DENR RED-NCR attached a copy of the original classification approved by the DENR Secretary, certified as true by the legal custodian of DENR records.[55]

The records show that the LRA did not file its brief within the non--extendible period provided in the August 3, 2021 Resolution.

Based on these premises and in consideration of the recent enactment of Republic Act No. (RA) 11573[56] which took effect on September 1, 2021, the Petition is now deemed submitted for resolution.

The Issue

The Petition calls on the Court to determine whether PRCI sufficiently proved that it is entitled to a decree of registration over the Subject Property.

The Court's Ruling

The Court resolves to remand the Petition to the CA for the reasons set forth below.

As a starting point, it bears recalling that the RTC held that PRCI was able to establish that it had been in open, actual, continuous, adverse, and notorious possession of the Subject Property in the concept of an owner for the period then required by law for the acquisition of title.[57] While the Republic filed an appeal to assail the Subject

Property's land classification status, it did not impugn the evidence presented by PRCI to prove the nature and period of its possession. Consequently, the fact that PRCI has been in possession of the Subject Property in the concept of owner since 1956 is not disputed.

Thus, the crux of the present controversy hinges on a single question - whether PRCI has established that the Subject Property forms part of the alienable and disposable agricultural land of the public domain in accordance with the requirements set by prevailing law.

To resolve this question, a preliminary discussion on the relevant concepts relating to property, ownership, and land classification is in order.

Land classification under the 1987 Constitution and the Civil Code

The Regalian doctrine has long been recognized as the foundation of the State's property regime[58] and has been consistently adopted under the 1935, 1973, and 1987 Constitutions.[59] In essence, the Regalian doctrine espouses that lands not appearing to be clearly under private ownership are generally presumed to form part of the public domain belonging to the State.

As explained in the recent case of *Federation of Coron, Busuanga, Palawan Farmer's Association, Inc. v. The Secretary of the Department of Environment and Natural Resources*[60] (*Federation*), and as cogently pointed out by Associate Justice Marvic M.V.F. Leonen, this general rule admits of a single exception: native title to land. Claims of private ownership pursuant to native title are presumed to have been held even before the Spanish conquest. Thus, lands subject of native titles are deemed excluded from the mass of lands forming part of the public domain.

The Court's ruling in *Federation* elucidates:

Pursuant to the Regalian [d]octrine (*Jura Regalia*), a legal concept first introduced into the country from the West by Spain through the Laws of the Indies and the Royal Cédulas, all lands of the public domain belong to the State. This means that the State is the source of any asserted right to ownership of land, and is charged with the conservation of such patrimony. All lands not appearing to be clearly under private ownership are presumed to belong to the State. Also, public lands remain part of the inalienable land of the public domain unless the State is shown to have reclassified or alienated them to private persons.

To further understand the Regalian [d]octrine, a review of the previous Constitutions and laws is warranted. The Regalian [d]octrine was embodied as early as in the Philippine Bill of 1902. Under Section 12 thereof, it was stated that all properties of the Philippine Islands that were acquired by the United States through the treaty with Spain shall be under the control of the Government of the Philippine Islands, to wit:

SECTION 12. That all the property and rights which may have been acquired in the Philippine Islands by the United States under the treaty of peace with Spain, signed December tenth, eighteen hundred and ninety-eight, except such land or other property as shall be designated by the President of the United States for military and other reservations of the Government of the United States, are hereby placed under the control of the Government of said Islands, to be administered for the benefit of the inhabitants thereof, except as provided in this Act.

The only exception in the Regalian [d]octrine is native title to land, or ownership of land by Filipinos by virtue of a claim of ownership since time immemorial and independent of any grant from the Spanish Crown. In *Cariño v. Insular Government*, the United States Supreme Court at that time held that:

It might, perhaps, be proper and sufficient to say that when, as far back as testimony or memory goes, the land has been held by individuals under a claim of private ownership, it will be presumed to have been held in the same way from before the Spanish conquest, and never to have been public land.

As pointed out in the case of *Republic v. Cosalan*:

Ancestral lands are covered by the concept of native title that "refers to pre-conquest rights to lands and domains which, as far back as memory reaches, have been held under a claim of private ownership by ICCs/IPs, have never been public lands and are thus indisputably presumed to have been held that way since before the Spanish Conquest." To reiterate, they are considered to have never been public lands and are thus indisputably presumed to have been held that way.

The CA has correctly relied on the case of *Cruz v. Secretary of DENR*, which institutionalized the concept of native title. Thus:

Every presumption is and ought to be taken against the Government in a case like the present. It might, perhaps, be proper and sufficient to say that when, as far back as testimony or memory goes, the land has been held by individuals under a claim of private ownership, it will be presumed to have been held in the same way before the Spanish conquest, and never to have been public land.

From the foregoing, it appears that lands covered by the concept of native title are considered an exception to the Regalian [d]octrine embodied in Article XII, Section 2 of the Constitution which provides that all lands of the public domain belong to the State which is the source of any asserted right to any ownership of land.[61] (Emphasis supplied; original emphasis omitted)

At present, Section 3, Article XII of the 1987 Constitution classifies lands of the public domain into five (5) categories — agricultural lands, forest lands, timber lands, mineral lands, and national parks. The provision states:

Section 3. Lands of the public domain are classified into agricultural, forest or timber, mineral lands and national parks. Agricultural lands of the public domain may be further classified by law according to the uses to which they may be devoted. Alienable lands of the public domain shall be limited to agricultural lands. x x x (Emphasis supplied)

In turn, Section 3 mandates that only lands classified as agricultural may be declared alienable and susceptible of private ownership. It bears noting, however, that private ownership contemplates not only ownership by private persons, but also ownership by the State, provinces, cities, and municipalities in their private capacity.[62]

On the other hand, the Civil Code classifies the property of the State into two (2) categories, thus:

ART. 420. The following things are property of public dominion:

(1) Those intended for public use, such as roads, canals, rivers, torrents, ports and bridges constructed by the State, banks, shores, roadsteads, and others of similar character;

(2) Those which belong to the State, without being for public use, and are intended for some public service or for the development of the national wealth.

ART. 421. All other property of the State, which is not of the character stated in the preceding article, is patrimonial property.

ART. 422. Property of public dominion, when no longer intended for public use or for public service, shall form part of the patrimonial property of the State.

In the 2013 Resolution[63] in the case of *Malabanan*, the Court attempted to harmonize the classification of land under the 1987 Constitution and the classification of property under the Civil Code, thus:

Land, which is an immovable property, may be classified as either of public dominion or of private ownership. Land is considered of public dominion if it either: (a) is intended for public use; or (b) belongs to the State, without being for public use, and is intended for some public service or for the development of the national wealth. Land belonging to the State that is not of such character, or although of such character but no longer intended for public use or for public service forms part of the patrimonial property of the State. Land that is other than part of the patrimonial property of the State, provinces, cities and municipalities is of private ownership if it belongs to a private individual.

x x x x

Alienable and disposable lands of the State fall into two categories, to wit: (a) patrimonial lands of the State, or those classified as lands of private ownership under Article 425 of the Civil Code, without limitation; and (b) lands of the public domain, or the public lands as provided by the Constitution, but with the limitation that the lands must only be agricultural. x x x[64] (*Italics in the original*)

During the deliberations, Associate Justice Samuel H. Gaerlan astutely raised that this classification of "alienable and disposable lands of the State" into patrimonial lands and lands of the public domain appears to be inconsistent with the intent of the framers. Indeed, the record of the Constitutional Commission deliberations on what was then Section 6, Article XII[65] is illuminating:

MR. SUAREZ. If it is reflective of the thinking of the Committee insofar as Section 4 is concerned, we propose that the words "lands of the public domain" appearing on line 26 of Section 6 be changed to "PUBLIC AGRICULTURAL LANDS"; but basically, it is "agricultural land."

MR. MONSOD. Maybe to be consistent and to harmonize, we just use the same phrase as we used in Section 4: "AGRICULTURAL LANDS of the public domain."

MR. SUAREZ. Thank you.

MR. RODRIGO. Madam President, may I call attention to the fact that the words "public domain" are the words used in the 1935 as well as in the 1973 Constitutions.

MR. VILLEGAS. We retained it that way.

MR. RODRIGO. So, they have already adopted a meaning and I suppose there is even a jurisprudence on this matter. Unless it is absolutely necessary, I do not think we should change that.

MR. SUAREZ. What we are suggesting, Madam President, is to retain the words "public domain" but qualify the word "lands" with "AGRICULTURAL lands of the public domain."

MR. VILLEGAS. We are retaining "public domain."

MR. CONCEPCION. Madam President.

THE PRESIDENT. Commissioner Concepcion is recognized.

MR. CONCEPCION. If the Committee does not intend to change the original implication of this provision — and by original I mean the Constitutions of 1935 and 1973 — may I suggest the advisability of retaining the former phraseology. Otherwise, there might be a question as to whether the same meaning attached thereto by jurisprudence will apply or another meaning is sought to be imparted to this provision.

MR. VILLEGAS. As long as it is clear in our record that we really mean agricultural lands, can we ask Commissioner Suarez to just retain the existing phraseology?

MR. SUAREZ. I would have no objection to that. I just want to make it very clear, whether in the record or in the constitutional provisions, when we speak of "lands of the public domain" under Section 6 we are thinking

in terms of agricultural lands.

THE PRESIDENT. So, there will be no need anymore to insert the word "AGRICULTURAL"?

MR. SUAREZ. That is right. We will not press on our amendment, Madam President.

THE PRESIDENT. We already have that interpretation.

x x x x

MR. TINGSON. There are no more registered speakers for Section 6; so we may now vote on Section 6, Madam President.

THE PRESIDENT. Will the honorable Chairman please read Section 6?

MR. VILLEGAS. Section 6 will read: "Save in cases of hereditary succession, no private lands shall be transferred or conveyed except to individuals, corporations, or associations qualified to acquire or hold lands of the public domain." [66]

As the quoted exchange shows, it was initially suggested that the term "lands of the public domain" under then Section 6, Article XII [67] be qualified with the term "agricultural" in order to clarify that only private agricultural lands of the public domain may be acquired and/or held by individuals, corporations, or associations.

This initial suggestion, albeit not pursued, clearly shows that the concept of public domain under the Constitution is indeed broader than the concept of public dominion under the Civil Code.

Hence, while lands of the public domain under the Constitution pertain to all lands owned or held by the State both in its public and private capacity, lands forming part of the public dominion under the Civil Code pertain only to those which are intended for public use, public service, or the development of national wealth, and excludes patrimonial property. Therefore, property of public dominion and patrimonial property, as defined by the Civil Code, both fall within the scope of public domain contemplated under the 1987 Constitution. Excepted from the scope of public domain are lands subject of a claim of ownership based on native title as explicitly recognized in *Cariño v. Insular Government*. [68]

Patrimonial property

As stated, the Civil Code classifies property into two (2) categories: (i) property of public dominion (that held by the State in its public capacity for public use, public service or the development of national wealth for the common and public welfare), [69] or (ii) patrimonial property (that held by the State in its private capacity to attain economic ends). [70]

Being private in nature, patrimonial property is subject to alienation and disposition in the same way as properties owned by private individuals, [71] and may thus be subject to prescription and be the object of ordinary contracts or agreements. [72] Examples of patrimonial property of the State include those acquired by the government in execution sales and tax sales, friar lands, mangrove lands and mangrove swamps. [73]

Article 420 suggests that at any given point in time, all property of the State may either be classified as property of public dominion or patrimonial property. The Republic recognizes this dichotomy inasmuch as it asserts that "[t]he classifications of land pertaining to the State under the Civil Code are mutually exclusive." [74]

In turn, patrimonial property of the State may be further classified into two sub-categories: (i) those which are not property of public dominion or imbued with public purpose based on the State's current or intended use, and may thus be classified as patrimonial property "by nature" pursuant to Article 421; and (ii) those which previously

assumed the nature of property of public dominion by virtue of the State's use, but which are no longer being used or intended for said purpose, and may thus be classified as "converted" patrimonial property pursuant to Article 422.

Thus, the proper interpretation of Article 422 in relation to Articles 420 and 421 is that "converted" patrimonial property can only come from property of public dominion under Article 420. Hence, "converted" patrimonial property should not be understood as a subset of patrimonial property "by nature" under Article 421.

There is no doubt that forest lands, timber lands, mineral lands, and national parks which are lands of the public domain under the Constitution fall under property of public dominion under Article 420(2) of the Civil Code, as do agricultural lands. It is also clear that land classified as agricultural and subject to the State's current or intended use remains property of public dominion. However, these agricultural lands, once declared as alienable and disposable, become "converted" patrimonial property of the State.[75]

In effect, the classification of agricultural land as alienable and disposable serves as unequivocal proof of the withdrawal by the State of the said land from the public dominion, and its "conversion" to patrimonial property. The clear intention of such conversion is to open the land to private acquisition or ownership. Again, as keenly observed by Justice Gaerlan, such converted patrimonial property remains within the broader constitutional concept of public domain precisely as alienable and disposable land of the public domain.[76]

To recall, property of public dominion is outside the commerce of man. Consequently, it can neither be appropriated nor be the subject of contracts; hence, they cannot be alienated or encumbered.[77] Property falling under Article 420 is outside the commerce of man precisely because it is property of public dominion. Conversely, those falling under Articles 421 and 422 are necessarily within the commerce of man, as they are not property of public dominion.

Clearly, any specific property of the State may either be outside or within the commerce of man; it cannot be both. Prior to the classification of such property to alienable and disposable, agricultural lands (being property of public dominion) are beyond the commerce of man. It is the classification of agricultural lands as alienable and disposable which places them within the commerce of man, and renders them capable of being the subject matter of contracts (such as a patent, the latter being a contract between the State and the grantee). In turn, the power to classify (and re-classify) land is vested solely in the Executive Department.[78] Once a parcel of land forming part of public dominion is classified as alienable and disposable, they become subject to private acquisition but only through the prescribed modes of acquisition of ownership.

Prescription as a mode of acquisition of real property

PD 1529 governs the registration of land under the Torrens System. Since PD 1529 merely prescribes the manner through which existing title (ownership) may be confirmed, registration thereunder presupposes that the ownership of the land subject of the application for registration had already been acquired through any one of the modes prescribed by law.

At the time when PRCI filed its application for registration, ordinary registration proceedings were governed by Section 14 of PD 1529, thus:

Section 14. Who may apply. — The following persons may file in the proper Court of First Instance an application for registration of title to land, whether personally or through their duly authorized representatives:

(1) Those who by themselves or through their predecessors-in-interest have been in open, continuous, exclusive and notorious possession and occupation of alienable and disposable lands of the public domain under a bona fide claim of ownership since June 12, 1945, or earlier.

(2) Those who have acquired ownership of private lands by prescription under the provision of existing laws.

(3) Those who have acquired ownership of private lands or abandoned river beds by right of accession or accretion under the existing laws.

(4) Those who have acquired ownership of land in any other manner provided for by law.

Where the land is owned in common, all the co-owners shall file the application jointly.

Where the land has been sold under pacto de retro, the vendor a retro may file an application for the original registration of the land, provided, however, that should the period for redemption expire during the pendency of the registration proceedings and ownership to the property consolidated in the vendee a retro, the latter shall be substituted for the applicant and may continue the proceedings.

A trustee on behalf of his principal may apply for original registration of any land held in trust by him, unless prohibited by the instrument creating the trust.

Notably, PRCI did not specify the statutory provision invoked as basis for its application for registration. Nevertheless, PRCI hinged its application on the allegation that it and its predecessors in interest have been in open, continuous, exclusive, and notorious possession of the Subject Property for more than fifty (50) years,[79] particularly since the year 1956, and not 1945 as prescribed by what was then Section 14(1). Thus, the inevitable conclusion which may be drawn from this is that PRCI's application for registration could only fall within the rubric of what was then Section 14(2) of PD 1529 which covered the registration of land acquired through prescription under existing laws.

The reference made by then Section 14(2) to "existing laws" necessarily includes the Civil Code — the statute which governs the acquisition of lands through prescription.[80] By prescription, ownership over real property may be acquired through the lapse of time in the manner and under the conditions laid down by law,[81] that is: (i) through uninterrupted possession in good faith and with just title for a period of ten (10) years for ordinary acquisitive prescription;[82] or (ii) through uninterrupted possession for thirty (30) years without need of just title or good faith for extraordinary acquisitive prescription.[83]

As to the requirements of possession, just title, and good faith, the Civil Code further provides:

ART. 1118. Possession has to be in the concept of an owner, public, peaceful and uninterrupted.

x x x x

Art. 1127. The good faith of the possessor consists in the reasonable belief that the person from whom he received the thing was the owner thereof, and could transmit his ownership.

x x x x

ART. 1129. For the purposes of prescription, there is just title when the adverse claimant came into possession of the property through one of the modes recognized by law for the acquisition of ownership or other real rights, but the grantor was not the owner or could not transmit any right.

The provisions governing prescription only permit the acquisition of private unregistered lands.[84] As previously noted, lands of private ownership may either be lands owned by private persons, or, pursuant to Article 425 of the Civil Code, patrimonial property of the State, provinces, cities, or municipalities, owned by them in their private

capacity.[85]

Thus, excepted from acquisitive prescription are real properties belonging to the State which are not patrimonial in character (that is, property of public dominion under Article 420 of the Civil Code), as they fall outside the commerce of man.[86]

In *Malabanan*, the Court laid down the requirements for original registration under what was then Section 14(2). Reconciling Section 14(2) with the Civil Code provisions governing prescription, the Court held:

x x x Section 14(2) explicitly refers to the principles on prescription under existing laws. Accordingly, we are impelled to apply the civil law concept of prescription, as set forth in the Civil Code, in our interpretation of Section 14(2) x x x

The critical qualification under Article 1113 of the Civil Code is thus: "[p]roperty of the State or any of its subdivisions not patrimonial in character shall not be the object of prescription." The identification [of] what consists of patrimonial property is provided by Articles 420 and 421, which we quote in full:

Art. 420. The following things are property of public dominion:

(1) Those intended for public use, such as roads, canals, rivers, torrents, ports and bridges constructed by the State, banks, shores, roadsteads, and others of similar character;

(2) Those which belong to the State, without being for public use, and are intended for some public service or for the development of the national wealth.

Art. 421. All other property of the State, which is not of the character stated in the preceding article, is patrimonial property.

It is clear that property of public dominion x x x cannot be the object of prescription or, indeed, be subject of the commerce of man. Lands of the public domain, whether declared alienable and disposable or not, are property of public dominion and thus insusceptible to acquisition by prescription.

x x x x

Nonetheless, Article 422 of the Civil Code states that "[p]roperty of public dominion, when no longer intended for public use or for public service, shall form part of the patrimonial property of the State." It is this provision that controls how public dominion property may be converted into patrimonial property susceptible to acquisition by prescription. After all, Article 420(2) makes clear that those property "which belong to the State, without being for public use, and are intended for some public service or for the development of the national wealth" are public dominion property. For as long as the property belongs to the State, although already classified as alienable or disposable, it remains property of the public dominion x x x when it is "intended for some public service or for the development of the national wealth."

Accordingly, there must be an express declaration by the State that the public dominion property is no longer intended for public service or the development of the national wealth or that the property has been converted into patrimonial. Without such express declaration, the property, even if classified as alienable or disposable, remains property of the public dominion, pursuant to Article 420(2), and thus incapable of acquisition by prescription. It is only when such alienable and disposable lands are expressly declared by the State to be no longer intended for public service or for the development of the national wealth that the period of acquisitive prescription can begin to run. Such declaration shall be in the form of a law duly enacted by Congress or a Presidential Proclamation in cases where the President is duly authorized by law.

It is comprehensible with ease that this reading of Section 14(2) of the Property Registration Decree limits its

scope and reach and thus affects the registrability even of lands already declared alienable and disposable to the detriment of the bona fide possessors or occupants claiming title to the lands. Yet this interpretation is in accord with the Regalian doctrine and its concomitant assumption that all lands owned by the State, although declared alienable or disposable, remain as such and ought to be used only by the Government.[87] (Emphasis omitted)

Based on the foregoing discussion in *Malabanan*, the requirements for original registration under then Section 14(2) were: (i) a declaration that the land subject of the application is alienable and disposable; (ii) an express government manifestation that said land constitutes patrimonial property, or is "no longer retained" by the State for public use, public service, or the development of national wealth; and (iii) proof of possession for the period and in the manner prescribed by the Civil Code for acquisitive prescription, reckoned from the moment the property subject of the application becomes patrimonial property of the State.

The second *Malabanan* requirement, that is, the express government manifestation that the land constitutes patrimonial property, was anchored on the premise that "all lands owned by the State, although declared alienable or disposable, remain as [property of public dominion] and ought to be used only by the Government." [88] However, this premise was not meant to be adopted in absolute terms.

Once property of public dominion is classified by the State as alienable and disposable land of the public domain, it immediately becomes open to private acquisition, since "[a]lienable lands of the public domain x x x [form] part of the patrimonial [property] of the State." [89] The operative act which converts property of public dominion to patrimonial property is its classification as alienable and disposable land of the public domain, as this classification precisely serves as the manifestation of the State's lack of intent to retain the same for some public use or purpose.

To emphasize, all lands not otherwise appearing to be clearly within private ownership are generally presumed to be part of the public domain pursuant to the Regalian doctrine.[90]

Consequently, those who seek registration on the basis of title over land forming part of the public domain must overcome the presumption of State ownership.[91] To do so, the applicant must establish that the land subject of the application is alienable or disposable and thus susceptible of acquisition and subsequent registration.[92] However, once the presumption of State ownership is discharged by the applicant, the burden to refute the applicant's claim that the land in question is patrimonial in nature necessarily falls on the State. For while the burden to prove that the land subject of the application is alienable and disposable is placed on the applicant, the burden to prove that such land is retained for public service or for the development of the national wealth, notwithstanding its previous classification as alienable and disposable, rests, as it should, with the State.

Where the property subject of the application had not been utilized by the State, and the latter had not manifested any intention to utilize the same, proof of conversion into patrimonial property requires the establishment of a negative fact — the lack of intent on the part of the State to retain the property and utilize the same for some public purpose. In such situations, what precludes the conversion of property of public dominion to patrimonial property is an existing intention to use the same for public purpose, and not one that is merely forthcoming. This is clear from the language of Article 420 of the Civil Code:

ART. 420. The following things are property of public dominion:

x x x x

(2) Those which belong to the State, without being for public use, and are intended for some public service or for the development of the national wealth. (Emphasis and underscoring supplied)

In other words, placing on the applicant the burden to prove the State's lack of intent to retain the property would

be unreasonable, and totally beyond the text and purpose of PD 1529. Further, this renders illusory the legal provisions in the Civil Code for the acquisition of property. After all, it is the State which has the capacity to prove its own intent to use such property for some public purpose in the absence of any overt manifestation thereof through prior use, occupation, or express declaration.

Jurisprudence instructs that when the plaintiff's case depends upon the establishment of a negative fact, and the means of proving the fact are equally within the control of each party, the burden of proof is placed upon the party averring the negative fact.[93] Conversely, if the means to prove the negative fact rests easily, if not only, upon the defendant, the plaintiff should not be made to bear the burden of proving it.

In cases where land held by the State has not been previously utilized for some public purpose, the State has no prior use to abandon or withdraw the land from. It would therefore be unreasonable to require the applicant to present a law or executive proclamation expressing such abandonment for there never will be one. The imposition of this additional requirement in cases where the land so possessed had never been utilized by the State has dire consequences for those who have occupied and cultivated the land in the concept of owners for periods beyond what is required by law.

However, and to be clear, where the property subject of the application had been previously utilized by the State for some public purpose, proof of conversion requires the establishment of a positive fact — the abandonment by the State of its use and the consequent withdrawal of the property from the public dominion. To establish this positive fact, it becomes incumbent upon the applicant to present an express government manifestation that the land subject of his application already constitutes patrimonial property, or is no longer retained for some public purpose. It is within this context that the second requirement espoused in *Malabanan* was crafted. This second requirement covered "converted" patrimonial property of the State, or those falling within the scope of Article 422 of the Civil Code.

The early case of *Cebu Oxygen & Acetylene Co., Inc. v. Bercilles*[94] (*Cebu Oxygen*) already established this interpretation of Article 422 of the Civil Code. In *Cebu Oxygen*, the applicant therein sought the registration of a parcel of land previously used by the local government as a public road. The Court held that the registration of the property should be permitted since the petitioner therein had been able to prove that the parcel of land had been explicitly withdrawn from public use by virtue of a city resolution authorizing its sale in a public bidding.

The fact that explicit withdrawal from public use finds relevance only with respect to "converted" patrimonial property under Article 422 (i.e., property subject to prior state-use) was further emphasized in *Laurel v. Garcia*[95] (*Laurel*), which involved consolidated petitions for prohibition to enjoin government officials from selling a 3,179-square meter property in *Roponggi, Tokyo* which had been acquired by the State through the *Reparations Agreement* executed between the Philippines and Japan in 1956. The *Roponggi* property initially served as the site of the Philippine embassy before it was relocated to *Nampeidai, Tokyo* when the embassy building had to undergo major repairs.

In *Laurel*, the Court held that the *Roponggi* property assumes the nature of property of public dominion under Article 420(2) of the Civil Code (i.e., intended for some public service or the development of national wealth). Noting that the *Roponggi* property had been subject of prior state-use, the Court held that its conversion from property of public dominion under Article 420(2) to patrimonial property under Article 422 must be explicit. The Court ruled:

The *Roponggi* property is correctly classified under paragraph 2 of Article 420 of the Civil Code as property belonging to the State and intended for some public service.

Has the intention of the government regarding the use of the property been changed because the lot has been

idle for some years? Has it become patrimonial?

The fact that the Roppongi site has not been used for a long time for actual Embassy service does not automatically convert it to patrimonial property. Any such conversion happens only if the property is withdrawn from public use. A property continues to be part of the public [dominion], not available for private appropriation or ownership "until there is a formal declaration on the part of the government to withdraw it from being such["] x x x.

The respondents enumerate various pronouncements by concerned public officials insinuating a change of intention. We emphasize, however, that an abandonment of the intention to use the Roppongi property for public service and to make it patrimonial property under Article 422 of the Civil Code must be definite. Abandonment cannot be inferred from the non-use alone specially if the non-use was attributable not to the government's own deliberate and indubitable will but to a lack of financial support to repair and improve the property x x x. Abandonment must be a certain and positive act based on correct legal premises.[96] (Emphasis supplied; italics in the original)

From these referenced cases, it becomes clear that the need for an express government manifestation confirming that the property in question is "no longer retained" by the State for public use, public service, or the development of national wealth, stems from the principle that abandonment of property of public dominion under Article 420 cannot be inferred solely from non-use. In turn, the determination of whether property has in fact been abandoned by the State is necessary only in cases where there has been prior state-use. To repeat, there is no abandonment to speak of in the absence of prior state-use.

The application of the second Malabanan requirement[97] in cases where there has been no prior state-use, in addition to the requirement of proof that the property in question had been declared alienable and disposable, is thus improper.

Amendments introduced by RA 11573

In a serendipitous turn of events, RA 11573 took effect on September 1, 2021, days after the Court directed the parties to file their respective memoranda. RA 11573 was passed with the intention of improving the confirmation process for imperfect land titles.[98]

Among the changes introduced by RA 11573 is the amendment of Section 14 of PD 1529, thus:

SEC. 6. Section 14 of [PD 1529] is hereby amended to read as follows:

"SECTION 14. Who may apply. — The following persons may file at any time, in the proper Regional Trial Court in the province where the land is located, an application for registration of title to land, not exceeding twelve (12) hectares, whether personally or through their duly authorized representatives:

"(1) Those who by themselves or through their predecessors-in-interest have been in open, continuous, exclusive and notorious possession and occupation of alienable and disposable lands of the public domain not covered by existing certificates of title or patents under a bona fide claim of ownership for at least twenty (20) years immediately preceding the filing of the application for confirmation of title except when prevented by war or force majeure. They shall be conclusively presumed to have performed all the conditions essential to a Government grant and shall be entitled to a certificate of title under this section.

"(2) Those who have acquired ownership of private lands or abandoned riverbeds by right of accession or accretion under the provisions of existing laws.

"(3) Those who have acquired ownership of land in any other manner provided for by law.

"Where the land is owned in common, all the co--owners shall file the application jointly.

"Where the land has been sold under pacto de retro, the vendor a retro may file an application for the original registration of the land: Provided, however, That should the period for redemption expire during the pendency of the registration proceedings and ownership to the property consolidated in the vendee a retro, the latter shall be substituted for the applicant and may continue the proceedings.

"A trustee on behalf of the principal may apply for original registration of any land held in trust by the trustee, unless prohibited by the instrument creating the trust."

Notably, Section 6 of RA 11573 shortens the period of possession required under the old Section 14(1). Instead of requiring applicants to establish their possession from "June 12, 1945, or earlier", the new Section 14(1) only requires proof of possession "at least twenty (20) years immediately preceding the filing of the application for confirmation of title except when prevented by war or force majeure."

Equally notable is the final proviso of the new Section 14(1) which expressly states that upon proof of possession of alienable and disposable lands of the public domain for the period and in the manner required under said provision, the applicant/s "shall be conclusively presumed to have performed all the conditions essential to a Government grant and shall be entitled to a certificate of title under this section." This final proviso unequivocally confirms that the classification of land as alienable and disposable immediately places it within the commerce of man, and renders it susceptible to private acquisition through adverse possession.

The final proviso thus clarifies that for purposes of confirmation of title under PD 1529, no further "express government manifestation that said land constitutes patrimonial property, or is 'no longer retained' by the State for public use, public service, or the development of national wealth" shall henceforth be required. This harmonizes the language of PD 1529 with the body of principles governing property of public dominion and patrimonial property in the Civil Code. Through the final proviso, any confusion which may have resulted from the wholesale adoption of the second Malabanan requirement has been addressed.

In line with the shortened period of possession under the new Section 14(1), the old Section 14(2) referring to confirmation of title of land acquired through prescription has been deleted. The rationale behind this deletion is not difficult to discern. The shortened twenty (20)-year period under the new Section 14(1) grants possessors the right to seek registration without having to comply with the longer period of thirty (30) years possession required for acquisitive prescription under the Civil Code. It is but logical for those who have been in adverse possession of alienable and disposable land for at least twenty (20) years to resort to the immediate filing of an application for registration on the basis of the new Section 14(1) without waiting for prescription to set in years later.

In addition to the amendments discussed, RA 11573 also prescribes the nature of proof sufficient to establish the status of land as alienable and disposable, hence:

SEC. 7. Proof that the Land is Alienable and Disposable. — For purposes of judicial confirmation of imperfect titles filed under [PD 1529], a duly signed certification by a duly designated DENR geodetic engineer that the land is part of alienable and disposable agricultural lands of the public domain is sufficient proof that the land is alienable. Said certification shall be imprinted in the approved survey plan submitted by the applicant in the land registration court. The imprinted certification in the plan shall contain a sworn statement by the geodetic engineer that the land is within the alienable and disposable lands of the public domain and shall state the applicable Forestry Administrative Order, DENR Administrative Order, Executive Order, Proclamations and the Land Classification Project Map Number covering the subject land.

Should there be no available copy of the Forestry Administrative Order, Executive Order or Proclamation, it is sufficient that the Land Classification (LC) Map Number, Project Number, and date of release indicated in the land classification map be stated in the sworn statement declaring that said land classification map is existing in the inventory of LC Map records of the National Mapping and Resource Information Authority (NAMRIA)

and is being used by the DENR as land classification map.

In effect, Section 7 supersedes the requirements[99] in T.A.N. Properties and Hanover.

Hence, at present, the presentation of the approved survey plan bearing a certification signed by a duly designated DENR geodetic engineer stating that the land subject of the application for registration forms part of the alienable and disposable agricultural land of the public domain shall be sufficient proof of its classification as such, provided that the certification bears references to: (i) the relevant issuance (e.g., Forestry Administrative Order, DENR Administrative Order, Executive Order, or Proclamation); and (ii) the LC Map number covering the subject land.

In the absence of a copy of the relevant issuance classifying the subject land as alienable and disposable, the certification of the DENR geodetic engineer must state: (i) the LC Map number; (ii) the Project Number; and (iii) the date of release indicated in the LC Map; and (iv) the fact that the LC Map forms part of the records of the National Mapping and Resource Information Authority (NAMRIA) and is therefore being used by DENR as such.

In addition, the DENR geodetic engineer must be presented as witness for proper authentication of the certification so presented. The Court's ruling in *Republic v. Galeno*[100] lends guidance:

In *Republic v. Medida*, the Court held that certifications of the Regional Technical Director, DENR cannot be considered prima facie evidence of the facts stated therein, holding that:

Public documents are defined under Section 19, Rule 132 of the Revised Rules on Evidence as follows:

(a) The written official acts, or records of the official acts of the sovereign authority, official bodies and tribunals, and public officers, whether of the Philippines, or of a foreign country;

(b) Documents acknowledged before a notary public except last wills and testaments; and

(c) Public records, kept in the Philippines, of private documents required by law to be entered therein.

Applying Section 24 of Rule 132, the record of public documents referred to in Section 19(a), when admissible for any purpose, may be evidenced by an official publication thereof or by a copy attested by the officer having legal custody of the record, or by his deputy x x x.

Section 23, Rule 132 of the Revised Rules on Evidence provides:

"Sec. 23. Public documents as evidence.—Documents consisting of entries in public records made in the performance of a duty by a public officer are prima facie evidence of the facts stated therein. All other public documents are evidence, even against a third person, of the fact which gave rise to their execution and of the date of the latter."

The CENRO and Regional Technical Director, FMS-DENR, certifications [do] not fall within the class of public documents contemplated in the first sentence of Section 23 of Rule 132. The certifications do not reflect "entries in public records made in the performance of a duty by a public officer," such as entries made by the Civil Registrar in the books of registries, or by a ship captain in the ship's logbook. The certifications are not the certified copies or authenticated reproductions of original official records in the legal custody of a government office. The certifications are not even records of public documents. x x x

As such, sans the testimonies of Acevedo, Caballero, and the other public officers who issued respondent's documentary evidence to confirm the veracity of its contents, the same are bereft of probative value and cannot, by their mere issuance, prove the facts stated therein. At best, they may be considered only as prima facie evidence of their due execution and date of issuance but do not constitute prima facie evidence of the facts stated therein.[101] (Emphasis supplied)

Like certifications issued by the CENROs, Regional Technical Directors, and other authorized officials of the DENR with respect to land classification status, certifications of similar import issued by DENR geodetic engineers do not fall within the class of public documents contemplated under Rule 132 of the Rules of Court. Accordingly, their authentication in accordance with said rule is necessary.

Retroactive application of RA 11573

As stated, RA 11573 took effect on September 1, 2021, or fifteen (15) days after its publication on August 16, 2021.[102] Notably, RA 11573 does not expressly provide for its retroactive application.

As a general rule, laws shall have no retroactive effect, unless the contrary is provided.[103] However, this rule is subject to certain recognized exceptions, as when the statute in question is curative in nature, or creates new rights, thus:

As a general rule, laws have no retroactive effect. But there are certain recognized exceptions, such as when they are remedial or procedural in nature. This Court explained this exception in the following language:

"It is true that under the Civil Code of the Philippines, '(l)aws shall have no retroactive effect, unless the contrary is provided.' But there are settled exceptions to this general rule; such as when the statute is CURATIVE or REMEDIAL in nature or when it CREATES NEW RIGHTS." [104] (Italics omitted)

In *Frivaldo v. Commission on Elections*,[105] the Court shed light on the nature of statutes that may be deemed curative and may therefore be applied retroactively notwithstanding the absence of an express provision to this effect:

According to Tolentino, curative statutes are those which undertake to cure errors and irregularities, thereby validating judicial or administrative proceedings, acts of public officers, or private deeds and contracts which otherwise would not produce their intended consequences by reason of some statutory disability or failure to comply with some technical requirement. They operate on conditions already existing, and are necessarily retroactive in operation. Agpalo, on the other hand, says that curative statutes are "healing acts x x x curing defects and adding to the means of enforcing existing obligations x x x (and) are intended to supply defects, abridge superfluities in existing laws, and curb certain evils. x x x By their very nature, curative statutes are retroactive x x x (and) reach back to past events to correct errors or irregularities and to render valid and effective attempted acts which would be otherwise ineffective for the purpose the parties intended." [106] (Emphasis and underscoring supplied; italics omitted)

In *Nunga, Jr. v. Nunga III*,[107] the Court further clarified that while a law creating new rights may be given retroactive effect, this can only be done if the new right does not prejudice or impair any vested rights.

On this basis, the Court finds that RA 11573, particularly Section 6 (amending Section 14 of PD 1529) and Section 7 (prescribing the required proof of land classification status), may operate retroactively to cover applications for land registration pending as of September 1, 2021, or the date when RA 11573 took effect.

To be sure, the curative nature of RA 11573 can easily be discerned from its declared purpose, that is, "to simplify, update and harmonize similar and related provisions of land laws in order to simplify and remove ambiguity in its interpretation and implementation." [108] Moreover, by shortening the period of adverse possession required for confirmation of title to twenty (20) years prior to filing (as opposed to possession since June 12, 1945 or earlier), the amendment implemented through Section 6 of RA 11573 effectively created a new right in favor of those who have been in possession of alienable and disposable land for the shortened period provided. The retroactive application of this shortened period does not impair vested rights, as RA 11573 simply operates to confirm the title of applicants whose ownership already existed prior to its enactment.

Here, PRCI presented the following evidence to prove the fact of possession: (i) the testimony of Esperanza

detailing the manner through which the Subject Property had been transferred from Manuel to PRCI; (ii) the testimony of Bernarda Lu, a neighbor of the Dee Ham family, confirming that Manuel, and, thereafter, PRCI, had openly and exclusively occupied the Subject Property, and had built significant improvements thereon including a warehouse presently used by PRCI in the conduct of its business; (iii) the original land survey plan in Manuel's name, duly approved by the Bureau of Lands on December 22, 1958; and (iv) tax receipts and declarations in the name of PRCI's predecessors in interest, which date back to 1956.[109]

PRCI's application stood unopposed before the RTC. As explained, the Republic did not present any controverting evidence to impugn the veracity of PRCI's claims as to the nature and period of its possession over the Subject Property. Instead, the Republic's subsequent appeal primarily raised PRCI's alleged failure to establish the Subject Property's classification as alienable and disposable agricultural land of the public domain.

In effect, PRCI's assertions anent possession stand uncontroverted, and thus establish that PRCI, through its predecessors in interest, had been in open, continuous, and exclusive possession of the Subject Property in the concept of owner since 1956, or for a period of over fifty-four (54) years prior to the filing of its application for registration. This period amounts to more than three (3) decades beyond the twenty (20)-year period required under the new Section 14(1).

On the other hand, PRCI presented the following evidence to prove that the Subject Property forms part of the alienable and disposable agricultural land of the public domain: (i) the 2011 Certification issued by the Regional Technical Director of the Forest Management Bureau of the DENR attesting to such fact;[110] and (ii) the 2013 Certification subsequently issued by the DENR RED-NCR affirming and validating the statements in the 2011 Certification.[111] Evidently, these certifications are not acceptable proof of the required land classification status under the new parameters set by RA 11573.

Nevertheless, in the interest of substantial justice, bearing in mind the curative nature of RA 11573, and recognizing the long period of possession by PRCI, the Court deems it proper to remand the case to the CA for reception of evidence on the Subject Property's land classification status in accordance with Section 7 of RA 11573. Thereafter, the CA is directed to resolve PRCI's application for land registration with utmost dispatch following the guidelines set forth in this Decision.

Thus, to aid the bench and the bar, the Court lays down the following guidelines on the application of RA 11573:

- RA 11573 shall apply retroactively to all applications for judicial confirmation of title which remain pending as of September 1, 2021, or the date when RA 11573 took effect. These include all applications pending resolution at the first instance before all Regional Trial Courts, and applications pending appeal before the Court of Appeals.
- Applications for judicial confirmation of title filed on the basis of the old Section 14(1) and 14(2) of PD 1529 and which remain pending before the Regional Trial Court or Court of Appeals as of September 1, 2021 shall be resolved following the period and manner of possession required under the new Section 14(1). Thus, beginning September 1, 2021, proof of "open, continuous, exclusive and notorious possession and occupation of alienable and disposable lands of the public domain not covered by existing certificates of title or patents under a bona fide claim of ownership for at least twenty (20) years immediately preceding the filing of the application for confirmation" shall be sufficient for purposes of judicial confirmation of title, and shall entitle the applicant to a decree of registration.
- In the interest of substantial justice, the Regional Trial Courts and Court of Appeals are hereby directed, upon proper motion or *motu proprio*, to permit the presentation of additional evidence on land classification status based on the parameters set forth in Section 7 of RA 11573.

- Such additional evidence shall consist of a certification issued by the DENR geodetic engineer which (i) states that the land subject of the application for registration has been classified as alienable and disposable land of the public domain; (ii) bears reference to the applicable Forestry Administrative Order, DENR Administrative Order, Executive Order, or proclamation classifying the land as such; and (iii) indicates the number of the LC Map covering the land.
- In the absence of a copy of the relevant issuance classifying the land as alienable and disposable, the certification must additionally state (i) the release date of the LC Map; and (ii) the Project Number. Further, the certification must confirm that the LC Map forms part of the records of NAMRIA and is precisely being used by the DENR as a land classification map.
- The DENR geodetic engineer must be presented as witness for proper authentication of the certification in accordance with the Rules of Court.

Final Note

The underlying philosophy of making public land available to Filipino citizens is sewn into the foundations of the Constitution; it is reflected in the exclusive reservation of land ownership to Filipinos,[112] and is echoed in the State's mandate to promote agrarian and urban land reform through the just distribution of all agricultural lands,[113] and the establishment of urban centers and resettlement areas for the homeless.[114] Through the imposition of retention limits,[115] the provision of incentives for voluntary land-sharing, and the directive to respect the rights of small land and property owners, the Constitution further institutionalizes the policy of making land ownership accessible to each individual Filipino.

In line with this, PD 1529 provides for the judicial confirmation of imperfect title to land so as to bring the latter within the coverage of the Torrens system. The protection afforded by the Torrens system provides the necessary security to encourage land owners to make the investments needed to make productive use of their landholdings. Through this process, the law functions to aid land owners in becoming productive members of society in a manner that is consistent with the principles enshrined in the Constitution.

With the passage of RA 11573, any doubt which may have plagued the requirements for confirmation of title under Section 14 of PD 1529 have been clarified, with the expressed view of removing any ambiguity in its interpretation, and further streamlining the registration process.[116]

To this end, the Court stresses that the issues involved in a land registration proceeding rest heavily on factual considerations, as they require the determination of land classification status and the nature of actual physical possession over the property subject of the action. These factual considerations are, in turn, established not only through written documentation, but also through proof of prior acts which serve as assertions of ownership, not only of the applicant but also, of the State. Accordingly, the State's participation in land registration proceedings is imperative, not only at the appeal level, but more so, at the first instance before the trial courts. Since trial courts are "in a more advantageous position to examine x x x evidence, [and] observe the demeanor of the witnesses x x x testifying in the case,"[117] they play a unique and essential role in the fact-finding process. The State's participation in the trial court proceedings enables the parties to thresh out evidentiary issues which would not otherwise be addressed at the appeal level. Consequently, the State's belated participation at the appeal level hampers prompt and equitable resolution, and leads to protracted litigation, as in this case.

For this reason, the immediate participation and heightened vigilance of the OSG at the trial court level is strongly enjoined, the latter having been vested with the sole authority to represent the State in all land registration and related proceedings.[118]

WHEREFORE, premises considered, the petition for review on certiorari filed by the Republic of the Philippines is DENIED in part.

The February 25, 2014 Decision and June 27, 2014 Resolution respectively rendered by the Court of Appeals First Division and Special First Division in CA-G.R. CV. No. 98531 are AFFIRMED insofar as it holds that Pasig Rizal Co., Inc., by itself and through its predecessors in interest, has been in open, continuous, exclusive, and notorious possession and occupation of the Subject Property since 1956.

The case is REMANDED to the Court of Appeals for reception of evidence on the Subject Property's land classification status based on the parameters set forth in Section 7 of Republic Act No. 11573. Thereafter, the Court of Appeals is directed to resolve the present case in accordance with this Decision with due and deliberate dispatch.

SO ORDERED.

Gesmundo, C.J., Perlas-Bernabe, Hernando, Lazaro-Javier, Inting, Zalameda, M. Lopez, Rosario, J. Lopez, Dimaampao, and Marquez, JJ., concur.

Leonen, J., See separate concurring opinion.

Gaerlan, J., See separate concurring opinion.

[*] Also appears as "Pasig Rizal Lumber Company, Inc." in some parts of the rollo.

[1] Rollo, pp. 10-26, excluding Annexes.

[2] Id. at 28-38. Penned by Associate Justice Manuel M. Barrios, with Presiding Justice Andres B. Reyes, Jr. (a retired Member of this Court) and Associate Justice Normandie B. Pizarro concurring.

[3] Id. at 50-52. Penned by Associate Justice Manuel M. Barrios, with Presiding Justice Andres B. Reyes, Jr. (a retired Member of this Court) and Associate Justice Pedro B. Corales concurring.

[4] Id. at 60-63. Penned by Judge Rolando G. Mislang.

[5] Id. at 63.

[6] Id. at 29.

[7] Id.

[8] Id. The exact date of the conveyance in favor of PRCI cannot be ascertained from the records.

[9] Id.

[10] Id.

[11] Id. at 30.

[12] Id.

[13] Id.

[14] Id. Notice of initial hearing was sent to the Land Registration Authority, the Office of the Solicitor General, the Land Management Bureau, the Department of Environment and Natural Resources, the City Engineer of Pasig City, the Office of the Pasig City Prosecutor, and the owners of the properties adjoining the Subject Property, id. at 61.

[15] Id. at 61.

[16] Id.

[17] Id. at 30.

[18] Supra note 4.

[19] Id. at 63.

[20] Id.

[21] Id. at 62-63.

[22] See id. at 14.

[23] Id. at 37.

[24] Id. at 33.

[25] Also "Forest Management Service" in some parts of the rollo.

[26] Rollo, p. 33.

[27] Id. at 34.

[28] Id.

[29] See id. at 35.

[30] A land classification map shows the classification of lands of the public domain based on the land classification system undertaken by the then Department of Agriculture and Natural Resources through the Bureau of Forestry, the Ministry of Natural Resources through the Bureau of Forest Development, and the DENR. A land classification map results from a delimitation survey conducted by the National Mapping and Resource Information Authority (NAMRIA) to establish the permanent forest land and protected area boundaries through actual ground survey. See the GUIDELINES FOR THE ASSESSMENT AND DELINEATION OF BOUNDARIES BETWEEN FORESTLANDS, NATIONAL PARKS AND AGRICULTURAL LANDS, DENR Administrative Order No. 2008-24, December 8, 2008 and REVISED REGULATIONS ON LAND SURVEYS, DENR Administrative Order No. 2007-29, July 31, 2007.

[31] Rollo, pp. 33-34.

[32] Id. at 36.

[33] See id. PD 1529 is entitled "AMENDING AND CODIFYING THE LAWS RELATIVE TO REGISTRATION OF PROPERTY AND FOR OTHER PURPOSES," otherwise known as the "PROPERTY REGISTRATION DECREE," approved on June 11, 1978.

[34] Id. at 36-37.

[35] Id. at 39-45.

[36] Id. at 50-52.

[37] Id. at 3.

[38] Id. at 3-8.

[39] Id. at 67-69. Denominated as "Comment and/or Opposition (To the Petition for Review on Certiorari under Rule 45 of the Rules of Court filed by the Petitioner)."

[40] Filed on April 30, 2015, id. at 89-99.

[41] Id. at 103-108.

[42] Id. at 121-122.

[43] Id. at 126-141.

[44] Id. at 126.

[45] G.R. No. 179987, April 29, 2009, 587 SCRA 172.

[46] G.R. No. 189859, October 18, 2010, 633 SCRA 383.

[47] Id. at 134-137.

[48] Id. at 143-176.

[49] Id. at 153-154.

[50] Id. at 154.

[51] Id. at 155-156.

[52] G.R. No. 154953, June 26, 2008, 555 SCRA 477.

[53] G.R. No. 172102, July 2, 2010, 622 SCRA 730.

[54] Rollo, p. 171-172.

[55] Id. at 173.

[56] AN ACT IMPROVING THE CONFIRMATION PROCESS FOR IMPERFECT LAND TITLES, AMENDING FOR THE PURPOSE COMMONWEALTH ACT No. 141, AS AMENDED, OTHERWISE KNOWN AS "THE PUBLIC LAND ACT," AND PRESIDENTIAL DECREE No. 1529, AS AMENDED, OTHERWISE KNOWN AS THE "PROPERTY REGISTRATION DECREE", July 16, 2021.

[57] Rollo, pp. 61-62.

[58] Republic v. Espinosa, G.R. No. 186603, April 5, 2017, 822 SCRA 317, 332, citing SAAD Agro--Industries, Inc. v. Republic, G.R. No. 152570, September 27, 2006, 503 SCRA 522, 535.

[59] Secretary of the Department of Environment and Natural Resources v. Yap, G.R. Nos. 167707 & 173775, 568 SCRA 164, 184-185.

[60] G.R. No. 247866, September 15, 2020.

[61] Id. at 6-8.

[62] See generally J. Bellosillo, Separate Concurring and Dissenting Opinion in Chavez v. Public Estates Authority, G.R. No. 133250, May 6, 2003, 403 SCRA 1, 34-52.

[63] Heirs of Mario Malabanan v. Republic, G.R. No. 179987, September 3, 2013, 704 SCRA 561.

[64] Id. at 574-577.

[65] Now Section 7, Article XII, which states "[s]ave in cases of hereditary succession, no private lands shall be transferred or conveyed except to individuals, corporations, or associations qualified to acquire or hold lands of the public domain."

[66] 3 RECORD OF THE CONSTITUTIONAL COMMISSION, No. 63, August 22, 1986, p. 597.

[67] Supra note 65.

[68] 212 U.S. 449 (1909).

[69] See 2 Arturo M. Tolentino, COMMENTARIES AND JURISPRUDENCE ON THE CIVIL CODE OF THE PHILIPPINES 30 (1992).

[70] Id. at 32. See also II Edgardo L. Paras, CIVIL CODE OF THE PHILIPPINES ANNOTATED 47 (10[th] ed. 1981).

[71] I Eduardo P. Caguioa, COMMENTS AND CASES ON CIVIL LAW 485 (1961).

[72] See CIVIL CODE, Art. 1113. See also I Eduardo P. Caguioa, id. and Ernesto L. Pineda, LAW ON PROPERTY 32-33 (2009).

[73] I Eduardo P. Caguioa, id. at 485-486, citing Jacinto v. Director of Lands, 49 Phil. 853 (1926) and Commonwealth v. Gungun, 70 Phil. 194 (1940).

[74] Rollo, p. 153.

[75] See Oswaldo D. Agcaoili, PROPERTY REGISTRATION DECREE AND RELATED LAWS (LAND TITLES AND DEEDS) 647 (2015). See also 2 Arturo M. Tolentino, supra note 69, at 38; J. Bellosillo, Separate Concurring and Dissenting Opinion in Chavez v. Public Estates Authority, supra note 62.

[76] J. Gaerlan, Concurring Opinion, pp. 22-23.

[77] See CIVIL CODE, Arts. 1347 and 1409.

[78] See Commonwealth Act No. 141, Sec. 6.

[79] Rollo, p. 137.

[80] See CIVIL CODE, Art. 712.

[81] See id., Arts. 1106 and 1113.

[82] See id., Art. 1134.

[83] See id., Art. 1137.

[84] Section 47 of PD 1529 states that "[n]o title to registered land in derogation of the title of the registered owner shall be acquired by prescription or adverse possession."

[85] Article 425 of the Civil Code provides:

ART. 425. Property of private ownership, besides the patrimonial property of the State, provinces, cities, and municipalities, consists of all property belonging to private persons, either individually or collectively.

[86] See CIVIL CODE, Art. 1113.

[87] Heirs of Mario Malabanan v. Republic, supra note 45, at 201-204.

[88] Id. at 204.

[89] Oswaldo D. Agcaoili, *supra* note 75. See also 2 Arturo M. Tolentino, *supra* note 69, at 38; J. Bellosillo, Separate Concurring and Dissenting Opinion in *Chavez v. Public Estates Authority*, *supra* note 62.

[90] Again, this general rule is subject to a single exception which excludes privately held lands based on native title from the mass of the public domain. See *Cariño v. Insular Government*, *supra* note 68 cited in *Federation of Coron, Busuanga, Palawan Farmer's Association, Inc. v. The Secretary of the Department of Environment and Natural Resources*, *supra* note 60, at 7.

[91] *Federation of Coron, Busuanga, Palawan Farmer's Association, Inc. v. The Secretary of the Department of Environment and Natural Resources*, *id.* at 16-17.

[92] Id. at 17.

[93] *O v. Javier*, G.R. No. 182485, July 3, 2009, 591 SCRA 656, 660-661.

[94] No. L-40474, August 29, 1975, 66 SCRA 481.

[95] G.R. Nos. 92013 & 92047, July 25, 1990, 187 SCRA 797.

[96] Id. at 808-809. Citations omitted.

[97] That is, an express government manifestation confirming that the property in question is "no longer retained" by the State for public use, public service, or the development of national wealth.

[98] See RA 11573, Sec. 1.

[99] In essence, *T.A.N. Properties and Hanover* held that in order to prove the status of land as alienable and disposable, applicants in land registration proceedings must present: (i) a certification issued by the CENRO or PENRO attesting to such fact; and (ii) a copy of the original classification approved by the DENR Secretary (in the form of an LC Map), coupled with an official publication of the latter's issuance declaring such land alienable and disposable. The *T.A.N. Properties and Hanover* requirements were affirmed by the Court in *Dumo v. Republic*, 832 Phil. 656 (2018). The majority Decision was subject to a Concurring and Dissenting Opinion espousing that the second requirement set forth in *T.A.N. Properties and Hanover* was premised on the CENRO's lack of authority to issue certified true copies of approved LC Maps, and the fact that the CENRO did not serve as the official repository of such certified true copies at such time. Following the issuance of DENR AO-2012-09, which delegated unto the CENRO, PENRO and the RED-NCR not only the authority to issue certifications on land classification status, but also certified true copies of approved land classification maps, said opinion further espoused that certifications of land classification status issued by the CENRO, PENRO and the RED-NCR should be deemed already sufficient for purposes of proving the alienable and disposable character of property subject of land registration proceedings, provided that these certifications expressly bear references to: (i) the LC map; and (ii) the document through which the original classification had been effected, such as a Bureau of Forest Development Administrative Order (BFDAO) issued and signed by the DENR Secretary.

[100] G.R. No. 215009, January 23, 2017, 815 SCRA 191.

[101] Id. at 196-198, citing *Republic v. Medida*, G.R. No. 195097, August 13, 2012, 678 SCRA 317, 328-329.

[102] RA 11573, Sec. 13.

[103] CIVIL CODE, Art. 4.

[104] *Zulueta v. Asia Brewery, Inc.*, G.R. No. 138137, March 8, 2001, 354 SCRA 100, 106, citing *Frivaldo v.*

Commission on Elections, G.R. Nos. 120295 & 123755, June 28, 1996, 257 SCRA 727, 754.

[105] Id.

[106] Id. at 754.

[107] G.R. No. 178306, December 18, 2008, 574 SCRA 760.

[108] RA 11573, Sec. 1.

[109] See rollo, pp. 30, 61-62.

[110] Id. at 33.

[111] Id. at 34.

[112] See 1987 CONSTITUTION, Art. III, Sec. 2.

[113] See id., Art. XIII, Sec. 4.

[114] See id., Art. XIII, Sec. 9.

[115] See id., Art. XII, Sec. 3.

[116] RA 11573, Sec. 1.

[117] *Dalion v. Court of Appeals*, G.R. No. 78903, February 28, 1990, 182 SCRA 872, 877.

[118] See *Heirs of Atty. Jose C. Reyes v. Republic*, G.R. No. 150862, August 3, 2006, 497 SCRA 520, 528, citing PD 478, *DEFINING THE POWERS AND FUNCTIONS OF THE OFFICE OF THE SOLICITOR GENERAL*, June 4, 1974, Sec. 1(e).

SEPARATE CONCURRING OPINION

LEONEN, J.:

While the ponencia has graciously included my observations on the regalian doctrine, allow me to express a few more points on this subject.

The regalian doctrine is a legal fiction devoid of clear constitutional mooring. Our Constitution does not support the presumption that all land is considered public by default because they were passed down from the Spanish Crown to the State. Article XII, Section 2 of the 1987 Constitution limits State ownership only to lands of the public domain:

SECTION 2. All lands of the public domain, waters, minerals, coal, petroleum, and other mineral oils, all forces of potential energy, fisheries, forests or timber, wildlife, flora and fauna, and other natural resources are owned by the State. With the exception of agricultural lands, all other natural resources shall not be alienated.
[Emphasis supplied]

This is consistent with the 1935^[1] and 1973^[2] Constitutions which also limited State dominion only over lands within the public domain.

The due process clause likewise protects all types of properties. Article III, Section 1 of the Constitution provides:

SECTION 1. No person shall be deprived of life, liberty, or property without due process of law, nor shall any person be denied the equal protection of the laws.

The due process clause does not confine its coverage to properties covered by paper titles, "[v]erily, there could be land, considered as property, where ownership has vested as a result of either possession or prescription, but still, as yet, undocumented." [3]

Furthermore, the regalian doctrine has no historical basis, as even Spain recognized private ownership of land outside of a royal decree, acknowledging that private land ownership can be obtained either through native custom or long-time possession. *Cariño v. Insular Government* [4] stated:

Prescription is mentioned again in the royal cedula of October 15, 1754, cited in 3 Philippine, 546; "Where such possessors shall not be able to produce title deeds, it shall be sufficient if they shall show that ancient possession, as a valid title by prescription." It may be that this means possession from before 1700; but, at all events, the principle is admitted. As prescription, even against Crown lands, was recognized by the laws of Spain we see no sufficient reason for hesitating to admit that it was recognized in the Philippines in regard to lands over which Spain had only a paper sovereignty. [5]

Associate Justice Oliver Wendell Holmes, Jr. in *Cariño* emphasized that land held under the concept of ownership prior to the Spanish invasion of our shores could not have been part of public land:

Whatever the law upon these points may be, and we mean to go no further than the necessities of decision demand, every presumption is and ought to be against the government in a case like the present. It might, perhaps, be proper and sufficient to say that when, as far back as testimony or memory goes, the land has been held by individuals under a claim of private ownership, it will be presumed to have been held in the same way from before the Spanish conquest, and never to have been public land. Certainly in a case like this, if there is doubt or ambiguity in the Spanish law, we ought to give the applicant the benefit of the doubt. [6] (Emphasis supplied)

Additionally, the regalian doctrine, a feudal theory introduced by the Spaniards, was not adopted during the American colonial period, and the respect of ownership by native custom was the rule in line with the American objective "to do justice to the natives, not to exploit their country for private gain." [7] Again, in *Cariño*:

It is true that Spain, in its earlier decrees, embodied the universal feudal theory that all lands were held from the Crown, and perhaps the general attitude of conquering nations toward people not recognized as entitled to the treatment accorded to those in the same zone of civilization with themselves. It is true, also, that, in legal theory, sovereignty is absolute, and that, as against foreign nations, the United States may assert, as Spain asserted, absolute power. But it does not follow that, as against the inhabitants of the Philippines, the United States asserts that Spain had such power. When theory is left on one side, sovereignty is a question of strength, and may vary in degree. How far a new sovereign shall insist upon the theoretical relation of the subjects to the head in the past, and how far it shall recognize actual facts, are matters for it to decide.

The Province of Benguet was inhabited by a tribe that the Solicitor-General, in his argument, characterized as a savage tribe that never was brought under the civil or military government of the Spanish Crown. It seems probable, if not certain, that the Spanish officials would not have granted to anyone in that province the registration to which formerly the plaintiff was entitled by the Spanish laws, and which would have made his title beyond question good. Whatever may have been the technical position of Spain it does not follow that, in the view of the United States, [it] had lost all rights and was a mere trespasser when the present government seized [the] land. The argument to that effect seems to amount to a denial of native titles throughout an important part of the Island of Luzon, at least, for the want of ceremonies which the Spaniards would not have permitted and had not the power to enforce. [8] (Emphasis supplied)

Hence, the State's "underlying title to all the lands in the country ... is burdened by the pre-existing legal rights of [indigenous people] who had occupied and used the land prior to [the] birth of the State." [9]

Nonetheless, the right to a native title should not be limited to the members of indigenous cultural communities, as all Filipinos were once natives before we were repeatedly colonized. It bears stressing that Cariño did not limit its application to indigenous people, yet it is often misinterpreted to apply only to lands possessed by members of indigenous cultural communities.[10] Cariño is not only confined to ancestral land rights but should also equally apply to all people who have possessed land in the concept of owner since time immemorial.[11]

It is indisputable that we are all natives when it comes to ancestral properties.[12] The distinction between "Christians" and "non-Christians" or "civilized" and "uncivilized" was a political device utilized in furtherance of the colonization process. The "willing" natives were herded into reducciones or pueblos to "improve their living conditions" and "civilize those backward races[.]"[13] Thus, natives who converted into Christianity and accepted Spanish rule were deemed "civilized," while those who resisted colonization were labeled as "uncivilized." This dichotomy was later embraced by the Americans who lumped the uncolonized groups into the generic term of "non-Christian tribes":

At the end of the Spanish era an estimated ten to twenty percent of the native population continued to live outside the colonial pale. Most either belonged to Islamicized communities in the southern parts of the colony or lived among the upland interiors of the major islands. The U.S. Regime generically labeled these peoples as "non-Christian tribes." An official Christian/non-Christian dichotomy ensued and was reified in the minds of the colonial elites. The dichotomy ignored the indigenous cultural traits that endured among the Hispanized, the varied degrees of Hispanization among ostensible Christians, and the cultural variations among those labeled non-Christian.

One of the greatest, and largely unrecognized, ironies of the Taft era was the tendency to overlook the wide spectrum of westernized acculturation among the Philippine masses, as well as the enduring indigenous influences in their lives. As a result, the much disdained Hispanized peasantry was lumped together and indiscriminately labeled, along with Filipino elites, as 'civilized.' Worcester insisted that people from the three main Christian ethnic groups, i.e., the Tagalogs, Ilocanos, and Visayans, were culturally homogeneous and "to be treated as a class." [14]

The Spanish Government made it clear that the distribution of land rights and interests to Spaniards and their loyal subjects should not be at the expense of the "rights and interests of the natives in their holdings." [15] Yet while both Spain and America promoted policies that respected the natives' rights over their land, the reality was that our colonizers eventually triggered their legal disenfranchisement through subsequent laws.

Through the Royal Decree of October 15, 1754, the Spanish Government guaranteed the natives' rights over their lands, with justified long and continuous possession qualifying them for title to their cultivated land. Succeeding royal decrees also emphasized Spain's intention to respect natives and their landholdings.[16] However, the lack of awareness among the natives of Spanish laws due to "[t]he uneven Spanish impact, abused by colonial officials, the absence of effective notice, illiteracy, lack of money to pay for transportation fares and legal prerequisites, e.g., filing fees, attorney's fees, survey costs" [17] led to the failure of a large number of natives to have their lands registered under the Spanish Mortgage Law.

Even the remedial measure envisioned by the Maura Law, which was supposed to "insure to the natives, in the future, whenever it may be possible, the necessary land for cultivation, in accordance with traditional usages[.]" [18] was ultimately just a scheme to confiscate the natives' landholdings by imposing a deadline for registration. This is clear in Article 4 of the Maura Law, which provides:

The title to all agricultural lands which were capable of adjustment under the Royal Decree of 1880, but the adjustment of which has not been sought at the time of promulgation of this Decree . . . will revert to the State. Any claim to such lands by those who might have applied for adjustment of the same but have not done so at

the time of the above-mentioned date, will not avail themselves in any way or at any time.[19] (Emphasis supplied)

The Americans then used the failure to register under the Maura Law as a basis to deny recognition of ancestral property rights.[20]

The malicious imposition of the baseless dichotomy on natives has created widespread injustice not only on our indigenous communities but also to all Filipinos, as we were all natives before we were stamped by our colonizers with their convenient labels.

To bring justice to our people and to right our history, it is time that we reframe our invocation of the regalian doctrine and to stop viewing our lands as bounty bequeathed on us by our colonizers.

Accordingly, I vote to DENY IN PART the Petition for Review and to REMAND the case to the Court of Appeals for reception of evidence and for the Court of Appeals to thereafter RESOLVE the case with dispatch.

[1] 1935 CONST., art. XII, sec. 1.

[2] 1973 CONST., art. XIV, sec. 8.

[3] J. Leonen, Concurring and Dissenting Opinion in Heirs of Malabanan v. Republic of the Philippines, 717 Phil. 141, 206 (2013) [Per J. Bersamin, En Banc].

[4] 41 Phil. 935 (1909) [J. Holmes, United States Supreme Court] / 212 U.S., 449; 53 L. ed., 594.

[5] Cariño v. Insular Government, 41 Phil. 935, 942 (1909) [J. Holmes, United States Supreme Court].

[6] Id. at 941.

[7] Id. at 940.

[8] Id. at 939.

[9] Sama v. People of the Philippines, G.R. No. 224469, January 5, 2021, <<https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/67108>> [Per J. Lazaro-Javier, En Banc].

[10] J. Leonen, Concurring and Dissenting Opinion in Heirs of Malabanan v. Republic of the Philippines, 717 Phil. 141, 209 (2013) [Per J. Bersamin, En Banc].

[11] J. Leonen, Concurring Opinion in Federation of Coron, Busuanga, Palawan Farmer's Association, Inc. v. Secretary of the Department of Environment and Natural Resources, G.R. No. 247866 (Resolution), September 15, 2020, <<https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/66687>> [Per C.J. Gesmundo, En Banc].

[12] Id.

[13] Rubi v. Provincial Board of Mindoro, 39 Phil. 660, 674 (1919) [Per J. Malcolm, En Banc].

[14] 1 OWEN JAMES LYNCH, JR., COLONIAL LEGACIES IN A FRAGILE REPUBLIC: PHILIPPINE LAND LAW AND STATE FORMATION 243-244 (1st ed., 2011).

[15] J. Leonen, Concurring Opinion in Sama v. People of the Philippines, G.R. No. 224469, January 5, 2021, <<https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/67108>> [Per J. Lazaro-Javier, En Banc], citing Owen James Lynch, Jr., Native Title, Private Right and Tribal Land Law: An Introductory Survey, 57 Phil. L. J. 268, 274 (1982).

[16] Id.

[17] Owen James Lynch, Jr., Land Rights, Land Laws and Land Usurpation: The Spanish Sea (1565-1898), 63 Phil. L. J. 82, 107 (1988).

[18] Owen James Lynch, Jr., Native Title, Private Right and Tribal Land Law: An Introductory Survey, 57 Phil. L. J. 268, 275 (1982).

[19] As cited in John Jerico Laudet Balisnomo, Ancestral Domain Ownership and Disposition: Whose Land, Which Lands, 42 ATENEO L. J. 159, 174 (1997).

[20] J. Leonen, Concurring Opinion in Sama v. People of the Philippines, G.R. No. 224469, January 5, 2021, <<https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/67108>> [Per J. Lazaro-Javier, En Banc].

SEPARATE CONCURRING OPINION

GAERLAN, J.:

"There is no running away from history. It shapes our reality, and as time goes by, we become a part of it ourselves..."[1]

I concur in the ponencia. I submit this opinion to provide a fuller discussion of the constitutional concept of public domain, its relation to the civil law concept of public dominion, and the implications of the legal act of declaring lands of the public domain as alienable and disposable.

I.

Philippine constitutional law recognizes three fundamental forms of title to land. The first is private title;[2] the second, indigenous title;[3] and the third, state dominion. State dominion is a derivation of the Regalian doctrine, which in turn is the medieval political notion that the sovereign "possessed the prerogative or the right in the property of private persons as well as in all public lands." [4] As conceptualized in Philippine constitutional law, the principle of state dominion over lands is now based on the following principles: 1) popular national ownership of natural resources; 2) eradication of caciquism, absentee landlordism, and other forms of land accumulation abuses; 3) multiplication of landowners and encouragement of smallholding in land; 4) conservation of natural resources through government regulation; and 5) national defense through control of natural resources.[5] The principle of state dominion is enshrined in Article XII, Sections 2 and 3 of the Constitution, viz.:

Section 2. All lands of the public domain x x x are owned by the State. With the exception of agricultural lands, all other natural resources shall not be alienated. The exploration, development, and utilization of natural resources shall be under the full control and supervision of the State. x x x

Section 3. Lands of the public domain are classified into agricultural, forest or timber, mineral lands, and national parks. Agricultural lands of the public domain may be further classified by law according to the uses to which they may be devoted. Alienable lands of the public domain shall be limited to agricultural lands. Private corporations or associations may not hold such alienable lands of the public domain except by lease, for a period not exceeding twenty-five years, renewable for not more than twenty-five years, and not to exceed one thousand hectares in area. Citizens of the Philippines may lease not more than five hundred hectares, or acquire not more than twelve hectares thereof, by purchase, homestead, or grant.

Taking into account the requirements of conservation, ecology, and development, and subject to the requirements of agrarian reform, the Congress shall determine, by law, the size of lands of the public domain which may be acquired, developed, held, or leased and the conditions therefor.

The 1986 Constitutional Commission deliberately retained the term "public domain," which was also used in the 1935 and 1973 constitutions, to refer to lands which are owned by the government under the principle of state dominion.[6] Furthermore, Article XII, Section 3, in regulating the disposition of such lands, consistently uses the modifying phrase "of the public domain" in describing the "alienable and disposable" or "agricultural" lands being distributed under said provision.

II.A.

The phrase public domain first entered Philippine statute books in 1901, when the American-constituted Philippine Commission created the Bureau of Public Lands through Act No. 218. Section 1 of said law provided:

SECTION 1. There is hereby created, under the Department of the Interior, an Insular Bureau of Public Lands, which shall have charge of all of the public domain of the Government of the Philippine Islands, except so far as control thereof may be necessary to the functions of the Forestry and Mining Bureaus, which shall not be affected by this Act. Under the supervision of the Bureau of Public Lands shall be executed all instruments for the sale or conveyance of the public lands when authorized by law.

The Philippine Bill of 1902, which served as the basic law of the Philippines at that time, then authorized the government to classify and dispose of—i.e., render capable of being transferred to the ownership of another—lands of the public domain under terms and conditions embodied in a general law enacted for such purpose, viz.:

SECTION 13. That the Government of the Philippine Islands, subject to the provisions of this Act and except as herein provided, shall classify according to its agricultural character and productiveness, and shall immediately make rules and regulations for the lease, sale, or other disposition of the public lands other than timber or mineral lands, but such rules and regulations shall not go into effect or have the force of law until they have received the approval of the President, and when approved by the President they shall be submitted by him to Congress at the beginning of the next ensuing session thereof and unless disapproved or amended by Congress at said session they shall at the close of such period have the force and effect of law in the Philippine Islands: Provided, That a single homestead entry shall not exceed sixteen hectares in extent.

SECTION 14. That the Government of the Philippine Islands is hereby authorized and empowered to enact rules and regulations and to prescribe terms and conditions to enable persons to perfect their title to public lands in said Islands, who, prior to the transfer of sovereignty from Spain to the United States, had fulfilled all or some of the conditions required by the Spanish laws and royal decrees of the Kingdom of Spain for the acquisition of legal title thereto, yet failed to secure conveyance of title; and the Philippine Commission is authorized to issue patents, without compensation, to any native of said Islands, conveying title to any tract of land not more than sixteen hectares in extent, which were public lands and had been actually occupied by such native or his ancestors prior to and on the thirteenth of August, eighteen hundred and ninety-eight.

SECTION 15. That the Government of the Philippine Islands is hereby authorized and empowered, on such terms as it may prescribe, by general legislation, to provide for the granting or sale and conveyance to actual occupants and settlers and other citizens of said Islands such parts and portions of the public domain, other than timber and mineral lands, of the United States in said Islands as it may deem wise, not exceeding sixteen hectares to any one person and for the sale and conveyance of not more than one thousand and twenty-four hectares to any corporation or association of persons: Provided, That the grant or sale of such lands, whether the purchase price be paid at once or in partial payments, shall be conditioned upon actual and continued occupancy, improvement, and cultivation of the premises sold for a period of not less than five years, during which time the purchaser or grantee can not alienate or encumber said land or the title thereto; but such restriction shall not apply to transfers of rights and title of inheritance under the laws for the distribution of the

estates of decedents.

SECTION 16. That in granting or selling any part of the public domain under the provisions of the last preceding section, preference in all cases shall be given to actual occupants and settlers; and such public lands of the United States in the actual possession or occupancy of any native of the Philippine Islands shall not be sold by said Government to any other person without the consent thereto of said prior occupant or settler first had and obtained: Provided, That the prior right hereby secured to an occupant of land, who can show no other proof of title than possession, shall not apply to more than sixteen hectares in any one tract.

Pursuant to this grant of power, the Philippine Commission, on October 7, 1903, enacted the first Public Land Act (Act No. 926, hereinafter referred to as the PLA I), which allowed the disposition of lands of the public domain through homestead, sale, and lease. Sections 1, 10, and 22 thereof stated:

CHAPTER I

Homesteads on the Public Domain

SECTION 1. Any citizen of the Philippine Islands, or of the United States, or of any Insular possession thereof, over the age of twenty-one years or the head of a family may, as hereinafter provided, enter a homestead of not exceeding sixteen hectares of unoccupied, unreserved, unappropriated agricultural public land in the Philippine Islands, as defined by the Act of Congress of July first, nineteen hundred and two, entitled "An Act temporarily to provide for the administration of the affairs of civil government in the Philippine Islands, and for other purposes," which shall be taken, if on surveyed lands, by legal subdivisions, but if on unsurveyed lands, shall be located in a body which shall be as nearly as practicable rectangular in shape and not more than eight hundred meters in length; but no person who is the owner of more than sixteen hectares of land in said Islands or who has had the benefits of any gratuitous allotment of sixteen hectares of land since the acquisition of the Islands by the United States, shall be entitled to the benefits of this chapter.

CHAPTER II

Sales of Portions of the Public Domain

SECTION 10. Any citizen of the Philippine Islands, or of the United States or of any insular possession therefor, or any corporation or like association of persons organized under the laws of the Philippine Islands or of the United States or any state, territory, or insular possession thereof, and authorized to transact business in the Philippine Islands, may purchase any tract of unoccupied, unappropriated and unreserved non-mineral agricultural public land in the Philippine Islands, as defined in the Act of Congress of July first, nineteen hundred and two, not to exceed sixteen hectares for an individual or one thousand and twenty-four hectares for an individual or one thousand and twenty-four hectares for a corporation or like association, by proceeding as hereinafter provided in this chapter, provided, that no association of persons not organized as above and no more partnership shall be entitled to purchase a greater quantity than will equal sixteen hectares for each member thereof.

CHAPTER III

Leases of Portions of the Public Domain

SECTION 22. Any citizen of the United States, or of the Philippine Islands, or of any insular possession of the United States, or any corporation or association of persons organized under the laws of the Philippine Islands, or of any state, territory, or insular possession thereof, authorized by the laws of its creation and any by the laws of the Philippine Islands and the Acts of Congress applicable thereto to transact business in the Philippine Islands, may lease any tract of unoccupied, unreserved, nonmineral agricultural public lands, as defined by sections eighteen and twenty of the Act of Congress approved July first, nineteen hundred and two providing a temporary government for the Philippine Islands, and so forth, not exceeding one thousand and twenty-four hectares, by proceeding as hereinafter in this chapter indicated; Provided, That no lease shall be permitted to interfere with any prior claim by settlement or occupation until the consent of the occupant or settler is first

had and obtained, or until such claim shall be legally extinguished; And provided, further, That no corporation or association of person shall be permitted to lease lands hereunder which are not reasonably necessary to enable it to carry one the business for which it was lawfully created and which it may lawfully pursue in the Philippine Islands.

The PLA I, in setting forth the rules on lease, sale, and acquisition of "homesteads on" or "portions of the public domain," referred to unoccupied, unreserved, nonmineral agricultural public lands. Stated differently, the PLA I deliberately defined its area of application, i.e., the "public domain," to be "unoccupied, unreserved, nonmineral agricultural public lands."

In 1919, under the regime of the Philippine Autonomy Act,[7] the Philippine Legislature passed Act No. 2874 (hereinafter referred to as the PLA II), which repealed the PLA I and introduced several important changes to the public land management system. The PLA II provides for the following modes of acquiring public land:

CHAPTER IV

Homesteads

SECTION 12. Any citizen of the Philippine Islands or of the United States, over the age of eighteen years, or the head of a family, who does not own more than twenty-four hectares of land in said Islands or has not had the benefit of any gratuitous allotment of more than twenty-four hectares of land since the occupation of the Philippine Islands by the United States, may enter a homestead or not exceeding twenty-four hectares of agricultural land of the public domain.

CHAPTER V

Sale

SECTION 23. Any citizen of lawful age of the Philippine Islands or of the United States, and any such citizen not of lawful age who is head of a family, and any corporation or association of which at least sixty-one per centum of the capital stock or of any interest in said capital stock belongs wholly to citizens of the Philippine Islands or of the United States, and which is organized and constituted under the laws of the Philippine Islands or of the United States or of any State thereof and authorized to transact business in the Philippine Islands, and corporate bodies organized in the Philippine Islands authorized under their charters to do so, may purchase any tract of public agricultural land disposable under this Act, not to exceed one hundred and forty-four hectares in the case of an individual and one thousand and twenty-four hectares in that of a corporation or association, by proceeding as prescribed in this chapter[.]

CHAPTER VI

Lease

SECTION 34. All citizen of lawful age of the Philippine Islands or of the United States and any corporation or association of which at least sixty-one per centum of the capital stock or of any interest in said capital stock belongs wholly to citizens of the Philippine Islands or of the United States, and which is organized and constituted under the laws of the Philippine Islands or of the United States or of any State thereof and authorized to transact business in the Philippine Islands, may lease any tract of agricultural public land available for lease under the provisions of this Act, not exceeding a total of one thousand and twenty-four hectares: x x x

Corporations or associations not having all and each of the requirements established in the preceding paragraph of this section may, with the express authorization of the Legislature, lease agricultural public lands available for lease the total area of which shall not exceed one thousand and twenty-four hectares.

CHAPTER VII

Free Patents

SECTION 41. Any native of the Philippine Islands who is not the owner of more than twenty-four hectares, and who since July fourth, nineteen hundred and seven, or prior thereto, has continuously occupied and cultivated, either by himself or through his predecessors in interest, a tract or tracts of agricultural public land subject to disposition, shall be entitled under the provisions of this chapter, to have a free patent issued to him for a tract or tracts of such land not to exceed twenty-four hectares in all.

CHAPTER VIII

Judicial Confirmation of Imperfect or Incomplete Titles

SECTION 45. The following described citizens of the Philippine Islands and the United States, occupying lands of the public domain or claiming to own any such lands or an interest therein, but whose titles have not been perfected or completed, may apply to the Court of First Instance of the province where the land is located for confirmation of their claims and the issuance of a certificate of title therefor, under the Land Registration Act, to wit:

(a) Those who prior to the transfer of sovereignty from Spain to the United States have applied for the purchase, composition or other form of grant of lands of the public domain under the laws and royal decrees then in force and have instituted had prosecuted the proceedings in connection therewith, but have, with or without default upon their part, or for any other cause, not received title therefor, if such applicants or grantees and their heirs have complied and cultivated said lands continuously since the filing of their applications.

(b) Those who by themselves or through their predecessors in interest have been in the open, continuous, exclusive, and notorious possession and occupation of agricultural lands of the public domain, under a bona fide claim of acquisition of ownership except as against the Government, since July twenty-sixth, eighteen hundred and ninety-four except when prevented by war or force majeure. These shall be conclusively presumed to have performed all the conditions essential to a Government grant and shall be entitled to a certificate of title under the provisions of this chapter.

CHAPTER IX

Classification and Concession of Public Lands Suitable for Commerce and Industry

SECTION 55. Any tract of land of the public domain which, being neither timber nor mineral land, shall be classified as suitable for residential purposes or for commercial, industrial, or other productive purposes or for commercial, industrial, or other productive purposes other than agricultural purposes, and shall be open to disposition or concession, shall be disposed of under the provisions of this chapter, and not otherwise.

While the PLA II removed the reference to "unoccupied, unreserved, nonmineral agricultural public lands," it nevertheless retained the term "public" as the key descriptor for the lands under its ambit, thus: "agricultural land of the public domain" (Section 12), "public agricultural land disposable under this Act" (Section 23), "agricultural public land" (Sections 34 and 41), and "[agricultural] lands of the public domain" (Sections 45 and 55). Moreover, it retains the concept of "public domain" as its realm of operation (Sections 1-10) without providing for an express definition thereof.

By the 1930s, the concept of public domain had firmly taken root in our jurisprudence, so much so that the 1935 Constitution incorporated the concept into the enunciation of the state dominion principle, viz.:

SECTION 1. All agricultural, timber, and mineral lands of the public domain, waters, minerals, coal, petroleum, and other mineral oils, all forces of potential energy, and other natural resources of the Philippines belong to the State, and their disposition, exploitation, development, or utilization shall be limited to citizens of the Philippines, or to corporations or associations at least sixty per centum of the capital of which is owned by such citizens, subject to any existing right, grant, lease, or concession at the time of the inauguration of the Government established under this Constitution. Natural resources, with the exception of public agricultural

land, shall not be alienated, and no license, concession, or lease for the exploitation, development, or utilization of any of the natural resources shall be granted for a period exceeding twenty-five years, renewable for another twenty-five years, except as to water rights for irrigation, water supply, fisheries, or industrial uses other than the development of water power, in which cases beneficial use may be the measure and the limit of the grant.

SECTION 2. No private corporation or association may acquire, lease, or hold public agricultural lands in excess of one thousand and twenty-four hectares, nor may any individual acquire such lands by purchase in excess of one hundred and forty-four hectares, or by lease in excess of one thousand and twenty-four hectares, or by homestead in excess of twenty-four hectares. Lands adapted to grazing, not exceeding two thousand hectares, may be leased to an individual, private corporation, or association.[8]

Barely a year after the ratification of the 1935 Constitution, the Philippine Legislature passed Commonwealth Act No. 141 or the PLA III, which repealed the PLA II. The PLA III, which continues to be the prevailing law on public land disposition, essentially retains the modes of acquisition of public land first introduced in the PLA II.[9] It also retains the terms "public" and "public domain" as the key thematic descriptors for lands within its coverage.

The aforecited provisions clearly illustrate the consistent use of the term public domain as the key descriptor for lands pertaining to the government under the principle of state dominion. The term is used not only in all the major public land laws of the Philippines under the American regime, but also in numerous other statutes from that period.[10] Such was the prevalence and persistence of the concept in the statute books that the 1934 Constitutional Convention integrated it into Article XIII, Sections 1 and 5 of the 1935 Constitution; and it is now retained in the present Constitution.

II.B.

As mentioned in the previous section, the term public domain was introduced into Philippine jurisprudence during the American regime. In American law, public domain has two interrelated meanings. In its regular usage, it denotes "government-owned land" in general.[11] An 1881 report commissioned by the United States House of Representatives states:

The public domain embraces the area of the lands now owned or heretofore disposed of by the United States in nineteen States and eleven Territories and parts of Territories, and known as the land States and Territories x x x, the United States being the sole owner of the soil, with entire and complete jurisdiction over the same. x x x[12]

In 1886, a Japanese scholar who was sent to the United States by the Japanese government "to investigate certain questions of agrarian and economic interest"[13] described the development of the public domain of the United States as follows:

The public domain of the United States was acquired through cession, purchase, and conquest. Its acquisition had been precipitated by a combination of varied political and economical [sic] considerations. The desire of firm union and the safety of the whole confederacy peacefully terminated the disputed claims of the larger States to the western lands. The prospect of fishery and the development of natural resources must have prompted the action of President Johnson's administration in the purchase of Alaska. The first acquisition of public land took place on March 1, 1781, and the last acquisition on March 30, 1867. x x x[14]

This gradual accumulation of land by the United States federal government, which started with the cession of western lands by the thirteen founding states from 1785 to 1802,[15] then later followed by the Louisiana Purchase of 1803, the Florida Purchase of 1820, the annexation of Texas in 1845, the acquisition of Mexican lands through the 1848 Treaty of Guadalupe Hidalgo and the Gadsden Purchase of 1853, and concluded by the

acquisition of Alaska (through an 1867 treaty with Russia) and Hawaii (through annexation in 1898),^[16] had far-reaching effects. A senior official in the United States Department of the Interior pointed out that:

Cession of the western lands probably did more to build a solid base of unity for the Nation than was realized at the time. The significance of this action was not so much the material gain to the Nation of the real estate itself, but the intangible contribution it made by giving the Nation something which was now held in common and could be used for the common good. A property right had been created in an entity which was more than a single state.

The estimated 222 million acres which were involved in this transaction was small in comparison with what would later become part of the public domain. At one time or another, the federal government has held title to 1.8 billion acres of land, or nearly ninety-five per cent of the acreage of the Nation exclusive of Alaska and Hawaii. Today, the federal government holds title to nearly 21.8 per cent of the land in the oldest forty-eight States and to about 99.7 per cent of the land in Alaska.^[17]

This mass distribution of lands of the public domain has become one of the hallmark sagas of American history. It involved protracted political and legal struggles among the federal government, the state governments, private companies, land speculators, farmers, settler associations, military veterans,^[18] indigenous inhabitants of the North American continent, among other parties.^[19] This massive program for the distribution of the lands acquired by the federal government, which was regulated through legislation,^[20] became the matrix which engendered the second definition of the term public domain, thus:

The lands owned by the federal government are generally classified as either "public domain" or "reserved" lands. The public domain includes lands open to settlement, public sale, or other disposition under the federal public land laws, and which are not exclusively dedicated to any specific governmental or public purpose. See, e.g., *Federal Power Commission v. Oregon*, 349 U.S. 435, 75 S.Ct. 832, 99 L.Ed. 1215 (1955); *United States v. Minnesota*, 270 U.S. 181, 46 S.Ct. 298, 70 L.Ed. 539 (1926). Public domain lands are, for the most part, managed by the United States Department of the Interior through its Bureau of Land Management. Reserved lands are those that have been expressly withdrawn from the public domain by statute, executive order, or treaty, and are dedicated to a specific federal purpose. Pursuant to the authority vested in the United States by Article IV, Section 3 of the United States Constitution, Congress has frequently acted to reserve or withdraw lands from the public domain or to empower the President or his delegate to do so. See *United States v. New Mexico*, 438 U.S. 696, 98 S.Ct. 3012, 57 L.Ed. 2d 1052 (1978); *United States v. Midwest Oil Co.*, 236 U.S. 459, 35 S.Ct. 309, 59 L.Ed. 673 (1915). Among these reservations are national forests, national parks, national monuments, public springs and waterholes, and public mineral hot springs. x x x^[21] (Emphasis and underlining supplied, citations omitted)

The terms "public lands" and "public domain," which are regarded as synonymous, do not include all the land owned by the United States or the states. Such terms are habitually used in the United States to designate such lands of the United States or of the states as are subject to sale or other disposal under general laws, and are not held back or reserved for any special governmental or public purpose, and do not include lands to which rights have attached and become vested through full compliance with an applicable land law.^[22] (Emphasis and underlining supplied, citations omitted)

The constitution of the United States, like ours, vests in the legislature the power to control lands of the public domain.^[23] Thus:

No appropriation of public lands may be made for any purpose except by authority of Congress. However, Congress was held to have acquiesced in the long-continued practice of withdrawing land from the public domain by Executive Orders. In 1976 Congress enacted legislation that established procedures for withdrawals and that explicitly disclaimed continued acquiescence in any implicit executive withdrawal authority. The comprehensive authority of Congress over public lands includes the power to prescribe the times, conditions,

and mode of transfer thereof and to designate the persons to whom the transfer shall be made, to declare the dignity and effect of titles emanating from the United States, to determine the validity of grants which antedate the government's acquisition of the property, to exempt lands acquired under the homestead laws from previously contracted debts, to withdraw land from settlement and to prohibit grazing thereon, to prevent unlawful occupation of public property and to declare what are nuisances, as affecting such property, and provide for their abatement, and to prohibit the introduction of liquor on lands purchased and used for an Indian colony. Congress may limit the disposition of the public domain to a manner consistent with its views of public policy. x x x[24] (Citations omitted)

During this "frontier era" in the history of the United States, the United States federal government enacted numerous statutes and executive issuances regulating the public domain,[25] the most significant of which are: 1) the donation and land grant acts, through which portions of the public domain were distributed gratis for settlement, irrigation, road-building, school and railroad construction, among others;[26] 2) the Pre-emption Acts, which gave settlers in lands of the public domain a pre-emptive right to the lands they were occupying;[27] and 3) the Homestead Acts, which allowed American citizens to enter into and acquire title to government lands, subject to the requirement that the applicant shall personally occupy and cultivate the land.[28] At this point in time, clearly, the American land law regime favored distribution of the public domain as the general rule, and conservation thereof as the exception.

The basic principle of allowing settlers to acquire title to portions of unreserved government lands essentially through occupation and cultivation for a certain amount of time[29] was carried over to this jurisdiction through the PLA I,[30] as illustrated by a comparison of the provisions of the Homestead Act of 1862 and the PLA I:

Homestead Act of 1862

PLA I

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That any person who is the head of a family, or who has arrived at the age of twenty-one years, and is a citizen of the United States, or who shall have filed his declaration of intention to become such, as required by the naturalization laws of the United States, and who has never borne arms against the United States Government or given aid and comfort to its enemies, shall, from and after the first January, eighteen hundred and sixty-three, be entitled to enter one quarter section or a less quantity of unappropriated public lands, upon which said person may have filed a preemption claim, or which may, at the time the application is made, be subject to preemption at one dollar and twenty-five cents, or less, per acre; or eighty acres or less of such unappropriated lands, at two dollars and fifty cents per acre, to be located in a body, in conformity to the legal subdivisions of the public lands, and after the same shall have been surveyed: Provided, That any person owning and residing on land may, under the provisions of this act, enter other land lying contiguous to his or her said land, which shall not, with the land so already owned and occupied, exceed in the aggregate one hundred and sixty acres.

SECTION 1. Any citizen of the Philippine Islands, or of the United States, or of any Insular possession thereof, over the age of twenty-one years or the head of a family may, as hereinafter provided, enter a homestead of not exceeding sixteen hectares of unoccupied, unreserved, unappropriated agricultural public land in the Philippine Islands, as defined by the Act of Congress of July first, nineteen hundred and two, entitled "An Act temporarily to provide for the administration of the affairs of civil government in the Philippine Islands, and for other purposes," which shall be taken, if on surveyed lands, by legal subdivisions, but if on unsurveyed lands, shall be located in a body which shall be as nearly as practicable rectangular in shape and not more than eight hundred meters in length; but no person who is the owner of more than sixteen hectares of land in said islands or who has had the benefits of any gratuitous allotment of sixteen hectares of land since the acquisition of the Islands by the United States, shall be entitled to the benefits of this chapter.

SEC. 2. And be it further enacted, That the person applying for the benefit of this act shall, upon application to the register of the land office in which he or she is about to make such entry, make affidavit before the said register or receiver that he or she is the head of a family, or is twenty-one years or more of age, or shall have performed service in the army or navy of the United States, and that he has never borne arms against the Government of the United States or given aid and comfort to its enemies, and that such application is made for his or her exclusive use and benefit, and that said entry is made for the purpose of actual settlement and cultivation, and not either directly or indirectly for the use or benefit of any other person or persons whomsoever; and upon filing the said affidavit with the register or receiver, and on payment of ten dollars, he or she shall thereupon be permitted to enter the quantity of land specified: Provided, however, That no certificate shall be given or patent issued therefor until the expiration of five years from the date of such entry; and if, at the expiration of such time, or at any time within two years thereafter, the person making such entry; or, if he be dead, his widow; or in case of her death, his heirs or devisee; or in case of a widow making such entry, her heirs or devisee, in case of her death; shall prove by two credible witnesses that he, she, or they have resided upon or cultivated the same for the term of five years immediately succeeding the time of filing the affidavit aforesaid, and shall make affidavit that no part of said land has been alienated, and that he has borne true allegiance to the Government of the United States; then, in such case, he, she, or they, if at that time a citizen of the United States, shall be entitled to a patent, as in other cases provided for by law: And provided, further, That in case of the death of both father and mother, leaving an Infant child, or children, under twenty-one years of age, the right and fee shall ensure to the benefit of said infant child or children; and the executor, administrator, or guardian may, at any time within two years after the death of the surviving parent, and in accordance with the laws of the State in which such children for the time being have their domicil, sell said land for the benefit of said infants, but for no other purpose; and the purchaser shall acquire the absolute title by the purchase, and be entitled to a patent from the United States, on payment of the office fees and sum of money herein specified.

SECTION 2. Any person applying to enter land under the provisions of this chapter shall file with such officer as may be designated by law as local land officer, or in case there be no such officer than with the Chief of the Bureau of Public Lands, an application under oath showing that he has the qualifications required under section one of this chapter, and that he possesses none of the disqualifications there mentioned that such application is made for his exclusive use and benefits: that the same is made for the purpose of actual settlement and cultivation, and not either directly or indirectly, for the use or benefit of any other person, persons, corporation or association of persons; that the land applied for is non-mineral, does not contain valuable deposits of coal or salts, is more valuable for agricultural than forestry purposes, and is not occupied by any other person; and showing the location of the land by stating the province, municipality, and barrio in which the same is situated, and as accurate a description as may be given, showing the boundaries of the land, having reference to natural objects and permanent monuments, if any. Upon the filing of said application the Chief of the Bureau of Public Lands shall summarily determine, by inquiry of the Chief of the Bureau of Forestry and from the available land records, whether the land described is prima facie subject under the law to homestead settlement, and, if he shall find nothing to the contrary, the applicant, upon the payment of ten pesos, Philippine currency, shall be permitted to enter the quantity of land specified, provided, however, that the option of the applicant, payment of said entry fee and of the fee prescribed in section three hereof may be made in five annual installments of four pesos each. These payments may be made to the municipal treasurer of the locality who, in turn, shall forward to the provincial treasurer the amounts received on this account. In case of the delinquency of the applicant in the payment of any said installments, thirty days after having become delinquent, he shall lose ipso facto his rights to the land in question, shall not be entitled to the reimbursement of the installments which he may have paid, and the land shall become vacant and open to entry by another.

SECTION 3. No certificate shall be given or patent issued for the land applied for until the expiration of five years from the date of filing of the application; and if, at the expiration of such time, or at any time within three years thereafter, the person filing such application shall prove by two credible witnesses that he has resided upon the land for the last two years immediately preceding the day of such proof, and cultivated the land for

the term of five years immediately succeeding the time of filing the application aforesaid, and shall make affidavit that no part of said land has been alienated or encumbered, and that he has borne true allegiance to the Government of the United States and that of the Philippine Islands, then, upon payment of a fee of ten pesos, Philippine currency, or upon the payment of the last of the five installments provided for in section two, to such officer as may be designated by law as local land officer, or in case there be no such officer then to the Director of Lands, he shall be entitled to a patent, provided, however, That in the event of the death of an applicant prior to the issuance of a patent his widow shall be entitled to have a patent for the land applied for issue to her upon showing that she has consummated the requirements of law for homesteading the lands as above set out and in case the applicant dies before the issuance of the patent and does not leave a widow, then the interest of the applicant in the land shall descend and patent shall issue to the persons who under the laws of the Philippine Islands would have taken, had the title been perfected by patent before the death of the applicant, upon proof, by the persons thus entitled, of compliance with said requirement and conditions. (As amended by Act No. 1864.)

Likewise, the PLA I incorporates in its chapter on "Free Patents"[31] another variation on the homestead principle which allows for the recognition of time immemorial occupation of lands by natives of the Philippines, still subject to the basic requirement of an application filed before the pertinent land administration office and subject to investigation of the claim.[32]

In the 1909 case of *Montano v. Insular Government*[33] (*Montano*), which involved the registration of a fishpond, this Court ruled that the concept of public domain as used in the Philippine Bill of 1902 and the PLA I corresponds to the aforementioned "frontier" American definition of public domain as unreserved public lands that have been opened to settlement,[34] viz.:

The point decided was that such land within the meaning of the Act of Congress of July 1, 1902, was agricultural, the reasoning leading up to that conclusion being that Congress having divided all the public lands of the Islands into three classes it must be included in one of the three, and being clearly neither forest nor mineral, it must of necessity fall into the division of agricultural land. In the concurring opinion, in order to avoid misapprehension on the part of those not familiar with United States land legislation and a misunderstanding of the reach of the doctrine, it was pointed out that under the decisions of the Supreme Court of the United States the phrase "public lands" is held to be equivalent to "public domain," and does not by any means include all lands of Government ownership, but only so much of said lands as are thrown open to private appropriation and settlement by homestead and other like general laws. Accordingly, "government land" and "public land" are not synonymous terms; the first includes not only the second, but also other lands of the Government already reserved or devoted to public use or subject to private right. In other words, the Government owns real estate which is part of the "public lands" and other real estate which is not a part thereof.

This meaning attached to the phrase "public lands" by Congress in its land legislation is settled by usage and adjudication beyond a doubt, and without variation. It is therefore doing the utmost violence to all rules of construction to contend that in this law, dealing with the same subject-matter in connection with these Islands, a different meaning had, without indication or motive, been imported into the words. They can not have one meaning in every other statute and a different and conflicting meaning in this statute. Where property in general is referred to therein, other and apt phrases are used in order to include it; for instance, section 12 [of the Philippine Bill of 1902] provides "that all the property and rights which may have been acquired in the Philippine Islands by the United States . . . are hereby placed under the control of the Government of the said Islands." Therefore, there is much real property belonging to the Government which is not affected by statutes for the settlement, prescription or sale of public lands. Examples in point are properties occupied by public buildings or devoted to municipal or other governmental uses.[35] (Emphasis, underlining and italics supplied)

A mere three months after *Montano*, this Court, deciding a case involving the applicability of Section 54, No. 6 of

the PLA I, reiterated the ruling therein, viz.:

Given the above legal provisions and the data contained in the record, it is seen that the land, the registration of which is claimed, was of the class of vacant crown or public land which the State could alienate to private persons, and being susceptible of cultivation, since at any time the person in possession desired to convert it into agricultural land he might do so in the same manner that he had made a building lot of it, it undoubtedly falls within the terms of the said Act of Congress, as well as the provisions of the above-cited section 54 and paragraph 6 thereof of Act No. 926, for the reason that the said land is neither mining nor timber land.[36] (Emphasis and underlining supplied)

As earlier demonstrated, the PLA II and the still-prevailing PLA III retain the use of the term public domain. Both iterations likewise retain the provisions on homesteads and free patents as legacy implementations of the homestead principle.[37]

Turning back to the United States, when the "frontier" phase of American history came to a close, the United States Congress started to close the public domain to further disposition,[38] marking a reversal of policy whereby conservation of state-owned lands became the general rule and distribution thereof became the exception. In 1934, the Taylor Grazing Act reserved all remaining available public domain lands pending their reclassification;[39] and in 1976, the Federal Land Policy and Management Act[40] repealed all homestead and public land disposal laws in the contiguous United States.[41] Thus, upon the close of the frontier era, with the wealth of the United States secured after its industrialization and rise as an imperial world power, and in line with a policy shift in favor of the conservation of the natural environment,[42] the American legal conception of the public domain returned to its original roots as an all-embracing term for all government lands, i.e., lands belonging to the State under the principle of state dominion.[43]

As earlier mentioned, this conservationist trend persists in the 1935 and 1987 Constitutions, both of which explicitly lay down conservation of state-owned lands as the rule, and the distribution thereof as the exception.

The foregoing discussion illustrates the historical antecedents of the concept of the public domain, with special focus on its development in the United States and its later transplantation into Philippine jurisprudence. The concept of public domain was introduced into this jurisdiction at a time when distribution of state-owned land was the rule and conservation thereof was the exception. The continued use of the term public domain in subsequent Philippine public land legislation after the PLA I and its subsequent enshrinement in the 1935 and 1987 Constitutions clearly demonstrates the constitutional intention to continue using the concept — including the historical context and the legal significations thereof — as a key component of our land regulation regime, even if that land regulation regime is at odds with the initial legal context in which the concept was first introduced to this jurisdiction.

III.

Having established the meaning of the concept of the public domain, we now proceed to an inquiry into its relation with the civil law concept of public dominion. On this point, the draft ponencia opines:

While the Civil Code adopts the term "public dominion" instead of "public domain" as employed in the Constitution, both these terms refer to property subjected to the control of the State. The distinction appears to lie in usage, for while dominion is understood to pertain to "perfect control in right of ownership", domain may be alternatively understood as the subject of such right, as in "the real estate so owned". (Corollary to this, it has also been observed that "property of public domain" is not used [in the Civil Code] in the sense of ownership by the State, but a right of property which carries with it juridical prerogatives [sic] in favor of the State.) To be sure, the term "public dominion" presently adopted in the Civil Code originates from the term "dominio publico" which also refers to "public domain" under the pertinent Articles of the Spanish Civil Code

of 1889 x x x.

There is no doubt that forest lands, timber lands, mineral lands, and national parks which are lands of the public domain under the Constitution fall under property of public dominion under Article 420(2) of the Civil Code, as do agricultural lands. Clearly, public land that is classified as agricultural (and subject to the State's current or intended use) is property of public dominion. x x x[44]

Public domain, as used in the Constitution, can either mean all State--owned lands as a whole; or the subset of these lands which have been set aside for disposition. Meanwhile, public dominion, as used in the Civil Code provisions on property, has a distinct signification. In his commentaries on Articles 338 and 339 of the 1889 Civil Code of Spain,[45] Justice Jose Maria Manresa wrote:

Pero ¿qué clase de relación jurídica mantiene el Estado con estos bienes de dominio público? Por de pronto, se ve que no es una relación de propiedad, sino de pertenencia, que trae como consecuencia ciertas prerrogativas jurídicas en favor del Estado como soberano territorial. La propiedad de estos bienes, con los caracteres especiales de una propiedad colectiva y de un uso y disfrute general, en virtud de la aplicación de agüellos á la satisfacción de necesidades colectivas, corresponde, mientras están en tal posición, á la sociedad nacional (ó provincial ó municipal, según los casos). «Su destino», dice Ihering, »no es servir al Estado como persona jurídica, sino á los ciudadanos». Están adscritos á un servicio común y público, que les impide, advierte Laurent, «ser objeto de verdadera apropiación por el Estado ó por los particulares».

La función que en definitiva ejerce el Estado respecto de estos bienes á consecuencia de la relación jurídica especial que implican, nace de ser el Estado el representante jurídico de la sociedad. Es una verdadera función de policía social y administrativa, ya de seguridad, ya de servicio general. El Estado tiene bajo su acción soberana todos esos bienes; para que respondan á un fin de interés general, los cuida, los conserva y regula cuando es preciso el uso de los mismos. Son, en suma, tales bienes un patrimonio nacional, provincial ó municipal, que está bajo la salvaguardia del Estado respectivo.

x x x x

x x x En rigor, concibiendo al Estado como debe concebirse, cabe entre él y los bienes que el Código enumera tres relaciones diferentes, en vez de dos, á pesar de lo que por otra parte opinan algunos comentaristas. La relación jurídica de dominio público, según el concepto más racional de éste, comprende los bienes que son de la nación, de la comunidad social; respecto de ellos el Estado no tiene más que la función representativa ya indicada. El Código italiano dice que no son enajenables. En nuestro Código son los que se enumeran en el núm. 1.º del presente artículo. Pero hay otra relación jurídica en la que se encuentran bienes (núm. 2.º del art. 339), que no son, en rigor, de dominio público, al menos en el concepto y forma que los anteriores; son del dominio del Estado, como representante social que realiza el derecho, y para poder prestar aquellos servicios públicos que le están encomendados, así como para que contribuya al fomento de la riqueza nacional que está bajo su custodia. No son estos bienes patrimoniales, porque están como adscritos á un servicio necesario, ó bien las tiene el Estado en espera de un empleo oportuno (las minas mientras no se otorgue su concesión), ni constituyen una fuente especial de riqueza, fuente de ingresos ó medio en disponibilidad para atender la satisfacción de sus necesidades.[46]

It is clear that the civil law concept of public dominion is somewhat related to the concept of the public domain, as both pertain to the principle of state dominion. However, the scope of public dominion, as used in the Civil Code, is limited to state properties for public use, for public service, or the development of national wealth.[47] Unlike public domain, which connotes full ownership,[48] public dominion "is not a relationship of ownership, but of belonging, which brings as a consequence certain legal prerogatives in favor of the State as territorial sovereign." [49] These "legal prerogatives" over public dominion properties are vested by law in the State either because of: 1) the utility of these properties to the State in the discharge of its functions; or 2) their potential

contribution to the national wealth. Moreover, these justifications correspond to the constitutional principles of police power and natural resource control.[50] Justice Manresa goes on further to state that the public use properties of public dominion under Article 420(1) comprise property that belongs to the nation, to the social community; with respect to it the State has only "the aforementioned legal prerogatives";[51] while the public dominion properties intended for public service or the development of national wealth under Article 420(2) are given to the State because these properties are either: 1) "attached to a necessary service"; 2) "held by the State awaiting an opportune use"; or 3) "a special source of wealth, a source of income or a means available to meet the satisfaction of its needs." [52] Verily, lands of public use under Article 420(2) roughly correspond to the concept of reserved lands under American federal law.

These distinctions were recognized, albeit in rather vague terms, by this Court in a case for nullification of a lease over a portion of land owned by the San Lazaro Hospital, thus:

As to the first contention, it is not stated in defendant's brief in what sense the words "public lands" are used. It seems, however, that the defendant refers to lands of the public domain. He testified at the trial that the lands of the San Lazaro Hospital belonged to the Government of the United States. If such were the case his interpretation of these words would be erroneous. That property belongs to the public domain which is destined to public use or which belongs exclusively to the State without being devoted to common use or which is destined to some public service or to the development of the national resources and of mines until transferred to private persons. (Art. 339[53] of the Civil Code.) The land in question does not pertain to any of these classes. The best proof of it is that the defendant himself had been using it for his own personal and exclusive benefit. So that, assuming without deciding that the land in question belonged to the Government of the United States, it would be nevertheless private property under the provisions of articles 340 and 345 of the Civil Code,[54] and as such, unless provided for by special legislation, is subject to the provisions of those articles. The defendant has not called our attention to any special law providing a method different from that contained in the Civil Code for the leasing of the lands belonging to the San Lazaro Hospital, and we do not know of the existence of any such law.[55] (Emphasis. Underlining and footnote supplied)

As is implied in the foregoing excerpt, this Court has already recognized, as early as 1906, that the constitutional concept of public domain is broader than the civil law concept of public dominion, for public domain embraces both state properties of the public dominion under Article 420 and state patrimonial (i.e., private) properties under Article 421 of the Civil Code. Thus, properties of the public dominion can become patrimonial property; but in becoming such, they remain within the public domain, unless and until they are transferred to parties other than the State.

IV.

With the foregoing disquisitions in mind, we now reconsider the pertinent parts of Article XII, Sections 2 and 3 of the Constitution, which we reproduce again for clarity:

Section 2. All lands of the public domain x x x are owned by the State. With the exception of agricultural lands, all other natural resources shall not be alienated. The exploration, development, and utilization of natural resources shall be under the full control and supervision of the State. x x x

Section 3. Lands of the public domain are classified into agricultural, forest or timber, mineral lands, and national parks. Agricultural lands of the public domain may be further classified by law according to the uses to which they may be devoted. Alienable lands of the public domain shall be limited to agricultural lands. Private corporations or associations may not hold such alienable lands of the public domain except by lease, for a period not exceeding twenty-five years, renewable for not more than twenty-five years, and not to exceed one thousand hectares in area. Citizens of the Philippines may lease not more than five hundred hectares, or acquire not more than twelve hectares thereof by purchase, homestead, or grant.

Taking into account the requirements of conservation, ecology, and development, and subject to the requirements of agrarian reform, the Congress shall determine, by law, the size of lands of the public domain which may be acquired, developed, held, or leased and the conditions therefor.

In formulating the provisions of Article XII, the 1986 Constitutional Commission deliberately retained the term public domain, including the legal history and signification of the concept, viz.:

MR. MONSOD: Madam President, I think the intent of line 13, Section 4 is that there are now four classifications in the generic sense of agricultural lands: agriculture, forest, mineral and national parks.

So, we would be willing to entertain an amendment that will insert the word "AGRICULTURE" before "lands" on line 13.

MR. SUAREZ: That is in Section 4.

MR. MONSOD: Yes.

MR. SUAREZ: And does the Commissioner think that this will be consistent with the provision of Section 6?

MR. MONSOD: Yes, and also with line 2 of the same section.

MR. SUAREZ: Yes. And would the Commissioner not think of changing the phrase "lands of the public domain" to "PUBLIC AGRICULTURAL LANDS" or something in order to jibe and harmonize with Section 4?

MR. MONSOD: Does the Commissioner mean line 26?

MR. SUAREZ: I am referring to line 26, Madam President.

MR. MONSOD: That is also agricultural land, Madam President.

MR. SUAREZ: Yes, that is it. Is the Commissioner not thinking of changing the term "lands of the public domain" to "AGRICULTURAL LANDS"?

MR. MONSOD: We are also willing to entertain an amendment to that effect in order to clarify the intent of the article.

MR. SUAREZ: May I suggest that to the members of the Committee, Madam President?

MR. VILLEGAS: All right.

THE PRESIDENT: Is Commissioner Suarez proposing an amendment?

MR. SUAREZ: With respect to Section 6.

THE PRESIDENT: Yes, Section 6.

MR. SUAREZ: If it is reflective of the thinking of the Committee insofar as Section 4 is concerned, we propose that the words "lands of the public domain" appearing on line 26 of Section 6 be changed to "PUBLIC AGRICULTURAL LANDS"; but basically, it is "agricultural land."

MR. MONSOD: Maybe to be consistent and to harmonize, we just use the same phrase as we used in Section 4: "AGRICULTURAL LANDS of the public domain."

MR. SUAREZ: Thank you.

MR. RODRIGO: Madam President, may I call attention to the fact that the words "public domain" are the words used in the 1935 as well as in the 1973 Constitutions.

MR. VILLEGAS: We retained it that way.

MR. RODRIGO: So, they have already adopted a meaning and I suppose there is even a jurisprudence on this matter. Unless it is absolutely necessary, I do not think we should change that.

MR. SUAREZ: What we are suggesting, Madam President, is to retain the words "public domain" but qualify the word "lands" with "AGRICULTURAL lands of the public domain."

MR. VILLEGAS: We are retaining "public domain."

MR. CONCEPCION: Madam President.

THE PRESIDENT: Commissioner Concepcion is recognized.

MR. CONCEPCION: If the Committee does not intend to change the original implication of this provision — and by original I mean the Constitutions of 1935 and 1973 — may I suggest the advisability of retaining the former phraseology. Otherwise, there might be a question as to whether the same meaning attached thereto by jurisprudence will apply or another meaning is sought to be imparted to this provision.

MR. VILLEGAS: As long as it is clear in our record that we really mean agricultural lands, can we ask Commissioner Suarez to just retain the existing phraseology?

MR. SUAREZ: I would have no objection to that. I just want to make it very clear, whether in the record or in the constitutional provisions, when we speak of "lands of the public domain" under Section 6 we are thinking in terms of agricultural lands.

THE PRESIDENT: So, there will be no need anymore to insert the word "AGRICULTURAL"?

MR. SUAREZ: That is right. We will not press on our amendment, Madam President.

THE PRESIDENT: We already have that interpretation.

MR. SUAREZ: Thank you, Madam President.[56] (Underlining and emphasis supplied)

It is therefore clear that when the Constitution speaks of lands of the public domain, such term can only have two meanings: 1) all lands owned or held by the state; or 2) unreserved state-owned lands which have been opened for disposition. However, Article XII, Section 3 further qualifies that "[l]ands of the public domain are classified into agricultural, forest or timber, mineral lands, and national parks." Likewise, Article XII, Section 2 provides that "[w]ith the exception of agricultural lands, all other natural resources, [including forest lands, mineral lands, and national parks], shall not be alienated." Given these textual parameters, the inescapable conclusion is that the term "lands of the public domain," as used in the Constitution, pertains to all state-owned lands, regardless of their classification. It should also follow that when the Constitution speaks of alienable lands of the public domain, the basic law refers essentially to the subset of the larger set of all state-owned lands regardless of their classification that share the common attribute of alienability, subject to further qualification in Section 2 that this subset shall only include agricultural lands, thereby excluding forest lands, mineral lands, and national parks.

In turn, the Civil Code provides that all property, including lands of the public domain, are "either of public dominion or of private ownership." [57] Stated differently, lands of the public domain, which are also property, are also either of public dominion or of private ownership. Consequently, pursuant to Article 420 of the Civil Code, lands of the public domain that are either: 1) intended for or in actual public use (such as public streets,[58] plazas and public squares,[59] foreshore lands,[60] reclaimed lands,[61] lands on which public works under Article 420(1) are built, and national parks[62]; 2) not for public use, but intended for public service (such as national security infrastructure,[63] military reservations,[64] and buildings constructed and used by the government[65]) or 3) not for public use but intended for the development of national wealth, i.e., "a special source of wealth, a

source of income or a means available to meet the satisfaction of [the State's] needs" (such as mineral, timber, and forest lands[66] and reserved agricultural lands of the public domain that have not been declared alienable and disposable[67], are all embraced within the set of lands of public dominion. Likewise, pursuant to Article 421 of the Civil Code, all lands of the public domain that do not fall within these three classes should be considered patrimonial, i.e., private property of the State.

In view of the foregoing discussion, it is ineluctably clear that when a parcel of land of the public domain is declared "alienable and disposable," either by legislative act or by delegated authority, such declaration has two effects: first, the land is rendered "capable of being transferred to the ownership" of entities other than the State; this also means that the land moves into the subset of alienable lands of the public domain, without being taken out of the larger set of lands of the public domain.[68] Concomitant to this first effect is the second effect: the land is placed into the subset of patrimonial property under the Civil Code, without being taken out of the all-encompassing set of constitutional public domain, which is broad enough to encompass both public dominion and patrimonial properties of the State. Stated differently, when the Constitution refers to "alienable and disposable lands of the public domain," it can only mean patrimonial lands of the State under the Civil Code, since these are the only properties still within the public domain that are alienable (i.e., capable of being transferred to the ownership of another), since lands of the public dominion are outside of the commerce of man[69] and are therefore inalienable.[70]

Consequently, the pronouncement in the second *Heirs of Mario Malabanan v. Republic*[71] ruling that:

Alienable and disposable lands of the State fall into two categories, to wit: (a) patrimonial lands of the State, or those classified as lands of private ownership under Article 425 of the Civil Code, without limitation; and (b) lands of the public domain, or the public lands as provided by the Constitution, but with the limitation that the lands must only be agricultural x x x.[72]

is not quite accurate. First, the Constitution does not use the phrase "alienable and disposable lands of the State," but rather "alienable and disposable lands of the public domain." While the two phrases are practically synonymous, the Constitutional intent to use the modifier "of the public domain" must be respected, and the historical-legal signification of the phrase must be taken into account in interpreting the provisions of the basic law. Second, "lands of the public domain" are the universal set to which both patrimonial and public dominion lands of the State belong; and since public dominion lands of the State are inalienable, the set of "alienable and disposable lands of the public domain" is limited to patrimonial lands of the State. As pointed out by an eminent Filipino legal scholar:

Public lands of the Philippines are designated as "Lands of the public domain" in Commonwealth Act No. 141, and formerly in Act No. 2874. Are they property of public dominion as understood in article 420 of the Civil Code?

The Supreme Court has already called attention to the difference in meaning in the Spanish law and in American-patterned legislation of apparently the same terms. "It is to be noted, however," it said, "that in the two languages terms ordinarily equivalent are not in this relation employed in the same sense, and that lands de dominio publico signify quite a different thing from the arbitrary English phrases 'public lands' or 'public domain'." x x x

From this conclusion of the Supreme Court, it seems that "public lands" [i.e., lands of the public domain] may, under the criterion of the Civil Code, be classified as private property of the State, as soon as they are available for alienation or disposition. Before they have been declared so available for disposition, they would partake of property of public dominion, under article 420, paragraph 2, "for the development of the national wealth," just like "mines before their concessions have been granted." [73]

V.

Turning now to the case at bar, we consider the implications of the foregoing discussion on the provisions of the Property Registration Decree (PRD), especially Section 14(1) and (2) thereof. In the original *Heirs of Mario Malabanan v. Republic*[74] decision, this Court held that Section 14(1) of the PRD is "virtually the same as"[75] Section 48(b) of the PLA III, as the former provision operationalizes the latter, thus:

PLA III Section 48(b)

PRD Section 14(1)

Sec. 48. The following-described citizens of the Philippines, occupying lands of the public domain or claiming to own any such lands or an interest therein, but whose titles have not been perfected or completed, may apply to the Court of First Instance of the province where the land is located for confirmation of their claims and the issuance of a certificate of title therefor, under the Land Registration Act, to wit:

x x x x

(b) Those who by themselves or through their predecessors in interest have been in open, continuous, exclusive, and notorious possession and, occupation of agricultural lands of the public domain, under a bona fide claim of acquisition or ownership, since June 12, 1945, immediately preceding the filing of the application for confirmation of title, except when prevented by war or force majeure. These shall be conclusively presumed to have performed all the conditions essential to a government grant and shall be entitled to a certificate of title under the provisions of this chapter. (As amended by PD 1073).

SECTION 14. Who May Apply. — The following persons may file in the proper Court of First Instance an application for registration of title to land, whether personally or through their duly authorized representatives:

(1) Those who by themselves or through their predecessors-in-interest have been in open, continuous, exclusive and notorious possession and occupation of alienable and disposable lands of the public domain under a bona fide claim of ownership since June 12, 1945, or earlier.

As discussed earlier, the PLA III, its predecessor statutes, and the related laws that were enacted during the American occupation were all enacted during the "frontier" phase of American history, when the United States government was still actively distributing the lands of the public domain, and the contemporary land laws were enacted to facilitate this process. These statutes were therefore crafted to: 1) embody distribution of the public domain as the general rule; and 2) to operationalize the concept of public domain as state-owned lands that have been opened to disposition. Thus, the legislature, in using the phrase "agricultural lands of the public domain" in Section 48(b) of the PLA III, could only have referred to state--owned patrimonial lands which have been opened to disposition, which at the time of the enactment thereof, comprised an overwhelming majority of the public domain as a whole.

In view of our discussion in the previous section, this conclusion does not change even under the currently prevailing legal regime in which distribution of the public domain is the general rule, rather than the exception, for we have already established that alienable lands of the public domain can refer only to the patrimonial lands of the State under the Civil Code. It must be noted that Article XII, Section 3 of the Constitution limits alienable lands of the public domain to agricultural lands. In turn, Section 2 of the PLA III limits the scope of its operation to lands of the public domain which are not timber lands, mineral lands, friar lands, or previously private land.[76] Section 6 of the PLA III, in outlining the classificatory power of the President over the public domain, enumerates three classes of lands therein: alienable or disposable, timber, and mineral lands.[77] Section 9 of the PLA III then places agricultural lands as a mere subset of the supposedly larger set of "lands of the public domain alienable or

open to disposition," i.e., the "alienable or disposable" lands under Section 6. Section 9 likewise enumerates the other sub-classes of alienable or disposable land according to their "use or purposes." Thus, the term "agricultural lands," as used in the PLA III, contemplates alienable lands of the public domain which have been classified by proper authority as suitable or destined for agricultural use or purposes.

Thus, in keeping with this general classification under the PLA III, Section 14(1) of the PRD substitutes the phrase "alienable and disposable" as the descriptor for the main phrase "lands of the public domain," in place of the word "agricultural" used in Section 48(b) of the PLA III, for two reasons: 1) the phrases "agricultural public lands" or "agricultural lands of the public domain," as used in the PLA III, pertain strictly to lands destined for agriculture as classified under Sections 6 and 9 thereof, as opposed to the broader constitutional sense of "agricultural lands;"[78] and 2) it has already been established that, under the Constitution, no other class of land within the public domain can be declared alienable and disposable but agricultural public lands.

Our foregoing discussion neither affects the distinctions between the registration of land under Sections 14(1) and 14(2) nor renders the PLA III inutile. Senator Arturo M. Tolentino correctly points out that:

"[P]ublic lands" (i.e., lands of the public domain) may, under the criterion of the Civil Code, be classified as private property of the State, as soon as they are available for alienation or disposition. Before they have been declared so available for disposition, they would partake of property of public dominion, under article 420, paragraph 2, "for the development of the national wealth," just like "mines before their concessions have been granted."

According to Lomonaco and Ricci, the State disposes of private property like any private person, but "naturally in accordance with special laws." This special law is Commonwealth Act No. 141 (formerly Act No. 2874) with respect to alienable or disposable public lands destined for agricultural, residential, commercial, industrial, or other similar productive purposes; for educational, charitable, or other similar purposes; and for reservations for town sites and for public and quasi-public uses. The friar lands, not classified as "public lands" under Commonwealth Act No. 141, are disposed of under the provisions of Act No. 1120; and the San Lazaro Estate, under Act No. 2360, as amended by Act No. 2478. These lands are private property of the State in the same manner that islands formed in navigable and floatable rivers are private property of the State.[79]

In the recent case of *Republic v. Bautista*,[80] this Court distinguished Section 14(1) from Section 14(2) in this manner:

From their respective requisites, it is clear that the bases for registration under these two provisions of law differ from one another. Registration under Section 14(1) is based on possession; whereas registration under Section 14(2) is based on prescription. Thus, under Section 14(1), it is not necessary for the land applied for to be alienable and disposable at the beginning of the possession on or before June 12, 1945 — Section 14(1) only requires that the property sought to be registered is alienable and disposable at the time of the filing of the application for registration. However, in Section 14(2), the alienable and disposable character of the land, as well as its declaration as patrimonial property of the State, must exist at the beginning of the relevant period of possession.[81]

In keeping with its American statutory ancestors, Section 48(b) of PLA III, as implemented by Section 14(1) of the PRD, is essentially a grant of patrimonial land of the public domain which is based on possession; in effect, it is a special kind of donation with conditions imposed by special law for the effectivity thereof.[82] Among these conditions is that the land must have been classified as agricultural under the provisions of the PLA III. As held in the second *Heirs of Mario Malabanan*[83] ruling, the conversion of the claimed land into alienable-and-disposable/patrimonial status, as well as the classification thereof into agricultural land under the PLA III, can be made even after the commencement of the statutory period, as long as it is made before the application is filed. On the other hand, Section 14(2) of the PRD implements the general provisions of the Civil

Code on prescription with respect to patrimonial lands of the public domain. Unlike in Section 15(1), lands sought to be registered under Section 15(2) need not be classified as agricultural under the PLA III, as long as such lands have been declared alienable-and-disposable/patrimonial prior to or at the commencement of the prescriptive period.

VI.

In sum, I submit that the PLA must be understood in its historical context. The core principles of the PLA are rooted in an American land law regime wherein the distribution of the public domain was the rule and conservation thereof was the exception. However, when these principles were introduced to the Philippines, it became incorporated into a legal regime where conservation of the public domain was the rule rather than the exception. This engendered the complications so poignantly illustrated in the *Heirs of Mario Malabanan*[84] and *Republic v. Court of Appeals and Naguit*[85] cases, and which, hopefully, may be obviated by the ponencia.

Under the Constitution and the Civil Code, the State does not exercise full ownership rights over public domain lands of the public domain, precisely because these lands are inalienable and are held by the State strictly by virtue of its stewardship over natural resources under the modern principle of state dominion,[86] or in furtherance of the police power. As we have discussed earlier, the State only enjoys "certain legal prerogatives" over these lands. The Constitutional and statutory grants of power to declare public domain lands of the public domain as alienable and disposable is one of these "legal prerogatives," by which the Constitution allows the State to exercise full ownership rights over such lands, by converting them into patrimonial, alienable, and disposable lands of the public domain.[87] Consequently, a declaration by competent authority that a parcel of land is alienable and disposable has the effect of removing such land from the public dominion; but not from the more expansive mass of the public domain.

[1] From Grzegorz Górny and Janusz Rosikon, *VATICAN SECRET ARCHIVES: UNKNOWN PAGES OF CHURCH HISTORY* (2020), as quoted in Piotr Gursztyn, "Vatican Secret Archives" (Peter Obst, trans.), in *New Books from Poland Fall 2020*, p. 38 (2020, Polish Book Institute). Accessed June 19, 2021 at <https://instytutksiazki.pl/download.php?path=sections/catalogs&file=499dafc9878b162bfa59fd2e81edf9a01603704279.pdf&name=nbf%202020%20fall.pdf> (archive link: <https://archive.is/fl6pl>).

[2] CONSTITUTION, Article II, Sections 20 and 21; Article III, Section 1; Article XII, Sections 3, 6, 7, and 8. This includes rights to land dating back to the Spanish occupation or from time immemorial. *Republic v. Cosalan*, 835 Phil. 649 (2018); *Republic v. Court of Appeals and Cosalan*, 284 Phil. 575 (1992); *Republic v. Court of Appeals and Paran*, 278 Phil. 1 (1991); *Abaoag v. Director of Lands*, 45 Phil. 518, 520 (1923); *Tan Yungquip v. Director of Lands*, 42 Phil. 128 (1921); *Cariño v. Insular Government*, 212 U.S. 449 (1909).

[3] CONSTITUTION, Article II, Section 22; Article XII, Section 5; Republic Act No. 8371; concurring opinion of Leonen, J., in *Sama v. People*, G.R. No. 224469, January 5, 2021.

[4] H. Lawrence Noble, *REGALIAN THEORY REVIVED IN PHILIPPINES*, 9 *American Bar Association Journal* (No. 1) 13-14 (1923), accessed June 10, 2021 at https://www.jstor.org/stable/25711111?refreqid=excelsior%3A91b100f99a18782aed1f6da6235516ba&seq=1#meta_data_info_tab_contents.

[5] Vicente G. Sinco, *PHILIPPINE POLITICAL LAW* 376-378 (1949); II Hector S. De Leon and Hector M. De Leon, Jr., *PHILIPPINE CONSTITUTIONAL LAW: PRINCIPLES AND CASES* 965-966 (2017), citing Report of Committee on Nationalization and Preservation of Lands and other Natural Resources, 1935 Constitutional Convention.

[6] 3 RECORD OF THE CONSTITUTIONAL COMMISSION (No. 063, August 22, 1986) 596-597 (1990).

[7] More popularly known as the Jones Act, Public Law 64-240, 39 Stat. 545 (1916).

[8] 1935 CONSTITUTION, Article XIII.

[9] Secretary of the Department of Environment & Natural Resources v. Mayor Yap, 589 Phil. 156, 181 (2008); Separate Opinion of Associate Justice (later Chief Justice) Reynato S. Puno in Cruz v. Secretary of Environment and Natural Resources, 400 Phil. 904, 941 (2000).

[10] Act No. 554, Section 13 (1902); Act No. 648 (1903); Act No. 703, Section 13(a) (1903); Act No. 1111, Sections 11 & 15 (1904); Act No. 1224, Section 1 (1904); Act No. 1258, Section 2 (1904); Act No. 1448, Sections 11 & 15 (1906); Act No. 1459, Sections 56 & 86 (1906); Act No. 1497, Section 1 (1906); Act No. 1510, Section 1 (1906); Act No. 1700, Section 2(a) (1907); Act No. 1835, Section 2 (1908); Act No. 2053, Section 1 (1911); Act No. 2062, Section 4 (1911); Act No. 2273, Section 1 (1913); Act No. 2273, Section 1 (1913); Act No. 2281 (1913); Act No. 2282, Section 8(a) (1913); Act No. 2286 (1913); Act No. 2373, Section 1 (1914); Act No. 2361, Sections 1 & 2 (1914); Act No. 2384, Section 2 (1914); Act No. 2485, Section 14(b) (1915); Act No. 2544 (1916); Act No. 2643, Section 10 (1916); Act No. 2662, Section 1 (1916); Act No. 2657, Sections 80(d) & 977 (1916); Act No. 2711, Sections 64, 1838, 1844, 2089(g), 2753(b) & (c) (1917); Act No. 2719, Section 1 (1917); Act No. 2722 (1917); Act No. 2765, Section 8(a) (1918); Act No. 2777, Section 2 (1918); Act No. 2836, Section 1 (1919); Act No. 2848, Section 11 (1919); Act No. 3077, Sections 1 & 4 (1923); Act No. 3059, Section 1 (1923); Act No. 3178, Section 2 (1924); Act No. 3211, Section 1 (1924); Act No. 3399, Section 1 (1927); Act No. 3447, Section 3 (1928); Act No. 3518, Section 22 (1928); Act No. 3608 (1930); Act No. 3672, Section 1 (1930); Act No. 3673, Section 1 (1930); Act No. 3819 (1931); Act No. 3852, Sections 1 & 2 (1931); Act No. 3915, Section 1 (1932); Act No. 3982, Section 1 (1932); Act No. 4043, Section 1 (1933); Act No. 4062 (1933); Act No. 4107, Section 4 (1933); and Act No. 4195, Section 1 (1935).

[11] BLACK'S LAW DICTIONARY (9[th] edition) 1349 (2009). The concept of public domain has its roots in the Roman law concepts of *ager publicus* (public lands acquired through conquest by the Roman government which were made available to Roman citizens. Saskia T. Roselaar, PUBLIC LAND IN THE ROMAN REPUBLIC: A SOCIAL AND ECONOMIC HISTORY OF *AGER PUBLICUS* IN ITALY, 396-89 BC 1-2, 86-144 (2010)) and *dominium* (the Roman law concept of ownership which "indicated a full and absolute ownership or lordship over some subjected thing," including the powers and rights associated therewith. Daniel Lee, PRIVATE LAW MODELS FOR PUBLIC LAW CONCEPTS: THE ROMAN LAW THEORY OF DOMINIUM IN THE MONARCHOMACH DOCTRINE OF POPULAR SOVEREIGNTY, 70 The Review of Politics 370, 378 [2008]. Accessed May 23, 2021 at <https://www.jstor.org/stable/20453014>; Max Radin, FUNDAMENTAL CONCEPTS OF THE ROMAN LAW, 13 CAL. L. REV. (No. 3) 207, 210-215 (1925), accessed on June 10, 2021 at https://www.jstor.org/stable/3475643?refreqid=excelsior%3Aa10bbc96485881d40d91b2c8b7bb6ab5&seq=1#metadata_info_tab_contents; Lorenzo F. Miravite, HANDBOOK FOR ROMAN LAW 148-150 [1991]). Shosuke Sato, HISTORY OF THE LAND QUESTION IN THE UNITED STATES 10-14 (1886). Electronic book accessed on June 10, 2021 at <https://archive.org/details/historylandques00satgoog/page/n4/mode/2up>.

[12] Public Land Commission and Thomas Donaldson, THE PUBLIC DOMAIN: ITS HISTORY WITH STATISTICS (1881), p. 13. Electronic book accessed on June 16, 2021 at <https://archive.org/details/publicdomainits00donagoog/page/13/model/up> (more commonly known as the Donaldson Report).

[13] Shosuke Sato, *supra* note 11 at i.

[14] Id. at 21.

[15] Id. at 40.

[16] Id. at 21-75. More detailed accounts of the territorial expansion of the public domain of the United States are found in Public Land Commission and Donaldson, *supra* note 12 at 89-163; Payson Jackson Treat, *THE NATIONAL LAND SYSTEM, 1785-1820* (1910); Malcolm J. Rohrbough, *THE LAND OFFICE BUSINESS: THE SETTLEMENT AND ADMINISTRATION OF AMERICAN PUBLIC LANDS, 1789-1837* (1968); Roy Marvin Robbins, *OUR LANDED HERITAGE: THE PUBLIC DOMAIN, 1776-1936* (1942), electronic copy accessed July 1, 2021 at <http://reader.library.cornell.edu/docviewer/digital?id=chla2890744#page/3/mode/1up>; and Paul Frymer, *BUILDING AN AMERICAN EMPIRE: THE ERA OF TERRITORIAL AND POLITICAL EXPANSION* (2017).

[17] R. B. Held, *WHOSE PUBLIC LANDS?*, 7 *Nat. Resources J.* 153, 155-156 (1967). Accessed June 16, 2021 at <https://digitalrepository.unm.edu/nrj/vol7/iss2/2>.

[18] The earliest distributions of lands of the public domain were made to officers and soldiers of the Continental Army. Shosuke Sato, *supra* note 11 at 131.

[19] See Shosuke Sato, *supra* note 11 at 21-75; Public Land Commission and Thomas Donaldson, *supra* note 12; Paul W. Gates, *THE JEFFERSONIAN DREAM: STUDIES IN THE HISTORY OF AMERICAN LAND POLICY AND DEVELOPMENT* (1996); John D. McGowan, *THE DEVELOPMENT OF POLITICAL INSTITUTIONS ON THE PUBLIC DOMAIN*, 11 *WYO. L.J.* 1 (1956), Accessed June 11, 2021 at <https://scholarship.law.uwyo.edu/wlj/vol11/iss1/1>; Farris W. Cadle, *GEORGIA LAND SURVEYING HISTORY AND LAW* (1991); Vernon R. Carstensen (ed.), *THE PUBLIC LANDS: STUDIES IN THE HISTORY OF THE PUBLIC DOMAIN* (1968).

[20] See Public Land Commission and Donaldson, *supra* note 12 at 209-239, 256-415.

[21] *United States v. City and County of Denver*, 656 P.2d 1 (Supreme Court of Colorado) (1982).

[22] 73 C.J.S. §1, p. 647.

[23] U.S. CONSTITUTION, Article IV, Section 3, paragraph 2.

[24] Congressional Research Service, *THE CONSTITUTION OF THE UNITED STATES OF AMERICA: ANALYSIS AND INTERPRETATION* 988-989 (2017). Accessed May 13, 2021 at <https://www.govinfo.gov/content/pkg/GPO-CONAN-2017/pdf/GPO-CONAN-2017.pdf>. Citations omitted.

[25] For a full account of the various policies for the distribution of the United States' public domain, see Public Land Commission and Thomas Donaldson, *supra* note 12; Shosuke Sato, *supra* note 11; and works cited in footnotes 15 and 18, *supra*.

[26] Public Land Commission and Thomas Donaldson, *supra* note 12 at 209-213 (donations and grants to specific groups and persons); 223-237 (educational land grants, military, and naval land bounties); 257-288 (canal, wagon, and railroad grants); 295-297 (general grant of lands to settlers in East Florida, Oregon, Washington, and New Mexico Territories).

[27] Shosuke Sato, *supra* note 11 at 159-167; Malcolm J. Rohrbough, *supra* note 16 at 200-220. In Public Land Commission and Thomas Donaldson, *supra* note 12 at 214: "This pre-emption or preference right thus first established was a step toward abolishing the sale of unoffered land, and giving a settler the first right or preference as against a person desiring to purchase and hold for investment or speculation. The essential

conditions of a pre-emption are actual entry upon, residence in a dwelling, and improvement and cultivation of a tract of land. The several pre-emption acts give a preference to the settlers. Pre-emption is a premium in favor of and condition for making permanent settlement and a home. It is a preference for actual tilling and residing upon a piece of land." Another author described it as "the right to settle on and improve unappropriated public lands and later buy them at the minimum price without compensation," which was first granted in a general manner in 1841. Owen J. Lynch, *COLONIAL LEGACIES IN A FRAGILE REPUBLIC: A HISTORY OF PHILIPPINE LAND LAW AND STATE FORMATION WITH EMPHASIS ON THE EARLY U.S. REGIME, 1898-1913* 391, fn. 5 (2011), citing Benjamin H. Hibbard, *A HISTORY OF PUBLIC LAND POLICIES* 144 (1939).

[28] Homestead Act of 1862, 12 Stat. 392 (1862), Sections 1-3. Accessed June 17, 2021 at <http://memory.loc.gov/cgi-bin/ampage?collId=llsl&fileName=012/lls1012.db&recNum=0423>.

[29] Shosuke Sato, *supra* note 11 at 176; John Bell Sanborn, *SOME POLITICAL ASPECTS OF HOMESTEAD LEGISLATION*, 6 *The American Historical Review* (No. 1) 19 (1900), accessed June 16, 2021 at https://www.jstor.org/stable/1834687?seq=1#metadata_info_tab_contents.

[30] Owen J. Lynch, *supra* note 27 at 389-390, citing Roy Marvin Robbins, *supra* note 16 (1950 ed.) and Benjamin H. Hibbard, *supra* note 27.

[31] ACT No. 926, Sections 32-35.

[32] *Id.*, Sections 33-34.

[33] 12 Phil. 572 (1909).

[34] *Montano v. Insular Government*, *id.*, also cited in the concurring opinion of Puno, J. in *Cruz v. Secretary of Environment and Natural Resources* (resolution on motion for reconsideration), 400 Phil. 904, 940 (2000).

[35] *Id.* at 574-575.

[36] *Ibañez de Aldecoa v. Insular Government*, 13 Phil. 159, 163 (1909).

[37] ACT No. 2874, Chapter IV on "Homesteads" and Chapter VII on "Free Patents"; Commonwealth Act No. 141, Chapter IV on "Homesteads" and Chapter VII on "Free Patents."

[38] David H. Getches, *MANAGING THE PUBLIC LANDS: THE AUTHORITY OF THE EXECUTIVE TO WITHDRAW LANDS*, 22 *Nat. Resources J.* 279, 281-287 (1982), accessed June 11, 2021 at <https://core.ac.uk/download/pdf/151600234.pdf>; Roy Marvin Robbins, *supra* note 16 at 398-423; Congressional Research Service, *THE CONSTITUTION OF THE UNITED STATES OF AMERICA: ANALYSIS AND INTERPRETATION*, *supra* note 24. See also 42 AM. JUR. §1 (1942).

[39] R. B. Held, *supra* note 17 at 156; David H. Getches, *id.* at 280.

[40] Pub. L. 94-579, 90 Stat. 2743, 43 U.S.C. ch. 35 § 1701 et seq. Accessed June 19, 2021 at <https://www.govtrack.us/congress/bills/94/s507/text>.

[41] Sections 702 and 703.

[42] David H. Getches, *supra* note 38 at 283-284; Roy Marvin Robbins, *supra* note 16.

[43] *BLACK'S LAW DICTIONARY* (9[th] ed.) 1349 (2009).

[44] Ponencia, pp. 13-14; footnotes 62 and 63.

[45] Articles 338 and 339 of the 1889 Civil Code of Spain form the basis for Articles 419 and 420 of our Civil

Code.

[46] 3 José Maria Manresa y Navarro, COMENTARIOS AL CODIGO CIVIL ESPAÑOL 53-54, 55-56 (1893). Citations omitted, emphasis and underlining supplied.

[47] CIVIL CODE, Article 420.

[48] Weatherly v. Jackson, 123 Tex. 213, 71 S.W.2d 259 (1934); Langdon v. Mayor, etc., of City of New York, 93 N.Y. 129 (1883); Union Mill & Min. Co. v. Ferris, 24 F. Cas. 594, 2 Sawy. 176, 16 Int. Rev. Rec. 114 (1872).

[49] 3 José Maria Manresa y Navarro, supra note 46 at 53. See also 2 Arturo M. Tolentino, COMMENTARIES AND JURISPRUDENCE ON THE CIVIL CODE OF THE PHILIPPINES 30, 36 (1992).

[50] 3 José Maria Manresa y Navarro, id. Justice Eduardo P. Caguioa goes even further to state that these properties are held by the state in consequence of its territorial sovereignty, implying that these properties are held by the state not by virtue of dominium but by imperium. 2 Eduardo P. Caguioa, COMMENTS AND CASES ON CIVIL LAW: CIVIL CODE OF THE PHILIPPINES 30 (1966).

[51] 3 José Maria Manresa y Navarro, id. at 56.

[52] Id.

[53] Now Article 420 of the Civil Code.

[54] Now Articles 421 and 425 of the Civil Code.

[55] Tipton v. Martinez, 5 Phil. 477, 478-479 (1906).

[56] 3 RECORD OF THE CONSTITUTIONAL COMMISSION (No. 063, August 22, 1986) 596-597.

[57] CIVIL CODE, Article 419.

[58] Alolino v. Flores, 783 Phil. 605, 613 (2016); Macasiano v. Judge Diokno, 287 Phil. 517 (1992); Dacanay v. Mayor Asistio, Jr., 284 Phil. 548 (1992).

[59] Bishop of Calbayog v. Director of Lands, 150-A Phil. 806 (1972); Harty v. Municipality of Victoria, 13 Phil. 152 (1909).

[60] Baguio v. Heirs of Ramon Abello, G.R. Nos. 192956 & 193032, July 24, 2019; Francisco v. Government of the Philippine Islands, 28 Phil. 505 (1914).

[61] Chavez v. Public Estates Authority, 433 Phil. 506 (2002).

[62] CONSTITUTION, Article XII, Section 3; REPUBLIC ACT No. 7586 (1992) and REPUBLIC ACT No. 11038 (2018).

[63] Municipality of Hinunangan v. Director of Lands, 24 Phil. 124 (1913) (fortresses); Ignacio v. Director of Lands, 108 Phil. 335 (1960) (lands needed for coast guard service); COMMONWEALTH ACT NO. 1, Section 97, Purpose V (1935).

[64] Republic v. Southside Homeowners Association, Inc., 534 Phil. 8 (2006).

[65] Laurel v. Garcia, 265 Phil. 827 (1990); Justice Eduardo P. Caguioa, supra note 50 at 36.

[66] CONSTITUTION, Article XII, Section 3.

[67] Hector S. De Leon and Hector M. De Leon, Jr., COMMENTS AND CASES ON PROPERTY 43 (2003),

citing *Chavez v. Public Estates Authority*, supra note 61; PRESIDENTIAL DECREE NO. 705 (as amended), Sections 3(a), (b), & (c), and 13.

[68] BLACK'S LAW DICTIONARY (9[th] ed.) (2009), p. 84.

[69] *Tensuan v. Heirs of Vasquez*, G.R. No. 204992, September 8, 2020; *PNOC Alternative Fuels Corp. v. National Grid Corporation of the Philippines*, G.R. No. 224936, September 4, 2019; *Republic v. Spouses Alejandre*, G.R. No. 217336, October 17, 2018; *Land Bank of the Phils. v. Cacayuran*, 709 Phil. 819 (2013); *MIAA v. City of Pasay*, 602 Phil. 160 (2009); *Villanueva v. Judge Castañeda, Jr.*, 238 Phil. 136 (1987).

[70] *Land Bank of the Phils. v. Cacayuran*, id.; *Municipality of Cavite v. Rojas*, 30 Phil. 602 (1915).

[71] 717 Phil. 141 (2013).

[72] Id. at 162.

[73] Arturo M. Tolentino, supra note 48 at 37-38.

[74] 605 Phil. 244 (2009).

[75] Id. at 266.

[76] The full provision reads: "Section 2. The provisions of this Act shall apply to the lands of the public domain; but timber and mineral lands shall be governed by special laws and nothing in this Act provided shall be understood or construed to change or modify the administration and disposition of the lands commonly called "friar lands" and those which, being privately owned, have reverted to or become the property of the Commonwealth of the Philippines, which administration and disposition shall be governed by the laws at present in force or which may hereafter be enacted." Given the explicit exclusion of mineral and timber lands, and the special laws enacted for national park lands, which cannot be alienated (see generally Republic Act No. 7586 [1992] and Republic Act No. 11038 [2018]), the scope of the PLA III is thus limited to agricultural lands of the public domain.

[77] This classification of lands in Section 6 of the PLA III is clear proof that the PLA III conceives of the "public domain" as state-owned lands that have been released for disposition. Essentially this classification corresponds to the US federal classification of public domain lands versus reserved lands. Confusion arises, however, because the first sentence of the provision seems to be using the term "public domain" in its expanded conception.

[78] Agricultural lands are those which are not mineral or forest lands, regardless of whether the power of classification has been exercised thereover. *Krivenko v. Register of Deeds*, 79 Phil. 461 (1947); *Mapa v. Insular Government*, 10 Phil. 175 (1908).

[79] Arturo M. Tolentino, supra note 48 at 38. Emphases and underlining supplied.

[80] G.R. No. 211664, November 12, 2018.

[81] Id.

[82] It appears that the classificatory agencies have the power to calibrate the fineness of the distinction between the two senses of the term "agricultural land" in the PLA III and the Constitution, in that the classificatory agencies can establish the criteria for "suitability" (PLA III, Section 11) or determine the use or purpose to which [alienable and disposable lands of the public domain] are destined (PLA III, Section 9).

[83] *Heirs of Mario Malabanan v. Republic*, supra note 71.

[84] Heirs of Mario Malabanan v. Republic, *supra* notes 71 and 74.

[85] 489 Phil. 405 (2005).

[86] CONSTITUTION, Article XIII, Section 6; Vicente G. Sinco, *supra* note 5; Hector S. De Leon and Hector M. De Leon, Jr., *supra* note 5.

[87] See Chavez v. Public Estates Authority, *supra* note 61.

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