5.1 Definition, sources and Types of Usufruct

5.1.1 Definition

In Roman-based legal systems, **usufruct** is **the temporary right to the use and enjoyment of the property of another, without changing the character of the property**.

This legal concept developed in Roman law and found significant application in the determination of the property interests between a slave held under a *usus fructus* (Latin: “use and enjoyment”) bond and a temporary master. Any property acquired by a slave as a result of his labour legally belonged to that master.

According to the black’s law dictionary:

Usufruct is a right to use and enjoy the fruits of another’s property for a period without damaging or diminishing it, although the property might

Modern civil-law systems recognize two types of usufructs.

a. **The perfect usufruct** includes only those things that a usufructuary (one who holds property under right of usufruct) can use without changing their substance, such as land, buildings, or movable objects; the substance of the property, however, may be altered naturally over time and by the elements.

b. **The quasi-, or imperfect, usufruct** includes property that is consumable or expendable, such as money, agricultural products, and the like, which would be of no advantage to the usufructuary if he could not consume them, expend them,

Usufruct may arise from;

- **Contract**_… an owner of a thing may transfer the use right over a thing to another by contractual agreement.
- **Will (testate succession)**… a person may provide orally or in writing so that the use right of his property shall be transferred to another person. Art 912 and 929.
- **The law / intestate succession**/… for example, if a certain property cannot be divided between persons without being destructed, all the owners may be allowed to use the thing in an equal

- **Single usufructuary** …created in favor of a single person.
- **Multiple usufructuary** …to be used jointly and simultaneously in favor of several persons.
- **Successive Usufructuary**… where several persons are called to enjoy it in succession, one following the other. For example, a person may be given a right of usufruct until the of his time death and after his death the usufruct may be transferred to his or her heirs who are called to it in the second place.
- **Limited time usufructuary** Usufruct may be created for a limited period of time or ;
- **Lifetime usufructuary** where a property may be given to a person to be used for lifetime of the usufructuary. Art 1322(1).

- **Corporate Usufructuary…** created in favor of bodies corporate or properties with specific destination shall

5.2.1 Rights of a usufructuary

- The right to use and enjoy the thing, and its fruits.
- The right to bring possessory action and to use force to protect his possession in case where any person, including the bare owner, interferes with his possession of the thing. (Arts 1341, 1148 and 1149).
- The the right of usufruct over the compensation paid in case where the thing is lost or destroyed. Art 1319(2)

5.2.2 Obligations of a usufructuary

- The Conservation of the Substance of the Thing. (Art. 1309(1) and 1330(2).
- To exercise due care and diligence like a diligent head of family and must use the thing following the pattern established by the owner and he must follow the prior use of the thing. (Art. 1312, 1330/2/ & 1328)
- The obligation to up-keep the thing: - The usufructuary has an obligation to have regular maintenance and repair works done at his cost. (Art 1313).

- To pay all the charges encumbering the profits of the thing such as annual taxes such as land tax, building tax or income taxes and other charges that are normally payable out of the income derived from the thing. (Art 1314).

- To inform the bare owner about any act of interference by a third person in the rights of the bare owner. For instance, he must inform the bare owner of any person, whether in court or outside of a court, challenging the right of ownership of the bare owner over the thing.

- Where a usufructuary fails to comply with this provision and the bare owner loses his right of ownership, he shall be liable to compensate the bare owner as if he himself caused the loss or damage of the rights of the bare owner. (Art 1342).

- At the time of extinction of the usufruct, to restore or restitute the thing to the bare owner or his agent.

- He shall be liable for the loss or deterioration of the thing, where the loss or deterioration resulted from his fault, such as abuse of the thing or failure to exercise due care in the use of the thing or negligence in the use and

5.2.3 Obligations of a bare owner

- Duty to refrain from any kind of interference with the right of the usufructuary to possess, use and enjoy the thing and collect and use its fruits. For example, he cannot change the thing, which is subject of the usufruct nor can he use or exploit the thing or interfere with the possession of the thing.
- Undertake major repairs as defined under Arts 1337 and 1338, which are not result of the usufructuary's fault.
- Cover extra ordinary charges. Art 1315

5.2.4 Rights of a bare owner

From the discussions made above regarding the obligations of the usufructuary, we can identify the rights of the bare owner.

Usufruct

The right of usufruct shall be extinguished for either of the following reasons;

a. Death of the usufructuary. (Art 1322(1)
b. Lapse of the period for which it is created. (Art 1322(1)
c. Extinctive prescription – lack of exercise of any of the usufruct rights or complete absence of enjoyment, use possession by the usufructuary or by his agent in relation to ordinary corporeal movable things (Art 1310 & 1192).
d. The loss or destruction of the thing; Similar to the case of loss of ownership right, usufruct shall also be extinguished as a result of the loss or destruction of the object of property (Arts 1319, 1310 &

e. Consolidation or merger of the position of the bare owner and the usufructuary in one person when the usufructuary acquires bare ownership (by contract or succession) or when the bare owner acquires the usufruct by contract(Art 1676/1/ & 1842)

f. **Forfeiture or waiver of right** by the usufructuary; A right of usufruct of chattels shall be extinguished where the usufructuary expresses, clearly and unequivocally, his intention to waive his rights as a usufructuary. (Arts 1310 & 1191) (Art 1676/1/ & 1825).

g. Acquisitive prescription in favor of a