LECTURE NOTES ON CIVIL LAW

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CHANGES IN THE NEW CIVIL CODE

1. **Granting of new rights**
   - *Example:* The Family Code erases the distinction between natural and spurious children. Now they are lumped together as 'illegitimate.' Thus, spurious children are given rights.
2. **Different solutions to old problems**
   - *Example:* Change in river course
3. **Clarification of old provisions**
   - *Example:* Under the old Civil Code, there were only void and voidable contracts. With the addition of unenforceable and rescissible contracts, the NCC provides clarification
4. **Certain subjects omitted**
   - *Examples:* The dowry has been omitted; certain leases have also been omitted.

The NCC is far from perfect. There are structural defects. Certain things which should be in the preliminary section are found elsewhere. An example of this is the vices of consent. Why are they found in contracts? They are relevant in all juridical transactions. Another example is the topic of degrees of relationship. This is found only in succession. Degrees of relationship are relevant in other books too. Finally, why is tradition found in the law on sales? Tradition is not only important in sales. Rather, tradition is a mode of acquiring ownership.

PRELIMINARY TITLE

I. EFFECT AND APPLICATION OF LAWS

Art. 1. **This Act shall be known as the "Civil Code of the Philippines."**

Art. 2. **Laws shall take effect after fifteen days following the completion of their publication in the Official Gazette, unless it is otherwise provided. This Code shall take effect one year after such publication.**

- **'This code shall take effect 1 year after such publication.'** The SC in the case of *Lara vs. Del Rosario* that the one year should be counted from the date of actual release and not the date of issue.
- Executive Order No. 200 supersedes Article 2 regarding the time of effectivity of laws.

EXECUTIVE ORDER NO. 200

PROVIDING FOR THE PUBLICATION OF LAWS EITHER IN THE OFFICIAL GAZETTE OR IN A NEWSPAPER OF GENERAL CIRCULATION IN THE PHILIPPINES AS A REQUIREMENT FOR THEIR EFFECTIVITY

WHEREAS, Article 2 of the Civil Code partly provides that "laws shall take effect after fifteen days following the completion of their publication in the Official Gazette, unless it is otherwise provided . . .";

WHEREAS, the requirement that for laws to be effective only a publication thereof in the Official Gazette will suffice has entailed some problems, a point recognized by the Supreme Court in Tañada, et al. vs. Tuvera, et al. (G.R. No. 63915, December 29, 1986) when it observed that "[t]here is much to be said of the view that the publication need not be made in the Official Gazette, considering its erratic release and limited readership";

WHEREAS, it was likewise observed that "[u]ndoubtedly, newspapers of general circulation could better perform the function of communicating the laws to the people as such periodicals are more easily available, have a wider readership, and come out regularly"; and

WHEREAS, in view of the foregoing premises Article 2 of the Civil Code should accordingly be amended so the laws to be effective must be published either in the Official Gazette or in a newspaper of general circulation in the country;

NOW, THEREFORE, I, CORAZON C. AQUINO, President of the Philippines, by virtue of the powers vested in me by the Constitution, do hereby order:

Sec. 1. Laws shall take effect after fifteen days following the completion of their publication either in the Official Gazette or in a newspaper of general circulation in the Philippines, unless it is otherwise provided.

Sec. 2. Article 2 of Republic Act No. 386, otherwise known as the "Civil Code of the Philippines," and all other laws inconsistent with this Executive Order are hereby repealed or modified accordingly.

Sec. 3. This Executive Order shall take effect immediately after its publication in the Official Gazette.

Done in the City of Manila, this 18th day of June, in the year of Our Lord, nineteen hundred and eighty-seven.

- **'15 days following'** - does this mean on the 15th or 16th day? The law is not clear.
- Under Article 2, publication in the Official Gazette was necessary. Now, under E.O. No. 200, publication may either be in the Official Gazette or a newspaper of general publication.
- **'unless otherwise provided'** refers to when the law shall take effect. It does not mean that publication can be dispensed with. Otherwise, that would be a violation of due process.
- **General Rule:** Laws must be published in either the Official Gazette or a newspaper of general circulation.
- ***Exception:*** The law may provide for another manner of publication. Different manner meaning:
  1. Not in Official Gazette or newspaper of general circulation; or

     Example: Read over the television or the radio (provided that the alternative is reasonable)
  2. Change in the period of effectivity
- **'publication'** means making it known; dissemination. It doesn't have to be in writing.

- **'Change period of effectivity'** – the gap between publication and effectivity should be reasonable under the circumstances.
- Before publication, cannot apply the law whether penal or civil *(Pesigan vs. Angeles)* Why? How can you be bound if you don't know the law.
- Requirement of publication applies to all laws and is mandatory.

Art. 3. **Ignorance of the law excuses no one from compliance therewith.**

- *Ignorantia legis neminem excusat* (Ignorance of the law excuses no one).
- This is a necessary rule for all civilized society. Otherwise it would be impossible to enforce the law. It is very hard to determine whether or not a person really does not know the law. Without this rule, there would be anarchy. The law sacrifices occasional harshness to prevent universal anarchy.
- There are potential methods to mitigate the severity of Article 3 – Articles 526 (¶3), 2155, 1334.[*]
- In *Kasilag vs. Rodriguez,* the SC said that the possession of the antichretic credit as possession in good faith since a difficult question of law was involved – antichresis. In this case, the parties were not very knowledgeable of the law.
- Article 3 applies only to ignorance of Philippine law. It does not apply to foreign law. In Private International Law, foreign law must be proven even if it is applicable. Otherwise, the courts will presume the foreign law to be the same as Philippine law.

Art. 4. **Laws shall have no retroactive effect, unless the contrary is provided.**

- *Lex de futuro judex de preterito* (The law provides for the future, the judge for the past).
- **Retroactive law** – one which creates a new obligation and imposes a new duty or attaches a new disability with respect to transactions or considerations already past.
- **General Rule:** Law must be applied prospectively.
- ***Exceptions:***
  1. If the statute provides for retroactivity.

     Exception to the exception:

     a. *Ex post facto* laws

     b. Laws which impair the obligation of contracts
  2. Penal laws insofar as it favors the accused who is not a habitual criminal, even though at the time of the enactment of such law final sentence has already been rendered.
  3. Remedial laws as long as it does not affect or change vested rights.

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[*] *Art. 526, ¶3.* Mistake upon a doubtful or difficult question of law may be the basis of good faith.

Art. 2155. Payment by reason of a mistake in the construction or application of a doubtful or difficult question of law may come within the scope of the preceding article.

Art. 1334. Mutual error as to the legal effect of an agreement when the real purpose of the parties is frustrated, may vitiate consent.

4. When the law creates new substantive rights unless vested rights are impaired.
5. Curative laws (the purpose is to cure defects or imperfections in judicial or administrative proceedings)
6. Interpretative laws
7. Laws which are of emergency nature or are authorized by police power *(Santos vs. Alvarez*; *PNB vs. Office of the President)*

Art. 5. **Acts executed against the provisions of mandatory or prohibitory laws shall be void, except when the law itself authorizes their validity.**

- A mandatory law is one which prescribes some element as a requirement (*i.e.*, wills must be written – Article 804[♣]; form of donations – Article 749[♦])
- A prohibitory law is one which forbids something (*i.e.*, joint wills – Article 818[♥])
- **General Rule:** Acts which are contrary to mandatory or prohibited laws are void.
- ***Exceptions:***
  1. When the law itself authorized its validity (*i.e.,* lotto, sweepstakes)
  2. When the law makes the act only voidable and not void (*i.e.,* if consent is vitiated, the contract is voidable and not void)
  3. When the law makes the act valid but punishes the violator (*i.e.,* if the marriage is celebrated by someone without legal authority but the parties are in good faith, the marriage is valid but the person who married the parties is liable)
  4. When the law makes the act void but recognizes legal effects flowing therefrom (*i.e.,* Articles 1412 & 1413[♠])

[♣] *Art. 804.* Every will must be in writing and executed in a language or dialect known to the testator.

[♦] *Art. 749.* In order that the donation of an immovable may be valid, it must be made in a public document, specifying therein the property donated and the value of the charges which the donee must satisfy.

The acceptance may be made in the same deed of donation or in a separate public document, but it shall not take effect unless it is done during the lifetime of the donor.

If the acceptance is made in a separate instrument, the donor shall be notified thereof in an authentic form, and this step shall be noted in both instruments.

[♥] *Art. 818.* Two or more persons cannot make a will jointly, or in the same instrument, either for their reciprocal benefit or for the benefit of a third person.

[♠] *Art. 1412.* If the act in which the unlawful or forbidden cause consists does not constitute a criminal offense, the following rules shall be observed:

(1) When the fault is on the part of both contracting parties, neither may recover what he has given by virtue of the contract, or demand the performance of the other's undertaking;

(2) When only one of the contracting parties is at fault, he cannot recover what he has given by reason of the contract, or ask for the fulfillment of what has been promised him. The other, who is not at fault, may demand the return of what he has given without any obligation to comply his promise.

Art. 1413. Interest paid in excess of the interest allowed by the usury laws may be recovered by the debtor, with interest thereon from the date of the payment.

Art. 6. **Rights may be waived, unless the waiver is contrary to law, public order, public policy, morals, or good customs, or prejudicial to a third person with a right recognized by law.**

- What one can waive are rights and not obligations. *Example,* a creditor can waive the loan but the debtor may not.
- There is no form required for a waiver since a waiver is optional. You can waive by mere inaction, refusing to collect a debt for example is a form of waiver.
- Requisites of a valid waiver *(Herrera vs. Boromeo)*
  1. Existence of a right
  2. Knowledge of the existence of the right
  3. An intention to relinquish the right (implied in this is the capacity to dispose of the right)
- **General Rule:** Rights can be waived.
- ***Exceptions:***
  1. If waiver is contrary to law, public order, public policy, morals or good customs
  2. If the waiver would be prejudicial to a 3rd party with a right recognized by law. (*e.g.,* If A owes B P10M, B can't waive the loan if B owes C and B has no other assets.)
- *Examples of waivers which are prohibited:*
  1. Repudiation of future inheritance
  2. Waiver of the protection of *pactum commissorium*
  3. Waiver of future support
  4. Waiver of employment benefits in advance
  5. Waiver of minimum wage
  6. Waiver of the right to revoke a will

Art. 7. **Laws are repealed only by subsequent ones, and their violation or non-observance shall not be excused by disuse, or custom or practice to the contrary.**

When the courts declared a law to be inconsistent with the Constitution, the former shall be void and the latter shall govern.

Administrative or executive acts, orders and regulations shall be valid only when they are not contrary to the laws or the Constitution.

- Article 7 is obvious because time moves forward.
- Only subsequent laws can repeal prior laws either through:
  1. A repealing clause
  2. Incompatibility of the subsequent and prior laws
- The violation of a law is not justified even if:
  1. No one follows the law (*i.e.,* nonpayment of taxes)
  2. There is a custom to the contrary

- The 2nd par. of Article 7 is judicial review in statutory form.

Art. 8. **Judicial decisions applying or interpreting the laws or the Constitution shall form a part of the legal system of the Philippines.**

- This is a new provision taken from common law. Under the civil law tradition, the court merely applies the law. However since the Philippine legal system is a combination of civil law and common law, courts apply statutes as well as resort to the doctrine of precedent.

Art. 9. **No judge or court shall decline to render judgment by reason of the silence, obscurity or insufficiency of the laws.**

Art. 10. **In case of doubt in the interpretation or application of laws, it is presumed that the lawmaking body intended right and justice to prevail.**

- What if the law is silent? The court should render a decision based on justice as stated in Article 10.

Art. 11. **Customs which are contrary to law, public order or public policy shall not be countenanced.**

- What if customs are not contrary to law? The custom would be countenanced. However, this does not mean that the custom would have obligatory force.

Art. 12. **A custom must be proved as a fact, according to the rules of evidence.**

- The law doesn't specify the cases when custom is relevant in litigation. But in case custom is relevant, it should be proven.
- Commentators say that custom is important in cases involving negligence. For example, if a *kalesa* in Manila is by custom supposed to have rattan baskets to prevent people from slipping, if a person slips because there is no rattan basket, then he can sue for negligence.

Art. 13. **When the laws speak of years, months, days or nights, it shall be understood that years are of three hundred sixty-five days each; months, of thirty days; days, of twenty-four hours; and nights from sunset to sunrise.**

If months are designated by their name, they shall be computed by the number of days which they respectively have.

In computing a period, the first day shall be excluded, and the last day included.

- Article 13 has been superseded by Executive Order No. 292 (the Revised Administrative Code of 1987) – Book 1, §31.

Sec. 31. ***Legal Periods.*** **- "Year" shall be understood to be twelve calendar months; "month" of thirty days, unless it refers to a specific calendar month in which case it shall be computed according to the number of days the specific month contains; "day," to a day of twenty-four hours; and "night," from sunset to sunrise.**

- Under E.O. No. 292, a year is now equivalent to 12 calendar months and not 365 days. Under Article 13 leap years are not considered. For examples, in order to make a will, one has to be 18 years old. But if you use Article 13, one loses 4 to 5 days if you don't count the leap years. E.O. No. 292 is better than Article 13 since it is more realistic.
- There should have been a definition of hours. That definition is relevant for labor law. According to Professor Balane, an hour should be defined as 1/24 of a calendar day. If you use the definition that an hour is equal to 60 minutes, then we would have to define minutes, then seconds, and so on. It would be too scientific.

II. CONFLICTS OF LAW PROVISIONS

Art. 14. **Penal laws and those of public security and safety shall be obligatory upon all who live or sojourn in the Philippine territory, subject to the principles of public international law and to treaty stipulations.**

- Two principles:
  1. **Territoriality**

     General Rule: Criminal laws apply only in Philippine territory.

     Exception*:* Article 2, Revised Penal Code.[∅]
  2. **Generality**

     General Rule*:* Criminal laws apply to everyone in the territory (citizens and aliens)

     Exceptions*:* In these instances, all the Philippines can do is expel them

     a. Treaty stipulations which exempt some persons within the jurisdiction of Philippine courts (*e.g.,* Bases Agreement)

     b. Heads of State and Ambassadors

        (*Note:* Consuls are subject to the jurisdiction of our criminal courts.)

Art. 15. **Laws relating to family rights and duties, or to the status, condition and legal capacity of persons are binding upon citizens of the Philippines, even though living abroad.**

[∅] Art. 2. *Application of its provisions.* — Except as provided in the treaties and laws of preferential application, the provisions of this Code shall be enforced not only within the Philippine Archipelago, including its atmosphere, its interior waters and maritime zone, but also outside of its jurisdiction, against those who:

1. Should commit an offense while on a Philippine ship or airship;
2. Should forge or counterfeit any coin or currency note of the Philippine Islands or obligations and securities issued by the Government of the Philippine Islands;
3. Should be liable for acts connected with the introduction into these islands of the obligations and securities mentioned in the presiding number;
4. While being public officers or employees, should commit an offense in the exercise of their functions; or
5. Should commit any of the crimes against national security and the law of nations, defined in Title One of Book Two of this Code.

- Theories on Personal Law:
  1. ***Domiciliary theory*** - the personal laws of a person are determined by his domicile
  2. ***Nationality theory*** - the nationality or citizenship determines the personal laws of the individual
- Under Article 15, the Philippines follows the nationality theory. Family rights and duties, status and legal capacity of Filipinos are governed by Philippine law.
- **General Rule:** Under Article 26 of the Family Code, all marriages solemnized outside the Philippines in accordance with the laws in force in the country where they were solemnized and valid there as such, is also valid in the Philippines.
- ***Exception:*** If the marriage is void under Philippine law, then the marriage is void even if it is valid in the country where the marriage was solemnized .

  Exception to the exception:

  1. Article 35, ¶2, Family Code

     Art. 35. **The following marriages shall be void from the beginning:**
     (2) Those solemnized by any person not legally authorized to perform marriages unless such marriages were contracted with either or both parties believing in good faith that the solemnizing officer had the legal authority to do so;

  2. Article 35, ¶3, Family Code

     Art. 35. **The following marriages shall be void from the beginning:**
     (3) Those solemnized without license, except those covered the preceding Chapter;

  Even if the foreign marriage did not comply with either ¶s 2 and 3 of Article 35, Philippine law will recognize the marriage as valid as long as it is valid under foreign law.

Art. 16, ¶1. **Real property as well as personal property is subject to the law of the country where it is stipulated.**

- *Lex situs* or *lex rei sitae* governs real or personal property (property is subject to the laws of the country in which it is located).
- In *Tayag vs. Benguet* consolidated, the SC said that Philippine law shall govern in cases involving shares of stock of a Philippine corporation even if the owner is in the US.

Art. 16, ¶2. **However, intestate and testamentary successions, both with respect to the order of succession and to the amount of successional rights and to the intrinsic validity of testamentary provisions, shall be regulated by the national law of the person whose succession is under consideration, whatever may be the nature of the property and regardless of the country wherein said property may be found.**

- This is merely an extension of the nationality theory in Article 15.

- The national law of the decedent regardless of the location of the property shall govern. Thus, the national law of the decedent shall determine who will succeed.
- In *Miciano vs. Brimo*, the SC said that the will of a foreigner containing the condition that the law of the Philippines should govern regarding the distribution of the properties is invalid.
- In *Aznar vs. Garcia*, what was involved was the renvoi doctrine. In this case, the decedent was a citizen of California who resided in the Philippine. The problem was that under Philippine law, the national law of the decedent shall govern. On the other hand, under California law, the law of the state where the decedent has his domicile shall govern. The SC accepted the referral by California law and applied Philippine law (single renvoi).
- ***Problem:*** What if the decedent is a Filipino domiciled in a foreign country which follows the domiciliary theory?

  According to Professor Balane, one way to resolve the situation is this – Philippine law should govern with respect to properties in Philippine while the law of the domicile should govern with respect to properties located in the state of domicile.

Art. 17. **The forms and solemnities of contracts, wills, and other public instruments shall be governed by the laws of the country in which they are executed.**

When the acts referred to are executed before the diplomatic or consular officials of the Republic of the Philippines in a foreign country, the solemnities established by Philippine laws shall be observed in their execution.

Prohibitive laws concerning persons, their acts or property, and those which have for their object public order, public policy and good customs shall not be rendered ineffective by laws or judgments promulgated, or by determinations or conventions agreed upon in a foreign country.

- *Lex loci celebrationis* (formal requirements of contracts, wills, and other public instruments are governed by the country in which they are executed)
- There is no conflict between the 1st ¶ of Article 16 and the 1st ¶ of Article 17 since they talk of 2 different things.
- Thus, the formal requirements of a contract involving real property in the Philippines must follow the formal requirements of the place where the contract was entered into. However, if what is involved is not the formal requirements, then the law of the place where the properties (whether real or personal) are located shall govern.

Art. 18. **In matters which are governed by the Code of Commerce and special laws, their deficiency shall be supplied by the provisions of this Code.**

III. Human Relations

Art. 19. **Every person must, in the exercise of his rights and in the performance of his duties, act with justice, give everyone his due, and observe honesty and good faith.**

Art. 20. **Every person who, contrary to law, willfully or negligently causes damage to another, shall indemnify the latter for the same.**

Art. 21. **Any person who willfully causes loss or injury to another in manner that is contrary to morals, good customs or public policy shall compensate the latter for the damage.**

Art. 22. **Every person who through an act of performance by another, or any other means, acquires or comes into possession of something at the expense of the latter without just or legal ground, shall return the same to him.**

Art. 23. **Even when an act or event causing damage to another's property was not due to the fault or negligence of the defendant, the latter shall be liable for indemnity if through the act or event he was benefited.**

Art. 24. **In all contractual, property or other relations, when one of the parties is at a disadvantage on account of his moral dependence, ignorance, indigence, mental weakness, tender age or other handicap, the courts must be vigilant for his protection.**

Art. 25. **Thoughtless extravagance in expenses for pleasure or display during a period of acute public want or emergency may be stopped by order of the courts at the instance of any government or private charitable institution.**

Art. 26. **Every person shall respect the dignity, personality, privacy and peace of mind of his neighbors and other persons. The following and similar acts, though they may not constitute a criminal offense, shall produce a cause of action for damages, prevention and other relief:**

(1) Prying into the privacy of another's residence:

(2) Meddling with or disturbing the private life or family relations of another;

(3) Intriguing to cause another to be alienated from his friends;

(4) Vexing or humiliating another on account of his religious beliefs, lowly station in life, place of birth, physical defect, or other personal condition.

Art. 27. **Any person suffering material or moral loss because a public servant or employee refuses or neglects, without just cause, to perform his official duty may file an action for damages and other relief against he latter, without prejudice to any disciplinary administrative action that may be taken.**

Art. 28. **Unfair competition in agricultural, commercial or industrial enterprises or in labor through the use of force, intimidation, deceit, machination or any other unjust, oppressive or highhanded method shall give rise to a right of action by the person who thereby suffers damage.**

Art. 29. **When the accused in a criminal prosecution is acquitted on the ground that his guilt has not been proved beyond reasonable doubt, a civil action for damages for the same act or omission may be instituted. Such action requires only a preponderance of evidence. Upon motion of the defendant, the court may require the plaintiff to file a bond to answer for damages in case the complaint should be found to be malicious.**

If in a criminal case the judgment of acquittal is based upon reasonable doubt, the court shall so declare. In the absence of any declaration to that effect, it may be inferred from the text of the decision whether or not the acquittal is due to that ground.

Art. 30. **When a separate civil action is brought to demand civil liability arising from a criminal offense, and no criminal proceedings are instituted during the pendency of the civil case, a preponderance of evidence shall likewise be sufficient to prove the act complained of.**

Art. 31. **When the civil action is based on an obligation not arising from the act or omission complained of as a felony, such civil action may proceed independently of the criminal proceedings and regardless of the result of the latter.**

Art. 32. **Any public officer or employee, or any private individual, who directly or indirectly obstructs, defeats, violates or in any manner impedes or impairs any of the following rights and liberties of another person shall be liable to the latter for damages:**

(1) Freedom or religion;

(2) Freedom of speech;

(3) Freedom to write for the press or to maintain a periodical publication;

(4) Freedom from arbitrary or illegal detention;

(5) Freedom of suffrage;

(6) The right against deprivation of property without due process of law;

(7) The right to a just compensation when private property is taken for public use;

(8) The right to the equal protection of the laws;

(9) The right to be secure in one's person, house, papers, and effects against unreasonable searches and seizures;

(10) The liberty of abode and of changing the same;

(11) The privacy of communication and correspondence;

(12) The right to become a member of associations or societies for purposes not contrary to law;

(13) The right to take part in a peaceable assembly to petition the Government for redress of grievances;

(14) The right to be a free from involuntary servitude in any form;

(15) The right of the accused against excessive bail;

(16) The right of the accused to be heard by himself and counsel, to be informed of the nature and cause of the accusation against him, to have a speedy and public trial, to meet the witnesses face to face, and to have compulsory process to secure the attendance of witness in his behalf;

(17) Freedom from being compelled to be a witness against one's self, or from being forced to confess guilt, or from being induced by a promise

of immunity or reward to make such confession, except when the person confessing becomes a State witness;

(18) Freedom from excessive fines, or cruel and unusual punishment, unless the same is imposed or inflicted in accordance with a statute which has not been judicially declared unconstitutional; and

(19) Freedom of access to the courts.

In any of the cases referred to in this article, whether or not the defendant's act or omission constitutes a criminal offense, the aggrieved party has a right to commence an entirely separate and distinct civil action for damages, and for other relief. Such civil action shall proceed independently of any criminal prosecution (if the latter be instituted), and mat be proved by a preponderance of evidence.

The indemnity shall include moral damages. Exemplary damages may also be adjudicated.

The responsibility herein set forth is not demandable from a judge unless his act or omission constitutes a violation of the Penal Code or other penal statute.

Art. 33. **In cases of defamation, fraud, and physical injuries a civil action for damages, entirely separate and distinct from the criminal action, may be brought by the injured party. Such civil action shall proceed independently of the criminal prosecution, and shall require only a preponderance of evidence.**

Art. 34. **When a member of a city or municipal police force refuses or fails to render aid or protection to any person in case of danger to life or property, such peace officer shall be primarily liable for damages, and the city or municipality shall be subsidiarily responsible therefor. The civil action herein recognized shall be independent of any criminal proceedings, and a preponderance of evidence shall suffice to support such action.**

Art. 35. **When a person, claiming to be injured by a criminal offense, charges another with the same, for which no independent civil action is granted in this Code or any special law, but the justice of the peace finds no reasonable grounds to believe that a crime has been committed, or the prosecuting attorney refuses or fails to institute criminal proceedings, the complaint may bring a civil action for damages against the alleged offender. Such civil action may be supported by a preponderance of evidence. Upon the defendant's motion, the court may require the plaintiff to file a bond to indemnify the defendant in case the complaint should be found to be malicious.**

If during the pendency of the civil action, an information should be presented by the prosecuting attorney, the civil action shall be suspended until the termination of the criminal proceedings.

Art. 36. **Pre-judicial questions, which must be decided before any criminal prosecution may be instituted or may proceed, shall be governed by rules of court which the Supreme Court shall promulgate and which shall not be in conflict with the provisions of this Code.**

PERSONS

Person
- Any physical or juridical being susceptible o frights and obligations, or of being the subject of legal relations

Persons *vs.* Things
- A person is the *subject* of legal relations
- A things is the *object* of legal relations

Art. 37. **Juridical capacity, which is the fitness to be the subject of legal relations, is inherent in every natural person and is lost only through death. Capacity to act, which is the power to do acts with legal effect, is acquired and may be lost.**

- 2 component elements of capacity:
  1. **Juridical capacity**
     - There are no degrees of juridical capacity.
     - Juridical capacity is the same in every person. No one has more juridical capacity than others. It is inherent in natural persons. On the other hand, it arises in artificial persons when such artificial persons are created.
  2. **Capacity to act**
     - This is best presented by a spectrum:

     - Nobody has 100% capacity to act. The law imposes restrictions on capacity to act. As long as one has contractual capacity (*a.k.a.* full civil capacity) one is near 100% capacity to act. "Full civil capacity" is not really 100% but close to it. With contractual capacity, one is generally able to perform contracts and dispose of property.
     - Nobody has 0% capacity to act. Infants are close to 0% but still have capacity to act. For example, even fetus has the right to succeed and also have the right to the integrity of body. Aliens cannot own colleges or broadcast media.

Art. 38. **Minority, insanity or imbecility, the state of being a deaf-mute, prodigality and civil interdiction are mere restrictions on capacity to act, and do not exempt the incapacitated person from certain obligations, as when the latter arise from his acts or from property relations, such as easements.**

Art. 39. **The following circumstances, among others, modify or limit capacity to act: age, insanity, imbecility, the state of being a deaf-mute, penalty, prodigality, family relations, alienage, absence, insolvency and trusteeship. The consequences of these circumstances are governed in this Code, other codes, the Rules of Court, and in special laws. Capacity to act is not limited on account of religious belief or political opinion.**

A married woman, twenty-one years of age or over, is qualified for all acts of civil life, except in cases specified by law.

- Articles 38 and 39 are really the same thing. They are redundant.
- **Insolvency** – certain obligations cannot be performed (*i.e.,* one cannot pay off debts in favor of one creditor while excluding other creditors)
- **Trusteeship** - one is placed in guardianship.
- **Prodigality** - it is not by itself a restriction. It is a ground to be placed in guardianship
- These restrictions don't exempt incapacitated persons from certain obligations. Under Article 1156, there are 5 sources of obligations:
  1. Law
  2. Contract
  3. Delict
  4. Quasi-delict
  5. Quasi-contract
- Thus, Articles 38 and 39 prevent incapacitated persons from incurring contractual obligations only. Thus, even though an insane person cannot be thrown in jail for a criminal act, the insane person is still civilly liable (delict). An incapacitated person must still pay income tax if income is earned.
- Although Articles 38 and 39 don't mention it, incapacitated persons may acquire rights. For example, they have the right to accept donations or to succeed.
- The enumeration in Articles 38 and 39 is not exclusive. There are others spread throughout the code. (*i.e.,* a lawyer cannot buy property in litigation – Article 1491 (5)[⊕])
- Article 39, last ¶ has been amended by R.A. No. 6809. 21 years is no longer the age of majority but 18.
- Article 39, last ¶ – What are the cases specified by law?

I. NATURAL PERSONS

Art. 40. **Birth determines personality; but the conceived child shall be considered born for all purposes that are favorable to it, provided it be born later with the conditions specified in the following article.**

Art. 41. **For civil purposes, the foetus is considered born if it is alive at the time it is completely delivered from the mother's womb. However, if the foetus had an intra-uterine life of less than seven months, it is not deemed born**

[⊕] *Art. 1491.* The following persons cannot acquire by purchase, even at a public or judicial auction, either in person or through the mediation of another:

(5) Justices, judges, prosecuting attorneys, clerks of superior and inferior courts, and other officers and employees connected with the administration of justice, the property and rights in litigation or levied upon an execution before the court within whose jurisdiction or territory they exercise their respective functions; this prohibition includes the act of acquiring by assignment and shall apply to lawyers, with respect to the property and rights which may be the object of any litigation in which they may take part by virtue of their profession.

if it dies within twenty-four hours after its complete delivery from the maternal womb.

- Principles:
  1. For personality to be acquired one must be born
  2. Once birth occurs, personality for favorable purposes retroacts to the moment of conception
- To be born means to be alive after the fetus is completely separated from the mother's womb by cutting off the umbilical cord.
- **General Rule:** To be born, it is enough that the fetus is alive when the umbilical cord is cut
- ***Exception:*** If the intra-uterine life is less than 7 months, it must live for at least 24 hours, before it is considered born (There is no distinction as to how the child dies – whether natural, accidental, etc.)
- According to Professor Balane, modern medicine cannot as of yet determine if the intra-uterine life is 7 months or less in terms of number of days. Modern medicine cannot determine the exact time when fertilization took place. Modern medicine estimates the fetus age in weeks.
- An example of a case where upon birth occurs personality retroacts to the moment of conception is in case of succession since it is favorable to the child. On the other hand, if the purpose is for paying taxes, personality does not retroact since it is unfavorable to the child.
- In *Geluz vs. CA*, the SC said that the father could not file the action for damages. The fetus never acquired personality because it was never born – it was not alive at the time it was delivered from the mother's womb. Since the fetus did not acquire any personality, it acquired no rights which could be transmitted to the father. Thus, the father could not sue in a representative capacity. The father could have sued in his personal capacity had the father suffered anguish which he did not.

Art. 42. **Civil personality is extinguished by death.**

The effect of death upon the rights and obligations of the deceased is determined by law, by contract and by will.

- This article deals with the extinguishment of civil personality
- Death is not defined in the Civil Code. Not even doctors know precisely when death occurs. There are many theories.
- The fact of death is important because it affects civil personality and legal relations. The main effect of death is readily seen in succession. Death is also relevant to labor law and insurance.

Art. 43. **If there is a doubt, as between two or more persons who are called to succeed each other, as to which of them died first, whoever alleges the death of one prior to the other, shall prove the same; in the absence of proof, it is presumed that they died at the same time and there shall be no transmission of rights from one to the other.**

RULE 131, RULES OF COURT

Sec. 3. *Disputable presumptions.* — The following presumptions are satisfactory if uncontradicted, but may be contradicted and overcome by other evidence:

(jj) That except for purposes of succession, when two persons perish in the same calamity, such as wreck, battle, or conflagration, and it is not shown who died first, and there are no particular circumstances from which it can be inferred, the survivorship is determined from the probabilities resulting from the strength and age of the sexes, according to the following rules:

1. If both were under the age of fifteen years, the older is deemed to have survived;

2. If both were above the age of sixty, the younger is deemed to have survived;

3. If one is under fifteen and the other above sixty, the former is deemed to have survived;

4. If both be over fifteen and under sixty, and the sex be different, the male is deemed to have survived; if the sex be the same, the older;

5. If one be under fifteen or over sixty, and the other between those ages, the latter is deemed to have survived.

- This is a presumption regarding simultaneous death and not a rule on survivorship. On the other hand, the Rules provide for a presumption of survivorship based on certain criteria.
- The Rules of Court shall apply where:
  1. The issue does not involve succession but something else (i.e., insurance, suspensive conditions); and
  2. The persons perish in the same calamity
- Article 43 shall apply where:
  1. The case involves succession; and
  2. The persons do not perish in the same calamity.
- If the conditions in the Rules of Court or Article 43 do not concur, do not apply either.
- ***Problem:*** What if succession is involved and the persons perish in the same calamity?

  Most commentators say Article 43 will prevail. This is the only case of conflict between the Rules of Court and Article 43.
- In *Joaquin vs. Navarro*, Article 43 was not applied. There was no need to apply the presumption in Article 43 since there was evidence to show who died first.

II. JURIDICAL PERSONS

Art. 44. **The following are juridical persons:**

(1) The State and its political subdivisions;

(2) Other corporations, institutions and entities for public interest or purpose, created by law; their personality begins as soon as they have been constituted according to law;

(3) Corporations, partnerships and associations for private interest or purpose to which the law grants a juridical personality, separate and distinct from that of each shareholder, partner or member.

- This enumerates the juridical persons.
- A juridical person is an organic unit resulting from a group of persons or mass or property to which the state grants or recognizes personality and capacity to hold patrimonial rights independent of those of component members
- The juridical personality of political subdivisions and public corporations (*i.e.,* GSIS, SSS) commences when the law creating them becomes effective.
- The juridical personality of a private corporation commences upon incorporation with the SEC.
- The juridical personality of a partnership commences upon the meeting of the minds of the parties.
- Although the Catholic Church is not one of those mentioned in Article 44, it is still considered as a juridical person in *Barlin vs. Ramirez* because of tradition.

Art. 45. **Juridical persons mentioned in Nos. 1 and 2 of the preceding article are governed by the laws creating or recognizing them.**

Private corporations are regulated by laws of general application on the subject.

Partnerships and associations for private interest or purpose are governed by the provisions of this Code concerning partnerships.

JURIDICAL PERSON	GOVERNED BY
State	Constitution (Defines its organization and limits its rights vis-à-vis citizens)
Political subdivision	Charter
Public corporation	Charter
Private corporation	Corporation Code, Articles of Incorporation and By-Laws
Partnerships	Stipulations of the parties and suppletorily by the general provisions on partnership

Art. 46. **Juridical persons may acquire and possess property of all kinds, as well as incur obligations and bring civil or criminal actions, in conformity with the laws and regulations of their organization.**

Art. 47. **Upon the dissolution of corporations, institutions and other entities for public interest or purpose mentioned in No. 2 of article 44, their property and other assets shall be disposed of in pursuance of law or the charter creating them. If nothing has been specified on this point, the property and other assets shall be applied to similar purposes for the benefit of the region, province, city or municipality which during the existence of the institution derived the principal benefits from the same.**

- Dissolution is found in detail in the Corporation Code.

III. CITIZENSHIP AND DOMICILE

Art. 48. **The following are citizens of the Philippines:**

(1) Those who were citizens of the Philippines at the time of the adoption of the Constitution of the Philippines;

(2) Those born in the Philippines of foreign parents who, before the adoption of said Constitution, had been elected to public office in the Philippines;

(3) Those whose fathers are citizens of the Philippines;

(4) Those whose mothers are citizens of the Philippines and, upon reaching the age of majority, elect Philippine citizenship;

(5) Those who are naturalized in accordance with law.

- This has been superseded by the Constitution.

ARTICLE IV, PHILIPPINE CONSTITUTION

Section 1. **The following are citizens of the Philippines:**

(1) Those who are citizens of the Philippines at the time of the adoption of this Constitution;

(2) Those whose fathers or mothers are citizens of the Philippines;

(3) Those born before January 17, 1973, of Filipino mothers, who elect Philippine citizenship upon reaching the age of majority; and

(4) Those who are naturalized in accordance with law.

Art. 49. **Naturalization and the loss and reacquisition of citizenship of the Philippines are governed by special laws.**

Art. 50. **For the exercise of civil rights and the fulfillment of civil obligations, the domicile of natural persons is the place of their habitual residence.**

Art. 51. **When the law creating or recognizing them, or any other provision does not fix the domicile of juridical persons, the same shall be understood to be the place where their legal representation is established or where they exercise their principal functions.**

- Article 50 governs the domicile of natural persons. Article 51 talks about the domicile of juridical persons.
- Requisites of Domicile (*Callego vs. Vera*):
  1. Physical Presence
  2. Intent to remain permanently
- Kinds of Domicile
  1. Domicile of Origin
     - Domicile of parents of a person at the time he was born.
  2. Domicile of Choice
     - Domicile chosen by a person, changing his domicile of origin.

- A 3rd requisite is necessary – intention not to return to one's domicile as his permanent place.

3. Domicile by Operation of Law (*i.e.,* Article 69[⊗], domicile of minor)

- Residence *vs.* Domicile
  - Residence is not permanent (There is no intent to remain)
  - Domicile is permanent (There is intent to remain)
- According to the Supreme Court in *Marcos vs. COMELEC*, the wife does not lose her domicile upon marriage. She does not necessarily acquire her husband's domicile. Until the spouses decide to get a new domicile, the wife retains her old domicile. Under Article 698 of the Family Code, the domicile is fixed jointly.
- 3 Rules:
  1. A man must have a domicile somewhere.
  2. A domicile once established remains until a new one is acquired.
  3. A man can only have one domicile at a time.
- The following Articles in the Civil Code mention domicile:
  1. Article 821

> ***Art. 821.*** **The following are disqualified from being witnesses to a will:**
>
> **(1) Any person not domiciled in the Philippines;**
>
> **(2) Those who have been convicted of falsification of a document, perjury or false testimony.**

  2. Article 829

> ***Art. 829.*** **A revocation done outside the Philippines, by a person who does not have his domicile in this country, is valid when it is done according to the law of the place where the will was made, or according to the law of the place in which the testator had his domicile at the time; and if the revocation takes place in this country, when it is in accordance with the provisions of this Code.**

  3. Article 1251

> ***Art. 1251.*** **Payment shall be made in the place designated in the obligation.**
>
> **There being no express stipulation and if the undertaking is to deliver a determinate thing, the payment shall be made wherever the thing might be at the moment the obligation was constituted.**
>
> **In any other case the place of payment shall be the domicile of the debtor.**
>
> **If the debtor changes his domicile in bad faith or after he has incurred in delay, the additional expenses shall be borne by him.**

[⊗] *Art. 69.* The husband and wife shall fix the family domicile. In case of disagreement, the court shall decide.

These provisions are without prejudice to venue under the Rules of Court.

- The concept of domicile is not as important in civil law countries unlike common law countries which follow the nationality theory.

IV. SURNAMES

- Surnames are important for identification. Surnames identify the family to which a person belongs (transmitted from parent to child).
- A name is a word or a combination by which a person is known or identified (*Republic vs. Fernandez*)
- Characteristics of Surnames
  1. Absolute – intended to protect from confusion
  2. Obligatory
  3. Fixed – can't change at one's leisure
  4. Outside the commerce of man – can't sell or donate
  5. Imprescriptible - even if one does not use, still your name
- Rules
  1. As far as the state is concerned, your real name is the one in the Civil Registry (not the baptismal certificate since parish records are no longer official)
  2. Change of name can only be done through court proceedings

     Art. 376. **No person can change his name or surname without judicial authority.**

  3. However, a person can use other names which are authorized by C.A. No. 142 as amended by R.A. No. 6085 (use of pseudonym)
- Guidelines regarding Change of Name
  1. In a petition for change of name, courts are generally strict. You have to show sufficient cause.
     - The cases of *Naldoza vs. Republic* and *Republic vs. Marcos* illustrate what are sufficient causes. *Republic vs. Hernandez* added an additional ground. The enumeration is not an exclusive list of causes. They are merely the ones frequently cited.
     - In *Republic vs. CA*, the child wanted to change to the surname of the stepfather's. The Supreme Court said this is not allowed since it will cause confusion as to the child's paternity.
  2. In a petition for injunction or in a criminal case for violation of C.A. No. 142, courts are generally liberal for as long as there is no fraud or bad faith.
     - In *Legamia vs. IAC*, the Supreme Court allowed the mistress to use her live-in partner's name since everyone knew that she was the mistress – no confusion.
     - In *Tolentino vs. CA*, the Supreme Court allowed the former Mrs. Tolentino to keep on using the surname of Tolentino since the same was not being used for fraudulent purposes.

3. In case of adoption where the woman adopts alone, it is the maiden name that should be given the child (*Johnston vs. Republic*)

Art. 370. **A married woman may use:**

(1) Her maiden first name and surname and add her husband's surname, or

(2) Her maiden first name and her husband's surname or

(3) Her husband's full name, but prefixing a word indicating that she is his wife, such as "Mrs."

- A married woman may use only her maiden name and surname. She has an option and not a duty to use the surname of her husband as provided for in Art. 370. This is the obiter dictum in *Yasin vs. Shari'a* which cites Tolentino.
- According to *Yasin vs. Shari'a,* when the husband dies, the woman can revert to her old name without need for judicial authorization.

Art. 176, Family Code. **Illegitimate children shall use the surname and shall be under the parental authority of their mother, and shall be entitled to support in conformity with this Code. The legitime of each illegitimate child shall consist of one-half of the legitime of a legitimate child. Except for this modification, all other provisions in the Civil Code governing successional rights shall remain in force.**

- Illegitimate children shall use the surname of the mother.

Art. 377. **Usurpation of a name and surname may be the subject of an action for damages and other relief.**

Art. 378. **The unauthorized or unlawful use of another person's surname gives a right of action to the latter.**

- Articles 377 and 378 don't talk of the same thing.
- Article 377 deals with the usurpation of names. There is usurpation when there is confusion of identity (*i.e.* you claim to be Jaime Zobel)
- Elements of Article 377 (Usurpation):
  1. There is an actual use of another's name by the defendant
  2. The use is unauthorized
  3. The use of another's name is to designate personality or identify a person.
- Article 378 is using of the name for purposes other than usurpation (*i.e.,* slander; for example, I will use Daliva's surname in my product, calling it Daliva see-thru lingerie)

V. EMANCIPATION AND AGE OF MAJORITY (RA 6809)

REPUBLIC ACT NO. 6809

AN ACT LOWERING THE AGE OF MAJORITY FROM TWENTY-ONE TO EIGHTEEN YEARS, AMENDING FOR THE PURPOSE EXECUTIVE ORDER NUMBERED TWO HUNDRED NINE, AND FOR OTHER PURPOSES

Sec. 1. **Article 234 of Executive Order No. 209, the Family Code of the Philippines, is hereby amended to read as follows:**

"Art. 234. Emancipation takes place by the attainment of majority. Unless otherwise provided, majority commences at the age of eighteen years."

Sec. 2. Articles 235 and 237 of the same Code are hereby repealed.

Sec. 3. Article 236 of the same Code is also hereby amended to read as follows:

"Art. 236. Emancipation shall terminate parental authority over the person and property of the child who shall then be qualified and responsible for all acts of civil life, save the exceptions established by existing laws in special cases.

"Contracting marriage shall require parental consent until the age of twenty-one.

"Nothing in this Code shall be construed to derogate from the duty or responsibility of parents and guardians for children and wards below twenty-one years of age mentioned in the second and third paragraphs of Article 2180 of the Civil Code."

Sec. 4. Upon the effectivity of this Act, existing wills, bequests, donations, grants, insurance policies and similar instruments containing references and provisions favorable to minors will not retroact to their prejudice.

Sec. 5. This Act shall take effect upon completion of its publication in at least two (2) newspapers of general circulation.

Approved: **December 13, 1989**

- Emancipation is the extinguishments of parental authority. It takes place at the age of 18.
- The problem with R.A. No. 6809, being a piece meal amendment, it does not take care of all references in the Civil Code with reference to the age of majority.
- One defect of R.A. No. 6809 is that it restores the distinction between perfect and imperfect emancipation. The Family Code removed the distinction which RA 6809 restored. Thus, although 18 is the age of emancipation:
  1. Persons between 18 to 21 still need parental consent for marriage.
  2. Parents or guardians are liable for the quasi-delicts of persons who are already 18 years old under Article 2180[℘] until he reaches the age of 21.

[℘] *Art. 2180.* The obligation imposed by article 2176 is demandable not only for one's own acts or omissions, but also for those of persons for whom one is responsible.

The father and, in case of his death or incapacity, the mother, are responsible for the damages caused by the minor children who live in their company.

According to Professor Balane, this is crazy. The basis for vicarious liability is parental authority. Since parents and guardians no longer exercise parental authority, they should no longer be made liable. This is unjust because the parents are no longer in a position to prevent their emancipated children from acting – responsibility without power.

- ¶2 of Article 2180 has been repealed by Article 221[ℵ] of the Family Code.

VI. ABSENCE

- Absence is that special legal status of one who is not in his domicile, his whereabouts being unknown and it being uncertain whether he is dead or alive.

  Example: When Lacson went to the US, Lacson was not absent since his whereabouts were known.

- Stages of Absence (According to Seriousness)

  1. **Temporary or Provisional** (Articles 381 – 383)

> ***Art. 381.*** **When a person disappears from his domicile, his whereabouts being unknown, and without leaving an agent to administer his property, the judge, at the instance of an interested party, a relative, or a friend, may appoint a person to represent him in all that may be necessary.**
>
> **This same rule shall be observed when under similar circumstances the power conferred by the absentee has expired.**
>
> ***Art. 382.*** **The appointment referred to in the preceding article having been made, the judge shall take the necessary measures to safeguard the rights and interests of the absentee and shall specify the powers, obligations and remuneration of his representative, regulating them, according to the circumstances, by the rules concerning guardians.**
>
> ***Art. 383.*** **In the appointment of a representative, the spouse present shall be preferred when there is no legal separation.**
>
> **If the absentee left no spouse, or if the spouse present is a minor, any competent person may be appointed by the court.**

- Requisites for Provisional Absence
  1. Absence for an appreciable period which depends upon the circumstances
  2. Immediate necessity for his representation in some specific urgent matter
  3. Absentee left no agent or the agency has expired.

Guardians are liable for damages caused by the minors or incapacitated persons who are under their authority and live in their company.

[ℵ] *Art. 221.* Parents and other persons exercising parental authority shall be civilly liable for the injuries and damages caused by the acts or omissions of their unemancipated children living in their company and under their parental authority subject to the appropriate defenses provided by law.

- The declaration of provisional absence (must go to court) is limited to a specific act.

2. **Normal or Declared** (Articles 384 – 389)

Art. 384. **Two years having elapsed without any news about the absentee or since the receipt of the last news, and five years in case the absentee has left a person in charge of the administration of his property, his absence may be declared.**

Art. 385. **The following may ask for the declaration of absence:**

(1) The spouse present;

(2) The heirs instituted in a will, who may present an authentic copy of the same;

(3) The relatives who may succeed by the law of intestacy;

(4) Those who may have over the property of the absentee some right subordinated to the condition of his death.

Art. 386. **The judicial declaration of absence shall not take effect until six months after its publication in a newspaper of general circulation.**

Art. 387. **An administrator of the absentee's property shall be appointed in accordance with article 383.**

Art. 388. **The wife who is appointed as an administratrix of the husband's property cannot alienate or encumber the husband's property, or that of the conjugal partnership, without judicial authority.**

Art. 389. **The administration shall cease in any of the following cases:**

(1) When the absentee appears personally or by means of an agent;

(2) When the death of the absentee is proved and his testate or intestate heirs appear;

(3) When a third person appears, showing by a proper document that he has acquired the absentee's property by purchase or other title.

In these cases the administrator shall cease in the performance of his office, and the property shall be at the disposal of those who may have a right thereto.

- Periods
  1. 2 years – if he did not leave an agent
  2. 5 years – if he left an agent
- Computation of Period
  a. If no news, the period must be computed from the date of disappearance.
  b. If there is news, the period must be computed from the last time the absentee was referred to in the news (not receipt of last news)

For example, X in 1996 goes on a world tour. On March 1, X poses for a picture and sends a postcard. This is received by Y on September 1. X is not heard from again. According to Professor Balane, the disappearance should be counted from March 1 and not September 1. Counting from September 1 just doesn't make sense!

- The purpose of the declaration of absence is for the court to have someone to administer the property of the absentee – Article 384. If the absentee left no property to administer, then one cannot resort to a declaration of absence.
- For purposes of re-marriage, a declaration of absence is not proper. In this case, what is required is a summary proceeding for presumptive death.

3. **Presumptive Death**

a. ***Ordinary Presumptive Death*** (Article 390)

Art. 390. **After an absence of seven years, it being unknown whether or not the absentee still lives, he shall be presumed dead for all purposes, except for those of succession.**

The absentee shall not be presumed dead for the purpose of opening his succession till after an absence of ten years. If he disappeared after the age of seventy-five years, an absence of five years shall be sufficient in order that his succession may be opened.

1. If absentee is 75 or below
   - 7 years – for all purposes except succession
   - 10 years - for succession
2. If absentee is over 75 years old
   - 5 years for all purposes

b. ***Qualified Presumptive Death*** (Article 391)

Art. 391. **The following shall be presumed dead for all purposes, including the division of the estate among the heirs:**

(1) A person on board a vessel lost during a sea voyage, or an aeroplane which is missing, who has not been heard of for four years since the loss of the vessel or aeroplane;

(2) A person in the armed forces who has taken part in war, and has been missing for four years;

(3) A person who has been in danger of death under other circumstances and his existence has not been known for four years.

- Person on board a vessel lost during a sea voyage, missing airplane , person in the armed forces who has taken part in war, a person who has been in danger of death under other circumstances and his existence is not known.
- **General Rule:** 4 years for all purposes
- ***Exception:*** 2 years for purposes of remarriage (Article 41, Family Code)

Art. 41. **A marriage contracted by any person during subsistence of a previous marriage shall be null and void, unless before the celebration of the subsequent marriage, the prior spouse had been absent for four consecutive years and the spouse present has a well-founded belief that the absent spouse was already dead. In case of disappearance where there is danger of death under the circumstances set forth in the provisions of Article 391 of the Civil Code, an absence of only two years shall be sufficient.**

For the purpose of contracting the subsequent marriage under the preceding paragraph the spouse present must institute a summary proceeding as provided in this Code for the declaration of presumptive death of the absentee, without prejudice to the effect of reappearance of the absent spouse.

- When can you ask for a decree of presumptive death for purposes of remarriage?
  1. 4 years after disappearance
  2. 2 years if the circumstances fall under Article 391
- Under these rules on presumptive death, there is no need for a court decree. The mere running of the period raises the presumption of death.
- However, for purposes of remarriage, a summary proceeding is required under Article 41 of the Family Code. Otherwise, the subsequent marriage is void.
- In the case of *Eastern Shipping vs. Lucas*, the Supreme Court did not apply Article 391. The Supreme Court said that Article 391 is a rebuttable presumption. Being a presumption, Article 391 is applied only if there is no evidence. In this case, the Supreme Court had enough evidence to rule that the seaman was really dead.

VII. FUNERALS

Art. 305. **The duty and the right to make arrangements for the funeral of a relative shall be in accordance with the order established for support, under article 294. In case of descendants of the same degree, or of brothers and sisters, the oldest shall be preferred. In case of ascendants, the paternal shall have a better right.**

- The order given in Article 305 as to who has the right to make funeral arrangements follows the order for support under Article 199[*] of the Family Code.

[*] *Art. 199.* Whenever two or more persons are obliged to give support, the liability shall devolve upon the following persons in the order herein provided:

(1) The spouse;
(2) The descendants in the nearest degree;
(3) The ascendants in the nearest degree; and
(4) The brothers and sisters.

Art. 306. **Every funeral shall be in keeping with the social position of the deceased.**

Art. 307. **The funeral shall be in accordance with the expressed wishes of the deceased. In the absence of such expression, his religious beliefs or affiliation shall determine the funeral rites. In case of doubt, the form of the funeral shall be decided upon by the person obliged to make arrangements for the same, after consulting the other members of the family.**

Art. 308. **No human remains shall be retained, interred, disposed of or exhumed without the consent of the persons mentioned in articles 294 and 305.**

Art. 309. **Any person who shows disrespect to the dead, or wrongfully interferes with a funeral shall be liable to the family of the deceased for damages, material and moral.**

Art. 310. **The construction of a tombstone or mausoleum shall be deemed a part of the funeral expenses, and shall be chargeable to the conjugal partnership property, if the deceased is one of the spouses.**

VIII. CIVIL REGISTRY

- The Civil Registry is the repository of relevant facts of a person (birth, adoption, nationalization, marriage, death, etc.)

Art. 407. **Acts, events and judicial decrees concerning the civil status of persons shall be recorded in the civil register.**

- Anything which affects the civil status of persons shall be recorded in the Civil Register. *(Read also Article 7, of PD 603*)*

Art. 408. The following shall be entered in the civil register: (1) Births; (2) marriages; (3) deaths; (4) legal separations; (5) annulments of marriage; (6) judgments declaring marriages void from the beginning; (7) legitimations; (8) adoptions; (9) acknowledgments of natural children; (10) naturalization; (11) loss, or (12) recovery of citizenship; (13) civil interdiction; (14) judicial determination of filiation; (15) voluntary emancipation of a minor; and (16) changes of name.

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* Art. 7. *Non-disclosure of Birth Records.* - The records of a person's birth shall be kept strictly confidential and no information relating thereto shall be issued except on the request of any of the following:

(1) The person himself, or any person authorized by him;

(2) His spouse, his parent or parents, his direct descendants, or the guardian or institution legally in-charge of him if he is a minor;

(3) The court or proper public official whenever absolutely necessary in administrative, judicial or other official proceedings to determine the identity of the child's parents or other circumstances surrounding his birth; and

(4) In case of the person's death, the nearest of kin.

Any person violating the prohibition shall suffer the penalty of imprisonment of at least two months or a fine in an amount not exceeding five hundred pesos, or both, in the discretion of the court.

Art. 409. **In cases of legal separation, adoption, naturalization and other judicial orders mentioned in the preceding article, it shall be the duty of the clerk of the court which issued the decree to ascertain whether the same has been registered, and if this has not been done, to send a copy of said decree to the civil registry of the city or municipality where the court is functioning.**

Art. 410. **The books making up the civil register and all documents relating thereto shall be considered public documents and shall be *prima facie* evidence of the facts therein contained.**

- Public documents shall be presumed to be accurate.
- Under Article 7 of PD 603, public documents are not accessible to everybody.
- Correlate Article 410 with Article 15 of RA 8552[♦] (The Domestic Adoption Act).

Art. 411. **Every civil registrar shall be civilly responsible for any unauthorized alteration made in any civil register, to any person suffering damage thereby. However, the civil registrar may exempt himself from such liability if he proves that he has taken every reasonable precaution to prevent the unlawful alteration.**

Art. 412. **No entry in a civil register shall be changed or corrected, without a judicial order.**

- Entries in the civil register can only be corrected by a judicial proceeding. Without the judicial proceeding, the person would be guilty of falsification of public documents and possibly other crimes regarding the civil status of persons (*i.e.*, simulation of birth)
- Originally, Article 412 could only be resorted to if the error was merely clerical. In *Barreto vs. Local Civil Registrar*, the Supreme Court defined a clerical error as one which is visible to the eyes or obvious to the understanding. In this case, the alleged error being the gender of the person, the alleged error could not be determined by a reference to the record.
- In recent years, the Supreme Court has ruled that a petition for correction of entry under Article 412 and Rule 108 can be availed of to correct the following errors:
  1. Clerical
  2. Substantial
- If the error is clerical, a summary proceeding is enough. If the error is substantial, an adversary proceeding with notice to all parties is necessary.

[♦] Sec. 15. *Confidential Nature of Proceedings and Records.* — All hearings in adoption cases shall be confidential and shall not be open to the public. All records, books, and papers relating to the adoption cases in the files of the court, the Department, or any other agency or institution participating in the adoption proceedings shall be kept strictly confidential.

If the court finds that the disclosure of the information to a third person is necessary for purposes connected with or arising out of the adoption and will be for the best interest of the adoptee, the court may merit the necessary information to be released, restricting the purposes for which it may be used.

Art. 413. **All other matters pertaining to the registration of civil status shall be governed by special laws.**

FAMILY RELATIONS

I. MARRIAGE

Art. 1. **Marriage is a special contract of permanent union between a man and a woman entered into in accordance with law for the establishment of conjugal and family life. It is the foundation of the family and an inviolable social institution whose nature, consequences, and incidents are governed by law and not subject to stipulation, except that marriage settlements may fix the property relations during the marriage within the limits provided by this Code.**

- Marriage is a contract. It is a contract and much more. It is a contract of permanent union between a man and a woman. A contract of marriage unlike other contracts confers status.
- The primordial purpose of marriage is the establishment of family life.
- Generally in contracts, the parties are free to enter into contractual stipulations. However, in a marriage contract parties are generally not free to enter into contractual stipulations. All the consequences of marriage are determined by law. The only area in which the parties may stipulate is with regard to property relations as long as these stipulations are not contrary to law. In fact, the parties are not limited to the 3 major regimes in the Family Code.

Art. 2. **No marriage shall be valid, unless these essential requisites are present:**

(1) Legal capacity of the contracting parties who must be a male and a female; and

(2) Consent freely given in the presence of the solemnizing officer.

Art. 3. **The formal requisites of marriage are:**

(1) Authority of the solemnizing officer;

(2) A valid marriage license except in the cases provided for in Chapter 2 of this Title; and

(3) A marriage ceremony which takes place with the appearance of the contracting parties before the solemnizing officer and their personal declaration that they take each other as husband and wife in the presence of not less than two witnesses of legal age.

Art. 4. **The absence of any of the essential or formal requisites shall render the marriage void *ab initio*, except as stated in Article 35 (2).**

A defect in any of the essential requisites shall not affect the validity of the marriage but the party or parties responsible for the irregularity shall be civilly, criminally and administratively liable.

- 2 Kinds of Elements
  1. **Essential**

a. Legal capacity (included in legal capacity is the difference in sex)
b. Consent

2. **Formal**
   a. Authority of the solemnizing Officer
   b. Valid marriage license
   c. Marriage ceremony

- 3 terms

1. **Absence**
   - **General Rule:** The absence of either an essential or formal requisite makes the marriage void.
   - ***Exceptions:***

   a. ***Article 35, paragraph 2*** (party believes in good faith that the solemnizing officer has authority)

   > ***Art. 35.*** **The following marriages shall be void from the beginning:**
   >
   > **(2) Those solemnized by any person not legally authorized to perform marriages unless such marriages were contracted with either or both parties believing in good faith that the solemnizing officer had the legal authority to do so;**

   b. ***Marriages exempted from marriage license*** (Articles 27, 28, 31, 32, 33, 34)

   > ***Art. 27.*** **In case either or both of the contracting parties are at the point of death, the marriage may be solemnized without necessity of a marriage license and shall remain valid even if the ailing party subsequently survives.**
   >
   > ***Art. 28.*** **If the residence of either party is so located that there is no means of transportation to enable such party to appear personally before the local civil registrar, the marriage may be solemnized without necessity of a marriage license.**
   >
   > ***Art. 31.*** **A marriage *in articulo mortis* between passengers or crew members may also be solemnized by a ship captain or by an airplane pilot not only while the ship is at sea or the plane is in flight, but also during stopovers at ports of call.**
   >
   > ***Art. 32.*** **A military commander of a unit, who is a commissioned officer, shall likewise have authority to solemnize marriages in articulo mortis between persons within the zone of military operation, whether members of the armed forces or civilians.**
   >
   > ***Art. 33.*** **Marriages among Muslims or among members of the ethnic cultural communities may be performed validly without the**

necessity of marriage license, provided they are solemnized in accordance with their customs, rites or practices.

Art. 34. **No license shall be necessary for the marriage of a man and a woman who have lived together as husband and wife for at least five years and without any legal impediment to marry each other. The contracting parties shall state the foregoing facts in an affidavit before any person authorized by law to administer oaths. The solemnizing officer shall also state under oath that he ascertained the qualifications of the contracting parties are found no legal impediment to the marriage.**

2. **Defect**
   - Defect occurs in essential requisites alone.
   - Fairly well-defined since there are many specific articles.
   - ***Effect:*** Marriage is voidable
3. **Irregularity**
   - Irregularity refers to formal requisites alone
   - No enumeration as to irregularity unlike defect
   - ***Effects:***
     a. Valid marriage
     b. Party responsible for irregularity may be held liable

A. Difference in Sex (Articles 2(1), 4 ¶1, 39)

Art. 2 (1). **No marriage shall be valid, unless these essential requisites are present:**

(1) Legal capacity of the contracting parties who must be a male and a female;

- Difference in sex is explicitly required for the first time. It was necessary to make this explicit since some jurisdictions allow same sex marriages.

Art. 4. **The absence of any of the essential or formal requisites shall render the marriage void *ab initio,* except as stated in Article 35 (2).**

- The absence of this requisite makes the marriage void.

Art. 39. **The action or defense for the declaration of absolute nullity shall not prescribe.**

- The period to have the marriage declared void is imprescriptible, the element being essential.

B. Some Form of Ceremony (Articles 3(3), 4 ¶1, 6, 8)

Art. 3. **The formal requisites of marriage are:**

(3) A marriage ceremony which takes place with the appearance of the contracting parties before the solemnizing officer and their personal declaration that they take each other as husband and wife in the presence of not less than two witnesses of legal age.

Art. 4. **The absence of any of the essential or formal requisites shall render the marriage void *ab initio*, except as stated in Article 35 (2).**

Art. 6. **No prescribed form or religious rite for the solemnization of the marriage is required. It shall be necessary, however, for the contracting parties to appear personally before the solemnizing officer and declare in the presence of not less than two witnesses of legal age that they take each other as husband and wife. This declaration shall be contained in the marriage certificate which shall be signed by the contracting parties and their witnesses and attested by the solemnizing officer.**

In case of a marriage in articulo mortis, when the party at the point of death is unable to sign the marriage certificate, it shall be sufficient for one of the witnesses to the marriage to write the name of said party, which fact shall be attested by the solemnizing officer.

- The following are the barest minimum required:
  1. Personal appearance of parties before the solemnizing officer
  2. Declaration that they take each other as husband and wife (manifestation of intent)
- The law does not require a specific ceremony neither does it require specific words or symbols.
- Marriages by proxy are NOT ALLOWED since the contracting parties must personally appear before the solemnizing officer.
- The intent (their declaration that they each other as husband and wife) may be manifested in any form (*i.e.,* words, gestures, etc.). In the case of *Martinez vs. Tan,* the intent was manifested in writing.
- Some commentaries say that the 2 witnesses must be of legal age. Others say they need not be of legal age. To be safe, the witnesses should be of legal age.

Art. 8. **The marriage shall be solemnized publicly in the chambers of the judge or in open court, in the church, chapel or temple, or in the office the consul-general, consul or vice-consul, as the case may be, and not elsewhere, except in cases of marriages contracted on the point of death or in remote places in accordance with Article 29[♥] of this Code, or where both of the parties request the solemnizing officer in writing in**

[♥] *Art. 29.* In the cases provided for in the two preceding articles, the solemnizing officer shall state in an affidavit executed before the local civil registrar or any other person legally authorized to administer oaths that the marriage was performed *in articulo mortis* or that the residence of either party, specifying the barrio or barangay, is so located that there is no means of transportation to enable such party to appear personally before the local civil registrar and that the officer took the necessary steps to ascertain the ages and relationship of the contracting parties and the absence of legal impediment to the marriage.

which case the marriage may be solemnized at a house or place designated by them in a sworn statement to that effect.

C. Legal Capacity (Article 2(1))

Art. 2. **No marriage shall be valid, unless these essential requisites are present:**

(1) Legal capacity of the contracting parties who must be a male and a female;

1. ***Age*** (Articles 5, 35(1), 39, 45(1), 37(1))

Art. 5. **Any male or female of the age of eighteen years or upwards not under any of the impediments mentioned in Articles 37 and 38, may contract marriage.**

- For both male and female, the minimum age is 18.

Art. 35. **The following marriages shall be void from the beginning:**

(1) Those contracted by any party below eighteen years of age even with the consent of parents or guardians;

- If any contracting party is below 18, the marriage is void.

Art. 39. **The action or defense for the declaration of absolute nullity shall not prescribe.**

- The period to have the marriage declared void shall not prescribe.

Art. 45. **A marriage may be annulled for any of the following causes, existing at the time of the marriage:**

(1) That the party in whose behalf it is sought to have the marriage annulled was eighteen years of age or over but below twenty-one, and the marriage was solemnized without the consent of the parents, guardian or person having substitute parental authority over the party, in that order, unless after attaining the age of twenty-one, such party freely cohabited with the other and both lived together as husband and wife;

Art. 47. **The action for annulment of marriage must be filed by the following persons and within the periods indicated herein:**

(1) For causes mentioned in number 1 of Article 45 by the party whose parent or guardian did not give his or her consent, within five years after attaining the age of twenty-one, or by the parent or guardian or person having legal charge of the minor, at any time before such party has reached the age of twenty-one;

- Despite R.A. No. 6809, parental consent is required for a contracting party who has not yet reached 21.
- Article 47(1) tells us who can set aside the marriage which is voidable for lack of the necessary parental consent. The parent who did not give he necessary parental consent until such child reaches the age of 26.
- However in Article 45(1), ratification of the marriage is possible if the party who needed parental consent cohabits with the other spouse. Ratification may only occur after such party reaches 21.
- Once the marriage has been ratified, the parents cannot annul under this ground.
- If the parents filed the annulment before their child reached 21, but upon reaching 21, their child cohabits, the action to annul the marriage continues. What would be determinative in such a situation is the time of filing.
- The capacitated person or his parents may not have the marriage annulled for lack of parental consent.

2. ***Relationship*** (Articles 37, 38 (1-8), 39)

Art. 37. **Marriages between the following are incestuous and void from the beginning, whether relationship between the parties be legitimate or illegitimate:**

(1) Between ascendants and descendants of any degree; and

(2) Between brothers and sisters, whether of the full or half blood.

- Incestuous Relationship
  1. In the direct line, in any degree – no limit
  2. 2nd degree collaterals (brothers & sisters) whether full or half blood, legitimate or illegitimate

Art. 38. **The following marriages shall be void from the beginning for reasons of public policy:**

(1) Between collateral blood relatives whether legitimate or illegitimate, up to the fourth civil degree;

(2) Between step-parents and step-children;

(3) Between parents-in-law and children-in-law;

(4) Between the adopting parent and the adopted child;

(5) Between the surviving spouse of the adopting parent and the adopted child;

(6) Between the surviving spouse of the adopted child and the adopter;

(7) Between an adopted child and a legitimate child of the adopter;

(8) Between adopted children of the same adopter;

- Article 38 (1) refers to uncles, aunts and first cousins
- Article 38 (3) is a new provision – marriage between parents-in-law and children-in-law
- Articles 38 (5) and 38 (6) are provided for to guard against scandal – marriage between the surviving spouse of the adopting parent and the adopted child; marriage between the surviving spouse of the adopted child and adopter.
- Article 38 (8) prohibits the marriage between adopted children of the same adopter while Art. 38 (7) prohibits the marriage between an adopted child and a legitimate child of the adopted. What is not prohibited are the following:
  1. Marriage between an adopted child and an illegitimate child of the adopter.
  2. Marriage between stepchildren

Art. 39. **The action or defense for the declaration of absolute nullity shall not prescribe.**

- The period to have the marriage declared void shall not prescribe.

3. ***Prior Marriage*** (Articles 35 (4), 35 (6), 40, 41, 42, 43, 44, 52, 53 & 39)

- The following are marriages which are defective because of a prior marriage:

  a. **Bigamous or polygamous marriages *not* falling under Article 41**

  Art. 35. **The following marriages shall be void from the beginning:**

  (4) Those bigamous or polygamous marriages not falling under Article 41;

  - If the marriage falls under Article 41, the marriage is valid.

  Art. 41. **A marriage contracted by any person during subsistence of a previous marriage shall be null and void, unless before the celebration of the subsequent marriage, the prior spouse had been absent for four consecutive years and the spouse present has a well-founded belief that the absent spouse was already dead. In case of disappearance where there is danger of death under the circumstances set forth in the provisions of Article 391 of the Civil Code, an absence of only two years shall be sufficient.**

  For the purpose of contracting the subsequent marriage under the preceding paragraph the spouse present must institute a summary proceeding as provided in this Code for the declaration of presumptive death of the absentee, without prejudice to the effect of reappearance of the absent spouse.

  Art. 42. **The subsequent marriage referred to in the preceding Article shall be automatically terminated by the recording of the affidavit of reappearance of the absent spouse,**

unless there is a judgment annulling the previous marriage or declaring it void *ab initio*.

A sworn statement of the fact and circumstances of reappearance shall be recorded in the civil registry of the residence of the parties to the subsequent marriage at the instance of any interested person, with due notice to the spouses of the subsequent marriage and without prejudice to the fact of reappearance being judicially determined in case such fact is disputed.

- Requisites of a marriage under Article 41:
  1. Absence of a prior spouse for at least 4 consecutive years or 2 consecutive years if the circumstances fall under Art. 391.
  2. Spouse presents a well-founded belief that the absent spouse was already dead
  3. Institution by the present spouse of a summary proceeding for the declaration of presumptive death.
- Rules for marriages under Article 41
  1. The marriage is valid until it is terminated under Article 42 (*Note:* The term "terminated" and not "annulled" is used since the 2nd marriage is not a defective but a regular marriage)
  2. **General Rule:** The termination of the 2nd marriage takes effect upon the recording of the affidavit of reappearance of the absent spouse.
  3. ***Exception:*** There is no termination of the 2nd marriage if there is a judgment of annulment or nullity with regard to the 1st marriage.
- Any interested party may case the recording of the affidavit of reappearance (*i.e.*, present spouse, absent spouse, subsequent spouse, children)
- The affidavit of reappearance should contain the facts and circumstances of appearance
- The affidavit of reappearance must be recorded in the civil registry of the residence of the parties to the subsequent marriage.
- ***Effectiveness:*** The affidavit of reappearance is sufficient in itself unless it is judicially challenged.

Art. 43. **The termination of the subsequent marriage referred to in the preceding Article shall produce the following effects:**

(1) The children of the subsequent marriage conceived prior to its termination shall be considered legitimate;

(2) The absolute community of property or the conjugal partnership, as the case may be, shall be dissolved and liquidated, but if either spouse contracted said marriage in bad faith, his or her share of the net profits of the community property or conjugal partnership

property shall be forfeited in favor of the common children or, if there are none, the children of the guilty spouse by a previous marriage or in default of children, the innocent spouse;

(3) Donations by reason of marriage shall remain valid, except that if the donee contracted the marriage in bad faith, such donations made to said donee are revoked by operation of law;

(4) The innocent spouse may revoke the designation of the other spouse who acted in bad faith as beneficiary in any insurance policy, even if such designation be stipulated as irrevocable; and

(5) The spouse who contracted the subsequent marriage in bad faith shall be disqualified to inherit from the innocent spouse by testate and intestate succession.

- ***Effects:***

  1. Essentially, 1st marriage continues.
  2. According to Article 43 (5), the spouse who contracted the subsequent marriage in bad faith shall be disqualified to inherit from the innocent spouse – testate and intestate succession. Therefore, the implication sis that if the parties are in good faith, they are still heirs of each other. Professor Balane doesn't agree with this. According to Professor Balane, if the 2nd marriage is terminated, it should follow that the parties to the second marriage lose their right to be heirs of each other.

Art. 44. **If both spouses of the subsequent marriage acted in bad faith, said marriage shall be void *ab initio* and all donations by reason of marriage and testamentary dispositions made by one in favor of the other are revoked by operation of law.**

b. **Void under Article 40**

Art. 40. **The absolute nullity of a previous marriage may be invoked for purposes of remarriage on the basis solely of a final judgment declaring such previous marriage void.**

- Even if the 1st marriage is void, there is still a need for a summary proceeding declaring such marriage void *ab initio.* Thus, if a 2nd marriage is contracted without first securing the declaration of nullity with regard to the 1st marriage, then the 2nd marriage is also void. Plus, bigamy has been committed.

c. **Void under Article 53 (in relation to Article 52)**

Art. 35. **The following marriages shall be void from the beginning:**

(6) Those subsequent marriages that are void under Article 53.

Art. 52. **The judgment of annulment or of absolute nullity of the marriage, the partition and distribution of the properties of the spouses and the delivery of the children's presumptive legitimes shall be recorded in the appropriate civil registry and registries of property; otherwise, the same shall not affect third persons.**

Art. 53. **Either of the former spouses may marry again after compliance with the requirements of the immediately preceding Article; otherwise, the subsequent marriage shall be null and void.**

- Despite declaration of annulment or nullity of the marriage, before the former spouses may contract a subsequent marriage, the following must be recorded in the appropriate civil registry and registries of property:
  1. Judgment of annulment or of absolute nullity
  2. Partition and distribution of the properties of the spouses
  3. Delivery of the children's presumptive legitime
- If the preceding tasks are not accomplished, then any subsequent marriage is void.

Art. 39. **The action or defense for the declaration of absolute nullity shall not prescribe.**

- The period to have the marriage declared void shall not prescribe.

4. ***Crime*** (Article 38 (9))

Art. 38. **The following marriages shall be void from the beginning for reasons of public policy:**

(9) Between parties where one, with the intention to marry the other, killed that other person's spouse, or his or her own spouse.

- 2 changes from Article 80 (6) of the Civil Code
  1. Intention for killing must be in order to marry the surviving spouse
  2. No conviction is required.
- Article 38 (9) excludes killing thru negligence since there is no intent to kill.
- The difficulty in Article 38 (9) is proving that the reason for killing is to enable the killer and the surviving spouse to marry each other.

5. ***Physical Incapacity*** (Articles 45 (5), 47 (5))

Art. 45. **A marriage may be annulled for any of the following causes, existing at the time of the marriage:**

(5) That either party was physically incapable of consummating the marriage with the other, and such incapacity continues and appears to be incurable; or

Art. 47. **The action for annulment of marriage must be filed by the following persons and within the periods indicated herein:**

(5) For causes mentioned in number 5 and 6 of Article 45, by the injured party, within five years after the marriage.

- These articles refer to impotence and not sterility.
- Men and women are capable of impotence. For men, there is impotence when they cannot erect. For women, impotence occurs when penetration is not possible – an anatomical disorder. For men, impotence may have physical or psychological causes.
- Requisites of Annulment Due to Impotence
  1. Impotence exists at the time of the celebration of the marriage
  2. The impotence is permanent and incurable (need medical opinion)
  3. The impotence is unknown to the other spouse.
  4. The other spouse must also not be impotent.
- In some jurisdictions, there is a presumption that if after 3 years of marriage and it is found that the woman is still a virgin and suffers no anatomical defects, it is presumed that the man is impotent. There is no Philippine case stating that this presumption also applies in the Philippines. (This is known as the **Doctrine of Triennial Cohabitation**)
- What if the man is impotent only with regard to his wife? There is no case yet.
- The action for annulment due to impotence must be filed by the injured party within 5 years after the marriage.
- A marriage which is defective because of a party's impotence cannot be ratified. Ratification means cohabitation with sexual intercourse.

6. ***Psychological Incapacity*** (Article 36)

Art. 36. **A marriage contracted by any party who, at the time of the celebration, was psychologically incapacitated to comply with the essential marital obligations of marriage, shall likewise be void even if such incapacity becomes manifest only after its solemnization.**

- Psychological incapacity is not a substitute for divorce. The theory behind psychological incapacity is that one or both of the spouses cannot discharge one or more of the essential marital obligations (Article 68). There must be an absolute incapability to do so.

- During the 1st years of the effectivity of the Family Code, many couples resorted to Article 36 as a convenient way to end their marriage. As a result of these abuses, the Supreme Court became very strict in applying Article 36.
- Psychological incapacity must exist at the time the marriage is celebrated (like impotence). However, psychological incapacity need not be manifested at the time of the celebration of the marriage. This is the tricky part.
- In *Santos vs. CA*, the Supreme Court enumerated the following characteristics of psychological incapacity:
    1. Gravity
    2. Juridical antecedence
    3. Incurability
- In *Republic vs. CA (Molina)*, the Supreme Court reiterated *Santos vs. CA*. Furthermore, the Supreme Court laid down several guidelines:
    1. The burden of proof to show the nullity of the marriage belongs to the plaintiff. Any doubts should be resolved in favor of the existence and continuation of the marriage and against the dissolution and nullity.
    2. The root cause of the psychological incapacity must be:
        a. Psychological and not physical (although psychological incapacity can be manifested physically)
        b. Medically or clinically identified
        c. Alleged in the complaint
        d. Proved sufficiently by experts (*i.e.* psychiatrists, psychologists)
        e. Clearly explained in the decision
    3. The incapacity must be proven to be existing "at the time of the celebration" of the marriage.
    4. Such incapacity must also be shown to be medically or clinically permanent or incurable.
    5. Such illness must be grave enough to bring about the disability of the party to assume the essential obligations of marriage
    6. The essential marital obligations must be those embraced by Articles 60 to 71 of the Family Code as regards the husband and wife, as well as Articles 220, 221 and 225 of the same Code in regard to parents and their children. Such non-complied marital obligations must also be stated in the petition, proven by evidence and included in the test of the decision.
    7. Interpretations given by the National Appellate Matrimonial Tribunal of the Catholic Church in the Philippines, while not controlling or decisive, should be given great respect by our courts.
    8. The trial court must order the prosecuting attorney or fiscal and the Solicitor General to appear as counsel for the State. The Solicitor General's role is to issue a certification stating why he does or does not agree.

- In *Chi Ming Tsoi vs. CA*, the convergence of all the factors stated in the complaint amounted to psychological incapacity.

7. *Disease* (Articles 45 (6), 47 (5))

Art. 45. **A marriage may be annulled for any of the following causes, existing at the time of the marriage:**

(6) That either party was afflicted with a sexually-transmissible disease found to be serious and appears to be incurable.

Art. 47. **The action for annulment of marriage must be filed by the following persons and within the periods indicated herein:**

(5) For causes mentioned in number 5 and 6 of Article 45, by the injured party, within five years after the marriage.

- Requisites for Annulment due to disease
  1. Either party is afflicted with a sexually transmissible disease (STD)
  2. The STD must exist at the time the marriage is celebrated
  3. The STD must be serious
  4. The STD must be apparently incurable.
  5. The STD party not afflicted by STD must be ignorant of the other's affliction (Professor Balane's opinion)
  6. The injured party must be free from STD (Professor Balane's opinion)
- According to Professor Balane, AIDS would fall under Article 45 (6). Article 45(6) does not say that the only way to transmit the disease is through sex.
- Professor Balane is not sure if it is required that the afflicted person should know that he has STD.
- The injured party must be ignorant of the other party's affliction. If the injured party knew and the marriage took place, then the injured party has no right to complain.
- The action to annul the marriage must take place within 5 years from the marriage.
- The Family Code does not state if such a marriage can be ratified. Professor Balane doesn't see why such a marriage cannot be ratified.

D. Consent

1. *Insanity* (Articles 45(2), 47(2))

Art. 45. **A marriage may be annulled for any of the following causes, existing at the time of the marriage:**

(2) That either party was of unsound mind, unless such party after coming to reason, freely cohabited with the other as husband and wife;

Art. 47. **The action for annulment of marriage must be filed by the following persons and within the periods indicated herein:**

(2) For causes mentioned in number 2 of Article 45, by the same spouse, who had no knowledge of the other's insanity; or by any relative or guardian or person having legal charge of the insane, at any time before the death of either party, or by the insane spouse during a lucid interval or after regaining sanity;

- Insanity is a legal and not a medical question.
- One of the spouses must be insane at the time the marriage was celebrated. However, Professor Balane cannot imagine anyone marrying an insane person and not knowing it.
- The following are the prescriptive periods for filing:
  1. At any time before the death of either party
     - With regard to the same spouse who had no knowledge of the other's sanity or by any relative, guardian or person having legal charge of the insane
  2. During a lucid interval or after regaining sanity – with regard to the insane party.
- *Queries:*
  1. Up to what relatives (degree) can file the action for annulment?
  2. How long exactly does the insane spouse have to file for annulment during a lucid interval or recovery?
- Ratification by the insane spouse is possible (*i.e.,* during a lucid interval, the insane spouse cohabits)

2. ***Fraud*** (Articles 45 (3), 46)

Art. 45. **A marriage may be annulled for any of the following causes, existing at the time of the marriage:**

(3) That the consent of either party was obtained by fraud, unless such party afterwards, with full knowledge of the facts constituting the fraud, freely cohabited with the other as husband and wife;

Art. 46. **Any of the following circumstances shall constitute fraud referred to in Number 3 of the preceding Article:**

(1) Non-disclosure of a previous conviction by final judgment of the other party of a crime involving moral turpitude;

(2) Concealment by the wife of the fact that at the time of the marriage, she was pregnant by a man other than her husband;

(3) Concealment of sexually transmissible disease, regardless of its nature, existing at the time of the marriage; or

(4) Concealment of drug addiction, habitual alcoholism or homosexuality or lesbianism existing at the time of the marriage.

No other misrepresentation or deceit as to character, health, rank, fortune or chastity shall constitute such fraud as will give grounds for action for the annulment of marriage.

- Fraud here is not the fraud founding contracts and obligations. Fraud here has a very technical meaning – Article 46.
- Article 46 is an EXCLUSIVE LIST.
- Articles 46 (1) and (2) are clear. In Article 46 (3), the STD need not be serious or incurable. As long as the STD, existing at the time of marriage, is concealed, it constitutes fraud.
- Article 46 (4), must the homosexual be a practicing homosexual or is such sexual orientation enough under here? There is no jurisprudence yet.
- The injured party has 5 years from the time the fraud was discovered to file for annulment.
- A marriage which is defective due to fraud may be ratifies. Ratification occurs when the injured party freely cohabits with the other despite having full knowledge of the facts constituting fraud.
- In *Buccat vs. Buccat*, the Supreme Court said that there was no concealment by the wife of the fact that she was pregnant with another man's child. There was no concealment since at the time of marriage, she was already in her 6th month.

3. ***Duress – force, intimidation or undue influence*** (Articles 45 (4), 47 (4))

Art. 45. **A marriage may be annulled for any of the following causes, existing at the time of the marriage:**

(4) That the consent of either party was obtained by force, intimidation or undue influence, unless the same having disappeared or ceased, such party thereafter freely cohabited with the other as husband and wife;

Art. 47. **The action for annulment of marriage must be filed by the following persons and within the periods indicated herein:**

(4) For causes mentioned in number 4 of Article 45, by the injured party, within five years from the time the force, intimidation or undue influence disappeared or ceased;

- The injured party has 5 years from the time the force, intimidation or undue influence disappeared or ceased to file for annulment.
- Ratification occurs when the force, intimidation or undue influence having disappeared or ceased, the injured party cohabits.

4. **Mistake as to Identity** (Articles 35 (5), 39)

Art. 35. **The following marriages shall be void from the beginning:**

(5) Those contracted through mistake of one contracting party as to the identity of the other;

Art. 39. **The action or defense for the declaration of absolute nullity shall not prescribe.**

- A marriage where there is mistake as to identity is a void marriage since consent is completely negated.
- Mistake as to identity involves the substitution of the other party.

E. Authority of the Solemnizing Officer (Articles 3 (1), 4 (1), 7, 10, 31, 32, 35 (2))

Art. 3. **The formal requisites of marriage are:**

(1) Authority of the solemnizing officer;

Art. 4. **The absence of any of the essential or formal requisites shall render the marriage void *ab initio*, except as stated in Article 35 (2).**

Art. 7. **Marriage may be solemnized by:**

(1) Any incumbent member of the judiciary within the court's jurisdiction;

(2) Any priest, rabbi, imam, or minister of any church or religious sect duly authorized by his church or religious sect and registered with the civil registrar general, acting within the limits of the written authority granted by his church or religious sect and provided that at least one of the contracting parties belongs to the solemnizing officer's church or religious sect;

(3) Any ship captain or airplane chief only in the case mentioned in Article 31;

(4) Any military commander of a unit to which a chaplain is assigned, in the absence of the latter, during a military operation, likewise only in the cases mentioned in Article 32;

(5) Any consul-general, consul or vice-consul in the case provided in Article 10.

- Article 7, enumerating those persons who may solemnize a marriage, has been amended by the Local Government Code. Now, municipal and city mayors have the authority to solemnize a marriage.
- Article 7(1), justices of the Supreme Court and Court of Appeals can solemnize marriages anywhere in the Philippines. Justices of the Regional Trial Courts and Municipal/Metropolitan/Municipal Circuit Trial Courts can only solemnize marriages within their territorial jurisdiction.

Art. 10. **Marriages between Filipino citizens abroad may be solemnized by a consul-general, consul or vice-consul of the Republic of the Philippines. The issuance of the marriage license and the duties of the local civil registrar and of the solemnizing officer with regard to the celebration of marriage shall be performed by said consular official.**

Art. 31. **A marriage in articulo mortis between passengers or crew members may also be solemnized by a ship captain or by an airplane pilot not only while the ship is at sea or the plane is in flight, but also during stopovers at ports of call.**

Art. 32. **A military commander of a unit, who is a commissioned officer, shall likewise have authority to solemnize marriages in articulo mortis between persons within the zone of military operation, whether members of the armed forces or civilians.**

Art. 35. **The following marriages shall be void from the beginning:**

(2) Those solemnized by any person not legally authorized to perform marriages unless such marriages were contracted with either or both parties believing in good faith that the solemnizing officer had the legal authority to do so;

- Article 35 (2), if one or both of the contracting parties believes in good faith that the solemnizing officer had authority to do so even if such person was not authorized, the marriage is not void but valid.
- Good faith in Article 35 (2) refers to a question of fact. For example, the parties did not know that the license of the priest had expired or that the judge had retired. If the parties thought that Ping Lacson had the authority marry them, that is not goof faith. That is ignorance of the law. The same is also true if the parties believe that an RTC judge of Quezon City can marry them in Tawi-Tawi. That is an error of law.

F. Marriage License (Articles 3 (2), 4 (1), 4 (3), 35 (3), 9 – 21[refers to the administrative requirements], 27 – 34)

Art. 3. **The formal requisites of marriage are:**

(2) A valid marriage license except in the cases provided for in Chapter 2 of this Title;

Art. 4. **The absence of any of the essential or formal requisites shall render the marriage void *ab initio*, except as stated in Article 35 (2).**

A defect in any of the essential requisites shall not affect the validity of the marriage but the party or parties responsible for the irregularity shall be civilly, criminally and administratively liable.

Art. 35. **The following marriages shall be void from the beginning:**

(3) Those solemnized without license, except those covered the preceding Chapter;

Art. 9. **A marriage license shall be issued by the local civil registrar of the city or municipality where either contracting party habitually resides, except in marriages where no license is required in accordance with Chapter 2 of this Title.**

Art. 10. **Marriages between Filipino citizens abroad may be solemnized by a consul-general, consul or vice-consul of the Republic of**

the Philippines. The issuance of the marriage license and the duties of the local civil registrar and of the solemnizing officer with regard to the celebration of marriage shall be performed by said consular official.

Art. 11. **Where a marriage license is required, each of the contracting parties shall file separately a sworn application for such license with the proper local civil registrar which shall specify the following:**

(1) Full name of the contracting party;

(2) Place of birth;

(3) Age and date of birth;

(4) Civil status;

(5) If previously married, how, when and where the previous marriage was dissolved or annulled;

(6) Present residence and citizenship;

(7) Degree of relationship of the contracting parties;

(8) Full name, residence and citizenship of the father;

(9) Full name, residence and citizenship of the mother; and

(10) Full name, residence and citizenship of the guardian or person having charge, in case the contracting party has neither father nor mother and is under the age of twenty-one years.

The applicants, their parents or guardians shall not be required to exhibit their residence certificates in any formality in connection with the securing of the marriage license.

Art. 12. The local civil registrar, upon receiving such application, shall require the presentation of the original birth certificates or, in default thereof, the baptismal certificates of the contracting parties or copies of such documents duly attested by the persons having custody of the originals. These certificates or certified copies of the documents by this Article need not be sworn to and shall be exempt from the documentary stamp tax. The signature and official title of the person issuing the certificate shall be sufficient proof of its authenticity.

If either of the contracting parties is unable to produce his birth or baptismal certificate or a certified copy of either because of the destruction or loss of the original or if it is shown by an affidavit of such party or of any other person that such birth or baptismal certificate has not yet been received though the same has been required of the person having custody thereof at least fifteen days prior to the date of the application, such party may furnish in lieu thereof his current residence certificate or an instrument drawn up and sworn to before the local civil registrar concerned or any public official authorized to administer oaths. Such instrument shall contain the sworn declaration of two witnesses of lawful age, setting forth the full name, residence and citizenship of such contracting party and of his or her parents, if known, and the place and date of birth of such party. The nearest of kin of the contracting parties shall be preferred as witnesses, or, in their default, persons of good reputation in the province or the locality.

The presentation of birth or baptismal certificate shall not be required if the parents of the contracting parties appear personally before the local civil registrar concerned and swear to the correctness of the lawful age of said parties, as stated in the application, or when the local civil registrar shall, by merely looking at the applicants upon their personally appearing before him, be convinced that either or both of them have the required age.

Art. 13. **In case either of the contracting parties has been previously married, the applicant shall be required to furnish, instead of the birth or baptismal certificate required in the last preceding article, the death certificate of the deceased spouse or the judicial decree of the absolute divorce, or the judicial decree of annulment or declaration of nullity of his or her previous marriage.**

In case the death certificate cannot be secured, the party shall make an affidavit setting forth this circumstance and his or her actual civil status and the name and date of death of the deceased spouse.

Art. 14. **In case either or both of the contracting parties, not having been emancipated by a previous marriage, are between the ages of eighteen and twenty-one, they shall, in addition to the requirements of the preceding articles, exhibit to the local civil registrar, the consent to their marriage of their father, mother, surviving parent or guardian, or persons having legal charge of them, in the order mentioned. Such consent shall be manifested in writing by the interested party, who personally appears before the proper local civil registrar, or in the form of an affidavit made in the presence of two witnesses and attested before any official authorized by law to administer oaths. The personal manifestation shall be recorded in both applications for marriage license, and the affidavit, if one is executed instead, shall be attached to said applications.**

Art. 15. **Any contracting party between the age of twenty-one and twenty-five shall be obliged to ask their parents or guardian for advice upon the intended marriage. If they do not obtain such advice, or if it be unfavorable, the marriage license shall not be issued till after three months following the completion of the publication of the application therefor. A sworn statement by the contracting parties to the effect that such advice as been sought, together with the written advice given, if any, shall be attached to the application for marriage license. Should the parents or guardian refuse to give any advice, this fact shall be stated in the sworn statement.**

Art. 16. **In the cases where parental consent or parental advice is needed, the party or parties concerned shall, in addition to the requirements of the preceding articles, attach a certificate issued by a priest, imam or minister authorized to solemnize marriage under Article 7 of this Code or a marriage counsellor duly accredited by the proper government agency to the effect that the contracting parties have undergone marriage counselling. Failure to attach said certificates of marriage counselling shall suspend the issuance of the marriage license for a period of three months from the completion of the publication of the**

application. Issuance of the marriage license within the prohibited period shall subject the issuing officer to administrative sanctions but shall not affect the validity of the marriage.

Should only one of the contracting parties need parental consent or parental advice, the other party must be present at the counselling referred to in the preceding paragraph.

Art. 17. **The local civil registrar shall prepare a notice which shall contain the full names and residences of the applicants for a marriage license and other data given in the applications. The notice shall be posted for ten consecutive days on a bulletin board outside the office of the local civil registrar located in a conspicuous place within the building and accessible to the general public. This notice shall request all persons having knowledge of any impediment to the marriage to advise the local civil registrar thereof. The marriage license shall be issued after the completion of the period of publication.**

Art. 18. **In case of any impediment known to the local civil registrar or brought to his attention, he shall note down the particulars thereof and his findings thereon in the application for marriage license, but shall nonetheless issue said license after the completion of the period of publication, unless ordered otherwise by a competent court at his own instance or that of any interest party. No filing fee shall be charged for the petition nor a corresponding bond required for the issuances of the order.**

Art. 19. **The local civil registrar shall require the payment of the fees prescribed by law or regulations before the issuance of the marriage license. No other sum shall be collected in the nature of a fee or tax of any kind for the issuance of said license. It shall, however, be issued free of charge to indigent parties, that is those who have no visible means of income or whose income is insufficient for their subsistence a fact established by their affidavit, or by their oath before the local civil registrar.**

Art. 20. **The license shall be valid in any part of the Philippines for a period of one hundred twenty days from the date of issue, and shall be deemed automatically cancelled at the expiration of the said period if the contracting parties have not made use of it. The expiry date shall be stamped in bold characters on the face of every license issued.**

Art. 21. **When either or both of the contracting parties are citizens of a foreign country, it shall be necessary for them before a marriage license can be obtained, to submit a certificate of legal capacity to contract marriage, issued by their respective diplomatic or consular officials.**

Stateless persons or refugees from other countries shall, in lieu of the certificate of legal capacity herein required, submit an affidavit stating the circumstances showing such capacity to contract marriage.

- **General Rule:** A marriage license is required.

- ***Exceptions:***

1. ***Marriages* in articulo mortis** (Articles 27, 31, 32)

   Art. 27. **In case either or both of the contracting parties are at the point of death, the marriage may be solemnized without necessity of a marriage license and shall remain valid even if the ailing party subsequently survives.**

   Art. 31. **A marriage in articulo mortis between passengers or crew members may also be solemnized by a ship captain or by an airplane pilot not only while the ship is at sea or the plane is in flight, but also during stopovers at ports of call.**

   Art. 32. **A military commander of a unit, who is a commissioned officer, shall likewise have authority to solemnize marriages in articulo mortis between persons within the zone of military operation, whether members of the armed forces or civilians.**

   - Articles 31 and 32 are not distinct exceptional marriages but marriages *in articulo mortis*.

2. **Residence is located such that either party has no means of transportation to enable such party to appear before the Civil Registrar** (Article 28)

   Art. 28. **If the residence of either party is so located that there is no means of transportation to enable such party to appear personally before the local civil registrar, the marriage may be solemnized without necessity of a marriage license.**

3. **Marriages among Muslims or among members of ethnic cultural communities as long as they are solemnized in accordance with their customs** (Article 33)

   Art. 33. **Marriages among Muslims or among members of the ethnic cultural communities may be performed validly without the necessity of marriage license, provided they are solemnized in accordance with their customs, rites or practices.**

   NOTE: The Muslim Code governs if the contracting parties are both Muslims or if the male is Muslim. If only the female is Muslim, then the Family Code governs.

4. **Couples living together as husband and wife for at least 5 years and they must not have any legal impediment to marry each other** (Article 34)

   Art. 34. **No license shall be necessary for the marriage of a man and a woman who have lived together as husband and wife for at least five years and without any legal impediment to marry each other. The contracting parties shall state the foregoing facts in an**

affidavit before any person authorized by law to administer oaths. The solemnizing officer shall also state under oath that he ascertained the qualifications of the contracting parties are found no legal impediment to the marriage.

Art. 29. **In the cases provided for in the two preceding articles, the solemnizing officer shall state in an affidavit executed before the local civil registrar or any other person legally authorized to administer oaths that the marriage was performed *in articulo mortis* or that the residence of either party, specifying the barrio or barangay, is so located that there is no means of transportation to enable such party to appear personally before the local civil registrar and that the officer took the necessary steps to ascertain the ages and relationship of the contracting parties and the absence of legal impediment to the marriage.**

II. Effect of Defective Marriages on the Status of Children

A. If the marriage is voidable (Article 54)

Art. 54. **Children conceived or born before the judgment of annulment or absolute nullity of the marriage under Article 36 has become final and executory shall be considered legitimate. Children conceived or born of the subsequent marriage under Article 53 shall likewise be legitimate.**

- Legitimate – if conceived before final judgment
- Illegitimate - if conceived after final judgment

B. If the marriage is void

- **General Rule:** Children are illegitimate (Article 165)

Art. 165. **Children conceived and born outside a valid marriage are illegitimate, unless otherwise provided in this Code.**

- ***Exceptions:*** Legitimate if the marriage falls under:
  1. **Article 36** – Psychological incapacity

Art. 36. **A marriage contracted by any party who, at the time of the celebration, was psychologically incapacitated to comply with the essential marital obligations of marriage, shall likewise be void even if such incapacity becomes manifest only after its solemnization.**

  2. **Article 53** – Children conceived or born of the subsequent marriage under Article 53 even though such marriage is void for failure to comply with the requirements of Article 52.

Art. 53. **Either of the former spouses may marry again after compliance with the requirements of the immediately preceding Article; otherwise, the subsequent marriage shall be null and void.**

III. MARRIAGE CERTIFICATE (Articles 22 and 23)

Art. 22. **The marriage certificate, in which the parties shall declare that they take each other as husband and wife, shall also state:**

(1) The full name, sex and age of each contracting party;

(2) Their citizenship, religion and habitual residence;

(3) The date and precise time of the celebration of the marriage;

(4) That the proper marriage license has been issued according to law, except in marriage provided for in Chapter 2 of this Title;

(5) That either or both of the contracting parties have secured the parental consent in appropriate cases;

(6) That either or both of the contracting parties have complied with the legal requirement regarding parental advice in appropriate cases; and

(7) That the parties have entered into marriage settlement, if any, attaching a copy thereof.

Art. 23. **It shall be the duty of the person solemnizing the marriage to furnish either of the contracting parties the original of the marriage certificate referred to in Article 6 and to send the duplicate and triplicate copies of the certificate not later than fifteen days after the marriage, to the local civil registrar of the place where the marriage was solemnized. Proper receipts shall be issued by the local civil registrar to the solemnizing officer transmitting copies of the marriage certificate. The solemnizing officer shall retain in his file the quadruplicate copy of the marriage certificate, the copy of the marriage certificate, the original of the marriage license and, in proper cases, the affidavit of the contracting party regarding the solemnization of the marriage in place other than those mentioned in Article 8.**

- A marriage certificate is proof of marriage. It is however not the only proof (*i.e.*, witnesses)

IV. ADDITIONAL REQUIREMENTS FOR ANNULMENT OR DECLARATION OF NULLITY

Art. 48. **In all cases of annulment or declaration of absolute nullity of marriage, the Court shall order the prosecuting attorney or fiscal assigned to it to appear on behalf of the State to take steps to prevent collusion between the parties and to take care that evidence is not fabricated or suppressed.**

In the cases referred to in the preceding paragraph, no judgment shall be based upon a stipulation of facts or confession of judgment.

- Prosecuting attorney or fiscal should:
  1. Take steps to prevent collusion between the parties

2. Take care that evidence is not fabricated or suppressed

NOTE: No judgment shall be based upon a stipulation of facts or confession of judgment.

Art. 52. **The judgment of annulment or of absolute nullity of the marriage, the partition and distribution of the properties of the spouses and the delivery of the children's presumptive legitimes shall be recorded in the appropriate civil registry and registries of property; otherwise, the same shall not affect third persons.**

- The following must be accomplished:
  1. Partition and distribution of the properties of the spouses
  2. Delivery of the children's presumptive legitimes
  3. Recording of the judgment of annulment or of absolute nullity. The partition and distribution and the delivery of the children's presumptive legitimes in the appropriate civil registry and registries of property. (Otherwise, the same shall not affect 3rd persons)
- Failure to comply with Article 52 shall render the subsequent marriage null and void.

V. Foreign Marriages and Foreign Divorces

Art. 26, ¶1. **All marriages solemnized outside the Philippines, in accordance with the laws in force in the country where they were solemnized, and valid there as such, shall also be valid in this country, except those prohibited under Articles 35 (1), (4), (5) and (6), 3637 and 38.**

- **General Rule:** Foreign marriages which are in accordance with the law in force in the country where they were solemnized and valid there are valid in the Philippines.
- ***Exception:*** Void marriages under Philippine Law
- ***Exception to the exception:***
  1. **Article 35, ¶2**

> ***Art. 35.*** **The following marriages shall be void from the beginning:**
>
> **(2) Those solemnized by any person not legally authorized to perform marriages unless such marriages were contracted with either or both parties believing in good faith that the solemnizing officer had the legal authority to do so;**

  2. **Article 35, ¶3**

> ***Art. 35.*** **The following marriages shall be void from the beginning:**
>
> **(3) Those solemnized without license, except those covered the preceding Chapter;**

Art. 26, ¶2. **Where a marriage between a Filipino citizen and a foreigner is validly celebrated and a divorce is thereafter validly obtained abroad by the alien spouse capacitating him or her to remarry, the Filipino spouse shall have capacity to remarry under Philippine law.**

- **General Rule:** Foreign divorces obtained by Filipino citizens will be considered void and are not recognized.
- ***Exception:*** In case the parties to the marriage are a Filipino citizen and a foreigner. If the foreigner obtains a valid foreign divorce, the Filipino spouse shall have capacity to re-marry under Philippine law.
  - However, if it is the Filipino citizen who secures the divorce, the divorce will not be recognized in the Philippines.
- Requisites of Article 26, ¶2
  1. The marriage must be one between a Filipino and a foreigner
  2. Divorce is granted abroad
  3. Divorce must have been obtained by the alien spouse.
  4. Divorce must capacitate the alien spouse to remarry.
- Article 26, ¶2 has a retroactive effect if no vested rights are affected.
- ***Problem:*** Suppose at the time of the marriage, both are Filipinos. Later on, one spouse is naturalized. This spouse obtains a foreign divorce. Will Article 26, ¶2 apply?

  2 views:

  1. *Justice Puno*
     - It won't. Article 26, ¶2 requires that at the time the marriage is celebrated, there must be 1 foreigner.
  2. *DOJ Opinion*
     - It applies, Article 26, ¶2 is not specific.

VI. Effects of a Defective Marriage

1. Re-appearance of absent spouse

- The marriage is not really defective. Thus, the term "terminated" is used.

> ***Art. 52.*** **The judgment of annulment or of absolute nullity of the marriage, the partition and distribution of the properties of the spouses and the delivery of the children's presumptive legitimes shall be recorded in the appropriate civil registry and registries of property; otherwise, the same shall not affect third persons.**

- There must be partition and distribution of the properties of the spouses and the delivery of the children's presumptive legitimes. This shall be recorded in the appropriate registries of property.

2. Annulment

> ***Art. 52.*** **The judgment of annulment or of absolute nullity of the marriage, the partition and distribution of the properties of the spouses and the delivery of the children's presumptive legitimes shall be recorded in the appropriate civil registry and registries of property; otherwise, the same shall not affect third persons.**

- There must be a partition and distribution of the properties of the spouses and the delivery of the children's presumptive legitime, and the recording of such and the judgment of nullity with the appropriate civil registry and registries of property.

Art. 53. **Either of the former spouses may marry again after compliance with the requirements of the immediately preceding Article; otherwise, the subsequent marriage shall be null and void.**

- Either of the former spouses may marry again provided Article 52 is complied with.

3. Declaration of Nullity

- This is not a defective marriage since there was no marriage in the first place.
- Article 50 applies.

Art. 50. **The effects provided for by paragraphs (2), (3), (4) and (5) of Article 43 and by Article 44 shall also apply in the proper cases to marriages which are declared *ab initio* or annulled by final judgment under Articles 40 and 45.**

The final judgment in such cases shall provide for the liquidation, partition and distribution of the properties of the spouses, the custody and support of the common children, and the delivery of third presumptive legitimes, unless such matters had been adjudicated in previous judicial proceedings.

All creditors of the spouses as well as of the absolute community or the conjugal partnership shall be notified of the proceedings for liquidation.

In the partition, the conjugal dwelling and the lot on which it is situated, shall be adjudicated in accordance with the provisions of Articles 102 and 129.

4. Legal Separation

- See Articles 63 and 64 for the effects.

Art. 63. **The decree of legal separation shall have the following effects:**

(1) The spouses shall be entitled to live separately from each other, but the marriage bonds shall not be severed;

(2) The absolute community or the conjugal partnership shall be dissolved and liquidated but the offending spouse shall have no right to any share of the net profits earned by the absolute community or the conjugal partnership, which shall be forfeited in accordance with the provisions of Article 43(2);

(3) The custody of the minor children shall be awarded to the innocent spouse, subject to the provisions of Article 213 of this Code; and

(4) The offending spouse shall be disqualified from inheriting from the innocent spouse by intestate succession. Moreover,

provisions in favor of the offending spouse made in the will of the innocent spouse shall be revoked by operation of law.

Art. 64. **After the finality of the decree of legal separation, the innocent spouse may revoke the donations made by him or by her in favor of the offending spouse, as well as the designation of the latter as beneficiary in any insurance policy, even if such designation be stipulated as irrevocable. The revocation of the donations shall be recorded in the registries of property in the places where the properties are located. Alienations, liens and encumbrances registered in good faith before the recording of the complaint for revocation in the registries of property shall be respected. The revocation of or change in the designation of the insurance beneficiary shall take effect upon written notification thereof to the insured.**

The action to revoke the donation under this Article must be brought within five years from the time the decree of legal separation become final.

VII. Rules on the Forfeiture of the Share of the Guilty Spouse

1. **Re-appearance of spouse** (Article 43(2))

Art. 43. **The termination of the subsequent marriage referred to in the preceding Article shall produce the following effects:**

(2) The absolute community of property or the conjugal partnership, as the case may be, shall be dissolved and liquidated, but if either spouse contracted said marriage in bad faith, his or her share of the net profits of the community property or conjugal partnership property shall be forfeited in favor of the common children or, if there are none, the children of the guilty spouse by a previous marriage or in default of children, the innocent spouse;

- The present spouse cannot be the one in bad faith because in order to contract a subsequent marriage, the present spouse must believe in good faith that the absent spouse is dead.

2. **Annulment** (Article 50(1))

Art. 50. **The effects provided for by paragraphs (2), (3), (4) and (5) of Article 43 and by Article 44 shall also apply in the proper cases to marriages which are declared *ab initio* or annulled by final judgment under Articles 40 and 45.**

3. **Legal Separation (Article 63(2))**

Art. 63. **The decree of legal separation shall have the following effects:**

(2) The absolute community or the conjugal partnership shall be dissolved and liquidated but the offending spouse shall have no right to any share of the net profits earned by the absolute

community or the conjugal partnership, which shall be forfeited in accordance with the provisions of Article 43(2);

VIII. Instances when there is Delivery of Presumptive Legitimes

1. **Re-appearance of former spouse** (Articles 102 (5), 43(2))

Art. 102. **Upon dissolution of the absolute community regime, the following procedure shall apply:**

(5) The presumptive legitimes of the common children shall be delivered upon partition, in accordance with Article 51.

Art. 43. **The termination of the subsequent marriage referred to in the preceding Article shall produce the following effects:**

(2) The absolute community of property or the conjugal partnership, as the case may be, shall be dissolved and liquidated, but if either spouse contracted said marriage in bad faith, his or her share of the net profits of the community property or conjugal partnership property shall be forfeited in favor of the common children or, if there are none, the children of the guilty spouse by a previous marriage or in default of children, the innocent spouse;

2. **Annulment** (Articles 50 ¶2, 51)

Art. 50, ¶2. **The final judgment in such cases shall provide for the liquidation, partition and distribution of the properties of the spouses, the custody and support of the common children, and the delivery of their presumptive legitimes, unless such matters had been adjudicated in previous judicial proceedings.**

Art. 51. **In said partition, the value of the presumptive legitimes of all common children, computed as of the date of the final judgment of the trial court, shall be delivered in cash, property or sound securities, unless the parties, by mutual agreement judicially approved, had already provided for such matters.**

The children or their guardian or the trustee of their property may ask for the enforcement of the judgment.

The delivery of the presumptive legitimes herein prescribed shall in no way prejudice the ultimate successional rights of the children accruing upon the death of either of both of the parents; but the value of the properties already received under the decree of annulment or absolute nullity shall be considered as advances on their legitime.

3. **Legal Separation** (Articles 102 (5), 63(2))

Art. 102. **Upon dissolution of the absolute community regime, the following procedure shall apply:**

(5) The presumptive legitimes of the common children shall be delivered upon partition, in accordance with Article 51.

Art. 63. **The decree of legal separation shall have the following effects:**

(2) The absolute community or the conjugal partnership shall be dissolved and liquidated but the offending spouse shall have no right to any share of the net profits earned by the absolute community or the conjugal partnership, which shall be forfeited in accordance with the provisions of Article 43(2);

4. Other causes for the dissolution of conjugal property (Articles 102, 129, 135)

Art. 102. **Upon dissolution of the absolute community regime, the following procedure shall apply:**

(1) An inventory shall be prepared, listing separately all the properties of the absolute community and the exclusive properties of each spouse.

(2) The debts and obligations of the absolute community shall be paid out of its assets. In case of insufficiency of said assets, the spouses shall be solidarily liable for the unpaid balance with their separate properties in accordance with the provisions of the second paragraph of Article 94.

(3) Whatever remains of the exclusive properties of the spouses shall thereafter be delivered to each of them.

(4) The net remainder of the properties of the absolute community shall constitute its net assets, which shall be divided equally between husband and wife, unless a different proportion or division was agreed upon in the marriage settlements, or unless there has been a voluntary waiver of such share provided in this Code. For purpose of computing the net profits subject to forfeiture in accordance with Articles 43, No. (2) and 63, No. (2), the said profits shall be the increase in value between the market value of the community property at the time of the celebration of the marriage and the market value at the time of its dissolution.

(5) The presumptive legitimes of the common children shall be delivered upon partition, in accordance with Article 51.

(6) Unless otherwise agreed upon by the parties, in the partition of the properties, the conjugal dwelling and the lot on which it is situated shall be adjudicated to the spouse with whom the majority of the common children choose to remain. Children below the age of seven years are deemed to have chosen the mother, unless the court has decided otherwise. In case there in no such majority, the court shall decide, taking into consideration the best interests of said children.

Art. 129. **Upon the dissolution of the conjugal partnership regime, the following procedure shall apply:**

(1) An inventory shall be prepared, listing separately all the properties of the conjugal partnership and the exclusive properties of each spouse.

(2) Amounts advanced by the conjugal partnership in payment of personal debts and obligations of either spouse shall be credited to the conjugal partnership as an asset thereof.

(3) Each spouse shall be reimbursed for the use of his or her exclusive funds in the acquisition of property or for the value of his or her exclusive property, the ownership of which has been vested by law in the conjugal partnership.

(4) The debts and obligations of the conjugal partnership shall be paid out of the conjugal assets. In case of insufficiency of said assets, the spouses shall be solidarily liable for the unpaid balance with their separate properties, in accordance with the provisions of paragraph (2) of Article 121.

(5) Whatever remains of the exclusive properties of the spouses shall thereafter be delivered to each of them.

(6) Unless the owner had been indemnified from whatever source, the loss or deterioration of movables used for the benefit of the family, belonging to either spouse, even due to fortuitous event, shall be paid to said spouse from the conjugal funds, if any.

(7) The net remainder of the conjugal partnership properties shall constitute the profits, which shall be divided equally between husband and wife, unless a different proportion or division was agreed upon in the marriage settlements or unless there has been a voluntary waiver or forfeiture of such share as provided in this Code.

(8) The presumptive legitimes of the common children shall be delivered upon the partition in accordance with Article 51.

(9) In the partition of the properties, the conjugal dwelling and the lot on which it is situated shall, unless otherwise agreed upon by the parties, be adjudicated to the spouse with whom the majority of the common children choose to remain. Children below the age of seven years are deemed to have chosen the mother, unless the court has decided otherwise. In case there is no such majority, the court shall decide, taking into consideration the best interests of said children.

Art. 135. **Any of the following shall be considered sufficient cause for judicial separation of property:**

(1) That the spouse of the petitioner has been sentenced to a penalty which carries with it civil interdiction;

(2) That the spouse of the petitioner has been judicially declared an absentee;

(3) That loss of parental authority of the spouse of petitioner has been decreed by the court;

(4) That the spouse of the petitioner has abandoned the latter or failed to comply with his or her obligations to the family as provided for in Article 101;

(5) That the spouse granted the power of administration in the marriage settlements has abused that power; and

(6) That at the time of the petition, the spouses have been separated in fact for at least one year and reconciliation is highly improbable.

In the cases provided for in Numbers (1), (2) and (3), the presentation of the final judgment against the guilty or absent spouse shall be enough basis for the grant of the decree of judicial separation of property.

5. **Decree of Nullity** (Article 50¶2)

Art. 50. **The final judgment in such cases shall provide for the liquidation, partition and distribution of the properties of the spouses, the custody and support of the common children, and the delivery of third presumptive legitimes, unless such matters had been adjudicated in previous judicial proceedings.**

- Professor Balane is not in favor of the delivery of presumptive legitimes. Presumptive legitimes are tentative. Furthermore, the properties of the spouses are frozen, yet the children do not have vested rights.

IX. Legal Separation (Bed and Board Separation)

Art. 55. **A petition for legal separation may be filed on any of the following grounds:**

(1) Repeated physical violence or grossly abusive conduct directed against the petitioner, a common child, or a child of the petitioner;

- The key words are "repeated" and "grossly".

(2) Physical violence or moral pressure to compel the petitioner to change religious or political affiliation;

- There must be undue pressure since some pressure is expected in every marriage. It must go beyond what is permissible (case to case basis).

(3) Attempt of respondent to corrupt or induce the petitioner, a common child, or a child of the petitioner, to engage in prostitution, or connivance in such corruption or inducement;

(4) Final judgment sentencing the respondent to imprisonment of more than six years, even if pardoned;

(5) Drug addiction or habitual alcoholism of the respondent;

- The drug addiction can occur after the marriage. Article 55 (5) does not talk of concealment of drug addiction unlike Article 46(4)[♠].

(6) Lesbianism or homosexuality of the respondent;

- Is this talking about homosexuality in terms of practice or is such sexual orientation enough? Again, there are no cases.

(7) Contracting by the respondent of a subsequent bigamous marriage, whether in the Philippines or abroad;

(8) Sexual infidelity or perversion;

- Under the Family Code, both men and women need only commit one act of sexual infidelity to fall under Article 55 (8).
- In *Gandionco vs. Peñaranda*, the Supreme Court said that a criminal conviction of concubinage is not necessary, only preponderance of evidence. In fact, a civil action for legal separation based on concubinage may proceed ahead of or simultaneously with a criminal action.
- Sexual perversion is a relative term.

(9) Attempt by the respondent against the life of the petitioner; or

- Article 55 (9) – under this ground, there is no need for conviction.

(10) Abandonment of petitioner by respondent without justifiable cause for more than one year.

For purposes of this Article, the term "child" shall include a child by nature or by adoption.

Art. 56. **The petition for legal separation shall be denied on any of the following grounds:**

(1) Where the aggrieved party has condoned the offense or act complained of;

(2) Where the aggrieved party has consented to the commission of the offense or act complained of;

(3) Where there is connivance between the parties in the commission of the offense or act constituting the ground for legal separation;

(4) Where both parties have given ground for legal separation;

(5) Where there is collusion between the parties to obtain decree of legal separation; or

(6) Where the action is barred by prescription.

- There are 2 more grounds not found in Article 56:

[♠] *Art. 46.* Any of the following circumstances shall constitute fraud referred to in Number 3 of the preceding Article:

(4) Concealment of drug addiction, habitual alcoholism or homosexuality or lesbianism existing at the time of the marriage.

1. Death of either party during the pendency of the case (*Lapuz-Sy vs. Eufemio*)
2. Reconciliation of the spouses during the pendency of the case (Article 66 (1)[∅])

- In *Lapuz-Sy vs. Eufemio*, the lawyer wanted to proceed with legal separation despite of the death of one of the parties. The Supreme Court denied it since the primary purpose of legal separation is bed and board separation while the effect on their property relations is merely incidental.

Art. 58. **An action for legal separation shall in no case be tried before six months shall have elapsed since the filing of the petition.**

- This is the cooling-off period – can only try the petition for legal separation after 6 months from filing. The Supreme Court has interpreted Article 58 to mean that there shall be no hearing on the main issue but the court may hear incidental issues.
- In the case of *Araneta vs. Concepcion*, the Supreme Court allowed the court to hear the issue regarding the custody of the children even if the 6-month period had not yet elapsed. Professor Balane didn't like the ruling in this case. According to him, what are you going to talk about if you don't go to the main case?

Art. 59. **No legal separation may be decreed unless the Court has taken steps toward the reconciliation of the spouses and is fully satisfied, despite such efforts, that reconciliation is highly improbable.**

- For legal separation to be declared, reconciliation must be highly unlikely.

Art. 60. **No decree of legal separation shall be based upon a stipulation of facts or a confession of judgment.**

In any case, the Court shall order the prosecuting attorney or fiscal assigned to it to take steps to prevent collusion between the parties and to take care that the evidence is not fabricated or suppressed.

- No decree of legal separation shall be based upon a stipulation of facts or a confession judgment. In *Ocampo vs. Florenciano*, the Supreme Court said that legal separation cannot be granted on the basis of the wife's admission alone. There must be other proof.

1. Effects of Filing A Petition for Legal Separation

a. Spouses can live separately from each other.

b. The administration of the common properties (ACP, CPG, etc) shall be given by the court to either of the spouses or to a 3rd person as is best for the interests of the community.

c. In the absence of a written agreement of the spouses, the court shall provide for the support between the spouses and the custody and support of the common children, taking into account the welfare of the children and their choice of the parent with whom they wish to remain.

[∅] *Art. 66.* The reconciliation referred to in the preceding Articles shall have the following consequences:

(1) The legal separation proceedings, if still pending, shall thereby be terminated at whatever stage

d. When the consent of 1 spouse to any transaction of the other is required by law, judicial authorization shall be necessary, unless such spouse voluntarily gives such consent.

2. Effects of the Decree of Legal Separation (Nos. 1 – 4, Article 63)

Art. 63. **The decree of legal separation shall have the following effects:**

(1) The spouses shall be entitled to live separately from each other, but the marriage bonds shall not be severed;

(2) The absolute community or the conjugal partnership shall be dissolved and liquidated but the offending spouse shall have no right to any share of the net profits earned by the absolute community or the conjugal partnership, which shall be forfeited in accordance with the provisions of Article 43(2);

(3) The custody of the minor children shall be awarded to the innocent spouse, subject to the provisions of Article 213 of this Code; and

(4) The offending spouse shall be disqualified from inheriting from the innocent spouse by intestate succession. Moreover, provisions in favor of the offending spouse made in the will of the innocent spouse shall be revoked by operation of law.

a. Spouses shall be entitled to live separately from each other, but the marriage bonds shall not be severed.

b. The ACP or the CPG shall be dissolved and liquidated. The offending spouse shall have no right to any share of the net profits earned by the ACP or CPG following the rules of forfeiture in Article 43 (2)[⊕].

c. The custody of the minor children shall be awarded to the innocent spouse subject to Article 213[⊗].

d. The offending spouse shall be disqualified from inheriting from the innocent spouse by intestate succession. Testamentary dispositions in favor of the offending spouse shall be revoked by operation of law.

e. Donation *propter nuptias* made by the innocent spouse to the offending spouse may be revoked at the option of the former. (Article 64[℘])

[⊕] *Art. 43.* The termination of the subsequent marriage referred to in the preceding Article shall produce the following effects:

(2) The absolute community of property or the conjugal partnership, as the case may be, shall be dissolved and liquidated, but if either spouse contracted said marriage in bad faith, his or her share of the net profits of the community property or conjugal partnership property shall be forfeited in favor of the common children or, if there are none, the children of the guilty spouse by a previous marriage or in default of children, the innocent spouse;

[⊗] *Art. 213.* In case of separation of the parents, parental authority shall be exercised by the parent designated by the Court. The Court shall take into account all relevant considerations, especially the choice of the child over seven years of age, unless the parent chosen is unfit.

[℘] *Art. 64.* After the finality of the decree of legal separation, the innocent spouse may revoke the donations made by him or by her in favor of the offending spouse, as well as the designation of the latter as beneficiary in any insurance policy, even if such designation be stipulated as irrevocable.

f. The designation by the innocent spouse of the offending spouse as a beneficiary in any insurance policy (even irrevocable ones) may be revoked by the innocent spouse. (Article 64[℘])

g. Cessation of the obligation of mutual support. (Article 198[ℵ])

h. The wife shall continue using her name and surname employed before legal separation.

3. Effects of Reconciliation

a. Joint custody of the children is restored.

b. The right to succeed by the guilty spouse from the offended spouse is restored – compulsory only.

c. With regard testamentary spouse in the will of the innocent spouse.

d. If the donation *propter nuptias* succession, reconciliation will not automatically revive the institution of the guilty were revoked, the same is not automatically restored.

- Articles 65 and 66 always allow reconciliation even after the decree.

> ***Art. 65.*** **If the spouses should reconcile, a corresponding joint manifestation under oath duly signed by them shall be filed with the court in the same proceeding for legal separation.**
>
> ***Art. 66.*** **The reconciliation referred to in the preceding Articles shall have the following consequences:**
>
> **(1) The legal separation proceedings, if still pending, shall thereby be terminated at whatever stage; and**
>
> **(2) The final decree of legal separation shall be set aside, but the separation of property and any forfeiture of the share of the guilty spouse already effected shall subsist, unless the spouses agree to revive their former property regime.**
>
> **The court's order containing the foregoing shall be recorded in the proper civil registries.**

- According to Professor Balane, it is not the reconciliation which produces the effects in Article 66. Rather, it is the filing of the joint manifestation of reconciliation.

The revocation of the donations shall be recorded in the registries of property in the places where the properties are located. Alienations, liens and encumbrances registered in good faith before the recording of the complaint for revocation in the registries of property shall be respected. The revocation of or change in the designation of the insurance beneficiary shall take effect upon written notification thereof to the insured.

The action to revoke the donation under this Article must be brought within five years from the time the decree of legal separation become final.

[ℵ] *Art. 198.* During the proceedings for legal separation or for annulment of marriage, and for declaration of nullity of marriage, the spouses and their children shall be supported from the properties of the absolute community or the conjugal partnership. After the final judgment granting the petition, the obligation of mutual support between the spouses ceases. However, in case of legal separation, the court may order that the guilty spouse shall give support to the innocent one, specifying the terms of such order.

X. Rights and Obligations between Husband and Wife

Art. 68. **The husband and wife are obliged to live together, observe mutual love, respect and fidelity, and render mutual help and support.**

- This is really a declaration of policy
- The 3 duties of the spouses to each other are:
  1. Live together
  2. Observe mutual love, respect, and fidelity
  3. Render mutual help and support
- Article 68 is Article 36's reference when it refers to the spouse's inability to comply with the essential marital obligations.
- Although the courts cannot compel the spouses to comply with their marital obligations, under Articles 100 and 127, the spouse who leaves the conjugal home or refuses to live there without jus t cause shall not have the right to be supported.

Art. 69. **The husband and wife shall fix the family domicile. In case of disagreement, the court shall decide.**

The court may exempt one spouse from living with the other if the latter should live abroad or there are other valid and compelling reasons for the exemption. However, such exemption shall not apply if the same is not compatible with the solidarity of the family.

- The power to fix the domicile is joint.
- **General Rule:** Separation is incompatible with family solidarity.
- ***Exception:*** Article 69, ¶2*
  1. One spouse should live abroad
  2. Other valid and compelling reasons

Art. 70. **The spouses are jointly responsible for the support of the family. The expenses for such support and other conjugal obligations shall be paid from the community property and, in the absence thereof, from the income or fruits of their separate properties. In case of insufficiency or absence of said income or fruits, such obligations shall be satisfied from the separate properties.**

- Support is a joint responsibility. Both spouses are responsible for the support of the family.
- Support comprises everything indispensable for sustenance, dwelling, clothing, medical attendance, education and transportation, in keeping with the financial capacity of the family (Article 194)

* *Art. 69, ¶2.* The court may exempt one spouse from living with the other if the latter should live abroad or there are other valid and compelling reasons for the exemption. However, such exemption shall not apply if the same is not compatible with the solidarity of the family.

- Under Articles 94 (last ¶)[♣], 121 (last ¶)[♦] and 146 (¶2)[♥], if the community property is insufficient to cover debts of the community property, then the spouses are solidarily liable with their separate property. If the spouses have a regime of separation of property, the spouses are solidarily liable to creditors for family expenses.

Art. 73. **Either spouse may exercise any legitimate profession, occupation, business or activity without the consent of the other. The latter may object only on valid, serious, and moral grounds.**

In case of disagreement, the court shall decide whether or not:

(1) The objection is proper, and

(2) Benefit has occurred to the family prior to the objection or thereafter. If the benefit accrued prior to the objection, the resulting obligation shall be enforced against the separate property of the spouse who has not obtained consent.

The foregoing provisions shall not prejudice the rights of creditors who acted in good faith.

- There is an error here. This is NOT the full text. The text should read:

Either spouse may exercise any legitimate profession, occupation, business or activity without the consent of the other. The latter may object only on valid, serious and moral grounds.

In case of disagreement, the court shall decide whether or not:

1. **The objection is proper, and**
2. **Benefit has accrued to the family prior to the objection or thereafter. If the benefit accrued prior to the objection, the resulting obligation shall be enforced against the community property. If the benefit accrued thereafter, such obligation shall be enforced against the separate property of the spouse who has not obtained consent.**

XI. Property Relations

- Property relations are very important to creditors.

Art. 74. **The property relationship between husband and wife shall be governed in the following order:**

(1) By marriage settlements executed before the marriage;

(2) By the provisions of this Code; and

(3) By the local custom.

- Property relations is the only instance when the husband and wife can stipulate as to the terms an conditions.

[♣] *Art. 94, last ¶.* If the community property is insufficient to cover the foregoing liabilities, except those falling under paragraph (9), the spouses shall be solidarily liable for the unpaid balance with their separate properties.

[♦] *Art. 121, last ¶.* If the conjugal partnership is insufficient to cover the foregoing liabilities, the spouses shall be solidarily liable for the unpaid balance with their separate properties.

[♥] *Art. 146, ¶2.* The liabilities of the spouses to creditors for family expenses shall, however, be solidary.

- The marriage settlement governs the property relations of spouses provided such is not contrary to law.
- In the absence of a marriage settlement, the Family Code comes in. If the Family Code in a rare instance is not applicable, then custom comes in.
- Therefore, in the absence of a marriage settlement or when such marriage settlement is void, ACP shall be their marriage settlement by operation of law.
- As an exception, when the 1st marriage is dissolved by reason of death and the 2nd marriage was entered into before the conjugal partnership is liquidated, the law mandates that a regime of complete separation of property shall govern.

Art. 75. **The future spouses may, in the marriage settlements, agree upon the regime of absolute community, conjugal partnership of gains, complete separation of property, or any other regime. In the absence of a marriage settlement, or when the regime agreed upon is void, the system of absolute community of property as established in this Code shall govern.**

- ACP is the regime of the spouses in the absence of a marriage settlement or when the marriage settlement is void. This is so because ACP is more in keeping with Filipino culture.
- **General Rule:** All modifications to the marriage settlement must be made before the marriage is celebrated.
- ***Exceptions:***
  1. Legal Separation (Article 63 (2)♠)
     - In such an instance, the property regime is dissolved.
  2. Revival of the former property regime upon reconciliation if the spouses agree (Article 66 (2)∅)
  3. A spouse may petition the court for:
     1. Receivership
     2. Judicial separation of property, or
     3. The authority to be the sole administrator of the conjugal partnership

     ➔ If the other spouse abandons the other without just cause or fails to comply with his or her obligations to the family. (Article 128⊕)

♠ *Art. 63.* The decree of legal separation shall have the following effects:

(2) The absolute community or the conjugal partnership shall be dissolved and liquidated but the offending spouse shall have no right to any share of the net profits earned by the absolute community or the conjugal partnership, which shall be forfeited in accordance with the provisions of Article 43(2);

∅ *Art. 66.* The reconciliation referred to in the preceding Articles shall have the following consequences:

(2) The final decree of legal separation shall be set aside, but the separation of property and any forfeiture of the share of the guilty spouse already effected shall subsist, unless the spouses agree to revive their former property regime.

⊕ Art. 128. If a spouse without just cause abandons the other or fails to comply with his or her obligation to the family, the aggrieved spouse may petition the court for receivership, for judicial

4. Judicial Dissolution (Articles 135 and 136[⊗])

Art. 77. **The marriage settlements and any modification thereof shall be in writing, signed by the parties and executed before the celebration of the marriage. They shall not prejudice third persons unless they are registered in the local civil registry where the marriage contract is recorded as well as in the proper registries of properties.**

- **Form:** Marriage settlements and their modifications must be in writing (private or public) for validity
- To bind 3rd persons, the marriage settlement must be registered in:
  1. Local Civil Registry where the marriage contract is recorded.
  2. Proper Registries of Property

Art. 78. **A minor who according to law may contract marriage may also execute his or her marriage settlements, but they shall be valid only if the persons designated in Article 14 to give consent to the marriage are made parties to the agreement, subject to the provisions of Title IX of this Code.**

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separation of property, or for authority to be the sole administrator of the conjugal partnership property, subject to such precautionary conditions as the court may impose.

The obligations to the family mentioned in the preceding paragraph refer to marital, parental or property relations.

A spouse is deemed to have abandoned the other when he or she has left the conjugal dwelling without intention of returning. The spouse who has left the conjugal dwelling for a period of three months or has failed within the same period to give any information as to his or her whereabouts shall be prima facie presumed to have no intention of returning to the conjugal dwelling.

[⊗] *Art. 135.* Any of the following shall be considered sufficient cause for judicial separation of property:

(1) That the spouse of the petitioner has been sentenced to a penalty which carries with it civil interdiction;

(2) That the spouse of the petitioner has been judicially declared an absentee;

(3) That loss of parental authority of the spouse of petitioner has been decreed by the court;

(4) That the spouse of the petitioner has abandoned the latter or failed to comply with his or her obligations to the family as provided for in Article 101;

(5) That the spouse granted the power of administration in the marriage settlements has abused that power; and

(6) That at the time of the petition, the spouses have been separated in fact for at least one year and reconciliation is highly improbable.

In the cases provided for in Numbers (1), (2) and (3), the presentation of the final judgment against the guilty or absent spouse shall be enough basis for the grant of the decree of judicial separation of property.

Art. 136. The spouses may jointly file a verified petition with the court for the voluntary dissolution of the absolute community or the conjugal partnership of gains, and for the separation of their common properties.

All creditors of the absolute community or of the conjugal partnership of gains, as well as the personal creditors of the spouse, shall be listed in the petition and notified of the filing thereof. The court shall take measures to protect the creditors and other persons with pecuniary interest.

- If the party has not yet reached the age of 21, parental consent is also required with regard to the marriage settlement.

Art. 79. **For the validity of any marriage settlement executed by a person upon whom a sentence of civil interdiction has been pronounced or who is subject to any other disability, it shall be indispensable for the guardian appointed by a competent court to be made a party thereto.**

Art. 80. **In the absence of a contrary stipulation in a marriage settlement, the property relations of the spouses shall be governed by Philippine laws, regardless of the place of the celebration of the marriage and their residence.**

This rule shall not apply:

(1) Where both spouses are aliens;

(2) With respect to the extrinsic validity of contracts affecting property not situated in the Philippines and executed in the country where the property is located; and

(3) With respect to the extrinsic validity of contracts entered into in the Philippines but affecting property situated in a foreign country whose laws require different formalities for its extrinsic validity.

Art. 81. **Everything stipulated in the settlements or contracts referred to in the preceding articles in consideration of a future marriage, including donations between the prospective spouses made therein, shall be rendered void if the marriage does not take place. However, stipulations that do not depend upon the celebration of the marriages shall be valid.**

- The marriage settlement and the donations *propter nuptias* are void if the marriage does not take place.

A. *Donations Propter Nuptias*

- Requisites of Donations *Propter nuptias*
  1. Made before marriage
  2. Made in consideration of the marriage (the motivation behind the donation is the marriage)
  3. In favor of one or both of the spouses
- The donee must be 1 or both of the spouses
- The donor can be anybody including 1 of the spouses
- If the wedding gift is given before the wedding that is a donation *propter nuptias.*
- If the wedding gift is given after the wedding, that is treated as an ordinary donation

Art. 83. **These donations are governed by the rules on ordinary donations established in Title III of Book III of the Civil Code, insofar as they are not modified by the following articles.**

- FORM: Must comply with the form of donations in order to be valid (See Articles 748 and 749[℘])

Art. 84. **If the future spouses agree upon a regime other than the absolute community of property, they cannot donate to each other in their marriage settlements more than one-fifth of their present property. Any excess shall be considered void.**

Donations of future property shall be governed by the provisions on testamentary succession and the formalities of wills.

- This article applies only if the regime is NOT ACP. Otherwise, everything practically would be community property.
- If the donor is one of the future spouses and the regime is NOT ACP, the donor cannot donate more than 1/5 of his PRESENT PROPERTY.
- The future spouse may donate future property to his fiancée for as long as it is not inofficious (does not impair legitimes of the other compulsory heirs). This is so because the donation of future property is really a testamentary disposition.
- In the case of *Mateo vs. Lagua*, the Supreme Court said that donations *propter nuptias* may be revoked for being inofficious.
- If the donor is not one of the future spouses, the donor may give more than 1/5 of his present property provided that the legitimes are not impaired.
- If the regime is ACP, there is no need to give a donation *propter nuptias* to your spouse. It is useless since such donation shall become part of the community property. In addition, donor's tax must be paid.

Art. 86. **A donation by reason of marriage may be revoked by the donor in the following cases:**

(1) If the marriage is not celebrated or judicially declared void *ab initio* except donations made in the marriage settlements, which shall be governed by Article 81;

(2) When the marriage takes place without the consent of the parents or guardian, as required by law;

(3) When the marriage is annulled, and the donee acted in bad faith;

(4) Upon legal separation, the donee being the guilty spouse;

[℘] *Art. 748.* The donation of a movable may be made orally or in writing.

An oral donation requires the simultaneous delivery of the thing or of the document representing the right donated.

If the value of the personal property donated exceeds five thousand pesos, the donation and the acceptance shall be made in writing, otherwise, the donation shall be void.

Art. 749. In order that the donation of an immovable may be valid, it must be made in a public document, specifying therein the property donated and the value of the charges which the donee must satisfy.

The acceptance may be made in the same deed of donation or in a separate public document, but it shall not take effect unless it is done during the lifetime of the donor.

If the acceptance is made in a separate instrument, the donor shall be notified thereof in an authentic form, and this step shall be noted in both instruments.

(5) If it is with a resolutory condition and the condition is complied with;

(6) When the donee has committed an act of ingratitude as specified by the provisions of the Civil Code on donations in general.

- The donations *propter nuptias* may be revoked on the grounds enumerated here.
- In Article 86 (6), the act of ingratitude refers to Article 765[8].

Art. 87. **Every donation or grant of gratuitous advantage, direct or indirect, between the spouses during the marriage shall be void, except moderate gifts which the spouses may give each other on the occasion of any family rejoicing. The prohibition shall also apply to persons living together as husband and wife without a valid marriage.**

- **General Rule:** During the marriage, the spouses may not donate to one another.
- ***Exception:*** Spouses may give moderate gifts to each other on the occasion of any family rejoicing.

  NOTE: Article 87 is applicable to common-law spouses (*Matabuena vs. Cervantes*)
- This is to minimize improper or undue pressure as well as to prevent the spouses from defrauding their creditors.

B. ***System of Absolute Community***

Art. 91. **Unless otherwise provided in this Chapter or in the marriage settlements, the community property shall consist of all the property owned by the spouses at the time of the celebration of the marriage or acquired thereafter.**

Art. 92. **The following shall be excluded from the community property:**

(1) Property acquired during the marriage by gratuitous title by either spouse, and the fruits as well as the income thereof, if any, unless it is expressly provided by the donor, testator or grantor that they shall form part of the community property;

(2) Property for personal and exclusive use of either spouse. However, jewelry shall form part of the community property;

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[8] *Art. 765.* The donation may also be revoked at the instance of the donor, by reason of ingratitude in the following cases:

(1) If the donee should commit some offense against the person, the honor or the property of the donor, or of his wife or children under his parental authority;

(2) If the donee imputes to the donor any criminal offense, or any act involving moral turpitude, even though he should prove it, unless the crime or the act has been committed against the donee himself, his wife or children under his authority;

(3) If he unduly refuses him support when the donee is legally or morally bound to give support to the donor.

(3) Property acquired before the marriage by either spouse who has legitimate descendants by a former marriage, and the fruits as well as the income, if any, of such property.

- **General Rule:** Community property shall consist of all the property owned by the spouses at the time of the celebration of the marriage or acquired thereafter.
- ***Exceptions:***

1. Property acquired during the marriage by gratuitous title, including the fruits and the income.

   Exception to the exception: The donor, testator, or grantor expressly provides otherwise.

   - A's father dies. A inherits from the father. A marries B. The property inherited by A from his father is part of the community property.
   - B's mother dies during B's marriage to A. The property inherited by B from her mother does not form part of the community property.
   - In ACP, the income from separate property of the spouses does not form part of the community property.

     IN CPG, the income from separate property of the spouses forms part of the community property.

2. Property for personal and exclusive use of either spouse

   Exception to the Exception: Jewelry forms part of the community property.

3. Property acquired before the marriage by either spouse who has legitimate descendants by a former marriage, and the fruits and income of such property.

   - This is provided for so that the children from the 1st marriage will not be prejudiced.

Art. 93. **Property acquired during the marriage is presumed to belong to the community, unless it is proved that it is one of those excluded therefrom.**

- ***Presumption:*** Property acquired during the marriage is presumed to belong to the community.
- However it can be rebutted by proving such property acquired during marriage is excluded.

Art. 94. **The absolute community of property shall be liable for:**

- Article 94 enumerates the charges upon the absolute community of property.

(1) The support of the spouses, their common children, and legitimate children of either spouse; however, the support of illegitimate children shall be governed by the provisions of this Code on Support;

- The ACP shall support the spouses' common children and legitimate children of either spouse
- A common child of the spouse may not necessarily be legitimate. For example, A is married to B. A has an affair with C. A and C have a child, D. B dies. A and C get married. D cannot be legitimated since at the time of D's conception, A and C had no capacity to get married.
- Illegitimate children are supported:
  1. Primarily by their biological parent
  2. Subsidiarily by the ACP (Article 94 (9)*)

(2) All debts and obligations contracted during the marriage by the designated administrator-spouse for the benefit of the community, or by both spouses, or by one spouse with the consent of the other;

(3) Debts and obligations contracted by either spouse without the consent of the other to the extent that the family may have been benefited;

- The wordings under Articles 94 (2) and 94 (3) are different
- Article 94 (2) contemplates 3 situations:
  1. Obligations contracted by the designated administrator spouse for the purpose of benefiting the community.
     - Under 94 (2) (a), purpose is enough. It is not required to show to what extent the family benefited.
  2. Obligations contracted by both spouses
  3. Obligations contracted by 1 spouse with the consent of the other.
- Article 94 (3) contemplates the situation wherein 1 spouse contracts an obligation without the consent of the other.
  - The ACP is liable only to the extent that the family may have benefited.
- ***Problem:*** What is the rule now regarding obligations contracted by the business of a particular spouse?

  According to Professor Balane, there are 2 views. One view is that Article 94 (3) may be applied since both spouses are the administrators of the community property. Therefore, one spouse should not act alone as administrator. Therefore, obligations contracted for the business operations of a spouse are without consent of the other.

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* *Art. 94.* The absolute community of property shall be liable for:

(9) Antenuptial debts of either spouse other than those falling under paragraph (7) of this Article, the support of illegitimate children of either spouse, and liabilities incurred by either spouse by reason of a crime or a quasi-delict, in case of absence or insufficiency of the exclusive property of the debtor-spouse, the payment of which shall be considered as advances to be deducted from the share of the debtor-spouse upon liquidation of the community;

Another view is that such debts would fall under Article 94 (2). According to Justice Vitug, there is implied consent by the other spouse since the same did not object. Otherwise, commercial transactions would slow down.

(4) All taxes, liens, charges and expenses, including major or minor repairs, upon the community property;

(5) All taxes and expenses for mere preservation made during marriage upon the separate property of either spouse used by the family;

- Taxes and expenses for the preservation upon the exclusive property by 1 of the spouses should be borne by the ACP. This is so because the family benefits.

(6) Expenses to enable either spouse to commence or complete a professional or vocational course, or other activity for self-improvement;

(7) Antenuptial debts of either spouse insofar as they have redounded to the benefit of the family;

(8) The value of what is donated or promised by both spouses in favor of their common legitimate children for the exclusive purpose of commencing or completing a professional or vocational course or other activity for self-improvement;

(9) Antenuptial debts of either spouse other than those falling under paragraph (7) of this Article, the support of illegitimate children of either spouse, and liabilities incurred by either spouse by reason of a crime or a quasi-delict, in case of absence or insufficiency of the exclusive property of the debtor-spouse, the payment of which shall be considered as advances to be deducted from the share of the debtor-spouse upon liquidation of the community; and

- Ante-nuptial debts not falling under Article 94 (7) will be borne by the ACP if the separate property of the debtor-spouse is insufficient.

(10) Expenses of litigation between the spouses unless the suit is found to be groundless.

If the community property is insufficient to cover the foregoing liabilities, except those falling under paragraph (9), the spouses shall be solidarily liable for the unpaid balance with their separate properties.

1. Administration and Enjoyment of Community Property

Art. 96, ¶1. **The administration and enjoyment of the community property shall belong to both spouses jointly. In case of disagreement, the husband's decision shall prevail, subject to recourse to the court by the wife for proper remedy, which must be availed of within five years from the date of the contract implementing such decision.**

- Administration of the community property belongs to both spouses jointly.
- Both spouses must consent to the encumbrance or disposition of the community property.

Art. 96 (2), ¶2. **In the event that one spouse is incapacitated or otherwise unable to participate in the administration of the common properties, the other spouse may assume sole powers of administration. These powers do not include disposition or encumbrance without authority of the court or the written consent of the other spouse. In the absence of such authority or consent, the disposition or encumbrance shall be void. However, the transaction shall be construed as a continuing offer on the part of the consenting spouse and the third person, and may be perfected as a binding contract upon the acceptance by the other spouse or authorization by the court before the offer is withdrawn by either or both offerors.**

- The other spouse may assume sole powers of administration when:
  1. The other spouse is incapacitated.
  2. The other spouse is unable to participate (*i.e.,* abroad)
- The power to administer does not include the power to dispose or encumber solely by 1 spouse. Court authority or the approval of the other spouse is required.

Art. 97. **Either spouse may dispose by will of his or her interest in the community property.**

Art. 98. **Neither spouse may donate any community property without the consent of the other. However, either spouse may, without the consent of the other, make moderate donations from the community property for charity or on occasions of family rejoicing or family distress.**

- **General Rule:** In order to donate any community property, the other spouse must consent.
- ***Exception:*** Moderate donations do not need the consent of the other spouse if for:
  1. Charity
  2. Occasions of family rejoicing or distress

2. Dissolution and Liquidation of Absolute Community

Art. 99. **The absolute community terminates:**

(1) Upon the death of either spouse;

(2) When there is a decree of legal separation;

(3) When the marriage is annulled or declared void; or

(4) In case of judicial separation of property during the marriage under Article 134 to 138.

- Dissolution of the ACP is not synonymous with the dissolution of the marriage. In Articles 99 (2) and (4), the ACP is dissolved although the marriage is not. However, the dissolution of the marriage automatically results in the dissolution of the ACP.
- In Article 99 (3), when a marriage is declared as a nullity, there is no ACP to dissolve since there was no property regime to begin with. The dissolution in such a case would be governed by the rules on co-ownership.
- Article 99 is not a complete enumeration of the instances when the ACP terminates. Another instance is when the marriage is terminated by the reappearance of the absent spouse (Articles 42 and 43 (2)[*]).

Art. 102. **Upon dissolution of the absolute community regime, the following procedure shall apply:**

(1) An inventory shall be prepared, listing separately all the properties of the absolute community and the exclusive properties of each spouse.

(2) The debts and obligations of the absolute community shall be paid out of its assets. In case of insufficiency of said assets, the spouses shall be solidarily liable for the unpaid balance with their separate properties in accordance with the provisions of the second paragraph of Article 94.

(3) Whatever remains of the exclusive properties of the spouses shall thereafter be delivered to each of them.

(4) The net remainder of the properties of the absolute community shall constitute its net assets, which shall be divided equally between husband and wife, unless a different proportion or division was agreed upon in the marriage settlements, or unless there has been a voluntary waiver of such share provided in this Code. For purpose of computing the net profits subject to forfeiture in accordance with Articles 43, No. (2) and 63, No. (2), the said profits shall be the increase in value between the market value of the community property at the time of the celebration of the marriage and the market value at the time of its dissolution.

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[*] *Art. 42.* The subsequent marriage referred to in the preceding Article shall be automatically terminated by the recording of the affidavit of reappearance of the absent spouse, unless there is a judgment annulling the previous marriage or declaring it void *ab initio*.

A sworn statement of the fact and circumstances of reappearance shall be recorded in the civil registry of the residence of the parties to the subsequent marriage at the instance of any interested person, with due notice to the spouses of the subsequent marriage and without prejudice to the fact of reappearance being judicially determined in case such fact is disputed.

Art. 43. The termination of the subsequent marriage referred to in the preceding Article shall produce the following effects:

(2) The absolute community of property or the conjugal partnership, as the case may be, shall be dissolved and liquidated, but if either spouse contracted said marriage in bad faith, his or her share of the net profits of the community property or conjugal partnership property shall be forfeited in favor of the common children or, if there are none, the children of the guilty spouse by a previous marriage or in default of children, the innocent spouse;

(5) The presumptive legitimes of the common children shall be delivered upon partition, in accordance with Article 51.

(6) Unless otherwise agreed upon by the parties, in the partition of the properties, the conjugal dwelling and the lot on which it is situated shall be adjudicated to the spouse with whom the majority of the common children choose to remain. Children below the age of seven years are deemed to have chosen the mother, unless the court has decided otherwise. In case there in no such majority, the court shall decide, taking into consideration the best interests of said children.

- Article 102 enumerates the steps in liquidation:
  1. Inventory
     - 3 lists
       1. Inventory of community property
       2. Inventory of separate property of the wife
       3. Inventory of separate property of the husband.
  2. Payment of Community Debts
     - First, pay out of community assets
     - If not enough, husband and wife are solidarily liable with their separate property.
  3. Delivery to each spouse his or her separate property if any.
  4. Division of the net community assets

     NOTE: There are special rules regarding the family home.
  5. Delivery of presumptive legitimes if any to the children
- The presumptive legitimes are given in the following instances:
  1. Death of either spouse (Article 103)
  2. Legal Separation (Articles 63 and 64)
  3. Annulment (Articles 50 – 52)
  4. Judicial Separation of Property (Articles 134 – 137)
  5. Reappearance of the absent spouse which terminates the 2nd marriage (Article 43)

Art. 100. **The separation in fact between husband and wife shall not affect the regime of absolute community except that:**

(1) The spouse who leaves the conjugal home or refuses to live therein, without just cause, shall not have the right to be supported;

(2) When the consent of one spouse to any transaction of the other is required by law, judicial authorization shall be obtained in a summary proceeding;

(3) In the absence of sufficient community property, the separate property of both spouses shall be solidarily liable for the

support of the family. The spouse present shall, upon proper petition in a summary proceeding, be given judicial authority to administer or encumber any specific separate property of the other spouse and use the fruits or proceeds thereof to satisfy the latter's share.

- Separation *de facto* does not dissolve the ACP.

Art. 101. **If a spouse without just cause abandons the other or fails to comply with his or her obligations to the family, the aggrieved spouse may petition the court for receivership, for judicial separation of property or for authority to be the sole administrator of the absolute community, subject to such precautionary conditions as the court may impose.**

The obligations to the family mentioned in the preceding paragraph refer to marital, parental or property relations.

A spouse is deemed to have abandoned the other when her or she has left the conjugal dwelling without intention of returning. The spouse who has left the conjugal dwelling for a period of three months or has failed within the same period to give any information as to his or her whereabouts shall be *prima facie* presumed to have no intention of returning to the conjugal dwelling.

- If a spouse abandons the other spouse without just cause or fails to comply with his or marital obligations, the aggrieved spouse may petition the court for the following:
  1. Receivership
  2. Judicial separation of property
  3. Authority to be the sole administrator.
- Abandonment occurs when one leaves the conjugal dwelling without intention of returning.
- ***Presumption of Abandonment:*** When the spouse has left the conjugal dwelling for a period of 3 months without giving information as to his whereabouts.

Art. 104. **Whenever the liquidation of the community properties of two or more marriages contracted by the same person before the effectivity of this Code is carried out simultaneously, the respective capital, fruits and income of each community shall be determined upon such proof as may be considered according to the rules of evidence. In case of doubt as to which community the existing properties belong, the same shall be divided between the different communities in proportion to the capital and duration of each.**

- Article 104 will hardly ever occur. Skip this.

C. *Conjugal Partnership of Gains*

- Knowing the CPG is important. Under the Civil Code, this was the preponderant property regime. Since a lot of marriages took place before the effectivity of the Family Code – August 3, 1988 – many property regimes are CPG.

Art. 105. **In case the future spouses agree in the marriage settlements that the regime of conjugal partnership gains shall govern their property relations during marriage, the provisions in this Chapter shall be of supplementary application.**

The provisions of this Chapter shall also apply to conjugal partnerships of gains already established between spouses before the effectivity of this Code, without prejudice to vested rights already acquired in accordance with the Civil Code or other laws, as provided in Article 256.

- The regime of CPG applies:
  1. In case the future spouse agree on this regime in their marriage settlement, their property relations will be governed by their agreement with the Family Code suppletorily applicable.
  2. CPGs before the affectivity of the Family Code, without prejudice to vested rights

Art. 106. **Under the regime of conjugal partnership of gains, the husband and wife place in a common fund the proceeds, products, fruits and income from their separate properties and those acquired by either or both spouses through their efforts or by chance, and, upon dissolution of the marriage or of the partnership, the net gains or benefits obtained by either or both spouses shall be divided equally between them, unless otherwise agreed in the marriage settlements.**

- The husband and wife place in a common fund:
  1. Income of their separate properties
  2. Everything acquired by them through their efforts (whether singly or jointly)
  3. Everything acquired by them through chance (the winnings from gambling, hidden treasure, those acquired from hunting)
- The spouses are not co-owners of the conjugal properties during the marriage and cannot alienate the supposed ½ interest of each in the said properties. The interest of the spouses in the conjugal properties is only inchoate or a mere expectancy and does not ripen into title until it appears after the dissolution and liquidation of the partnership that there are net assets (*De Ansaldo vs. Sheriff of Manila*).

Art. 107. **The rules provided in Articles 88[♦] and 89[♥] shall also apply to conjugal partnership of gains.**

Art. 108. **The conjugal partnership shall be governed by the rules on the contract of partnership in all that is not in conflict with what is expressly determined in this Chapter or by the spouses in their marriage settlements.**

- The rules on partnership shall be applied in a suppletory manner.

Art. 109. **The following shall be the exclusive property of each spouse:**

(1) That which is brought to the marriage as his or her own;

(2) That which each acquires during the marriage by gratuitous title;

(3) That which is acquired by right of redemption, by barter or by exchange with property belonging to only one of the spouses; and

(4) That which is purchased with exclusive money of the wife or of the husband.

- Article 109 enumerates the exclusive property of spouses:
  1. Property brought to the marriage as his or her own
     - Strictly speaking paraphernal property refers to the exclusive property of the wife while capital is the exclusive property of the husband.
  2. Property which each spouse acquires during the marriage by gratuitous title
     - Gratuitous title is either:
       1. By succession
       2. By donation
     - ACP also has a similar provision.
  3. Property which is acquired by right of redemption, by barter or exchange with property belonging to only one of the spouses; and
     - Article 109 (3) is illustrated as follows: The wife owns exclusively a piece of land. The wife sells such land with the right to repurchase it. The wife redeems the money using conjugal funds. Under Article 109 (3), the property is still paraphernal as the right of redemption belongs to the wife. The fact that conjugal funds were used is irrelevant in that

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♦ *Art. 88.* The absolute community of property between spouses shall commence at the precise moment that the marriage is celebrated. Any stipulation, express or implied, for the commencement of the community regime at any other time shall be void.

♥ *Art. 89.* No waiver of rights, shares and effects of the absolute community of property during the marriage can be made except in case of judicial separation of property.

When the waiver takes place upon a judicial separation of property, or after the marriage has been dissolved or annulled, the same shall appear in a public instrument and shall be recorded as provided in Article 77. The creditors of the spouse who made such waiver may petition the court to rescind the waiver to the extent of the amount sufficient to cover the amount of their credits.

the wife must liquidate such debt to the common fund upon the liquidation of the property regime.

- Another illustration of Article 109 (3) is as follows: The wife owns exclusively a lot in BF Homes in Q.C. The wife decides to sell the lot and gets money in exchange. The money is paraphernal property.

4. Property which is purchased with exclusive money of the wife or of the husband
   - The rule is the same for ACP although there is no express provision.

Art. 110. **The spouses retain the ownership, possession, administration and enjoyment of their exclusive properties.**

Either spouse may, during the marriage, transfer the administration of his or her exclusive property to the other by means of a public instrument, which shall be recorded in the registry of property of the place the property is located.

Art. 111. **A spouse of age may mortgage, encumber, alienate or otherwise dispose of his or her exclusive property, without the consent of the other spouse, and appear alone in court to litigate with regard to the same.**

Art. 112. **The alienation of any exclusive property of a spouse administered by the other automatically terminates the administration over such property and the proceeds of the alienation shall be turned over to the owner-spouse.**

Art. 113. **Property donated or left by will to the spouses, jointly and with designation of determinate shares, shall pertain to the donee-spouses as his or her own exclusive property, and in the absence of designation, share and share alike, without prejudice to the right of accretion when proper.**

Art. 114. **If the donations are onerous, the amount of the charges shall be borne by the exclusive property of the donee spouse, whenever they have been advanced by the conjugal partnership of gains.**

Art. 115. **Retirement benefits, pensions, annuities, gratuities, usufructs and similar benefits shall be governed by the rules on gratuitous or onerous acquisitions as may be proper in each case.**

Art. 116. **All property acquired during the marriage, whether the acquisition appears to have been made, contracted or registered in the name of one or both spouses, is presumed to be conjugal unless the contrary is proved.**

- ***Presumption:*** All property acquired during marriage is presumed to be conjugal (but the contrary may be proved).

Art. 117. **The following are conjugal partnership properties:**

(1) Those acquired by onerous title during the marriage at the expense of the common fund, whether the acquisition be for the partnership, or for only one of the spouses;

(2) Those obtained from the labor, industry, work or profession of either or both of the spouses;

(3) The fruits, natural, industrial, or civil, due or received during the marriage from the common property, as well as the net fruits from the exclusive property of each spouse;

- According to Professor Balane, Article 117 (3) is inaccurate. There is no problem if the fruits come from the conjugal property. The problem arises when the fruits arise from the spouses' separate properties. For fruits arising from the separate properties of the spouses to be considered conjugal, one must look at when the fruits are due and not when the fruits are received.
- For example, A lends P 1,000,000 to B at 20% interest payable every quarter. B is supposed to pay interest on March, June, Sept, and Dec. B did not pay the interest due on March. A gets married to C. B finally pays the interests for the months of March and June on June. The interest for March is exclusive property while the interest for June is conjugal property. The interest for March is exclusive property because the test is not when A and C receives the fruits. It is when the fruits are due. In this case, the fruits were due on March before the marriage between A and C. That is why the interest for June is conjugal property.

(4) The share of either spouse in the hidden treasure which the law awards to the finder or owner of the property where the treasure is found;

(5) Those acquired through occupation such as fishing or hunting;

(6) Livestock existing upon the dissolution of the partnership in excess of the number of each kind brought to the marriage by either spouse; and

(7) Those which are acquired by chance, such as winnings from gambling or betting. However, losses therefrom shall be borne exclusively by the loser-spouse.

Art. 118. **Property bought on installments paid partly from exclusive funds of either or both spouses and partly from conjugal funds belongs to the buyer or buyers if full ownership was vested before the marriage and to the conjugal partnership if such ownership was vested during the marriage. In either case, any amount advanced by the partnership or by either or both spouses shall be reimbursed by the owner or owners upon liquidation of the partnership.**

- Article 118 is actually Article 117 (8).
- ***Test:*** When did the ownership vest in the buyer? The source of the funds is irrelevant.
- For example, A who is single, buys on installment a lot in Tagaytay. A has to pay 60 monthly installments. The contract provides that ownership would vest upon the full payment of the installments. A had already paid 20 monthly

installments. A gets married to B. After that A pays the remaining 40 monthly installments using conjugal funds. The property is conjugal following Art. 118. The first 20 monthly installments is a credit of A against the property regime. The converse is also true. The relevance of the funds is only for accounting purposes.

Art. 119. **Whenever an amount or credit payable within a period of time belongs to one of the spouses, the sums which may be collected during the marriage in partial payments or by installments on the principal shall be the exclusive property of the spouse. However, interests falling due during the marriage on the principal shall belong to the conjugal partnership.**

Art. 120. **The ownership of improvements, whether for utility or adornment, made on the separate property of the spouses at the expense of the partnership or through the acts or efforts of either or both spouses shall pertain to the conjugal partnership, or to the original owner-spouse, subject to the following rules:**

When the cost of the improvement made by the conjugal partnership and any resulting increase in value are more than the value of the property at the time of the improvement, the entire property of one of the spouses shall belong to the conjugal partnership, subject to reimbursement of the value of the property of the owner-spouse at the time of the improvement; otherwise, said property shall be retained in ownership by the owner-spouse, likewise subject to reimbursement of the cost of the improvement.

In either case, the ownership of the entire property shall be vested upon the reimbursement, which shall be made at the time of the liquidation of the conjugal partnership.

- This is known as reverse accession.
- In this situation, an improvement which is paid for by conjugal funds is built on land which is exclusively owned by one of the spouses.
- In *Caltex vs. Felias*, the Supreme Court said that before Article 120 could be applied, it is essential that the land must be owned by one of the spouses before the improvement is introduced.
- The general rule is that the accessory follows the principal. Thus, normally the improvement would follow the improvement. In Article 120, this is may not be the case, and it may be that the land would follow the improvement. That's why its called reverse accession.
- Rules:
    1. Reverse accession - if the cost of the improvement and the plus value are more than the value of the principal property at the time of the improvement. Thus, the entire property becomes conjugal.
        - For example, a lot is worth ₱1,000,000. A structure worth ₱800,000 was built. Thus, the total cost of the separate property and the improvement is ₱1,800,000. However due to the building of the improvement, the value of the entire property increases by P300,000 – the plus value. Thus, the entire property is worth ₱2,100,000. In this

case, the entire property becomes conjugal. The cost of the improvement (₱800,000) and the plus value (₱300,000) is more than the cost of the land (₱1,000,000).

2. Accession – if the cost of the improvement and the plus value are less than the value of the principal property at the time the improvement. Thus, the entire property becomes exclusive property of the spouse.
3. Ownership of the entire property shall vest on the owner-spouse or the partnership as the case upon the reimbursement of the improvement.
4. Reimbursement time is the time of the liquidation of the CPG.
5. The value to be paid at the liquidation is the value at the time of the improvement (This overrules *Padilla vs. Padilla*).
    - "Plus value" refers to what the improvement contributes to the increase in the value of the whole thing.

- ***Problem Areas:***
    1. Suppose the improvement is destroyed before reimbursement. Will Article 120 apply? Article 120 applies only on the assumption that the improvement exists at the time of liquidation. If the property is destroyed before the liquidation, the Article 120 won't apply. In the case of *Padilla vs. Paterno*, the SC said that land never became conjugal because the conjugal improvements were destroyed before payment could be effected.
    2. Does the vesting of ownership in reverse accession retroact to the time of the building of the improvement? The law is not clear.

- **Charges upon the Conjugal Partnership of Gains**

    - The charges upon the CPG are parallel to the charges on the ACP.

> ***Art. 121.*** **The conjugal partnership shall be liable for:**
>
> **(1) The support of the spouse, their common children, and the legitimate children of either spouse; however, the support of illegitimate children shall be governed by the provisions of this Code on Support;**
>
> **(2) All debts and obligations contracted during the marriage by the designated administrator-spouse for the benefit of the conjugal partnership of gains, or by both spouses or by one of them with the consent of the other;**
>
> **(3) Debts and obligations contracted by either spouse without the consent of the other to the extent that the family may have benefited;**
>
> **(4) All taxes, liens, charges, and expenses, including major or minor repairs upon the conjugal partnership property;**
>
> **(5) All taxes and expenses for mere preservation made during the marriage upon the separate property of either spouse;**

    - There is no requirement here that it be used by the family since the CPG is the usufructuary of the property.

(6) Expenses to enable either spouse to commence or complete a professional, vocational, or other activity for self-improvement;

(7) Antenuptial debts of either spouse insofar as they have redounded to the benefit of the family;

(8) The value of what is donated or promised by both spouses in favor of their common legitimate children for the exclusive purpose of commencing or completing a professional or vocational course or other activity for self-improvement; and

(9) Expenses of litigation between the spouses unless the suit is found to groundless.

If the conjugal partnership is insufficient to cover the foregoing liabilities, the spouses shall be solidarily liable for the unpaid balance with their separate properties.

- The Articles 122 to 125 have counterpart provisions in the ACP.

CPG PROVISION	**COUNTERPART ACP PROVISION**
Art. 122. **The payment of personal debts contracted by the husband or the wife before or during the marriage shall not be charged to the conjugal properties partnership except insofar as they redounded to the benefit of the family.** **Neither shall the fines and pecuniary indemnities imposed upon them be charged to the partnership.** **However, the payment of personal debts contracted by either spouse before the marriage, that of fines and indemnities imposed upon them, as well as the support of illegitimate children of either spouse, may be enforced against the partnership assets after the responsibilities enumerated in the preceding Article have been covered, if the spouse who is bound should have no exclusive property or if it should be insufficient; but at the time of the liquidation of the partnership, such spouse shall be charged for what has been paid for the purpose above-mentioned.**	***Art. 94.*** **The absolute community of property shall be liable for:** **(9) Antenuptial debts of either spouse other than those falling under paragraph (7) of this Article, the support of illegitimate children of either spouse, and liabilities incurred by either spouse by reason of a crime or a quasi-delict, in case of absence or insufficiency of the exclusive property of the debtor-spouse, the payment of which shall be considered as advances to be deducted from the share of the debtor-spouse upon liquidation of the community;**
Art. 123. **Whatever may be lost during the marriage in any game of chance or in betting, sweepstakes, or**	***Art. 95.*** **Whatever may be lost during the marriage in any game of chance, betting, sweepstakes, or any**

any other kind of gambling whether permitted or prohibited by law, shall be borne by the loser and shall not be charged to the *conjugal partnership* but any winnings therefrom shall form part of the *conjugal partnership property.*	**other kind of gambling, whether permitted or prohibited by law, shall be borne by the loser and shall not be charged to the *community* but any winnings therefrom shall form part of the *community property.***
Art. 124. **The administration and enjoyment of the *conjugal partnership* shall belong to both spouses jointly. In case of disagreement, the husband's decision shall prevail, subject to recourse to the court by the wife for proper remedy, which must be availed of within five years from the date of the contract implementing such decision.** **In the event that one spouse is incapacitated or otherwise unable to participate in the administration of the *conjugal* properties, the other spouse may assume sole powers of administration. These powers do not include disposition or encumbrance without authority of the court or the written consent of the other spouse. In the absence of such authority or consent, the disposition or encumbrance shall be void. However, the transaction shall be construed as a continuing offer on the part of the consenting spouse and the third person, and may be perfected as a binding contract upon the acceptance by the other spouse or authorization by the court before the offer is withdrawn by either or both offerors.**	**Art. 96. The administration and enjoyment of the *community property* shall belong to both spouses jointly. In case of disagreement, the husband's decision shall prevail, subject to recourse to the court by the wife for proper remedy, which must be availed of within five years from the date of the contract implementing such decision.** **In the event that one spouse is incapacitated or otherwise unable to participate in the administration of the *common* properties, the other spouse may assume sole powers of administration. These powers do not include disposition or encumbrance without authority of the court or the written consent of the other spouse. In the absence of such authority or consent, the disposition or encumbrance shall be void. However, the transaction shall be construed as a continuing offer on the part of the consenting spouse and the third person, and may be perfected as a binding contract upon the acceptance by the other spouse or authorization by the court before the offer is withdrawn by either or both offerors.**
Art. 125. **Neither spouse may donate any *conjugal partnership property* without the consent of the other. However, either spouse may, without the consent of the other, make moderate donations from the *conjugal partnership property* for charity or on occasions of family rejoicing or family distress.**	***Art. 98.*** **Neither spouse may donate any *community property* without the consent of the other. However, either spouse may, without the consent of the other, make moderate donations from the *community property* for charity or on occasions of family rejoicing or family distress.**

- The rules on dissolution are the same.

CPG PROVISION	COUNTERPART ACP PROVISION
Art. 126. **The *conjugal partnership* terminates:** **(1) Upon the death of either spouse;** **(2) When there is a decree of legal separation;** **(3) When the marriage is annulled or declared void; or** **(4) In case of judicial separation of property during the marriage under Articles 134 to 138.**	***Art. 99.*** **The *absolute community* terminates:** **(1) Upon the death of either spouse;** **(2) When there is a decree of legal separation;** **(3) When the marriage is annulled or declared void; or** **(4) In case of judicial separation of property during the marriage under Article 134 to 138.**

- Like Article 99 (3), Article 126 (3) is incorrect. The marriage regime in a void marriage never existed. There is nothing to dissolve. The special rules of co-ownership shall govern.

Art. 127. **The separation in fact between husband and wife shall not affect the regime of *conjugal partnership,* except that:** **(1) The spouse who leaves the conjugal home or refuses to live therein, without just cause, shall not have the right to be supported;** **(2) When the consent of one spouse to any transaction of the other is required by law, judicial authorization shall be obtained in a summary proceeding;** **(3) In the absence of sufficient *conjugal partnership property*, the separate property of both spouses shall be solidarily liable for the support of the family. The spouse present shall, upon petition in a summary proceeding, be given judicial authority to administer or encumber any specific separate property of the other spouse and use the fruits or proceeds thereof to satisfy the latter's share.**	***Art. 100.*** **The separation in fact between husband and wife shall not affect the regime of *absolute community* except that:** **(1) The spouse who leaves the conjugal home or refuses to live therein, without just cause, shall not have the right to be supported;** **(2) When the consent of one spouse to any transaction of the other is required by law, judicial authorization shall be obtained in a summary proceeding;** **(3) In the absence of sufficient *community property*, the separate property of both spouses shall be solidarily liable for the support of the family. The spouse present shall, upon proper petition in a summary proceeding, be given judicial authority to administer or encumber any specific separate property of the other spouse and use the fruits or proceeds thereof to satisfy the latter's share.**

Art. 128. **If a spouse without just cause abandons the other or fails to comply with his or her obligation to the family, the aggrieved spouse may petition the court for receivership, for judicial separation of property, or for authority to be the sole administrator of the *conjugal partnership property*, subject to such precautionary conditions as the court may impose.** **The obligations to the family mentioned in the preceding paragraph refer to marital, parental or property relations.** **A spouse is deemed to have abandoned the other when he or she has left the conjugal dwelling without intention of returning. The spouse who has left the conjugal dwelling for a period of three months or has failed within the same period to give any information as to his or her whereabouts shall be *prima facie* presumed to have no intention of returning to the conjugal dwelling.**	***Art. 101.*** **If a spouse without just cause abandons the other or fails to comply with his or her obligations to the family, the aggrieved spouse may petition the court for receivership, for judicial separation of property or for authority to be the sole administrator of the *absolute community*, subject to such precautionary conditions as the court may impose.** **The obligations to the family mentioned in the preceding paragraph refer to marital, parental or property relations.** **A spouse is deemed to have abandoned the other when her or she has left the conjugal dwelling without intention of returning. The spouse who has left the conjugal dwelling for a period of three months or has failed within the same period to give any information as to his or her whereabouts shall be *prima facie* presumed to have no intention of returning to the conjugal dwelling.**
Art. 129. **Upon the dissolution of the *conjugal partnership regime*, the following procedure shall apply:** **(1) An inventory shall be prepared, listing separately all the properties of the *conjugal partnership* and the exclusive properties of each spouse.** **(2) Amounts advanced by the *conjugal partnership* in payment of personal debts and obligations of either spouse shall be credited to the *conjugal partnership* as an asset thereof.** ***(3)*** **Each spouse shall be reimbursed for the use of his or her exclusive funds in the acquisition of property or for the value of his or her exclusive property, the ownership of which has been vested by law in the *conjugal***	***Art. 102.*** **Upon dissolution of the *absolute community regime*, the following procedure shall apply:** **(1) An inventory shall be prepared, listing separately all the properties of the *absolute community* and the exclusive properties of each spouse.** **(2) The debts and obligations of the *absolute community* shall be paid out of its assets. In case of insufficiency of said assets, the spouses shall be solidarily liable for the unpaid balance with their separate properties in accordance with the provisions of the second paragraph of Article 94.** **(3) Whatever remains of the exclusive properties of the spouses shall thereafter be delivered to each of them.** **(4) The net remainder of the**

partnership.

(4) The debts and obligations of the *conjugal partnership* shall be paid out of the *conjugal assets.* In case of insufficiency of said assets, the spouses shall be solidarily liable for the unpaid balance with their separate properties, in accordance with the provisions of paragraph (2) of Article 121.

(5) Whatever remains of the exclusive properties of the spouses shall thereafter be delivered to each of them.

(6) Unless the owner had been indemnified from whatever source, the loss or deterioration of movables used for the benefit of the family, belonging to either spouse, even due to fortuitous event, shall be paid to said spouse from the *conjugal funds*, if any.

(7) The net remainder of the *conjugal partnership properties* shall constitute the profits, which shall be divided equally between husband and wife, unless a different proportion or division was agreed upon in the marriage settlements or unless there has been a voluntary waiver or forfeiture of such share as provided in this Code.

(8) The presumptive legitimes of the common children shall be delivered upon the partition in accordance with Article 51.

(9) In the partition of the properties, the conjugal dwelling and the lot on which it is situated shall, unless otherwise agreed upon by the parties, be adjudicated to the spouse with whom the majority of the common

properties of the *absolute community* shall constitute its net assets, which shall be divided equally between husband and wife, unless a different proportion or division was agreed upon in the marriage settlements, or unless there has been a voluntary waiver of such share provided in this Code. For purpose of computing the net profits subject to forfeiture in accordance with Articles 43, No. (2) and 63, No. (2), the said profits shall be the increase in value between the market value of the *community property* at the time of the celebration of the marriage and the market value at the time of its dissolution.

(5) The presumptive legitimes of the common children shall be delivered upon partition, in accordance with Article 51.

(6) Unless otherwise agreed upon by the parties, in the partition of the properties, the conjugal dwelling and the lot on which it is situated shall be adjudicated to the spouse with whom the majority of the common children choose to remain. Children below the age of seven years are deemed to have chosen the mother, unless the court has decided otherwise. In case there in no such majority, the court shall decide, taking into consideration the best interests of said children.

children choose to remain. Children below the age of seven years are deemed to have chosen the mother, unless the court has decided otherwise. In case there is no such majority, the court shall decide, taking into consideration the best interests of said children.	

- Articles 129 and 102 are counterparts although there are differences.

Art. 130. **Upon the termination of the marriage by death, the *conjugal partnership* property shall be liquidated in the same proceeding for the settlement of the estate of the deceased.** **If no judicial settlement proceeding is instituted, the surviving spouse shall liquidate the *conjugal partnership property* either judicially or extra-judicially within six months from the death of the deceased spouse. If upon the lapse of the six-month period no liquidation is made, any disposition or encumbrance involving the *conjugal partnership property* of the terminated marriage shall be void.** **Should the surviving spouse contract a subsequent marriage without compliance with the foregoing requirements, a mandatory regime of complete separation of property shall govern the property relations of the subsequent marriage.**	***Art. 103.*** **Upon the termination of the marriage by death, the *community property* shall be liquidated in the same proceeding for the settlement of the estate of the deceased.** **If no judicial settlement proceeding is instituted, the surviving spouse shall liquidate the *community property* either judicially or extra-judicially within six months from the death of the deceased spouse. If upon the lapse of the six months period, no liquidation is made, any disposition or encumbrance involving the *community property* of the terminated marriage shall be void.** **Should the surviving spouse contract a subsequent marriage without compliance with the foregoing requirements, a mandatory regime of complete separation of property shall govern the property relations of the subsequent marriage.**
Art. 131. **Whenever the liquidation of the *conjugal partnership properties* of two or more marriages contracted by the same person before the effectivity of this Code is carried out simultaneously, the respective capital, fruits and income of each *partnership* shall be determined upon such proof as may be considered according to the rules of evidence. In case of doubt as to which partnership the existing properties belong, the**	***Art. 104.*** **Whenever the liquidation of the *community properties* of two or more marriages contracted by the same person before the effectivity of this Code is carried out simultaneously, the respective capital, fruits and income of each *community* shall be determined upon such proof as may be considered according to the rules of evidence. In case of doubt as to which community the existing properties belong, the**

same shall be divided between the different *partnerships* in proportion to the capital and duration of each.	**same shall be divided between the different *communities* in proportion to the capital and duration of each.**

- Steps in Liquidation
  1. Inventory of the CPG assets.
  2. Restitution of advances made to each spouse (*i.e.,* Article 122, ¶3[♠])
  3. Payment of debts to each spouse (*i.e.,* Article 120[∅])
  4. Payment of obligations to 3rd parties
  5. Delivery of exclusive properties
  6. Payment of losses and deterioration of movables belonging to each spouse
  7. Delivery of presumptive legitimes
  8. Division

D. *Separation of Property of the Spouses and Administration of Common Property by One Spouse During the Marriage*

- Separation of the property of the spouses and the administration of common property by one spouse during the marriage can take place in both ACP and CPG.
- A petition may be filed for the dissolution of the ACP or the CPG by:
  1. **Both spouses: voluntary dissolution** (Articles 134 and 136)

> ***Art. 134.*** **In the absence of an express declaration in the marriage settlements, the separation of property between spouses during the marriage shall not take place except by judicial order. Such judicial separation of property may either be voluntary or for sufficient cause.**

[♠] *Art. 122, ¶3.* However, the payment of personal debts contracted by either spouse before the marriage, that of fines and indemnities imposed upon them, as well as the support of illegitimate children of either spouse, may be enforced against the partnership assets after the responsibilities enumerated in the preceding Article have been covered, if the spouse who is bound should have no exclusive property or if it should be insufficient; but at the time of the liquidation of the partnership, such spouse shall be charged for what has been paid for the purpose above-mentioned.

[∅] *Art. 120.* The ownership of improvements, whether for utility or adornment, made on the separate property of the spouses at the expense of the partnership or through the acts or efforts of either or both spouses shall pertain to the conjugal partnership, or to the original owner-spouse, subject to the following rules:

When the cost of the improvement made by the conjugal partnership and any resulting increase in value are more than the value of the property at the time of the improvement, the entire property of one of the spouses shall belong to the conjugal partnership, subject to reimbursement of the value of the property of the owner-spouse at the time of the improvement; otherwise, said property shall be retained in ownership by the owner-spouse, likewise subject to reimbursement of the cost of the improvement.

In either case, the ownership of the entire property shall be vested upon the reimbursement, which shall be made at the time of the liquidation of the conjugal partnership.

Art. 136. **The spouses may jointly file a verified petition with the court for the voluntary dissolution of the absolute community or the conjugal partnership of gains, and for the separation of their common properties.**

All creditors of the absolute community or of the conjugal partnership of gains, as well as the personal creditors of the spouse, shall be listed in the petition and notified of the filing thereof. The court shall take measures to protect the creditors and other persons with pecuniary interest.

- There are no need for causes in a voluntary dissolution.

2. **One spouse: petition for sufficient cause** (Article 135)

Art. 135. **Any of the following shall be considered sufficient cause for judicial separation of property:**

(1) That the spouse of the petitioner has been sentenced to a penalty which carries with it civil interdiction;

(2) That the spouse of the petitioner has been judicially declared an absentee;

(3) That loss of parental authority of the spouse of petitioner has been decreed by the court;

(4) That the spouse of the petitioner has abandoned the latter or failed to comply with his or her obligations to the family as provided for in Article 101;

(5) That the spouse granted the power of administration in the marriage settlements has abused that power; and

(6) That at the time of the petition, the spouses have been separated in fact for at least one year and reconciliation is highly improbable.

In the cases provided for in Numbers (1), (2) and (3), the presentation of the final judgment against the guilty or absent spouse shall be enough basis for the grant of the decree of judicial separation of property.

- Causes are required for a petition for sufficient cause.
- Article 135 (3) must be taken in relation with Articles 229 (4)[⊕] and Articles 231 and 232[⊗].

[⊕] *Art. 229.* Unless subsequently revived by a final judgment, parental authority also terminates:

(4) Upon final judgment of a competent court divesting the party concerned of parental authority;

[⊗] *Art. 231.* The court in an action filed for the purpose in a related case may also suspend parental authority if the parent or the person exercising the same:

(1) Treats the child with excessive harshness or cruelty;

(2) Gives the child corrupting orders, counsel or example;

(3) Compels the child to beg; or

- The definition of abandonment in Article 135 (4) is found in Articles 101 and 128[℘].
- Under Article 135 (6), the spouse must wait for 1 year. After 1 year, the spouse can file the petition for sufficient cause. Also reconciliation must be highly improbable.

- The separation of the property of the spouses may not be done extrajudicially even if the spouses agree. Court intervention is necessary.
- After the decree of separation, the parties can revert back to their original regime by filing a motion in court (Article 141).

Art. 137. **Once the separation of property has been decreed, the absolute community or the conjugal partnership of gains shall be liquidated in conformity with this Code.**

During the pendency of the proceedings for separation of property, the absolute community or the conjugal partnership shall pay for the support of the spouses and their children.

Art. 138. **After dissolution of the absolute community or of the conjugal partnership, the provisions on complete separation of property shall apply.**

Art. 139. **The petition for separation of property and the final judgment granting the same shall be recorded in the proper local civil registries and registries of property.**

Art. 140. **The separation of property shall not prejudice the rights previously acquired by creditors.**

Art. 141. **The spouses may, in the same proceedings where separation of property was decreed, file a motion in court for a decree reviving the property regime that existed between them before the separation of property in any of the following instances:**

(1) When the civil interdiction terminates;

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(4) Subjects the child or allows him to be subjected to acts of lasciviousness.

The grounds enumerated above are deemed to include cases which have resulted from culpable negligence of the parent or the person exercising parental authority.

If the degree of seriousness so warrants, or the welfare of the child so demands, the court shall deprive the guilty party of parental authority or adopt such other measures as may be proper under the circumstances.

The suspension or deprivation may be revoked and the parental authority revived in a case filed for the purpose or in the same proceeding if the court finds that the cause therefor has ceased and will not be repeated.

Art. 232. If the person exercising parental authority has subjected the child or allowed him to be subjected to sexual abuse, such person shall be permanently deprived by the court of such authority.

[℘] A spouse is deemed to have abandoned the other when her or she has left the conjugal dwelling without intention of returning. The spouse who has left the conjugal dwelling for a period of three months or has failed within the same period to give any information as to his or her whereabouts shall be prima facie presumed to have no intention of returning to the conjugal dwelling.

(2) When the absentee spouse reappears;

(3) When the court, being satisfied that the spouse granted the power of administration in the marriage settlements will not again abuse that power, authorizes the resumption of said administration;

(4) When the spouse who has left the conjugal home without a decree of legal separation resumes common life with the other;

(5) When parental authority is judicially restored to the spouse previously deprived thereof;

(6) When the spouses who have separated in fact for at least one year, reconcile and resume common life; or

(7) When after voluntary dissolution of the absolute community of property or conjugal partnership has been judicially decreed upon the joint petition of the spouses, they agree to the revival of the former property regime. No voluntary separation of property may thereafter be granted.

The revival of the former property regime shall be governed by Article 67.

- If separation was by voluntary dissolution, the parties may agree to revert back to their original property regime. However, if they do so, no voluntary separation of property may be granted again.

Art. 142. **The administration of all classes of exclusive property of either spouse may be transferred by the court to the other spouse:**

(1) When one spouse becomes the guardian of the other;

(2) When one spouse is judicially declared an absentee;

(3) When one spouse is sentenced to a penalty which carries with it civil interdiction; or

(4) When one spouse becomes a fugitive from justice or is in hiding as an accused in a criminal case.

If the other spouse is not qualified by reason of incompetence, conflict of interest, or any other just cause, the court shall appoint a suitable person to be the administrator.

- This article enumerates the instances when the court may transfer the administration of all classes of exclusive property of either spouse.
- The following are the instances in when there can be a sole administrator of the conjugal property:
  1. If such is stipulated in the marriage settlement (Article 74[ℵ])
  2. If the other spouse is unable to participate (Articles 96, ¶2 and 124, ¶2[*])

[ℵ] *Art. 74.* The property relationship between husband and wife shall be governed in the following order:

(1) By marriage settlements executed before the marriage

[*] In the event that one spouse is incapacitated or otherwise unable to participate in the administration of the common (conjugal) properties, the other spouse may assume sole powers of

3. The court may order such in case of abandonment (Articles 101 and 128*)
4. If the spouses agree to such an arrangement during marriage. However, in order to affect 3rd persons, such agreement must be registered.

E. ***Regime of Separation of Property***

Art. 143. **Should the future spouses agree in the marriage settlements that their property relations during marriage shall be governed by the regime of separation of property, the provisions of this Chapter shall be suppletory.**

Art. 144. **Separation of property may refer to present or future property or both. It may be total or partial. In the latter case, the property not agreed upon as separate shall pertain to the absolute community.**

Art. 145. **Each spouse shall own, dispose of, possess, administer and enjoy his or her own separate estate, without need of the consent of the other. To each spouse shall belong all earnings from his or her profession, business or industry and all fruits, natural, industrial or civil, due or received during the marriage from his or her separate property.**

Art. 146. **Both spouses shall bear the family expenses in proportion to their income, or, in case of insufficiency or default thereof, to the current market value of their separate properties.**

The liabilities of the spouses to creditors for family expenses shall, however, be solidary.

F. ***Property Regime of Unions Without Marriage***

- According to Professor Balane, we should not use the term "common-law spouses" simply because we are not a common law country.
- For Articles 147 and 148 to apply, the persons living together as husband and wife must still be of different sexes.

Art. 147. **When a man and a woman who are capacitated to marry each other, live exclusively with each other as husband and wife without the benefit of marriage or under a void marriage, their wages and salaries shall be owned by them in equal shares and the property**

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administration. These powers do not include disposition or encumbrance without authority of the court or the written consent of the other spouse. In the absence of such authority or consent, the disposition or encumbrance shall be void. However, the transaction shall be construed as a continuing offer on the part of the consenting spouse and the third person, and may be perfected as a binding contract upon the acceptance by the other spouse or authorization by the court before the offer is withdrawn by either or both offerors.

* If a spouse without just cause abandons the other or fails to comply with his or her obligations to the family, the aggrieved spouse may petition the court for receivership, for judicial separation of property or for authority to be the sole administrator of the absolute community (conjugal partnership), subject to such precautionary conditions as the court may impose.

acquired by both of them through their work or industry shall be governed by the rules on co-ownership.

In the absence of proof to the contrary, properties acquired while they lived together shall be presumed to have been obtained by their joint efforts, work or industry, and shall be owned by them in equal shares. For purposes of this Article, a party who did not participate in the acquisition by the other party of any property shall be deemed to have contributed jointly in the acquisition thereof if the former's efforts consisted in the care and maintenance of the family and of the household.

Neither party can encumber or dispose by acts *inter vivos* of his or her share in the property acquired during cohabitation and owned in common, without the consent of the other, until after the termination of their cohabitation.

When only one of the parties to a void marriage is in good faith, the share of the party in bad faith in the co-ownership shall be forfeited in favor of their common children. In case of default of or waiver by any or all of the common children or their descendants, each vacant share shall belong to the respective surviving descendants. In the absence of descendants, such share shall belong to the innocent party. In all cases, the forfeiture shall take place upon termination of the cohabitation.

- Requisites of Article 147:
  1. The man and the woman must have capacity to marry each other.
  2. The man and the woman cohabit.
  3. The cohabitation is exclusive.
  4. The man and the woman are not married to each other or are married to each other but the marriage is void.
- Under Article 147, the property regime between the man and the woman would be special co-ownership.
- The special co-ownership covers:
  1. Wages and salaries of either the man and the woman
  2. Property acquired through the work or industry of either or both
     - If the partner did not acquire the property directly, that partner's efforts must consist of the care and maintenance of the family and of the household in order for such party to own 1/2 of the acquired property.
     - In *Maxey vs. CA*, the SC said that the co-ownership arises even if the common-law wife does not work is not gainfully employed. The common-law wife is still a co-owner since she ran the household and held the family purse even if she did not contribute thereto.
- The difference between this special co-ownership and the ordinary co-ownership is in Article 147, ¶3. In this special co-ownership, the following cannot be done:
  1. The co-ownership cannot be terminated until the cohabitation is also terminated.

2. The co-owner may not dispose or encumber his share in the property.

Art. 148. **In cases of cohabitation not falling under the preceding Article, only the properties acquired by both of the parties through their actual joint contribution of money, property, or industry shall be owned by them in common in proportion to their respective contributions. In the absence of proof to the contrary, their contributions and corresponding shares are presumed to be equal. The same rule and presumption shall apply to joint deposits of money and evidences of credit.**

If one of the parties is validly married to another, his or her share in the co-ownership shall accrue to the absolute community or conjugal partnership existing in such valid marriage. If the party who acted in bad faith is not validly married to another, his or her shall be forfeited in the manner provided in the last paragraph of the preceding Article.

The foregoing rules on forfeiture shall likewise apply even if both parties are in both faith.

- Article 148 governs live-in partners who do not fall under Article 147.
- Article 148 will apply if:
  1. The live-in partners do not have the capacity to marry each other; or
     - Example of this is that there is an impediment of relationship, crime or age.
  2. The cohabitation is not exclusive.
- The special co-ownership only covers property acquired by both parties through their actual joint contribution of money, property or industry. This is very similar to an ordinary partnership.
- If a live-in partner is legally married to someone else, the share of that live-in partner will accrue to the property regime of his or her existing valid marriage.
- If the party who acted in bad faith is not validly married to another his or her share shall be forfeited to their common children or descendants. In the absence of descendants, such share shall belong to the innocent party.

XII. The Family

Art. 149. **The family, being the foundation of the nation, is a basic social institution which public policy cherishes and protects. Consequently, family relations are governed by law and no custom, practice or agreement destructive of the family shall be recognized or given effect.**

- This is merely a declaration of policy.

Art. 150. **Family relations include those:**

(1) Between husband and wife;

(2) Between parents and children;

(3) Among brothers and sisters, whether of the full or half-blood.

- This is an exclusive enumeration of family members.

Art. 151. **No suit between members of the same family shall prosper unless it should appear from the verified complaint or petition that earnest efforts toward a compromise have been made, but that the same have failed. If it is shown that no such efforts were in fact made, the same case must be dismissed.**

This rules shall not apply to cases which may not be the subject of compromise under the Civil Code.

- **General Rule:** For a suit between members of the same family shall prosper the following are required:
  1. Earnest efforts towards a compromise have been made
  2. Such efforts have failed
  3. Such earnest efforts and the fact of failure must be alleged
  - Without these 3, the case will be dismissed.
- ***Exception:*** Cases which cannot be compromised. (Article 2035)

Art. 2035. **No compromise upon the following questions shall be valid:**

(1) The civil status of persons;

(2) The validity of a marriage or a legal separation;

(3) Any ground for legal separation;

(4) Future support;

(5) The jurisdiction of courts;

(6) Future legitime.

- In *Gayon vs. Gayon*, the SC said that Article 151 does not apply in the case of in-laws.
- In the case of *Magbaleta*, the SC said that Article 151 does not apply if non-family members are to be sued as well.

XIII. Family Home

Art. 152. **The family home, constituted jointly by the husband and the wife or by an unmarried head of a family, is the dwelling house where they and their family reside, and the land on which it is situated.**

Art. 153. **The family home is deemed constituted on a house and lot from the time it is occupied as a family residence. From the time of its constitution and so long as any of its beneficiaries actually resides therein, the family home continues to be such and is exempt from execution, forced sale or attachment except as hereinafter provided and to the extent of the value allowed by law.**

Art. 154. **The beneficiaries of a family home are:**

(1) The husband and wife, or an unmarried person who is the head of a family; and

(2) Their parents, ascendants, descendants, brothers and sisters, whether the relationship be legitimate or illegitimate, who are living in the family home and who depend upon the head of the family for legal support.

Art. 155. **The family home shall be exempt from execution, forced sale or attachment except:**

(1) For nonpayment of taxes;

(2) For debts incurred prior to the constitution of the family home;

(3) For debts secured by mortgages on the premises before or after such constitution; and

(4) For debts due to laborers, mechanics, architects, builders, materialmen and others who have rendered service or furnished material for the construction of the building.

Art. 156. **The family home must be part of the properties of the absolute community or the conjugal partnership, or of the exclusive properties of either spouse with the latter's consent. It may also be constituted by an unmarried head of a family on his or her own property.**

Nevertheless, property that is the subject of a conditional sale on installments where ownership is reserved by the vendor only to guarantee payment of the purchase price may be constituted as a family home.

- The purpose of these provisions is to remove from the reach of creditors the residence in which the family members dwell – social justice underpinnings
- The biggest change in the Family Code with regard to the family home is that the constitution of the family home shall be automatic once it is used as the family dwelling.
- **General Rule:** The family home is exempt from levy, attachment and execution.
- ***Exceptions:***
  1. Non-payment of taxes
  2. For debts incurred prior to the constitution of the family home
     - If it were otherwise, then the antecedent creditors would be prejudiced.
  3. For debts secured by mortgages on the premises before or after the constitution
  4. For debts due to laborers, mechanics, architects, builders, materialmen and others who have rendered service or furnished material for the construction of the building.
- Social justice

Art. 157. **The actual value of the family home shall not exceed, at the time of its constitution, the amount of the three hundred thousand pesos in urban areas, and two hundred thousand pesos in rural areas, or such amounts as may hereafter be fixed by law.**

In any event, if the value of the currency changes after the adoption of this Code, the value most favorable for the constitution of a family home shall be the basis of evaluation.

For purposes of this Article, urban areas are deemed to include chartered cities and municipalities whose annual income at least equals that legally required for chartered cities. All others are deemed to be rural areas.

- The value provided for Article 157 is unrealistic. According to Professor Balane, the judge should be given discretion and adjust it accordingly.
- There is a limit in terms of value provided for by the law. Otherwise, debtors can evade creditors by building very luxurious homes.

Art. 158. **The family home may be sold, alienated, donated, assigned or encumbered by the owner or owners thereof with the written consent of the person constituting the same, the latter's spouse, and a majority of the beneficiaries of legal age. In case of conflict, the court shall decide.**

- This is a very dangerous article. Under this article, the family home may not be sold, alienated, donated, assigned or encumbered without the consent of the person constituting the same, the latter's spouse and a majority of the beneficiaries (see Article 154) who are of legal age. Therefore, a bank must get the consent of majority of the beneficiaries before the family home may be mortgaged. How is the bank supposed to know who the beneficiaries are? How is the bank supposed to know if indeed the same is the family home? Finally, how is the bank supposed to know how many of the beneficiaries are of legal age? The title does not give you these pieces of information. According to Professor Balane, creditors must be afforded some protection. This is also disadvantageous to the owner since he may not sell the family home if the beneficiaries disagree.

Art. 159. **The family home shall continue despite the death of one or both spouses or of the unmarried head of the family for a period of ten years or for as long as there is a minor beneficiary, and the heirs cannot partition the same unless the court finds compelling reasons therefor. This rule shall apply regardless of whoever owns the property or constituted the family home.**

- The family home shall continue despite the death of one or both spouses or of the unmarried head of the family:
  1. As long as there is a minor beneficiary still living in the home
  2. Even if there is no minor beneficiary, for a period of 10 years
     - In this case, the heirs cannot partition the same unless the court finds compelling reasons. This rule shall apply regardless of whoever owns the property or constituted the family home.

Art. 160. **When a creditor whose claims is not among those mentioned in Article 155 obtains a judgment in his favor, and he has reasonable grounds to believe that the family home is actually worth more than the maximum amount fixed in Article 157, he may apply to the court which rendered the judgment for an order directing the sale of the property under execution. The court shall so order if it finds that the actual value of the family home exceeds the maximum amount allowed by law as of the time of its constitution. If the increased actual value exceeds the maximum allowed in Article 157 and results from subsequent voluntary improvements introduced by the person or persons constituting the**

family home, by the owner or owners of the property, or by any of the beneficiaries, the same rule and procedure shall apply.

At the execution sale, no bid below the value allowed for a family home shall be considered. The proceeds shall be applied first to the amount mentioned in Article 157, and then to the liabilities under the judgment and the costs. The excess, if any, shall be delivered to the judgment debtor.

Art. 161. **For purposes of availing of the benefits of a family home as provided for in this Chapter, a person may constitute, or be the beneficiary of, only one family home.**

Art. 162. **The provisions in this Chapter shall also govern existing family residences insofar as said provisions are applicable.**

XIV. Paternity and Filiation

- Paternity means the relationship or status of a person with respect to his or her child (paternity includes maternity).
- Filiation means the status of a person with respect to his or her parents.
- Paternity and filiation implies relationship.

Art. 163. **The filiation of children may be by nature or by adoption. Natural filiation may be legitimate or illegitimate.**

- 2 types of filiation
  1. Natural
     a. Legitimate
        i. Legitimate proper (Article 164)
        ii. Legitimated (Articles 167-172)
     b. Illegitimate (Articles 165, 175, 176)
  2. Adoption (R.A. No. 8552 ("Domestic Adoption Act") and R.A. No. 8043 ("Inter-country Adoption Act"))
- 3 Types of Legitimate Children
  1. Legitimate proper
  2. Legitimated
  3. Adopted
- 2 Types of Illegitimate Children
  a. Children of parents disqualified to marry each other at conception and marriage.
  b. Children of parents qualified to marry each other
     - Only this kind can be legitimated by subsequent marriage.

Art. 164. **Children conceived or born during the marriage of the parents are legitimate.**

Children conceived as a result of artificial insemination of the wife with the sperm of the husband or that of a donor or both are likewise legitimate

children of the husband and his wife, provided, that both of them authorized or ratified such insemination in a written instrument executed and signed by them before the birth of the child. The instrument shall be recorded in the civil registry together with the birth certificate of the child.

- A legitimate child is one conceived OR born during the marriage of the parents.
- An innovation in the Family Code is the rule on artificial insemination.
- 3 Ways of Artificial Insemination
  i. Homologous artificial insemination
     - The husband's sperm is used. This is resorted to when the husband is impotent but not sterile.
  ii. Heterologous artificial insemination
     - The sperm of another man is used. This is resorted to when the husband has a low sperm count.
  iii. Combined artificial insemination
     - A combination of the husband and another man's sperm is used. This is resorted to for psychological reasons. The husband would not know which sperm fertilized the egg unless a DNA test is conducted. If the husband knew that it was not his sperm, it may affect martial relations.
- What if the ovum of another woman is used? This is known as *in vitro* fertilization. This in not included in the coverage of the Family Code. A conservative judge will therefore say that such child is illegitimate.
- Requisites of a Valid and Legal Artificial Insemination
  1. Authorization or ratification of the insemination by both husband and wife
     - Authorization occurs before the act. Ratification occurs after the act.
  2. The authorization or ratification must be in writing
  3. The instrument must be executed and signed before the child's birth by both the husband and the wife
     - What if this is done after the child's birth? The law is silent.

Art. 165. **Children conceived and born outside a valid marriage are illegitimate, unless otherwise provided in this Code.**

Art. 54. **Children conceived or born before the judgment of annulment or absolute nullity of the marriage under Article 36 has become final and executory shall be considered legitimate. Children conceived or born of the subsequent marriage under Article 53 shall likewise be legitimate.**

- **General Rule:** If the child is conceived AND born outside a valid marriage, the child is illegitimate.
- ***Exceptions:***
  1. Children of voidable marriages
  2. Children of a void marriage in 2 instances
     a. Children conceived of a marriage void under Article 36

b. Children conceived of a marriage under Article 53

Art. 166. **Legitimacy of a child may be impugned only on the following grounds:**

- The presumption of legitimacy is one of the strongest presumptions known in law. It is a quasi-conclusive presumption since such presumption can only be rebutted by certain instances in Article 166.

(1) That it was physically impossible for the husband to have sexual intercourse with his wife within the first 120 days of the 300 days which immediately preceded the birth of the child because of:

(a) the physical incapacity of the husband to have sexual intercourse with his wife;

(b) the fact that the husband and wife were living separately in such a way that sexual intercourse was not possible; or

(c) serious illness of the husband, which absolutely prevented sexual intercourse;

- There must be a physical impossibility for the husband and the wife to have sexual intercourse for the 1st 120 days preceding the child's birth.
- If it takes 300 days for a child to be born, for a child to be illegitimate, it must be shown the physical impossibility of the husband and wife to have sex within the 1st 120 days.
- The physical impossibility must be for the ENTIRE 120 day period.
- These periods are not arbitrary since scientists know that in order for a child to survive, there must be a 6 month minimum period of gestation.
- Physical impossibility may be shown in 3 ways
  1. Impotence of the husband
  2. Spouses living separately
     - If the husband is living in Makati, and the wife is living in Q.C., this is not what is contemplated by Article 166 (1)(b).
     - If the husband is living in Toronto, and the wife is living in Manila, then it falls under Article 166 (1)(b).
     - If one of the spouses is in jail, there is still the possibility of sex since visits are allowed.
  3. Serious illness which absolutely prevented sex
     - The illness must be such that sex is impossible (*i.e.,* comatose). TB is not an illness which causes an impossibility to have sex *(Andal vs. Macaraig).*

  NOTE: In these 3 instances, it is presumed that there is no artificial insemination. Also it is incumbent on the one impugning legitimacy that there could be no access.

(2) That it is proved that for biological or other scientific reasons, the child could not have been that of the husband, except in the instance provided in the second paragraph of Article 164; or

- Article 166 (2) assumes that there is no physical impossibility. Otherwise, it would fall under Article 166 (1).
- DNA tests can show whether or not the husband is the biological father of the child. In *Lim vs. CA*, Justice Romero in a *obiter dictum* said that DNA tests are not yet accepted here.

(3) That in case of children conceived through artificial insemination, the written authorization or ratification of either parent was obtained through mistake, fraud, violence, intimidation, or undue influence.

- In case of artificial insemination, the written authorization or ratification was procured by mistake, fraud, violence, intimidation, or undue influence.

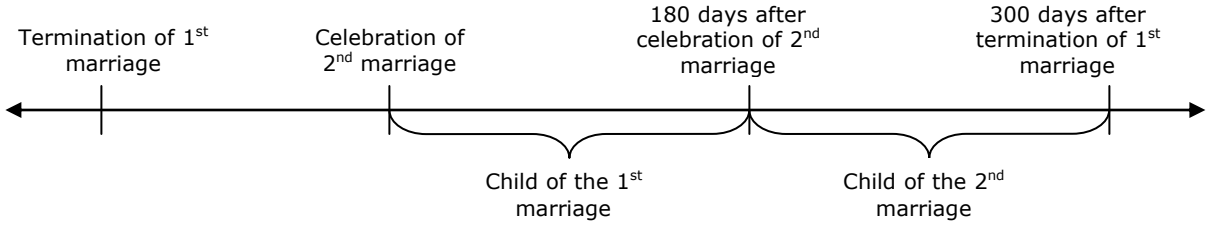
Art. 167. **The child shall be considered legitimate although the mother may have declared against its legitimacy or may have been sentenced as an adulteress.**

- Despite the declaration of the mother that the child is illegitimate or that she has been declared an adulteress, the presumption of legitimacy still stands. This is so because in many instances, the woman wouldn't know who the father of the child is if she had multiple partners. Also, there are instances wherein a woman whose marriage has turned sour will declare such in order to hurt the pride of her husband.
- ***Presumptions:***
  1. Validity of the marriage
  2. That the child is of the mother's (factual)
  3. That the child is that of the husband
  4. That the child was conceived during the marriage
  - Nos. 3 and 4 are hard to prove that's why presumptions come in.

Art. 168. **If the marriage is terminated and the mother contracted another marriage within three hundred days after such termination of the former marriage, these rules shall govern in the absence of proof to the contrary:**

(1) A child born before one hundred eighty days after the solemnization of the subsequent marriage is considered to have been conceived during the former marriage, provided it be born within three hundred days after the termination of the former marriage;

(2) A child born after one hundred eighty days following the celebration of the subsequent marriage is considered to have been conceived during such marriage, even though it be born within the three hundred days after the termination of the former marriage.



- For the child to be considered the child of the 1st husband, the following requisites must concur:
  1. The mother must have married again within 300 days from the termination of her first marriage
  2. The child was born within the same 300 days after the termination of the former marriage of its mother
  3. The child was born before 180 days after the solemnization of its mother's 2nd marriage
- For the child to be considered the child of the 2nd husband, the following requisites must concur:
  1. The mother must have married again within 300 days from the termination of the marriage
  2. The child was born within the same 300 days after the termination of its mother's first marriage
  4. The child was born after 180 days following the solemnization of its mother's second marriage
- The first marriage must be terminated either by death or annulment. Can the marriage refer to a marriage under Article 42? No, since the terms of this Article provide that the first marriage is terminated. Under Article 42, it is the 2nd marriage which is terminated.

Art. 170. **The action to impugn the legitimacy of the child shall be brought within one year from the knowledge of the birth or its recording in the civil register, if the husband or, in a proper case, any of his heirs, should reside in the city or municipality where the birth took place or was recorded.**

If the husband or, in his default, all of his heirs do not reside at the place of birth as defined in the first paragraph or where it was recorded, the period shall be two years if they should reside in the Philippines; and three years if abroad. If the birth of the child has been concealed from or was unknown to the husband or his heirs, the period shall be counted from the discovery or knowledge of the birth of the child or of the fact of registration of said birth, whichever is earlier.

Art. 171. **The heirs of the husband may impugn the filiation of the child within the period prescribed in the preceding article only in the following cases:**

(1) If the husband should died before the expiration of the period fixed for bringing his action;

(2) If he should die after the filing of the complaint without having desisted therefrom; or

(3) If the child was born after the death of the husband.

- **General Rule:** Only the husband can impugn the legitimacy of the child.
- ***Exception:*** The heirs of the husband in the following cases
  1. If the husband should die before the expiration of the period fixed for bringing his action

2. If he should die after the filing of the complaint without having desisted therefrom or
3. If the child was born after the death of the husband.

- The husband or the heirs has the following years to impugn the legitimacy of the child:
  1. 1 year from knowledge of the birth or its recording in the civil register, if the husband or in a proper case, any of his heirs, should reside in the city or municipality where the birth took place or recorded.
  2. 2 years from knowledge of the birth or its recording in the civil register, if the husband or in a proper case, any of his heirs, DO NOT reside in the city or municipality where the birth took place or recorded.
  3. 3 years from knowledge of the birth or its recording in the civil register, if the husband or in a proper case, any of his heirs, live abroad

  NOTE: If the birth of the child has been concealed or was unknown to the husband or his heirs, the period shall be counted from the discovery or knowledge of the birth of the child or of the fact of the registration of the birth, whichever is earlier.

1. *Proof of Filiation*

Art. 172. **The filiation of legitimate children is established by any of the following:**

(1) The record of birth appearing in the civil register or a final judgment; or

(2) An admission of legitimate filiation in a public document or a private handwritten instrument and signed by the parent concerned.

In the absence of the foregoing evidence, the legitimate filiation shall be proved by:

(1) The open and continuous possession of the status of a legitimate child; or

(2) Any other means allowed by the Rules of Court and special laws.

- Proof of filiation of a legitimate child is very liberal:
  1. Record of birth
  2. Final judgment
  3. Admission in a public document
  4. Admission in a private handwritten instrument and signed by the said parents
  5. Open and continuous possession of the status of a legitimate child
  6. Any other means allowed by the Rules of Court (i.e. baptismal certificate, family bibles, common reputation respecting pedigree, testimony of witnesses, etc.)
- Proof of filiation is very liberal because the law favors legitimacy. It is better to treat an illegitimate child as legitimate then to commit an error and treat a legitimate child as an illegitimate.

Art. 173. **The action to claim legitimacy may be brought by the child during his or her lifetime and shall be transmitted to the heirs should the child die during minority or in a state of insanity. In these cases, the heirs shall have a period of five years within which to institute the action.**

- The right of the child to bring an action to claim legitimacy does not prescribe as long as he lives.
- The child may bring such action even after the lifetime of his parents.
- The right to file an action to claim legitimacy may be transmitted by the child to the heirs should the child die during minority or die in a state of insanity or die during the pendency of the case. If the right is transmitted by the child to the heirs, then the heirs will have 5 years to bring the action.

2. ***Illegitimate Children***

- The rules in the Family Code were meant to liberalize the rules of the NCC on illegitimacy. In the NCC, recognition was necessary in order to afford rights to the illegitimate child. Under the Family Code, there is no need for recognition. Now, proof of illegitimacy is sufficient.
- The rule now is that the manner in which children may prove their legitimacy is also the same manner in which illegitimate children may prove their filiation (Article 175).
- The child may prove his illegitimate filiation by bringing an action to claim illegitimate filiation. The child has until his lifetime to file such action unless the action is based on the open and continuous possession by the child of the status of an illegitimate child, or on other evidence allowed by the Rules of Court. If the action is based on the open and continuous possession by the child of the status of an illegitimate child, or on other evidence allowed by the Rules of Court, then the action must be brought within the lifetime of the alleged parent.

Art. 176. **Illegitimate children shall use the surname and shall be under the parental authority of their mother, and shall be entitled to support in conformity with this Code. The legitime of each illegitimate child shall consist of one-half of the legitime of a legitimate child. Except for this modification, all other provisions in the Civil Code governing successional rights shall remain in force.**

- The rights of illegitimate children are not the same as the rights of a legitimate child.
- An illegitimate child shall use the surname of the mother. Even if a couple, wherein the man and the woman are capacitated to marry each other but are not married, agree that the child shall use surname of the man, this is not allowed. All illegitimate children shall use the mother's surname.
- Parental authority resides in the mother alone.
- The illegitimate child has the right of support. The order of preference for legitimate and illegitimate children are not the same however.

- An illegitimate child is entitled to only ½ he share of a legitimate child.

3. *Legitimation*

Art. 177. **Only children conceived and born outside of wedlock of parents who, at the time of the conception of the former, were not disqualified by any impediment to marry each other may be legitimated.**

Art. 178. **Legitimation shall take place by a subsequent valid marriage between parents. The annulment of a voidable marriage shall not affect the legitimation.**

- Requisites of Legitimation:
  1. The child is illegitimate (Article 177).
  2. The parents at the time of the child's conception are not disqualified from marrying each other (Article 177).
     - If the parents of the child are 16 and 15 years old at the latter's conception, the child may not be legitimated.
  3. There is a valid marriage subsequent to the child's birth (Article 178)
     - If the marriage occurs before the child's birth, then the child is legitimate (Article 164♦).
     - What if the marriage which takes place after the child's birth is a voidable marriage? The child would still be legitimated. A voidable marriage is still a valid one until it is declared void.

Art. 179. **Legitimated children shall enjoy the same rights as legitimate children.**

Art. 180. **The effects of legitimation shall retroact to the time of the child's birth.**

Art. 181. **The legitimation of children who died before the celebration of the marriage shall benefit their descendants.**

Art. 182. **Legitimation may be impugned only by those who are prejudiced in their rights, within five years from the time their cause of action accrues.**

4. *Domestic Adoption Act (Republic Act No. 8552)*

- The following are the important provisions:

  a. §7 (which superseded Articles 183-186 of the Family Code)

> **SECTION 7. *Who May Adopt.* — The following may adopt:**
>
> **(a) Any Filipino citizen of legal age, in possession of full civil capacity and legal rights, of good moral character, has not been convicted of any**

♦ *Art. 164, ¶1.* Children conceived or born during the marriage of the parents are legitimate.

crime involving moral turpitude, emotionally and psychologically capable of caring for children, at least sixteen (16) years older than the adoptee, and who is in a position to support and care for his/her children in keeping with the means of the family. The requirement of sixteen (16) year difference between the age of the adopter and adoptee may be waived when the adopter is the biological parent of the adoptee, or is the spouse of the adoptee's parent;

(b) Any alien possessing the same qualifications as above stated for Filipino nationals: *Provided*, That his/her country has diplomatic relations with the Republic of the Philippines, that he/she has been living in the Philippines for at least three (3) continuous years prior to the filing of the application for adoption and maintains such residence until the adoption decree is entered, that he/she has been certified by his/her diplomatic or consular office or any appropriate government agency that he/she has the legal capacity to adopt in his/her country, and that his/her government allows the adoptee to enter his/her country as his/her adopted son/daughter: *Provided, Further,* That the requirements on residency and certification of the alien's qualification to adopt in his/her country may be waived for the following:

(i) a former Filipino citizen who seeks to adopt a relative within the fourth (4th) degree of consanguinity or affinity; or

(ii) one who seeks to adopt the legitimate son/daughter of his/her Filipino spouse; or

(iii) one who is married to a Filipino citizen and seeks to adopt jointly with his/her spouse a relative within the fourth (4th) degree of consanguinity or affinity of the Filipino spouse; or

(c) The guardian with respect to the ward after the termination of the guardianship and clearance of his/her financial accountabilities.

Husband and wife shall jointly adopt, except in the following cases:

(i) if one spouse seeks to adopt the legitimate son/daughter of the other; or

(ii) if one spouse seeks to adopt his/her own illegitimate son/daughter: *Provided, However*, that the other spouse has signified his/her consent thereto; or

(iii) if the spouses are legally separated from each other.

In case husband and wife jointly adopt, or one spouse adopts the illegitimate son/daughter of the other, joint parental authority shall be exercised by the spouses.

b. §8 (which superseded Article 187 of the Family Code)

SECTION 8. *Who May Be Adopted.* — The following may be adopted:

(a) Any person below eighteen (18) years of age who has been administratively or judicially declared available for adoption;

(b) The legitimate son/daughter of one spouse by the other spouse;

(c) An illegitimate son/daughter by a qualified adopter to improve his/her status to that of legitimacy;

(d) A person of legal age if, prior to the adoption, said person has been consistently considered and treated by the adopter(s) as his/her own child since minority;

(e) A child whose adoption has been previously rescinded; or

A child whose biological or adoptive parent(s) has died: *Provided,* That no proceedings shall be initiated within six (6) months from the time of death of said parent(s).

c. §9 (which superseded Article 188 of the Family Code)

SECTION 9. *Whose Consent is Necessary to the Adoption*. — After being properly counseled and informed of his/her right to give or withhold his/her approval of the adoption, the written consent of the following to the adoption is hereby required:

(a) The adoptee, if ten (10) years of age or over;

(b) The biological parent(s) of the child, if known, or the legal guardian, or the proper government instrumentality which has legal custody of the child;

(c) The legitimate and adopted sons/daughters, ten (10) years of age or over, of the adopter(s) and adoptee, if any;

(d) The illegitimate sons/daughters, ten (10) years of age or over, of the adopter if living with said adopter and the latter's spouse, if any; and

(e) The spouse, if any, of the person adopting or to be adopted.

d. §§16-18 (which superseded Art. 189 and 190 of the Family Code)

SECTION 16. *Parental Authority.* — Except in cases where the biological parent is the spouse of the adopter, all legal ties between the biological parent(s) and the adoptee shall be severed and the same shall then be vested on the adopter(s).

SECTION 17. *Legitimacy.* — The adoptee shall be considered the legitimate son/daughter of the adopter(s) for all intents and purposes and as such is entitled to all the rights and obligations provided by law to legitimate sons/daughters born to them without discrimination of any kind. To this end, the adoptee is entitled to love, guidance, and support in keeping with the means of the family.

SECTION 18. *Succession.* — In legal and intestate succession, the adopter(s) and the adoptee shall have reciprocal rights of succession without distinction from legitimate filiation. However, if the adoptee and his/her biological parent(s) had left a will, the law on testamentary succession shall govern.

e. §19 (which superseded Art. 191 and 192 of the Family Code)

SECTION 19. *Grounds for Rescission of Adoption.* — Upon petition of the adoptee, with the assistance of the Department if a minor or if over eighteen (18) years of age but is incapacitated, as guardian/counsel, the adoption may be rescinded on any of the following grounds committed by the adopter(s): (a) repeated physical and verbal maltreatment by the adopter(s) despite having undergone counseling; (b) attempt on the life of the adoptee; (c) sexual assault or violence; or (d) abandonment and failure to comply with parental obligations.

Adoption, being in the best interest of the child, shall not be subject to rescission by the adopter(s). However, the adopter(s) may disinherit the adoptee for causes provided in Article 919 of the Civil Code.

f. §20 (which superseded Art. 193 of the Family Code)

> **SECTION 20. *Effects of Rescission.* — If the petition is granted, the parental authority of the adoptee's biological parent(s), if known, or the legal custody of the Department shall be restored if the adoptee is still a minor or incapacitated. The reciprocal rights and obligations of the adopter(s) and the adoptee to each other shall be extinguished.**
>
> **The court shall order the Civil Registrar to cancel the amended certificate of birth of the adoptee and restore his/her original birth certificate.**
>
> **Succession rights shall revert to its status prior to adoption, but only as of the date of judgment of judicial rescission. Vested rights acquired prior to judicial rescission shall be respected.**
>
> **All the foregoing effects of rescission of adoption shall be without prejudice to the penalties imposable under the Penal Code if the criminal acts are properly proven.**

- Can an adopted child continue to be an heir of his biological parents? Under Article 189 of the Family Code, the adopted child was still an heir of his blood relatives. However, Article 189 of the Family Code was superseded by §§16-18 of R.A. No. 8552. R.A. No. 8552 is silent on this point. According to Professor Balane, one cannot use §16 as the basis for saying that the adopted child cannot inherit from his biological parents. §16 only talks about parental authority. There is no reference to succession.

XV. SUPPORT

Art. 194. **Support compromises everything indispensable for sustenance, dwelling, clothing, medical attendance, education and transportation, in keeping with the financial capacity of the family.**

The education of the person entitled to be supported referred to in the preceding paragraph shall include his schooling or training for some profession, trade or vocation, even beyond the age of majority. Transportation shall include expenses in going to and from school, or to and from place of work.

- Support comprises everything indispensable for sustenance, dwelling, clothing, medical attendance, education, and transportation, in keeping with the financial capacity of the family.
- 3 Kinds of Support
  1. Legal – that which is required to be given by law
  2. Judicial – that which is required to be given by court order whether *pendente lite* or in a final judgment
  3. Voluntary or Conventional – by agreement
     - An example of conventional support is as follow. X donates land to Y. However X imposes a mode – Y has to support X's mother.

- Characteristics of Support
  1. Personal
  2. Intransmissible
  3. Not subject to waiver or compensation with regard to future support
     - Support in arrears can be waived.
  4. Exempt from attachment or execution (Article 205[♥])
  5. Reciprocal on the part of those who are by law bound to support each other (Article 195)
  6. Variable (Articles 201 and 202[♠])

Art. 195. **Subject to the provisions of the succeeding articles, the following are obliged to support each other to the whole extent set forth in the preceding article:**

(1) The spouses;

(2) Legitimate ascendants and descendants;

(3) Parents and their legitimate children and the legitimate and illegitimate children of the latter;

(4) Parents and their illegitimate children and the legitimate and illegitimate children of the latter; and

(5) Legitimate brothers and sisters, whether of full or half-blood

Art. 196. **Brothers and sisters not legitimately related, whether of the full or half-blood, are likewise bound to support each other to the full extent set forth in Article 194, except only when the need for support of the brother or sister, being of age, is due to a cause imputable to the claimant's fault or negligence.**

- Illegitimate siblings, whether of full or half blood, are bound to support each other. However, they need not give support to an illegitimate, emancipated sibling whose need for support is imputable to his fault or negligence.

Art. 199. **Whenever two or more persons are obliged to give support, the liability shall devolve upon the following persons in the order herein provided:**

(1) The spouse;

(2) The descendants in the nearest degree;

(3) The ascendants in the nearest degree; and

(4) The brothers and sisters.

[♥] *Art. 205.* The right to receive support under this Title as well as any money or property obtained as such support shall not be levied upon on attachment or execution.

[♠] *Art. 201.* The amount of support, in the cases referred to in Articles 195 and 196, shall be in proportion to the resources or means of the giver and to the necessities of the recipient.

Art. 202. Support in the cases referred to in the preceding article shall be reduced or increased proportionately, according to the reduction or increase of the necessities of the recipient and the resources or means of the person obliged to furnish the same.

- Article 199 is important because it establishes the order of preference for the givers of support. When a relative needs support, there are many relatives one can go after. That relative in need cannot choose but must follow the order established in this Article 199.
- If a parent needs support from his children, that parent may chose any of the children. All of the children are solidarily liable.

Art. 200. **When the obligation to give support falls upon two or more persons, the payment of the same shall be divided between them in proportion to the resources of each.**

However, in case of urgent need and by special circumstances, the judge may order only one of them to furnish the support provisionally, without prejudice to his right to claim from the other obligors the share due from them.

When two or more recipients at the same time claim support from one and the same person legally obliged to give it, should the latter not have sufficient means to satisfy all claims, the order established in the preceding article shall be followed, unless the concurrent obligees should be the spouse and a child subject to parental authority, in which case the child shall be preferred.

- Article 200 establishes the order of preference for recipients. When several relatives come to a particular relative for support, the relative who will give support must follow Article 200.
- If the relative who will give support has enough, he must give all those enumerated in Article 199. If the relative does not have enough, then the hierarchy enumerated in Article 199 must be followed.
- An minor who is an illegitimate child asks support from his father. This illegitimate child will not be preferred over the spouse of the father. Those who will be preferred over the spouse of the father are those children who are subject to the father's parental authority. In this case, since the child is illegitimate, the father has no parental authority. The illegitimate child will be behind legitimate children and the spouse of his parent. Illegitimate children are in Article 199 (2) since there is no distinction between legitimate and illegitimate.

Art. 201. **The amount of support, in the cases referred to in Articles 195 and 196, shall be in proportion to the resources or means of the giver and to the necessities of the recipient.**

Art. 202. **Support in the cases referred to in the preceding article shall be reduced or increased proportionately, according to the reduction or increase of the necessities of the recipient and the resources or means of the person obliged to furnish the same.**

- Support shall always be in proportion to the means of the giver and the necessities of the recipient.
- There is no *res judicata* as to the amount of support to be given since support is variable.

Art. 203. **The obligation to give support shall be demandable from the time the person who has a right to receive the same needs it for maintenance, but it shall not be paid except from the date of judicial or extrajudicial demand.**

Support *pendente lite* may be claimed in accordance with the Rules of Court.

Payment shall be made within the first five days of each corresponding month or when the recipient dies, his heirs shall not be obliged to return what he has received in advance.

- Support is demandable from the time the person who has the right to receive it needs it. However, it is payable only from judicial or extrajudicial demand.
- On April 1, X needed support from his father. Since X is too proud, X doesn't ask. On July 1, X goes to his father and asks him for support. The father refuses. On Sept. 1, X files an action for support. On Oct. 1, the court renders judgment in favor of X. When is the father obliged to give support? July 1 since there was extrajudicial demand.

Art. 204. **The person obliged to give support shall have the option to fulfill the obligation either by paying the allowance fixed, or by receiving and maintaining in the family dwelling the person who has a right to receive support. The latter alternative cannot be availed of in case there is a moral or legal obstacle thereto.**

- The person obliged to render support may fulfill his obligation in 2 ways at his option:
  1. Paying the amount fixed or
  2. Receiving and maintaining in the family dwelling the person who has a right to receive support
     - This 2nd option cannot be availed of when there is a moral or legal obstacle. For example, a husband in supporting his wife, cannot choose the 2nd option if he had been maltreating her *(Goitia vs. Campos Rueda).*

Art. 205. **The right to receive support under this Title as well as any money or property obtained as such support shall not be levied upon on attachment or execution.**

Art. 206. **When, without the knowledge of the person obliged to give support, it is given by a stranger, the latter shall have a right to claim the same from the former, unless it appears that he gave it without intention of being reimbursed.**

Art. 207. **When the person obliged to support another unjustly refuses or fails to give support when urgently needed by the latter, any third person may furnish support to the needy individual, with right of reimbursement from the person obliged to give support. This Article shall particularly apply when the father or mother of a child under the age of majority unjustly refuses to support or fails to give support to the child when urgently needed.**

Art. 208. **In case of contractual support or that given by will, the excess in amount beyond that required for legal support shall be subject to levy on attachment or execution.**

Furthermore, contractual support shall be subject to adjustment whenever modification is necessary due to changes of circumstances manifestly beyond the contemplation of the parties.

XVI. PARENTAL AUTHORITY

- Parental authority comes from *patria potestas* which means the father's power. The woman was always dependent on a male figure whether it be her husband, her father or her son.
- In Roman Law, *patria potestas* extended even to life and death. This power was granted to the father in order to keep his family in check. Now, the present concept of parental authority is no longer focused on the power aspect. Rather, the focus of parental authority is the obligational aspect. Parental authority is given to the parents over their children in order for the children to be reared properly. The focus is on the child and the child's welfare.

Art. 209. **Pursuant to the natural right and duty of parents over the person and property of their unemancipated children, parental authority and responsibility shall include the caring for and rearing them for civic consciousness and efficiency and the development of their moral, mental and physical character and well-being.**

- Parental authority terminates at the age of 18. This extends to both parental authority over the person and the property of the child.

Art. 210. **Parental authority and responsibility may not be renounced or transferred except in the cases authorized by law.**

Art. 211. **The father and the mother shall jointly exercise parental authority over the persons of their common children. In case of disagreement, the father's decision shall prevail, unless there is a judicial order to the contrary.**

Children shall always observe respect and reverence towards their parents and are obliged to obey them as long as the children are under parental authority.

- Parental authority is joint. In case of disagreement, the husband's decision prevails. However, the wife can go to court.
- For illegitimate children, parental authority is not joint. It is with the mother

Art. 212. **In case of absence or death of either parent, the parent present shall continue exercising parental authority. The remarriage of the surviving parent shall not affect the parental authority over the children, unless the court appoints another person to be the guardian of the person or property of the children.**

Art. 213. **In case of separation of the parents, parental authority shall be exercised by the parent designated by the Court. The Court shall take into account all relevant considerations, especially the choice of the child over seven years of age, unless the parent chosen is unfit.**

- The 2nd paragraph of Article 213 provides that no child under 7 years of age shall be separated from the mother, unless the court finds compelling reasons to order otherwise.
- In earlier cases, the mother was almost always the custodian of a child who is below 7 years. There is a trend of liberalizing this. Courts will always look at the best interest of the child as the criterion.

Art. 214. **In case of death, absence or unsuitability of the parents, substitute parental authority shall be exercised by the surviving grandparent. In case several survive, the one designated by the court, taking into account the same consideration mentioned in the preceding article, shall exercise the authority.**

Art. 215. **No descendant shall be compelled, in a criminal case, to testify against his parents and grandparents, except when such testimony is indispensable in a crime against the descendant or by one parent against the other.**

- Article 215 applies only in criminal cases and NOT in a civil case.
- **General Rule:** A descendant cannot be compelled in a criminal case to testify against his parents and grandparents.
- ***Exception:*** A descendant can be compelled if such testimony is indispensable in a crime against a descendant or by one parent against the other.
  NOTE: The criminal case need not be filed by the descendant or the parent. It may be filed by a 3rd person. Also, this rule applies only to compulsory testimony. It does not apply to voluntary testimony. Thus, the descendant can volunteer if he wants to.

Art. 216. **In default of parents or a judicially appointed guardian, the following person shall exercise substitute parental authority over the child in the order indicated:**

(1) The surviving grandparent, as provided in Art. 214;

(2) The oldest brother or sister, over twenty-one years of age, unless unfit or disqualified; and

(3) The child's actual custodian, over twenty-one years of age, unless unfit or disqualified.

Whenever the appointment or a judicial guardian over the property of the child becomes necessary, the same order of preference shall be observed.

- In default of the parents or a judicial guardian, substitute parental authority over the child shall be exercised in the order indicated:
  1. The surviving grandparent
     - If there are several grandparents, then the guardian shall be the one designated by the court pursuant to Articles 213 and 214
  2. The oldest brother or sister, over 21 years old, unless unfit or disqualified
  3. The child's actual custodian, over 21 years old, unless unfit or disqualified
     - This custodian need not be a relative of the child, but he or she must have actual custody.

Art. 217. **In case of foundlings, abandoned neglected or abused children and other children similarly situated, parental authority shall be entrusted in summary judicial proceedings to heads of children's homes, orphanages and similar institutions duly accredited by the proper government agency.**

Art. 218. **The school, its administrators and teachers, or the individual, entity or institution engaged in child are shall have special parental authority and responsibility over the minor child while under their supervision, instruction or custody.**

Authority and responsibility shall apply to all authorized activities whether inside or outside the premises of the school, entity or institution.

Art. 219. **Those given the authority and responsibility under the preceding Article shall be principally and solidarily liable for damages caused by the acts or omissions of the unemancipated minor. The parents, judicial guardians or the persons exercising substitute parental authority over said minor shall be subsidiarily liable.**

The respective liabilities of those referred to in the preceding paragraph shall not apply if it is proved that they exercised the proper diligence required under the particular circumstances.

All other cases not covered by this and the preceding articles shall be governed by the provisions of the Civil Code on quasi-delicts.

- Articles 218 and 219 apply ONLY to minors since the schools merely take the place of the parents.
- Rules:
  1. Articles 218 and 219 are not limited to schools of arts and trade, but are applicable to all schools.
  2. Authority and responsibility apply to activities inside and outside provided the activity is an authorized one (*i.e.,* field trip)
  3. The liability of the school administrators and the teacher is solidary and primary.
  4. The liability of the parents or the guardian is subsidiary.
  5. Negligence of the school administrators and the teacher is presumed. The burden in on the school administrator and the teacher to prove diligence under Article 219.
  6. The scope of the liability extends only to damage caused by the child in the course of an authorized school activity.
- Rules Regarding Liability for Injuries Caused by Students
  1. If the student who caused the injury is below 18, Articles 218 - 219 apply.
  2. If the student who caused the injury is above 18, Articles 218 - 219 do NOT apply. Article 2180[∅] is applicable.

[∅] *Art. 2180.* The obligation imposed by article 2176 is demandable not only for one's own acts or omissions, but also for those of persons for whom one is responsible.

The father and, in case of his death or incapacity, the mother, are responsible for the damages caused by the minor children who live in their company.

- Article 2180 is applicable to both academic and non-academic institutions.
  1. Academic institutions – the liability attaches to the teacher
  2. Non-academic institutions – the liability attaches to the head of the establishment *(Amadora vs. CA)*
- If a student is injured and the persons who caused the injury were not students, Arts. 218, 219 of the Family Code and Art. 2180 of the Civil Code are not applicable. The school is liable in such a case based on the contract between the student and the school. The school is supposed to provide the student adequate protection *(PSBA vs. CA).*

1. *Effect of Parental Authority Upon the Persons of the Children*

> ***Art. 220.*** **The parents and those exercising parental authority shall have with the respect to their unemancipated children on wards the following rights and duties:**
>
> **(1) To keep them in their company, to support, educate and instruct them by right precept and good example, and to provide for their upbringing in keeping with their means;**
>
> **(2) To give them love and affection, advice and counsel, companionship and understanding;**
>
> **(3) To provide them with moral and spiritual guidance, inculcate in them honesty, integrity, self-discipline, self-reliance, industry and thrift, stimulate their interest in civic affairs, and inspire in them compliance with the duties of citizenship;**
>
> **(4) To furnish them with good and wholesome educational materials, supervise their activities, recreation and association with others, protect them from bad company, and prevent them from acquiring habits detrimental to their health, studies and morals;**
>
> **(5) To represent them in all matters affecting their interests;**
>
> **(6) To demand from them respect and obedience;**
>
> **(7) To impose discipline on them as may be required under the circumstances; and**

Guardians are liable for damages caused by the minors or incapacitated persons who are under their authority and live in their company.

The owners and managers of an establishment or enterprise are likewise responsible for damages caused by their employees in the service of the branches in which the latter are employed or on the occasion of their functions.

Employers shall be liable for the damages caused by their employees and household helpers acting within the scope of their assigned tasks, even though the former are not engaged in any business or industry.

The State is responsible in like manner when it acts through a special agent; but not when the damage has been caused by the official to whom the task done properly pertains, in which case what is provided in article 2176 shall be applicable.

Lastly, teachers or heads of establishments of arts and trades shall be liable for damages caused by their pupils and students or apprentices, so long as they remain in their custody.

The responsibility treated of in this article shall cease when the persons herein mentioned prove that they observed all the diligence of a good father of a family to prevent damage.

(8) To perform such other duties as are imposed by law upon parents and guardians.

Art. 221. **Parents and other persons exercising parental authority shall be civilly liable for the injuries and damages caused by the acts or omissions of their unemancipated children living in their company and under their parental authority subject to the appropriate defenses provided by law.**

Art. 222. **The courts may appoint a guardian of the child's property or a guardian ad litem when the best interests of the child so requires.**

Art. 223. **The parents or, in their absence or incapacity, the individual, entity or institution exercising parental authority, may petition the proper court of the place where the child resides, for an order providing for disciplinary measures over the child. The child shall be entitled to the assistance of counsel, either of his choice or appointed by the court, and a summary hearing shall be conducted wherein the petitioner and the child shall be heard.**

However, if in the same proceeding the court finds the petitioner at fault, irrespective of the merits of the petition, or when the circumstances so warrant, the court may also order the deprivation or suspension of parental authority or adopt such other measures as it may deem just and proper.

Art. 224. **The measures referred to in the preceding article may include the commitment of the child for not more than thirty days in entities or institutions engaged in child care or in children's homes duly accredited by the proper government agency.**

The parent exercising parental authority shall not interfere with the care of the child whenever committed but shall provide for his support. Upon proper petition or at its own instance, the court may terminate the commitment of the child whenever just and proper.

2. ***Effect of Parental Authority Upon the Property of the Children***

Art. 225. **The father and the mother shall jointly exercise legal guardianship over the property of the unemancipated common child without the necessity of a court appointment. In case of disagreement, the father's decision shall prevail, unless there is a judicial order to the contrary.**

Where the market value of the property or the annual income of the child exceeds P50,000, the parent concerned shall be required to furnish a bond in such amount as the court may determine, but not less than ten per centum (10%) of the value of the property or annual income, to guarantee the performance of the obligations prescribed for general guardians.

A verified petition for approval of the bond shall be filed in the proper court of the place where the child resides, or, if the child resides in a foreign country, in the proper court of the place where the property or any part thereof is situated.

The petition shall be docketed as a summary special proceeding in which all incidents and issues regarding the performance of the obligations referred to in the second paragraph of this Article shall be heard and resolved.

The ordinary rules on guardianship shall be merely suppletory except when the child is under substitute parental authority, or the guardian is a stranger, or a parent has remarried, in which case the ordinary rules on guardianship shall apply.

Art. 226. **The property of the unemancipated child earned or acquired with his work or industry or by onerous or gratuitous title shall belong to the child in ownership and shall be devoted exclusively to the latter's support and education, unless the title or transfer provides otherwise.**

The right of the parents over the fruits and income of the child's property shall be limited primarily to the child's support and secondarily to the collective daily needs of the family.

Art. 227. **If the parents entrust the management or administration of any of their properties to an unemancipated child, the net proceeds of such property shall belong to the owner. The child shall be given a reasonable monthly allowance in an amount not less than that which the owner would have paid if the administrator were a stranger, unless the owner, grants the entire proceeds to the child. In any case, the proceeds thus give in whole or in part shall not be charged to the child's legitime.**

- Parents may exercise parental authority over their child's property.
- 2 Kinds of Properties of Minors
  1. **Adventitious** (Article 226)
     - Adventitious property is earned or acquired by the child through his work or industry or by onerous or gratuitous title.
     - The child owns this property.
     - The child is also is the usufructuary as the child enjoys the fruits unless the mode of transfer provides otherwise. The fruits and income of adventitious property must be applied primarily for the child's support and secondarily for the family's collective needs (Article 226, ¶2).
     - The property is administered by the parents since the child has no capacity to act.
  2. **Profectitious** (Article 227)
     - Profectitious property is owned by the parents. However, this property is given to the child for him to administer. For example, the parents may own a farm. Their child is 17 years old. To teach him industry, the parents tell the child to harvest and take care of the farm.
     - The parents own this type of property.
     - The parents are the usufructuary. However, the child is entitled to a monthly allowance which should be not less than what the owner of the

property would have paid an administrator. The parents may give the entire proceeds of the property to the child.

- The property is administered by the child.

C. ***Suspension or Termination of Parental Authority***

Art. 228. **Parental authority terminates permanently:**

(1) Upon the death of the parents;

(2) Upon the death of the child; or

(3) Upon emancipation of the child.

Art. 229. **Unless subsequently revived by a final judgment, parental authority also terminates:**

(1) Upon adoption of the child;

(2) Upon appointment of a general guardian;

(3) Upon judicial declaration of abandonment of the child in a case filed for the purpose;

(4) Upon final judgment of a competent court divesting the party concerned of parental authority; or

(5) Upon judicial declaration of absence or incapacity of the person exercising parental authority.

Art. 230. **Parental authority is suspended upon conviction of the parent or the person exercising the same of a crime which carries with it the penalty of civil interdiction. The authority is automatically reinstated upon service of the penalty or upon pardon or amnesty of the offender.**

Art. 231. **The court in an action filed for the purpose in a related case may also suspend parental authority if the parent or the person exercising the same:**

(1) Treats the child with excessive harshness or cruelty;

(2) Gives the child corrupting orders, counsel or example;

(3) Compels the child to beg; or

(4) Subjects the child or allows him to be subjected to acts of lasciviousness.

The grounds enumerated above are deemed to include cases which have resulted from culpable negligence of the parent or the person exercising parental authority.

If the degree of seriousness so warrants, or the welfare of the child so demands, the court shall deprive the guilty party of parental authority or adopt such other measures as may be proper under the circumstances.

The suspension or deprivation may be revoked and the parental authority revived in a case filed for the purpose or in the same proceeding if the court finds that the cause therefor has ceased and will not be repeated.

Art. 232. **If the person exercising parental authority has subjected the child or allowed him to be subjected to sexual abuse, such person shall be permanently deprived by the court of such authority.**

Art. 233. **The person exercising substitute parental authority shall have the same authority over the person of the child as the parents.**

In no case shall the school administrator, teacher of individual engaged in child care exercising special parental authority inflict corporal punishment upon the child.

- Kinds of Termination and Suspension
  1. **Irreversible Termination**
     a. Death of the parents (Article 228 (1))
        - Parental authority is terminated as far as the dead parent is concerned.
     b. Death of the child (Article 228 (2))
     c. Emancipation (Article 228 (3))
        - This is the most common.
     d. Court order under Article 232
        - If the parent or parents exercising parental authority have subjected the child or allowed him or her to be subjected to sexual abuse, the parent or parents shall be deprived permanently by the court of such parental authority.
  2. **Reversible Termination** (the termination may or may not be permanent)
     a. Upon adoption
        - It is reversible because there is a possibility that the adoption may be rescinded.
     b. Upon appointment of a guardian
        - Guardianship may be lifted if such is no longer necessary
     c. Judicial declaration of abandonment
     d. Final judgment of a competent court under Article 231
        - The grounds are:
          i. Treats the child with excessive harshness or cruelty;
          ii. Gives the child corrupting orders, counsel or example;
          iii. Compels the child to beg; or
          iv. Subjects the child or allows him or her to be subjected to acts of lasciviousness
     e. Judicial declaration of absence or incapacity of the person
  3. **Suspension of Parental Authority**
     a. Parent is convicted of a crime which carries with it the accessory penalty of civil interdiction
     b. Court order under Article 231

- The grounds are:
  i. Treats the child with excessive harshness or cruelty;
  ii. Gives the child corrupting orders, counsel or example;
  iii. Compels the child to beg; or
  iv. Subjects the child or allows him or her to be subjected to acts of lasciviousness

NOTE: Under Article 231, parental authority may be suspended or terminated depending on the seriousness of the ground.

XVII. Miscellaneous Provisions

Art. 356. **Every child:**

(1) Is entitled to parental care;

(2) Shall receive at least elementary education;

(3) Shall be given moral and civic training by the parents or guardian;

(4) Has a right to live in an atmosphere conducive to his physical, moral and intellectual development.

Art. 357. **Every child shall:**

(1) Obey and honor his parents or guardian;

(2) Respect his grandparents, old relatives, and persons holding substitute parental authority;

(3) Exert his utmost for his education and training;

(4) Cooperate with the family in all matters that make for the good of the same.

Art. 358. **Every parent and every person holding substitute parental authority shall see to it that the rights of the child are respected and his duties complied with, and shall particularly, by precept and example, imbue the child with highmindedness, love of country, veneration for the national heroes, fidelity to democracy as a way of life, and attachment to the ideal of permanent world peace.**

Art. 359. **The government promotes the full growth of the faculties of every child. For this purpose, the government will establish, whenever possible:**

(1) Schools in every barrio, municipality and city where optional religious instruction shall be taught as part of the curriculum at the option of the parent or guardian;

(2) Puericulture and similar centers;

(3) Councils for the Protection of Children; and

(4) Juvenile courts.

Art. 360. **The Council for the Protection of Children shall look after the welfare of children in the municipality. It shall, among other functions:**

(1) Foster the education of every child in the municipality;

(2) Encourage the cultivation of the duties of parents;

(3) Protect and assist abandoned or mistreated children, and orphans;

(4) Take steps to prevent juvenile delinquency;

(5) Adopt measures for the health of children;

(6) Promote the opening and maintenance of playgrounds;

(7) Coordinate the activities of organizations devoted to the welfare of children, and secure their cooperation.

Art. 361. **Juvenile courts will be established, as far as practicable, in every chartered city or large municipality.**

Art. 362. **Whenever a child is found delinquent by any court, the father, mother, or guardian may in a proper case be judicially admonished.**

Art. 363. **In all questions on the care, custody, education and property of children the latter's welfare shall be paramount. No mother shall be separated from her child under seven years of age, unless the court finds compelling reasons for such measure.**

- Articles 356 to 363 of the Civil Code have not been repealed by the Family Code. Most though are dead letter law.
- Article 363 is an important since this article deals with the best interest of the child.
- The second sentence of Article 363 is found in the second paragraph of Article 213[⊕] of the Family Code.
- The first sentence of Article 363 is still good law.

XVIII. SUMMARY JUDICIAL PROCEEDINGS (Articles 238-252)

Art. 238. **Until modified by the Supreme Court, the procedural rules provided for in this Title shall apply as regards separation in fact between husband and wife, abandonment by one of the other, and incidents involving parental authority.**

Art. 239. **When a husband and wife are separated in fact, or one has abandoned the other and one of them seeks judicial authorization for a transaction where the consent of the other spouse is required by law but such consent is withheld or cannot be obtained, a verified petition may be filed in court alleging the foregoing facts.**

The petition shall attach the proposed deed, if any, embodying the transaction, and, if none, shall describe in detail the said transaction and state the reason why the required consent thereto cannot be secured. In any case, the final deed duly executed by the parties shall be submitted to and approved by the court.

Art. 240. **Claims for damages by either spouse, except costs of the proceedings, may be litigated only in a separate action.**

[⊕] *Art. 213, ¶2.* In case of separation of the parents, parental authority shall be exercised by the parent designated by the Court. The Court shall take into account all relevant considerations, especially the choice of the child over seven years of age, unless the parent chosen is unfit.

Art. 241. **Jurisdiction over the petition shall, upon proof of notice to the other spouse, be exercised by the proper court authorized to hear family cases, if one exists, or in the regional trial court or its equivalent sitting in the place where either of the spouses resides.**

Art. 242. **Upon the filing of the petition, the court shall notify the other spouse, whose consent to the transaction is required, of said petition, ordering said spouse to show cause why the petition should not be granted, on or before the date set in said notice for the initial conference. The notice shall be accompanied by a copy of the petition and shall be served at the last known address of the spouse concerned.**

Art. 243. **A preliminary conference shall be conducted by the judge personally without the parties being assisted by counsel. After the initial conference, if the court deems it useful, the parties may be assisted by counsel at the succeeding conferences and hearings.**

Art. 244. **In case of non-appearance of the spouse whose consent is sought, the court shall inquire into the reasons for his failure to appear, and shall require such appearance, if possible.**

Art. 245. **If, despite all efforts, the attendance of the non-consenting spouse is not secured, the court may proceed ex parte and render judgment as the facts and circumstances may warrant. In any case, the judge shall endeavor to protect the interests of the non-appearing spouse.**

Art. 246. **If the petition is not resolved at the initial conference, said petition shall be decided in a summary hearing on the basis of affidavits, documentary evidence or oral testimonies at the sound discretion of the court. If testimony is needed, the court shall specify the witnesses to be heard and the subject-matter of their testimonies, directing the parties to present said witnesses.**

Art. 247. **The judgment of the court shall be immediately final and executory.**

Art. 248. **The petition for judicial authority to administer or encumber specific separate property of the abandoning spouse and to use the fruits or proceeds thereof for the support of the family shall also be governed by these rules.**

Art. 249. **Petitions filed under Articles 223, 225 and 235 of this Code involving parental authority shall be verified.**

Art. 250. **Such petitions shall be verified and filed in the proper court of the place where the child resides.**

Art. 251. **Upon the filing of the petition, the court shall notify the parents or, in their absence or incapacity, the individuals, entities or institutions exercising parental authority over the child.**

Art. 252. **The rules in Chapter 2 hereof shall also govern summary proceedings under this Chapter insofar as they are applicable.**

- Summary judicial proceedings provided under the Family Code:
  1. Declaration of presumptive death
  2. Partition of spouses property
  3. Disagreement in fixing domicile
  4. Disagreement in the exercise of profession
  5. Disagreement in the administration of community property
  6. Disagreement in the administration of conjugal property
  7. Parental authority over foundlings

PROPERTY

- Property is any physical or incorporeal entity capable of becoming the object of a juridical relation.

CLASSIFICATION OF PROPERTY (CASTAN)

I. According to Nature (Article 414)

Art. 414. **All things which are or may be the object of appropriation are considered either:**

(1) Immovable or real property; or

(2) Movable or personal property.

1. *Real or immovable* (Article 415)

- 4 Categories of Immovables

a. **Real by nature** (Article 415, ¶1 and ¶8)

i. Land, buildings, roads, and constructions of all kinds adhered to the soil

- In the case of *Lopez vs. Orosa,* a theater was constructed by using lumber. The lumber supplier was not paid. The lumber supplier was contending his material man's lien extends to the land. The SC said that the material man's lien attaches only to the building since a building is an immovable property by itself.
- In *Associated Insurance vs. Iya*, the SC said that the chattel mortgage over the house was void since a house is an immovable and not chattel. On the other hand, in *Tumalad vs. Vicencio*, the SC said that the parties may treat the house as chattel. The SC further added that the mortgagor is estopped from assailing the validity of the chattel mortgage over the house.

- How do you reconcile the rulings of *Associated Insurance vs. Iya* and *Tumalad vs. Vicencio*? *Tumalad vs. Vicencio applies* only if no 3rd parties are prejudiced.
- Is it correct to say that the *Tumalad* ruling tells us that a chattel mortgage over a building is proper? No, it does not. A chattel mortgage over a building is always improper since a building is always an immovable. In *Tumalad vs. Vicencio*, as between the parties, the chattel mortgage is enforceable. The parties are estopped from assailing the validity.
- Grey Area in *Associated Insurance vs. Iya* – What if the 3rd party was aware of the existence of the chattel mortgage and despite such knowledge, the 3rd party entered into the real estate mortgage? According to Professor Balane, there may be 2 ways of answering this:
  - One can argue that the real estate mortgage is valid despite knowledge of the 3rd party. That's probably why the 3rd party entered into the real estate mortgage. He knew that the chattel mortgage is ineffective as between 3rd parties.
  - One can argue that the 3rd party is in bad faith (Articles 19 and 20[⊗])

ii. Mines, quarries and slag dumps, while the matter thereof forms part of the bed, and waters either running or stagnant

b. **Real by incorporation** (Article 415, ¶s 2,3, and 7)

i. Trees, plants, and growing fruits, while they are attached to the land or form an integral part of an immovable

- Growing fruits and crops are movables in other laws (*i.e.* chattel mortgage law)

ii. Everything attached to an immovable in a fixed manner, in such a way that it cannot be separated therefrom without breaking the material or deterioration of the object

- It is the result which is important; that it cannot be removed without causing damage.
- There is no requirement that the attachment be done by the owner (can be done by anyone).
- In *Board of Assessments vs.* MERALCO, the MERALCO was assessed real property tax on its electric poles. The theory was that the same are real property being adhered to the soil. The SC said that the electric poles are not real property since they can be removed. Such poles were not attached in fixed manner.

[⊗] *Art. 19.* Every person must, in the exercise of his rights and in the performance of his duties, act with justice, give everyone his due, and observe honesty and good faith.

Art. 20. Every person who, contrary to law, willfully or negligently causes damage to another, shall indemnify the latter for the same.

iii. Fertilizer actually used on a piece of land

- Growing fruits The fertilizer is real property since it becomes an integral part of the soil.

c. **Real by destination** (Article 415, ¶s 4, 5, 6 and 9)

i. Statues, reliefs, paintings or other objects for use or ornamentation, placed in buildings or on lands by the owner of the immovable in such manner that it reveals the intention to attach them permanently to the tenements

- Requisites for Immobilization
  1. It is an object of ornamentation or object of use.
  2. The object is placed on a building or land.
  3. The installation was made by the owner of the building or the land.
  4. It is attached in such a manner that it reveals an intention to attach it permanently.

ii. Machinery, receptacles, instruments or implements intended by the owner of the tenement for an industry or works which may be carried on in a building or on a piece of land, and which tend directly to meet the needs of the said industry or works

- Requisites for Immobilization
  1. The object must be either machinery, receptacles, instruments or implements for an industry or work.
  2. The object is installed in a tenement.
  3. The installation is by the owner of the tenement.
  4. Industry or works are carried on in the tenement.
  5. The object carries out directly the industry or work.
- In *Berkenkotter vs. Cu Unjieng,* there was a real estate mortgage over the sugar central. Additional machinery was bought to increase the sugar central's capacity. The SC said that the additional machinery became immobilized under Article 415 (5). Thus, the additional machinery is included in the real estate mortgage.
- In *Berkenkotter vs. Cu Unjieng*, would it have made a difference if there was no stipulation that the real estate mortgage would cover future improvements? No, the improvements would be covered automatically by law as the same are immobilized. Of course, the parties are free to stipulate what may be excluded from the mortgage.
- In *Davao Saw Mill vs. Castillo,* the machinery was installed by the lessee. The contract of lease stated that all improvements

introduced by the lessee except machineries would belong to the lessor after the expiration of the lease contract. The SC said that the machinery was not immobilized under Article 415 (5) since the same was installed by the lessee and not the owner of the building or land.

- Suppose in *Davao Saw Mill vs. Castillo*, there was a provision in the lease contract that the machinery would pass to the lessor. Would the machinery be immobilized? Yes, it would since the lessor acts as an agent of the owner (the owner installs through the agent).
- Suppose in *Davao Saw Mill vs. Castillo,* the lease contract was silent on whether or not the machinery would pass to the lessor. Professor Balane is not sure. He thinks that Article 1678 may be applicable. Under Article 1678, the lessor upon the termination of the lease shall pay ½ of the value of the improvements. Should the lessor refuse to reimburse the improvements, then the lessee may remove the same even though the principal thing may be damaged.
- Article 1678 does not answer when the machinery becomes immobilized in case the lessor decides to buy it. Is it immobilized upon installation or upon purchase? Article 1678 is not clear on this.

iii. Animal houses, pigeon houses, beehives, fish ponds or breeding places of similar nature, in case their owner has placed them or preserves them with the intention to have them permanently attached to the land, and forming a permanent part of it; the animals in these places are included

- Requisites
  1. The structure is placed by the owner.
  2. The installation must be with the intention to have them permanently attached and forming a part of it.
- The animals are real property only for as long as they remain there. Thus, if the pigeons fly out of the pigeon house, then they are no longer real property.

iv. Docks and structures which, though floating, are intended by their nature and object to remain at a fixed place on a river, lake, or coast

d. **Real by analogy** (Article 415, ¶10)

- **Contracts for public works, and servitudes and other real rights over immovable property**
  - In contracts for public works, the contract itself is the real property. For example, the contract to build the EDSA flyover is real property in itself. In contracts for private works, the contract is personal property.

- Real rights are those rights which are enforceable against the whole world. (*i.e.* ownership, possession in concept of holder, servitude, mortgage).
- For a real right to be considered real property, the real right must be over an immovable property. For example, the real right of ownership of the land is considered real property while the real right of ownership over a bag is considered personal property.

2. Personal or movable

Art. 416. **The following things are deemed to be personal property:**

(1) Those movables susceptible of appropriation which are not included in the preceding article;

(2) Real property which by any special provision of law is considered as personal property;

(3) Forces of nature which are brought under control by science; and

(4) In general, all things which can be transported from place to place without impairment of the real property to which they are fixed.

Art. 417. **The following are also considered as personal property:**

(1) Obligations and actions which have for their object movables or demandable sums; and

(2) Shares of stock of agricultural, commercial and industrial entities, although they may have real estate.

- Since Article 415 is exclusive, Articles 416 and 417 are superfluous.
- Shares of stock (even if they shares of stock of Ayala Land) are always personal property.

  NOTE: The terms "real property" and "personal property" are common law terms while "immovable property" and "movable property" are civil law terms.
- The distinction between immovable and movable property is important in mortgages *(Lopez vs. Orosa, Associated Insurance vs. Iya,* and *Tumalad vs. Vicencio).*
- The distinction is also important in donations since the form will be different.

II. According to Character of Ownership (Articles 419 - 425)

Art. 419. **Property is either of public dominion or of private ownership.**

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.**

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.**

1. ***Public dominion***

- 2 Kinds of Property of the Public Dominion
  a. **Public use** – anyone can use (*i.e.*, EDSA, Rizal Park)
     i. Property for public use may be owned by the state (Article 420 (1))
     ii. Property for public use may be owned by LGUs – political subdivisions (Article 424)
  b. **Public service** – not for the general use but for some state function (*i.e.,* government hospitals, Malcolm Hall)
     - Only the state may own property for public service (Article 420 (2))
     - There is no such thing as property for public service for LGUs.

  NOTE: The term "public dominion" is a civil law term while "public domain" is a common law term. Strictly speaking, they are not synonymous.
- Characteristics of Property of the Public Dominion
  1. Outside the commerce of man except for purposes of repairs
  2. Not subject to prescription (because outside the commerce of man)
  3. Cannot be levied upon (i.e. execution or attachment)
  4. Cannot be burdened by any voluntary easement
- In *Yakapin vs. CFI*, the private lot was eroded by the sea. It eventually become part of the seabed. The SC said that the private lot became part of the public dominion since it is now part of the seabed.
- In Government of the *Philippines vs. Cabangis*, the SC said that the land was covered by a Torrens title will not protect the land owner if the land becomes part of the seabed – *de facto* case of eminent domain.
- In *Republic vs. CA,* the SC said that the land did not become part of the public dominion. There was only a temporary inundation. Once the flood had subsided, the land became dry (see Article 458).
- Creeks and forest land form part of the public dominion.

2. *Private ownership*

- 3 Kinds of Property of Private Ownership

a. **Patrimonial property of the state**

- All property of the state which is not of part of the public dominion is patrimonial property (Article 421).
- 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 (Article 422).
- Rulings in *Laurel vs. Garcia* (Roponggi case)

1. The Roponggi property is property of the public dominion since it is for public service.
    - According to Professor Balane, this has serious implications. Is it possible for property owned by the government in a foreign land to become property of the public dominion? Public dominion connotes sovereignty. In the case of Roponggi, Japan is the sovereign authority. In this case the Philippines is only a private land owner. Japan, being the sovereign, can expropriate the Roponggi property, and the Philippines cannot refused. The SC should have answered the question Is it possible for property owned by the government in a foreign land to become property of the public dominion.
2. Property of the public dominion cannot be alienated without it being converted to patrimonial property. Once the property has been converted, it is alienable.
3. Roponggi has not been converted to patrimonial property. Conversion can only take place by a formal declaration. Such declaration cannot be implied.
    - It is not clear if this formal declaration is an executive or a legislative act.
4. Patrimonial property can be alienated only by an authority of law (legislature).

b. **Patrimonial property of LGUs** (political subdivisions)

c. **Patrimonial property of individuals**

Art. 423. **The property of provinces, cities, and municipalities is divided into property for public use and patrimonial property.**

Art. 424. **Property for public use, in the provinces, cities, and municipalities, consist of the provincial roads, city streets, municipal streets, the squares, fountains, public waters, promenades, and public works for public service paid for by said provinces, cities, or municipalities.**

All other property possessed by any of them is patrimonial and shall be governed by this Code, without prejudice to the provisions of special laws.

- Properties of LGUs (Articles 423 and 424)
  1. Property for public use
     - Property for public use consist of roads, streets, squares, fountains, public waters, promenades and public works for public service paid for by the LGUs (Article 424, ¶1)
  2. Patrimonial property
     - All other property possessed by any of them is patrimonial and shall be governed by the Civil Code, without prejudice to the provisions of special laws.

     NOTE: According to Professor Balane, certain decisions have eroded Articles 423 and 424.

     - In *Tan Toco vs. Municipal Council of Iloilo*, a person levied on trucks, police cars, police stations. The SC said that these could not be levied since they were property for public use. According to Professor Balane, these are not properties for public use since not every in the general public may use them. Following the Civil Code, they are patrimonial property.
     - In *Zamboanga del Norte vs. City of Zamboanga*, following the Civil Code definition, all but 2 of the lots (playgrounds) are really patrimonial since there is LGUs cannot own property devoted for public service. But that was not what the SC said.

III. According to Essential Form

1. *Corporeal*

2. *Incorporeal* (*i.e.,* shares of stock, goodwill in a business)

- The distinction is important for areas such as mode of transfer

IV. According to Designation

1. *Specific*

- The object is individually determined. For example, I promise to sell you my car with license plate PME 208.

2. *Generic*

- The object is determined only as to its kind. For example, I promise to sell you 1000 kilos of rice.
- The distinction is important in legacies and donations. The distinction is also important in extinguishing obligations.

V. According to its Susceptibility to Substitution

1. *Fungible*

- Fungible means that the thing can be substituted with another thing of the same kind or quality. This is determined by the INTENT of the parties. For example, if A borrows a book from B, it may be the intention of the parties that B return the exact same book since it has A's annotations.

2. ***Non-Fungible***

VI. According to its Aptitude for Repeated Use

> ***Art. 418.*** **Movable property is either consumable or nonconsumable. To the first class belong those movables which cannot be used in a manner appropriate to their nature without their being consumed; to the second class belong all the others.**

1. ***Consumable***
   - A thing is consumable if according to its nature, it cannot be used appropriately without being consumed.

2. ***Non-Consumable***

NOTE: The legal definition of consumable in Article 1933[℘] is wrong. The subject matter of a *commodatum* may be a consumable or not. But, it must be non-fungible since the exact, same thing must be returned. In a *mutuum*, the obligor can return a different thing as long as it is of the same kind and quality.

VII. According to its Susceptibility to Division

1. ***Divisible***

2. ***Indivisible***

- The distinction is important in partition (either physical or constructive partition)

VIII. According to its Existence in Time

1. ***Present*** – *res existens*

2. ***Future*** – *res futurae*

- The distinction is important in sales. It is also important in donations. A party cannot donate future things. It is also important in succession. A party cannot enter into a contract regarding future inheritance.

IX. According to its Dependence

1. ***Principal***

2. ***Accessory***

[℘] *Art. 1933.* By the contract of loan, one of the parties delivers to another, either something not consumable so that the latter may use the same for a certain time and return it, in which case the contract is called a commodatum; or money or other consumable thing, upon the condition that the same amount of the same kind and quality shall be paid, in which case the contract is simply called a loan or mutuum.

Commodatum is essentially gratuitous.

Simple loan may be gratuitous or with a stipulation to pay interest.

In commodatum the bailor retains the ownership of the thing loaned, while in simple loan, ownership passes to the borrower.

- The general rule is that the accessory follows the principal. An exception to the general rules is reverse accession (Article 120[8], Family Code).
- The distinction is important in sales. When one buys a car, the car should include the accessories such as the spare tire, the radio, etc. The distinction is also important in lease contracts.

BUNDLE OF RIGHTS

I. Ownership

Art. 427. **Ownership may be exercised over things or rights.**

- Ownership is the independent and general right of a person to control a thing in its possession, enjoyment, disposition and recovery subject to no restrictions except those validly imposed by the state or by juridical transactions.
- In Roman Law, ownership was an absolute right. Ownership is evolving in light of social justice, police power in order to promote the welfare of the people and environmental concerns. Now, we have concepts such as stewardship. Now, one must comply with safety and environmental regulations. Now, building permits are required.
- Ownership is accompanied by the following rights *(Phil. Banking vs. Lui She)*:
  1. *ius possidendi* – the right to possess
  2. *ius utendi* – the right to use
  3. *ius fruendi* – the right to enjoy the fruits
  4. *ius abutendi* – the right to destroy (but cannot harm others)
  5. *ius disponendi* – the right to dispose, or the right to alienate, encumber, transform
  6. *ius vindicandi* – the right of action available to the owner to recover the property against the holder or possessor
  7. *ius accessions* – the right to accessions
- Characteristics of Ownership
  1. **General** (Article 428)

Art. 428. **The owner has the right to enjoy and dispose of a thing, without other limitations than those established by law.**

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[8] *Art. 120.* The ownership of improvements, whether for utility or adornment, made on the separate property of the spouses at the expense of the partnership or through the acts or efforts of either or both spouses shall pertain to the conjugal partnership, or to the original owner-spouse, subject to the following rules:

When the cost of the improvement made by the conjugal partnership and any resulting increase in value are more than the value of the property at the time of the improvement, the entire property of one of the spouses shall belong to the conjugal partnership, subject to reimbursement of the value of the property of the owner-spouse at the time of the improvement; otherwise, said property shall be retained in ownership by the owner-spouse, likewise subject to reimbursement of the cost of the improvement.

In either case, the ownership of the entire property shall be vested upon the reimbursement, which shall be made at the time of the liquidation of the conjugal partnership.

The owner has also a right of action against the holder and possessor of the thing in order to recover it.

- The owner may use the thing in all its possibility subject to restrictions. For example, an owner is not limited in using a bag merely as a place where goods are kept. The owner may use the bag as a hat.

2. **Independent**
   - Ownership can exist even without any other right.
3. **Abstract**
   - The right of ownership exists distinctly from its constituent or component parts (*i.e. ius accessions*, *ius abutendi*, etc).
4. **Elastic**
   - The component rights can be reduced or given to others (i.e. usufruct – the right to enjoy the fruits).
5. **Exclusive**
   - There can only be 1 ownership at one time.
   - In co-ownership, there is only 1 ownership, but this is shared ownership.
6. **Generally Perpetual**
   - Ownership is generally not limited as to time unless there is stipulation to the contrary.
   - Ownership is inherently unlimited, but it is not necessarily so. Ownership can be restricted. These restrictions on ownership may be imposed by the State or by juridical transactions (i.e. contract). In several cases, the SC has upheld the validity of deed restrictions with regard to how buildings are to be constructed.

Art. 429. **The owner or lawful possessor of a thing has the right to exclude any person from the enjoyment and disposal thereof. For this purpose, he may use such force as may be reasonably necessary to repel or prevent an actual or threatened unlawful physical invasion or usurpation of his property.**

- This is known as the doctrine of self-help.
- This is one of the instances in which a person is allowed to take the law into his own hands and to use force. Normally, the use of violence is reserved to the sovereign power of the state.
- Article 429 is similar to Article 11, ¶4[*] of the Revised Penal Code.
- Requisites

[*] Article 11. *Justifying circumstances.* – The following do not incur any criminal liability:
4. Any person who, in order to avoid an evil or injury, does an act which causes damage to another, provided that the following requisites are present:
   First. That the evil sought to be avoided actually exists;
   Second. That the injury feared be greater than that done to avoid it;
   Third. That there be no other practical and less harmful mean of preventing it.

1. Person who employs force or violence must be the owner (actual or presumed) or a lawful possessor
2. That person must be in actual physical possession
    - The right in Article 429 is a possessory right only.
    - A owns land in Nasugbu. A sees B's goons. B tells A to get out. A successfully thwarts the invasion. B's goons are injured. Can A be successfully charged with physical injuries? No, if reasonable force was used.
    - In the same example, B's goons succeeds in throwing out A. A comes back and inflicts force. Is this allowed? No, A is not in physical possession of the land. A's remedy is to go to court under Article 433[♣].
3. There must be actual or imminent aggression
4. Only reasonable force is employed by the owner or lawful possessor

Art. 430. **Every owner may enclose or fence his land or tenements by means of walls, ditches, live or dead hedges, or by any other means without detriment to servitudes constituted thereon.**

- The right of an owner to enclose his tenement is limited by the servitudes existing on it.
- In *Lunod vs. Meneses*, the owner of the lower tenement created a structure impeding the flow of water from the upper tenement to the lower tenements. Thus, the upper tenements were flooded. SC said that a person could enclose his property to obstruct the natural flow of waters from the upper tenements.

Art. 431. **The owner of a thing cannot make use thereof in such manner as to injure the rights of a third person.**

- The owner may use property only in such a manner that it does not injure others – *sic utere tuo ut alienum non laedas.*
- This encapsulates everything in the law on things.

Art. 432. **The owner of a thing has no right to prohibit the interference of another with the same, if the interference is necessary to avert an imminent danger and the threatened damage, compared to the damage arising to the owner from the interference, is much greater. The owner may demand from the person benefited indemnity for the damage to him.**

- This is basically the same rule as Article 11, ¶44 of the Revised Penal Code – prevention of a greater injury.
- Requisites:
    1. The interference must be necessary to avert imminent danger.
    2. The threatened damage must be greater than the damage caused to the owner.

[♣] *Art. 433.* Actual possession under claim of ownership raises disputable presumption of ownership. The true owner must resort to judicial process for the recovery of the property.

3. Only such interference as is necessary shall be made in order to avert the damage.

- An example of Article 432 is a case in criminal law. In that case a car was burning near a gas station. The car was pushed away from the gar station. However in the process, a house was burned.
- B is running away from drug addicts. B passes a house. B smashes the door and is able to save himself. B's actions are justified. B is not guilty of malicious mischief since B was trying to prevent injury to himself.
- **General Rule:** Compensation may be demanded by the property owner.
- ***Exception:*** No compensation if the injury is caused by the property owner and the person who intervened was not at fault.
- B is drunk. B is walking home and singing "Bayan Ko". B passes J's house. J has a Doberman. The Doberman attacks B. B stabs the Doberman with a Swiss army knife. Did B act under Article 432? Yes. Does B have to pay? No, because the danger came from the property itself, the Doberman, and it was not B's fault.
- B sees Doberman sleeping. B starts shouting at the Doberman. B kicks the dog. Dog attacks B. B stabs the dog. B is justified in killing the dog under Article 432. B has a right to defend himself. However, B has to pay J since B provoked the dog.

Art. 433. **Actual possession under claim of ownership raises disputable presumption of ownership. The true owner must resort to judicial process for the recovery of the property.**

- Assuming that the possessor claiming the ownership is illegitimate, the true owner (not in possession) must go to court. He cannot apply the doctrine of self-help under Article 429 since he is not in possession. Article 433 applies when the plaintiff is not in possession of the property.
- Remedies
  1. Action for forcible entry
     - The action of forcible entry is for the recovery of the material or physical possession and must be brought in the MTC within 1 year from the date of the forcible entry.
  2. *Accion publiciana*
     - A plenary action for the recovery of the possession of real estate, upon mere allegation and proof of a better right thereto, and without allegation of proof of title. This action can only be brought after the expiration of 1 year.
  3. *Accion reivindicatoria*
     - An action whereby the plaintiff alleges ownership over a parcel of land and seeks recovery of its possession.
  4. Quieting of title

Art. 476. **Whenever there is a cloud on title to real property or any interest therein, by reason of any instrument, record, claim, encumbrance or proceeding which is apparently valid or effective but**

is in truth and in fact invalid, ineffective, voidable, or unenforceable, and may be prejudicial to said title, an action may be brought to remove such cloud or to quiet the title.

An action may also be brought to prevent a cloud from being cast upon title to real property or any interest therein.

Art. 477. **The plaintiff must have legal or equitable title to, or interest in the real property which is the subject matter of the action. He need not be in possession of said property.**

Art. 478. **There may also be an action to quiet title or remove a cloud therefrom when the contract, instrument or other obligation has been extinguished or has terminated, or has been barred by extinctive prescription.**

Art. 479. **The plaintiff must return to the defendant all benefits he may have received from the latter, or reimburse him for expenses that may have redounded to the plaintiff's benefit.**

Art. 480. **The principles of the general law on the quieting of title are hereby adopted insofar as they are not in conflict with this Code.**

Art. 481. **The procedure for the quieting of title or the removal of a cloud therefrom shall be governed by such rules of court as the Supreme Court shall promulgated.**

- Like *accion publiciana*, it involves only real property and is either curative or preventive. Unlike *accion publiciana*, quieting of title applies to both ownership and possession. In quieting of title, the complaint must allege the existence of an apparently valid or effective instrument or other claim which is in reality void, ineffective, voidable or unenforceable.
- Article 476 seems to interchange removal of a cloud with quieting of title. In common law, there is a distinction. Under common law, an action to quiet title must set forth an adverse claim, but it must not be specific. Only a general claim is made. An action to remove a cloud requires a specific claim.
- Article 476 can either be a preventive (¶2) or a remedial action (¶1).
- Quieting of title is a *quasi in rem action*.
- If the plaintiff in an action to quiet title is in possession of the property, then the action to quiet title is imprescriptible (*Faya vs. CA*).

- As long as a person is in possession of the property, it is presumed that the person in possession is the owner. The burden is on the challenger to prove otherwise. The 1st sentence of Article 433 is similar to Article 541♦.
- However, under Article 1131♥ for purposes of prescription, just title is not presumed. If one seeks to acquire title by prescription, the burden is on the

♦ *Art. 541.* A possessor in the concept of owner has in his favor the legal presumption that he possesses with a just title and he cannot be obliged to show or prove it.

applicant claiming to be the owner. In Article 1131, it is the possessor who is the applicant. The possessor is the one who has the burden to prove that he acquired the property through prescription. It is not presumed. In Articles 433 and 541, the possessor does not claim to own it by prescription. The possessor takes a defensive stance.

Art. 434. **In an action to recover, the property must be identified, and the plaintiff must rely on the strength of his title and not on the weakness of the defendant's claim.**

- Two things must be proved in an *accion reivindicatoria*:
  1. The identity of the property
  2. Plaintiff's title to it

Art. 435. **No person shall be deprived of his property except by competent authority and for public use and always upon payment of just compensation.**

Should this requirement be not first complied with, the courts shall protect and, in a proper case, restore the owner in his possession.

- This is not really part of civil law. This is merely an adoption of the Constitutional provision on eminent domain.

Art. 436. **When any property is condemned or seized by competent authority in the interest of health, safety or security, the owner thereof shall not be entitled to compensation, unless he can show that such condemnation or seizure is unjustified.**

- Under police power, the state deprives the individual of the property without just compensation.
- P has a pair of socks which he has been wearing for 7 months. It is spreading numerous diseases. The state can take the pair of socks to burn. In doing so, there is no need for compensation.
- If the state wants to do research on germ warfare, and the state takes the socks and its germs, the state should compensate P.

Art. 437. The owner of a parcel of land is the owner of its surface and of everything under it, and he can construct thereon any works or make any plantations and excavations which he may deem proper, without detriment to servitudes and subject to special laws and ordinances. He cannot complain of the reasonable requirements of aerial navigation.

- In Roman law there is an old saying, "*Cujus est solum, ejus est usque ad coelum et ad inferos* (the owner of a piece of land owns everything above and below it to an indefinite extent)." This is not true anymore. Otherwise, airplanes would commit aerial trespass. However, it cannot be denied that the landowner owns the land, the earth and the air. Otherwise, his ownership is useless. Where do you draw the balance? The property owner owns the space and subsoil as far as

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♥ *Art. 1131.* For the purposes of prescription, just title must be proved; it is never presumed.

is necessary for his practical interest and ability to assert dominion. Beyond this, the owner has nothing. This would depend on a case to case basis.

Art. 438. **Hidden treasure belongs to the owner of the land, building, or other property on which it is found.**

Nevertheless, when the discovery is made on the property of another, or of the State or any of its subdivisions, and by chance, one-half thereof shall be allowed to the finder. If the finder is a trespasser, he shall not be entitled to any share of the treasure.

If the things found be of interest to science of the arts, the State may acquire them at their just price, which shall be divided in conformity with the rule stated.

Art. 439. **By treasure is understood, for legal purposes, any hidden and unknown deposit of money, jewelry, or other precious objects, the lawful ownership of which does not appear.**

- If you find treasure in your land, the treasure is yours.
- When a person finds treasure in a land that is not his, ½ goes to the finder and ½ goes to the owner of the land, building or other property.
- Requisites When a Person Finds Treasure in a Land That is Not His
  1. The deposit must be hidden and unknown (Article 439).
  2. There is no lawful owner.
  3. Discovery is by chance (Article 438).
     - There is debate as to what chance means. One school of thought thinks that chance means there was an intent to find treasure except that finding it was serendipitous. Another school of thought is that the finder should not have no intentions in the first place to look for treasure.
  4. Discoverer must not be a trespasser.

- **Accession**
  - Accession is not a mode of ownership. It is a mere concomitant right of ownership. It is a mere incident or consequence of ownership.

    Art. 440. **The ownership of property gives the right by accession to everything which is produced thereby, or which is incorporated or attached thereto, either naturally or artificially.**

  - The law wisely does not define accession. It merely tells us what accession does.
  - 2 Kinds of Accession

    A. *Accession discreta*
    - The right pertaining to the owner of a thing over everything produced thereby (Article 442)

      1. **Natural fruits**

- Natural fruits are the spontaneous products of the soil, and the young and other products of animals.
- B owns a male German Shepherd. M owns a female German Shepherd. The 2 dogs breed. To whom does the litter go? To the female since birth follows the womb (*partus requites ventreim*).

2. **Industrial fruits**
   - Industrial fruits are those produced by lands of any kind through cultivation or labor.
3. **Civil fruits**
   - Civil fruits are the rents of buildings, the price of leases of lands and other property and the amount of perpetual or life annuities or other similar income.
   - Stock dividends are civil fruits being surplus profit *(Bachrach vs. Seifert)*.
   - **General Rule:** Fruits belong to the owner.
   - ***Exception:*** The fruits do not belong to the owner in the following instances:
     1. Possessor in good faith (Article 544[♠])
     2. Usufruct
     3. Lease
     4. Antichresis (Article 2132[∅])
     5. Pledge

B. *Accession continua*

- The right pertaining to the owner of a thing over everything that is incorporated or attached thereto either naturally or artificially.

1. **Immovables**
   a. ***Industrial*** (Articles 445-456)

> ***Art. 445.*** **Whatever is built, planted or sown on the land of another and the improvements or repairs made thereon, belong to the owner of the land, subject to the provisions of the following articles.**

[♠] *Art. 544.* A possessor in good faith is entitled to the fruits received before the possession is legally interrupted.

Natural and industrial fruits are considered received from the time they are gathered or severed.

Civil fruits are deemed to accrue daily and belong to the possessor in good faith in that proportion.

[∅] Art. 2132. By the contract of antichresis the creditor acquires the right to receive the fruits of an immovable of his debtor, with the obligation to apply them to the payment of the interest, if owing, and thereafter to the principal of his credit.

Art. 446. **All works, sowing, and planting are presumed made by the owner and at his expense, unless the contrary is proved.**

i. *Building*

ii. *Planting*

iii. *Sowing*

(Note: I also included Dean Cynthia Roxas-del Castillo's charts in our civil law reviewer since those charts are more complete. However, I retained Professor Balane's charts since they are better as memory aids. Dean del Castillo's charts come first.)

1st case:
Landowner is the builder/planter/sower and is using the materials of another.

Art. 447. **The owner of the land who makes thereon, personally or through another, plantings, constructions or works with the materials of another, shall pay their value; and, if he acted in bad faith, he shall also be obliged to the reparation of damages. The owner of the materials shall have the right to remove them only in case he can do so without injury to the work constructed, or without the plantings, constructions or works being destroyed. However, if the landowner acted in bad faith, the owner of the materials may remove them in any event, with a right to be indemnified for damages.**

LANDOWNER IS THE BUILDER/PLANTER/SOWER	OWNER OF THE MATERIALS
Good Faith Can acquire the materials provided he pays for the value thereof.	***Good Faith*** Has the: 1. Right to receive payment for value of the materials; OR 2. Limited right of removal if there would be no injury to work constructed, or without plantings or constructions being destroyed (Article 447)
Bad Faith Can acquire the materials provided he pays the value thereof plus damages.	***Good Faith*** Has the: 1. Right to receive payment for value of materials plus damages; OR 2. Absolute right of removal of the work constructed in any event (whether or not substantial injury is caused) plus damages
Good Faith Can acquire the materials without paying for the value thereof and entitled to consequential damages due to the defects of the materials	***Bad Faith*** Loses the materials completely without receiving any indemnity

Bad Faith	***Bad Faith***
Treat as if both are in good faith.[⊕]	

LAND OWNER IS BUILDER/PLANTER/SOWER	**OWNER OF MATERIAL**
Good Faith	***Good Faith*** 1. Limited right of removal if there would be no injury to work constructed, or without plantings or constructions being destroyed (Article 447); or 2. Right to receive payment for value of the materials
Bad Faith	***Good Faith*** 1. Right to receive payment for value of materials plus damages; or 2. Absolute right of removal of the work constructed in any event plus damages
Good Faith Right to acquire the improvements without paying indemnity plus damages	***Bad Faith***
Bad Faith *(Same as though acted in good faith under Article 453)*	***Bad Faith*** *(Same as though acted in good faith under Article 453)*

- The land owner – builder/planter/sower is in good faith if he believes that the land belongs to him and he is ignorant of any defect or flaw in his title and he does not know that he has no right to use such materials. But when his good faith is coupled with negligence, he is liable for damages.
- The land owner – builder/planter/sower is in bad faith if he makes use of the land or materials which he knows belong to another.
- The owner of the materials is in good faith if he did not know that another was using his materials, or granting that he did know, if he informed the user of the ownership and made the necessary prohibition.
- The owner of the materials is in bad faith if he allows another to use the materials without informing him of the ownership thereof.
- Indemnification for damages shall comprehend not only the value of the loss suffered but also that of the profits which the obligee failed to realize.
- *Problem:* May the land owner – builder/planter/sower choose to return the materials instead of reimbursing their value even without the consent of the owner of the materials?

[⊕] *Art. 453.* If there was bad faith, not only on the part of the person who built, planted or sowed on the land of another, but also on the part of the owner of such land, the rights of one and the other shall be the same as though both had acted in good faith.

It is understood that there is bad faith on the part of the landowner whenever the act was done with his knowledge and without opposition on his part.

It depends:

1. If no damage has been made to the materials, or they have not been transformed as a result of the construction, they may be returned at the land owner's expense.
2. If damage has been made or there has been transformation, they cannot be returned anymore.

- *Problem:* Suppose the land owner – builder/planter/sower has already demolished or removed the plantings, constructions or works, is the owner of the materials still entitled to claim them?

  There are different opinions on this matter but the best rule seems to be that the OM is still entitled to get them since the law makes no distinction. Moreover, the land owner may insist on returning them for evidently there is no accession.

2nd case:
Builder/Planter/Sower builds, plants, or sows on another's land using his own materials.

Art. 448. **The owner of the land on which anything has been built, sown or planted in good faith, shall have the right to appropriate as his own the works, sowing or planting, after payment of the indemnity provided for in articles 546 and 548, or to oblige the one who built or planted to pay the price of the land, and the one who sowed, the proper rent. However, the builder or planter cannot be obliged to buy the land if its value is considerably more than that of the building or trees. In such case, he shall pay reasonable rent, if the owner of the land does not choose to appropriate the building or trees after proper indemnity. The parties shall agree upon the terms of the lease and in case of disagreement, the court shall fix the terms thereof.**

LAND OWNER	BUILDER/PLANTER/SOWER IS THE OWNER OF THE MATERIALS
Good Faith Has the option to: 1. To appropriate or acquire whatever has been built, planted or sown after paying indemnity which includes necessary expenses and useful expenses. If he wishes to appropriate the luxurious improvement, he must also pay the luxurious expenses. OR	***Good Faith*** Entitled to receive indemnity for necessary, useful and luxurious expenses (if the land owner appropriates the luxurious improvements) and has a right of retention over the land without having to pay for the rent until the land owner pays the indemnity Can remove useful improvements provided it does not cause any injury If the land owner does not appropriate the luxurious improvements, he can remove the same provided there is no injury to the principal thing

2. To obligate the builder/planter to pay the price of the land and the sower to pay the proper rent. *However,* the land owner cannot obligate the builder/ planter to buy if the value of land is more then the building or planting.	To purchase the land at fair market value when the value is not considerably more than the value of the builder or trees If the value of the land is considerably more than the value of the building or trees, he cannot be compelled to buy the land; in such case, he shall pay reasonable rent if the land owner does not choose option 1. If he cannot pay the purchase price of the land, the land owner can require him to remove what has been built or planted. If he cannot pay the rent, the land owner can eject him from the land.
Bad Faith To acquire whatever has been built, planter or sown by paying the indemnity plus damages	***Good Faith*** If land owner acquires whatever has been built, planted or sown, he must be indemnified of the value plus damages If land owner does not acquire, he can remove whatever has been built or planted whether or not it will cause any injury and is entitled to damages. If land owner does not acquire, he cannot insist on purchasing the land.
Good Faith Has the option: 1. To acquire whatever has been built, planter or sown without paying for indemnity except necessary expenses for the preservation of the land only and luxurious expenses if he decides to acquire the luxurious ornaments plus damages	***Bad Faith*** Loses what has been built, planted or sown. Entitled to reimbursement for necessary expenses for the preservation of the land but has no right of retention. Not entitled to reimbursement for useful expenses and cannot remove the useful improvements even if the removal will not cause any injury Not entitled to reimbursement for luxurious

	expenses except when the land owner acquires the luxurious improvements, the value of which is the one at the time the land owner enters possession (the depreciated value) Can remove luxurious improvements if it will not cause injury and LO does not want to acquire them.
2. To compel the builder/ planter to pay the price of the land and the sower to pay the proper rent plus damages	Must pay the price of the land or the rent plus damages
3. To demand the demolition or removal of the work at the expense of the builder/planter/ sower	Must remove luxurious improvements if it will not cause injury and LO does not want to acquire them.
Bad Faith	***Bad Faith***
Treat as if both are in good faith.[⊗]	

- In applying Article 448, the land owner, if in good faith, should be given the first option because he is the owner of the land especially if he is dealing with a person in bad faith. His right is older and by the principle of accession, he is entitled to the ownership of the accessory thing.
- The land owner is in good faith:
  1. If he is ignorant of the builder/planter/sower's act
  2. Even if he did know, he expressed his objection
  3. If he believed that the builder/planter/sower has a right to construct, plant or sow

  ➔ Otherwise, he shall be in bad faith.
- The builder/planter/sower is in good faith if he thought that the land was his.

LAND OWNER	**BUILDER/PLANTER/SOWER IS THE OWNER OF THE MATERIALS**
Good Faith	***Good Faith***
1. Land owner can acquire the improvement by paying; or *2.* Land owner can obligate builder/planter to buy the land or collect rent from sower. *However* land owner cannot	

[⊗] *Art. 453.* If there was bad faith, not only on the part of the person who built, planted or sowed on the land of another, but also on the part of the owner of such land, the rights of one and the other shall be the same as though both had acted in good faith.

It is understood that there is bad faith on the part of the landowner whenever the act was done with his knowledge and without opposition on his part.

obligate the builder/planter to buy if the value of land is more then the building or planting.	
Bad Faith	***Good Faith*** 1. Remove materials plus damages; or 2. Demand payment for materials plus damages
Good Faith *Options* 1. Appropriate works without indemnity plus damages; or 2. Demolish plus damages; or 3. Compel BPS to buy land regardless of the value of the land and the BP, plus damages *Obligations* 1. Land owner must pay for necessary expenses for preservation. 2. Land owner must pay BPS expenses under Article 443[℘] if applicable	***Bad Faith***
Bad Faith *(Same as though acted in good faith under Article 453)*	***Bad Faith*** *(Same as though acted in good faith under Article 453)*

3rd case:
Builder/Planter/Sower builds, plants, or sows on another's land with materials owned by third person

LAND OWNER	BUILDER/PLANTER/SOWER	OWNER OF THE MATERIALS
Good Faith Has the option 1. To acquire whatever has been built, planted or sown provided he pays the indemnity (which includes the value of what has been built, planted or sown plus value of the materials)	***Good Faith*** To receive indemnity from the land owner and has a right of retention over the land until the land owner pays	***Good Faith*** To receive indemnity from the builder/planter/sower who is principally/ primarily liable. If the builder/ planter/sower is insolvent, then demand indemnity from land owner who is subsidiarily liable. But has no right of retention against the builder/planter/sower and more so with the land

[℘] *Art. 443.* He who receives the fruits has the obligation to pay the expenses made by a third person in their production, gathering, and preservation.

2. To oblige the builder/ planter/sower to buy the land unless the value thereof is considerably more than the value of the building or trees	To buy the land	owner To receive indemnity from the builder/planter/sower only. The land owner has no subsidiary liability. But has right of retention. OR To remove materials if there will be no injury on the building or trees AND Has a material rent lien against the builder/planter/ sower for the payment of the value of the materials
Good Faith Has the option 1. To acquire whatever has been built, planted or sown provided he pays the indemnity (which includes the value of what has been built, planted or sown plus value of the materials) 2. To oblige the builder/ planter/sower to buy the land unless the value thereof is considerably more than the value of the building or trees	***Good Faith*** To receive indemnity from the land owner and has a right of retention over the land until the land owner pays To buy the land	***Bad Faith*** Whatever is the choice of the land owner 1. He loses the materials in favor of the builder/planter/ sower AND 2. He has no right to receive indemnity from the BPS
Good Faith Has the option 1. To acquire whatever has been built, planted or sown without paying indemnity except necessary expenses, if he should acquire luxurious improvements	***Bad Faith*** Loses what has been built, planted or sown but he is entitled to be indemnified for necessary expenses and luxurious expenses should the land owner acquire luxurious ornaments Has no right of removal even if it will not cause any injury	***Bad Faith*** *(Since both builder/planter/ sower and the owner of the materials are in bad faith, treat them as if both in good faith)* Whatever is the choice of the land owner, he has the right to receive indemnity for the value of the materials from the builder/

2. To oblige the builder/ planter to pay the price of the land and the sower to pay the proper rent 3. To demolish or remove what has been built or planted	To pay the price of the land Cannot do anything about it so he must remove	planter/sower only. The land owner has no subsidiary liability whatsoever. If land owner chooses option 1, he has no right to remove materials even if there will be no injury. If land owner chooses option 2, he has the right of removal provided it does not cause any injury to the property to which it is attached. Has liability for damages to whoever ends up owning the building for the inferior quality of materials.
Bad Faith To acquire what has been built, planted or sown by paying the indemnity plus damages to builder/planter/ sower	***Good Faith*** To receive indemnity from land owner plus damages Cannot insist on purchasing the land	***Good Faith*** To receive indemnity for value of materials from builder/planter/sower principally or from land owner in case the builder/ planter/sower is insolvent (subsidiary liability)
Bad Faith To acquire what has been built, planted or sown by paying the indemnity plus damages to builder/planter/ sower	***Good Faith*** To receive indemnity from land owner plus damages Cannot insist on purchasing the land	***Bad Faith*** No right to receive indemnity for value of materials from builder/ planter/sower nor from land owner who ends up owning the building or trees.

LAND OWNER	BUILDER/PLANTER/SOWER	OWNER OF THE MATERIALS
Good Faith 1. If the owner of the materials does not remove the materials and the builder/planter/ sower pays, the land owner can acquire the improvement by paying the builder/planter/ sower 2. If the owner of the	***Good Faith***	***Good Faith*** 1. Limited right of removal if there would be no injury to work constructed, or without plantings or constructions being destroyed (Article 447); or 2. Right to receive payment for value

materials does not remove the materials, and the builder/planter/ sower pays, the land owner can obligate the builder/planter to buy the land or collect rent from sower. However the land owner cannot obligate the builder/planter to buy if the value of land is more then the building or planting. 3. The land owner is subsidiarily liable to the owner of the materials.		of the materials from builder/planter/ sower. Land owner is subsidiarily liable.
Good Faith 1. Land owner can acquire the improvement by paying; or 2. Land owner can obligate builder/planter to buy the land or collect rent from sower. However land owner cannot obligate the builder/ planter to buy if the value of land is more then the building or planting. 3. LO not subsidiary liable for cost of materials	***Good Faith*** Keep what was built, planted or sown without indemnity to the owner of the materials plus damages from the owner of the materials	***Bad Faith*** Lose the materials to the builder/planter/sower without right to indemnity
Good Faith *Options* 1. Appropriate works without indemnity plus damages; or 2. Demolish plus damages; or 3. Compel builder/planter to buy land regardless of the value of the land and the sower to pay rent, plus damages *Obligations*	***Bad Faith***	***Bad Faith*** Right to receive payment for value of the materials

1. Land owner must pay for necessary expenses for preservation. 2. Land owner must pay builder/planter/sower expenses under Article 443* if applicable		
Bad Faith *(Same as though acted in good faith under Article 453[ℵ])*	***Bad Faith*** *(Same as though acted in good faith under Article 453)*	***Bad Faith*** *(Same as though acted in good faith under Article 453)*
Bad Faith Subsidiarily liable to the owner of the materials for value of materials	***Good Faith*** 1. Remove improvements plus damages against the land owner; or 2. Demand payment for improvement plus damages	***Good Faith*** 1. Remove materials if possible without injury 2. Collect value of materials from builder/planter/ sower. Land owner is subsidiarily liable
Bad Faith 1. If the owner of the materials does not remove the materials and the builder/planter/sower pays, the land owner can acquire the improvement by paying the builder/planter/sower 2. If the owner of the materials does not remove the materials, and the builder/planter/sower pays, the land owner can obligate the builder/planter to buy the land or collect rent from the sower. However, the land	***Bad Faith***	***Good Faith*** 1. Right to receive payment for value of materials from the builder/planter/sower and the land owner is subsidiarily liable plus damages; or 2. Absolute right of removal of the work constructed in any event plus damages

* *Art. 443.* He who receives the fruits has the obligation to pay the expenses made by a third person in their production, gathering, and preservation.

ℵ *Art. 453.* If there was bad faith, not only on the part of the person who built, planted or sowed on the land of another, but also on the part of the owner of such land, the rights of one and the other shall be the same as though both had acted in good faith.

It is understood that there is bad faith on the part of the landowner whenever the act was done with his knowledge and without opposition on his part.

owner cannot obligate the BP to buy if the value of land is more then the building or planting. 3. The land owner is subsidiarily liable to the owner of the materials.		
Good Faith 1. If the owner of the materials does not remove pays, the land owner can acquire the improvement by paying the builder/ planter/sower. 2. If the owner of the materials does not remove the materials, and the builder, planter or sower pays, the land owner can obligate the builder/planter to buy the land or collect rent from sower. However the land owner cannot obligate the builder/planter to buy if the value of land is more then the building or planting. 3. Land owner is subsidiarily liable to the owner of the materials.	***Bad Faith***	***Good Faith*** 1. Remove materials if possible without injury plus damages against builder/ planter/sower. 2. Collect value of materials from builder/planter/sower plus damages against the builder/planter/sower. The land owner is subsidiarily liable for value of the materials
Bad Faith	***Good Faith*** 1. Right to acquire the materials without paying indemnity plus damages 2. Remove improvement plus damages; or 3. Demand payment for improvement plus damages	***Bad Faith*** Loses right to materials without right to indemnity

- If the option is with the land owner (*i.e.,* to buy the improvement or sell the land), the land owner cannot refuse to exercise that option. The court may compel the land owner to exercise such option.

- If the land owner opts to buy the improvements from the builder/planter/sower, the land owner must pay the value of the builder/planter/sower. Builder/planter/sower has the right of retention until the land owner pays.
- If the land owner chooses to buy the improvement, the builder/planter/sower can sue to require the land owner to pay him. The obligation has now been converted to a monetary obligation.
- There is no transfer of ownership of the improvements until the land owner pays the builder/planter/sower.
- In *Ortiz vs. Kayanan* the SC said, "All the fruits that the builder/planter/sower may receive from the time that he is summoned, or when he answers the complaint, must be delivered or paid by him to the owner or lawful possessor. Such is the time when his good faith has ceased. While the builder/planter/sower retains the property until he is reimbursed for necessary and useful expenses, all the fruits the BPS receives from the moment his good faith ceases must be deferred or paid by him to the land owner. The builder/planter/sower may, however, secure the reimbursement of his expenses by using the fruits to pay it off (deduct the value of the fruits he receives from the time his good faith ceases from the reimbursement due him).
- Professor Balane doesn't agree with the ruling in *Ortiz vs. Kayanan*. It seems inconsistent to say that the builder/planter/sower retains ownership of the improvement until he is paid yet the fruits derived from such improvement should go to the land owner.
- If the land owner chooses to sell the land to the builder/planter, the builder/planter will have to pay the value of the land based on the prevailing market value at the time of payment.
- If the land owner chooses to sell the land and the builder/planter is unable or unwilling to pay, the Land owner has 3 options:
  1. Assume a lessor-lessee relationship; or
  2. Land owner can have the improvements removed and in the meantime demand rental; or
  3. Land owner can have the land and the improvements sold at a public auction; the proceeds of which shall be applied preferentially to the value of the land.
- The land owner cannot compel the sower to buy the land. Land owner can either buy the improvement or demand rental.
- If the value of the land is considerably greater than the value of the improvement, then the land owner can only choose between buying the improvement or demanding rental from the builder/planter/sower.

b. ***Natural*** (Articles 457-465)

i. *Alluvion or accretion* (Article 457)

Art. 457. **To the owners of lands adjoining the banks of rivers belong the accretion which they gradually receive from the effects of the current of the waters.**

- Article 457 applies only to lands adjoining banks of rivers. It does not apply by analogy to lands adjoining all bodies of

water. However, Article 84 of the Law of Waters applies the same principle to lakes, streams and creeks.

- The owners of lands adjoining the banks of rivers (riparian land) shall own the accretion which they gradually receive.
- Accretion denotes the act or process by which a riparian land gradually and imperceptively receives addition made by the water to which the land is contiguous.
- Alluvion refers to the deposit of soil.
- Rationale for this benefit: to compensate the owners for the losses which they may suffer by erosion due to the destructive forces of the water *(Ferrer vs. Bautista).*
- Requisites of Accretion
  1. The accumulation of soil is gradual and imperceptible.
  2. It is the result of the action of the water of the river.
  3. Deposits made by human intervention are excluded.
  4. The land where the accretion takes place is adjacent to the bank of the river.
- Accretion operates *ipso jure*. However, the additional area is not covered by a Torrens title since it is not described in the title. The riparian owner must register the additional area.

Art. 458. **The owners of estates adjoining ponds or lagoons do not acquire the land left dry by the natural decrease of the waters, or lose that inundated by them in extraordinary floods.**

- Article 458 is does not talk of accession. When a body of water dries up, the owner of the adjoining estate does not own the dried up land. There is no alluvion since soil was not deposited in the adjoining estate. Similarly, if the land of the adjoining owner should be flooded, such land does not become part of the public dominion if the flood will subside.

ii. *Avulsion*

Art. 459. **Whenever the current of a river, creek or torrent segregates from an estate on its bank a known portion of land and transfers it to another estate, the owner of the land to which the segregated portion belonged retains the ownership of it, provided that he removes the same within two years.**

- Avulsion is the removal of a considerable quantity of soil from 1 estate and its annexation to another by the perceptible action of water.
- In alluvium, the accumulation of the soil is gradual. The soil belongs to the owner of the property where the soil attaches. The soil cannot be identified.

- In avulsion, the accumulation of soil is sudden and abrupt. The soil can be identified. The soil belongs to the owner of the property from where the soil was taken. However, the owner has to 2 years to get the soil. If he does not get the soil within 2 years, the owner of the property where the soil currently is shall own the soil.
- Avulsion is a case of delayed accession *(JBL Reyes)*.

Art. 460. **Trees uprooted and carried away by the current of the waters belong to the owner of the land upon which they may be cast, if the owners do not claim them within six months. If such owners claim them, they shall pay the expenses incurred in gathering them or putting them in a safe place.**

NOTE: In the case of uprooted trees there is no accession.

- The owner of the land from which the trees came from should claim the tree within 6 months. All that Article 460 requires is claim and not removing. Although Art. 460 is silent, the owner of the tree should remove the trees within a reasonable time. If he does not claim within 6 months, the land owner where the tree is shall become the owner.

iii. *Change of river course*

Art. 461. **River beds which are abandoned through the natural change in the course of the waters *ipso facto* belong to the owners whose lands are occupied by the new course in proportion to the area lost. However, the owners of the lands adjoining the old bed shall have the right to acquire the same by paying the value thereof, which value shall not exceed the value of the area occupied by the new bed.**

Art. 462. **Whenever a river, changing its course by natural causes, opens a new bed through a private estate, this bed shall become of public dominion.**

Art. 463. **Whenever the current of a river divides itself into branches, leaving a piece of land or part thereof isolated, the owner of the land retains his ownership. He also retains it if a portion of land is separated from the estate by the current.**

- Requisites
  1. The change in the river course must be sudden
  2. The change must be permanent
  3. The change must natural

4. The river bed must be abandoned by the government
    - According to commentators, this requisite has been repealed by Article 461. However, the Water Code provides that the government can only return the river to the old bed if the government sees fit. This is possible especially if there are already existing hydro-electric plants and irrigation projects.
5. The river must continue to exist

- Has Article 461 been superseded by §58* of the Water Code?

  §58 provides that the government has the option to let the change of river course remain as is or to bring it back. It also provides that the owners of affected lands (those who lost land) may undertake to return the river to the old bed provided they get a permit from the government.

  §58 does not contain the 2nd sentence of Article 461. Is the 2nd sentence repealed?

  According to Professor Balane, no it is not since they are not inconsistent. Thus, the adjacent owners of the old bed can buy the old river bed.
- The old river bed according to Article 461 and § 58 shall be acquired by the people who lost their land in proportion to their land lost. This is fair but it is complicated. First, how do you compute the proportions? Second, what if the old river bed is far away?
- The new river bed is a case of *de facto* eminent domain.
- There is no accession under Article 463. The river merely divides itself into branches.

iv. *Formation of island*

Art. 464. **Islands which may be formed on the seas within the jurisdiction of the Philippines, on lakes, and on navigable or floatable rivers belong to the State.**

* *Article 58*. When a river or stream suddenly changes its course to traverse private lands, the owners of the affected lands may not compel the government to restore the river to its former be; nor can they restrain the government from taking steps to revert the river or stream to its former course. The owners of the lands thus affected are not entitled to compensation for any damage sustained thereby. However, the former owners of the new bed shall be the owners of the abandoned bed in proportion to the area lost by each.

The owners of the affected lands may undertake to return the river or stream to its old bed at their own expense; *Provided,* That a permit therefor is secured from the Secretary of Public Works, Transportation and Communication and works pertaining thereto are commenced within two years from the change in the course of the river or stream.

Art. 465. **Islands which through successive accumulation of alluvial deposits are formed in non-navigable and non-floatable rivers, belong to the owners of the margins or banks nearest to each of them, or to the owners of both margins if the island is in the middle of the river, in which case it shall be divided longitudinally in halves. If a single island thus formed be more distant from one margin than from the other, the owner of the nearer margin shall be the sole owner thereof.**

- Under Article 464, there is no accession. All belong to the state – islands which are formed on Philippine seas, on lakes and on navigable rivers. The SC however has not said what kind of property such the islands were – patrimonial or of the public dominion.
- Under Article 465, if the island is formed in a non-navigable river, there is accession. If the island is formed in a navigable river, then it belongs to the state.
- §59[♣] of the Water Code defines what is navigable.

2. **Movables**

a. ***Adjunction or conjunction*** (Articles 466-471)

Art. 466. **Whenever two movable things belonging to different owners are, without bad faith, united in such a way that they form a single object, the owner of the principal thing acquires the accessory, indemnifying the former owner thereof for its value.**

Art. 467. **The principal thing, as between two things incorporated, is deemed to be that to which the other has been united as an ornament, or for its use or perfection.**

Art. 468. **If it cannot be determined by the rule given in the preceding article which of the two things incorporated is the principal one, the thing of the greater value shall be so considered, and as between two things of equal value, that of the greater volume.**

In painting and sculpture, writings, printed matter, engraving and lithographs, the board, metal, stone, canvas, paper or parchment shall be deemed the accessory thing.

Art. 469. **Whenever the things united can be separated without injury, their respective owners may demand their separation.**

[♣] *Article 59.* Rivers, lakes and lagoons may, upon the recommendation of the Philippine Coast Guard, be declared navigable either in whole or in part.

Nevertheless, in case the thing united for the use, embellishment or perfection of the other, is much more precious than the principal thing, the owner of the former may demand its separation, even though the thing to which it has been incorporated may suffer some injury.

Art. 470. **Whenever the owner of the accessory thing has made the incorporation in bad faith, he shall lose the thing incorporated and shall have the obligation to indemnify the owner of the principal thing for the damages he may have suffered.**

If the one who has acted in bad faith is the owner of the principal thing, the owner of the accessory thing shall have a right to choose between the former paying him its value or that the thing belonging to him be separated, even though for this purpose it be necessary to destroy the principal thing; and in both cases, furthermore, there shall be indemnity for damages.

If either one of the owners has made the incorporation with the knowledge and without the objection of the other, their respective rights shall be determined as though both acted in good faith.

Art. 471. **Whenever the owner of the material employed without his consent has a right to an indemnity, he may demand that this consist in the delivery of a thing equal in kind and value, and in all other respects, to that employed, or else in the price thereof, according to expert appraisal.**

- There is adjunction or conjunction when 2 movables are attached to each other such that separation is impossible without injury. For example, the paint of B is used on the canvass of C.
- **Basic Rule:** If separation is possible without injury, then should separate. If this is not possible, then adjunction or conjunction.
- There are 2 parties here: the owner of the principal object and the owner of the accessory.
- 4 Situations:
  1. Both owner of the principal object and the owner of the accessory are in good faith
     - The owner of the principal object acquires the thing but with the duty to indemnify the owner of the accessory. (Article 466). However, the owner of the accessory has a right to demand separation even though there may be damage if the accessory is more valuable.
  2. The owner of the principal object is in good faith and the owner of the accessory is in bad faith.

- The owner of the accessory loses the thing plus is liable for damages (Article 470)

3. The owner of the principal object is in bad faith and the owner of the accessory is in good faith.
   - AO has 2 options:
     a. Demand value of the accessory plus damages; or
     b. Demand separation even if the principal will be destroyed plus damages (Article 470, ¶2)
4. Owner of the principal object and the owner of the accessory both in bad faith
   - Treat as if both are in good faith (Article 453 by analogy).
   - Rules to Determine Which is the Principal and Which is the Accessory
     a. Primary rule – importance or purpose
        - For example, the watch is the principal (to tell time) while the bracelet is the accessory (to wear).
     b. Secondary rule - value
     c. Tertiary rule – volume or mass
     d. Fourth rule – merits, utility, value (combination)

     NOTE: One normally does not go beyond the 2nd test.

- Kinds of Adjunction of Conjunction
  1. Engraftment
  2. Attachment
     a. ferruminatio
     b. plumbatura
  3. Weaving
  4. Painting
  5. Writing

b. ***Commixtion or Confusion*** (Articles 472, 433)

Art. 472. **If by the will of their owners two things of the same or different kinds are mixed, or if the mixture occurs by chance, and in the latter case the things are not separable without injury, each owner shall acquire a right proportional to the part belonging to him, bearing in mind the value of the things mixed or confused.**

Art. 473. **If by the will of only one owner, but in good faith, two things of the same or different kinds are mixed or**

confused, the rights of the owners shall be determined by the provisions of the preceding article.

If the one who caused the mixture or confusion acted in bad faith, he shall lose the thing belonging to him thus mixed or confused, besides being obliged to pay indemnity for the damages caused to the owner of the other thing with which his own was mixed.

- Commixtion refers to the mixture of solids (*i.e.* the mixture of rice of different varieties). Confusion refers to the mixture of liquids (*i.e.* mixture of different gasoline)
- Rules:
  1. If caused by the will of the parties or by chance or by the will of 1 party but is in good faith, then there will be a co-ownership based on proportional value (not volume).
  2. If caused by the will of 1 party in bad faith, then the party in bad faith loses the entire thing.
- Some commentators say that commixtion or confusion is not a true case of accession since there is no principal or accessory. Also, there is a co-ownership. In accession, everything goes to 1 party.

c. ***Specification*** (Article 474)

Art. 474. **One who in good faith employs the material of another in whole or in part in order to make a thing of a different kind, shall appropriate the thing thus transformed as his own, indemnifying the owner of the material for its value.**

If the material is more precious than the transformed thing or is of more value, its owner may, at his option, appropriate the new thing to himself, after first paying indemnity for the value of the work, or demand indemnity for the material.

If in the making of the thing bad faith intervened, the owner of the material shall have the right to appropriate the work to himself without paying anything to the maker, or to demand of the latter that he indemnify him for the value of the material and the damages he may have suffered. However, the owner of the material cannot appropriate the work in case the value of the latter, for artistic or scientific reasons, is considerably more than that of the material.

- Specification is the giving of a new form to another person's material through the application of labor.
- Here there are 2 parties: the material owner and the maker.
- 4 Situations
  1. Both material owner and maker are in good faith

- Maker acquires the thing with the duty to indemnify the material owner (Article 474, ¶1).
- However, if the material is much more precious then the material owner has 2 options:
  a. To appropriate the thing and pay the maker; or
  b. To sell the material to maker

2. Maker is in bad faith and the material owner is in good faith
   - Material owner has 2 options (Article 470):
     a. Appropriate the thing without indemnity to maker plus damages; or
        - This option is not available if the value of the work is considerably more than the material.
     b. Sell the material to maker plus damages
3. Maker is in good faith and the material owner is in bad faith
   - Maker appropriates without the duty to pay the material owner plus damages (Article 470 by analogy).
4. Maker and the material owner are both in bad faith
   - Treat both in good faith (Article 453 by analogy).

II. Co-Ownership

- Co-ownership is the right of common dominion which 2 or more persons have in a spiritual (*a.k.a.* ideal or aliquot) part of a thing which is not physically divided.
- In co-ownership, there is only 1 ownership, but ii is shared ownership.
- Each co-owner owns a fractional or an ideal part of the object but they cannot point to a specific part of the object.
- Co-ownership is not encouraged since it is very unwieldy. It is very easy to have disagreements between co-owners.

A. Sources of Co-Ownership
   1. By law
      - Law may mandate co-ownership (*i.e.,* party wall)
   2. By contract
   3. By chance
      - Examples are commixtion or confusion
   4. By occupation
      - In *Punzalan vs. Boon Liat,* the SC said that the fishermen are co-owners of the whale they caught.
   5. By succession
      - Compulsory, testamentary, intestate

B. Characteristics of Co-Ownership
   1. More than 1 owner

2. 1 physical unit or whole divided into ideal or fractional shares
3. Each fractional share is definite in amount but not physically segregated from the rest
4. As to the physical unit, each co-owner must respect the other co-owners in its common use, enjoyment and preservation (Article 483)
5. As to the aliquot share, each co-owner holds absolute control (Article 493)
6. No juridical personality of its own

C. Co-Ownership Distinguished from Partnership

CO-OWNERSHIP	PARTNERSHIP
Co-ownership may arise from other causes (*i.e.,* will or law)	Partnerships are created only by agreement or contract
The purpose of co-ownership is for collective enjoyment and to maintain the unity and preservation of the thing owned in common	The purpose of partnership is profit
In co-ownership, there is no juridical personality distinct from the members	In partnership, there is a juridical personality distinct from the members
A stipulation that a co-ownership be created for a period of more than 10 years is void	A partnership may be created for a period of more than 10 years
In co-ownership, a special authority is needed for representation among co-owners	In partnership, there is generally mutual representation by the partners
In a co-ownership there is freedom of disposition of a co-owner's share	In a partnership, a partner cannot transfer his rights to 3rd persons without the consent of the others
Death or incapacity of 1 of the co-owners have no effect on the existence of a co-ownership	The partnership can be extinguished by the death or incapacity of 1 of the partners
The distribution of profits is invariable in co-ownership by virtue of Article 485	The distribution of profits is subject to stipulation in partnerships

Art. 485. **The share of the co-owners, in the benefits as well as in the charges, shall be proportional to their respective interests. Any stipulation in a contract to the contrary shall be void.**

The portions belonging to the co-owners in the co-ownership shall be presumed equal, unless the contrary is proved.

- A co-owners share in the fruits and expenses is always dependent on the co-owners interest. Any agreement to the contrary is void.
- A makes a will. A gives farm to Jason, Joji and Ron in equal shares. However, the will states that the sharing in fruits and expenses in not equal. Jason gets 80%, Joji gets 15%, and Ron 5%. Is this valid? This is a debatable point according to Professor Balane. Some commentators say it is valid since Art. 485 refers to contractual agreements. Some commentators argue that it is not valid.

Although Art. 485 refers to contractual agreements, it should extend to other sources of co-ownership since Art. 485 is an expression of public policy.

Art. 486. **Each co-owner may use the thing owned in common, provided he does so in accordance with the purpose for which it is intended and in such a way as not to injure the interest of the co-ownership or prevent the other co-owners from using it according to their rights. The purpose of the co-ownership may be changed by agreement, express or implied.**

- Co-owners must respect the rights of the other co-owners.
- In *Pardell vs. Bartolome,* 2 sisters owned a 2 story building. The first floor was by rented out. The second floor was being occupied by 1 sister. The other sister was in Spain. The SC said that the sister occupying the second floor need not pay rent. The fact that she used the whole second floor is irrelevant. She did not prejudice the rights of her sister in Spain precisely because she was in Spain. But with respect to the first floor which was occupied by the husband of one of the sister's, the husband should pay his sister-in-law ½ of the rent for such portion. Otherwise, his sister-in-law would be prejudiced.
- As a co-owner, one can use all of the physical unit. For example, a co-owner uses the entire car, not just a portion of the car. A co-owner does not have to pay rent for the use of the thing co-owned.

Art. 487. **Any one of the co-owners may bring an action in ejectment.**

- Any one of the co-owners may bring an action in ejectment.
- A, B, C, D, and E are co-owners of a lot which is being squatted. A files an ejectment suit. A wins. All the other co-owners benefit. Do the other co-owners share in the expense? Yes, one can argue that it's a necessary expense.
- A, B, C, D, and E are co-owners of a lot which is being squatted. A files an ejectment suit. A loses. May the other sue for ejectment? No, it is barred by prior judgment.
- A,B, and C bought a book on credit. They are co-owners of a book. In an action by the creditor against the co-owners, the creditor must sue all. Article 487 contemplates a situation when it is the co-owner who files the suit not when they are the defendants.
- Article 487 is a case where 1 co-owner can bind the other. The other instance is Article 489.

Art. 488. **Each co-owner shall have a right to compel the other co-owners to contribute to the expenses of preservation of the thing or right owned in common and to the taxes. Any one of the latter may exempt himself from this obligation by renouncing so much of his undivided interest as may be equivalent to his share of the expenses and taxes. No such waiver shall be made if it is prejudicial to the co-ownership.**

- Expenses for the preservation of the thing owned in common as well as taxes must be shouldered by every co-owner in proportion to their interest.
- A co-owner has 2 options:

1. Pay for the necessary expenses or taxes
2. Can forfeit so much of his share which is equivalent to his interest to the co-owner

who paid for the necessary expenses or taxes

- The co-owner who made the advance has a right of reimbursement. The advancing co-owner only has the right to require payment. He may not demand the share of the co-owner.

Art. 489. **Repairs for preservation may be made at the will of one of the co-owners, but he must, if practicable, first notify his co-owners of the necessity for such repairs. Expenses to improve or embellish the thing shall be decided upon by a majority as determined in article 492.**

- Repairs for preservation may be made at the will of 1 of the co-owners.
- As much as possible, notice should be given to the other co-owners. The lack of notice only gives rise to the presumption that the repairs were not necessary. However, this can be proven otherwise.
- Article 489 is a case where 1 co-owner can bind the other. The other instance is Article 487.
- Useful or ornamental expenses need a majority. Majority is computed not by counting heads but by majority of the controlling interest in the co-ownership.

Art. 490. **Whenever the different stories of a house belong to different owners, if the titles of ownership do not specify the terms under which they should contribute to the necessary expenses and there exists no agreement on the subject, the following rules shall be observed:**

(1) The main and party walls, the roof and the other things used in common, shall be preserved at the expense of all the owners in proportion to the value of the story belonging to each;

(2) Each owner shall bear the cost of maintaining the floor of his story; the floor of the entrance, front door, common yard and sanitary works common to all, shall be maintained at the expense of all the owners pro rata;

(3) The stairs from the entrance to the first story shall be maintained at the expense of all the owners pro rata, with the exception of the owner of the ground floor; the stairs from the first to the second story shall be preserved at the expense of all, except the owner of the ground floor and the owner of the first story; and so on successively.

- This hardly exists anymore.
- Condominium Law (RA 4726 as amended by R.A. No. 7899)
  - Most condominiums are corporations. If the condominium is a co-ownership, then the provisions of the Civil Code are relevant.
  - Important Sections
    1. §2 - Definition

Sec. 2. **A Condominium is an interest in real property consisting of a separate interests in a unit in a residential, industrial or commercial building or in an industrial estate and an undivided interests in common, directly and indirectly, in the land, or the appurtenant interest of their respective units in the common areas.**

The real right in condominium may be ownership or any interest in real property recognized by law on property in the Civil Code and other pertinent laws.

2. §4 – Enabling or master deed (contents and necessary requirements) (amended)

Sec. 4. **The provisions of this Act shall apply to property divided or to be divided into condominium only if there shall be recorded in the Register of Deeds of the province or city in which the property lies, and duly annotated in the corresponding certificate of title of the land, if the latter had been patented or registered under either the Land Registration or Cadastral Acts, an enabling or master deed which shall contain, among others, the following:**

- **a) Description of the land on which the building or buildings and improvements are to be located;**
- **b) Description of the building or buildings, stating the number of stories and basement, the number of units and their accessories, if any;**
- **c) Description of the common areas and facilities;**
- **d) A statement of the exact nature of the interest acquired or to be acquired by the purchased in the separate units and the common areas of the condominium projects. Where title to or to appurtenant interests in the common areas is to be held by a condominium corporation, a statement to this effect shall be included;**
- **e) Statement of the purposes for which the building or buildings and each of the units are intended or restricted as to use;**
- **f) A certificate of the registered owner of the property, if he is other than those executing the master deed, as well as of all registered holders of any lien or encumbrances on the property, that they consent to the registration of the deed;**
- **g) The following plans shall be appended to the deed as integral parts thereof:**
  - **1. A survey plan of the land included in the project, unless a survey plan of the same property had previously been filed in said office.**
  - **2. A diagrammatic floor plan of the building or buildings each unit, its relative location and approximate dimensions.**
- **h) Any reasonable restriction not contrary to law, morals, or public policy regarding the right of any condominium owner to alienate or dispose off his condominium.**

The enabling or master deed may be amended or revoked upon registration of an instrument executed by a simple majority of the registered owners of the property: *Provided,* That in a condominium project exclusively for either residential or commercial use, simple majority shall be on a per unit of ownership basis and that in the case of mixed use, simple majority shall be on a floor area of ownership basis: *Provided, further,* That prior notifications to all registered owners are done: and *Provided, finally,* That any amendment or revocation already decided by a simple majority of all registered owners shall

be submitted to the Housing and Land Use Regulatory Board and the city/municipal engineer for approval before it can be registered. Until registration of a revocation, the provisions of this Act shall continue to apply to such property. *(As amended by R.A. No. 7899)*

3. §5 – What transfer of ownership includes (includes citizenship requirements)

Sec. 5. **Any transfer or conveyance of a unit or an apartment, office or store or other space therein, shall include the transfer or conveyance of the undivided interest in the common areas or in a proper case, the membership or share holdings in the condominium corporation: *Provided, however,* That where the common areas in the condominium project are held by the owners of separate units as co-owners hereof, no condominium unit therein shall be conveyed or transferred to persons other than Filipino citizens or corporation at least 60% of the capital stock of which belong to Filipino citizens, except in cases of hereditary succession. Where the common areas in a condominium project are held by a corporation, no transfer or conveyance of a unit shall be valid if the concomitant transfer of the appurtenant membership or stockholding in the corporation will cause the alien interest in such corporation to exceed the limits imposed by existing laws.**

4. §6 – Incidents of condominium grant

Sec. 6. **Unless otherwise expressly provided in the enabling or master deed or the declaration of restrictions, the incidents of a condominium grant are as follows:**

a) The boundary of the unit granted are the interior surfaces of the perimeter walls, floors, ceiling, windows and doors thereof: *Provided,* that in the case of an industrial estate condominium projects, wherein whole buildings, plants or factories may be considered as unit defined under section 3 (b) hereof, the boundary of a unit shall include the outer surfaces of the perimeter walls of said buildings, plants or factories. The following are not part of the unit: bearing walls, columns, floors, roofs, foundations, and other common structural elements of the buildings; lobbies, stairways, hall ways and other areas of common use, elevator equipment and shafts, central heating, central refrigeration and central air conditioning equipment, reservoir, tanks, pumps and other central services and facilities, pipes, ducts, flues, chutes, conduits wires and other utility installations, wherever located, except the outlets thereof when located within the unit.

b) There shall pass with the unit, as an appurtenant thereof, an exclusive casement for the use of the air space encompasses by the boundaries of the unit as it exists at any particular time and as the unit may lawfully be altered or reconstructed from time to time. Such easement shall be automatically terminated in any air space upon destruction of the units as to render it untenantable.

c) Unless otherwise provided, the common areas are held in common by the holders of units, in equal share one for each unit.

d) A non-exclusive easement for ingress, egress and support through the common areas in appurtenant to each unit and the common areas are subject to such easement.

e) Each condominium owner shall have the exclusive right to paint, repaint, tile, wax, paper or otherwise refinish and decorate the inner surfaces of the walls, ceilings, floors, windows and doors hounding his own unit: provided, that in the case of an industrial estate condominium unit, such right may be exercised over the external surfaces of the said unit.

f) Each condominium owner shall have the exclusive right to mortgage, pledge or encumber his condominium and to have the same appraised independently of the other condominium owner.

g) Each condominium owner has also the absolute right to sell or dispose of his condominium unless the master deed contains a requirements that the property be first offered to the condominium owners within a reasonable period of time before the same is offered to outside parties;

5. §8 – When partition is allowed

Sec. 8. **Where several persons own condominium in a condominium project, an action may be brought by one or more such person for partition thereof, by sale of the entire project, as if the owners of all the condominium in such project were co-owners of the entire project in the same proportion as their interests in the common areas: *Provided, however*, that a partition shall be made only upon a showing:**

a) That three years after damage or destruction to the project which renders a material part thereof unfit for its use prior thereto, the project had not been rebuilt or repaired substantially to its state prior to its damage or destruction; or

b) That damage or destruction to the project has rendered one half or more of the units therein untenantable and that condominium owners holding in aggregate more than 30 percent interest in the common areas are opposed to the repair or restoration of the projects; or

c) That project has been in existence in excess of 50 years, that it is obsolete and uneconomical, and that condominium owners holding in aggregate more than 50 percent interest in the common areas are opposed to repair or restoration or remodeling or modernizing of the project; or

d) That the project or a material part thereof has been condemned or expropriated and that the project is no longer viable, or that the condominium owners holding in aggregate more than 70 percent interest in the common areas are opposed to the continuation of the condominium regime after expropriation or condemnation of a material proportion thereof; or

e) That the condition for such partition by sale set forth in the declaration of restrictions duly registered in accordance with the terms of this Act, have been met.

6. §9 – Declaration of restrictions

Sec. 9. **The owner of a project shall, prior to the conveyance of any condominium therein, register a declaration or restrictions, relating to such project, which restrictions shall ensure to a bind all condominium owners in the project, such liens, unless otherwise provided, may be enforced by any condominium owner in the project or by the management body of such project.**

The Register of Deeds shall enter and annotate the declaration of restrictions, upon the Certificate of Title covering the land included within the proper, if the land is patented or registered under the Land Registration or Cadastral Acts.

Such declaration of restrictions, among the other things, may also provide:

a) As to management body

1. **For the power thereof, including power to enforce the provisions of the declarations of restrictions;**
2. **For the maintenance of insurance policies insuring condominium owners against loss by the, casualty, liability, workmen's compensation and other insurable risks and for bonding of the members of any management body;**
3. **Provisions for maintenance, utility, gardening and other services benefiting the common areas for the operations of the building, and legal, accounting and other professional and technical services;**
4. **For purchase of materials, supplies and the like needed by the common areas;**
5. **For payment of taxes and special assessment which would be a lien upon the entire project or common areas, for discharge of my encumbrance levied against the entire project of the common areas;**
6. **The manner for delegation of its powers;**
7. **For reconstruction of any portion or portions of any damage to or destruction of the project;**
8. **For entry by its officers and agents into any unit when necessary in connection with the maintenance or construction for which such body is responsible;**
9. **For a power of attorney to the management body to sell the entire project for the benefit of all of the owners thereof when partition of the project may be authorized under Section 8 of this Act, which said power shall be binding upon all of the condominium owners regardless or whether they assume the obligations of the restrictions or not.**

b) The manner and procedure for amending such restrictions, provided, that the vote of not less than a majority in interest of the owners is obtained;

c) For independent audit of the accounts of the management body;

d) For reasonable assessments to meet authorized expenditures, each condominium unit to be assessed separately for its share of such expenses in proportion (unless otherwise provided) to its owner's fractional interest in any common areas;

e) For the subordination of the liens securing such assessments to other lien either generally or specifically described;

f) For conditions, other than those provided for in Sections 8 and 13 of this Act, upon which partition of the project and dissolution of the condominium corporation may be made. Such right to partition or dissolution may be conditioned upon failure of the condominium owners to rebuild within a certain period or upon specified percentage of damage to the building, or upon a decision of an arbitration, or upon any other reasonable condition.

7. §10 – Condominium corporation

Sec. 10. **Whenever the common areas in a condominium project are held by a condominium corporation, such corporation shall constitute the management body of the project. The corporate purposes of such a corporation shall be limited to the holding of the common areas; either the ownership of any other interest in real property recognized by the law, to the management of the project, and to such other purposes as maybe necessary, incidental or convenient to the accomplishment of said purposes. The articles of incorporation or by laws of the corporation shall not contain any provision contrary to or inconsistent with the provision of this Act, the enabling or master deed, or the declaration of restrictions of the project, membership in a condominium corporation regarding of whether it is stock or non-stock corporation, shall not be transferable separately from the condominium unit of which it is an appurtenance. When a member or a stockholder ceases to own a unit in the project in which the condominium corporation owns or holds the common area, he shall automatically cease to be a member or stockholder of the condominium corporation.**

8. §13 – Judicial dissolution of condominium corporation

Sec. 13. Until the enabling or the master deed of the project in which the condominium corporation owns or holds the common areas is revoked the corporation shall not be voluntarily dissolved through an action for dissolution under Rule 104 of the Rules of Court except upon a showing:

- **a) The three years after damage or destruction to the project in which damage or destruction renders a materials part thereof unfit for its use prior thereto, the project has not been rebuilt or repaired substantially to its state prior to its damage or destruction; or**
- **b) The damage or destruction to the project has rendered one half or more of the units therein untenantable and that more than 30 percent of the member of the corporation entitled to vote, if a stock corporation, are opposed to the repair or reconstruction of the project; or**
- **c) That the project has been in existence excess of 50 years, that it is obsolete and uneconomical and that more than 50 percent of the members of the corporation if non-stock or stockholders representing more than 50 percent of the capital stock entitled to vote, if a stock corporation, are opposed to the repair or restoration or remodeling or modernizing of the project; or**
- **d) That project or material part thereof has been condemned or expropriated and that the project is no longer viable or that the members holding in aggregate more than 70 percent interest in the corporation if non-stock, or the stockholders representing more than 70 percent of the capital stock entitled to vote, if a stock corporation, are opposed to the continuation of the condominium regime after expropriation or condemnation of a material portion thereof; or**
- **e) That the conditions for such a dissolution set forth in the declaration of restrictions of the project in which the corporation owns or holds the common areas, have been met.**

9. §14 – Voluntary dissolution of condominium corporation (amended)

Sec. 14. **The condominium corporation may also be dissolved by the affirmative vote of all the stockholders or members thereof at a general or special meeting duly called for such purpose: *Provided,* That all the requirements of Section 62 of the Corporation Law are complied with.**

10. §16 – Disposition of common areas

Sec. 16. **A condominium corporation shall not, during its existence, sell, exchange, lease or otherwise dispose of the common areas owned or held by it in the condominium project unless authorized by the affirmative vote of a simple majority of the registered owners: *Provided,* That prior notification to all registered owners are done; and *Provided further,* That the condominium corporation may expand or integrate the project with another upon the affirmative vote of a simple majority of the registered owners, subject only to the final approval of the Housing Land Use Regulatory Board. *(As amended by R. A. No. 7899)***

Art. 491. **None of the co-owners shall, without the consent of the others, make alterations in the thing owned in common, even though benefits for all would result therefrom. However, if the withholding of the consent by one or more of the co-owners is clearly prejudicial to the common interest, the courts may afford adequate relief.**

- In order to make alterations, the consent of all co-owners is needed.
- An alteration is an act of strict ownership (*i.e.* any act of encumbrance) or one which involves a change in the use of the thing (*i.e.* bought Tamarax FX to carpool and then decide to rent it out).
- However, if the withholding of the consent by 1 or more of the creditors is clearly prejudicial to the common interest, the court may intervene and afford adequate relief.

Art. 492. **For the administration and better enjoyment of the thing owned in common, the resolutions of the majority of the co-owners shall be binding.**

There shall be no majority unless the resolution is approved by the co-owners who represent the controlling interest in the object of the co-ownership.

Should there be no majority, or should the resolution of the majority be seriously prejudicial to those interested in the property owned in common, the court, at the instance of an interested party, shall order such measures as it may deem proper, including the appointment of an administrator.

Whenever a part of the thing belongs exclusively to one of the co-owners, and the remainder is owned in common, the preceding provision shall apply only to the part owned in common.

- Acts of administration need a majority. Majority is computed not by counting heads but by majority of the controlling interest in the co-ownership.
- An example of an act of administration is replacing the tires of a car owned in common with another brand of tires.

Art. 493. **Each co-owner shall have the full ownership of his part and of the fruits and benefits pertaining thereto, and he may therefore alienate, assign or mortgage it, and even substitute another person in its enjoyment, except when personal rights are involved. But the effect of the alienation or the mortgage, with respect to the co-owners, shall be limited to the portion which may be allotted to him in the division upon the termination of the co-ownership.**

- Article 493 is the rule regarding fractional interest.
- The partner provision of Article 493 is Article 486[♦].
- Article 493 provides that each co-owner shall have the full ownership of his part and of the fruits and benefits pertaining thereto, and he may therefore alienate, assign or mortgage it, and even substitute another person in its enjoyment, except when personal rights are involved. But the effect of the alienation or the mortgage, with respect to the co-owners, shall be limited to the portion which may be allotted to him in the division upon the termination of the co-ownership.
- Article 486 provides that each co-owner may use the thing owned in common, provided he does so in accordance with the purpose for which it is intended and in such a way as not to injure the interest of the co-ownership or prevent the other co-owners from using it according to their rights.
- A co-owner may lease his fractional or ideal share.
- A co-owner may not dispose of the entire property owned in common. If he does so, the transaction is valid in so far as his ideal share is concern.

Art. 494. **No co-owner shall be obliged to remain in the co-ownership. Each co-owner may demand at any time the partition of the thing owned in common, insofar as his share is concerned.**

Nevertheless, an agreement to keep the thing undivided for a certain period of time, not exceeding ten years, shall be valid. This term may be extended by a new agreement.

A donor or testator may prohibit partition for a period which shall not exceed twenty years.

Neither shall there be any partition when it is prohibited by law.

No prescription shall run in favor of a co-owner or co-heir against his co-owners or co-heirs so long as he expressly or impliedly recognizes the co-ownership.

- Ways of Terminating a Co-Ownership
  1. Partition
     - Partition converts into certain and definite parts the respective share of the undivided shares of the co-owners.

[♦] Art. 486. Each co-owner may use the thing owned in common, provided he does so in accordance with the purpose for which it is intended and in such a way as not to injure the interest of the co-ownership or prevent the other co-owners from using it according to their rights. The purpose of the co-ownership may be changed by agreement, express or implied.

- **General Rule:** Partition is demandable by any of the co-owners as a matter of right at any time. If the other co-owners do not consent, then go to court.
- ***Exceptions:***
  a. When there is an agreement to keep the thing undivided
     - The maximum period for such an agreement is 10 years.
     - The agreement can be extended. Such an extension must not go beyond 10 years. There is no limit as to the number of extensions.
     - What if the co-owners agree to extend for more than 10 years, is the agreement totally void or it is good for only 10 years? The less radical view would say that it is valid for only 10 years.
     - Partition may either be by agreement of the parties or by judicial proceedings (Article 496[♥]).
  b. When prohibited by the donor or testator
     - The prohibition by the donor or testator cannot exceed 20 years.
     - What if donor states that the prohibition is for 30 years, is the prohibition totally void or it is good for only 20 years? The less radical view would say that it is valid for only 20 years.
     - Even though the testator or donor prohibits partition, the co-ownership shall terminate when:
       i. Any of the causes for which partnership is dissolved takes place; or
       ii. The court finds compelling reasons that division should be ordered upon petition of one of the co-heirs
  c. When prohibited by law
     - ***Exception to the exception:*** When compelling reasons it must be partitioned (*i.e.,* Article 159[♠], Family Code)
  d. When partition renders the thing unserviceable
     - Article 498[∅] governs in this case.
     - Under Article 498, when the thing is essentially indivisible and the co-owners cannot agree that it be allotted to one of them who shall indemnify the others, it shall be sold and the its proceeds be distributed.

[♥] *Art. 496.* Partition may be made by agreement between the parties or by judicial proceedings. Partition shall be governed by the Rules of Court insofar as they are consistent with this Code.

[♠] *Art. 159.* The family home shall continue despite the death of one or both spouses or of the unmarried head of the family for a period of ten years or for as long as there is a minor beneficiary, and the heirs cannot partition the same unless the court finds compelling reasons therefor. This rule shall apply regardless of whoever owns the property or constituted the family home.

[∅] Art. 498. Whenever the thing is essentially indivisible and the co-owners cannot agree that it be allotted to one of them who shall indemnify the others, it shall be sold and its proceeds distributed.

- What is allowed only is a constructive and not a physical partition (*i.e.* in a partition of a house).

e. When the legal nature of the thing does not allow partition (*i.e.* party wall)

2. Consolidation
3. Destruction or loss
4. Prescription
   - **General Rule:** Prescription will not run if the object is in possession of anyone of the co-owners since such possession is not adverse.
   - ***Exception:*** Co-owner may repudiate the co-ownership and the prescriptive period will start to run.

- Anything that terminates a co-ownership is similar to a partition.
- In *Tuason vs. Tuason,* the co-owners of a huge parcel of land agreed to improve the property by filling it and constructing roads thereon and then sub-dividing it into small lots for sale. Subsequently, one of the co-owners asked the court for partition alleging that Article 494 was violated. The SC said that the contract far from violating the legal provision that forbids a co-owner from being obliged to remain a party to the community precisely has for its purpose and object the dissolution of the co-ownership and of the community by selling the parcel held in common and dividing the proceeds of the sale among the co-owners. The obligation imposed in the contract to preserve the co-ownership until all the lots shall have been sold, is a mere incident to the main object of dissolving the co-ownership. By virtue of the document, the parties thereto practically and substantially entered into a contract of partnership as the best and most expedient means of eventually dissolving the co-ownership, and the life of said partnership to end when the object of its creation shall have been attained.

III. Possession

- 2 Kinds of Possession

A. *Possession in the concept of an owner* (*en concepto de dueno)*

- Possession in the concept of an owner DOES NOT refer to the possessor's inner belief or disposition regarding the property in his possession.
- Possession in the concept of an owner refers to his overt acts which tend to induce the belief on the part of others that he is the owner.
- Possession in the concept of an owner is *ius possidendi*.
- Possession in the concept of an owner by its nature is provisional. It usually ends up as ownership.
- Consequences of Possession in the Concept of an Owner

1. Possession is converted into ownership after the required lapse of time (Article 540)

> ***Art. 540.*** **Only the possession acquired and enjoyed in the concept of owner can serve as a title for acquiring dominion.**

2. Presumption of just title (Article 541)

Art. 541. **A possessor in the concept of owner has in his favor the legal presumption that he possesses with a just title and he cannot be obliged to show or prove it.**

- Relevance of the Inner Disposition of the Possessor in the Concept of an Owner (Good Faith, Bad Faith)
  1. **Good Faith**
     a. ***Requisites of Good Faith***
        i. Ostensible title or mode of acquisition
           - If its not an ostensible title but a real title, then its ownership.
        ii. Vice or defect in the title
           - If there was no vice or defect in the title, then its ownership.
           - Examples of vice or defect in title
             1. Grantor was not the owner
             2. Requirements for transmission were not complied with
             3. Mistake in the identity of the person
             4. Property was not really *res nullius*
        iii. Possessor is ignorant of the vice or defect and must have an honest belief that the thing belongs to him
           - Otherwise, it's bad faith.
     b. ***Effects of Good Faith***
        i. *As to the fruits*
           1. Fruits already received (Article 544, ¶1)

Art. 544, ¶1. **A possessor in good faith is entitled to the fruits received before the possession is legally interrupted.**

- Entitled to all the fruits until possession is legally interrupted (*i.e.* before summons)

2. Fruits still pending (Article 545)

Art. 545. **If at the time the good faith ceases, there should be any natural or industrial fruits, the possessor shall have a right to a part of the expenses of cultivation, and to a part of the net harvest, both in proportion to the time of the possession.**

The charges shall be divided on the same basis by the two possessors.

The owner of the thing may, should he so desire, give the possessor in good faith the right to finish the cultivation and gathering of the growing

fruits, as an indemnity for his part of the expenses of cultivation and the net proceeds; the possessor in good faith who for any reason whatever should refuse to accept this concession, shall lose the right to be indemnified in any other manner.

- Entitled to pro-rate the fruits already growing when his possession is legally interrupted
- For example, possessor planted crops. It takes the crops 4 months to grow. On the beginning of the 4th month, summons is served. At the end of the 4th month, the crops are harvested. Under Article 545, the possessor is entitled to ¾ of the crops since the possessor was in possession for 3 months. However, he also pays ¾ of the expenses.

ii. *As to necessary expenses* (Article 546, ¶1)

Art. 546, ¶1. **Necessary expenses shall be refunded to every possessor; but only the possessor in good faith may retain the thing until he has been reimbursed therefor.**

- The possessor in good faith is entitled to a refund of necessary expenses.
- The possessor in good faith may retain the thing until he is reimbursed for necessary expenses.

iii. *As to useful expenses* (Articles 546, ¶2, 547)

Art. 546, ¶2. **Useful expenses shall be refunded only to the possessor in good faith with the same right of retention, the person who has defeated him in the possession having the option of refunding the amount of the expenses or of paying the increase in value which the thing may have acquired by reason thereof.**

Art. 547. **If the useful improvements can be removed without damage to the principal thing, the possessor in good faith may remove them, unless the person who recovers the possession exercises the option under paragraph 2 of the preceding article.**

- The possessor in good faith is entitled to a refund of useful expenses.
- The possessor in good faith may retain the thing until he is reimbursed for useful expenses.
- The other party has the option to
  1. Refund the amount of expenses; or
  2. Pay the increase in value which the thing may have acquired

- If the useful improvements can be removed without damaging the principal thing, the possessor in good faith may remove them unless the other party wants to keep the useful improvements. In which case, the other party has to exercise the two previous options.

iv. *As to ornamental expenses* (Article 548)

Art. 548. **Expenses for pure luxury or mere pleasure shall not be refunded to the possessor in good faith; but he may remove the ornaments with which he has embellished the principal thing if it suffers no injury thereby, and if his successor in the possession does not prefer to refund the amount expended.**

- The possessor in good faith is not entitled to a refund for ornamental expenses.
- But he may remove the ornamental improvements if they do not cause damage to the principal thing.

v. *As to prescription* (Articles 1132, 1134)

Art. 1132. **The ownership of movables prescribes through uninterrupted possession for four years in good faith.**

The ownership of personal property also prescribes through uninterrupted possession for eight years, without need of any other condition.

With regard to the right of the owner to recover personal property lost or of which he has been illegally deprived, as well as with respect to movables acquired in a public sale, fair, or market, or from a merchant's store the provisions of articles 559 and 1505 of this Code shall be observed.

Art. 1134. **Ownership and other real rights over immovable property are acquired by ordinary prescription through possession of ten years.**

- Prescriptive Period:
  1. Movables – 4 years
  2. Immovables – 10 years

vi. *As to liability for deterioration or loss* (Article 552, ¶1)

Art. 552. **A possessor in good faith shall not be liable for the deterioration or loss of the thing possessed, except in cases in which it is proved that he has acted with fraudulent intent or negligence, after the judicial summons.**

- The possessor in good faith is not liable since he thought that he was the owner.
- Once the good faith ceases (*i.e.* summons served), then the possessor is liable if there was fraudulent intent or negligence.

2. **Bad Faith**
   - ***Effects of Bad Faith***
     i. *As to the fruits* (Article 549)

> ***Art. 549.*** **The possessor in bad faith shall reimburse the fruits received and those which the legitimate possessor could have received, and shall have a right only to the expenses mentioned in paragraph 1 of article 546 and in article 443. The expenses incurred in improvements for pure luxury or mere pleasure shall not be refunded to the possessor in bad faith, but he may remove the objects for which such expenses have been incurred, provided that the thing suffers no injury thereby, and that the lawful possessor does not prefer to retain them by paying the value they may have at the time he enters into possession.**

- The possessor in bad faith shall reimburse the fruits receive and those which the legitimate possessor could have received
- The possessor in bad faith has a right of reimbursement for necessary expenses for the production, gathering and preservation of the fruits.

ii. *As to the necessary expenses*
- The possessor in good faith is entitled to a refund of necessary expenses.
- The possessor in good faith has no right to retain the thing until he is reimbursed for necessary expenses.

iii. *As to useful expenses*
- The possessor in bad faith is not entitled to a refund of useful expenses.

iv. *As to ornamental expenses*
- The possessor in bad faith is not entitled to a refund of ornamental expenses
- The possessor in bad faith is entitled to remove the ornamental improves only if:
  i. Removal can be accomplished without damaging the principal thing and

ii. The lawful possessor does not prefer to retain the ornamental improvements by paying the value thereof at the time he enters into possession

v. *As to prescription* (Articles 1132, 1137)

Art. 1132. **The ownership of movables prescribes through uninterrupted possession for four years in good faith.**

The ownership of personal property also prescribes through uninterrupted possession for eight years, without need of any other condition.

With regard to the right of the owner to recover personal property lost or of which he has been illegally deprived, as well as with respect to movables acquired in a public sale, fair, or market, or from a merchant's store the provisions of articles 559 and 1505 of this Code shall be observed.

Art. 1137. **Ownership and other real rights over immovables also prescribe through uninterrupted adverse possession thereof for thirty years, without need of title or of good faith.**

- Prescriptive Period
  1. Movables – 8 years
  2. Immovables – 30 years

vi. *As to liability for deterioration or loss* (Article 552, ¶2)

Article 552, ¶2. **A possessor in bad faith shall be liable for deterioration or loss in every case, even if caused by a fortuitous event.**

- The possessor in bad faith becomes an insurer of the property. He is liable even if the thing is destroyed, loss or deteriorates due to a fortuitous event

- Presumptions Applicable
  1. **Just Title** (Article 541)

Art. 541. **A possessor in the concept of owner has in his favor the legal presumption that he possesses with a just title and he cannot be obliged to show or prove it.**

- A possessor in the concept of owner has in his favor the legal presumption that he possess just title and he cannot be obliged to show or prove it.

2. **Good Faith** (Articles 527, 559)

Art. 527. **Good faith is always presumed, and upon him who alleges bad faith on the part of a possessor rests the burden of proof.**

Art. 559. **The possession of movable property acquired in good faith is equivalent to a title. Nevertheless, one who has lost any movable or has been unlawfully deprived thereof may recover it from the person in possession of the same.**

If the possessor of a movable lost or which the owner has been unlawfully deprived, has acquired it in good faith at a public sale, the owner cannot obtain its return without reimbursing the price paid therefor.

- Good faith is always presumed, and upon him who alleges bad faith on the part of a possessor rests the burden of proof.
- The possession of movables acquired in good faith is equivalent to title.
  - Equivalent to title means presumptive title sufficient to serve as a basis for prescription.
- **General Rule:** A person who lost or has been unlawfully deprived of the movable, may recover it from the person who has possession of the movable.
  - Unlawful deprivation extends to all instances where there is no valid transmission (*i.e.* theft, robbery, etc.)
- ***Exceptions:***

  a. If the possessor obtained the movable in good faith at a public sale, the owner cannot get it back unless he reimburses the possessor.

  b. If the owner is estopped (Article 1505,¶1)

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

  c. If the disposition is made under any factor's act (Article 1505, ¶2)

  Art. 1505, ¶2. **Nothing in this Title, however, shall affect:**

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

- This is no longer applicable under the present law since we now have the Law on Agency.

d. Court order

e. If purchased ay a merchant's store (Article 1505(3))

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

- An example of a merchant's store would be SM or Rustan's. Without this exception, commercial transactions would be destabilized.
- Article 1505, ¶3 states in accordance with the Code of Commerce and special laws. Articles 85 and 86 was repealed. Is Article 1505, ¶3 still applicable? Professor Balane doesn't know.

f. If title is lost by prescription (Article 1132)

> ***Art. 1132.*** **The ownership of movables prescribes through uninterrupted possession for four years in good faith.**
>
> **The ownership of personal property also prescribes through uninterrupted possession for eight years, without need of any other condition.**
>
> **With regard to the right of the owner to recover personal property lost or of which he has been illegally deprived, as well as with respect to movables acquired in a public sale, fair, or market, or from a merchant's store the provisions of articles 559 and 1505 of this Code shall be observed.**

g. If the possessor is the holder in due course of a negotiable instrument of title (Article 1518)

> ***Art. 1518.*** **The validity of the negotiation of a negotiable document of title is not impaired by the fact that the negotiation was a breach of duty on the part of the person making the negotiation, or by the fact that the owner of the document was deprived of the possession of the same by loss, theft, fraud, accident, mistake, duress, or conversion, if the person to whom the document was negotiated or a person to whom the document was subsequently negotiated paid value therefor in good faith without notice of the breach of duty, or loss, theft, fraud, accident, mistake, duress or conversion.**

3. **Continuity of Good Faith** (Articles 528, 529)

Art. 528. **Possession acquired in good faith does not lose this character except in the case and from the moment facts exist which show that the possessor is not unaware that he possesses the thing improperly or wrongfully.**

Art. 529. **It is presumed that possession continues to be enjoyed in the same character in which it was acquired, until the contrary is proved.**

- Possession acquired in good faith does not lose this character except in the case and from the moment facts exist which show that the possessor is not unaware that he possesses the thing improperly or wrongfully.
- It is presumed that possession continues to be enjoyed on the same character in which it was acquired, until the contrary is proved.

4. **Non-Interruption** (Articles 554, 561)

Art. 554. **A present possessor who shows his possession at some previous time, is presumed to have held possession also during the intermediate period, in the absence of proof to the contrary.**

Art. 561. **One who recovers, according to law, possession unjustly lost, shall be deemed for all purposes which may redound to his benefit, to have enjoyed it without interruption.**

- A present possessor who shows his possession at some previous time, is presumed to have held possession also during the intermediate period, in the absence of proof to the contrary.
- One who recovers, according to law, possession unjustly lost, shall be deemed for all purposes which may redound to his benefit, to have enjoyed it without interruption.

5. **Extension to the Movables Within or Inside** (Articles 542, 426)

Art. 542. **The possession of real property presumes that of the movables therein, so long as it is not shown or proved that they should be excluded.**

Art. 426. **Whenever by provision of the law, or an individual declaration, the expression "immovable things or property," or "movable things or property," is used, it shall be deemed to include, respectively, the things enumerated in Chapter 1 and Chapter 2.**

Whenever the word "muebles," or "furniture," is used alone, it shall not be deemed to include money, credits, commercial securities, stocks and bonds, jewelry, scientific or artistic collections, books, medals, arms, clothing, horses or carriages

and their accessories, grains, liquids and merchandise, or other things which do not have as their principal object the furnishing or ornamenting of a building, except where from the context of the law, or the individual declaration, the contrary clearly appears.

- The possession of real property presumes that of the movables therein, so long as it is not shown or proved that they should be excluded.

B. *Possession in the concept of a holder* (*en concepto de tenedor*)

- The possessor in the concept of a holder carries with it no assertion of ownership. There are no overt acts which would induce a belief on the part of others that he is the owner.
- The possessor in the concept of a holder acknowledges a superior right in another person which the possessor admits is ownership.
- Possession in the concept of a holder is *ius possessionis*. This is right to possess is an independent right (*i.e.* lessee, trustee, agent, antichretic creditor, pledgee, co-owner with respect to the entire thing, etc.)
- Possession in the concept of a holder will never become ownership.
- **Presumptions Applicable**

1. **Non-Interruption** (Articles 554, 561)

Art. 554. **A present possessor who shows his possession at some previous time, is presumed to have held possession also during the intermediate period, in the absence of proof to the contrary.**

Art. 561. **One who recovers, according to law, possession unjustly lost, shall be deemed for all purposes which may redound to his benefit, to have enjoyed it without interruption.**

- A present possessor who shows his possession at some previous time, is presumed to have held possession also during the intermediate period, in the absence of proof to the contrary.
- One who recovers, according to law, possession unjustly lost, shall be deemed for all purposes which may redound to his benefit, to have enjoyed it without interruption.

2. **Extension to Movables Within or Inside** (Articles 552, 426)

Art. 552. **A possessor in good faith shall not be liable for the deterioration or loss of the thing possessed, except in cases in which it is proved that he has acted with fraudulent intent or negligence, after the judicial summons.**

A possessor in bad faith shall be liable for deterioration or loss in every case, even if caused by a fortuitous event.

Art. 426. **Whenever by provision of the law, or an individual declaration, the expression "immovable things or property," or "movable things or property," is used, it shall be deemed to include, respectively, the things enumerated in Chapter 1 and Chapter 2.**

Whenever the word "muebles," or "furniture," is used alone, it shall not be deemed to include money, credits, commercial securities, stocks and bonds, jewelry, scientific or artistic collections, books, medals, arms, clothing, horses or carriages and their accessories, grains, liquids and merchandise, or other things which do not have as their principal object the furnishing or ornamenting of a building, except where from the context of the law, or the individual declaration, the contrary clearly appears.

- The possession of real property presumes that of the movables therein, so long as it is not shown or proved that they should be excluded.

- In both possession in the concept of an owner and possession in the concept of a holder, both are protected by Article 539[⊕].
- Acquisition and Loss of Possession

A. *Acquisition*

- *How is it Acquired:* Possession is acquired by the material occupation of a thing or the exercise of a right, or by the fact that it is subject to the action of our will, or by the proper acts and legal formalities established for acquiring such right (Article 531)

Art. 531. **Possession is acquired by the material occupation of a thing or the exercise of a right, or by the fact that it is subject to the action of our will, or by the proper acts and legal formalities established for acquiring such right.**

- *Acquired by Whom:* Possession may be acquired by the same person who is to enjoy it, by his legal representative, by his agent, or by any person without any power whatever but in the last case, the possession shall not be considered as acquired until the person in whose name the act of possession was executed has ratified the same, without prejudice to the juridical consequences of *negotiorum gestio* in a proper case (Art. 532).

[⊕] *Art. 539.* Every possessor has a right to be respected in his possession; and should he be disturbed therein he shall be protected in or restored to said possession by the means established by the laws and the Rules of Court.

A possessor deprived of his possession through forcible entry may within ten days from the filing of the complaint present a motion to secure from the competent court, in the action for forcible entry, a writ of preliminary mandatory injunction to restore him in his possession. The court shall decide the motion within thirty (30) days from the filing thereof.

Art. 532. **Possession may be acquired by the same person who is to enjoy it, by his legal representative, by his agent, or by any person without any power whatever: but in the last case, the possession shall not be considered as acquired until the person in whose name the act of possession was executed has ratified the same, without prejudice to the juridical consequences of negotiorum gestio in a proper case.**

B. ***Loss***

- Possession may be lost
  1. **By abandonment** (Article 555 (1))
     - Abandonment may either be:
       a. ***Permanent***
          - There is no need for the prescriptive period to run.
       b. ***Temporary***
          - Prescription will run.
     - See Article 1125

Art. 1125. **Any express or tacit recognition which the possessor may make of the owner's right also interrupts possession.**

  2. **By assignment made to another either by onerous or gratuitous title** (Article 555 (2))
     - Disposition
  3. **By destruction or total loss of the thing, or it goes out of commerce** (Article 555 (3))
     - See Article 1189 (1), (2)

Art. 1189. **When the conditions have been imposed with the intention of suspending the efficacy of an obligation to give, the following rules shall be observed in case of the improvement, loss or deterioration of the thing during the pendency of the condition:**

(1) If the thing is lost without the fault of the debtor, the obligation shall be extinguished;

(2) If the thing is lost through the fault of the debtor, he shall be obliged to pay damages; it is understood that the thing is lost when it perishes, or goes out of commerce, or disappears in such a way that its existence is unknown or it cannot be recovered;

  4. **By possession of another subject to the provisions of Art. 537, if the new possession has lasted longer than 1 year. But the real right of possession is not lost till after the lapse of 10 years** (Article 555 (4))

- The complaint for forcible entry must be filed within 1 year from the forcible entry.
- *Accion publiciana* must be filed after the lapse of 1 year from the forcible entry but before the lapse of 10 years.
- In this case, possession is not really lost until the end of the 10th year.

5. **By *accion reinvindicatoria***

Art. 1120. **Possession is interrupted for the purposes of prescription, naturally or civilly.**

Art. 1121. **Possession is naturally interrupted when through any cause it should cease for more than one year.**

The old possession is not revived if a new possession should be exercised by the same adverse claimant.

Art. 1122. **If the natural interruption is for only one year or less, the time elapsed shall be counted in favor of the prescription.**

Art. 1123. **Civil interruption is produced by judicial summons to the possessor.**

Art. 1124. **Judicial summons shall be deemed not to have been issued and shall not give rise to interruption:**

(1) If it should be void for lack of legal solemnities;

(2) If the plaintiff should desist from the complaint or should allow the proceedings to lapse;

(3) If the possessor should be absolved from the complaint.

In all these cases, the period of the interruption shall be counted for the prescription.

6. **By eminent domain**

IV. Usufruct

- Usufruct is a real right temporary in nature which authorizes the holder to enjoy all the benefits which result from the normal enjoyment and exploitation of another's property with the obligation to return at the designated time either the same thing or in special cases its equivalent.

A. *3 Elements in a Usufruct*

1. **Essential**
   - The essential element of a usufruct is that it is a real but temporary right to enjoy someone else's property.
2. **Natural**
   - The natural element of a usufruct is the obligation to preserve the form and substance the property of another.

- In extraordinary cases known as irregular or imperfect or abnormal usufruct, this natural element is not present. The usufructuary does not have to return the same property.
- Kinds of Imperfect Usufruct
  a. ***Article 573***

> ***Art. 573.*** **Whenever the usufruct includes things which, without being consumed, gradually deteriorate through wear and tear, the usufructuary shall have the right to make use thereof in accordance with the purpose for which they are intended, and shall not be obliged to return them at the termination of the usufruct except in their condition at that time; but he shall be obliged to indemnify the owner for any deterioration they may have suffered by reason of his fraud or negligence.**

- Usufruct includes things which gradually deteriorate through wear and tear
- Usufructuary shall have the right to make use.
- The usufructuary shall not be obliged to return the property in its original condition.
- The usufructuary shall indemnify the property owner for the deterioration in case he is guilty of fraud or negligence.

  b. ***Article 574***

> ***Art. 574.*** **Whenever the usufruct includes things which cannot be used without being consumed, the usufructuary shall have the right to make use of them under the obligation of paying their appraised value at the termination of the usufruct, if they were appraised when delivered. In case they were not appraised, he shall have the right to return at the same quantity and quality, or pay their current price at the time the usufruct ceases.**

- Usufruct includes things which cannot be used without being consumed
- This is a usufruct in name only. It is really a *mutuum* (loan).
- Usufructuary shall have the right to make use.
- If the property was appraised, the usufructuary shall pay its appraised value.
- If the property was not appraised, the usufructuary may either
  i. Return the same quantity and quality; or
  ii. Pay their current price at the time the usufruct ceases

c. ***Article 591, ¶4***

Article 591, ¶4. **Should the usufruct be on sterile animals, it shall be considered, with respect to its effects, as though constituted on fungible things.**

- Should the usufruct be on sterile animals, it shall be considered as though it was constituted on fungible things.

3. **Accidental**
   - The accidental elements are those which are the subject of stipulation (*i.e.* how long will the usufruct last).

B. *Usufruct Distinguished from Lease*

BASIS	USUFRUCT	LEASE
Extent	Covers all fruits and uses as a rule	Generally covers only a particular or specific use
Nature of the right	Is always a real right	Is a real right only if, as in the case of a lease over real property, the lease is registered or is for more than one year, otherwise, it is only a personal right
Creator of the right	Can be created only by the owner or by a duly authorized agent, acting in behalf of the owner	The lessor may or may not be the owner(as when there is a sub-lease or when the lessor is only a usufructuary)
Origin	May be created by law, contract, last will or prescription	May be created as a rule only by contract, and by way of exception, by law(as in the case of an implied new lease or when a builder has built in GF on the land of another a building, when the land is considerably worth more in value than the building)
Cause	The owner is more or less passive, and allows the usufructuary to enjoy the thing given in usufruct "deja gozar"	Owner or lessor is more or less active, and he makes the lessee enjoy - "hace gozar"
Repairs	Usufructuary has the duty to make ordinary repairs	The lessee generally has no duty to pay for repairs
Taxes	Usufructuary pays for annual charges & taxes on fruits	Lessees can't constitute a usufruct on the property leased
Other things	Usufructuary may lease the property itself to another	

C. ***Kinds of Usufruct***

1. **According to Source** (Article 563)

> ***Art. 563.*** **Usufruct is constituted by law, by the will of private persons expressed in acts *inter vivos* or in a last will and testament, and by prescription.**

   a. Voluntary or Conventional (*i.e.* contracts, donations, wills)
   b. Legal – created by law (*i.e.* Article 226, ¶2, Family Code)

> ***Art. 226, ¶2.*** **The right of the parents over the fruits and income of the child's property shall be limited primarily to the child's support and secondarily to the collective daily needs of the family.**

2. **According to Extent** (Article 564)

> ***Art. 564.*** **Usufruct may be constituted on the whole or a part of the fruits of the thing, in favor of one more persons, simultaneously or successively, and in every case from or to a certain day, purely or conditionally. It may also be constituted on a right, provided it is not strictly personal or intransmissible.**

   a. Total – all of the fruits
   b. Partial – part of the fruits

3. **According to Persons Enjoying the Right of Usufruct** (Article 564)
   a. Simple – only one usufructuary enjoys
   b. Multiple – several usufructuaries enjoy
      i. Simultaneous
      ii. Successive
4. **According to the Terms of the Usufruct** (Article 564)
   a. Pure – no terms and conditions
   b. Conditional
   c. With a Term or Period
5. **According to the Object of the Usufruct** (Article 564)
   a. Things
   b. Rights
      - A usufruct may be constituted on a right provided that it is not strictly personal or intransmissible.

D. ***Rights of the Usufructuary***

1. **Right to the fruits** (Articles 566 - 570)

> ***Art. 566.*** **The usufructuary shall be entitled to all the natural, industrial and civil fruits of the property in usufruct. With respect to**

hidden treasure which may be found on the land or tenement, he shall be considered a stranger.

Art. 567. **Natural or industrial fruits growing at the time the usufruct begins, belong to the usufructuary.**

Those growing at the time the usufruct terminates, belong to the owner.

In the preceding cases, the usufructuary, at the beginning of the usufruct, has no obligation to refund to the owner any expenses incurred; but the owner shall be obliged to reimburse at the termination of the usufruct, from the proceeds of the growing fruits, the ordinary expenses of cultivation, for seed, and other similar expenses incurred by the usufructuary.

The provisions of this article shall not prejudice the rights of third persons, acquired either at the beginning or at the termination of the usufruct.

Art. 568. **If the usufructuary has leased the lands or tenements given in usufruct, and the usufruct should expire before the termination of the lease, he or his heirs and successors shall receive only the proportionate share of the rent that must be paid by the lessee.**

Art. 569. **Civil fruits are deemed to accrue daily, and belong to the usufructuary in proportion to the time the usufruct may last.**

Art. 570. **Whenever a usufruct is constituted on the right to receive a rent or periodical pension, whether in money or in fruits, or in the interest on bonds or securities payable to bearer, each payment due shall be considered as the proceeds or fruits of such right.**

Whenever it consists in the enjoyment of benefits accruing from a participation in any industrial or commercial enterprise, the date of the distribution of which is not fixed, such benefits shall have the same character.

In either case they shall be distributed as civil fruits, and shall be applied in the manner prescribed in the preceding article.

- Entitled to all the natural, industrial, and civil fruits of the property in usufruct.
- Natural or industrial fruits growing at the time the usufruct begins, belong to the usufructuary. Those growing at the time the usufruct terminates belong to the owner.
- The usufructuary at the beginning of the usufruct, has no obligation to refund to the owner any expenses incurred.
- The owner shall reimburse at the termination of the usufruct from the proceeds of the growing fruits, the ordinary expenses of cultivation incurred by the usufructuary.
- Rents derived from the lease of properties in usufruct are civil fruits. The usufructuary is entitled to receive such rents only up to the time of the

expiration of the usufruct, if the lease still subsists after the termination of the usufruct. For example, if the lease is for 5 years and the usufruct terminates after the 2nd year, the usufructuary shall be entitled to 2 years rent; the rent for the remaining period will belong to the owner.

2. **Right to enjoy any increase in the accession or any servitude** (Article 571)

Art. 571. **The usufructuary shall have the right to enjoy any increase which the thing in usufruct may acquire through accession, the servitudes established in its favor, and, in general, all the benefits inherent therein.**

- The usufructuary shall have the right to enjoy any increase which the thing in usufruct may acquire through accession, the servitudes established in its favor, and, in general, all the benefits inherent therein.

3. **Right to alienate the right of usufruct** (Articles 572, 590)

Art. 572. **The usufructuary may personally enjoy the thing in usufruct, lease it to another, or alienate his right of usufruct, even by a gratuitous title; but all the contracts he may enter into as such usufructuary shall terminate upon the expiration of the usufruct, saving leases of rural lands, which shall be considered as subsisting during the agricultural year.**

Art. 590. **A usufructuary who alienates or leases his right of usufruct shall answer for any damage which the things in usufruct may suffer through the fault or negligence of the person who substitutes him.**

- The usufructuary may lease or alienate his right of usufruct, even by gratuitous title.
- All the contracts he may enter into as such usufructuary shall terminate upon the expiration of the usufruct except lease of rural lands, which shall be considered as subsisting during the agricultural year.
- A usufructuary who alienates or leases his right of usufruct shall answer for any damage which the things in usufruct may suffer through the fault or negligence of the person who substituted him.

4. **Right to recover** (Article 578)

Art. 578. **The usufructuary of an action to recover real property or a real right, or any movable property, has the right to bring the action and to oblige the owner thereof to give him the authority for this purpose and to furnish him whatever proof he may have. If in consequence of the enforcement of the action he acquires the thing claimed, the usufruct shall be limited to the fruits, the dominion remaining with the owner.**

- The usufructuary of an action to recover real property or a real right, or movable property, has the right to bring the action.
- The owner is obligated to give him the authority for this purpose and to furnish him whatever proof he may have.
- If in consequence of the enforcement of the action he acquires the thing claimed, the usufruct shall be limited to the fruits, the dominion remaining with the owner.

5. **Right to make useful and ornamental expenses** (Article 579)

Art. 579. **The usufructuary may make on the property held in usufruct such useful improvements or expenses for mere pleasure as he may deem proper, provided he does not alter its form or substance; but he shall have no right to be indemnified therefor. He may, however, remove such improvements, should it be possible to do so without damage to the property.**

- Such right exists as long as he does not alter the property's form or substance.
- The usufructuary shall have no right of reimbursement.
- The usufructuary may remove use improvements if it is possible to do so without causing damage to the property.

6. **Right to any increase in the value due to indispensable repairs made** (Article 594)

Art. 594. If the owner should make the extraordinary repairs, he shall have a right to demand of the usufructuary the legal interest on the amount expended for the time that the usufruct lasts.

Should he not make them when they are indispensable for the preservation of the thing, the usufructuary may make them; but he shall have a right to demand of the owner, at the termination of the usufruct, the increase in value which the immovable may have acquired by reason of the repairs.

- The usufruct who has made the extraordinary repairs necessary for preservation is entitled to recover from the owner the increase in value which the tenement acquired by reason of such work.

E. Obligations of the Usufructuary

1. **To make an inventory** (Article 583)

Art. 583. **The usufructuary, before entering upon the enjoyment of the property, is obliged:**

(1) To make, after notice to the owner or his legitimate representative, an inventory of all the property, which shall contain an appraisal of the movables and a description of the condition of the immovables;

(2) To give security, binding himself to fulfill the obligations imposed upon him in accordance with this Chapter.

- Inventory contains an appraisal of the movables and a description of the immovables.
- Effect of Not Giving: Articles 586, 599

Art. 586. **Should the usufructuary fail to give security in the cases in which he is bound to give it, the owner may demand that the immovables be placed under administration, that the movables be sold, that the public bonds, instruments of credit payable to order or to bearer be converted into registered certificates or deposited in a bank or public institution, and that the capital or sums in cash and the proceeds of the sale of the movable property be invested in safe securities.**

The interest on the proceeds of the sale of the movables and that on public securities and bonds, and the proceeds of the property placed under administration, shall belong to the usufructuary.

Furthermore, the owner may, if he so prefers, until the usufructuary gives security or is excused from so doing, retain in his possession the property in usufruct as administrator, subject to the obligation to deliver to the usufructuary the net proceeds thereof, after deducting the sums which may be agreed upon or judicially allowed him for such administration.

Art. 599. **The usufructuary may claim any matured credits which form a part of the usufruct if he has given or gives the proper security. If he has been excused from giving security or has been able to give it, or if that given is not sufficient, he shall need the authorization of the owner, or of the court in default thereof, to collect such credits.**

The usufructuary who has given security may use the capital he has collected in any manner he may deem proper. The usufructuary who has not given security shall invest the said capital at interest upon agreement with the owner; in default of such agreement, with judicial authorization; and, in every case, with security sufficient to preserve the integrity of the capital in usufruct.

- Exceptions to Giving of Inventory
  a. No one will be injured (Article 585)

     Art. 585. **The usufructuary, whatever may be the title of the usufruct, may be excused from the obligation of making an inventory or of giving security, when no one will be injured thereby.**

  b. Waiver of owner (*i.e.* stipulation in the will or contract)

2. **Give security** (Article 583)

Art. 583. **The usufructuary, before entering upon the enjoyment of the property, is obliged:**

(1) To make, after notice to the owner or his legitimate representative, an inventory of all the property, which shall contain an appraisal of the movables and a description of the condition of the immovables;

(2) To give security, binding himself to fulfill the obligations imposed upon him in accordance with this Chapter.

- Effect of Not Giving:
  a. The owner may demand the following
     1. That the immovables be placed under administration
     2. That the movables be sold
     3. That the public bonds, instruments of credit payable to order or bearer be converted into registered certificates or deposited in a bank or public institution
     4. That the capital or sums of in cash and the proceeds of the sale of the movable property be invested in safe securities
        - The interest on the proceeds of the sale of the movables and that on the public securities and bonds and the proceeds of the property placed under administration shall belong to the usufructuary.

  b. The owner if he so prefers shall retain possession of the property as administrator until security is given.

  c. The usufructuary who has not given security shall invest the capital collected at interest upon agreement with the owner; in default of the agreement with judicial authorization.

- Instances when Security is Not Required
  a. No one will be injured (Article 585)

Art. 585. **The usufructuary, whatever may be the title of the usufruct, may be excused from the obligation of making an inventory or of giving security, when no one will be injured thereby.**

  b. Waiver

  c. If usufructuary is the donor of the property (Article 584)

Art. 584. **The provisions of No. 2 of the preceding article shall not apply to the donor who has reserved the usufruct of the property donated, or to the parents who are usufructuaries of their children's property, except when the parents contract a second marriage.**

  d. In case of usufruct by parents (Article 226, ¶2, Family Code)

Article 226, ¶2. **The right of the parents over the fruits and income of the child's property shall be limited primarily to the child's support and secondarily to the collective daily needs of the family.**

- ***Exception:*** When the parents contract a 2nd marriage (Article 584)

Art. 584. **The provisions of No. 2 of the preceding article shall not apply to the donor who has reserved the usufruct of the property donated, or to the parents who are usufructuaries of their children's property, except when the parents contract a second marriage.**

e. In case of *caucion juratoria* (Article 587)

Art. 587. **If the usufructuary who has not given security claims, by virtue of a promise under oath, the delivery of the furniture necessary for his use, and that he and his family be allowed to live in a house included in the usufruct, the court may grant this petition, after due consideration of the facts of the case.**

The same rule shall be observed with respect to implements, tools and other movable property necessary for an industry or vocation in which he is engaged.

If the owner does not wish that certain articles be sold because of their artistic worth or because they have a sentimental value, he may demand their delivery to him upon his giving security for the payment of the legal interest on their appraised value.

- *Caucion juratoria* refers to the case contemplated by Art. 587 whereby the usufructuary, being unable to file the required bond or security, files a verified petition in the proper court, asking for the delivery of the house and furniture necessary for himself and his family without any bond or security.
- The same rule shall also be applied to the instruments or tools necessary for an industry or vocation in which the usufructuary is engaged.

3. **Due care** (Articles 589, 610)

Art. 589. **The usufructuary shall take care of the things given in usufruct as a good father of a family.**

Art. 610. **A usufruct is not extinguished by bad use of the thing in usufruct; but if the abuse should cause considerable injury to the owner, the latter may demand that the thing be delivered to him, binding himself to pay annually to the usufructuary the net proceeds of the same, after deducting the expenses and the compensation which may be allowed him for its administration.**

- Take care of the things in usufruct as a good father of a family.
- Bad use of the thing in usufruct shall not extinguish the usufruct. However, if the abuse should cause considerable injury to the owner, the owner may demand that the thing be delivered to him. If the thing is delivered to the owner, the owner shall deliver to the usufructuary the net proceeds.

4. **Answer for damages caused by his substitute's fault or negligence** (Article 590)

Art. 590. **A usufructuary who alienates or leases his right of usufruct shall answer for any damage which the things in usufruct may suffer through the fault or negligence of the person who substitutes him.**

- If the usufructuary alienates or leases his right of usufruct, in case the things in usufruct should suffer damage by the fault or negligence of the usufructuary's substitute, the usufructuary is liable.

5. **Usufruct over livestock** (Article 591)

Art. 591. **If the usufruct be constituted on a flock or herd of livestock, the usufructuary shall be obliged to replace with the young thereof the animals that die each year from natural causes, or are lost due to the rapacity of beasts of prey.**

If the animals on which the usufruct is constituted should all perish, without the fault of the usufructuary, on account of some contagious disease or any other uncommon event, the usufructuary shall fulfill his obligation by delivering to the owner the remains which may have been saved from the misfortune.

Should the herd or flock perish in part, also by accident and without the fault of the usufructuary, the usufruct shall continue on the part saved.

Should the usufruct be on sterile animals, it shall be considered, with respect to its effects, as though constituted on fungible things.

- If the usufruct be over livestock, the usufructuary is obligated to replace with the young, the animals that die each year from natural causes or lost due to the rapacity of beasts.
- If the animals on which the usufruct is constituted should all perish, without the fault of the usufructuary, on account of some contagious disease or any other uncommon event, the usufructuary shall fulfill his obligation by delivering to the owner the remains which may have been saved.

6. **Make ordinary repairs** (Article 592)

Art. 592. **The usufructuary is obliged to make the ordinary repairs needed by the thing given in usufruct.**

By ordinary repairs are understood such as are required by the wear and tear due to the natural use of the thing and are indispensable for its preservation. Should the usufructuary fail to make them after demand by the owner, the latter may make them at the expense of the usufructuary.

- The usufructuary is obligated to make ordinary repairs.
- Ordinary repairs mean those repairs which arise out of the normal wear and tear of use.
- If the usufructuary does not make ordinary repairs, the owner may make ordinary repairs at the expense of the usufructuary.

7. **To notify the owner of urgent repairs** (Article 593)

Art. 593. **Extraordinary repairs shall be at the expense of the owner. The usufructuary is obliged to notify the owner when the need for such repairs is urgent.**

- The usufructuary is obligated to notify the owner when the need for such repairs is urgent.

8. **To pay interest on the amount expended for extraordinary repairs** (Article 594)

Art. 594. **If the owner should make the extraordinary repairs, he shall have a right to demand of the usufructuary the legal interest on the amount expended for the time that the usufruct lasts.**

Should he not make them when they are indispensable for the preservation of the thing, the usufructuary may make them; but he shall have a right to demand of the owner, at the termination of the usufruct, the increase in value which the immovable may have acquired by reason of the repairs.

- If the owner should make extraordinary repairs, the usufructuary is liable to pay legal interest on the amount expended until the expiration of the usufruct.

9. **Allow work by owner which does not prejudice the usufructuary** (Article 595)

Art. 595. **The owner may construct any works and make any improvements of which the immovable in usufruct is susceptible, or make new plantings thereon if it be rural, provided that such acts do not cause a diminution in the value of the usufruct or prejudice the right of the usufructuary.**

- The owner may construct works and improvements provided that such acts do not cause a diminution of the value of the usufruct or prejudice the right of the usufructuary.

10. **Pay annual charges** (Articles 596-597)

Art. 596. **The payment of annual charges and taxes and of those considered as a lien on the fruits, shall be at the expense of the usufructuary for all the time that the usufruct lasts.**

Art. 597. **The taxes which, during the usufruct, may be imposed directly on the capital, shall be at the expense of the owner.**

If the latter has paid them, the usufructuary shall pay him the proper interest on the sums which may have been paid in that character; and, if the said sums have been advanced by the usufructuary, he shall recover the amount thereof at the termination of the usufruct.

- Annual charges and taxes imposed on the fruits are shouldered by the usufructuary.
- Land taxes on the usufruct are shouldered by the owner.

11. **To notify the owner of any act of a 3rd person** (Article 601)

Art. 601. **The usufructuary shall be obliged to notify the owner of any act of a third person, of which he may have knowledge, that may be prejudicial to the rights of ownership, and he shall be liable should he not do so, for damages, as if they had been caused through his own fault.**

- If the usufructuary does not notify the owner of the any prejudicial act by a 3rd person, the usufructuary shall be liable for damages.

12. **Shoulder the expenses, costs, and liabilities in suits involving the usufruct** (Article 602)

Art. 602. **The expenses, costs and liabilities in suits brought with regard to the usufruct shall be borne by the usufructuary.**

13. **Return the thing at the termination of the usufruct** (Article 612)

Art. 612. **Upon the termination of the usufruct, the thing in usufruct shall be delivered to the owner, without prejudice to the right of retention pertaining to the usufructuary or his heirs for taxes and extraordinary expenses which should be reimbursed. After the delivery has been made, the security or mortgage shall be cancelled.**

- If in case the usufructuary or his heirs should be reimbursed, there would be a right of retention by the usufructuary or the heirs.
- After delivery of the thing, the security shall be cancelled.

F. Extinguishment of the Usufruct

1. **By death of the usufructuary** (Article 603 (1))
   - Exceptions
     a. Contrary intention
     b. Definite period
     c. When the usufruct is in favor of several persons
        i. Successively or
        ii. Simultaneously
2. **By the expiration of the period for which it was constituted or by the fulfillment of any resolutory condition** (Article 603 (2))
3. **By merger of the usufruct and ownership in the same person** (Article 603 (3))
4. **By renunciation of the usufructuary** (Article 603 (4))
5. **By the total loss of the thing in usufruct** (Article 603 (5))
6. **By the termination of the right of the person constituting the usufruct** (Article 603 (6))
7. **By prescription** (Article 603 (7))
8. Non-fulfillment of a mode imposed on the usufructuary
9. Rescission or annulment of the contract
10. Legal ways of extinguishing usufruct (*i.e.* termination of parental authority terminates the parents' usufruct with regard to the child's adventitious property)
11. Mutual dissent
12. Alienation by innocent purchaser for value (Article 709[⊗])
13. Happening of a resolutory condition

V. EASEMENTS

- An easement is a real right constituted in another's tenement whereby the owner of the latter must refrain from doing or allow something to be done on his property for the benefit of another thing or person.
- The term is "easement" is a common-law term. Servitude is the civil law term. A servitude is broader in scope. For example, an easement does not include the right to draw water. However at present, both terms are interchangeable.
- An easement grants less rights than a usufruct. An easement never carries with it the right to possess. The rights granted by an easement are very limited.

[⊗] *Art. 709.* The titles of ownership, or of other rights over immovable property, which are not duly inscribed or annotated in the Registry of Property shall not prejudice third persons.

A. *Characteristics*

1. Always a real right
   - **Basic Rule:** There can be NO easement on personal property.
2. Can only be imposed only on the property of another
   - It cannot be imposed on your property.
3. Produces limitations on ownership but the ownership is not impaired
4. Inseparable from the tenements from which it is passively or actively attached (Article 617)

> ***Art. 617.*** **Easements are inseparable from the estate to which they actively or passively belong.**

5. Indivisible

B. *Kinds of Easements*

1. **As to Benefit**

   a. ***Real*** (Article 613)

> ***Art. 613.*** **An easement or servitude is an encumbrance imposed upon an immovable for the benefit of another immovable belonging to a different owner.**
>
> **The immovable in favor of which the easement is established is called the dominant estate; that which is subject thereto, the servient estate.**

   - A real easement is one in favor of another immovable – the dominant estate.
   - This is more common than the personal easement.

   b. ***Personal***

   - A personal easement is in favor of a community, or of one or more persons to whom the encumbered estate does not belong (*i.e.* easement for drawing water).

2. **As to Manner of Exercise** (Article 615)

> ***Art. 615.*** **Easements may be continuous or discontinuous, apparent or nonapparent.**
>
> **Continuous easements are those the use of which is or may be incessant, without the intervention of any act of man.**
>
> **Discontinuous easements are those which are used at intervals and depend upon the acts of man.**
>
> **Apparent easements are those which are made known and are continually kept in view by external signs that reveal the use and enjoyment of the same.**

Nonapparent easements are those which show no external indication of their existence.

a. ***Continuous***

- Continuous easements are those the use of which is or may be incessant, without the intervention of any act of man.

b. ***Discontinuous***

- Discontinuous easements are those which are used at intervals and depend upon the acts of man (*i.e.* right of way)

3. **As to Indication of Existence** (Article 615)

a. ***Apparent***

- Apparent easements are those which are made known and are continually kept in view by external signs that reveal the use and enjoyment of the same.
- For example, a right of way is apparent if the path is marked off.

b. ***Non-apparent***

- Non-apparent easements are those which show no external indication of their existence.
- For example, a right of way is non-apparent if the path is not marked.

4. **As to Nature of the Limitation** (Article 616)

Art. 616. **Easements are also positive or negative.**

A positive easement is one which imposes upon the owner of the servient estate the obligation of allowing something to be done or of doing it himself, and a negative easement, that which prohibits the owner of the servient estate from doing something which he could lawfully do if the easement did not exist.

a. ***Positive***

- Positive easements are those which impose upon the owner of the servient estate the obligation of allowing something to be done or of doing it himself.

i. *In patiendo* (Article 680, 1st part)

- Allowing something to be done

ii. *In faciendo* (Article 680, 2nd part)

- Doing it yourself

b. ***Negative***

- Negative easements are those which prohibit the owner of the servient estate from doing something which he could lawfully do if the easement did not exist. In allowing someone to do something in your estate, you are prohibited from preventing that person from doing that something.

NOTE: Some commentators believe that all easements are negative. Easements are restrict the owners from doing something which they could

otherwise do. What appear to be positive easements are in fact really negative easements.

1. **As to Source**

   a. ***Voluntary*** (Article 619)

   > ***Art. 619.*** **Easements are established either by law or by the will of the owners. The former are called legal and the latter voluntary easements.**

   - Established by the will of the owners
   - In *North Negros Sugar Central vs. Hidalgo*, North Negros Sugar Central (NNSC) constructed across its properties a road connecting the mill site with the provincial highway. NNSC made the road accessible to the public, a toll fee being charged in cases of motor vehicles, & pedestrians being allowed free passage. A tuba saloon was in the adjoining hacienda. The owner pf the saloon passed through the connecting road as it was his only means of access. NNSC sought to enjoin the owner of the tuba saloon from using the road in question since NNSC's workers got drunk.
   - There are 2 very persuasive views in the case of *NNSC vs. Hidalgo*. The majority said that NNSC voluntarily constituted an easement of way in favor of the general public. NNSC could not discriminate against certain persons who may want to use the road. This is clearly a case of a servitude voluntarily constituted in favor of the community under Article 531. Having been devoted by NNSC to the use of the public in general, the road is charged w/ public interest & while so devoted. NNSC may not establish discriminatory exceptions against any private persons.
   - The dissent said that there was no easement by using the process of elimination. A voluntary easement can be created only by will, by a donation or by a contract. In this case, there was no will, donation, or contract.

   b. ***Legal*** (Article 619)

   - Established by law

   c. ***Mixed***

   - A mixed easement can be acquired through prescription

C. 2 Modes of Acquiring Easements

1. **Title**

   - Title means the juridical act which gives rise to the servitude (*i.e.* law, donation, contract, will)
   - All kinds of easements can be created by title
     a. Continuous and apparent easements
     b. Continuous and non-apparent easements
     c. Discontinuous and apparent easements
     d. Discontinuous and non-apparent easements

- Equivalents of Title
  a. Deed of recognition (Article 623)

> ***Art. 623.*** **The absence of a document or proof showing the origin of an easement which cannot be acquired by prescription may be cured by a deed of recognition by the owner of the servient estate or by a final judgment.**

  b. Final judgment (Article 623)
  c. Apparent sign (Article 624)

> ***Art. 624.*** **The existence of an apparent sign of easement between two estates, established or maintained by the owner of both, shall be considered, should either of them be alienated, as a title in order that the easement may continue actively and passively, unless, at the time the ownership of the two estates is divided, the contrary should be provided in the title of conveyance of either of them, or the sign aforesaid should be removed before the execution of the deed. This provision shall also apply in case of the division of a thing owned in common by two or more persons.**

- In *Amor vs. Florentino* owned a house and a camarin. The house had 3 windows. From the said windows the house receives light and air from the lot where the camarin stood. The camarin and the house were disposed of. The windows were not closed. The SC said that an easement of light and view had been established. When ownership passed to theirs, nothing was done to the windows. The new owner of the house continued to exercise the right of receiving light and air through those windows. The visible and permanent sign of an easement is the title that characterizes its existence. Existence of the apparent sign had the same effect as a title of acquisition of the easement of light and view upon death of original owner.
- There is an error in Article 624 according to Professor Balane. Article 624 provides "The existence…. as title in order that the easement may continue…" According to Professor Balane, the use of the word "continue" is wrong. It should be "the easement may arise" since there is no easement yet. There is no easement yet since both properties have only 1 owner. There are only seeds of a potential easement.

2. **Prescription**
   - ONLY continuous and apparent easements may be created by prescription.
   - In order for an easement to be acquired by prescription, good faith or bad faith is irrelevant. The easement can be acquired after the lapse of 10 years.
   - Counting of the 10 year prescriptive period

a. Positive easements
   - Start counting from the 1st act constituting the exercise of the easement was performed.

b. Negative easements
   - Start counting from the time when the owner of the dominant estate serves a notarial prohibition on the owner of the prospective servient estate.

NOTE: Most easements are clearly positive or negative easements. However, an easement of light and view is both a positive and a negative easement. There are special rules to determine the counting of the prescriptive period.

a. Start counting from the 1st act constituting the exercise of the easement was performed – if the opening through which the light and view passes is a party wall.
   - **Rationale**: If the neighbor does not like the opening, he can always close it.

b. Start counting from the time when the owner of the dominant estate serves a notarial prohibition on the owner of the prospective servient estate – if the opening is made on the dominant owner's own wall.
   - **Rationale:** The neighbor cannot close the opening since it's in the dominant owner's property.

Art. 625. **Upon the establishment of an easement, all the rights necessary for its use are considered granted.**

- Upon the establishment of an easement, all the rights necessary for its use are considered granted.
- An example of this is Article 641. An easement for drawing water may carry with it the easement of right of way. If the well is in the middle of someone else's property how can one draw water without having to pass through that person's property?

Art. 626. **The owner of the dominant estate cannot use the easement except for the benefit of the immovable originally contemplated. Neither can he exercise the easement in any other manner than that previously established.**

- Article 626 is a classic case of an intent that failed. Article 626 was meant to overrule the ruling in *Valderrama vs. North Negros Sugar Co.*
- In *Valderrama vs. North Negros Sugar Co.,* Valderrama executed a contract with North Negros (NNSC) whereby NNSC agreed to install a sugar central of minimum capacity of 300 tons for grinding and milling al sugar cane grown by Valderrama who in turn bound himself to furnish the central all the cane they might produce. A railroad was constructed on Valderrama's land to transport the sugarcane harvested. However, Valderrama was unable to supply the required amount of sugarcane. NNSC had to contract with other sugarcane growers. Valderrama alleges that the easement granted in favor of North Negros was only for the transportation of the sugarcane of Valderrama. The

SC said that the easement was created to enable NNSC to build and maintain a railroad for transportation of sugar cane. To limit use exclusively to the cane of the hacienda owners would make the contract ineffective. Furthermore, it is against the nature of the easement to pretend that it was established in favor of the servient estates. The easement was created in favor of the corporation and not for the hacienda owners. The corporation may allow its wagons to pass by the tracks as many times as it may deem fit.

- The solution to the problem in *Valderrama vs. NNSC* would be to stipulate in the contract that a violation of the any of the conditions would terminate the easement.

Art. 627. **The owner of the dominant estate may make, at his own expense, on the servient state any works necessary for the use and preservation of the servitude, but without altering it or rendering it more burdensome.**

For this purpose he shall notify the owner of the servient estate, and shall choose the most convenient time and manner so as to cause the least inconvenience to the owner of the servient estate.

- At his own expense, the owner of the dominant estate may make any works on the servient estate which are necessary for the use and preservation of the servitude.
- Such works cannot alter or make the servitude more burdensome.
- The owner of the dominant estate must notify the owner of the servient estate. The owner of the dominant estate must choose the most convenient time and manner so as to cause the least inconvenience to the owner of the servient estate.

Art. 628. **Should there be several dominant estates, the owners of all of them shall be obliged to contribute to the expenses referred to in the preceding article, in proportion to the benefits which each may derive from the work. Any one who does not wish to contribute may exempt himself by renouncing the easement for the benefit of the others.**

If the owner of the servient estate should make use of the easement in any manner whatsoever, he shall also be obliged to contribute to the expenses in the proportion stated, saving an agreement to the contrary.

- If there are several dominant estates with a common servitude, the expenses for its use and preservation shall be shouldered by the owners of the dominant estates in proportion to the benefit that they receive.
- In the absence of proof to the contrary, the presumption is that the benefits are equal.
- If the owner of the servient estate also makes use of the servitude, he must also contribute in proportion to the benefit he receives.

D. *Extinguishment of Easements*

1. **By merger of ownership of the dominant and servient estates**
   - The merger must be complete, absolute and permanent.
   - If the owner of the servient estate becomes a co-owner of the dominant estate, the easement subsists since the merger is not complete.
   - If the sale is a *pacto de retro* sale, then the merger is not complete. The easement is only suspended

2. **Extinctive prescription**
   - All the dominant owner of the estate has to do is to stop using it continuously.
   - In the case of legal easements, the right to claim is never extinguished. All the dominant owner of the estate has to do is to claim it.

3. **When either or both of the estates fall into such condition that the easement cannot be used. However, it shall be revived if the subsequent condition of either or both of the estates should permit its use. This is however subject to extinctive prescription**
   - This is not a ground for extinguishments. This is a ground for suspension of the easement. The suspension may eventually lead to extinguishment of the easement if there is extinctive prescription.

4. **Expiration of the term of the fulfillment of the condition**

5. **Renunciation of the owner of the dominant estate**
   - There is dispute as to whether or not the renunciation can be tacit or not. According to Professor Balane, it can be tacit under Article 6 of the Civil Code. Rights may be waived. There is no prescribed form.

6. **Buy off the easement**

7. **Expropriation of the servient estate**
   - There can be no easement over property of the public dominion.

8. **Permanent impossibility to make use of the easement**

9. **Annulment or cancellation of the contract of easement**

10. **Resolution of grantor's right to create the easement**
    - A sells land to B via a *pacto de retro* sale. B while being a vendee *de retro* grants an easement to C. If A, the vendor, redeems, the easement given to C is extinguished.

11. **Registration of the servient estate as free and without any encumbrance in the Torrens System in favor of an innocent purchaser for value**

12. **Cessation of necessity, in case of a legal easement of right of way** (Article 655[℘])

[℘] *Art. 655.* If the right of way granted to a surrounded estate ceases to be necessary because its owner has joined it to another abutting on a public road, the owner of the servient estate may demand that the easement be extinguished, returning what he may have received by way of

E. Legal Easements (Proper)

1. **Waters**

- The Water Code (Articles 31-52) amends many of the easements.
- Articles 52 and 100[x] of the Water Code are the repealing clauses
- Article 637 (natural drainage of lands) has been superseded by Article 50 of the Water Code.

> ***Art. 637.*** **Lower estates are obliged to receive the waters which naturally and without the intervention of man descend from the higher estates, as well as the stones or earth which they carry with them.**
>
> **The owner of the lower estate cannot construct works which will impede this easement; neither can the owner of the higher estate make works which will increase the burden.**

> ***Art. 50, Water Code.*** **Lower estates are obliged to receive the waters which naturally and without the intervention of man flow from the higher estate, as well as the stone or earth which they carry with them.**
>
> **The owner of the lower estate can not construct works which will impede this natural flow, unless he provides an alternative method of drainage; neither can the owner of the higher estate make works which will increase this natural flow.**

- Article 638 (tow path) has been superseded by Article 51 of the Water Code.

> ***Art. 638.*** **The banks of rivers and streams, even in case they are of private ownership, are subject throughout their entire**

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indemnity. The interest on the indemnity shall be deemed to be in payment of rent for the use of the easement.

The same rule shall be applied in case a new road is opened giving access to the isolated estate.

In both cases, the public highway must substantially meet the needs of the dominant estate in order that the easement may be extinguished.

[x] *Art. 52.* The establishment, extent, form, and conditions of easements of water not expressly determined by the provisions of this Code shall be governed by the provisions of the Civil Code.

Art. 100. The following laws, parts and/or provisions of laws are hereby repealed:

a. The provisions of the Spanish Law on Waters of August 3, 1866, the Civil Code of Spain of 1889 and the Civil Code of the Philippines (R.A. 386) on ownership of waters, easements relating to waters, use of public waters and acquisitive prescription on the use of waters, which are inconsistent with the provisions of this Code;
b. The provisions of R.A. 6395, otherwise known as the Revised Charter of National Power Corporation, particularly section 3, paragraph (f), and section 12, insofar as they relate to the appropriation of waters and the grant thereof;
c. The provisions of Act No. 2152, as amended, otherwise known as the Irrigation Act, section 3, paragraphs (k) and (m) of P.D. No. 813, R.A. 2056; Section 90, C.A. 137; and,
d. All Decree, Laws, Acts, parts of Acts, rules of Court, executive orders, and administrative regulations which are contrary to or inconsistent with the provisions of this Code.

length and within a zone of three meters along their margins, to the easement of public use in the general interest of navigation, floatage, fishing and salvage.

Estates adjoining the banks of navigable or floatable rivers are, furthermore, subject to the easement of towpath for the exclusive service of river navigation and floatage.

If it be necessary for such purpose to occupy lands of private ownership, the proper indemnity shall first be paid.

Art. 51, Water Code. **The banks of rivers and streams and the shores of the seas and lakes throughout their entire length and within a zone of three (3) meters in urban areas, twenty (20) meters in agricultural areas and forty (40) meters in forest areas, along their margins are subject to the easement of public use in the interest of recreation, navigation, floatage, fishing and salvage. No person shall be allowed to stay in this zone longer than what is necessary for recreation, navigation, floatage, fishing or salvage or to build structures of any kind.**

- Article 639 (easement of dam) has been superseded by Articles 38 and 39 of the Water Code.

Art. 639. **Whenever for the diversion or taking of water from a river or brook, or for the use of any other continuous or discontinuous stream, it should be necessary to build a dam, and the person who is to construct it is not the owner of the banks, or lands which must support it, he may establish the easement of abutment of a dam, after payment of the proper indemnity.**

Art. 38, Water Code. **Authority for the construction of dams, bridges and other structures across of which may interfere with the flow of navigable or flotable waterways shall first be secured from the Department of Public Works, Transportation and Communications.**

Art. 39, Water Code. **Except in cases of emergency to save life or property, the construction or repair of the following works shall be undertaken only after the plans and specifications therefor, as may be required by the Council, are approved by the proper government agency; dams for the diversion or storage of water; structures for the use of water power, installations for the utilization of subterranean or ground water and other structures for utilization of water resources.**

- Articles 640-641 are the provisions regarding easement for drawing of waters.

Art. 640. **Compulsory easements for drawing water or for watering animals can be imposed only for reasons of public use in favor of a town or village, after payment of the proper indemnity.**

Art. 641. **Easements for drawing water and for watering animals carry with them the obligation of the owners of the servient estates to allow passage to persons and animals to the place where such easements are to be used, and the indemnity shall include this service.**

- Articles 642-646 are the provisions for the easement of aqueduct. This should be correlated with Article 49 of the Water Code.

Art. 642. **Any person who may wish to use upon his own estate any water of which he can dispose shall have the right to make it flow through the intervening estates, with the obligation to indemnify their owners, as well as the owners of the lower estates upon which the waters may filter or descend.**

Art. 643. **One desiring to make use of the right granted in the preceding article is obliged:**

(1) To prove that he can dispose of the water and that it is sufficient for the use for which it is intended;

(2) To show that the proposed right of way is the most convenient and the least onerous to third persons;

(3) To indemnify the owner of the servient estate in the manner determined by the laws and regulations.

Art. 644. **The easement of aqueduct for private interest cannot be imposed on buildings, courtyards, annexes, or outhouses, or on orchards or gardens already existing.**

Art. 645. **The easement of aqueduct does not prevent the owner of the servient estate from closing or fencing it, or from building over the aqueduct in such manner as not to cause the latter any damage, or render necessary repairs and cleanings impossible.**

Art. 646. **For legal purposes, the easement of aqueduct shall be considered as continuous and apparent, even though the flow of the water may not be continuous, or its use depends upon the needs of the dominant estate, or upon a schedule of alternate days or hours.**

- Article 647 is the easement for the construction of stop lock and sluice gate.

Art. 647. **One who for the purpose of irrigating or improving his estate, has to construct a stop lock or sluice gate in the bed of the stream from which the water is to be taken, may demand that the owners of the banks permit its construction, after payment of damages, including those caused by the new easement to such owners and to the other irrigators.**

- Article 25 of the Water Code is the easement for appropriation and use of waters.

Art. 25, Water Code. **A holder of water permit may demand the establishment of easements necessary for the construction and maintenance of the works and facilities needed for the beneficial use of the waters to be appropriated subject to the requirements of just compensation and to the following conditions:**

a. That he is the owner, lessee, mortgagee or one having real right over the land upon which he proposes to use water; and

b. That the proposed easement is the most convenient and the least onerous to the servient estate.

Easements relating to the appropriation and use of waters may be modified by agreement of the contracting parties provided the same is not contrary to law or prejudicial to third persons.

2. **Right of way** (Articles 649-657)

Art. 649. **The owner, or any person who by virtue of a real right may cultivate or use any immovable, which is surrounded by other immovables pertaining to other persons and without adequate outlet to a public highway, is entitled to demand a right of way through the neighboring estates, after payment of the proper indemnity.**

Should this easement be established in such a manner that its use may be continuous for all the needs of the dominant estate, establishing a permanent passage, the indemnity shall consist of the value of the land occupied and the amount of the damage caused to the servient estate.

In case the right of way is limited to the necessary passage for the cultivation of the estate surrounded by others and for the gathering of its crops through the servient estate without a permanent way, the indemnity shall consist in the payment of the damage caused by such encumbrance.

This easement is not compulsory if the isolation of the immovable is due to the proprietor's own acts.

Art. 650. **The easement of right of way shall be established at the point least prejudicial to the servient estate, and, insofar as consistent with this rule, where the distance from the dominant estate to a public highway may be the shortest.**

Art. 651. **The width of the easement of right of way shall be that which is sufficient for the needs of the dominant estate, and may accordingly be changed from time to time.**

Art. 652. **Whenever a piece of land acquired by sale, exchange or partition, is surrounded by other estates of the vendor, exchanger, or co-owner, he shall be obliged to grant a right of way without indemnity.**

In case of a simple donation, the donor shall be indemnified by the donee for the establishment of the right of way.

Art. 653. **In the case of the preceding article, if it is the land of the grantor that becomes isolated, he may demand a right of way after paying a indemnity. However, the donor shall not be liable for indemnity.**

Art. 654. **If the right of way is permanent, the necessary repairs shall be made by the owner of the dominant estate. A proportionate share of the taxes shall be reimbursed by said owner to the proprietor of the servient estate.**

Art. 655. **If the right of way granted to a surrounded estate ceases to be necessary because its owner has joined it to another abutting on a public road, the owner of the servient estate may demand that the easement be extinguished, returning what he may have received by way of indemnity. The interest on the indemnity shall be deemed to be in payment of rent for the use of the easement.**

The same rule shall be applied in case a new road is opened giving access to the isolated estate.

In both cases, the public highway must substantially meet the needs of the dominant estate in order that the easement may be extinguished.

Art. 656. **If it be indispensable for the construction, repair, improvement, alteration or beautification of a building, to carry materials through the estate of another, or to raise therein scaffolding or other objects necessary for the work, the owner of such estate shall be obliged to permit the act, after receiving payment of the proper indemnity for the damage caused him.**

Art. 657. **Easements of the right of way for the passage of livestock known as animal path, animal trail or any other, and those for watering places, resting places and animal folds, shall be governed by the ordinances and regulations relating thereto, and, in the absence thereof, by the usages and customs of the place.**

Without prejudice to rights legally acquired, the animal path shall not exceed in any case the width of 75 meters, and the animal trail that of 37 meters and 50 centimeters.

Whenever it is necessary to establish a compulsory easement of the right of way or for a watering place for animals, the provisions of this Section and those of articles 640 and 641 shall be observed. In this case the width shall not exceed 10 meters.

- Requisites for an Easement of Right of Way
  a. The dominant estate is surrounded by other immovables without an adequate outlet to a public highway
     - The right of way may be demanded:
       i. When there is absolutely no access to a public highway

ii. When, even if there is one, it is difficult or dangerous to use, or is grossly insufficient (*i.e.* access is through a steep cliff)

- Mere inconvenience is not aground for demanding the easement of right of way (*i.e.* there is an adequate outlet, but it is not paved)

b. The dominant estate is willing to pay the proper indemnity

- If the right of way is permanent, payment shall be equivalent to the value of the land occupied and the amount of the damage caused to the servient estate.
- Such payment for permanent use does not mean that the owner of the dominant estate now owns such portion of the land.
- If a piece of land is acquired by sale, exchange, partition or partition, and the land is surrounded by other estates of the vendor, exchanger or co-owner, a right of way shall be given without having to pay the indemnity (Article 652)
- If it is the land of the vendor, exchanger or co-owner that becomes isolated, he may demand a right of way, provided that he pay the proper indemnity (Article 653)
- If a piece of land is acquired by donation, and such land is surrounded by other estates of the donor, the donee must pay the proper indemnity in order to get a right of way (Article 652).
- If it is the land of the donor that becomes isolated, he may demand a right of way without having to pay the indemnity (Article 653).

c. The isolation was not due to the acts of the proprietor of the dominant estate

- In Article 649, it states that the isolation must not be due to the act of the proprietor of the dominant estate. Yet, in Article 653, the proprietor of the dominant estate may demand an easement of right of way even though the isolation was caused by his act. Is there a conflict between Article 649 and Article 653? To reconcile, Article 653 deals with a specific instance.

d. That the right of way claimed is at the point least prejudicial to the servient estate; and insofar as consistent with this rule, where the distance from the dominant estate to a public highway may be the shortest.

- Extinguishment of Easements of Right of Way (Article 655)
  - The fact that an adequate outlet has been created does not automatically extinguish the a legal easement of right of way. It must be asked for by the owner of the servient estate.
  - The owner of the dominant estate cannot demand that the easement be extinguished.
  - Article 655 is applicable only to legal easements of right of way. It does not apply to voluntary easements of right of way.

3. **Party wall** (Articles 658-666)

Art. 658. **The easement of party wall shall be governed by the provisions of this Title, by the local ordinances and customs insofar as they do not conflict with the same, and by the rules of co-ownership.**

Art. 659. **The existence of an easement of party wall is presumed, unless there is a title, or exterior sign, or proof to the contrary:**

(1) In dividing walls of adjoining buildings up to the point of common elevation;

(2) In dividing walls of gardens or yards situated in cities, towns, or in rural communities;

(3) In fences, walls and live hedges dividing rural lands.

Art. 660. **It is understood that there is an exterior sign, contrary to the easement of party wall:**

(1) Whenever in the dividing wall of buildings there is a window or opening;

(2) Whenever the dividing wall is, on one side, straight and plumb on all its facement, and on the other, it has similar conditions on the upper part, but the lower part slants or projects outward;

(3) Whenever the entire wall is built within the boundaries of one of the estates;

(4) Whenever the dividing wall bears the burden of the binding beams, floors and roof frame of one of the buildings, but not those of the others;

(5) Whenever the dividing wall between courtyards, gardens, and tenements is constructed in such a way that the coping sheds the water upon only one of the estates;

(6) Whenever the dividing wall, being built of masonry, has stepping stones, which at certain intervals project from the surface on one side only, but not on the other;

(7) Whenever lands inclosed by fences or live hedges adjoin others which are not inclosed.

In all these cases, the ownership of the walls, fences or hedges shall be deemed to belong exclusively to the owner of the property or tenement which has in its favor the presumption based on any one of these signs.

Art. 661. **Ditches or drains opened between two estates are also presumed as common to both, if there is no title or sign showing the contrary.**

There is a sign contrary to the part-ownership whenever the earth or dirt removed to open the ditch or to clean it is only on one side thereof, in which case the ownership of the ditch shall belong

exclusively to the owner of the land having this exterior sign in its favor.

Art. 662. **The cost of repairs and construction of party walls and the maintenance of fences, live hedges, ditches, and drains owned in common, shall be borne by all the owners of the lands or tenements having the party wall in their favor, in proportion to the right of each.**

Nevertheless, any owner may exempt himself from contributing to this charge by renouncing his part-ownership, except when the party wall supports a building belonging to him.

Art. 663. **If the owner of a building, supported by a party wall desires to demolish the building, he may also renounce his part-ownership of the wall, but the cost of all repairs and work necessary to prevent any damage which the demolition may cause to the party wall, on this occasion only, shall be borne by him.**

Art. 664. **Every owner may increase the height of the party wall, doing at his own expense and paying for any damage which may be caused by the work, even though such damage be temporary.**

The expenses of maintaining the wall in the part newly raised or deepened at its foundation shall also be paid for by him; and, in addition, the indemnity for the increased expenses which may be necessary for the preservation of the party wall by reason of the greater height or depth which has been given it.

If the party wall cannot bear the increased height, the owner desiring to raise it shall be obliged to reconstruct it at his own expense and, if for this purpose it be necessary to make it thicker, he shall give the space required from his own land.

Art. 665. **The other owners who have not contributed in giving increased height, depth or thickness to the wall may, nevertheless, acquire the right of part-ownership therein, by paying proportionally the value of the work at the time of the acquisition and of the land used for its increased thickness.**

Art. 666. **Every part-owner of a party wall may use it in proportion to the right he may have in the co-ownership, without interfering with the common and respective uses by the other co-owners.**

- A party wall is a common wall built along the dividing line of 2 adjoining estates.
- Nature of a Party Wall
  a. Easement
    - Manresa and Castan believe that a party wall is predominantly an easement.

b. Co-ownership (*i.e.* Article 666)
    - Sanchez Roman believes that a party wall is predominantly a co-ownership
    - Special Characteristics of a Party Wall as Co-Ownership
        i. This co-ownership is indivisible
            - Cannot physically divide
        ii. The parts pertaining to each co-owner can be materially designated and yet the whole wall is co-owned
        iii. The rights of a co-owner of a party wall are greater than an ordinary co-owner

- Maintenance and Repair of Party Wall (Article 662)
    - **General Rule:** The expense for the repair and maintenance of the party wall shall be shouldered by the co-owners in proportion to the right of each.

      Presumption: Co-owners have equal proportion (share equally in the expenses).
    - ***Exceptions:***
        a. The expense for the repair of the party wall can be shouldered by 1 co-owner, but the co-owner who does not contribute must renounce his share in the party wall.
            - Commentators are of different opinions regarding the extent of the renunciation – total or proportional to the amount of repairs.
        b. When the defects are caused by 1 owner, he shall pay for all the expenses for repair
            - If the damage was due to the fault of one owner
- Presumption of Party Wall
    - A party wall is presumed when a wall divides
        a. Adjoining buildings
        b. Gardens or yards situated in cities, towns or in rural communities
        c. Rural lands
    - This presumption may be rebutted if there is a contrary
        a. Title; or
        b. Exterior sign or
            - The following are exterior signs which will be rebut the presumption
                i. A window or opening in the dividing wall
                ii. On 1 side, the wall is straight and then the wall juts out
                    - A buttress is placed part where the wall juts out. This is done in order to prevent the neighbor from invading his property.

iii. The entire wall is built within the boundary of 1 of the estates (not along the boundary of the 2 estates)

iv. When the wall supports the building of 1 estate but not the other

v. When the dividing wall between the courtyards, gardens, and tenements is constructed in such a way that the coping sheds the water upon only 1 of the estates

vi. Stepping stones only on 1 side of the wall

vii. When 1 estate is enclosed but the other is not

- Commentators do not agree as to whether or not this enumeration is exclusive.

c. Proof

4. **Light and view** (Articles 667-673)

Art. 667. **No part-owner may, without the consent of the others, open through the party wall any window or aperture of any kind.**

Art. 668. **The period of prescription for the acquisition of an easement of light and view shall be counted:**

(1) From the time of the opening of the window, if it is through a party wall; or

(2) From the time of the formal prohibition upon the proprietor of the adjoining land or tenement, if the window is through a wall on the dominant estate.

Art. 669. **When the distances in article 670 are not observed, the owner of a wall which is not party wall, adjoining a tenement or piece of land belonging to another, can make in it openings to admit light at the height of the ceiling joints or immediately under the ceiling, and of the size of thirty centimeters square, and, in every case, with an iron grating imbedded in the wall and with a wire screen.**

Nevertheless, the owner of the tenement or property adjoining the wall in which the openings are made can close them should he acquire part-ownership thereof, if there be no stipulation to the contrary.

He can also obstruct them by constructing a building on his land or by raising a wall thereon contiguous to that having such openings, unless an easement of light has been acquired.

Art. 670. **No windows, apertures, balconies, or other similar projections which afford a direct view upon or towards an adjoining land or tenement can be made, without leaving a distance of two meters between the wall in which they are made and such contiguous property.**

Neither can side or oblique views upon or towards such conterminous property be had, unless there be a distance of sixty centimeters.

The nonobservance of these distances does not give rise to prescription.

Art. 671. **The distance referred to in the preceding article shall be measured in cases of direct views from the outer line of the wall when the openings do not project, from the outer line of the latter when they do, and in cases of oblique view from the dividing line between the two properties.**

Art. 672. **The provisions of article 670 are not applicable to buildings separated by a public way or alley, which is not less than three meters wide, subject to special regulations and local ordinances.**

Art. 673. **Whenever by any title a right has been acquired to have direct views, balconies or belvederes overlooking an adjoining property, the owner of the servient estate cannot build thereon at less than a distance of three meters to be measured in the manner provided in article 671. Any stipulation permitting distances less than those prescribed in article 670 is void.**

- 2 Different Easements
  1. Easement of light (*luminis)*
     - The easement of light is the right to make an opening not greater than 30 centimeters square and to receive light from another's tenement.
     - The opening must be made on the ceiling or if on the wall, there must be an iron grating (so you can't look out, otherwise, it becomes an easement of light and view).
     - No minimum distance required.
  2. Easement of light and view (*luminis et prospectus*)
     - The easement of light and view is the right to open windows and apertures and to bar the owner of the servient estate to block the view.
     - The easement of view necessarily carries with it the easement of light.
     - Direct View: There must be a minimum distance of 2 meters from the wall of the opening and the contiguous property.
     - Oblique View: There must be a minimum distance of 60 centimeters from the wall of the opening and the contiguous property.
     - Non-observance of the minimum distances will not create an easement.
     - The owner of the servient estate cannot build within 3 meters from the boundary between the servient and the dominant estate. Thus,

there is 5 meters between the wall of the opening and any structure of the servient estate.

- The obligation not to build higher accompanies the easements of light and view.

- Acquiring by Prescription

a. Start counting from the 1st act constituting the exercise of the easement was performed – if the opening through which the light and view passes is a party wall.

- **Rationale:** If the neighbor does not like the opening, he can always close it.

b. Start counting from the time when the owner of the dominant estate serves a notarial prohibition on the owner of the prospective servient estate – if the opening is made on the dominant owner's own wall.

- Rationale: The neighbor cannot close the opening since it's in the dominant owner's property.

F. ***Other So-Called Legal Easements*** (Not Strictly Speaking Legal Easements)

1. **Drainage of buildings** (Articles 674-676)

Art. 674. **The owner of a building shall be obliged to construct its roof or covering in such manner that the rain water shall fall on his own land or on a street or public place, and not on the land of his neighbor, even though the adjacent land may belong to two or more persons, one of whom is the owner of the roof. Even if it should fall on his own land, the owner shall be obliged to collect the water in such a way as not to cause damage to the adjacent land or tenement.**

Art. 675. **The owner of a tenement or a piece of land, subject to the easement of receiving water falling from roofs, may build in such manner as to receive the water upon his own roof or give it another outlet in accordance with local ordinances or customs, and in such a way as not to cause any nuisance or damage whatever to the dominant estate.**

Art. 676. **Whenever the yard or court of a house is surrounded by other houses, and it is not possible to give an outlet through the house itself to the rain water collected thereon, the establishment of an easement of drainage can be demanded, giving an outlet to the water at the point of the contiguous lands or tenements where its egress may be easiest, and establishing a conduit for the drainage in such manner as to cause the least damage to the servient estate, after payment of the property indemnity.**

- This is not really an easement. Rather, it is a limitation of the right of ownership.

2. **Intermediate distances** (Articles 677-681)

Art. 677. **No constructions can be built or plantings made near fortified places or fortresses without compliance with the conditions required in special laws, ordinances, and regulations relating thereto.**

Art. 678. **No person shall build any aqueduct, well, sewer, furnace, forge, chimney, stable, depository of corrosive substances, machinery, or factory which by reason of its nature or products is dangerous or noxious, without observing the distances prescribed by the regulations and customs of the place, and without making the necessary protective works, subject, in regard to the manner thereof, to the conditions prescribed by such regulations. These prohibitions cannot be altered or renounced by stipulation on the part of the adjoining proprietors.**

In the absence of regulations, such precautions shall be taken as may be considered necessary, in order to avoid any damage to the neighboring lands or tenements.

Art. 679. **No trees shall be planted near a tenement or piece of land belonging to another except at the distance authorized by the ordinances or customs of the place, and, in the absence thereof, at a distance of at least two meters from the dividing line of the estates if tall trees are planted and at a distance of at least fifty centimeters if shrubs or small trees are planted.**

Every landowner shall have the right to demand that trees hereafter planted at a shorter distance from his land or tenement be uprooted.

The provisions of this article also apply to trees which have grown spontaneously.

Art. 680. **If the branches of any tree should extend over a neighboring estate, tenement, garden or yard, the owner of the latter shall have the right to demand that they be cut off insofar as they may spread over his property, and, if it be the roots of a neighboring tree which should penetrate into the land of another, the latter may cut them off himself within his property.**

Art. 681. **Fruits naturally falling upon adjacent land belong to the owner of said land.**

- Again, this is a limitation of ownership and not an easement.
- This is basically zoning which can be modified by laws and ordinances.

3. **Easement against nuisances** (Articles 682-683)

Art. 682. **Every building or piece of land is subject to the easement which prohibits the proprietor or possessor from committing nuisance through noise, jarring, offensive odor, smoke, heat, dust, water, glare and other causes.**

Art. 683. **Subject to zoning, health, police and other laws and regulations, factories and shops may be maintained provided the least possible annoyance is caused to the neighborhood.**

- This is also a limitation of ownership and not an easement.
- Nuisance is any act, omission, establishment, condition, property or anything else which (Article 694):
  a. Injures or endangers the health or safety of others; or
  b. Annoys or offends the senses; or
  c. Shocks, defies or disregards decency or morality; or
  d. Obstructs or interferes with the free passage of any public highway or streets, or any body of water; or
  e. Hinders or impairs the use of property.

4. **Lateral and subjacent support** (Articles 684-687)

Sec. 684. **No proprietor shall make such excavations upon his land as to deprive any adjacent land or building of sufficient lateral or subjacent support.**

Art. 685. **Any stipulation or testamentary provision allowing excavations that cause danger to an adjacent land or building shall be void.**

Art. 686. **The legal easement of lateral and subjacent support is not only for buildings standing at the time the excavations are made but also for constructions that may be erected.**

Art. 687. **Any proprietor intending to make any excavation contemplated in the three preceding articles shall notify all owners of adjacent lands.**

- In lateral support, there is an obligation to see to it that the structures on your neighbor's land will not collapse from your land's lack of support.
- In subjacent support, the owner of the surface and the sub-surface are different.

G. Voluntary Easements

- One can create voluntary easements in favor of another immovable or persons on one's property.
- In *La Vista vs. CA*, the easement of right of way was not a legal easement but was created because of a contract. Since it was created by a contract, the requisites for a right of way under Arts. 649 and 650 need not be followed.

DIFFERENT MODES OF ACQUIRING OWNERSHIP

- Mode is the specific cause which gives rise to ownership, as the result of the presence of a special condition of things, of the aptitude and intent of persons, and of compliance with the conditions established by law.
- Title is that which gives juridical justification for a mode because it produces the cause for the acquisition of ownership.
- Modes arise from title.
- In a contract of sale, the ownership is transferred not because of the contract of sale but by tradition (delivery).
- The modern trend however is to do away with the distinction between mode and title.

I. 3 Types of Modes

1. ***Original Mode***
    - In an original mode, ownership is not acquired from an immediately preceding owner. It does not however mean that the object was not owned before. For example, if someone catches fish, it does not necessarily mean that person was the first one to catch it (occupation).
    - Intellectual creation, occupation
2. ***Derivative Mode***
    - In a derivative mode, ownership is based on a right previously held by another person.
    - Law, tradition, donation, succession
3. ***Mixed Mode***
    - A 3rd mode was created since prescription could not be classified as original or derivative.
    - Prescription

II. Modes of Acquiring Ownership

A. *Intellectual creation*

- Intellectual creation is now governed by the Intellectual Property Code and the TRIPS Agreement.

B. *Occupation*

- For occupation to occur, the object must be appropriable by nature (Article 713*).
- Occupation regarding animals happens by hunting or fishing. The acquisition of animals can be regulated by law (*i.e.* dynamite fishing).
- The ownership of a piece of land cannot be acquired by occupation (Article 714). This is based on the Regalian Doctrine. Under the Regalian doctrine,

* *Art. 713.* Things appropriable by nature which are without an owner, such as animals that are the object of hunting and fishing, hidden treasure and abandoned movables, are acquired by occupation.

one cannot acquire land unless it was granted by the State or by its prior owner.

- Under the Regalian Doctrine, there is no such thing as land which is *res nullius*.
- If the state grants the land to X. X abandons the land. What happens to the land? There is no specific provision. Paras thinks that the land goes back to the state.
- Under Article 716[♣], the periods of 2 (for bees) and 20 days (for domesticated animals) are not periods of prescription. Rather, these days are conditions for the acquisition by occupation
- There is a difference between domesticated animals and domestic animals. Domesticated animals are by nature wild animals but have been tamed – possess the habit of returning to the premises of the possessor (Article 560[♦]). On the other hand, a domestic animal is treated like any other personal property. It cannot be acquired by the occupation since it is owned unless the owner abandons the animal.
- Domestic animals are governed by Article 559[♥].
- Article 719[♠] provides the procedure when one finds a lost movable which is not a treasure.

C. *Law*

- Proximately, law is 1 of the 7 modes of acquiring ownership.
- Ultimately, law is the only source of ownership.

♣ *Art. 716.* The owner of a swarm of bees shall have a right to pursue them to another's land, indemnifying the possessor of the latter for the damage. If the owner has not pursued the swarm, or ceases to do so within two consecutive days, the possessor of the land may occupy or retain the same. The owner of domesticated animals may also claim them within twenty days to be counted from their occupation by another person. This period having expired, they shall pertain to him who has caught and kept them.

♦ *Art. 560.* Wild animals are possessed only while they are under one's control; domesticated or tamed animals are considered domestic or tame if they retain the habit of returning to the premises of the possessor.

♥ *Art. 559.* The possession of movable property acquired in good faith is equivalent to a title. Nevertheless, one who has lost any movable or has been unlawfully deprived thereof may recover it from the person in possession of the same.

If the possessor of a movable lost or which the owner has been unlawfully deprived, has acquired it in good faith at a public sale, the owner cannot obtain its return without reimbursing the price paid therefor.

♠ *Art. 719.* Whoever finds a movable, which is not treasure, must return it to its previous possessor. If the latter is unknown, the finder shall immediately deposit it with the mayor of the city or municipality where the finding has taken place.

The finding shall be publicly announced by the mayor for two consecutive weeks in the way he deems best.

If the movable cannot be kept without deterioration, or without expenses which considerably diminish its value, it shall be sold at public auction eight days after the publication.

Six months from the publication having elapsed without the owner having appeared, the thing found, or its value, shall be awarded to the finder. The finder and the owner shall be obliged, as the case may be, to reimburse the expenses.

- The provisions regarding law as a mode of acquiring ownership is scattered throughout the Civil Code (*i.e.* Articles 681, 1434, 1456[∅]).

D. ***Tradition*** (Articles 1496-1501)

Art. 1496. **The ownership of the thing sold is acquired by the vendee from the moment it is delivered to him in any of the ways specified in articles 1497 to 1501, or in any other manner signifying an agreement that the possession is transferred from the vendor to the vendee.**

Art. 1497. **The thing sold shall be understood as delivered, when it is placed in the control and possession of the vendee.**

Art. 1498. **When the sale is made through a public instrument, the execution thereof shall be equivalent to the delivery of the thing which is the object of the contract, if from the deed the contrary does not appear or cannot clearly be inferred.**

With regard to movable property, its delivery may also be made by the delivery of the keys of the place or depository where it is stored or kept.

Art. 1499. **The delivery of movable property may likewise be made by the mere consent or agreement of the contracting parties, if the thing sold cannot be transferred to the possession of the vendee at the time of the sale, or if the latter already had it in his possession for any other reason.**

Art. 1500. **There may also be tradition *constitutum possessorium*.**

Art. 1501. **With respect to incorporeal property, the provisions of the first paragraph of article 1498 shall govern. In any other case wherein said provisions are not applicable, the placing of the titles of ownership in the possession of the vendee or the use by the vendee of his rights, with the vendor's consent, shall be understood as a delivery.**

- Tradition comes from the latin word *tradere* which means to deliver.
- Tradition is a mode of acquiring ownership as a consequence of certain contracts such as sale by virtue of which, actually or constructively, the object is placed in the control and possession of the transferee.

[∅] *Art. 681.* Fruits naturally falling upon adjacent land belong to the owner of said land.

Art. 1434. When a person who is not the owner of a thing sells or alienates and delivers it, and later the seller or grantor acquires title thereto, such title passes by operation of law to the buyer or grantee.

Art. 1456. If property is acquired through mistake or fraud, the person obtaining it is, by force of law, considered a trustee of an implied trust for the benefit of the person from whom the property comes.

- Kinds of Tradition
  1. **Real or material** – physical delivery (Article 1497)
  2. ***Fingida*** – constructive
     a. ***Simbolica*** (Article 1498)
        - Requisites
          i. Transferor must have control of the thing
             - The transferor must have actual possession
          ii. Transferee must be put in control
          iii. There must be intent to transfer
        - In *Aviles vs. Arcega*, a very controversial decision, the Alcantara sold the house to Aviles as evidenced by a document acknowledged before a notary public. The document stated that Alcantara would continue to possess the house for 4 months. Aviles never took possession of the property even after the lapse of 4 months. Alcantara sold the house to Arcega. The SC said that Aviles cannot invoke symbolic delivery as this was prevented by express stipulation – that Alcantara would continue in possession. The fact that 4 months had lapsed does not mean that there was symbolic delivery since there is no law providing that is should take place after the execution of the document where there is stipulation to the contrary.
        - This case is controversial since those who dissented are the 4 civil law experts.
        - *Traditio clarium* is part of *tradicion simbolica*. *Traditio clarium* is applicable only to personal property (i.e. keys). In Banco Filipino vs. Peterson, the goods in the warehouse were delivered when the keys to the warehouse were given.
     b. ***Longa manu*** (Articles 1496 and 1499, 1st part)
        - *Longa manu* means long hand. Literally this means hat the transfer of ownership is done by pointing out. For example, the ownership of the car is transferred by pointing to the specific car.
        - In *longa manu*, mere agreement is not enough. There must be an accompanying sign or gesture (Article 1499).
     c. ***Brevi manu*** (Article 1499)
        - *Brevi manu* means short hand.
        - *Brevi manu* occurs when the transferee was already in possession before he had acquired ownership. For example, the lessee is renting the house. The lessor sells the house to the lessee.
     d. ***Constitutum possessorium*** (Article 1500)
        - *Constitutum possessorium* is the opposite of *brevi manu*. In this case, the transferor already in possession and continues to be in possession under a different capacity after ownership had been transferred.

- For example, A owns a house. A sells the house to B. A then leases the house to B.

3. **Quasi-tradition** (*cuasi tradicion*)
   - Quasi-tradition refers to the delivery of incorporeal property.
   - For example, shares of stock cannot be physically transferred. What is delivered are the stock certificates. The endorsement of the stock certificate is delivery by quasi-tradition.
   - However, in *Tablante vs. Aquino*, the SC applied quasi-tradition to tangible property. According to Professor Balane, this is wrong. It should be *tradicion simbolica*.
4. **By operation of law** (*por ministerio de la ley*)
   - Succession should not be included here since succession is an independent mode of acquiring ownership. It is not part of tradition.

E. *Donation*

- Donation is an act of liberality whereby a person disposes gratuitously of a thing or right in favor of another, who accepts it (Article 725).
- According to Professor Balane, the definition of a donation in Article 725 is wrong. A donation is not an act. It is a contract.

1. **Features of donation**
   a. Reduction of the donor's patrimony
   b. Enhancement or increase of the donee's patrimony
   c. *Animus donandi* -- intent to do an act of liberality
2. **Classification of donations**
   a. ***Inter vivos*** – the effectivity of the donation does not depend upon the donor's death
      i. *Pure or simple* (Article 725[⊕])
         - Gratuitous
      ii. *Remuneratory* (Article 726[⊗])
         - The donation is made on account of the donee's merits.
         - For example, a parcel of land is given to L since L is the most outstanding student in law or out of gratitude for saving another person's life.
      iii. *Conditional or modal* (Articles 726, 733[℘])

[⊕] *Art. 725.* Donation is an act of liberality whereby a person disposes gratuitously of a thing or right in favor of another, who accepts it.

[⊗] *Art. 726.* When a person gives to another a thing or right on account of the latter's merits or of the services rendered by him to the donor, provided they do not constitute a demandable debt, or when the gift imposes upon the donee a burden which is less than the value of the thing given, there is also a donation.

[℘] *Art. 733.* Donations with an onerous cause shall be governed by the rules on contracts and remuneratory donations by the provisions of the present Title as regards that portion which exceeds the value of the burden imposed.

- A conditional or modal donation imposes upon the donee a burden which is less than the value of the thing donated.
- For example, X donates land worth P20,000,000. However, X must support the donor's mother – P2,000,000. The value of the donation is P18,000,000.
- The more accurate term is not conditional but modal.
- Modal donations are not pure acts of liberality since a mode is imposed.
- Article 733 is inaccurate. Article 733 mentions remuneratory donations. This should be replaced by the word "modal".

iv. *Onerous* (Article 733)

- This is a donation in name only.
- An onerous donation is a contradiction in terms.

b. ***Mortis causa*** - the effectivity of the donation depends upon the donor's death

- The provisions on donation *mortis causa* are dead letter because donations *mortis causa* are governed by the provisions of testamentary succession which is another mode of acquiring ownership.
- A donates to B a parcel of land on the condition that B passes the Bar of 2001. On the eve of the bar exam, A dies. B passes the bar months after the death of A. This is a donation *inter vivos* since the cause for the donation is passing the bar. The test to determine whether or not it is *inter vivos* or *mortis causa* is the causal connection.

3. **Form required**

- Form determines the validity of the donation. Donations are one of the few transactions left in which form determines validity. Most transactions are consensual, the intent determining validity.

a. ***Movables*** (Article 748)

> ***Art. 748.*** **The donation of a movable may be made orally or in writing.**
>
> **An oral donation requires the simultaneous delivery of the thing or of the document representing the right donated.**
>
> **If the value of the personal property donated exceeds five thousand pesos, the donation and the acceptance shall be made in writing, otherwise, the donation shall be void.**

- If the donation is worth P5,000 or less, the donation can be made orally. However, the oral donation must be accompanied by the simultaneous delivery of the movable or of the document representing the right donated. Without delivery, the donation is no good.
- If the value of the donation exceeds P5,000, the donation and the acceptance must be in writing.
- The writing may be in a public or in a private instrument.

b. ***Immovables*** (Article 749)

> ***Art. 749.*** **In order that the donation of an immovable may be valid, it must be made in a public document, specifying therein the property donated and the value of the charges which the donee must satisfy.**
>
> **The acceptance may be made in the same deed of donation or in a separate public document, but it shall not take effect unless it is done during the lifetime of the donor.**
>
> **If the acceptance is made in a separate instrument, the donor shall be notified thereof in an authentic form, and this step shall be noted in both instruments.**

- The donation must be in a public instrument.
- The acceptance must either be in the same public instrument or in a different public instrument.
- Acceptance shall not take effect unless it is done during the lifetime of the donor.
- If the acceptance is made in a separate public instrument, the donor shall be notified thereof in an authentic form, and this step shall be noted in both instruments.

4. **Distinction between *inter vivos* and *mortis causa***

- A donation *mortis causa* is always revocable. Thus, if the donation is designated as irrevocable or is revocable only for certain grounds or causes, then the donation is *inter vivos*.
- In a donation *inter vivos*, the property passes from the donor to the donee (ownership). If the donor reserves the right of ownership, then the donation is *mortis causa*.
  - A stipulation giving the donor the power to alienate the property if the donor needs money – donation *inter vivos*. In this case, the right to alienate is limited.

  NOTE: The reservation must pertain to a reservation of the ownership and NOT the fruits.
- If the donor reserves the power to alienate, then the donor reserves the right of ownership. It is a donation *mortis causa*. If the donor reserves the right to alienate only for certain grounds and causes, then it means that the donor has practically lost the right to alienate it. Which means, the donor has practically lost his right of ownership. This is a donation *inter vivos*.
- A stipulation stating that the donee cannot alienate without the donor's consent – donation *mortis causa*. In this case, the donor effectively has the power to alienate. The donee will always needs the consent of the donor.

5. **Limitations**

a. ***Who may Donate***

- A donor must have capacity to act (*i.e.* age of majority, no civil interdiction or other incapacity, etc.) – Article 735.

> ***Art. 735.*** **All persons who may contract and dispose of their property may make a donation.**

- The donor must have capacity at the time the donation is made.
- The donation is perfected from the moment the donor knows of the acceptance by the donee (Article 734) – cognition theory

> ***Art. 734.*** **The donation is perfected from the moment the donor knows of the acceptance by the donee.**

- Under the cognition theory, the contract is perfected upon the donor's learning of the donee's acceptance. It is not perfected when the donee simply manifests his acceptance – the manifestation theory. Knowledge by the donor is crucial.
- In order for the donation to be perfected, the donor must have knowledge of the donee's acceptance. Thus, the donor must be alive and must have capacity at the time he learns of the donee's acceptance.

b. ***Who may be a Donee***

- All those who are not specifically disqualified by law may accept donations (Article 738).

c. ***Void Donations***

- The following are void donations:
  - i. *Those made between persons who were guilty of adultery or concubinage at the time of the donation* (Article 739 (1))
    - Conviction is not necessary.
    - The donation shall not be void if the donee did not know of the donor's existing marriage.
  - ii. *Those made between persons found guilty of the same criminal offense, in consideration thereof* (Article 739 (2))
    - Aggravating circumstance of price, promise or reward
  - iii. *Those made to a public officer or his wife, descendants and ascendants, by reason of his office* (Article 739 (3))
  - iv. *Donations made by guardians and trustees of property entrusted to them* (Article 736)
    - In *Araneta vs. Perez*, the owner of the land had a trustee. The land was being developed into a subdivision. The trustee donated with the court's consent to the LGU a portion of the land to be used as a street. The donation to the LGU was being challenged on the basis of Article 736. The SC said that Article 736 contemplates donations which are pure. In this case, the

donation to the LGU was not a pure donation. The donation was necessary to develop the subdivision.

d. The donation should not be inofficious
e. The donation should not prejudice creditors
f. The donation should not impair support for the donor and his family
g. Donations cannot comprehend future property (Article 751)

> ***Art. 751.*** **Donations cannot comprehend future property.**
>
> **By future property is understood anything which the donor cannot dispose of at the time of the donation.**

6. **Reduction and revocation**
   a. ***The donation should not be inofficious*** (Article 752)

> ***Art. 752.*** **The provisions of article 750 notwithstanding, no person may give or receive, by way of donation, more than he may give or receive by will.**
>
> **The donation shall be inofficious in all that it may exceed this limitation.**

- A donation is inofficious if it impairs the legitime.
- An inofficious donation will be reduced in so far as it exceeds what the donor could have given by will to the donee – the free portion. Whether a donation is inofficious or not can only be determined at the time of the death of the donor.
- The heirs of the donor have 10 years from the death of the donor to revoke or reduce the donation *(Imperial vs. CA).*
- If there is a subsequent appearance or birth of a child and his legitime is impaired because of a donation, the donation may be revoked or reduced to the extent that his legitime is prejudiced (Articles 760 and 761).

> ***Art. 760.*** **Every donation *inter vivos*, made by a person having no children or descendants, legitimate or legitimated by subsequent marriage, or illegitimate, may be revoked or reduced as provided in the next article, by the happening of any of these events:**
>
> **(1) If the donor, after the donation, should have legitimate or legitimated or illegitimate children, even though they be posthumous;**
>
> **(2) If the child of the donor, whom the latter believed to be dead when he made the donation, should turn out to be living;**
>
> **(3) If the donor subsequently adopt a minor child.**

> ***Art. 761.*** **In the cases referred to in the preceding article, the donation shall be revoked or reduced insofar as it exceeds**

the portion that may be freely disposed of by will, taking into account the whole estate of the donor at the time of the birth, appearance or adoption of a child.

- In the case of the subsequent appearance or birth of a child, the action to revoke or reduce the donation shall prescribe after 4 years from the birth of the child, or from his legitimation, recognition or adoption or from the judicial decree of filiation, or from the time the information was received regarding the existence of the child believed dead. This action cannot be renounced, and is transmitted upon the death of the donor, to his legitimate and illegitimate children and descendants (Article 763).

b. ***The donation should not prejudice creditors*** (Article 759)

Art. 759. **There being no stipulation regarding the payment of debts, the donee shall be responsible therefor only when the donation has been made in fraud of creditors.**

The donation is always presumed to be in fraud of creditors, when at the time thereof the donor did not reserve sufficient property to pay his debts prior to the donation.

- If the donor does not have enough properties reserved to pay off his creditors, the creditors have 4 years from the knowledge of the donation to rescind the donation – *accion pauliana* (Articles 1381 (3), 1387 and 1389[8])

c. ***The donation must not impair the support for the donor or his relatives*** (Article 750)

Art. 750. **The donations may comprehend all the present property of the donor, or part thereof, provided he reserves, in full ownership or in usufruct, sufficient means for the support of himself, and of all relatives who, at the time of the acceptance of the donation, are by law entitled to be supported by the donor. Without such reservation, the donation shall be reduced in petition of any person affected.**

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[8] *Art. 1381.* The following contracts are rescissible:

(3) Those undertaken in fraud of creditors when the latter cannot in any other manner collect the claims due them;

Art. 1387. All contracts by virtue of which the debtor alienates property by gratuitous title are presumed to have been entered into in fraud of creditors, when the donor did not reserve sufficient property to pay all debts contracted before the donation.

Alienations by onerous title are also presumed fraudulent when made by persons against whom some judgment has been issued. The decision or attachment need not refer to the property alienated, and need not have been obtained by the party seeking the rescission.

Art. 1389. The action to claim rescission must be commenced within four years.

For persons under guardianship and for absentees, the period of four years shall not begin until the termination of the former's incapacity, or until the domicile of the latter is known.

- If the donor does not reserve enough property for his and his family's support, the donation can be reduced.
- The donation can be reduced as much as may be necessary.
- In extreme cases, the donation can be revoked if the donor gave away so much, and the donor and his family need everything back.

d. ***Donations must comply with the conditions of the donation*** (Article 764)

Art. 764. **The donation shall be revoked at the instance of the donor, when the donee fails to comply with any of the conditions which the former imposed upon the latter.**

In this case, the property donated shall be returned to the donor, the alienations made by the donee and the mortgages imposed thereon by him being void, with the limitations established, with regard to third persons, by the Mortgage Law and the Land Registration laws.

This action shall prescribe after four years from the noncompliance with the condition, may be transmitted to the heirs of the donor, and may be exercised against the donee's heirs.

- For failure to comply with the conditions of the donation, the donor or his heirs have 4 years from noncompliance to revoke the donations.
- The right of revocation may be exercised against the donee's heirs.
- Revocation is the only available remedy in this situation. Reduction is not applicable.

e. ***The donee must not act with ingratitude*** (Article 765)

- The following are acts of ingratitude
  a. If the donee should commit some offense against the person, the honor or the property of the donor, or of his wife or children under his parental authority
  b. If the donee imputes to the donor any criminal offense, or any act involving moral turpitude, even though he should prove it, unless the crime or the act has been committed against the donee himself, his wife or children under his authority
  c. If he unduly refuses him support when the donee is legally or morally bound to give support to the donor
     - The refusal by the donee must be unjustifiable.
- The fact that these acts were committed will not give rise to the revocation. The donor must invoke these grounds.
- The donor has 1 year from the time the donor acquires knowledge of the donee's act of ingratitude to revoke (Article 769).

Art. 769. **The action granted to the donor by reason of ingratitude cannot be renounced in advance. This action prescribes within one year, to be counted from the time the**

donor had knowledge of the fact and it was possible for him to bring the action.

F. ***Succession***

G. ***Prescription***

III. Modes of Extinguishing Ownership

A. ***Voluntary Modes***

1. **Abandonment**
   - Rights such as ownership may be waived.
   - Under Article 6, the waiver of ownership need not follow any formalities.

> ***Art. 6.*** **Rights may be waived, unless the waiver is contrary to law, public order, public policy, morals, or good customs, or prejudicial to a third person with a right recognized by law.**

2. **Alienation**
   a. *Onerous title* (*i.e.* sale)
   b. *Gratuitous title*
      i. *Inter vivos*
      ii. *Mortis causa*
3. **Voluntary destruction** (*i.e.* burning of trash)

B. ***Involuntary Modes***

1. **Fortuitous loss or destruction** (*i.e.* fire)
2. ***Accession continua*** (*i.e.* bad faith in commixtion or confusion)
3. **Rescissory actions**
4. **Judicial decree**
   - Professor Balane does not think that judicial decree should be enumerated as an involuntary mode since the judicial decree would be based on something else.
5. **By operation of law** (*i.e.* confiscate due to police power)

OBLIGATIONS AND CONTRACTS

Introduction

Our Civil Code follows the Gaian order which is of three parts: Persons, Things and Obligations.

The title of Book IV of the Civil Code is inaccurate. While the title is "Obligations and Contracts", it should only be "Obligations" since by including "Contracts" in the title, it is putting the latter on equal footing with the former; but this is not correct since contracts is only one of the sources of obligations.

Obligations is the most important, most abstract and most difficult of all of civil law. It is the entirety of private law. If you don't know obligations and contracts, you will never understand commercial law.

The term "obligations" was derived from the words "ob" and "ligare" which means "to bind or tie together". "Ligare" is the source of several common words such as "ligament" and "ligation". (Ligation and Vasectomy have the same purpose: to tie and to cut off, the fallopian tube, for the former, and the vas deferens, for the latter.)

"Obligatio" was initially a physical act of being chained (with shackles). Before, under Roman law, if the debtor cannot pay, the creditor can bring him to the magistrate and the magistrate can authorize the creditor to cuff the debtor and offer him for sale for 3 days, the proceeds of which go to the creditor. The debtor then becomes a slave. If he is not bought, the creditor can have him chopped into little pieces or have him sold to the barbarians.

As time passed, cruelty softened. By the time of Cicero, "ligatio" does not mean vinculum of chains but *vinculum juris* (bond of law). Obligation became metaphorical and not literal.

I. Obligations

A. *Definition of Obligation*

Art. 1156. **An obligation is a juridical necessity to give, to do or not to do.**

- This provision is the soul of brevity. It was borrowed from Sanchez Roman. However, many commentators say it is incomplete because the "obligation" is only from the point of view of the debtor. To make it complete, it must cover the points of view of both the debtor and creditor. Obligations are bilateral. It should include what can be required, the remedy and the means by which the creditor can take to pursue the remedy.
- An obligation is a juridical relation whereby a person should engage or refrain from engaging in a certain activity for the satisfaction of the private interest of another who, in the case of non-fulfillment of such duty, may obtain from the patrimony of the former through proper judicial proceedings the very prestation due or in default thereof, the economic equivalent that it represents (Diaz Piero).
- An obligation is a juridical relation whereby a person (called a creditor) may demand from another (called the debtor) the observance of a determinate conduct, and, in case of breach, may obtain satisfaction from the assets of the latter (Arias Ramos).

B. *Characteristics of Obligations*

1. It represents an exclusively private interest
2. It creates ties which are by nature transitory
    - Because obligations are extinguished. But the period is relative – could be seconds (*e.g.,* buying coke) and could be years (*e.g.,* partnership, lease)
3. It involves the power to make the juridical tie defective in case of non-fulfillment through satisfaction of the debtor's property

C. *Trends in the Modern Law of Obligations*

1. **Progressive spiritualization of the law on obligations**
    - Before, obligations were very formal and ritualistic. If it was not in the proper form, no obligations will assume. Now, the emphasis is in the meeting of the minds, and not on the specific form. There is even no need

that it be in writing, as a **General Rule**, since consensuality is the prevailing doctrine. As long as it can be manifest – and any kind of manifestation will do – it is sufficient.

- Roman Law was formalistic. Vestiges of Roman Law in the Civil Code can be seen in the law governing donations, which is very formal. Even for sales, the requirement of form is only for enforceability and not for validity. This is to make it conducive to business and facilitate commercial transactions.
- This is still an ongoing trend: e-commerce added another option in form and proof of contracts (but this is not applicable to all, usually only for business, not applicable to wills).

2. **The principle of autonomy of will of the parties is now subject to several restrictions**
   - While the principle still operates, the exceptions (prohibited areas) have grown larger and larger.
   - Article 1306 gives the five restrictions: not contrary to law, morals, good customs, public order, or public policy. Those which are against these five restrictions are void, as can be seen in Article 1409[*]. However, now we have restrictions such as social justice, environmental preservation, etc. This is because of the rising tide of social discontent, hence social legislation came to be for the underprivileged.

3. **The mitigation of the principle that the debtor should answer with all his property**
   - Before, the debtor had to answer his debts with all his property. Now, certain properties are exempt and these can be found in substantive law (*i.e.,* home) and in procedural law (*i.e.* support, etc.)
   - Also, the debtor may not be imprisoned for non-payment of debts.
   - The theory is to leave the debtor something to live decently by.
4. **The weakening of the principle that liability arises from responsibility**
   - This is basically the principle in quasi-delicts. Now, in many cases, a person may be held liable even if not responsible.
   - For example, under workman's compensation, the employer is liable to compensate the employee even if the employer was not negligent.
5. **The tendency of unity in modern legislation**
   - This can be manifest in the rise of a "global village". This can be seen particularly in trade laws.
   - The tendency now is to make things uniform especially in commerce. Different rules would impede commerce.

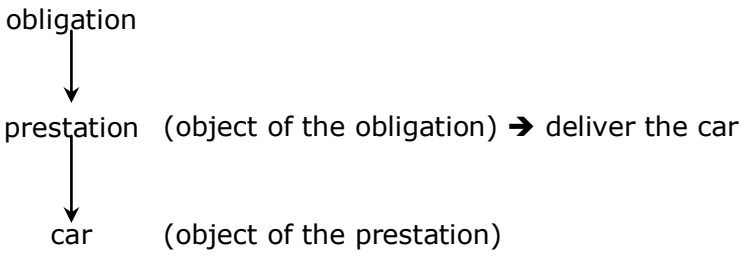
[*] *Art. 1409.* The following contracts are inexistent and void from the beginning:
(1) Those whose cause, object or purpose is contrary to law, morals, good customs, public order or public policy;

D. *Essential Requisites of Obligations*

1. **Active subject**
   - The active subject is called a creditor if the obligation is to give. The active subject is called an obligee if the obligation is to do.
   - The active subject is always a person whether juridical or natural.
2. **Passive subject**
   - The passive subject is called a debtor if the obligation is to give. The passive subject is called an obligor if the obligation is to do.
   - The passive subject must be determinate or determinable

- How can both subjects be determinate or determinable?
  a. Obligations where the subjects are completely and absolutely determined at the birth of an obligation.
     - If A and B are parties to a contract of sale and B doesn't comply. A cannot sue C.
  b. Obligations where one subject is determined at the moment of the birth of the obligation and the other subject is to be determined subsequently at some fixed criterion, which criterion is fixed at the start of the obligation.
     - B makes a promissory note payable to M or order. In this case, the creditor is not necessarily M. The creditor is either M or to whomever the promissory note is endorsed.
     - At the time of the birth of the obligation, the payee is not yet known but the obligation is valid.
  c. Obligations in which subjects are determined in accordance with its relation to a thing.
     - The 'real' rights
     - A mortgaged property to X pursuant to a loan. The mortgage attaches to the property. If A sells the property to B, the annotation in the TCT will follow and B becomes the mortgagor. If A doesn't pay, X goes against B.
     - The obligor in this case is whoever owns the land. X doesn't care whether its A or B.

3. **Object of the obligation**
   - The object of the obligation always consists in an activity or conduct to be observed by the debtor towards the creditor. This conduct to be observed is also known as the prestation.
   - In a contract of sale for example, the object of the obligation is the conduct of the vendor in delivering the car. The car, on the other hand, is the object of the prestation.



- Sometimes, the commentators confuse the car as the object of the obligation, but this is wrong. The object is *not* the car but the prestation.
- According to Professor Balane, the distinction between the object of the obligation and the object of the prestation has been blurred by Articles 1347-1349.
- Requisites of the Object of the Obligation
  a. Licit (Legal)
     - *Example:* Can't validly enter into a contract for sexual services
  b. Possible both in fact and in law
     - Determined by the rules of experience
  c. Determinate or determinable
     - Can't say that "I promise to sell you something".
     - *Example of determinate:* I promise to sell you my car.
     - *Example of determinable:* I promise to sell you my riceland in Bicol in November (will become determinate when time comes).
  d. Must have pecuniary value

4. ***Vinculum juris***
   - The *vinculum juris* is the legal tie. It consists of the enforceability of the obligation. If the debtor does not conform, the creditor has the power to go to court to make the debtor perform – coercive.
   - What makes an obligation is the power of the creditor to haul the debtor before the court, summoning powers of the state if needed.
   - Voluntariness goes into *entering* into an obligation. But once you enter, it becomes involuntary.
5. ***Causa***
   - Castan adds a 5th essential requisite – *causa*. Also known as *causa debendi* or *causa obligationes. Causa* means the why of an obligation.
   - The object of an obligation answers the question "What is owed?" (Quid). The *causa* answers the question "Why is it owed?" (Cur).
   - For example, A will deliver a car to B since A expects to get P300,000. The P300,000 is the *causa* of the obligation.

6. **Form**
    - Another commentators say that the 6th essential requisite is form. Form means some manifestation of intent. In some cases the manifestation is specific such as in the case of donations.
    - According to Professor Balane that the general rule is that there is no specific form for a valid obligation. However, if form means that there is some external manifestation, fine, since we are not telepathic after all. However, there should still be no specific form.

E. ***Sources of Obligations*** (Article 1157)

> ***Art. 1157.*** **Obligations arise from:**
>
> **(1) Law;**
>
> **(2) Contracts;**
>
> **(3) Quasi-contracts;**
>
> **(4) Acts or omissions punished by law; and**
>
> **(5) Quasi-delicts.**

- There is really only one source of obligations – just law. Without the law saying that a particular contract is enforceable, the contract will not give rise to an obligation. However, "source" can be understood in both the ultimate and immediate sense. In the ultimate sense, law is the solitary source. In the immediate sense, there are 5, those enumerated in Article 1157. Law is therefore both an immediate and ultimate source. Examples of law being an immediate source are payment of taxes and accession.
- Is this enumeration of the sources of obligation exclusive? The Supreme Court in the case of *Sagrada Orden vs. NACOCO* seem to answer it in the affirmative. However, this is only by implication or indication. The Court did not make an explicit statement that it is.
- Many commentators including Professor Balane believe that the list is not exclusive. They criticize the case because it is not a good way of enumerating. At present, there is one more possible source of obligations – public offer.
- *Example:* In commercials, there is an offer to replace 30 sachets of Tide for one Venetian-cut glass until the end of the year. There is no contract or quasi-contract. But if before the end of the year, you present your Tide sachets, you can demand for your glass. Public offer is in fact a source of obligation under the BGB (the German Civil Code), Article 657 which provides that a person who by public notice announces a reward in the performance of the act is liable even if such person did not act in view of such reward.
- Although public officers are supplemented by DTI regulations, Professor Balane thinks that public offer should be made part of the law since regulations easily change.

1. **Law** (Article 1158)

> ***Art. 1158.*** **Obligations derived from law are not presumed. Only those expressly determined in this Code or in special laws are demandable, and shall be regulated by the precepts of the law which**

establishes them; and as to what has not been foreseen, by the provisions of this Book.

- There is only 1 ultimate source of obligations – law. However, there are 5 proximate sources of obligations (Article 1157).

2. **Contract** (Article 1159)

Art. 1159. **Obligations arising from contracts have the force of law between the contracting parties and should be complied with in good faith.**

- Contract is only 1 of the sources of obligations.
- This provision combines two concepts of Roman law – equity or good faith *(ius gentium)* and strict compliance by the parties *(ius chinile)*.
- A contract is a meeting of minds between 2 persons whereby one binds himself, with respect to the other, to give something or to render some service (Article 1305)
- Contractual obligations have the force of law between the contracting parties and should be complied with in good faith (Article 1159).
- The contracting parties may establish such stipulations, clauses, terms and conditions as they may deem convenient, provided they are not contrary to law, morals, good customs, public order, or public policy (Article 1306).
- Contracts are perfected by mere consent, and from that moment the parties are bound not only to the fulfillment of what has been expressly stipulated but also to all the consequences which, according to their nature, may be in keeping with good faith, usage and law (Article 1315).
- In case of doubt, the interpretation consistent with good faith is followed *(People's Car vs. Commando Security)*.
- Party cannot excuse themselves on the ground that it has become unprofitable. Law will not protect you from your own bad judgment.

3. **Quasi-contract** (Article 1160)

Art. 1160. **Obligations derived from quasi-contracts shall be subject to the provisions of Chapter 1, Title XVII, of this Book.**

4. **Delict** (Article 1161)

Art. 1161. **Civil obligations arising from criminal offenses shall be governed by the penal laws, subject to the provisions of article 2177, and of the pertinent provisions of Chapter 2, Preliminary Title, on Human Relations, and of Title XVIII of this Book, regulating damages.**

- **General Rule:** If you commit a crime, you are liable both criminally and civilly.
- ***Exception:*** No private offended party (*e.g.* contempt, etc.)

- The Civil Code deals with the civil aspect (*i.e.* indemnification for loss of earning capacity).

5. **Quasi-delict** (Article 1162)

> ***Art. 1162.*** **Obligations derived from quasi-delicts shall be governed by the provisions of Chapter 2, Title XVII of this Book, and by special laws.**

- Quasi-delict is a civil law term while tort is a common law term.
- Difference between Contractual Liability and Quasi-Delict
  - In quasi-delict, the obligation arises only when there is a violation. Without violation, there is no obligation. It is the breach itself which gives rise to the obligation.
  - In contracts, there is already an obligation which exists prior to or even without a breach. The breach of the contract is immaterial to the legal obligation.
  - *Example:* Contract of sale of watch. If both parties perform their obligation, the contract is extinguished. There is no breach, but there is an obligation.

    (Compare the above example with the one below)

    Example: Driving recklessly, A hits a child. When did the obligation came to being? When there was injury due to negligence. (Negligence *per se* does not give rise to a quasi-delict unless there is injury.)

    Breach and quasi-delict are inseparable. But contract and breach may be separable.
- **Question:** Are contracts and quasi-delicts mutually exclusive?

  Answer: No.

  In *Gutierrez vs. Gutierrez*, there was a collision between a bus and a car and a passenger of the bus was injured. It was proven that the driver of the car was a minor and an incompetent driver. The passenger sued against them all. The Supreme Court held that the bus driver, bus owner and the driver of the car (through his father) are jointly and severally liable to the passenger. The liability of the owner of the bus and the bus driver rests on that of a contract. On the other hand, the father is responsible for the acts of his son and is therefore responsible for the negligence of the minor. Here, it is clear that breach of contract and quasi-delict are separate.

  However, they can overlap as can be seen in the following example: Bus driver drives recklessly and the bus hits a tree. A passenger is injured. The passenger and sue the driver for quasi-delict (due to negligence) or for crime or the bus company for breach of contract of carriage or for quasi-delict (negligence in the selection and supervision).

  The cause of action one chooses determines the:

  1. Parties involved
  2. Degree of proof

3. Defenses

One can tailor his suit depending on the cause of action he chooses.

F. *Nature and Effect of Obligations*

1. **Kinds of Prestations**

a. **To give** (Articles 1163-1166)

Art. 1163. **Every person obliged to give something is also obliged to take care of it with the proper diligence of a good father of a family, unless the law or the stipulation of the parties requires another standard of care.**

Art. 1164. **The creditor has a right to the fruits of the thing from the time the obligation to deliver it arises. However, he shall acquire no real right over it until the same has been delivered to him.**

Art. 1165. **When what is to be delivered is a determinate thing, the creditor, in addition to the right granted him by article 1170, may compel the debtor to make the delivery.**

If the thing is indeterminate or generic, he may ask that the obligation be complied with at the expense of the debtor.

If the obligor delays, or has promised to deliver the same thing to two or more persons who do not have the same interest, he shall be responsible for any fortuitous event until he has effected the delivery.

Art. 1166. **The obligation to give a determinate thing includes that of delivering all its accessions and accessories, even though they may not have been mentioned.**

i. *To give a determinate thing*

- **Primary Obligation:** Giving what is supposed to be given.
- ***3 Accessory Obligations:***
  1. After constitution of the obligation and before delivery, to take care of it with the proper diligence of a good father of the family (Article 1163)
     - **General Rule:** Diligence of a good father of the family
     - ***Exception:*** Law or stipulation requires different standard of care
     - If through negligence, something causes the thing damage, the debtor is liable for damages.
     - This is not applicable to a generic thing.
  2. *To account and deliver to the creditor the fruits if the thing bears fruits upon the time the obligation to deliver it arises* (Article 1164).

- However, ownership is transferred only by delivery. Hence, creditor's right over the fruits is merely personal.
- *Example:* A sold B a mango plantation to be delivered on January 1. Come January 1, A did not deliver. A instead sold the fruits to C, a buyer in good faith. B sues A for specific performance. Court awards the plantation to B. Does B have a right to the fruits? Yes, as against A. No, as against C, because B's right over the fruits is only personal. B's remedy is to go against A for the value of the fruits.

3. *To deliver the accessions and accessories* (Article 1166)
   - Don't take accession in the technical sense (or else, it might overlap with ii). Understand it to mean things that go with the thing to be delivered (*i.e.* radio of the car).

- Remedies Available to the Creditor
  1. Specific performance – the debtor must perform it personally
  2. Equivalent performance – damages
     - Damages may be obtained exclusively or in addition to the 1st action.
- Rules regarding Improvement, Loss or Deterioration (Articles 1189, 1190, 1194)

Art. 1189. **When the conditions have been imposed with the intention of suspending the efficacy of an obligation to give, the following rules shall be observed in case of the improvement, loss or deterioration of the thing during the pendency of the condition:**

(1) If the thing is lost without the fault of the debtor, the obligation shall be extinguished;

(2) If the thing is lost through the fault of the debtor, he shall be obliged to pay damages; it is understood that the thing is lost when it perishes, or goes out of commerce, or disappears in such a way that its existence is unknown or it cannot be recovered;

(3) When the thing deteriorates without the fault of the debtor, the impairment is to be borne by the creditor;

(4) If it deteriorates through the fault of the debtor, the creditor may choose between the rescission of the obligation and its fulfillment, with indemnity for damages in either case;

(5) If the thing is improved by its nature, or by time, the improvement shall inure to the benefit of the creditor;

(6) If it is improved at the expense of the debtor, he shall have no other right than that granted to the usufructuary.

Art. 1190. **When the conditions have for their purpose the extinguishment of an obligation to give, the parties, upon the fulfillment of said conditions, shall return to each other what they have received.**

In case of the loss, deterioration or improvement of the thing, the provisions which, with respect to the debtor, are laid down in the preceding article shall be applied to the party who is bound to return.

As for the obligations to do and not to do, the provisions of the second paragraph of article 1187 shall be observed as regards the effect of the extinguishment of the obligation.

Art. 1194. **In case of loss, deterioration or improvement of the thing before the arrival of the day certain, the rules in article 1189 shall be observed.**

1. Requisites
    a. Obligation has a suspensive condition, a resolutory condition or term
    b. The obligor is obligated to deliver a determinate thing
    c. There is improvement, loss or deterioration before the fulfillment of the condition or the period
    d. The condition is fulfilled or the period arrives
2. Rules Proper
    a. If the thing is lost without the fault of the debtor, the obligation is extinguished
    b. If the thing is lost through the fault of the debtor, he must pay damages
        - The thing is lost when it perishes, goes out of commerce or disappears in such a way that its existence is unknown or cannot be recovered.
    c. If the thing deteriorates without the fault of the debtor, the creditor must accept the thing in its impaired condition
    d. If the thing deteriorates through the fault of the debtor, the creditor may choose between
        i. Resolution (Article 1189) plus damages
        ii. Fulfillment of the obligation plus damages
    e. If the thing is improved by nature or by time, the improvement shall inure to the benefit of the creditor

f. If the thing is improved at the expense of the debtor, the debtor shall the same rights as a usufructuary

ii. *To give a generic thing*

- Remedies Available to the Creditor
  1. Specific performance – the debtor must perform it personally
  2. Substitute performance – done by someone else (perform at the expense of the debtor)
  3. Equivalent performance – damages
     - Damages may be obtained exclusively or in addition to the 1st 2 actions.

c. ***To do*** (Article 1167)

Art. 1167. **If a person obliged to do something fails to do it, the same shall be executed at his cost.**

This same rule shall be observed if he does it in contravention of the tenor of the obligation. Furthermore, it may be decreed that what has been poorly done be undone.

i. Only the obligor can do (*personalisimo)*

- Remedies Available to the Creditor
  1. Equivalent performances – damages

ii. Anyone else can do it (not *personalisimo*)

- Remedies Available to the Creditor
  1. Substitute performance – done by someone else (perform at the expense of the debtor)
  2. Equivalent performance – damages
     - Damages may be obtained exclusively or in addition to the 1st 2 actions.

b. ***Not to do*** (Article 1168)

Art. 1168. **When the obligation consists in not doing, and the obligor does what has been forbidden him, it shall also be undone at his expense.**

- This includes the obligation not to give.
- Remedies Available to the Creditor
  i. Substitute performance - done by someone else (perform at the expense of the debtor)
  ii. Equivalent performance - damages
     - Damages may be obtained exclusively or in addition to the 1st 2 actions.

- Summary of the rules regarding remedies available to the creditor in obligations to give, to do and not to do.

	Obligation	Specific Performance	Equivalent Performance	Substitute Performance
1.	**To give**			
	a. Determinate thing	√	√	×
	b. Determinable thing	√	√	√
2.	**To do**			
	a. Very personal	×	√	×
	b. Not very personal	×	√	√
3.	**Not to do**	×	√	√

- Specific performance is the performance of the prestation itself.
    - In obligations to do or not to do, specific performance is not available since it will go against the constitutional prohibition against involuntary servitude.
- Equivalent performance is the payment of damages
- Substitute performance is when someone else performs or something else is performed at the expense of the debtor.

2. **Irregularity in Performance**

a. ***Attributable to the Debtor (culpable)***

- Article 1170 provides that those who in the performance of their obligations are guilty of fraud, negligence, or delay and those who in any manner contravene the tenor thereof, are liable for damages. According to Professor Balane, the phrase " who in any manner contravene the tenor thereof" is a catch-all provision. However, such is unnecessary. Nothing will escape fraud, negligence or delay.

i. *Fraud* (Articles 1170, 1171)

> ***Art. 1170.*** **Those who in the performance of their obligations are guilty of fraud, negligence, or delay, and those who in any manner contravene the tenor thereof, are liable for damages.**
>
> ***Art. 1171.*** **Responsibility arising from fraud is demandable in all obligations. Any waiver of an action for future fraud is void.**

- The problem with fraud is the term. It is used in different meanings in the Code.
- Fraud may be defined as the voluntary execution of a wrongful act, or willful omission, knowing and intending the effects which naturally and necessarily arise from such act or omission. Fraud is the deliberate and intentional evasion of the normal fulfillment of

the obligation. It is distinguished from negligence by the presence of deliberate intent, which is lacking in the latter. *(Legaspi Oil vs. CA)*

- Fraud under Article 1170 is more properly called as malice.
- Fraud under Article 1170 must not be confused with fraud under Article 1338[♣]. Fraud under Article 1338 is more properly called as deceit.
- In Article 1338, fraud preexists the obligation, thus the obligation is voidable. Deceit vitiates consent in contracts. Deceit is antecedent fraud. The deceit occurs by using insidious words machinations. Without this deceit, the other party would not have entered into the contract.

  In Article 1171, there was already an obligation before the fraud exists. Malice is subsequent fraud.

  Example of fraud as deceit under Article 1338: A and B entered into a contract of sale of a diamond necklace. However, the necklace was really made of glass. Fraud here is *deceit.* There was vitiation of consent hence the contract is voidable.

  Example of fraud as malice under Article 1171. A and B entered into a contract. B will deliver furniture made of narra but B delivered one made of plywood. Fraud here is *malice*. It will not affect the validity of the contract.
- Effects of Fraud (Articles 1170, 1171)
  1. Creditor may insist on proper substitute or specific performance (Article 1233[♦]); or
  2. Rescission/Resolution (Article 1191[♥])
  3. Damages in either case (Article 1170)

ii. *Negligence*

- Negligence is the absence of due diligence (Article 1173)

Art. 1173. **The fault or negligence of the obligor consists in the omission of that diligence which is required by the nature**

[♣] *Art. 1338.* There is fraud when, through insidious words or machinations of one of the contracting parties, the other is induced to enter into a contract which, without them, he would not have agreed to.

[♦] Art. 1233. A debt shall not be understood to have been paid unless the thing or service in which the obligation consists has been completely delivered or rendered, as the case may be.

[♥] *Art. 1191.* The power to rescind obligations is implied in reciprocal ones, in case one of the obligors should not comply with what is incumbent upon him.

The injured party may choose between the fulfillment and the rescission of the obligation, with the payment of damages in either case. He may also seek rescission, even after he has chosen fulfillment, if the latter should become impossible.

The court shall decree the rescission claimed, unless there be just cause authorizing the fixing of a period.

This is understood to be without prejudice to the rights of third persons who have acquired the thing, in accordance with articles 1385 and 1388 and the Mortgage Law.

of the obligation and corresponds with the circumstances of the persons, of the time and of the place. When negligence shows bad faith, the provisions of articles 1171 and 2201, paragraph 2, shall apply.

If the law or contract does not state the diligence which is to be observed in the performance, that which is expected of a good father of a family shall be required.

Art. 1172. **Responsibility arising from negligence in the performance of every kind of obligation is also demandable, but such liability may be regulated by the courts, according to the circumstances.**

- Like fraud, negligence results in improper performance. But it is characterized by lack of care, unlike fraud which is characterized by malice.
- Lack of care means lack of due diligence or the care of a good father of the family *(bonus paterfamilias)* under Article 1163.
- In English law, due diligence is called the diligence of a prudent businessman, since they are more commerce-oriented.
- 2 Types of Negligence
    1. Simple
    2. Gross
- The determination of due diligence is always relative. It will depend on
    1. The nature of the obligation
    2. Nature of the circumstances of
        a. Person
        b. Time
        c. Place
        - *Example:* The diligence required in shipping hinges is different from the diligence required in shipping the *Pieta de Michaelangelo.* The shipper must observe the diligence of a good father of the family in both cases but the standard of care is different. It is much higher for the *Pieta.*
        - The diligence of a good father of the family is the imaginary standard.
- Effects of Negligence (Articles 1170, 1172)
    1. Creditor may insist on proper substitute or specific performance (Article 1233); or
    2. Rescission/Resolution (Article 1191)
    3. Damages in either case (Article 1170)

iii. *Delay (Mora)*

Art. 1169. **Those obliged to deliver or to do something incur in delay from the time the obligee judicially or extrajudicially demands from them the fulfillment of their obligation.**

However, the demand by the creditor shall not be necessary in order that delay may exist:

(1) When the obligation or the law expressly so declare; or

(2) When from the nature and the circumstances of the obligation it appears that the designation of the time when the thing is to be delivered or the service is to be rendered was a controlling motive for the establishment of the contract; or

(3) When demand would be useless, as when the obligor has rendered it beyond his power to perform.

In reciprocal obligations, neither party incurs in delay if the other does not comply or is not ready to comply in a proper manner with what is incumbent upon him. From the moment one of the parties fulfills his obligation, delay by the other begins.

- Delay has nothing to do with quality but only with punctuality.
- Delay is the non-fulfillment of the obligation with respect to time. In fraud and negligence, the question is the quality even if performed on time. In delay, even if the quality is excellent but the performance is not in due time, the debtor is liable.
- Requisites of delay *(SSS vs. Moonwalk)*
  - Obligation is demandable and liquidated
  - Delay is through fault or negligence
  - Creditor requires performance either judicially (through court action) or extrajudicially (any communication by the creditor to debtor).
- In reciprocal obligations (obligations with a counterpart prestation) which require simultaneous performance, demand is still needed.
  - *What is the form of such demand?* Any communication of a party that he is ready and willing to comply with his obligation. If after receipt of demand and the other party does not comply with his obligation, he is in delay.
- 3 Kinds of Delay
  1. *Mora solvendi*
     - Delay in performance incurred by the debtor.
     - Requisites:
       a. The obligation is demandable and liquidated

b. Debtor delays performance either because of *dolo* or *culpa*

c. The creditor demands the performance either judicially or extrajudicially

- **General Rule:** Demand is necessary. (*mora solvendi ex persona*). Thus, no demand, no delay.
- ***Exceptions:*** (*mora solvendi ex re*) – Article 1169

a. When the obligation or the law expressly so declares

- Mere setting of due date is not enough. This does not constitute automatic delay.
- There must be an express stipulation to the following effect: "Non-performance on that day is delay without need of demand." *(Dela Rosa vs. BPI)*

b. When it appears from the nature and circumstances of the obligation that time was a controlling motive for the establishment of the contract.

- *Example:* The wedding gown has to be ready before the wedding.

c. When demand would be useless, when obligor has rendered it beyond his power to perform.

- *Example:* A sold the fruits of the mango plantation he already sold to B to C. B need not make a demand on A to deliver the fruits since demand would be useless.

- Effects of *Mora Solvedi*

a. When the obligation is to deliver a determinate thing, the risk is placed on the part of the debtor (Article 1165[♠])

b. Damages

c. Rescission/ Resolution (Article 1191)

2. *Mora accipiendi*

- The creditor incurs in delay when debtor tenders payment or performance, but the creditor refuses to accept it without just cause.
- *Mora accipiendi* is related to payment (consignation).

[♠] *Art. 1165.* When what is to be delivered is a determinate thing, the creditor, in addition to the right granted him by article 1170, may compel the debtor to make the delivery.

If the thing is indeterminate or generic, he may ask that the obligation be complied with at the expense of the debtor.

If the obligor delays, or has promised to deliver the same thing to two or more persons who do not have the same interest, he shall be responsible for any fortuitous event until he has effected the delivery.

- Requisites:
  a. An offer of performance by the debtor who has the required capacity
  b. The offer must be to comply with the prestation as it should be performed
  c. The creditor refuses the performance without just cause.
- Effects of *Mora Accipiendi:*
  a. Responsibility of debtor for the thing is limited to fraud and gross negligence
  b. Debtor is exempted from risk of loss of thing w/c automatically pass to creditor
  c. Expenses incurred by debtor for preservation of thing after the delay shall be chargeable to creditor.
  d. If the obligation has interest, debtor shall not have obligation to pay the same from the time of the delay
  e. Creditor becomes liable for damages
  f. Debtor may relieve himself by consignation of the thing

3. *Compensatio morae*
   - Delay on both sides in reciprocal obligations, cancel each other out.

b. ***Not Attributable to the Debtor (non-culpable)***

- *Fortuitous event*

Art. 1174. **Except in cases expressly specified by the law, or when it is otherwise declared by stipulation, or when the nature of the obligation requires the assumption of risk, no person shall be responsible for those events which could not be foreseen, or which, though foreseen, were inevitable.**

- Also governed by Article 1221[∅] but is called 'loss' there, a cause fo extinguishment of obligation.
- Also called *caso fortuioto, force marjeure,* act of God.
- Requisites *(Nakpil vs. CA)*
  1. The cause of the unforeseen and unexpected occurrence, or the failure to comply with his obligations, must be independent of the human will

[∅] *Art. 1221.* If the thing has been lost or if the prestation has become impossible without the fault of the solidary debtors, the obligation shall be extinguished.

If there was fault on the part of any one of them, all shall be responsible to the creditor, for the price and the payment of damages and interest, without prejudice to their action against the guilty or negligent debtor.

If through a fortuitous event, the thing is lost or the performance has become impossible after one of the solidary debtors has incurred in delay through the judicial or extrajudicial demand upon him by the creditor, the provisions of the preceding paragraph shall apply.

2. It must be impossible to foresee the event which constitute the *caso fortuito*, or if it can be foreseen, it must be impossible to avoid
3. The occurrence must be such as to render it impossible for the debtor to fulfill his obligation in a normal manner
4. The obligor must be free from any participation in the aggravation of the injury resulting to the creditor

- **General Rule:** When a debtor is unable to fulfill his obligation because of a fortuitous event or *force majeure*, he cannot be held liable for damages or non-performance.
- ***Exceptions:***
  1. When the law so provides (*i.e.* Article 1165, ¶2[⊕])
  2. When there is express stipulation
     - Fortuitous event yields to contrary stipulation.
  3. When the nature of the obligation requires the assumption of risk (*i.e.* insurance contracts)

3. **Other Provisions**

Art. 1175. **Usurious transactions shall be governed by special laws.**

- Article 1175 is dead letter law because of the lifting of the ceiling on interest rates. Thus, usury has been decriminalized, but the decriminalization cannot be given retroactive effect (with respect to the civil aspect).
- Some decisions have struck down high interests, not because they were usurious but because such rates were unconscionable.
- Correlate Article 1175 with Articles 1957, 1413 and 1961[⊗].

Art. 1176. **The receipt of the principal by the creditor without reservation with respect to the interest, shall give rise to the presumption that said interest has been paid.**

The receipt of a later installment of a debt without reservation as to prior installments, shall likewise raise the presumption that such installments have been paid.

[⊕] *Article 1165, ¶2.* If the obligor delays, or has promised to deliver the same thing to two or more persons who do not have the same interest, he shall be responsible for any fortuitous event until he has effected the delivery.

[⊗] *Art. 1957.* Contracts and stipulations, under any cloak or device whatever, intended to circumvent the laws against usury shall be void. The borrower may recover in accordance with the laws on usury.

Art. 1413. Interest paid in excess of the interest allowed by the usury laws may be recovered by the debtor, with interest thereon from the date of the payment.

Art. 1961. Usurious contracts shall be governed by the Usury Law and other special laws, so far as they are not inconsistent with this Code.

- 2 Presumptions regarding:
  a. Interest bearing debt
     - Presumption that interest has been paid if the principal has been received without reservation regarding interest,
  b. Debt payable in installments
     - Presumption that earlier installments have been paid if the later installment has been received without reservation regarding the previous installments.
- These are only rebuttable presumptions, you can prove through other evidence. You can prove mistake.

Art. 1177. **The creditors, after having pursued the property in possession of the debtor to satisfy their claims, may exercise all the rights and bring all the actions of the latter for the same purpose, save those which are inherent in his person; they may also impugn the acts which the debtor may have done to defraud them.**

- Enforcement of Creditor's Remedies
  a. Levy and execution of the debtor's non-exempt properties (Articles 1177, 2236[℘])
  b. *Accion subrogatoria*
     - Subrogatory action premised on the theory that "the debtor of my debtor is my debtor."
     - Requisites:
       i. Creditor has a right of credit against the debtor.
       ii. Credit is due and demandable.
       iii. Failure of debtor to collect his own credit from a third person either through malice or negligence.
       iv. Insufficiency of assets of the debtor to satisfy the creditor's credit
       v. Right (of account) is not *intuitu personae*
  c. *Accion pauliana* (Articles 1380-1389)
     - Right of creditors to rescind alienations by debtor which are prejudicial to them to the extent of the prejudice.
     - *Example:* A donates land to C but he owes B. A has no other property. B can rescind the donation to C. The donation is rescissible to the extent of the debt.
     - Requisites:
       i. There is a credit in favor of the plaintiff
       ii. The debtor has performed an act subsequent to the contract, giving advantage to other persons.

[℘] *Art. 2236.* The debtor is liable with all his property, present and future, for the fulfillment of his obligations, subject to the exemptions provided by law.

iii. The creditor is prejudiced by the debtor's act which are in favor of third parties and rescission will benefit the creditor.

iv. The creditor has no other legal remedy.

v. The debtor's acts are fraudulent.

d. *Accion directa*

- A direct (not subrogatory) action by the creditor against his debtor's debtor, a remedy which gives the creditor the prerogative to act in his own name, such as the actions of the lessor against the sublessee (Article 1652[ᵡ]), the laborer of an independent contractor against the owner (Article 1729[*]), the principal against the subagent (Article 1893[♣]), and the vendor-a-retro against the transferee of the vendee (Article 1608[♦]).
- This is an exception to the relativity of contracts.
- *Example 1:*

A ——— lease ——— B ——— sub-lease ——— C

There are two separate contracts here: The contract of lease between A and B and the contract of sub-lease between B and C. C owes B ₱7000. B owes A ₱5000.

Ordinarily, A cannot sue C since there is no relationship between them, but in Article 1652, A can sue C for ₱5000.

- *Example 2:*

A *(customer)* ——— contract for a piece of work ——— B *(contractor)* ——— contract of labor ——— C *(worker)*

[ᵡ] *Art. 1652.* The sublessee is subsidiarily liable to the lessor for any rent due from the lessee. However, the sublessee shall not be responsible beyond the amount of rent due from him, in accordance with the terms of the sublease, at the time of the extra-judicial demand by the lessor.

Payments of rent in advance by the sublessee shall be deemed not to have been made, so far as the lessor's claim is concerned, unless said payments were effected in virtue of the custom of the place.

[*] *Art. 1729.* Those who put their labor upon or furnish materials for a piece of work undertaken by the contractor have an action against the owner up to the amount owing from the latter to the contractor at the time the claim is made. However, the following shall not prejudice the laborers, employees and furnishers of materials:

(1) Payments made by the owner to the contractor before they are due;

(2) Renunciation by the contractor of any amount due him from the owner.

This article is subject to the provisions of special laws.

[♣] *Art. 1893.* In the cases mentioned in Nos. 1 and 2 of the preceding article, the principal may furthermore bring an action against the substitute with respect to the obligations which the latter has contracted under the substitution.

[♦] *Art. 1608.* The vendor may bring his action against every possessor whose right is derived from the vendee, even if in the second contract no mention should have been made of the right to repurchase, without prejudice to the provisions of the Mortgage Law and the Land Registration Law with respect to third persons.

Again, there are two separate contracts here: The contract for a piece of work between A and B and the contract of labor between B and C. A owes B ₱10,000 which is not fully paid yet. B owes C ₱5000 for unpaid wages. C can go after A directly for ₱5000.

Art. 1178. **Subject to the laws, all rights acquired in virtue of an obligation are transmissible, if there has been no stipulation to the contrary.**

- Rights are transmissible unless the rights are personal.

G. ***Different Kinds of Obligations***

1. **According to Demandability** (Articles 1179-1192)

Art. 1179. **Every obligation whose performance does not depend upon a future or uncertain event, or upon a past event unknown to the parties, is demandable at once.**

Every obligation which contains a resolutory condition shall also be demandable, without prejudice to the effects of the happening of the event.

Art. 1180. **When the debtor binds himself to pay when his means permit him to do so, the obligation shall be deemed to be one with a period, subject to the provisions of article 1197.**

Art. 1181. **In conditional obligations, the acquisition of rights, as well as the extinguishment or loss of those already acquired, shall depend upon the happening of the event which constitutes the condition.**

Art. 1182. **When the fulfillment of the condition depends upon the sole will of the debtor, the conditional obligation shall be void. If it depends upon chance or upon the will of a third person, the obligation shall take effect in conformity with the provisions of this Code.**

Art. 1183. **Impossible conditions, those contrary to good customs or public policy and those prohibited by law shall annul the obligation which depends upon them. If the obligation is divisible, that part thereof which is not affected by the impossible or unlawful condition shall be valid.**

The condition not to do an impossible thing shall be considered as not having been agreed upon.

Art. 1184. **The condition that some event happen at a determinate time shall extinguish the obligation as soon as the time expires or if it has become indubitable that the event will not take place.**

Art. 1185. **The condition that some event will not happen at a determinate time shall render the obligation effective from the moment the time indicated has elapsed, or if it has become evident that the event cannot occur.**

If no time has been fixed, the condition shall be deemed fulfilled at such time as may have probably been contemplated, bearing in mind the nature of the obligation.

Art. 1186. **The condition shall be deemed fulfilled when the obligor voluntarily prevents its fulfillment.**

Art. 1187. **The effects of a conditional obligation to give, once the condition has been fulfilled, shall retroact to the day of the constitution of the obligation. Nevertheless, when the obligation imposes reciprocal prestations upon the parties, the fruits and interests during the pendency of the condition shall be deemed to have been mutually compensated. If the obligation is unilateral, the debtor shall appropriate the fruits and interests received, unless from the nature and circumstances of the obligation it should be inferred that the intention of the person constituting the same was different.**

In obligations to do and not to do, the courts shall determine, in each case, the retroactive effect of the condition that has been complied with.

Art. 1188. **The creditor may, before the fulfillment of the condition, bring the appropriate actions for the preservation of his right.**

The debtor may recover what during the same time he has paid by mistake in case of a suspensive condition.

Art. 1189. **When the conditions have been imposed with the intention of suspending the efficacy of an obligation to give, the following rules shall be observed in case of the improvement, loss or deterioration of the thing during the pendency of the condition:**

(1) If the thing is lost without the fault of the debtor, the obligation shall be extinguished;

(2) If the thing is lost through the fault of the debtor, he shall be obliged to pay damages; it is understood that the thing is lost when it perishes, or goes out of commerce, or disappears in such a way that its existence is unknown or it cannot be recovered;

(3) When the thing deteriorates without the fault of the debtor, the impairment is to be borne by the creditor;

(4) If it deteriorates through the fault of the debtor, the creditor may choose between the rescission of the obligation and its fulfillment, with indemnity for damages in either case;

(5) If the thing is improved by its nature, or by time, the improvement shall inure to the benefit of the creditor;

(6) If it is improved at the expense of the debtor, he shall have no other right than that granted to the usufructuary.

Art. 1190. **When the conditions have for their purpose the extinguishment of an obligation to give, the parties, upon the**

fulfillment of said conditions, shall return to each other what they have received.

In case of the loss, deterioration or improvement of the thing, the provisions which, with respect to the debtor, are laid down in the preceding article shall be applied to the party who is bound to return.

As for the obligations to do and not to do, the provisions of the second paragraph of article 1187 shall be observed as regards the effect of the extinguishment of the obligation.

Art. 1191. **The power to rescind obligations is implied in reciprocal ones, in case one of the obligors should not comply with what is incumbent upon him.**

The injured party may choose between the fulfillment and the rescission of the obligation, with the payment of damages in either case. He may also seek rescission, even after he has chosen fulfillment, if the latter should become impossible.

The court shall decree the rescission claimed, unless there be just cause authorizing the fixing of a period.

This is understood to be without prejudice to the rights of third persons who have acquired the thing, in accordance with articles 1385 and 1388 and the Mortgage Law.

Art. 1192. **In case both parties have committed a breach of the obligation, the liability of the first infractor shall be equitably tempered by the courts. If it cannot be determined which of the parties first violated the contract, the same shall be deemed extinguished, and each shall bear his own damages.**

a. ***Pure***

- A pure obligation is one which has neither a condition nor a term attached to it. It is one which is subject to no contingency.
- A pure obligation is demandable at once (Article 1179).

b. ***Conditional***

- A condition is a future and uncertain event.
- All conditions are future.
- Article 1179 mentions the term "past event unknown to the parties". This has been criticized by many commentators. This is a contradiction in terms. The condition in a past even unknown to the parties is knowledge by the parties of the past event.
- In conditional obligation, the happening of the condition determines its birth or death. In term, the happening of the term determines its demandability.
- Types of Conditions
    i. 1. *Suspensive*
        - The fulfillment of a suspensive condition results in the acquisition of rights arising out of the obligation.

- The condition that some event happen at a determinate time shall extinguish the obligation as soon as the time expires or if it has become indubitable that the event will not take place (Article 1184)
- The condition that some event will not happen at a determinate time shall render the obligation effective from the moment the time indicated has elapsed, or if it has become evident that the event cannot occur (Article 1185).
- The moment the suspensive condition happens, the obligation becomes effective and enforceable. However, the effects of the obligation retroact to the moment when such obligation was constituted or created. By the principle of retroactivity, therefore, a fiction is created whereby the binding tie of the conditional obligation is produced from the time of its perfection, and not from the happening of the condition (Article 1187)
- The law does not require the delivery or payment of the fruits or interests accruing before the happening of the suspensive condition. The right to the fruits of the thing is not within the principle of retroactivity of conditional obligations (Article 1187)
- If the obligation imposes reciprocal prestations, fruits and interest are deemed mutually compensated.

  Example: I promise to sell my mango plantation at ₱5000/hectare if you pass the bar examination.

  I do not have to give you the fruits from the time of the agreement to the release of the bar exams.
- If the obligation is unilateral, debtor appropriates the fruits.
- In obligations to do and not to do, the courts shall use sound discretion to determine the retroactive effect of the fulfillment of the condition (Article 1187)
- The creditor may, before the fulfillment of the condition, bring the appropriate actions for the preservation of his right (Article 1188, 1st ¶). JBL Reyes criticizes the use of the word "bring". The 1st ¶ of Article 1188 does not limit itself to judicial actions. Thus, the word "take" is better.
- The debtor who paid before the happening of the condition may recover only when he paid by mistake and provided the action to recover is brought before the condition (Article 1188).

2. *Resolutory*
   - The fulfillment of the resolutory condition results in the extinguishments of rights arising out of the obligation.
   - If the resolutory condition is fulfilled, the obligation is treated as if it did not exist. Thus, each party is bound to return to the other whatever he has received, so that they

may be returned to their original condition before the creation of the obligation (Article 1190).

- Resolution (Article 1191) is found on the conditional obligations because if there is a breach, the breach is a resolutory condition which extinguishes the obligation.
- Article 1191 uses the term "rescission". The better term is "resolution". The term rescission is also found in Article 1381[♥], rescissible contracts. Resolution is different from rescission. Resolution is based on the non-fulfillment of the obligation. Rescission is based on economic prejudice. Furthermore, the character of resolution is principal and retaliatory while the character of rescission is subsidiary. This means that in resolution there is no need to show that there is no other remedy. In rescission, the plaintiff must show that there is no other recourse.
- The right of resolution applies to reciprocal obligations.
- A reciprocal obligation has 2 elements
  1. 2 prestations arising from the same source
  2. Each prestation is designed to be the counterpart of the other
- An example of a reciprocal obligation is a contract of sale.
- Summary of Rulings on Resolution
  1. The right to resolve is in inherent in reciprocal obligations.
  2. The breach of the obligation must be substantial. Proof of substantial breach is a prerequisite for resolution.
  3. The right of resolution can be exercised extrajudicially and will take effect upon communication to the defaulting party. This notice of resolution is necessary.
  4. The exercise of this right can be the subject of judicial review.
  5. Upon resolution, there must be mutual restitution of the object and its fruits
     - The parties are returned to their original situation – *status quo ante*.

♥ *Art. 1381.* The following contracts are rescissible:
(1) Those which are entered into by guardians whenever the wards whom they represent suffer lesion by more than one-fourth of the value of the things which are the object thereof;
(2) Those agreed upon in representation of absentees, if the latter suffer the lesion stated in the preceding number;
(3) Those undertaken in fraud of creditors when the latter cannot in any other manner collect the claims due them;
(4) Those which refer to things under litigation if they have been entered into by the defendant without the knowledge and approval of the litigants or of competent judicial authority;
(5) All other contracts specially declared by law to be subject to rescission.

6. If the aggrieved party has not performed the prestation and resolves extrajudicially, then all the aggrieved party has to do is to refuse to perform his prestation.

7. If the aggrieved party has performed the prestation, the aggrieved party can demand recovery. If the defaulting party refuses to return it, the aggrieved party must go to court in order to recover.

- In *Ilingan vs.CA (September 26, 2001)* case, there was an *obiter dictum* that the operative act that resolves a contract is the decree of court and the right should be exercised judicially. Professor Balane says this is wrong. However, the *ratio* of the case said that the communication must be a notarial notice.

ii. 1. *Potestative*

- In a potestative condition, the fulfillment of the condition depends upon the will of a party to the obligation.
- If the condition depends upon the will of the creditor, then the obligation is valid. In this case, there is a *vinculum juris*. The creditor can compel the debtor to perform the obligation.

  Example: I will give you my pomelo plantation if you establish permanent residence in Davao.

  This is a suspensive condition dependent on the sole will of the creditor. It becomes pure and demandable at once.
- Article 1182 prohibits a suspensive potestative condition dependent on the will of the debtor. The entire obligation is void.

  Example: I will sell you my car if I want to.

  Why does it annul the entire obligation?

  Because there is no juridical tie. Remember, an obligation is one which has to be performed regardless of the will of the debtor. There is no element of compulsion. In the example above, the creditor can never compel, can never have a cause of action.
- In reciprocal obligations, the law only talks about the first prestation, the reciprocal prestation is not taken into consideration.

2. *Casual*

- In a casual condition, the fulfillment of the condition depends upon chance and/or upon the will of a 3rd person and not on the will of a party.
- *Example:* I will give you my house if the Philippines renounces its foreign debt in 5 years. (Dependent solely on the will of a third person or on chance).

3. *Mixed*
    - In a mixed condition, the fulfillment of the condition depends partly upon the will of a party to the obligation and partly upon chance and/or the will of a 3rd person.
    - When the condition depends not only upon the will of the debtor, but also upon chance or will of the others, the obligation is valid.
    - *Example:* I will give you my house if you marry him within 3 years. (The condition here is a mixed condition. In this case, the condition of marriage depends partly on the creditor, a party to the obligation, and partly on a 3rd person.)

- Doctrine of Constructive Compliance
    - The condition shall be deemed fulfilled when the obligor voluntarily prevents its fulfillment (Article 1186).
    - The principle underlying constructive fulfillment of conditions is that a party to a contract may not be excused from performing his promise by the non-occurrence of an event which he himself prevented.
    - Requisites
        1. Intent of the debtor to prevent fulfillment of the obligation
            - Where the act of the debtor, however, although voluntary, did not have for its purpose the prevention of the fulfillment of the condition, it will not fall under the doctrine of constructive compliance.
        2. Actual prevention of compliance
            - The doctrine of constructive compliance applies to potestative and mixed conditions.

iii. 1. *Possible*
    - A condition is possible when it is capable of realization according to nature, law, public policy or good customs.

2. *Impossible*
    - A condition is impossible when it is not capable of realization according to nature, law, public policy or good customs.
    - The effect of an impossible condition is to annul the obligation (Article 1183). The effect of an impossible condition regarding donations and succession is different. In donations and succession, an impossible condition is simply disregarded. The distinction can be explained by the fact that Article 1183 refers to onerous obligation whereas donations and succession are gratuitous.
    - However, if the obligation is divisible and that part of the obligation is not unaffected by the impossible condition, then the obligation is valid (Article 1183).

- Justice Paras distinguishes as follows:
  1. Positive condition to do something impossible
     - Void condition and obligation
  2. Negative condition not to do something impossible
     - Disregard the condition, the obligation is valid
  3. Negative condition not to do something illegal
     - Valid condition and obligation

iv. 1. *Positive*
- A condition is positive when the condition involves the performance of an act.

2. *Negative*
- A condition is negative when the condition involves the non-performance of an act.

v. 1. *Divisible*
- A condition is divisible when the condition is susceptible of partial realization.

2. *Indivisible*
- A condition is indivisible when the condition is not susceptible of partial realization.

vi. 1. *Conjunctive*
- A condition is conjunctive when there are several conditions, all of which must be realized.

2. *Alternative*
- A condition is alternative when there are several conditions, only one of which must be realized.

vii. 1. *Express*
- A condition is express when the condition is stated expressly.

2. *Implied*
- A condition is implied when the condition is tacit.

c. ***Term*** (Articles 1193-1198)

Art. 1193. **Obligations for whose fulfillment a day certain has been fixed, shall be demandable only when that day comes.**

Obligations with a resolutory period take effect at once, but terminate upon arrival of the day certain.

A day certain is understood to be that which must necessarily come, although it may not be known when.

If the uncertainty consists in whether the day will come or not, the obligation is conditional, and it shall be regulated by the rules of the preceding Section.

Art. 1194. **In case of loss, deterioration or improvement of the thing before the arrival of the day certain, the rules in article 1189 shall be observed.**

Art. 1195. **Anything paid or delivered before the arrival of the period, the obligor being unaware of the period or believing that the obligation has become due and demandable, may be recovered, with the fruits and interests.**

Art. 1196. **Whenever in an obligation a period is designated, it is presumed to have been established for the benefit of both the creditor and the debtor, unless from the tenor of the same or other circumstances it should appear that the period has been established in favor of one or of the other.**

Art. 1197. **If the obligation does not fix a period, but from its nature and the circumstances it can be inferred that a period was intended, the courts may fix the duration thereof.**

The courts shall also fix the duration of the period when it depends upon the will of the debtor.

In every case, the courts shall determine such period as may under the circumstances have been probably contemplated by the parties. Once fixed by the courts, the period cannot be changed by them.

Art. 1198. **The debtor shall lose every right to make use of the period:**

(1) When after the obligation has been contracted, he becomes insolvent, unless he gives a guaranty or security for the debt;

(2) When he does not furnish to the creditor the guaranties or securities which he has promised;

(3) When by his own acts he has impaired said guaranties or securities after their establishment, and when through a fortuitous event they disappear, unless he immediately gives new ones equally satisfactory;

(4) When the debtor violates any undertaking, in consideration of which the creditor agreed to the period;

(5) When the debtor attempts to abscond.

- A term is a length of time which, exerting an influence on an obligation as a consequence of juridical acts, suspends its demandability or determines its extinguishment.
- A term is a future and certain event (*i.e.* death)
- When the debtor binds himself to pay when his means permit him to do so, the obligation is one with a term (Article 1180). Although Article 1180 looks like a condition dependent on the sole will of the debtor, the law treats it as a term.

- If prepayment is made without the debtor being aware that the period had not yet arrived, then the thing and the fruits can be recovered (Article 1195). If prepayment is made and the debtor was aware that the period had not yet arrived, then the debtor waives the benefit of the term.
    - An obligation was entered on May 1, 2002 between A and B. The obligation is to be performed on October 1, 2002. A delivers on September 1, 2002 by mistake to B. A discovers his mistake and tells B to return the object and the fruits delivered.

      Article 1195 does not answer who is entitled to the fruits which have been produced in the meantime (May 1, 2002 to October 1, 2002).

      According to the Spanish Code, the debtor (A) can only fruits.

      There are 2 views:

      i. The debtor is entitled to the fruits produced in the meantime (Tolentino)
          - This is because delivery is not required until October 1.

      ii. The creditor is entitled to the fruits since the obligation is demandable only when the period arrives
          - This is because the obligation is already existing although it is not yet demandable.

    - Professor Balane believes that the fruits belong to the debtor. Why would Article 1195 allow the debtor to recover the fruits if he should still give them back after the term comes.
    - Instances when the Fruits Cannot be Recovered

      i. When the obligation is reciprocal and there has been prepayment of both sides

      ii. When the obligation is a loan and the debtor is bound to pay interest

      iii. When the period is exclusively for the creditor's benefit

      iv. When the debtor is aware of the period and pays anyway – waiver
- The presumption is that the period is for the benefit of both the debtor and the creditor (Article 1196). The effect of this presumption is that the creditor cannot demand payment before the period arrives nor can the debtor demand the creditor to accept payment before the period arrives.

  Example: A issues a promissory note to B demandable on October 15. A cannot insist on prepayment nor can B insist that he be paid on September.
- If the period is for the benefit of the creditor only, the creditor can demand performance at any time, but the debtor cannot compel him to accept payment before the period expires.

- If the period is for the benefit of the debtor only, the debtor can he may oppose a premature demand for payment, but may validly pay at any time before the period expires.
  - When the obligation is worded such that payment it to be made "within 6 months", the period is for the benefit of the debtor.
  - When the obligation is worded such that payment is to be made "on or before", the period is for the benefit of the debtor.
- The debtor shall lose every right to make use of the period:
  i. When after the obligation has been contracted, the debtor becomes insolvent unless he gives a guaranty or security for the debt (Article 1198 (1))
     - The insolvency here need not be judicial. It can be actual insolvency.
  ii. When he does not furnish to the creditor the guaranties or securities which he has promised (Article 1198 (2))
  iii. When by his own acts he has impaired the said guaranties or securities after their establishment, and when through a fortuitous event hey disappear, unless he immediately gives new ones equally satisfactory (Article 1198 (3))
  iv. When the debtor violates any undertaking, in consideration of which the creditor agreed (Article 1198 (4))
  v. When the debtor attempts to abscond (Article 1198 (5))
  vi. When the creditor is deceived on the substance or quality of the thing pledged, the creditor may either claim another thing in its stead or demand immediate payment of the principal obligation (Article 2109)
- Types of Periods
  i. 1. *Suspensive* (*ex die*)
     - The period is suspensive when the obligation becomes demandable only upon the arrival of the period.
     2. *Resolutory (in diem*)
     - The period is resolutory when the performance must terminate upon the arrival of the period.
  ii. 1. *Legal*
     - A period is legal when it is granted by law.
     2. *Voluntary*
     - A period is voluntary when it is stipulated by the parties.
     3. *Judicial*
     - A period is judicial when it is fixed by the courts.
     - If the obligation does not fix a period, but from its nature and the circumstances it can be inferred that a period was intended, the courts may fix the duration thereof (Article 1197, 1st ¶).

- 2 steps involved in an action for fixing a period:
  1. The court should determine that the obligation does not fix a period but it can be inferred that a period is intended due to the circumstances OR the period is dependent on debtor's will.
  2. Court shall decide what period was probably contemplated by the parties.
     - Court should make an educated guess.
     - Court should not fix a period which it thinks is fair or reasonable but rather the period which was probably contemplated by the parties.
- Generally, you cannot ask for specific performance because fixing a period contemplates something in the future, hence to ask for specific performance would be illogical.
- Instances When Court May Fix a Period
  1. Article 1197, ¶1

> ***Art. 1197, ¶1.*** **If the obligation does not fix a period, but from its nature and the circumstances it can be inferred that a period was intended, the courts may fix the duration thereof.**

- Exceptions
  a. Articles 1682 and 1687, 1st sentence

> ***Art. 1682.*** **The lease of a piece of rural land, when its duration has not been fixed, is understood to have been for all the time necessary for the gathering of the fruits which the whole estate leased may yield in one year, or which it may yield once, although two or more years have to elapse for the purpose.**

> ***Art. 1687, 1st sentence.*** **If the period for the lease has not been fixed, it is understood to be from year to year, if the rent agreed upon is annual; from month to month, if it is monthly; from week to week, if the rent is weekly; and from day to day, if the rent is to be paid daily.**

  b. *Pacto de retro sales* (Article 1606)

> ***Art. 1606.*** **The right referred to in article 1601, in the absence of an express agreement, shall last four years from the date of the contract.**

Should there be an agreement, the period cannot exceed ten years.

However, the vendor may still exercise the right to repurchase within thirty days from the time final judgment was rendered in a civil action on the basis that the contract was a true sale with right to repurchase.

c. Contract of services for an indefinite period

- Court cannot fix a period or else it would amount to involuntary servitude.

2. Article 1197, ¶2

Art. 1197, ¶2. **The courts shall also fix the duration of the period when it depends upon the will of the debtor.**

3. Article 1191, ¶3

Art. 1191, ¶3. **The court shall decree the rescission claimed, unless there be just cause authorizing the fixing of a period.**

4. Article 1687, 2nd, 3rd and 4th sentences

Art. 1687, 2nd, 3rd and 4th sentences. **However, even though a monthly rent is paid, and no period for the lease has been set, the courts may fix a longer term for the lease after the lessee has occupied the premises for over one year. If the rent is weekly, the courts may likewise determine a longer period after the lessee has been in possession for over six months. In case of daily rent, the courts may also fix a longer period after the lessee has stayed in the place for over one month.**

5. Article 1180

Art. 1180. **When the debtor binds himself to pay when his means permit him to do so, the obligation shall be deemed to be one with a period, subject to the provisions of Article 1197.**

iii. 1. Express

- A period is express when the period is specifically stated.

2. Tacit

- A period is tacit when a person undertakes to do some work which can be done only during a particular season.

iv. 1. *Original*

2. *Grace*

- A grace period is an extension fixed by the parties or by the court.

v. 1. *Definite*

- A period is definite when it refers to a fixed known date or time.

2. *Indefinite*

- A period is indefinite when it refers to an event which will necessarily happen but the date of its happening is unknown (*i.e.* death)

2. **According to Plurality of Object** (Articles 1199-1206)

Art. 1199. **A person alternatively bound by different prestations shall completely perform one of them.**

The creditor cannot be compelled to receive part of one and part of the other undertaking.

Art. 1200. **The right of choice belongs to the debtor, unless it has been expressly granted to the creditor.**

The debtor shall have no right to choose those prestations which are impossible, unlawful or which could not have been the object of the obligation.

Art. 1201. **The choice shall produce no effect except from the time it has been communicated.**

Art. 1202. **The debtor shall lose the right of choice when among the prestations whereby he is alternatively bound, only one is practicable.**

Art. 1203. **If through the creditor's acts the debtor cannot make a choice according to the terms of the obligation, the latter may rescind the contract with damages.**

Art. 1204. **The creditor shall have a right to indemnity for damages when, through the fault of the debtor, all the things which are alternatively the object of the obligation have been lost, or the compliance of the obligation has become impossible.**

The indemnity shall be fixed taking as a basis the value of the last thing which disappeared, or that of the service which last became impossible.

Damages other than the value of the last thing or service may also be awarded.

Art. 1205. **When the choice has been expressly given to the creditor, the obligation shall cease to be alternative from the day when the selection has been communicated to the debtor.**

Until then the responsibility of the debtor shall be governed by the following rules:

(1) If one of the things is lost through a fortuitous event, he shall perform the obligation by delivering that which the creditor should choose from among the remainder, or that which remains if only one subsists;

(2) If the loss of one of the things occurs through the fault of the debtor, the creditor may claim any of those subsisting, or the price of that which, through the fault of the former, has disappeared, with a right to damages;

(3) If all the things are lost through the fault of the debtor, the choice by the creditor shall fall upon the price of any one of them, also with indemnity for damages.

The same rules shall be applied to obligations to do or not to do in case one, some or all of the prestations should become impossible.

Art. 1206. **When only one prestation has been agreed upon, but the obligor may render another in substitution, the obligation is called facultative.**

The loss or deterioration of the thing intended as a substitute, through the negligence of the obligor, does not render him liable. But once the substitution has been made, the obligor is liable for the loss of the substitute on account of his delay, negligence or fraud.

a. ***Alternative***

- An obligation is alternative when several objects or prestations are due, but the payment or performance of 1 of them would be sufficient.
- A promises to deliver either 500 kgs of rice or 1000 liters of gas. The obligation is alternative. The debtor cannot perform the obligation by giving 250 kgs of rice and 500 liters of gas unless the creditor agrees. In which case there is a novation.
- **General Rule:** The right of choice the right to belongs to the debtor.
- ***Exceptions:***
  i. When it is expressly granted to the creditor
  ii. When it is agreed upon by the parties that a 3rd person shall make the choice
- The act of making the choice is called concentration. Once the choice has been made, then the obligation is concentrated in 1 object.
- Whoever has the right of choice must communicate it to the other party (Article 1201). The creditor has to communicate his choice to the debtor so that the debtor will know. On the other hand, in *Ong Guan vs. Century Insurance*, the Supreme Court said that the purpose for notice to the creditor is to give the creditor the opportunity to express his consent or to impugn the election made by the debtor. Professor

Balane does not agree with this statement since the creditor does not have the right to impugn, otherwise, the obligation would not be an alternative obligation. A better reason according to Professor Balane is to give the creditor time to prepare.

Example: The choice is either to give diamond ring or a Mercedes Benz. The debtor should notify the creditor so the creditor can either rent a safety deposit box or prepare a garage.

However, according to Professor Balane, the best reason is because once the choice is communicated, the obligation ceases to be alternative. The risk of loss belongs to the creditor now.

- Choice Belongs to the Debtor
  i. When through fortuitous event or through the debtor's acts, there is only 1 prestation left, the obligation ceases to be alternative (Article 1202).
  ii. When the choice of the debtor is limited through the creditor's own acts, then the debtor has the remedy of resolution (Article 1191) plus damages (Article 1203)
  iii. When all the things are lost due to the debtor's fault, the creditor can sue for damages (Article 1204)
  iv. When some things are lost due to the debtor's fault but there are still some things remaining, then the debtor can choose from what's left
  v. When all the things are lost due to a fortuitous event, the obligation is extinguished
  vi. When all but 1 of the things are lost due to a fortuitous event and the last object is lost through the debtor's fault, then the creditor can sue for damages
  vii. When all but 1 of the things are lost through the debtor's own acts and the last object is lost through a fortuitous event, the obligation is extinguished
- Choice Belongs to the Creditor (Article 1205)
  i. When 1 or some of the objects are lost through fortuitous events, then the creditor chooses from the remainder
  ii. When 1 or some of the objects are lost due to the debtor's fault, the creditor may choose from the remainder or get the value of any of the objects lost plus damages in either case
  iii. When all of the things are lost due to the debtor's fault, the creditor can get the value of any of the objects lost plus damages
  iv. When some are lost through the debtor's fault, the creditor chooses from the remainder
  v. When all the objects are lost due to a fortuitous event, then the obligation is extinguished
  vi. When all the objects are lost due to the creditor's fault, the obligation is extinguished

b. ***Facultative***

- An obligation is facultative when only 1 object or prestation has been agreed upon by the parties to the obligation, but the debtor may deliver or render another in substitution.
- Facultative obligations bear a resemblance to alternative obligations particularly when the choice in an alternative obligation is with the debtor.
- In a facultative obligation, the right of choice is always with the debtor.
- In an alternative obligation, if 1 of the prestations is impossible, then there are other choices. In a facultative obligation, if the principal obligation is impossible, then everything is annulled.
- In theory, it is easy to distinguish a facultative obligation from an alternative obligation. In practice, it is difficult to do so since most of the time, the words are ambiguous. For example, I promise to deliver my Honda Accord, but I reserve my right to substitute this with my Gold Rolex. In this case, it is not very clear whether the obligation is alternative or facultative. According to Professor Balane, the rule is that one must look at the circumstances of the obligation. If it is impossible to determine which one, then the doubt should be resolved in the favor of an alternative obligation since its effects are less radical.

3. **According to Plurality of Subject** (Articles 1207-1222)

Art. 1207. **The concurrence of two or more creditors or of two or more debtors in one and the same obligation does not imply that each one of the former has a right to demand, or that each one of the latter is bound to render, entire compliance with the prestation. There is a solidary liability only when the obligation expressly so states, or when the law or the nature of the obligation requires solidarity.**

Art. 1208. **If from the law, or the nature or the wording of the obligations to which the preceding article refers the contrary does not appear, the credit or debt shall be presumed to be divided into as many shares as there are creditors or debtors, the credits or debts being considered distinct from one another, subject to the Rules of Court governing the multiplicity of suits.**

Art. 1209. **If the division is impossible, the right of the creditors may be prejudiced only by their collective acts, and the debt can be enforced only by proceeding against all the debtors. If one of the latter should be insolvent, the others shall not be liable for his share.**

Art. 1210. **The indivisibility of an obligation does not necessarily give rise to solidarity. Nor does solidarity of itself imply indivisibility.**

Art. 1211. **Solidarity may exist although the creditors and the debtors may not be bound in the same manner and by the same periods and conditions.**

Art. 1212. **Each one of the solidary creditors may do whatever may be useful to the others, but not anything which may be prejudicial to the latter.**

Art. 1213. **A solidary creditor cannot assign his rights without the consent of the others.**

Art. 1214. **The debtor may pay any one of the solidary creditors; but if any demand, judicial or extrajudicial, has been made by one of them, payment should be made to him.**

Art. 1215. **Novation, compensation, confusion or remission of the debt, made by any of the solidary creditors or with any of the solidary debtors, shall extinguish the obligation, without prejudice to the provisions of article 1219.**

The creditor who may have executed any of these acts, as well as he who collects the debt, shall be liable to the others for the share in the obligation corresponding to them.

Art. 1216. **The creditor may proceed against any one of the solidary debtors or some or all of them simultaneously. The demand made against one of them shall not be an obstacle to those which may subsequently be directed against the others, so long as the debt has not been fully collected.**

Art. 1217. **Payment made by one of the solidary debtors extinguishes the obligation. If two or more solidary debtors offer to pay, the creditor may choose which offer to accept.**

He who made the payment may claim from his co-debtors only the share which corresponds to each, with the interest for the payment already made. If the payment is made before the debt is due, no interest for the intervening period may be demanded.

When one of the solidary debtors cannot, because of his insolvency, reimburse his share to the debtor paying the obligation, such share shall be borne by all his co-debtors, in proportion to the debt of each.

Art. 1218. **Payment by a solidary debtor shall not entitle him to reimbursement from his co-debtors if such payment is made after the obligation has prescribed or become illegal.**

Art. 1219. **The remission made by the creditor of the share which affects one of the solidary debtors does not release the latter from his responsibility towards the co-debtors, in case the debt had been totally paid by anyone of them before the remission was effected.**

Art. 1220. **The remission of the whole obligation, obtained by one of the solidary debtors, does not entitle him to reimbursement from his co-debtors.**

Art. 1221. **If the thing has been lost or if the prestation has become impossible without the fault of the solidary debtors, the obligation shall be extinguished.**

If there was fault on the part of any one of them, all shall be responsible to the creditor, for the price and the payment of damages and interest, without prejudice to their action against the guilty or negligent debtor.

If through a fortuitous event, the thing is lost or the performance has become impossible after one of the solidary debtors has incurred in delay through the judicial or extrajudicial demand upon him by the creditor, the provisions of the preceding paragraph shall apply.

Art. 1222. **A solidary debtor may, in actions filed by the creditor, avail himself of all defenses which are derived from the nature of the obligation and of those which are personal to him, or pertain to his own share. With respect to those which personally belong to the others, he may avail himself thereof only as regards that part of the debt for which the latter are responsible.**

a. ***Single***
   - An obligation is single when there is only 1 debtor and 1 creditor.

b. ***Joint***
   - An obligation is joint when each of the debtor is liable only for a proportional part of the debt, and each creditor is entitled only to a partial part of the credit.
   - A joint obligation is also called *mancomunada*, pro rata, *mancomunada* simple.
   - **General Rule:** The obligation is joint since joint obligations are less onerous.
   - ***Exceptions:***
     i. Agreement of the parties
     ii. Law (*i.e.* tort feasors are solidarily liable)
     iii. Nature of the obligation
        - According to many commentators, this is superfluous since a solidary obligation arises because of law.
   - *ESSENTIAL NATURE:* There are as many obligations as there are creditors multiplied by as many debtors.
   - Types of Joint Obligations
     i. *Active joint*
        - In active joint, there are multiple creditors.
        - A, B, and C are creditors, and X is the debtor. If the obligation is joint, there are 3 obligations – X's obligation to A, X's obligation to B, and X's obligation to C.

- The demand of 1 creditor on 1 debtor will not constitute a demand on the others.
- The prescription of 1 of the debts will not affect the other debts.

ii. *Passive joint*

- In passive joint, there are multiple debtors.
- X, Y, and Z are debtor, and A is the creditor. If the obligation is joint, there are 3 obligations – X's obligation to A, Y's obligation to A, and Z's obligation to A.
- The demand of 1 creditor on 1 debtor will not constitute a demand on the others.
- The prescription of 1 of the debts will not affect the other debts.
- The insolvency of 1 of the debtors will not affect the burden of the other debtors.

iii. *Mixed joint*

- In mixed joint, there are multiple creditors and debtors.
- X, Y, and Z are debtors, and A, B, and C are the creditors. If the obligation is joint, there are 9 obligations – X's obligation to A, X's obligation to B, X's obligation to C, Y's obligation A, Y's obligation to B, Y's obligation to C, Z's obligation to A, Z's obligation to B, and Z's obligation to C.

c. ***Solidary***

- An obligation is solidary when any of the debtors can be hled liable for the entire obligation, and any of the creditors is entitled to demand the entire obligation.
- A solidary obligation is also called joint and several, joint and individual, and *in solidum*.
- If a promissory says, "I promise to pay," and it is signed by K, B, and M, then the obligation is solidary.
- An obligation is solidary when

  i. The parties so agree

  ii. When the law so provides (*i.e.* tort feasors are solidarily liable)

  iii. When nature of the obligation requires the obligation to be solidary

  - According to many commentators, this is superfluous since a solidary obligation arises because of law.

- Types of Solidary Obligations

  i. *Active solidary*

  - In active solidary, there are multiple creditors.
  - Characteristics of Active Solidary
    - A credit once paid is shared equally among the creditors unless a different intention appears.

- The debtor may pay any of the creditors, but if any demand, judicial or extrajudicial is made on him, he must pay only to the one demanding payment (Article 1214).
    - Article 1214 can be open to abuse. For example, if A writes Y demanding the performance of the obligation and A takes no further action, B and C cannot demand from Y. This is open to collusion.
    - Suppose A, B, and C are creditors of X. A demands the payment of the loan worth P9,000. X instead pays to B. The payment to B will be treated as a payment to a 3rd person. Therefore, X must still pay A the amount of the loan minus the share of B. So, X has to pay P6,000 to A.

ii. *Passive solidary*

- In passive solidary, there are multiple debtors.
- Characteristics of Passive Solidary
- Each debtor may be required to pay the entire obligation but after payment, he can recover from his co-debtors their respective shares.

iii. *Mixed solidary*

- In mixed solidary, there are multiple debtors and creditors.
- Characteristics of Mixed Solidary
    - A credit once paid is shared equally among the creditors unless a different intention appears.
    - The debtor may pay any of the creditors, but if any demand, judicial or extrajudicial, is made on him, he must pay only to the one demanding payment (Article 1214).
        - According to Professor Balane, Article 1214 is problematic. For example, X owes A, B and C. B makes an extrajudicial demand on X. X cannot pay A or C anymore. The problem is when B does not follow up the demand, it can keep the obligation in suspension indefinitely.

          The rule in the Spanish Code was that the debtor cannot pay the other non-demanding solidary creditors only if one of the solidary creditor makes a judicial demand.
        - Suppose the debtor upon whom the demand is made pays a creditor who did not make a demand. The payment is considered a payment to a third person. Therefore the debtor can still be made to pay by the one who made the demand on him.

          Example: X owes A and B. B demanded from X. X pays A. X must still pay B ₱6000.

          But the payment to the demanding creditor can be reduced by the share of the paid creditor.

The debtor can still recover from the paid creditor (unjust enrichment).

- Suppose A and B are creditors while X and Y are debtors. A demands from Y. Now, X pays B. The payment of X to B extinguishes the entire solidary obligation. X is not bound by the demand by A on Y. There is no violation of Article 1214.

- Each debtor may be required to pay the entire obligation but after payment, he can recover from his co-debtors their respective shares.

- Is there a conflict between Article 1212 and Article 1215[♠]? Article 1212 provides that each of the solidary creditors may do whatever may be useful to the others, but not anything which may be prejudicial to the latter. But Article 1215 allows novation, compensation, confusion or remission on the part of the solidary creditor. Why? According to Professor Balane, this is absurd.

  One way of reconciling is that under Article 1215, any creditor can remit or condone the obligation. But because the obligation is extinguished, the condoning creditor must be liable for the other creditor's share. Here, there is no prejudice.

  However, another problem arises if the condoning creditor later on becomes insolvent.

- ***Art. 1219.*** **The remission made by the creditor of the share which affects one of the solidary debtors does not release the latter from his responsibility towards the co-debtors, in case the debt had been totally paid by anyone of them before the remission was effected.**

- A is the creditor of W, X, Y, and Z. W, X, Y, and Z owe A P6,000. The obligation is solidary. A remits Y's share – P1,500. A can go after X for only P4,500. The remission benefits X initially since X only has to pay P4,500 instead of 6,000. However, X can only recover P3,000 from W and Z.

- A is the creditor of W, X, Y, and Z. W, X, Y, and Z owe A P6,000. The obligation is solidary. A remits Y's share – P1,500. A can go after Y for the balance since Y is still a solidary debtor for the balance. Otherwise,

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[♠] *Art. 1212.* Each one of the solidary creditors may do whatever may be useful to the others, but not anything which may be prejudicial to the latter.

Art. 1215. Novation, compensation, confusion or remission of the debt, made by any of the solidary creditors or with any of the solidary debtors, shall extinguish the obligation, without prejudice to the provisions of article 1219.

The creditor who may have executed any of these acts, as well as he who collects the debt, shall be liable to the others for the share in the obligation corresponding to them. Art. 1215.

Novation, compensation, confusion or remission of the debt, made by any of the solidary creditors or with any of the solidary debtors, shall extinguish the obligation, without prejudice to the provisions of article 1219.

The creditor who may have executed any of these acts, as well as he who collects the debt, shall be liable to the others for the share in the obligation corresponding to them.

the effect of remission would be extended. However, Y can recover P4,500 from W, X, and Z.

- A is the creditor of W, X, Y, and Z. W, X, Y, and Z owe A P6,000. The obligation is solidary. A remits Y's share – P1,500. Z becomes insolvent. A sues W for the balance of P4,500. Art. 1217 must be applied. Thus, the insolvency of Z is shouldered by W, X, and Y. So, W can recover P2,000 from X and P500 from Y instead of collecting P3,000. W has to shoulder P500 as a loss due to Z's insolvency.
- 3 Kinds of Defenses
  i. Real defenses
     - These are defenses derived from the nature of the obligation.
     - A real defense is a total defense. It benefits all the debtors.
  ii. Personal defenses
     - Personal defenses may either be total or partial defenses.
     - An example of a total personal defense is if the consent of the debtors were all vitiated.
     - An example of a partial defense is that a certain amount is not yet due. It is partial since there may be amounts which are already due. Thus, the debtor has to pay for those amounts which are due.
  iii. Defenses which are personal to the other co-debtors
     - The debtor can only avail himself of these defenses only with regard to the part of the debt which his co-debtors are responsible for.
     - These defenses are partial.
- The debtor sued can invoke all three kinds of defenses. The difference is whether such defense would result in total or partial exculpation.

4. **According to Performance** (Articles 1223-1225)

Art. 1223. **The divisibility or indivisibility of the things that are the object of obligations in which there is only one debtor and only one creditor does not alter or modify the provisions of Chapter 2 of this Title.**

Art. 1224. **A joint indivisible obligation gives rise to indemnity for damages from the time anyone of the debtors does not comply with his undertaking. The debtors who may have been ready to fulfill their promises shall not contribute to the indemnity beyond the corresponding portion of the price of the thing or of the value of the service in which the obligation consists.**

Art. 1225. **For the purposes of the preceding articles, obligations to give definite things and those which are not susceptible of partial performance shall be deemed to be indivisible.**

When the obligation has for its object the execution of a certain number of days of work, the accomplishment of work by metrical units, or analogous things which by their nature are susceptible of partial performance, it shall be divisible.

However, even though the object or service may be physically divisible, an obligation is indivisible if so provided by law or intended by the parties.

In obligations not to do, divisibility or indivisibility shall be determined by the character of the prestation in each particular case.

- Divisible and indivisible obligations have nothing to do with the object of the prestation. A common misconception is if the object of the prestation is divisible, then the obligation is also divisible.

a. Divisible
   - An obligation is divisible when it is susceptible to partial performance.

b. Indivisible
   - An obligation is indivisible when it cannot be validly performed in parts.

- **General Rule:** Obligations are indivisible.
- ***Exceptions:***
  i. When the parties provide otherwise (Articles 1225, 3rd ¶, 1248∅)
  ii. When the nature of the obligation necessarily entails the performance of the obligation in parts
     - *Example:* Hiring a security guard to guard from 8pm to 2am daily for 6 months. This obligation cannot be performed indivisibly. You can't compress time.
     - When the obligation has for its object the execution of a certain number of days of work, the accomplishment of work by metrical units, or analogous things, which by their nature are susceptible of partial performance, it shall be divisible (Article 1225, 2nd ¶)
     - ***Exception to the Exception:*** However, even though the object or service may be physically divisible, an obligation is indivisible if
       1. So provided by law; or
       2. Intended by the parties.

  iii. When the law provides otherwise
     - There are provisions on payment which provide that performance may be divisible.
- Divisibility of the object does not mean that the obligation is also divisible. But indivisibility of the object necessarily means an indivisible obligation.

∅ *Art. 1248.* Unless there is an express stipulation to that effect, the creditor cannot be compelled partially to receive the prestations in which the obligation consists. Neither may the debtor be required to make partial payments.

However, when the debt is in part liquidated and in part unliquidated, the creditor may demand and the debtor may effect the payment of the former without waiting for the liquidation of the latter.

- The test of divisibility of an obligation is whether or not it is susceptible of partial performance.
    - For example, if X is supposed to deliver 1000 kilos of sugar, this does not mean that X can deliver the sugar in installments.

5. **According to Sanction for Breach** (Articles 1226-1230)

Art. 1226. **In obligations with a penal clause, the penalty shall substitute the indemnity for damages and the payment of interests in case of noncompliance, if there is no stipulation to the contrary. Nevertheless, damages shall be paid if the obligor refuses to pay the penalty or is guilty of fraud in the fulfillment of the obligation.**

The penalty may be enforced only when it is demandable in accordance with the provisions of this Code.

Art. 1227. **The debtor cannot exempt himself from the performance of the obligation by paying the penalty, save in the case where this right has been expressly reserved for him. Neither can the creditor demand the fulfillment of the obligation and the satisfaction of the penalty at the same time, unless this right has been clearly granted him. However, if after the creditor has decided to require the fulfillment of the obligation, the performance thereof should become impossible without his fault, the penalty may be enforced.**

Art. 1228. **Proof of actual damages suffered by the creditor is not necessary in order that the penalty may be demanded.**

Art. 1229. **The judge shall equitably reduce the penalty when the principal obligation has been partly or irregularly complied with by the debtor. Even if there has been no performance, the penalty may also be reduced by the courts if it is iniquitous or unconscionable.**

Art. 1230. **The nullity of the penal clause does not carry with it that of the principal obligation.**

The nullity of the principal obligation carries with it that of the penal clause.

a. ***No penal clause***

b. ***With penal clause***

- A penal clause is an accessory undertaking to assume greater liability in case of breach *(SSS vs. Moonwalk)*.
- Penal clauses are governed by Articles 2226-2228[⊕], the provisions on liquidated damages since a penal clause is the same as liquidated damages *(Lambert vs. Fox)*.

[⊕] *Art. 2226.* Liquidated damages are those agreed upon by the parties to a contract, to be paid in case of breach thereof.

Art. 2227. Liquidated damages, whether intended as an indemnity or a penalty, shall be equitably reduced if they are iniquitous or unconscionable.

- Penal clauses may be reduced by the courts if unconscionable.
- 2 Functions of a Penal Clause (*SSS vs. Moonwalk*)
  i. To provide liquidated damages
    - The creditor can demand liquidated damages without having to prove actual damages.
    - The only limitation that the courts will reduce the liquidated damages if the same is scandalously unconscionable.
  ii. To strengthen the coercive force of the obligation by the threat of greater responsibility in case of breach
    - Stipulates a penalty which is greater than one without a penal clause. Thus, *Robes-Francisco* states that 4% interest is not a penal clause.
- 2 Characteristics of a Penal Clause
  i. Subsidiary or alternative (Article 1227)
    - **General Rule:** Upon breach of the obligation, the creditor has to choose whether to demand the principal or the penalty.
    - ***Exception:*** The principal obligation and the penalty can be demanded when the penal clause is joint or cumulative. This occurs when it is the creditor has been clearly granted such right (Article 1227, 2nd sentence), either expressly or impliedly. The implied right must be one ascertainable from the nature of the obligation. An example is in the construction industry where the contractor must pay the penalty if the work is completed after the stipulated time frame but must also finish the agreed construction.
  ii. Exclusive (Article 1226)
    - **General Rule:** The penalty clause takes the place of other damages (that's why in imposing a penalty clause, make sure that the penalty is stiff).
    - ***Exception:*** Both the penalty and actual damages may be recovered in the following:
      1. Express stipulation
      2. Refusal by the debtor to pay the penalty
      3. The debtor is guilty of fraud (malice) in the performance of the obligation.
        - In *Pamintuan vs. CA,* the Supreme Court said that the excess of damages absorbs the penalty. Professor Balane said that this is a wrong application. You can demand both the excess and the penalty.
        -

Art. 2228. When the breach of the contract committed by the defendant is not the one contemplated by the parties in agreeing upon the liquidated damages, the law shall determine the measure of damages, and not the stipulation.

H. ***Extinguishment of Obligations***

Art. 1231. **Obligations are extinguished:**

(1) By payment or performance:

(2) By the loss of the thing due:

(3) By the condonation or remission of the debt;

(4) By the confusion or merger of the rights of creditor and debtor;

(5) By compensation;

(6) By novation.

Other causes of extinguishment of obligations, such as annulment, rescission, fulfillment of a resolutory condition, and prescription, are governed elsewhere in this Code.

1. **Payment or Performance** (Articles 1232 – 1251)

Art. 1232. **Payment means not only the delivery of money but also the performance, in any other manner, of an obligation.**

Art. 1233. **A debt shall not be understood to have been paid unless the thing or service in which the obligation consists has been completely delivered or rendered, as the case may be.**

Art. 1234. **If the obligation has been substantially performed in good faith, the obligor may recover as though there had been a strict and complete fulfillment, less damages suffered by the obligee.**

Art. 1235. **When the obligee accepts the performance, knowing its incompleteness or irregularity, and without expressing any protest or objection, the obligation is deemed fully complied with.**

Art. 1236. **The creditor is not bound to accept payment or performance by a third person who has no interest in the fulfillment of the obligation, unless there is a stipulation to the contrary.**

Whoever pays for another may demand from the debtor what he has paid, except that if he paid without the knowledge or against the will of the debtor, he can recover only insofar as the payment has been beneficial to the debtor.

Art. 1237. **Whoever pays on behalf of the debtor without the knowledge or against the will of the latter, cannot compel the creditor to subrogate him in his rights, such as those arising from a mortgage, guaranty, or penalty.**

Art. 1238. **Payment made by a third person who does not intend to be reimbursed by the debtor is deemed to be a donation, which requires the debtor's consent. But the payment is in any case valid as to the creditor who has accepted it.**

Art. 1239. **In obligations to give, payment made by one who does not have the free disposal of the thing due and capacity to alienate it shall not be valid, without prejudice to the provisions of article 1427 under the Title on "Natural Obligations."**

Art. 1240. **Payment shall be made to the person in whose favor the obligation has been constituted, or his successor in interest, or any person authorized to receive it.**

Art. 1241. **Payment to a person who is incapacitated to administer his property shall be valid if he has kept the thing delivered, or insofar as the payment has been beneficial to him.**

Payment made to a third person shall also be valid insofar as it has redounded to the benefit of the creditor. Such benefit to the creditor need not be proved in the following cases:

(1) If after the payment, the third person acquires the creditor's rights;

(2) If the creditor ratifies the payment to the third person;

(3) If by the creditor's conduct, the debtor has been led to believe that the third person had authority to receive the payment.

Art. 1242. **Payment made in good faith to any person in possession of the credit shall release the debtor.**

Art. 1243. **Payment made to the creditor by the debtor after the latter has been judicially ordered to retain the debt shall not be valid.**

Art. 1244. **The debtor of a thing cannot compel the creditor to receive a different one, although the latter may be of the same value as, or more valuable than that which is due.**

In obligations to do or not to do, an act or forbearance cannot be substituted by another act or forbearance against the obligee's will.

Art. 1245. **Dation in payment, whereby property is alienated to the creditor in satisfaction of a debt in money, shall be governed by the law of sales.**

Art. 1246. **When the obligation consists in the delivery of an indeterminate or generic thing, whose quality and circumstances have not been stated, the creditor cannot demand a thing of superior quality. Neither can the debtor deliver a thing of inferior quality. The purpose of the obligation and other circumstances shall be taken into consideration.**

Art. 1247. **Unless it is otherwise stipulated, the extrajudicial expenses required by the payment shall be for the account of the debtor. With regard to judicial costs, the Rules of Court shall govern.**

Art. 1248. **Unless there is an express stipulation to that effect, the creditor cannot be compelled partially to receive the prestations in**

which the obligation consists. Neither may the debtor be required to make partial payments.

However, when the debt is in part liquidated and in part unliquidated, the creditor may demand and the debtor may effect the payment of the former without waiting for the liquidation of the latter.

Art. 1249. **The payment of debts in money shall be made in the currency stipulated, and if it is not possible to deliver such currency, then in the currency which is legal tender in the Philippines.**

The delivery of promissory notes payable to order, or bills of exchange or other mercantile documents shall produce the effect of payment only when they have been cashed, or when through the fault of the creditor they have been impaired.

In the meantime, the action derived from the original obligation shall be held in the abeyance.

Art. 1250. **In case an extraordinary inflation or deflation of the currency stipulated should supervene, the value of the currency at the time of the establishment of the obligation shall be the basis of payment, unless there is an agreement to the contrary.**

Art. 1251. **Payment shall be made in the place designated in the obligation.**

There being no express stipulation and if the undertaking is to deliver a determinate thing, the payment shall be made wherever the thing might be at the moment the obligation was constituted.

In any other case the place of payment shall be the domicile of the debtor.

If the debtor changes his domicile in bad faith or after he has incurred in delay, the additional expenses shall be borne by him.

These provisions are without prejudice to venue under the Rules of Court.

- Like obligee and creditor, payment and performance are twin terms. Payment refers to obligations to give while performance refers to obligations to do.
- Payment and performance is the paradigmatic mode. When obligations are entered into, the parties expect payment or performance. All other modes of extinguishing obligations are abnormal modes.
- Requisites of Payment
  a. ***As to prestation***
     i. *Identity*
        - Identity means that the very prestation must be performed.
        - For example, if the obligation is to give a car, one cannot fulfill the obligation pay giving a house.

- If the prestation is specific, the debtor must give or deliver the specific thing which was agreed upon (Article 1244[⊗]).
- If the prestation is generic, the creditor cannot demand a thing of superior quality. However, the debtor cannot give a thing of inferior quality (Article 1246[℘]).
- The payment of debts in money shall be made in the currency stipulated, and if it not possible to deliver such currency, then in the currency which is legal tender in the Philippines (Article 1249[ℵ], 1st ¶).

  R.A. No. 529 has been repealed by R.A. No. 8183 which allows payment in different currency. However, in the absence of an agreement, payment shall be made in ₱.
- Negotiable papers and other commercial documents can be refused by the creditor unless there is stipulation to the contrary.
- If the negotiable papers and other commercial documents are accepted by the creditor, it has only a provisional effect. There is payment only in the following (Article 1249[ℵ], 2nd ¶).

  1. When they have been honored and cashed; or
  2. When through the fault of the creditor, they have been impaired

  In the case of *NAMARCO,* the check must be the check of another person, not a party, before there will be impairment.

  For example, A gave B a check as payment for a loan. B did not encash the check as a result of which, the check became stale. There is no impairment here. B can still ask A for payment of the loan.

  However, if B endorsed a check made by A to C as payment for a loan and C did not encash the check which became stale, then C can no longer ask B to pay him again.

[⊗] *Art. 1244.* The debtor of a thing cannot compel the creditor to receive a different one, although the latter may be of the same value as, or more valuable than that which is due.

In obligations to do or not to do, an act or forbearance cannot be substituted by another act or forbearance against the obligee's will.

[℘] *Art. 1246.* When the obligation consists in the delivery of an indeterminate or generic thing, whose quality and circumstances have not been stated, the creditor cannot demand a thing of superior quality. Neither can the debtor deliver a thing of inferior quality. The purpose of the obligation and other circumstances shall be taken into consideration.

[ℵ] *Art. 1249.* The payment of debts in money shall be made in the currency stipulated, and if it is not possible to deliver such currency, then in the currency which is legal tender in the Philippines.

The delivery of promissory notes payable to order, or bills of exchange or other mercantile documents shall produce the effect of payment only when they have been cashed, or when through the fault of the creditor they have been impaired.

In the meantime, the action derived from the original obligation shall be held in the abeyance.

- In the case of *Pacific Timber,* the Supreme Court said that a certified check or a manager's check is considered as good as cash. But newer cases say that such instruments are not considered legal tender and thus, the creditor can refuse to accept. For example, A gives B a manager's check and bank closes for a bank holiday.
- Article 1250[*] was applied only during the Japanese occupation.
- Exceptions to the Requirement of Identity
  1. *Dacion en pago* (Article 1245)

     Art. 1245. **Dation in payment, whereby property is alienated to the creditor in satisfaction of a debt in money, shall be governed by the law of sales.**

  2. Novation

ii. *Integrity*

- Identity means that the entire prestation must be performed – completeness (Article 1233[♣])
- Exceptions to Integrity
  1. Substantial compliance in good faith (Article 1234)

     Art. 1234. **If the obligation has been substantially performed in good faith, the obligor may recover as though there had been a strict and complete fulfillment, less damages suffered by the obligee.**

  2. Waiver (Article 1235)

     Art. 1235. **When the obligee accepts the performance, knowing its incompleteness or irregularity, and without expressing any protest or objection, the obligation is deemed fully complied with.**

  3. In application of payments if the debts are equally onerous (Article 1254, 2nd ¶)

     Art. 1254, 2nd ¶. **If the debts due are of the same nature and burden, the payment shall be applied to all of them proportionately.**

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[*] *Art. 1250.* In case an extraordinary inflation or deflation of the currency stipulated should supervene, the value of the currency at the time of the establishment of the obligation shall be the basis of payment, unless there is an agreement to the contrary.

[♣] *Art. 1233.* A debt shall not be understood to have been paid unless the thing or service in which the obligation consists has been completely delivered or rendered, as the case may be.

iii. Indivisibility

- Indivisibility means that the obligor must perform the prestation in one act and not in installments (Article 1248). The creditor can validly refuse if the performance is not in one act.
- Exceptions to Indivisibility (Cases when the law allows installment performance)

1. In case of express stipulation (Article 1248)

> ***Art. 1248.*** **Unless there is an express stipulation to that effect, the creditor cannot be compelled partially to receive the prestations in which the obligation consists. Neither may the debtor be required to make partial payments.**
>
> **However, when the debt is in part liquidated and in part unliquidated, the creditor may demand and the debtor may effect the payment of the former without waiting for the liquidation of the latter.**

2. In prestations which necessarily entail partial performance (Article 1225, 2nd ¶)

> ***Art. 1225, 2nd ¶.*** **When the obligation has for its object the execution of a certain number of days of work, the accomplishment of work by metrical units, or analogous things which by their nature are susceptible of partial performance, it shall be divisible.**

3. If the debt is liquidated in part and unliquidated in part (Article 1248)

> ***Art. 1248.*** **Unless there is an express stipulation to that effect, the creditor cannot be compelled partially to receive the prestations in which the obligation consists. Neither may the debtor be required to make partial payments.**
>
> **However, when the debt is in part liquidated and in part unliquidated, the creditor may demand and the debtor may effect the payment of the former without waiting for the liquidation of the latter.**

4. In joint divisible obligations (Article 1208)

> ***Art. 1208.*** **If from the law, or the nature or the wording of the obligations to which the preceding article refers the contrary does not appear, the credit or debt shall be presumed to be divided into as many shares as there are creditors or debtors, the credits or debts being considered distinct from one another, subject to the Rules of Court governing the multiplicity of suits.**

5. In solidary obligations when the debtors are bound under different terms and conditions (Article 1211)

   Art. 1211. **Solidarity may exist although the creditors and the debtors may not be bound in the same manner and by the same periods and conditions.**

6. In compensation where there is a balance left (Article 1290)

   Art. 1290. **When all the requisites mentioned in article 1279 are present, compensation takes effect by operation of law, and extinguishes both debts to the concurrent amount, even though the creditors and debtors are not aware of the compensation.**

7. If the work is to be delivered partially, the price or compensation for each part having been fixed (Article 1720)

   Art. 1720. **The price or compensation shall be paid at the time and place of delivery of the work, unless there is a stipulation to the contrary. If the work is to be delivered partially, the price or compensation for each part having been fixed, the sum shall be paid at the time and place of delivery, in the absence if stipulation.**

8. In case of several guarantors who demand the right of division (Article 2065)

   Art. 2065. **Should there be several guarantors of only one debtor and for the same debt, the obligation to answer for the same is divided among all. The creditor cannot claim from the guarantors except the shares which they are respectively bound to pay, unless solidarity has been expressly stipulated.**

   The benefit of division against the co-guarantors ceases in the same cases and for the same reasons as the benefit of excussion against the principal debtor.

9. In case of impossibility or extreme difficult of a single performance
   - For example, A is obligated to deliver 1 million bags of cement. Under the circumstances, this may be extremely difficult.

b. ***As to the parties***

   i. *Payor, Obligor, Debtor*

   - Who may be the Payor

     1. Without the consent of the creditor

a. The debtor himself
b. The debtor's heirs or assigns
c. The debtor's agent
d. Anyone interested in the fulfillment of the obligation (*e.g.* guarantor)

2. With the consent of the creditor
   - Anyone can pay if the creditor consents

- Effect of Payment by a 3rd Person
  1. Payment was with the Debtor's Consent
     - **General Rule:** The payor steps into the shoes of the creditor and becomes entitled not only to recover what he has paid, but also to exercise all the rights which the creditor could have exercised – subrogation (Articles 1236, 1237♦).
       - There is no extinguishment of the obligation but a change in the active subject.
     - ***Exception:*** No subrogation if intended to be a donation (Article 1238♥).
  2. Payment was without the Debtor's Consent
     - The 3rd person may demand repayment to the extent that the debtor has benefited (Article 1236, 2nd ¶♦).

ii. *Payee, Obligee, Creditor*

- Who may be the Payee
  1. The creditor himself (Articles 1240, 1626♠)
  2. The creditor's successor or transferee (Article 1240)
  3. The creditor's agent (Article 1240)
  4. Any third person subject to the following conditions:

♦ *Art. 1236.* The creditor is not bound to accept payment or performance by a third person who has no interest in the fulfillment of the obligation, unless there is a stipulation to the contrary.

Whoever pays for another may demand from the debtor what he has paid, except that if he paid without the knowledge or against the will of the debtor, he can recover only insofar as the payment has been beneficial to the debtor.

Art. 1237. Whoever pays on behalf of the debtor without the knowledge or against the will of the latter, cannot compel the creditor to subrogate him in his rights, such as those arising from a mortgage, guaranty, or penalty.

♥ *Art. 1238.* Payment made by a third person who does not intend to be reimbursed by the debtor is deemed to be a donation, which requires the debtor's consent. But the payment is in any case valid as to the creditor who has accepted it.

♠ *Art. 1240.* Payment shall be made to the person in whose favor the obligation has been constituted, or his successor in interest, or any person authorized to receive it.

Art. 1626. The debtor who, before having knowledge of the assignment, pays his creditor shall be released from the obligation.

a. Provided it redounded to the creditor's benefit and only to the extent of such benefit (Article 1241[∅], 2nd par)

b. If it falls under Article 1241 ¶2 (1), (2) and (3), the benefit is total.

5. Anyone in possession of the credit (Article 1242[⊕])

6. In all these 5 instances, it is required that the debt should not be garnished (Article 1242). If there is payment despite garnishment, then there is no payment.

c. ***As to the time and place of performance***

i. *When Payment Should be Made*

- Payment should be made when it is due.
- Even if the payment is due, the **General Rule** is that demand is still necessary.
- Article 1169[⊗] provides the instances when demand is not necessary

1. When the obligation or the law expressly so declares
2. Time is the controlling motive for the establishment of the contract
3. Demand would be useless

ii. *Where Payment Should be Made:*

- **Primary Rule:** Agreement of the parties

[∅] *Art. 1241.* Payment to a person who is incapacitated to administer his property shall be valid if he has kept the thing delivered, or insofar as the payment has been beneficial to him.

Payment made to a third person shall also be valid insofar as it has redounded to the benefit of the creditor. Such benefit to the creditor need not be proved in the following cases:

(1) If after the payment, the third person acquires the creditor's rights;

(2) If the creditor ratifies the payment to the third person;

(3) If by the creditor's conduct, the debtor has been led to believe that the third person had authority to receive the payment.

[⊕] *Art. 1242.* Payment made in good faith to any person in possession of the credit shall release the debtor.

[⊗] *Art. 1169.* Those obliged to deliver or to do something incur in delay from the time the obligee judicially or extrajudicially demands from them the fulfillment of their obligation.

However, the demand by the creditor shall not be necessary in order that delay may exist:

(1) When the obligation or the law expressly so declare; or

(2) When from the nature and the circumstances of the obligation it appears that the designation of the time when the thing is to be delivered or the service is to be rendered was a controlling motive for the establishment of the contract; or

(3) When demand would be useless, as when the obligor has rendered it beyond his power to perform.

In reciprocal obligations, neither party incurs in delay if the other does not comply or is not ready to comply in a proper manner with what is incumbent upon him. From the moment one of the parties fulfills his obligation, delay by the other begins.

- **Secondary Rule:** Place where the thing was at the time the obligation was constituted if the obligation is to deliver a determinate thing
- **Tertiary Rule:** Debtor's domicile (not residence)

- 4 Special Forms of Payment
  a. ***Dacion en pago*** (Article 1245)

Art. 1245. **Dation in payment, whereby property is alienated to the creditor in satisfaction of a debt in money, shall be governed by the law of sales.**

- *Dacion en pago* is the act of extinguishing the obligation by the substitution of payment. It is the delivery and transmission of ownership of a thing by the debtor to the creditor as an accepted performance/payment of an obligation.
- By agreement of the parties, the prestation is changed.
- *Dacion en pago* is a special form of payment since it does not comply with the requisite of identity.
- Other terms for *dacion en pago* include dation in payment, *dation en paiement* and *datio in solutum*.
- *Dacion en pago* is governed by the law on sales (Article 1245).
- There are 2 ways of looking at *dacion en pago*. The traditional way is to view *dacion en pago* as a sale.
- *Example:* A owes B P100,000. A has no cash when the loan falls due but he offers the car if B wants it. B accepts.
- Here, the debt is in money but payment is in something else.
- According to the old traditional concept, it is like a sale because P100,000 seemed to be the purchase price and the car is the object.
- However, the modern view is to look at *dacion en pago* as a novation.
- Castan has another view of *dacion en pago*. He believes that it is neither a sale nor a novation but a special form of payment. It is a species/variation of payment implying an onerous transaction similar to but not equal to a sale. It is not novation since there is no new obligation.
- *Dacion en pago* will take place only if the parties consent.
- *Dacion en pago* extinguishes the obligation up to the value of the thing delivered unless the parties agree that the entire obligation is extinguished *(Lopez vs. CA).*

  b. ***Application of payments*** (Articles 1252-1254)

Art. 1252. **He who has various debts of the same kind in favor of one and the same creditor, may declare at the time of making the payment, to which of them the same must be applied. Unless the parties so stipulate, or when the application**

of payment is made by the party for whose benefit the term has been constituted, application shall not be made as to debts which are not yet due.

If the debtor accepts from the creditor a receipt in which an application of the payment is made, the former cannot complain of the same, unless there is a cause for invalidating the contract.

Art. 1253. **If the debt produces interest, payment of the principal shall not be deemed to have been made until the interests have been covered.**

Art. 1254. **When the payment cannot be applied in accordance with the preceding rules, or if application can not be inferred from other circumstances, the debt which is most onerous to the debtor, among those due, shall be deemed to have been satisfied.**

If the debts due are of the same nature and burden, the payment shall be applied to all of them proportionately.

- Application payment is the designation of the debt which is being paid by a debtor who has several obligations of the same kind in favor of the creditor to whom payment is made.
- The situation in application of payments is that a debtor owes his creditor. There are several debts due, but the debtor cannot pay all of the debts due.
- *Example:* A owes B P2000, P3000 and P10,000. A gives B P15,000. There is no application of payment here because it is equal to the total amount due.
- The creditor can always not accept application of payments since the creditor cannot be compelled to accept partial performance of the obligation. However, this may not be wise since the debtor may have other creditors.
- The rules on application of payment solve the problem of distributing the payment which is less than the total obligation.
- Rules in Application of Payment
    - **1st Rule:** Apply in accordance with the agreement
    - **2nd Rule:** If there is no agreement, the debtor has the right to apply
    - **3rd Rule:** If the debtor does not choose, the creditor can choose.
    - **4th Rule:** Apply to the most onerous debt (Article 1254, ¶1)
        - Rules to Determine Which is the More Onerous Obligation
            i. An interest bearing obligation is more onerous than a non-interest bearing obligation.
            ii. An older debt is more onerous than a recent debt

iii. An obligation where the party is bound as a principal is more onerous than an obligation is bound as a surety

iv. An obligation which is secured is more onerous than an obligation which is unsecured

v. An obligation with a penal clause is more onerous than an obligation without a penal clause

- **5th Rule:** If equally onerous, apply proportionately (Article 1254, ¶2)

c. ***Payment by cession*** (Article 1255)

Art. 1255. **The debtor may cede or assign his property to his creditors in payment of his debts. This cession, unless there is stipulation to the contrary, shall only release the debtor from responsibility for the net proceeds of the thing assigned. The agreements which, on the effect of the cession, are made between the debtor and his creditors shall be governed by special laws.**

- The situation is contemplated here is that the debtor has several creditors and several debts. He turns over property to his creditors who are given the authority to sell the property and to apply the proceeds to his debt.
- In payment by cession, property is turned over by the debtor to the creditors who acquire the right to sell it and divide the net proceeds among themselves.
- In payment by cession, the creditors do not own the property to be sold. The creditors only have the power to sell. The net proceeds of the sale will be distributed according to the agreement.
- Payment by cession is a special form of payment because there is no completeness of performance – integrity. In most cases, there will be a balance due.
- Payment by Cession Distinguished from *Dacion en Pago*
  - In *dacion en pago*, there is a transfer of ownership from the debtor to the creditor. In *payment by cesion*, there is no transfer of ownership. The creditors simply acquire the right to sell the properties of the debtor and apply the proceeds of the sale to the satisfaction of their credit.
  - Payment by cession does not generally terminate all debts due since normally there is still a balance due. The balance will continue to be due unless the parties agree otherwise. Usually, the termination is only to the extent of the net proceeds. The extinguishment of the obligation is *pro tanto*.
- Payment by cession must be distinguished from insolvency.
  - 2 Kinds of Insolvency
    i. Extrajudicial or Voluntary

- In extrajudicial insolvency, if there is a balance left, the debtor must still pay.
- However, the debtor may limit which properties will be sold by the creditors since the agreement is contractual.

ii. Judicial

- In judicial insolvency, the obligation is totally extinguished even if there's still a balance.
- In judicial insolvency, every property which is not exempt from attachment or execution is made available for sale.

d. ***Tender of payment and consignation*** (Article 1256-1261)

Art. 1256. **If the creditor to whom tender of payment has been made refuses without just cause to accept it, the debtor shall be released from responsibility by the consignation of the thing or sum due.**

Consignation alone shall produce the same effect in the following cases:

(1) When the creditor is absent or unknown, or does not appear at the place of payment;

(2) When he is incapacitated to receive the payment at the time it is due;

(3) When, without just cause, he refuses to give a receipt;

(4) When two or more persons claim the same right to collect;

(5) When the title of the obligation has been lost.

Art. 1257. **In order that the consignation of the thing due may release the obligor, it must first be announced to the persons interested in the fulfillment of the obligation.**

The consignation shall be ineffectual if it is not made strictly in consonance with the provisions which regulate payment.

Art. 1258. **Consignation shall be made by depositing the things due at the disposal of judicial authority, before whom the tender of payment shall be proved, in a proper case, and the announcement of the consignation in other cases.**

The consignation having been made, the interested parties shall also be notified thereof.

Art. 1259. **The expenses of consignation, when properly made, shall be charged against the creditor.**

Art. 1260. **Once the consignation has been duly made, the debtor may ask the judge to order the cancellation of the obligation.**

Before the creditor has accepted the consignation, or before a judicial declaration that the consignation has been properly made, the debtor may withdraw the thing or the sum deposited, allowing the obligation to remain in force.

Art. 1261. **If, the consignation having been made, the creditor should authorize the debtor to withdraw the same, he shall lose every preference which he may have over the thing. The co-debtors, guarantors and sureties shall be released.**

- Consignation is the act of depositing the thing due w/ the court or judicial authorities whenever the creditor cannot accept or refuses to accept payment and it generally requires a prior tender of payment.
- It is defined in the case of *Soco vs. Militante* as a deposit of the object of the prestation in a competent court in accordance with the rules prescribed by law, after tender of payment was refused or circumstances which render payment impossible or inadvisable.
- According to Professor Balane, the title of the subsection is wrong. It should have been consignation only because that is the special mode of payment and not the tender of payment.
- Tender of payment is a manifestation made by the debtor of his willingness, readiness and ability to pay.
- It is a special mode of payment because payment is made not to the creditor but to the court.
- Consignation is an option on the part of the debtor because consignation assumes that the creditor was in *mora accipiendi* when the creditor without just cause, refuses to accept payment. Of course, if the creditor without just cause refuses to accept payment, the debtor may just delay payment. But something still hangs above his head. He is therefore, given the option to consign.
- Requisites:
  i. That there was a debt due
  ii. That the consignation of the obligation had been made because of some legal cause, either because
    1. Tender of payment was unjustly refused by the creditor or
    2. There is no need for tender of payment due to circumstances which make tender of payment impossible or inadvisable
      - Circumstances Which Make Tender of Payment Unnecessary (Article 1256)
        a. The creditor was absent or unknown, or does not appear at the place of payment
        b. The creditor was incapacitated to receive the payment at the time it was due

- Payment made to an incapacitated person does not count except to the extent that the incapacitated person is benefited.

c. The creditor, without just cause refuses to give a receipt

- According to Professor Balane, this is wrong. This is not a special case wherein you don't need tender of payment. This presupposes that there has been a prior tender of payment.

d. Several persons claimed to be entitled to receive the amount due

- The debtor should file interpleader with consignation

e. The title of the obligation has been lost

iii. That previous notice of the consignation had been given to the person interested in the performance of the obligation (Article 1257)

iv. That the amount due was placed at the disposal of the court (consignation proper)

v. That after the consignation had been made the person interested was notified thereof (second notice.)

- Failure of any of these requirements is enough ground to render a consignation ineffective.

2. **Loss of the Thing Due** (Articles 1262-1269)

Art. 1262. **An obligation which consists in the delivery of a determinate thing shall be extinguished if it should be lost or destroyed without the fault of the debtor, and before he has incurred in delay.**

When by law or stipulation, the obligor is liable even for fortuitous events, the loss of the thing does not extinguish the obligation, and he shall be responsible for damages. The same rule applies when the nature of the obligation requires the assumption of risk.

Art. 1263. **In an obligation to deliver a generic thing, the loss or destruction of anything of the same kind does not extinguish the obligation.**

Art. 1264. **The courts shall determine whether, under the circumstances, the partial loss of the object of the obligation is so important as to extinguish the obligation.**

Art. 1265. **Whenever the thing is lost in the possession of the debtor, it shall be presumed that the loss was due to his fault, unless there is proof to the contrary, and without prejudice to the provisions of article 1165. This presumption does not apply in case of earthquake, flood, storm, or other natural calamity.**

Art. 1266. **The debtor in obligations to do shall also be released when the prestation becomes legally or physically impossible without the fault of the obligor.**

Art. 1268. **When the debt of a thing certain and determinate proceeds from a criminal offense, the debtor shall not be exempted from the payment of its price, whatever may be the cause for the loss, unless the thing having been offered by him to the person who should receive it, the latter refused without justification to accept it.**

Art. 1269. **The obligation having been extinguished by the loss of the thing, the creditor shall have all the rights of action which the debtor may have against third persons by reason of the loss.**

- Loss of the thing here is not to be taken in the strict legal meaning of "loss". Loss can be applied in an obligation to give a determinate thing (Article 1262), in an obligation to give a generic thing (Article 1263) and in an obligation to do (Article 1266).
- The term loss embraces all causes which may render impossible the performance of the prestations – impossibility of performance .
- A thing is lost when it perishes, or goes out of commerce, or disappears in such a way that its existence is unknown or it cannot be recovered.
- When the debt of a thing certain and determinate proceeds from a criminal offense, the debtor shall not be exempted from the payment of its price, whatever may be the cause for the loss, unless the thing having been offered by him to the person who should receive it, the latter refused without justification to accept it (Article 1268).
- Kinds of Impossibility According to Time
  a. Original Impossibility
     - If the impossibility had already existed when the contract was made, then the result is not extinguishments but inefficacy of the obligation under Articles 1348 and 1493[℘]. The contract is void.
  b. Supervening Impossibility
     - The impossibility of performance must be subsequent to the execution of the contract in order to extinguish the obligation.
       - Change in the Circumstances
       - *Rebus sic stantibus* literally means "things as they stand." It is short for *clausula rebus sic stantibus* – agreement of things as they stand. Also called *Riesgo imprevisible* (Spanish), *Theorie*

[℘] *Art. 1348.* Impossible things or services cannot be the object of contracts.

Art. 1493. If at the time the contract of sale is perfected, the thing which is the object of the contract has been entirely lost, the contract shall be without any effect.

But if the thing should have been lost in part only, the vendee may choose between withdrawing from the contract and demanding the remaining part, paying its price in proportion to the total sum agreed upon.

d'imprevision (French) and *Verschuvinden des Grundgeschäftes* (German).

Art. 1267. **When the service has become so difficult as to be manifestly beyond the contemplation of the parties, the obligor may also be released therefrom, in whole or in part.**

- In Roman law, no matter how difficult the obligation is, it has to be performed or else the obligor may be liable for damages *(pacta sunt servanda)*. In Medieval times, although agreements should be complied with, in certain extreme circumstances, the debtor can be released because of the difficulty in performance.
- This is a principle of international law which holds that when 2 states enter into a treaty, they enter taking into account the circumstances at the time it was entered into and should the circumstances change as to make the fulfillment of the treaty very difficult, one may ask for a termination of the treaty. This principle of international law has spilled over into Civil law.
- The underlying philosophy here is that when parties enter into an agreement, the parties contemplate existing circumstances. When things supervene, the parties may be discharged because they did not contemplate such difficult circumstances.
- This doctrine is also called the doctrine of extreme difficulty and frustration of commercial object or enterprise.
- The attitude of the courts on this doctrine is very strict. This principle has always been strictly applied. To give it a liberal application is to undermine the binding force of an obligation. Every obligation is difficult. The performance must be extremely difficult in order for *rebus sic stantibus* to apply.
- Requisites
  i. The event or change could not have been foreseen at the time of the execution of the contract
  ii. The event or change makes the performance extremely difficult but not impossible
  iii. The event must not be due to an act of either party
  iv. The contract is for a future prestation.
- If the contract is of immediate fulfillment, the gross inequality of the reciprocal prestation may involve lesion or want of cause.

- Obligation to Give

  a. Obligation to give a determinate thing
     - The happening of a fortuitous event in itself does not necessarily extinguish an obligation to deliver a determinate thing. An obligation consisting in the delivery of a specified thing, shall be extinguished when the said thing is lost or destroyed without the fault of the obligor and before he is in default.

- Whenever the thing is lost in the possession of the debtor, it shall be presumed that the loss was due to his fault, unless there is proof to the contrary, and without prejudice to the provisions of Article 1165. This presumption does not apply in case of earthquake, flood, storm or other natural calamity (Article 1265)

b. Obligation to give a generic thing

- The happening of a fortuitous event does not extinguish the obligation to deliver a generic thing *Genus nunquam perit* – "genus never perishes." This is the general rule. Sometimes, though, the entire genus perishes because it becomes illegal.
- What is not covered by this rule is an obligation to deliver a limited generic.

  Example: I promise to deliver to you one of my *Amorsolo*s (I have 4). This is not generic because I only have four but not specific because I did not specify which one. This is governed by Article 1262. In this case, the obligation may be extinguished by the loss of all the things through fortuitous event.

- Obligation to do
  - The debtor in obligations to do shall also be released when the prestation becomes legally or physically impossible without the fault of the obligor (Article 1266).
  - The impossibility here must be supervening. If it is original, then the contract is void.
- Kinds of Impossibility According to Nature

  a. Objective Impossibility
  - In objective impossibility, the act cannot be done by anyone. The effect of objective impossibility is to extinguish the obligation.

  b. Subjective Impossibility
  - In subjective impossibility, the obligation becomes impossible only w/ respect to the obligor. There are 3 views as to the effect of a subjective impossibility:

    i The obligation is not extinguished. The obligor should ask another to do the obligation.

    ii. The obligation is extinguished.

    iii. A third view distinguishes one prestation which is very personal and one which are not personal such that subjective impossibility is a cause for extinguishes a very personal obligation but not an obligation which is not very personal.

- Effect of Loss on Creditor's Rights
  - The obligation having been extinguished by the loss of the thing, the creditor shall have all the rights of action which the debtor may have against the third person by reason of the loss.
  - A common example of this is insurance.

3. **Condonation or Remission of the Due**

Art. 1270. **Condonation or remission is essentially gratuitous, and requires the acceptance by the obligor. It may be made expressly or impliedly.**

One and the other kind shall be subject to the rules which govern inofficious donations. Express condonation shall, furthermore, comply with the forms of donation.

Art. 1271. **The delivery of a private document evidencing a credit, made voluntarily by the creditor to the debtor, implies the renunciation of the action which the former had against the latter.**

If in order to nullify this waiver it should be claimed to be inofficious, the debtor and his heirs may uphold it by proving that the delivery of the document was made in virtue of payment of the debt.

Art. 1272. **Whenever the private document in which the debt appears is found in the possession of the debtor, it shall be presumed that the creditor delivered it voluntarily, unless the contrary is proved.**

Art. 1273. **The renunciation of the principal debt shall extinguish the accessory obligations; but the waiver of the latter shall leave the former in force.**

Art. 1274. **It is presumed that the accessory obligation of pledge has been remitted when the thing pledged, after its delivery to the creditor, is found in the possession of the debtor, or of a third person who owns the thing.**

- Condonation or remission is an act of liberality by virtue of which, without receiving any equivalent, the creditor renounces enforcement of an obligation which is extinguished in whole or in part.
- Requisites
  a. The debt must be existing
     - You can remit a debt even before it is due.

       Example: I owe A P1M. I promised to pay on July 31, 2002 with interest. On May 31, A condones the obligation. The obligation is existing but not yet due but it can be condoned.

  b. The renunciation must be gratuitous
     - If renunciation is for a consideration, the mode of extinguishment may be something else. It may be novation, compromise or *dacion en pago* for example.

  c. There must be acceptance by the debtor
  d. The parties must have capacity
     - The creditor must have capacity to give away.
     - The debtor must have capacity to accept.

- Form
  a. If the renunciation is express, then it is a donation.
     - The form of donation must be observed. If the condonation involves movables, apply Article 748[♤]. If it involves immovables, apply Article 749[♤].
  b. If the renunciation is implied, then it is tantamount to a waiver.
     - There is no prescribed form in a waiver (Article 6[*]). For example, the creditor can just refuse to collect the debt.
     - According to Professor Balane, Articles 1271 and 1272[♣] refer to a kind of implied renunciation when the creditor divests himself of the proof credit.
     - The delivery of a private document, evidencing a credit, made voluntarily by the creditor to the debtor, implies the renunciation of the action which the former had against the latter.
     - If in order to nullify this waiver it should be claimed to be inofficious, the debtor and his heirs may uphold it by providing that the delivery of the document was made in virtue of payment of the debt (Article 1271).
        - Article 1271 has no application to public documents because there is always a copy in the archives which can be used to prove the credit. Private document refers to the original in order for Article 1271 to apply.
        - By delivering the private document, the creditor deprives himself of proof.

[♤] *Art. 748.* The donation of a movable may be made orally or in writing.

An oral donation requires the simultaneous delivery of the thing or of the document representing the right donated.

If the value of the personal property donated exceeds five thousand pesos, the donation and the acceptance shall be made in writing, otherwise, the donation shall be void. (632a)

Art. 749. In order that the donation of an immovable may be valid, it must be made in a public document, specifying therein the property donated and the value of the charges which the donee must satisfy.

The acceptance may be made in the same deed of donation or in a separate public document, but it shall not take effect unless it is done during the lifetime of the donor.

If the acceptance is made in a separate instrument, the donor shall be notified thereof in an authentic form, and this step shall be noted in both instruments.

[*] *Art. 6.* Rights may be waived, unless the waiver is contrary to law, public order, public policy, morals, or good customs, or prejudicial to a third person with a right recognized by law.

[♣] *Art. 1271.* The delivery of a private document evidencing a credit, made voluntarily by the creditor to the debtor, implies the renunciation of the action which the former had against the latter.

If in order to nullify this waiver it should be claimed to be inofficious, the debtor and his heirs may uphold it by proving that the delivery of the document was made in virtue of payment of the debt. (1188)

Art. 1272. Whenever the private document in which the debt appears is found in the possession of the debtor, it shall be presumed that the creditor delivered it voluntarily, unless the contrary is proved.

- The second paragraph of Article 1271 implies that the voluntary return of the title of credit is presumed to be by reason of remission and not by reason of the payment of debt. According to Professor Balane, this is anomalous. This provision is absurd and immoral in that it authorizes the debtor and his heirs to prove that they paid the debt, when the provision itself assumes that there has been a remission, which is gratuitous.

- Whenever the private document in which the debt appears is found in the possession of the debtor, it shall be presumed that the creditor delivered it voluntarily, unless the contrary is proved (Article 1272).

- 2 Presumptions:

  i. If a private document is found in the possession of the debtor, then it is presumed that the creditor voluntarily delivered it to him

  ii. Since the creditor voluntarily delivered the private document, then there is a presumption of remission

- Ways of Remission

  a. By will

  b. By agreement

- Effect of Partial Remission

  - The renunciation of the principal debt shall extinguish the accessory obligations; but the waiver of the latter shall leave the former in force (Article 1273).

    Example: Loan secured by a mortgage. If I condone the loan, I condone the mortgage. But if I condone the mortgage, I do not condone the loan which merely becomes unsecured.

  - The obligation of the guarantor is extinguished at the same time as that of the debtor, and for the same causes as all other obligations (Article 2076).

  - The guarantors, even though they be solidary, are released from their obligation whenever by some act of the creditor they cannot be subrogated to the rights, mortgages, and preferences of the latter (Article 2080).

  - It is presumed that the accessory obligation of pledge has been remitted when the thing pledged, after its delivery to the creditor, is found in the possession of the debtor, or of a third person who owns the thing (Article 1274).

    - According to Professor Balane, the accessory obligation of pledge is extinguished because pledge is a possessory lien. The presumption in this case is that the pledgee has surrendered the thing pledged to the pledgor. However, this is not a conclusive presumption according to Article 2110, ¶2.

    - This presumption is not applicable in a mortgage since there is no possessory lien.

- In addition to the requisites prescribed in article 2085, it is necessary, in order to constitute the contract of pledge, that the thing pledged be placed in the possession of the creditor, or of a third person by common agreement (Article 2093)
- The debtor cannot ask for the return of the thing pledged against the will of the creditor, unless and until he has paid the debt and its interest, with expenses in a proper case (Article 2105).

4. **Confusion or Merger of Rights**

Art. 1275. **The obligation is extinguished from the time the characters of creditor and debtor are merged in the same person.**

Art. 1276. **Merger which takes place in the person of the principal debtor or creditor benefits the guarantors. Confusion which takes place in the person of any of the latter does not extinguish the obligation.**

Art. 1277. **Confusion does not extinguish a joint obligation except as regards the share corresponding to the creditor or debtor in whom the two characters concur.**

- Confusion is the meeting in one person of the qualities of the creditor and debtor with respect to the same obligation.
- Confusion or merger of rights extinguishes the obligation because the creditor becomes his own debtor. Therefore, how can the creditor sue himself.
- Requisites of Confusion
  a. It must take place between the creditor and the principal debtor (Article 1276)
     - A borrowed P 1M from B with C as guarantor. If C acquires the right to collect the P 1M, there is no confusion since C is neither a principal debtor or creditor. The effect is that the guaranty is extinguished. The principal obligation remains.
  b. The very same obligation must be involved (Article 1275)
- Usual Causes of Confusion
  a. Succession (compulsory, testate, intestate)
  b. Donation
  c. Negotiation of a negotiable instrument
- Confusion can overlap with remission or payment.

  Example of confusion overlapping with remission: X owes O P100,000. O bequeath to X that credit. And then she died. In this case, there is extinguishment both by merger. But in this case, merger could overlap with remission.

  Example of confusion overlapping with payment. A makes a promissory note and endorses it to B. B endorsed it to C. C to D. D endorsed it back to A.

5. **Compensation**

Art. 1278. **Compensation shall take place when two persons, in their own right, are creditors and debtors of each other.**

Art. 1279. **In order that compensation may be proper, it is necessary:**

(1) That each one of the obligors be bound principally, and that he be at the same time a principal creditor of the other;

(2) That both debts consist in a sum of money, or if the things due are consumable, they be of the same kind, and also of the same quality if the latter has been stated;

(3) That the two debts be due;

(4) That they be liquidated and demandable;

(5) That over neither of them there be any retention or controversy, commenced by third persons and communicated in due time to the debtor.

Art. 1280. **Notwithstanding the provisions of the preceding article, the guarantor may set up compensation as regards what the creditor may owe the principal debtor.**

Art. 1281. **Compensation may be total or partial. When the two debts are of the same amount, there is a total compensation.**

Art. 1282. **The parties may agree upon the compensation of debts which are not yet due.**

Art. 1283. **If one of the parties to a suit over an obligation has a claim for damages against the other, the former may set it off by proving his right to said damages and the amount thereof.**

Art. 1284. **When one or both debts are rescissible or voidable, they may be compensated against each other before they are judicially rescinded or avoided.**

Art. 1285. **The debtor who has consented to the assignment of rights made by a creditor in favor of a third person, cannot set up against the assignee the compensation which would pertain to him against the assignor, unless the assignor was notified by the debtor at the time he gave his consent, that he reserved his right to the compensation.**

If the creditor communicated the cession to him but the debtor did not consent thereto, the latter may set up the compensation of debts previous to the cession, but not of subsequent ones.

If the assignment is made without the knowledge of the debtor, he may set up the compensation of all credits prior to the same and also later ones until he had knowledge of the assignment.

Art. 1286. **Compensation takes place by operation of law, even though the debts may be payable at different places, but there shall be an indemnity for expenses of exchange or transportation to the place of payment.**

Art. 1287. **Compensation shall not be proper when one of the debts arises from a depositum or from the obligations of a depositary or of a bailee in commodatum.**

Neither can compensation be set up against a creditor who has a claim for support due by gratuitous title, without prejudice to the provisions of paragraph 2 of article 301.

Art. 1288. **Neither shall there be compensation if one of the debts consists in civil liability arising from a penal offense.**

Art. 1289. **If a person should have against him several debts which are susceptible of compensation, the rules on the application of payments shall apply to the order of the compensation.**

Art. 1290. **When all the requisites mentioned in article 1279 are present, compensation takes effect by operation of law, and extinguishes both debts to the concurrent amount, even though the creditors and debtors are not aware of the compensation.**

- Compensation is a mode of extinguishing, to the concurrent amount, the obligations of those persons who in their own right are reciprocally debtors and creditors of each other.
- Perhaps, next to payment, compensation is the most common mode of extinguishing an obligation.
- Compensation Distinguished from Confusion
  - In compensation, there are 2 parties and 2 debts, whereas in confusion, there are 2 debts and only 1 party.
- Kinds of Compensation

  a. ***Legal*** (Article 1279)
     - Legal compensation takes place automatically by operation of law once all the requisites under Article 1279 are present.
     - Requisites

       i. The parties must be mutually debtors and creditors of each other in their own right and as principals.
          - There can be no compensation if 1 party occupies only a representative capacity (*i.e.* agent). Likewise, there can be no compensation if in one obligation, a party is a principal obligor and in another obligation, he is a guarantor.

       ii. The things due must be fungible
          - Article 1279 uses the word "consumable". This is wrong. The proper terminology is "fungible" which refers to things of

the same kind which in payment can be substituted for another.

iii. The 2 debts must be due

iv. The 2 debts must be liquidated and demandable

- Demandable means that the debts are enforceable in court, there being no apparent defenses inherent in them. The obligations must be civil obligations, excluding those that are purely natural. Before a judicial decree of rescission or annulment, a rescissible or voidable debt is valid and demandable; hence, it can be compensated.
- A debt is liquidated when its existence and amount are determined. And a debt is considered liquidated, not only when it is expressed already in definite figures w/c do not require verification, but also when the determination of the exact amount depends only on a simple arithmetical operation.

v. Neither of the debts must not be garnished

vi. Compensation must not be prohibited by law

- Articles 1287, 1288 and 1794[♦] are examples of when legal compensation is not allowed.
- Legal compensation is not allowed when there is conventional or facultative compensation.

- Effect of Legal Compensation
  - If a person should have against him several debts which are susceptible of compensation, the rules on the application of payments shall apply to the order of the compensation (Article 1289)
  - When all the requisites mentioned in article 1279 are present, compensation takes effect by operation of law, and extinguishes both debts to the concurrent amount, even though the creditors and debtors are not aware of the compensation (Article 1290)

b. ***Facultative*** (Articles 1287, 1288)

- Facultative compensation takes place when compensation is claimable by only one of the parties but not of the other.
- Compensation shall not be proper when one of the debts arises from a depositum or from the obligations of a depositary or of a bailee in commodatum.
- Neither can compensation be set up against a creditor who has a claim for support due by gratuitous title, without prejudice to the provisions of paragraph 2 of article 301 (Article 1287)

♦ *Art. 1794.* Every partner is responsible to the partnership for damages suffered by it through his fault, and he cannot compensate them with the profits and benefits which he may have earned for the partnership by his industry. However, the courts may equitably lessen this responsibility if through the partner's extraordinary efforts in other activities of the partnership, unusual profits have been realized.

- The prohibition of compensation when one of the debts arises from a depositum or commodatum is based on justice. A deposit is made or a commodatum is given on the basis of confidence in the depositary or the borrower. It is therefore, a matter of morality, that the depositary or the borrower should in fact perform his obligation; otherwise, the trust or confidence of the depositor or lender would be violated.
- With respect to future support, to allow its extinguishments by compensation would defeat its exemption from attachment and execution (Article 205, Family Code) and may expose the recipient to misery and starvation. However, support in arrears can be compensated.
- The depositary cannot set up compensation w/ respect to the things deposited to him. But the depositor can set up the compensation.

  Example: A is a warehouseman. B deposits 1000 *quedans* of rice with A. B also owes A 1000 kilos of rice. A cannot claim compensation but B can set up compensation.

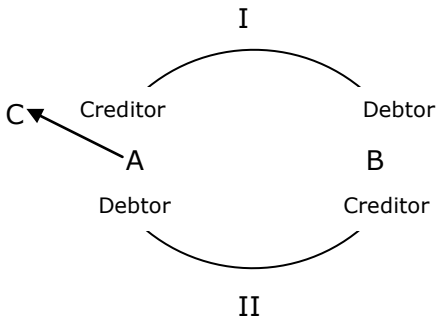
- Neither shall there be compensation if one of the debts consists in civil liability arising from a penal offense (Article 1288)
  - If 1 of the debts consists in civil liability arising from a penal offense, compensation would be improper and inadvisable because the satisfaction of such obligation is imperative.
  - The person who has the civil liability arising from the crime cannot set up compensation. However, the offended party is entitled to set up compensation.

c. **Conventional or Contractual** (Article 1282)
   - Contractual or conventional compensation takes place when parties agree to set-off even if the requisites of legal compensation are not present.
   - The parties may agree upon the compensation of debts which are not yet due.
   - The parties may compensate by agreement any obligations, in w/c the objective requisites provided for legal compensation are not present.

d. **Judicial** (Article 1283)
   - Judicial compensation is compensation decreed by the court in a case where there is a counterclaim.
   - If one of the parties to a suit over an obligation has a claim for damages against the other, the former may set it off by proving his right to said damages and the amount thereof.

- Effect of Assignment (Article 1285)

  Situation:



  There are two credits – credit I and credit II. In credit I, A is the creditor and B is the debtor. In credit II, B is the creditor and A is the debtor. A wants to assign credit I to C. A cannot assign credit II since it is passive subjective novation. Can B now invoke against C the compensation of credit II?

  It depends:

  a. If the assignment is with the debtor's (B's) consent
     - Debtor cannot set up compensation at all unless the right is reserved.
  b. If the assignment is with the debtor's (B's) knowledge but without consent
     - The debtor can set up compensation with a credit already existing at the time of the assignment.
  c. If the assignment is without the debtor's (B's) knowledge
     - Debtor can set up as compensation any credit existing at the time he acquired knowledge even if it arose after the actual assignment.

6. **Novation**

Art. 1291. **Obligations may be modified by:**

(1) Changing their object or principal conditions;

(2) Substituting the person of the debtor;

(3) Subrogating a third person in the rights of the creditor.

Art. 1292. **In order that an obligation may be extinguished by another which substitute the same, it is imperative that it be so declared in unequivocal terms, or that the old and the new obligations be on every point incompatible with each other.**

Art. 1293. **Novation which consists in substituting a new debtor in the place of the original one, may be made even without the knowledge or against the will of the latter, but not without the consent of the creditor. Payment by the new debtor gives him the rights mentioned in articles 1236 and 1237.**

Art. 1294. **If the substitution is without the knowledge or against the will of the debtor, the new debtor's insolvency or non-fulfillment of the obligations shall not give rise to any liability on the part of the original debtor.**

Art. 1295. **The insolvency of the new debtor, who has been proposed by the original debtor and accepted by the creditor, shall not revive the action of the latter against the original obligor, except when said insolvency was already existing and of public knowledge, or known to the debtor, when the delegated his debt.**

Art. 1296. **When the principal obligation is extinguished in consequence of a novation, accessory obligations may subsist only insofar as they may benefit third persons who did not give their consent.**

Art. 1297. **If the new obligation is void, the original one shall subsist, unless the parties intended that the former relation should be extinguished in any event.**

Art. 1298. **The novation is void if the original obligation was void, except when annulment may be claimed only by the debtor or when ratification validates acts which are voidable.**

Art. 1299. **If the original obligation was subject to a suspensive or resolutory condition, the new obligation shall be under the same condition, unless it is otherwise stipulated.**

Art. 1300. **Subrogation of a third person in the rights of the creditor is either legal or conventional. The former is not presumed, except in cases expressly mentioned in this Code; the latter must be clearly established in order that it may take effect.**

Art. 1301. **Conventional subrogation of a third person requires the consent of the original parties and of the third person.**

Art. 1302. **It is presumed that there is legal subrogation:**

(1) When a creditor pays another creditor who is preferred, even without the debtor's knowledge;

(2) When a third person, not interested in the obligation, pays with the express or tacit approval of the debtor;

(3) When, even without the knowledge of the debtor, a person interested in the fulfillment of the obligation pays, without prejudice to the effects of confusion as to the latter's share.

Art. 1303. **Subrogation transfers to the persons subrogated the credit with all the rights thereto appertaining, either against the debtor or against third person, be they guarantors or possessors of mortgages, subject to stipulation in a conventional subrogation.**

Art. 1304. **A creditor, to whom partial payment has been made, may exercise his right for the remainder, and he shall be preferred to the person who has been subrogated in his place in virtue of the partial payment of the same credit.**

- Novation is the extinguishment of an obligation by the substitution or change of the obligation by a subsequent one which extinguishes or modifies the first, either by changing the object of principal conditions, or by substituting the person of the debtor, or by subrogating a third person in the rights of the creditor.
- Novation is the most unusual mode of extinguishing an obligation. It is the only mode whereby an obligation is extinguished and a new obligation is created to take its place. The other modes of extinguishing an obligation are absolute in the sense that the extinguishment of the obligation is total. Novation, on the other hand, is a relative mode of extinguishing an obligation.
- A compromise is a form of novation. The difference is that a compromise has some judicial participation. The effect of compromise is the same as novation.
- Classification of Novation
    a. Subjective or Personal Novation – change of one of the subjects
        i. Active subjective
            - This a change of creditor.
            - This is also known as subrogation.
            - 2 Kinds of Subrogation
                1. Legal (Article 1302)
                    - It is presumed that there is legal subrogation:
                        a. When a creditor pays another creditor who is preferred, even without the debtor's knowledge;
                        b. When a third person, not interested in the obligation, pays with the express or tacit approval of the debtor
                        c. When, even without the knowledge of the debtor, a person interested in the fulfillment of the obligation pays, without prejudice to the effects of confusion as to the latter's share;
                2. Conventional
                    - Conventional subrogation of a third person requires the consent of the original parties and of the third person (Article 1301)
            - Effect of Subrogation
                1. A creditor, to whom partial payment has been made, may exercise his right for the remainder, and he shall be preferred to the person who has been subrogated in his place in virtue of the partial payment of the same credit (Article 1304)

2. Subrogation transfers to the person subrogated the credit with all the rights thereto appertaining, either against the debtor or against third persons, be they guarantors or possessors of mortgages, subject to stipulation in a conventional subrogation (Article 1303)

ii. Passive subjective

- This is a change of debtor.
- Types of Passive Subjective

1. *Expromission* (Article 1293)

- In *expromission* the changing of the debtor is not upon the old debtor's initiative. It could be upon the initiative of the creditor or of the new debtor.
- This requires the consent of the creditor since the changing of the debtor may prejudice him. This requires the consent of the new debtor since he is the one who will pay.
- The consent of the old debtor is not required.
- The intent of the parties must be to release the old debtor. The release of the old debtor is absolute even if it turns out that the new debtor is insolvent.
- Cases of *expromission* are quite rare.

2. *Delegacion* (Article 1295)

- In *delegacion* the change is at the debtor's initiative.
- The consent of the old debtor (*delegante*), the new debtor (*delegado*), and the creditor (*delegatario*) are all required.
- The intent of the parties must be to release the old debtor. However, release of the old debtor is not absolute. He may be held liable

a. If the new debtor was already insolvent at the time of the *delegacion*; and

b. Such insolvency was either known to the old debtor or of public knowledge

b. Objective or Real Novation

- In objective novation there is a change in the object or in the principal conditions.
- Novation by a change in the principal conditions is the most problematic kind of novation because one has to determine whether or not the change in the conditions is principal or merely incidental.
- If the amount of debt is increased, Castan thinks that there is a novation while Caguioa thinks there is no novation. Professor Balane thinks that Castan is correct. The old obligation is merged with the new.

- If the amount of the debt is decreased, according the SC in *Sandico vs. Piguing,* there is no novation. One can look at the decrease of the amount as a partial remission.
- In *Millar vs. CA,* there is no novation if the terms of the payment are changed. In this case, there was a change from lump sum to installment payments.
- In *Fua vs. Yap,* not only was the amount reduced, mode of payment was changed from single payment to installment. Finally, a mortgage was constituted. The SC said in *Fua vs. Yap* that there was a novation. Therefore, a mere change in the amount or mode of payment if taken singly is not a novation. But taken together, there is a novation.
- In *Inchausti vs. Yulo*, the SC said that the mere extension of time is not a novation for the period does affects only the performance and not the creation of an obligation. In another case, the SC said that the shortening of the period is a novation.

c. Mixed Novation

- Mixed is a combination of both subjective and objective novation.

- Requisites of Novation

a. There must be a previous valid obligation

- The novation is void if the original obligation was void, except when annulment may be claimed only by the debtor, or when ratification validates acts which are voidable (Article 1298)

b. There must be an agreement of the parties to create the new obligation

- If the original obligation was subject to a suspensive or resolutory condition, the new obligation shall be under the same condition, unless it is otherwise stipulated (Article 1299)

c. There must be an extinguishments of the old obligation

- Professor Balane considers this as an effect rather than a requisite of novation.
- In order that an obligation may be extinguished by another which substitute the same, it is imperative that it be so declared in unequivocal terms, or that the old and the new obligations be on every point incompatible with each other (Article 1292)

d. The new obligation must be valid

- If the new obligation is void, the original one shall subsist, unless the parties intended that the former relation should be extinguished in any event (Article 1297)

- Effect of Novation
  - Accessory obligations may subsist only insofar as they may benefit third persons who did not give their consent, *e.g., stipulation pour autrui*
  - **General Rule:** In a novation, the accessory obligation is extinguished.

- ***Exception:*** In an active subjective novation, the guarantors, pledgors, mortgagors are not released.
- Under Article 1303, accessory obligations are not extinguished. So there is a conflict? How do you resolve? According to commentators, Article 1303 is an exception to Article 1296.
- B owes K P1 M. M is a guarantor of B. B is substituted by U. B is released. M is also released under Article 1296. M is released since he guarantees B's performance and not B's. B might have a good credit standing but U may not. M might be prejudiced if he has to guarantee U's performance.
- If there is a change in the creditor under Article 1303, the guarantor is not released since it doesn't make a difference. What the guarantor guarantees is the integrity of the debtor.

7. Annulment
8. Rescission
9. Fulfillment of a Resolutory Condition
10. Prescription
11. Death in Certain Instances
12. For example, death extinguishes obligations which are purely personal (*i.e.* obligations in marriage, obligation to support, obligations in a partnership, etc.)
13. Renunciation by the Creditor (Article 6)
    - The creditor waives the obligation.
    - The renunciation need not be in any specific form.
    - Renunciation and remission are 2 different things. A renunciation is a refusal by the creditor to enforce his claim with the intention of waiving it. A remission is in the nature of a donation.
14. Compromise
15. Arrival of a Resolutory Term
16. Mutual Dissent or Desistance (*Saura vs. DBP*)
17. Unilateral Withdrawal
    - **General Rule:** Unilateral withdrawals are not allowed.
    - ***Exception:*** Partnership
18. Change of Civil Status
    - For example, if the marriage is annulled, certain obligations are extinguished, like the obligations to live together and to support one another.
19. *Rebus Sic Stantibus* (Article 1267)
20. Want of Interest
    - *Example:* A owns a peking duck restaurant with a secret recipe for preparing peking duck. A disclosed the secret recipe to B, his cook. B is then prohibited in his employment contract to work in another restaurant

within 5 years from leaving A's restaurant. Two years after B left, A closes his restaurant and opens a hardware store. B can now work in a restaurant.

21. Judicial Insolvency

- The effect of judicial insolvency is that all unpaid debts are written off for good. Thus, even if the debtor has improved his financial situation because of judicial insolvency, there is no need for the debtor to pay his unpaid debts.

II. Contracts

A. *General Provisions*

1. Definition

Art. 1305. **A contract is a meeting of the minds between 2 persons whereby one binds himself, with respect to the other, to give something or to render some service.**

- Professor Balane thinks that the definition in Article 1305 is inaccurate. The term "persons" should be submitted by the term "parties". Also, contracts may be multilateral; there can be more than 2 parties involved (*i.e.* partnership).

2. Characteristics of Contracts

a. ***Obligatory force***

Art. 1315. **Contracts are perfected by mere consent, and from that moment the parties are bound not only to the fulfillment of what has been expressly stipulated but also to all the consequences which, according to their nature, may be in keeping with good faith, usage and law.**

- **General Rule:** Contracts are perfected by mere consent – the principle of consensuality (Article 1315)
- ***Exception:*** Real contracts, such as deposit, pledge, and commodatum are not perfected until the delivery of the object of the obligation (Article 1316)
- Obligations arising from contracts have the force of law between the parties and should be complied with in good faith (Article 1159)

Art. 1314. **Any third person who induces another to violate his contract shall be liable for damages to the other contracting party.**

- It is not clear whether Article 1314 is a tortious liability or a contractual liability. Professor Balane considers it as only a tortious liability so it is not violative of the rule on relativity of contracts.
- Article 1314 is really a quasi-delict.
- Requisites
  i. Existence of a valid contract

ii. Knowledge by the 3rd person of the existence of the contract

iii. Interference by the 3rd person in the contractual relation without legal justification

b. ***Mutuality***

Art. 1308. **The contract must bind both contracting parties; its validity or compliance cannot be left to the will of one of them.**

Art. 1309. **The determination of the performance may be left to a third person, whose decision shall not be binding until it has been made known to both contracting parties.**

Art. 1310. **The determination shall not be obligatory if it is evidently inequitable. In such case, the courts shall decide what is equitable under the circumstances.**

- An example of a determination made by a 3rd person (Article 1309) is the fixing of the price by the 3rd person.
- The contract may be revoked if there is mutual dissent.

c. ***Relativity***

Art. 1311, ¶1. **Contracts take effect only between the parties, their assigns and heirs, except in case where the rights and obligations arising from the contract are not transmissible by their nature, or by stipulation or by provision of law. The heir is not liable beyond the value of the property he received from the decedent.**

- **General Rule:** The contract is binding only upon the parties and their successors (Article 1311). However, if the contract is purely personal (*intuitu personae*), then the contract will not bind assigns and heirs.
- ***Exception:*** 3 parties are affected by the contract in the following instances and can take appropriate action

i. *Accion pauliana* (Article 1177)

Art. 1177. **The creditors, after having pursued the property in possession of the debtor to satisfy their claims, may exercise all the rights and bring all the actions of the latter for the same purpose, save those which are inherent in his person; they may also impugn the acts which the debtor may have done to defraud them.**

- An rescissory action involving a contract in fraud of creditors.

Art. 1313. **Creditors are protected in cases of contracts intended to defraud them.**

ii. *Accion directa*

- A direct (not subrogatory) action by the creditor against his debtor's debtor, a remedy which gives the creditor the prerogative to act in his own name, such as the actions of the lessor against the sublessee (Article 1652[♥]), the laborer of an independent contractor against the owner (Article 1729[♠]), the principal against the subagent (Article 1893[∅]), and the vendor-a-retro against the transferee of the vendee (Article 1608[⊕]).

iii. *Article 1312*

> ***Art. 1312.*** **In contracts creating real rights, third persons who come into possession of the object of the contract are bound thereby, subject to the provisions of the Mortgage Law and the Land Registration Laws.**

iv. *Stipulation pour autrui* – stipulation in favor of a 3rd person

> ***Art. 1311, ¶2.*** **If a contract should contain some stipulation in favor of a third person, he may demand its fulfillment provided he communicated his acceptance to the obligor before its revocation. A mere incidental benefit or interest of a person is not sufficient. The contracting parties must have clearly and deliberately conferred a favor upon a third person.**

- Requisites
  1. There must be a stipulation in favor of a 3rd person
  2. That stipulation in favor of a 3rd person should be a part and not the whole of the contract

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[♥] *Art. 1652.* The sublessee is subsidiarily liable to the lessor for any rent due from the lessee. However, the sublessee shall not be responsible beyond the amount of rent due from him, in accordance with the terms of the sublease, at the time of the extra-judicial demand by the lessor.

Payments of rent in advance by the sublessee shall be deemed not to have been made, so far as the lessor's claim is concerned, unless said payments were effected in virtue of the custom of the place.

[♠] *Art. 1729.* Those who put their labor upon or furnish materials for a piece of work undertaken by the contractor have an action against the owner up to the amount owing from the latter to the contractor at the time the claim is made. However, the following shall not prejudice the laborers, employees and furnishers of materials:

(1) Payments made by the owner to the contractor before they are due;

(2) Renunciation by the contractor of any amount due him from the owner.

This article is subject to the provisions of special laws.

[∅] *Art. 1893.* In the cases mentioned in Nos. 1 and 2 of the preceding article, the principal may furthermore bring an action against the substitute with respect to the obligations which the latter has contracted under the substitution.

[⊕] *Art. 1608.* The vendor may bring his action against every possessor whose right is derived from the vendee, even if in the second contract no mention should have been made of the right to repurchase, without prejudice to the provisions of the Mortgage Law and the Land Registration Law with respect to third persons.

3. A clear and deliberate intent to confer a benefit on a 3rd person and not merely incidental
    - In the case of *Mandarin Villa vs. CA,* the credit card holder was held to have a right to sue under the contract between the establishment and the bank. The Supreme Court said that it's a stipulation *pour autrui* to confer benefit on the customer to purchase on credit.
    - However, Professor Balane believes that it is debatable whether an agreement between a credit card company and establishment is a clear and deliberate conferment of benefit on a third party. He would have concurred with the decision in *Mandarin Villa* if the basis was quasi-delict.
4. That the favorable stipulation should not be conditioned or compensated by any kind of obligation whatever
5. Neither of the contracting parties bears the legal representation of authorization of the 3rd parties
    - If the 3rd parties is represented, then the principles of agency apply.
6. The 3rd person must have communicated his acceptance to the obligor before its revocation

d. ***Autonomy of will***

Art. 1306. **The contracting parties may establish such stipulations, clauses, terms and conditions as they may deem convenient, provided they are not contrary to law, morals, good customs, public order, or public policy.**

3. **Elements of a Contract**

a. ***Essential Elements***

Art. 1318. **There is no contract unless the following requisites concur:**

(1) Consent of the contracting parties;

(2) Object certain which is the subject matter of the contract;

(3) Cause of the obligation which is established.

- The essential elements are those without which there can be no contract. These elements are, in turn, subdivided into common (*communes*), special (*especiales*), and extraordinary (*especialisimos*). The common elements are those which are present in all contracts, such as consent, object certain, and cause. The special elements are present only in certain contracts, such as delivery in real contracts or form in solemn ones. The extraordinary elements are those which are peculiar to a specific contract (*i.e.* price in sales).

i. *Consent*

1. Consent in General
    - Definition of Consent

      Art. 1319, 1st sentence. **Consent is manifested by the meeting of the offer and the acceptance upon the thing and the cause which are to constitute the contract.**

    - Elements of Consent
        a. Plurality of subjects
        b. Capacity
        c. Intelligent and free will
        d. Express or tacit manifestation of the will
        e. Conformity of the internal will and its manifestation
2. Offer
    - An offer is a unilateral proposition which 1 party makes to the other for the celebration of a contract.

      Art. 1321. **The person making the offer may fix the time, place, and manner of acceptance, all of which must be complied with.**

    - Requisites of Offer
        a. Definite
            - The offer must be definite, so that upon acceptance, an agreement can be reached on the whole contract.
        b. Complete
            - The offer must be complete, indicating with sufficient clearness the kind of contract intended and definitely stating the essential conditions of the proposed contract as well as the non-essential ones desired by the offeror.
        c. Intentional
            - An offer without seriousness, made in such manner that the other party would not fail to notice such lack of seriousness, is absolutely without juridical effects and cannot give rise to a contract (*i.e.* must not be made in jest, or a prank).
3. Acceptance
    a. Requisites of Acceptance
        i. Unequivocal
        ii. Unconditional
            - If the acceptance is qualified, then that is a counter-offer (Article 1319, 3rd sentence).

- An amplified acceptance may or may not be an acceptance of the original offer. It depends on the circumstances.

  Example: A offers to sell 1000 kilos of cement. B says he wants to buy 2000 kilos of cement. Is the 1000 kilos accepted? It depends. If buyer wants a block sale, that is, only 2000 kilos and nothing less, then it is a counter-offer.

b. Manifestation of Acceptance

Art. 1320. **An acceptance may be express or implied.**

- Silence is ambiguous. Silence in itself is neither acceptance nor rejection. Can it mean acceptance? One must look at the circumstances.

  Examples: A and B are own stalls which sell rice. C delivers 1000 kilos of rice to A every Sunday. If A is not there, C just leaves it with A's assistant. C tries to do business with B. B is not there though. C leaves rice with B's assistant. B does not call C. Both A and B are silent. A accepted the rice because of the arrangement. If A did not want to accept the rice, then A should have called. B's silence is not acceptance.

c. Cognition Theory

Article 1319, 2nd ¶. **Acceptance made by letter of telegram does not bind the offerer except from the time it came to his knowledge.**

- This is known as the Cognition Theory. Commercial law uses the Theory of Manifestation.
- Offer and acceptance takes effect only from the time knowledge is acquired by the person to whom it is directed. If during intervening time, the offer or acceptance is extinguished by death/insanity, such offer or acceptance has no more effect.

  Example: Offeror gave offer on March 1. The offer reached the offeree on March 5. From the point of view of the offeror, offer is counted from March 5. He can still countermand before March 5.

- If the parties are face to face, then there is no problem since there is no time gap.
- The problem arises when there is a time gap. Under Article 1319, there is perfection of the contract when there is knowledge of the other party's acceptance. This has serious consequences.

  Example 1. The offer was made in Davao on February 1. The offer was sent through mail which is received in Manila on February 5. On the same day, the offer is accepted. Mail is sent to Davao on February 5 signifying

acceptance. On February 8, the party in Manila becomes insane. On February 13, the mail reaches Davao. According to Professor Balane, under Article 1323, there is no contract since there was no contractual capacity.

Example 2. The offer was made in Bacolod on March 1. It was received in Quezon City on March 3. On March 4, the offeree sends his acceptance. On March 5, the offeror countermands offer. Now, both acceptance and countermand of offer are in the mail. Whichever reaches the destination first will be counted.

d. Offers Through Agents

Art. 1322. **An offer made through an agent is accepted from the time acceptance is communicated to him.**

e. Effect of Death, Insanity

Art. 1323. **An offer becomes ineffective upon the death, civil interdiction, insanity or insolvency of either party before acceptance is conveyed.**

f. Withdrawal of the Offer

Art. 1324. **When the offeror has allowed the offeree a certain period to accept, the offer may be withdrawn at any time before acceptance by communicating such withdrawal, except when the option is founded upon consideration, something paid or promised.**

- Article 1324 is related to Article 1479, ¶2[⊗]. They actually say the same thing.
- S offers to sell a car to B for P300,000. B needs to think about it, and so B asks for 30 days and pays S P5,000. The payment of P5,000 is a distinct consideration from the price of the car. This distinct consideration of P5,000 is payment for the 30 days. B is paying for time. The option contract is separate from the contract of sale. S cannot sell the car to anybody else within that 30-day period. If S sells the car to someone else within the 30-day period, he is guilty of contractual breach. But B can buy the car before the end of the 30-day period and such will be a valid sale.
- S offers to sell a car to B for P300,000. B needs to think about it, and so B asks for 30 days. B does not pay S for time, but S promises to give B 30 days. In this case there is no option contract. However, in *Sanchez vs. Rigos*, the Supreme Court said that even if there was no option contract, S must still communicate the withdrawal

[⊗] *Art. 1479, ¶2.* An accepted unilateral promise to buy or to sell a determinate thing for a price certain is binding upon the promissor if the promise is supported by a consideration distinct from the price.

of the offer to B. If S does not communicate his withdrawal, that is tantamount to a continuing offer. Professor Balane does not agree with this. According to him, if there is no valid option contract, there should be no continuing offer. According to Professor Balane, the Supreme Court should have explained that.

- S offers to sell a car to B for P300,000. B needs to think about it, and so B asks for 30 days and pays P5,000 to S. B decides to buy the car within 30 days. The car is not sold to anybody else. S does not want to sell the car to B. B can sue S for specific performance – compel S to sell him the car.
- S offers to sell a car to B for P300,000. B needs to think about it, and so B asks for 30 days and pays P5,000 to S. B decides to buy the car within 30 days. Before B is able to buy the car, S sells the car to X. B can sue S for damages. B cannot sue for specific performance since the car has been sold to an innocent purchaser.
- A right of first refusal is different from an option contract. A right of first refusal is the right to have first opportunity to purchase or the right to meet any other offer. On the other hand, an option contact limits the promissor's power to revoke an offer. The right of first refusal is not covered by the Civil Code.
- A right of first refusal is a statement by a person to another that if the former decides to sell the object, the latter will have the first offer. Here, the object is determinable. But the exercise of the right to buy is conditioned on the seller's decision to sell on terms which are not yet certain.
- According to *Equatorial vs. Mayfair,* the requirement of separate consideration is not applicable in a right of first refusal. According to Professor Balane, this is peculiar since an option contract is more firm and yet it requires the payment of separate consideration but a right of first refusal does not. However, in *Litonjua vs. CA,* the Supreme Court said that in a right of first refusal, the consideration for the loan or mortgage is already a part of the consideration for the right of first refusal.
- In *Ang Yu vs. CA*, the SC said that an action for specific performance will not lie against the promissor. However, a complaint under Article 19 for damages may be filed if the actions of the promissor are whimsical. In *Equatorial vs. Mayfair* the right of first refusal was violated when the vendor sold the object to another person. The SC in *Equatorial vs. Mayfair* said that an action for specific performance may be filed. *Equatorial vs. Mayfair* is totally inconsistent with *Ang Yu vs. CA*.

- The Supreme Court has held *(Equatorial vs. Mayfair, Parañaque Kings vs. CA, Litonjua vs. CA, PUP vs. CA)* that the right of first refusal is enforceable by an action for specific performance. And that the actual vendee may be required to sell the property to the holder of the right of first refusal at the price which he bought it.
- However, in a recent case, *Rosencorr vs. CA (March 8, 2001),* the Supreme Court has held that the right of first refusal need not be written to be unenforceable since it is not included in the Statute of Frauds. Also, if the vendee is in good faith, he may not be compelled by specific performance since he relied on a title which is clean. The remedy is to go after the vendor.
- In a right of first refusal, there is no definite offer since the vendor has to option of deciding not to sell the object. Also, in a right of first refusal, there is no need for a separate consideration. In an option contract, there is a definite offer. According to Professor Balane, the right of first refusal is inferior to an option contract since there is no definite offer. Professor Balane does not understand why an action for specific performance is allowed in violations of rights of first refusal but not in the case of option contracts when the object is sold to another person. Why is the SC giving greater legal effect to a right of first refusal which is more tentative? Also, where the SC get these rules since the right of first refusal is not covered by the Civil Code.

g. Advertisements

Art. 1325. **Unless it appears otherwise, business advertisements of things for sale are not definite offers, but mere invitations to make an offer.**

Art. 1326. **Advertisements for bidders are simply invitations to make proposals, and the advertiser is not bound to accept the highest or lowest bidder, unless the contrary appears.**

- Most advertisements are simply invitations to make an offer and are not offers in themselves since not all the necessary terms can fit in the advertisement.
- Even if the ad had all the necessary terms, it's still an invitation to make offer since there is no definite person to whom the offer is being made (public offer).

h. Simulated Contracts

Art. 1345. **Simulation of a contract may be absolute or relative. The former takes place when the parties do not intend to be bound at all; the latter, when the parties conceal their true agreement.**

Art. 1346. **An absolutely simulated or fictitious contract is void. A relative simulation, when it does**

not prejudice a third person and is not intended for any purpose contrary to law, morals, good customs, public order or public policy binds the parties to their real agreement.

i. Absolutely Simulated (*contrato simulado*)

- Absolute simulation of a contract takes place when the parties do not intent to be bound at all (Article 1345).
- For example, X pretends to sell his car to avoid tax liability. However X has no real intention to sell the car.
- An absolutely simulated or fictitious contract is void (Article 1346)

ii. Relatively Simulated (*contrato disimulado*)

- Relative simulation of a contract takes place when the parties conceal their true agreement (Article 1345).
- In a relatively simulated contract, the parties enter into a contract but disguise it as another.
- For example, X has many creditors, and they are going after X's car. X cannot donate his car to Y since the creditors will just resort to *accion pauliana*. So, X antedates a contract of sale, selling his car to Y, except that X's intention is to donate his car to Y.
- A relatively simulated contract, when it does not prejudice a 3rd person and is not intended for any purpose contrary to law, morals, good customs, public order or public policy binds the parties to their real agreement (Article 1346).
- The law will apply the rules of the true contract and not the ostensible contract.

ii. *Object*

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

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

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

Art. 1348. **Impossible things or services cannot be the object of contracts.**

Art. 1349. **The object of every contract must be determinate as to its kind. The fact that the quantity is not**

determinate shall not be an obstacle to the existence of the contract, provided it is possible to determine the same, without the need of a new contract between the parties.

- The object of the contract is the prestation. Thus, it is always the conduct which is to be observed. It is not a concrete object like a car. In a contract of sale, the object is the delivery of the object and not the object itself.
- The provisions on object however blur the distinction between the object of the contract, the prestation, and the object of the prestation. According to Professor Balane, these provisions are not fatal though.
- Requisites of Object
    1. The object must be within the commerce of man, either already existing or in potency (Article 1347)
        - Within the commerce of man means that the object is capable of appropriation and transmission.
        - The term "in potency" means that the object will come into existence in the future.
        - Generally in reciprocal contracts particularly sales, the sale of future things is allowed. For example, it is possible to sell the future harvest of a farm.
        - The coming into being of the future thing is a suspensive condition.
        - *Emptio rei speratae* is a conditional sale. There is a suspensive condition. If the future thing does not come into existence, then there is no contract of sale.
        - *Emptio spei* is the sale of a hope. Even if the future thing does not materialize, the buyer must pay since the buyer is taking a chance. (*i.e.* sale of lotto ticket). Hope is a present thing.
        - Some future things are not allowed to be objects of the prestation. The law does not allow contracts on future inheritance.
    2. The object must licit, or not be contrary to law, morals, good customs, public policy or public order (Article 1347)
    3. The object must be possible (Article 1348)
        - If the object is impossible, then the contract is void for lack of cause.
        - Article 1348 does not talk of supervening impossibility which is a mode of extinguishments.
        - Impossibility under Article 1348 must be actual and contemporaneous with the making of the contract.
    4. The object must be determinate as to its kind and determinable as to its quantity (Article 1349)

- The object need not be individualized. It must be determinate as to its kind or species.
- The quantity of the object may be indeterminate, so long as the right of the creditor is not rendered illusory.

5. The object must be transmissible
   - This is actually a redundancy since this is already in the requisite of being within the commerce of man.

iii. *Cause*

Art. 1350. **In onerous contracts the cause is understood to be, for each contracting party, the prestation or promise of a thing or service by the other; in remuneratory ones, the service or benefit which is remunerated; and in contracts of pure beneficence, the mere liberality of the benefactor.**

Art. 1351. **The particular motives of the parties in entering into a contract are different from the cause thereof.**

Art. 1352. **Contracts without cause, or with unlawful cause, produce no effect whatever. The cause is unlawful if it is contrary to law, morals, good customs, public order or public policy.**

Art. 1353. **The statement of a false cause in contracts shall render them void, if it should not be proved that they were founded upon another cause which is true and lawful.**

Art. 1354. **Although the cause is not stated in the contract, it is presumed that it exists and is lawful, unless the debtor proves the contrary.**

Art. 1355. **Except in cases specified by law, lesion or inadequacy of cause shall not invalidate a contract, unless there has been fraud, mistake or undue influence.**

- The cause of a contract is the "why of the contract," the immediate and most proximate purpose of the contract, the essential reason which impels the contracting parties to enter into it and which explains and justifies the creation of the obligation through such contract.
- The cause is different from consideration. Consideration in the Anglo-American sense must always be valuable or capable of pecuniary estimation. Cause, on the other hand, need not be material at all, and may consist in a moral satisfaction for the promissor.
- Requisites of Cause
  1. It must exist
  2. It must be true

3. It must be licit

- Cause is different from motive. Cause is the proximate why while motive is the ultimate why. For example, A wants to sell his house for P60 M because A is moving to Canada. B is willing to buy the house for P60 M. In this case, the cause for A is the P60 M while the cause for B is the house. A's motive is to dispose of the house which he does not need since A is going to Canada.
- Like failure of or lack of object, the failure of cause has an effect on the contract. If there is no cause or the cause is illegal, then the contract is void. This is unlike the lack of consent. When consent is lacking, the contract is not void. The contract is merely voidable.
- **General Rule:** Failure of motive as a **General Rule** does not affect the contract.
- ***Exception:*** Motive affects the contract when

  1. The motive becomes a suspensive condition; or
  2. The realization of the motive is the cause for the contract and there is an intervening serious mistake of fact

- In onerous contracts, the cause is the prestation or promise of a thing or service by the other party.
  - It has been held that, as a mortgage is an accessory contract, its cause or consideration is the very cause or consideration of the principal contract, from which it receives its life, and without which it cannot exist as an independent contract *(China Bank vs. Lichauco).*
- In remuneratory contracts, the cause is the service or benefit which is remunerated .
  - A remuneratory contract is one where a party gives something to another because of some service or benefit given or rendered by the latter to the former, where such service or benefit was not due as a legal obligation.
- In gratuitous contracts, the cause is the mere liberality of the benefactor.
  - Delivery – for real contracts
  - Form – for formal contracts

b. ***Natural Elements***

- The natural elements are those which are derived from the nature of the contract and ordinarily accompany the same. They are presumed by law, although they can be excluded by the contracting parties if they so desire.

  i. Right to resolve (Article 1191)

  ii. Warranties in sales contracts

c. ***Accidental Elements***

- The accidental elements are those which exist only when the parties expressly provide for them for the purpose of limiting or modifying the normal effects of the contract (i.e. conditions, terms, modes)

4. **Stages of a Contract**

a. Preparation, conception, or generation, which is the period of negotiation and bargaining, ending at the moment of agreement of the parties

b. Perfection or birth of the contract, which is the moment when the parties come to agree on the terms of the contract

- **General Rule:** Contracts are perfected by mere consent – the principle of consensuality (Article 1315)
- ***Exception:*** Real contracts, such as deposit, pledge, and commodatum are not perfected until the delivery of the object of the obligation (Article 1316)

c. Consummation or death, which is the fulfillment or performance of the terms agreed upon

5. **Classification of Contracts**

a. According to Degree of Dependence

i. Preparatory

- A preparatory contract is one which has for its object the establishment of a condition in law which is necessary as a preliminary step towards the celebration of another subsequent contract (*i.e.* partnership, agency).

ii. Principal

- A principal contract is one which can subsist independently from other contracts and whose purpose can be fulfilled by themselves (*i.e.* sales, lease).

iii. Accessory

- An accessory contract is one which can exist only as a consequence of, or in relation with, another prior contract (*i.e.* pledge, mortgage).

b. According to Perfection

i. Consensual

- A consensual contract is one which is perfected by mere agreement of the parties (*i.e.* sales, lease).

ii. Real

- A real contract is one which requires not only the consent of the parties for their perfection, but also the delivery of the object by 1 party to the other (*i.e.* commodatum, deposit, pledge).

c. According to their Form

i. Common or informal

- An informal contract is one which does not require some particular form (*i.e.* loan, lease).

ii. Special or formal

- A formal contract is one which requires some particular form (*i.e.* donation, chattel mortgage).

d. According to Purpose

i. Transfer of ownership (*i.e.* sale)

ii. Conveyance of use (*i.e.* commodatum)

iii. Rendition of service (*i.e.* agency)

e. According to Subject Matter

i. Things (*i.e.* sale, deposit, pledge)

ii. Services (*i.e.* agency, lease of services)

f. According to the Nature of the Obligation

i. Bilateral

- A bilateral contract is one which gives rise to reciprocal obligations for both parties (*i.e.* sale, lease).

ii. Unilateral

- A unilateral contract is one which gives rise to an obligation for only 1 of the parties (*i.e.* commodatum, gratuitous deposit).

g. According to Cause

i. Onerous

- An onerous contract is one in which each of the parties aspires to procure for himself a benefit through the giving of an equivalent or compensation (i.e. sale).

ii. Gratuitous

- A gratuitous contract is one in which one of the parties proposes to give to the other a benefit without any equivalent or compensation (i.e. commodatum).

h. According to Risk

i. Commutative

- A commutative contract is one in which each of the parties acquires an equivalent of his prestation and such equivalent is pecuniarily appreciable and already determined from the moment of the celebration of the contract (*i.e.* lease).

ii. Aleatory

- An aleatory contract is one in which each of the parties has to his account the acquisition of an equivalent prestation , but such equivalent, although pecuniarily appreciable, is not yet determined, at the moment of the celebration of the contract, since it depends upon the happening of an uncertain event, thus charging the parties with the risk of loss or gain (*i.e.* insurance).

i. According to Name

i. Nominate

- A nominate contract is one which has a name and is regulated by special provisions of law (*i.e.* sale, lease)

ii. Innominate

Art. 1307. **Innominate contracts shall be regulated by the stipulations of the parties, by the provisions of Titles I and II of this Book, by the rules governing the most analogous nominate contracts, and by the customs of the place.**

- An innominate contract is one that does not have a name and is not regulated by special provisions of law.
- A contract is not void just because it has no name. It is not a requisite for validity. A contract may have no name but it can be valid provided it has all the elements of a contract and all the restrictions are respected.
- 4 Classes of Innominate Contracts
  - *do ut des* ("I give that you give")
  - *do ut facias* ("I give that you do")
  - *facio ut des* ("I do that you give")
  - *facio ut facias* ("I do that you do")

B. ***Form of Contracts***

Art. 1356. **Contracts shall be obligatory, in whatever form they may have been entered into, provided all the essential requisites for their validity are present. However, when the law requires that a contract be in some form in order that it may be valid or enforceable, or that a contract be proved in a certain way, that requirement is absolute and indispensable. In such cases, the right of the parties stated in the following article cannot be exercised.**

Art. 1357. **If the law requires a document or other special form, as in the acts and contracts enumerated in the following article, the contracting parties may compel each other to observe that form, once the contract has been perfected. This right may be exercised simultaneously with the action upon the contract.**

Art. 1358. **The following must appear in a public document:**

(1) Acts and contracts which have for their object the creation, transmission, modification or extinguishment of real rights over immovable property; sales of real property or of an interest therein a governed by articles 1403, No. 2, and 1405;

(2) The cession, repudiation or renunciation of hereditary rights or of those of the conjugal partnership of gains;

(3) The power to administer property, or any other power which has for its object an act appearing or which should appear in a public document, or should prejudice a third person;

(4) The cession of actions or rights proceeding from an act appearing in a public document.

All other contracts where the amount involved exceeds five hundred pesos must appear in writing, even a private one. But sales of goods, chattels or things in action are governed by articles, 1403, No. 2 and 1405.

- **General Rule:** There is no need for a specific form, but there must still be some manifestation of consent.
- ***Exception:*** When the written form is required

1. For validity
   - If it not written, the same is void.
   - Examples are donations (Articles 748, 749), antichresis (Article 2134), interest in a loan (Article 1956), sale of land by an agent (Article 1874), contribution of immovables in a partnership (Article 1773)
2. For enforceability
   - The contract is unenforceable if it is not written.
     a. An agreement that by its terms is not to be performed within a year from the making thereof (Article 1403 (a))
     b. A special promise to answer for the debt, default or miscarriage of another (Article 1403 (b))
     c. An agreement made in consideration of marriage, other than a mutual promise to marry (Article 1403 (c))
     d. An agreement for the sale of goods, chattels or things in action, at a price not less than P500, unless the buyer accepts and receives part of such goods and chattels, or the evidence, or some of them, of such things in action, or pay at the time some part of the purchase money; but when a sale is made by auction and entry is made by the auctioneer in his sales book, at the time of sale, of the amount and kind of property sold, terms of sale, price, names of the purchasers and person on whose account the sale is made, it is a sufficient memorandum (Article 1403 (d))
     e. An agreement of lease for a period of more than 1 year, or the sale of real property or of an interest therein (Article 1403 (e))
     f. A representation as to the credit of a 3rd person (Article 1403 (f))
     g. No express trusts concerning an immovable or any interest therein may be proved by parol evidence (Article 1443)
3. For registrability
   - The following must appear in a public instrument:
     a. Acts and contracts which have for their object the creation, transmission, modification or extinguishment of real rights over immovable property; sales of real property or of an interest therein governed by Articles 1403 (2) and 1405
     b. The cession, repudiation or renunciation of hereditary rights or of those of the conjugal partnership of gains

c. The power to administer property, or any other power which has for its object an act appearing or which should appear in a public document, or should prejudice a 3rd person

d. The cession of actions or rights proceeding from an act appearing in a public document

- Contracts enumerated in Article 1358 are valid as between the contracting parties even when they have not been reduced to public or private writings.
- Except in certain cases where public instruments and registration are required for the validity of the contract itself, the legalization of a contract by means of a public writing and its entry in the register are not essential solemnities or requisites for the validity of the contract as between the contracting parties, but are required for the purposes of making it effective as against 3rd person.
- Article 1357 gives the contracting parties the coercive power to reciprocally compel the execution of the formalities required by law, as soon as the requisites for the validity of the contracts are present.

C. ***Reformation of Instruments***

Art. 1359. **When, there having been a meeting of the minds of the parties to a contract, their true intention is not expressed in the instrument purporting to embody the agreement, by reason of mistake, fraud, inequitable conduct or accident, one of the parties may ask for the reformation of the instrument to the end that such true intention may be expressed.**

If mistake, fraud, inequitable conduct, or accident has prevented a meeting of the minds of the parties, the proper remedy is not reformation of the instrument but annulment of the contract.

Art. 1360. **The principles of the general law on the reformation of instruments are hereby adopted insofar as they are not in conflict with the provisions of this Code.**

Art. 1361. **When a mutual mistake of the parties causes the failure of the instrument to disclose their real agreement, said instrument may be reformed.**

Art. 1362. **If one party was mistaken and the other acted fraudulently or inequitably in such a way that the instrument does not show their true intention, the former may ask for the reformation of the instrument.**

Art. 1363. **When one party was mistaken and the other knew or believed that the instrument did not state their real agreement, but concealed that fact from the former, the instrument may be reformed.**

Art. 1364. **When through the ignorance, lack of skill, negligence or bad faith on the part of the person drafting the instrument or of the clerk or typist, the instrument does not express the true intention of the parties, the courts may order that the instrument be reformed.**

Art. 1365. **If two parties agree upon the mortgage or pledge of real or personal property, but the instrument states that the property is sold absolutely or with a right of repurchase, reformation of the instrument is proper.**

Art. 1366. **There shall be no reformation in the following cases:**

(1) Simple donations inter vivos wherein no condition is imposed;

(2) Wills;

(3) When the real agreement is void.

Art. 1367. **When one of the parties has brought an action to enforce the instrument, he cannot subsequently ask for its reformation.**

Art. 1368. **Reformation may be ordered at the instance of either party or his successors in interest, if the mistake was mutual; otherwise, upon petition of the injured party, or his heirs and assigns.**

Art. 1369. **The procedure for the reformation of instrument shall be governed by rules of court to be promulgated by the Supreme Court.**

- Once the minds of the contracting parties meet, a valid contract exists, whether the agreement is reduced to writing or not. There are instances however, where in reducing their agreements to writing, the true intention of the contracting parties are not correctly expressed in the document, either by reason of mistake, fraud, inequitable conduct or accident. It is in such cases that reformation of instruments is proper. The action for such relief rests on the theory that the parties came to an understanding, but in reducing it to writing, through mutual mistake, fraud or some other reason, some provision was omitted or mistakenly inserted, and the action to change the instrument so as to make it conform to the contract agreed upon.
- Reformation Distinguished from Annulment
  - The action for reformation of instruments presupposes that there is a valid existing contract between the parties, and only the document or instrument which was drawn up and signed by them does not correctly express the terms of their agreement. On the other hand, if the minds of the parties did not meet, or if the consent of either one was vitiated by violence or intimidation or mistake or fraud, so that no real and valid contract was made, the action is for annulment.
  - Annulment involves a complete nullification of the contract while reformation gives life to it upon certain corrections.
- Operation and Effect of Reformation
  - Upon reformation of an instrument, the general rule is that it relates back to, and takes effect from the time of its original execution, especially as between the parties.
- Requisites of Reformation
  1. There must have been a meeting of the minds upon the contract

2. The instrument or document evidencing the contract does not express the true agreement between the parties
3. The failure of the instrument to express the agreement must be due to mistake, fraud, inequitable conduct or accident
    - Requisites of Mistake
        a. That the mistake is one of fact
            - Whenever an instrument is drawn with the intention of carrying an agreement previously made, but which, due to mistake or inadvertence of the draftsman or clerk, does not carry out the intention of the parties, but violates it, there is a ground to correct the mistake by reforming the instrument.
        b. That it was common to both parties
            - A written instrument may be reformed where there is a mistake on 1 side and fraud or inequitable conduct on the other, as where 1 party to an instrument has made a mistake and the other knows it and conceals the truth from him.
            - The mistake of 1 party must refer to the contents of the instrument and not the subject mater or the principal conditions of the agreement. In the latter case, an action for annulment is the proper remedy.
            - If 2 parties agree upon the mortgage or pledge of real property or personal property, but the instrument states that the property is sold absolutely or with a right of repurchase, reformation is proper.
        c. The proof of mutual mistake must be clear and convincing

- Limitations of Reformation
    1. Reformation is not proper in the following cases:
        a. Simple donations *inter vivos* wherein no condition is imposed
        b. Wills
        c. When the real agreement is void
    2. Who may ask for reformation
        a. If the mistake is mutual
            - Reformation may be ordered at the instance of either party or his successors in interest
        b. If the mistake is not mutual
            - Reformation may be ordered upon petition of the injured party or his heirs and assigns
    3. Effect of enforcing an action
        - When one of the parties has brought an action to enforce the instrument, he cannot subsequently ask for its reformation.

D. ***Interpretation of Contracts***

- Where the parties have reduced their contract into writing, the contents of the writing constitutes the sole repository of the terms of the agreement between the parties. Whatever is not found in the writing must be understood as waived and abandoned. Generally, therefore, there can be no evidence of the terms of the contract other than the contents of the writing, unless it is alleged and proved that the intention of the parties is otherwise.

Art. 1370. **If the terms of a contract are clear and leave no doubt upon the intention of the contracting parties, the literal meaning of its stipulations shall control.**

If the words appear to be contrary to the evident intention of the parties, the latter shall prevail over the former.

- When the terms of the agreement are so clear and explicit that they do not justify an attempt to read into it any alleged intention of the parties, the terms are to be understood literally just as they appear on the face of the contract.
- When the true intent and agreement of the parties is established, it must be given effect and prevail over the bare words of the written agreement.

Art. 1371. **In order to judge the intention of the contracting parties, their contemporaneous and subsequent acts shall be principally considered.**

Art. 1372. **However general the terms of a contract may be, they shall not be understood to comprehend things that are distinct and cases that are different from those upon which the parties intended to agree.**

Art. 1373. **If some stipulation of any contract should admit of several meanings, it shall be understood as bearing that import which is most adequate to render it effectual.**

Art. 1374. **The various stipulations of a contract shall be interpreted together, attributing to the doubtful ones that sense which may result from all of them taken jointly.**

- Where the instrument is susceptible of 2 interpretations, 1 which will make it invalid and illegal, and another which will make it valid and legal, the latter interpretation should be adopted.
- In the construction of an instrument where there are several provisions or particulars, such a construction is, if possible, to be adopted as will give effect to all.

Art. 1375. **Words which may have different significations shall be understood in that which is most in keeping with the nature and object of the contract.**

Art. 1376. **The usage or custom of the place shall be borne in mind in the interpretation of the ambiguities of a contract, and shall fill the omission of stipulations which are ordinarily established.**

- When there is doubt as to the meaning of any particular language, it should be determined by a consideration of the general scope and purpose of the instrument in which it occurs.
- An instrument may be construed according to usage in order to determine its true character.

Art. 1377. **The interpretation of obscure words or stipulations in a contract shall not favor the party who caused the obscurity.**

- The party who draws up a contract in which obscure terms or clauses appear, is the one responsible for the obscurity or ambiguity; they must therefore be construed against him.

Art. 1378. **When it is absolutely impossible to settle doubts by the rules established in the preceding articles, and the doubts refer to incidental circumstances of a gratuitous contract, the least transmission of rights and interests shall prevail. If the contract is onerous, the doubt shall be settled in favor of the greatest reciprocity of interests.**

If the doubts are cast upon the principal object of the contract in such a way that it cannot be known what may have been the intention or will of the parties, the contract shall be null and void.

Art. 1379. **The principles of interpretation stated in Rule 123[℘] of the Rules of Court shall likewise be observed in the construction of contracts.**

Rule 130, Rules of Court

Sec. 10. ***Interpretation of a writing according to its legal meaning.*** **— The language of a writing is to be interpreted according to the legal meaning it bears in the place of its execution, unless the parties intended otherwise.**

Sec. 11. ***Instrument construed so as to give effect to all provisions.*** **— In the construction of an instrument where there are several provisions or particulars. such a construction is, if possible, to be adopted as will give effect to all.**

Sec. 12. ***Interpretation according to intention; general and particular provisions.*** **— In the construction of an instrument, the intention of the parties is to be pursued; and when a general and a particular provision are inconsistent, the latter is paramount to the former. So a particular intent will control a general one that is inconsistent with it.**

- When a general and a particular provision are inconsistent, the particular provision will control.

Sec. 13. ***Interpretation according to circumstances.*** **— For the proper construction of an instrument, the circumstances under which it was made, including the situation of the subject thereof and of the parties to it, may be shown, so that the judge may be placed in the position of those whose language he is to interpret.**

[℘] Now, Rule 130, §§10-19.

Sec. 14. *Peculiar signification of terms.* — The terms of a writing are presumed to have been used in their primary and general acceptation, but evidence is admissible to show that they have a local, technical, or otherwise peculiar signification, and were so used and understood in the particular instance, in which case the agreement must be construed accordingly.

Sec. 15. *Written words control printed.* — When an instrument consists partly of written words and partly of a printed form, and the two are inconsistent, the former controls the latter.

Sec. 16. *Experts and interpreters to be used in explaining certain writings.* — When the characters in which an instrument is written are difficult to be deciphered, or the language is not understood by the court, the evidence of persons skilled in deciphering the characters, or who understand the language, is admissible to declare the characters or the meaning of the language.

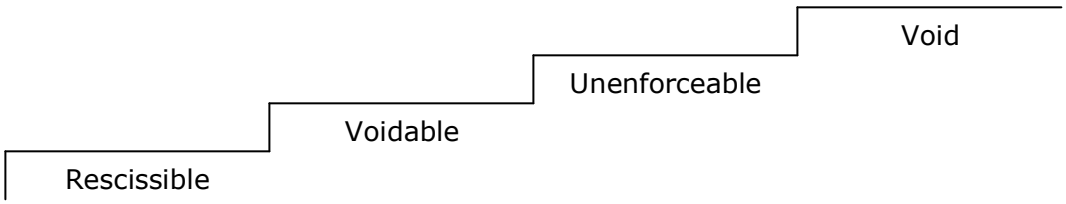
Sec. 17. *Of two constructions, which preferred.* — When the terms of an agreement have been intended in a different sense by the different parties to it, that sense is to prevail against either party in which he supposed the other understood it, and when different constructions of a provision are otherwise equally proper, that is to be taken which is the most favorable to the party in whose favor the provision was made.

Sec. 18. *Construction in favor of natural right.* — When an instrument is equally susceptible of two interpretations, one is favor of natural right and the other against it, the former is to be adopted.

Sec. 19. *Interpretation according to usage.* — An instrument may be construed according to usage, in order to determine its true character.

E. *Defective Contracts*

- The remaining chapters deal with defective contracts. The Civil Code made major and important improvements on this topic. Unlike the Spanish Code, the defective contracts were ambiguous and had unclear classifications. They were simply void or voidable. Here, in our present code, there are for types of defective contracts, from the serious to less serious, in the following order:



- However, our Code still has some imperfections. As pointed out by Tolentino, there must be a "relatively void" contract. For example, in an assignment of lease without authority, this is void as to third parties, but valid as between the parties.
- There have been several cases decided by our Supreme Court wherein a chattel mortgage over real property was declared void as to third parties but valid as between the parties.

- Whatever imperfections the Code has, it still is better than other codes on this topic.

1. **Rescissible Contracts**

Art. 1380. **Contracts validly agreed upon may be rescinded in the cases established by law.**

Art. 1381. **The following contracts are rescissible:**

(1) Those which are entered into by guardians whenever the wards whom they represent suffer lesion by more than one-fourth of the value of the things which are the object thereof;

(2) Those agreed upon in representation of absentees, if the latter suffer the lesion stated in the preceding number;

(3) Those undertaken in fraud of creditors when the latter cannot in any other manner collect the claims due them;

(4) Those which refer to things under litigation if they have been entered into by the defendant without the knowledge and approval of the litigants or of competent judicial authority;

(5) All other contracts specially declared by law to be subject to rescission.

Art. 1382. **Payments made in a state of insolvency for obligations to whose fulfillment the debtor could not be compelled at the time they were effected, are also rescissible.**

Art. 1383. **The action for rescission is subsidiary; it cannot be instituted except when the party suffering damage has no other legal means to obtain reparation for the same.**

Art. 1384. **Rescission shall be only to the extent necessary to cover the damages caused.**

Art. 1385. **Rescission creates the obligation to return the things which were the object of the contract, together with their fruits, and the price with its interest; consequently, it can be carried out only when he who demands rescission can return whatever he may be obliged to restore.**

Neither shall rescission take place when the things which are the object of the contract are legally in the possession of third persons who did not act in bad faith.

In this case, indemnity for damages may be demanded from the person causing the loss.

Art. 1386. **Rescission referred to in Nos. 1 and 2 of article 1381 shall not take place with respect to contracts approved by the courts.**

Art. 1387. **All contracts by virtue of which the debtor alienates property by gratuitous title are presumed to have been entered into in fraud of creditors, when the donor did not reserve sufficient property to pay all debts contracted before the donation.**

Alienations by onerous title are also presumed fraudulent when made by persons against whom some judgment has been issued. The decision or attachment need not refer to the property alienated, and need not have been obtained by the party seeking the rescission.

In addition to these presumptions, the design to defraud creditors may be proved in any other manner recognized by the law of evidence.

Art. 1388. **Whoever acquires in bad faith the things alienated in fraud of creditors, shall indemnify the latter for damages suffered by them on account of the alienation, whenever, due to any cause, it should be impossible for him to return them.**

If there are two or more alienations, the first acquirer shall be liable first, and so on successively.

Art. 1389. **The action to claim rescission must be commenced within four years.**

For persons under guardianship and for absentees, the period of four years shall not begin until the termination of the former's incapacity, or until the domicile of the latter is known.

- This is not be to confused with resolution, discussed in Article 1191. This chapter on rescissible contracts is the proper rescissible. According to Scaevola, rescission is a process designated to render inefficacious a contract validly entered into and normally binding, by reason of external conditions, causing an economic prejudice to a party or to his creditors.
- A rescissible contract is a contract which is valid because it contains all the essential requisites prescribed by law, but which is defective because of injury or damage to either of the contracting parties or to 3rd persons, as a consequence of which it may be rescinded by means of a proper action for rescission.
- Rescission is a remedy granted by law to the contracting parties, and even to 3rd persons, to secure the reparation of damages caused to them by a contract, even if the same should be valid, by means of the restoration of things to their condition prior to the celebration of the contract.
- Requisites of Rescission
    a. The contact must be a rescissible contract under Article 1381 or Article 1382
        - The following contracts are rescissible
            i. Those entered into by guardians whenever the whom they represent suffer lesion by more than ¼ of the value of things which are the object thereof (Article 1381 (1))
                - Rescission shall not take place with respect to contracts approved by the court (Article 1386).
                - As a rule, when a guardian enters into a contract involving the disposition of the ward's property, the guardian must secure the approval of the guardianship court. A guardian is only authorized to manage the estate of the ward. A

guardian has no power to dispose of any portion of the estate without approval of the court. If more than acts of mere administration are involved, judicial approval is necessary.

- In case of sale, mortgage, or other encumbrance of any portion of the estate which does not have judicial approval is an unenforceable contract (Article 1403 (1)).
- Therefore, Article 1381 (1) is limited to contracts which constitute mere acts of administration (*i.e.* the purchase of equipment for the cultivation of lands, purchase of materials for repair of buildings, etc.).
- Lesion is very difficult to apply in practice.
- For example, A is the agent of B. B owns land worth P10 M. A sells the land for P7 M. From the facts, the lesion suffered by B is 30%. In practice, are you sure that P10 M is the fair market value of the land. What if the situation is urgent and that property must be disposed of right away?
- Another example, A is the agent of B. B owns land worth P10 M. C wants to buy the land. C is willing to pay P 7 M – lump sum payment. D is willing to pay P 10 M but on installments.

ii. Those agreed upon in representation of absentees, if the absentee suffers lesion by more than ¼ of the value of things which are the object thereof (Article 1381 (2))

- Rescission shall not take place with respect to contracts approved by the court (Article 1386).
- As a rule, when the legal representative of an absentee enters into a contract involving the disposition of the absentee's property, he must secure the approval of the court. A legal representative is only authorized to manage the estate of the absentee. He has no power to dispose of any portion of the estate without approval of the court. If more than acts of mere administration are involved, judicial approval is necessary.
- In case of sale, mortgage, or other encumbrance of any portion of the estate which does not have judicial approval is an unenforceable contract (Article 1403 (1)).
- Therefore, Article 1381 (2) is limited to contracts which constitute mere acts of administration (*i.e.* the purchase of equipment for the cultivation of lands, purchase of materials for repair of buildings, etc.).
- Lesion is very difficult to apply in practice.
- For example, A is the agent of B. B owns land worth P10 M. A sells the land for P7 M. From the facts, the lesion suffered by B is 30%. In practice, are you sure that P10 M is the fair market value of the land. What if the situation is urgent and that property must be disposed of right away?

- Another example, A is the agent of B. B owns land worth P10 M. C wants to buy the land. C is willing to pay P 7 M – lump sum payment. D is willing to pay P 10 M but on installments.

iii. Those undertaken in fraud of creditors when the creditors cannot in any other manner collect the claims due them (Article 1381 (3))

- This is an exception to the principle of relativity of contracts.
- Creditors, after having pursued the property in possession of the debtor to satisfy their claims may exercise all the rights and bring all the actions of the latter for the same purpose, save those which are inherent in his person; they may also impugn the acts which the debtor may have done to defraud them (Article 1177).
- Creditors are protected in cases of contracts intended to defraud them (Article 1313).
- In determining whether or not a certain conveyance is fraudulent, the question in every case is whether the conveyance was a *bona fide* transaction or trick and contrivance to defeat creditors, or whether it conserves to the debtor a special right.
- All contracts by virtue of which the debtor alienates property by gratuitous tile are presumed to have been entered into in order to defraud creditors, when the donor did not reserve sufficient property to pay all debts contracted before the donation (Article 1387, 1st ¶).
- Alienations by onerous title are also presumed fraudulent when made by persons against whom some judgment has been rendered in any instance or some writ of attachment has been issued. The decision or attachment need not refer to the property alienated, and need not have been obtained by the party seeking the rescission (Article 1387, 2nd ¶).
- Badges of Fraud

  1. The fact that the consideration of the conveyance is inadequate
  2. A transfer made by a debtor after suit has begun and while it is pending against him
  3. A sale upon credit by an insolvent debtor
  4. Evidence of large indebtedness or complete insolvency
  5. The transfer of all or nearly all of his property by a debtor, especially when he is insolvent or greatly embarrassed financially
  6. The fact that the transfer is made between father and son when there are present any of the above circumstances

7. The failure of the vendee to take exclusive possession of all the property

iv. Those which refer to things under litigation if they have been entered into by the defendant without the knowledge and approval of the litigants or of competent judicial authority (Article 1381 (4))

- Article 1381 (4) refers to a contract executed by the defendant in a suit involving the ownership or possession of a thing, when such contract is made without the knowledge and approval of the plaintiff or court.
- As in the case of a contract in fraud of creditors, the remedy of rescission in this case is given to a 3rd person who is not a party to the contract. The purpose is to protect the plaintiff.

v. All other contracts specially declared by law to be the subject of rescission (Article 1381 (5))

- The following provision in sales are examples of rescissible contracts declared by law – Arts 1526, 1534, 1538, 1539, 1540, 1556, 1560, 1567, 1659.
- Payments made in a state of insolvency for obligations to whose fulfillment the debtor could not be compelled at the time they were effected (Article 1382)

b. The person asking for rescission must have no other legal means to obtain reparation for the damages suffered by him (Article 1383)

c. The person demanding rescission must be able to return whatever he may be obliged to restore if rescission is granted (Article 1385, 1st par)

- This requisite is only applicable if the one who suffers the lesion is a party to the contract.
- This requisite does not apply when a defrauded creditor resorts to *accion pauliana*.

d. The things which are the object of the contract must not have passed legally to the possession of a 3rd person acting in good faith (Article 1385, 2nd ¶)

- Whoever acquires in bad faith the things alienated in fraud of creditors, shall indemnify the latter for damages suffered by them on account of the alienation, whenever, due to any cause, it should be impossible for him to return them (Article 1388,1st ¶).
- If there are 2 or more alienations, the 1st acquirer shall be liable 1st, and so on successively (Article 1388, 2nd ¶).

e. The action for rescission must be brought within the prescriptive period of 4 years (Article 1389)

2. **Voidable Contracts**

Art. 1390. **The following contracts are voidable or annullable, even though there may have been no damage to the contracting parties:**

(1) Those where one of the parties is incapable of giving consent to a contract;

(2) Those where the consent is vitiated by mistake, violence, intimidation, undue influence or fraud.

These contracts are binding, unless they are annulled by a proper action in court. They are susceptible of ratification.

Art. 1391. **The action for annulment shall be brought within four years.**

This period shall begin:

In cases of intimidation, violence or undue influence, from the time the defect of the consent ceases.

In case of mistake or fraud, from the time of the discovery of the same.

And when the action refers to contracts entered into by minors or other incapacitated persons, from the time the guardianship ceases.

Art. 1392. **Ratification extinguishes the action to annul a voidable contract.**

Art. 1393. **Ratification may be effected expressly or tacitly. It is understood that there is a tacit ratification if, with knowledge of the reason which renders the contract voidable and such reason having ceased, the person who has a right to invoke it should execute an act which necessarily implies an intention to waive his right.**

Art. 1394. **Ratification may be effected by the guardian of the incapacitated person.**

Art. 1395. **Ratification does not require the conformity of the contracting party who has no right to bring the action for annulment.**

Art. 1396. **Ratification cleanses the contract from all its defects from the moment it was constituted.**

Art. 1397. **The action for the annulment of contracts may be instituted by all who are thereby obliged principally or subsidiarily. However, persons who are capable cannot allege the incapacity of those with whom they contracted; nor can those who exerted intimidation, violence, or undue influence, or employed fraud, or caused mistake base their action upon these flaws of the contract.**

Art. 1398. **An obligation having been annulled, the contracting parties shall restore to each other the things which have been the subject matter of the contract, with their fruits, and the price with its interest, except in cases provided by law.**

In obligations to render service, the value thereof shall be the basis for damages.

Art. 1399. **When the defect of the contract consists in the incapacity of one of the parties, the incapacitated person is not obliged to make any restitution except insofar as he has been benefited by the thing or price received by him.**

Art. 1400. **Whenever the person obliged by the decree of annulment to return the thing can not do so because it has been lost through his fault, he shall return the fruits received and the value of the thing at the time of the loss, with interest from the same date.**

Art. 1401. **The action for annulment of contracts shall be extinguished when the thing which is the object thereof is lost through the fraud or fault of the person who has a right to institute the proceedings.**

If the right of action is based upon the incapacity of any one of the contracting parties, the loss of the thing shall not be an obstacle to the success of the action, unless said loss took place through the fraud or fault of the plaintiff.

Art. 1402. **As long as one of the contracting parties does not restore what in virtue of the decree of annulment he is bound to return, the other cannot be compelled to comply with what is incumbent upon him.**

- A voidable contract is a contract in which all of the essential elements for validity are present, but the element of consent is vitiated either by lack f legal capacity of 1 of the contracting parties or by mistake, violence, intimidation, undue influence, or fraud.
- Voidable contracts are binding unless they are annulled by a proper action court. They are susceptible to confirmation.
    - There is a difference between confirmation and ratification. Confirmation is the process of curing the defect of a voidable contract. Ratification is the process of curing contracts which are defective because they were entered into without authority.
- The following contracts are voidable or annullable, even though there may have been no damage to the contracting parties
    a. Those where one of the parties is incapable of giving consent to a contract
        - The following cannot give consent to a contract (Article 1327):
            i. *Unemancipated minors*
                - Where necessaries are sold and delivered to a minor or other person without capacity to act, he must pay a reasonable price therefore. Necessaries include everything that is indispensable for sustenance, dwelling, clothing, and medical attendance.
                - Contracts effected by minors who have already passed the age of puberty and adolescence and are near the adult age, when they pretend to have already reached the age of

majority, while in fact they have not, are valid, and cannot be permitted afterwards to excuse themselves from compliance with obligations assumed by them or seek their annulment. This is in consonance with the rules of estoppel. *(Mercado vs. Espiritu)*.

- However in *Braganza v, De Villa*, the SC said that the misrepresentation of an incapacitate person does not estop him from denying that he was of age, or from asserting that he was under age, at the time he entered into the contract. According to Professor Balane, this view is very logical. If the minor is too young to enter into contracts, he is too young to be estopped.

ii. *Insane or demented persons, and deaf mutes who do not know how to write*

Art. 1328. **Contracts entered into during a lucid interval are valid. Contracts agreed to in a state of drunkenness or during a hypnotic spell are voidable.**

Art. 1329. **The incapacity declared in article 1327 is subject to the modifications determined by law, and is understood to be without prejudice to special disqualifications established in the laws.**

b. Those where the consent is vitiated by mistake, violence, intimidation, undue influence or fraud

Art. 1330. **A contract where consent is given through mistake, violence, intimidation, undue influence or fraud is voidable.**

i. Mistake

Art. 1331. **In order that mistake may invalidate consent, it should refer to the substance of the thing which is the object of the contract, or to those conditions which have principally moved one or both parties to enter into the contract .**

Mistake as to the identity or qualification of one of the parties will vitiate consent only when such identity or qualifications have been the principal cause of the contract.

A simple mistake of account shall give rise to its correction.

Art. 1332. **When one of the parties is unable to read, or if the contract is in a language not understood by him, and mistake or fraud is alleged, the person enforcing the contract must show that the terms thereof have been fully explained to the former.**

Art. 1333. **There is no mistake if the party alleging it knew the doubt, contingency or risk affecting the object of the contract.**

Art. 1334. **Mutual error as to the legal effect of an agreement when the real purpose of the parties is frustrated, may vitiate consent.**

Art. 1342. **Misrepresentation by a third person does not vitiate consent, unless such misrepresentation has created substantial mistake and the same is mutual.**

Art. 1343. **Misrepresentation made in good faith is not fraudulent but may constitute error.**

ii. Violence

Art. 1335, 1st ¶. **There is violence when in order to wrest consent, serious or irresistible force is employed.**

- Violence shall annul the obligation, although it may been employed by a 3rd person who did not take part in the contract (Article 1336).
- Requisites of Violence
  1. Irresistible physical force is employed
  2. The force is the determining cause for giving consent

iii. Intimidation

Art. 1335, 2nd ¶. **There is intimidation when one of the contracting parties is compelled by a reasonable and well-grounded fear of an imminent and grave evil upon his person or property, or upon the person or property of his spouse, descendants or ascendants, to give his consent.**

- Requisites of Intimidation
  1. The threat must be the determining cause for giving consent
  2. The threatened act is unjust and unlawful
     - A threat to enforce one's claim through competent authority, if the claim is just or legal, does not vitiate consent (Article 1335, 4th ¶).
     - The threat to enforce a right, should not be aimed at a result which is contrary to law or morals, or which is unjust and contrary to good faith. Although it is lawful to exercise rights, it is not always lawful to use them for purposes different from those for which they were created. Thus, although it is lawful to report crimes, the threat to report it may be illicit if the purpose is not to cooperate in the discovery and prosecution of the crime, but to obtain some prestation from the culprit which otherwise could not be obtained and which does not constitute indemnity for damages for the crime committed.

- Thus, the rule is, generally, a threat to do something lawful does not constitute intimidation.

  Example: If you don't marry my daughter, I'll report you to the IBP. This is not unlawful because the person did commit immorality.

  Sometimes, though, it may constitute intimidation.

  Example: A saw B commit murder. A threatened B that he will report him to the police unless B gives A his house. This is intimidation because there is no connection between the crime and the contract.

3. The threat is real and serious
   - For example the threat must be to kill you or burn your house and not merely to pinch you.
4. The threat produces a well-grounded fear that the person making it can and will inflict harm
   - To determine the degree of intimidation, the age, sex, and condition of the person shall be borne in mind (Article 1335, 3rd ¶).
   - For example, a 75year old man who is bed ridden and says that he will kill you does not produce a well-grounded fear.
   - Intimidation shall annul the obligation, although it may have been employed by a 3rd person who did not take part in the contract (Article 1336).

iv. Undue influence

Art. 1337. **There is undue influence when a person takes improper advantage of his power over the will of another, depriving the latter of a reasonable freedom of choice. The following circumstances shall be considered: the confidentiality, family, spiritual and other relations between the parties, or the fact that the person alleged to have been unduly influenced was suffering from mental weakness, or was ignorant or in financial distress.**

v. Fraud

Art. 1332. **When one of the parties is unable to read, or if the contract is in a language not understood by him, and mistake or fraud is alleged, the person enforcing the contract must show that the terms thereof have been fully explained to the former.**

Art. 1338. **There is fraud when, through insidious words or machinations of one of the contracting parties, the other is induced to enter into a contract which, without them, he would not have agreed to.**

- This is known as deceit or *dolo causante*. This is different from *dolo incidente* which means fraud on things which would not prevent you from entering into a contract but may hold the other liable for damages.
- Requisites of Fraud
  1. Fraud is employed by 1 party on the other (Articles 1342, 1344)
  2. The other party was induced to enter into the contract (Article 1338)
  3. The fraud must be serious (Article 1344)
  4. There is damage or injury caused

Art. 1339. **Failure to disclose facts, when there is a duty to reveal them, as when the parties are bound by confidential relations, constitutes fraud.**

Art. 1340. **The usual exaggerations in trade, when the other party had an opportunity to know the facts, are not in themselves fraudulent.**

Art. 1341. **A mere expression of an opinion does not signify fraud, unless made by an expert and the other party has relied on the former's special knowledge.**

Art. 1342. **Misrepresentation by a 3rd person does not vitiate consent, unless such misrepresentation has created substantial mistake and the same is mutual.**

Art. 1343. **Misrepresentation made in good faith is not fraudulent but may constitute error.**

Art. 1344. **In order that fraud may make a contract voidable, it should be serious and should not have been employed by both contracting parties.**

Incidental fraud only obliges the person employing it to pay damages.

- If a 3rd person should commit violence or intimidation on 1 of the contracting parties and this vitiates the contracting party's consent, then the contract may be annulled (Article 1336). By analogy, if a 3rd person should exert undue influence on 1 of the contracting parties and this vitiates the consent of the contracting party, then the contract may be annulled. However, if the 3rd party commits fraud, damages is the only remedy unless the fraud committed by the 3rd person has created a mutual substantial mistake (Article 1342).

- Rules Regarding Voidable Contracts
  a. Voidable contracts are effective unless set aside (Article 1390).

b. The validity of a voidable contract can only be assailed in a suit for that purpose (*i.e.* complaint or counterclaim).

- The action for annulment of contracts may be instituted by all who are thereby obliged principally or subsidiarily. However, persons who are capable cannot allege the incapacity of those with whom they contracted; nor can those who exerted intimidation, violence, or undue influence, or employed fraud, or caused ,mistake base their action upon these flaws of the contract (Article 1397).
- The action for annulment shall be brought within 4 years. This period shall begin
  i. Intimidation – from the time the defect of the consent ceases
  ii. Violence – from the time the defect of the consent ceases
  iii. Undue influence – from the time the defect of the consent ceases
  iv. Mistake – from the time of the discovery of the mistake
  v. Fraud – from the time of the discovery of the fraud
- The 4 year prescription period to annul contracts entered into by minors or other incapacitated persons shall begin from the time the guardianship ceases (Article 1391, 4th ¶).
- An obligation having been annulled, the contracting parties shall restore to each other the things which have been the subject matter of the contract, with their fruits, and the price with its interest, except in cases provided by law (Article 1398, 1st ¶).
  - In obligations to render service, the value thereof shall be the basis for damages (Article 1398, 2nd ¶).
  - When the defect of the contract consists in the incapacity of 1 of the parties, the incapacitated person is not obliged to make any restitution except insofar as he has been benefited by the thing or price received by him (Article 1399).
  - What if the Thing to Be Returned is Lost
    i. Loss due to Fault of Defendant
      - Defendant has to pay the plaintiff
        1. Value of the thing loss
        2. Fruits if any
        3. Interest

    ii. Loss due to a Fortuitous Event or due to a 3rd party
      - Defendant has to pay the plaintiff
        1. Value of the thing loss
        2. Fruits if any

    iii. Loss due to Fault or Fraud of Plaintiff
      - The plaintiff loses the right to annul (Article 1401).

- There is fault on the part of the plaintiff once the plaintiff regains capacity.

iv. Loss without Fault on the Plaintiff's Part

- Commentators have a difference of opinion
  1. The right to annul is extinguished unless the plaintiff offers to pay the value of the object at the time of loss
  2. The plaintiff is entitled to annul without having to pay anything.

- As long as 1 of the contracting parties does not restore what in virtue of the decree of annulment he is bound to return, the other cannot be compelled to comply with what is incumbent upon him (Article 1402).

- The action for annulment will not prosper in the following:
  i. If the contract has been confirmed (Article 1392)
  ii. If the action to annul has prescribed (Article 1391)
  iii. When the thing which is the object of the contract is lost through the fault or fraud of the person who has a right to institute the proceedings (Article 1401, 1st ¶)
  iv. Estoppel

c. Voidable contracts can be confirmed.
   - Confirmation extinguishes the action to annul a voidable contract (Article 1392).
   - Confirmation is the proper term for curing the defect of a voidable contract.
   - Confirmation cleanses the contract from all its defects from the moment it was constituted (Article 1396).
   - Requisites of Confirmation
     1. That the contract is a voidable or annullable contract
     2. That the ratification is made with knowledge of the cause for nullity
     3. That at the time the ratification is made, the cause of nullity has already ceased to exist
   - Confirmation may be effected expressly or tacitly. It is understood that there is tacit confirmation if, with knowledge of the reason which renders the contract voidable and such reason having ceased, the person who has a right to invoke it should execute an act which necessarily implies an intention to waive his right (Article 1393).

d. Voidable contracts can be confirmed only by the party whose consent was vitiated
   - Confirmation does not require the conformity of the contracting party who has no right to bring the action for annulment (Article 1395).

- Confirmation may be effected by the guardian of the incapacitated person (Article 1394).

3. **Unenforceable Contracts**

Art. 1403. **The following contracts are unenforceable, unless they are ratified:**

(1) Those entered into in the name of another person by one who has been given no authority or legal representation, or who has acted beyond his powers;

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

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

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

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

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

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

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

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

Art. 1404. **Unauthorized contracts are governed by article 1317 and the principles of agency in Title X of this Book.**

Art. 1405. **Contracts infringing the Statute of Frauds, referred to in No. 2 of article 1403, are ratified by the failure to object to the presentation of oral evidence to prove the same, or by the acceptance of benefit under them.**

Art. 1406. **When a contract is enforceable under the Statute of Frauds, and a public document is necessary for its registration in the Registry of Deeds, the parties may avail themselves of the right under Article 1357.**

Art. 1407. **In a contract where both parties are incapable of giving consent, express or implied ratification by the parent, or guardian, as the case may be, of one of the contracting parties shall give the contract the same effect as if only one of them were incapacitated.**

If ratification is made by the parents or guardians, as the case may be, of both contracting parties, the contract shall be validated from the inception.

Art. 1408. **Unenforceable contracts cannot be assailed by third persons.**

- An unenforceable contract is a contract which cannot be enforced by a proper action in court, unless they are ratified, because either they are entered into without or in excess of authority or they do not comply with the Statute of Frauds or both the contracting parties do not possess the required legal capacity.
- The following contracts are unenforceable unless they are ratified (Article 1403)
  a. Those entered into in the name of another person by 1 who has been given no authority or legal representation, or who has acted beyond his powers

Art. 1317. **No one may contract in the name of another without being authorized by the latter, or unless he has by law a right to represent him.**

A contract entered into in the name of another by one who has no authority or legal representation, or who has acted beyond his powers, shall be unenforceable, unless it is ratified, expressly or impliedly, by the person on whose behalf it has been executed, before it is revoked by the other contracting party.

- When a person enters into a contract for and in the name of another, without authority to do so, the contract does not bind the latter, unless he ratifies the same.
- The agent, who has entered into the contract in the name of the purported principal, but without authority from him, is liable to 3rd persons upon the contract.
- The proper term for this case is "ratification".
- *Example:* In a sale, Y claimed that he was an agent of X, even if not. The contract cannot be enforced against X. Another example is when the agent is authorized to lease the property but the agent instead sells the property. The principal is not bound.

b. Those that do not comply with the Statute of Frauds

- This is the most famous variety.

i. An agreement that by its terms is not to be performed within a year from the making thereof

- In *Babao vs. Perez*, the Supreme Court interpreted the phrase "not be to performed within a year" to mean that the obligation cannot be finished within 1 year. Professor Balane does not agree with this interpretation. According to Professor Balane the phrase "not to be performed within a year" should mean that the obligation cannot begin within a year. For practical reasons, the contract must be in writing since the parties might forget. This rule was made to guard against fallibility (forgetfulness) of man and fraud.
- According to Professor Balane, the Supreme Court's interpretation is incorrect. If the obligation cannot be finished within 1 year, the contract is not within the Statute of Frauds because of partial performance.

ii. A special promise to answer for the debt, default or miscarriage of another

- The test as to whether a promise is within the statute has been said to lie in the answer to the question whether the promise is an original or collateral one. If the promise is an original one or an independent one, that is, if the promisor becomes thereby primarily liable for the payment of the debt, the promise is not within the statute.
- If the promise is collateral to the agreement of another and the promisor becomes merely a surety or guarantor, the promise must be in writing.

iii. An agreement made in consideration of marriage, other than a mutual promise to marry

- A mutual promise to marry does not fall within the Statute of Frauds since they are not made in writing.
- Agreements made in consideration of marriage other than the mutual promise to marry are within the Statute of Frauds.
- In *Cabague vs. Auxilio,* the father of the groom promised to improve his daughter-in-law's father's house in consideration of the marriage. The father of the groom made improvements on the house. The wedding did not take place. The Supreme Court said that the father of the groom could not sue on the oral contract which as to him is not "mutual promise to marry". Professor Balane disagrees with the Supreme Court. According to Professor Balane, the father of the groom should be able to sue since there was partial performance.

iv. An agreement for the sale of goods, chattels or things in action, at a price not less than P500, unless the buyer accepts and receives part of such goods and chattels, or the evidence, or some of them, of such things in action, or pay at the time some part of the

purchase money; but when a sale is made by auction and entry is made by the auctioneer in his sales book, at the time of sale, of the amount and kind of property sold, terms of sale, price, names of the purchasers and person on whose account the sale is made, it is a sufficient memorandum

- The requirement of a written instrument or a memorandum for sales of personal property for a price not less than P500, covers both tangible and intangible personal property. It also covers the assignment of choses in action.
- Where a contract for the sale of goods at a price not less than P500 is oral, and there is neither partial payment or delivery, receipt, and acceptance of the goods, the contract is unenforceable, and cannot be the basis of an action for the recovery of the purchase price, or as the basis of an action for damages for breach of the agreement.
- Where there is a purchase of a number of articles which taken separately does not have a price of P500 each, but taken together, the price exceeds P500, the operation of the statute of frauds depends upon whether there is a single inseparable contract or a several one. If the contract is entire or inseparable, and the total price exceeds P500, the statute applies. But if the contract is separable, then each article is taken separately.

v. An agreement of lease for a period of more than 1 year, or the sale of real property or of an interest therein

- As long there is a sale of real property, the sale must be in writing. There is no minimum.
- An oral contract for a supplemental lease of real property for longer period than 1 year is within the Statute of Frauds.
- An agreement to enter into an agreement is also within the Statute of Frauds.

vi. A representation as to the credit of a 3rd person

- A wants to borrow money from C. C does not know A. C goes to B to ask about A's credit standing. B says that A's credit standing is satisfactory even though B knows that A is insolvent. Under Article 1403, C can go after B if B's representation was in writing.
- Professor Balane thinks that this does not belong in the Statute of Frauds. There is no contract between C and B. B did not bind himself to pay C. What we have here is an unenforceable tort.
- According to Professor Balane, "a representation as to the credit of a 3rd person" should be replaced by Article 1443. Article 1443 provides that no express trusts concerning an immovable or any interest therein may be proved by parol evidence.
- When the express trust concerns an immovable or an interest therein, a writing is necessary to prove it. This writing is not

required for the validity of the trust. It is required only for purposes of proof. When the property subject to the express trust, however is not real estate or an interest therein, then it may be proved by any competent evidence, including parol evidence.

c. Those where both parties are incapable of giving consent to a contract

- Neither party or his representative can enforce the contract unless it has been previously ratified. The ratification by 1 party, however, converts the contract into a voidable contract – voidable at the option of the party who has not ratified; the latter, therefore, can enforce the contract against the party who has ratified. Or, instead, of enforcing the contract, the party who has not ratified it may ask for annulment on the ground of his incapacity.
- The proper term is "acknowledgement" (and not ratification).

- 2 Principles in the Statute of Frauds

a. Parol evidence is not admissible. However, there are 2 ways of bringing it out.

- 2 Ways in Which Parol Evidence is Admissible

i. Failure to object by the opposing lawyer when parol evidence is used (Article 1405)

- If there is no objection, then parol evidence is admitted.

ii. Acceptance of benefits (Article 1405)

- If there has been performance on 1 side and the other side accepts, then the Statute of Frauds is not applicable. Also, estoppel sets in so by accepting performance, the defect is waived.

b. The Statute of Frauds applies only to executory contracts and not to those which have been executed in whole or in part.

- "Executed" here means there has been performance in part and acceptance by the other.

4. **Void Contracts**

Art. 1409. **The following contracts are inexistent and void from the beginning:**

(1) Those whose cause, object or purpose is contrary to law, morals, good customs, public order or public policy;

(2) Those which are absolutely simulated or fictitious;

(3) Those whose cause or object did not exist at the time of the transaction;

(4) Those whose object is outside the commerce of men;

(5) Those which contemplate an impossible service;

(6) Those where the intention of the parties relative to the principal object of the contract cannot be ascertained;

(7) Those expressly prohibited or declared void by law.

These contracts cannot be ratified. Neither can the right to set up the defense of illegality be waived.

Art. 1410. **The action or defense for the declaration of the inexistence of a contract does not prescribe.**

- A void contract is an absolute nullity and produces no effect, as if it had never been executed or entered into.
- The following contracts are inexistent and void from the beginning (Article 1409)
  a. Those whose cause, object or purpose is contrary to law, morals. Good customs, public order or public policy
  b. Those which are absolutely simulated or fictitious
  c. Those whose cause or object did not exist at the time of the transaction
     - According to Professor Balane, Article 1409 (3) should not be "did not exist". Rather, the correct phrase should be "could not come into existence" because there can be a contract over a future thing.
     - Examples of "could not come into existence" are tangerine flying elephants and cars running on urine.
  d. Those whose object is outside the commerce of men
  e. Those which contemplate an impossible service
     - Here, there is no object.
  f. Those where the intention of the parties relative to the principal object of the contract cannot be ascertained
     - This is similar to being void for vagueness under the Constitutional law.
  g. Those expressly prohibited or declared void by law
     - An example of this is sale between husband and wife, subject to exceptions. The Supreme Court has held that contingent fees of lawyers wherein the latter receive part of the property subject of litigation are valid, unless unconscionable in amount.
- Characteristics of Void Contracts
  a. The contract produces no effect whatsoever either against or in favor of anyone
  b. A judgment of nullity would be merely declaratory. There is no action for annulment necessary as such is *ipso jure.*
     - Even when the contract is void or inexistent, an action is necessary to declare its inexistence, when it has already been fulfilled. Nobody can take the law into his own hands.
     - The intervention of a competent court is necessary to declare the absolute nullity of the contract and to decree the restitution of what has been given under it.
     - The judgment of nullity will retroact to the very day when the contract was entered into.

c. It cannot be confirmed, ratified or cured.

d. If it has been performed, the restoration of what has been given is in order, except if *pari delicto* will apply.

e. The right to set the contract's nullity cannot be waived

f. The action for nullity is imprescriptible (Article 1410)

- As between the parties to a contract, validity cannot be given to it by estoppel if it is prohibited by law or is against public policy.

g. Any person can invoke the contract's nullity if its juridical effects are felt as to him

- The defense of illegality of contracts is not available to 3rd persons whose interests are not directly affected (Article 1421).

- *Pari Delicto* (in equal guilt)

Art. 1411. **When the nullity proceeds from the illegality of the cause or object of the contract, and the act constitutes a criminal offense, both parties being in *pari delicto*, they shall have no action against each other, and both shall be prosecuted. Moreover, the provisions of the Penal Code relative to the disposal of effects or instruments of a crime shall be applicable to the things or the price of the contract.**

This rule shall be applicable when only one of the parties is guilty; but the innocent one may claim what he has given, and shall not be bound to comply with his promise.

Art. 1412. **If the act in which the unlawful or forbidden cause consists does not constitute a criminal offense, the following rules shall be observed:**

(1) When the fault is on the part of both contracting parties, neither may recover what he has given by virtue of the contract, or demand the performance of the other's undertaking;

(2) When only one of the contracting parties is at fault, he cannot recover what he has given by reason of the contract, or ask for the fulfillment of what has been promised him. The other, who is not at fault, may demand the return of what he has given without any obligation to comply his promise.

- Articles 1411 and 1412 refer to the *pari delicto* rule, which literally means "in equal kind", or also "in equal guilt" – *in pari delicto oritur actio* and sometimes "in equal guilt, the position of the defendant is stronger" – *in pari delicto potior est condicio defendentis.* The position of the defendant is stronger because the plaintiff's claim is not really granted.
- The *pari delicto* rule applies only to contracts which is void for illegality of subject matter. Thus, if the contract is void for simulation, the *pari delicto* rule does not apply so a party can claim the object back through reconveyance.
- Outline:

a. If it constitutes a criminal offense

   i. If both parties are in *pari delicto*

      - No action for specific performance can prosper on either side (Article 1411, 1st ¶).
      - No action for restitution can prosper on either side (Article 1411, 1st ¶).
      - *Example:* A shabu supplier supplies shabu to the shabu dealer. If the shabu supplier does not deliver the shabu, the dealer cannot file an action for specific performance.

   ii. If only 1 party is guilty

      - No action for specific performance can prosper on either side.
      - An action for restitution will be allowed only if the innocent party demands. The guilty party is not entitled to restitution.

b. If it does not constitute a criminal offense

   i. If both parties are in *pari delicto*

      - No action for specific performance can prosper on either side (Article 1411, 1st ¶).
      - No action for restitution can prosper on either side (Article 1411, 1st ¶).

   ii. If only 1 party is guilty

      - No action for specific performance can prosper on either side.
      - An action for restitution will be allowed only if the innocent party demands.

- Exceptions to *Pari Delicto*

  a. Interest paid in excess of the interest allowed by the usury laws may be recovered by the debtor, with interest therefrom from the date of payment (Article 1413)

  b. When money is paid or property delivered for an illegal purpose, the contract may be repudiated by 1 of the parties before the purpose has been accomplished, or before any damage has been caused to a 3rd person. In such case, the courts may, if the public interest will thus be subserved, allow the party repudiating the contract to recover the money or property (Article 1414).

  c. Where 1 of the parties to an illegal contract is incapable of giving consent, the courts, may, if the interest of justice so demands, allow recovery of money or property delivered by the incapacitated person (Article 1415).

  d. When the agreement is not illegal *per se* but is merely prohibited, and the prohibition by law is designed for the protection of the plaintiff, he may, if public policy is enhanced, recover what he has paid or delivered (Article 1416).

  e. When the price of any article or commodity is determined by statute, or by authority of law, any person paying any amount in excess of the maximum price allowed may recover such excess (Article 1417).

f. When the law fixes, or authorizes the fixing of the maximum number of hours of labor, and a contract is entered into whereby a laborer undertakes to work longer than the maximum thus fixed, he may demand additional compensation for service rendered beyond the time limit (Article 1418).

g. When the law sets or authorizes the setting of a minimum wage for laborers, and a contract is agreed upon by which a laborer accepts a lower wage, he shall be entitled to recover the deficiency (Article 1419).

- The above contracts are void but there is some remedy for policy considerations. An example is the minimum wage law under Article 1419 wherein the employer and the employee freely agree to the terms of employment below the minimum wage. Although they are in *pari delicto*, you don't follow the rules of *pari delicto.* There is a policy consideration of social justice involved. This is similar to the preferential option for the poor of churches.

- Final Provisions

Art. 1420. **In case of a divisible contract, if the illegal terms can be separated from the legal ones, the latter may be enforced.**

Art. 1421. **The defense of illegality of contract is not available to third persons whose interests are not directly affected.**

Art. 1422. **A contract which is the direct result of a previous illegal contract, is also void and inexistent.**

Dear Fellow Bar Examinees,

I'm sorry the editing of this "reviewer" took longer than I expected.

I hope this "reviewer" would help you make sense of the rather confusing world of civil law.

The notes here are from Professor Ruben F. Balane's lectures in his UP Civil Law Review class (I'm not sure from what year), I just added the codal provisions and reformatted the notes for easier reading. I also included parts of the Obligations and Contracts Reviewer made by 4A Class 2000 and my notes in Civil Law Review 2 on Obligations and Contracts (also under Professor Balane) last semester (2001-2002).

If you find this helpful, please share with another examinee.

If you see any mistake, please share with me. Thanks.

God bless and good luck to all of us.

Dot
Ateneo Law 2002

THANK YOU TO PROFESSOR RUBEN F. BALANE