Disclaimer: This note was the result of pooled present at hand legal resources; hence for omitted topics, it is incumbent upon you to supply the same.

PROPERTY [1]

Property defined: is any physical or incorporeal entity capable of becoming the object of a juridical relation.

Property refers to all things which are (already in the possession of man) or may be (susceptible of appropriation) the objects of appropriation are considered as property either as immovable or movable.

Property is not the same as. Things or causas refers refers to objects which are appropriable or not. Property is always appropriable.
Appropriation defined: equivalent to occupation; willful apprehension of a corporeal object which has no owner with the intent to acquire ownership.

Requisites of property:

1. **Utility** – capable of satisfying human needs (e.g. food, shelter, and clothing).

2. **Individuality/substantivity** – quality of having existence apart from any other thing or property (e.g. parts of the human body may, within the limits prescribed by law, become property only when separated from the body of the person to whom they belong).

3. **Appropriability** – susceptibility of being possessed by men. Hence, diffused forces of nature in their totality cannot be considered as property (e.g. air, lightning).

An object cannot be considered as property because of PHYSICAL IMPOSSIBILITY (e.g. res communes) or LEGAL IMPOSSIBILITY (e.g. human body).

Res communes – these are common things which are not capable of appropriation in their entirety (e.g. air, lightning) although they may be appropriated under certain conditions in a limited way (e.g. oxygen, electricity). In case of the latter, they become property.

Res nullius – that which has no owner because it has not yet been appropriated (e.g. hidden treasure, wild animals, fish in the ocean), or because it has been lost or abandoned by the owner. It constitutes property as long as it is susceptible of being possessed for the use of man.

Res alicujus – objects already owned or possessed by men.

THE HUMAN BODY

During lifetime: RULE: it is NOT a property. Hence, cannot be appropriated. EXCEPTION: within the limits prescribed by law. *R.A.7719 promotes voluntary blood donation; service contracts (e.g. modeling).*

After death: RULE: still, NOT a property by reason of public policy. Personality of a man demands respect even after death. EXCEPTION: within the limits prescribed by law. R.A 349 legalizes permission of use human organs or any portion of the human body for medical, surgical, or scientific purposes under certain conditions; R.A 7170 authorizes the legacy or donation of human organs after death or for transplant as well as the advancement of research, medical and dental education and therapy.

CLASSIFICATION OF PROPERTY

According to Nature [Art. 414]
1. Immovable or real property; or
2. Movable or personal property.

According to Character of Ownership
1. Public dominion
2. Private property

According to essential form
1. Incorporeal
2. Corporeal

According to designation
1. Specific
2. Generic

According to susceptibility to substitution
1. Fungible
2. Non-fungible

According to aptitude for repeated use
1. Consumable
2. Non-consumable

According to its susceptibility to division
1. Divisible
2. Indivisible

According to its existence in time
1. Present- res existens
2. Future- res future

According to its dependence
1. Principal
2. accessory

ACCORDING TO NATURE

I. Real by nature

a. 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.

[1] From SLU reviewer and Balane Notes.

How do you reconcile the rulings of Associated Insurance vs. Iya and Tumalad vs. Vicencio? Tumalad applies only if no 3rd parties are prejudiced.

Is it correct to say that 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, as between the parties, the chattel mortgage is enforceable. The parties are estopped from assailing the validity.

b. Mines, quarries and slag dumps, while the matter thereof forms part of the bed, and waters either running or stagnant.

II. Real by incorporation

a. 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 [ex: chattel mortgage law].

b. 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. There is no requirement that the attachment be done by the owner of the property. The attachment may be done by anyone.

In Board of **Assessment 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. The assessment is invalid.

c. Fertilizer actually used on a piece of land. – The fertilizer is real property since it becomes an integral part of the soil.

III. Real by destination

1. 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.

2. 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 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.

3. 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.

4. 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.

IV. Real by analogy

a. 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.

b. 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.

According to Ownership

I. 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) and 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. Public dominion connotes sovereignty.

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.

II. 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 refuse. 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

CASE: LAUREL VS. GARCIA [G.R. No. 92013 July 25, 1990] - Roponggi case

Facts: The government of Japan donated two parcels of land located in Japan to the government of the Philippines. The donation is a form of restorative justice to the Filipinos for the atrocities that the Japanese soldiers committed to the latter. The said parcels of land are intended for the Philippines to build its embassy. However, due to lack of funds, the said property was never developed and used. Respondents Ramon Garcia as the head of Asset Privatization Trust, Raul Manglapus, as the Secretary of Foreign Affairs, and Catalino Macaraig as executive Secretary want to sell the land, since it is no longer in use.

Issue: Whether or not the said lots can be sold.

Held: No. The Roppongi property is correctly classified under paragraph 2 of Article 420 of the Civil Code as property belonging to the State and intended for some public service.

Has the intention of the government regarding the use of the property been changed because the lot has been Idle for some years? Has it become patrimonial?

The fact that the Roppongi site has not been used for a long time for actual Embassy service does not automatically convert it to patrimonial property. Any such conversion happens only if the property is withdrawn from public use (Cebu Oxygen and Acetylene Co. v. Bercilles, 66 SCRA 481 [1975]). ***A property continues to be part of the public domain, not available for private appropriation or ownership until there is a formal declaration on the part of the government to withdraw it from being such*** (Ignacio v. Director of Lands, 108 Phil. 335 [1960]).

A mere transfer of the Philippine Embassy to Nampeidai in 1976 is not relinquishment of the Roppongi property's original purpose. Even the failure by the government to repair the building in Roppongi is not abandonment since as earlier stated, there simply was a shortage of government funds. The recent Administrative Orders authorizing a study of the status and conditions of government properties in Japan were merely directives for investigation but did not in any way signify a clear intention to dispose of the properties.

As can be gleaned from the case, in order for a property public dominion used for public purpose to become patrimonial property, there must be an express positive act of the Government converting the property of public dominion into a patrimonial property. In other words Congress has to pass a law converting a property of Public Dominion into a patrimonial property. And once it became a patrimonial property then it can be the subject of the commerce of men.

PROPERTY OF LGU's

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 can be classified in two kinds:

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 person 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 LGUs cannot own property devoted for public service. But that was not what the SC said.

According to Essential Form

1. Corporeal- those that are palpable.

2. Incorporeal (*i.e.,* shares of stock, goodwill in a business)

Note: The distinction is important for areas such as mode of transfer.

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.

Note: The distinction is important in legacies and donations. The distinction is also important in extinguishing obligations.

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

According to its Aptitude for Repeated Use

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.

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.

According to its Susceptibility to Division

1. Divisible

2. Indivisible - The distinction is important in partition (either physical or constructive partition)

According to its Existence in Time

1. Present – *res existens*

2. Future *[res future]* - 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.

According to its Dependence

1. Principal
2. Accessory

Importance of distinction: 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.

The **general rule** is that the accessory follows the principal. An exception to the general rules is reverse accession (Article 120, Family Code).

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.

MOVABLE PROPERTY

(1) General Rule: all things which can be transported from place to place without impairment of the real property to which they are fixed.

(2) Exclusions: those movables susceptible of appropriation which are not included in the enumeration of immovables.

(3) Special: real property which by any special provisions of law is considered as personalty.

(4) In parts: forces of nature which are brought under control by science.

(5) Obligations (credits) and actions (replevin) which have for their object movables (corporeal or intangible) or demandable sums.
These are really personal rights because they have a definite passive subject (e.g. intellectual property).

(6) Shares of stocks or interests in juridical entities.

BAR 1994- CHATTEL MORTGAGE; IMMOVABLES - Vini constructed a building on a parcel of land he leased from Andrea. She chattel mortgaged the land to Felicia. When he could not pay Felicia, the latter initiated foreclosure proceedings. Vini claimed that the building she had constructed on the leased land cannot be validly foreclosed because the building was, by law, an immovable. Is Vini correct?

SUGGESTED ANSWERS:
a) The Chattel Mortgage is void and cannot be foreclosed because the building is an immovable and cannot be an object of a chattel mortgage.

b) It depends. If the building was intended and is built of light materials, the chattel mortgage may be considered as valid as between the parties and it may be considered in respect to them as movable property, since it can be removed from one place to another. But if the building is of strong material and is not capable of being removed or transferred without being destroyed, the chattel mortgage is void and cannot be foreclosed.

c) If it was the land which Vini chattel mortgaged, such mortgage would be void, or at least unenforceable, since he was not the owner of the land. If what was mortgaged as a chattel is the building, the chattel mortgage is valid as between the parties only, on grounds of estoppel which would preclude the mortgagor from assailing the contract on the ground that its subject-matter is an immovable. Therefore Vini's defense is untenable, and Felicia can foreclose the mortgage over the building, observing, however, the procedure prescribed for the execution of sale of a judgment debtor's immovable under Rule 39, Rules of Court, specifically, that the notice of auction sale should be published in a newspaper of general circulation.

d) The problem that Vini mortgaged the land by way of a chattel mortgage is untenable. Land can only be the subject matter of a real estate mortgage and only an absolute owner of real property may mortgage a parcel of land. (Article 2085 (2) Civil Code). Hence, there can be no foreclosure. But on the assumption that what was mortgaged by way of chattel mortgage was the building on leased land, then the parties are treating the building as chattel. A building that is not merely superimposed on the ground is an immovable property and a chattel mortgage on said building is legally void but the parties cannot be allowed to disavow their contract on account of estoppel by deed. However, if third parties are involved such chattel mortgage is void and has no effect.

BAR 2003- CHATTEL MORTGAGE; IMMOVABLES- X constructed a house on a lot which he was leasing from Y. Later, X executed a chattel mortgage over said house in favor of Z as security for a loan obtained from the latter. Still later, X acquired ownership of the land where his house was constructed, after which he mortgaged both house and land in favor of a bank, which mortgage was annotated on the Torrens Certificate of Title. When X failed to pay his loan to the bank, the latter, being the highest bidder at the foreclosure sale, foreclosed the mortgage and acquired X's house and lot. Learning of the proceedings conducted by the bank, Z is now demanding that the bank reconvey to him X's house or pay X's loan to him plus interests. Is Z's demand against the bank valid and sustainable? Why? 5%

SUGGESTED ANSWER: No, Z's demand is not valid. A building is immovable or real property whether it is erected by the owner of the land, by a usufructuary, or by a lessee. ***It may be treated as a movable by the parties to chattel mortgage but such is binding only between them and not on third parties*** *(Evangelista v. Alto Surety Col, inc. 103 Phil. 401 [1958]).* In this case, since the bank is not a party to the chattel mortgage, it is not bound by it, as far as the Bank is concerned, the chattel mortgage, does not exist. Moreover, the chattel mortgage does not exist. Moreover, the chattel mortgage is void because it was not registered. Assuming that it is valid, it does not bind the Bank because it was not annotated on the title of the land mortgaged to the bank. Z cannot demand that the Bank pay him the loan Z extended to X, because the Bank was not privy to such loan transaction.

ANOTHER SUGGESTED ANSWER: No, Z's demand against the bank is not valid. His demand that the bank reconvey to him X's house presupposes that he has a real right over the house. All that Z has is a personal right against X for damages for breach of the contract of loan. The treatment of a house, even if built on rented land, as movable property is void insofar as third persons, such as the bank, are concerned. On the other hand, the Bank already had a real right over the house and lot when the mortgage was annotated at the back of the Torrens title. The bank later became the owner in the foreclosure sale. Z cannot ask the bank to pay for X's loan plus interest. There is no privity of contract between Z and the bank.

ALTERNATIVE ANSWER: The answer hinges on whether or not the bank is an innocent mortgagee in good faith or a mortgagee in bad faith. In the former case, Z's demand is not valid. In the latter case, Z's demand against the bank is valid and sustainable. Under the Torrens system of land registration, every person dealing with registered land may rely on the correctness of the certificate of title and the law will not in any way oblige to him to look behind or beyond the certificate in order to determine the condition of the title. He is not bound by anything not annotated or reflected in the certificate. If he proceeds to buy the land or accept it as a collateral relying on the certificate, he is considered a buyer or a mortgagee in good faith. On this ground, the Bank acquires a clean title to the land and the house. However, a bank is not an ordinary mortgagee. Unlike private individuals, a bank is expected to exercise greater care and prudence in its dealings. The ascertainment of the condition of a property offered as collateral for a loan must be a standard and indispensable part of its operation. The bank should have conducted further inquiry regarding the house standing on the land considering that it was already standing there before X acquired the title to the land. The bank cannot be considered as a mortgagee in good faith. On this ground, Z's demand against the Bank is valid and sustainable.

RIGHTS AS PROPERTY

Property includes not only material objects, but also rights [although these are merely relations]. However, only rights which are PATRIMONIAL in nature can be considered as

property. Otherwise, they are not (e.g. (family rights, right to life, liberty).

Classification of Rights:

1. Real rights *[jus in re]:* interest belonging to a person over a specific thing without a definite passive subject against whom such right may be personally enforced (e.g. ownership).

Elements:

- **a.** Ownership of an object by a subject.
- **b.** General obligation of respect, there being no particular passive subject.
- **c.** Effective actions against anyone who may want to disturb it.

2. Personal rights *[jus in personam/ad rem]:* the power of a person (creditor) to demand from another (debtor) as a definite passive subject, the fulfillment of the latter's obligation; the right of obligation.

Elements:

- **a.** Subjects consisting of active (creditor-obligee) and passive (debtor-obligor).
- **b.** There is a particular passive subject who is bound to observe the obligation.
- **c.** Effective actions against the passive subject.

Note that a person can have REAL RIGHT over an IMMOVABLE and MOVABLE PROPERTY**.** It is wrong to think that real rights are applicable only to immovable properties. This can be explained by the diagram below.

REAL RIGHTS

1. Ownership
2. Possession
3. Usufruct
4. Conventional Mortgage & legal redemption
5. Hereditary right

Immovable

1. Real estate Mortgage [REM
2. Easements on 2 immovable only
3. Antichrisis
4. Lease for more than 1 year.

Movable

1. Chattel
2. pledge

Thus, a person who has ownership over an immovable or movable property has a real right [enforceable against the whole world] over the property subject of real estate or chattel mortgage.

RIGHT OF OWNERSHIP

Definition: The independent right of a person to the exclusive enjoyment and control of a thing including its disposition and recovery subject only to the restrictions established by law and the rights of others.

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.

Objects: Ownership may be exercised over THINGS or RIGHTS.

Characteristics of Ownership

1. **General:** "the owner has the right to enjoy and dispose of a thing, without other limitations than those established by law. The owner has also a right of action against the holder and possessor of the thing in order to recover it." [Art. 428]

   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.

Attributes of ownership:

1. **Right to enjoy** – includes right to use and enjoy (jus utendi), right to the fruits (jus fruendi), right to accessories (jus accessiones) and right to consume by use (jus abutendi), within the limits prescribed by law; includes the right to exclude any person from the enjoyment and disposal thereof.

   Jus accessiones: 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.

   Right to possess: the right to hold a thing or enjoy a right; It may be exercise in one's own name or in the name of the other; possession may be in the concept of an owner or a mere holder with the ownership pertaining to another; right to possess does not always include the right to use.

   It suffices that a legal manifestation to possess the property either through oneself or another.

2. **Right to dispose** – (jus disponendi) the power of the OWNER to alienate, encumber, transfer and even destroy the thing owned, totally or partially, within

the limits prescribed by law; includes right not to dispose.

3. **Right of action** – (jus vindicandi) given by the law to the person whose property has been wrongfully taken from him against any person unlawfully detaining it even if the possession of the latter has been legalized by conveyance, either to recover damages or the possession of the property; the right of action can be transferred.

   However, the person who claims the he has a better right to the property must prove (burden of proof) his title thereto. Accordingly, a person in peaceful possession of property must be respected in his possession until a competent court rules for his ouster.

LIMITATIONS ON THE RIGHT OF OWNERSHIP

1. Those imposed in general by the State in the exercise of the power of taxation, police power, and power of eminent domain.
2. Those imposed by law such as legal easements and the requirement of legitime in succession.
3. Those imposed by the grantor of the property on the grantee, either by contract or by last will.
4. Those imposed by the owner himself, such as voluntary easement, mortgage, pledge and lease.

   ✪ If the prohibition is to alienate the property is perpetual, it is considered as void. The maximum period of inalienability, when imposed by will, is 20 years, unless a fideicomissary substitution has been established. The same principle, by analogy, can apply to any other gratuitous disposition such as donation, unless the donor provides for reversion (Art. 757), in which case, a longer period may be allowed.

   ✪ In mortgage contracts, a stipulation forbidding the owner from alienating the property mortgaged is void (Art. 2130).

   ✪ **Where the stipulation on inalienability is valid,** the property is NOT subject to attachment. Otherwise, the prohibition to alienate would be illusory.

   ✪ Stipulations limiting the rights of owners as embodied in a restrictive covenant.

5. Those arising from conflicts of private rights such as those which take place in *accession continua* or those caused by contiguity of property.
6. Prohibition against the acquisition of private lands by aliens.

Evidence to prove ownership: ownership may be proved by any evidence admissible in law.

a. Torrens title.
b. Title from the Spanish Government.
c. Patent duly registered in the Registry of Property by the grantee.
d. Deed of sale.
e. Long possession.

Tax declarations are not conclusive proof of ownership. However, when coupled with possession for a period sufficient for prescription, they become strong evidence of ownership. Also, the failure of a person to declare land for taxation may be admitted to show that he is not the owner thereof.

DISPUTABLE PRESUMPTION OF OWNERSHIP

Requisites:

1. There must be actual (physical or material) possession of the property.
2. The possession must be under claim of ownership.

Hence, the true owner must resort to judicial process for the recovery of the property.

ACTIONS FOR POSSESSION

PERSONAL PROPERTY

Φ **Recourse: Replevin,** to be filed within 4 years from dispossession in case there is good faith or 8 years from dispossession of bad faith on the part of the possessor of the property.

REAL PROPERTY

1. ***Accion Interdictal*** **[Ejectment cases]**

   a. Forcible entry – A person deprived of the possession of any land or building by force, intimidation, stealth, threat and strategy (FISTS).

   b. Unlawful detainer – Any landlord, vendor, vendee or other person against whom the possession of any land or building is unlawfully withheld after the expiration or termination of the right to hold possession by virtue of any contract, express or implied.

   Period to file action:

   Forcible entry- Within 1 year after such unlawful deprivation or withholding of possession, or upon the discovery of FISTS. No demand is necessary in a forcible entry case.

   Unlawful detainer- it is to be filed within 1 year commencing from the time of last formal demand (oral or written; direct or indirect) to vacate. No demand is necessary for a lessee to vacate when it is specifically provided for in the agreement.

   Prayer: for the restitution of possession, with damages and costs. *However, the only damages that can be recovered in an Ejectment suit are the fair rental value or the reasonable compensation for the use and occupation of the real property.* Other damages must be claimed in an ordinary action.

   The defendant, however, may set up a counterclaim for moral damages and recover it if it is within the jurisdiction of the court.

   Jurisdiction: MTC (summary procedure). Whatever the amount of plaintiff's damages will not affect the court's jurisdiction.

Issue: Physical possession. The decision in such action is ***res judicata*** in the question of possession. **Sub-lessees** are bound by the judgment rendered against the lessee in an ejectment case even if they were not made parties thereto.

However, relative to ejectment case is the principle of ***tacita reconduccion*** [implied/tacit lease] - wherein the renewal of the lease is based on the mode of payment of the lease, whether daily, monthly or yearly.

2. ***Accion publiciana*** **[plenary action]:** whenever the owner is dispossessed by any other means (e.g. possession is due to tolerance of the owner) other than FISTS, he may maintain this action to recover possession without waiting for the expiration of 1 year before commencing this suit. It may also be brought after the expiration of 1 year if no action had been instituted for forcible entry or unlawful detainer.

3. ***Accion reinvindicatoria*****:** action for recovery of dominion over the property as owner.

   Two things must be proved in an *accion reivindicatoria*:
   1. The identity of the property
   2. Plaintiff's title to it

   This action should be filed in case of refusal of a party to deliver possession of property due to an adverse claim of ownership.

   A suit to recover possession of a parcel of land as an element of ownership is a reinvindicatory action.

   If the land is registered then pray for conveyance to prevent splitting causes of action.

   In an action for conveyance, the register of deeds must be impleaded as a party thereto.

4. **Writ of possession:** A writ of possession is improper to eject another from possession except in the following cases:
   - **a.** After the land has been registered under the Torrens system of registration.
   - **b.** Extrajudicial foreclosure of mortgage.
   - **c.** Judicial foreclosure of mortgage provided that the mortgagor has possession and no 3rd party intervened.
   - **d.** Execution sales.

5. **Writ of injunction:** injunction is not a proper remedy for the recovery of possession. But where the plaintiff is admittedly the owner of the property, and is in possession thereof, he is entitled to the equitable remedy of injunction to prevent or restrain acts of trespass and illegal interference by others with the possession of the property.

RIGHT TO ENCLOSE OR FENCE: Every owner may enclose or fence his land or tenements by any reasonable means subject to the right of others to existing servitudes imposed on the land or tenement.

RIGHT TO SPACE, SUBSOIL, AND SURFACE RIGHTS OF A LAND OWNER: 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 requirement of aerial navigation.

Economic utility: The right of the landowner extends to the space and subsoil as far as necessary for his practical interests, or to the point where it is possible to assert his dominion; beyond these limits, he would have no legal interest.

The right of the owner of a parcel of land to construct any works or make any plantations and excavations on his land is subject to:
- **a.** Existing servitudes or easements.
- **b.** Special laws.
- **c.** Local ordinances.
- **d.** The reasonable requirements of aerial navigation.
- **e.** Rights of third persons.

REGALIAN DOCTRINE: All minerals and other natural resources found either in public or private lands are owned by the State.

OBLIGATION TO RESPECT THE RIGHTS OF OTHERS: The owner of a thing cannot make use thereof in such a manner as to injure the rights of a 3rd person.

✪ This is based on the police power of the State.

✪ It does not apply where the owner of a thing makes use of it in a lawful manner for then it cannot be said that the manner of the use is such "as to injure the rights of a third person".

PRINCIPLE OF SELF – HELP

Who may avail? The **owner** or **lawful possessor** of a thing.

Right involved: RIGHT TO EXCLUDE any person from the ENJOYMENT and DISPOSAL thereof.

Self-help: 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.

Requisites of self-help:
1. Owner must be lawful possessor.
2. Owner must use only reasonable force.
3. There must be actual or imminent threatened physical invasion or usurpation of the property and life of the owner.
4. Can only be exercised at the time of an actual or threatened dispossession or immediately after the dispossession has taken place.

✪ The actual invasion of property may consist of a mere disturbance of possession or of real dispossession. In the first case, the force may be used as long as the disturbance continues. In the second case, the force to regain

possession can be used only immediately after the dispossession. Once the usurper's possession has become firm by lapse of time, the lawful possessor must resort to the competent authority to recover his property.

✪ The principle of self defense in the RPC covers not only defense of a man's person but also extends to his rights including the right of property.

Self-help doctrine is MODIFIED by the principle of state of necessity, and the condemnation of property through the exercise of State powers (eminent domain and police power). State of necessity prevails over the principle of self-help.

STATE OF NECESSITY- 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 hanger, and the threatened damage, compared to the damage arising to the owner from the interference, is much greater.

Right of the owner: Demand from the person benefited indemnity for the damage to him.

Exception: Tolentino – If the owner of the property causing the danger would have been responsible for damages if the danger had not been averted (e.g. to prevent inundation, demolition of a dam constructed without authority. The owner of the dam need not be indemnified).

Requisites:

1. The interference is necessary.
2. The damage to another is much greater than the damage to the property.

✪ The seriousness or gravity of the danger must be much greater than the damage to the property affected or destroyed by the protective act.

✪ Danger to life is always greater than damage to property.

✪ If through an error, one believed himself to be in a state of necessity, or used excessive means, his act would be illicit, and the owner of the property can use the principle of self-help.

✪ The law does not require that the person acting in a state of necessity be free from negligence in the creation of the threatened danger.

EXERCISE OF STATE POWERS

EMINENT DOMAIN: No person shall be deprived of his property except by competent authority and fro public use and always upon payment of just compensation.

Should this requirement be not complied with, the courts shall protect and, in proper cases, restore the owner in his possession.

POLICE POWER: 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.

Requisites:

1. The interest of the public in general, as distinguished from those of a particular class, requires such interference.
2. The means employed are reasonably necessary for the accomplishment of a purpose, and not unduly oppressive upon individuals.

RIGHTS TO HIDDEN TREASURE

Concept: Treasure consists of money, jewels, or other precious objects which are hidden and unknown, such that their finding is a real discovery.

Rules:

a. The treasure belongs to the owner of the land if he is the finder.

b. The finder is entitled to 1/2 if he is not the owner of the land, provided the discovery is by chance.

c. If the finder is a trespasser, he shall not be entitled to any share of the treasure.

d. If the things found be of interest to science or the arts, the State may acquire them at their just price, which shall be divided equally among the land owner and the finder.

"By chance" means by good luck; there must be no purpose or intent to look for treasure. If it does, the finder, who is not the land owner, becomes a trespasser.

The Code Commission do not preclude a finder who hunts for hidden treasure; But the one who looks for hidden treasure on the property of another should have the latter's permission, since a trespasser is not entitled to any share in the hidden treasure he may find.

If the land owner gave his permission to the treasure hunter, the latter is entitled to 1/2 because this is still a case of "by chance".

The rule is different if the finder is unaware of the hidden treasure and he was commissioned by the land owner to look for treasure. If the finder was so ordered by the owner, his only right is to be paid his salary, unless a contrary intention appears in the agreement.

If the finder is a lessee or usufructuary, the latter gets 1/2; if found by another person other than the lessee or usufructuary, 1/2 goes to him and 1/2 goes to the owner of the property on which it was found.

With respect to the term "other precious objects" it would refer only to movables which are similar to money or jewelry (ejusdem generis rule); they include things of interest to science or the arts.

The deposit must be "hidden and unknown", since if the treasure is purposely hidden, the owner may recover it from the finder unless he has abandoned the property or considered it lost without hope of ever finding it.

Where the things discovered do not qualify as hidden treasure, the rules on occupation would apply.

RIGHT OF ACCESSION

Definition: The right of the owner of a thing, real or personal, to become the owner of everything which is produced thereby, or which is incorporated or attached thereto, either naturally or artificially.

Accession is not a mode of ownership. It is a mere concomitant right of ownership. It is a mere incident or consequence of ownership.

ACCESSION	ACCESSORY
The fruits of, or additions to, or improvements upon, a thing (the principal) in its three forms of building, planting and sowing.	Things joined to, or included with the principal thing for the latter's embellishment, better use, or completion.
Not necessary to the principal thing.	The accessory and the principal must go together.
Both can exist only in relation to the principal.	

✪ Since the law itself gives the right, accession may, in a sense, be considered as a mode of acquiring property under the law.

KINDS OF ACCESSION

1. **Accession discreta** – extension of the right of ownership to the products of a thing.

   ✪ Based on the principle of justice for it is only just that the owner of a thing should also own whatever it produces.

   Divisions: Natural fruits, industrial fruits, and civil fruits.

2. **Accession continua** – the acquisition of ownership over a thing incorporated to that which belongs to the owner.

   ✪ Based on convenience, necessity and utility, for it is more practical that the owner of the principal should also own the accessory instead of a co-ownership.

   a. **With respect to real property, it may either be.**
      i. Accession industrial (building, planting, sowing).
      ii. Accession natural (alluvium, avulsion/by force of river, change of river course, and formation of islands).

   b. **With respect to personal property, it may be:**
      i. Conjunction or adjunction.
      ii. Commixtion or confusion.
      iii. Specification

Basic principles on accession:

a. The owner of a property owns the extension or increase thereto.
b. *Accesoria sequitor principalia* [Accessory follows the principal.
c. The incorporation of the accessory with the principal is effected only when two things are so united that they cannot be separated without injuring or destroying the juridical nature of one of them.

ACCESSION DISCRETA
RIGHT OF OWNER TO THE FRUITS

Fruits: include all the products of things, the benefits from rights, and the advantage derived from the use of a thing.

Divisions: Natural fruits, industrial fruits, and civil fruits.

General rule: All fruits belong to the OWNER of a thing.

✪ The fruits may either be in the form of damages suffered by the owner of a land.

Exceptions:

a. Possessor in good faith.
b. Usufructuary.
c. Lessee.
d. Pledgee.
e. Creditor in Antichresis.

KINDS OF FRUITS

Natural fruits:

a. The spontaneous products of the soil.
b. The young and other products of the soil.

✪ Under the rule *partus sequitur ventrem*, to the owner of female animals would also belong the young of such animals although this right is lost when the owner mixes his cattle with those of another.

✪ The **young of animals** becomes an accession if they are already apparent in the womb or upon birth.

Industrial fruits – The products of lands of any kind which are produced through cultivation or labor.

✪ Standing trees are not fruits since they are considered immovables although they produce fruits themselves. However, they may be considered as industrial fruits when they are cultivated or exploited to carry on an industry.

Civil fruits- all passive incomes derived from property, such as-

a. Rents of buildings.
b. Prices of leases (rents) of lands and other property (including movables).
c. Amount of perpetual or life annuities or other similar income.

Payment of Expenses: He who receives the fruits has the obligation to pay the expenses made by a third person in their production, gathering and preservation.

Expenses covered:

a. Dedicated to the annual production, and not for the improvement of the property.

b. Not unnecessary, excessive, of for pure luxury.
c. Required by the condition of the work or the cultivation made.

✪ This rule may apply where the owner of the property recovers the same from a possessor who has not yet received the fruits although they may have already gathered or harvested.

✪ The rule is in keeping with the principle on unjust enrichment.

EFFECT OF BAD FAITH ON THE FRUITS:

a. If the fruits have not yet been gathered at the time the owner recovers possession from a possessor in bad faith, he does not have to pay for **production expenses** since a possessor in bad faith loses that which has been planted or sown, without right to any indemnity whatsoever, except for necessary expenses of preservation.

✪ The land owner acquires the fruits by accession.

b. If the fruits are already severed or gathered, and are ordered turned over to the owner of the land by the possessor in bad faith, the latter is entitled to be reimbursed and may deduct his expenses of cultivation, gathering and preservation.

✪ Even where such expenses exceed the value of the fruits, the owner must pay the expenses just the same because the law makes no distinction.

✪ Moreover, he who is entitled to the benefits and advantages must assume the risks and losses, the owner, however, may free himself of the expenses by permitting the possessor to complete the harvesting and gathering of the fruits for him.

POSSESSION LEGALLY INTERRUPTED

1. Service of summons
2. Acknowledgment of the better right of the plaintiff
3. Fortuitous event

From the moment the possession is interrupted, the possessor is not considered in bad faith.

Right of Concession- this right is exercise only by the land owner. It contemplates that the expenses of landowner is set-off against his share in the fruits. If the possessor refuses such arrangement then the possessor shall not be entitled to the payment of expenses but the landowner is entitled to the fruits.

WHEN NATURAL AND INDUSTRIAL FRUITS DEEMED TO EXIST: Only such as are manifest or born are considered as natural or industrial fruits. With respect to animals, it is sufficient that they are in the womb of the mother, although unborn.

✪ Civil fruits are easily prorated for they are deemed to accrue daily and belong to the possessor in good faith in that proportion.

ACCESSION CONTINUA [INDUSTRIAL]
IMMOVABLE PROPERTY

BUILDING, PLANTING, SOWING

General Rule: 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.

✪ The owner of the land must be known, otherwise no decision can be rendered on the ownership of the thing planted, built or sown until a hearing shall have been accorded to whosoever is entitled thereto.

Presumption: All works, sowing, and planting are presumed made by the owner and at his expense, unless the contrary is proved.

a. The works were made by the owner – based on positive law; a land naturally has an owner and the law accordingly presumes that he made the works, sowing or planting.

b. They were made at the owner's expense – as a general rule. It cannot be said that one who builds, plants or sows on another's land will do so at his expense but for the benefit of the owner; hence, it must be presumed that what is built, planted or sown is done at the expense of the owner although the one who did so was a third person.

ARTICLE 447 - Landowner is the builder/planter/sower and is using the materials of another

Landowner/builder/sower/planter	**Owner of the materials**
Good faith **1.** Landowner can acquire the materials provided he pays for the value thereof. **2.** To demand the owner of materials to remove the same if it will not cause damage thereto. If choice no. 2 is not possible then the landowner have to choose no. 1 **Note:** landowner will be the first one to exercise the option.	**Good faith** Has the: **1.** right to receive the payments 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.
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	Bad Faith
Can acquire materials without paying for the value thereof and entitled to consequential damages due to the defects of the materials.	Loses the materials completely without receiving any indemnity.
Bad faith	**Bad faith**
Treat as if both are in good faith.	

Landowner/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 good faith is coupled with negligence, he is liable for damages.

Landowner/ builder/sower/planter 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 landowner- builder/planter/sower choose to return the materials instead of reimbursing their value even without the consent of the owner of the materials?

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 or there has been transformation, they cannot be retuned anymore.

Problem: suppose the landowner- builder/sower/planter 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 rules seems to be that the owner of materials is still entitled to get them since the law makes no distinction. Moreover, the landowner may insist on returning them for evidently there is no accession.

ARTICLE 448- builder/planter/sower builds, plants, or sows on another's land using his own materials.

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; OR **2.** To obligate the builder/planter to pay the price of the land and the sower to pay the proper rent. However, the landowner cannot obligate the builder/planter to buy if the value of land is more than the building or planting. The LO has the primacy of choice. These options are preclusive in the sense that the LO have to choose only one and his choice must be communicated to the BPS-OM. **Value of indemnity:** fair market value of the improvements and not construction cost. It is only the improvements that are to be paid and does not include the land since the land owner owns the land. **If the landowner cannot pay the value of the improvements, can he be evicted therefrom?** Although under the law there was a contract to sell. Payment of the price is a positive suspensive condition. This implies that the possession of the BPS-OM of the property is merely tolerated by the LO. Thus, ejectment proceeding is sufficient to oust the BPS-OM if he does not pay the value of the land.	**Good faith-** entitled to received indemnity for necessary, useful, and luxurious expenses [if the landowner appropriates the luxurious improvements] and has the 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 landowner does not appropriate the luxurious improvements, he can remove the same provided there is no injury to the principal thing. To purchase the land at fair market value when the value is not considerably more than the value of the value of the building 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. The rental shall be agreed by the parties and if they cannot agree then the court shall fix the same. If he cannot pay the purchase price of the land, the landowner can require him to remove what has been built or planted. If he cannot pay the rent, the landowner can eject him from the land.

The landowner cannot be evicted since he owns the land. The value of the property becomes an ordinary debt of the landowner to the BPS-OM.	
Bad faith- **1.** To acquire whatever has been built, planted or sown by paying the indemnity plus damages. **2.** No right to sell the land.	**Good faith-** **1.** If landowner acquires whatever has been built, planted or sown, he must be indemnified of the value plus damages. **2.** If the landowner 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 landowner does not acquire, he cannot insist on purchasing the land.
Good faith- has the option to: **1.** To acquire whatever has been built, planted 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. **2.** To compel the builder/planter to pay the price of the land and the sower to pay the proper rent plus damages [regardless of the value of the land] **3.** To demand the demolition or removal of the work at the expense of the builder/planter/ sower.	**Bad faith-** **1.** 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. **2.** Not entitled to reimbursement of useful expenses and cannot remove useful improvements even if the removal will not cause any injury. Not entitled to reimbursement for luxurious expenses except when the landowner acquires the luxurious improvements, the value of which is the one at the time the landowner enter possession [the depreciated value]. **3.** Can remove luxurious improvements if it will not cause injury and landowner does not want to acquire them. Must pay the price of the land or the rent plus damages. Must remove luxurious improvements if it will not cause injury and landowner does not want to acquire them.
Bad faith	**Bad faith**
Treat as if both are in good faith.	

In applying Article 448 the landowner 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 landowner 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 good faith.

The builder/planter/sower is in good faith if he thought that the land was his.

CASES WHERE ARTICLE 448 DOES NOT APPLY:

1. Lease with improvements- there is a separate provision in the case of lease.

2. the owner of the land is the builder and losses the land through auction of donation- Article 448 contemplates two parties, the builder must not be the owner of the land and the owner of the land.

3. Co-owner of an aliquot- the owner and the builder are the same person.

4. usufruct- usufructuary cannot remove useful improvements or expenses for mere pleasure unless there is no damage to the property.

5. The owner constructs a building in his own land and sold the land to another- the owner of the land is in bad faith and the buyer also of the land knows the bad faith.

6. Things that are not built in it permanent nature.

7. Belligerent occupation- no application of 448 especially if the owner of the land is the government. Exception: if the government and not the belligerent occupant that allows the builder to improve the land, the government is estopped if it contest the occupation of the land.

GOOD FAITH MAY CO-EXIST WITH NEGLIGENCE: A party guilty of negligence, irrespective of his good faith, shall be liable for the damage done in accordance with the rule on *culpa aquiliana* or quasi – delict.

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 materials]; OR **2.** to oblige the builder/planter /owner to buy the land unless the value thereof is considerably more than the value of the building or trees	**Good faith-** **1.** To receive indemnity from the landowner and has a right of retention over the land until the land owner pays; **2.** To buy the land.	**Good faith-** **1.** To receive indemnity from the builder/planter/sower who is [principally/primarily liable. If the builder/ sower/ planter is insolvent, then demand indemnity from landowner who is subsidiarily liable. But has no right of retention against the builder/planter/ sower and more so with the land owner. **2.** To receive indemnity from the builder/planter/sower only. The landowner has no subsidiary liability. But has right of retention; OR **3.** To remove materials if there will be no injury on the building or trees AND Has material rent lien against the builder/planter/sower for the payment of the value of the materials. Cannot claim from LO if LO sold the land to BPS.
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 tress.	**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 the choice of the landowner: 1. he losses the materials in favor of the builder/sower/planter; 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. **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.	**Bad Faith-** Losses what has been built, planted or sown but he is entitled to be indemnified for necessary expenses should the land owner acquire luxurious ornaments. Has no right of removal even if it will not cause any injury. To pay the price of the land. Cannot do anything about it so he must remove.	**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/planter/sower only. The owner of the materials has no subsidiary liability whatsoever. If the landowner chooses option 1, he has no right to remove materials even if there will be no injury. If the landowner choses 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 landowner 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 landowner plus damages. Cannot insist on purchasing the land.	**Bad faith**- no right to receive indemnity for value of materials neither from builder/planter/sower nor from landowner who end up owning the building or trees.

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.

BAR 1992- BUILDER; GOOD FAITH- A owns a parcel of residential land worth P50, 000. Unknown to A, a residential house costing P 100,000.00 is built on the entire parcel by B who claims ownership of the land. Answer all the following questions based on the premise that B is a builder in good faith and A is a landowner in good faith.

SUGGESTED ANSWER:

a) May A acquire the house built by B? If so, how? Yes, A may acquire the house build by B by paying indemnity to B. Article 448 of the Civil Code provides that 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 546 of the Civil Code.

b) If the land increased in value to P50, 000.00 by reason of the building of the house thereon, what amount should be paid by A in order to acquire the house from B? A should pay B the sum of P50, 000.00. Article 548 of the Civil Code provides that useful expenses shall be refunded to the possessor in good faith with the 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. The increase in value amounts to P50, 000.00.

c) Assuming that the cost of the house was P90, 000.00 and not P100, 000.00, may A require B to buy the land? Yes, A may require B to buy the land. Article 448 of the Civil Code provides that the owner of the land on which anything has been built in good faith shall have the

right to oblige the one who built to pay the price of the land if its value is not considerably more than that of the building.

d) If B voluntarily buys the land as desired by A, under what circumstances may A nevertheless be entitled to have the house removed? If B agrees to buy the land but fails to pay, A can have the house removed *(Depra vs. Dumlao, 136 SCRA 475).*

e) In what situation may a "forced lease" arise between A and B. and what terms and conditions would govern the lease? Article 448 of the Civil Code provides that the builder cannot be obliged to buy the land if its value is considerably more than that of the building. In such case, he shall pay reasonable rent, if the owner of the land does not choose to appropriate the building after proper indemnity. The parties shall agree upon the terms of the lease and in case of disagreement, the court fix the terms thereof.

BAR 1999- BUILDER; GOOD FAITH VS. BAD FAITH
(a) Because of confusion as to the boundaries of the adjoining lots that they bought from the same subdivision company, X constructed a house on the adjoining lot of Y in the honest belief that it is the land that he bought from the subdivision company. What are the respective rights of X and Y with respect to X's house? (3%) - The rights of Y, as owner of the lot, and of X, as builder of a house thereon, are governed by Art. 448 of the Civil Code which grants to Y the right to choose between two remedies: (a) appropriate the house by indemnifying X for its value plus whatever necessary expenses the latter may have incurred for the preservation of the land, or (b) compel X to buy the land if the price of the land is not considerably more than the value of the house. If it is, then X cannot be obliged to buy the land but he shall pay reasonable rent, and in case of disagreement, the court shall fix the terms of the lease.

(b) Suppose X was in good faith but Y knew that X was constructing on his (Y's) land but simply kept quiet about it, thinking perhaps that he could get X's house later. What are the respective rights of the parties over X's house in this case? (2%) - Since the lot owner Y is deemed to be in bad faith (Art 453), X as the party in good faith may (a) remove the house and demand indemnification for damages suffered by him, or (b) demand payment of the value of the house plus reparation for damages (Art 447, in relation to Art 454). Y continues as owner of the lot and becomes, under the second option, owner of the house as well, after he pays the sums demanded.

BAR 2000-BUILDER; GOOD FAITH VS. BAD FAITH- In good faith, Pedro constructed a five-door commercial building on the land of Pablo who was also in good faith. When Pablo discovered the construction, he opted to appropriate the building by paying Pedro the cost thereof. However, Pedro insists that he should be paid the current market value of the building, which was much higher because of inflation.

SUGGESTED ANSWER:
1) Who is correct Pedro or Pablo? (1%) - Pablo is correct. Under Article 448 of the New Civil Code in relation to Article 546, the builder in good faith is entitled to a refund of the necessary and useful expenses incurred by him, or the increase in value which the land may have acquired by reason of the improvement, at the option of the landowner. The builder is entitled to a refund of the expenses he incurred, and not to the market value of the improvement.

The case of *Pecson v. CA, 244 SCRA 407,* is not applicable to the problem. In the Pecson case, the builder was the owner of the land who later lost the property at a public sale due to non-payment of taxes. The Court ruled that Article 448 does not apply to the case where the owner of the land is the builder but who later lost the land; not being applicable, the indemnity that should be paid to the buyer must be the fair market value of the building and not just the cost of construction thereof. The Court opined in that case that to do otherwise would unjustly enrich the new owner of the land.

ALTERNATIVE ANSWER: Pedro is correct. In Pecson vs. CA, it was held that Article 546 of the New Civil Code does not specifically state how the value of useful improvements should be determined in fixing the amount of indemnity that the owner of the land should pay to the builder in good faith. Since the objective of the law is to adjust the rights of the parties in such manner as "to administer complete justice to both of them in such a way as neither one nor the other may enrich himself of that which does not belong to him", the Court ruled that the basis of reimbursement should be the fair market value of the building.

2) In the meantime that Pedro is not yet paid, who is entitled to the rentals of the building, Pedro or Pablo? (1%) - Pablo is entitled to the rentals of the building. As the owner of the land, Pablo is also the owner of the building being an accession thereto. However, Pedro who is entitled to retain the building is also entitled to retain the rentals. He, however, shall apply the rentals to the indemnity payable to him after deducting reasonable cost of repair and maintenance.

ALTERNATIVE ANSWER: Pablo is entitled to the rentals. Pedro became a possessor in bad faith from the time he learned that the land belongs to Pablo. As such, he loses his right to the building, including the fruits thereof, except the right of retention.

BAR 2000- BUILDER; GOOD FAITH VS. BAD FAITH; ACCESSION - a) Demetrio knew that a piece of land bordering the beach belonged to Ernesto. However, since the latter was studying in Europe and no one was taking care of the land, Demetrio occupied the same and constructed thereon nipa sheds with tables and benches which he rented out to people who want to have a picnic by the beach. When Ernesto returned, he demanded the return of the land. Demetrio agreed to do so after he has removed the nipa sheds. Ernesto refused to let Demetrio remove the nipa sheds on the ground that these already belonged to him by right of accession. Who is correct? (3%)

SUGGESTED ANSWER: Ernesto is correct, Demetrio is a builder in bad faith because he knew beforehand that the land belonged to Ernesto, under Article 449 of the New Civil

Code, one who builds on the land of another loses what is built without right to indemnity. Ernesto becomes the owner of the nipa sheds by right of accession. Hence, Ernesto is well within his right in refusing to allow the removal of the nipa sheds.

BAR 2001- BUILDER; GOOD FAITH VS. BAD FAITH; PRESUMPTION - Mike built a house on his lot in Pasay City. Two years later, a survey disclosed that a portion of the building actually stood on the neighboring land of Jose, to the extent of 40 square meters. Jose claims that Mike is a builder in bad faith because he should know the boundaries of his lot, and demands that the portion of the house which encroached on his land should be destroyed or removed. Mike replies that he is a builder in good faith and offers to buy the land occupied by the building instead.

SUGGESTED ANSWER:

1) Is Mike a builder in good faith or bad faith? Why? (3%) - Yes, Mike is a builder in good faith. There is no showing that when he built his house, he knew that a portion thereof encroached on Jose's lot. Unless one is versed in the science of surveying, he cannot determine the precise boundaries or location of his property by merely examining his title. In the absence of contrary proof, the law presumes that the encroachment was done in good faith *[Technogas Phils, v. CA, 268 SCRA 5, 15 (1997)].*

ALTERNATIVE ANSWER: Mike cannot be considered a builder in good faith because he built his house without first determining the corners and boundaries of his lot to make sure that his construction was within the perimeter of his property. He could have done this with the help of a geodetic engineer as an ordinary prudent and reasonable man would do under the circumstances.

2) Whose preference should be followed? Why? (2%) - None of the preferences shall be followed. The preference of Mike cannot prevail because under Article 448 of the Civil Code, it is the owner of the land who has the option or choice, not the builder. On the other hand, the option belongs to Jose, he cannot demand that the portion of the house encroaching on his land be destroyed or removed because this is not one of the options given by law to the owner of the land. The owner may choose between the appropriation of what was built after payment of indemnity, or to compel the builder to pay for the land if the value of the land is not considerably more than that of the building. Otherwise, the builder shall pay rent for the portion of the land encroached.

ALTERNATIVE ANSWER: Jose's preference should be followed. He may have the building removed at the expense of Mike, appropriate the building as his own, oblige Mike to buy the land and ask for damages in addition to any of the three options. (Articles 449, 450, 451, CC)

ACCESSION CONTINUA [NATURAL]

IMMOVABLE PROPERTY

ALLUVION

Definition: It is the increment which lands abutting rivers gradually receive as a result of the current of the waters, or the gradual and imperceptible addition to the banks of the rivers.

Requisites:

1. The deposit or accumulation of soil or sediment must be gradual and imperceptible.
2. The accretion results from the effects or action of the current of the waters of the river (or the sea).
3. The land where accretion takes place must be adjacent to the bank of a river (or the sea coast).
4. Deposits made by human intervention are excluded.

Alluvion	Accretion
The deposit of soil or to the soil itself.	The act or the process by which a riparian land generally and imperceptively receives addition made by the water to which the land is contiguous.
Brought about by accretion.	The addition or increase received by the land.

Rule: to the owners of the lands adjoining the banks of rivers belong the accretions which they gradually receive from the effects of the current of the waters.

Accretion operates *ipso jure*, such that ownership is automatically acquired. 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. The alluvion also can be subject to prescription if not titled.

However, registration under the Torrens system does not protect the riparian owner against diminution of the area of his land through gradual changes in the course of the adjoining stream.

Rationale of alluvion:

1. To compensate him for the danger of the loss that he suffers because of the location of his land (for the estates bordering on rivers are exposed to floods and other damage produced by the destructive force of waters).
2. To compensate him for the encumbrances and various kinds of easements to which his property is subject.
3. To promote the interests of agriculture for the riparian owner is in the best position to utilize the accretion.

✪ *A riparian owner cannot acquire the addition to his land caused by special/artificial works expressly intended by him to bring about accretion. Hence, a riparian owner cannot register accretions to his land constructed for reclamation purposes.*

✪ *If the riparian land is subject to easement established by the government, the riparian owner has the right to the accretion. The easement does not deprive the owner of his ownership.*

RULE ON ESTATES ADJOINING PONDS OR LAGOONS- The owners of estates adjoining ponds or lagoons do not

acquire the land left dry by the natural decrease of the waters, or loss that inundated by them in extraordinary floods [Article 448].

Article 48 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 the 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.

ACCESSION CONTINUA [NATURAL]
IMMOVABLE PROPERTY

AVULSION/BY FORCE OF RIVER

Definition: avulsion is the removal of a considerable quantity of soil from 1 estate and its annexation to another by the perceptible action of water. 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 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.

According to **JBL Reyes**, avulsion is a delayed accession since the owner of the estate where washed-out soil landed will own the same only after 2 years if the owner does not remove it.

Note: the 2 year period is the beginning of acquisitive prescription. Such that if third person occupies the land the 10 year period or 30 year period of acquisitive prescription will commence after the lapse of two years and the riparian owner did not register the lot.

Requisites:

1. The segregation and transfer must be caused by the current of a river, creek, or torrent (or by other forces, e.g. earthquake).

2. The segregation and transfer must be sudden or abrupt.

3. The portion of land transported must be known or identifiable.

Alluvion	Avulsion
The deposit of soil is gradual.	The deposit it is sudden and abrupt.
The deposit of the soil belongs to the owner of the property where the same was deposited.	The owner of the property from which a part was detached retains the ownership thereof.
The soil cannot be identified.	The detached portion can be identified.

BAR 2001- ACCRETION; ALLUVION - For many years, the Rio Grande River deposited soil along its bank, beside the titled land of Jose. In time, such deposit reached an area of one thousand square meters. With the permission of Jose, Vicente cultivated the said area. Ten years later, a big flood occurred in the river and transferred the 1000 square meters to the opposite bank, beside the land of Agustin. The land transferred is now contested by Jose and Agustin as riparian owners and by Vicente who claims ownership by prescription. Who should prevail? Why? (5%)

SUGGESTED ANSWER: Jose should prevail. The disputed area, which is an alluvion, belongs by right of accretion to Jose, the riparian owner (Art. 457 CC). When, as given in the problem, the very same area" was "transferred" by flood waters to the opposite bank, it became an avulsion and ownership thereof is retained by Jose who has two years to remove it (Art. 459, CC). Vicente's claim based on prescription is baseless since his possession was by mere tolerance of Jose and, therefore, did not adversely affect Jose's possession and ownership (Art. 537, CC). Inasmuch as his possession is merely that of a holder, he cannot acquire the disputed area by prescription.

BAR 2003- ACCRETION; AVULSION- Andres is a riparian owner of a parcel of registered land. His land, however, has gradually diminished in area due to the current of the river, while the registered land of Mario on the opposite bank has gradually increased in area by 200 square meters. (a) Who has the better right over the 200-square meter area that has been added to Mario's registered land, Mario or Andres? (b) May a third person acquires said 200-square meter land by prescription?

SUGGESTED ANSWER:
a. Mario has a better right over the 200 square meters increase in area by reason of accretion, applying Article 457 of the New Civil Code, which provides that —to the owners of lands adjoining the banks of rivers belong the accretion which they gradually received from the effects of the current of the waters. Andres cannot claim that the increase in Mario's land is his own, because such is an accretion and not result of the sudden detachment of a known portion of his land and its attachment to Mario's land, a process called —avulsion. He can no longer claim ownership of the portion of his registered land which was gradually and naturally eroded due to the current of the river, because he had lost it by operation of law. That portion of the land has reasonable rent, if the owner of the land does not choose to become part of the public domain.

b. Yes, a third party may acquire by prescription the 200 square meters, increase in area, because it is not included in the Torrens Title of the riparian owner. Hence, this does not involve the imprescriptibility conferred by Section 47, P.D. No. 1529. The fact that the riparian land is registered does not automatically make the accretion thereto a registered land. *(Grande v. CA, 115 521 (1962); Jagualing v. CA, 194 SCRA 607 (1991)*

ACCESSION CONTINUA [NATURAL]
IMMOVABLE PROPERTY

TREES UPROOTED/BY FORCE OF RIVER

Rule: 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 Article 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 be come the owner.

Scope: *This rule refers to uprooted trees only. If a known portion of land with trees standing thereon is carried away by the current to another land, the rule on avulsion governs.*

Period to claim: The period for making a claim is 6 months; it is a condition precedent and not a period of prescription (De Leon).

After a claim is made within six months, an action may be brought within the period provided by law for prescription of movables.

Payment of expenses for preservation: The original owner claiming the trees is liable to pay the expenses incurred by the owner of the land upon which they have been cast in gathering or putting them in a safe place.

ACCESSION CONTINUA [NATURAL]
IMMOVABLE PROPERTY

ABANDONED RIVER BED/CHANGE IN THE COURSE OF RIVER

Rule: River beds which are abandoned through the NATURAL change in the course of waters ipso facto belong to the owners whose lands are occupied by the new course in proportion to the area lost.

The **new river bed** is de facto imminent domain. The abandoned old river bed must be registered by the owner of the property where the new river bed traverses.

Requisites:

1. The change in the river course must be sudden;
2. The change must be permanent;
3. The change must be natural;
4. The river must be abandoned by the government;
5. The river must continue to exist.

According to commentators, requisite no. 4 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.

Has Article 461 been superseded by Article 58 of the Water Code?

Article 58 of the Water Code 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.

Article 58 of the WC does not contain the 2nd sentence of Article 461 of the Civil Code- *"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".* 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.

✪ River beds are part of public domain. In this case, there is abandonment by the government of its right over the old bed. The owner of the invaded land automatically acquires ownership of the same without the necessity of any formal act on his part.

✪ **"In proportion to the area lost"** implies that there are two or more owners whose lands are occupied by the new bed. Therefore, if only one owner lost a portion of his land, the entire old bed should belong to him.

ACCESSION CONTINUA [NATURAL]
IMMOVABLE PROPERTY

NEW RIVER BED WITHOUT ABANDONMENT

Rule: Whenever a river, changing its course by NATURAL causes, opens a new bed through a private estate, this bed shall become of public dominion.

✪ The bed of a public river or stream is of public ownership. If the river changes its course and opens a new bed, this bed becomes of public dominion even if it is on private property.

✪ The law does not make any distinction whether the river is navigable or not.

ACCESSION CONTINUA [NATURAL]
IMMOVABLE PROPERTY

BRANCHING OF COURSE OF RIVER

Rule: 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 thereto. He also retains ownership to a portion of his land separated from the estate by the current.

✪ The provision does not refer to the formation of islands through accretion, but refers to the formation of an island caused by a river dividing itself into branches resulting in:

- **a.** Isolation (without being physically transferred) of a piece of land or part thereof; OR
- **b.** Separation (physical transfer, but not to the point of becoming avulsion) of a portion of land from an estate by the current

✪ The owner preserves his ownership of the isolated or separated property.

✪ The law does not make any distinction whether the river is navigable or not.

REMEDY: restore the original course of the river. The owner of the lad must asked permit from the DPWH.

ACCESSION CONTINUA [NATURAL]
IMMOVABLE PROPERTY

FORMATION OF ISLANDS

Rules:

1. **If formed on the seas within the jurisdiction of the Philippines, on lakes, or on navigable or floatable rivers:** the island belongs to the State as part of its patrimonial property.

   ✪ Article 59 of the Water Code defines navigable water. Article 59- Rivers, lakes and lagoons may, upon the recommendation of the Philippine coastguard, be declared navigable either in whole or in part.

   ✪ A navigable river is one which in its natural state affords a channel for useful commerce and not such as is only sufficient to float a banca or a canoe.

2. **If formed in non – navigable and non – floatable rivers:**
   a. It belongs to the **nearest riparian owner**, or owner of the margin or bank nearest to it as he is considered on the best position to cultivate and develop the island.

   b. If the island is in the **middle of the river**, the island is divided longitudinally in halves. If the island formed is longer than the property of the riparian owner, the latter is deemed *ipso jure* to be the owner of that portion which corresponds to the length of that portion of his property along the margin of the river.

   c. If a single island be more distant from one margin than from the other, the owner of the nearer margin shall be the sole owner thereof.

ACCESSION CONTINUA [INDUSTRIAL]
MOVABLE PROPERTY

ADJUNCTION OR CONJUNCTION

Definition: It is the union of 2 movable things belonging to different owners in such a way that they form a single object, but each one of the component things preserves its value.

Example: the paint of B is used on the canvass of C.

Characteristics:

1. There are two movables belonging to different owners.
2. They are united in such a way that they form a single object.
3. They are so inseparable that their separation would impair their nature and result in substantial injury to either component.

Kinds:

1. **Inclusion or engraftment** (e.g. Diamond is set on a gold ring).
2. **Soldadura or soldering/ Attachment** (e.g. Lead is united or fused to an object made of lead; it is ferruminacion if both the accessory and principal objects are of the same metal; and plumbatura if they are of different metals).
3. **Escritura or writing** (e.g. when a person writes on paper belonging to another).
4. **Pintura or painting** (e.g. when a person paints on canvas belonging to another).
5. **Tejido or weaving** (e.g. when threads belonging to different owners are used in making textile).

Basic rule: if separation is possible without injury, then separate them. If this is not possible, then there is adjunction or conjunction.

Parties: the owner of the principal object and the owner of the accessory.

4 SITUATIONS INVOLVING PARTIES IN CONJUNCTION OR ADJUNCTION.

1. **Owner of the principal and accessory things are in good faith:** If the union took place without bad faith, the owner of the principal thing acquires the accessory, with the obligation to indemnify the owner of the accessory for its value.

   But the question is which of them is the principal thing? **Tests to determine the principal in adjunction:** In the order of application, the principal is that:
   a. **Primary rule**- RULE OF IMPORTANCE AND PURPOSE: To which the accessory has been united as an ornament or for its use or perfection.

      Example: the watch is the principal [to tell time] while the bracelet is the accessory [to wear].

   b. **Secondary rule**- VALUE: Of greater value, if they are of unequal values.

   c. **Tertiary rule**- VOLUME or MASS: Of greater volume, if they are of an equal value.

   d. **Fourth rule**- MERITS, UTILITY, VALUE: Of greater merits taking into consideration all the pertinent legal provisions applicable as well as the comparative merits, utility and volume of their respective things.

   ✪ In paintings and sculpture, writings, printed matter, engraving and lithographs, the board, metal stone, canvas, paper or parchment shall be deemed the accessory thing.

2. **Owner of the principal thing is in good faith while there is bad faith on the part of owner of accessory:**
   i. The owner of the accessory thing shall lose the thing incorporated, AND

ii. He shall be liable for damages to the owner of the principal thing, or the payment of the price, including its sentimental value as appraised by experts.

iii. The principal may demand for the delivery of a thing equal in kind and value and in all other respects to that of the principal thing, or the payment of the price, including its sentimental value as appraised by experts.

3. **Bad faith on the part of the owner of the principal & good faith on the part of the owner of accessory thing:** The owner of the accessory thing is given the option either:
   i. To require the owner of the principal thing to pay the value of the accessory thing, plus damages.

   ii. To have the accessory thing separated even if it be necessary to destroy the principal thing, plus damages.

   iii. The accessory may demand for the delivery of a thing equal in kind and value and in all other respects to that of the accessory thing, or the payment of the price, including its sentimental value as appraised by experts.

4. **Both parties in bad faith:** their respective rights are to be determined as though both acted in good faith.

WHEN IS SEPARATION OF UNITED THINGS ALLOWED

a. In case of separation without injury, their respective owners may demand their separation.

b. In case the accessory is much more precious than the principal, the owner of the accessory may demand its separation even though the principal may suffer injury.

c. In case the owner of principal acted in bad faith, even if separation will cause damage to the principal thing.

ACCESSION CONTINUA [INDUSTRIAL]
MOVABLE PROPERTY

COMMIXTION OR CONFUSION

Definition: Takes place when two or more things belonging to different owners are mixed or combined with the respective identities of the component parts destroyed or lost.

Commixtion/confusion	Adjunction
There is a greater degree of interpenetration, and in certain cases, even decomposition of the things which have been mixed.	Union of two movable things in such a way that they form a single object but each one of the component things preserves its value.

Strictly speaking, there is no accession in mixture since there is neither a principal nor an accessory.

Kinds: The mixture may be voluntary or by chance.

1. **Commixtion** or the mixture of solid things belonging to different owners.

   Example: the mixture of rice with different varieties.

2. **Confusion** or the mixture of liquid things belonging to different owners.

   Example: mixture of different gasoline belonging to different owners.

Rules: Sentimental value shall be duly appreciated.

1. **Mixture by will of both the owners or by chance:**
   a. Their rights shall first be governed by their stipulations.
   b. If the things mixed are of the same kind and quality, there is no conflict of rights, and the mixture can easily be divided between the 2 owners.
   c. If the things mixed are of different kind and quality, in the absence of a stipulation, each owner acquires a right or interest in the mixture in proportion to the value of his material as in co-ownership.

2. **Mixture caused by an owner in good faith or by chance:**
   a. Their rights shall first be governed by their stipulations.
   b. If the things mixed are of the same kind and quality, there is no conflict of rights, and the mixture can easily be divided between the 2 owners.
   c. If the things mixed are of different kind and quality, in the absence of a stipulation, each owner acquires a right or interest in the mixture in proportion to the value of his material as in co-ownership.

✪ Co-ownership arises when the things mixed are of different kinds or quality. The expenses incident to separation shall be borne by all the owners in proportion to their respective interests in the mixture.

3. **Mixture caused by an owner in bad faith:** The owner in bad faith not only forfeits the thing belonging to him but also becomes liable to pay indemnity for the damages caused to the other owner.

4. **Mixture by both owners in bad faith:** There is bad faith when the mixture is made with the knowledge and without the objection of the other owner. Accordingly, their respective rights shall be determined as though both acted in good faith.

ACCESSION CONTINUA [INDUSTRIAL]
MOVABLE PROPERTY

SPECIFICATION

Definition: Takes place whenever the work of a person is done on the material of another, and such material, as a consequence of the work itself, undergoes a transformation.

1. **Worker and owner of the materials in good faith:** The worker becomes the owner of the work/transformed thing but he must indemnify the owner of the material for its value.

   Exception: If the material is more precious or of more value than the work/transformed thing, the owner of the material may choose:
   - **a.** To appropriate the new thing to himself but must pay for the value of the work or labor, OR
   - **b.** To demand indemnity for the material.

2. **Worker in bad faith but the owner of the material in good faith: T**he owner of the material has the option either:
   - **a.** To appropriate the work to himself without paying the maker, OR
   - **b.** To demand the value of the material plus damages.

   Limitation: The first option is not available in case the value of the work, for artistic or scientific reasons, is considerably more than that of the material, to prevent unjust enrichment.

3. **Owner of the materials in bad faith but the worker is in good faith:** The owner of the material is in bad faith when he does not object to the employment of his materials. Accordingly, he shall lose his materials and shall have the obligation to indemnify the worker fro the damages he may have suffered (Art. 470 by analogy, Tolentino).

4. **Both owners are in bad faith: T**heir rights shall be determined as though both acted in good faith.

Adjunction, Mixture, and Specification distinguished:

1. In Adjunction and Mixture, there would be at least two things, while in the Specification, there may be only one thing whose form is changed.

2. In Adjunction and Specification, the component parts retain or preserve their nature, while in Mixture, the things mixed may or may not retain their respective original nature.

3. In Adjunction and Specification, the principle that 'accessory follows the principal' applies, while in Mixture, co- ownership results.

APPRAISAL OF SENTIMENTAL VALUE: Sentimental value shall be duly appreciated in the payment of the proper indemnity in accessions with respect to movable property.

✪ *Sentimental value attached to a thing is not always easy to estimate, as such it may be considered by the court.*

QUIETING OF TITLE

Concept of quieting of title: An action to quiet the title to property or to remove a cloud thereon is a remedy or form of proceeding originating in equity jurisprudence which has for its purpose an adjudication that a claim or title to or an interest in property, adverse to that of the complainant, is invalid, so that the complainant or his assignees may be forever afterward free from any danger of hostile claim.

Action to quiet title: A remedy or proceeding which has for its purpose an adjudication that a claim of title to realty or an interest thereon, adverse to the plaintiff and those claiming under him may forever be free of any hostile claim.

What is a cloud on title? It is a semblance of title, either legal or equitable, or a claim or a right in real property, appearing in some legal form which is, in fact, invalid or which would be inequitable to enforce.

REQUISITES FOR EXISTENCE OF CLOUD:

1. The plaintiff in an action to quiet title must have a legal or equitable title to, or an interest in the real property which is the subject matter of the action.

   ✪ A legal title may consist in full ownership or in the naked ownership which is registered in the name of the plaintiff.

   ✪ If the plaintiff has the beneficial interest in the property the legal title of which pertains to another, he is said to have an equitable title.

   ✪ An interest in property is any interest short of ownership, like the interest of a mortgagee or a usufructuary.

2. There is an instrument, record, claim, encumbrance or proceeding which is apparently valid or effective.

3. Such instrument is in truth and in fact, invalid, ineffective, or voidable, or unenforceable, or has been extinguished or terminated, or has been barred by extinctive prescription.

4. Such instrument may be prejudicial to said title.

5. 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.

✪ The purpose of the action to quiet title is solely to remove the cloud on the plaintiff's title or to prevent a cloud from being cast upon his title and not to obtain any other benefits.

Pingol v. CA: It is not necessary that the vendee has an absolute title. An equitable title is sufficient to clothe him with personality to bring an action to quiet title.

Characteristics of a cloud based on defect in instrument:

a. The defect in the instrument is ***NOT apparent on its face*** and, therefore, has to be proved by extrinsic evidence. If the instrument is invalid on its face, there is no cloud to speak of for the purpose of an action to quiet title.

b. The alleged cloud must be ***prima facie substantial,*** and cast a suspicion on the title or interest to which it is hostile as will injuriously affect the owner in maintaining his rights.

Apprehended or threatened cloud: The Court has the power to prevent the casting of a cloud on title to property provided that the cloud is not merely speculative. Relief is granted if the threatened or anticipated cloud is one which, if it existed, would be removed by suit to quite title.

Titong v. CA: What plaintiff imagined as clouds cast on his title were PR's alleged acts of physical intrusion and not an instrument, record, claim, encumbrance or proceeding which constitutes or casts a cloud, doubt, question or shadow upon the owner's title or interest in real property. Clearly, the acts alleged may be considered grounds for an action for forcible entry but definitely not one for quieting of title.

CLOUD DUE TO EXTINGUISHMENT OF RIGHT OR PRESCRIPTION: When the contract, instrument or other obligation has been extinguished or has terminated, or has been barred by extinctive prescription, there may also be an action to quiet title or to remove a cloud therefrom.

Nature of actions to quiet title:

a. These actions are not technically suits in rem, nor are they strictly speaking, in person, but being against the person in respect of the res, wherein the judgment does not extend beyond the property in controversy, these proceedings acquire a status that may be characterized as ***suits quasi in rem.***

b. The action may be brought as an independent civil action.

c. Petitions for quieting of title should take precedence over ejectment case to prevent multiplicity of suits.

Property to which action is applicable:

a. Real property or any interest therein.

b. Certain types of personal property (e.g. vessels, motor vehicles, certificate of stocks) which partake of the nature of real property or are treated to some extent as realty because of registration requirements for ownership or transactions.

Examples/Instances of cloud of title:

a. An absolute fictitious contract of sale or a sale of simulated consideration.

b. A sale by an agent without written authority or after expiration of his authority.

c. A forged contract.

d. A contract of sale or donation which has become imperative because of non –performance by the vendee or donee of a condition precedent.

e. A voidable contract.

Action to quiet title	Action to remove a cloud
Purpose is to put an end to troublesome litigation in respect to the property involved.	Purpose is the removal of a possible foundation for a future hostile action.
A remedial action involving a present adverse claim.	A preventive action to prevent a future cloud on the title.
Plaintiff asserts his own estate and declares GENERALLY that defendant claims some estate in the land, without defining it, and avers that the claim is without foundation, and calls on the defendant to set forth the nature of his claim, so that it may be determined by decree.	Plaintiff declares his own title and avers the source and nature of defendant's claim, point out its defect, and prays that it be declared void.

PRESCRIPTIBILITY OF ACTION:

a. An action to quiet title brought by a person who is in possession of the property is imprescriptible.

b. If the plaintiff is not in possession of the property, he must invoke his remedy within the proper prescriptive period of ten or thirty years depending on ordinary or extraordinary prescription.

Defenses against quieting of title:

a. Prescription.

b. Acquisition by the defendant of the title to the property by adverse possession.

c. Res judicata.

Reliefs:

a. The instrument constituting the cloud is decreed to be surrendered and cancelled.

b. In case of a cloud which has been cast upon title by alteration in a deed, relief may be awarded by decreeing restoration of the deed to its original state.

PROCEDURE OF QUIETING OF TITLE: The principle of the general law on quieting of title shall apply. Also, it shall be governed by such Rules of Court as the Supreme Court shall promulgate.

The SC has not yet promulgated the particular rules on the quieting of title.

JURISDICTION ON QUIETING OF TITLE

Φ **MTC-** estimated value of the lot is 30 and below outside Metro Manila and 50 and below within Metro Manila

Φ **RTC-** estimated value of the lot is 31K and above outside Metro Manila and 51K or more within Metro Manila.

CO-OWNERSHIP

Definition: A form of ownership which exists whenever an undivided thing or right belongs to different persons; As a right, it has been defined as the right of common dominion which two or more persons have in a spiritual or ideal part of a thing which is not materially or physically divided.

Requisites of co-ownership

1. Plurality of subjects and singularity of object.
2. Unity or material indivision of the object, which means that there is single object which is not materially divided, and which is the element which binds the subjects.
3. The recognition of ideal shares, which determines the rights and obligations of the co-owners.

Principles of Co-ownership:

- Φ In co-ownership, there is only 1 ownership, but such ownership is shared ownership.
- Φ Each co-owner owns a fractional or an ideal part of the object but they cannot point to a specific part of the object.
- Φ Co-ownership is not encouraged since

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

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

✪ The relationship between and among the co-owners is fiduciary in character and attribute. Hence, each co-owner becomes a trustee for the benefit of his co-owners and he may not do any act prejudicial to the interest of his co-owners.

RIGHTS OF EACH CO-OWNER:

1. He shall have full ownership of his part (his undivided interest or share in the common property).
2. He shall have full ownership of the fruits and benefits pertaining thereto.
3. He may alienate, assign or mortgage his ideal interest or share. The effect of the alienation or mortgage shall be limited to the portion which may be allotted to him in the division upon the termination of the co-ownership.
4. He may even substitute another person in the enjoyment of his part, except when personal rights are involved such as his share in a right to use and habitation.
5. He may by himself extinguish any real right existing on the thing, such as easement or mortgages, because in everything that is for the benefit of the community, each co-owner represent all the others.

Can a co-owner sell his *pro-indiviso* share in the community property even without the consent of other co-owners? Yes, since one of his right as an owner is to dispose the property at his own will.

Remedy of other co-owner: legal redemption – it is the right given by law to other co-owners to redeem the alienated *pro-indiviso* shares of their co-owners.

Requisites of Legal Redemption

1. There must be a co-ownership
2. One of the co-owners sold his right to a stranger [not a co-owner]
3. The sale was made before partition of the community property
4. The right of redemption must be exercised by one or more co-**owners within 30 days to be counted from the time that he or they were notified in writing** by the vendee or by the co-owner vendor.
5. The vendee must be reimbursed for the price of the sale.

Notice to other co-owners of the sale

- Φ It must be in writing. If the notice was given orally, it will not toll the running of the 30 days period to redeem.
- Φ It must be given after the transection

Can a co-owner without the consent of other co-owners sell the entire community property? No, the seller co-owner can only alienate his interest in the co-ownership. Thus, the sale of the interest of the other co-owners is void.

Remedy of non-consenting co-owners if the community property was already delivered to the buyer?

- Φ The proper remedy is partition of the community property.
- Φ **Nullification of the sale** is not the proper remedy since the sale of the interest of the seller co-owner is valid, making the buyer a co-owner. Nullification of the sale is a remedy if the sale is entirely null and void.
- Φ **Recover of possession** is not also the remedy since this can be availed only by the non-consenting co-owner if the act of a co-owner is prejudicial to the co-

ownership. Moreover, since the buyer became a co-owner, one of his rights is the entitlement to the possession of the community property as one.

- Φ **Legal redemption** is also not the remedy because the remedy of legal redemption contemplates that the seller co-owner sold his *pro-indiviso* share and not the entire community property.

Art. 1623 requires that the written notification should come from the vendor or prospective vendor, not from any other person. It is the notification from the seller, which can remove all doubts as to the fact of the sale, its perfection, and its validity, for in a contract of sale, the seller is in the best position to confirm whether consent to the essential obligation of selling the property and transferring ownership thereof to the vendee has been given. (**Francisco v. Boiser)**

The written notice of sale is mandatory for the tolling of the 30-day redemption period. Notwithstanding actual knowledge of a co-owner, the latter is still entitled to a written notice from the selling co-owner in order to remove all uncertainties about the sale, its terms and conditions, as well as its efficacy and status. **(Verdad v CA)**

The validity of a title depends on the buyer's knowledge, actual or constructive, of a prior sale. While there is no direct proof that the second vendees actually knew of the sale to the first vendees, they are deemed to have constructive knowledge thereof by virtue of their relationship to the vendors. A third person, within the meaning of Art. 1620 of the Civil Code (on the right of legal redemption of a co-owner) is anyone who is not a co-owner. Art. 1623, requiring the vendor of the property to give a written notice of sale to the other co-owners, had been rendered inutile by the fact that the first vendees took possession of the property immediately after the execution of the deed of sale in their favor and continue to possess the same. Since the fact of possession by the first vendees had not been questioned by any of the co-owners, the latter may be deemed to have knowledge of the sale. **(Pilapil v CA)**

If the buyer registered the entire community property in his own name, what is the remedy of the non-consenting co-owners? If the buyer succeeded in obtaining a title of the community property in his own name, then there exists an implied trust in favor of the non-consenting co-owners.
The non-consenting co-owners can assail the title of the buyer based on implied trust, which will prescribe within 10 years from notice of the sale. The co-owners can file an action of quieting of title with reconveyance and nullification of title.

What if a co-owner sold a specific portion of the community property, is the sale valid? No, the sale is null and void, since a co-owner can only dispose his undivided interest in the co-wnership. However, the buyer shall step into the shoes of vendor co-owner and will take the interest of the latter in the co-ownership.

LIMITATIONS ON CO–OWNER'S RIGHT OF USE: Each co–owner may use the thing owned in common provided he does so:

1. **To the purpose for which the co–ownership is intended.**

   ✪ To determine the purpose for which the property is intended, the agreement of the parties should govern. In default of such agreement, it is understood that the thing is intended for that use for which it is ordinarily accepted to its nature, or the use to which it has been previously devoted.

   ✪ The purpose of the co-ownership may be changed by agreement, express or implied.

   ✪ **Mere tolerance** on the part of the co-owners cannot legalize the change in the use of a thing from that intended by the parties.

2. **Without prejudice to the interests of the co–ownership.**

   ✪ A co-owner cannot devote community property to his exclusive use.

   ✪ A co–owner may not convey or adjudicate to himself in fee simple, by metes and bounds, a determinate physical portion of real estate owned in common.

   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 the entire 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.

3. **Without preventing the other co–owners from using it according to their rights.**
   ✪ The co-owners may establish rules regarding their use of the thing owned in common. In default thereof, there should be a <u>just and equitable distribution of uses</u> among all the co-owners.

REMEDY: EJECTMENT SUIT [Art. 447 rel. to Art 449]-

a. **Can be brought by anyone of the co–owners.**

   - Φ A co-owner may bring such an action without the necessity of joining all the other co-owners as co-plaintiffs because the suit is deemed to be instituted for the benefit of all.

   - Φ However, if the action is for the benefit of the plaintiff alone, such that he claims the

possession for himself and not for the co-ownership, the action will NOT prosper.

b. Action may be brought not only against strangers but even against a co–owner.

✪ The effect of the action will be to obtain recognition of the co-ownership. The defendant cannot be excluded because he has a right to possess as a co-owner, and the plaintiff cannot recover any material or determinate part of the property.

Illustrations:
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. However, an adverse decision in the action is not necessarily res judicata with respect to the other co–owners not being parties to the action, but they are bound where it appears that the action was instituted in their behalf with their express or implied consent.

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.

Note: Article 447 is a case where 1 co-owner can bind the other. The other instance is **Article 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.**

BENEFITS & EXPENSES IN THE CO-OWNED PROPERTY

I. SHARE OF CO–OWNERS IN BENEFITS: It shall be proportional to their respective interests in the co-ownership. Any stipulation in a contract to the contrary shall be void.

✪ The article speaks of "stipulation in a contract". Hence, if the co-ownership is created other than by a contract (will or donation), the share of the co–owners need not be proportionate to their respective interests (DE LEON).

II. NECESSARY EXPENSES

✪ Expenses of preservation (necessary expenses) include all those which, if not made, would endanger the existence of the thing or reduce its value or productivity. They do not imply an improvement or increase.

✪ The consent of the other co-owners need not be obtained. Thus, a co-owner may advance the expenses for preservation. If practicable, he is required to give notice to his co-owners of the NECESSITY of the repairs to be made but he is NOT required to obtain their consent.

Reason: Each co-owner preserves the rights inherent in ownership in general, and he should not be prejudiced by the negligence of the others by making it necessary for him to submit to their resolutions, thereby preventing him from taking the necessary measures to prevent the destruction of the thing or loss of the right owned in common, although it is within his power to do so.

✪ **Why is notice to other co-owners necessary?** It is for them to prepare for the expenses.

✪ **Right of co-owner who shouldered the necessary expenses:** to be reimbursed by the other co-owners. If the other co-owners do not pay he can ask the court to compel them to pay the same.

✪ **Remedy of co-owners who were not notified of the necessary expenses:** They can ask the co-owner who made the expenses to prove the necessity of the repairs and the reasonableness of the expenses. The co-owners who were not notified will not be required to contribute to expenses which are excessive.

✪ If due to the opposition of the others, the repairs are not undertaken, those who opposed such repairs shall pay the losses and damages suffered by the community.

EXAMPLE OF NECESSARY EXPENSE: expenses of preservation and taxes- 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 in proportion to their interest therein.

✪ There is no other remedy available against the co-owner who refuses to pay his share in the expenses of preservation except an action to compel him to contribute such share.

✪ Failure to contribute does not amount to a renunciation of any portion of share in the co-ownership. The co-owner in default cannot be compelled to renounce his share therein. Renunciation is a voluntary and free act.

Remedy of a co-owner who cannot contribute: 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.

Prejudicial renunciation: No such waiver shall be made if it is prejudicial to the co-ownership.

Illustration: In a building owned in common, urgent repairs are needed. Otherwise, the building is going to collapse. A owns 2/3 interest in the building, and B and C own 1/6 each. If B and C have each just enough

funds equal to 1/6 of the expected expenses for the repair of the building, and then A renounces in their favor all his interest in the building, the repair may become impossible of accomplishment for lack of funds. The waiver in this case is void. B and C can proceed to have the building repaired, and A would still be bound to pay his share of the expenses, notwithstanding his renunciation.

Rules on renunciation:

a. Total or partial.

b. Expressly made – a tacit renunciation cannot produce any effect.

c. The renunciation is in reality a case of ***dacion en pago;*** the debt of the co-owner consisting of his share in the expenses of preservation and taxes, is paid, not in money, but in an interest in property.

d. Since the renunciation refers to a portion equivalent in value to the share of the renouncing co-owner in an existing debt, it is only logical that the other co-owners who shall pay the debt of the renouncer in exchange for the portion being renounced, should consent thereto.

e. Renunciation refers to existing debts and NOT to future expenses.

f. Renunciation is a free act; a co-owner may not be compelled to renounce.

However, waiver interest in the community property is not allowed if it is prejudicial to the co–ownership.

III. EXPENSES FOR ADMINISTRATION

✪ Majority of the co-owners must consent to the expenses.

✪ **Majority:** There shall be no majority unless the resolution is approved by the co-owners who represent the controlling interest in the object of co-ownership (not numerical superiority).

✪ The administration may be delegated by the co-owners to one or more persons, whether co-owners or not. The powers and duties of such administrators must be governed by the rules on agency.

EXAMPLE: Expenses to improve or embellish are a matter of administration and better enjoyment of the thing owned in common. Since they are not essential to the preservation of the thing owned in common, and can afford to be delayed, the consent of the majority of the co–owners is required.

Rules for acts of administration and better enjoyment:

a. For the administration and better enjoyment of the thing owned in common, the resolutions of the **majority** of the co-owners shall be binding.

b. 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.

c. 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 administrator.**

Characteristics of acts of administration:

a. They refer to the enjoyment and preservation of the thing.

b. They have transitory effects.

c. Alterations which do not affect the substance or form of the thing.

✪ A lease ceases to be an act of administration and becomes an act of ownership when it is required to be recorded in the Registry of Property with a special power of attorney. A special power of attorney shall be necessary when the lease of any real property is for a period of more than 1 year.

✪ In this management, the majority of interests control, and their decisions are binding upon the minority. In making these decisions, however, there should be a notice to the minority, so that they can be heard, and the majority will be justified in proceeding without previous consultation with the minority, only when the urgency *of the case and the difficulty of meeting so require.*

Instances of prejudicial resolution of the MAJORITY:

1. When the resolution calls for a substantial change or alteration of the common property or of the use to which it has been dedicated by agreement or by its nature.

2. When the resolution goes beyond the limits of mere administration, or invades the proprietary rights of the co-owners.

3. When the resolution exposes the thing to serious danger.

4. When the majority refuses to dismiss an administrator who is guilty of fraud or negligence.

ALTERATIONS IN CO-OWNED PROPERTY

Definition: An act, by virtue of which, a co-owner, in opposition to the common or tacit agreement, and violating the will of the co-ownership, changes the thing from the state in which the others believe it should remain, or withdraws it from the use to which they desire it to be

intended; transformation which change the essence and nature of the thing.

Rule on alteration of community property:

- Φ Unanimous consent of all the co-owners is needed.
- Φ 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.
- Φ Alteration is a form of repudiation.

✪ An alteration constitutes an exercise of the right of ownership, and not of mere administration. Hence, alterations must be made by the consent of all of the co-owners even though the alteration would be beneficial, and not by a mere majority. The consent may be express or implied as in the case of a co-owner who knows that the alteration is being made, but does not interpose any objection thereto. **However, the consent given must be express to entitle recovery or reimbursement for the expenses incurred in the alteration.**

✪ When the change or alterations merely affect the better enjoyment of the thing, the agreement of the co-owners representing the majority interest is sufficient.

✪ The co–owner who makes such alteration without the express or implied consent of the other co–owners acts in bad faith, as a punishment he should:

a. Lose what he spent.
b. Be obliged to demolish the improvements done.
c. Be liable to pay for losses and damages the community property or the other co–owners may have suffered.
d. Whatever is beneficial or useful to the co-ownership shall belong to it.

ACQUSITIVE PRESCRIPTION IN CO-OWNERSHIP

Φ Acquisitive prescription in co-ownership depends on the one possessed the community property.

Community property is possessed by third person- acquisitive prescription sets in when the third person possesses the property in an open, continuous, exclusive and notorious manner. He will own the property within-

- Φ 10 years if in good faith
- Φ 30 years if in bad faith

The acquisitive period shall commence from the time of possession of the community property.

Community property is possessed by a co-owner- for acquisitive prescription to set in, the co-owner must repudiate the co-ownership. He will own the property within 30 years commencing form the knowledge of the co-owners of the repudiation of the co-ownership.

REPUDIATION OF CO-OWNERSHIP

Is there a possibility that the ownership over a community property will be consolidated to only one owner? Yes if a co-owner-

1. Buys the whole community property
2. If a co-owner repudiates the presence of co-ownership acquisitive prescription had set in against the other co-owners.

Prescriptive period: 30 years commencing from the date of the knowledge of other co-owners of the repudiation.

✪ Where a co-owner or co–heir repudiates the co-ownership, prescription begins to run from the time of knowledge of the repudiation. Thus, the imprescriptibility of the action to demand partition cannot be invoked when one of the co-owners has claimed the property as exclusive owner and possessed it for a period sufficient to acquire it by prescription

General rule: prescription does not 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.

Rationale: The possession of a co-owner is like that of a trustee. No one of the co–owners may acquire exclusive ownership of the common property through prescription for the possession by the trustee alone is not deemed adverse to the rest.

Exception: In case a co-owner expressly repudiates the existence of co-ownership. However, in order that his possession may be deemed adverse to the others, the following requisites must concur:

1. That he has performed unequivocal acts of repudiation amounting to an ouster of the others.
2. Such positive acts of repudiation have been made known to the others.
3. The evidence thereon must be clear and convincing.

✪ Hence, a mere silent possession of the trustee unaccompanied with acts amounting to an ouster of the cestui que trust cannot be construed as adverse possession.

✪ In order that the share of a co-owner may prescribe in favor of one of the co-owners, it must be clearly shown that he has repudiated the claims of the others, and that they were apprised of his claim of adverse and exclusive ownership, before prescriptive period begins to run.

Specific acts which are considered acts of repudiation:

a. Filing by a trustee of an action in court against the trust to quiet title, or recovery of ownership thereof, held in possession by the former.

b. The issuance of the certificate of title would constitute an open and clear repudiation of any trust, and the lapse of more than 20 years, open and adverse possession as owner would certainly suffice to vest title by prescription.

c. Alteration of the community property without the consent of all the co-owners.

d. Fencing the community property to the exclusion of other co-owners.

e. Entering into a registered lease of the community property without the consent of all the co-owners. A lease shall be registered if it for the period of more than 1 year. If the lease is register the lessee will have a real right over the property enforceable even against the co-owners. The other co-owners may be deprived of the used of the community property.

FORCLOSURE OF MORTGAGED OF A CO-OWNED PROPERTY

Rule: the property is still co-owned until the period of redeeming the mortgage property had lapsed. The right of redemption belongs to the co-owners.

ILLUSTRATION: Bar 2000- ownership; co-ownership; redemption: Ambrosio died, leaving his three daughters, Belen, Rosario and Sylvia a hacienda which was mortgaged to the Philippine National Bank due to the failure of the daughters to pay the bank, the latter foreclosed the mortgage and the hacienda was sold to it as the highest bidder. Six months later, Sylvia won the grand prize at the lotto and used part of it to redeem the hacienda from the bank. Thereafter, she took possession of the hacienda and refused to share its fruits with her sisters, contending that it was owned exclusively by her, having bought it from the bank with her own money. Is she correct or not? (3%)

SUGGESTED ANSWER: Sylvia is not correct. The 3 daughters are the co-owners of the hacienda being the only heirs of Ambrosio. When the property was foreclosed, the right of redemption belongs also to the 3 daughters. When Sylvia redeemed the entire property before the lapse of the redemption period, she also exercised the right of redemption of her co-owners on their behalf. As such she is holding the shares of her two sisters in the property, and all the fruits corresponding thereto, in trust for them. Redemption by one co-owner inures to the benefit of all *(Adille v. CA.157 SCRA 455).* Sylvia, however, is entitled to be reimbursed the shares of her two sisters in the redemption price.

TERMINATION OF CO–OWNERSHIP

Rule: 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.

Causes of termination:

1. By the consolidation or merger in only one of the co-owners of all the interests of the others.
2. By the destruction or loss or the property co–owned.
3. By acquisitive prescription in favor of a third person or a co–owner who repudiates the co–ownership.
4. By the termination of the period agreed upon or imposed by the donor or the testator, or the period allowed by law.
5. By the sale by the co-owners of the thing to a third person and the distribution of its proceeds among them.
6. By the partition, judicial or extrajudicial, of the respective undivided shares of the co-owners.

PARTITION OF CO-OWNED PROPERTY

✪Partition shall be governed by the Rules of Court.

✪ The mere fact that the partition of the property may affect the usefulness or value of the whole is not a valid excuse for a refusal to have it partitioned among the co-owners.

✪ An action for partition does not prescribe.

Partition defined: The division between two or more persons of real or personal property which they own in common so that each may enjoy and possess his sole estate to the exclusion of and without interference from the others.

Exceptions to the right of partition:

1. When the co-owners have agreed to keep the thing undivided for a certain period of time, not exceeding 10 years. This term may be extended by a new agreement.

   ✪ The excess in 10 years shall be void. When the agreement is that it shall continue until one co-owner dies, the indivision cannot go beyond 10 years. If a co-owner dies before 10 years expire, the indivision will cease upon such death.

2. When the partition is prohibited by the donor or testator for a certain period not exceeding 20 years.

3. When another co–owner has possessed the property as exclusive owner and for a period sufficient to acquire it by prescription.

4. When a partition is prohibited by law as when the co-owners cannot demand a physical division of the thing owned in common because to do so would render it unserviceable for the use for which it is intended the co-ownership may be terminated in accordance with the following rules:
   - **a.** Agreement between the co-owners that the thing be allotted to one of them who shall indemnify the others.
   - **b.** If the co-owners cannot agree, the thing shall be sold and its proceeds distributed to the co-owners.

5. When from the very nature of the community, it cannot be legally divided, such as in party walls and the conjugal partnership.

Purpose and effect of partition:

1. It has for its purpose the separation, division and assignment of the thing held in common among those to whom it may belong; the thing itself may be divided, or its value.

2. After partition, the portion belonging to each co-owner has been identified and localized, so that co-ownership, in its real sense, no longer exists.

Issues in an action for partition:

1. Whether or not the plaintiff is indeed a co–owner.

2. How the property is to be divided between the plaintiff and the defendant.

How partition is effected:

a. Extrajudicially pursuant to an agreement or by judicial proceedings under Rule 69 of the Rules of Court.

b. May be effected in consequence of a suit through a settlement between the parties with the approval of a competent court

✪ Where in an action for reconveyance and damages does not specifically seek partition, it does not preclude the court from considering partition as a remedy under art. 494

OBLIGATIONS OF CO–OWNERS IN PARTITION:

1. Mutual accounting of benefits received for the fruits and other benefits of the thing belong to all the co-owners.

2. Mutual reimbursement for expenses, for if they share in the benefits, they should also share in the charges.

3. Indemnity for damages caused by reason of negligence or fraud.

4. Reciprocal warranty for defects of title or quality of the portion assigned to a co–owner.

PARTICIPATION OF CREDITORS AND ASSIGNEES IN THE PARTICIPATION

Note that the participation of creditors and assignees is only limited in the partition of the co-owned property.

Creditors: includes all kinds of creditors, provided they became so during the existence of the co–ownership.

Assignees: refers to transferees of the interests of one or more of the co–owners.

Rules:

1. If no notice is given, the partition will not be binding upon the creditors. The creditors or assignees may question the partition.
2. If notice is given, it is their duty to appear and make known their position.
3. They cannot impugn a partition already executed or implemented, unless:
   a. There has been fraud, whether or not notice was given, and whether or not formal opposition was presented, OR
   b. The partition was made notwithstanding a formal opposition presented to prevent it, even if there has been no fraud.

THIRD PERSONS: The partition of a thing owned in common shall not prejudice third persons, who shall retain the rights of mortgage, servitude, or any other real rights belonging to them before the division was made. Personal rights pertaining to third persons against the co-ownership shall also remain in force, notwithstanding the partition.

✪ Third persons refers to all those with real rights or with personal rights against the co–owners who had no participation whatever in the partition. Such rights of third persons existing before the division was made are retained by them or remain in force notwithstanding the partition.

LEGAL OR JURIDICAL DISSOLUTION: When the thing is essentially indivisible, the co-ownership may be terminated in accordance with the following rules:

a. Agreement between the co-owners that the thing be allotted to one of them who shall indemnify the others.
b. If the co-owners cannot agree, the thing shall be sold and its proceeds distributed to the co-owners.

✪ The sale may be public or private, and the purchaser may be a co-owner or a third person.

SPECIAL CO-OWNERSHIP

EXPENSES IN DIFFERENT STORIES OF A HOUSE BELONGING TO DIFFERENT OWNERS.

Rules: 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. Main walls, party walls, the roof and other things used in common: all owners in proportion to the value of the story belonging to each.

2. Floors of story: each owner shall bear the cost of maintaining the floor of his story.

3. Floor of entrance, front door, common yard and common sanitary works: all owners pro rata.

4. Stairs from the entrance to the first story: all owners pro rata, with the exception of the owner of the ground floor.

5. Stairs from the first story to the second story: all owners pro rata, with the exception of the owner of the ground floor and the first floor; and so on, successively.

6. Stairs going to the basement: Owner of the basement.

EXPENSES ON COMMON AREAS OF CONDOMINIUM UNITS [R.A. 4726: THE CONDOMINIUM ACT]

Condominium defined : An interest in real property consisting of a separate interest in a unit in a residential, industrial or commercial building and an undivided interest in common, directly or indirectly, in the land on which it is located and in other common areas of the building. A

condominium may include, in addition, a separate interest in other portions of such real property.

How expenses are handled? Title to common areas, including the land, or the appurtenant interests in such areas, may be held by a corporation specially formed for the purpose (condominium corporation) in which the holders of separate interests shall automatically be members or shareholders, to the exclusion of others, in proportion to the appurtenant interest of their respective units in the common areas.

RIGHTS AND OBLIGATIONS OF CONDOMINIUM OWNER

What are the incidents of a condominium grant?

a. The boundary of the unit grant

1. the interior surfaces of the perimeter walls, floors, ceilings, windows, an doors
2. those which are not part of the unit bearing walls, columns, floors, roofs, foundations, and other common structural elements of the building; lobbies, stairways, hallways, and other areas of common use, elevator equipment and shafts, central heating, central refrigeration, and central air conditioning equipment, reservoirs, 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. Exclusive easement for the use of the air space encompassed by the boundaries of the unit as it exists at any particular time.

1. as the unit may lawfully be altered or reconstructed from time to time
2. such easement shall be automatically terminated in any air space upon destruction of the units to render it untenable

c. Unless otherwise provided, the common areas are held in common by the holders of units, in equal shares, one for each unit

d. a non-exclusive easement for ingress, egress, and support through the common areas are subject to such easements.

e. Each condominium unit 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, bounding his own unit.

f. Each condominium owner shall have the exclusive right to mortgage, pledge, encumber his condominium and to have the same appraised independently of the other condominiums but any obligation incurred by such condominium owner is personal to him.

g. Each condominium owner has also the absolute right to sell or dispose of his condominium unless the master deed contains a requirement that the property be first offered to the condominium owners within a reasonable period of time before the same is offered to outside parties.

Case: Section 5 of the Condominium Act expressly provides that the shareholding in the Condominium Corporation will be conveyed only in a proper case. Not every purchaser of a condominium unit is a shareholder of the condominium corporation. The Condominium Act leaves to the Master Deed the determination of when the shareholding will be transferred to the purchaser of a unit, as clearly provided in the deed in this case. Ownership of a unit, therefore, is a condition *sine qua non* to being a shareholder in the condominium corporation By necessary implication, the "separate interest" in a condominium, which entitles the holder to become automatically a share holder in the condominium corporation, as provided in Section 2 of the Condominium Act, can be no other than ownership of a unit. The private respondents, consequently, who have not fully paid the purchase price of their units and are not owners of their units nor members or shareholders of the petitioner condominium corporation. (**Sunset View Condominium v Judge Campos)**

BAR 1992- Ownership; Co-Ownership- A, B and C are the co-owners in equal shares of a residential house and lot. During their co-ownership, the following acts were respectively done by the co-owners: 1) A undertook the repair of the foundation of the house, then tilting to one side, to prevent the house from collapsing. 2) B and C mortgaged the house and lot to secure a loan. 3) B engaged a contractor to build a concrete fence all around the lot. 4) C built a beautiful grotto in the garden. 5) A and C sold the land to X for a very good price.

SUGGESTED ANSWER:

(a) Is A's sole decision to repair the foundation of the house binding on B and C? May A require B and C to contribute their 2/3 share of the expense? Reasons. Yes. A's sole decision to repair the foundation is binding upon B and C. B and C must contribute 2/3 of the expense. Each co-owner has the right to compel the other co-owners to contribute to the expense of preservation of the thing (the house) owned in common in proportion to their respective interests (Arts. 485 and 488, Civil Code).

(b) What is the legal effect of the mortgage contract executed by B and C? Reasons. The mortgage shall not bind the 1/3 right and interest of A and shall be deemed to cover only the rights and interests of B and C in the house and lot. The mortgage shall be limited to the portion (2/3) which may be allotted to B and C in the partition (Art. 493, Civil Code).

(c) Is B's sole decision to build the fence binding upon A and C? May B require A and C to contribute their 2/ 3 share of the expense? Reasons. B's sole decision to build the concrete fence is not binding upon A and C. Expenses to improve the thing owned in common must be decided upon by a majority of the co-owners who represent the controlling interest (Arts. 489 and 492. Civil Code).

(d) Is C's sole decision to build the grotto binding upon A and B? May C require A and B to contribute their 2/ 3 share of the expense? Reasons. C's sole decision to build the grotto is not binding upon A and B who cannot be required to contribute to the expenses for the embellishment of the thing owned in common if not decided upon by the majority of the co-owners who represent the controlling interest (Arts. 489 and 492, Civil Code).

(e) What are the legal effects of the contract of sale executed by A. C and X? Reasons. The sale to X shall not bind the 1/3 share of B and shall be deemed to cover only the 2/3 share of A and C in the land (Art. 493, Civil Code). B shall have the right to redeem the 2/3 share sold to X by A and C since X is a third person (Art. 1620, Civil Code).

BAR 2000- OWNERSHIP; CO-OWNERSHIP; PRESCRIPTION- In 1955, Ramon and his sister Rosario inherited a parcel of land in Albay from their parents. Since Rosario was gainfully employed in Manila, she left Ramon alone to possess and cultivate the land. However, Ramon never shared the harvest with Rosario and was even able to sell one-half of the land in 1985 by claiming to be the sole heir of his parents. Having reached retirement age in 1990 Rosario returned to the province and upon learning what had transpired, demanded that the remaining half of the land be given to her as her share. Ramon opposed, asserting that he has already acquired ownership of the land by prescription, and that Rosario is barred by laches from demanding partition and reconveyance. Decide the conflicting claims. (5%)

SUGGESTED ANSWER: Ramon is wrong on both counts: prescription and laches. His possession as co-owner did not give rise to acquisitive prescription. Possession by a co-owner is deemed not adverse to the other co-owners but is, on the contrary, deemed beneficial to them *(Pongon v. GA, 166 SCRA 375).* Ramon's possession will become adverse only when he has repudiated the co-ownership and such repudiation was made known to Rosario. Assuming that the sale in 1985 where Ramon claimed he was the sole heir of his parents amounted to a repudiation of the co-ownership, the prescriptive period began to run only from that time. Not more than 30 years having lapsed since then, the claim of Rosario has not as yet prescribed. The claim of laches is not also meritorious. Until the repudiation of the co-ownership was made known to the other co-owners, no right has been violated for the said co-owners to vindicate. Mere delay in vindicating the right, standing alone, does not constitute laches.

ALTERNATIVE ANSWER: Ramon has acquired the land by acquisitive prescription, and because of laches on the part of Rosario. Ramon's possession of the land was adverse because he asserted sole ownership thereof and never shared the harvest therefrom. His adverse possession having been continuous and uninterrupted for more than 30 years, Ramon has acquired the land by prescription. Rosario is also guilty of laches not having asserted her right to the harvest for more than 40 years.

BAR 2002- Ownership; Co-Ownership; Prescription- Senen and Peter are brothers. Senen migrated to Canada early while still a teenager. Peter stayed in Bulacan to take care of their widowed mother and continued to work on the Family farm even after her death. Returning to the country some thirty years after he had left, Senen seeks a partition of the farm to get his share as the only co-heir of Peter. Peter interposes his opposition, contending that acquisitive prescription has already set in and that estoppel lies to bar the action for partition, citing his continuous possession of the property for at least 10 years, for almost 30 years in fact. It is undisputed that Peter has never openly claimed sole ownership of the property. If he ever had the intention to do so, Senen was completely ignorant of it. Will Senen's action prosper? Explain. (5%).

SUGGESTED ANSWER: Senen's action will prosper. Article 494 of the New Civil Code provides that —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 nor notified Senen of his having repudiated the same.

ALTERNATIVE ANSWER: Senen's action will prosper. This is a case of implied trust. (Art 1441, NCC) For purposes of prescription under the concept of an owner (Art. 540, NCC). There is no such concept here. Peter was a co-owner, he never claimed sole ownership of the property. He is therefore estopped under Art. 1431, NCC.

BAR 1993- OWNERSHIP; CO-OWNERSHIP; REDEMPTION: In 1937, A obtained a loan of P20, 000.00 from the National City Bank of New York, an American-owned bank doing business in the Philippines. To guarantee payment of his obligation, A constituted a real estate mortgage on his 30- hectare parcel of agricultural land. In 1939, before he could pay his obligation. A died intestate leaving three children. B, a son by a first marriage, and C and D, daughters by a second marriage. In 1940, the bank foreclosed the mortgage for non-payment of the principal obligation. As the only bidder at the extrajudicial foreclosure sale, the bank bought the property and was later issued a certificate of sale. The war supervened in 1941 without the bank having been able to obtain actual possession of the property which remained with A's three children who appropriated for themselves the income from it. In 1948, B bought the property from the bank using the money he received as back pay from the U. S. Government, and utilized the same in agribusiness. In 1960, as B's business flourished, C and D sued B for partition and accounting of the income of the property, claiming that as heirs of their father they were co-owners thereof and offering to reimburse B for whatever he had paid in purchasing the property from the bank. In brief, how will you answer the complaint of C and D, if you were engaged by D as his counsel?

SUGGESTED ANSWER: As counsel of B, I shall answer the complaint as follows: When B bought the property, it was not by a right of redemption since the period therefore had already expired. Hence, B bought the property in an independent unconditional sale. C and D are not co-owners with B of the property. Therefore, the suit of C and D cannot prosper.

ALTERNATIVE ANSWER: As counsel of B, I shall answer the complaint as follows: From the facts described, it would appear that the Certificate of sale has not been registered. The one-year period of redemption begins to run from registration. In this case, it has not yet even commenced. Under the Rules of Court, the property may be released by the Judgment debtor or his successor in interest. (Sec. 29, Rule 27). It has been held that this includes a joint owner. *(Ref. Magno vs.Ciola, 61 Phil. 80).*

BAR 2002- OWNERSHIP; CO-OWNERSHIP; REDEMPTION: Antonio, Bart, and Carlos are brothers.

They purchased from their parents specific portions of a parcel of land as evidenced by three separates deeds of sale, each deed referring to a particular lot in meter and bounds. When the deeds were presented for registration, the Register of Deeds could not issue separate certificates of Title. A single title had to be issued, therefore, in the names of three brothers as co-owners of the entire property. The situation has not changed up to now, but each of the brothers has been receiving rentals exclusively from the lot actually purchased by him. Antonio sells his lot to a third person, with notice to his brothers. To enable the buyer to secure a new title in his name, the deed of sale was made to refer to undivided interest in the property of the seller (Antonio), with the metes and bounds of the lot sold being stated. Bart and Carlos reacted by signifying their exercise of their right of redemption as co-owners. Antonio in his behalf and in behalf of his buyer, contends that they are no longer co-owners, although the title covering the property has remained in their names as such. May Bart and Carlos still redeem the lot sold by Antonio? Explain. (5%)

SUGGESTED ANSWER: No, they may not redeem because there was no Co-ownership among Antonio, Bart, and Carlos to start with. Their parents already partitioned the land in selling separate portions to them. The situation is the same as in the case *Si v. Court of Appeals, (342 SCRA 653 [2000]).*

POSSESSION

Concept: The holding of the thing or the enjoyment of a right with the intention to possess in one's own right.

Elements:

1. There must be holding or control of a thing or right; exception: those cases mentioned in ART.537.
2. The holding or control must be with intention to possess.
3. It must be in one's own right.

FORM OR DEGREES OF POSSESSION

1. **possession without any title whatever** – mere holding or possession without any right or title at all e.g. thief, squatter;

2. **possession with a juridical title** – possession is predicated on a juridical relation existing between the possessor and the owner of the thing but not in the concept of owner e.g. lessee, usufructuary, agent, pledgee, trustee;

3. **possession with a just title** – possession of an adverse claimant whose title is sufficient to transfer ownership but is defective e.g when the seller is not the true owner or could not transmit his rights thereto to the possessor who acted in good faith;
4. **possession with a title in fee simple** – possession derived from the right of dominion or possession of an owner note: THIS IS THE HIGHEST DEGREE OF POSSESSION

ACQUISITION OF POSSESSION

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).

Legal formalities contemplates delivery of the property, whether actual or constructive

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).

2 KINDS OF POSSESSION

Usually possession may either be-

1. Possession in the concept of an owner *[en concepto de dueno]*
2. Possession in the concept of a holder *[en concepto de tenedor]*

POSSESSION IN THE CONCEPT OF AN OWNER

Φ Possession in the concept of an owner DOES NOT refer to the possessor's inner belief or disposition regarding the property in his possession.

Φ 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.

Φ Possession in the concept of an owner is *ius possidendi*.

Φ 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].
2. Presumption of just title [Art 541].

Relevance of the inner disposition of the possessor in the concept of an owner [good faith, bad faith]

Φ Although possession does refer to the overt acts of the possessor, his disposition has relevance as to other matters of possession.

I. GOOD FAITH

A. Requisites

i. Ostensible title or mode of acquisition - If it's 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.

Φ 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
- Φ Otherwise, it's bad faith.

B. EFFECTS OF GOOD FAITH

1. As to the fruits

- Φ **Fruits already received [Art 544]** - Entitled to all the fruits until possession is legally interrupted (*i.e.* before summons).

- Φ **Fruits still pending [Art 545]** - 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.

2. As to necessary expenses [Art 546]
- Φ The possessor in good faith is entitled to a refund of necessary expenses.

- Φ The possessor in good faith may retain the thing until he is reimbursed for necessary expenses.

3. As to useful expenses [Art 546 & 547]
- Φ The possessor in good faith is entitled to a refund of useful expenses.

- Φ The possessor in good faith may retain the thing until he is reimbursed for useful expenses.

- Φ 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

- Φ 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.

4. As to ornamental expenses [Art 548]
- Φ The possessor in good faith is not entitled to a refund for ornamental expenses.
- Φ But he may remove the ornamental improvements if they do not cause damage to the principal thing.

5. As to prescription [Art 1132, 1134]
- Φ Movables- 4 years from possession
- Φ Immovable- 10 years from possession.

6. As to liability for deterioration or loss [Art 552]
- Φ The possessor in good faith is not liable since he thought that he was the owner.

- Φ Once the good faith ceases (*i.e.* summons served), then the possessor is liable if there was fraudulent intent or negligence.

II. BAD FAITH- effects of bad faith:

1) As to fruits [549]
- Φ The possessor in bad faith shall reimburse the fruits receive and those which the legitimate possessor could have received.

- Φ The possessor in bad faith has a right of reimbursement for necessary expenses for the production, gathering and preservation of the fruits.

2) As to necessary expenses
- Φ The possessor in good faith is entitled to a refund of necessary expenses.
- Φ The possessor in good faith has no right to retain the thing until he is reimbursed for necessary expenses.

3) As to useful expenses
- Φ The possessor in bad faith is not entitled to a refund of useful expenses.

4) As to ornamental expenses
- Φ The possessor in bad faith is not entitled to a refund of ornamental expenses.
- Φ 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.

5) As to prescription [1132 & 1137]
- Φ Movables – 8 years
- Φ Immovables – 30 years

6) As to liability for deterioration or loss [Art 552]
- Φ 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

APPLICABLE PRESUMPTIONS IN POSSESSION AS AN OWNER

1. **Just title [541]**
   - Φ A possessor in the concept of owner has in his favor the legal presumption that he possesses just title and he cannot be obliged to show or prove it.

2. **Good faith [527, 559]**
   - Φ Good faith is always presumed, and upon him who alleges bad faith on the part of a possessor rests the burden of proof.
   - Φ The possession of movables acquired in good faith is equivalent to title.
   - Φ Equivalent to title means presumptive title sufficient to serve as a basis for prescription.
   - Φ **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.)
   - Φ **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)
     - **c.** If the disposition is made under any factor's act (Article 1505, ¶2)
     - **d.** Court order
     - **e.** If purchased by a merchant's store (Article 1505(3)

       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)
     - **g.** If the possessor is the holder in due course of a negotiable instrument of title (Article 1518)

3. **Continuity of Good Faith [528, 529]**
   - Φ 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.
   - Φ 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 [554, 561]**
   - Φ 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.
   - Φ 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 movable within or inside [542, 426]**
   - Φ 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.

POSSESSION IN THE CONCEPT OF A HOLDER

Φ 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.

Φ The possessor in the concept of a holder acknowledges a superior right in another person which the possessor admits is ownership.

Φ 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.)

Φ Possession in the concept of a holder will never become ownership.

Φ **Note** that if the possessor repudiates the possession as a holder, then from that time on he possesses the property in the concept of an owner.

PRESUMPTIONS APPLICABLE

1. **Non- interruption [554, 561]**
   - Φ 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.
   - Φ 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 of movable within or inside**
   - Φ 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.

Note: In both possession in the concept of an owner and possession in the concept of a holder, both are protected by

"**Article 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."

LOSS OF POSSESSION

Possession maybe lost-

1. **Abandonment [555]** - Abandonment may either be:
   a. **Permanent** - There is no need for the prescriptive period to run.
   b. ***Temporary*** - Prescription will run.

   See Article 1125

2. **By assignment made to another either by onerous or gratuitous title [555].**

3. **By destruction or total loss of the thing, or it goes out of commerce [555].**

   Φ See 1189 (1) (2)

4. By possession of another subject to the provisions of Article 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 [555]

   Φ The complaint for forcible entry must be filed within 1 year from the forcible entry.

   Φ *Accion publiciana* must be filed after the lapse of 1 year from the forcible entry but before the lapse of 10 years.

   Φ In this case, possession is not really lost until the end of the 10th year.

5. **By *Accion Reinvindicatoria* –** if an accion reinvindicatoria was filed it has the following effects:

   Φ **Art. 1120.** Possession is interrupted for the purposes of prescription, naturally or civilly.

   Φ **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.

   Φ **Art. 1122.** If the natural interruption is for only one year or less, the time elapsed shall be counted in favor of the prescription.

   Φ **Art. 1123.** Civil interruption is produced by judicial summons to the possessor.

   Φ **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. **Eminent Domain**

RULES FOR LOSS OF MOVABLES

General Rule: possession of personal property acquired in GF = title therefore the true owner cannot recover it

Exception: if the true owner
(1) lost the movable or
(2) has been unlawfully deprived

In either of these, he may recover the personal property not only from the finder but also from those who may have acquired it in GF form such finder or thief, without paying for any indemnity *except* if possessor acquired it in public sale (here, the possessor in GF is entitled to reimbursement).

Public sale—is one where there has been a public notice of the sale, in which anybody has a right to bid and offer to buy

Requisites for Title:
1. that the possession is in GF
2. that the owner has voluntarily parted with the possession of the thing
3. that the possessor is in the concept of an owner

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. 560)**

DOCTRINE OF TACKING OF POSSESSION-

REMEDIES OF PERSONS DEPRIVE OF POSSESSION
1. **Replevin**
2. ***Accion interdictal*** [ejectment cases]
3. ***Accion publiciana***
4. ***Accion reinvindicatoria*****-** if the possession is in the concept of an owner.

Bar 1993- Chattel Mortgage; Possession - A, about to leave the country on a foreign assignment, entrusted to B his brand new car and its certificate of registration. Falsifying A's signature, B sold A's car to C for P200, 000.00. C then registered the car in his name. To complete the needed amount, C borrowed P100.000.00 from the savings and loan association in his office, constituting a chattel mortgage on the car. For failure of C to pay the amount owed, the savings and loan association filed in the RTC a complaint for collection with application for issuance of a writ of replevin to obtain possession of the vehicle so that the chattel mortgage could be foreclosed. The RTC issued the writ of replevin. The car was then seized from C and sold by the sheriff at public auction at which the savings and loan association was the lone bidder. Accordingly, the car was sold to it. A few days later, A arrived from his foreign assignment. Learning of what happened to his car, A sought to recover possession and ownership of it from the savings and loan association. Can A recover his car from the savings and loan association? Explain your answer.

Suggested answer: Under the prevailing rulings of the Supreme Court, A can recover the car from the Savings and Loan Association provided he pays the price at which the Association bought the car at a public auction. Under that doctrine, there has been an unlawful deprivation by B of A of his car and, therefore, A can recover it from any person in possession thereof. But since it was bought at a public auction in good faith by the Savings and Loan Association, he must reimburse the Association at the price for which the car was bought.

Alternative answer: Yes, A can recover his car from the Savings and Loan Association. In a Chattel Mortgage, the mortgagor must be the absolute owner of the thing mortgaged. Furthermore, the person constituting the mortgage must have the free disposal of the property, and in the absence thereof, must be legally authorized for the purpose. In the case at bar, these essential requisites did not apply to the mortgagor B, hence the Chattel Mortgage was not valid.

Bar 1995 - Chattel Mortgage; Preference of Creditors - Lawrence, a retired air force captain, decided to go into the air transport business. He purchased an aircraft in cash except for an outstanding balance of P500, 000.00. He incurred an indebtedness of P300, 000.00 for repairs with an aircraft repair company. He also borrowed P1 Million from a bank for additional capital and constituted a chattel mortgage on the aircraft to secure the loan.

While on a test flight the aircraft crashed causing physical injuries to a third party who was awarded damages of P200, 000. 00. Lawrence's insurance claim for damage to the aircraft was denied thus leaving him nothing else but the aircraft which was then valued only at P1 Million. Lawrence was declared insolvent.

Assuming that the aircraft was sold for Pl Million, give the order of preference of the creditors of Lawrence and distribute the amount of P1 Million.

Suggested answer: Assuming that the aircraft was sold for P1 Million, there is no order of preference. The P1 Million will all go to the bank as a chattel mortgagee because a chattel mortgage under Art. 2241 (4) NCC defeats Art. 2244 (12) and (14}. Art. 2241 (3) and (5) are not applicable because the aircraft is no longer in the possession of the creditor.

RUINOUS BUILDINGS AND TREES IN DANGER OF FALLING

Rules as to constructions: The owner has the duty to demolish a building, or any other construction which is in danger of falling or to repair the same in order to prevent it from falling.

In case of his failure to do so, demolition of the structure at the expense of the owner, or when demolition is not necessary, take measures to insure public safety.

✪ *The owner is liable for damages whether or not he had actual knowledge of the ruined condition of his building or other construction.*

Related provisions: See Articles 1723, 2190, 2191, 2192.

Rules as to trees: The owner of the tree shall be obliged to remove it whenever it threatens to fall in such a way as to cause damage to:

a. The land or tenement of another, OR
b. To travelers over a public or private road.

In case of his failure to do so, the administrative authorities, in the exercise of police power, may order its removal at the expense of the owner.

✪ *The police power of the State includes the power to abate nuisance per se or per accidens. Ruinous buildings and trees in danger of falling are nuisances per se.*

USUFRUCT

USUFRUCT DEFINED - a real right, of a temporary nature, which authorizes its holder to enjoy all the benefits which result from the normal enjoyment of another's property, with the obligation to return, at the designated time, either the same thing, or, in special cases, its equivalent

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.

3. **Accidental** - The accidental elements are those which are the subject of stipulation (*i.e.* how long will the usufruct last).

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.	

KINDS OF USUFRUCT

According to Source [Art 563]
- **a.** Voluntary or Conventional (*i.e.* contracts, donations, wills)
- **b.** Legal – created by law (*i.e.* Article 226, ¶2, Family Code)

According to Extent [Art 564]
- **a.** Total – all of the fruits
- **b.** Partial – part of the fruits

According to Persons Enjoying the Right of Usufruct [Art 564]
- **a.** Simple – only one usufructuary enjoys
- **b.** Multiple – several usufructuaries enjoy
  - **i.** Simultaneous
  - **ii.** Successive

According to the Terms of Usufruct [Art 564]
- **a.** Pure – no terms and conditions
- **b.** Conditional
- **c.** With a Term or Period

According to the Object of the Usufruct [Art 564]
- **a.** Things
- **b.** Rights
  - Φ A usufruct may be constituted on a right provided that it is not strictly personal or intransmissible.

RIGHTS OF THE USUFRUCTUARY

1. Rights to the fruits [Art 566-570]

Φ Not entitled to hidden treasures found in the land subject of usufruct unless he is the finder.

Φ Entitled to all the natural, industrial, and civil fruits of the property in usufruct.

Φ 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 for the fruits.

Φ 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.

Φ 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 increase in the accession or any servitude [Art 571]

Φ 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 right of usufruct [Art 572, 590]

Φ Consent of the naked owner is not needed for the alienation of the right of usufruct.

Φ The usufructuary may lease or alienate his right of usufruct, even by gratuitous title.

Φ 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.

Φ 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 [Art 578]

- Φ The usufructuary of an action to recover real property or a real right, or movable property, has the right to bring the action.

- Φ The owner is obligated to give him the authority for this purpose and to furnish him whatever proof he may have.

- Φ 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 [Art 579]

- Φ Such right exists as long as he does not alter the property's form or substance.
- Φ The usufructuary shall have no right of reimbursement.
- Φ The usufructuary may remove use improvements if it is possible to do so without causing damage to the property. [the usufructuary may remove the improvement at the termination of the usufruct.]

6. Right to any increase in the value due to indispensable repairs made [Art 594]

- Φ 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.

OBLIGATIONS OF USUFRUCTUARY

1. To make and inventory [Art 583].

- Φ Inventory contains an appraisal of the movables and a description of the immovables.

- Φ 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.

- Φ **Exceptions to making of inventory**
  - **a.** Non-execution of an inventory does not injure anyone [Art 585].
  - **b.** Waiver of owner [stipulation in the will or contract]

2. Give security [Art 583]

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
    - Φ 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)
b. Waiver
c. If usufructuary is the donor of the property (Article 584)
d. In case of usufruct by parents (Article 226, ¶2, Family Code)

Exceptions:

- Φ When the value of the children's property is more than 50K.
- Φ When the parents contract a 2nd marriage (Article 584)

e. In case of *caucion juratoria* (Article 587)

- Φ ***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.

- Φ 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. Observe Due care [Art 589, 610]
- Φ Take care of the things in usufruct as a good father of a family [*diligentissimi bonus pater familias*].

- Φ 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 of negligence [Art 590]
- Φ 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 [Art 591].
- Φ 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.

- Φ 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 & extraordinary reapirs [Art 592]
- Φ The usufructuary is obligated to make ordinary repairs.
- Φ Ordinary repairs mean those repairs which arise out of the normal wear and tear of use.

- Φ If the usufructuary does not make ordinary repairs, the owner may make ordinary repairs at the expense of the usufructuary.

- Φ In case of extra-ordinary repairs naked owner cannot be compelled to do it, unless it is necessary for preservation. If the naked owner does not make the repairs then the usufructuary can undertake the repairs and he has the right to be reimbursed for expenses incurred therefor by the naked owner.

7. To notify the owners of urgent repairs [Art 593]
- Φ 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 extra-ordinary repairs [Art 594]
- Φ 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 [Art 595]
- Φ 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 [Art 596- 597]
- Φ Annual charges and taxes imposed on the fruits are shouldered by the usufructuary.
- Φ Land taxes on the usufruct are shouldered by the owner in the absence of stipulation to the contrary.

11. To notify the owner of any act of 3rd person detrimental to ownership [Art 601]
- Φ If the usufructuary does not notify the owner of the any prejudicial act by a 3rd person, the usufructuary shall be liable for damages.

- Φ Remedy of usufructuary if his possession to the property subject of usufruct is prejudice:
  - **a.** Replevin
  - **b.** Accion interdictal
  - **c.** Accion publiciana

- Φ **Note:** it is the naked owner that has the legal personality to file accion reinvindicatoria as a remedy since the usufructuary is not the owner. However, the usufructuary can avail of such remedy if he repudiates the usufruct and started possessing the property as an owner.

12. Shoulder the expenses, costs and liabilities in suits involving the usufruct [Art 602].

13. Return the thing at the termination of the usufruct [Art 612].
- Φ If in case the usufructuary or his heirs should be reimbursed, there would be a right of retention by the usufructuary or the heirs.

- Φ After delivery of the thing, the security shall be cancelled.

USUFRUCT ON LAND AND BUILDING

I. Building is totally destroyed and insured

a) Premiums paid by naked owner and usufructuary
- Φ Building is rebuild- usufruct is not extinguish on the land and building.

- Φ Building not rebuild- usufruct on land continues but naked owner usufruct interest of insurance proceeds.

b) Premiums paid by naked owner only
- Φ Naked owner is entitled to the insurance proceeds.
- Φ Building rebuild- usufruct on the building cannot be continued, but usufruct on the land continues.

EXTINGUISHMENT OF THE USUFRUCT

1. **By death of the usufructuary** (Article 603 (1))

   Exceptions:
   - **a.** Contrary intention
   - **b.** Definite period [if the stipulated period for the duration of the usufruct did not elapsed and the usufructuary dies, his heirs shall not acquire the usufruct unless there is a stipulation to the contrary.]
   - **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)] - what if the thing subject of usufruct cannot be returned? Liability of the usufructuary depends on the manner of loss-
   - Φ If loss due to bad faith- usufructuary is liable for damages.
   - Φ If loss was due to fortuitous event- usufructuary has no liability.

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.

USUFRUCT NOT TERMINATED

1. **Expropriation-** the owner is entitled to just compensation and the interest thereon should be delivered to the usufructuary.

2. **Is the usufruct extinguished when the thing is usufruct was badly used by the usufructuary?** No! Article 610- "A usufruct is not extinguish 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 compensation which may be allowed him for its administration.

   There is abuse if the usufructuary uses the thing is usufruct in a manner not originally contemplated by the parties.

   However, if the usufruct was created via a contract, it may be stipulated that bad use of the property in usufruct may extinguish the usufruct.

   Remember that the agreement in the contract is the law between the parties.

EASEMENTS/ SERVITUDES

EASEMENT OR SERVITUDE DEFINED

- Φ Not a possessory right.

- Φ Easement has been defined as a real right constituted on another'' property, corporeal and immovable, by virtue of which the owner of the same has to abstain from doing or to allow somebody else to do something on his property for the benefit of another thing or person;

- Φ It may also be defined as an encumbrance imposed upon an immovable for the benefit of another immovable belonging to a different owner or for the benefit of a community or one or more persons to whom the encumbered estate does not belong by virtue of which the owner is obliged to abstain from doing or to permit a certain thing to be done on his estate

EASEMENT AND SERVITUDE DISTINGUISHED

- Φ easement is an English term while servitude which is derived from Roman Law, is the name used in civil law countries;
- Φ servitude is the broader term, it may be real or personal while easement is always real;
- Φ it is said that easement refers to the right enjoyed by one and servitude, the burden imposed upon another;

Characteristics of Easement

1. it is a real right but will affect third persons only when duly registered;
2. it is enjoyed over another immovable, never on one's own property;
3. it involves two neighboring estates, the dominant to which a right belongs and the servient upon which the obligation arises;

4. it is inseparable from the estate to which it is attached and, therefore, cannot be alienated independently of the estate;
5. it is indivisible for it is not affected by the division of the estate between two or more persons;
6. it is a right limited by the needs of the dominant owner or estate, without possession;
7. it cannot consist in the doing of an act unless the act is accessory in relation to a real easement;
8. it is a limitation on the servient owner's rights of ownership for the benefit of the dominant owner; and therefore, it is not presumed

Easement established only on immovable

- Φ what the law treats of are not all immovables as defined by the Civil Code but only those which are so by their nature (are really capable of being moved)

Nature of benefit to dominant estate

- Φ there can be no easement without a burden on an estate for the benefit of another immovable belonging to a different owner or of a person or a group of persons

Distinguished from lease

1. easement is a real right, while lease is a real right only when registered;
2. easement is imposed only on real property while lease may involve either personal or real property;
3. in easement, there is a limited right to the use of real property of another but without the right of possession, while in lease, there is a limited right to both the possession and use of another's property

Distinguished from usufruct

1. easement is imposed only on real property, while usufruct may involve either real or personal property;
2. easement is limited to a particular or specific use of the servient estate, while usufruct includes all the uses and the fruits of the property;
3. easement is a non – possessory right over an immovable, while usufruct involves a right of possession in an immovable or movable;
4. easement is not extinguished by the death of the dominant owner, while usufruct is, as a rule, extinguished by the death of the usufructuary

Note: both are real rights, whether registered or not, and are transmissible

Can an easement be created over a usufruct? No, because easements can only be created over an immovable which is corporeal. A usufruct is a right which is incorporeal and not corporeal.

May a usufruct be created over an easement? No, although easement is a right but it cannot exist on its own, it must be with an immovable. Therefore there can be no usufruct over an easement because usufruct is a possessory right while an easement is not.

May an easement be created over another easement? No, easement is a real right over corporeal things thus you cannot have an easement over right which although real but not corporeal.

CLASSIFICATIONS OF EASEMENTS

1. **as to recipient of benefit:**
   - **a.** Real – art. 613
   - **b.** Personal – art. 614

2. **as to its source:**
   - **a.** Voluntary; - art. 619
   - **b.** Legal; - arts. 637 - 687
   - **c.** mixed

3. **As to its exercise:**
   - **a.** Continuous; - art. 615
   - **b.** Discontinuous – art. 615

4. **As to whether or not its existence is indicated:**
   - **a.** Apparent; - art. 615
   - **b.** Non – apparent – art. 615

5. **As to duty of servient owner**
   - **a.** Positive; - art. 616
   - **b.** Negative – art. 616

MODES OF ACQUIRING EASEMENTS

II. Title

- Φ Title means the juridical act which gives rise to the servitude (*i.e.* law, donation, contract, will)

- Φ 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

- Φ **Equivalents of Title**
  - **a.** Deed of recognition (Article 623)
  - **b.** Final judgment (Article 623)
  - **c.** Apparent sign (Article 624)

- Φ 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.

- Φ 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.

III. Prescription

Φ ONLY continuous and apparent easements may be created by prescription.

Φ 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.

Φ 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.

RIGHST & OBLIGATIONS OF PARTIES IN AN EASEMENT

RIGHTS OF THE DOMINANT OWNER:

1. to exercise all the rights necessary for the use of the easement;
2. to make on the servient estate all the works necessary for the use an preservation of the servitude;
3. to renounce the easement if he desires to exempt himself from contribution to necessary expenses;
4. to ask for mandatory injunction to prevent impairment of his use of the easement

OBLIGATIONS OF THE DOMINANT OWNER

1. he cannot alter the easement or render it more burdensome;

   Exception: right of dominant owner to make necessary works - the rights granted by art. 627 is subject to the following conditions:
   - **a.** the works which shall be at his expense, are necessary for the use and preservation of the servitude;
   - **b.** they do not alter or render the servitude more burdebsome;
   - **c.** the dominant owner, before making the works, must notify the servient owner;
   - **d.** they shall be done at the most convenient time and manner so as to cause the least inconvenience to the servient owner
2. he shall notify the servient owner of works necessary for the use and preservation of the servitude;
3. he must choose the most convenient time and manner in making the necessary works as to cause the least inconvenience to the servient owner;
4. he must contribute to the necessary expenses if there are several dominant estates in proportion to the benefits derived from the works

RIGHTS OF THE SERVIENT OWNER

1. to retain the ownership of the portion of the estate on which the easement is established;
2. to make use of the easement, unless there is an agreement to the contrary;
3. to change the place or manner of the use of the easement provided it be equally convenient

OBLIGATIONS OF THE SERVIENT OWNER

1. he cannot impair the use of the easement;
2. he must contribute to the necessary expenses in case he uses the easement, unless there is an agreement to the contrary

Art. 625. Upon the establishment of an easement, all the rights necessary for its use are considered granted.

Φ Upon the establishment of an easement, all the rights necessary for its use are considered granted.

Φ 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.

Φ 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.*

Φ 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.

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.**
    - Φ 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)

LEGAL EASEMENTS

I. WATERS

a. Natural Drainage of Lands - 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 cannot 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.

b. Two paths - 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 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.

c. Easement of Dams - 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 floatable 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.

d. Drawing of Waters - 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.

e. Easement of Aqueducts - 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.

f. Stop lock and sluice gate - 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.

g. Appropriation and used of waters - 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.

II. RIGHT OF WAY

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.

- Φ 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)
- Φ 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.

- Φ 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.
- Φ Such payment for permanent use does not mean that the owner of the dominant estate now owns such portion of the land.
- Φ 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)
- Φ 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)
- Φ 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).
- Φ 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.

- Φ 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.

- Φ Extinguishment of Easements of Right of Way (Article 655).

- Φ 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.

- Φ The owner of the dominant estate cannot demand that the easement be extinguished.

- Φ Article 655 is applicable only to legal easements of right of way. It does not apply to voluntary easements of right of way.

III. PARTY WALL

- Φ A party wall is a common wall built along the dividing line of 2 adjoining estates.

- Φ 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.

- Φ 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.

- Φ Maintenance and Repair of Party Wall (Article 662)

- Φ **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).

- Φ **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.

- Φ **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

- Φ **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**

IV. LIGHT AND VIEW

2 Different Easements

1. **Easement of light (*luminis)***
   - Φ 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.

   - Φ 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).

   - Φ No minimum distance required.

2. **Easement of light and view (*luminis et prospectus*)**
   - Φ 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.

   - Φ The easement of view necessarily carries with it the easement of light.

- Φ **Direct View:** There must be a minimum distance of 2 meters from the wall of the opening and the contiguous property.

- Φ **Oblique View:** There must be a minimum distance of 60 centimeters from the wall of the opening and the contiguous property.

- Φ Non-observance of the minimum distances will not create an easement.

- Φ 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.

- Φ The obligation not to build higher accompanies the easements of light and view.

- Φ **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.

OTHER LEGAL EASEMENTS

1. **Drainage of Buildings [Art 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.

- Φ **This is not really an easement. Rather, it is a limitation of the right of ownership.**

2. **Intermediate distances [Art 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.

- Φ **Again, this is a limitation of ownership and not an easement.**
- Φ **This is basically zoning which can be modified by laws and ordinances.**

3. **Easement Against Nuisances [Art 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**.**

- Φ This is also a limitation of ownership and not an easement.

- Φ 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 [Art 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.

- Φ 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.
- Φ In subjacent support, the owner of the surface and the sub-surface are different.

Voluntary Easements

- Φ One can create voluntary easements in favor of another immovable or persons on one's property.

- Φ 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.

- Φ **Voluntary easement maybe extinguish also by voluntary agreement of the parties to the easement.**

BAR 2005- Easement; Effects; Discontinuous Easements; Permissive Use: Don was the owner of an agricultural land with no access to a public road. He had been passing through the land of Ernie with the latter's acquiescence for over 20 years. Subsequently, Don subdivided his property into 20 residential lots and sold them to different persons. Ernie blocked the pathway and refused to let the buyers pass through his land.

a) Did Don acquire an easement of right of way? Explain. (2%)

Suggested answer: No, Don did not acquire an easement of right of way. An easement of right of way is discontinuous in nature — it is exercised only if a man passes over somebody's land. Under Article 622 of the Civil Code, discontinuous easements, whether apparent or not, may only be acquired by virtue of a title. The Supreme Court, in *Abellana, Sr. v. Court of Appeals (G.R. No. 97039, April 24, 1992),* ruled that an easement of right of way being discontinuous in nature is not acquirable by prescription. Further, possession of the easement by Don is only permissive, tolerated or with the acquiescence of Ernie. It is settled in the case of *Cuaycong v. Benedicto (G.R. No. 9989, March 13, 1918)* that a permissive use of a road over the land of another, no matter how long continued, will not create an easement of way by prescription.

Alternative answer: Yes, Don acquired an easement of right of way. An easement that is continuous and apparent can be acquired by prescription and title. According to Professor Tolentino, an easement of right of way may have a continuous nature if there is a degree of regularity to indicate continuity of possession and that if coupled with an apparent sign, such easement of way may be acquired by prescription.

b) Can Ernie close the easement?

Suggested answer: Yes, Ernie could close the pathway on his land. Don has not acquired an easement of right of way either by agreement or by judicial grant. Neither did the buyers. Thus, establishment of a road or unlawful use of the land of Ernie would constitute an invasion of possessory rights of the owner, which under Article 429 of the Civil Code may be repelled or prevented. Ernie has the right to exclude any person from the enjoyment and disposal of the land. This is an attribute of ownership that Ernie enjoys.

Alternative answer: Yes, Ernie may close the pathway, subject however, to the rights of the lot buyers. Since there is no access to the public road, this results in the creation of a legal easement. The lot buyers have the right to demand that Ernie grant them a right of way. In turn, they have the obligation to pay the value of the portion used as a right of way, plus damages.

c) What are the rights of the lot buyers, if any? Explain. (2%)

Suggested answer: Prior to the grant of an easement, the buyers of the dominant estate have no other right than to compel grant of easement of right of way. Since the properties of the buyers are surrounded by other immovables and has no adequate outlet to a public highway and the isolation is not due to their acts, buyers may demand an easement of a right of way provided proper indemnity is paid and the right of way demanded is the

shortest and least prejudicial to Ernie. *(Villanueva v. Velasco, G.R. No. 130845, November 27, 2000).*

BAR 2002- Easement; Nuisance; Abatement: Lauro owns an agricultural land planted mostly with fruit trees. Hernando owns an adjacent land devoted to his piggery business, which is two (2) meters higher in elevation. Although Hernando has constructed a waste disposal lagoon for his piggery, it is inadequate to contain the waste water containing pig manure, and it often overflows and inundates Lauro's plantation. This has increased the acidity of the soil in the plantation, causing the trees to wither and die. Lauro sues for damages caused to his plantation. Hernando invokes his right to the benefit of a natural easement in favor of his higher estate, which imposes upon the lower estate of Lauro the obligation to receive the waters descending from the higher estate. Is Hernando correct? (5%)

Suggested answer: Hernando is wrong. It is true that Lauro's land is burdened with the natural easement to accept or receive the water which naturally and without interruption of man descends from a higher estate to a lower estate. However, Hernando has constructed a waste disposal lagoon for his piggery and it is this waste water that flows downward to Lauro's land. Hernando has, thus, interrupted the flow of water and has created and is maintaining a nuisance. Under Act. 697 NCC, abatement of a nuisance does not preclude recovery of damages by Lauro even for the past existence of a nuisance. The claim for damages may also be premised in Art. 2191 (4) NCC.

Another answer: Hernando is not correct. Article 637 of the New Civil Code provides that the owner of the higher estate cannot make works which will increase the burden on the servient estate. *(Remman Enterprises, Inc. v. CA, 330 SCRA 145 [2000]).* The owner of the higher estate may be compelled to pay damages to the owner of the lower estate.

BAR 1993- Easements; Right of Way: Tomas Encarnacion's 3,000 square meter parcel of land, where he has a plant nursery, is located just behind Aniceta Magsino's two hectare parcel land. To enable Tomas to have access to the highway, Aniceta agreed to grant him a road right of way a meter wide through which he could pass. Through the years Tomas' business flourished which enabled him to buy another portion which enlarged the area of his plant nursery. But he was still landlocked. He could not bring in and out of his plant nursery a jeep or delivery panel much less a truck that he needed to transport his seedlings. He now asked Aniceta to grant him a wider portion of her property, the price of which he was willing to pay, to enable him to construct a road to have access to his plant nursery. Aniceta refused claiming that she had already allowed him a previous road right of way. Is Tomas entitled to the easement he now demands from Aniceta?

Suggested answer: Art. 651 of the Civil Code provides that the width of the easement must be sufficient to meet the needs of the dominant estate, and may accordingly change from time to time. It is the need of the dominant estate which determines the width of the passage. These needs may vary from time to time. As Tomas' business grows, the need for use of modern conveyances requires widening of the easement.

Alternative answer: The facts show that the need for a wider right of way arose from the increased production owing to the acquisition by Tomas of an additional area. Under Art. 626 of the Civil Code, the easement can be used only for the immovable originally contemplated. Hence, the increase in width is justified and should have been granted.

BAR 2000- Easements; Right of Way: The coconut farm of Federico is surrounded by the lands of Romulo. Federico seeks a right of way through a portion of the land of Romulo to bring his coconut products to the market. He has chosen a point where he will pass through a housing project of Romulo. The latter wants him to pass another way which is one kilometer longer. Who should prevail? (5%)

Suggested answer: Romulo will prevail. Under Article 650 of the New Civil Code, the easement of right of way shall be established at the point least prejudicial to the servient estate and where the distance from the dominant estate to a public highway is the shortest. *In case of conflict, the criterion of least prejudice prevails over the criterion of shortest distance.* Since the route chosen by Federico will prejudice the housing project of Romulo, Romulo has the right to demand that Federico pass another way even though it will be longer.

BAR 2001- Easements; Right of Way; Inseparability: Emma bought a parcel of land from Equitable-PCI Bank, which acquired the same from Felisa, the original owner. Thereafter, Emma discovered that Felisa had granted a right of way over the land in favor of the land of Georgina, which had no outlet to a public highway, but the easement was not annotated when the servient estate was registered under the Torrens system. Emma then filed a complaint for cancellation of the right of way, on the ground that it had been extinguished by such failure to annotate. How would you decide the controversy? (5%)

Suggested answer: The complaint for cancellation of easement of right of way must fail. The failure to annotate the easement upon the title of the servient estate is not among the grounds for extinguishing an easement under Art. 631 of the Civil Code. Under Article 617, easements are inseparable from the estate to which they actively or passively belong. Once it attaches, it can only be extinguished under Art. 631, and they exist even if they are not stated or annotated as an encumbrance on the Torrens title of the servient estate. (II Tolentino 326, 1987 ed.)

Alternative answer: Under Section 44, PD No. 1529, every registered owner receiving a certificate of title pursuant to a decree of registration, and every subsequent innocent purchaser for value, shall hold the same free from all encumbrances except those noted on said certificate. This rule, however, admits of exceptions. Under Act 496, as amended by Act No. 2011, and Section 4, Act 3621, an easement if not registered shall remain and shall be held to pass with the land until cutoff or extinguished by the registration of the servient estate.

However, this provision has been suppressed in Section 44, PD No. 1529. In other words, the registration of the servient estate did not operate to cut-off or extinguish the right of

way. Therefore, the complaint for the cancellation of the right of way should be dismissed.

BAR 1996- Easements; Right of Way; Requisites: David is the owner of the subdivision in Sta. Rosa, Laguna, without an access to the highway. When he applied for a license to establish the subdivision, David represented that he will purchase a rice field located between his land and the highway, and develop it into an access road. But when the license was already granted, he did not bother to buy the rice field, which remains unutilized until the present. Instead, he chose to connect his subdivision with the neighboring subdivision of Nestor, which has an access to the highway. Nestor allowed him to do this, pending negotiations on the compensation to be paid. When they failed to arrive at an agreement, Nestor built a wall across the road connecting with David's subdivision. David filed a complaint in court, for the establishment of an easement of right of way through the subdivision of Nestor which he claims to be the most adequate and practical outlet to the highway. 1) What are the requisites for the establishment of a compulsory easement of a right of way?

Suggested answer: Art, 649, NCC. 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 property 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 cause by such encumbrance. This easement is not compulsory if the isolation of the immovable is due to the proprietor's own acts. (564a). 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. 650, NCC: Vda. De Baltazar v. CA. 245 SCRA 333)*

Alternative answer: The requisites for a compulsory easement of right of way are: (a) the dominant estate is surrounded by other immovables and is without an adequate outlet to a public street or highway; (b) proper indemnity must be paid; (c) the isolation must not be due to the acts of the owner of the dominant estate; and (d) the right of way claimed is at a point least prejudicial to the servient estate and, insofar as is consistent with this rule, where the distance to the street or highway is shortest.

2) Is David entitled to a right of way in this case? Why or why not? No, David is not entitled to the right of way being claimed. The isolation of his subdivision was due to his own act or omission because he did not develop into an access road the rice field which he was supposed to purchase according to his own representation when he applied for a license to establish the subdivision *(Floro us. Llenado, 244 SCRA713).*

DIFFERENT MODES OF ACQUIRING OWNERSHIP

CONCEPT OF MODE AND TITLE

- Φ MODE is the specific cause which produces them as a result of the presence of a special condition of things, of the capacity and intention of persons, and of the fulfillment of the requisites established by law;

- Φ TITLE is the juridical act, right or condition which gives the means to their acquisition but which in itself is insufficient to produce them

MODE AND TITLE DISTINGUISHED

1. mode directly and immediately produces a real right, while title serves merely to give the occasion for its acquisition or existence;
2. mode is the cause, while title is the means;
3. mode is the proximate cause, while title may be regarded as the remote cause;
4. mode is the essence of the right which is to be created or transmitted, while title is the means whereby that essence is transmitted

DIFFERENT MODES [AND TITLES] OF ACQUIRING OWNERSHIP AND OTHER REAL RIGHTS

1. **Original modes** or those independent of any pre – existing right of another person, namely:
   - **a.** occupation;
   - **b.** Work which includes intellectual creation.

2. **Derivative modes** or those based on a pre – existing right held by another person, namely:
   - **a.** law;
   - **b.** donation;
   - **c.** succession;
   - **d.** tradition;
   - **e.** prescription

3. **Mixed Mode**
   - Φ A 3rd mode was created since prescription could not be classified as original or derivative.

   - Φ Prescription

LAW AS A MODE OF ACQUISITION

When the Civil Code speaks of law as a mode of acquisition, it refers to it as a distinct mode or to those cases where the law, independent of other modes, directly vests ownership of a thing in a person once the prescribed conditions or requisites are present or complied with.

TRADITION AS A MODE OF ACQUISITION

- Φ Tradition comes from the latin word *tradere* which means to deliver.
- Φ 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.

Φ Tradition is a derivative mode of acquiring ownership and other real rights by virtue of which, there being intention and capacity on the part of the grantor and grantee and the pre – existence of said rights in the estate of the grantor, they are transmitted to the grantee through a just title;

The principal kinds of tradition are as ff:

a. real tradition or physical delivery which takes place when the thing is physically delivered or transferred from hand to hand if it is a movable, and if it is an immovable, by certain acts also material, performed by the grantee in the presence of and with consent of the grantor which acts generally called taking possession;

b. constructive tradition or when the delivery of the thing is not real or material but consists merely in certain facts indicative of the same, this may take place in any of the ff cases:
- Φ symbolical tradition;
- Φ tradition by public instrument;
- Φ tradtion longa manu;
- Φ tradition brevi manu;
- Φ tradition constitutum possessorium;
- Φ quasi tradition;
- Φ tradition by operation of law

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
   - Φ The transferor must have actual possession.

   ii. Transferee must be put in control iii. There must be intent to transfer.

   Φ 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.

   Φ This case is controversial since those who dissented are the 4 civil law experts.

   Φ *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)
   - Φ *Longa manu* means long hand. Literally this means that the transfer of ownership is done by pointing out. For example, the ownership of the car is transferred by pointing to the specific car.

   - Φ In *longa manu*, mere agreement is not enough. There must be an accompanying sign or gesture (Article 1499).

   c. ***Brevi manu*** (Article 1499)
   - Φ *Brevi manu* means short hand.

   - Φ *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)
   - Φ *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.
   - Φ For example, A owns a house. A sells the house to B. A then leases the house to B.

3. **Quasi-tradition** (*cuasi tradicion*)
   - Φ Quasi-tradition refers to the delivery of incorporeal property.
   - Φ 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.
   - Φ 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*)
   - Φ Succession should not be included here since succession is an independent mode of acquiring ownership. It is not part of tradition

OCCUPATION

CONCEPT OF OCCUPATION: it may be defined as the appropriation of things appropriable by nature which is without an owner.

Requisites:
1. there must be seizure of a things;
2. the thing seized must be corporeal personal property;
3. the thing must be susceptible of appropriation by nature;
4. the thing must be without an owner;
5. there must be an intention to appropriate;
6. the requisites or conditions laid down by law must be complied with

OCCUPATION AND POSSESSION DISTINGUISHED

1. occupation is a mode of acquiring ownership, while possession merely raises the presumption of ownership when it is exercised in the concept of owner;
2. occupation refers only to corporeal personal property, while possession may be exercised over any kind of property, whether real or personal, corporeal or incorporeal;
3. occupation requires that the object thereof be without an owner, while possession may refer to property owned by somebody;
4. occupation requires that there be an intent to acquire ownership, while possession may be had in the concept of a mere holder;
5. occupation may not take place without some form of possession, while possession may exist without occupation;
6. occupation is of short duration, while possession is generally of longer duration;
7. occupation by itself cannot lead to another mode of acquisition, while possession may lead to another mode which is prescription

WAYS BY WHICH OCCUPATION MAY BE EFFECTED

1. by hunting and fishing;
2. by finding of movables which never had any owner;
3. by finding of movables which have been abandoned by the owner;
4. by finding of hidden treasure

OCCUPATION BY LAND

- Φ land is not included among things that can be the object of occupation;
- Φ the reason is that when land is without an owner, it pertains to the State;
- Φ if it is not owned by a private person, it belongs to the public domain
- Φ with respect to an abandoned lot, it may be considered as without an owner and therefore pertains to the State as part of its patrimonial property, not by virtue of occupation but on the legal principle that land without owner belongs to the State

REGULATION OF HUNTING AND FISHING

- Φ Special Law regulates hunting to protect animal life – Act No. 2590 a amended by Act. No. 3770, Act. No. 4003 and C.A. No. 491;
- Φ Special Law governing fishing is P.D. No. 704 otherwise known as the Fisheries Decree of 1975;
- Φ Hunting and fishing may be regulated by a municipal corporation or local government unit under a provision of law or authority granted by Congress, being in this case a delegation of the State's authority to the corporation.

OCCUPATION BY A SWARM OF BEES

- Φ the owner of a swarm of bees that went to another'' land shall lose ownership if he has not pursued the same within two consecutive days after it left his property, or after pursuing the same, he ceases to do so within the same period;
- Φ in such a case, the possessor or owner of the land may occupy or retain the bees

OCCUPATION OF DOMESTICATED ANIMALS

- Φ a domesticated animal which has not strayed or been abandoned cannot be acquired by occupation by a person to whose custody it was entrusted;
- Φ neither does the provision apply to a case where a person has found a domestic animal and kept it for a number of years not knowing its owner;
- Φ the period of two days and twenty days are not periods of limitation, but conditions precedent to recovery

OCCUPATION OF PIGEONS AND FISH [Art 717]

- Φ the article does not refer to wild pigeons and fish in a state of liberty or that live naturally independent of man;
- Φ their occupation is regulated by special laws on hunting and fishing;
- Φ what is contemplated here are pigeons and fish considered as domesticated animals subject to the control of man in private breeding places

RULES AS TO LOST MOVABLES

1. The rights and obligations of the finder of lost personal property are based on the principle of quasi – contract;
2. The duty imposed on the finder by art. 719 is based on the fact that one who lost his property does not necessarily abandon it;
3. If there is no abandonment, the lost thing has not become res nullius.

DONATION

CONCEPT OF DONATION

- Φ 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).

- Φ According to Professor Balane, the definition of a donation in Article 725 is wrong. A donation is not an act. It is a contract.

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.

CLASSIFICATION OF DONATIONS

A. ***Inter vivos*** – the effectivity of the donation does not depend upon the donor's death. The ownership of the thing donated is given to the donee during the lifetime and the lifetime of the donor.

i. **Pure or simple** (Article 725) – Gratuitous

ii. **Remuneratory/ compensatory** (Article 726)
- Φ The donation is made on account of the donee's merits.
- Φ Rules: [1] past meritorious services must be indicated and written in the deed of donation. [2] the donation does not constitute recoverable debt.

- Φ 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)

- Φ A conditional or modal donation imposes upon the donee a burden which is less than the value of the thing donated.
- Φ 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.
- Φ The more accurate term is not conditional but modal.
- Φ Modal donations are not pure acts of liberality since a mode is imposed.
- Φ Article 733 is inaccurate. Article 733 mentions remuneratory donations. This should be replaced by the word —modal.

Φ **Requisites of the conditions:**

a. The conditions must be imposed by the donor himself upon the donee.

b. The conditions must appear in the deed of donation.

Note: one must specify the burden imposed in the donation inorder to determine if the value of the burden is less than the value of the property donated.

The burden must be futuristic and for the benefit of the donor.

iv. Onerous (Article 733)

- Φ This is a donation in name only.
- Φ An onerous donation is a contradiction in terms.

B. ***Mortis causa*** - the effectivity of the donation depends upon the donor's death

- Φ 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.

- Φ 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.

NATURE AND EFFECT OF DONATION

1. although the article defines donation as an act, it is really a contract, with all the essential requisites of a contract;

- Φ it falls under contracts of pure beneficence, the consideration being the mere liberality of the benefactor;
- Φ however the Code considers donation not among the contracts that transfer ownership but as a particular mode of acquiring and transmitting ownership;

2. the effect of donation is to reduce the patrimony or asset of the donor and to increase that of the donee;

3. hence, the giving of a mortgage or any other security does not constitute a donation

REQUISITES OF DONATION

1. Donor must have the capacity to make the donation of a thing or right;
2. He must have the donative intent or intent to make the donation out of liberality to benefit the donee;
3. There must be delivery, whether actual or constructive, of the thing or right donated;
4. The donee must accept or consent to the donation

FORMS OF DONATION

In donations **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.

I. DONATIONS OF MOVABLES [Art 748]

- Φ 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.

- Φ If the value of the donation exceeds P5, 000, the donation and the acceptance must be in writing.
- Φ The writing may be in a public or in a private instrument.

II. DONATION OF IMMOVABLES [Art 749]

- Φ The donation must be in a public instrument.
- Φ The acceptance must either be in the same public instrument or in a different public instrument.
- Φ Acceptance shall not take effect unless it is done during the lifetime of the donor.

- Φ 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.

Distinction between *inter vivos* and *mortis causa*

- Φ 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*.

- Φ 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*.

- Φ 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.

Φ 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*.

Φ 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.

LIMITATIONS ON DONATION

I. Who may donate?

Φ A donor must have capacity to act (*i.e.* age of majority, no civil interdiction or other incapacity, etc.) – Article 735.

Φ The donor must have capacity at the time the donation is made.

Φ The donation is perfected from the moment the donor knows of the acceptance by the donee (Article 734) – **cognition theory**

Φ 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.

Φ 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.

II. Who may be a donee?

Φ All those who are not specifically disqualified by law may accept donations (Article 738).

Φ **requirement for donee:**

a. a donee need not be sui juris, with complete legal capacity to bind himself by contract;

b. as long as he is not specially disqualified by law, he may accept donations

JOINT DONEES- Article 753: "when a donation is made to several persons jointly, it is understood to be in equal shares, and there shall be no right of accretion among them, unless the donor has otherwise provided.

The preceding paragraph shall not be applicable to donations made to the husband and wife jointly, between whom there shall be a right of accretion, if the contrary has not been provided by the donor."

Note: all the joint donees must accept the donation. One of the donees cannot accept in behalf of the other without any authorization from them.

CAPACITY OF THE DONEE

Φ **Specially disqualified:** not those minor or of unsound mind but those enumerated under Art. 739.

Φ **Donees:** either person or juridical being (e.g. partnership)

Φ **Conjugal partnership** is not a juridical being. Donation should be made either to the husband or wife or both by a third person. (**capital-** husband's exclusive property**; paraphernal-** wife's)

Φ **Religious organization/ alien organization:** Must have at least 60% capital stock owned by Filipino.

Φ **Attorney:**

✓ Incapacitated to buy the property of litigant because deceit may occur.

✓ But he is not disqualified as a donee

DONATIONS VOID ON MORAL GROUNDS

Φ null and void

Φ it is the law that declares these donations as null and void.

Φ the article is based on considerations of morality and public policy;

1. Donation between persons guilty of adultery and concubinage shall be void.

Φ Need not proved in criminal action and can be proved by preponderance of evidence.

Φ If the donation was done **after** the commission of act, the donation is valid, except when the donation was done in consideration of said act.

Φ But the offended wife cannot file legal separation because husband's adultery is not a legal ground thereof.

Φ Sweetheart, without sexual intercourse- there can be donation.

Φ If Joshua donated to Marian, the latter being married to dingdong, the donation is **voidable** because the law prohibits the wife to accept any donation from a stranger without the husband's consent. The reason is to avoid alienation of affection.

Φ Husband's donation to a paramour to end the immoral arrangement is valid. However, if the woman knows the man to be married and demands donation from him, the donation is voidable.

- Φ Life insurance benefit cannot go to a paramour if they are guilty of adultery and concubinage, even if the premiums are being paid from conjugal property or exclusive property of the husband because these benefits shall go to the wife.

- Φ **Liquez v. CA:** a donation made of illicit cause (e.g. to cohabit) is **void.** But the donor and his heirs cannot get back the property because a party in illicit transaction cannot get what has been given.

2. **Donation made between persons guilty of criminal offense, in consideration thereof.**
   - Φ There must be criminal conviction.
   - Φ Donation done before or after the commission of the crime in consideration thereof is void.
   - Φ A donation made to prevent commission of crime is valid.

3. **Donation made to public official, his wife, descendants and ascendants by reason of his office.**
   - Φ **Purpose:** to prevent bribery.
   - Φ But the public officer may become **donor.**

ART. 740: INCAPACITY TO SUCCEED A WILL- unworthiness of the donee

- Φ the article expressly makes the provisions on incapacity to succeed by will applicable to donations inter vivos;
- Φ they are also applicable to donations mortis causa which are governed by the law on succession;
- Φ since donations and wills are both gratuitous, the same reason for the incapacity exists for both cases
- Φ **ART. 1032 C.C (incapacitated to inherit)- example:**
  1. Abortive infant- absolute incapacity
  2. The priest who heard the confession of the testator during the last will- relative incapacity
- Φ If before donation the donation is valid. There being no **undue influence.**
- Φ If there is condonation/ forgiveness of offense, the accused may became a donee.

ART. 741: DONATIONS TO MINORS AND OTHERS WITHOUT CAPACITY TO CONTRACT

- Φ **if minor is incapacitated to accept:**
- Φ if the reason for requiring acceptance through the parents or legal representative is the lack of capacity of the donee to give consent, it is clear that the donee may not validly accept a donation although it imposes no burden;
- Φ in any case, when a **formal or written acceptance is required by the donor, such acceptance must be made by the parents or legal representative**
- Φ **11 years old** may be a donee, but acceptance must be done by his parent or legal representative.
- Φ **Minors may accept by themselves:**
  1. **Yes! If the donation is simple.**
     - ✓ No burden, for the benefit of the minor.
     - ✓ **Except:** when written acceptance of the donation is required, the parents or legal representative must intervene.
  2. **No! if the donation is onerous.**
     - ✓ Burden is imposed.
     - ✓ The parent or legal representative must intervene.
     - ✓ The intervention must be with **judicial permission** so that the acceptance may be considered valid.

ART. 742: DONATIONS TO CONCEIVED AND UNBORN CHILDREN

- Φ The article applies both to simple and onerous donations, but if the onerous is not favorable to the child, it is as if there was no donation.
- Φ **who make acceptance for donation to unborn children:**
- Φ Those persons who would legally represent them if they are already born.
- Φ **Requisites:**
  1. Child should be born latter (intra uterine life)
  2. Intra uterine life of less than 7 months- should be alive for at least 24 hours.

ART. 743: DONATIONS TO INCAPACITATED PERSONS

- Φ **What is incapacity:**
- Φ The incapacity refers to persons **specially disqualified by law to become donees,** such as those referred to in arts. 739 and 740;

- Φ **Those who are incapacitated by law:**
  1. Donation between persons guilty of adultery and concubinage shall be void.
  2. Donation made between persons guilty of criminal offense, in consideration thereof.
  3. Donation made to public official, his wife, descendants and ascendants by reason of his office.

- Φ **Art. 740 in relation to Art. 1027 on Succession: those incapacitated to succeed.**

  Disqualification by incapacity (1027)

  i. Priest or minister
  - Limited to the context of religion
  - JV: it doesn't include Mike Velarde and El Shaddai
  - The illness referred to must be the one in which the testator died off (except: when the ill person met an accident)

  ii. Relative up to 4th civil degree OR sect

  iii. Guardians
  - Refers to both guardians of persons or property
  - Applied until the guardianship endures

  iv. Attesting or testamentary witness and their spouse, parents or children

- Except when there are 3 other witnesses

v. Physician, surgeon, nurse, health officer or druggist
- Includes illegal practitioners
- Must be the one who **took care** of the decedent

vi. Individuals, associations and corporations NOT permitted by law
- This is the only one that applies to BOTH types of succession.

NOTE: This is based on public policy. In these cases, there is a conclusive presumption of undue influence

Φ donations to such persons are void even if simulated under the guise of another contract or through an intermediary

ART. 744: DONATIONS OF THE SAME THING TO DIFFERENT DONEES

Φ The article expressly makes applicable by analogy the rules on sales of the same thing to two or more different vendees.
Φ **Art. 1544 on SALE**
Φ **Double sale of movable:** the person who have taken possession in good faith.
Φ **Immovable:**
1. First to register in the registry of property in good faith
2. First in possession
3. Person who can present the oldest title.

Φ This article does not apply if there is a sale and there is a donation.

III. Void Donations – the following are void donations:

a. ***Those made between persons who were guilty of adultery or concubinage at the time of the donation*** (Article 739 (1))
Φ Conviction is not necessary.
Φ The donation shall not be void if the donee did not know of the donor's existing marriage.

b. ***Those made between persons found guilty of the same criminal offense, in consideration thereof*** (Article 739 (2))
Φ Aggravating circumstance of price, promise or reward

c. ***Those made to a public officer or his wife, descendants and ascendants, by reason of his office*** **(Article 739 (3))**

d. ***Donations made by guardians and trustees of property entrusted to them*** **(Article 736)**
Φ **General rule:** guardians trustees cannot donate the properties of their wrd.
Φ **Exceptions:**
1. Repudiation and after the lapse of the prescriptive period.
2. Onerous donation where the ward or his property was benefited.
However, the must be court approval.

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.

IV. The donation should not be inofficious.

V. The donation should not prejudice creditors.

VI. The donation should not impair support for the donor and his family.

VII. Donations cannot comprehend future property (Article 751)

ACCEPTANCE OF DONATION

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3. Person who can present the oldest title.

Φ This article does not apply if there is a sale and there is a donation.

ART. 745: BY WHOM ACCEPTANCE IS MADE
Φ **Who accepts:**
1. Donee/ personally
2. Authorized person with general and sufficient power.
-With GPA or SPA- **must be in public instrument.**

Φ **General rule:** A valid donation once accepted becomes irrevocable

Φ **Except:**
1. On such grounds provided by law such as inofficiousness.
2. Failure of the donee to comply with charges imposed in the donations.
3. by reason of ingratitude

Φ **Agent-** cannot accept in behalf of the principal.

Φ **Unenforceable contract** if accepted.

- Φ **Parish priest- may accept in behalf of the Church.**

- Φ **Mayor may accept in behalf of the municipality.**

ART. 746: WHEN ACCEPTANCE IS MADE - Applicable to donation inter vivos and to onerous donation. In onerous, without acceptance/ meeting of minds, there is no contract.

1. **during lifetime of donor and donee – donation inter vivos:**
   - Φ even if donation is made during their lifetime, but the donor dies before the acceptance is communicated to him, the donation is not perfected;

2. **after death of donor – donation mortis causa:**
   - Φ if the acceptance was made **before** the donor's death, the donation mortis causa, although validly executed, cannot be given force and effect, such acceptance is void
   - Φ Acceptance must be **after** donor's death.

ART. 747: DUTY OF PERSON WHO ACCEPTS IN REPRESENTATION OF THE DONEE

Requisites:

1. acceptance is made through the parents, legal representative, or authorized agent of the donee;
2. the property donated is immovable;
3. the acceptance is not made in the same deed of donation but in as separate public instrument
4. the requirement of notification of the donor and notation in both instruments that such notification has been made is necessary for the validity and perfection of the donation

ART. 749: FORMALITIES FOR DONATION OF IMMOVABLES

- Φ the article does not apply to onerous donations which are governed by the rules on obligations and contracts;
- Φ The provision applies where the donation imposes upon the donee a **burden which is less than the value of the thing** given because it requires that the public document must specify the value of the charges that the donee must satisfy.
- Φ **Applicable to:**
  - **a.** compensatory donation (remuneratory of the 1st kind)
  - **b.** modal donation

RULES:

- Φ authentic form
- Φ Acceptance of donation must be stated.

1. **Donation and acceptance are in the same instrument**

   REQUIREMENTS:
   a. Must be in a public instrument or document;
   b. The instrument must specify the property donated and the charges, if any, which the donee must satisfy.

2. **donation and acceptance are in separate instruments**

   REQUIREMENTS:
   - **a.** must be in a public instrument or document;
   - **b.** the instrument must specify the property donated and the charges, if any, which the donee must satisfy;
   - **c.** the acceptance by the donee must be in a public document;
   - **d.** it must be done during the lifetime of the donor;
   - **e.** the donor must be notified in authentic form of the acceptance of the donation in a separate instrument;

The fact that such notification has been made must be noted in both instruments

RESCISSION OF DONATIONS

Note: the goal of restitution is to restore status qou, thus the parties are obliged to return what they received.

Rescission is different from revocation.

Grounds for Rescission of Donations:

3. Impossible conditions impose by the donor upon the donee.
4. In case the donor has no property left to support himself.

REDUCTION AND REVOCATION OF DONATION

Grounds of Revocation:

a) Revocation may take effect if an inofficious donation was made.
   - Φ A donation is inofficious if it impairs the legitime.

   - Φ 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.

   - Φ The heirs of the donor have 10 years from the death of the donor to revoke or reduce the donation *(Imperial vs. CA).*

   - Φ 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).

   - Φ 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) If the donations prejudice creditors of the donor [Art 759].

- Φ 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)

c) Donation impaired the support of the donor or his relatives.

d) If the donor does not reserve enough property for his and his family's support, the donation can be reduced.

e) The donation can be reduced as much as may be necessary.

f) 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) Donation did not comply with the formalities required.

- Φ For failure to comply with the conditions of the donation, the donor or his heirs have 4 years from noncompliance to revoke the donations.
- Φ The right of revocation may be exercised against the donee's heirs.
- Φ Revocation is the only available remedy in this situation. Reduction is not applicable.

e) The donee committed an act of ingratitude to the donor.

- Φ The following are acts of ingratitude
  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.
- Φ The refusal by the donee must be unjustifiable.
- Φ The fact that these acts were committed will not give rise to the revocation. The donor must invoke these grounds.
- Φ The donor has 1 year from the time the donor acquires knowledge of the donee's act of ingratitude to revoke (Article 769).

MODES OF EXTINGUISHING OWNERSHIP

A. VOLUNTARY MODES

1) Abandonment

- Φ Rights such as ownership may be waived.
- Φ Under Article 6, the waiver of ownership need not follow any formalities

2) Alienation

- *Onerous title* (*i.e.* sale)
- *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**
   - Φ 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)

BAR 2003- DONATION VS. SALE

a) May a person sells something that does not belong to him? Explain. b) May a person donate something that does not belong to him? Explain. 5%

Suggested answer:

(a) Yes, a person may sell something which does not belong to him. For the sale to be valid, the law does not require the seller to be the owner of the property at the time of the sale. (Article 1434, NCC). If the seller cannot transfer ownership over the thing sold at the time of delivery because he was not the owner thereof, he shall be liable for breach of contact.

(b) As a general rule, a person cannot donate something which he cannot dispose of at the time of the donation (Article 751, New Civil Code).

BAR 1998- DONATIONS; PERFECTION: On July 27, 1997, Pedro mailed in Manila a letter to his brother, Jose, a resident of Iloilo City, offering to donate a vintage sports car which the latter had long been wanting to buy from the former. On August 5, 1997, Jose called Pedro by cellular phone to thank him for his generosity and to inform him that he was sending by mail his letter of acceptance. Pedro never received that letter because it was never mailed. On August 14, 1997, Pedro received a telegram from Iloilo informing him that Jose had been killed in a road accident the day before (August 13, 1997)

Suggested answer:

1. Is there a perfected donation? [2%]- None. There is no perfected donation. Under Article 748 of the Civil Code, the donation of a movable may be made orally or in writing. If the value of the personal property donated exceeds five thousand pesos, the donation and the acceptance shall be made in writing. Assuming that the value of the thing donated, a vintage sports car exceeds P5, 000.00 then the donation and the acceptance must be in writing. In this instance, the acceptance of Jose was not in writing, therefore, the donation is void. Upon the other hand, assuming that the sports car costs less than P5,000.00, then the donation maybe oral, but still, the simultaneous delivery of the car is needed and there being none, the donation was never perfected.

2. Will your answer be the same if Jose did mail his acceptance letter but it was received by Pedro in Manila days after Jose's death? [3%] - Yes, the answer is the same. If Jose's mail containing his acceptance of the donation was received by Pedro after the former's death, then the donation is still void because under Article 734 of the Civil Code, the donation is perfected the moment the donor knows of the acceptance by the donee. The death of Jose before Pedro could receive the acceptance indicates that the donation was never perfected. Under Article 746 acceptance must be made during the lifetime of both the donor and the donee.

BAR 1998- DONATIONS; FORMALITIES; MORTIS CAUSA-Ernesto donated in a public instrument a parcel of land to Demetrio, who accepted it in the same document. It is there declared that the donation shall take effect immediately, with the donee having the right to take possession of the land and receive its fruits but not to dispose of the land while Ernesto is alive as well as for ten years following his death. Moreover, Ernesto also reserved in the same deed his right to sell the property should he decide to dispose of it at any time - a right which he did not exercise at all. After his death, Ernesto's heirs seasonably brought an action to recover the property, alleging that the donation was void as it did not comply with the formalities of a will. Will the suit prosper? [5%]

Suggested answer: Yes, the suit will prosper as the donation did not comply with the formalities of a will. In this instance, the fact that the donor did not intend to transfer ownership or possession of the donated property to the donee until the donor's death, would result in a donation mortis causa and in this kind of disposition, the formalities of a will should be complied with, otherwise, the donation is void. In this Instance, donation mortis causa embodied only in a public instrument without the formalities of a will could not have transferred ownership of disputed property to another.

Alternative answer: One of the essential distinctions between a donation inter vivos and a donation mortis causa is that while the former is irrevocable, the latter is revocable. In the problem given, all the clauses or conditions mentioned in the deed of donation, except one, are consistent with the rule of irrevocability and would have sustained the view that the donation is inter vivos and therefore valid. The lone exception is the clause which reserves the donor's right to sell the property at any time before his death. Such a reservation has been held to render the donation revocable and, therefore, becomes a donation mortis causa *(Puig vs. Penqflorida, 15 SCRA 276, at p. 286).* That the right was not exercised is immaterial; its reservation was an implied recognition of the donor's power to nullify the donation anytime he wished to do so. Consequently, it should have been embodied in a last will and testament. The suit for nullity will thus prosper.

BAR 1996- DONATIONS; CONDITION; CAPACITY TO SUE - Sometime in 1955, Tomas donated a parcel of land to his step-daughter Irene, subject to the condition that she may not sell, transfer or cede the same for twenty years. Shortly thereafter, he died. In 1965, because she needed money for medical expenses, Irene sold the land to Conrado. The following year, Irene died, leaving as her sole heir a son by the name of Armando. When Armando learned that the land which he expected to inherit had been sold by Irene to Conrado, he filed an action against the latter for annulment of the sale, on the ground that it violated the restriction imposed by Tomas. Conrado filed a motion to dismiss, on the ground that Armando did not have the legal capacity to sue. If you were the Judge, how will you rule on this motion to dismiss? Explain.

Suggested answer: As judge, I will grant the motion to dismiss. Armando has no personality to bring the action for annulment of the sale to Conrado. Only an aggrieved party to the contract may bring the action for annulment thereof (Art. 1397. NCC). While Armando is heir and successor-in-interest of his mother (Art. 1311, NCC), he [standing in place of his mother) has no personality to annul the contract. Both are not aggrieved parties on account of their own violation of the condition of, or restriction on, their ownership imposed by the donation. Only the donor or his heirs would have the personality to bring an action to revoke a donation for violation of a condition thereof or a restriction thereon. *(Garrido u. CA, 236 SCRA 450).* Consequently, while the donor or his heirs were not parties to the sale, they have the right to annul the contract of sale because their rights are prejudiced by one of the contracting parties thereof *[DBP v. CA, 96 SCRA 342; Teves vs. PHHC. 23 SCRA 114].* Since Armando is neither the donor nor heir of the donor, he has no personality to bring the action for annulment.

Alternative answer: As judge, I will grant the motion to dismiss. Non-compliance with a condition imposed by a donor gives rise to an action to revoke the donation under Art. 764, NCC. However, the right of action belongs to the donor and is transmissible to his heirs, and may be exercised against the donee's heirs. Since Armando is an heir of the donee, not of the donor, he has no legal capacity to sue for revocation of the donation. Although he is not seeking such revocation but an annulment of the sale which his mother, the donee, had executed in violation of the condition imposed by the donor, an action for annulment of a contract may be brought only by those who are principally or subsidiarily obliged thereby (Art. 1397, NCC). As an exception to the rule, it has been held that a person not so obliged may nevertheless ask for annulment if he is prejudiced in his rights regarding one of the contracting parties *(DBP us. CA. 96 SCRA 342 and other cases)* and can show the detriment which would result to him from the contract in which he had no intervention, *(Teves vs. PHHC, 23 SCRA 1141).* Such detriment or prejudice cannot be shown by Armando. As a forced heir, Armando's interest in

the property was, at best, a mere expectancy. The sale of the land by his mother did not impair any vested right. The fact remains that the premature sale made by his mother (premature because only half of the period of the ban had elapsed) was not voidable at all, none of the vices of consent under Art. 139 of the NCC being present. Hence, the motion to dismiss should be granted.

DONATIONS; REQUISITES; IMMOVABLE PROPERTY- Anastacia purchased a house and lot on installments at a housing project in Quezon City. Subsequently, she was employed in California and a year later, she executed a deed of donation, duly authenticated by the Philippine Consulate in Los Angeles, California, donating the house and lot to her friend Amanda. The latter brought the deed of donation to the owner of the project and discovered that Anastacia left unpaid installments and real estate taxes. Amanda paid these so that the donation in her favor can be registered in the project owner's office. Two months later, Anastacia died, leaving her mother Rosa as her sole heir. Rosa filed an action to annul the donation on the ground that Amanda did not give her consent in the deed of donation or in a separate public instrument. Amanda replied that the donation was an onerous one because she had to pay unpaid installments and taxes; hence her acceptance may be implied. Who is correct? (2%)

Suggested answer: Rosa is correct because the donation is void. The property donated was an immovable. For such donation to be valid, Article 749 of the New Civil Code requires both the donation and the acceptance to be in a public instrument. There being no showing that Amanda's acceptance was made in a public instrument, the donation is void. The contention that the donation is onerous and, therefore, need not comply with Article 749 for validity is without merit. The donation is not onerous because it did not impose on Amanda the obligation to pay the balance on the purchase price or the arrears in real estate taxes. Amanda took it upon herself to pay those amounts voluntarily. For a donation to be onerous, the burden must be imposed by the donor on the donee. In the problem, there is no such burden imposed by the donor on the donee. The donation not being onerous, it must comply with the formalities of Article 749.

Alternative answer: Neither Rosa nor Amanda is correct. The donation is onerous only as to the portion of the property corresponding to the value of the installments and taxes paid by Amanda. The portion in excess thereof is not onerous. The onerous portion is governed by the rules on contracts which do not require the acceptance by the donee to be in any form. The onerous part, therefore, is valid. The portion which is not onerous must comply with Article 749 of the New Civil thereof to be in a public instrument in order to be valid. The acceptance not being in a public instrument, the part which is not onerous is void and Rosa may recover it from Amanda.

BAR 1999- DONATIONS; VALIDITY; EFFECTIVITY; FOR UNBORN CHILD - Elated that her sister who had been married for five years was pregnant for the first time, Alma donated P100, 000.00 to the unborn child. Unfortunately, the baby died one hour after delivery. May Alma recover the P100.000.00 that she had donated to said baby before it was born considering not been fixed in the Deed of Donation, the donee is not that the baby died? Stated otherwise, is the donation valid and binding? Explain. (5%)

Suggested answer: The donation is valid and binding, being an act favorable to the unborn child, but only if the baby had an intra-uterine life of not less than seven months and provided there was due acceptance of the donation by the proper person representing said child. If the child had less than seven months of intra-uterine life, it is not deemed born since it died less than 24 hours following its delivery, in which ease the donation never became effective since the donee never became a person, birth being determinative of personality.

Alternative answer: Even if the baby had an intra-uterine life of more than seven months and the donation was properly accepted, it would be void for not having conformed with the proper form. In order to be valid, the donation and acceptance of personal property exceeding five thousand pesos should be in writing. (Article 748, par. 3)

BAR 1993- DONATIONS; INTER VIVOS; ACCEPTANCE: On January 21, 1986, A executed a deed of donation inter vivos of a parcel of land to Dr. B who had earlier constructed thereon a building in which researches on the dreaded disease AIDS were being conducted. The deed, acknowledged before a notary public, was handed over by A to Dr. B who received it. A few days after, A flew to Davao City. Unfortunately, the airplane he was riding crashed on landing killing him. Two days after the unfortunate accident. Dr. B, upon advice of a lawyer, executed a deed acknowledged before a notary public accepting the donation. Is the donation effective? Explain your answer.

Suggested answer: No, the donation is not effective. The law requires that the separate acceptance of the donee of an immovable must be done in a public document during the lifetime of the donor (Art. 746 & 749, Civil Code) In this case, B executed the deed of acceptance before a notary public after the donor had already died.

BAR 1997- DONATIONS; EFFECT; ILLEGAL & IMMORAL CONDITIONS: Are the effects of illegal and immoral conditions on simple donations the same as those effects that would follow when such conditions are imposed on donations *con causa onerosa*?

Suggested answer: No, they don't have the same effect. Illegal or impossible conditions in simple and remuneratory donations shall be considered as not imposed. Hence the donation is valid. The donation will be considered as simple or pure. The condition or mode is merely an accessory disposition, and its nullity does not affect the donation, unless it clearly appears that the donor would not have made the donation without the mode or condition. Donations *con causa onerosa* is governed by law on obligations and contracts, under which an impossible or Illicit condition annuls the obligation dependent upon the condition where the condition is positive and suspensive. If the impossible or illicit condition is negative, it is simply considered as not written, and the obligation is converted into a pure and simple one. However, in order that an illegal condition may annul a contract, the impossibility must exist

at the time of the creation of the obligation; a supervening impossibility does not affect the existence of the obligation.

Additional answer: No. In simple or pure donation, only the illegal or irrevocable, the latter is revocable. In the problem given, all impossible condition is considered not written but the donation remains valid and becomes free from conditions. The condition or mode being a mere accessory disposition. Its nullity does not affect the donation unless it clearly appears that the donor would not have made the donation without the mode or condition. On the other hand, onerous donation is governed by the rules on contracts. Under Article 1183, Impossible or illegal conditions shall annul the obligation which depends upon them. In these cases, both the obligation and the condition are void.

BAR 2006- donations; unregistered; effects; noncompliance; resolutory condition: Spouses Alfredo and Racquel were active members of a religious congregation. They donated a parcel of land in favor of that congregation in a duly notarized Deed of Donation, subject to the condition that the Minister shall construct thereon a place of worship within 1 year from the acceptance of the donation. In an affidavit he executed on behalf of the congregation, the Minister accepted the donation. The Deed of Donation was not registered with the Registry of Deeds. However, instead of constructing a place of worship, the Minister constructed a bungalow on the property he used as his residence. Disappointed with the Minister, the spouses revoked the donation and demanded that he vacate the premises immediately. But the Minister refused to leave, claiming that aside from using the bungalow as his residence, he is also using it as a place for worship on special occasions. Under the circumstances, **can Alfredo and Racquel evict the Minister and recover possession of the property? If you were the couple's counsel, what action you take to protect the interest of your clients? (5%)**

Suggested answer: Yes, Alfredo and Racquel can bring an action for ejectment against the Minister for recovery of possession of the property evict the Minister and recover possession of the property. An action for annulment of the donation, reconveyance and damages should be filed to protect the interests of my client. The donation is an onerous donation and therefore shall be governed by the rules on contracts. Because there was no fulfillment or compliance with the condition which is resolutory in character, the donation may now be revoked and all rights which the donee may have acquired under it shall be deemed lost and extinguished *(Central Philippine University, G.R. No. 112127, July 17,1995).*

Alternative answer: No, an action for ejectment will not prosper. I would advice Alfredo and Racquel that the Minister, by constructing a structure which also serves as a place of worship, has pursued the objective of the donation. His taking up residence in the bungalow may be regarded as a casual breach and will not warrant revocation of the donation. Similarily, therefore, an action for revocation of the donation will be denied *(C. J. Yulo & Sons, Inc. v. Roman Catholic Bishop, G.R. No. 133705, March 31, 2005; Heirs of Rozendo Sevilla v. De Leon, G.R. No. 149570, March 12, 2004).*

BAR 2003- Donations; with Resolutory Condition- In 1950, Dr. Alba donated a parcel of land to Central University on condition that the latter must establish a medical college on the land to be named after him. In the year 2000, the heirs of Dr. Alba filed an action to annul the donation and for the reconveyance of the property donated to them for the failure, after 50 years, of the University to established on the property a medical school named after their father. The University opposed the action on the ground of prescription and also because it had not used the property for some purpose other than that stated in the donation. Should the opposition of the University to the action of Dr. Alba's heirs be sustained? Explain.

Suggested answer: The donation may be revoked. The non-established of the medical college on the donated property was a resolutory condition imposed on the donation by the donor. Although the Deed of Donation did not fix the time for the established of the medical college, the failure of the donee to establish the medical college after fifty (50) years from the making of the donation should be considered as occurrence of the resolutory condition, and the donation may now be revoked. While the general rule is that in case the period is not fixed in the agreement of the parties, the period must be fixed first by the court before the obligation may be demanded, the period of fifty (50) years was more than enough time for the donee to comply with the condition. Hence, in this case, there is no more need for the court to fix the period because such procedure with the condition. *(Central Philippine University v. CA. 246 SCRA 511).*

Another suggested answer: The donation may not as yet revoked. The establishment of a medical college is not a resolutory or suspensive condition but a —charge, obligation, or a —mode. The noncompliance with the charge or mode will give the donor the right to revoke the donation within four (4) years from the time the charge was supposed to have been complied with, or to enforce the charge by specific performance within ten (10) years from the time the cause of action accrued. Inasmuch as the time to established the medical college has not been fixed in the Deed of Donation, the donee is not yet default in his obligation until the period is fixed by order of the court under Article 1197 of the New Civil Code. Since the period has not been fixed as yet, the donee is not yet default, and therefore the donor has no cause of action to revoke the donation. *(Dissenting opinion of Davide, CJ, Central Philippine University v. Court of Appeals, 246 SCRA 511 [1995])*

BAR 1991- Donations; Conditions; Revocation: Spouses Michael and Linda donated a 3-hectare residential land to the City of Baguio on the condition that the city government would build thereon a public park with a boxing arena, the construction of which shall commence within six (6) months from the date the parties ratify the donation. The donee accepted the donation and the title to the property was transferred in its name. Five years elapsed but the public park with the boxing arena was never started. Considering the failure of the donee to comply with the condition of the donation, the donor-spouses sold the property to Ferdinand who then sued to recover the land from the city government. Will the suit prosper?

Suggested answer: Ferdinand has no right to recover the land. It is true that the donation was revocable because of breach of the conditions. But until and unless the donation was revoked, it remained valid. Hence, Spouses Michael and Linda had no right to sell the land to Ferdinand. One cannot give what he does not have. What the donors should have done first was to have the donation annulled or revoked. And after that was done, they could validly have disposed of the land in favor of Ferdinand.

Alternative answer:
A. Until the contract of donation has been resolved or rescinded under Article 1191 of the Civil Code or revoked under Art. 764 of the Civil Code, the donation stands effective and valid. Accordingly, the sale made by the donor to Ferdinand cannot be said to have conveyed title to Ferdinand, who, thereby, has no cause of action for recovery of the land acting for and in his behalf.

B. The donation is onerous, and being onerous, what applies is the law on contracts, and not the law on donation (De Luna us. Abrigo, 81 SCRA 150). Accordingly, the prescriptive period for the filing of such an action would be the ordinary prescriptive period for contacts which may either be six or ten depending upon whether it is verbal or written. The filing of the case five years later is within the prescriptive period and, therefore, the action can prosper,

Alternative Answer: The law on donation lays down a special prescriptive period in the case of breach of condition, which is four years from non-compliance thereof (Article 764 Civil Code). Since the action has prescribed, the suit will not prosper.