I. EFFECT AND APPLICATION OF LAWS

A. WHEN LAW TAKES EFFECT

Q: When did the Civil Code take effect?

A: August 30, 1950

Q: When do laws take effect?

A: Laws take effect:

> **GR:** *After* 15 days following the completion of its publication in the official gazette or newspaper of general circulation.
>
> **Note:** *"after 15 days"*– Law shall take effect on the 16th day from date of publication
>
> **XPN:** unless otherwise provided by the law.

Q: What is meant by the phrase "unless it is otherwise provided" in the provision on effectivity of laws?

A: 15-day period may be lengthened or shortened by Congress. The exception refers to the 15-day period, *not* the requirement of publication, publication being mandated by due process.

Note: No one shall be charged with notice of the statutes provision until the publication is completed and the 15 day period has expired. The law produces no effect until and unless it completes the requirement of publication.

Q: When will the law take effect if it is made to take effect "immediately"?

A: It shall take effect immediately after publication. The 15 day period after publication is dispensed with but publication is not.

Q: When will the law take effect if it states that it shall be "effective upon approval"?

A: The clause "unless it is otherwise provided" refers to the date of effectivity and not to the requirement of publication itself, which cannot in any event be omitted. This clause does not mean that the legislator may make the law effective immediately upon approval, or on any other date without its previous publication.

Publication is indispensable in every case, but the legislature may in its discretion provide that the usual fifteen-day period shall be shortened or extended.

Inasmuch as the law has no specific date for its effectivity and neither can it become effective upon its approval notwithstanding its express statement, following Article 2 of the Civil Code and the doctrine enunciated in Tanada, *supra,* it took effect fifteen days after its publication. *(Umali v Estanislao, G.R. No. 104037, May 29, 1992, [citing Tanada v. Tuvera, G.R. No. L-63915, Dec. 29, 1986])*

RULES ON PUBLICATION

Q: Are all laws required to be published?

A:

> **GR:** Yes. Publication is indispensable.
>
> **XPN:**
>
> 1. Municipal Ordinances (governed by the Local Government Code not the Civil Code)
> 2. Rules and regulations that are internal in nature.
> 3. Letters of Instruction issued by administrative supervisors on internal rules and guidelines.
> 4. Interpretative regulations regulating only the personnel of administrative agency.
>
> **XPN to the XPN:** Administrative rules and regulations that require publication:
>
> 1. The purpose of which is to implement or enforce existing laws pursuant to a valid delegation;
> 2. Penal in Nature;
> 3. It diminishes existing rights of certain individuals

Q: Honasan questions the authority and jurisdiction of the DOJ panel of prosecutors to conduct a preliminary investigation and to eventually file charges against him, claiming that since he is a senator with a salary grade of 31, it is the Office of the Ombudsman, not the DOJ, which has authority and jurisdiction to conduct the preliminary investigation. DOJ claims that it has concurrent jurisdiction, invoking an OMB-DOJ Joint Circular which outlines the authority and responsibilities among prosecutors of the DOJ and the Office of the Ombudsman in the conduct of preliminary investigations. Honasan counters that said circular is ineffective as it was never published.

Is OMB-DOJ Circular No. 95-001 ineffective because it was not published?

A: No. OMB-DOJ Circular No. 95-001 is merely an internal circular between the two offices which outlines the authority and responsibilities among prosecutors of the DOJ and of the Office of the Ombudsman in the conduct of preliminary investigations. It does not contain any penal provision nor prescribe a mandatory act or prohibit any under pain of penalty. Further, it does not regulate the conduct of persons or the public, in general. As such therefore, it need not be published. *(Honasan, II v. The Panel of Investigating Prosecutors of the Department of Justice, G.R. No. 159747, Jun. 15, 2004)*

Q: What is the effect of non-publication of the law?

A: The law shall not be effective. It is a violation of due process.

Q: What must be published in order to comply with the publication requirement?

A: Publication must be in full or it is no publication at all since its purpose is to inform the public of the contents of the laws…the mere mention of the number of the presidential decree, the title of such decree, its whereabouts, the supposed date of effectivity, and in a mere supplement of the Official Gazette cannot satisfy the publication requirement. This is not even substantial compliance. *(Tañada v. Tuvera, G.R. No. L-63915, Dec. 29, 1986)*

Q: Judicial decisions form part of the law or the legal system of the land. Is compliance with the publication requirement for effectivity of laws necessary for judicial decisions to be effective?

A: No. The term "laws" do not include decisions of the Supreme Court because lawyers in the active law practice must keep abreast of decisions, particularly where issues have been clarified, consistently reiterated and published in advance reports and the SCRA *(Roy v. CA, G.R. No. 80718, Jan. 29, 1988)*

Q: Publication must be made in a newspaper of general circulation or in the Official Gazette.When is a newspaper of general circulation?

A:

1. It is published within the court's jurisdiction
2. Published for disseminating local news and general information.
3. It has a *bona fide* subscription list of paying subscribers
4. Not merely caters to a specific class of persons.
5. It is published at regular intervals.

B. IGNORANCE OF THE LAW

Q: Differentiate mistake of law from mistake of fact.

A:

MISTAKE OF FACT	MISTAKE OF LAW
Want of knowledge of some fact or facts constituting or relating to the subject matter in hand.	Want of knowledge or acquaintance with the laws of the land insofar as they apply to the act, relation, duty, or matter under consideration.
When some facts which really exist are unknown or some fact is supposed to exist which really does not exist.	Occurs when a person having full knowledge of the facts come to an erroneous conclusion as to its legal effects
Good faith is an excuse	Not excusable, even if in good faith

Note: Ignorance of a foreign law is a mistake of fact

Q: Tina charged Eduardo with bigamy. He invokes as defense good faith and that he did not know that there was still a need for a prior declaration of nullity of marriage before he can contract a subsequent marriage. Is his defense tenable?

A: No. Eduardo is presumed to have acted with malice or evil intent when he married Tina. As a general rule, mistake of fact or good faith of the accused is a valid defense in a prosecution for a felony by *dolo*; such defense negates malice or criminal intent. However, ignorance of the law is not an excuse because everyone is presumed to know the law. *Ignorantia legis neminem excusat. (Manuel v. People, G.R. No. 165842, Nov. 29, 2005)*

Q: Eduardo was married to Ruby. He then met Tina and proposed marriage, assuring her that he was single. They got married and lived together. Tina, upon learning that Eduardo had been previously married, charged Eduardo for bigamy for which he was convicted.

Eduardo testified that he declared he was "single" because he believed in good faith that his first wife was already dead, having

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not heard from her for 20 years, and that he did not know that he had to go to court to seek for the nullification of his first marriage before marrying Tina.

Is Eduardo liable for the crime of bigamy?

A: Yes. Eduardo is presumed to have acted with malice or evil intent when he married Tina. As a general rule, mistake of fact or good faith of the accused is a valid defense in a prosecution for a felony by *dolo*; such defense negates malice or criminal intent. However, ignorance of the law is not an excuse because everyone is presumed to know the law. It was the burden of the Eduardo to prove his defense that when he married the Tina, he was of the well-grounded belief that his first wife was already dead. He should have adduced in evidence a decision of a competent court declaring the presumptive death of his first wife as required by Article 349 of the Revised Penal Code, in relation to Article 41 of the Family Code. Such judicial declaration also constitutes proof that Eduardo acted in good faith, and would negate criminal intent on his part when he married the private complainant and, as a consequence, he could not be held guilty of bigamy in such case. Eduardo, however, failed to discharge his burden. (*Manuel v. People, G.R. No. 165842, Nov. 29, 2005*)

Q: What is the rule as regards difficult questions of law?

A: In specific instances provided by law, mistake as to difficult questions of law has been given the same effect as a mistake of fact. *E.g.* Mistake upon a doubtful or difficult question of law may be the basis of good faith. *[Art. 526 (3)]*

C. RETROACTIVITY OF LAWS

Q: Do laws have retroactive effect?

A:

GR: Laws shall have no retroactive effect.

XPN: TIN CREEP

1. **T**ax laws
2. **I**nterpretative statutes
3. Laws creating **N**ew Rights
4. **C**urative Statutes
5. **R**emedial/procedural
6. **E**mergency Laws
7. When **E**xpressly provided
8. **P**enal laws favorable to the accused *provided, accused is not a habitual criminal*

XPN to the XPN: constitutional limits, where retroactivity would result to: **IE**

1. **I**mpairment of obligation of contracts
2. **E**x Post Facto Laws

Note: In case of doubt: laws apply prospectively, not retroactively.

Q: May judicial decisions be given retroactive effect?

A: No. When a doctrine of the Supreme Court is overruled and a different view is adopted, the new doctrine should be applied prospectively and should not apply to parties who had relied on the old doctrine and acted on the faith thereon. *(Rabuya, p. 10)*

D. MANDATORY OR PROHIBITORY LAWS

Q: What is the status of acts which are contrary to law?

A:

GR: Acts that are contrary to the provisions of mandatory and proibitory law are void. *(Art. 5, NCC)*

XPN: Where the law:

1. Makes the act valid but punishes the violator,
   e.g. Marriage solemnized by a person not authorized to do so;
2. Itself authorizes its validity;
3. Makes the act merely voidable *i.e.* valid until annulled;
4. Declares the nullity of an act but recognizes its effects as legally existing, *e.g.* Child born after the annulment of marriage is considered legitimate.

E. WAIVER OF RIGHTS

Q: What is a right?

A: It is a legally enforceable claim of one person against another, that the other shall do a given act, or shall not do a given act *(Pineda, Persons, p. 23)*

Q: What are the kinds of rights? Distinguish.

A:

1. *Natural Rights* – Those which grow out of the nature of man and depend upon personality.

   E.g. right to life, liberty, privacy, and good reputation.

2. *Political Rights* – Consist in the power to participate, directly or indirectly, in the establishment or administration of government.

   E.g. right of suffrage, right to hold public office, right of petition.

3. *Civil Rights*– Those that pertain to a person by virtue of his citizenship in a state or community.

   E.g. property rights, marriage, equal protection of laws, freedom of contract, trial by jury. *(Pineda, Persons, p. 24)*
   a. Rights of personalty or human rights;
   b. Family rights; and
   c. Patrimonial rights:
      i. Real rights
      ii. Personal rights. (*Rabuya Persons, p. 19*)

Q: May rights be waived?

A:

GR: Yes.

XPN:

1. If waiver is:
   a. Contrary to law, public order, public policy, morals or good customs.
   b. Prejudicial to a third person with a right recognized by law.

2. If the right is:
   a. A natural right, such as right to life.
   b. Inchoate, such as future inheritance.

Q: What are the elements of waiver of rights?

A: EKI

1. Must be an **E**xisting right
2. The one waiving such right must have **K**nowledge of evidence thereof
3. **I**ntention to relinquish said right. *(Valderamma v. Macalde, G.R. No.165005, Sept. 16,2005)*

Q: What are the requisites of a valid waiver?

A: AFCUNF

1. Waiving party must **A**ctually have the right he is renouncing.
2. He must have **F**ull capacity to make the waiver
3. Waiver must be **C**lear and **U**nequivocal
4. Waiver must **N**ot be contrary to law, public order, public morals, etc.
5. When **F**ormalities are required, they must be complied with.

F. REPEAL OF LAWS

Q: What are the kinds of repeal? Distinguish.

A: Repeal may be express or implied. It is *express* if the law expressly provides for such. On the other hand, it is *implied* when the provisions of the subsequent law are incompatible or inconsistent with those of the previous law.

Q: What are the requisites of implied repeal?

A:

1. Laws cover the same subject matter
2. Latter is repugnant to the earlier

Q: What is the rule on repeal of repealing laws?

A: It depends upon how the old law is repealed by the repealing law:

1. If the old law is e*xpressly* repealed and repealing law is repealed: the Old law is not revived
2. If the old law is *impliedly* repealed and repealing law is repealed: the Old law is revived.

Note: Unless the law otherwise provides, in both cases.

G. JUDICIAL DECISIONS

Q: Are judicial decisions considered laws in this jurisdiction?

A: No. Decisions of the Supreme Court, although in themselves not laws, are nevertheless evidence of what the laws mean.

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Q: When do judicial decisions form part of the law of the land?

A:

GR: As of the date of the enactment of said law. This is so because the Supreme Court's interpretation merely establishes the contemporaneous legislative intent that the construed law purports to carry into effect.

XPN: When a doctrine is overruled and a different view is adopted, the new doctrine should be applied *prospectively* and should not prejudice parties who relied on the old doctrine.

Q: Explain the concept of *stare decisis*.

A: It is adherence to judicial precedents. Once a question of law has been examined and decided, it should be deemed settled and closed to further argument.

Note: This doctrine however is not inflexible, so that when in the light of changing conditions, a rule has ceased to be beneficial to the society, courts may depart from it.

Courts are required to follow the rule established in earlier decisions of the Supreme Court.

H. DUTY TO RENDER JUDGMENT

Q: Can the Court decline to render judgment by reason of silence of the law?

A: No.No judge or court shall decline to render judgment by reason of the silence, obscurity or insufficiency of the law**.**

Note: However, this duty is not a license for courts to engage in judicial legislation. The duty of the courts is to apply or interpret the law, not to make or amend it.

I.PRESUMPTION AND APPLICABILITY OF CUSTOM

Q: What is the presumption in case there is doubt in the interpretation or application of laws?

A: That the lawmaking body intended right and justice to prevail *(Art. 10).*

Q: What are customs?

A: These are rules of conduct, legally binding and obligatory, formed by repetition of acts uniformly observed as a social rule.

Q: How are customs proved?

A:

GR: Must be proved as a fact, according to the rules on evidence.

XPN: Courts may take judicial notice of a custom if there is already a decision rendered by the same court recognizing the custom.

Q: What are the requisites to make a custom an obligatory rule?

A: P-TOP

1. **P**luralityor Repetition of acts
2. Practiced for a long period of **T**ime
3. The community accepts it as a proper way of acting, such that it is considered **O**bligatory upon all.
4. **P**racticed by the great mass of the social group.

Q: May courts apply customs in deciding cases?

A:

1. *In civil cases*, customs may be applied by the courts in cases where the applicable law is: **SOI**
   a. **S**ilent
   b. **O**bscure
   c. **I**nsufficient

   Provided said customs are not contrary to law, public morals, etc.

2. *In criminal cases*, customs cannot be applied because *nullum crimen nulla poena sine lege (There is neither crime nor punishment, without a law).*

J. LEGAL PERIODSS

Q: How do you compute the periods?

A: Year – 365 days
Month – 30 days
Day – 24 hours
Nighttime – from sunset to sunrise

Note: *Month*: if designated by its name: compute by the number of days which it respectively has.

Week: 7 successive days regardless of which day it would start

Calendar week: Sunday to Saturday

Note: In Commissioner of Internal Revenue v. Primetown Property Group, Inc., the SC ruled that as between the Civil Code, which provides that a year is equivalent to 365 days, and the Administrative Code of 1987, which states that a year is composed of 12 calendar months, it is the latter that must prevail following the legal maxim, Lex posteriori derogat priori.

Q: What is the manner of counting periods?

A: Exclude the first, include the last;

Step 1. From the reckoning date, add the period or number of days which will expire.

e.g. Calendar days, not leap year:

Date of commission = September 3, 2005
Prescriptive period = 90 days from commission

3 + 90 = 93

Step 2. From the total, subtract the number of days, calendar or not, until the difference is less that the number of days in a month. This difference shall be the date in the month immediately succeeding the last month whose number of days was subtracted.

		93	
Less:	September	30	= 63
Less:	October	31	= 32
Less:	November	30	= 2
(December)			

November is the last month whose number of days was subtracted; hence, the remaining difference of 2 shall be the date in December, the month immediately succeeding November.

Hence, the last day for filing the action is December 2, 2005.

Q: In a case for violation of the Copyright law filed against her, Soccoro countered by saying that since the crime was found out on September 3, 1963, while the information was filed on September 3, 1965, the crime had already prescribed, since 1964 was a leap year. Has the crime prescribed?

A: Yes. *Namarco v. Tuazon* held that February 28 and 29 of a leap year should be counted as separate days in computing periods of prescription. Since this case was filed on September 3, 1965, it was filed one day too late; considering that the 730th day fell on September 2, 1965 — the year 1964 being a leap year.

With the approval of the Civil Code of the Philippines (R.A. 386) we have reverted to the provisions of the Spanish Civil Code in accordance with which a month is to be considered as the regular 30-month and not the solar or civil month with the particularity that, whereas the Spanish Civil Code merely mentioned 'months, days or nights,' ours has added thereto the term 'years' and explicitly ordains in Article 13 that it shall be understood that years are of three hundred sixty-five days.*(People v. Ramos GR L-25265, May 9, 1978, Ramos v. Ramos GR L-25644, May 9, 1978)* However, when the year in questioned is a leap year, the 365 day rule is not followed because February 28 and 29 of a leap year should be counted as separate days in computing periods of prescription *(NAMARCO vs Tuazon, GR No L-29131, Aug. 27, 1969).*

Q: What is the rule if the last day falls on a Sunday or a legal holiday?

A: It depends. If the act to be performed within the period is:

1. Prescribed or allowed by: **ROO**
   a. the **R**ules of Court
   b. an **O**rder of the court; or
   c. any **O**ther applicable statute

   The last day will automatically be the next working day.

2. Arises from a contractual relationship – the act will still become due despite the fact that the last day falls on a Sunday or a legal holiday.

K. APPLICABILITY OF PENAL LAWS

Q: When, where and upon whom do the following laws apply?

1. *Penal laws* – Penal laws and laws of public security and safety shall be obligatory upon all those who live or sojourn in the Philippine territory *(Art. 14, NCC)*

   GR: *Territoriality rule* – Obligatory to all who live or sojourn in Philippine territory. *(Art. 2, RPC)*

   XPN: Treaty stipulations, Public International Law principles.

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E.g.
a. Ambassadors
b. Ministers
c. International agencies enjoying diplomatic immunity

2. *Status laws* – Laws relating to family rights and duties, status, condition and legal capacity of persons are binding upon citizens of the Philippines eventhough living abroad (Art. 15, NCC)

GR:*Nationality rule* – Binding upon citizens of the Philippines, even though living abroad.

XPN:
a. In case of divorce obtained validly by an alien pursuant to the rules that governs his country, the Filipino spouse shall be considered also as divorced.
b. Domiciliary rule applies to stateless persons

Note: the basis for determining the personal law of an individual is either the *Domiciliary Rule* (Domicile) or *Nationality Rule* (Citizenship)

3. *Real Statutes* – Laws on Property

GR:*Lex Rei Sitae* – Real property as well as personal property is subject to the law of the country where it is situated. *(Art. 16)*

XPN:*Lex Nationalii* – National law of the person whose succession is under consideration, applies to: Testate/Intestate Succession as to 3 things only: **OAI**
a. **O**rder of succession
b. **A**mount of successional rights
c. **I**ntrinsic validity of the testamentary provisions.

Note: The enumeration above is governed by the national law of the decedent, regardless of place of death.

4. Law governing extrinsic validity of contracts, wills and public instruments.

GR:*Lex loci celebrationis(Art. 17)*– forms and solemnities of contracts, wills and other public instruments shall be governed by the laws of the country in which they are executed

XPN: Philippine law shall apply in the following cases even though performed abroad:
a. Acts are executed before the diplomatic or consular officials of the Philippines.
b. Prohibitory laws concerning persons, their acts or property, and those which have for their object public order, public policy and good customs. *(Art. 17, NCC)*

Q: What is a law?

A: In its jural and concrete sense, law means a rule of conduct formulated and made obligatory by legitimate power of the state. *(Diaz, Statutory Construction, p. 1)*

Q: What is the effect of laws, judgments promulgated or conventions agreed upon in a foreign country on Philippine laws?

A: As regards prohibitive laws:

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

XPN: Art 26, par. 2 of the Family Code (FC), on mixed marriages where the foreigner obtained a divorce decree abroad and was thereby capacitated to remarry.

Note: in this case, even though divorce is not recognized in the Philippines as a mode of terminating marriage, still the marriage is terminated by virtue of a judgment of divorce and issuance of a divorce decree by a foreign court.

L. CONFLICT OF LAWS, RELATIVE TO DIVORCE

Q: The second clause of the will of Joseph, a Turkish citizen and a resident of the Philippines, states that:

xxx, it is my wish that the distribution of my property and everything in connection with this, my will, be made and disposed of in accordance with the laws in force in the Philippine Islands, requesting all of my relatives to respect this wish, otherwise, I annul and cancel beforehand whatever

disposition found in this will favorable to the person or persons who fail to comply with this request.

Is the clause above-quoted valid?

A: No, it is void. The second clause of the will regarding the law which shall govern it and the condition imposed, is null and void, being contrary to law. Article 792 of the Civil Code provides that "Impossible conditions and those contrary to law or good morals shall be considered as not imposed and shall not prejudice the heir or legatee in any manner whatsoever, even should the testator otherwise provide."

Said clause is contrary to law because it expressly ignores the testator's national law when, according to article 10 of the Civil Code, such national law of the testator is the one to govern his testamentary dispositions. Said condition then is considered unwritten, hence the institution of legatees is unconditional and consequently valid and effective.

Q: Explain the following doctrines:

A:

1. Renvoi Doctrine("referring back") – Renvoi takes place when the conflicts rule of the forum makes a reference to a foreign law, but the foreign law is found to contain a conflict rule that returns or refers the matter back to the law of the forum (Remission).

2. Transmission theory – Provides that when the conflicts rule of the forum makes a reference to a foreign law, but the foreign law is found to contain a conflict rule that refers it to a third country, the law of the third country shall apply.

3. Doctrine of Processual Presumption – The foreign law, whenever applicable, should be proved by the proponent thereof, otherwise, such law shall be presumed to be exactly the same as the law of the forum.

4. Doctrine of Operative Facts – Acts done pursuant to a law which was subsequently declared unconstitutional remain valid, but not when the acts are done after the declaration of unconstitutionality.

Q: Edward is a citizen of California domiciled in the Philippines. After he executed his will, he went back to America and stayed there. During the post mortem probate of the will, Helen, his illegitimate natural child, opposed it on the ground of preterition. She claims that under Art. 16 par. 2 of the Civil Code, in case of succession, the national law of the deceased - the civil code of California - should govern., which provides that if a Californian not domiciled in California dies, the law of his domicile must govern. Lucy, on the otherhand, counters that under the same provision, the national law of the deceased should apply. Which law should be applied – Philippine law or Californian Law?

A: Philippine Law should be applied. Where the testator (Edward) was a citizen of California, and domiciled in the Philippines, the amount of successional rights should be governed by his national law, that is, Californian law. However, the conflict of law rules of California provides that in cases of citizens who are residents of another country, the law of the country of domicile should apply, hence, Philippine law on legitimes should be applied. This is so because California law itself refers the case back to the Philippines. The Philippine court has no other alternative but to accept the referring back, for to do otherwise, might result again in its referring back to the Philippines, which would give rise to a sort of an "international football*". (Aznar v. Garcia, G.R. No. L-16749. Jan. 31, 1963)*

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HUMAN RELATIONS

A. BREACH OF PROMISE TO MARRY

Q: Is breach of promise to marry an actionable wrong?

A:
GR: No, a breach of promise to marry perse in not an actionable wrong. There is no provision of the Civil Code authorizing an action for breach of promise to marry.

XPN: When the act is not a mere breach of promise to marry but constitutes one where damages pursuant to Art. 21 of the Civil Code may be recovered, such as:

1. Where the woman is a victim of moral seduction. (Gashem Shookat Baksh v. CA, G.R. No. 97336, February 19, 1993)

2. Where one formally sets a wedding and go through and spend for all the preparations and publicity, only to walk out of it when the matrimony was about to be solemnized.(Wassmer v. Velez, G.R. No. L-20089 , December 26, 1964)

Q: Maria met Ayatollah, an Iranian medical student, at the restaurant where she worked. A few days after, Ayatollah courted and proposed to marry Maria. The latter accepted his love on the condition that they would get married; they therefore agreed to get married. When the couple visited Maria's parents, Ayatollah was allowed to sleep with Maria during the few days of their stay. The couple continued to live together in an apartment. However, Ayatollah's attitude towards Maria changed. He maltreated her and when Maria became pregnant, Ayatollah gave her medicine to abort the fetus. Despite the abuses, Maria continued to live with Ayatollah and kept reminding him of his promise to marry her. However, Ayatollah told her that he could not do so because he was already married to a girl in Bacolod City. Maria left and filed a complaint for damages against Ayatollah for the alleged violation of their agreement to get married. May damages be recovered for a breach of promise to marry on the basis of Article 21 of the Civil Code?

A: A breach of promise to marry per se is not an actionable wrong. But where a man's promise to marry is the proximate cause of the acceptance of his love by a woman and his representation to fulfill that promise thereafter becomes the proximate cause of the giving of herself unto him in a sexual congress, proof that the promise was only a deceptive device to inveigle her to obtain her consent to the sexual act, could justify the award of damages pursuant to Article 21 not because of such promise to marry but because of the fraud and deceit behind it and the willful injury to her honor and reputation which followed thereafter. It is essential, however, that such injury should have been committed in a manner contrary to morals, good customs or public policy. In the instant case, Ayatollah's fraudulent and deceptive protestations of love for and promise to marry Maria that made her surrender her virtue and womanhood to him and to live with him on the honest and sincere belief that he would keep said promise, In short, Maria surrendered her virginity, the cherished possession of every single Filipina, not because of lust but because of moral seduction.(Gashem Shookat Baksh v. CA, G.R. No. 97336, February 19, 1993)

Q: Soledad a highschool teacher used to go around together with Francisco, who was almost ten (10) years younger than she. Eventually, intimacy developed between them after Soledad became an underwriter in Cebu. One evening, after coming from the movies, they had sexual intercourse in Francisco's cabin on board M/V "Escaño," to which he was then attached as apprentice pilot. After a few months, Soledad advised Francisco that she was pregnant, whereupon he promised to marry her. Later their child was born. However, subsequently, Francisco married another woman. Soledad filed a complaint for moral damages for alleged breach of promise to marry. May moral damages be recovered for breach of promise to marry?

A: No. It is the clear and manifest intent of our law making body not to sanction actions for breach of promise to marry. Moreover, Francisco is not morally guilty of seduction, not only because he is approximately ten (10) years younger than the complainant — who around thirty-six (36) years of age, and as highly enlightened as a former high school teacher and a life insurance agent are supposed to be — when she became intimate with him, then a mere apprentice pilot, but, also, because, the court of first instance found that, complainant "surrendered herself" to Francisco because, "overwhelmed by her love" for him, she "wanted to bind" "by having a fruit of their engagement even before they had the benefit of clergy.

(Hermosisima v. CA, G.R. No. L-14628, September 30, 1960)

Note: To constitute seduction there must be some sufficient promise or inducement and the woman must yield because of the promise or other inducement. If she consents merely from carnal lust and the intercourse is from mutual desire, there is no seduction.

Q: What are the elements of an action under Article 21 of the Civil Code?

A: LCI

1. there is an act which is **L**egal
2. but which is **C**ontrary to morals, good customs, public order or policy
3. the act is done with **I**ntent to injure.

Note: Art. 21 deals with acts contra bonus mores or contrary to good morals and presupposes loss or injury, material or otherwise, which one may suffer as a result of such violation

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I. PERSONS AND PERSONALITY

A. CAPACITY TO ACT

1. CIVIL PERSONALITY

Q: Distinguish juridical capacity from capacity to act.

A:

JURIDICAL CAPACITY	CAPACITY TO ACT
Definition	
Fitness to be the subject of legal relations	Power to do acts with legal effect
Acquisition	
Inherent (co-exists with the natural person)	Through the fulfillment of specific legal activities
Loss	
Only through death	Through death and other causes
In relation to the other	
Can exist without capacity to act	Cannot exist w/o juridical capacity
Limitation	
None	*Art. 38 (restriction)* *Art. 39 (modification / limitation),* among others

2.RESTRICTIONS ON CAPACITY TO ACT

Q: What are the restrictions on capacity to act?

A: MIDI-PC

1. **M**inority,
2. **I**nsanity,
3. **D**eaf-mute,
4. **I**mbecility,
5. **P**rodigality,
6. **C**ivil Interdiction

Q: What are the circumstances that modify or limit capacity to act?

A: I-PAID-FAT-PIA

1. **I**nsanity
2. **P**rodigality
3. **A**ge
4. **I**mbecility
5. **D**eaf-Mute
6. **F**amily Relations
7. **A**lienage
8. **T**rusteeship
9. **P**enalty
10. **I**nsolvency
11. **A**bsence

Q: How does civil personality cease?

A: It depends upon the classification of persons:

1. *Natural persons* – by death
2. *Juridical persons* – by termination of existence

3. BIRTH

Q: How is *personality* acquired by natural persons?

A:

GR: *Actual / Permanent Personality*– Personality begins at birth; not at conception

XPN: *Presumptive / Temporary* – The law considers the conceived child as born *(Conceptus pro nato habetur)*

Note: For there to be presumptive personality, the foetus must be "born later in accordance with law" and the purpose for which such personality is given must be beneficial to the child.

Q: May a fetus be considered born for all purposes?

A: No**.** Only for purposes beneficial and favorable to it.

Q: Explain the meaning of the clause: *"Born later in accordance with law".*

A: A fetus with an intra-uterine life of:

1. *Less than 7 months* – Must survive for at least 24 hours after its *complete* delivery from the maternal womb
2. *At least 7 months* –If born alive: considered born, even it dies within 24 hours after complete delivery.

Q: Does the conceived child have the right to be acknowledged even if it is still conceived?

A: Yes. It is a universal rule of jurisprudence that a child, upon being conceived, becomes a bearer of legal rights and is capable of being dealt with as a living person. The fact that it is yet unborn is no impediment to the acquisition of rights provided it be born later in accordance with Law *(De Jesus v. Syquia, G.R. No. L-39110, Nov. 28, 1933).*

4. DEATH

Q: How does civil personality cease?

A: It depends upon the classification of persons:

1. Natural persons – by death
2. Juridical persons – by termination of existence

Q:What rule would apply in case there is doubt as to who died first?

A: It depends on whether the parties are called to succeed each other.

1. *If successional rights are involved* – Art. 43 of the NCC: Survivorship Rule; and Rule 131, Sec. 3(*kk*): Presumption of simultaneity of deaths between persons called to succeed each other, applies.

2. *If no successional rights are involved* – Rule 131, Sec. 3 (jj) of the Rules of Court applies. (Presumption of survivorship)

Note: Both are to be applied only in the absence of facts.

Q: Jaime, who is 65, and his son, Willy, who is 25, died in a plane crash. There is no proof as to who died first. Jaime's only surviving heir is his wife, Julia, who is also Willy's mother. Willy's surviving heirs are his mother, Julia, and his wife, Wilma.

In the settlement of Jaime's estate, can Wilma successfully claim that her late husband, Willy, had a hereditary share since he was much younger than his father and therefore, should be presumed to have survived longer?

A: No, Wilma cannot successfully claim that Willy had a hereditary share in his father's estate.

Under Art 43, Civil Code, two persons "who are called to succeed each other" are presumed to have died at the same time, in the absence of proof as to which of them died first. This presumption of simultaneous death applies in cases involving the question of succession as between the two who died, who in this case, are mutual heirs, being father and son.

Q: Suppose, Jaime had a life insurance policy with his wife Julia, and his son, Willy, as the beneficiaries. Can Wilma successfully claim that one-half of the proceeds should belong to Willy's estate?

A: Yes, Wilma can invoke the presumption of survivorship and claim that one-half of the proceeds should belong to Willy's estate, under Sec.3(jj) par.5 Rule 131, Rules of Court, as *the dispute does not involve succession*.

Under this presumption, the person between the ages of 15 and 60 is deemed to have survived one whose age was over 60 at the time of their deaths. The estate of Willy endowed with juridical personality stands in place and stead of Willy, as beneficiary. **(1998 Bar Question)**

A. COMPARISON OF ART.43 AND RULE 131

SURVIVORSHIP RULE UNDER CIVIL CODE

Q: Explain the survivorship rule under the new Civil Code.

A: If in doubt as to who died first between 2 or more persons called to succeed each other:

Burden of Proof: Whoever alleges the death of one prior to the other shall prove the same;

Absent such proof: Presumption is they all died at the same time. There shall be *no transmission of successional rights.*

Q: What are the conditions that may warrant the application of the survivorship rule?

A: It applies when the following conditions are present:

1. The parties are heirs to one another
2. There is no proof as to who died first
3. There is doubt as to who died first

Q: What is the presumption under the survivorship rule?

A: Presumption of simultaneity of deaths. When two or more persons who are called to succeed each other, die, they shall be presumed to have died at the same time.

PRESUMPTIONS ON SURVIVORSHIP UNDER THE RULES OF COURT

Q: Explain the presumptions on survivorship under the Rules of Court.

A: The Rules of Court provide that:

1. when two or more persons
2. perish in the same calamity and
3. it is not shown who died first, and

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4. there are no particular circumstances from which it can be inferred that one died ahead of the other,

The survivorship shall be determined from the probabilities resulting from the strength and age of the sexes according to the following rules:

Age/Sex of decedents at the time of death		Who presumed to have survived
Decedent A	***Decedent B***	
Under 15	***Under 15***	Older
Above 60	***Above 60***	Younger
Under 15	***Above 60***	Under 15 (younger)
Above 15 BUT under 60	***Above 15 BUT under 60***	Different sexes – male Same sex – Older
Under 15 OR over 60	***Between 15 and 60***	Between 15 and 60

Q: Do the statutory rules in the determination of sequence of death absolutely apply in a case where indirect and/or inferential evidence surrounding the circumstances of the deaths exists?

A: No. It is manifest from the language of section 69 (*ii*) of Rule 123 and that of the foregoing decision that the evidence of the survivorship need not be direct; it may be indirect, circumstantial, or inferential. Where there are facts, known or knowable, from which a rational conclusion can be made, the presumption does not step in, and the rule of preponderance of evidence controls. It is the "particular circumstances from which it (survivorship) can be inferred" that are required to be certain as tested by the rules of evidence. It is enough that "the circumstances by which it is sought to prove the survivorship must be such as are competent and sufficient when tested by the general rules of evidence in civil cases." *(Joaquin v. Navarro, G.R. No. L-5426, May 29, 1953)*

Q: At the age 18, Marian found out that she was pregnant. She insured her own life and named her unborn child as her sole beneficiary. When she was already due to give birth, she and her boyfriend Pietro, the father of her unborn child, were kidnapped in a resort in Bataan where they were vacationing. The military gave chase and after one week, they were found in abandoned hut in Cavite. Marian and Pietro were hacked with bolos. Marian and the baby she delivered were both found dead, with the baby's umbilical cord already cut. Pietro survived.

Can Marian's baby be the beneficiary of the insurance taken on the life of the mother?

A: An unborn child may be designated as the beneficiary in the insurance policy of the mother. An unborn child shall be considered a person for purposes favorable to it provided it is born later in accordance with the Civil Code. There is no doubt that the designation of the unborn child as a beneficiary is favorable to the child.

Between Marian and the baby, who is presumed to have died ahead?

A: If the baby was not alive when completely delivered from the mother's womb, it was not born as a person, then the question of who between two persons survived will not be an issue. Since the baby had an intra-uterine life of more than 7 months, it would be considered born if it was alive, at the time of its complete delivery from the mother's womb. We can gather from the facts that the baby was completely delivered. But whether or not it was alive has to be proven by evidence.

If the baby was alive when completely delivered from the mother's womb, then it was born as a person and the question of who survived as between the baby and the mother shall be resolved by the provisions of the Rules of Court on survivorship. This is because the question has nothing to do with succession. Obviously, the resolution of the question is needed just for the implementation of an insurance contract. Under Rule 13, Sec. 3, (jj), (5) as between the baby who was under 15 years old and Marian who was 18 years old, Marian is presumed to have survived.

In both cases, therefore, the baby never acquired any right under the insurance policy. The proceeds of the insurance will then go to the estate of Marian.

Will Prieto, as surviving biological father of the baby, be entitled to claim the proceeds of the life insurance on the life of Marian?

A: Since the baby did not acquire any right under the insurance contract, there is nothing for Prieto to inherit. **(2008 Bar Question)**

B. DOMICILE AND RESIDENCE OF PERSON

Q: Distinguish between residence and domicile.

A: Residence is a place of abode, whether permanent or temporary. Domicile denotes a fixed permanent to which, when absent, one has the intention of returning.

Q: Where is the domicile of a natural person for the exercise of civil rights and fullfilment of civil obligations?

A: His place of habitual residence.

Q: Where is the domicile of juridical persons?

A:

1. The place fixed by the law creating or recognizing the juridical person
2. In the absence thereof, the place where their legal representation is established or where they exercise their principal functions.

II. MARRIAGE

Q: What is marriage?

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

A.REQUISITES

1. NATURE OF MARRIAGE

Q: What is meant by the law when it declares marriage as an inviolable social institution?

A: Marriage is an institution in which the community is deeply interested. The State has surrounded it with safeguards to maintain its purity, continuity and permanence. The security and stability of the State are largely dependent on it. It is in the interest and duty of each member of the community to prevent the bringing about of a condition that would shake its foundation and lead to its destruction. The incidents of the status are governed by law, not by will of the parties. *(Beso v. Daguman, A.M. No. MTJ-99-1211, January 28, 2000 [citing Jimenez v. Republic, G.R. No. L-12790, August 31,1960])*

Q: Distinguish marriage from ordinary contract.

A:

MARRIAGE	ORDINARY CONTRACT
As a contract	
Special contract Social institution	Merely a contract
Applicable law	
Governed by the law on marriage	Governed by the law on contracts
Right to stipulate	
GR: Not subject to stipulation **XPN:** Property relations in marriage settlements	Generally subject to stipulations
Capacity to contract	
Legal capacity required	Minors may contract thru their parents or guiardians or in some instances, by themselves
Gender requirement	
Contracting parties must only be two persons of opposite sexes	Contracting parties may be two or more persons regardless of sex
Dissolution by agreement	
Dissolved only by death or annulment, never by mutual agreement	Can be dissolved by mutual agreement among others.

2. KIND OF REQUISITES

ESSENTIAL REQUISITES

Q: What are the essential requisites of marriage?

A:

1. *Legal capacity* of the contracting parties who must be a male and a female
2. *Consent freelygiven* in the presence of the solemnizing officer

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Q: What constitute legal capacity of the parties to marry?

A: ASI

1. **A**ge – at least 18yrs
2. **S**ex – between male and female
3. **L**ack of legal impediment to marry

Q: Are there other requirements, taking into consideration the age of the parties to the marriage, for the validity of such marriage?

A: Yes, depending upon the age of the contracting party.

AGE	ADDITIONAL REQUIREMENTS
18 to 21 years old	Parental consent and Marriage counselling
22 to 25 years old	Parental advice and Marriage counselling

Note: Absence of the additional requirement of *parental consent* does not make the marriage void but only voidable.

FORMAL REQUISITES

Q: What are the formal requisites of marriage?

A: CAL

1. Marriage **C**eremony
2. **A**uthority of the solemnizing officer
3. Valid marriage **L**icense

3. EFFECT OF ABSENCE OF REQUISITES

Q: What is the status of marriage in case of:

1. **Absence of any of the essential requisites?**
   A: Void ab initio

2. **Absence of any of the formal requisites?**
   A:GR: Void ab initio.

   XPN: Valid even in the absence of formal requisite:
   a. Marriages exempt from license requirement
   b. Either or both parties believed in good faith that the solemnizing officer had the proper authority.

3. **Defect in essential requisites?**
   A: Voidable

4. **Irregularity in formal requisites?**
   A: Valid, but the party responsible for such irregularity shall be civilly, criminally or administratively liable.

4. MARRIAGE CEREMONY

Q: What constitutes a valid marriage ceremony?

A: That which takes place with the:

1. appearance of the contracting parties before the solemnizing officer and
2. their personal declaration that they shall take each other as husband and wife
3. in the presence of not less that 2 witnesses of legal age.

Note: No particular form of ceremony or religious rite is required by law.

Q: Is marriage by proxy allowed?

A: It depends.

1. *If performed in the Philippines* – No, it is not allowed, hence the marriage is *void.*

   Note: Philippine laws prohibit marriages by proxy. Since the marriage is performed in the Philippines, Philippine laws shall apply following the principle of *lex loci celebrationis*.

2. *If performed abroad* – Whether it is allowed or not depends upon the law of the place where the marriage was celebrated *(lex loci celebrationis)*

   Note: As to marriages between Filipinos - all marriages solemnized outside the Philippines, in accordance with the laws enforced in said country where they are solemnized, and valid there as such, shall also be valid here in the country, except those prohibited under Art. 35 (1), (2), (4), (5), (6), 36, 37 and 38. *(Art. 26, FC)*

5. SOLEMNIZING AUTHORITY

Q: Who are authorized to solemnize marriage?

A: It depends:

1. *Under ordinary circumstances*:
   a. Incumbent judiciary member – *provided,* within the court's (his) jurisdiction

b. Priest, rabbi, imam or minister of any church/religious sect duly authorized – *provided* at least one of the parties belongs to such church or religious sect.

c. Consul general, consul or vice-consul – *provided* both parties are Filipinos and marriage takes place abroad.

d. Mayors (Arts 444 and 445 of LGC)

Note: Includes "Acting Mayor"

2. *Marriages in articulo mortis:*
   a. Ship captain or airplane chief – *provided* the marriage is performed:
      i. During voyage, even during stopovers
      ii. Between passengers or crew members
   b. Military commander of a unit who is a commissioned officer – *provided* the marriage is performed:
      i. In absence of chaplain;
      ii. Within zone of military operation;
      iii. Between members of the armed forces or civilians

Q: What must the solemnizing officer in a marriage *in articulo mortis* do after solemnizing such marriage?

A: He shall state in an affidavit executed before the local civil registrar or any other person legally authorized to administer oaths, that the marriage wa performed *in articulo mortis* and that he took the necessary steps to ascertain the ages and relationship of the contracting parties and the absence of a legal impediment to the marriage. *(Art. 29, FC)*

Q: Will the solemnizing officer's failure to execute an affidavit that he solemnized the marriage in articulo mortis affect the validity of marriage?

A: No, it will not.The marriage will be still valid. The Law permits marriages in articulo mortis without marriage license but it requires the solemnizing officer to make an affidavit and file it.

However, such affidavit is not an essential or formal requisite of marriage, the same with a Marriage Contract. The signing of the marriage contract and the affidavit is only required for the purpose of evidencing the act, not a requisite of marriage. It is the obligation of the solemnizing officer. It does not affect the validity of marriage *(De Loria v. Felix, G.R. No. L-9005, Jun. 20, 1958).*

Q:What are the authorized venues of marriage?

A:

GR: Must be solemnized publicly within the jurisdiction of the authority of the solemnizing officer:
1. Chambers of the judge or in open court
2. Church, chapel or temple
3. Office of the consul-general, consul or vice-consul

XPN:
1. Marriage at the point of death
2. Marriage in remote places
3. Marriage at a house or place designated by the parties with the written request to the solemnizing officer to that effect.

Note: This provision is only *directory*, not mandatory. The requirement that the marriage be solemnized in a particular venue or a public place is not an essential requisite for the validity of the marriage.

A. EXCEPTIONS

Q: What is the exception to the rule requiring authority of the solemnizing officer?

A: Marriages contracted with either or both parties believing in good faith that the solemnizing officer had the authority to do so.

MARRIAGE LICENSE

Q: What is the period of the validity of a marriage license?

A: A marriage license is valid in any part of the Philippines only for *120 days* from the date of its issuance and shall be deemed automatically cancelled at the expiration of said period.

Note: If the parties contracted marriage after 120 days lapsed from the issuance of the marriage license, such marriage shall be considered void for lack of marriage license.

Q: What is the effect in the issuance of a marriage license if a party who is required by law to obtain parental advice or undergo marriage counseling failed to do so?

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A: The issuance of marriage license is *suspended* for 3 months from the completion of publication of the application.

Note: The marriage is valid in this case.

Q: What is the status of the marriage if the parties get married within said 3-month period?

A: It depends.

1. *If the parties did not obtain a marriage license* – the marriage shall be *void* for lack of marriage license.
2. *If the parties were able to obtain a marriage license* – the marriage shall be valid without prejudice to the actions that may be taken against the guilty party.

Q: Who issues the marriage license?

A: The local civil registrar of the city or municipality where either contracting party habitually resides.

Note: Obtaining a marriage license in a place other than where either party habitually resides is a mere irregularity.

A. FOREIGN NATIONAL

Q: What is required from the contracting parties before a marriage license can be obtained?

A: Each of the contracting parties shall file a separate or individual sworn application with the proper local civil registrar.

Note: Foreigners are further required to submit a Certificate of Legal Capacity issued by their respective diplomatic or consular officials before they can obtain a marriage license.

For stateless persons or refugees, in lieu of a certificate of legal capacity, an affidavit stating the circumstances showing such capacity to contract marriage must be submitted.

Q: What is the status of a marriage celebrated on the basis of a license issued without the required Certificate of Legal Capacity?

A: The marriage is valid as this is merely an irregularity in complying with a formal requirement of the law in procuring a marriage license, which will not affect the validity of the marriage. (*Garcia v. Recio, G.R. 138322, October 2, 2001*)

B. EXCEPTIONS

Q: What are the marriages exempt from the license requirement?

A: MARCOS-Z

1. Marriages among **M**uslims or members of ethnic cultural communities.
2. Marriages in **A**rticulo mortis.
   NOTE: Articulo Mortis means "at the point of death", not merely in danger of dying.
3. Marriages in **R**emote places.
   NOTE: "Remote Place" - no means of transportation to enable the party to personally appear before the solemnizing local civil registrar.
4. Marriages between parties **C**ohabiting for at least 5 years
5. Marriages solemnized **O**utside the Philippines where no marriage license is required by the country where it was solemnized.
6. Marriages in articulo mortis **S**olemnized by a ship captain or airplane pilot
7. Marriages within **Z**ones of military operation.

Q: What are the requisites for the 5-year cohabitation exception to the marriage license requirement?

A: The requisites are: **5D PAS**

1. Living together as husband and wife at least ***5*** years before the marriage.

   The 5 year period must be characterized by:
   a. *Exclusivity* – the partners must live together exclusively, with no other partners, during the whole 5-year period.
   b. *Continuity* – such cohabitation was unbroken.

   Note: The period is counted from the date of celebration of marriage. It should be the years immediately before the day of the marriage.

2. No legal impediment to marry each other **D**uring the period of cohabitation.

Note: The five-year period of cohabitation must have been a period of legal union had it not been for the absence of marriage.

3. Fact of absence of legal impediment must be **P**resent at the time of the marriage
4. Parties must execute an **A**ffidavit that they are living together as husband and wife for 5 years and that they do not have any impediment to marry
5. Solemnizing officer must execute a **S**worn statement that he had ascertained the qualifications of the parties and found no legal impediment to their marriage *(Manzano v. Sanches, Mar. 1, 2001)*

Q: Pepito was married to Teodulfa. Teodulfa was shot by him resulting in her death. After 1 year and 8 months, he married Norma without any marriage license. In lieu thereof, they executed an affidavit stating that they had lived together as husband and wife for at least five years and were thus exempt from securing a marriage license. What is the status of their marriage?

A: Void for lack of marriage license.To be exempt from the license requirement under the 5-year cohabitation rule, t*he cohabitation should be in the nature of a perfect union that is valid under the law but rendered imperfect only by the absence of the marriage contract and is characterized by continuity, that is, unbroken, and exclusivity, meaning no third party was involved at anytime within the 5 years*. It should be a period of legal union had it not been for the absence of the marriage.

In this case, Pepito and Norma are not exempt from the marriage license requirement because at the time of Pepito and Norma's marriage, it cannot be said that they have lived with each other as husband and wife for at least five years prior to their wedding day because from the time Pepito's first marriage was dissolved to the time of his marriage with Norma, only about twenty months had elapsed.

Q: Would your answer be the same if Pepito was separated in fact from Teodulfa?

A: Yes, the marriage is still void. Even if they were separated in fact, and thereafter both Pepito and Norma had started living with each other that has already lasted for five years, the fact remains that Pepito had a subsisting marriage at the time when he started cohabiting with Norma. It is immaterial that when they lived with each other, Pepito had already been separated in fact from his lawful spouse. The subsistence of the marriage even where there was actual severance of the filial companionship between the spouses cannot make any cohabitation by either spouse with any third party as being one as "husband and wife".(Niñal v. Bayadog, GR No. 133778, March 14, 2000)

MARRIAGE CERTIFICATE

Q: What are the distinctions between a marriage license and a marriage certificate?

MARRIAGE LICENSE	MARRIAGE CERTIFICATE
Authorization by the state to celebrate marriage.	Best evidence of the existence of the marriage.
Formal requisite of marriage.	Not an essential or formal requisite of marriage.

Q: Guillermo and Josefa lived together as husband and wife, but there is doubt as to whether they got married, since no record of the marriage existed in the civil registry but their relatives and friends maintained that the two in fact married each other and lived as husband and wife for more than half a century. Is Guillermo married to Josefa?

A: They are presumed to be married. In this jurisdiction, every intendment of the law leans toward legitimizing matrimony. Persons dwelling together apparently in marriage are presumed to be in fact married. This is the usual order of things in society and, if the parties are not what they hold themselves out to be, they would be living in constant violation of the common rules of law and propriety. Semper praesumitur pro matrimonio – always presume marriage. *(Vda. De la Rosa v. Heirs of Vda. De Damian, G.R. No. 103028, Oct. 10, 1997)*

Note: Although a marriage contract is considered a primary evidence of marriage, its absence is not always proof that no marriage took place. (Delgado Vda. De la Rosa, et al. v. Heirs of Marciana Rustia Vda. De Damian, et al., G.R. No. 103028, Oct. 10, 1997)

B. EFFECT OF MARRIAGE CELEBRATED ABROAD AND FOREIGN DIVORCE

Q: What rules govern the validity of marriage?

A: It depends:

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1. *As to its extrinsic validity – Lex loci celebrationis*

   Note: *Locus regit actum* -"the act is governed by the law of the place where it is done" - is adhered to here in the Philippines as regards the extrinsic validity of marriage.

2. *As to its intrinsic validity* – Personal law

   Note: Personal law may either be the national law or the law of the place where the person is domiciled.

   If the person involved is a *stateless person*, domiciliary rule applies, otherwise, *lex nationalii* applies.

Q: What is the status of marriages between Filipinos solemnized abroad in accordance with the law in force in said country?

A:

GR: Marriages between Filipinos solemnized outside the Philippines in accordance with the law of the foreign country where it is celebrated, if valid there, shall be valid here as such.

XPN: It shall be void, even if it is valid in the foreign country where the marriage was celebrated, if any of the following circumstances are present: **LIM – 2B – 2P**

1. **L**ack of legal capacity even with parental consent (*e.g.* party is below 18);
2. **I**ncestuous;
3. Contracted through **M**istake of one party as to the identity of the other;
4. Contracted following the annulment or declaration of nullity of a previous marriage but **B**efore partition, etc.;
5. **B**igamous or polygamous *except* as provided in Art. 41 FC on terminable bigamous marriages;
6. Void due to **P**sychological incapacity;
7. Void for reasons of **P**ublic policy

Q:Suppose in a valid mixed marriage (marriage between a citizen of a foreign country and a citizen of the Philippines,) the foreign spouse obtained a divorce decree abroad and was capacitated to remarry.

1. **May the Filipino spouse remarry despite the fact that divorce is not valid in the Philippines?**
2. **Will your answer be the same if it was a valid marriage between Filipinos?**

A:

1. Yes, the Filipino spouse is capacitated to remarry just as the alien spouse is capacitated. Divorce validly obtained abroad *by the alien spouse* capacitating him/her to remarry will likewise allow the Filipino spouse to remarry. This is the rule laid down in Article 26 (2) of the Family Code.

   It should be noted however that the foreign spouse must be capacitated to remarry before the Filipino spouse may also be capacitated to remarry.

   Note: It is true that owing to the nationality principle embodied in Art. 16 of the NCC, only Philippine nationals are covered by the policy against absolute divorces the same being considered contrary to our concept of public policy and morality. However, aliens may obtain divorces abroad, which may be recognized in the Philippines, provided they are valid according to their national law. The marriage tie, when thus severed as to one party, ceases to bind either. A husband without a wife, or a wife without a husband, is unknown to the law. *(Van Dorn v. Romillo, Jr.,GR No. L-68470, Oct. 8, 1985)*

2. It depends. What is material in this case is the citizenship of the spouse who obtained a divorce decree abroad at the time the decree was obtained and not their citizenship at the time the marriage was celebrated.

   If the Filipino spouse was naturalized as a citizen of a foreign country before he/she obtains a divorce decree and was thereafter capacitated to remarry, the Filipino spouse will be capacitated to remarry.

   Note: Although said provision only provides for divorce obtained abroad by the foreign spouse in a valid mixed marriage, the legislative intent would be rendered nugatory if this provision would not be applied to a situation where there is a valid marriage between two Filipino citizens, one of whom thereafter is

naturalized as a foreign citizen and obtains a valid divorce decree capacitating him or her to remarry, as in this case. To rule otherwise would be to sanction absurdity and injustice. *(Republic v. Orbecido III, GR. No. 154380, Oct. 5, 2005)*

The naturalization of one of the parties, as well as the divorce decree obtained by him or her, *must be proven as a fact under our rules on evidence. The foreign law under which the divorce was obtained must likewise be proven as our courts cannot take judicial notice of foreign laws.*

However, if the Filipino spouse remained to be a citizen of the Philippines when he/she obtained a divorce decree abroad, such decree will not be recognized in the Philippines even if that spouse is subsequently naturalized as a citizen of a foreign country. This is so because at the time the spouse obtained the divorce decree, he/she was still a citizen of the Philippines and being naturalized afterwards does not cure this defect. *(See: Republic v. Iyoy, G.R. No. 152577, Sept. 21, 2005)*

Note: *Burden of Proof*– lies with "the party who alleges the existence of a fact or thing necessary in the prosecution or defense of an action." Since the divorce was a defense raised by respondent, the burden of proving the pertinent foreign law validating it falls squarely upon him. Courts cannot take judicial notice of foreign laws. The power of judicial notice must be exercised with caution, and every reasonable doubt upon the subject should be resolved in the negative. *(Garcia v. Recio, G.R. No. 138322, Oct. 2, 2001)*

C. VOID AND VOIDABLE MARRIAGES

Q: What may be the status of marriages?

A:

1. Valid
2. Void
3. Voidable

Q: What are the distinctions between void and voidable marriages?

A:

VOID MARRIAGE	VOIDABLE MARRIAGE
Status of marriage	
Void ab initio	Voidable: Valid until annulled
Petition filed	
Declaration of Nullity of Marriage	Annulment of Marriage
Who may file	
GR: Solely by the husband or wife. **XPN:** Any real party in interest, only in the following cases: 1. Nullity of marriage cases commenced before the effectivity of A.M. No. 02-11-10.- March 15, 2003. 2. Marriages celebrated during the effectivity of the Civil Code. (De Dios Carlos v. Sandoval, G.R. No. 179922, December 16, 2008).	**GR:** Offended Spouse **XPN:** 1.Parents or guardians in cases of *insanity* 2.Parents or guardians before the party reaches 21 years old on the ground of Lack of Parental Authority
Prescriptive Period	
No prescriptive period	**GR:** Within 5 years from discovery of the ground **XPN:** 1. Lifetime of spouse in cases of *insanity* 2. Before the party reaches 21 in cases where parents or guardians may file annulment

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Children	
GR: Illegitimate; **XPN:** Those conceived or born of marriages declared void under: 1. Art.36 (Psychological incapacity), or 2. Art. 52 in relation to Art. 53	Legitimate
Judicial Declaration	
GR: Not necessarythat there is judicial declaration **XPN:** in case of remarriage	Necessary

1. VOID MARRIAGE

Q: What are the marriages that are void ab initio?

A: LAaMB- PIPS-18

1. **A**bsence of any of the essential or formal requisites of marriage;
2. Contracted by any party below **18** years of age even with the consent of parents or guardians;
3. Solemnized without **L**icense, except those marriages that are exempt from the license requirement;
4. Solemnized by any person not **A**uthorized to perform marriages unless such marriages were contracted with either or both parties believing in good faith that the solemnizing officer had the legal authority to do so;
5. Contracted through **M**istake of one of the contracting party as to the identity of the other;
6. **B**igamous or polygamous marriages;
7. **S**ubsequent marriages that are void under *Art. 53* FC;
8. Marriages contracted by any party, who at the time of the celebration of the marriage, was **P**sychologically incapacitated;
9. **I**ncentuous Marriages *(Art. 37, FC)*
10. Marriages declared void because they are contrary to **P**ublic policy *(Art. 38, FC).*

A. ABSENCE OF REQUISITES

GENDER REQUIREMENT

Q: What is the status of a marriage between Filipinos if the parties thereto are of the same sex?

A: Void. For a marriage to be valid, it must be between persons of opposite sexes.

Q: In case of a change in sex, can the person who has undergone said change be allowed to marry another of the same sex as he/she originally had?

A: It depends upon the cause for the change in sex.

1. *If the change is artificial* – No, he/she cannot.

   Note: The sex or gender at the time of birth shall be taken into account. He is still, in the eyes of the law, a man although because of theartificialintervention, he now has the physiological characteristics of a woman *(Silverio v. Republic, G.R. No. 174689, Oct.22, 2007)*

2. *If the change is natural* – He/she can.

Note: When one suffers from Congenital Adrenal Hyperplasia, *a disorder that changes the physiological characteristic of a person*, the court may grant the change of gender. In this case, the person must not take unnatural steps to interfere what he/she is born with. Nature has taken its due course in revealing more fully the male/female characteristics *(Republic v. Cagandahan, G.R. No. 166676, Sept.12, 2008).*

Q: Jennifer was registered as a female in her Certificate of Live Birth. In her early years, she suffered from clitoral hypertrophy and was found out that her ovarian structures had minimized. She also alleged that she has no breasts or menstration. She was diagnosed to have Congenital Adrenal Hyperplasia (CAH) a condition where persons thus afflicted possess secondary male characteristics because of too much secretion of androgen. She then alleged that for all interests and appearances as well as in mind and emotion, she has become a male person. What is Jennifer's gender or sex?

A: Male. Where the person is biologically or naturally intersex the determining factor in his gender classification would be *what the individual, having reached the age of majority, with good reason thinks of his/her sex*. Jennifer here thinks of himself as a male and considering that his body produces high levels of androgen, there is preponderant biological support for considering him as being male. Sexual development in cases of intersex persons makes the gender classification at birth inconclusive. It is at maturity that the gender of such persons is fixed.

Jennifer has simply let nature take its course and has not taken unnatural steps to arrest or interfere with what he was born with. And accordingly, he has already ordered his life to that of a male. He could have undergone treatment and taken steps, like taking lifelong medication, to force his body into the categorical mold of a female but he did not. He chose not to do so. Nature has instead taken its due course in his development to reveal more fully his male characteristics.

To him belongs the primordial choice of what courses of action to take along the path of his sexual development and maturation. In the absence of evidence that he is an "incompetent" and in the absence of evidence to show that classifying him as a male will harm other members of society who are equally entitled to protection under the law, the Court affirms as valid and justified his position and his personal judgment of being a male. *(Republic v. Jennifer Cagandahan, G.R. No. 166676, Sep. 12, 2008)*

CONSENT FREELY GIVEN

Q: What is the effect of lack of free and voluntary consent?

A: When consent is obtained through mistake, fraud, force, intimidation or undue influence, or when either of the contracting party is of unsound mind at the time of the celebration of the marriage, the marriage is annullable. *(Art. 45, FC)*

CONTRACTED BY PARTY BELOW 18

Q: What is the status of marriages where one or both of the parties are below 18 years of age?

A: it is void for lack of legal capacity.

Q: Would your answer be the same if their parents consented to the marriage?

A: Yes. Parental consent does not have the effect of curing this defect.

Q: What if the marriage was a mixed marriage where the Filipino is 18 years old but the foreigner is below 17 years of age. What is the status of the marriage?

A: It depends. If the national law of the foreigner recognizes 17 year old persons to be capacitated to marry, then their marriage is valid, otherwise it is void.

Note: *Lex nationalii* applies

LACK OF AUTHORITY OF SOLEMNIZING OFFICER

Q: What is the effect of lack of authority of solemnizing officer?

A:
GR: The marriage is void ab initio.

XPN:

1. Express - If either or both parties believed in good faith that the solemnizer had the legal authority to do so. (Art. 35, FC)
2. Implied - Article 10 in relation to Article 26 of the Family Code. If the marriage between a foreigner and a Filipino citizen abroad solemnized by a Philippine consul assigned in that country is recognized as valid in the host country, such marriage shall be considered as valid in the Philippines. (Sta. Maria Jr., Persons and Family Relations Law)

SOLEMNIZED WITHOUT LICENSE

Q: Judge Palaypayon solemnized marriages even without the requisite marriage license. Thus, some couples were able to get married by the simple expedient of paying the marriage fees. As a consequence, their marriage contracts did not reflect any marriage license number. In addition, the judge did not sign their marriage contracts and did not indicate the date of the solemnization, the reason being that he allegedly had to wait for the marriage license to be submitted by the parties. Such marriage contracts were not filed with the Local Civil Registry. Are such marriages valid?

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A: No. The Family Code pertinently provides that the formal requisites of marriage are, *inter alia*, a valid marriage license, except in the cases provided for therein. Complementarily, it declares that the absence of any of the essential or formal requisites shall generally render the marriage void *ab initio* and that, while an irregularity in the formal requisites shall not affect the validity of the marriage, the party or parties responsible for the irregularity shall be civilly, criminally and administratively liable.*(Cosca v. Palaypayon, A.M. No. MTJ-92-721, Sept. 30, 1994)*

CONTRACTED THROUGH MISTAKE

Q: For the marriage to be void, on what circumstance must the mistake refer to?

A: For marriage to be rendered void, the mistake in identity must be with reference to the actual physical identity of other party, not merely a mistake in the name, personal qualifications, character, social standing, etc. *(Rabuya, p. 213)*

BIGAMOUS MARRIAGES

Q: If a person contracts a subsequent marriage during the subsistence of a prior marriage, what is the status of the subsequent marriage?

A:

GR: Void for being bigamous or polygamous.

XPN: Valid if it is a terminable bigamous marriage.

Q: When is a marriage considered bigamous?

A: It is when a person contracts a second or subsequent marriage before the former marriage has been legally dissolved, or before the absent spouse has been declared presumptively dead by means of judgment rendered in the proper proceedings. *(Art. 349, RPC)*

Note: The same applies to polygamy.

Q: May a person contract a valid subsequent marriage before a first marriage is declared void *ab initio* by a competent court?

A: No. The Supreme Court has consistently held that a judicial declaration of nullity is required before a valid subsequent marriage can be contracted; or else, what transpires is a bigamous marriage, reprehensible and immoral. Article 40 of the Family Code expressly requires a judicial declaration of nullity of marriage. *(In re: Salvador v. Serafico, A.M. 2008-20-SC, Mar. 15, 2010)*

Note: Under Art. 40 of the FC, before one can contract a second marriage on the ground of nullity of the first marriage, there must first be a final judgment declaring the first marriage void. If a party fails to secure a judicial declaration of nullity of the first marriage, he or she runs the risk of being charged with bigamy as the marital bond or vinculum in the first nuptial subsists *(Mercado v. Tan GR: 137110, Aug.,2000; Te v. CA GR No: 126746,Nov. 29,2009).*

Q: What are the special cases when subsequent marriage is allowed?

A:

1. Marriage between a Filipino and a foreigner and procurement by the *alien spouse* of a valid divorce decree abroad, capacitating him/her to remarry.
2. Terminable bigamous marriages *(Art. 41)*
3.

PSYCHOLOGICAL INCAPACITY

Q: What is psychological incapacity?

A: There is no exact definition for psychological incapacity, but it was defined by the Supreme Court as *"no less than a mental (not physical) incapacity that causes a party to be truly incognitive of the basic marital covenants that concomitantly must be assumed and discharged by the parties to the marriage."*

The intendment of the law has been to confine the meaning of "psychological incapacity" to the most serious cases of personality disorders clearly demonstrative of an utter insensitivity or inability to give meaning and significance to the marriage. *(Santos v. CA, G.R. No. 112019, Jan. 4, 1995)*

Q: What are the requisites of psychological incapacity?

A:

1. *Juridical antecedence* – must be rooted in the history of the party antedating the marriage, although overt manifestations may arise only after such marriage.
2. *Gravity* – grave enough to bring about the disability of the party to assume the essental marital obligations.
3. *Permanence or incurability* – must be incurable. If curable, the cure should be

beyond the means of the parties involved.

Q: What are some instances where allegations of psychological incapicity were not sustained?

1. Mere showing of irreconcilable differences and conflicting personalities. *(Carating-Siayngco v. Siayngco, G.R. No. 158896, Oct, 27. 2004)*

2. Mere sexual infidelity or perversion, do not by themselves constitute psychological incapacity, as well as immaturity and irresponsibility.

   Note: It must be shown that these acts are manifestations of a disordered personality which would make respondent completely unable to discharge the essential obligations of a marital state, not merely youth, immaturity or sexual promiscuity. *(Dedel vs CA, G.R. no. 151867, Jan.29, 2004)*

3. Disagreements regarding money matters. *(Tongol v. Tongol, G.R. No. 157610, Oct. 19, 2007)*

4. Mere abandonement.

   Note: There must be proof of natal or supervening disabling element in the personality factor that effectively incapacitates a person from accepting and complying with the Essential Marital obligations of Marriage. *(Republic v. Quintero-Hamano, G.R. No. 149498, May 20, 2004)*

5. Sexual infidelity *(Republic v. Dagdag, GR No. 109975, February 9, 2001)*.

Q: Would the state of being of unsound mind or the concealment of drug addiction, habitual alcoholism, homosexuality or lesbianism be considered indicia of psychological incapacity, if existing at the inception of marriage? Explain.

A: In the case of *Santos v. CA (240 SCRA 20, 1995)*, the Supreme Court held that being of unsound mind, drug addiction, habitual alcoholism, lesbianism or homosexuality may be indicia of psychological incapacity, *depending on the degree of severity of the disorder*. However, the concealment of drug addiction, habitual alcoholism, lesbianism or homosexuality is a ground of annulment of marriage. **(2002 Bar Question)**

INCESTUOUS MARRIAGES

Q: What marriages are considered incestuous?

A: Those marriages:

1. Between ascendants and descendants of any degree;
2. Between brothers and sisters whether of the full or half blood.

Note: Regardless of whether the relationship between the parties is legitimate or illegitimate.

VOID BY REASON OF PUBLIC POLICY

Q: What are the marriages that are void by reason of public policy?

A:

1. Collateral blood relatives (legitimate or Illegitimate) up to the 4th civil degree;
2. Step-parents & step-children;
3. Parents-in-law & children-in-law;
4. Adopting parent & the adopted child;
5. Surviving spouse of the adopting parent & the adopted child;
6. Surviving spouse of the adopted child & the adopter;
7. Adopted child & legitimate child of the adopter;
8. Adopted children of the same adopter;
9. Parties where one, with the intention to marry the other, kills the latter's spouse, or his/her spouse.

Note: List is exclusive. If not falling within this enumeration, the marriage shall be valid. Such as marriages between:

1. Adopted and Illegitimate child of the adopter
2. Step brother and step sister
3. Brother-in-law and sister-in-law
4. Parties who have been guilty of adultery or concubinage

2. PRESCRIPTION

Q: What is the prescriptive period of the action or defense for the declaration of absolute nullity of marriage?

A: None. The time for filing an action or defense for the declaration of absolute nullity of marriage, whether in a direct or collateral manner, does not prescribe.

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Note: Any of the parties in a void marriage can file an action for the declaration of nullity of marriage even though such party is the wrongdoer.

Q: What is the effect of death of a party in a petition for declaration of nullity of marriages?

A:

1. Before the entry of judgment – The court shall order the case closed and terminated without prejudice to the settlement of estate in proper proceedings.
2. After the entry of judgment – The decision shall be binding upon the parties and their successors-in-interest in the settlement of the estate.

Q: May the heirs of a deceased person file a petition for the declaration of nullity of his marriage after his death?

A: No. The advent of the Rule on Declaration of Absolute Nullity of Void Marriages marks the beginning of the end of the right of the heirs of the deceased spouse to bring a nullity of marriage case against the surviving spouse. While A.M. No. 02-11-10-SC declares that a petition for declaration of absolute nullity of marriage may be filed solely by the husband or the wife, it does not mean that the compulsory or intestate heirs are without any recourse under the law. They can still protect their successional right, for, compulsory or intestate heirs can still question the validity of the marriage of the spouses, not in a proceeding for declaration of nullity but upon the death of a spouse in a proceeding for the settlement of the estate of the deceased spouse filed in the regular courts.

However, with respect to nullity of marriage cases commenced before the effectivity of A.M. No. 02-11-10 and marriages celebrated during the effectivity of the Civil Code, the doctrine laid down in the Niñal v. Bayadog case still applies; that the children have the personality to file the petition to declare the nullity of marriage of their deceased father to their stepmother as it affects their successional rights. (De Dios Carlos v. Sandoval, G.R. No. 179922, December 16, 2008).

Q: If the court denies a petition for declaration of nullity of marriage based on psychological incapacity, may a party to the said case file another petition for declaration of its nullity based on the absence of marriage license?

A: A petition to declare the marriage void due to absence of marriage license, filed after the court denied a petition to declare the marriage void due to psychological incapacity, is barred by res judicata. There is only one cause of action which is the nullity of the marriage. Hence, when the second case was filed based on another ground, there was a splitting of a cause of action which is prohibited. The petitioner is estopped from asserting that the first marriage had no marriage license because in the first case, he impliedly admitted the same when he did not question the absence of a marriage license. Litigants are provided with the options on the course of action to take in order to obtain judicial relief. Once an option has been taken and a case is filed in court, the parties must ventilate all matters and relevant issues therein. The losing party who files another action regarding the same controversy will be needlessly squandering time, effort and financial resources because he is barred by law from litigating the same controversy all over again. (Mallion v. Alcantara, G.R. No. 141528, Oct. 31, 2006)

Q: Is the declaration of nullity of marriage applied prospectively?

A: No, it retroacts to the date of the celebration of the marriage. However,although the judicial declaration of nullity of a marriage on the ground of psychological incapacity retroacts to the date of the celebration of the marriage insofar as the vinculum between the parties is concerned, it must be noted that the marriage is not without legal consequences or effects. One such consequence or effect is the incurring of criminal liability for bigamy. To hold otherwise would be to render nugatory the State's penal laws on bigamy as it would allow individuals to deliberately ensure that each marital contract be flawed in some manner, and to thus escape the consequences of contracting multiple marriages. *(Tenebro v. CA, G.R. No. 150758, Feb. 18, 2004)*

Q: While his marriage is subsisting, Veronico married Leticia, which marriage was later declared void on the ground of psychological incapacity. When Veronico got married for the third time, Leticia filed a case for bigamy against him.

For his defense, Veronico claims that effects of the nullity of his marriage with Leticia retroacts to the date when it was contracted, hence, he is not guilty of bigamy for want of an essential element – the existence of a valid previous marriage. Rule on Veronico's argument.

A: No. Article 349 of the RPC penalizes the mere act of contracting a second or subsequent marriage during the subsistence of a previous valid marriage. Here, as soon as the second marriage to Leticia was celebrated, the crime of bigamy had already been consummated as the second marriage was contracted during the subsistence of the valid first marriage. *(Tenebro v. CA,G.R. No. 150758, Feb. 18, 2004)*

Q: Is the judicial declaration of absolute nullity of a void marriage necessary?

A:

1. For purposes of remarriage – judicial declaration of absolute nullity is necessary.

   Note: In the instance where a party who has previously contracted a marriage which is legally unassailable, he is required by law to prove that the previous one was an absolute nullity. But this he may do on the basis solely of a final judgment declaring such previous marriage void.

2. For purposes other than remarriage – no judicial action is necessary.

   Note: Here, evidence may be adduced, testimonial or documentary, to prove the existence of the grounds rendering such a previous marriage an absolute nullity. But these need not be limited solely to an earlier final judgment of a court declaring such marriage void. *(Rabuya, Civil Law Reviewer, 2009 ed)*

SUBSEQUENT MARRIAGE

Q: In what cases may a person enter into a valid subsequent marriage during the subsistence of a prior marriage?

A: In case of terminable bigamous marriages. If before the celebration of the subsequent marriage: **ABD**

1. The **A**bsent spouse had been absent for 4 consecutive years (ordinary absence) or 2 consecutive years (extra-ordinary absence);
2. The present spouse has a well-founded **B**elief that the absent spouse is already dead;
3. There is judicial **D**eclaration of presumptive death in a summary proceeding.

Note: If *both* spouses of subsequent marriage acted in bad faith, such marriage is void ab initio.

Q: Gregorio married Janet. When he was employed overseas, he was informed that Janet left. Five years later, he filed an action for her to be declared presumptively dead without alleging that he wishes to remarry. Will his action prosper?

A: No. A petition to declare an absent spouse presumptively dead may not be granted in the absence of any allegation that the spouse present will remarry. Also, there is no showing that Gregorio conducted a search for his missing wife w/ such diligence as to give rise to a "well-founded belief" that she is dead. The four requisites not having concurred, his action for the declaration of presumptive death of his wife should be denied. (Republic v. Nolasco, G.R. No. 94053, Mar. 17, 1993)

Q: What is the effect if the parties to the subsequent marriage obtains knowledge that the spouse absent has reappeared?

A: None. If the absentee reappears, but no step is taken to terminate the subsequent marriage, either by affidavit or by court action, such absentee's mere reappearance, even if made known to the spouses in the subsequent marriage, will not terminate such marriage. *(SSS v. Jarque Vda. De Bailon, G.R. No. 165545, Mar. 24, 2006)*

Q: May a marriage be terminated extrajudicially?

A: Yes. The recording of the affidavit of reappearance of the absent spouse in the civil registry of the residence of the parties to the subsequent marriage shall automatically terminate the terminable bigamous marriage unless there is a judgment annulling the previous marriage or declaring it void ab initio. (Art. 42)

In Art 42, FC, no judicial proceeding to annul a subsequent marriage contracted under Art. 41 is necessary. Also, the termination of the subsequent marriage by affidavit provided for in Art. 42 does not preclude the filing of an action in court to prove the reappearance of the absentee and obtain a declaration of dissolution or termination of the subsequent marriage. (SSS v. Jarque Vda. De Bailon, G.R. No. 165545, Mar. 24, 2006)

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ASST. SUBJECT HEADS: KAREN FELIZ G. SUPNAD, LAMBERTO L. SANTOS III; **MEMBERS:** PAUL ELBERT E. AMON, ALSTON ANARNA, OZAN J. FULLEROS, CECILIO M. JIMENO, JR., ISMAEL SARANGAYA, JR.; **CONTRIBUTORS:** LOISE RAE G. NAVAL, MONICA JUCOM

Q: When are non-bigamous subsequent marriages void?

A: The subsequent marriage of a person whose prior marriage has been annulled but contracted said subsequent marriage without compliance with Art. 52, FC, shall be void.

Before he contracts a subsequent marriage, he must first comply with the requirement provided for in Art. 52, *viz*:

The recording in the civil registries and registries of properties of the following: **JPDD**

1. **J**udgment of annulment;
2. **P**artition;
3. **D**istribution of properties, and
4. **D**elivery of presumptive legitimes

Q: Ana Rivera had a husband, a Filipino citizen like her, who was among the passengers on board a commercial jet plane which crashed in the Atlantic Ocean ten (10) years earlier and had never been heard of ever since. Believing that her husband had died, Ana married Adolf Cruz Staedler, a divorced German national born of a German father and a Filipino mother residing in Stuttgart. To avoid being required to submit the required certificate of capacity to marry from the German Embassy in Manila, Adolf stated in the application for marriage license stating that Adolf was a Filipino, the couple got married in a ceremony officiated by the Parish Priest of Calamba, Laguna in a beach in Nasugbu, Batangas, as the local parish priest refused to solemnize marriage except in his church. Is the marriage valid? Explain fully.

A: The issue hinges on whether or not the missing husband was dead or alive at the time of the second marriage.

If the missing husband was in fact dead at the time the second marriage was celebrated, the second marriage was valid. Actual death of a spouse dissolves the marriage ipso facto whether or not the surviving spouse had knowledge of such fact. A declaration of presumptive death even if obtained will not make the marriage voidable because presumptive death will not prevail over the fact of death.

If the missing husband was in fact alive when the second marriage was celebrated, the second marriage was void ab initio because of a prior subsisting marriage. Had Ana obtained a declaration of presumptive death, the second marriage would have been voidable.

In both cases, the fact that the German misrepresented his citizenship to avoid having to present his Certificate of Legal Capacity, or the holding of the ceremony outside the church or beyond the territorial jurisdiction of the solemnizing officer, are all irregularities which do not affect the validity of the marriage. *(2008 Bar Question).*

VOIDABLE MARRIAGES

Q: What is the effect if a marriage is voidable?

A: A voidable marriage is considered valid and produces all its civil effects until it is set aside by final judgment of a competent court in an action for annulmet. *(Rabuya, Persons, p. 295)*

Q: What are voidable marriages and how may they be ratified?

A:

GROUND	RATIFICATION
Marriage of a party 18 years of age or over but below 21 solemnized without the consent of the parents, guardian or person having substitute parental authority over the party, in that order	Contracting party who failed to obtain parental consent: Through free cohabitation after attaining the age of 21. **Note:** The parents cannot ratify the marriage. The effect of prescription on their part is that they are barred from contesting it but the marriage is not yet cleansed of its defect.
Either party was of unsound mind	Insane spouse: Through free cohabitation after coming to reason.
Consent of either party was obtained by fraud	Injured party: Through free cohabitation with full knowledge of the facts constituting the fraud.
Vices of consent such as force, intimidation or undue influence	Injured party: Through free cohabitation after the vices have ceased or disappeared.
Impotence and STD	May not be ratified but action may be barred by prescription only, which is 5 years after the marriage

UNSOUND MIND

Q: What is the test in determining unsoundness of mind as a ground for annulment?

A: It is essential that the mental incapacity must relate specifically to the contract of marriage and the test is whether the party at the time of the marriage was capable of understanding the nature and consequences of the marriage. *(Rabuya persons, p. 300)*

Q: Who may file annulment based on unsound mind?

A:

GR: The sane spouse has the legal standing to file the action for annulment only in cases where he or she contracted the marriage without knowledge of the other's insanity.

XPN: When the sane spouse had knowledge of the other's insanity, action for annulment may be filed only by the following;

1. Any relative or guardian or person having legal charge of the insane
2. The insane spouse during a lucid interval or after regaining sanity *(Rabuya, p. 301)*

FRAUD

Q: What are the circumstances constituting fraud under Art. 45 (3)?

A: NPSD

1. **N**on-disclosure of conviction by final judgment of crime involving moral turpitude;
2. Concealment by the wife of the fact that at the time of marriage, she was **P**regnant by a man other than her husband;
3. Concealment of **S**exually transmitted disease, regardless of nature, existing at the time of marriage;
4. Concealment of **D**rug addiction, habitual alcoholism, homosexuality and lesbianism. *(Art. 46)*

Note: Any other misrepresentation as to character, health, rank, fortune or chastity is not a ground for annulment.

Note: Where there has been no misrepresentation or fraud, that is, when the husband at the time of the marriage knew that the wife was pregnant, the marriage cannot be annulled. Here, the child was born less than 3 months after the celebration of the marriage. Supreme Court refused to annul the marriage for the reason that the woman was at an advance stage of pregnancy at the time of the marriage and such condition must have been patent to the husband. *(Buccat v. Buccat, G.R. No. 47101, Apr. 25, 1941)*

Q: Aurora prayed for the annulment of her marriage with Fernando on the ground of fraud in obtaining her consent after having learned that several months prior to their marriage, Fernando had pre-marital relationship with a close relative of his. According to her the "non-divulgement to her of such pre-marital secret" constituted fraud in obtaining her consent w/in the contemplation of no. 4 of Art. 85, NCC. Is the concealment by the husband of a pre-marital relationship with another woman a ground for annulment of marriage?

A: No. The non-disclosure to a wife by her husband of his pre-marital relationship with another woman is not a ground for annulment of marriage. For fraud as a vice of consent in marriage, which may be a cause for its annulment, comes under Art. 85, No. 4 of the NCC. (now, Article 46 of the Family Code). This fraud, as vice of consent, is limited exclusively by law to those kinds or species of fraud enumerated in Art. 86.

Note: The intention of Congress to confine the circumstances that can constitute fraud as ground for annulment of marriage to the 3 cases therein may be deduced from the fact that, of all the causes of nullity enumerated in Art. 85 *(now, Article 46 of the FamilyCode)*, fraud is the only one given special treatment in a subsequent article within the chapter on void and voidable marriages. If its intention were otherwise, Congress would have stopped at Art. 85, for anyway, fraud in general is already mentioned therein as a cause for annulment. *(Anaya v. Palaroan, GR L-27930, Nov. 26 1970)*

DRUG ADDICTION

Q: Under what conditions, respectively, may drug addiction be a ground, if at all, for the declaration of nullity of marriage, annulment of marriage, and legal separation?

A:

1. *Declaration of nullity of marriage:*

    a. The drug addiction must amount to psychological incapacity to comply with the essential obligations of marriage;

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b. It must be antecedent (existing at the time of marriage), grave and incurable:

2. *Annulment of marriage:*

a. The drug addiction must be concealed;
b. It must exist at the time of marriage;
c. There should be no cohabitation with full knowledge of the drug addiction;
d. The case is filed within five (5) years from discovery.

3. *Legal separation:*

a. There should be no condonation or consent to the drug addiction;
b. The action must be filed within five (5) years from the occurrence of the cause.
c. Drug addiction arises during the marriage and not at the time of marriage. **(Bar Question 1997)**

Q: If drug addiction, habitual alcoholism, lesbianism or homosexuality should occur only during the marriage, would these constitute grounds for a declaration of nullity or for legal separation, or would they render the marriage voidable?

A: In accordance with law, if drug addiction, habitual alcoholism, lesbianism or homosexuality should occur only during the marriage, they will:

1. Not constitute as grounds for declaration of nullity. *(Art. 36, FC)*
2. Constitute as grounds for legal separation. *(Art. 55, FC)*; and
3. Not constitute as grounds to render the marriage voidable*. (Arts. 45 and 46 of the FC)* **(2002 Bar Question)**

VITIATED CONSENT

Q: When is vitiated consent a ground for annulment of marriage?

A:

GR: Consent of either party was obtained by force, intimidation or undue influence

XPN: If the same having disappeared or ceased, such party thereafter freely cohabited with the other as husband and wife

IMPOTENCE

Q:When may impotence be a ground for annulment of marriage?

A: CPUII

1. Exists at the time of the **C**elebration of marriage
2. **P**ermanent (does not have to be absolute)
3. **I**ncurable
4. **U**nknown to the other spouse
5. Other spouse must not also be **I**mpotent

Q: In case there is no proof as to the potency of one spouse, shall he be considered as impotent?

A:

GR: No.Presumption is in favor of potency.

XPN: Doctrine of triennial cohabitation.

Q:What is the doctrine of triennial cohabitation?

A: If after 3 years of living together with her husband, the wife remained a virgin, the husband is presumed to be impotent. *(Rabuya, Persons, p. 310)*

SEXUALLY TRANSMITTED DISEASE

Q: When may affliction of a sexually transmitted disease (STD) be a ground for annulment?

A: Requisites: **AESIAF**

a. One of the parties is **A**fflicted with STD
b. STD must be:
   a. **E**xisting at the time the marriage is celebrated
   b. **S**erious
   c. apparently **I**ncurable
c. The other spouse must not be **A**ware of the other's affliction
d. Injured party must be **F**ree from STD.

Q: Yvette was found to be positive for HIV virus, considered sexually transmissible, serious and incurable. Her boyfriend Joseph was aware of her condition and yet married her. After two (2) years of cohabiting with Yvette, and in his belief that she would probably never be able to bear him a healthy child, Joseph now wants to have his marriage with Yvette annulled on the ground that Yvette has STD. Yvette opposes the suit contending that Joseph is estopped from seeking annulment of their marriage since he knew even before their marriage that she was afflicted with HIV virus.

Can the action of Joseph for annulment of his marriage with Yvette prosper? Discuss fully.

A: No. Concealment of a sexually transmitted disease may annul the marriage if there was *fraud* existing in the party concerned. In this case, there was no fraud because Joseph knew that Yvette was suffering from HIV when he married her. (par 3, Art. 46, Family Code)

Q: Differentiate Articles 45 and 46 of the Family Code on STD as ground for annulment

A:

ARTICLE 45	ARTICLE 46
Affliction	***Concealment***
The *fact of being afflicted* is the ground for annulment	The *act of concealing* is the ground for annulment as it constitutes Fraud
Whether concealed or not	There must be concealment
Must be Serious and Incurable	Does not have to be serious and incurable

Q: Who may file and when should the petition for annulment of voidable marriages be filed?

A:

WHO MAY FILE	WHEN TO FILE
Marriage was solemnized without the consent of the parents, guardian or person having substitute parental authority over the party	
Contracting party	Within 5 years after attaining the age of 21
Parent, guardian, or person having legal charge of the contracting party	At any time before such party has reached the age of 21
Either party was of unsound mind	
Sane spouse who had no knowledge of the other's insanity	At any time before the death of either party
Any relative, guardian or person having legal charge of the insane	At any time before the death of either party
Insane spouse	During a lucid interval or after regaining sanity
The consent of either party was obtained by fraud	
Injured party	Within 5 years after the discovery of fraud
The consent of either party was obtained by force, intimidation, or undue influence	
Injured party	Within 5 years from the time the force, intimidation, or undue influence disappeared or ceased
Either party was physically incapable of consummating the marriage with the other, and such incapacity continues and appears to be incurable	
Injured party	Within 5 years after the celebration of marriage
Either party was afflicted with a sexually transmissible disease found to be serious and appears to be incurable	
Injured party	Within 5 years after the celebration of marriage

5. PRESENCE OF PROSECUTOR

Q: What is the role of the prosecutor or Solicitor General in all cases of annulment or declaration of absolute nullity of marriage?

A: They shall take steps to prevent collusion between the parties and to take care that evidence is not suppressed. Concomitantly, even if there is no suppression of evidence, the public prosecutor has to make sure that the evidence to be presented or laid down before the court is not fabricated. Truly, only the active participation of the public prosecutor or the Solicitor General will ensure that the interest of the State is represented and protected in proceedings for declaration of nullity of marriages by preventing the fabrication or suppression of evidence**.**

Q: When is the non-intervention of the prosecutor not fatal to the validity of the proceedings in the trial court?

A: In cases where the respondent in a petition for annulment vehemently opposed the same and where he does not allege that evidence was suppressed or fabricated by any of the parties. (Tuason v. CA, G.R. No. 116607, April 10, 1996)

Q: What are the actions prohibited in annulment and declaration of absolute nullity of marriage cases?

A: CCSSJ

1. Compromise
2. Confession of judgment
3. Stipulation of facts
4. Summary judgment
5. Judgment on the pleadings

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Note: What the law prohibits is a judgment based exclusively or mainly on defendant's confession (Ocampo v. Florenciano, 107 Phil. 35). Thus, stipulation of facts or confession of judgment if sufficiently supported by other independent substantial evidence to support the main ground relied upon, may warrant an annulment or declaration of absolute nullity.

6. PENDENCY OF ACTION

Q: What is the duty of the Court during the pendency of the action for annulment, declaration of absolute nullity of marriage or legal separation?

A: The Court shall, in the absence of adequate written agreement between the spouses, provide for the:

1. Support of the spouses
2. Support and custody of the common children.
3. Visitation rights of the other parent.

7. EFFECTS OF NULLITY

Q: What rule governs the liquidation of properties in marriages declared void or annulled by final judgment?

A:

1. Void marriages:
   GR: The rules on co-ownership under the Civil Code. (Valdes v. RTC)

   XPN: Art. 43(2) of the Family Code in marriages declared void under Art. 40. (Art. 50)

2. Voidable marriages under Art. 45: shall be liquidated in accordance with Art. 43(2) of the Family Code.(Art. 50)

Note: In both instances under Articles 40 and 45, the marriages are governed either by absolute community of property or conjugal partnership of gains unless the parties agree to a complete separation of property in a marriage settlement entered into before the marriage. Since the property relations of the parties is governed by absolute community of property or conjugal partnership of gains, there is a need to liquidate, partition and distribute the properties. (Dino v. Dino, G.R. No. 178044, January 19, 2011)

Q: What must the final judgment of nullity or annulment provide?

A: The final judgment shall provide for the ff:

1. Liquidation, partition and distribution of the properties of the spouses;
2. Custody and support of the common children; and
3. Delivery of their presumptive legitimes,

Unless such matters had already been adjudicated in previous judicial proceedings, in which case, the final judgment of nullity or annulment need not provide for those which have already been adjudicated.

Note: Where there was a failure to record in the civil registry and registry of property the judgment of annulment or absolute nullity of the marriage, the partition and distribution of the property of the spouses, and the delivery of the children's presumptive legitimes, it shall not affect third persons. (Arts. 52 & 53)

Q: What are the forms of presumptive legitime?

A:

1. cash
2. property
3. sound security

Q: What must be done by a person whose prior marriage was annulled or declared void if he wishes to remarry?

A: He must comply with the requirement provided for in Art. 52, before he contracts a subsequent marriage, viz:

The recording in the civil registries and registries of properties of the following: JPDD

1. Judgment of annulment;
2. Partition;
3. Distribution of properties; and
4. Delivery of presumptive legitimes.

III. LEGAL SEPARATION

A. GROUNDS

Q: What are the grounds for legal separation?

A: PALFAC SILA

1. Repeated **P**hysicalviolence or grossly abusive conduct against petitioner, common child, child of petitioner;
2. **A**ttemptto corrupt or induce petitioner, common child, child of petitioner to engage in prostitution, or connivance in such corruption or inducement;

3. Attempt by respondent against **L**ifeof petitioner;
4. **F**inal judgment sentencing respondent to imprisonment of more than 6 years;
5. Drug **A**ddiction or habitual alcoholismof respondent;

   Note: It must exist *after* celebration of marriage

6. Physical violence or moral pressure to **C**ompel petitioner to changereligious or political affiliation;
7. Bigamous marriage **S**ubsequently contracted by respondent in the Philippines or abroad
8. Sexual **I**nfidelity or perversion;
9. **L**esbianism/homosexuality of respondent;

   Note: It must exist *after* celebration of marriage

10. **A**bandonment of petitioner by respondent without justifiable cause for more than 1 year.

Q: Lucita left the conjugal dwelling and filed a petition for legal separation due to the physical violence, threats, intimidation and grossly abusive conduct she had suffered at the hands of Wiliam, her husband. William denied such and claimed that since it was Lucita who had left the conjugal abode, then the decree of legal separation should not be granted, following Art.56 (4) of the FC which provides that legal separation shall be denied when both parties have given ground for legal separation. Should legal separation be denied on the basis of William's claim of mutual guilt?

A: No. Art. 56 (4) of the FC does not apply since the abandonment that is a ground for legal separation is abandonment without justifiable cause for more than one year. In this case, Lucita left William due to his abusive conduct. Such act does not constitute the abandonment contemplated in the said provision. Since this is so, there is no mutual guilt between them as there is only one erring spouse. (*Ong Eng Kiam v. CA, GR No. 153206, Oct. 23, 2006*)

Q:What acts are considered acts of violence under R.A. 9262?

A:

1. Causing, threatening to cause, or attempting to cause physical harm to the woman or her child;
2. Placing the woman or her child in fear of imminent physical harm;
3. Attempting to compel or compelling the woman or her child:
   a. to engage in conduct which the woman or her child has the right to desist from; or
   b. desist from conduct which the woman or her child has the right to engage in,
4. Attempting to restrict or restricting the woman's or her child's freedom of movement or conduct by:
   a. Force, or
   b. threat of force;
   c. physical, or
   d. other harm, or
   e. threat of physical or other harm;
   f. intimidation directed against the woman or child.
   This shall include, but not limited to, the following acts committed with the purpose or effect of controlling or restricting the woman's or her child's movement or conduct:
      i. Threatening to deprive or actually depriving the woman or her child of custody to her/his family;
      ii. Depriving or threatening to deprive the woman or her children of financial support legally due her or her family, or deliberately providing the woman's children insufficient financial support;
      iii. Depriving or threatening to deprive the woman or her child of a legal right;
      iv. Preventing the woman in engaging in any legitimate profession, occupation, business or activity or controlling the victim's own money or properties, or solely controlling the conjugal or common money, or properties;
5. Inflicting or threatening to inflict physical harm on oneself for the purpose of controlling her actions or decisions;
6. Causing or attempting to cause the woman or her child to engage in any

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sexual activity which does not constitute rape, by:
a. Force, or
b. threat of force;
c. physical harm, or
d. through intimidation directed against the woman or her child or her/his immediate family;

7. Engaging in purposeful, knowing, or reckless conduct, personally or through another, that alarms or causes substantial emotional or psychological distress to the woman or her child.

   This shall include, but not be limited to, the following acts:
   a. Stalking or following the woman or her child in public or private places;
   b. Peering in the window or lingering outside the residence of the woman or her child;
   c. Entering or remaining in the dwelling or on the property of the woman or her child against her/his will;
   d. Destroying the property and personal belongingness or inflicting harm to animals or pets of the woman or her child; and
   e. Engaging in any form of harassment or violence;

8. Causing mental or emotional anguish, public ridicule or humiliation to the woman or her child, including, but not limited to, repeated verbal and emotional abuse, and denial of financial support or custody of minor children of access to the woman's child/children.

Note: The Supreme Court decided to withhold the names and identities of women and child victims, from the court records in order to respect their dignity and protect their privacy. These rulings give effect to the provisions of R.A. 9262. The confidentiality or non-disclosure rule covers the withholding of information relating to the personal circumstances of the victim which tend to establish or compromise their identities, as well as those of their immediate family or household members. In the aforesaid cases, the names of the victims were substituted with initials. *(People v. Melchor Cabalquinto, G.R. No. 167693, Sept.19, 2006; People v. Alexander Mangitngit, G.R. No. 171270, Sept. 20, 2006)*

Q: What is a Protection Order under R.A. 9262?

A: Protection order is an order issued under this act for the purpose of preventing further acts of violence against a woman or her child and granting other necessary relief. *(Rabuya, Persons, p. 376)*

The relief granted under a protection order serves the purpose of safeguarding the victim from further harm, minimizing any disruption in the victim's daily life, and facilitating the opportunity and ability of the victim to independently regain control over her life. The provisions of the protection order shall be enforced by law enforcement agencies. The protection orders that may be issued under this Act are the barangay protection order (BPO), temporary protection order (TPO) and permanent protection order (PPO).

Q: Who may file for protection order?

A:
1. The offended party;
2. Parents or guardians of the offended party;
3. Ascendants, descendants or collateral relatives within the fourth civil degree of consanguinity or affinity;
4. Officers or social workers of the DSWD or social workers of local government units (LGUs);
5. Police officers, preferably those in charge of women and children's desks;
6. Punong barangay or barangay kagawad;
7. Lawyer, counselor, therapist or healthcare provider of the petitioner;
8. At least two (2) concerned responsible citizens of the city or municipality where the violence against women and their children occurred and who has personal knowledge of the offense committed.

B. DEFENSES

Q: What are the grounds for denial of petition for legal separation?

A: C^4MP-DR
1. **C**ondonation of act complained of;
2. **C**onsent to the commission of the offense/act;
3. **C**onnivance in the commission of the act;
4. **C**ollusion in the procurement of decree of LS;
5. **M**utual guilt;

6. **P**rescription: 5 yrs from occurrence of cause;
7. **D**eath of either party during the pendency of the case *(Lapuz-Sy v. Eufemio, G.R. No. L-31429, Jan. 31, 1972)*;
8. **R**econciliation of the spouses during the pendencyof the case *(Art. 56, FC).*

Q: What is the prescriptive period for filing a petition for legal separation?

A: An action for legal separation shall be filed within five years from the time of the occurrence of the cause *(Art. 57, FC)*. An action filed beyond that period is deemed prescribed.

Q: William filed a petition for legal separation in 1955 grounded on Juanita's adulterous relations allegedly discovered by William in 1945. Was William's action already barred by prescription?

A: Yes. Under Article 102, NCC, an action for legal separation can not be filed except within one (1) year from and after the plaintiff became cognizant of the cause and within five years from and after the date when such cause occurred.

In this case, William's action is already barred because of his failure to petition for legal separation proceedings until ten years after he learned of his wife's adultery, which was upon his release from internment in 1945. *(Brown v.Yambao, G.R. No. L-10699, Oct. 18, 1957)*

Note: This case was decided under the civil code not under the family code.

What is the effect of failure to interpose prescription as a defense?

A: None. While it is true that prescription was not interposed as a defense, nevertheless, the courts can take cognizance thereof, because actions seeking a decree of legal separation, or annulment of marriage, involve public interest and it is the policy of our law that no such decree be issued if any legal obstacles thereto appear upon the record. (*Brown v.Yambao, G.R. No. L-10699, Oct. 18, 1957*)

Q: Rosa and Ariel were married in the Catholic Church of Tarlac, Tarlac on January 5. 1988. In 1990, Ariel went to Saudi Arabia to work. There, after being converted into Islam, Ariel married Mystica, Rosa learned of the second marriage of Ariel on January 1, 1992 when Ariel returned to the Philippines with Mystica. Rosa filed an action for legal separation on February 5, 1994.

1. **Does Rosa have legal grounds to ask for legal separation?**
2. **Has the action prescribed?**

A:

1. Yes, the abandonment of Rosa by Ariel for more than one (1) year is a ground for legal separation unless upon returning to the Philippines, Rosa agrees to cohabit with Ariel which is allowed under the Muslim Code. In this case, there is condonation.

   The contracting of a subsequent bigamous marriage whether in the Philippines or abroad is a ground for legal separation under Article 55(7) of the Family Code. Whether the second marriage is valid or not, Ariel having converted into Islam, is immaterial.

2. No. Under Article 57 of the Family Code, the aggrieved spouse must file the action within five (5) years from the occurrence of the cause. The subsequent marriage of Ariel could not have occurred earlier than 1990, the time he went to Saudi Arabia. Hence, Rosa has until 1995 to bring the action under the Family Code. **(1994 Bar Question)**

C. COOLING-OFF PERIOD

Q: What is the mandatory cooling-off period?

A: The requirement set forth by law that an action for legal separation shall in no case shall be tried before 6 months has elapsed since the filing of the petition, *to enable the contending spouses to settle differences. In other words, it is for possible reconciliation.*

Note: There is no cooling-off period if the ground alleged are those under R.A. 9262 (Anti-violence against Women and Children).

D. RECONCILIATION EFFORTS

Q: What is required of the Court before legal separation may be decreed?

A: The Court shall take steps toward the reconciliation of the spouses and must be fully satisfied, despite such efforts, that reconciliation is highly improbable

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E. CONFESSION OF JUDGMENT

Q: What is the rule in rendering a judgment of legal separation based upon a stipulation of facts or confession of judgment?

A: A decree of legal separation cannot be issued solely on the basis of a stipulation of facts or a confession of judgment. The grounds for legal separation must be proved. Neither confession of judgment nor summary judgment is allowed.

Note: What the law prohibits is a judgment based exclusively or mainly on defendant's confession. (Ocampo v. Florenciano,G.R. No. L-13553, February 23, 1960)

EXTENT OF INQUIRY OF PROSECUTOR

Q: After learning of Juanita's misconduct, William filed a petition for legal separation. During his cross-examination by the Assistant Fiscal, it was discovered that William lived with a woman named Lilia and had children with her after the liberation. The court denied the petition on the ground both of them had incurred in a misconduct of similar nature that barred the right of action under Art. 100, NCC.

William argues that in cross-examining him with regard to his marital relation with Lilia, who was not his wife, the Assistant Fiscal acted as counsel for Juanita when the power of the prosecuting officer is limited to finding out whether or not there is collusion, and if there is no collusion, to intervene for the state. Is his argument correct?

A: The argument is untenable. It was legitimate for the Fiscal to bring to light any circumstances that could give rise to the inference that Juanita's default was calculated, or agreed upon, to enable him to obtain the decree of legal separation that he sought without regard to the legal merits of his case. One such circumstance is the fact of William's cohabitation with Lilia, since it bars him from claiming legal separation by express provision of Article 100 of the new Civil Code. Such evidence of misconduct is a proper subject of inquiry as they may justifiably be considered circumstantial evidence of collusion between the spouses.

Article 101 NCC, calling for the intervention of the state attorneys in case of uncontested proceedings for legal separation (and of annulment of marriages, under Article 88) emphasizes that marriage is more than a mere contract; that it is a social institution in which the state is vitally interested, so that its continuation or interruption cannot be made depend upon the parties themselves. It is consonant with this policy that the inquiry by the Fiscal should be allowed to focus upon any relevant matter that may indicate whether the proceedings for separation or annulment are fully justified or not. *(Brown v.Yambao, G.R. No. L-10699, Oct. 18, 1957)*

Q: Who may file, when and where should the petition for legal separation be filed?

A:

Who may file	Husband or wife
When to file	Within 5 years from the time of the occurrence of the cause
Where to file	Family Court of the province or city where the petitioner or the respondent has been residing for at least 6 months prior to the date of filing or in case of a non-resident, where he may be found in the Philippines, at the election of the petitioner

F. EFFECTS OF FILING PETITION

Q:What are the effects of filing of a petition for legal separation?

A:

1. The spouses shall be entitled to live separately from each other.
2. In the absence of an agreement between the parties, the court shall designate either the husband or the wife or a 3rd person to administer the absolute community or conjugal partnership property.

G. EFFECTS OF PENDENCY

Q: What is the effect of the death of plaintiff-spouse before a decree of legal separation?

A: The death of plaintiff before a decree of legal separation abates such action. Being personal in character, it follows that the death of one party to the action causes the death of the action itself - *actio personalis moritur cum persona*. Even if property rights are involved, because these rights are mere effects of the decree of legal separation, being rights in expectation, these rights do not come into existence as a result of the death of a party. Also under the Rules of Court, an action for legal separation or annulment of marriage is not

one which survives the death of spouse. *(Lapuz v. Eufemio, G.R. No. L-31429, Jan. 31, 1972)*

Q: May the heirs of the deceased spouse continue the suit (petition for decree of legal separation) if the death of the spouse takes place during the pendency of the suit?

A: No. An action for legal separation is purely personal, therefore, the death of one party to the action causes the death of the action itself – *action personalis moritur cum persona.*

Note: Incases where one of the spouses is dead as well as in case the deceased's heirs continue the suit,Separation of property and any forfeiture of share already effected *subsists*, *unless* spouses agree to revive former property regime

H. EFFECTS OF LEGAL SEPARATION

Q: What are the effects of decree of legal separation?

A:

1. Spouses entitled to *live separately;*

   Note: Marriage bond *not* severed

2. ACP/CPG shall be dissolved or liquidated;

   Note:*But* offending spouse shall have no right to any share of the net profits earned by the AC/CP which shall be forfeited in according w/ Art. 43(2).

3. *Custody* of minor children is awarded to the innocent spouse (subject to Art. 213, FC);
4. Offending spouse is *disqualified* to inherit from innocent spouse by *intestate* succession;
5. Provisions in will of innocent spouse which favors offending spouse shall be *revoked* by operation of law;
6. Innocent spouse may *revoke* donations he/she made in favor of offending spouse;

   Note: Prescriptive period: 5 years from finality of decree of legal separation

7. Innocent spouse may *revoke* designation of offending spouse as beneficiary in any insurance policy (even when stipulated as irrevocable).

Note: An action for legal separation which involves nothing more than bed-and-board separation of the spouses is purely personal. The Civil Code recognizes this (1) by allowing only the innocent spouse and no one else to claim legal separation; (2) by providing that the spouses can, by their reconciliation, stop or abate the proceedings and even rescind a decree of legal separation already granted.*(Lapuz v. Eufemio, G.R. No. L-31429, Jan. 31, 1972)*

Q: May the wife who has been granted legal separation petition be allowed to revert to her maiden name?

A: No. The marriage bond not having severed, the woman remains to be the lawful wife of the man.

Note: Even under the Civil Code, the use of the husband's surname during the marriage *(Art. 370, Civil Code),* after annulment of the marriage *(Art. 371, Civil Code)* and after the death of the husband *(Art. 373, Civil Code)* is permissive and not obligatory except in case of legal separation *(Art. 372, Civil Code).* Under the present article of our Code, however, the word "may" is used, indicating that the use of the husband's surname by the wife is permissive rather than obligatory. We have no law which provides that the wife shall change her name to that of the husband upon marriage. This is in consonance with the principle that surnames indicate descent. It seems, therefore, that a married woman may use only her maiden name and surname. She has an option, but not a duty, to use the surname of the husband in any of the ways provided by this Article. *(Yasin v. Hon. Judge Sharia'h District court, G.R. No. 94986, Feb. 23, 1995)*

Q: Which of the following remedies,
- **a. declaration of nullity of marriage,**
- **b. annulment of marriage,**
- **c. legal separation, and/or**
- **d. separation of property,**

can an aggrieved spouse avail himself/herself of:

a. If the wife discovers after the marriage that her husband has "AIDS"?

A: Since AIDS is a serious and incurable sexually transmissible disease, the wife may file an *action for annulment*of the marriage on this ground whether such fact was concealed or not from the wife, provided that the disease was present at the time of the marriage. The marriage is voidable even though the husband was not aware that he had the disease at the time of marriage.

b. If the wife goes (to) abroad to work as a nurse and refuses to come home after the expiration of her three-year contract there?

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A: If the wife refuses to come home for three (3) months from the expiration of her contract, she is presumed to have abandoned the husband and he may file an *action for judicial separation of property*. If the refusal continues for more than one year from the expiration of her contract, the husband may file the *action for legal separation*under Art. 55 (10) of the Family Code on the ground of abandonment of petitioner by respondent without justifiable cause for more than one year. The wife is deemed to have abandoned the husband when she leaves the conjugal dwelling without any intention of returning *(Article 101, FC).* The intention not to return cannot be presumed during the 30year period of her contract.

c. If the husband discovers after the marriage that his wife has been a prostitute before they got married?

A: If the husband discovers after the marriage that his wife was a prostitute before they got married, he has no remedy. No misrepresentation or deceit as to character, health, rank, fortune or chastity shall constitute fraud as legal ground for an action for the annulment of marriage *(Article 46 FC).*

d. If the husband has a serious affair with his secretary and refuses to stop notwithstanding advice from relatives and friends?

A: The wife may file an *action for legal separation*. The husband's sexual infidelity is a ground for legal separation *(Article 55, FC).* She may also file an *action for judicial separation of property*for failure of her husband to comply with his marital duty of fidelity *(Article 135 (4), 101, FC).*

e. If the husband beats up his wife every time he comes home drunk?

A: The wife may file an *action for legal separation*on the ground of repeated physical violence on her person *(Article 55 (1), FC).* She may also file an *action for judicial separation of property*for failure of the husband to comply with his marital duty of mutual respect *(Article 135 (4), Article 101, FC).* She may also file an *action for declaration of nullity*of the marriage if the husband's behavior constitute psychological incapacity existing at the time of the celebration of marriage. **(2003 Bar Question)**

I. RECONCILIATION

Q: What are the effects of reconciliation?

A:

1. *As to the Decree:*
   a. *During the pendency of the case:* LS proceedings terminated in whatever stage
   b. *After the issuance of the decree:* Final decree of LS to be set aside

2. *As to the Property Regime:*

   GR: With respect to separation of properties, the same shall subsist.

   XPN: The parties, however, can come into an agreement to revive their previous regime. Their agreement must be under oath and must contain a list of the properties desired to be returned to the community or conjugal property and those which will remain separate, a list of creditors and their addresses.

3. *As to capacity to succeed:* The Family Code does not provide for the revival of revoked provisions in a will originally made in favor of the offending party as a result of the LS. This absence gives the innocent spouse the right to choose whether the offending spouse will be reinstituted.

4. *As to the forfeited shares:* Those given to the children cannot be returned since the spouses are no longer the owners of such. But those given to the innocent spouse may be returned.

Note: In an action for legal separation on the ground of adultery filed by the husband, even though the defendant wife did not interpose the defense of prescription, nevertheless, the courts can take cognizance thereof, because actions seeking a decree of legal separation or annulment of marriage, involve public interest, and it is the policy of our law that no such decree be issued if any legal obstacles thereto appear upon the record. Also, the husband was guilty of commission of the same offense by living with another woman.

This is an exception to the Rules of Court provision that defenses not raised in the pleadings will not be considered since provisions on marriage are substantive in nature.*(Brown v. Yambao, G.R. No. L-10699, Oct. 18, 1957)*

Q: Does reconciliation automatically revive the former property regime of the spouses?

A: No. If the spouses want to revive the previous property regime, they must execute an agreement to revive the former property regime, which agreement shall be submitted in court, together with a verified motion for its approval. *(Art. 67, Family Code)*

The agreement to revive must be under oath and specify:

1. The properties to be contributed anew to the restored regime;
2. Those to be retained as separated properties of each spouse; and
3. The names of all their known creditors, their addresses and the amounts owing to each.

Q: How does Declaration of Nullity of Marriage, Annulment of Marriage and Legal Separation differ from each other?

A:

DECLARATION OF NULLITY OF MARRIAGE	ANNULMENT	LEGAL SEPARATION
Marriage bond		
Dissolved	Dissolved	No effect, marriage bond remains valid
Status of children		
GR: Illegitimate **XPN:**Children conceived or born of marriages before declaration of nullity under Arts. 36 and 53 considered legitimate	Legitimate	
Property relations		
GR: Governed either by Article 147 or Article 148 of the Family Code. Thus, property regime shall be liquidated pursuant to the ordinary rules on co-ownership. **XPN:** Marriages declared void under Art. 40 which shall be liquidated in accordance with Art. 43 (2).(Valdes v. RTC)	ACP/CPG shall be dissolved & liquidated. *[Art. 43 (2)]* Share of spouse, who contracted the subsequent marriage in bad faith, in the net profits of the community property or conjugal partnership, shall be forfeited in favor of the common children, or if there are none, the children of the guilty spouse by a previous marriage, or in default of children, the innocent spouse	
Donations propter nuptias		
	GR: Shall remain valid. [Art. 43 (3)] **XPN**: 1. if donee contracted the marriage in bad faith, such donations made to said donee shall be revoked by operation of law. 2. if both spouses to the marriage acted in bad faith, all donations propter nuptias shall be revoked by operation of law.	
Insurance		
	If one spouse acted in bad faith, innocent spouse may revoke his designation as beneficiary in the insurance policy even if such designation be stipulated as irrevocable. [Art. 43 (4)]	
Succession		
	If one spouse contracted the marriage in bad faith, he shall be disqualified to inherit from innocent spouse by testate and intestate succession. [Art. 43 (5)]	

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IV. RIGHTS AND OBLIGATIONS BETWEEN HUSBAND AND WIFE

A. ESSENTIAL OBLIGATIONS

Q: What are the rights and obligations of the spouses?

A:

1. Essential marital obligations (EMO): **LOR**
   a. **L**ive together

      Note: Includes consortium and copulation

   b. **O**bserve mutual love, respect, fidelity
   c. **R**ender mutual help and support

2. Fix the family domicile *(Art. 69, FC)*
3. Jointly support the family *(Art. 70, FC)*
   a. Expenses shall be paid from the community property
   b. In the absence thereof from the *income or fruits* of their separate properties
   c. In the absence or insufficiency thereof from their *separate properties*

4. Manage the household *(Art. 71, FC)*
5. Not to neglect duties, or commit acts which tend to bring danger, dishonor, or injury to family *(Art. 72, FC)*
6. Either spouse may practice any legitimate profession/business, even without the consent of the other. *(Art. 73, FC)*

   Note: Other spouse may object on valid, serious and moral grounds.

   In case of disagreement, the court shall decide whether:
   a. Objection is proper; and
   b. Benefit has accrued to the family before and after the objection.

   Note: The foregoing shall not prejudice right of creditors who acted in good faith.

Q: What are the other obligations of spouses?

A:

1. Exercise the duties and enjoy the rights of parents;
2. Answer for civil liability arising from injuries caused by children below 18;
3. Exercise parental authority over children's property *(Republic v. CA, Molina, G.R. No. 108763, Feb. 13, 1997).*

Q: May the performance of essential marital obligations be compelled by court?

A:

GR: Performance of EMO under Art. 68 cannot be compelled by court because it will be a violation of personal liberty.

XPN: Giving support *(Arroyo v. Arroyo, G.R. No. L-17014, Aug. 11, 1921)*

Q: Who fixes the family domicile?

A: The husband and wife.

Note: In case of disagreement the Court shall decide.

Q: When may the Court exempt one spouse from living with the other?

A:

1. If one spouse should live aboad.
2. Other valid and compelling reasons.

Note: The Court shall not grant the exemption if it is not compatible with the solidarity of the family.

Q: From where shall the expenses for the support of the family come from?

A:

1. Community property
2. In the absence thereof, from the income of separate properties.
3. In the absence of such income, from the separate properties.

Q: Can a spouse object in the exercise by the other of his/her profession, occupation or business?

A: Yes, but only on valid, serious and moral grounds.

Note: Other spouse may object on valid, serious and moral grounds.

In case of disagreement, the court shall decide whether:

a. Objection is proper; and
b. Benefit has accrued to the family before and after the objection.

Note: The foregoing shall not prejudice right of creditors who acted in good faith.

Q: What law shall govern the property relations of spouses?

A:

GR: Philippine laws shall govern, regardless of place of celebration and residence of spouses, in the absence of contrary stipulation in a marriage settlement. (Art. 80, Family Code)

XPN: *Lex rei sitae* applies:

1. Where both spouses are aliens;
2. With respect to the extrinsic validity of contracts:
   a. affecting property not situated in the Philippines; and
   b. executed in the country where the property is located;
3. With respect to extrinsic validity of contracts:
   a. entered into in the Philippines; but
   b. affecting property situated in a foreign country whose laws require different formalities for its extrinsic validity

Q: What governs the property relations of spouses?

A: The property relations shall be governed by the ff. in the stated order:

1. Marriage settlement
2. Provisions of the Family Code
3. Local custom

Q: Marriage being a contract, may the parties enter into stipulations which will govern their marriage?

A: Yes, only as to their property relations during the marriage subject only to the condition that whatever settlement they may have must be within the limits provided by the Family Code. However, the nature, consequences, and effects of marriage cannot be subject to stipulation. *(Rabuya, Persons, p. 398)*

Note: Future spouses may agree upon the regime of absolute community of property, conjugal partnership of gains, absolute separation of propetry or any other regime.

Q: Are rights over share in the community or conjugal property waivable during the marriage?

A:

GR: No.

XPN: In case of judicial separation of property.

Note: The waiver must be in a public instrument and recorded in the office of the local civil registrar where the marriage contract was recorded as well as in the proper registry of property.

A. MARRIAGE SETTLEMENTS

Q: What is a marriage settlement (MS)?

A: It is a contract entered into by spouses about to be married for the purpose of fixing the terms and conditions of their property relations with regard to their present and future property.

It is also refered to as *Ante Nuptial Agreement*or *Matrimonial Contract.(Pineda, 2008 edition)*

Q: What are the requisites of a valid MS?

A: I-SER

1. **I**n writing;
2. **S**igned by the parties;
3. **E**xecuted *before* the celebration of marriage;
4. **R**egistration (to bind 3rd persons).

Note: The provisions in the marriage settlement must be in accordance with law, morals or public policy, otherwise such agreement is void (*Paras, Civil Code, book I, pp. 516*)

Q: What are the additional requirements for the validity of the MS?

A:

FACTUAL SITUATION	ADDITIONAL REQUIREMENT
If one of both of the parties are:	***The ff. must be made a party to the MS, otherwise the MS is void:***
18-21 years old	Parents; or those required to give consent
Sentenced with civil interdiction	Guardian appointed by the court
Disabled	Guardian appointed by the court

Q: May a marriage settlement be modified?

A: Yes. For any *modification* in the MS to be valid:

1. The requisites for a valid MS must be present;
2. There must be judicial approval;
3. Subject to the provisions of Arts. 66, 67, 128, 135, and 136.

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Q: What is the effect on the ante nuptial agreement in case the marriage is not celebrated?

A:

GR: Everything stipulated in the settlements or contracts in consideration of the marriage shall be rendered *void.*

XPN: Those not dependent upon or is not made in consideration of the marriage *subsists.*

B. DONATIONS BY REASON OF MARRIAGE

Q: When are donations considered as donations by reason of marriage?

A: Those donations which are made before the celebration of the marriage, in consideration of the same, and in favor of one or both parties.

Q: What are the requisites for donations propter nuptias (DPN)?

A:

1. Made before celebration of marriage;
2. Made in consideration of the marriage;
3. Made in favor of one or both of the future spouses.

Q: What are the requisites if donation be made by one spouse in favor of the other?

A:

1. There must be marriage settlement (MS) stipulating a property regime other than ACP;
2. Donation in the MS be not more that 1/5 of the present property;
3. There must be acceptance by the other spouse.

C. VOID DONATIONS BY THE SPOUSES

Q: What is the rule regarding donations made between spouses?

A:

1. *Before the marriage:*

GR: Future spouses cannot donate to each other *more than 1/5* of their *present* property (Excess shall be considered void)

XPN: If they are governed by ACP, then each spouse can donate to each other in their marriage settlements present property without limit, *provided* there is sufficient property left for their support and the legitimes are not impaired.

2. *During the marriage:*

GR: Every donation or grant of gratuitous advantage, direct or indirect, between spouses are considered void.

XPN: Moderate gifts on the occasion of any family rejoicing.

Note: The aforementioned rules also apply to common law spouses.

Q: Why are donations between spouses during marriage considered void?

A:

1. To protect unsecured creditors from being defrauded;
2. To prevent the stronger spouse from inposing upon the weaker spouse transfer of the latter's property to the former;
3. To prevent indirect modification of the marriage settlement.

Q: What are the grounds for filing an action for revocation of a DPN and what their respective prescriptive periods?

A:

GROUNDS (Art. 86)		PRESCRIPTIVE PERIOD	
		Period	Reckoning Point
1. Marriage is not celebrated **XPN:** Those automatically rendered void by law		5 yrs	Time the marriage was not solemnized on the fixed date. (*art. 1149*)
2. Marriage is judicially declared void	**Ground for nullity:**	Revoked by operation of law	
	a. Contracted subsequent marriage before prior marriage has been judicially declared *void*		
	b. any other grounds	5 yrs	Finality of judicial declaration of nullity (if action is to recover property)
3. Marriage took place *without consent of parents*, when required by law		5 yrs	Time the donor came to know that the required parental consent was not obtained.
4. Marriage is *annulled* and donee *acted in bad faith*		5 yrs	Finality of decree
5. Upon *legal separation (LS)*, *donee* being the *guilty* spouse		5 yrs	Time decree of LS has become final
6. Donation *subject to resolutory condition* and it *took place*		5 yrs	Happening of the resolutory condition.
7. Donee committed an act of ingratitude		1 yr	From donor's knowledge of the commission of an act of ingratitude.

Note: Acts of ingratitude:

1. Commission of an offense against the *person, honor or property* of the donor, his wife or his children under his parental authority
2. **GR:** Imputation to the donor any *criminal offense or any act involving moral turpitude*
   XPN: ifthe crime was committed against the donee himself, his wife or his children under his authority
3. Undue refusal to support the donor when he is legally or morally bound to give such support.

PROPERTY REGIMES

Q: What are the different property regimes which may be adopted by future spouses?

A:

1. Absolute Community of Property (ACP)
2. Conjugal Partnership of Gains (CPG)
3. Absolute Separation of Property (ASOP)
4. Any other regime within limits provided by the Family Code

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Q: Distinguish ACP, CPG and ASOP.

A:

ACP	CPG	ASOP
When it applies		
When spouses: 1. Adopt it in a marriage settlement; 2. Do not choose any economic system; *or* 3. Adopted a different property regime and the same is void.	When the future spouses adopt it in a marriage settlement.	1. When future spouses adopt it in a marriage settlement 2. ACP or CPG is dissolved 3. Prior marriage is dissolved due to death of one spouse and surviving spouse failed to comply with the requirements under Art 103 (judicial settlement proceeding of the estate of deceased spouse) 4. By judicial order. Judicial separation of property may either be *voluntary* or for *sufficient cause.*
Consist of		
All the properties owned by the spouses at the time of marriage become community property	Each spouse retains his/her property before the marriage and *only the fruits and income* of such properties become part of the conjugal properties during the marriage	
Effect of separation in fact		
The separation in fact shall not affect the regime of ACP. But: 1. The spouse who leaves the conjugal home or refuses to live therein, without just cause, shall not have the right to be supported; 2. When consent of one spouse to any transaction of the other is required by law, judicial authorization shall be obtained in a summary proceeding. 3. In case of insufficiency of community or conjugal partnership property, separate property of both spouses shall be *solidarily* liable for the support of the family. Spouse present shall, upon proper petition in a summary proceeding, be given judicial authority to administer or encumber any specific separate property of the other spouse and use the fruits or proceeds thereof to satisfy the latter's share. *(Arts. 100 & 127, FC)*		
Effect of dissolution		
Upon dissolution and liquidation of the community property, what is divided equally between the spouses or their heirs is the *net remainder* of the properties of the ACP.	Upon dissolution of the partnership, the separate property of the spouses are returned and only the *net profits* of the partnership are divided equally between the spouses of their heirs.	

Q: When do the property regimes commence?

A: Property regime commences at the precise moment of the celebration of the marriage.

Q: In the absence of a marriage settlement, what property regime governs the property relations of spouses?

A:

GR: Absolute community of property. *(Art. 75, FC)*

XPN:

1. For marriages contracted prior to the effectivity of the Family Code on August 3, 1988, conjugal partnership of gains shall govern the property relations. This is so because Article 119 of the New Civil Code will apply. The provisions of the Family Code shall have no retroactive effect because it shall impair vested rights.

2. Subsequent marriage contracted within one year from the death of the deceased spouse without liquidation of the community property or conjugal partnership of gains, either judicially or extrajudicially, as required under Arts. 103 and 130 of the Family Code. In such case, a mandatory regime of complete separation of property shall govern the subsequent marriage. *(Rabuya, Civil Law Reviewer, p. 100).*

REVIVAL OF FORMER PROPERTY REGIME

Q: What are the grounds for the revival of a former property regime?

A: 1-CAR-APS

1. **C**ivil interdiction of the prisoner-spouse terminates;
2. **A**bsentee spouse reappears
3. Court authorizes **R**esumption of administration by the spouse formerly exercising such power;
4. Spouse who has **A**bandoned the conjugal home returns and resumes common life with the other;
5. **P**arental authority is judicially restored to the spouse previously deprived thereof;
6. Reconciliation and resumption of common life of spouse who had been separated in fact for at least **1** year;
7. **S**pouses agree to revive their former property regime.

TRANSFER OF ADMINISTRATION OF EXCLUSIVE PROPERTY

Q: What are the grounds for transfer of administration of the exclusive property of each spouse?

A: When one spouse: **CFAG**

1. is sentenced to penalty with **C**ivil interdiction;
2. becomes a **F**ugitive from justice or is hiding as an accused in a criminal case;
3. is judicially declared **A**bsent;
4. becomes a **G**uardian of the other.

Note: Transfer of administration of the exclusive property of either spouses does not confer ownership over the same. *(Rodriguez v. De la Cruz, GR No. 3629, Sept. 28, 1907)*

Spouses contribute to the family expenses proportionately to their income and the value of their properties.

On the other hand, their liability to creditors for family expenses is solidary.

D. ABSOLUTE COMMUNITYY

1. GENERAL PROVISIONS

Q: When shall the absolute community of property commence?

A: At the precise moment of the celebration of the marriage. i.e. actual time the marriage is celebrated on a certain date.

Note: Any stipulation, express or implied, for the commencement of the community regime at any other time shall be void.

Q: What law governs the absolute community of property?

A:

1. Family code
2. Provisions on co-ownership

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2. WHAT CONSTITUTES COMMUNITY PROPERTY

Q: What constitutes the community property?

A:

Includes:

1. All the property owned by the spouses:
   a. at the time of the celebration of the marriage; or
   b. acquired thereafter;
2. Property acquired during the marriage by gratuitous title, if expressly made to form part of the community property by the donor, testator or grantor;
3. Jewelries, etc.;
4. Winnings in gambling.

Excludes:

1. Property acquired during the marriage by gratuitous title and its fruits;

   XPN: If expressly provided by the donor, testator or grantor that they shall form part of the community property

2. Property for *personal and exclusive use*of either spouse;

   XPN: Jewelries shall form part of the ACP because of their monitary value.
3. Property acquired before the marriage by one with legitimate descendants by former marriage and its fruits and income;

4. Those excluded by the marriage settlement.

Q: In absence of evidence, does property acquired during the marriage belong to the community property?

A: Property acquired during the marriage is presumed to belong to the community, *unless* proven otherwise by strong and convincing evidence*. (Art .93)*

Q: Mister, without Misis' consent, executed a special power of attorney in favor of Drepa in order to secure a loan to be secured by a conjugal property, which loan was later obtained. When the loan was not paid, the mortgage was foreclosed and sold on auction. Misis seeks the declaration of the mortgage and sale as void invoking Art. 124 of the FC. Will the wife's action prosper?

A: Yes. The settled rule is that the sale or encumbrance of a conjugal property requires the consent of both the husband and the wife *(Guiang v. CA, 353 Phil. 578).* The absence of the consent of one renders the entire sale or encumbrance null and void, including the portion of the conjugal property pertaining to the husband who contracted the sale. Neither would the conjugal partnership be liable for the loan on the ground that it redounded to the benefit of the family. The sweeping conclusion that the loan was obtained by the husband in order to finance the construction of housing units, without however adducing adequate proof, does not persuade. *(Homeowners Savings &Loan Bank v. Dailo,G.R. No. 153802, Mar. 11, 2005)*

Q: In a sale of a piece of land that she and her husband, David, owned, Lorenza, who witnessed the sale, signed on the page reserved for witnesses to the deed. When the buyer sought to register the sale, it was denied by the Register of Deeds for lack of the wife's consent to the sale. Decide.

A: The register of deeds is incorrect. A wife, by affixing her signature to a deed of sale on the space provided for witnesses, is deemed to have given her implied consent to the contract of sale. The consent need not always be explicit or set forth in any particular document so long as it is shown by acts of the wife that such consent or approval was in fact given.*(Pelayo v. Perez, G.R. No. 141323, Jun. 8, 2005*)

Note: In this case, it will be noted that the sale was entered into prior to the effectivity of the FC. Because of such, Art. 173, in relation to Art. 166 of the Civil Code, would have applied if there was a finding of lack of the wife's consent. Under said provisions, the sale would have been merely voidable, and not void.

Q: Andres sold a parcel of land belonging to the conjugal partnership to Pepito. Days before the sale, Kumander, his wife, assented to such by signing a document entitled "Marital Consent" contained in a jurat, which was then sworn to before the same notary public who notarized the deed of sale, and then appended to the deed of sale itself. Is the conveyance valid?

A: It depends. The use of the jurat, instead of an acknowledgment, does not elevate the marital consent into the level of a public document but instead consigns it to the status of a private writing. Hence, the presumption of regularity does not apply and the wife still needs to prove its genuiness and authenticity as required under the rules of evidence. (*Pan Pacific Industrial Sales*

Co., Inc. v. CA, G.R. No. 125283, Feb. 10, 2006

Note: The fact that the document contains a jurat, and not an acknowledgment, should not affect its genuineness or that of the related document of conveyance itself, the Deed of Absolute Sale. In this instance, a jurat suffices as the document only embodies the manifestation of the spouse's consent, a mere appendage to the main document. *(Pan Pacific Industrial Sales Co., Inc. v. CA, G.R. No. 125283, Feb. 10, 2006)*

Q: Will losses in gambling be charged upon the community property?

A: No *(Art. 95)*. However, any *winnings* therefrom shall form part of the community property.

3. CHARGES UPON AND OBLIGATIONS OF THE COMMUNITY PROPERTY

Q: What are the charges upon the ACP?

A:

1. The *support* of the spouses, their common children, and *legitimate* children of either spouse;
2. All *debts and obligations* contracted during the marriage by:
   a. the designated administrator-spouse for the benefit of the community
   b. by both spouses
   c. by one spouse with the consent of the other;
3. *Debts and obligations* contracted by either spouse *without the consent* of the other to the extent that the family may have been benefited;
4. All taxes, liens, charges and expenses, including major or minor repairs, *upon the community property;*
5. All taxes and expenses for *mere preservationmade during marriage* upon the *separate property* of either spouse *used by the family;*
6. *Expenses* to enable either spouse to commence or complete a *professional* or *vocational* course, or other *activity for self-improvement;*
7. *Ante nuptial debts* of either spouse insofar as they have *redounded to the benefit of the family;*
8. The *value* of what is *donated* or *promised* by both spouses in favor of their common legitimate children for the *exclusive purpose* of commencing or completing a *professional* or *vocational course* or other *activity for self-improvement;*
9. Payment, in case of *absence* or *insufficiency* of the *exclusive property* of the debtor-spouse, of:
   a. *Ante nuptial debts* of either spouse which did *not* redound to the benefit of the family;
   b. the *support of illegitimate*children of either spouse;
   c. *liabilities* incurred by either spouse by reason of a *crime or quasi-delict;*

   Note: The payment of which shall be considered as advances to be deducted from the share of the debtor-spouse upon liquidation of the community

10. *Expenses of litigation between* the spouses.

    XPN: Suit is found to be groundless, it cannot be charged against the ACP.

4. OWNERSHIP, ADMINISTRATION, ENJOYMENT AND DISPOSITION OF THE COMMUNITY PROPERTY

Q: To whom does the right to administer the community property belong to?

A:

GR: It belongs to both spouses *jointly*.

XPN: If one spouse is incapacitated or otherwise unable to participate in the administration of the common properties – capacitated or able spouse may assume *sole* powers of administration

But such powers *do not* include: **DAE**

1. **D**isposition;
2. **A**lienation; or
3. **E**ncumbrance

of the conjugal or community property.

Q: In case of disagreement, whose decision shall prevail?

A: That of the husband *but* subject to recourse to the court by the wife for proper remedy.

Note: Prescriptive period for recourse is 5 years from the date of the contract implementing such decision.

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Q: In cases of alienation, disposition or encumbrance of the community property, and one spouse is incapacitated or unable to participate in the administration of the community property, is the approval of one spouse enough for said alienation, disposition or encumbrance to be valid?

A: No. Both spouses must approve any dispositions or encumbrances, and consent of the other spouse regarding the disposition must be *in writing*, *otherwise*, the matter should be brought to court and the court will give the authority, if proper.

Such consent or court approval must be obtained *before* the alienation, etc., otherwise, such will be void and obtaining such consent or court approval afterwards will not validate the act. A void act cannot be ratified.

Q: What if one spouse acts without the consent of the other or without court approval?

A: If one spouse acts without the consent of the other or without court approval, such disposition or encumbrance is *void*.

However, the transaction shall be construed as a continuing offer on the part of the consenting spouse and the 3rd person which may be perfected as a binding contract upon acceptance by the spouse or court approval.

Q: When may one spouse resort to obtaining court approval for any alienation, encumbrance or disposition of community property?

A: In absence of the written consent of the other spouse.

Q: What if the community property is insufficient to cover the foregoing liabilities?

A:

GR: The spouses shall be *solidarily liable for the unpaid balance* with their separate properties.

XPN: Those falling under paragraph 9 of Art. 94. (Ante-nuptial debts, support of illegitimate children, liabilities incurred by spouse by reason of a crime or quasi-delict) –in which case the exclusive property of the spouse who incurred such debts will be liable. However, if the exclusive property is insufficient, payment will be considered as advances to be deducted from share of debtor-spouse. *(Art. 94 (9) of the Family Code)*

Q: What is the rule on donating a community property by a spouse?

A:

GR: A spouse cannot donate any community property without the consent of the other.

XPN: Moderate donations for charity or on occasion of family rejoicing or distress. *(Art. 98)*

Q: If a spouse abandons without just cause his family or fails to comply with obligations to the family, what are the remedies of the spouse present?

A: Petition the court for:

1. Receivership;
2. Judicial separation of property;
3. Authority to be the sole administrator of the absolute community.

Q: When is there abandonment?

A: When a spouse leaves the conjugal dwelling without intention of returning.

Note:3 months disappearance without any information as to the spouse's whereabouts shall be *prima facie* presumption of abandonment of the other spouse. *(Art. 101, FC)*

Q: May spouses sell property to each other?

A:

GR: No, such sale is considered void

XPNs:

1. When a separation of property was agreed upon in the marriage settlement;
2. When there has been a judicial separation of property under Articles 135 and 136 of FC *(Art. 1490, NCC).*

Q: During his lifetime and while he was married to Epifania, Joseph acquired a piece of land which he then subsequently conveyed, by way of a purported sale, to his other woman, Maria. Is the sale of the piece of land by Joseph to his mistress proper?

A: No. The proscription against the sale of property between spouses under Art. 1490 applies even to common law relationships. In an earlier ruling, the SC nullified a sale made by a husband in favor of a concubine, after he had abandoned his family and left the conjugal home

where his wife and children lived, and from whence they derived their support, for being contrary to morals and public policy. The sale was regarded by the court as subversive of the stability of the family, a basic social institution which public policy cherishes and protects *(Ching v. CA, GR No. 165879, Nov. 10, 2006*).

5. DISSOLUTION OF COMMUNITY REGIME

Q: How is the ACP terminated?

A:

1. Death of either spouse;
2. Legal separation;
3. Annulment;
4. Judicial separation of property during marriage.

6. LIQUIDATION OF THE ABSOLUTE COMMUNITY ASSETS AND LIABILITIES

Q: What is the applicable procedure in case of dissolution of ACP?

A:

1. *Inventory* of all properties;

2. *Payment* of community debts;

   Note: First, pay out of the community assets. If not enough, husband and the wife are *solidarily* liable for the unpaid balance with their separate properties

3. *Delivery* to each spouse of his/her *remaining exclusive properties;*

4. *Equal division* of net community assets
   Unless there is:
   a. An *agreement* for a different proportion; *or*
   b. A *voluntary waiver* of such share;

5. *Delivery* of the *presumptive legitimes* of the children;

6. *Adjudication* of conjugal dwelling and custody of common children.

Q: What is the applicable procedure in the dissolution of the ACP in case the marriage is terminated by death?

A: Community property shall be liquidated in the same proceeding for the settlement of the estate of the deceased.

If no judicial proceeding is instituted, the surviving spouse shall, judicially or extra-judicially, liquidate the community property *within 6 months* from the death of the deceased spouse. *(Art. 103)*

Q: What if the surviving spouse failed to liquidate the community property within 1 year from the death of the deceased spouse contrary to Art. 103, FC?

A: Failure to do so would render any disposition or encumbrance involving community property of the terminated marriage *void*.

E. CONJUGAL PARTNERSHIP OF GAINS

1. GENERAL PROVISIONS

Q: What is the regime of CPG?

A: It is the property relation formed by the husband and the wife by placing in a *common fund:*

1. the proceeds, product, fruits and income of their separate properties;
2. those acquired by them through:
   a. effort
   b. chance

Q: When shall the conjugal partnership commence?

A: At the precise moment when the marriage ceremony is celebrated.

Q: What law governs the conjugal partnership?

A: The rules on the contract of partnership in all that is not in conflict with what is expressly determined in the Family Code and by the spouses in their marriage settlements.

2. EXCLUSIVE PROPERTY OF EACH SPOUSE

Q: What are the exclusive properties of the spouses?

A:

1. Those brought into the marriage as his/her own;

   Note: A property purchased before the marriage and fully paid during the marriage remains to be a separate property of either spouse. *(Lorenzo v. Nicolas, L-4085, July 30, 1952)*

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2. Those acquired during the marriage by gratuitous title;
3. Those acquired by right of redemption, barter or exchange with exclusive property;
4. That purchased with exclusive money of either spouse.

Note: The controlling factor is the source of the money used, or the money promised to be paid. *(Rivera v. Bartolome, C.A., 40 O.G. 2090)*

Q: What are the rules in cases of improvement of exclusive property?

A:

1. *Reverse accession* – If the cost of the improvement and the additional value is *more than* the value of the principal property at the time of the improvement, the property becomes conjugal.

2. *Accession* – If the cost of the improvement and the additional value is *equal to or less than* the value of the principal property, the entire property becomes the exclusive property of the spouses

3. CONJUGAL PARTNERSHIP PROPERT

Q: What constitutes CPG?

A:

1. Those acquired during the marriage with conjugal funds;
2. Those obtained from labor, industry, work or profession of either or both spouse;
3. Fruits of conjugal property due or received during the marriage and net fruits of separate property;
4. Share of either spouse in hidden treasure;
5. Those acquired through occupation such as hunting or fishing;
6. Livestock in excess of what was brought to the marriage;
7. Those acquired by chance such as winnings in gamblings and bettings.

Q: What are the rules if a property is bought on installments paid partly from the exclusive funds of the spouses and partly from conjugal funds?

A:

1. If full ownership was vested before the marriage – it shall belong to the buyer spouse.
2. If full ownership was vested during the marriage – it shall belong to the conjugal partnership.

Q: Yamane asserts that the parcel of land, which was purchased at auction, belonged to the conjugal partnership of him and his late wife. In the title, his name appeared to be merely descriptive of the civil status of the registered owner, his late wife. The purchase took place prior to the advent of the Family Code. Is the property conjugal or paraphernal property of his late wife?

A: Conjugal. In this case the provisions of the Civil Code would apply since the purchase took place before the FC took effect. Under *Art. 160 of the NCC*, all property of the marriage is presumed to belong to the conjugal partnership, unless it be proved that it pertains exclusively to the husband or the wife. In this case, there was no proof that the property had been acquired exclusively by Yamane's late wife. The mere registration of a property in the name of one spouse does not destroy its conjugal nature in the absence of strong, clear and convincing evidence that it was acquired using the exclusive funds of said spouse. *(Spouses Go v. Yamane, G.R. No. 160762, May 3, 2006)*

Q: Dolores seeks to recover a parcel of land, alleging that she and her husband acquired such during their marriage, that it formed part of their conjugal properties and that he sold it without her consent. She presents as evidence their marriage contract and the initial tax declaration over the property. Decide.

A: Recovery is not warranted. The rule is all property of the marriage is presumed to be conjugal in nature. *However, for this presumption to apply, the party who invokes it must first prove that it was acquired during the marriage.* Here, Dolores's evidence consisted of her marriage contract and the initial tax declaration over the property. She did not identify when she and her husband first occupied and possessed the land. Neither did she present any witness to prove that they first occupied the property during their marriage and that they both, worked on the land. *(Pintiano-Anno v. Anno,G.R. No. 163743, Jan. 27, 2006)*

Q: Josefina, purchased a parcel of land using, according to her, her own funds. Although the

titles to the lots were issued in the names of the spouses, the dorsal portions thereof contained an entry showing that Eduardo had waived any right over the properties as they were bought out of the savings of Josefina. When a complaint for sum of money against her husband, Eduardo, prospered, the lot was levied upon. Does the parcel of land belong to the conjugal partnership?

A: Yes. Since Josefina failed to prove that she acquired the properties with her personal funds before her cohabitation with Eduardo, it should be presumed and considered as belonging to the conjugal partnership. Art. 105 of the FC, which provides that the Code shall apply to conjugal partnerships established before it took effect, without prejudice to vested rights already acquired under the New Civil Code or other laws, applies in this case. There was no evidence adduced by Josefina showing that she had acquired a vested right in this regard. Thus, as it appears that the properties were acquired during the subsistence of the marriage of Josefina and Eduardo, under normal circumstances, the same should be presumed to be conjugal property. *(Francisco v. Master Iron Works Construction Corp., G.R. No. 151967. Feb. 16, 2005)*

4. CHARGES UPON AND OBLIGATIONS OF THE CPG

Q: What are the charges upon the CPG?

A: D2-T2-E2-VAS

1. **S**upport of the spouses, their common children and the legitimate children of either spouse;
2. **D**ebts and obligations contracted by one without the consent of the other to the extent that the family benefited;
3. **D**ebts and obligations contracted during the marriage by an administrator-spouse, both spouses or one with the consent of the other;
4. **T**axes, liens, charges, expenses upon conjugal property;
5. **T**axes and expenses for mere preservation of separate property;
6. **E**xpenses for professional, vocational or self-improvement courses of either spouse;
7. **A**nte-nuptial debts to the extent the family has been benefited;
8. **V**alue of what is donated or promised to common legitimate children for professional, vocation or self improvement courses;
9. **E**xpenses of litigation.

5. ADMINISTRATION OF THE CPG

Q: To whom does the right to administer the conjugal partnership belong?

A:

GR: It belongs to both spouses jointly.

XPN: If one spouse is incapacitated or otherwise unable to participate in the administration of the common properties – capacitated or able spouse may assume sole powers of administration

But such powers do not include: DAE

a. Disposition;
b. Alienation; or
c. Encumbrance of the conjugal or community property.

Q: In case of disagreement, whose decision shall prevail?

A: That of the husband but subject to recourse to the court by the wife for proper remedy.

Note: Prescriptive period for recourse is 5 years from the date of the contract implementing such decision.

6. DISSOLUTION OF CPG REGIME

Q: How is the conjugal partnership terminated?
A:

1. Death of either spouse;
2. Legal separation;
3. Annulment;
4. Judicial separation of property during marriage.

7. LIQUIDATION OF THE CONJUGAL PARTNERSHIP ASSETS AND LIABILITIES

Q: What are the steps in the liquidation of the CPG?

A: R2-D4-IPA

1. **I**nventory of all the properties;
2. **R**estitution of advances made to each of the spouses;
3. **R**eimbursement for use of exclusive funds;
4. **D**ebts and obligations of the CP are paid;
5. **D**elivery of exclusive properties;

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6. **P**ayment of losses and deterioration of movables belonging to each of the spouses;
7. **D**ivision of the net conjugal partnership;
8. **D**elivery of the children's presumptive legitimes;
9. **A**djudication of conjugal dwelling and custody of children.

Q: Upon termination of the marriage by death, how shall the community property be liquidated?

A: The community property shall be liquidated in the same proceeding for the settlement of the estate of the deceased spouse.

Q: In the absence of a judicial settlement proceeding, how shall the community property be liquidated?

A: The surviving spouse shall liquidate the community property either, judicially or extrajudicially within one year from the death of the deceased spouse.

Q: What are the effects if the community property is not liquidated?

A:

1. Any disposition or encumbrance made by the surviving spouse involving community property of the terminated marriage shall be void.
2. Should the surviving spouse contract a subsequent marriage a mandatory regime of complete separation of property shall govern the property relations of the subsequent marriage

F. SEPARATION OF PROPERTY OF THE SPOUSES AND ADMINISTRATION OF COMMON PROPERTY BY ONE SPOUSE DURING THE MARRIAGE

Q: In what ways can there be judicial separation of property?

A: Judicial separation of property may either be *voluntary* or for *sufficient cause.*

Q: What are the sufficient causes for judicial separation of property?

A: CJ-LASA

1. **C**ivil interdiction of the spouse of petitioner;
2. **J**udicial declaration of absence;
3. **L**oss of parental authority as decreed by the court;
4. **A**bandonment or failure to comply with family obligation;
5. **A**dministrator spouse has abused authority;
6. **S**eparation in fact for one year and reconciliation is highly improbable.

Q: What are the effects of judicial separation of property between spouses?

A:

1. The absolute community or conjugal partnership is dissolved;
2. The liability of the spouses to creditors shall be solidary with their separate properties;
3. Mutual obligation to support each other continues;

   XPN: When there is legal separation

4. Rights previously acquired by creditors are not prejudiced.

G. REGIME OF SEPARATION OF PROPERTY

Q: What governs the regime of separation of property?

A:

1. Marriage settlement
2. Family Code in suppletory character.

Q: What are the kinds of separation of property?

A:

1. As to extent:
   a. Total
   b. Partial- In this case, the property not agreed upon as separate shall pertain to the absolute community.

2. As to kinds of property:
   a. Present property
   b. Future property
   c. Both present and future property

Q: What are the rights of the spouses under the regime of separation of property?

A:

1. Each spouse shall administer, dispose of, own, possess, and enjoy his or her own separate property, without need of the consent of the other.

2. Each spouse shall own all earnings from his or her profession, business and industry and all fruits, natural, industrial or civil, due or received during the marriage from his or her separate property.

Q: What are the liabilities for family expenses of the spouses under the regime of separation of property?

A:

GR: Both spouses shall bear the family expenses in proportion to their income.

XPN: In case of insufficiency or default thereof, to the current market value of their separate properties.
Spouses shall be solidarily liable to creditors for family expenses.

H. PROPERTY REGIME OF UNIONS WITHOUT MARRIAGE

Q: What is the property regime of unions without marriage?

A:

ART. 147	ART. 148
Applicability	
1. No legal impediment to marry; 2. Void marriage on the ground of psychological incapacity.	Presence of legal impediment: 1. Adulterous relationships 2. Bigamous/polygamous marriages 3. Incestuous void marriages under Art 37 4. Void marriages by reason of public policy *(Art. 38)*
Salaries & wages	
Owned in equal shares	Separately owned by the parties. If any is married, his/her salary pertains to the CPG of the legitimate marriage.
Property exclusively acquired	
Belongs to party upon proof of acquisition through exclusive funds	Belongs to such party
Property acquired by both through their work or industry	
Governed by rules of co-ownership	Owned in common in proportion to their respective contributions
Presumption	
Property acquired while living together presumed obtained by their joint efforts, work or industry and owned by them in equal shares. If one party did not participate in acquisition: presumed to have contributed through care and maintenance of family and household *(Buenaventura v. Buenaventura, G.R. No. 127358, Mar. 31, 2005)*	No presumption of joint acquisition. Actual joint contribution of money, property or industry shall be owned by them in common proportion. However, their contributions are presumed equal, in the absence if proof to the contrary
Forfeiture	
When only one is in GF, share of party in BF in the co-ownership be forfeited in favor of: 1. their common children 2. innocent party in default of / waiver by any/all common children, or by their descendants	If one of the parties is validly married to another, his/her share in the co-ownership shall accrue to the ACP or CPG existing in the marriage. If the party who acted in BF is not validly married to another or if both parties are in BF, such share be forfeited in manner provided in last par of Art. 147
Proof of actual contribution	
Not necessary	Necessary

Note: For as long as it is proven that property was acquired during marriage, the presumption of conjugality will attach *regardless in whose name the property is registered*.

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The presumption is *not* rebutted by the mere fact that the certificate of title of the property or the tax declaration is in the name of one of the spouses. *(Villanueva v. CA, G.R. No. 143286, Apr. 14, 2004)*

Under Art. 148, only the properties acquired by both parties through their *actual joint contribution* of money property or industry shall be owned by them in proportion to their respective contributions. *(Agapay v. Palang, G.R. No. 116726, July 28, 1997)*

Q: What property relation governs in case marriage is declared null and void on the ground of psychological incapacity?

A: The property relation between the parties is governed by Art. 147 of the FC. Under this property regime, property acquired by both spouses through their *work* and *industry* shall be governed by the rules on equal co-ownership. Any property acquired during the union is *prima facie* presumed to have been obtained through their joint efforts. A party who did not participate in the acquisition of the property shall still be considered as having contributed thereto jointly if said party's "efforts consisted in the care and maintenance of the family household." Unlike the conjugal partnership of gains, the fruits of the couple's separate property are not included in the co-ownership.

Q: Josefina's petition for nullity of her marriage to Eduardo was granted on the ground of existence of a prior marriage. She now asserts that since her marriage to Eduardo is void, their property relation is to be governed by the rules on co-ownership under Art. 148 of the FC and not by Art. 144 of the Civil Code. In this regime, Eduardo has no share at all in the properties since no proof was adduced by him as regards his participation in their purchase. However, she did not prove that she acquired the properties using her personal funds and prior to her cohabitation with Eduardo. Is her contention correct?

A: No. Art. 148 of the FC does not apply since, in said article, a co-ownership may ensue in case of cohabitation where, for instance, one party has a pre-existing valid marriage, provided that the parties prove their actual joint contribution of money, property or industry and only to the extent of their proportionate interest thereon. Petitioner failed to adduce preponderance of evidence that she contributed money, property or industry in the acquisition of the subject property and, hence, is not a co-owner of the property. Since the subject property was acquired during the subsistence of the first marriage of Eduardo, under normal circumstances, the same should be presumed to be conjugal property of Eduardo and Josefina. (*Francisco v. Master Iron Works Construction Corp.,G.R. No. 151967. Feb. 16, 2005*)

Q: Francisco and Erminda's marriage was nullified by the trial court due to psychological incapacity. He did not contest the decree of nullity but he assailed the division in the properties which was contained in the decree. He asserted that the properties were acquired through his efforts and that she had no contribution whatsoever in their acquisition and maintenance; hence, she should not be entitled to a joint share in their properties. Is Francisco's contention correct?

A: No. The property relation between the parties is governed by Art. 147 of the FC. Under this article, there is a presumption that the properties which they acquired during their cohabitation were acquired through their joint efforts, work or industry. It further provides that a party who did not participate in the acquisition thereof shall be deemed to have contributed jointly in the acquisition thereof if his or her efforts consisted in the care and maintenance of the family and of the household.

Note: In this case, Francisco himself testified that his wife was not a plain housewife but one who helped him in managing the family's business. Hence, Erminda is rightfully entitled to a joint share in their properties. *(Gonzales v. Gonzales,G.R. No. 159521, Dec. 16, 2005)*

Q: Romeo and Juliet lived together as husband and wife without the benefit of marriage. During their cohabitation, they acquired a house. When they broke up, they executed an agreement where he agreed to leave the house provided Juliet will pay his entire share in their properties. She failed to do so but she also ignored his demand for her to vacate. Romeo sued her for ejectment which the court granted. Was the court correct in granting the same?

A: No. Under Art. 147 of the FC, the property is co-owned by the parties. Under said provision, in the absence of proof to the contrary, any property acquired by common-law spouses during their cohabitation is presumed to have been obtained thru their joint efforts and is owned by them in equal shares. Their property relationship in such a case is essentially governed by the rules on co-ownership. Thus, Romeo cannot seek the ejectment of Juliet therefrom. As a co-owner, she is as much entitled to enjoy its

possession and ownership as him. *(Abing v. CA,G.R. No. 146294, Jul. 31, 2006)*

Q: In 1973, Mauricio, a Filipino pensioner of the US Government, contracted a bigamous marriage with Erlinda, despite the fact that his first wife, Carol, was still living. In 1975, Mauricio and Erlinda jointly bought a parcel of rice land with the title being placed jointly in their names. Shortly thereafter, they purchased another property (a house and lot) which was placed in her name alone as the buyer. In 1981, Mauricio died and Carol promptly filed an action against Erlinda to recover both the rice land and the house and lot, claiming them to be conjugal property of the first marriage. Erlinda contends that she and the late Mauricio were co-owners of the rice land, and with respect to the house and lot she claims she is the exclusive owner. Assuming she fails to prove that she had actually used her own money in either purchase, how do you decide the case?

A: Carol's action to recover both the rice land and the house and lot is well-founded. Both are conjugal property, in view of the failure of Erlinda, the wife in a bigamous marriage, to prove that her own money was used in the purchases made. The Supreme Court in a case applied Art. 148, Family Code, despite the fact that the husband's death took place prior to the effectivity of said law. However, even under Art. 144, Civil Code, the same conclusion would have been reached in view of the bigamous nature of the second marriage. **(1998 Bar Question)**

Q: Luis and Rizza, both 26 years of age and single, live exclusively with each other as husband and wife without the benefit of marriage, Luis is gainfully employed, Rizza is not employed, stays at home, and takes charge of the household chores.

After living together for a little over twenty years, Luis was able to save from his salary earnings during that period the amount of P200,000.00 presently deposited in a bank. A house and lot worth P500,000.00 was recently purchased for the same amount by the couple. Of the P500.000.00 used by the common-law spouses to purchase the property, P200.000.00 had come from the sale of palay harvested from the hacienda owned by Luis and P300,000.00 from the rentals of a building belonging to Rizza. In fine, the sum of P500.000.00 had been part of the fruits received during the period of cohabitation from their separate property, a car worth P100.000.00 being used by the common-law spouses, was donated just months ago to Rizza by her parents.

Luis and Rizza now decide to terminate their cohabitation, and they ask you to give them your legal advice on how, under the law should the bank deposit of P200,000.00 the house and lot valued at P500.000.00 and the car worth P100.000.00 be allocated to them?

A: Art. 147 of the Family Code provides in part that when a man and a woman who are capacitated to marry each other, live exclusively with each other as husband and wife without the benefit of marriage or under a void marriage, their wages and salaries shall be owned by them in equal shares and the property acquired by both of them through their work or industry shall be governed by the rules of co-ownership. In the absence of proof to the contrary, properties acquired while they lived together shall be presumed to have been obtained by their joint efforts, worker industry, and shall be owned by them in equal shares. A party who did not participate in the acquisition by the other party of any property shall be deemed to have contributed jointly in the acquisition thereof if the former's efforts consisted in the care and maintenance of the family and of the household. Thus:

1. the wages and salaries of Luis in the amount of P200,000.00 shall be divided equally between Luis and Rizza.

2. the house and lot valued at P500.000.00 having been acquired by both of them through work or industry shall be divided between them in proportion to their respective contribution, in consonance with the rules on co-ownership. Hence, Luis gets 2\5 while Rizza gets 3\5 of P500.000.00.

3. the car worth P100,000.00 shall be exclusively owned by Rizza, the same having been donated to her by her parents. **(1997 Bar Question)**

Q: In 1989, Rico, then a widower forty (40) years of age, cohabited with Cora, a widow thirty (30) years of age. While living together, they acquired from their combined earnings a parcel of riceland. After Rico and Cora separated, Rico lived together with Mabel, a maiden sixteen (16) years of age. While living together, Rico was a

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salaried employee and Mabel kept house for Rico and did full-time household chores for him. During their cohabitation, a parcel of coconut land was acquired by Rico from his savings.

After living together for one (1) year, Rico and Mabel separated. Rico then met and married Letty, a single woman twenty-six (26) years of age. During the marriage of Rico and Letty, Letty bought a mango orchard out of her own personal earnings.

1. **Who would own the riceland, and what property relations governs the ownership? Explain.**
2. **Who would own the coconut land, and what property relations governs the ownership? Explain.**
3. **Who would own the mango orchard, and what property elations governs the ownership? Explain.**

A:

1. Rico and Cora are the co-owners of the riceland. The relations is that of co-ownership *(Art. 147, Family Code, first paragraph).*

   Addendum: However, after Rico's marriage to Letty, the half interest of Rico in the riceland will then become absolute community property of Rico and Letty.

2. Rico is the exclusive owner of the coconut land. The relation is a sole/single proprietorship *(Art. 148. Family Code, first paragraph is applicable, and not Art. 147 Family Code).*

   Addendum: However, after Rico's marriage to Letty, the coconut land of Rico will then become absolute community property of Rico and Letty.)

3. Rico and Letty are the co-owners. The relations is the Absolute Community of Property *(Arts, 75, 90 and 91, Family Code).***(1992 Bar Question)**

VI. THE FAMILY

A. THE FAMILY AS AN INSTITUTION

Q: What is included in family relations?

A:

1. Between husband and wife
2. Between parents and children
3. Among other ascendants and descendants
4. Among brothers and sisters, whether of the full ot half blood.

Q: What governs family relations?

A: The law.

Q: What are the requisites before a suit between members of the same family may prosper?

A:

1. Earnest efforts toward a compromise have been made;
2. Such efforts failed;
3. The fact that earnest efforts toward a compromise have been made but the same have failed appears in the verified complaint or petition..

Q: In a complaint filed by Manolo against his brother, Rodolfo, it was alleged that the case "xxx passed through the Barangay and no settlement was forged between the plaintiffs and defendant as a result of which Certification to File Action was issued xxx". Rodolfo moved to dismiss for failure to comply with a condition precedent - that earnest efforts for an amicable settlement among the parties had been exerted but that none was reached. Decide.

A: The case will prosper. There was in fact substantial compliance with Art. 151 of the Family Code since the spouses alleged in the complaint for ejectment that the case "xxx passed through the Barangay and no settlement was forged between the plaintiffs and defendant as a result of which Certification to File Action was issued by Barangay 97, Zone 8, District I, Tondo, Manila xxx". It bears stressing that under Sec. 412 (a) of R.A. 7160, no complaint involving any matter within the authority of the Lupon shall be instituted or filed directly in court for adjudication unless there has been a confrontation between the parties and no settlement was reached.

Moreover, the phrase "members of the same family" found in Art. 151 of the Family Code must

be construed in relation to Art. 150 thereof. (Martinez*, et al. v. Martinez, G.R. No. 162084. Jun. 28, 2005*)

Note: A sister-in-law or a brother-in-law is not covered by these two provisions. Being an exception to the general rule, Art. 151 must be strictly construed. (*Gayon v. Gayon, G.R. No. L-28394, Nov. 26, 1970*)

B. THE FAMILY HOME

Q: What is meant by family home (FH) and how is it constituted?

A: It is the dwelling house where the husband and wife and their family reside, and the land on which it is situated; it is constituted jointly by the husband and the wife or by an unmarried head of a family.

Q: Can FH be constituted on a house constructed on a land belonging to another?

A: No.

Reason: The land where the house is erected is an integral part of the home and the home should be permanent in character.

Note: A house constructed on rented land or by tolerance of the owner is not a permanent improvement on the land and the home will thus be temporary.

Q: What are the exceptions to the rule that the FH is exempt from execution, forced sale or attachment?

A: LTPM

1. Debts due to **L**aborers, mechanics, architects, builders, material men and others who rendered service or furnished materials for the constitution of the building;
2. Non-payment of **T**axes;
3. Debts incurred **P**rior to constitution;
4. Debts secured by **M**ortgages on the family home.

Note: Exemption is limited to the value allowed in the FC

Q: A complaint for damages was filed against Hinahon in 1986 when she incurred liabilities as early as 1977, which action prospered in 1989. The house and lot that she owned was levied upon and sold at auction. She assails the levy and sale on the ground that it was her family home and therefore exempt from execution. Decide.

A: It is not exempt. Under Art. 155 of the FC, the family home shall be exempt from execution, forced sale, or attachment except for, among other things, debts incurred prior to the constitution of the family home. In the case at bar, the house and lot was not constituted as a family home, whether judicially or extra-judicially, at the time that the debtor incurred her debts. Under prevailing jurisprudence, it is deemed constituted as such by operation of law only upon the effectivity of the Family Code on August 3, 1988, thus, the debts were incurred before the constitution of the family home. *(Gomez-Salcedo, et al. v. Sta. Ines, et al.,G.R. No. 132537, Oct. 14, 2005)*

Q: What are the guidelines in the constitution of the family home?

A: 1-SAPOC

1. FH is deemed constituted from the time of **A**ctual occupation as a family residence;
2. Only **1** FH may be constituted;
3. Must be **O**wned by the person constituting it;
4. Must be **P**ermanent;
5. **S**ame rule applies to both valid and voidable marriages and even to common law spouses; *(Arts. 147 and 148)*
6. It **C**ontinues despite death of one or both spouses or an unmarried head of the family for 10 years or as long as there is a minor beneficiary.

Q: Who are the beneficiaries of a FH?

A:

1. Husband and wife, or unmarried head of the family
2. Parents (may include parents-in-law), ascendants, brothers and sisters (legitimate or illegitimate) living in the FH and dependent on the head of the family for support

Q: What are the requisites in the sale, alienation, donation, assignment or encumbrance of the FH?

A: The following must give their written consent:

1. The person who constituted the FH;
2. The spouse of the person who constituted the FH;

3. Majority of the beneficiaries of legal age.

Note: In case of conflict, court shall decide.

Q: What are the requisites for the creditor to avail of the right to execute?

A:

1. He must be a judgment creditor;
2. His claim must not be among those excepted under Art. 155;
3. He has reasonable grounds to believe that the family home is worth more than the maximum amount fixed in Art. 157.

Q: What is the procedure in exercising the right to execute?

A:

1. Creditor must file a motion in the court proceeding where he obtained a favorable judgment for a writ of execution against the FH;
2. There will be a hearing on the motion where the creditor must prove that the actual value of the FH exceeds the maximum amount fixed by the Family Code, either at the time of its constitution or as a result of improvements introduced after its constitution;
3. If the creditor proves that the actual value exceeds the maximum amout, the court will order its sale in execution;
4. If the family home is sold for more than the value allowed, the proceeds shall be applied as follows:
   a. The obligations enumerated in Art. 155 must be paid
   b. The judgment in favor of the creditor will be paid, plus all the costs of execution

The excess, if any, shall be delivered to the judgment debtor (Art. 160, Family Code).

VII. PATERNITY AND FILIATION

Q: To what do paternity and filiation refer to?

A: Paternity and filiation refer to the relationship existing between parent and child.

Note: Filiation may be by nature or adoption. Filiation may be legitimate or illegitimate.

Q: What are the classifications of filiation?

A: LILA

GENERAL RULE	EXCEPTIONS
Legitimate	
Conceived or born within a valid marriage	
Illegitimate	
Conceived *and* born outside a valid marriage	
Legitimated	
Conceived or born outside of wedlock of parents without impediment to marry at the time of conception and had subsequently married. *Requisites of Legitimation:* 1. No legal impediment for parents to marry at time of conception; 2. Valid marriage subsequent to child's birth.	
Adopted	
(Please refer to related notes on Adoption laws)	

A. LEGITIMATE CHILDREN

Q: When is a child conceived by artificial insemination considered legitimate?

A: The following conditions must be present:

1. The artificial insemination is made on the wife, not on another woman;
2. The artificial insemination on the wife is done with the sperm of the husband or of a donor, or both the husband and a donor;
3. The artificial insemination has been authorized or ratified by the spouse on a written instrument executed and signed by them before the birth of the child; and
4. The written instrument is recorded in the civil registry together with the birth certificate of the child.

Q: What is the rule on status of child where the mother contracted another marriage within 300 days after termination of the former?

A: The child shall be considered as conceived during the:

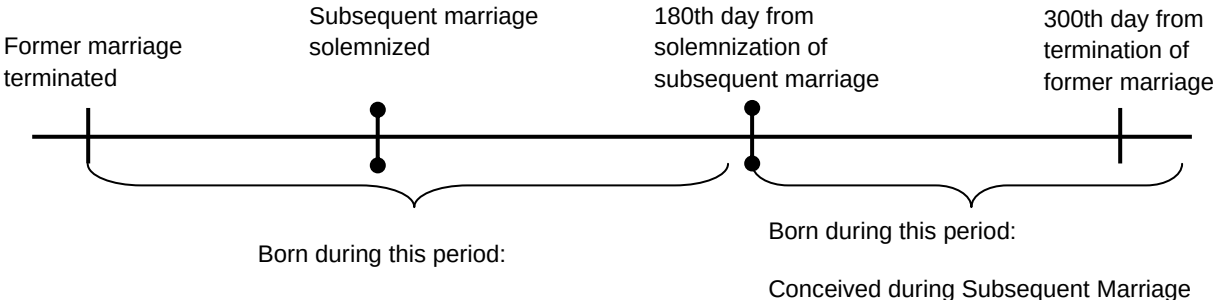
1. *Former marriage*– if child is born:
   a. *Before* 180 days after the solemnization of the subsequent marriage, *provided* it is born
   b. *Within* 300 days after termination of former marriage

2. *Subsequent marriage* –if a child born:

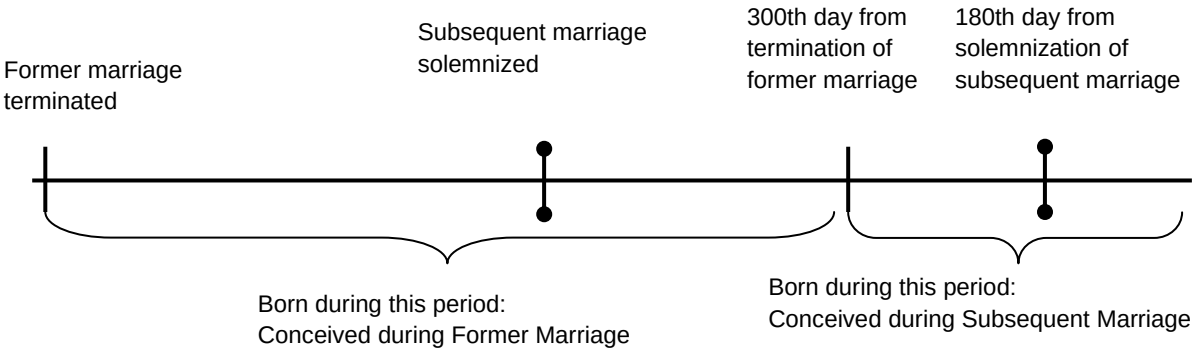
a. 180 days *after* the celebration of the subsequent marriage;
b. *even though* it be born within 300 days after the termination of the former marriage.

Illustrations:

1. **180th day takes place before 300th day**



2. **180th day takes place after 300th day**



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Q: Distinguish action to impugn legitimacy and action to claim legitimacy.

A:

ACTION TO IMPUGN LEGITIMACY	ACTION TO CLAIM LEGITIMACY
Remedy	
Action to impugn legitimacy or illegitimacy	Action to claim legitimacy (compulsory recognition)
Real party in interest	
GR: Husband **XPN:** Heirs, in cases where: 1. Husband died before the expiration of the period for bringing the action; 2. Husband died after filing the complaint, without having desisted; 3. Child was born after the death of husband.	**GR:** Child **XPN:** Heirs of the child, in cases where: 1. Child died in state of *insanity* 2. Child died during *minority* **Note:** Must be filed within 5 years.
Prescription	
1 year – husband reside in the same municipality or city where birth took place *2 years* – husband reside NOT in the same municipality or city *3 years* – husband is living abroad	**GR:** During the lifetime of the child **XPN:** Lifetime of the putative father In cases where the action is for the recognition of illegitimate child by "open and continuous possession" of the status.

Q: What are the grounds to impugn legitimacy of the child?

A:

1. *Physical impossibility* for the husband to have sexual intercourse with his wife within the first 120 days of the 300 days which immediately preceded the birth of the child because of:
   a. *Physical incapacity* of the husband to have sexual intercourse with his wife,
   b. The fact that the husband and wife were living separately in such a way that *sexual intercourse was not possible*, or
   c. *Serious illness* of the husband which *absolutely* prevented intercourse;
2. Proved that for *biological or other scientific reasons*, the child could not have been that of the husband, except in the case of children conceived through artificial insemination;
3. In case of children *conceived through artificial insemination*, the written authorization or ratification of either parent was obtained through mistake, fraud, violence, intimidation or undue influence.

Q: When does the prescriptive period start to run?

GR: The prescriptive period for filing action impugning the legitimacy of the child shall be counted from the knowledge of birth or its recording in the civil registry.
XPN: If the birth was:
1. Concealed from or
2. Was unknown to the husband or his heirs, the periods shall be counted from the discovery or knowledge of the birth of the child or of the act of registration of said birth, *whichever is earlier.*

CLAIMING FILIATION

Q: Is the right to claim filiation transmissible to the heirs of the child?

A:

GR: The right to claim filiation may be used only by the child. It is not transmissible to the heirs.

XPN: In cases where child died:
1. During minority or
2. In a state of insanity.

Q: When should an action to claim legitimacy be brought?

A: It depends on who is bringing the action:

1. *By the child* – during his lifetime
2. *By his heirs* – within 5 years should the child die during minority or in a state of insanity

Note: Questioning legitimacy may not be collaterally attacked. It can be impugned only in a direct action.

B. PROOF OF FILIATION

Q: What are the different kinds of proof of filiation?

A: Proof of filiation has two kinds: Primary and secondary.

1. *Primary* proof consists of the ff:
   a. Record of birth appearing in civil registrar or final judgment;
   b. Admission of legitimate filiation in public document or private handwritten instrument signed by parent concerned.

2. *Secondary* consists of the ff:
   a. Open and continuous possession of legitimacy;
   b. Any means allowed by the Rules of Court and by special laws.

Note: *Continuous* does not mean that the concession of status shall continue forever but only that it shall not be of an intermittent character while it continues. The *possession* of such status means that the father has treated the child as his own, directly and not through others, spontaneously and without concealment though without publicity.

There must be a showing of permanent intention of the supposed father to consider the child as his own by continuous and clear manifestation and paternal affection and care. *(Mendoza v. CA, G.R. No. 86302, Sept. 24, 1991)*

To prove open and continuous possession of the status of an illegitimate child, there must be evidence of manifestation of the permanent intention of the supposed father to consider the child as his, by continuous and clear manifestations of parental affection and care, *which cannot be attributed to pure charity*.

Such acts must be of such a nature that they reveal not only the conviction of paternity, but also the apparent desire to have and treat the child as such in all relations in society and in life, not accidentally, but continuously. *(Jison v. CA, G.R. No. 124853, Feb. 24, 1998)*

Q: What are the rules on proving filiation?

A:

GR: Primary proof shall be used to prove filiation.

XPN: In absence of primary proof, secondary proof may be resorted to.

Note: For illegitimate children, if the action is based on par. 2 of Art. 172 (secondary proof), the action may be brought only *during* the lifetime of the alleged parent.

Q: Rosanna, as surviving spouse, filed a claim for death benefits with the SSS upon the death of her husband, Pablo. She indicated in her claim that the decedent is also survived by their minor child, Jeylynn, who was born in 1991. The SSS granted her claim but this was withdrawn after investigation, when a sister of the decedent informed the system that Pablo could not have sired a child during his lifetime because he was infertile. However in Jeylynn's birth certificate, Pablo affixed his signature and he did not impugn Jeylynn's legitimacy during his lifetime. Was the SSS correct in withdrawing the death benefits?

A: No. Under Art. 164 of the FC, children conceived or born during the marriage of the parents are legitimate. This presumption becomes conclusive in the absence of proof that there is physical impossibility of access under Art. 166. Further, upon the expiration of the periods for impugning legitimacy under Art. 170, and in the proper cases under Art. 171, of the FC, the action to impugn would no longer be legally feasible and the status conferred by the presumption becomes fixed and unassailable. In this case, there is no showing that Pablo, who has the right to impugn the legitimacy of Jeylynn, challenged her status during his lifetime. Furthermore, there is adequate evidence to show that the child was in fact his child, and this is the birth certificate where he affixed his signature. *(SSS v. Aguas, et al.,G.R. No. 165546, Feb. 27, 2006)*

Q: In an action for partition of estate, the trial court dismissed it on the ground that the respondent, on the basis of her birth certificate, was in fact the illegitimate child of the deceased and therefore the latter's sole heir, to the exclusion of petitioners. However, trial court failed to see that in said birth certificate, she was listed therein as "adopted". Was the trial court correct in dismissing the action for partition?

A: No. The trial court erred in relying upon the said birth certificate in pronouncing the filiation of the respondent. However, since she was listed therein as "adopted", she should therefore have presented evidence of her adoption in view of the contents of her birth certificate. In this case, there is no showing that she undertook such. It is well-settled that a record of birth is merely prima facie evidence of the facts contained therein. It is not

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conclusive evidence of the truthfulness of the statements made there by the interested parties. *(Rivera v. Heirs of Romualdo Villanueva, GR No. 141501, July 21, 2006)*

Q: In a complaint for partition and accounting with damages, Ma. Theresa alleged that she is the illegitimate daughter of Vicente, and therefore entitled to a share in the estate left behind by the latter. As proof, she presented her birth certificate which Vicente himself signed thereby acknowledging that she is his daughter. Is the proof presented by Ma. Theresa sufficient to prove her claim that she is an illegitimate child of Vicente?

A: Yes. Citing the earlier case of *De Jesus v. Estate of Juan Dizon, (366 SCRA 499)*, the Supreme Court held that the Ma. Theresa was able to establish that Vicente was in fact her father. The due recognition of an illegitimate child in a record of birth, a will, a statement before a court of record, or in any authentic writing is, in itself, a consummated act of acknowledgment of the child, and no further court action is required. The rule is, *any authentic writing is treated not just as a ground for compulsory recognition; it is in itself a voluntary recognition that does not require a separate action for judicial approval. (Eceta v. Eceta,G.R. No. 157037, May 20, 2004)*

Q: Gerardo filed a complaint for bigamy against Ma. Theresa, alleging that she had a previous subsisting marriage when she married him. The trial court nullified their marriage and declared that the son, who was born during their marriage and was registered as their son, as illegitimate. What is the status of the child?

A: The first marriage being found to be valid and subsisting, whereas that between Gerardo and Ma. Theresa was void and non-existent, the child should be regarded as a legitimate child out of the first marriage. This is so because the child's best interest should be the primordial consideration in this case.

Q: Gerardo and Ma. Theresa, however, admitted that the child was their son. Will this affect the status of the child?

A: No. The admission of the parties that the child was their son was in the nature of a compromise. *The rule is that the status and filiation of a child cannot be compromised*. Art. 164 of the FC is clear that a child who is conceived or born during the marriage of his parents is legitimate. (*Concepcion v. CA,G.R. No. 123450. Aug. 31, 2005*)

Q: What is the effect of Ma. Theresa's claim that the child is her illegitimate child with her second husband to the status of the child?

A: None. This declaration – an avowal by the mother that her child is illegitimate – is the very declaration that is proscribed by Art. 167 of the Family Code. This proscription is in consonance with, among others, the intention of the law to lean towards the legitimacy of children. (*Concepcion v. CA,G.R. No. 123450. Aug. 31, 2005*)

Q: In a petition for issuance of letters of administration, Cheri Bolatis alleged that she is the sole legitimate daughter of decedent, Ramon and Van Bolatis. Phoebe, the decedent's second wife, opposed the petition and questioned the legitimate filiation of Cheri to the decedent, asserting that Cheri's birth certificate was not signed by Ramon and that she had not presented the marriage contract between her alleged parents which would have supported her claim.

In said birth certificate, it was indicated that her birth was recorded as the legitimate child of Ramon and Van Bolatis, and contains as well the word "married" to reflect the union between the two. However, it was not signed by Ramon and Vanemon Bolatis. It was merely signed by the attending physician, who certified to having attended to the birth of a child. Does the presumption of legitimacy apply to Cherimon?

A: No. Since the birth certificate was not signed by Cher's alleged parents but was merely signed by the attending physician, such a certificate, although a public record of a private document is, under Section 23, Rule 132 of the Rules of Court, evidence only of the fact which gave rise to its execution, which is, the fact of birth of a child. *A birth certificate, in order to be considered as validating proof of paternity and as an instrument of recognition, must be signed by the father and mother jointly, or by the mother alone if the father refuses.* There having been no convincing proof of respondent's supposed legitimate relations with respect to the decedent, the presumption of legitimacy under the law did not therefore arise in her favor. *(Angeles v. Angeles-Maglaya, G.R. No. 153798, Sept.2, 2005)*

Q: On the basis of the physical presentation of the plaintiff-minor before it and the fact that the alleged father had admitted having sexual intercourse with the child's mother, the trial court, in an action to prove filiation with

support, held that the plaintiff-minor is the child of the defendant with the plaintiff-minor's mother. Was the trial court correct in holding such?

A: No. In this age of genetic profiling and DNA analysis, the extremely subjective test of physical resemblance or similarity of features will not suffice asevidence to prove paternity and filiation before courts of law. This only shows the very high standard of proof that a child must present in order to establish filiation.

Note: The birth certificate that was presented by the plaintiff-minor appears to have been prepared without the knowledge or consent of the putative father. It is therefore not a competent piece of evidence on paternity. *The local civil registrar in this case has no authority to record the paternity of an illegitimate child on the information of a third person.* Similarly, a baptismal certificate, while considered a public document, can only serve as evidence of the administration of the sacrament on the date specified therein but not the veracity of the entries with respect to the child's paternity *(Macadangdang v. CA, 100 SCRA 73).* Thus, certificates issued by the local civil registrar and baptismal certificates are *per se* inadmissible in evidence as proof of filiation and they cannot be admitted indirectly as circumstantial evidence to prove the *same (Jison v. CA, 350 Phil. 138)*. *(Cabatania v. CA, G.R. No. 124814. Oct. 21, 2004)*

C. ILLEGITIMATE CHILDREN

Q: Who are illegitimate children?

A: Children conceived *and* born outside a valid marriage.

Q: In what instances may an illegitimate child use the surname of their father?

A: RAP

1. Filiation has been **R**ecognized by the father through the record of birth appearing in the civil register
2. **A**dmission in public document
3. **P**rivate handwritten instrument is made by the father

Note: Provided that the father has the right to institute an action before the regular courts to prove non-filiation during his lifetime.

D. LEGITIMATED CHILDREN

Q: What is legitimation?

A: Legitimation is a remedy or process by means of which those who in fact not born in wedlock and should therefore be ordinarily illegitimate, are by fiction, considered legitimate.

Q: Who are entitled to legitimation?

A: Only children conceived and born outside of wedlock of parents who, at the time of conception, were not disqualified by any impediment to marry each other.

Q: Are children born of parents, who at the time of conception and birth, were minors may be legitimated?

A: Yes. RA 9858 amended Art. 177 of the Family Code in allowing children conceived and born outside of wedlock of parents who, at the time of conception of the former, were not disqualified by any impediment to marry each other, or *were so disqualified only because either or both of them were below eighteen (18) years of age, to be legitimated.*

Q: What are the requisites of legitimation?

A:

1. Child must have been conceived and born outside of wedlock;
2. Child's parents, at the time of former's conception, were not disqualified by any impediment to marry each other;
3. The subsequent *valid marriage* of the parents. (Art. 177, NCC)

Q: Roderick and Faye were high school sweethearts. When Roderick was 18 and Faye, 16 years old, they started living together as husband and wife without the benefit of marriage. When Faye reached 18 years of age, her parents forcibly took her back and arranged for her marriage to Brad. Although Faye lived with Brad after the marriage, Roderick continued to regularly visit Faye while Brad was away at work. During their marriage, Faye gave birth to a baby girl, Laica. When Faye was 25 years old, Brad discovered her continued liaison with Roderick and in one of their heated arguments, Faye shot Brad to death. She lost no time in marrying her true love Roderick, without a marriage license, claiming that they have been continuously cohabiting for more than 5 years.

Was the marriage of Roderick and Faye valid?

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A: The marriage was void because there was no marriage license. Their marriage was not exempt from the requisite of a marriage license because Roderick and Faye have not been cohabiting for at least 5 continuous years before the celebration of their marriage. Their lovers' trysts and brief visitations did not amount to "cohabitation". Moreover, the Supreme Court held that for the marriage to be exempt from a license, there should be no impediment for them to marry each other during the entire 5 years of cohabitation. Roderick and Faye could not have cohabited for 5 years of cohabitation. Roderick and Faye could not have been cohabited for 5 continuous years without impediment because Faye was then legally married to Brad. **(2008 Bar Question)**

What is the filiation status of Laica?

A: Having been born during the marriage of Faye and Brad, she is presumed to be the legitimate child of Faye and Brad, she is presumed to be the legitimate child of Faye and Brad. This presumption had become conclusive because the period of time to impugn her filiation had already prescribed.

Can Laica bring an action to impugn her own status on the ground that based on DNA results, Roderick is her biological father?

A: No, she cannot impugn her own filiation. The law does not allow a child to impugn his or her own filiation. In the problem, Laica's legitimate filiation was accorded to her by operation of law which may be impugned only by Brad, or his heirs in the cases provided by law within the prescriptive period.

Can Laica be legitimated by the marriage of her biological parents?

A: No she cannot be legitimated by the marriage of her biological parents. In the first place she is not, under the law, the child of Roderick. In the second place, her biological parents could not have validly married each other at the time she was conceived and born simply because Faye was still married to Roderick at that time. Under Article 177 of the Family Code, only children conceived or born outside of wedlock of parents who, at the time of the conception of the child were not disqualified by any impediment to marry each other, may be legitimated. **(2008 Bar Question)**

RIGHTS OF CHILDREN

Q: What are the rights of legitimate and illegitimate children?

A:

LEGITIMATE CHILDREN	ILLEGITIMATE CHILDREN
Surname	
Bear the surnames of both parents (mother and father)	Bear the surname of either the mother or the father under R.A. 9255
Support	
Receive support from: 1. Parents; 2. Ascendants; and 3. in proper cases, brothers and sisters under Art 174.	Receive support according to provision of FC
Legitime	
Full Legitimes and other successional rights under the Civil Code	Share is equivalent to ½ of the share of a legitimate child
Period for filing action for claim of legitimacy or illegitimacy	
His/her whole lifetime regardless of type of proof provided under Art 172	For primary proof: his/her whole lifetime For secondary proof: only during the lifetime of the alleged parent
Transmissibility of right to file an action to claim legitimacy	
Yes	No
Right to inherit ab intesto	
Yes	No right to inherit ab intesto from legitimate children and relatives of father and mother under Art 992, NCC (Iron Curtain Rule)

VIII. ADOPTION

A. DOMESTIC ADOPTION LAW

1. WHO CAN ADOPT

Q: Who may adopt?

A:

1. Filipino;
2. Alien;
3. Guardian with respect to his ward.

Q: What are the qualifications of a Filipino who may adopt?

A: LPG-FEC-16

1. Must be of **L**egal age;
2. In a **P**osition to care for his children;
3. **G**ood moral character;
4. **F**ull civil capacity and legal rights;
5. Not been **C**onvicted of any crime involving moral turpitude;
6. **E**motionally and psychologically capable of caring for children;
7. **GR:** At least **16** years older than adoptee

   XPN: It is not necessary that adopter be at least 16 years older:
   a. Adopter is the biological parent of the adoptee,
   b. Adopter is the spouse of adoptee's parent.

Q: What are the qualifications of an alien who may adopt under R.A. 8552?

A: SD-3

1. Possesses **S**ame qualifications as those enumerated for Filipino adopters;
2. His country has **D**iplomatic relations with the Philippines;
3. **GR:** Has been living in the Philippines for at least **3** continuous years prior to the application for adoption and maintains such residence until adoption decree has been entered.

   XPN:
   a. He is a former Filipino who seeks to adopt a relative within the 4th civil degree of consanguinity or affinity,
   b. He is married to a Filipino and seeks to adopt jointly with his spouse a relative within the 4th degree of consanguinity or affinity,
   c. He is married to a Filipino and seeks to adopt the legitimate or illegitimate child of his filipino spouse.

Q: How may a guardian adopt his ward?

A: A guardian may only adopt his ward after termination of guardianship and clearance of his financial accountabilities.

Q: What is the rule when a person seeking to adopt has a spouse?

A:

GR: Such person must adopt with his spouse *jointly*. The general rule is that husband and wife shall jointly adopt.

XPN:

1. One spouse seeks to adopt the legitimate child of the other;
2. One spouse seeks to adopt his own illegitimate child;
3. Spouses are legally separated.

Q: Spouses Primo and Monica Lim, childless, were entrusted with the custody of two minor children, the parents of whom were unknown. Eager of having children of their own, the spouses made it appear that they were the children's parents by naming them Michelle P. Lim and Michael Jude Lim.

Subsequently, Monina married Angel Olario after Primo's death of her husband. She decided to adopt the children by availing the amnesty given under R.A. 8552 to those individuals who simulated the birth of a child. She filed separate petitions for the adoption of Michelle, then 25 years old and Michael, 18. Both Michelle and Michael gave consent to the adoption.

The trial court dismissed the petition and ruled that Monina should have filed the petition jointly with her new husband. Monina, in a Motion for Reconsideration argues that mere consent of her husband would suffice and that joint adoption is not needed, for the adoptees are already emancipated.

Is the trial court correct in dismissing the petitions for adoption?

A: Yes. Section 7 Article 3 of R.A. 8552 reads: Sec. 7 – Husband and wife *shall* jointly adopt, xxx.

The use of the word "shall" in the above-quoted

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provision means that joint adoption by the husband and the wife is mandatory. This is in consonance with the concept of joint parental authority over the child which is the ideal situation. As the child to be adopted is elevated to the level of a legitimate child, it but natural to require the spouses to adopt jointly. The rule also ensures harmony between the spouses.

The law is clear. There is no room for ambiguity. Monina, having remarried at the time the petitions for adoption were filed, must jointly adopt. Since the petitions for adoption were filed only by Monina herself, without joining her husband, Olario, the trial court was correct in denying the petitions for adoption on this ground. *(In Re: Petition for Adoption of Michelle P. Lim, In Re: Petition for Adoption of Michael Jude P. Lim, Monina P. Lim, G.R. Nos. 168992-93, May 21, 2009)*

Q: Is joint adoption still needed when the adoptees are already emancipated?

A: Yes. Even if emancipation terminates parental authority, the adoptee is still considered a legitimate child of the adopter with all the rights of a legitimate child such as: (1) to bear the surname of the father and the mother; (2) to receive support from their parents; and (3) to be entitled to the legitime and other successional rights. Conversely, the adoptive parents shall, with respect to the adopted child, enjoy all the benefits to which biological parents are entitled such as support and successional rights.

ADOPTEE

Q: Who may be adopted?

A:

1. Any person below 18 of age who has been administratively or judicially declared available for adoption;
2. Legitimate child of one spouse by the other spouse;
3. Illegitimate child by a qualified adopter to improve the status of said child to that of legitimacy;
4. Person of legal age, if prior to the adoption, said person has been consistently considered and treated by adopters as their child since minority;
5. Child whose adoption has been previously rescinded;
6. Child whose biological parents have died provided no proceedings have been initiated within 6 months from time of death.

Q: What is the definition of "child"?

A: A child is any person below 18 years old.

Q: What is the definition of "child legally free for adoption"?

A: A child voluntarily or involuntarily committed to the DSWD, freed of his biological parents, guardians, adopters in case of rescission.

Q: Whose written consent is necessary for adoption?

A:

1. Adoptee, if 10 years of age and over;
2. Biological parents of the child, if known or the legal guardian, or the proper government instrumentality which has legal custody of the child;
3. Legitimate children of the adopter, if 10 years old or over;
4. Illegitimate children of the adopter, if 10 years old or over and living with him;
5. Spouse of the adopted, if married;
6. Spouse of the adopter, if married.

Q: Bernadette filed a petition for adoption of the three minor children of her late brother, Ian. She alleged that when her brother died, the children were left to the care of their paternal grandmother, Anna, who went to Italy. This grandmother died however, and so she filed the petition for adoption. The minors gave their written consent to the adoption and so did all of her own grown-up children. The trial court granted the decree of adoption even though the written consent of the biological mother of the children was not adduced by Bernadette. Was the trial court correct in granting the decree of adoption?

A: No. The rule is *adoption statutes must be liberally construed* in order to give spirit to their humane and salutary purpose which is to uplift the lives of unfortunate, needy or orphaned children. *However*, the discretion to approve adoption proceedings on the part of the courts should not to be anchored solely on those principles, but with due regard likewise to the natural rights of the parents over the child. *The written consent of the biological parents is indispensable for the validity of the decree of adoption.* Indeed, the natural right of a parent to his child requires that his consent must be obtained before his parental rights and duties

may be terminated and vested in the adoptive parents. In this case, since the minors' paternal grandmother had taken custody of them, her consent should have been secured instead in view of the absence of the biological mother. This is so under Sec. 9 (b) of R.A. 8552, otherwise known as the Domestic Adoption Act of 1998. Diwata failed in this respect, thus necessitating the dismissal of her petition for adoption. *(Landingin v. Republic,G.R. No. 164948, June 27, 2006)*

Q: On what grounds may an adoptee seek the rescission of the adoption?

A:

1. Attempt on the life of the adoptee;
2. Sexual assault or violence;
3. Abandonment and failure to comply with parental obligations;
4. Repeated physical or verbal maltreatment by the adopter.

Note: Adopter cannot rescind but may disinherit the adoptee.

Q: What are the grounds by which an adopter may disinherit adoptee?

A:

1. Groundless accusation against the testator of a crime punishable by 6 years or more imprisonment;
2. Found guilty of attempt against the life of the testator, his/her spouse, descendant or ascendant;
3. Causes the testator to make changes or changes a testator's will through violence, intimidation, fraud or undue influence;
4. Maltreatment of the testator by word or deed;
5. Conviction of a crime which carries a penalty of civil interdiction;
6. Adultery or concubinage with the testator's wife;
7. Refusal without justifiable cause to support the parent or ascendant;
8. Leads a dishonorable or disgraceful life.

Q: What are the effects of adoption?

A:

1. **GR:** Severance of all legal ties between the biological parents and the adoptee and the same shall then be vested on the adopters
   XPN: In cases where the biological parent is the spouse of the adopter;
2. Deemed a legitimate child of the adopter;
3. Acquires reciprocal rights and obligations arising from parent-child relationship;
4. Right to use surname of adopter;
5. In legal and intestate succession, the adopters and the adoptee shall have reciprocal rights of succession without distinction from legitimate filiation. *However,* if the adoptee and his/her biological parents had left a will, the law on testamentary succession shall govern.

Q: State the effects of rescission of the adoption in the Domestic Adoption Act of 1998 (RA 8552).

A:

1. If adoptee is still a minor or is incapacitated – Restoration of:
   a. Parental authority of the adoptee's biological parents, if known' or
   b. Legal custody of the DSWD;
2. Reciprocal rights and obligations of the adopters and adoptee to each other shall be extinguished;
3. Court shall order the civil registrar to cancel the amended certificate of birth of the adoptee and restore his/her original birth certificate;
4. Succession rights shall revert to its status prior to adoption, *but* only as of the date of judgment of judicial rescission;
5. Vested rights acquired prior to judicial rescission shall be respected.

Despite several relationships with different women, Andrew remained unmarried. His first relationship with Brenda produced a daughter, Amy, now 30 years old. His second, with Carla, produced two sons: Jon and Ryan. His third, with Donna, bore him two daughters: Vina and Wilma. His fourth, while Elena, bore him no children although Elena has a daughter Jane, from a previous relationship. His last, with Fe, produced no biological children but they informally adopted without court proceedings, Sandy, now 13 years old, whom they consider as their own. Sandy, now 13 years old, whom they consider as their own. Sandy was orphaned as a baby and was entrusted to them by the midwife who attended to Sandy's birth. All the children, including Amy, now live with Andrew in his house.

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Is there any legal obstacle to the legal adoption of Amy by Andrew? To the legal adoption of Sandy by Andrew and Elena?

A: No, there is no legal obstacle to the legal adoption of Amy by Andrew. While a person of age may not be adopted, Amy falls within two exceptions: (1) she is an illegitimate child and she is being adopted by her illegitimate father to improve her status; and (2) even on the assumption that she is not an illegitimate child of Andrew, she may still be adopted, although of legal age, because she has been consistently considered and treated by the adopter as his own child since minority. In fact, she has been living with him until now.

There is a legal obstacle to the adoption of Sandy by Andrew and Elena. Andrew and Elena cannot adopt jointly because they are not married.

In his old age, can Andrew be legally entitled to claim support from Amy, Jon, Ryan, Vina, Wilma and Sandy assuming that all of them have the means to support him?

A: Andrew can claim support from them all, except from Sandy, who is not his child, legitimate, illegitimate or adopted.

Can Amy, Jon, Ryan, Vina, Wilma and Sandy legally claim support from each other?

A: Amy, Jon, Ryan, Vina and Wilma can ask support from each other because they are half-blood brothers and sisters, and Vina and Wilma are full-blood sisters (Art. 195 [5], Family Code), but not Sandy who is not related to any of them.

Can Jon and Jane legally marry?

A: Jon and Jane can legally marry because they are not related to each other. Jane is not a daughter of Andrew. **(2008 Bar Question)**

B. INTERCOUNTRY ADOPTION ACT OF 1995 (RA 8043)

ADOPTER

Q: Who may adopt?

A:

1. Any alien;
2. Filipino citizen, both permanently residing abroad.

Q: What are the qualifications needed for a Filipino or alien to adopt?

A:

1. At least 27 years old and 16 years older than the child to be adopted at the time of the application *unless* adopter is the parent by nature of the child;
2. If married, his spouse must jointly file for adoption;
3. Has the capacity to act or assume all rights and responsibilities of parental authority;
4. Not been convicted of a crime involving moral turpitude;
5. Eligible to adopt under his national law;
6. In a position to provide for proper care and support and give necessary moral values;
7. Agrees to uphold the basic rights of the child mandated by the UN convention of rights of Child and the Philippine Laws;
8. Comes from a country with which the Philippines has diplomatic relations and adoption is allowed under his national law;
9. Possesses all the qualifications and none of the disqualifications under the law or other applicable Philippine laws.

Q: Sometime in 1990, Sarah, born a Filipino but by then a naturalized American citizen, and her American husband Sonny Cruz, filed a petition in the Regional Trial Court of Makati, for the adoption of the minor child of her sister, a Filipina, can the petition be granted?

A: It depends. If Sonny and Sarah have been residing in the Philippines for at least 3 years prior to the effectivity of R.A. 8552, the petition may be granted. Otherwise, the petition cannot be granted because the American husband is not qualified to adopt.

While the petition for adoption was filed in 1990, it was considered refiled upon the effectivity of R.A. 8552. This is the law applicable, the petition being still pending with the lower court. Under the Act, Sarah and Sonny must adopt jointly because they do not fall in any of the exceptions where one of them may adopt alone. When husband and wife must adopt jointly, the Supreme Court has held in a line of cases that both of them must be qualified to adopt. While Sarah, an alien, is qualified to adopt, for being a former Filipino citizen who seeks to adopt a relative within the 4th degree of consanguinity or affinity, Sonny, an alien, is not qualified to adopt because he is neither a former Filipino citizen nor

married to a Filipino. One of them not being qualified to adopt, their petition has to be denied. However, if they have been residents of the Philippines 3 years prior to the effectivity of the Act and continues to reside here until the decree of adoption is entered, they are qualified to adopt the nephew of Sarah under Sec 7(b) thereof, and the petition may be granted. **(2000 Bar Question)**

ADOPTEE

Q: Who may be adopted?

A: Only a legally free child may be adopted provided the following are submitted:

1. Child study;
2. Birth certificate/ foundling certificate;
3. Deed of Voluntary Commitment/Decree of Abandonment/Death Certificate of parents;
4. Medical evaluation or history;
5. Psychological evaluation;
6. Recent photo;

Q: What is the definition of "child"?

A: A child is any person below 15 years old.

Q: What is a "legally-free child"?

A: A child who has been voluntarily or involuntarily committed to the DSWD of the Philippines, in accordance with the Child Youth and Welfare Code

Note: No child shall be matched to a foreign adoptive family unless it is satisfactorily shown that the child cannot be adopted in the Philippines

GR: There shall be no physical transfer of a voluntarily committed child earlier than 6 months from the date of execution of Deed of Voluntary Commitment.

XPN:

1. Adoption by relative;
2. Child with special medical condition.

INTER-COUNTRY ADOPTION BOARD

Q: What is the function of Inter-Country Adoption Board?

A: The Inter Country Adoption Board acts as the central authority in matters relating to inter-country adoption. The Board shall ensure that all the possibilities for adoption of the child under the Family Code have been exhausted and that the inter-country adoption is in the best interest of the child

Q: What is trial custody?

A: It is the pre-adoptive relationship which ranges 6 months from the time of the placement. It starts from the actual transfer of the child to the applicant who, as actual custodian, shall exercise substitute parental authority over the person of the child

Note:

1. If unsatisfactory – the relationship shall be suspended by the board and the foreign adoption agency shall arrange for the child's voluntary care.
2. If satisfactory – the Board shall submit the written consent of the adoption to the foreign adoption agency within 30 days after the request of the latter's request.

IX. SUPPORT

Q: What is support?

A: It comprises everything indispensable for sustenance, dwelling, clothing, medical assistance and transportation, in keeping with the financial capacity of the family, including the education of the person entitled to be supported until he completes his education or training for some profession, trade or vocation, even beyond the age of majority. *(Art. 194, FC)*

Q: What are the characteristics of support?

A: PRIM PEN

1. **P**ersonal
2. **R**eciprocal on the part of those who are by law bound to support each other
3. **I**ntransmissible
4. **M**andatory
5. **P**rovisional character of support judgment
6. **E**xempt from attachment or execution
7. **N**ot subject to waiver or compensation

A. WHAT IT COMPRISES

Q: What comprises support?

A: Support comprises of everything indispensable for: **SDC MET**

1. **S**ustenance
2. **D**welling
3. **C**lothing
4. **M**edical attendance
5. **E**ducation – includes schooling or training for some profession, trade or

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vocation, even beyond the age of majority

6. **T**ransportation – includes expenses going to and from school, or to from place of work

Q: What are the rules on the amount of support?

A: Amount of support shall be in proportion to the resources or means of the giver and to the necessities of the recipient. It shall be increased or reduced proportionately, according to the increase/reduction of necessities of the recipient and the resources of the person obliged.

Q: What are the different kinds of support?

A:

1. *Legal* – required or given by law;
2. *Judicial* – required by court;
   May be:
   a. Pendente lite
   b. In a final judgment

3. *Conventional* – by agreement.

Q: What are the rules on support of illegitimate children of either spouse?

A: It depends upon the property regime of the spouses.

1. *ACP*:
   a. Exclusive property of the debtor spouse shall be liable.
   b. If the exclusive property is insufficient, the community is liable.

      Note: The same being considered as advance made by the absolute community to said spouse.

2. *CPG:*
   a. Property of the debtor-spouse is liable.
   b. If the debtor spouse has no property or the same is insufficient, it may be enforced against the conjugal property.

B. WHO ARE OBLIGED

Q: Who are persons obliged to support each other?

A:

1. Spouses;
2. Legitimate ascendants & descendants;
3. Parents and their legitimate children, and the legitimate and illegitimate children of the latter;
4. Parents and their illegitimate children, and the legitimate and illegitimate children of the latter;
5. Legitimate brothers and sisters whether full or half-blood.

Q: Are brothers and sisters not legitimately related likewise bound to support each other?

A:

GR: Yes.

XPN: when the need for support of the brother or sister, being of age, is due to a cause imputable to the claimant's fault or negligence. In this case, the illegitimate brother or sister has no right to be supported.

Q: What are the sources of support?

A:

SOURCES OF SUPPORT		
During Marriage	**Pending Litigation**	**After Litigation**
Spouses		
From the community property	***ACP*** **GR:** From the community property assets **XPN:** If Art 203 applies, that if the claimant spouse is the guilty spouse, he/she is not entitled to support. ***CPG*** Support is considered an advance of such spouses' share. *The rule does not apply if the spouses are under ACP based on Art 153.	**GR:** No obligation to support **XPN:** If there is Legal Separation. In which case, the court may require the guilty spouse to give support
Children		
From the community property	From the community property	From the separate properties of the spouses

Q: To whom does the liability to support devolve upon?

A: In the following order: **S-DAB**

1. **S**pouse
2. **D**escendants in the in the nearest degree
3. **A**scendants in the nearest degree
4. **B**rothers and sisters

Q: Belen, in behalf of her minor children, instituted a petition for declaration of legitimacy and support against Federico, their alleged father, and Francisco, father of Federico. It appears that the marriage of the two was annulled due to the minority of Federico. May Francisco be ordered to give support?

A: Yes. There appears to be no dispute that the children are indeed the daughters of Federico by Belen. Under Art. 199 of the FC, "Whenever two or more persons are obliged to give support, the liability shall devolve upon the following persons in the following order herein provided:

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

The obligation to give support rests principally on those more closely related to the recipient. However, the more remote relatives may be held to shoulder the responsibility should the claimant prove that those who are called upon to provide support do not have the means to do so. Here, since it has been shown that the girls' father, Federico, had no means to support them, then Francisco, as the girls' grandfather, should then extend the support needed by them.

Note: The second option in Art. 204 of the FC, that of taking in the family dwelling the recipient, is unavailing in this case since the filing of the case has evidently made the relations among the parties bitter and unpleasant. *(Mangonon, et al. v. CA, et al.,G.R. No. 125041, Jun. 30, 2006)*

Q: Marcelo and Juana called Dr. Arturo to their house to render medical assistance to their daughter-in-law who was about to give birth to a child. He performed the necessary operation. When Dr. Arturo sought payment, Marcelo and Juana refused to pay him without giving any good reason. Who is bound to pay the bill for the services rendered by Arturo?

A: Her husband, not her father and mother- in-law. The rendering of medical assistance in case of illness is comprised among the mutual obligations to which the spouses are bound by way of mutual support. (Arts. 142 and 143.) If every obligation consists in giving, doing or not doing something (Art. 1088), and spouses are mutually bound to support each other, there can be no question but that, when either of them by reason of illness should be in need of medical assistance, the other is under the unavoidable obligation to furnish the necessary services of a physician in order that health may be restored, and he or she may be freed from the sickness by which life is jeopardized.

Her husband denies liability on the ground that it was not he who requested Dr. Arturo's assistance. Decide.

A: That it was not the husband who called and requested his assistance for his wife is no bar to the fulfillment of the said obligation, as Marcelo, in view of the imminent danger to which the life of the patient was at that moment exposed, considered that medical assistance was urgently needed, and the obligation of the husband to furnish his wife in the indispensable services of a physician at such critical moments is specially established by the law, as has been seen, and compliance therewith is unavoidable.*(Pelayo v. Lauron, et al., GR No. L-4089, Jan. 12, 1909)*

C. SUPPORT DURING MARRIAGE LITIGATION

Q: What is the source of support during the pendency of legal separation, annulment and declaration of nullity of marriage proceedings?

A: The spouses and their common children shall be supported from the properties of the absolute community or the conjugal partnership.

Q: Are the spouses still obliged to render mutual support after final judgment granting the petition?

A:

GR: No. The obligation of mutual support ceases after final judgment.

XPN: In case of legal separation the Court may order that the guilty spouse shall give support to the innocent one.

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D. AMOUNT

Q: What is the amount of support?

A: Amount shall be in proportion to the resources or means of the giver and to the necessities of the recipient.

Q: May the amount of support be reduced or increased?

A: Yes. Support may be decreased or increased proportionately according to the reduction or increase of the necessities of the recipient and the resources of the person obliged to furnish the same.

E. WHEN DEMANDABLE

Q: When is the obligation to give support demandable?

A: From the time the person who has a right to receive support needs it for maintenance.

#
Q: When shall support be paid?

A: Only from the date of judicial or extrajudicial demand.

Note: The right to support does not arise from mere fact of relationship but from imperative necessity without which it cannot be demanded. The law presumes that such necessity does not exist unless support is demanded.

F. OPTIONS

Q: What are the options given to persons giving support?

A:

1. To **G**ive a fixed monthly allowance; or
2. To **R**eceive and maintain the recipient in the giver's home or family dwelling.

Q: After 1 month of marriage, husband repeatedly demanded from wife to perform "unchaste and lascivious acts on his genitals." Because of her refusal, he maltreated her by word and deed, inflicting bodily injuries on her. To escape his lewd designs and avoid further harm, she left the conjugal home and took refuge in her parent's house.

She filed an action for support which was dismissed on the ground that the husband could not be compelled to give support if his wife lived outside of the conjugal home, unless there was legal separation. Is the dismissal proper?

A: No. The law will not permit the husband to evade or terminate his obligation to support his wife if she is driven away from the conjugal home because of his own wrongful acts. In this case, she was forced to leave the conjugal abode because of her husband's lewd designs and physical assaults. She may claim support from him for separate maintenance even outside of the conjugal home. *(Goitia v. Campos Rueda, G.R. No. 11263, Nov. 2, 1916)*

G. ATTACHMENT

Q: Is the right to receive support subject to attachment or execution?

A:

> **GR:** No. The right to receive support and any money or property obtained as support cannot be attached no be subject to execution to satisfy any judgment against the recipient.
>
> **XPN:** In case of contractual support or support given by will, the excess in amount beyond that required for legal support shall be subject to levy on attachment or execution.

Q: Jurisdictional questions may be raised at any time. What is the exception with respect to the provisional character of judgment for support and the application of estoppels?

A: *Judgment for support is always provisional in character*. *Res Judicata* does not apply. The lower court cannot grant a petition based on grounds, such as bigamy, not alleged in the petition. Such a decision based on grounds not alleged in the petition is void on the ground of no jurisdiction.

However, if the lower court's void decision is not assailed on appeal which dealt only with the matter of support, the losing party is now estopped from questioning the declaration of nullity and the SC will not undo the judgment of the RTC declaring the marriage null and void for being bigamous.

It is axiomatic that while a jurisdictional question may be raised at any time, this however admits of an exception where estoppel has supervened. *(Lam v. Chua, G.R. No. 131286, Mar. 18, 2004)*

Q: Edward abandoned his legitimate children when they were minors. After 19 years from the time Edward left them, they, through their mother, finally sued him for support, which the court granted. The court ordered him to pay 2M pesos as support in arrears.

Edward assails the grant of the support in arrears as erroneous since under Art. 203 of the FC, there was never any demand for support, judicial or extra-judicial, from them. Rule on his contention.

A: No. Edward could not possibly expect his daughters to demand support from him considering their tender years at the time that he abandoned them. In any event, the mother of the girls had made the requisite demand for material support although this was not in the standard form of a formal written demand. Asking one to give support owing to the urgency of the situation is no less a demand just because it came by way of a request or a plea. *(Lacson v. Lacson, et al.,G.R. No. 150644, Aug. 28, 2006)*

Q: Noel helped Lea by extending financial help to support Lea's children with Edward. May Noel seek reimbursement of his contributions? If yes, from whom may he do so?

A: Yes. Pursuant to Art. 207 of the FC, Noel can rightfully exact reimbursement from Edward. This provision reads that *"[W]hen the person obliged to support another unjustly refuses or fails to give support when urgently needed by the latter, any third person may furnish support to the needy individual, with right of reimbursement from the person obliged to give support."* The resulting juridical relationship between the Edward and Noel is a quasi-contract, an equitable principle enjoining one from unjustly enriching himself at the expense of another. *(Lacson v. Lacson, et al.,GR No. 150644, Aug. 28, 2006)*

Q: Fe and her son Martin sued Martin's alleged biological father Arnel for support. Arnel denied having sired Martin arguing that his affair and intimacy with Fe had allegedly ended in long before Martin's conception. As a result, Fe and Martin moved for the issuance of an order directing all the parties to submit themselves to DNA paternity testing. The said motion was granted by the court. Did the order of the court convert the complaint for support to a petition for recognition?

A: The assailed order did not convert the action for support into one for recognition but merely allowed Fe to prove their cause of action. But even if the order effectively integrated an action to compel recognition with an action for support, such was valid and in accordance with jurisprudence. In *Tayag v. Court of Appeals (209 SCRA 665)*, the Supreme Court allowed the integration of an action to compel recognition with an action to claim one's inheritance. A separate action will only result in a multiplicity of suits. Furthermore, the declaration of filiation is entirely appropriate to the action for support. *(Agustin v. CA, G.R. No. 162571, June 15, 2005).*

Q: Can DNA testing be ordered in a proceeding for support without violating the constitutional right against self-incrimination?

A: Yes. In *People v. Yatar (428 SCRA 504)*, the Supreme Court had already upheld the constitutionality of compulsory DNA testing and the admissibility of the results thereof as evidence. Moreover, it has mostly been in the areas of legality of searches and seizure and in the infringement of privacy of communication where the constitutional right to privacy has been critically at issue.

If, in a criminal case, an accused whose very life is at stake can be compelled to submit to DNA testing, so much more so may a party in a civil case, who does not face such dire consequences, be likewise compelled. DNA testing and its results is now acceptable as object evidence without running afoul self-incrimination rights of a person. *(Agustin v. CA,GR No. 162571, Jun. 15, 2005)*

X. PARENTAL AUTHORITY

A. GENERAL PROVISIONS

Q: What is *patria potestas*?

A: The sum total of the rights of parents over the persons and property of their *unemancipated child*.

Q: What does parental authority include?

A: It shall include:

1. Caring for and rearing of such children for civic consciousness and efficiency;
2. Development of their moral, mental and physical character and well-being.

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Q: What are the characteristics of parental authority?

A: Jo-Na-RePuTe

1. **Jo**intly exercised by the father and mother;
2. **Na**tural right and duty of the parents;
3. Cannot be **Re**nounced, transferred or waived;

   XPN: In cases authorized by law;

4. **Pu**rely personal;

   Note: It cannot be exercised through agents.

5. **Te**mporary.

Q: What are the rules as to the exercise of parental authority?

A:

1. The father and the mother shall *jointly* exercise parental authority over the persons of their common children.

   Note: *In case of disagreement*, the father's decision shall prevail *unless* there is a judicial order to the contrary.

2. If the child is illegitimate, parental authority is with the mother.

Q: What is meant by the parental preference rule?

A: The natural parents, who are of good character and who can reasonably provide for the child are ordinarily entitled to custody as against all persons.

Q: Who shall exercise parental authority in case of legal or de facto separation of parents?

A: Parent designated by the Court.

Q: What shall the Court take into account in the designation of the parent?

A: All relevant considerations, especially the choice of the child over seven years of age except when the parent chosen is unfit.

Q: What is the rule as to the custody of a child below 7 years of age?

A:

GR: No child below 7 years of age shall be separated from the mother

XPN: When the court finds compelling reasons to consider otherwise

Note: The paramount consideration in matters of custody of a child is the *welfare and well-being of the child*

Q: If the parents are separated *de facto*, who between them has custody over their child/children?

A: In the absence of a judicial grant of custody to one parent, both are entitled to the custody of their child/children.

The parent who has been deprived of the rightful custody of the child may resort to the remedy of *habeas corpus*. *(Salientes v. Abanilla, G.R. No. 162734, Aug. 29, 2006)*

Q: The petition for declaration of nullity filed by Crisanto against his wife included a prayer for custody *pendente lite* of their 4-year old son. The supplication for custody was based on the alleged immorality of the mother who, the husband asserted, was a lesbian. However, the trial court citing Art. 213 of the FC, denied Crisanto's prayer for temporary custody of his son, there having been no compelling reason to so order it. Was the trial court correct in denying Crisanto's prayer for temporary custody?

A: Yes. The petitioner failed to overcome the so-called "tender-age presumption" rule under Art. 213 of the FC. There was no compelling evidence of the mother's unfitness. 'Sexual preference or moral laxity alone does not prove parental neglect or incompetence – to deprive the wife of custody, the husband must clearly establish that her moral lapses have had an adverse effect on the welfare of the child or have distracted the errant spouse from exercising proper parental care.

Note: The general rule that children less than seven years of age shall not be separated from the mother finds its *raison d'etre* in the basic need of minor children for their mother's loving care. This is predicated on the *"best interest of the child" principle* which pervades not only child custody cases but also those involving adoption, guardianship, support, personal status and minors in

conflict with the law. *(Pablo-Gualberto v. Gualberto, G.R. No. 154994/G.R. No. 156254, Jun. 28, 2005)*

Q: In a petition for *habeas corpus*which he filed before the Court of Appeals, Joey sought custody of his minor son from his former live-in partner, Loreta. Joey alleged that the child's mother was abroad most of the time and thus, he should be given joint custody over their son. The CA however denied the petition, and on the basis of Art. 213, par (2) of the FC, awarded custody of the child in favor of the mother. Was the CA correct in denying Joey's petition for *habeas corpus* for the custody of his minor son?

A: Yes. Under Art. 176 of the FC, parental authority over an illegitimate child is vested solely in the mother, and this is true notwithstanding that the child has been recognized by the father as his offspring. At most, such recognition by the father would be a ground for ordering the latter to give support to, but not custody of, the child *(David v. Court of Appeals, 250 SCRA 82).* Custody over the minor in this case was therefore awarded correctly to the mother, and this is all the more so in view of Art. 213 of the FC which lays down the Maternal Preference Rule. There is also no showing that Joey was able to show proof of any compelling reason to wrest from the mother parental authority over their minor child.

Note: However, the CA erred in applying Sec. 6, Rule 99 of the Rules of Court. This provision applies only when the parents of the child are married to each other but are separated either by virtue of a decree of legal separation or because they are leaving separately de facto. In this case, the child's parents were never married. Hence, the portion of the CA decision allowing the child, upon reaching the age of ten, to choose which parent to live, should be deleted therefrom. *(Briones v. Miguel, et al., G.R. No. 156343. Oct. 18, 2004)*

Q: In a petition for *habeas corpus* that was filed by Loran against his estranged wife, as well as against his parents-in-law whom he alleged were unlawfully restraining him from having custody of his child, the trial court issued an order directing the aforesaid persons to appear in court and produce the child in question and to show cause why the said child should not be discharged from restraint. Does trial court's order run counter to Art. 213 of the FC?

A: No. The assailed order of the trial court did not grant custody of the minor to any of the parties but was merely a procedural directive addressed to the petitioners for them to produce the minor in court and explain why they are restraining his liberty. Moreover, Art. 213 of the FC deals with the adjudication of custody and serves as a guideline for the proper award of-custody by the court. While the petitioners can raise it as a counter argument in the custody suit, it may not however be invoked by them to prevent the father from seeing the child.

Note: *Habeas corpus* may be resorted to in cases where rightful custody is withheld from a person entitled thereto. Under Art. 211 of the FC, both parents in this case have joint parental authority over their child and consequently joint custody over him. Further, although the couple is separated *de facto*, the issue of custody has yet to be adjudicated by the court. *In the absence of a judicial grant of custody, both parents are still entitled to the custody of their child. (Salientes, et al. v. Abanilla, et al.,G.R. No. 162734, Aug. 29, 2006)*

Q: The tug of war over custody of their minor son resulted in Ivy's filing of a petition for *habeas corpus* against Ernesto before the RTC. The trial court then granted temporary custody over the child to Ernesto. Who has jurisdiction over habeas corpus cases?

A: The RTC. Both the Supreme Court and the Court of Appeals still retain jurisdiction over habeas corpus cases involving minors despite the passage of Rep. Act No. 8369 (The Family Courts Act of 1997) - the law conferring upon family courts exclusive jurisdiction over such cases. SC had earlier ruled that it would be difficult for persons seeking the whereabouts of minors to seek redress from family courts whose writs are enforceable only within their respective territorial jurisdiction. This lack of recourse could not have been the legislative intent, and thus R.A. 8369 did not effectively divest the High Court and Court of Appeals of their jurisdiction over habeas corpus cases involving custody of minors. The primordial consideration always is the welfare and best interest of the child. As it stands then, *the RTCs, thru the appropriately designated Family Court branches, the CA and the SC have concurrent jurisdiction over such petitions.* Since in this case, the petition was first filed before the RTC of Quezon City, then the latter acquired jurisdiction over the same to the exclusion of the Court of Appeals and the Supreme Court. To hold otherwise would be to risk instances where courts of concurrent jurisdiction might issue conflicting orders. *(Reyes-Tabujara v. CA, et al., GR No. 172813, July 20, 2006)*

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B. SUBSTITUTE AND SPECIAL PARENTAL AUTHORITY

Q: What is the order of substitute parental authority?

A: GOC

1. Surviving **G**randparent;

2. **O**ldest brother or sister, over 21 years;
   XPN: unfit or disqualified

3. Actual **C**ustodian over 21 year;
   XPN: unfit or disqualified

C. EFFECTS OF PARENTAL AUTHORITY UPON THE PERSON OF THE CHILDREN

Q: What are the rules regarding the right to custody over the child?

A:

GR: Parents are never deprived of the custody and care of their children.

XPNS:

1. For cause
   Note: the law presumes that the child's welfare will be best served in the care and control of his parents.

2. If in consideration of the child's welfare or well-being, custody may be given even to a non-relative.

Q: What is the basis for the duty to provide support?

A: Family ties or relationship, not parental authority.

Note: The obligation of the parents to provide support is not coterminous with the exercise of parental authority.

Q: What is the rule on the parent's duty of representation?

A:

GR: Parents are duty-bound to represent their unemancipated children in all matters affecting their interests;

Note: This duty extends to representation in court litigations.

XPN: A guardian *ad litem* may be appointed by the court to represent the child when the best interest of the child so requires.

Q: What is the scope of the parent's right to discipline the child?

A: Persons exercising parental authority may:

1. Impose discipline on minor children as may be required under the circumstances.

2. Petition the court for the imposition of appropriate disciplinary measures upon the child, which include the commitment of the child in entities or institutions engaged in child care or in children's homes duly accredited by the proper government agency.
   Note: Such commitment must not exceed 30 days.

Q: What are the limitations on the exercise of the right to discipline the child and what are its consequences?

A: Persons exercising such right is not allowed to:
1. treat the child with excessive harshness or cruelty; or
2. inflict corporal punishment.

Otherwise, the following are its consequences:

1. Parental authority may be suspended;
2. Parent concerned may be held criminally liable for violation of RA 7160 (Special Protection of Children against Abuse, Exploitation and Discrimination Act)

Q: To whom may special parental authority be granted?

A:

1. **S**chool administrator and teachers;
2. **I**ndividual entity or institution engaged in child care.

Q: What are the distinctions between substitute parental authority and special parental authority?

A:

SUBSTITUTE PARENTAL AUTHORITY	SPECIAL PARENTAL AUTHORITY
Exercised in case of: **DAU** 1. **D**eath, 2. **A**bsence, or 3. **U**nsuitability of parents.	1. Exercised concurrently with the parental authority of the parents; 2. Rests on the theory that while the child is in the custody of the person exercising special parental authority, the parents temporarily relinquish parental authority over the child to the latter.

Q: What is the liability of persons exercising special parental authority over the child?

A: They are principally and solidarily liable for damages caused by the acts or omissions of the child while under their supervision, instruction or custody.

Note: Parents, judicial guardians or those exercising substitute parental authority over the minor are subsidiarily liable for said acts and omissions of the minor.

D. EFFECTS OF PARENTAL AUTHORITY UPON THE PROPERTY OF THE CHILDREN

Q: Who exercises legal guardianship over the property of an unemancipated child?

A: The father and the mother, jointly, without need of court appointment.

Note: In case of disagreement, the father's decision shall prevail unless there is a judicial order to the contrary.

Q: When is a parent required to post a bond?

A: If the market value of the property or the annual income of the child exceeds 50,000 Php.

Note: The bond shall not be less than 10% of the value of the property or annual income. *(Art. 225, FC)*

Q: What are the kinds of properties of a minor? Distinguish.

A:

ADVENTITIOUS	PROSFECTITIOUS
1. Earned or acquired by the child through his work or industry by onerous or gratuitous title; 2. Owned by the child; 3. Child is also the usufructuary, but the child's use of the property shall be secondary to all collective daily needs of the family; 4. Administered by the parents.	1. Property given by the parents to the child for the latter to administer; 2. Owned by the parents; 3. Parents are usufructuary; 4. Property administered by the child.

Q: What are the rules regarding the use of the child's property?

A:

3. The property of minor children shall be devoted to their support and education unless the title or transfer provides otherwise.
4. The parents have the right to use only the fruits and income of said property for the following purposes:
   a. Primarily, to the child's support;
   b. Secondarily, to the collective daily needs of the family.

Q: What is the rule on disposition and encumbrance of the child's property?

A: The parents, as legal guardians of the property of their minor children, do not have the power to dispose or encumber the property of the latter, such power is granted by law only to a judicial guardian of the ward's property, and even then, only with the court's prior approval, secured in accordance with the proceedings set forth under the Rules of Court.

Q: What is the rule on lease of property belonging to minor children?

A:

GR: The parents, as legal guardians of the minor's property, may validly lease the same, even without court authorization,

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because lease has been considered as an act of administration.

XPNS: Court authorization is required if:

1. If the lease will be recorded in the Registry of Property;
2. If the lease is for a period of more than one year, because this is already deemed an act of dominion.

E. SUSPENSION OR TERMINATION OF PARENTAL AUTHORITY

Q: When is parental authority terminated?

A:

1. *Permanent:* **DED**
   a. **D**eath of parents;
   b. **E**mancipation of the child;
   c. **D**eath of child.

2. *Temporary:* **AGA FIA** – it may be revived
   a. **A**doption of the child;
   b. Appointment of general **G**uardian;
   c. Judicial declaration of **A**bandonment;
   d. **F**inal judgment divesting parents of PA;
   e. **I**ncapacity of parent exercising PA;
   f. Judicial declaration of **A**bsence.

Q: What are the grounds for suspension of PA?

A: CHAIN B

1. Gives **C**orrupting orders, counsel and example;
2. Treats child with excessive **H**arshness and cruelty;
3. Subjects/allows child be subjected to **A**cts of lasciviousness;
4. Conviction of crime with penalty of civil **I**nterdiction ;
5. Culpable **N**egligence of parent or person exercising PA;
6. Compels child to **B**eg.

Note: If the person exercising PA has subjected the child or allowed him to be subjected to Sexual Abuse, he/she shall be *permanently* deprived of PA.

Q: When may the suspension be revoked and parental authority revived?

A: There must be a case filed for the purpose or in the same proceeding if the court finds that the cause therefore had ceased and will not be repeated.

GR: Parental authority and responsibility are *inalienable* and may not be transferred and renounced.

XPN: In case authorized by law.

Note: Parents may exercise authority over their children's property.

XI. EMANCIPATION

Q: How does emancipation take place?

A: By attainment of majority at the age of (18) eighteen years.

Q: What are the effects of emancipation?

A:

1. Parental authority over the person and property of the child is terminated
2. Child shall be qualified and responsible for all acts of civil life, save exceptions established by existing laws.
3. Contracting marriage shall require parental consent until the age of (21) twenty one.
4. The responsibility of parents or guardians for children and wards below (21) twenty-one under the second and third paragraphs of Art.2180 of the Civil Code shall not be derogated.

XII. SUMMARY JUDICIAL PROCEEDINGS IN THE FAMILY LAW

Q: What are the matters subject to summary proceedings?

A:

1. Petition for judicial authority to administer or encumber specific separate property of the abandoning spouse.
2. Petition for an order providing for disciplinary measures over a child.
3. Petition for approval of bond of parents who exercise parental authority over the property of their children.
4. Judicial declaration of presumptive death.
5. Action of a child for delivery of presumptive legitime
6. Judicial determination of family domicile in case of disagreement between the spouses
7. Objection of one spouse as to the profession of the other.

8. Action entrusting parental authority over foundlings, abandoned, neglected or abused children to heads of institutions.
9. Annulment by wife of the husband's decision in the administration and enjoyment of community or conjugal property.
10. Appointment of one of the spouses as sole administrator but only when the other spouse is absent, or separated in fact, or has abandoned the other or the consent is withheld. (Uy v. CA, G.R. No. 109557, November 29, 2000)

Q: How shall matters subject to summary proceedings be decided?

A: All cases requiring summary court proceedings shall be decided in an expeditious manner, without regard to technical rules.

Q: W filed a petition with the RTC under the rules on Summary Judicial Proceedings in the Family Law provided for in the Family Code, for the declaration of the presumptive death of her absent spouse, H, based on the provisions of Art. 41 of the Family Code, for purposes of remarriage. After trial, the RTC rendered a decision declaring the presumptive death of H. The Republic received a copy of the decision on Nov 14, 2001. Subsequently, the Republic filed a Notice of Appeal on Nov 22, 2001. The RTC held that the appeal was filed within the reglementary period and thus, elevated the records to the Court of Appeals. However, the Court of Appeals denied the Republic's appeal and accordingly affirmed the appealed RTC decision.

Did the Court of Appeals acquire jurisdiction over the appeal on a final and executory judgment of the RTC?

A: No. In Summary Judicial Proceedings under the Family Code, there is no reglementary period within which to perfect an appeal, precisely because judgments rendered thereunder, by express provision of Art. 247, Family Code, are "immediately final and executory". An appellate court acquires no jurisdiction to review a judgment which, by express provision of law, is immediately final and executory. The right to appeal is not a natural right nor is it a part of due process, for it is merely a statutory privilege. Since, by express mandate of Article 247 of the Family Code, all judgments rendered in summary judicial proceedings in Family Law are "immediately final and executory", the right to appeal was not granted to any of the parties therein. The Republic, as oppositor in the petition for declaration of presumptive death, should not be treated differently. It had no right to appeal the RTC decision of November 7, 2001. The RTC's decision was immediately final and executory upon notice to the parties. (*Republic v. Bermudez-Lorino, G.R. No. 160258, January 19, 2005*)

Note: However, an aggrieved party may file a petition for certiorari to question abuse of discretion amounting to lack of discretion. (*Republic v. Tango, G.R. No. 161062, July 31, 2009*)

XIII. FINAL PROVISIONS

Q: What is the rule on the retroactivity of the Family Code?

A:
GR: The Code shall have retroactive effect**.**

XPN: No retroactivity if it would prejudice vested rights.

Q: What is a vested right?

A: Some right or interest in property that has become fixed or established, and is no longer open to doubt or controversy. Rights are vested when the right to enjoyment, present or prospective, has become the property of some person as present interest.

XIV. FUNERAL

Q: What are the rules regarding funeral?

A: General Guidelines:

1. Duty and right to make arrangements in funerals in accordance with Art. 199, FC:
   a. Spouse,
   b. Descendants in the nearest degree,
   c. Ascendants in the nearest degree,
   d. Brothers and Sisters;

2. Funeral shall be:
   a. in keeping with the social position of the deceased,
   b. in accordance with the expressed wishes of the deceased,
   c. *In absence of the expressed wishes*, his religious beliefs or affiliation shall determine;

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3. Any person who disrespects the dead or allows the same shall be liable for damages;

4. If the deceased is married, the tombstone or mausoleum is deemed part of the funeral expense and chargeable against the community property or conjugal partnership property.

XV. USE OF SURNAMES

Q: What are the grounds for change of name which have been held valid?

A: CLEARED

1. One has **C**ontinuously used and been known since childhood by a Filipino name and was unaware of alien parentage;
2. The change results as a **L**egal consequence, as in legitimation;
3. There is a sincere desire to adopt a Filipino name to **E**rase signs of former alienage, all in good faith and without prejudicing anyone;
4. The change will **A**void confusion;
5. The name is:
   a. **R**idiculous,
   b. **E**xtremely difficult to write or pronounce,
   c. **D**ishonorable.

Q: The petition filed by the parents in behalf of their minor son Julian Lin Carulasan Wang sought the dropping of the latter's middle name, "Carulasan." The parents averred that their plan for Julian to study in Singapore and adjust to its culture necessitates the drop since in that country, middle names or the mother's surname are not carried in a person's name. They therefore anticipate that Julian may be subjected to discrimination on account of his middle name, which is difficult to pronounce in light of Singapore's Mandarin language which does not have the letter "R" but if there is, Singaporeans pronounce it as "L." Should the petition for the dropping of his middle name be granted?

A: No. Petitioners' justification for seeking the change in the name of their child, that of convenience, was characterized by the Supreme Court as amorphous, to say the least, and would not warrant a favorable ruling. As Julian is only a minor and has yet to understand and appreciate the value of any change in his name, it is best that the matter be left to his judgment and discretion when he reaches legal age.

The State has an interest in the names borne by individuals and entities for purposes of identification, and that a change of name is a privilege and not a right, such that before a person can be allowed to change the name given him either in his birth certificate or civil registry, he must show proper or reasonable cause, or any compelling reason which may justify such change. Otherwise, the request would be denied. *(In Re: Petition for change of name and/or correction/cancellation of entry in civil registry of Julian Lin Carulasan Wang, G.R. No. 159966, Mar. 30, 2005)*

Note: The touchstone for the grant of a change of name is that there be proper and reasonable cause for which the change is sought.

Q: Can a person change his registered first name and sex on the basis of a sex reassignment?

A: No. Before a person can legally change his given name, he must present proper or reasonable cause or any compelling reason justifying such change. In addition, he must show that he will be prejudiced by the use of his true and official name. Under the Civil Register Law, a birth certificate is a historical record of the facts as they existed at the time of birth. Thus, *the sex of a person is determined at birth,* visually done by the birth attendant (the physician or midwife) by examining the genitals of the infant. Considering that there is no law legally recognizing sex reassignment, the determination of a person's sex made at the time of his or her birth, if not attended by error, is immutable. *(Silverio v. Republic, G.R. No. 174689, Oct. 22, 2007)*

Q: What are the procedural requirements for a petition for change of name?

A:

1. 3 years residency in the province where the change is sought prior to the filing;
2. Must not be filed within 30 days prior to an election;
3. Petition must be verified.

Q: What is the Rule with regard to the use of surname by a child who is (1) legitimate, (2) legitimated, (3) adopted and (4) illegitimate?

A:

CHILD CONCERNED	SURNAME TO BE USED
Legitimate	Father's
Legitimated	
Adopted	Adopter's
Illegitimate	Mother's or Father's if requisites of R.A. 9255 are complied with
Conceived prior to annulment of marriage	Father's
Conceived after annulment of marriage	Mother's

FACTUAL CIRCUMSTANCE OF THE WIFE		SURNAME TO BE USED
Valid marriage (before husband dies) Art 370		1. first name and maiden name + husband's surname 2. first name + husband's surname 3. husband's full name + prefix indicating that she is his wife (*e.g.* Mrs.) 4. retain the use of her maiden name *use of husband's surname is not a duty but merely an option for the wife
Marriage is Annuled Art. 371	Wife is guilty party	Shall resume using her maiden name
	Wife is innocent	Choices: 1. resume using her maiden name 2. continue using husband's surname *Unless:* a. court decrees otherwise; b. she or the former husband is married again to another person
Legally Separated		Wife shall continue using the name and surname employed by her prior to the legal separation. Art. 372
Divorced (at least if they allow it later or for those who got divorced during the japanese occupation)		Choices same as widowed spouse. She may use her husband's surname. Art. 373

Q: Virginia Remo, a Filipino citizen, is married to Francisco Rallonza. In her passport, the following entries appear: "Rallonza" as her surname, "Maria Virginia" as her given name, and "Remo" as her middle name. Prior to the expiration of her passport, Virginia applied for the renewal of her passport with the DFA, with a request to revert to her maiden name and surname in the replacement passport. Virginia, relying on Article 370 of the Civil Code, contends that the use of the husband's surname by the wife is permissive rather than obligatory. Is Virginia correct?

A: No. A married woman has an option, but not a duty, to use the surname of the husband in any of the ways provided by Article 370 of the Civil Code. However, R.A. 8239 or the Philippine Passport Act of 1996 limits the instances when a married woman applicant may exercise the option to revert to the use of her maiden name. These are death of husband, divorce, annulment, and declaration of nullity of marriage.

In case of renewal of passport, a married woman may either adopt her husband's surname or continuously use her maiden name. However, once she opted to use her husband's surname in her original passport, she may not revert to the use of her maiden name, except if any of the four grounds provided under R.A. 8239 is present.

Further, even assuming R.A. 8239 conflicts with the Civil Code, the provisions of R.A. 8239 which is a special law specifically dealing with passport issuance must prevail over the provisions of the Civil Code which is the general law on the use of surnames. A basic tenet in statutory construction is that a special law prevails over a general law. *(Remo v. Sec. of Foreign Affairs, G.R. No. 169202, Mar. 5, 2010)*

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Q: What are the elements of usurpation of name?

A: AUD

1. **A**ctual use of another's name by the defendant;
2. Use is **U**nauthorized;
3. Use of another's name is to **D**esignate personality or identify a person.

Q: What are the remedies available to the person whose name has been usurped?

A:

1. *Civil* – insofar as private persons are concerned:
   a. Injunction
   b. Damages

2. *Criminal* – when public affairs are prejudiced.

Q: Is the use of another's name always actionable?

A: No. It is *not* actionable *when it is used as stage, screen or pen name.*

Provided: **GIM**

1. Use is in **G**ood faith;
2. No **I**njury is caused to the rights of the person whose name was used;
3. Use is **M**otivated by:
   a. Modesty
   b. desire to avoid unnecessary trouble
   c. other reason not prohibited by law or morals.

MIDDLE NAME

Note: A middle name has practical or legal significance as it serves to identify the maternal pedigree or filiation of a person and distinguishes him from others who may have the same given name and surname as he has. Art. 364 of the Civil Code states that legitimate and legitimated children shall principally use the surname of their father. Art. 174 of the Family Code gives legitimate children the right to bear the surnames of the father and mother, while illegitimate children, under Art. 176, as amended by R.A. 9255, shall use the surname of their mother, unless their father recognizes their filiation, in which case, they may bear the father's surname. In the case of these children, their registration in the civil registry requires that their middle names be indicated therein, apart of course from their given names and surnames. *(In re: Petition for Change of Name and/or Correction of Entry in the Civil Registry of Julian Lin Carulasan Wang, 454 SCRA 155)*

Q: Honorato filed a petition to adopt his minor illegitimate child Stephanie. Stephanie has been using her mother's middle name and surname. He prayed that Stephanie's middle name be changed from "Astorga" to "Garcia," which is her mother's surname and that her surname "Garcia" be changed to "Catindig," which is his surname. This the trial court denied. Was the trial court correct in denying Honorato's request for Stephanie's use of her mother's surname as her middle name?

A: No. The name of an individual has two parts – the given name or proper name and the surname or family name. The given name may be freely selected by the parents for the child, but the surname to which the child is entitled is fixed by law. The Civil Code (Arts. 364 to 380) is silent as to the use of a middle name. Even Art. 176 of the FC, as amended by R.A. 9255 (An Act Allowing Illegitimate Children to Use the Surname of Their Father) is silent as to what middle name a child may use.

An adopted child is entitled to all the rights provided by law to a legitimate child without discrimination of any kind, including the right to bear the surname of her father and her mother. As she had become a legitimate child on account of her adoption, it follows that Stephanie is entitled to utilize the surname of her father, Honorato Catindig, and that of her mother, Gemma Garcia.

Since there is no law prohibiting an illegitimate child adopted by her natural father, like Stepnanie, to use, as middle name her mother's surname, the High Court found no reason why she should not be allowed to do so.

Note: The Supreme Court, in granting the petition, predicated its ruling upon the statutory principle that adoption statutes, being humane and salutary, should be liberally construed to carry out the beneficent purposes of adoption. The modern trend is to consider adoption not merely as an act to establish a relationship of paternity and filiation, but also as an act which endows a child with legitimate status. *(In the Matter of the Adoption of Stephanie Nathy Astorga Garcia,G.R. No. 148311. Mar. 31, 2005)*

Q: Giana was born to Andy and Aimee, who at the time of Giana's birth were not married to each other. While Andy was single at that time, Aimee was still in the process of securing a judicial declaration of nullity on her marriage to her ex-husband. Gianna's birth certificate, which was signed by both Andy and Aimee, registered the status of Gianna as "legitimate", her surname carrying that of Andy's, and that her parents were married to each other.

Can a judicial action for correction of entries in Gianna's birth certificate be successfully maintained to:

a. Change her status from "legitimate" to "illegitimate"; and

A: A judicial action cannot be maintained to change the status of Gianna from "legitimate" to "illegitimate" child of Andy and Aimee. While it is true that Gianna is the biological daughter of Andy and Aimee conceived and born without marriage between them, Gianna is presumed, under the law as the legitimate child of Aimee and her husband. This filiation may be impugned only by the husband. To correct the status of Gianna in her birth certificate from "legitimate child of Andy and Aimee" to "illegitimate child of Andy and Aimee" will amount to indirectly impugning her filiation as the child of Aimee's husband in a proper action. What cannot be done directly cannot be done indirectly.

b. Change her surname from that of Andy's to Aimee's maiden surname?

A: A judicial action to change the surname of Gianna from the surname of Andy to the maiden surname of Aimee is also not allowed. Gianna, being presumed to be the legitimate child of Aimee's husband is required by law to be registered under the surname of Aimee's husband. While it is true that Gianna's registered surname is erroneous, a judicial action for correction of entry to change the surname of Gianna to that of Aimee's maiden surname will also be erroneous. A judicial action to correct an entry in the birth certificate is allowed to correct an error and not to commit another error.

Alternative Answers: It may be noted that the problems does not show whether Gianna was born while Aimee was living with her ex husband. Neither does it show who filed the judicial action to correct the entries.

If the problem is intended only for purpose of determining whether factual changes are in order, then the answers are:

a. A change from "legitimate" to "illegitimate" is proper upon proof of lack of marriage between Andy and Aimee.

b. If the child is considered illegitimate, then she should follow the surname of her mother.

Instead of a judicial action, can administrative proceedings be brought for the purpose of making the above corrections?

A: Under R.A. 9048, only typographical errors are allowed to be corrected administratively. The change of status from legitimate to illegitimate is not a typographical error and even assuming that it is, its administrative correction is not allowed under R.A. 9048. Typographical errors involving status, age, citizenship, and gender are expressly excluded from what may be corrected administratively.

The change of the surname is also not allowed administratively. R.A. 9048 provides for an administrative procedure for change of first name only and not for change of surname.

Assuming that Aimee is successful in declaring her former marriage void, and Andy and Aimee subsequently married each other, would Gianna be legitimated?

A: No, Gianna will not be legitimated. While the court may have declared the marriage void *ab initio* and, therefore, no marriage took place in the eyes of the law, Gianna will still not be legitimated. This is because at the time she was conceived and born her biological parents could not have validly married each other. For their marriage to be valid, the court must first declare the first marriage null and void. In the problem, Gianna was conceived and born before the court has decreed the nullity of her mother's previous marriage. **(2008 Bar Question)**

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XVI. ABSENCE

A. PROVISIONAL MEASURES IN CASE OF ABSENCE

Q: What is absence?

A: Special status of a person who has left his domicile and thereafter his whereabouts and fate are unknown, it being uncertain whether he is already dead or still alive. (*Olaguiviel v. Morada, 63 O.G. 4940*)

Q: What are the kinds of absence?

A:

1. Physical Absence
2. Legal Absence

Q: What is provisional absence?

A:

1. When a person disappears from his domicile
2. His whereabouts are unknown and:
   a. he did not leave any agent
   b. he left an agent but the agent's power has expired

Q: What is the remedy of an interested party, a relative or a friend of the absentee to protect the latter's interest?

A: They may petition the Court for the appointment of a representative to represent the absentee in all that may be necessary.

Q: What is the duty of the Court after appointing the representative?
A: The Court shall:

1. Take the necessary measures to safeguard the rights and interests of the absentee.
2. Specify the powers, obligations, and remuneration of the representative.
3. Regulate the powers, obligations and remuneration according to the circumstances by the rules concerning guardians.

Q: What is the order of preference in the appointment of a representative?
A:

1. Spouse present, except, when legally separated.
2. In the absence of spouse, any competent person.

Note: The administrator of the absentee's property shall be appointed in accordance with the same order.

B. DECLARATION OF ABSENCE

Q: When may absence be judicially declared?

A: It depends.

1. Where the absentee left no agent to administer his property- after two (2) years without any news about the absentee or since receipt of the last news.
2. Where the absentee has left a person to administer his property- after five (5) years.

Q: Who may ask for the declaration of absence?

A:

1. Spouse present
2. Heirs instituted in a will
3. Relatives who may succeed by intestacy
4. Persons who may have over the property of the absentee some right subordinated to the condition of his death.

Q: When shall the judicial declaration of absence take effect?

A: Six (6) months after its publication in a newspaper of general circulation.

C. ADMINISTRATION OF THE PROPERTY OF THE ABSENTEE

Q: When shall the administration of the property of the absentee cease?

A: ADD

1. When absentee **A**ppears personally or by means of an agent.
2. When **D**eath of the absentee is proved and his testate or intestate heirs appear.
3. When a third person appears, showing by a proper **D**ocument that he has acquired the absentee's property by purchase or other title.

D. PRESUMPTION OF DEATH

Q: What are the kinds of presumed death?

A:

1. Ordinary presumption- ordinary absence; absentee disappears under normal conditions without danger or idea of death.

2. Extraordinary presumption- qualified absence; disappearance with great probability of death.

Q: What are the rules in ordinary presumption of death?

A: In case of:

1. Disappearance upon or before reaching the age of seventy five (75) years:

a. **After an absence of seven (7) years?**
A: The absentee is presumed dead for all purposes except, succession.

b. **After an absence of ten (10) years?**
A: The absentee is presumed dead for all purposes including succession.

2. Disappearance at the age of seventy six (76) years or older**:**

a. **After an absence of five (5) years?**
A: The absentee is presumed dead for all purposes including succession.

Q: When is the absentee presumed to have died under an ordinary presumption?

A: At the end of the five, seven or ten year period as the case may be.

Q: Who are presumed dead for all purposes including the division of estate among heirs in case of extraordinary presumption of death?

A: VAD

1. Person on board a Vessel lost during a sea voyage, or an airplane which is missing, who has not been heard of for four (4) years since the loss of the vessel or airplane;
2. Person in the Armed forces who has taken pat in war, and has been missing for four (4) years;
3. Person who has been in Danger of death under other circumstances and his existence has not been known for four (4) years.

Q: When is the absentee presumed to have died under an extraordinary presumption?

A: At the time of disappearance. *i.e.* when the calamity took place.

Q: May a petition for the declaration of presumptive death be the subject of a judicial declaration, if it is the only question upon which a competent court has to pass?

A: No. Under the Civil Code, the presumption of death is established by law and no court declaration is needed for the presumption to arise. Moreover, It is clear that a judicial declaration that a person is presumptively dead, being a presumption juris tantum only, subject to contrary proof, cannot become final. If a judicial decree declaring a person presumptively dead, cannot become final and executory even after the lapse of the reglementary period within which an appeal may be taken, then a petition for such a declaration is useless, unnecessary, superfluous and of no benefit to the petitioner.

Q: Juana married Arturo on January 1973. However, because the latter was unemployed the spouses constantly argued . Thus, Arturo left the conjugal dwelling on October 1975. Years passed without any word from Arturo. Juana didn't hear any news of Arturo, his whereabouts or even if he was alive or not. Believing that Arturo was already dead, Juana married Dante on June 1986. Subsequently, however, Dante's application for naturalization filed with the United States Government was denied because of the subsisting marriage between Juana and Arturo. Hence, on March , 2007, Juana filed a Petition for declaration of presumptive death of Arturo with the RTC. The RTC dismissed the Petition on the ground that Juana was not able to prove the existence of a well-grounded belief that her husband Arturo was already dead as required under Article 41 of the Family Code.

a. Was the RTC correct in dismissing the petition based on Article 41 of the Family Code?

No. Since the marriages were both celebrated under the auspices of the Civil Code it is the Civil Code that applies to this case not Art. 41 of the FC. Under the Civil Code, proof of well founded belief is not required. Juana could not have been expected to comply with the requirement of proof of "well-founded belief" since the FC was

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not yet in effect at the time of her marriage to Dante. Moreover, the enactment of the FC in 1988 does not change this conclusion. The FC shall have no retroactive effect if it impairs vested rights. To retroactively apply the provisions of the FC requiring Juana to exhibit "well-founded belief" will, ultimately, result in the invalidation of her second marriage, which was valid at the time it was celebrated. Such a situation would be untenable and would go against the objectives that the Family Code wishes to achieve.

b. Will the petition for declaration of presumptive death, therefore, prosper?

No. Under the Civil Code, the presumption of death is established by law and no court declaration is needed for the presumption to arise. For the purposes of the civil marriage law, Art. 83 of the Civil Code, it is not necessary to have the former spouse judicially declared an absentee. The law only requires that the former spouse has been absent for seven consecutive years at the time of the second marriage, that the spouse present does not know his or her former spouse to be living, that such former spouse is generally reputed to be dead and the spouse present so believes at the time of the celebration of the marriage. Since death is presumed to have taken place by the seventh year of absence, Arturo is to be presumed dead starting October 1982.

Further, the presumption of death cannot be the subject of court proceedings independent of the settlement of the absentee's estate. In case the presumption of death is invoked independently of such an action or special proceeding there is no right to be enforced nor is there a remedy prayed for by the petitioner against her absent husband. Neither is there a prayer for the final determination of his right or status or for the ascertainment of a particular fact, for the petition does not pray for a declaration that the petitioner's husband is dead, but merely asks for a declaration that he be presumed dead because he had been unheard from in seven years. In sum, the petition for a declaration that the petitioner's husband is presumptively dead, even if judicially made, would not improve the petitioner's situation, because such a presumption is already established by law. (*Valdez v. Republic, G.R. No. 180863, September 8, 2009*)

Q: Discuss the distinctions between declaration of presumptive death for purpose of contracting subsequent marriage and opening succession and declaration of absence under Rules of Court.

A:

DECLARATION OF PRESUMPTIVE DEATH FOR PURPOSE OF:		DECLARATION OF ABSENCE
OPENING OF SUCCESSION	**CONTRACTING SUBSEQUENT MARRIAGE**	
Applicable laws		
Arts. 390-396, Civil Code	Arts. 41-44, Family Code	Rule 107, Rules of Court
Who may file petition		
Absentee's co-heirs, heirs, assigns, representative or successors-in-interest	Spouse present	1. Spouse present; 2. Heirs instituted in the will; 3. Relatives who will succeed by intestacy; or 4. Those who have over the property of the absentee some right subordinated to the condition of his death. *(Sec. 2, Rule 107)*
Purpose of petition		
To open succession	For the purpose of contracting subsequent marriage by spouse present	It is to appoint an administrator over the properties of the absentee. This is proper only where the absentee has properties to be administered

When to file petition		
GR: Absence of ten years. **XPN:** If he disappeared after the age of seventy-five years, an absence of five years shall be sufficient in order that his succession may be opened	**GR:** *4 consecutive years absence of spouse* – and the spouse present has a well-founded belief that the absent spouse was already dead **XPN:** *2 consecutive years absence of spouse* – In case of disappearance where there is danger of death under the circumstances set forth in the provisions of Article 391 of the Civil Code *(Art. 41, FC)*	*After 2 years:* 1. From his disappearance and without any news about the absentee; or 2. Of the last news about the absentee. *After 5 years*: If he left an administrator of his property. *(Sec. 2)*
Effectivity of declaration		
Upon institution of a summary proceeding in court.	Upon institution of a summary proceeding in court.	6 months after its publication of place and time of hearing in a newspaper of general circulation and in the Official Gazette. The order must also be recorded in the Civil Registry of the place where the absentee last resided. *(par. 2, Sec. 6, Rule 107)*
Grounds for termination of declaration		
Upon recording of the affidavit of reappearance.	Upon recording of the affidavit of reappearance of the absent spouse, unless there is a judgment annulling the previous marriage or declaring it void *ab initio.*	1. Absentee appears personally or through an agent; 2. Absentee's death is proved and heirs appear; or 3. Third person appears showing that he acquired title over the property of the absentee *(Sec. 8)*.
Effect of reappearance		
If the absentee appears, or without appearing his existence is proved, he shall recover his property in the condition in which it may be found, and the price of any property that may have been alienated or the property acquired therewith; but he cannot claim either fruits or rents. *(Art. 392, Civil Code)*	It does not automatically terminate the subsequent marriage. To cause the termination of the subsequent marriage, the reappearance must be made in an affidavit of reappearance and the recording of a sworn statement of the fact and circumstances of such reappearance in the civil registry. If, however, there was previous judgment annulling or declaring the prior marriage void, then the reappearance of the absent spouse, the execution of the affidavit, and the recording of the sworn statement shall not result to the termination of the subsequent marriage.	The trustee or administrator shall cease in the performance of his office, and the property shall be placed at the disposal of those who may have a right thereto.

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XVII. CIVIL REGISTRAR

A. ARTICLE 407-413

Q: What is the civil register?

A: Refers to the various registry books and related certificates and documents kept in the archives of the local civil registry offices, Philippine Consulate, and of the Office of the Civil Registrar General.

Q: What shall be recorded in the civil register?

A: The following, concerning the civil status of persons:

1. Acts
2. Events
3. Judicial decrees

Q: What is civil status?

A: The circumstances affecting the legal situation or sum total of capacities or incapacities of a person in view of his age, nationality and family membership (Beduya v. Republic, G.R. L-71639, May 29, 1964). It also includes all his personal qualities and relations, more or less permanent in nature, not ordinarily terminable at his own will, such as his being legitimate or illegitimate, or his being married or not.

Q: What are the acts authorized to be entered in the civil register?

A:

1. legitimation
2. acknowledgment of illegitimate children
3. naturalization

Q: What are the events authorized to be entered in the civil register?

A:

1. births
2. marriages
3. naturalization
4. deaths

Q: What are the judicial decrees authorized to be entered in the civil register?

A:

1. legal separations
2. annulments of marriage
3. declarations of nullity of marriage
4. adoption
5. naturalization
6. loss or recovery of citizenship,
7. civil interdiction
8. judicial determination of filiation
9. changes of name *(Silverio v. Republic, G.R. No. 174689, October 22, 2007*)

Q: What is the nature of the books making up the civil register and the documents relating thereto?

A: The books and documents shall be considered public documents and shall be prima facie evidence of the facts therein contained.

B. RA 9048

Q: When did R.A. 9048 take effect?

A: March 22, 2001.

Q: What is the rule with regard to changing or correction of entries in the civil register?
A:

GR: No entry in a civil register shall be changed or corrected without a judicial order.
XPN:

1. clerical or typographical errors and

2. change of first name or nickname which can be corrected or changed administratively by the concerned city or municipal civil registrar or consul general in accordance with the provisions of RA 9048 (Clerical Error Law).

Q: What is a clerical or typographical error?

A: Refers to a mistake committed in the performance of clerical work in writing , copying, transcribing or typing an entry in the civil register that is harmless and innocuous, such as misspelled name or misspelled place of birth or the like, which is visible to the eyes or obvious to the understanding, and can be corrected or changed only by reference to other existing record or records: Provided, that no correction must involved the change of , nationality, age, status or sex of the petitioner. (*Section 2(c), RA 9048*)

C. RULE 108, RULES OF COURT

Q: May clerical or typographical errors be corrected under Rule 108 of the Rules of Court?

A: No. The correction or change of clerical or typographical errors can now be made through administrative proceedings and without the need for a judicial order. In effect, RA 9048 removed from the ambit of Rule 108 of the Rules of Court the correction of such errors. Rule 108 now applies only to substantial changes and corrections in entries in the civil register. (*Silverio v. Republic, G.R. No. 174689, October 22, 2007*)

Q: What is a first name?

A: Refers to a name or nickname given to a person which may consist of one or more names in addition to the middle and last names.

Q: John Lloyd Cruzada filed a petition for the change of his first name and sex in his birth certificate in the RTC. He alleged that his name was registered as "John Lloyd Cruzada" in his certificate of live birth. His sex was registered as "male". Further, he alleged that he is a male transsexual. Prior to filing the petition, he underwent sex reassignment surgery Thailand. Thus, he seeks to have his name in his birth certificate changed from "John Lloyd" to "Joanna," and his sex from "male" to "female" on the ground of sex reassignment pursuant to Articles 407 to 413 of the Civil Code, Rules 103 and 108 of the Rules of Court and RA 9048.

1. **May a person's first name be changed on the ground of sex reassignment?**

A: No. The State has an interest in the names borne by individuals and entities for purposes of identification. A change of name is a privilege, not a right. Petitions for change of name are controlled by statutes. RA 9048 now governs the change of first name. RA 9048 provides the grounds for which change of first name may be allowed:

(1) The petitioner finds the first name or nickname to be ridiculous, tainted with dishonor or extremely difficult to write or pronounce;
(2The new first name or nickname has been habitually and continuously used by the petitioner and he has been publicly known by that first name or nickname in the community; or
(3)The change will avoid confusion.

RA 9048 does not sanction a change of first name on the ground of sex reassignment. Rather than avoiding confusion, changing petitioner's first name for his declared purpose may only create grave complications in the civil registry and the public interest. Before a person can legally change his given name, he must present proper or reasonable cause or any compelling reason justifying such change. In addition, he must show that he will be prejudiced by the use of his true and official name. In this case, he failed to show, or even allege, any prejudice that he might suffer as a result of using his true and official name.

2. **May a person's sex as indicated in his certificate of birth be changed on the ground of sex reassignment?**

A: No. Under RA 9048, a correction in the civil registry involving the change of sex is not a mere clerical or typographical error. It is a substantial change for which the applicable procedure is Rule 108 of the Rules of Court. The entries correctable under Rule 108 of the Rules of Court are those provided in Articles 407 and 408 of the Civil Code. These acts, events and judicial decrees provided in Articles 407 and 408 of the Civil Code produce legal consequences that touch upon the legal capacity, status and nationality of a person. Their effects are expressly sanctioned by the laws. In contrast, sex reassignment is not among those acts or events mentioned in Article 407. Neither is it recognized nor even mentioned by any law, expressly or impliedly. A person's sex is an essential factor in marriage and family relations. It is a part of a person's legal capacity and civil status. In this connection, Article 413 of the Civil Code provides that, all other matters pertaining to the registration of civil status shall be governed by special laws. But there is no such special law in the Philippines governing sex reassignment and its effects. (*Silverio v. Republic, G.R. No. 174689, October 22, 2007*)

Note: The jurisdiction over applications for change of first name is now primarily lodged with the city or municipal civil registrar or consul general concerned. The intent and effect of the law is to exclude the change of first name from the coverage of Rules 103 (Change of Name) and 108 (Cancellation or Correction of Entries in the Civil Registry) of the Rules of Court, until and unless an administrative petition for change of name is first filed and subsequently denied. Hence, the remedy and the proceedings regulating change of first name are primarily administrative in nature, not judicial. (Silverio v. Republic, G.R. No. 174689, October 22, 2007)

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PROPERTY

I. CHARACTERISTICS

Q: What is property?

A: It is an object or a right which is appropriated or susceptible of appropriation by man, with capacity to satisfy human wants and needs (*Pineda Property, p. 1, 1999 Ed*)

Q: What are the requisites for a thing to be considered as property?

A: USA

1. ***U****tility* – capability to satisfy a human need
2. ***S****ubstantivity/Individuality* – independent existence
3. ***A****ppropriability* – susceptibility to ownership/possession, even if not yet actually appropriated

Q: What properties are not susceptible of appropriation?

A:

1. Common things (*res commones)*

   XPN: Those that may be appropriated under certain conditions in a limited way.

   e.g. Electricity

2. Not susceptible due to physical impossibility
   e.g. Sun

3. Not susceptible due to legal impossibility
   e.g. Human body

II. CLASSIFICATION OF PROPERTY

Q: What are the classifications of property?

A:

1. *As to mobility*
   a. Immovable or real property
   b. Movable or personal property

2. *As to ownership*
   a. Public dominion
   b. Private ownership

3. *As to alienability*
   a. Alienable
   b. Inalienable

4. *As to individuality*
   a. Specific property
   b. Generic property

5. *As to susceptibility to touch*
   a. Tangible
   b. Intangible

6. *As to susceptibility to substitution*
   a. Fungible
   b. Non fungible

7. *As to accession*
   a. Principal
   b. Accessory

A. HIDDEN TREASURE

Q: What is the concept of hidden treasure?

A: HUM

1. **H**idden and unknown
2. **U**nknown owner
3. Consists of **M**oney, jewels, or other precious objects. *(Not raw materials)*

Q: What is the meaning of "other precious objects"?

A: Under the *ejusdem generis* rule, the phrase should be understood as being similar to money or jewelry.

Q: Is oil or gold considered as hidden treasure?

A: No, these are natural resources.

Q: What is the rule regarding discovery of hidden treasure?

A:

GR: If the finder is the owner of the land, building, or other property where it is found, the entire hidden treasure belongs to him.
XPN: If the finder is not the owner or is a stranger *(includes the lessee or usufructuary)*, he is entitled to ½ thereof. (*Art 566*, NCC)

Q: What is the effect if the finder is married?

A: If the finder is married he or she gets one half of the treasure or its value his or her spouse is entitled to share one-half of that share it being a conjugal property. *(Art. 117, par. 4, FC)*

Q: When is the finder entitled to any share in the hidden treasure?

A: Requisites: **ACTA**

1. Discovery was made on the property of **A**nother, or of the State or any of its political subdivisions;
2. Made by **C**hance; and
3. He is not a **T**respasser or **A**gent of the landowner. *(Art. 438 par. 2, NCC)*

Note: 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 in conformity with the rule stated. (*Art. 438, NCC*)

Q: What is the meaning of 'By Chance"?

A: The finder had no intention to search for the treasure. There is no agreement between the owner of the property and the finder for the search of the treasure. *(Pineda Property, p. 86, 1999 ed)*

Q: Adam, a building contractor, was engaged by Blas to construct a house on a lot which he (Blas) owns. While digging on the lot in order to lay down the foundation of the house, Adam hit a very hard object. It turned out to be the vault of the old *Banco de las Islas Filipinas.* Using a detonation device, Adam was able to open the vault containing old notes and coins which were in circulation during the Spanish era. While the notes and coins are no longer legal tender, they were valued at P 100 million because of their historical value and the coins' silver and nickel content. The following filed legal claims over the notes and coins:

- **i) Adam, as finder;**
- **ii) Blas, as owner of the property where they were found;**
- **iii) Bank of the Philippine Islands, as successor-in-interest of the owner of the vault; and**
- **iv) The Philippine Government because of their historical value.**

Q: Who owns the notes and coins?

A: Hidden treasure is money jewelry or other precious objects the ownership of which does not appear (Art. 439, CC). The vault of the Banco de las Islas Filipinas has been buried for about a century and the Bank of the Philippine Islands cannot succeed by inheritance to the property of Banco de las Islas Filipinas. The ownership of the vault, together with the notes and coins can now legally be considered as hidden treasure because its ownership is no longer apparent. The contractor, Adams, is not a trespasser and therefore entitled to one-half of the hidden treasure and Blas as owner of the property, is entitled the other half (*Art. 438, NCC*). Since the notes and coins have historical value, the government may acquire them at their just price which in turn will be divided equally between Adam and Blas (Art. 438, par.3, CC)

Alternative Answer: The Banco de las Islas Filipinas is the owner of the vault. The finder and the owner of the land cannot share in the notes and coins, because they are not buried treasure under the law, as the ownership is known. Although under Art. 720 of the Civil Code the finder shall be given a reward of one-tenth of the price of the thing found, as a lost movable, on the principle of quasi-contract.

However, the notes and coins may have become *res nullius* considering that Banco de las Islas Filipinas is no longer a juridical person and has apparently given up looking for them and Adam, the first one to take possession with intent to possess shall become the sole owner.

Q: Assuming that either or both Adam and Blas are adjudged as owners, will the notes and coins be deemed part of their absolute community or conjugal partnership of gains with their respective spouses?

A: Yes. The hidden treasure will be part of the absolute community or conjugal property, of the respective marriages (Arts. 91, 93 and 106, Family Code).

Alternative Answer: It is not hidden treasure and therefore, not part of the absolute or conjugal partnership of the spouses. But the finder of the lost movable, then his reward equivalent to one-tenth of the value of the vault's contents, will form part of the conjugal partnership. If the government wants to acquire the notes and coins, it must expropriate them for public use as museum pieces and pay just compensation. **(2008 Bar Question)**

B. RIGHT OF ACCESSION

Q: What is the right of accession?

A: That right of ownership of which an owner of a thing has over the products of said thing (*accession discreta*), as well as to all things inseparably attached or incorporated thereto

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whether naturally or artificially (*accession continua*). *(Pineda Property, p. 88, 1999 ed)*

1. FRUITS

Q: What is the rule on the owners right of accession with respect to what is produced by his property?

A: To the owner belongs the:
1. natural fruits;
2. industrial fruits;
3. civil fruits. (*Art. 441, NCC*)

NOTE: Natural fruits are the spontaneous products of the soil, and the young and other products of animals.

Industrial fruits are those produced by lands of any kind through cultivation or labor.

Civil fruits are the rents of buildings, the price of leases of lands and other property and the amount of perpetual or life annuities or other similar income.

Q: What is the obligation of the owner who receives the fruit from a third person?

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

NOTE: 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.

2. ACCESSION; IMMOVABLE PROPERTY FRUITS

Q: What is the rule if the planter and owner of the land are different?

A: As to:

Gathered Fruits		
	Planter in GF	***Planter in BF***
Planter	Keeps fruits	Reimbursed for expenses for production, gathering, and preservation
Owner	No necessity to reimburse the planter of expenses since he retains the fruits	Gets fruits, pay planter expenses
Standing Crops		
	Planter in GF	***Planter in BF***
Planter	Reimbursed for expenses, for production, gathering, and preservation.	Loses everything. No right of reimbursement
Owner	Owns fruits provided he pays planter expenses, for production, gathering, and preservation.	Owns fruits

Q: Give the rule when the land owner is the builder, planter or sower.

A:

Land Owner **and Builder, Planter or Sower**	**Owner of Materials**
Good Faith	***Good Faith***
Acquire building etc. after paying indemnity for value of materials.	1. Remove materials if w/o injury to works, plantings or constructions; *or* 2. Receive indemnity for value of materials
Bad Faith	***Good Faith***
Acquire building etc. after paying value of materials AND indemnity for damages, subject to the right of the owner of materials to remove	1. Remove materials, w/ or w/o injury *and* be indemnified for damages; *or* 2. Be indemnified for value of materials *and* damages
Good Faith	***Bad Faith***
Acquire w/o paying indemnity *and* right to damages.	Lose materials w/o being indemnified *and* pay damages
Bad Faith	***Bad Faith***
As though both acted in good faith (*in pari delicto*)	

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Q: Give the rule when land owner *is <u>not</u> builder, planter or sower.*

A:

Land Owner	Builder, Planter, Sower and Owner of Materials
Good Faith	***Good Faith***
LO has option to: 1. Acquire improvements after paying indemnity which could either be: a. Original costs of improvements b. Increase in the value of the whole. 2. Sell the land to builder and planter or collect rent from sower unless the value of the land is considerably greater than the building etc., in which case, the builder and planter shall pay rent under the terms fixed by the parties.	In case land owner exercises (1), builder has the right to retain until indemnity is paid and cannot be required to pay rent.
Good Faith	***Bad Faith***
1. Option to: a. Acquire improvements without paying indemnity and collect damages. b. Sell the land to builder and planter or rent it to the sower, and collect damages in both cases. c. Order the demolition of work or restoration to former condition and collect damages in both cases. 2. Pay necessary expenses for preservation.	1. Lose improvements without right to be indemnified. 2. Recover necessary expenses for preservation of land. 3. Pay damages to land owner.
Bad Faith	***Good Faith***
1. Land owner must indemnify builder, planter, sower for improvements and pay damages. 2. Cannot compel Builder, planter and sower to buy land.	1. Receive indemnity for improvements *and* receive damages; *or* 2. Remove them in any event *and* receive damages
Bad Faith	***Bad Faith***
As though both acted in good faith (*in pari delicto*)	

Q: Give the rule when the land owner, builder, planter, sower and owner of materials are different persons.

A:

Land Owner	Builder, Planter, Sower	Owner of Materials
Good Faith	***Good Faith***	***Good Faith***
1. Acquire improvements and pay indemnity to builder, planter, sower and be subsidiarily liable to owner of materials for value of materials 2. Either a. Sell the land to builder and planter *except* if its value is considerably more. b. Rent to sower.	1. Right of retention for necessary and useful expenses *and* 2. Pay value of materials to its owner.	1. Collect value of materials primarily from BPS and subsidiarily from LO if former is insolvent 2. Remove only if w/o injury
Good Faith	***Good Faith***	***Bad Faith***
1. Option to: a. Acquire improvements and pay indemnity to builder, planter, sower. b. i. Sell to builder, planter except if the value of land is considerably more, then, forced lease. ii. Rent to sower 2. Without subsidiary liability for cost of materials.	1. Right of retention for necessary and useful expenses. 2. Keep building etc. without indemnity to owner of materials and collect damages from him.	1. Lose materials without right to indemnity. 2. Pay damages.

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Good Faith	***Bad Faith***	***Bad Faith***
1. Option to: a. Acquire improvements without paying indemnity and collect damages. b. Demolition/ restore plus damages. c. Sell to builder,planter or collect rent from sower plus damages. 2. Pay necessary expenses to builder, planter, sower	1. Recover necessary expenses for land preservation. 2. Loses improvements without right to indemnity from land owner unless the latter sells the land.	1. Recover value from builder, planter, sower (*in pari delicto)* 2. If builder, planter, sower acquired improvements, remove materials if possible without injury. 3. No action against land owner and may be liable to the latter for damages.
Bad Faith	***Bad Faith***	***Bad Faith***
Same as though both acted in good faith *(in pari delicto)*		
Bad Faith	***Good Faith***	***Good Faith***
1. Acquire improvements after paying indemnity and damages to builder, planter, sower, unless the latter decides to remove.	1. Remove improvements 2. Be indemnified for damages in any event	1. Remove materials if possible without injury. 2. Collect value of materials primarily from builder, planter, sower, subsidiarily from land owner.
Bad Faith	***Bad Faith***	***Good Faith***
1. Acquire improvements after indemnity, subsidiarily liable to owner of materials. 2. a. Sell to builder, planter except if value of land is more. b. Rent to sower.	1. Right of retention for necessary expenses 2. Pay value of materials to owner of materials and pay him damages.	1. Collect value of materials primarily from builder, planter, sower, subsidiarily from land owner.

Good Faith	*Bad Faith*	*Good Faith*
1. Option to: a. Acquire without paying indemnity and collect damages. b. Sell to builder, planter or rent to sower and collect damages 2. Pay necessary expenses to builder, planter, sower. 3. Subsidiarily liable to owner of materials.	1. Recover necessary expenses. 2. Lose improvements without right of indemnity from land owner unless the latter sells the land.	1. Collect value of materials and damages from builder, planter, sower. 2. Remove materials in any event if builder, planter, sower.
Bad Faith	***Good Faith***	***Bad Faith***
Acquire improvements and pay indemnity and damages to builder, planter, sower unless the latter decides to remove.	1. Indemnity for damages 2. Remove improvements in any event.	No indemnity, loses materials.

Q: When can the owner of the land appropriate as his own the works, sowing or planting of the builder, planter, sower respectively.

A: Only when the builder, planter, sower believes that he has the right to so build, plant, or sow because he thinks he owns the land or believes himself to have a claim of title. *(Morales v. CA, G.R. No. 12196, Jan.28, 1998)*

Note: Improvements made prior to the annotation of the notice of *lis pendens* are deemed to have been made in good faith. After such annotation, the builder can no longer invoke the rights of a builder in good faith. (*Carrascoso v. CA, G.R. No. 123672, Dec. 14, 2005)*

Q: May the owner of the land choose neither to pay the building nor to sell the land and demand the removal of the structures and restoration of possession of the lot. Decide.

A: The owner has the option of paying the value of the building or selling the land. He cannot refuse either to pay or sell and compel the owner of the building to remove it from the land where it is erected. He is entitled to such removal only when, after having chosen to sell the land, the other party fails to pay for the same. (*Ignacio v. Hilario, 76 Phil 606, 1946*)

Q: Felix cultivated a parcel of land and planted sugar cane, believing it to be his own. When the crop was eight months old, and harvestable after two more months, a resurvey of the land showed that it really belonged to Fred. What are the options available to Fred?

A: As to the pending crops planted by Felix in good faith, Fred has the option of allowing Felix to continue the cultivation and to harvest the crops, or to continue the cultivation and harvest the crops himself. In the latter option, however, Felix shall have the right to a part of the expenses of cultivation and to a part of the net harvest, both in proportion to the time of possession. (*Art. 545*) (**2000 Bar Question)**

Q: 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.

1. What are the respective rights of X and Y with respect to X's house?

A: The rights of Y, as owner of the lot, and of X, as builder of a house thereon, are governed by Art. 448 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

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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.

2. **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?**

A: 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. **(1999 Bar Question)**

Q: Pecson owned a commercial lot on which he built a building. For failure to pay realty taxes, the lot was sold at public auction to Nepomuceno, who in turn sold it to the spouses Nuguid. The sale, however, does not include the building. The spouses subsequently moved for the delivery of possession of the said lot and apartment. Pecson filed a motion to restore possession pending determination of the value of the apartment. May Pecson claim payment of rentals?

A: Yes, Pecson is entitled to rentals by virtue of his right of retention over the apartment. The construction of the apartment was undertaken at the time when Pecson was still the owner of the lot. When the Nuguids became the uncontested owner of the lot, the apartment was already in existence and occupied by tenants.

Art. 448 does not apply to cases 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. To do otherwise would unjustly enrich the new owner of the land.

Note: While the law aims to concentrate in one person the ownership of the land and the improvements thereon in view of the impracticability of creating a state of forced co-ownership, it guards against unjust enrichment insofar as the good-faith builder's improvements are concerned. The right of retention is considered as one of the measures to protect builders in good faith.

Q: Pending complete reimbursement, may the spouses Nuguid benefit from the improvement?

A: No. Since spouses Nuguid opted to appropriate the improvement for themselves when they applied for a writ of execution despite knowledge that the auction sale did not include the apartment building, they could not benefit from the lot's improvement until they reimbursed the improver in full, based on the current market value of the property. *(Pecson v. CA, G.R. No. 115814, May 26, 1995)*

Q: 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.

1. Who is correct, Pedro or Pablo?

A: Pablo is correct. Under Art. 448 in relation to Art. 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.

Note: The case of *Pecson v. CA, G.R. No. 115814, May 26, 1995* is not applicable.

2. In the meantime that Pedro is not yet paid, who is entitled to the rentals of the building, Pedro or Pablo?

A: 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. **(2000 Bar Question)**

Q: What is the effect if the building built on the land owned by another is sold to pay for the land's value?

A: The builder becomes part-owner of the land.

Q: When may the land owner compel the removal of the building built on his land?

A: The landowner may not seek to compel the owner of the building to remove the building from the land after refusing to pay for the building or to sell the land. He is entitled to such removal *only* when, after having chosen to sell the land, the other party fails to pay for said land. *(Ignacio v. Hilario, G.R. L-175, April 30, 1946)*

Q: What is the rule when the land's value is considerably more than the improvement?

A: Land owner cannot compel the builder to buy the land. In such event, a *"forced lease"* is created and the court shall fix the terms thereof in case the parties disagree thereon *(Depra v. Dumalo, No. L-57348, May 16, 1985)*.

Q: What is the rule when land owner sells the land to a 3rd person who is in bad faith?

A: Builder must go against the 3rd person *but* if the latter has paid the land owner, a case against such land owner may still be filed by the builder and the 3rd person may file a 3rd party complaint against land owner.

Q: Does the land owner have the right of removal or demolition?

A:

GR: No.

XPN: Option exercised was compulsory selling and builder failed to pay.

Q: What is the recourse left to the parties where the builder fails to pay the value of the land?

A: While the Civil Code is silent on this point, guidance may be had from these decisions:

1. In *Miranda v. Fadullon, G.R. No. L-8220*, Oct. 29, 1955, the builder might be made to pay rental only, leave things as they are, and assume the relation of lessor and lessee;

2. In *Ignacio v. Hilario, G.R. L-175, April 30, 1946,* owner of the land may have the improvement removed; or

3. In *Bernardo v. Bataclan, G.R. No. L-44606,* Nov. 28, 1938, the land and the improvement may be sold in a public auction, applying the proceeds first to the payments of the value of the land, and the excess if any, to be delivered to the owner of the house in payment thereof. (*Filipinas College Inc. v. Timbang, G.R. No. L-12812, Sept. 29, 1959)*

Q: Will the land owner upon demand for payment automatically become the owner of the improvement for failure of the builder to pay for the value of the land?

A: No. There is nothing in Art. 448 and 546 which would justify the conclusion that upon failure of the builder to pay the value of the land, when such is demanded by the landowner, the land owner becomes automatically the owner of the improvement under Art. 445.

Q: The Church, despite knowledge that its intended contract of sale with the National Housing Autority had not been perfected, proceeded to introduce improvements on the disputed land. On the other hand, NHA knowingly granted the Church temporary use of the subject properties and did not prevent the Church from making improvements thereon. Did the Church and NHA act in bad faith?

A: Yes. The Church and the NHA, both acted in bad faith, hence, they shall be treated as if they were both in good faith. *(National Housing Authority v. Grace Baptist Church, G.R. No. 156437, Mar. 1, 2004)*

USUFRUCTUARY

Q: What are the rights of the usufruct over improvements he introduced on the property held in usufruct?

A:

GR: The usufructuary is not entitled to indemnity for the expenses he had incurred in the making of the improvements.

XPN: He may remove the improvements even against the will of the owner. Provided, that no damage would be caused to the property. (*Art. 579, NCC*)

Note: The usufructuary may introduce useful or luxurious improvements but is prohibited from altering the form and substance of the property

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Note: If the usufructuary has not chosen to remove the improvements, he may not be compelled to do so (*Pineda Property, p. 329, 1999 ed)*

Q: What if the improvements cannot be removed without causing damage to the property?

A: The usufructuary can set-off the value of the improvements against the amount of the damage he had caused to the property. (*Art. 580, NCC*)

3. LAND ADJOINING RIVER BANKS

A. ALLUVION

Q: What is alluvium or alluvion?

A: It is the gradual deposit of sediment by natural action of a current of fresh water *(not sea water)*, the original identity of the deposit being lost. Where is by sea water, it belongs to the State. *(Government of Philippine Islands v. Cabangis,* G.R. No. L-28379, Mar. 27, 1929)
Note: *Art. 457* states "To the owners of the lands adjoining the banks of the rivers belong the accretion which they gradually receive from the effects of the current of the waters.

Q: Distinguish accretion from alluvium?

A: Accretion is the process whereby the soil is deposited while alluvium is the soil deposited.

Q: What are the requisites of alluvium?

A: GMA

1. Deposit is **G**radual and imperceptible
2. **M**ade through the effects of the current of the water
3. The land where the accretion takes place is **A**djacent to the banks of the river

Q: What is the effect if all the requisites are present?

A: The riparian owner is automatically entitled to the accretion.

Q: When does the alluvion start to become the property of the riparian owner?

A: From the time that the deposit created by the current of water becomes manifest. *(Heirs of Navarro v. IAC, GR. No. 68166, Feb. 12, 1997)*

Q: To what does the rule on alluvion not apply?

A: The rule does not apply to man-made or artificial accretions to lands that adjoin canals or esteros or artificial drainage system *(Ronquillo vs. CA, G.R. No 43346, Mar. 20, 1991).*

Q: What if the deposits accumulate, not through the effects of the current of the water, but because of the constructions made by the owner purely for defensive purposes against the damaging action of the water?

A: The deposits are still deemed to be alluvion and will belong to the riparian owner.

Q: What if the deposit is brought about by sea water?

A: It belongs to the State and forms part of the public domain.

Q: Must alluvial deposits be registered?

A: Yes, though automatically it is owned by the riparian owner. *(Heirs of Navarro v. IAC, G.R. No. 68166, Feb. 12, 1997)*

Q: What if the riparian owner fails to register the deposits within the prescriptive period?

A: Failure to register the alluvial deposit acquired by accretion for a period of *50 years* subjects said accretion to acquisition thru prescription by third persons. *(Reynante v. CA, G.R. No. 95907, Apr. 8, 1992)*

Note: Registration under the Torrens System does not protect the riparian owner against the diminution of the area of his registered land through gradual changes in the course of an adjoining stream

Q: What are the reasons for granting a riparian owner the right to alluvion deposited by a river?

A:

1. To compensate him for:
   a. danger of loss that he suffers due to the location of his land
   b. for the encumbrances and other easements on his land
2. To promote the interests of agriculture as he is in the best position to utilize the accretion.

B. CHANGE INTHE COURSE OF RIVER

Q: What happens when a river changes its course by natural causes and its bed is formed on a private estate?

A: It becomes of public dominion whether it is navigable or floatable or not.

Q: What are the requisites?

A: NAPA

1. There must be a **N**atural change in the course of the waters of the river; otherwise, the bed may be the subject of a State grant *(Reyes-Puno, p.54)*
2. The change must be **A**brupt or sudden;
3. The change must be **P**ermanent;

Note: the rule does not apply to temporary overflowing of the river.

4. There must be **A**bandonment by the owner of the bed.

Note: Abandonment pertains to the decision not to bring back the river to the old bed. *(Reyes-Puno, p.53)*

Q: What is the effect when the river bed is abandoned?

A: Once the river bed has been abandoned, the owners of the invaded land become owners of the abandoned bed to the extent as provided by Art. 462. No positive act is needed on their part, as it is subject thereto *ipso jure* from the moment the mode of acquisition becomes evident.

Note: The rule on abandoned river bed does not apply to cases where the river simply dries up because there are no persons whose lands are occupied by the waters of the river.

C. AVULSION

Q: What is avulsion?

A: It is the deposit of known (identifiable) portion of land detached from the property of another which is attached to the property of another as a result of the effect of the current of a river, creek or torrent.

Note: Art. 459 states that "Whenever the current of a river, creek, or torrent segregates from an estate on its banks a known portion of land and transfers it to another estate, the owner of the land to which the segregated portion belonged retains the ownership of it, provided he removes it within 2 years.

Q: Distinguish alluvium from avulsion.

A:

ALLUVIUM	AVULSION
Gradual and imperceptible	Sudden or abrupt process
Soil cannot be identified	Identifiable and verifiable
Belongs to the owner of the property to which it is attached	Belongs to the owner from whose property it was detached
Merely an attachment	Detachment followed by attachment

Q: What are the requisites of avulsion?

A: CAP

1. Transfer is caused by the **C**urrent of a river, creek, or torrent.
2. Transfer is sudden or **A**brupt
3. The **P**ortion of the land transported is known or identifiable.

Q: What if land from one tenement is transferred to another by forces of nature other than the river current?

A: By analogy, it can still be considered as an avulsion.

Q: What is the rule on acquisition of titles over an avulsion?

A:

GR: Original owner retains title.

XPNs: The owner must remove (not merely claim) the transported portion within *2 years* to retain ownership, otherwise, the land not removed shall belong to the owner of the land to which it has been adjudicated in case of:

1. Abandonment; *or*
2. Expiration of 2 years, whether the failure to remove be voluntary or involuntary, and irrespective of the area of the portion known to have been transferred.

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4. ISLANDS

Q: What are the rules on ownership with regard to formation of islands?

A:

LOCATION	OWNER
If formed on the sea	
W/in territorial waters	State
Outside territorial waters	First country to occupy
If formed on lakes or navigable/ floatable rivers	
	State
If formed on non-navigable/ floatable rivers	
Nearer in margin to one bank	Owner of nearer margin is the sole owner
If equidistant	Island divided longitudinally in halves

Q: Eduave is the owner of land forming part of an island in a non-navigable river. Said land was eroded due to a typhoon, destroying the bigger portion thereof and improvements thereon. Due to the movements of the river deposits on the part of the land that was not eroded, the area was increased. Later, Eduave allowed Dodong to introduce improvements thereon and live there as a caretaker. However, Dodong however later denied Eduave's claim of ownership so the latter filed action to quiet title over the property. Who has a better right to the land?

A: Eduave. Clearly, the land in question is an island that appears in a non-floatable and non-navigable river, and it is not disputed that Eduave is the owner of the parcel of land along the margin of the river and opposite the island. Applying Art. 465, the island belongs to the owner of the parcel of land nearer the margin. More accurately, because the island is longer than the property of Eduave, he is deemed *ipso jure* the owner of that portion which corresponds to the length of his property along the margin of the river. If however, the riparian owner fails to assert his claim thereof, the same may yield to the adverse possession of the third parties, as indeed even accretion to land titled under the Torrens system must itself still be registered. Dodong thus may acquire said land by acquisitive prescription. But here, Dodong's possession cannot be considered to be in good faith, so 30 years of possession is needed. *(Jagualing v. CA, G.R. No. 94283, Mar. 4, 1991)*

Note: There is no accession when islands are formed by the branching of a river; the owner retains ownership of the isolated piece of land.

C. BY OBJECT

1. REAL OR IMMOVABLE

Q: What are the categories of immovable property?

A: Real Property by: NIDA

1. ***N****ature* – cannot be carried from place to place.
2. ***I****ncorporation* – those which are attached to an immovable in a fixed manner and considered as an integral part thereof, irrespective of its ownership.
3. ***D****estination* – things placed in buildings or on lands by the owner of the immovable or his agent in such a manner that it reveals the intention to attach them permanently thereto.
4. ***A****nalogy* – classified by express provision of law.

IMMOVABLE BY NATURE &

BY INCORPORATION

Par. 1, Art. 415. Land, buildings, roads and constructions of all kinds adhered to the soil.

Q: Are *barong-barongs* immovable property?

A: No. They are not permanent structures but mere superimpositions on land.

Q: Where buildings are sold to be demolished immediately, are the buildings immovable or movable?

A: The sale involves movable property. What are really sold are the materials.

Q: What is the effect of demolition of a house?

A: Once a house is demolished, its character as an immovable ceases. This is because a house is classified as an immovable property by reason of its adherence to the soil on which it is built. *(Bicerra v. Teneza, G.R. No. L-16218, Nov. 29, 1962)*

Q: May a building be mortgaged apart from the land on which it was built?

A: While it is true that a mortgage of land necessarily includes, in the absence of stipulation of the improvements thereon, buildings, still a building by itself may be mortgage apart from the land on which it has been built. Such a mortgage would still be a real estate mortgage for the building would still be considered immovable property even if dealt with separately and apart from the land. *(Yee v. Strong Machinery Company, G.R. No. 11658, Feb.15, 1918)*

Q: Can a building erected on a land belonging to another be mortgaged?

A: Yes. A valid real estate mortgage can be constituted. Art. 415 of the New Civil Code mentions "buildings" separate from land. This means that the building by itself is an immovable and may be subject of a REM. *(Prudential Bank v. Panis, G.R. No. L-50008, Aug. 31, 1987)*

Q: Is the annotation or inscription of a deed of sale of real property in a chattel mortgage registry considered an inscription in the registry of real property?

A: No. By its express terms, the Chattel Mortgage Law contemplates and makes provisions for mortgages of personal property; and the sole purpose and object of the chattel mortgage registry is to provide for the registry of "Chattel mortgages," that is to say, mortgages of personal property executed in the manner and form prescribed in the statute. *(Yee v. Strong Machinery Co, G.R. No. L-11658, Feb. 15, 1918)*

Par. 2, Art. 415. Trees, plants and growing fruits, while they are attached to the land or form an integral part of an immovable.

Q: Are trees immovable or movable?

A:

1. *Real property by nature*- if they are spontaneous products of the soil
2. *Real property by incorporation*- If they have been planted thru cultivation or labor

Note: The moment trees are detached or uprooted from the land it is considered as personal property. However, in case of uprooted timber, they are still not considered as personal property because timber is an integral part of the timber land.

IMMOVABLE BY INCORPORATION

Par. 3, Art. 415. 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.

Q: What is *res vinta*?

A: These are immovable by incorporation, which when separated from the immovable, they regain their condition as movable?

IMMOVABLE BY INCORPORATION & BY DESTINATION

Par. 4, Art. 415. Statutes, reliefs, paintings or other objects for use or ornamentation, placed in buildings or on lands by the owner of the immovable in such a manner that it reveals the intention to attach them permanently to the tenements.

Q: What do you mean by "*placed by the owner*"?

A: The objects must be placed by the owner of the immovable and not necessarily the owner of the object.

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Q: Distinguish Par. 3 from Par. 4.

A:

PAR. 3	PAR. 4
Cannot be separated from the immovable without breaking or deterioration	Can be separated from the immovable without breaking or deterioration.
Need not be placed by the owner	Must be placed by the owner of the immovable, or by his agent whether express or implied
Real property by incorporation	Real property by incorporation and destination

Par. 5, Art. 415. 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 & which tend directly to meet the needs of the said industry or works.

Q: What are the requisites for machinery to be considered real property?

A: COTE

1. The industry or work must be **C**arried on in a building or on a piece of land;
2. The machinery must:
   a. Be placed by the **O**wner of the tenement or his agent;
   b. **T**end directly to meet the needs of the said industry or work; and
   c. Be **E**ssential and principal to the industry or work, and not merely incidental thereto.

Q: Is machinery placed by a tenant or by a usufructuary considered real property?

A: No. Since it is placed by a person having only a temporary right, it does not become immobilized.

Note: Where a tenant places the machinery under the express provision of lease that it shall become a part of the land belonging to the owner upon the termination of the lease without compensation to the lessee, the tenant acts as an agent of the owner and the immobilization of the machineries arises from the act of the owner in giving by contract a permanent destination to the machinery. *(Valdez v. Central Altagracia, 225 U.S. 58, 1912)*

Q: How is the equipment of a transportation business classified?

A: A transportation business is not carried on in a building or on a specified land. Hence, equipment destined only to repair or service a transportation business may not be deemed real property, but personal property. *(Mindanao Bus Co. v. City Assessor and Treasurer, G.R. No. L-17870, Sept. 29, 1962)*

Note: Machines must be essential and principal elements in the industry and must directly meet the needs of said industry. It does not include movables which are merely incidentals, without which the business can still continue or carry on their functions.

Q: Are machineries bolted or cemented on real property mortgaged considered an immovable property?

A: No. The fact that machineries were bolted or cemented on real property mortgaged does not make them ipso facto immovable under Art. 415 (3) and (5) as the parties intent has to be looked into.

Q: Can parties treat an immovable property by nature as a chattel?

A: Yes. Even if the properties appear to be immovable by nature, nothing detracts the parties from treating them as chattels to secure an obligation under the principle of estoppel. *(Tsai v. CA, G.R. No. 120098, Oct. 2, 2001)*

Q: What is the effect of temporary separation of movables from the immovables to which they are attached?

A: 2 views

1. They continue to be regarded as immovables.
2. Fact of separation determines the condition of the objects thus recovering their condition as movables.

2. PERSONAL OR MOVABLE

Q: What are movable properties?

A: SOFTSS

1. Movables **S**usceptible of appropriation which are not included in Art. 415;
2. Real property which by any **S**pecial provision of law considers as personalty
   e.g. growing crops under the Chattel Mortgage Law.
3. **F**orces of nature which are brought under the control of science
   e.g. electricity generated by electric powers, solar light for batteries power.
4. In general, all things which can be **T**ransported from place to place without impairment of the real property to which they are fixed;
5. **O**bligations and actions which have for their object movables or demandable sums; and
6. **S**hares of stock of agricultural, commercial and industrial entities, although they have real estate. *(Art. 416, NCC)*

Q: State the tests to determine whether a property is a movable property.

A: MES

1. *Test of **E**xclusion* – everything not included in Art. 415.
   Note: *E.g.* ships or vessels or interest in a business.
2. *By reason of a **S**pecial law* – immovable by nature but movable for the purpose of the special law.
   Note: *e.g.* Growing crops for purposes of the Chattel Mortgage Law.
3. *Test of **M**obility* – if the property is capable of being carried from place to place without injuring the real property to which it may in the mean time be attached.

D. BY OWNER

Q: How are properties classified according to ownership?

A:

1. *Public dominion* - property owned by the State (or its political subdivisions) in its public or sovereign capacity and intended for public use.
2. *Private ownership* – property owned by:
   a. Private persons, either individually or collectively; and
   b. *The State in its private capacity (*patrimonial property).
   c. The LGUs:
      i. *Property for public use* – roads, streets, squares, fountains, public waters, promenades and public works for public service paid for by the LGUs.
      ii. *Patrimonial Property* – all other properties possessed by LGUs without prejudice to special laws. *(Art. 419, NCC)*

1. PUBLIC DOMINION

Q: What are the kinds of property of public dominion?

A: Properties which are: **USD**

1. For public **U**se;
2. Intended for public **S**ervice and not for public use; and
3. For the **D**evelopment of the national wealth. *(Art. 420, NCC)*

Q: What are the characteristics of properties of public dominion?

A: ULEP- ROB

1. In general, they can be **U**sed by everybody;
2. Cannot be **L**evied upon by execution or attachment;
3. May **E**ither be real or personal property;
4. Cannot be acquired by **P**rescription;

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5. Cannot be **R**egistered under Land Registration Law and be the subject of Torrens Title**;**
6. ***O****utside the commerce of man* – cannot be alienated or leased or be subject of any contract;
7. Cannot be **B**urdened by voluntary easement.

Q: Who has the authority to classify or reclassify public lands?

A: As provided in the Public Land Act, the classification or reclassification of public lands into alienable or disposable, mineral or forest lands is a prerogative of the executive department of the government and not of the courts.

Q: Can property of public dominion be converted to patrimonial property?

A: Yes, through a formal declaration by the executive or legislative body that the property is no longer needed for public use or for public service.

Q: May public streets or thoroughfares be leased or licensed to market stallholders by virtue of a city ordinance or resolution of the Metro Manila Commission?

A: No. The right of the public to use the city streets may not be bargained away through contract. Hence, the agreement between the city government and stall holders is contrary to law and therefore void.

Q: Do LGU's have the power to withdraw a public street from public use?

A: LGU cannot withdraw a public street from public use, unless it has been granted such authority by law. *(Dacanay v. Asistio Jr,, G.R. No. 93654, May 6, 1992)*

2. PRIVATE OWNERSHIP

Q: What are properties in private ownership of private persons or entities?

A: All properties not belonging to the State or to its political subdivision are properties of private ownership pertaining to private persons, either individually or collectively.

Q: Are aliens prohibited to privately own lands?

A: Yes. Aliens have no right to acquire any public or private agriculture, commercial or residential lands (except by hereditary succession). (*Krivenko v. Register or Deeds*)

Note: The same rule applies to a foreign corporation even if it is a religious non - stock corporation.

Q: What is the patrimonial property of the State?

A: It is the property not devoted to public use, public service, or the development of the national wealth. It is intended rather for the attainment of the economic ends of the State, that is, for subsistence. It is owned by the State in its private or proprietary capacity.

Note: It may be disposed of by the State in the same manner that private individuals dispose of their own property subject, however, to administrative laws and regulations

Note: It may be subject to prescription (Art. 1113) and it can be the object of ordinary contracts or agreements. *(Pineda Property, p. 28, 1999 ed)*

E. BY NATURE

Q: How are properties classified according to consumability?

A:

1. *Consumable property* – that which cannot be used according to its nature without being consumed or being eaten or used up.

   i.e. A glass of wine

2. *Non-Consumable property* – that which can be used according to its nature without being consumed or being eaten or used up.

   i.e. Eyeglasses (Art. 418, Pineda Property, p. 21. 1999 ed)

Q: How are properties classified according to susceptibility to substitution?

A:

1. *Fungible property* – that property which belongs to a common genus permitting its substitution.
   i.e. grains of sugar or salt, oil, vinegar

2. *Non- fungible property* – that property which is specified and not subject to substitution.
   i.e. a specific house at a specific address.

Note: As to whether a property is fungible or non-fungible is determined by the agreement of the parties and not on the consumability of the thing. *(Pineda Property, p. 22, 1999 ed)*

III. OWNERSHIP

A. RIGHTS IN GENERAL

Q: What is ownership?

A: The juridical relation of a person over a thing by virtue of which said person has the exclusive power or authority to receive all the benefits and advantages arising from said thing, save those restricted by law or the recognized rights of others.

Q: What are the kinds of ownership?

A: FNSC

1. ***F****ull ownership* – includes all the rights of an owner;
   Note: Naked ownership + Usufruct

2. ***N****aked ownership* – ownership where the rights to the use and to the fruits have been denied;
   Note: Full ownership – Usufruct

3. ***S****ole ownership* – ownership is vested in only one person;

4. ***C****o-ownership* – ownership is vested in 2 or more persons.

Q: What are the characteristics of ownership?

A:

1. *Elastic* – power/s may be reduced and thereafter automatically recovered upon the cessation of the limitingq; rights.

2. *General* – the right to make use of all the possibilities or utility of the thing owned, except those attached to other real rights existing thereon.

3. *Exclusive* – there can only be one ownership over a thing at a time. There may be two or more owners but only one ownership.

4. *Independent* – other rights are not necessary for its existence.

5. *Perpetual* – ownership lasts as long as the thing exists. It cannot be extinguished by non user but only by adverse possession.

1. BUNDLE OF RIGHTS PERSONAL OR MOVABLE

A. JUS UTENDI, FRUENDI, ABUTENDI, VINDICANDI, DISPODENDI, POSSIDENDI

Q: What are the attributes of ownership?

A:

1. Right to enjoy (*jus utendi*)
2. Right to the fruits (*jus fruendi*)
3. Right to abuse (*jus abutendi*)
4. Right to dispose (*jus dispodendi*)
5. Right to recover (*jus vindicandi*)

REMEDIES TO RECOVER POSSESSION

1. ACTIONS TO RECOVER OWNERSHIP AND POSSESSION OF REAL PROPERTY

Q: What are the legal remedies to recover possession of one's property?

A:

1. *Personal property*- replevin
2. *Real property*
   a. *Accion Interdictal*
      i. Forcible Entry
      ii. Unlawful detainer
   b. *Accion Publiciana*
   c. *Accion Reinvindicatoria*

A. DISTINCTIONS BETWEEN ACCION REIVINDICATORIA, ACCION PUBLICIANA, ACCION INTERDICTAL

ACCION INTERDICTAL

Q: What is a*ccion interdictal?*

A: A summary action to recover physical or material possession only and must be brought within one year from the time the cause of action arises.

1. Forcible Entry
2. Unlawful detainer

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ACCION PUBLICIANA

Q: What is *accion publiciana*?

A: Ordinary civil proceeding to recover the better right of possession, *except* in cases of forcible entry and unlawful detainer. What is involved here is not possession de facto but possession *de jure*.

ACCION REINVINDICATORIA

Q: What is *accion reinvindicatoria*?

A: Action to recover real property based on ownership. Here, the object is the recovery of the dominion over the property as owner.

Q: What are the requisites of *accion reinvindicatoria?*

A: Requisites:

1. Identity of Property
2. Plaintiff's title to the property

Note: Where the facts averred in the complaint reveals that the action is neither one of forcible entry nor unlawful detainer but essentially involves a boundary dispute, the same must be resolved in an *accion reinvindicatoria (Sarmiento v. CA, G.R. No. 116192, Nov. 16, 1995).*

Q: A contract of lease executed by Alava (lessor) and Anita Lao (lessee) was not registered with the Register of Deeds. Aside from Anita, Rudy Lao also leased a portion of the same property where he put up his business. At that time, Rudy knew that Anita and her husband were the owners of the said building. He also knew that she had leased that portion of the property, and that Jaime Lao, their son, managed and maintained the building, as well as the business thereon. Rudy eventually purchased the entire property from Alava. Rudy then filed a complaint for unlawful detainer against Jaime alleging that the latter had occupied a portion of his property without any lease agreement and without paying any rentals, and prayed that an order be rendered directing Jaime to vacate the premises. Should the complaint be dismissed?

A: Yes. The records in this case show that the respondent has been in possession of the property in question, not by mere tolerance or generosity of Rudy, but as the manager of his mother, who conducted her business in the building which stood on a portion of the property leased from Alava. Jaime's possession was in behalf of his mother, and not in his own right.

Q: What is the effect of non-registration of the contract of lease?

A: Although the lease contract was not filed with the Register of Deeds, nevertheless, Rudy was bound by the terms and conditions of said contract. The lease, in effect became a part of the contract of sale. However, Rudy had no cause of action for unlawful detainer against Anita because of the subsisting contract of lease; hence, he could not file the complaint against her. (*Lao v. Lao, G.R. No. 149599, May 16, 2000)*

B. DISTINCTION BETWEEN FORCIBLE ENTRY AND UNLAWFUL DETAINER

Q: Distinguish forcible entry from unlawful detainer.

A:

Forcible Entry	Unlawful Detainer
As to when possession became unlawful	
Possession of the defendant is unlawful from the beginning as he acquires possession by force, intimidation, strategy, threat or stealth **(FISTS)**.	Possession is inceptively lawful but becomes illegal from the time defendant unlawfully withholds possession after the expiration or termination of his right thereto. **Note:** The question of possession is primordial, while the issue of ownership is generally unessential in unlawful detainer. *(Rosa Rica Sales Center v. Sps. Ong, G.R. 132197, Aug. 16, 2005)*
As to necessity of demand	
No previous demand for the defendant to vacate is necessary.	Demand is jurisdictional if the ground is non-payment of rentals or failure to comply with the lease contract.

As to necessity of proof of prior physical possession	
Plaintiff must prove that he was in prior physical possession of the premises until he was deprived thereof by the defendant.	Plaintiff need not have been in prior physical possession. **Note:** The fact that petitioners are in possession of the lot does not automatically entitle them to remain in possession. *(Ganilla v. CA, G.R. No. 150755, June 28, 2005)*
As to when 1 year period is counted from	
1 year period is generally counted from the date of actual entry of the land.	1 year period is counted from the date of last demand or last letter of demand.

2. ACTIONS FOR RECOVERY OF POSSESSION OF MOVABLE PROPERTY

REPLEVIN

Q: What is replevin?

A: It is the remedy when the complaint prays for the recovery of the possession of personal property.

Q: May a property in *custodia legis* be subject of a replevin suit?

A: No. A property validly deposited in *custodia legis* cannot be subject of a replevin suit. *(Calub v. CA, G.R. No. 115634, Apr. 27, 2000)*

3. REQUISITES FOR RECOVERY OF PROPERTY

Q: What are the requisites in an action to recover property?

A:

1. Clearly identify the land he is claiming in accordance with the title/s on which he bases his right of ownership; and
2. Prove that he has a better title than the defendant

Note: Plaintiff's title must be founded on positive right or title and not merely on the lack or inefficiency of the defendant's title. In other words, he shall not be permitted to rely upon the defects of the defendant's title *(Art. 434, Pineda Property, p. 59, 1999 ed)*

Q: Why is the plaintiff not allowed to rely on the weakness of defendant's title?

A:

1. Possibility that neither the plaintiff nor the defendant is the true owner of the property. In which case, the defendant who is in possession will be preferred.
2. One in possession is presumed to be the owner and he cannot be obliged to show or prove a better title
3. Possessor in the concept of an owner is presumed to be in good faith and he cannot be expected to be carrying every now and then his proofs of ownership over the property
4. He who relies on the existence of a fact, should prove that fact. If he cannot prove, the defendant does not have to prove. *(Pineda Property, p. 59, 1999 ed)*

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2. DISTINCTION BETWEEN REAL AND PERSONAL RIGHTS

Q: Distinguish real from personal rights

A:

Real Right	Personal Right
Creation	
Created by both title and mode directly over a thing	Created by title alone-save when title is also the made as in succession. It is not directly created over a thing but is exercised through another against whom the action is to be brought.
Object	
Generally corporeal or tangible. Object is specific prorperty or thing	Incorporeal or intangible. Object covers all the present and future property of the debtor (Art. 2236)
Subjects	
(a) One definite active subject (e.g. owner) (b) One indefinite passive subject which is the whole world Right of pursuit is therefore available. Real right follows its object in the hands of any possessor	(a) An active subject (creditor) (b) A definite passive subject (debtor)
Enforceability	
Enforceable against the whole world	Enforceable only against the original debtor or his transferee charged with notice of the personal rights
Limit	
Limited by usefulness, value or productivity of the thing	No such limitation
Extinguishment	
Extinguished by loss or destruction of the thing	Not so extinguished. Claim for damages may still be pursued-in case of loss or destruction of the thing

B. MODES OF ACQUIRING OWNERSHIP

Q: What are the modes of acquiring ownership?

A:

1. *Original* – are those which do not arise or depend upon any pre-existing right or title of another person

   i.e. Occupa*tion, Intellectual Creation, Acquisitive Prescription*

2. *Derivative* – are those which arise or depend upon a pre-existing or preceding right or title of another person

   i.e. Law, Donation, Succession mortis causa, tradition (delivery)

C. LIMITATIONS

Q: What are the limitations on the right of ownership?

A: Those imposed by the: **CC-SLOG**

1. ***S****tate in the exercise of*:
   a. Power of taxation
   b. Police power
   c. Power of eminent domain
2. ***L****aw*
   a. Legal easements and
   b. The requirement of legitime in succession;
3. ***O****wner himself*
   a. Voluntary easement
   b. Mortgage
   c. Pledge
   d. Lease;
4. ***G****rantor of the property on the grantee, either by*:
   a. Contract
   b. Donation or
   c. Will;
5. *Those arising from **C**onflicts of private rights*
   a. Those which take place in accession continua;
6. ***C****onstitution*
   a. Prohibition against the acquisition of private lands by aliens.

IV. ACCESSION

A. RIGHT TO HIDDEN TREASURES

See II. Classification; A. Hidden Treasures p.89

B. GENERAL RULES

1. FOR IMMOVABLES

ACCESSION DISCRETA

Q: What is *accession discreta?*

A: It is the right pertaining to the owner of a thing over everything produced thereby.

Q: What are the requisites of *accession discreta?*

A:

1. Increase or addition to the original thing
2. At repeated intervals
3. By inherent forces

Q: What are the kinds of fruits?

A: NIC

1. ***N****atural* –
   a. Spontaneous products of the soil;
   b. The young and
   c. Other products of animals, whether brought about by scientific means or not.
2. ***I****ndustrial*– produced by lands of any kind through:
   a. Cultivation or
   b. Labor
3. ***C****ivil fruits* –
   a. Derived from the use of property or
   b. Income from the property itself. They consist of rents of buildings and the prices of leases of lands. *(Art. 442, NCC)*

Q: To whom do the fruits belong?

A:

GR: To the owner of the land. *(Art. 441, NCC)*

XPNS: If the thing is: [**PULPA]**

1. In **P**ossession of a possessor in good faith *(Art 546, NCC)*; before the possession is legally interrupted.

2. Subject to a **U**sufruct *(Art. 566, NCC)*

3. **L**ease of rural land

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4. **P**ledged *(Art. 1680 and Art. 2102, par. 7, NCC)*; pledge is entitled to the fruits but has the obligation to compensate or set-off what he receives with those which are owing to him.

5. In possession of an **A**ntichretic creditor *(Art. 2132, NCC)*

Q: What does the maxim *pratus sequitor ventrem* mean?

A: The offspring follows the dam (mother).

ACCESSION CONTINUA

Q: What is accession *continua?*

A: It is the right pertaining to the owner of a thing over everything incorporated or attached thereto either naturally or artificially; by external forces.

1. With respect to *real* property **[IN]**
   a. *Accession **I**ndustrial* (*building, planting or sowing)*
   b. *Accession **N**atural (alluvium, avulsion, change of a river course, and formation of islands)*

      Note: In case of uprooted trees, the owner retains ownership if he makes a claim within 6 months. This does not include trees which remain planted on a known portion on land carried by the force of the waters. In this latter case, the trees are regarded as accessions of the land through gradual changes in the course of adjoining stream. *(Payatas v. Tuazon, No. 30067, March 23, 1929)*

2. With respect to *personal* property **[SAC]**
   a. **S**pecification
   b. **A**djunction or conjunction
   c. **C**ommixtion or confusion

Q: What are the basic principles in accession *continua?*

A: BADONG-E

1. He who is in **B**ad faith is liable for damages.
2. **A**ccessory follows the principal
3. Union or incorporation must generally be effected in such a manner that to separate the principal from the accessory would result in substantial **D**amage to either or diminish its value.
4. To the **O**wner of the thing belongs the extension or increases to such thing.
5. Bad faith of one party **N**eutralizes the bad faith of the other so that they shall be considered in good faith.
6. He who is in **G**ood faith may be held responsible but not penalized.
7. No one shall unjustly **E**nrich himself at the expense of another

ACCESSION INDUSTRIAL

Q: What are the maxims in connection with *accession industrial?*

A:

1. The accessory follows the principal.

2. The accessory follows the nature of that to which it relates.

3. What is built upon the land goes with it; or the land is the principal, and whatever is built on it becomes the accessory.

Q: What is the rule on ownership regarding accession industrial?

A:

GR: The owner of the land is the owner of whatever is built, planted or sown on that land, including the improvements or repairs made thereon.

XPN:

1. When the doer is in good faith the rule is modified.

2. Improvements on the land of one of the spouses at the expense of the conjugal partnership will belong to the partnership or to the spouse who owns the land depending on which of the two properties has a higher value (Art. 120, FC)

Note: If the doer is in bad faith, he is entitled only to necessary expenses for the preservation of the land *(Pineda Property, p. 98, 1999 ed)*

ACCESSION NATURAL

Q: To whom does the offspring of animals belong when the male and female belong to different owners?

A: Under the Partidas, the owner of the female was considered also the owner of the young, unless there is a contrary custom or speculation.

The legal presumption, in the absence of proof to the contrary, is that the calf, as well as its mother belongs to the owner of the latter, by the right of accretion. *(US v. Caballero, G.R. No. 8608, Sept. 26, 1913).*

Note: This is also in accord with the maxim *"pratus sequitor ventrem"*

2. FOR MOVABLES

A. ACCESSION CONTINUA

Q: What is the basic principle of accession with respect to movable property?

A: Accession exists only if separation is not feasible. Otherwise, separation may be demanded.

Q: Enumerate different kinds of accession continua as regard movables.

A: AMS

1. **A**djunction or conjunction
2. **Mi**xture
3. **S**pecification

ADJUNCTION

Q: What is adjunction?

A: The process by virtue of which two movable things belonging to different owners are united in such a way that they form a single object and each of the things united *preserves* its own nature. *(Art. 466, NCC)*

Q: What are its characteristics?

A: That there are: 2BUS

1. **2** movables;
2. **B**elonging to different owners;
3. **U**nited forming a single object;
4. **S**eparation would impair their nature or result in substantial injury to either thing.

Q: What are the classes of adjunction or conjunction?

A: PEWWS

1. **P**ainting *(pintura)*
2. **E**ngraftment - like setting a precious stone on a golden ring)
3. **W**riting *(escritura)*
4. **W**eaving
5. **S**oldering- joining a piece of metal to another metal)
   a. *Ferruminacion* - principal and accessory are of the same metal
   b. *Plumbatura* – different metals *(Art. 468, NCC)*

Q: Who owns the movables subject to adjunction?

A: The owner of the principal by law becomes owner of the resulting object and should indemnify the owner of the accessories for the values thereof

Q: What are the tests to determine the principal?

A: VVUM

1. *That of greater **V**alue*- If two things are of equal value. *(Art. 468)*
2. *That of greater **V**olume*- If two things are of equal volume. *(Art. 468)*
3. *That to which the other has been **U**nited as an ornament, or for its use or perfection* - If it cannot be determined from Art. 467. *(Art. 467)*
4. That which has greater **M**erits, utility and volume if things.

Q: How is ownership determined if the adjunction involves three or more things?

A: The court should first distinguish the principal and apply Art. 466 in an equitable manner such that the principal acquires the accessory, indemnifying the former owner thereof for its value.

Q: How about if the adjunction involves three or more things?

A: The principal should first be distinguished, after**,** Art. 466 will be applied in an equitable manner, such that the principal acquires the accessory, indemnifying the former owner thereof for its value.

Note: Art. 466 states that "Whenever two movable things belonging to different owners are, without bad faith, united in such a way that they form a

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single object, the owner of the principal thing acquires the accessory, indemnifying the former owner thereof for its value.

Q: When is separation of things allowed?

A: WAB

1. Separation **W**ithout injury
2. **A**ccessory is more precious than the principal
3. Owner of the principal acted in **B**ad faith. *(Art. 469, NCC)*

Q: What are the rules as regards rights of owners over the thing in adjunction?

A:

OWNER OF THE PRINCIPLE	OWNER OF THE ACCESSORY
Good Faith	***Good Faith***
1. Acquire accessory and pay owner of the accessory for its value; OR 2. Demand separation provided the thing suffers no injury.	1. Receive payment for value of accessory; OR 2. **GR:** Demand separation provided the thing suffers no injury **XPN:** If accessory is more precious than principal, he may demand separation w/ or w/o injury to the thing.
Good Faith	***Bad Faith***
Acquire accessory w/o paying the owner of accessory and entitled to damages.	Lose accessory and pay damages.
Bad Faith	***Good Faith***
1. Pay value of accessory and pay damages; OR 2. Have the things separated, even though there is injury to the principal and pay damages.	1. Receive payment and damages; OR 2. Have accessory separated w/ or w/o injury to principal and receive damages
Bad Faith	***Bad Faith***
Same as though both acted in good faith	

Q: How is the indemnity made?

A:

1. Delivery of a thing equal in kind and value; or
2. Payment of its price including the sentimental value. *(Article 471, NCC)*

MIXTURE

Q: What is a mixture?

A: It is the combination of materials where the respective identities of the component elements are lost either voluntarily or by chance. *(Arts. 472-473, NCC)*

Q: What are the kinds of mixtures?

A: COM-CON

1. **Com**mixtion – mixture of solids
2. **Con**fusion – liquids

Q: What are the rules regarding mixtures?

A:

1st Owner	2nd Owner
By Will of Both Owners of by Accident	
Good Faith	***Good Faith***
1. Right is subject to stipulations; OR 2. Right is in proportion to the part belonging to him (Co-ownership arises)	
By Will of Only 1 Owner/ By Chance	
Good Faith	***Good Faith***
Have the things separated provided the thing suffers no injury; OR *If cannot be separated w/o injury*, acquire interest on mixture in proportion to his part (co-ownership)	
Bad Faith (caused the mixture)	***Good Faith***
1st owner will lose his part on the mixture and pay damages to the 2nd owner	2nd owner will acquire entire mixture and entitled to damages
Bad Faith	***Good Faith (caused the mixture)***
As if both acted in GF, because the 2nd owner in GF was the one who caused the ratification, because the 1st owner	As if both acted in GF, since the 1st owner is in BF and the 2nd owner who caused the mixture in GF in a way ratifies the BF of 1st owner.

SPECIFICATION

Q: What is a specification?

A: It is the giving of new form to another's material thru application of labor. The material undergoes a transformation or change of identity.

Q: What are the respective rights of the maker and the owner of the materials in specification?

A:

Maker (M)	Owner of Materials (OM)
Good Faith	***Good Faith***
Appropriate the thing transformed and pay the owner of the materials for its value **XPN:** If the material is more precious than the thing transformed, the owner of the materials has the option to: 1. acquire the work and indemnify the maker for his labor; or 2. demand indemnity for the material.	Receive payment for value of materials
Good Faith	***Good Faith***
1. Receive payment for value of his work; OR 2. Appropriate the new thing and pay the owner of materials for its value.	1. Appropriate new thing and pay the maker for the work; OR 2. Receive payment for value of materials
Bad Faith	***Good Faith***
1. Lose the new thing and pay damages to owner of the materials; OR 2. Pay value of materials and damages to owner of the materials.	1. Appropriate the new thing without paying and receive damages; OR **Note**: Not available if the new thing is more valuable than materials for scientific or artistic reasons 2. Receive payment for the value of materials and damages.

Q: Distinguish adjunction, mixture and specification.

A:

ADJUNCTION	MIXTURE	SPECIFICATION
Involves at least 2 things	Involves at least 2 things	May involve 1 thing(or more) but form is changed
Accessory follows the principal	Co-ownership results	Accessory follows the principal
Things joined retain their nature	Things mixed or confused may either retain or lose their respective natures	The new object retains or preserves the nature of the original object

B. RULES FOR DETERMINING THE PRINCIPAL AND ACCESSORY

Q: What are the factors to determine the principal and the accessory?

A: *Primary Factors (Importance/purpose)*

1. The thing which is incorporated to another thing as an ornament is the accessory. The other is the principal
2. The thing to which is added to or joined to another for the use or perfection of the latter is the accessory. The other is the principal

Secondary Factors

1. The one which has a greater value shall be considered principal
2. If they have equal value, the one with greater volume shall be considered principal (Art. 467-468. *Pineda Property, p. 141-142, 1999 ed)*

Note: In painting and sculpture, writings, printed matter, engraving and lithographs, the board, metal, stone, canvas, paper or parchment shall be deemed the accessory thing. (Art. 468)

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V. QUIETING OF TITLE

A. REQUIREMENT

Q: What are the requisites for an action to quiet title?
A: LCDR

1. Plaintiff must have a **L**egal or equitable title to, or interest in the real property which is the subject matter of the action;
2. There must be **C**loud in such title;
3. Such cloud must be **D**ue to some
   a. Instrument;
   b. Record;
   c. Claim;
   d. Encumbrance; or
   e. proceeding which is apparently valid but is in truth invalid, ineffective, voidable or unenforceable, and is prejudicial to the plaintiff's title; and
4. Plaintiff must
   a. **R**eturn to the defendant all benefits he may have received from the latter; or
   b. reimburse him for expenses that may have redounded to his benefit.

Q: What are the requisites for existence of a cloud?

A: ATP

1. There is an **A**pparently valid or effective instrument.
2. But such instrument is in **T**ruth:
   a. Invalid;
   b. ineffective;
   c. voidable;
   d. unenforceable;
   e. has been extinguished or terminated;
   f. has been barred by extinctive prescription.
3. Such instrument may be **P**rejudicial to the title.

Q: What is the purpose of an action to remove cloud on title?

A: It is intended to procure the cancellation, or delivery of, release of an instrument, encumbrance, or claim constituting a claim on plaintiff's title, and which may be used to injure or vex him in the enjoyment of his title.

B. DISTINCTION BETWEEN QUIETING TITLE AND REMOVING/PREVENTING A CLOUD

Q: Differentiate an action to quiet title from an action to remove cloud on title.

A:

ACTION TO QUIET TITLE	ACTION TO REMOVE CLOUD ON TITLE
To put an end to troublesome litigation with respect to the property involved	For the removal of a possible foundation for a future hostile claim
A remedial action	A preventive action
Involving a *present* adverse claim	To prevent a *future* cloud on the title

C. PRESCRIPTION OR NON-PRESCRIPTION OF ACTION

Q: What are the prescriptive periods for bringing an action to quiet title?

A:

1. Plaintiff in possession – imprescriptible
2. Plaintiff *not* in possession – 10 years (ordinary) or 30 years (extra-ordinary)

Note: Laches is defined as the failure or neglect, for unreasonable and unexplained length of time, to do that which by exercising due diligence, could or should have been done earlier.

The negligence or omission to assert a right within a reasonable time, warranting a presumption that the party entitled to assert it either has abandoned it or declined to assert it. *(Tijam v Sibonghanoy, L-21450, Apr. 15, 1968)*

Q: May an action filed within the period of limitations, still be barred?

A: Yes, by laches. (See *Arts. 1431, 1433, 1437, NCC*)

Q: Is an action to quiet title imprescriptible?

A: Yes. Even though the Civil Code does not include an action to quiet title as one of those actions which are imprescriptible, the SC in this case held that such action is imprescriptible. The basis of the court is Art. 480. The imprescriptibility of an action to quiet title is a general principle from American jurisprudence. *(Bucton v. Gabar, G.R. No. L-36359, Jan.31, 1974)*

VI. CO-OWNERSHIP

A. CHARACTERISTICS OF CO-OWNERSHIP

1. IN GENERAL

Q: What is co-ownership?

A: It is a state where an undivided thing or right belongs to two or more persons. (Art. 484). It is the right of common dominion which two or more persons have in a spiritual (or ideal) part of the thing which is not physically divided.

Q: What are the characteristics of co-ownership?

A: PRES-LG

1. **P**lurality of subjects / owners;
2. There is no mutual **R**epresentation by the co-owners;
3. It exists for the common **E**njoyment of the co-owners;
4. There is a **S**ingle object which is not materially divided;
5. It has no distinct **L**egal personality
6. It is **G**overned first of all by the contract of the parties; otherwise, by special legal provisions, and in default of such provisions, by the provisions of Title III of the New Civil Code on co-ownership.

Q: What are the requisites of co-ownership?

A: POL

1. **P**lurality of owners;
2. **O**bject, which is an undivided thing or right;
3. Each co-owner's right must be **L**imited only to his ideal share of the physical whole

Note: By the very nature of co-ownership, a co-owner cannot point to any specific portion of the property owned in common as his own because *his share remains intangible and ideal (Spouses Avila et al vs. Spouses Barabat, GR. No. 141993, May 17, 2006).*

Q: What happens when a co-owner sells the whole property as his?

A: The sale will affect only his own share but not those of the other co-owners who did not consent to the sale.

Note: A sale of the entire property by one co-owner without the consent of the other co-owners is not null and void but affects only his undivided share and the transferee gets only what would correspond to his grantor in the partition of the thing owned in common *(Paulmitan vs. CA, GR No. 51584, Nov. 25, 1992.)*

Q: Can there be an agreement to keep the thing undivided for a certain period of time?

A: Yes. An agreement to keep the thing n undivided for a certain period of time, not exceeding ten years, shall be valid. This term may be extended by a new agreement.

A donor or testator may prohibit partition for a period which shall not exceed twenty years.

Neither shall there be any partition when it is prohibited by law.

Q: Distinguish co-ownership from joint tenancy

A:

CO-OWNERSHIP Tenancy in common	JOINT OWNERSHIP Joint Tenancy
As to the extent of ownership	
Each co-owner is the owner of his own ideal share.	Each joint owner owns the whole thing.
As to disposition	
Each co-owner may dispose of his undivided share without the other co-owners' consent.	Joint owner may not dispose of his own share without of all the rest, because he really has no ideal share.
As to transfer of shares in case of death	
Upon the death of a co-owner, his ideal share goes to his heirs.	Upon the death of a joint owner, his share goes to the other joint owners by accretion.
As to minority or legal disability	
In case of a minor who is a co-owner, this does not benefit the others.	The legal disability of one joint owner benefits the others.
Prescription	
Prescription will continue to run among co-owners	Prescription will not run among them.

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Q: Distinguish co-ownership from partnership.
A:

CO-OWNERSHIP	ORDINARY PARTNERSHIP
No legal personality.	With legal personality.
Can be created without the formalities of a contract.	Can be created only by contract, express or implied.
By contract or by will.	By contract only.
Agreement to exist for more than 10 years is void.	No term limit is set by law.
No mutual representation.	There is mutual representation.
Not dissolved by the death/incapacity of a co-owner.	Dissolved by death or incapacity of a partner.
A co-owner can dispose of his share w/o the consent of the others hence in a way a co-owner is substituted.	A partner cannot be substituted w/o the consent of the others.
Profits of a co-owner depend on his proportionate share.	Profits may be stipulated upon (for e.g., profit-sharing agreements)
For collective enjoyment.	For profit.
No public instrument is needed even if the object of the co-ownership is an immovable.	May be made in any form except when real property is contributed.

2. SPECIAL RULES:

A. CONCEPT OF CONDOMINIUM

(1) CONDOMINIUM CORPORATION

Q: What is a condominium corporation?

A: A condominium may include, in addition, a separate interest in other portions of such real property. Title to the common areas, including the land, or the appurtenant interests in such areas, may be held by a corporation specially formed for the purpose (known as the "**condominium corporation**") in which the holders of separate interest 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.

The real right in condominium may be ownership or any other interest in real property recognized by law, on property in the Civil Code and other pertinent laws. *(Sec. 2, RA No. 4726)*

(2) INTEREST IN REAL PROPERTY

Q: What is a condominium?

A: An interest in real property consisting of;

1. a separate interest in a unit in a residential, industrial or commercial building; and
2. an undivided interest in common, directly or indirectly, in the
   a. land on which it is located; and
   b. In other common areas of the building.

(3) CONCEPT OF COMMON AREAS, AMENDMENT

Q: What are common areas?

A: The entire project excepting all units separately granted or held or reserved.

Q: What is a project?

A: The entire parcel of real property divided or to be divided in condominiums, including all structures thereon.

Q: Where the common areas in the condominium are held by the owners of separate units as co-owners thereof, to whom can the units therein be conveyed?

A:

GR: Only to Filipino citizens.

XPN: To aliens in case of hereditary succession.

(4) DOCUMENTS TO CONSIDER

Q: What are the requirements before a property be considered divided or to be divided into condominiums?

A: An enabling or master deed must be recorded in the Register of Deeds of the province or city in which the property lies and duly annotated in the corresponding certificate of the title of the land, if the latter has been patented or registered under either the Land Registration or Cadastral Acts. *(Sec. 4, RA. No. 4726)*

Q: What must an enabling or master deed contain?

A:

1. Description of the land on which the building or buildings and improvements are or are to be located;
2. Description of the building or buildings, stating the number of stories and basements, the number of units and their accessories, if any;
3. Description of the common areas and facilities;
4. A statement of the exact nature of the interest acquired or to be acquired by the purchaser in the separate units and in the common areas of the condominium project. Where title to or the appurtenant interests in the common areas is or is to be held by a condominium corporation, a statement to this effect shall be included;
5. Statement of the purposes for which the building or buildings and each of the units are intended or restricted as to use;
6. A certificate of the registered owner of the property, if he is other than those executing the master deed, as well as of all registered holders of any lien or encumbrance on the property, that they consent to the registration of the deed;
7. The following plans shall be appended to the deed as integral parts thereof:
    a. A survey plan of the land included in the project, unless a survey plan of the same property had previously bee filed in said office;
    b. A diagrammatic floor plan of the building or buildings in the project, in sufficient detail to identify each unit, its relative location and approximate dimensions;
8. Any reasonable restriction not contrary to law, morals or public policy regarding the right of any condominium owner to alienate or dispose of his condominium.

Note: The enabling or master deed may be amended or revoked upon registration of an instrument executed by the registered owner or owners of the property and consented to by all registered holders of any lien or encumbrance on the land or building or portion thereof. The term "registered owner" shall include the registered owners of condominiums in the project. Until registration of a revocation, the provisions of RA. No. 4726 shall continue to apply to such property. *(Sec. 4, RA. No. 4726)*

B. RIGHTS AND OBLIGATIONS OF CONDOMINIUM OWNER

(1) CONTRIBUTIONS/DUES

Q: What are the incidents of a condominium grant?

A: Unless otherwise expressly provided in the enabling or master deed or the declaration of restrictions, the incidents of a condominium grant are as follows:

1. The boundary of the unit granted are the interior surfaces of the perimeter walls, floors, ceilings, windows and doors thereof. The following 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.
2. There shall pass with the unit, as an appurtenance thereof, an exclusive easement for the use of the air space encompassed by the boundaries of the unit as it exists at any particular time and as the unit may lawfully be altered or reconstructed from time to time. Such easement shall be automatically terminated in any air space upon destruction of the unit as to render it untenantable.
3. Unless otherwise, provided, the common areas are held in common by the holders of units, in equal shares, one for each unit.
4. A non-exclusive easement for ingress, egress and support through the common areas is appurtenant to each unit and the common areas are subject to such easements.
5. Each condominium owner shall have the exclusive right to paint, repaint, tile,

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wax, paper or otherwise refinish and decorate the inner surfaces of the walls, ceilings, floors, windows and doors bounding his own unit.

6. Each condominium owner shall have the exclusive right to mortgage, pledge or encumber his condominium and to have the same appraised independently of the other condominiums but any obligation incurred by such condominium owner is personal to him.
7. 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. *(Sec. 6, RA No. 4726)*

C. GROUNDS FOR PARTITION OF COMMON AREAS, OR DISSOLUTION OF THE CONDOMINIUM

Q: Can the common areas be divided?

A:

GR: No, there can be no judicial partition.

XPNs: A partition shall be made *only* upon a showing that: **COURE**

1. That 3 yrs after damage to the project which rendered a material part thereof unfit for its use prior thereto, it has not been **R**epaired substantially to its state prior to said damage; or

2. That damage to the project has rendered 1/2 or more of the units therein **U**ntenantable and owners holding, in aggregate, more than 30% interest in the common areas are opposed to the repair; or

3. That the project has been in existence for more than 50 yrs, is **O**bsolete and is uneconomic, and owners holding, in aggregate, more than 50% interest in the common areas are opposed to the repair or modernizing; or

4. That the project or a material part thereof has been condemned or **E**xpropriated, the project is no longer viable and owners holding, in aggregate, more than 70% interest in the common areas are opposed to continuation of the condominium after such expropriation or condemnation; or

5. That the **C**onditions for such partition by sale have been met.

Q: When can a Corporation Condominium be voluntarily dissolved?

A:

1. By the affirmative vote of all the stockholders or members thereof at a general or special meeting duly called for the purpose: *Provided* all the requirements of Section 62 of the Corporation Law are complied with.

2. **GR:** When the enabling or master deed is revoked

   XPN:

   1. That 3 years after damage or destruction to the project which renders a material part thereof unfit for its use prior thereto, it has not been rebuilt or repaired substantially to its prior state; or
   2. That damage or destruction to the project has rendered 1/2 or more of the units therein untenantable and that more than 50% of the members of the corporation, if non-stock, or the shareholders representing more than 30% of the capital stock entitled to vote, if a stock corporation, are opposed to the repair or reconstruction of the project, or
   3. That the project has been in existence in excess of 50 years, that it is obsolete and uneconomical, and more than 50% of the members of the corporation, if non-stock, or the stockholders representing more than 50% of the capital stock entitled to vote, if a stock corporation, are opposed to the repair or restoration or remodeling or modernizing of the project; or
   4. That the project or a material part thereof has been condemned or expropriated and that the project is no longer viable, or that the members holding in aggregate

more than 70% interest in the corporation, if non-stock, or the stockholders representing more than 70% of the capital stock entitled to vote, if a stock corporation, are opposed to the continuation of the condominium regime after expropriation or condemnation of a material portion thereof; or

5. That the conditions for such a dissolution have been met. *(Secs. 13 & 14, RA 4726)*

B. SOURCE OF CO-OWNERSHIP

Q: What are the sources of co-ownership?

A: LOST-CC

1. **L**aw - ex. easement of party walls *(Article 658, NCC)*

2. **O**ccupancy - ex. when two persons gather forest products or catch a wild animal

3. **S**uccession- ex. heirs of undivided property before partition

4. **T**estamentary (or mortis causa) **/** Donation inter vivos

   i.e. Where the donor prohibits partition of the property for a certain period of time

5. **C**ontract

6. by **C**hance or fortuitous event

   Example: Hidden treasure

C. RIGHTS OF CO-OWNERS

Q: What are the rights of each co-owner as to the thing owned in common?

A: USA-COPE-P

1. To **U**se the thing according to the purpose intended provided that:

   a. It is w/o prejudice to the interest of the co-ownership; and

   b. W/o preventing the use of other co-owners. *(Art. 486, NCC)*

2. To **S**hare in the benefits in proportion to his interest, provided the charges are borne in the same proportion. *(Art. 485, NCC)*

Note: A contrary stipulation is void. Hence, benefits cannot be stipulated upon by the co-owners.

3. Each co-owner may bring an **A**ction for ejectment. (Art. 487, NCC)

Note: Action for ejectment covers; forcible entry, unlawful detainer, accion publiciana, quieting of title, accion reivindicatoria, replevin.

4. To **C**ompel other co-owners to contribute to expenses for preservation of the thing *(Art. 488, NCC)*

5. To **O**ppose to any act of alteration *(Art. 491, NCC)* even if beneficial to the co-owners.

6. To **P**rotect against acts of majority which are prejudicial to the minority *(Art. 492, par. 3, NCC)*

7. To **E**xercise legal redemption.

8. To ask for **P**artition *(Art. 494, NCC)*

EJECTMENT

Q: Borromeo, a co-owner of a parcel of land, allowed Resuena to reside in said land. After sometime, Borromeo later demands that Resuena should vacate the property, but the latter refused. May Borromeo file an ejectment suit even if he is a mere co-owner of the lot?

A: Yes. Art. 487 of the Civil Code which provides that "anyone of the co-owners may bring an action in ejectment" is a categorical and an unqualified authority in favor of Borromeo to evict Resuena from the portion occupied. Borromeo's action for ejectment against Resuena is deemed to be instituted for the benefit of all co-owners of the property. (*Resuena v. CA, G.R. No. 128338, Mar. 28, 2005*)

Q: Does the filing of an ejectment suit require the consent of the other co-owners?

A: No. Art.487 states that "any one of the co-owners may bring action for ejectment". The law does not require that consent of the co-owners must be first secured before bringing an action for ejectment.

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Q: What if the case does not prosper, are the other co-owners bound by the judgment?

A:

GR: No.

XPN: They were also served with summons, even as unwilling plaintiffs.

Q: Can suit for ejectment be brought by one co-owner against another co-owner?

A: No, since the latter also has a right of possession; the only effect of the action will be to obtain recognition of the co-ownership.

1. DISTINCTION BETWEEN RIGHT TO PROPERTY OWNED IN COMMON AND FULL OWNERSHIP OVER HIS/HER IDEAL SHARE

Q: Distinguish right to property owned in common and full ownership over his/her ideal share

A:

a. Right to property owned in common

Each co- owner is granted the right to use the property owned in common for the purpose for which it is intended.

There are two restrictions in the enjoyment of this right:

i. the co- ownership shall not be injured;
ii. the exercise shall not prevent the other co- owners from using the property according to their own rights.

b. Full ownership over his/her ideal share

A co- owner has full ownership of his share (undivided interest) and the fruits and benefits arising therefrom. Being the full owner thereof he may alienate, assign or mortgage it; he can also substitute another person in the enjoyment of his share, except only when personal rights are involved.

2. ACTS OF ALTERATION

Q: What is an alteration?

A: Alteration is a change which is more or less permanent, which changes the use of the thing and which prejudices the condition of the thing or its enjoyment by the others. (*Paras, p.344*)

Q: What does alteration include?

A: It includes the act by virtue of which a co-owner changes the thing from the state in which the others believe it should remain. It is not limited to material charges. (*Viterbo v. Quinto, 35226-R, Dec. 19, 1973*)

Q: Distinguish acts of administration from acts of alteration.

A:

ACTS OF ADMINISTRATION	ACTS OF ALTERATION
Refer to the enjoyment, exploitation, alteration of the thing which do not affect its substance, form, or purpose	Acts, by virtue of which, a co-owner, in opposition to the expressed or tacit agreement of all the co-owners, and in violation of their will, changes the thing from the state in which the others believe it would remain, or withdraws it from the use to which they believe it is intended
Transitory in character	Permanent
Do not affect the substance or form	Affect or relate the substance or essence of the thing
In relation to the right of a co-owner, they require the consent of the majority	Requires the consent of *all* co-owners
Can be exercised by the co-owners through others	Must be exercised by the co-owners themselves

Q: What is the liability of a co-owner who makes an alteration without the express or implied consent of the others?

A: He shall: **LDP**

1. Lose what he has spent;
2. be obliged to Demolish the improvements done; and
3. Pay for the loss and damages the community property or other co-owners may have suffered.

Q: What is conversion?
A: It refers to the act of using or disposing of another's property without lawful authority to do so in a manner different from that with which a property is held by the trustees to whom the owner had entrusted the same. It is not necessary that the use for which the property is given be directly to the advantage of the person misappropriating or converting the property of another. (*People v. Carballo, 17136-CR, Nov. 17, 1976*)

3. RIGHT TO PARTITION

Q: What are the rights of co-owners as to the ideal share of each?

A: FARTS

1. Each has **F**ull ownership of his part and of his share of the fruits and benefits;

2. Right to **A**lienate, dispose or encumber;

3. Right to **R**enounce part of his interest to reimburse necessary expenses incurred by another co-owner;

4. Right to enter into **T**ransaction affecting his ideal share;

   Note: The transaction affects only his ideal share not that of the other co-owners.

5. Right to **S**ubstitute another person in its enjoyment, *except* when personal rights are involved.

   Note: Personal rights or *jus in personam* is the power belonging to one person to demand from another, as a definite passive subject-debtor, the fulfillment of a prestation to give, to do, or not to do. *(Paras, p.773)*

Q: What is the rule as regards to the right to demand partition?

A:

GR: Every co-owner has the right to demand partition.

XPNs: EAS-PAUL

1. When partition would render the thing **U**nserviceable; or

2. When the thing is essentially **I**ndivisible;

3. Partition is prohibited by **L**aw by reason of their origin or juridical nature- ex. party walls and fences;

4. When the co-owners **A**gree to keep the property undivided for a period of time but not more than 10 yrs;

5. Partition is **P**rohibited by the transferor (donor / testator) but not more than 20 yrs;

   Note: 10 years ordinary prescription, 30 years extra-ordinary partition**.**

6. When a co-owner possessed the property as an **E**xclusive owner for a period sufficient to acquire it through prescription. (Acquisitive Prescription)
7. Co-owners may agree that it be **A**llotted to one of them reimbursing the others;

8. If they cannot agree, may **S**ell the thing and distribute the proceeds.

Q: May the right to ask for partition be waived or renounced permanently?

A: No, such waiver or renunciation is *void*.

Q: Can prescription run in favor of or against a co-owner?

A:

GR: As long as he expressly or impliedly recognizes the co-ownership, it cannot.

Reason: Possession of a co-owner is like that of a trustee and shall not be regarded as adverse to the other co-owners but in fact is beneficial to all of them. Acts considered adverse to strangers may not be considered adverse insofar as co-owners are concerned. *(Salvador v. CA, G.R. No. 109910, Apr. 5, 1995)*

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XPN: Co-owner's possession may be deemed adverse to the *cestui que trust* or the other co-owners provided the following elements must concur:

1. That he has performed unequivocal acts of repudiation amounting to an ouster of the *cestui que trust* or the other co-owners;

2. That such positive acts of repudiation have been made known to the *cestui que trust* or the other co-owners; and

3. That the evidence thereon must be clear and convincing. *(Salvador v. CA, G.R. No. 109910, Apr. 5, 1995)*

   Note: Prescription begins to run from the time of repudiation.
   Example of acts of repudiation: filing of an action to:
   1. Quiet title; or
   2. Recovery of ownership.

XPN to XPN: Constructive trusts can prescribe. Express trust cannot prescribe as long as the relationship between trustor and trustee is recognized. (*Paras, p. 362*)

Q: The two lots owned by Alipio was inherited by his 9 children, including Maria, upon his death. Pastor, Maria's husband, filed a complaint for quieting of title and annulment of documents against the spouses Yabo, alleging that he owned a total of 8 shares of the subject lots, having purchased the shares of 7 of Alipio's children and inherited the share of his wife, Maria, and that he occupied, cultivated, and possessed continuously, openly, peacefully, and exclusively the parcels of land. He prayed that he be declared the absolute owner of 8/9 of the lots. His co-heirs then instituted an action to partition the lots. Did Pastor acquire by prescription the shares of his other co-heirs or co-owners?

A: No. The only act which may be deemed as repudiation by Pastor of the co-ownership over the lots is his filing of an action to quiet title. The period of prescription started to run only from this repudiation. However, this was tolled when his co-heirs, instituted an action for partition of the lots. Hence, the adverse possession by Pastor being for only about 6 months would not vest in him exclusive ownership of his wife's estate, and absent acquisitive prescription of ownership, laches and prescription of the action for partition will not lie in favor of Pastor. *(Salvador v. CA, G.R. No. 109910, Apr. 5, 1995)*

Q: Should creditors and/or assignees be notified of the proposed partition?

A: The law does not require that a notification be given but:

1. *If notice is given*- it is their duty to appear to concur /oppose, otherwise creditor's claims are deemed waived.

2. *If no notice is given*- creditors and/or assignees may still question the partition made.

Q: Can a partition already executed or implemented be still impugned?

A:

GR: No.

XPN:

1. In case of fraud, regardless of notification and opposition;

2. In case of partition was made over their objection even in absence of fraud *(Article 497, NCC)*

Q: What are rights of co-owners are not affected by partition?

A: MRS-P

1. Rights of:
   a. **M**ortgage;
   b. **S**ervitude;
   c. any other **R**eal rights existing before partition.

2. **P**ersonal rights pertaining to third persons against the co-ownership *(Art. 499, NCC)*

Example: A, B and C where co-owners of parcel of land mortgaged to M. If A, B, and C should physically partition the property, the mortgage in M's favor still covers all the three lots, which, together, formerly constituted one single parcel. If A alone had contracted an unsecured obligation, he would of course be the only one responsible. (Paras, p. 376)

4. RIGHT TO CONTRIBUTIONS FOR EXPENSES

Q: What are the expenses which the co-owners can be compelled to contribute?

A: Only necessary expenses. Useful expenses and those for pure luxury are not included.

Q: Differentiate necessary, useful, expense of pure luxury.

A: Necessary expenses are those made for the preservation of the thing, or those without which the thing would deteriorate or be lost, or those that augment the income of the things upon which are expended, or those incurred for cultivation, production, upkeep, etc. (Mendoza v De Guzman, 52 Phil. 171)

Useful expenses incurred for the preservation of the realty in order that it may produce the natural, industrial, and civil fruits it ordinarily produce. (Marcelino v, Miguel, 53 OG 5650)

Ornamental expenses add value to the thing only for a certain persons in view of their particular whims, neither essential for preservation nor useful to everybody in general.

Q: When may acts of preservation made in the property of the co-owners?

A: At the will of one of the co-owners, but he must, if practicable, first notify the others of the necessity of such repairs.

Q: What are those acts which require the majority consent of the co-owners?

A: IME

a. Management
b. Enjoyment
c. Improvement or embellishment

Q: What is the remedy in case the minority opposes the decision of the majority in co-ownership?

A: Minority may appeal to the court against the majority's decision if the same is seriously prejudicial.

Q: Who shall decide on matters relating to expenses for the improvement or embellishment of the thing?

A: Expenses to improve or embellish the thing shall be decided upon by the majority. *(Art. 489, NCC)*

Note: There is no majority unless the resolution is approved by the co-owners who represent the controlling interest in the object of the co-ownership (*par. 2 Art. 492, NCC)*

1. WAIVER

Q: May a co-owner opt not to contribute to the expenses for the preservation of the property? How?

A:

GR: Yes, by renouncing his undivided interest equal to the amount of contribution.
XPN: If the waiver or renunciation is prejudicial to the co-ownership, otherwise he cannot exempt himself from the contribution *(Art. 488, NCC)*

Note: The value of the property at the time of the renunciation will be the basis of the portion to be renounced.

Q: Is the failure or refusal of a co-owner to contribute *pro rata* to his share in expenses tantamount to renunciation?

A: No, there must be an express renunciation, otherwise he is required to reimburse the others for the expenses they incurred.

Q: What is the effect of renunciation?

A: It is in effect a *dacion en pago* since there is a change in the object of the obligation (i.e. from sum of money to interest in the co-ownership). Consequently, the consent of the other co-owners is necessary.

Note: *Dacion en pago* is a juridical concept whereby a debtor pays off his obligations to the creditor by the conveyance of ownership of his property as an accepted equivalent of performance or payment. The end result may be the same, but the concept is entirely different from that of a purchase. (Damicog v Desquitada, CV – 43611, Oct. 3,1983)

Q: Can the renunciation be made without the consent of any unpaid creditor?

A: No, for it is in effect a novation by substitution, it will prejudice the rights of the unpaid creditor.

Note: Novation by substitution is the substitution of the person of the debtor.

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6. RIGHT TO REDEMPTION OF CO-OWNERS SHARE

Q: Whose shares may a co-owner redeem?

A: The shares of all or any other co-owner if sold to a third person.

Q: What if two or more co-owners want to redeem?

A: They may do so in proportion to the shares they respectively have.

Q: What is the effect of redemption by a co-owner?

A: Redemption of the whole property by a co-owner does not vest in him sole ownership over said property. Redemption within the period prescribed by law will inure to the benefit of all co-owners. Hence, it will not put an end to existing co-ownership *(Mariano v. CA, GR. No. 101522, May 28, 1993)*.

Q: Fortunato, his siblings and mother are co-owners of a parcel of land. Lumayno purchased the shares of Fortunato's co-owners. When Fortunato died, his wife claimed that she has the right of redemption over the shares previously sold by the co-owners to Lumayno because they have not formally subdivided the property. However, although the lot had not yet been formally subdivided, still, the particular portions belonging to the co-owners had already been ascertained. In fact the co-owners took possession of their respective parts. Can Fortunato's wife be entitled to right of legal redemption?

A: No. She is no longer entitled to the right of legal redemption under *Art. 1632 of the Civil Code*. As legal redemption is intended to minimize co-ownership, once the property is subdivided and distributed among the co-owners the community ceases to exist and there is no more reason to sustain any right of legal redemption. The exercise of this right presupposes the existence of a co-ownership at the time the conveyance is made by a co-owner and when it is demanded by the other co-owners. Even an oral agreement of partition is valid and binding upon the parties. (*Vda. de Ape v. CA, G.R. No. 133638, Apr. 15, 2005*)

Q: Villaner, upon death of his wife, sold the conjugal property to Leonardo. Villaner's 8 children, as co-owners of the property, now claim that the sale does not bind them as they did not consent to such undertaking. Is the sale binding on the children?

A: No. While a co-owner has the right to freely sell and dispose of his undivided interest, nevertheless, as a co-owner, he cannot alienate the shares of his other co-owners. The disposition made by Villaner affects only his share *pro indiviso*, and the transferee gets only what corresponds to his grantor's share in the partition of the property owned in common. The property being conjugal, Villaner's interest in it is the undivided one-half portion. When his wife died, her rights to the other half was vested to her heirs including Villaner and their 8 legitimate children.

Q: What is the status of the sale? Is it valid, void or voidable?

A: A sale of the entire property by one co-owner without the consent of the other co-owners is valid. However, it will only affect the interest or share in the undivided property of the co-owner who sold the same.

Q: What is the remedy of the other heirs in this case?

A: The proper action in cases like this is not for the nullification of the sale or the recovery of possession of the thing owned in common from the third person who substituted the co-owner or co-owners who alienated their shares, but the division of the common property or that is, an action for *partition* under Rule 69 of the Revised Rules of Court. *(Acabal v. Acabal, G.R. No. 148376, Mar. 31, 2005)*

D. TERMINATION/EXTINGUISHMENT

Q: How is co-ownership extinguished?

A: CALSTEP

1. **C**onsolidation or merger in one co-owner;
2. **A**cquisitive prescription in favor of a third person or a co-owner who repudiates;
3. **L**oss or destruction of thing co-owned;
4. **S**ale of thing co-owned;
5. **T**ermination of period agreed upon;
6. **E**xpropriation;
7. Judicial or extra-judicial **P**artition.

1. EFFECT OF PARTITION

Q: What are the effects of partition?

A:

1. It confers upon the co-owner exclusive title over the property adjudicated to him (Art. 1091);
2. Possession of the co-owner over the property adjudicated to him shall be deemed exclusive for the period during which the co-possession lasted (*Art. 543, NCC*). In other words, it is deemed continuous. *(Pineda Property, p. 206, 1999 ed)*

2. RIGHTS AGAINST INDIVIDUAL CO-OWNERS IN CASE OF PARTITION

Q: What are the obligations of co-owners upon partition?

A: WARD

1. Mutual **A**ccounting for benefits received, fruits and other benefits
2. Mutual **R**eimbursements for expenses
3. Indemnity for **D**amages caused by reason of negligence/fraud
4. Reciprocal **W**arranty for defects of title and quality of the portion assigned to the co-owner *(Art. 500-501, NCC)*

3. PARTITION IN CASE CO-OWNERS CANNOT AGREE

Q: How is partition effected?

A:

1. By agreement between the parties; or
2. By judicial proceedings *(Art. 496)*

Q: What is the remedy in case the co – owners cannot agree in the partition?

A: If realty is involved, an action for partition (under Rule 69 of the Rules of Court) against the co-owners may be filed. In case of personalty and actual partition could not be made, it may be sold under the discretion of the court and the proceeds be divided among the owners after deduct*ing* the necessary expenses *(Pineda Property, p. 198, 1999 ed)*

VII. POSSESSION

A. CHARACTERISTICS

Q: What is possession?

A: Possession is the holding of a thing or the enjoyment of a right (*Art. 523*)

Q: What are the requisites of possession?

A: PAP

1. ***P****ossession in fact or* holding or control of a thing or right;

2. ***A****nimus possidendi* or the deliberate intention to possess;

3. **P**ossession by virtue of one's own right

Q: What are the degrees of possession? Distinguish.

A: NJJS

1. *Possession with **N**o right or title*- possessor knows that his possession is wrongful,

   e.g. Possession of a thief or a usurper of land.

2. *With **J**uridical title* - possession peaceably acquired and will not ripen into full ownership as long as there is no repudiation of the concept under which property is held.

   e,g. Possession of a tenant, depositary, agent.

3. *With **J**ust title or title sufficient to transfer ownership, but not from the true owner* - ripens to full ownership by the lapse of time.

   e,g. Possession of a buyer of a piece of land from one who pretends to be the owner thereof.

4. *With a title in fee **S**imple* - springs from ownership; highest degree of possession.

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Q: What are the classes of possession?

A: OVAL-OH-GBC

1. *In one's **O**wn name* – possessor claims the thing for himself
2. ***V**oluntary* – by virtue of an agreement
3. *In the name of **A**nother* – held by the possessor for another; agent, subject to authority and ratification; if not authorized, *negotiorum gestio*
4. ***L**egal* – by virtue of law;
   e.g. possession in behalf of incapacitated

5. *In the **C**oncept of an owner* – possessor, by his actions, is believed by others as the owner, whether he is in good or bad faith
6. *In the concept of a **H**older* – possessor holds it merely to keep or enjoy it, the ownership pertaining to another; ex. usufructuary

   Note: None of these holders may assert a claim of ownership for himself over the thing but they may be considered as possessors in the concept of an owner, or under a claim of ownership, with respect to the right they respectively exercise over the thing.

7. *Possession in **G**ood faith*
8. *Possession in **B**ad faith*
9. ***C**onstructive possession* - does not mean that a man has to have his feet on every square meter of ground.

Q: What kind of possession can serve as title?

A: Possession with title in fee simple.

Q: Differentiate possession and occupation

A:

POSSESSION	OCCUPATION
Apply to properties whether with or without an owner	Applies only to property without an owner
Possession does not confer ownership	Occupation confers ownership
There can be possession without ownership	There can be no occupation without ownership

Q: Is it possible for a person who has been declared as the owner of a certain property not to be entitled to its possession?

A: Yes. Possession and ownership are distinct legal concepts. Ownership confers certain rights to the owner among which are the right to enjoy the thing owned and the right to exclude other persons from possession thereof. On the other hand, possession is defined as the holding of a thing or the enjoyment of a right. Literally, to possess means to actually and physically occupy a thing with or without a right. Thus a person may be declared an owner but not entitled to possession. (*Heirs of Roman Soriano v. CA, GR No. 128177, August 15, 2001)*

Note: Possession is merely one of the attributes ownership. *(Jus Possidendi)*

B. ACQUISITION OF POSSESSION

Q: What are the ways of acquiring possession?

A: FAMS

1. By **M**aterial occupation/exercise of a right
2. By **S**ubjection of the thing/right to our will
3. By proper **A**cts and legal **F**ormalities established for acquiring such right (Art. 531, NCC)

Q: What if the possession is acquired by a stranger?

A: Where possession is acquired not by an agent or representative but by a stranger without agency, possession is not acquired until the act of the agent or representative is ratified *(Art. 532, NCC).*

Q: What are the acts which do not give rise to possession?

A: Possession through: **FAT-V**

1. **F**orce or intimidation as long as there is a possessor who objects thereto. *(Art. 536, NCC)*

2. **A**cts executed clandestinely and without the knowledge of the possessor which means that:
   a. acts are not public; and

   b. unknown to the owner or possessor

3. Mere **T**olerance by the owner or the lawful possessor.
4. Acts executed by **V**iolence. *(Art 537, NCC)*

Q: What kind of possession can serve as a title for acquiring dominion?

A: Only the possession acquired and enjoyed *in the concept of owner*. *(Art. 540, NCC)*

C. EFFECTS OF POSSESSION

1. POSSESSOR IN GOOD FAITH

Q: When is a possessor in good faith?

A: When he is not aware that there exists in his title or mode of acquisition any flaw which invalidates it. *(Art. 526, NCC)*

Q: When does possession in good faith cease?

A: Possession in good faith ceases from the moment defects in his title are made known to the possessor.
This interruption of good faith may take place:

1. at the date of summons or
2. that of the answer if the date of summons does not appear at the date

However, there is a contrary view that the date of summons may be insufficient to convince the possessor that his title is defective.

Q: What is the effect in case possession ceases to be in good faith?

A: Possessor in bad faith is required to pay rent or in case vacate the property, in both cases he is required to pay damages to the lawful owner or possessor of the property.

Q: Jose offered to sell his lot to Rosario which the latter accepted. They executed a document containing the sale. Later, Rosario sought the execution of the formal deed of sale, but Jose could not continue the sale because he sold the lot to Emma with whom he executed a formal deed of sale. Informed that the sale in favor of Emma was not registered, Rosario registered her adverse claim. Later, Emma registered her deed of sale and a TCT was issued to her but with Rosario's adverse claim. Emma then took possession of the lot. Who has a better right to the land?

A: Rosario. To merit the protection of Art 1544 (double sale) it is essential that the buyer of the realty must act in good faith in registering his deed of sale. Rosario's prior purchase of the land was made in good faith; she was the only buyer at that time. Her good faith did not cease after Jose told him of the second sale to Emma. Because of that information, Rosario wanted an audience with Emma but was snubbed by the latter. In order to protect her right, Rosario registered her adverse claim. Said recording is deemed to be in good faith and emphasize Emma's bad faith. (*Carbonell v.CA G.R. No. L-29972, Jan. 26, 1976*)

Q: Is Emma entitled to the improvements she introduced in the lot?

A: No. Emma's rights to the improvements she introduced are governed by Arts. 546 and 547 (necessary and useful expense made by possessor in good faith). These provisions seem to imply that the possessor in bad faith has neither the right of retention of useful improvements nor the right to demand refund for useful expenses. (*Carbonell v.CA G.R. No. L-29972, Jan. 26, 1976*)

Q: What are the rights of a possessor?

A:

GOOD FAITH	BAD FAITH
As to fruits received	
Entitled while possession is in good faith	Reimburse fruits received or which lawful possessor would have received
As to pending fruits	
Liable to the lawful possessor for expenses of cultivation and shall share in net harvest to time of possession	No right to such pending fruits
As to expenses:	
(Necessary expenses)	
Right of reimbursement and retention	Right of reimbursement and retention
(Useful expenses)	
Right of removal	No right of removal
As to liability in case of deterioration or loss	
No liability, unless due to his fault/negligence	Always liable for deterioration or loss

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A. RIGHT TO PENDING FRUITS

Q: When are fruits considered received?

A:

1. *Natural and industrial fruits* - from the time they are gathered or severed

2. *Civil fruits* - from the time of their accrual and not their actual receipt. *(Art. 544, NCC)*

Q: What if there are ungathered natural or industrial fruits at the time good faith ceases?

A: The possessor shall share in the expenses of cultivation, net harvest, and charges in proportion to the time of possession. *(Art 545, NCC)*

Q: What are the options of the owner in case there are pending fruits at the time good faith ceases?

A:

1. To pay the possessor in good faith indemnity for his cultivation expenses and charges and his share in the net harvest; *or*
2. To allow him to finish the cultivation and gathering of the growing fruits.

Q: What if the possessor refuses, for any reason, to finish the cultivation and gathering?
A: He forfeits the right to be indemnified in any other manner. *(Art. 545, par. 3, NCC))*

B. RIGHT TO BE REIMBURSED

(1) NECESSARY AND USEFUL EXPENSES

Q: What are necessary expenses?

A: Expenses incurred to preserve the property, without which, said property will physically deteriorate or be lost.

Q: Who is entitled to reimbursement for necessary expenses?

A: Every possessor, whether the possessor is in good faith or bad faith.

Note: However, only the possessor in good faith may retain the thing until he has been reimbursed. *(Art. 546, Pineda Property, p. 279, 1999 ed)*

Q: What are useful expenses?

A: Those which increase the value or productivity of the property.

Q: Who has the right to be refunded for useful expenses?

A: Only to the possessor in good faith with the same right of retention as in necessary expenses. *(Art. 546)*

Note: Possessor in good faith need not pay rent during the period of retention. *(Pineda Property, p. 280, 1999 ed)*

Q: What is the effect of voluntary surrender of property?

A: It is a waiver of the possessor's right of retention but his right to be refunded may still be enforced, unless he also waived the same. *(Pineda Property, p. 282, 1999 ed)*

Q: May a possessor remove the useful improvements he introduced?

A: Yes, but only by a possessor in good faith and only when no substantial damage or injury would be caused to the principal thing. *(Art. 547)*

Note: However, this right of removal is only subordinate to the owner's right to keep the improvements himself by paying the expenses incurred or the concomitant increase in the value of the property caused by the improvements. *(Pineda Property, p. 283, 1999 ed)*

(2) EXPENSES FOR PURE LUXURY

Q: What are luxurious expenses?

A: Expenses incurred for improvements introduced for pure luxury or mere pleasure. *(Pineda Property, p. 281, 1999 ed)*

Q: Are luxurious expenses refundable?

A: No, even if the possessor is in good faith.

Note: But he may remove the luxurious improvements if the principal thing suffers no injury thereby, and if his successor in the possession does not prefer to refund the amount expended. *(Art. 548)*

2. POSSESSOR IN BAD FAITH

Q: When is a possessor in bad faith?

A: When he is aware that there exists in his title or mode of acquisition any flaw which invalidates it.

Note: Only personal knowledge of the flaw in one's title or mode of acquisition can make him a possessor in bad faith.

Q: When is good or bad faith material or immaterial?

A: It is important in connection with the

1. receipt of fruits,
2. indemnity for expenses, and
3. acquisition of ownership by prescription.

It becomes immaterial when the right to recover is exercised. *(Article 539, NCC)*

Q: What are the requisites to constitute possession whether in good faith or in bad faith?

A:

1. Possessor has a title/mode of acquisition;
2. There is a flaw or defect in said title/mode;
3. The possessor is aware or unaware of the flaw or defect.

Q: May mistake upon a doubtful questions or difficult question of law be the basis of possession in good faith?

A: Yes. Mistake upon a doubtful or difficult questions of law (provided such ignorance is not gross and therefore inexcusable) may be a basis of good faith. It is true that "ignorance of the law excuses no one" but error in the application of the law, in the legal solutions arising from such application, and the interpretation of doubtful doctrine can still make a person ignorance of the law may be based on an error of fact. *(Paras, p 463)*

Note: Mistake upon a doubtful or difficult question of law refers to the honest error in the application or interpretation of doubtful or conflicting legal provisions/doctrines, and not to the ignorance of the law. *(Article 526, par. 3, NCC)*

Q When Dolorico died, his guardian Ortiz continued the cultivation and possession of the property, without filing any application to acquire title. In the homestead application, Dolorico named Martin, as his heir and successor in interest. Martin later relinquished his rights in favor of Quirino his grandson and requested the Director of Lands to cancel the homestead application which was granted. Quirino filed his sales applications and the said property was awarded to him being the only bidder. Is Ortiz entitled to right of retention?

A: Yes. A possessor in good faith has the right of retention of the property until he has been fully reimbursed for all the necessary and useful expenses made by him on the property. Its object is to guarantee the reimbursement for the expenses, such as those for the preservation of the property, or for the enhancement of its utility or productivity. It permits the actual possessor to remain in possession while he has not been reimbursed by the person who defeated him in the possession for those necessary expenses and useful improvements made by him on the thing possessed. (*Ortiz v. Kayanan, G.R. No. L-32974, July 30, 1979*)

Q: What is the rule when two or more persons claim possession over the same property?

A: It depends.

GR: Possession cannot be recognized in two different personalities

XPN in case of co-possession when there is no conflict.

Q: What are the criteria in case there is a dispute of possession of 2 or more persons?

A: Criteria in case of dispute: [**A2DE]**

1. Present/Actual possessor shall be preferred
2. If there are 2 possessors, the one longer in possession
3. If the Dates of possession are the same, the one with a title
4. If all of the above are Equal, the fact of possession shall be judicially determined, and in the meantime, the thing shall be placed in judicial deposit. *(Article 538, NCC)*

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D. LOSS OR UNLAWFUL DEPRIVATION OF A MOVABLE

Q: What is a lost thing?

A: It is one previously under the lawful possession and control of a person but is now without any possessor.

Note: It is not an abandoned property *(Pineda Property, p. 503, 1999 ed)*

Q: What is the duty of a finder of a lost movable?

A: Whoever finds a lost movable, which is not a treasure, must return it to its previous possessor. If the latter is unknown, the finder shall immediately deposit it with the mayor of the city or municipality where the finding has taken place.

Note: The mayor in turn must publicly announce the finding of the property for two consecutive weeks.

Q: When is public auction of the lost movable authorized?

A: If the movable cannot be kept without deterioration, or without expenses which considerably diminish its value, it shall be sold at public auction eight days after the publication.

Q: May the lost movable be awarded to the finder?

A: Yes. If the owner or previous possessor did not appear after 6 months from the publication, the thing found or its value or proceeds if there was a sale, shall be awarded to the finder. The finder , however, shall pay for the expenses incurred for the publication. *(Art. 719*, *NCC*)

Q: What is the duty of the owner who appeared?

A:

1. Give a reward to the finder equivalent to one-tenth (1/10) of the sum or of the price of the thing found. (*Art. 720, NCC*)
2. Reimburse to the finder for the latter's expenses incurred for the preservation of the thing. (*Art. 546*,NCC) and expenses spent for the location of the owner
3. Reimburse the expenses for publication if there was a public auction sale. (*Pineda Propert*y, *p. 505, 1999 ed)*

1. PERIOD TO RECOVER

See: *Prescriptive Periods*

2. FINDER OF LOST MOVABLE

Q: What is the right of a possessor who acquires a movable claimed by another?

A:

1. Bad faith - no right
2. Good faith- presumed ownership. It is equivalent to title.
   Requisites:
   a. possession in good faith
   b. owner has voluntarily parted with the possession of the thing; and
   c. Possessor is in the concept of an owner.

Q: Is the possession of movable property acquired in good faith equivalent to a title?

A: Yes.

GR: *Doctrine of irrevindicability* **-** The possession of movable property acquired in good faith is equivalent to title.

Note: This is merely presumptive as it can be defeated by the true owner. *(Art. 559, NCC)*

XPNs:

1. When the owner has lost; or
2. Has been unlawfully deprived of a movable.
   In which case the possessor cannot retain the thing as against the owner, who may recover it without paying any indemnity

XPN to the XPNs: Where movable is acquired in good faith at a public sale, the owner must reimburse to recover. *(Art. 559 par. 2, NCC)*

Q: Using a falsified manager's check, Justine, as the buyer, was able to take delivery of a second hand car which she had just bought from United Car Sales. Inc. The sale was registered with the Land Transportation Office. A week later, the United Car Sales learned that the check had been dishonored, but by that time, Justine was nowhere to be seen. It turned out that Justine had sold the car to Jerico, the present possessor who knew nothing about the falsified check. In a suit filed by United Car Sales. Inc. against Jerico for recovery of the car, United Car Sales alleges it had been unlawfully deprived of its property through fraud and should, consequently, be allowed to recover it without having to reimburse the defendant for the price the latter had paid. Should the suit prosper?

A: Yes, the suit should prosper because the criminal act of estafa should be deemed to come within the meaning of unlawful deprivation under Art. 559, Civil Code, as without it United Car Sales would not have parted with the possession of its car. (**1998 Bar Question)**

Note: The possession of movable property acquired in good faith is equivalent to a title. Nevertheless, one who has lost any movable or has been unlawfully deprived thereof, may recover it from the person in possession of the same. *(Art. 559, Civil Code)*

3. DISTINGUISHED FROM VOIDABLE TITLE

Q: What is the rule in case the seller of a thing has voidable title on the thing sold?

A: Where the seller of goods has a voidable title thereto, but his title has not been avoided at the time of the sale, the buyer acquires a good title to the goods, provided he buys them in good faith, for value, and without notice of the seller's defect of title. (*Art. 1506, NCC*)

E. IN CONCEPT OF OWNER, HOLDER, IN ONE'S OWN NAME, IN NAME OF ANOTHER

F. RIGHTS OF THE POSSESSOR

Q: What are the rights of a possessor?

A: RPR

1. to be Respected in his possession
2. to be Protected in said possession by legal means
3. to secure in an action for forcible entry the proper writ to Restore him in his possession *(Article 539, NCC)*

Q: During his lifetime, Velasco acquired Lot A from spouses Sacluti and Obial evidenced by a deed of sale. In 1987, spouses Padilla entered the said property as trustees by virtue of a deed of sale executed by the Rural Bank. The Padilla's averred that the Solomon spouses owned the property which was identified as Lot B. However, it was proved during trial that the land occupied by spouses Padilla was Lot A in the name of Velasco, whereas the land sold by the bank to the spouses Padilla was Lot B. The heirs of Velasco demanded that spouses Padilla vacate the property, but they refused. Thus, the heirs filed a complaint for *accion publiciana.* Who has the better right of possession?

A: The heirs of Velasco has the better right. *Accion publiciana,* or for recovery of the right to possess is an action filed in the RTC to determine the better right to possession of realty independently of the title. The objective of the plaintiffs in *accion publiciana* is to recover possession only, not ownership. Lot A was the subject of a cadastral case. The OCT was issued to Sacluti and Obial who sold the same to Artemio. From the date of sale, until Artemio's death, he was in continuous possession of the land.

Q: Has the action already prescribed?

A: No. The remedy of *accion publiciana* prescribes after the lapse of ten years. In the present case, the action was filed with the RTC in 1991. Spouses Padilla dispossessed the heirs of Velasco of the property in 1987. At the time of the filing of the complaint, only 4 years had elapsed from the time of dispossession. The real right of possession is not lost till after the lapse of 10 years. (Art. 554(4), NCC). *(Spouses Padilla v. Velasco, G.R. No. 169956, Jan. 19, 2009)*

Q: What are the presumptions in favor of a possessor?

A: GCENCE

1. Good faith
2. Continuity of initial good faith
3. Enjoyment in the same character in which possession was acquired until the contrary is proved
4. Non-interruption in favor of the present possessor
5. Continuous possession by the one who recovers possession of which he was wrongfully deprived
6. Extension of possession of real property to all movables contained therein.

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Q: What are the rights of a possessor as regards necessary expenses?

A:

GOOD FAITH	BAD FAITH
1. Right to refund; 2. Right of retention; **Note:** During his possession, he is not obliged to pay rent nor damages in case he refuses to vacate the premises.	Right to refund The possessor has no right of retention

Q: Why is there no right of retention in case of bad faith?

A: As punishment for his bad faith.

Q: Is there right of removal?

A: None, whether in good faith or bad faith.

Reason: Necessary expenses affect the existence or substance of the property itself.

Note: Improvements be so incorporated to the principal thing that their separation must necessarily reduce the value of the thing not curable by ordinary repairs.

Q: What are other rights of possessor?

A:

With respect to		GOOD FAITH	BAD FAITH
Taxes and Charges	***On capital***	Charged to owner	Charged to owner
	On fruits	Charged to possessor	Charged to owner
	Charges	Pro rata	Charge to owner
Gathered or severed fruits		Possessor is entitled to the fruits	Possessor must return value of fruits already received as well as value of fruits which the owner or legitimate possessor should be entitled (does not apply to possessor in BF)
Cultivation expenses of gathered fruits		Possessor is not entitled to be reimbursed	Possessor is entitled to be reimbursed
Pending or ungathered fruits		Share pro-rata between possessor and owner of expenses, net harvest, and charges	Owner is entitled to the fruits
Production expenses of pending fruits		indemnity to possessor in pro rata: (owner's option) a. money b. allowing full cultivation and gathering of all fruits	No indemnity
Improvements no longer existing		No reimbursement	No reimbursement
Liability for accidental loss or deterioration		Liable if acting with fraudulent intent or negligence, after summons	Liable in every case
Improvements due to time or nature		Inure to the owner or lawful possessor	Inure to the owner or lawful possessor

Note: A possessor is protected regardless of the manner of acquisition.

Q: What are the rights of a possessor with regard to useful expenses?

A: If in good faith:
1. Right to refund
2. Right of retention until paid
3. Right of removal, provided:
   a. without damage to the principal thing
   b. subject to the superior right of the prevailing party to keep the improvements by paying the expenses or the increase in value of the thing

Note: If the possessor is in bad faith, he has no right.

Q: What are the rights of a possessor with regard to expenses for pure luxury?

A:

GOOD FAITH	BAD FAITH
Right of removal, Provided: 1. without injury to principal thing; 2. successor in possession does not prefer to refund amount expended.	same rights, but liable only for the value of the ornaments at the time he enters into possession, in case he prefers to retain

Q: May the owner of a property eject the possessor forcibly without court intervention?

A: No. The owner must resort to the courts and cannot forcibly eject a possessor *(Bago vs. Garcia, No. 2587, January 8, 1906).*

G. LOSS/TERMINATION

Q: How is possession lost?

A: PRADA

1. **P**ossession of another subject to the provisions of Art. 537, if a person is not in possession for more than one year but less than 10 years he losses possession de fact. This means that he can no longer bring an action of forcible entry or unlawful detainer, since the prescriptive period is one year for such actions. But he may still institute an accion publiciana to recover possession de jure, possession as a legal right or the real right of possession. (Paras, p. 548)

   Note: Acts merely tolerated, and those executed clandestinely and without the knowledge of the possessor of a thing, or by violence, do not affect possession. (Art. 537, Civil Code)

2. **A**bandonment

   Note: Abandonment involves a **v**oluntary renunciation of all rights over a thing

   Requisites:

   a. the abandoner must have been a possessor in the concept of owner (either an owner or mere possessor may respectively abandon either ownership or possession)
   b. the abandoner must have the capacity to renounce or to alienate (for abandonment is the repudiation of property right)
   c. there must be physical relinquishment of the thing or object
   d. there must be no *spes recuperandi* (expectation to recover) and no more *anumus revertendi* (intention to return or get back) *(Paras, pp. 344-345)*

3. **R**ecovery of the thing by the legitimate owner

4. **D**estruction or total loss of the thing – a thing is lost when it perishes or goes out of commerce, or disappears in such a way that its existence is unknown, or it cannot be recovered. (Art. 1189, Civil Code)

5. **A**ssignment - complete transmission of the thing/right to another by any lawful manner**.**

VIII. USUFRUCT

A. CHARACTERISTICS

Q: What are the characteristics of usufruct?
A: ENA

1. ***E**ssential* – those without which it cannot be termed as usufruct:
   a. real right (whether registered in the registry of property or not);
   b. constituted on property.
      i. real
      ii. personal;
      iii. consumable;
      iv. non-consumable;
      v. tangible;
      vi. intangible.
   c. temporary duration;
   d. purpose: to enjoy the benefits and derive all advantages from the object as a consequence of normal use or exploitation.

2. ***N**atural* – that which ordinarily is present, but a contrary stipulation can eliminate it because it is not essential.
   a. The obligation of conserving or preserving the form and substance (value) of the thing.
   b. Transmissible

3. ***A**ccidental* – those which may be present or absent depending upon the stipulation of parties
   a. Whether it be pure or a conditional usufruct
   b. The number of years it will exist
   c. Whether it is in favor of one person or several, etc.

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Q: Is the usufructuary bound to preserve the form and substance of the thing in usufruct?
A:

GR: Yes.

XPN: In case of an abnormal usufruct, whereby the law or the will of the parties may allow the modification of the substance of the thing.

Q: Chayong owned a parcel of land which she mortgaged to Michael. Upon the OCT was an annotation of usufructuary rights in favor of Cheddy. Is Michael obliged to investigate Chayong's title?

A: No. The annotation is not sufficient cause to require Michael to investigate Chayong's title because the latter's ownership over the property remains unimpaired despite such encumbrance. Only the *jus utendi* and *jus fruendi* over the property are transferred to the usufructuary. The owner of the property maintains the *jus disponendi* or the power to alienate, encumber, transform, and even destroy the same. (*Hemedes v. CA, G.R. Nos. 107132 and 108472, Oct. 08, 1999*)

Q: Differentiate usufruct from lease.

A: CRONEC

USUFRUCT	LEASE
Nature of the right	
Always a real right	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 a personal right
Creator of Right	
Owner or his agent	May not be the owner, as in the case of a sub-lessor or a usufructuary
Origin	
By law, contract, will of testator or by prescription	By contract, by way of exception by law (as in the case of an implied new lease, or when a builder has built in good faith on the land of another a building, when the land is considerably worth more in value than the building.
Extent of Enjoyment	
All fruits, uses and benefits	Only those particular or specific use.
Cause	
A passive owner who allows the usufructuary to enjoy the object of usufruct	An active owner who makes the lessee enjoy
Repairs and Taxes	
Usufructuary pays for ordinary repairs and pays for annual charges and taxes on the fruits	Lessee is not obliged to pay for repairs/taxes

B. CLASSIFICATION

Q: What are the kinds of usufruct?

A: ONES-E

1. As to **O**rigin:
   a. *Legal* – created by law such as usufruct of the parents over the property of their unemancipated children
   b. *Voluntary* – created by will of the parties either by act inter vivos (e.g. donation) or by act mortis causa e.g. in a last will and testament)
   c. *Mixed* (or prescriptive) – created by both law and act of the person (e.g. acquired by prescription: I possessed in good faith a parcel of land which really belonged to another. Still in good faith, I gave in my will to X, the naked ownership of land and to Y, the usufruct. In due time, Y may acquire the ownership of the usufruct by acquisitive prescription.) (Paras, p. 572)
2. As to **N**umber of beneficiary
   a. *Simple* – if only one usufructuary enjoys the usufruct
   b. *Multiple* – if several usufructuaries enjoy the usufruct
      i. simultaneous – at the same time.
      ii. successive – one after the other.

   Note: In this latter case, if usufruct is created by donation, all the donees must be alive, or at leased already conceived, at the time of the perfection of the donation.

3. As to **E**xtent of object:
   a. *Total* – constituted on the whole thing
   b. *Partial* – constituted only on a part

4. As to **S**ubject matter:
   a. O*ver things*
      i. *Normal* (or perfect or regular) – involves non consumable things where the form and substance are preserved
      ii. *Abnormal* (or imperfect or irregular) – involves consumable things
   b. *Over rights* – involves intangible property; rights must not be personal or intransmissible in character so present or future support cannot be an object of usufruct.

5. As to **E**ffectivity or extinguishment:
   a. *Pure* – no term or condition
   b. *With a term* – there is a period which may be either suspensive or resolutory
      i. *ex die* – from a certain day
      ii. *in diem* – up to a certain day
      iii. *ex die in diem* – from a certain day up to a certain day.
   c. *Conditional* – subject to a condition which may be either suspensive or resolutory.

C. RIGHTS AND OBLIGATIONS OF USUFRUCTUARY

Q: What are the rights of the usufructuary as to the thing and its fruits?

A: RISERI-CR

1. To **R**eceive the fruits of the property in usufruct and half of the hidden treasure he accidentally finds on the property *(Arts. 566, 438, NCC)*
2. To enjoy any **I**ncrease which the thing in usufruct may acquire through accession *(Art. 571, NCC)*
3. To personally **E**njoy the thing or lease it to another *(Arts. 572-577, NCC)* generally for the same or shorter period as the usufruct
4. To make such ***I***mprovements or expenses on the property he may deem proper and to remove the improvements provided no damage is caused to the property *(Art. 579, NCC)*
5. To **S**et-off the improvements he may have made on the property against any damage to the same *(Art. 580, NCC)*
6. To **R**etain the thing until he is reimbursed for advances for extraordinary expenses and taxes on the capital *(Art. 612, NCC)*
7. To **C**ollect reimbursements from the owner for indispensable extra ordinary repairs, taxes on the capital he advanced, and damages caused to him
8. To **R**emove improvements made by him if the same will not injure the property

Q: 120-hectares of land from the NHA property were reserved for the site of the National Government Center. 7 hectares from which were withdrawn from the operation. These revoked lands were reserved for the Manila Seedling Bank Foundation, Inc. (MSBF). However, MSBF occupied approximately 16 hectares and leased a portion thereof to Bulacan Garden Corporation (BGC). BGC occupies 4,590 sqm. Implementing such revocation, NHA ordered BGC to vacate its occupied area. BGC then filed a complaint for injunction. Has BGC any right over the leased premises?

A: A usufructuary may lease the object held in usufruct. The owner of the property must respect the lease entered into by the usufructuary so long as the usufruct exists. MSBF was given a usufruct over only a 7-hectare area. NHA cannot evict BGC if the 4,590 square meter portion MSBF leased to BGC is within the 7-hectare area held in usufruct by MSBF. However, the NHA has the right to evict BGC if BGC occupied a portion outside of the 7-hectare area covered by MSBF's usufructuary rights. *(NHA v. CA, G.R. No. 148830, Apr. 13, 2005)*

Q: What are the rights of the usufructuary as to the usufruct itself?

A: ARC

a. To Alienate or mortgage the right of usufruct (*Art. 572*, *NCC*)

   XPN: parental usufruct *(Arts. 225, 226 FC)*

b. In a usufruct to **R**ecover property/real right, to bring the action and to oblige the owner thereof to give him the proper authority and the necessary proof to bring the action *(Art. 578, NCC)*

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c. In a usufruct of part of a **C**ommon property, to exercise all the rights pertaining to the co-owner with respect to the administration and collection of fruits or interests.

Q: Can usufructuary exercise acts of ownership?

A:

GR: A usufructuary cannot exercise acts of ownership such as alienation or conveyance.

XPNs: When what is to be alienated or conveyed is a: **CIA**

1. **C**onsumable'
2. Property **I**ntended for sale;
3. Property which has been **A**ppraised when delivered.

Note: if it has not yet been appraised or if it is not a consumable: return the same quality (*mutuum*)

Q: What are the rights of the usufructuary as to advances and damages?

A: To be: **ITD**

a. reimbursed for Indispensable extraordinary repairs made by him
Note: The reimbursement shall be in the amount equal to the increase in value of the property *(Art. 594, NCC)*

b. reimbursed for **T**axes on the capital advanced by him *(Art. 597, par. 2, NCC)*

c. indemnified for **D**amages caused by usufructuary to the naked owner *(Art. 581, NCC)*

Q: What are the rights of a usufructuary on pending natural and industrial fruits?

A:

Fruits Growing:	Rights of the usufructuary
At the beginning of the usufruct	not bound to refund to the owner the expenses of cultivation and production
At the termination of the usufruct	belong to the owner but he is bound to reimburse the usufructuary of the ordinary cultivation expenses *(Art. 545, NCC)* out of the fruits received *(Art. 443, NCC)*

Note: Civil fruits accrue daily, stock dividends and cash dividends are considered civil fruits.

Q: What if the expenses exceed the proceeds of the growing fruits?

A: The owner has no obligation to reimburse the difference. *(Art. 567, NCC)*

Q: May the usufructuary lease the thing in usufruct even without the owner's consent

A: Yes, but not being the owner, he cannot alienate, pledge or mortgage the thing itself.

Q: May the usufructuary alienate, pledge, or mortgage the right of usufruct?

A: Yes, he, being the owner of the right itself. *(Art. 572, NCC)*

Q: Up to when may the transferee enjoy the rights transferred to him by the usufructuary?

A: Until the expiration of the usufruct. Transfer of usufructuary rights, gratuitous or onerous, is co-terminous with the term of usufruct.

Q: What happens if the thing subject of usufruct is mortgaged by the owner?

A: Usufructuary has no obligation to pay mortgage. But if the same is attached, the owner becomes liable for whatever is lost by the usufructuary.

Q: To what may the usufructuary be liable for?

A: For the damages suffered by the usufructuary on account of fraud committed by him or through his negligence.

Q: When is the usufructuary not liable?

A:

1. For deterioration due to wear and tear
2. For deterioration due to a fortuitous event

Q: What are the rights and obligations of the usufructuary with respect to consumable things?

A: The usufructuary shall have the right to make use of the consumable thing. At the termination of the usufruct, the usufructuary has the obligation to:

1. If the thing has been appraised, pay its appraised value;
2. If the thing has not been appraised:
   a. Return the same quantity and quality; or
   b. Pay its current price at such termination.

Q: What if the damages exceed the value of the improvements?

A: The usufructuary is liable for the difference as indemnity.

Q: What if the improvements exceed the amount of damages?

A: He may remove the portion of the improvements representing the excess in value if it can be done without injury; otherwise, the excess in value accrues to the owner.

Q: Why do improvements accrue to the owner?

A: Because there is no indemnity for improvements.

Q: What are the obligations of the usufructuary?

A:

1. *Before the usufruct*

   a. Make an inventory
   b. Give security

2. *During the usufruct*

   a. Take care of property
   b. Replace the young of animals that die or are lost or become prey when the usufruct is constituted on a flock or herd of livestock;
   c. Make ordinary repairs
   d. Notify the owner of urgent extra-ordinary repairs
   e. Permit works & improvements by the naked owner not prejudicial to the usufruct
   f. Pay annual taxes and charges on the fruits
   g. Pay interest on taxes on capital paid by the naked owner
   h. Pay debts when usufruct is constituted on the whole patrimony
   i. Secure the naked owner's/court's approval to collect credits in certain cases
   j. Notify the owner of any prejudicial act committed by 3rd persons
   k. Pay for court expenses and costs

3. *At the termination*

   a. Return the thing in usufruct to the naked owner unless there is a right of retention
   b. Pay legal interest for the time that the usufruct lasts
   c. Indemnify the naked owner for any losses due to his negligence or of his transferees

Note: If the animals all perish w/o fault but due to contagious disease / uncommon event –deliver remains saved. If the young of animals perished in part due to accident, usufruct continues on remaining portion. If the usufruct is constituted on sterile animals, they are considered as if fungible and have the obligation to replace same kind and quality.

OBLIGATIONS BEFORE THE USUFRUCTT

Q: What are the effects of failure to post a bond or security?

A:

1. The owner shall have the following options:
   a. receivership of realty;
   b. sale of movables;
   c. deposit of securities; or
   d. investment of money; or
   e. retention of the property as administrator.
2. The net product shall be delivered to the usufructuary;
3. The usufructuary cannot collect credit due or make investments of the capital without the consent of the owner or of the court until the bond is given.

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Q: When may the usufructuary be exempt from the obligation to give security?

A: When**: SIR**

1. No one will be **I**njured by the lack of the bond;
2. The donor (or parent) **R**eserved the usufruct of the property donated;
3. The usufruct is **S**ubject to *caucion juratoria* where:
   a. The usufructuary: takes an oath to take care of the things and restore them to its previous state before the usufruct is constituted.
   b. The property subject to such cannot be alienated or encumbered or leased.

   Reason: because this would mean that the usufructuary does not need the property if the thing or property can be alienated.

Q: What is *caucion juratoria?*

A: 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*. (Art. 587)*

Q: When does the usufructuary start to have a right to the proceeds and benefits after the security has been given?

A: He shall have a right to all the proceeds and benefits from the day on which he should have commenced to receive them. (Retroactivity) *(Art. 588, NCC)*

Q: What are ordinary repairs?

A: Such as are required by the wear and tear due to the natural use of the thing and are indispensable for its preservation. *(Art. 592, NCC)*

Note:

GR: Usufructuary has no liability when the thing deteriorates due to wear and tear. He is obliged to return the thing in such state.

XPNs: when there is fraud or negligence

Q: What are extraordinary repairs?

A:

1. Those required by the wear and tear due to the natural use of the thing but not indispensable for its preservation.
2. Those required by the deterioration of or damage to the thing caused by exceptional circumstances and are indispensable for its preservation.

Q: Who pays for extraordinary repairs?

A: Depends on the kind of extraordinary repairs: *(Art. 594, NCC)*

1. *If made by the owner* - he can make them but to his expense and he shall have the right to demand from the usufructuary the payment of legal interest on the amount expended during the duration of the usufruct.

2. *If made by the usufructuary –*

   GR: the usufructuary may make them but he is not entitled to indemnity because they are not needed for the preservation of the thing.

   XPN: He shall have the right to demand the payment of the increase in value at the termination of the usufruct *provided* that:

   1. He notified the owner of the urgency of the repairs
   2. The owner failed to make repairs notwithstanding such notification
   3. The repair is necessary for the preservation of the property.

Q: Does the usufructuary have a right of retention even after the termination of the usufruct?

A: Yes, until he is reimbursed for the increase in value of the property caused by extraordinary repairs for preservation.

Q: How is the increase in value determined?

A: It is the difference between the value of the property before the repairs were made and the value after the repairs have been made.

D. RIGHTS OF THE OWNER

Q: What are the rights of a naked owner and the limitations imposed upon him?

A:

Rights	Limitations
Alienation	Can alienate the thing in usufruct
Alteration	Cannot alter the form and substance
Enjoyment	Cannot do anything prejudicial to the usufructuary
Construction and Improvement	Can construct any works and make any improvement provided it does not diminish the value or the usufruct or prejudice the rights of the usufructuary.

Q: What is the effect of the death of the naked owner on the usufruct?

A: It does not terminate the usufruct. His rights are transmitted to his heirs.

Q: Is renunciation an assignment of right?

A: No, it is really abandonment by the usufructuary of his right and does not require the consent of the naked owner but it is subject to the rights of creditors.

Q: What is the obligation of the owner if the property held in usufruct is expropriated for public use?

A: The owner is obliged to:

1. either replace it; or
2. pay legal interest to usufructuary of the net proceeds of the same.

Q: What happens when a part of the thing subject of the usufruct is lost?

A: The remaining part shall continue to be held in usufruct.

Q: Can usufruct be constituted in favor of a town, corporation or association?

A: Yes, but it cannot be for more than 50 years.

Q: A usufruct is constituted on an immovable where a building is erected, and the building is destroyed, what will happen?

A: Usufructuary will have the right to make use of the land and materials.

Q: An insurance covering the object of usufructuary was obtained, who gets the proceeds?

A: If both of them paid premium: both will share in the insurance proceeds. If it was only the owner who paid, then proceeds will go to him alone.

Q: What is the effect of improper use of the thing by the usufructuary?

A: The owner may demand the delivery of and administration of the thing with responsibility to deliver net fruits to usufructuary.

Q: On 1 January 1980, Minerva, the owner of a building granted Petronila a usufruct over the property until 01 June 1998 when Manuel, a son of Petronila, would have reached his 3oth birthday. Manuel, however, died on 1 June 1990 when he was only 26 years old.

Minerva notified Petronila that the usufruct had been extinguished by the death of Manuel and demanded that the latter vacate the premises and deliver the same to the former. Petronila refused to vacate the place on the ground that the usufruct in her favor would expire only on 1 June 1998 when Manuel would have reached his 30th birthday and that the death of Manuel before his 30th birthday did not extinguish the usufruct.

Whose contention should be accepted?

A: Petronila's contention is correct. Under Article 606 of the Civil Code, a usufruct granted for the time that may elapse before a third person reaches a certain age shall subsist for the number of years specified even if the third person should die unless there is an express stipulation in the contract that states otherwise.

In the case at bar, there is no express stipulation that the consideration for the usufruct is the existence of Petronila's son. Thus, the general rule and not the exception should apply in this case. **(1997 Bar Question)**

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Q: What are considered special usufructs?

A: These are usufruct on**:**

1. Pension or income (Art. 570, NCC)
2. Property owned in common (Art. 582, NCC)
3. Cattle (livestock) (Art. 591, NCC)
4. On Vineyards and woodland (Arts 575-576, NCC)
5. Right of action (Art. 578, NCC)
6. Mortgaged property (Art. 600, NCC)
7. over the Entire patrimony (Art. 598, NCC)
8. things which Gradually deteriorate (Art. 573, NCC)
9. Consumable property (Art. 574, NCC)

E. EXTINCTION/TERMINATION

Q: How is usufruct extinguished?

A: PLDT-ERM

1. *Acquisitive **P**rescription*
   Note: the use by a third person and not the non-use by the usufructuary

2. *Total **L**oss of the thing*
   Note: if the loss is only partial, the usufruct continues with the remaining part.

3. ***D**eath of the usufructuary*; unless a contrary intention appears.
   ***Reason*:** Usufruct is constituted essentially as a lifetime benefit for the usufructuary or in consideration of his person.

4. **T**ermination of right of the person constituting the usufruct
5. **E**xpiration of the period or fulfillment of the resolutory condition
6. ***R**enunciation by the usufructuary*.

   Note: it partakes the nature of a condonation or donation, it must comply with the forms of donation.

7. **M**erger of the usufruct and ownership in the same person who becomes the absolute owner thereof. *(Art. 1275, NCC)*

IX. EASEMENTS

A. CHARACTERISTICS

Q: What is an easement or servitude?

A: It is an encumbrance imposed upon an immovable for the benefit of:

1. another immovable belonging to a different owner; or
2. 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. *(Arts. 613- 614, NCC)*

Q: Distinguish Dominant Estate from Servient Estate.

DOMINANT ESTATE	SERVIENT ESTATE
Immovable in favor of which, the easement is established	That property or estate which is subject to the dominant estate
Which the right belongs	Upon which an obligation rests.

The immovable in favor of which, the easement is established is called the *dominant estate*; that which is subject thereto, the *servient estate.*

Q: Can there be an easement over another easement? Explain.

A: There can be no easement over another easement for the reason that an easement may be constituted only on a corporeal immovable property. An easement, although it is real right over an immovable, is not a corporeal right. **(1995 Bar Question)**

Q: Differentiate easement from servitude.

A:

EASEMENT	SERVITUDE
An English law term	Used in civil law countries
Real	Real or personal
The right enjoyed	Burden imposed upon another

Q: What are characteristics of easement?

A: NICE LIAR

1. Is a right limited by the **N**eeds of the dominant owner or estate, without possession;
2. Is **I**nseparable from the estate to which it is attached - cannot be alienated independently of the estate; *(Art. 617, NCC)*
3. **C**annot consist in the doing of an act unless the act is accessory in relation to a real easement;
4. Involves 2 neighboring **E**states: the dominant estate to which the right belongs and the servient estate upon which an obligation rests;
5. Is a **L**imitation on the servient owner's rights of ownership;
6. Is **I**ndivisible- not affected by the division of the estate between two or more persons; *(Art. 618, NCC)*
7. It is enjoyed over **A**nother immovable never on one's own property;
8. Is a **R**eal right but will affect third persons only when registered.

Q: What are essential qualities of easements?

A:

1. Incorporeal;
2. Imposed upon corporeal property;
3. Confer no right to a participation in the profits arising from it;
4. Imposed for the benefit of corporeal property;
5. Has 2 distinct tenements: dominant and servient estate;
6. Cause must be perpetual.

Q: What is meant by "easement established only on an immovable?"

A: The term "immovable" must be understood in its common and not in its legal sense.

Q: Distinguish easement from usufruct.

A:

EASEMENT	USUFRUCT
Constituted on	
On real property	Real or personal
Use granted	
Limited to a particular or specific use of the servient estate	Includes all uses and fruits
As to right of possession	
Non-possessing right over an immovable	Involves a right of possession in an immovable or movable
As to effect of death	
Not extinguished by death of dominant owner	Extinguished by death of usufructuary
Nature of right	
Real right whether or not registered	Real right whether or not registered
As to transmissibility	
Transmissible	Transmissible
How it may be constituted	
May be constituted in favor, or, burdening, a piece of land held in usufruct	Cannot be constituted on an easement but it may be constituted on the land burdened by an easement

Q: Can there be:

a. An easement over a usufruct?

A: There can be no easement over a usufruct. Since an easement may be constituted only on a corporeal immovable property, no easement may be constituted on a usufruct which is not a corporeal right.

b. A usufruct over an easement?

A: There can be no usufruct over an easement. While a usufruct may be created over a right, such right must have an existence of its own independent of the property. A servitude cannot be the object of a usufruct because it has no existence independent of the property to which it attaches.

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Q: Distinguish easement from lease.

A:

Easement	Lease
Nature	
Real right whether registered or not (whether real or personal)	Real right only when registered OR when the lease exceeds 1 yr.
Where constituted	
Only on real properties	Real or personal
Limitations on the use of right	
There is limited right to the use of real property of another but w/o right of possession	Limited right to both possession and use of another's property
Scope and Uses	
Covers all fruits and uses as a rule	Generally covers only a particular or specific use
Who may create	
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
How it is created	
May be created by: law, contract, last will or prescription	**GR:** only by contract; **XPN:** 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
Passive or Active Owner	
The owner is more or less passive, and he allows the usufructuary to enjoy the thing given in usufruct	The owner or lessor is more or less active
Who has the duty to make repairs	
Usufructuary has the duty to make the ordinary repairs	Lessee generally has no duty to pay for repairs
Who bears payment of taxes and charges on the property	
Usufructuary pays for the annual charges and taxes and on the fruits	Lessee generally pays no taxes
Limitation on the use of the property	
Usufructuary may lease the property to another	The lessee cannot constitue a usufruct on the property leased

APPARENT SIGN

Q: What is the doctrine of apparent sign?

A: Easements are inseparable from the estate to which they actively or passively pertain. The existence of apparent sign under Art. 624 is equivalent to a title. It is as if there is an implied contract between the two new owners that the easement should be constituted, since no one objected to the continued existence of the windows.

Note: It is understood that there is an *exterior sign* contrary to the easement of party wall whenever:

1. there is a window or opening in the dividing wall of buildings
2. entire wall is built within the boundaries of one of the estates
3. the dividing wall bears the burden of the binding beams, floors and roof frame of one of the buildings, but not those of the others
4. the lands enclosed by fences or live hedges adjoin others which are not enclosed

In all these cases, ownership is deemed to belong exclusively to the owner of the property which has in its favor the presumption based on any of these signs.

Q: What is the effect of acknowledgement of an easement in one owns property?

A: An acknowledgement of the easement is an admission that the property belongs to another *(BOMEDCO v. Heirs of Valdez, G.R. No. 124669).*

PARTIES TO AN EASEMENT

Q: Who are the parties to an easement?

A:

1. Dominant estate – refers to the immovable for which the easement was established.

2. Servient estate – the estate which provides the service or benefit.

DOMINANT OWNER

Q: What are the rights of the dominant owner?

A: MARE

1. **E**xercise all rights necessary for the use of the easement *(Art. 625,NCC)*
2. **M**ake on the servient estate all works necessary for the use and preservation of the servitude *(Art. 627 par. 1,NCC)*
3. **R**enounce the easement if he desires to exempt from contributing necessary expenses *(Art. 628,NCC)*
4. **A**sk for mandatory injunction to prevent impairment of his right. (*Resolme v. Lazo*, 27 Phil 416)

Q: What are the obligations of the dominant owner?

A: CAN C

1. He cannot **A**lter the easement or render it more burdensome. *(Art. 627 par. 1,NCC)*
2. He shall **N**otify the servient owner of works necessary for the use and preservation of the servitude. *(Art. 627 par. 2,NCC)*
3. He must **C**hoose the most convenient time and manner of making the necessary works as to cause the least inconvenience to the servient owner.
4. If there are several dominant estates he must **C**ontribute to the necessary expenses in proportion to the benefits derived from the works *(Art. 628 par. 1,NCC)*

SERVIENT OWNER

Q: What are the rights of the servient owner?

A: RMC

1. **R**etain the ownership of the portion of the estate on which easement is imposed
2. **M**ake use of the easement *unless* there is an agreement to the contrary. *(Art. 628 par. 2, NCC)*,
3. **C**hange the place or manner of the use of the easement, provided it be equally convenient *(Art. 629, par. 2,NCC)*

Q: What are the obligations or limitations imposed on the servient owner?

A: IC

1. He cannot **I**mpair the use of the easement.
2. He must **C**ontribute to the necessary expenses in case he uses the easement, unless otherwise agreed upon *(Art. 628 par. 2, NCC)*

B. CLASSIFICATIONS OF EASEMENT

Q: What are the classifications of easements?

A:

1. As to recipient of the benefit:
   a. Real (or Predial) – The easement is in favor of another immovable.
   b. Personal – The easement is in favor of a community, or of one or more persons to whom the encumbered estate does not belong (easement of right of way for passage of livestock).

2. As to purpose or nature of limitation:
   a. Positive – One which impose upon the servient estate the obligation of allowing something to be done or of doing it himself.
   b. Negative – That which prohibits the owner of the servient estate from doing something which he could lawfully do if the easement did not exist

3. As to the manner of exercised:
   a. *Continuous* – Their use may or may not be incessant

      Note: For acquisitive prescription, the easement of aqueduct and easement of light and view are considered *continuous*.

   b. *Discontiuous* – used at intervals and depend upon the acts of man.

   Right of way - because it may be exercised only if a person passes or sets foot on somebody else's land.

4. As to whether their existence is indicated:

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a. Apparent – Made known and continually kept in view by external signs that reveal the use and enjoyment of the same

e.g. right of way when there is an alley or a permanent path

b. Non-apparent – They show no external indication of their existence.

e.g. easement of not building to more than a certain height.

5. As to the right given:

a. Right to partially use the servient estate
e.g right of way
b. Right to get specific materials or objects from the servient estate
c. right to participate in ownership
e.g easement of party wall
d. Right to impede or prevent the neighboring estate from performing a specific act of ownership.

6. As to source:
a. Legal – those created by law for public use or private interests.
b. Voluntary - constituted by will or agreement of the parties or by testator.
c. Mixed – created partly by agreement and partly by law.

7. As to the duty of the servient owner:
a. *Positive* – Imposes upon the owner of the servient estate the obligation of allowing something to be done or doing it himself.

e.g. right of way - imposes the duty to allow the use of said way.

b. *Negative* – Prohibits the owner of the servient estate from doing something which he could lawfully do if the easement did not exist.

e.g. Easement of light and view where the owner is prohibited from obstructing the passage of light.

1. LEGAL EASEMENT

Q: What is a Legal Easement?

A: An easement established by law for public use or for the interest of private persons.

Q: What is a Public Legal Easement?

A: A Public Legal Easement is for public or communal use.

Q: What is a Private Legal Easement?

A: A Private Legal Easements is for the interest of private persons or for private use.

Q: What are the kinds of legal easements?

A: WIND – PLW

1. Easement relating to **W**aters
2. Easement relating to right of **W**ay
3. **I**ntermediate distances and works for certain construction and plantings
4. Easement against **N**uisance
5. **D**rainage of Building
6. Easement of **P**arty wall
7. Easement of **L**ight and view

A. RIGHT OF WAY

Q: What is right of way?

A: It is the right to demand that the owner of an estate surrounded by other estates be allowed to pass thru the neighboring estates after payment of proper indemnity.

Q: Can easement of right of way be acquired by prescription?

A: No, because it is discontinuous or intermittent *(Ronquillo, et al. vs. Roco, GR No. L-10619, Feb. 28, 1958).*

Q: What kind of servitude in favor of the government is a private owner required to recognize?

A: The only servitude which he is required to recognize in favor of the government is:

1. the easement of a public highway,
2. private way established by law, or

3. any government canal or lateral that has been pre-existing at the time of the registration of the land.

Note: If the easement is not pre-existing and is sought to be imposed only after the land has been registered under the LR Act, proper expropriation proceedings should be had, and just compensation paid to the registered owner *(Eslaban v. Vda De Onorio, G.R. No. 146062).*

Q: What are the requisites for easement on right of way?

A: POON-D

1. The easement must be established at the point least **P**rejudicial to the servient estate
2. Claimant must be an **O**wner of enclosed immovable or with real right
3. There must be no adequate **O**utlet to a public highway
4. The right of way must be absolutely **N**ecessary not mere convenience
5. The isolation must not be **D**ue to the claimant's own act
6. There must be payment of proper **I**ndemnity.

Q: What if the property is not the shortest way and will not cause the least damage to the servient estate?

A: The way which will cause the least damage should be used even if it will not be the shortest.

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

Q: What does "least prejudicial" mean in determining the right of way?

A: It means it is the shortest way *and* the one which will cause the least damage to the property to the servient estate in favor of the dominant estate.

Q: 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 1km longer. Who should prevail?

A: Romulo will prevail. Under Art. 650, 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. **(2000 Bar Question)**

Q: Spouses dela Cruz are occupants of a parcel of land located at the back of Ramiscal's property. They use as their pathway, to and from the nearest public highway from their property, a long strip of land owned by Ramiscal. They also enclosed such strip of land with a gate, fence, and roof. Ramiscal demanded that the spouses demolish the same. The spouses refused. Are the spouses entitled to a right of way?

A: No. There is no voluntary nor legal easement established. The spouses failed to show that they entered into an agreement with Ramiscal to use the pathway. Art 649 provides that the easement of right of way is not compulsory if the isolation of the immovable is due to the proprietor's own acts. Mere convenience for the dominant estate is not enough to serve as its basis. There should be no other adequate outlet to a public highway. Also, under Art. 649, it is the owner or any person who by virtue of a real right may cultivate or use any immovable surrounded by other immovable pertaining to other persons, who is entitled to demand a right of way through the neighboring estates. Here, the spouses fell short of proving that they are the owners of the supposed dominant estate. (*Eslaban v. Vda De Onorio, G.R. No. 146062*)

Q: David owns a subdivision which does not have an access to the highway. When he applied for a license to establish the subdivision, he represented that he will purchase a ricefield located between his land and the highway, and develop it into an access road. However, when the license was granted, he did not buy the rice field, which remained unutilized. Instead, he chose to connect his subdivision with the neighboring subdivision of Nestor, which has an access to the highway. When Nestor and David failed to arrive at an agreement as to compensation, Nestor built a wall across the road connecting with David's subdivision. Is David entitled to 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?

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A: 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 an access road to the rice fields which he was supposed to purchase according to his own representation when he applied for a license to establish the subdivision. (*Floro vs. Llenado, 244 SCRA 713)*

Q: How much is the proper indemnity to the servient estate?

A: If the passage is:

1. Continuous and permanent - the indemnity consists of the value of the land occupied plus the amount of damages caused to the servient estate.
2. Temporary – indemnity consists in the payment of the damage caused

Q: How wide should an easement of right of way be?

A: The width of the easement shall be that which is sufficient for the needs of the dominant estate.*(Art. 651, NCC)*

Q: Can a dominant owner demand a driveway for his automobile?

A: Yes, due to necessity of motor vehicles in the present age.

Q: Who is responsible for repairs and taxes?

A:

1. As to repairs the dominant owner is liable for necessary repairs.
2. As to proportionate share of the taxes it shall be reimbursed by said owner to the proprietor of the servient estate. This applies only to permanent easements. *(Art. 654, NCC)*

Q: What are the special causes of extinguishment of right of way?

A:

1. The opening of a public road, or

2. Joining the dominant tenement to another which has an exit to a public road.

Q: Is said extinguishment automatic?

A: No. There must be a demand for extinguishment coupled with tender of indemnity by the servient owner.

Q: 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 apublic highway, but the easment 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?

A: 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 Art 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. **(2001 Bar Question)**

OTHER LEGAL EASEMENTS

WATERS

Q: What are the different easements relating to waters?

A: These are: **DRAW – BN**

1. **N**atural drainage *(Art. 637)*
2. drainage of **B**uildings *(Art. 674)*
3. easement on **R**iparian banks for navigation, floatage, fishing, salvage, and tow path *(Art. 638)*
4. easement of a **D**am *(Arts. 639, 647)*
5. easement for drawing **W**ater or for watering animals *(Arts. 640-641)*
6. easement of **A**queduct *(Arts. 642-636)*

NATURAL DRAINAGE

Note: Lower estates must receive waters which are naturally and without intervention of man descend from higher estates including earth and stones carried with them.

Q: What are its limitations?

A:

a. Dominant owner must not increase the burden but he may erect works to avoid erosion.

b. The servient owner must not impede the descent of water (but may regulate it).

EASEMENT FOR DRAWING WATER OR FOR WATERING ANIMALS

Note: This is a combined easement for drawing of water and right of way.

Q: What are the requisites for easement for watering cattle?

A:

1. It must be imposed for reasons of public use
2. It must be in favor of a town or village indemnity must be paid

Note: the right to make the water flow thru or under intervening or lower estates

Q: What are the requisites for drawing water or for watering of animals?

A:

1. Owner of the dominant estate has the capacity to dispose of the water;
2. The water is sufficient for the use intended
3. Proposed right of way is the most convenient and the least onerous to third persons.
4. Pay indemnity to the owner of the servient estate *(Art. 643)*

EASEMENT OF AQUEDUCT

Q: How is the easement of aqueduct considered?

A: For legal purposes, it is considered *continuous* and *apparent* even though the flow of 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. *(Art. 646, NCC)*

PARTY WALL

Q: What is a party wall?

A: A common wall which separates two estates, built by common agreement at the dividing line such that it occupies a portion of both estates on equal parts.

Note: it is a kind of compulsory co-ownership.

Q: Distinguish easement of party wall from co-ownership.

A:

PARTY WALL	CO-OWNERSHIP
Shares of co-owners cannot be physically segregated but they can be physically identified	Can be divided physically; a co-owner cannot point to any definite portion of the property belonging to him
No limitation as to use of the party wall for exclusive benefit of a party	None of the co-owners may use the community property for his exclusive benefit because he would be invading on the rights of the others
Any owner may free himself from contributing to the cost of repairs and construction of a party wall by renouncing ALL his rights	Partial renunciation is allowed

Q: What are the presumptions (*juris tantum*) of existence of a party wall?

A:

1. in adjoining walls of building, up to common elevation
2. in dividing walls of gardens and yards (urban)
3. in dividing fences, walls and live hedges of rural tenements
4. In ditches or drains between tenements

Rebuttal of presumption:

1. Title
2. by contrary proof
3. by signs contrary to the existence of the servitude *(Arts. 660 & 661, NCC)*
   Note: If the signs are contradictory, they cancel each other.

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Q: Who spends for the cost of repairs and construction of party walls?
A: The part-owners. They are obliged to contribute in proportion to their respective interests.

Q: May an owner refuse to contribute?

A:

GR: Yes, any owner may free himself from the obligation to contribute by renouncing his rights in the party wall.

XPN: When the party wall actually supports his building, he cannot refuse to contribute for the expenses or repair and construction. *(Art. 662, NCC)*

XPN to XPN: If the owner renounces his part-ownership of the wall, in this case he shall bear the expenses of repairs and work necessary to prevent any damage which demolition may cause to the party wall. *(Art. 663, NCC)*

Q: May an owner increase the height of a party wall?

A: Yes, provided that he must:

1. do so at his own expense;
2. pay for any damage caused even if it is temporary;
3. He must bear the cost of maintaining the portion added;
4. He must pay the increased cost of preservation of the wall *(Art. 664, NCC);*
5. He shall be obliged to reconstruct the wall at his expense if necessary for the wall to bear the increased height and if additional thickness is required, he shall provide the space therefore from his own land.

DRAINAGE OF BUILDINGS

Q: Define drainage of buildings

A: It is the right to divert the rain waters from one's own roof to the neighboring estate.

Q: What are the conditions for drainage of buildings?

A:

1. No adequate outlet
2. The outlet must be at the point where egress is easiest and establishing a conduit for the drainage of water
3. Proper indemnity

LATERAL AND SUBJACENT SUPPORT

Q: Can there be a stipulation or testamentary provision allowing excavations that could cause danger to an adjacent land or building?

A: No, the same shall be void. *(Art. 685, NCC)*

Reason: a person is protected even against his own folly, in the interest of public safety. (Paras, p.729)

Q: What should be done first before making an excavation?

A: Any proprietor who intends to make any excavation shall notify all owners of adjacent lands.

2. VOLUNTARY EASEMENT

Q: When is an easement voluntary?

A: it is voluntary when it is established by the will of the owners.

Q: Who may constitute voluntary easements?

A: The owner possessing capacity to encumber property may constitute voluntary servitude. If there are various owners, *all* must consent; but consent once given is not revocable.

Q: For whose favor are voluntary easements established?

A:

1. Predial servitudes:
   a. for the owner of the dominant estate
   b. for any other person having any juridical relation with the dominant estate, if the owner ratifies it.
2. Personal servitudes: for anyone capacitated to accept.

Q: How are voluntary easements created and what are the governing rules for such?

A:

1. If created by title (contract, will, etc.), the title governs.

2. If acquired by prescription, it is governed by the manner or form of possession.

   In both cases, the Civil Code will only apply suppletorily.

C. MODES OF ACQUIRING EASEMENTS

1. COMPULSORY EASEMENTS

Q: How are easements acquired?

A: FART-P

1. By **T**itle – All easements:
   a. Continuous and apparent *(Art. 620)*
   b. Continuous non-apparent *(Art. 622)*
   c. discontinuous, whether apparent or non-apparent *(Art. 622)*
2. By **P**rescription of ten years – continuous and apparent *(Art. 620)*
3. By deed of **R**ecognition
4. By **F**inal judgment
5. By **A**pparent sign established by the owner of the two adjoining estates

Q: How is the prescriptive period computed?

A:

a. *Positive easement* - the period is counted from the day when the owner of the dominant estate begins to exercise it

b. *Negative easement*- from the day a notarial prohibition is made on the servient estate

2. EASEMENT OF LIGHT AND VIEW

Q: What is easement of light (*jus luminum*)?

A: The right to admit light from neighboring estate by virtue of the opening of a window or the making of certain openings.

Q: What is easement of view (*jus prospectus*)?

A: The right to make openings or windows to enjoy the view thru the estate of another and the power to prevent all constructions or works which could obstruct such view or make the same difficult.

Note: It necessarily includes easement of light.

Q: What are its modes of acquisition of easement of light and view?

A:
1. by title
2. by prescription

Q: What is the prescriptive period for acquisition of easement of light and view?

A: 10 years.

Q: From when does the prescriptive period start to run?

A: The reckoning point depends on whether the easement is positive or negative which, in turn, is dependent on where the opening is made if it is made:

1. On one's own wall and the wall does not extend over the property of another – The easement is negative.

   Commencement of Period of prescription - starts from the time formal prohibition is made.

   Reason: The owner merely exercises his right of dominion and not of an easement. Negative easement is not automatically vested as formal prohibition is a pre-requisite.

2. Thru a party wall or on one's own wall which extends over the neighboring estate – The easement is positive.

   Commencment of Period of prescription – starts from the time the window is opened.

   Reason: owner of the neighboring estate who has a right to close it up allows an encumbrance on his property.

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Q: How about with regard to openings at height of ceiling joists?

A: The owner of a wall which is not a party wall may make an opening to admit light and air, but not view subject to the ff:

1. The size must not be more than 30 square centimeters
2. The opening must be at the height of the ceiling joists or immediately under the ceiling
3. There must be an iron grating imbedded in the wall
4. There must be wire a screen.

Q: What are the restrictions as to easement of views?

A:

1. *Direct Views*: the distance of 2 meters between the wall and the boundary must be observed
2. *Oblique Views*: (walls perpendicular or at an angle to the boundary line) must not be 60 cm to the nearest edge of the window.

Note: Any stipulation to the contrary is void *(Art. 673, NCC).*

Q: What if the wall upon which an opening is made, becomes a party wall?

A: A part-owner can order the closure of the opening. No part-owner may make an opening thru a party wall without the consent of the others.
Note: If the wall becomes a party wall he can close the window unless there is a stipulation to the contrary (*Art. 669, Civil Code, Paras p. 715*)

Q: Does non-observance of the distances provided in Article 670 give rise to prescription?

A: No, this refers to a negative easement as the window is thru a wall of the dominant estate.

Note: No windows, apertures, balconies, or other similar projections which afford a direct view upon or towards an adjoining land or tenement can be made, without leaving a distance of two meters between the wall in which they are made and such contiguous property. Neither can side or oblique views upon or towards such conterminous property be had, unless there be a distance of sixty centimeters. The nonobservance of these distances does not give rise to prescription. (Art. 670, Civil Code)

Q: How is easement of light and view extinguished?
A:

1. Merger
2. When the easement can no longer be used
3. Expiration of the term (if temporary) or fulfillment of the condition (if conditional)
4. Renunciation of the owner of the dominant estate of the redemption agreed upon
5. Non-user for 10 years

EXTINGUISHMENT OF EASEMENTS

Q: How are easements extinguished?

A: MARINE-CREW

1. **M**erger of ownership of the dominant and servient owner
2. **A**nnulment of the title to the servitude
3. **R**edemption agreed upon
4. **I**mpossibility to use the easement
5. **N**on-user : 10 years
6. **E**xpiration of the term or fulfillment of the resolutory condition
7. Bad **C**ondition – when either or both estates fall into such a condition that the easement could not be used
8. **R**esolution of the right of grantor to create the easement (as when the vendor a retro redeems the land)
9. **E**xpropriation of the servient estate
10. **W**aiver by the dominant owner gathered from positive acts

X. NUISANCE

Q: What is a nuisance?

A: Any:

1. act,
2. omission,
3. establishment,
4. business or
5. condition of property or
6. anything else which: **ISAHO**
   a. **I**njures/dangers the health or safety of others
   b. **S**hocks, defies or disregards decency or morality
   c. **A**nnoys or offends the senses
   d. **H**inders or impairs the use of property or

e. **O**bstructs or interferes with the free passage to any public highway or street or body of water

Q: May a nuisance be both public and private?

A: Yes, it is called mixed nuisance.

e.g. A house washed on to a street railway track: private nuisance to the railway company and a public nuisance because it obstructs the street.

Q: Distinguish nuisance from trespass.

A:

Nuisance	Trespass
Use of one's own property which causes injury to another	Direct infringement of another's right or property
Injury is consequential	Injury is direct and immediate

Q: What are the kinds of nuisance?
A:

1. According to the number of persons affected:
    a. *Public (or common) nuisance* – is one which affects the community or neighborhood or considerable number of persons
    b. *Private nuisance* – is one which affects an individual or few persons only.
2. Other classification of nuisance:
    a. *Nuisance Per Se* – that kind of nuisance which is always a nuisance. By its nature, it is always a nuisance at all times and under any circumstances regardless of location of surroundings.
    b. *Nuisance Per Accidens* – that kind of nuisance by reason of location, surrounding or in the manner it is conducted or managed.

Q: Distinguish nuisance per se from nuisance *per accidens*.

A:

PER SE	PER ACCIDENS
As a matter of law	As a matter of fact
Need only be proved in any locality	Depends upon its location and surroundings, the manner of its conduct or other circumstances
May be summarily abated under the law of necessity	May be abated only with reasonable notice to the person alleged to be maintaining or doing such nuisance

ATTRACTIVE NUISANCE

Q: What is the doctrine of attractive nuisance?

A. One who maintains on his estate or premises an attractive nuisance without exercising due case to prevent children from playing therewith or resorting thereto, is liable to a child of tender years who is injured thereby, even if the child is technically a trespasser in the premises. *(Jarco Marketing Corp. v. CA, 117 SCAD 818, 321 SCRA 375 (1991), Paras, p. 741)*

Q: What is the basis for the liability?

A: The attractiveness is an invitation to children. Safeguards to prevent danger must therefore be set up.

Q: What are the elements of attractive nuisance?

A:

1. It must be attractive
2. Dangerous to children of tender years.

Q: Is a swimming pool an attractive nuisance?

A:

GR: A swimming pool or water tank is not an attractive nuisance, for while it is attractive, it is merely an imitation of the work of nature. Hence, if small children are drowned in an attractive water tank of another, the owner is not liable even if there be no guards in the premises (*Hidalgo Enterprises v. Balandan, et. al, L-3422 Jun. 13, 1952*).

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XPN: Swimming pool with dangerous slides

Note: The doctrine of attractive nuisance does not generally apply to bodies of water, artificial as well as natural in the absence of some unusual condition or artificial other than the mere water and its location.

REMEDIES AGAINST NUISANCE

Q: What are the remedies against nuisance?

A: If the nuisance is:

PUBLIC	PRIVATE
Civil action	Civil Action
Abatement w/o judicial proceedings	Abatement w/o judicial proceedings
Prosecution under RPC/local ordinance	

Q: What are the requisites of extra-judicial abatement?

A: BAR VID

1. The nuisance must be specially **I**njurious to the person affected.
2. No **B**reach of peace or unnecessary injury must be committed
3. **D**emand must first be made upon the owner or possessor of the property to abate the nuisance.
4. Demand is **R**ejected
5. Abatement is **A**pproved by the district health officer and executed with the assistance of the local police, and
6. **V**alue of destruction does not exceed P3,000

Q: When can an owner of the thing abated recover damages?

A: If the thing is found by the court not to be a nuisance, the owner can claim damages.

Note: A private person or a public official extrajudicially abating a nuisance shall be liable for damages if he causes unnecessary injury or if the alleged nuisance is later declared by the courts to be not real nuisance.

Q: Does the right to question the existence of a nuisance prescribe?

A: No. It is imprescriptible.

XI. ACTION TO QUIET TITLE

Q: What is an action to quiet title?

A: It is an action for the purpose of putting an end to vexatious litigation with respect to the property involved.

Note: An action to quiet title is *quasi in rem* - an action *in personam* concerning real property where judgment therein is enforceable only against the defeated party and his privies.

Q: What are the reasons for quieting title?

A:

1. prevent litigation;
2. protect true title and possession;
3. real interest of both parties which requires the determination of the precise state of title.

Q: What are the instances where action to quiet title does not apply?

A:

GR:

1. To questions involving interpretation of documents;
2. To mere written or oral assertions of claims.

XPNs:

1. If made in a legal proceeding
2. If it is being asserted that the instrument or entry in plaintiff's favor is not what it purports to be
3. To boundary disputes
4. To deeds by strangers to the title *unless* purporting to convey the property of the plaintiff
5. To instruments invalid on their face
6. Where the validity of the instrument involves pure questions of law

Q: Edgardo donated a parcel of land to a *barangay* subject to the condition that it shall be used for the construction of a public plaza within 5 years from execution of the Deed of Donation. Otherwise, the deed shall have no force and effect and ownership of the land will revert to the donor. The *barangay* took possession of the property and allowed the construction of buildings by public and private entities. Edgardo filed a complaint for quieting of title and recovery of possession of the area donated against the *barangay* claiming that the donation had ceased to be effective, for failure to comply with the conditions of the donation. Was the action to quiet title properly made?

A: No. The action to quiet title is unavailing until the donation shall have first been revoked. In the case at bar, the *barangay* traces its claim of ownership over the disputed property to a valid contract of donation which is yet to be effectively revoked. Such rightful claim does not constitute a cloud on the supposed title of Edgardo over the same property removable by an action to quiet title. *(Dolar v. Brgy. Lublub, G.R. No. 152663, Nov. 18, 2005)*

XII. MODES OF ACQUIRING OWNERSHIP

Q: Differentiate mode from title.

A:

MODE	TITLE
Directly and immediately produces a real right	Serves merely to give the occasion for its acquisition or existence
Cause	Means
Proximate cause	Remote cause
Essence of the right which is to be created or transmitted	Means whereby that essence is transmitted

Q: What are the modes of acquiring ownership?

A: OLD TIPS

1. **O**ccupation
2. **L**aw
3. **D**onation
4. **T**radition
5. **I**ntellectual creation
6. **P**rescription
7. **S**uccession

A. OCCUPATION

Q: What are the requisites of occupation?

A: WISCS

1. There must be **S**eizure of a thing,
2. which must be a **C**orporeal personal property,
3. which must be **S**usceptible of appropriation by nature
4. The thing must be **W**ithout an owner
5. There must be an **I**ntention to appropriate.

Q: Distinguish occupation from possession.

A:

OCCUPATION	POSSESSION
As regards acquisition of ownership	
Mode of acquiring ownership	Merely raises the presumption of ownership when exercised in the concept of owner
As to property involved	
Involves only corporeal personal property	Any kind of property
As regards ownership of the thing by another	
Requires that the object be without an owner	The property may be owned by somebody
As regards the intent to acquire	
There must be an intent to acquire ownership	May be had in the concept of a mere holder
As regards possession	
May not take place w/o some form of possession	May exist w/o occupation
As to period	
Short duration	Generally longer
As to leading to another mode of acquisition	
Cannot lead to another mode of acquisition	May lead to another mode- prescription

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Q: What are the things susceptible of occupation?

A:

1. Things that are without an owner – res nullius; abandoned

Note: Stolen property cannot be subject of occupation

2. Animals that are the object of hunting and fishing
3. Hidden treasure
4. Abandoned movables.

Q: May a person acquire ownership over a wild animal by occupation?

A: Wild animals are considered *res nullius* when not yet captured. After its capture, animals that escaped become *res nullius* again.

Q: When can land be the object of occupation?

A: It depends.

1. If without an owner, it pertains to the State *(Regalian Doctrine).*
2. If abandoned and the property is private, it can be the object of occupation.
3. And if the land does not belong to anyone is presumed to be public.

B. DONATION

1. DEFINITION

Q: What is donation?

A: It is an act of pure liberality whereby a person disposes gratuitously of a thing or right in favor of another who accepts it. (Art. 725, Civil Code.)

Q: What are the requisites of donation?

A: ACID

1. Donor must have **C**apacity to make the donation
2. He must have donative **I**ntent (*animus donandi*)
3. There must be **D**elivery
4. Donee must **A**ccept or consent to the donation during the lifetime of the donor and of the donee in case of donation *inter vivos (Art. 746, NCC)*; whereas in case of donation *mortis causa*, acceptance is made after donor's death because they partake of a will *(Art. 728, NCC)*

Q: What are the essential features or elements of a true donation?

A:

1. Alienation of property by the donor during his lifetime, which is accepted
2. Irrevocability by the donor of the donation
3. *Animus Donandi* (donative intent)
4. Consequent impoverishment of the donor (diminution of his assets)

Q: What rules govern donations of the same thing to different donees?

A: These are governed by provisions on double sale as set forth in Article 1544. *(Art. 744, NCC)*

Note: If the same thing should have been sold to different vendees, the ownership shall be transferred to the person who may have first taken possession thereof in good faith, if it should be movable property. Should it be immovable property, the ownership shall belong to the person acquiring it who in good faith first recorded it in the Registry of Property. Should there be no inscription, the ownership shall pertain to the person who in good faith was first in the possession; and, in the absence thereof, to the person who presents the oldest title, provided there is good faith (Art. 1544, Civil Code)

OBJECT OF DONATIONS

Q: What may donation cover?

A: Donation may cover all present property. Donations cannot comprehend future property.

(Art. 751, NCC)

Q: Can future inheritance or the inchoate right to inherit be donated?

A: No, because it is future property.

Q: May property, the acquisition of which is subject to suspensive condition be donated?

A: Yes, because once the condition is fulfilled, it retroacts to the day the contract is constituted. *(Art. 1187 par 1, NCC)*

Q: May ownership and usufruct of property be donated to different persons separately?

A: Yes, provided all the donees are living at the time of donation. *(Art. 756, NCC)*

Q: Is there a limitation on the amount that can be donated?

A:

1. If the donor has forced heirs he cannot give or receive by donation more than what he can give or receive by will.
2. If the donor has no forced heirs, donation may include all present property *provided* he reserves in full ownership or in usufruct:
   a. the amount necessary to support him and those relatives entitled to support from him.
   b. property sufficient to pay the donor's debt contracted prior to the donation.

2. CHARACTERISTICS

A. EXTENT TO WHICH DONOR MAY DONATE PROPERTY

Q: Up to what extent may a donation cover?

A: It may comprehend all the present property of the donor, or part thereof, provided he reserves, in full ownership or in usufruct, sufficient means for the support of himself, and of all relatives who, at the time of the acceptance of the donation, are by law entitled to be supported by the donor. *(Art. 750, NCC)*

Q: Can future properties be subject of donation?

A: No, donations cannot comprehend future properties

Note: Future property means anything which the donor cannot dispose of at the time of the donation. *(Art. 751, NCC)*

B. RESERVATIONS AND REVERSIONS

Q: What is the effect if the donor violates the requirement for reservation under Article 750?

A: A donation where the donor did not reserve property or assets for himself in full ownership or in usufruct sufficient for his support and all relatives legally dependent upon him, is not void. It is merely reducible to the extent that the support to himself and his relatives is impaired or prejudiced. *(Pineda Property, p. 571, 1999 ed)*

Q: What is reversion in donation?

A: It is a condition established in the deed of donation which has for its effect the restoration or return of the property donated to the donor or his estate or in favor of other persons who must be living at the time of the donation for any cause or circumstances. *(Art. 757)*

Note: If the reversion is in favor of other persons who are not all living at the time of the donation, the reversion stipulated shall be void, but the donation shall remain valid.

3. KINDS

Q: What are the kinds of donation?

A:

1. *According to motive or cause:* **SRMO**
   a. Simple
   b. Remuneratory (1st kind)
   c. Remuneratory (2nd kind): Conditional or Modal donations
   d. Onerous donations
2. *As to perfection or extinguishment*:
   a. Pure
   b. With a condition
   c. With a term
3. *According to effectivity:*
   a. *Inter vivos* (Art. 729, Civil Code)
   b. *Mortis Causa* (Art. 728, Civil Code)
   c. *Propter Nuptias*

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Q: Discuss the kinds of donation according to motive or cause?

A:

PURPOSE	FORM
Simple	
pure liberality	same to that of forms in donations
Remuneratory (1st kind)	
to reward past services provided the services do not constitute a demandable debt.	same to that of forms in donations
Remuneratory (2nd kind)	
1. reward future services; or 2. because of future charges or burdens, when the value of said services, burdens, or charges is less than the value of the donation.	1. Onerous – same form of that of contracts 2. Gratuitious – same form of that of donations
Onerous	
Burdens, charges or services are equal in value to that of the donation.	same as that of contracts

Q: Discuss the kinds of donation according to motive or cause?
A:

1. Pure donation – is one which is not subject to any condition
2. Conditional – is one wherein the donor imposes on the donee a condition dependent on the happening of a future event or past event unknown to the parties.
3. With a Term – is one wherein the donor imposes on the donee a condition dependent upon the happening of a future and certain event.

A. DONATION INTER VIVOS

Q: What are the limitations imposed by law in making donations inter vivos?

A: RFM

1. Donor must **R**eserve sufficient means for his support and for his relatives who are entitled to be supported by him *(Art. 750, NCC)*
2. Donation cannot comprehend **F**uture property except donations between future husband and wife *(See Art. 84 FC)*
3. No person may give by way of donation **M**ore than he may give by will

B. DONATION BY REASON OF MARRIAGE

Q: What are donations by reason of marriage or donations propter nuptias (DPN)?

A: Those donations which are made before the celebration of the marriage, in consideration of the same, and in favor of one or both parties.

Q: What are the grounds for filing an action for revocation of a DPN?

A:

1. Marriage is not celebrated
2. Marriage is judicially declared void
3. Marriage took place without consent of parents, when required by law
4. Marriage is annulled and donee acted in bad faith
5. Upon legal separation, donee being the guilty spouse
6. Donation subject to resolutory condition and it took place
7. Donee committed an act of ingratitude

C. DONATION MORTIS CAUSA

Q: What is donation mortis causa?
A: These are donations which are to take effect upon the death of the donor.

NOTE: it partakes of the nature of testamentary provisions and governed by the rules on succession. *(Art. 728, NCC)*

Q: Distinguish donation *inter vivos* from donation *mortis causa*.

A:

INTER VIVOS	MORTIS CAUSA
As to when it takes effect	
Takes effect during the lifetime of the donor, independently of the his death	Takes effect upon donor's death
As to cause or consideration	
Cause is donor's pure generosity	In contemplation of donor's death without intention to dispose of the thing in case of survival
On predecease	
Valid if donor survives the done	Void if donor survives
On revocability	
Generally irrevocable except for grounds provided for by law	Always revocable at any time and for any reason before the donor's death
On formalities	
Must comply with the formalities of donations	Must comply with the formalities of a will
On when acceptance is made	
Acceptance during donor's lifetime	After donor's death
On when property is conveyed to the donee	
Property completely conveyed to the donee	Property retained by the donor while he is still alive
On tax payable	
Donor's tax	Estate tax

D. ONEROUS DONATION

Q: What is an onerous donation?

A: A donation given for which the donor received a valuable consideration which is the equivalent of the property so donated.

Q: What are the kinds of onerous donations?

A:

1. Totally onerous – when the burden is equal to or greater than the value of the property donated

2. Partially onerous – when the burden is lesser than the value of the donation. *(Pineda Property, p. 547, 1999 ed)*

Q: What laws will apply to onerous donations?

A:

1. Totally onerous – rules on contracts

2. Partially onerous
   a. Portion exceeding the value of the burden – simple donations
   b. Portion equivalent to the burden – law on contracts *(Pineda Property, p. 547, 1999 ed)*

E. SIMPLE, MODAL, CONDITIONAL

Q: What is a simple donation?

A: One which is not subject to any condition

Q: What is a conditional donation?

A: One wherein the donor imposes on the done a condition dependent on the happening of a future event or past event unknown to the parties.

Q: What is the effect if a suspensive condition may take place beyond the natural expectation of life of the donor?

A: The condition does not destroy the nature of the act as a donation intervivos, unless a contrary intention appears. *(Art. 730)*

Q: What is a modal donation?

A: A donation subject to burdens or charges. *(Pineda Property, p. 536-537, 1999 ed)*

4. FORMALITIES REQUIRED

A. HOW MADE AND ACCEPTED

Q: Who must make the acceptance?

A: Acceptance may be made by the donee himself or thru an agent with special power of attorney otherwise, donation shall be void. *(Art. 745, NCC)*

Q: Why is there a need for an acceptance?

A: Because the donee may not want to accept the donor's liberality or if donation is onerous, he may not agree with the burden imposed.

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Note: Donation is perfected once the acceptance of the donation was made known to the donor. Accordingly, ownership will only revert to the donor if the resolutory condition is not fulfilled.

Q: What is the effect of donations made to incapacitated persons?

A: Donations made to incapacitated persons shall be void, though simulated under the guise of another contract or through a person who is interposed *(Art. 743, NCC)*

Q: Who may accept donations made in favor of minors?

A: If the donation is pure and simple and does not require written acceptance, the minors can accept the donation by themselves
If the donation needs written acceptance, it may be accepted by their guardian or legal representatives

Q: Who may accept donations made to conceived and unborn children?

A: Donations made to conceived and unborn children may be accepted by those who would legally represent them if they were already born *(Art. 742, NCC)*

B. PERFECTION

Q: When is a donation perfected?

A: Donation is perfected from the moment the donor knows of the acceptance by the donee *(Art. 734, NCC)*.

C. DIFFERENCES BETWEEN FORMALITIES FOR DONATION OF REAL, PERSONAL PROPERTIES

Q: What is the formalities required for donation of real and personal properties?

A:

1. Of movable property:
   a. With simultaneous delivery of property donated:
      i. for P 5,000 or less - may be oral/written
      ii. for more than P 5,000 – written in public or private document
   b. Without simultaneous delivery:
      i. The donation and acceptance must be written in a public or private instrument (Statute of Frauds), regardless of value.
      Otherwise, donation is *unenforceable*
2. Of immovable property:
   a. Must be in a public instrument specifying
      i. the property donated and
      ii. the burdens assumed by the donee
   b. Acceptance may be made:
      i. In the same instrument or
      ii. In another public instrument, notified to the donor in authentic form, and noted in both deeds.
      Otherwise, donation is void.

5. QUALIFICATIONS OF DONOR, DONEE

Q: Who qualifies as a donor?

A: Any person who has capacity to contract and capacity to dispose of his property. *(Art. 735, NCC)*

Q: Why is there a need for capacity to contract?

A: Because a donation *inter vivos* is contractual in nature and is a mode of alienation of property.

Q: When is the possession of capacity to contract by the donor determined?

A: His capacity shall be determined as of the time of the making of donation. *(Art. 737, NCC)*
Note: Making of donation shall be construed to mean perfection.

Q: Who may qualify as donees?

A: All those who are not specially disqualified by law.

Q: May an unborn child be a donee? A donor?

A: An unborn child may be a donee but not a donor.
As a donee, donations made to conceived and unborn children may be accepted by those persons who would legally represent them if they were already born. *(Art. 742, NCC)*
Note: if the conceived child did not become a person, the donation is null and void
An unborn child cannot be a donor because it is essential for a person to be able to make a donation, he must have full civil capacity

6. EFFECTS OF DONATION/LIMITATIONS

A. IN GENERAL

Q: What rights and actions does the donee acquire?

A: The donee is subrogated to the rights and actions which in case of eviction would pertain to the donor.

Q: When are donors liable for eviction of hidden defects?

A:

1. If the donation is simple or remunerative, donor is not liable for eviction or hidden defects because the donation is gratuitous, *unless* the donor acted in bad faith.
2. If the donation is onerous, the donor is liable on his warranty against eviction and hidden defects but only to the extent of the burden.

Q: What are the rules regarding the liability of the donee to pay the debts of donor?

A:

1. Where donor imposes obligation upon the done; *(Art. 758, NCC) the done is liable:*
    a. to pay only debts previously contracted;
    b. for debts subsequently contracted only when there is an agreement to that effect;

    Note: Not liable for debts in excess of the value of donation received, *unless* the contrary is intended.

2. Where there is no stipulation regarding the payment of debts: *(Art. 759, NCC)*
    a. Donee is generally not liable to pay donor's debts
    b. Donee is responsible only if donation has been made in fraud of creditors.

    Note: The presumption that the donations was made in fraud of creditors arises when the donor has not left sufficient assets to pay his debts, at the time of donation.
    c. The done shall not be liable beyond the value of donation received.

B. DOUBLE DONATIONS

Q: When is there double donation?

A: When the same thing has been donated to two or more persons.

Q: What is the rule in case of a double donation?

A: The rule on double sale under Article 1544 shall be applicable:

a. *Movable* – Owner who is first to possess in good faith
b. *Immovable* –
    a. First to *register* in good faith
    b. No inscription, first to *possess* in good faith
    c. *No inscription & no possession in good faith* – Person who presents *oldest title* in good faith

C. EXCESSIVE/INOFFICIOUS

Q: What is the rule in case of an excessive or inofficious donation?

A:

1. A donor may not donate more than what he can give by will;

Reason: If he donates more than waht he cannot give by will, the donation will become excessive and to insist on it, the legitimes of the compulsory heirs will be impaired. Legitimes are reserved for the compulsory heirs and the same cannot be impaired or disposed of by the testator.

2. The donee cannot receive by way of donation more than what he may receive by will.

Reason: if the donee can receive by donation (devise or legacy) more than what the testator is allowed by law to give, the donation is inofficious and it may be suppressed totally or reduced as to its excess.

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D. SCOPE OF AMOUNT

Q: What properties may be donated?

A: The donation may cover all present property of the donor. Present property refers to property of the donor which he could dispose of at the time of the donation.

Q: What is the standing of the donation where the donor did not reserved property or assets for himself sufficient for his support and all his relatives legally dependent upon him?

A: It is valid. It is merely reducible to the extent that the support to himself and his relatives is impaired or prejudiced. (*Agapito v. De Joya, [CA]. 40 Off. Gaz. P. 3526)*

Q: May future properties be donated?

A: No. The donor is not yet the owner of said property. A person cannot give what he does not own.

NOTE: Future inheritance is future property, but not all future property is future inheritance. Future inheritance like future property cannot be disposed of by donation. However, *accrued inheritance*, even if not yet delivered, may be alienated by the heir because hereditary rights are transmitted from the moment of the death of the decedent. (*Art. 777, NCC)*

E. IN FRAUD OF CREDITORS

Q: What is the remedy in case of donations executed in fraud of creditors?

A: The creditors may rescind the donation to the extent of their credits. The action is known as *accion pauliana.*

NOTE: If the donor did not reserved enough assets to pay his creditors whom he owned before the donation, the donation is presumed to be in fraud of creditors.

7. VOID DONATIONS

Q: What are the donations prohibited by law?

A: Donations made**: LAW SCRA POP**

1. By individuals, associations or corporations not permitted by **L**aw to make donations;
2. By persons guilty of **A**dultery or concubinage at the time of donation;
3. By a **W**ard to the guardian before the approval of accounts;
4. By **S**pouses to each other during the marriage or to persons of whom the other spouse is a presumptive heir.
5. Between persons found guilty of the same **C**riminal offense in consideration thereof;
6. To **R**elatives of such priest, etc. within the 4th degree, or to the church to which such priest belongs;
7. To an **A**ttesting witness to the execution of donation, if there is any, or to the spouse, parents or children or anyone claiming under them;
8. To the **P**riest who heard the confession of the donor during the latter's last illness, or the minister of the gospel who extended spiritual aid to him during the same period;
9. To a public **O**fficer or his/her spouse, descendants or ascendants in consideration of his/her office;
10. To a **P**hysician, surgeon, nurse, health officer or druggist who took care of the donor during his/her last illness;

REVOCATION OR REDUCTION

A. GROUNDS FOR REVOCATION AND REDUCTION

Q: What are the grounds for revocation of donation?
A:

1. *Under Art. 760*
   a. Birth of a donor's child or children (legitimate, legitimated, or illegitimate) after the donation, even though born after his death.
   b. Appearance of a donor's child who is missing and thought to be dead by the donor
   c. Subsequent adoption by the donor of a minor child.

2. *Under Art. 764*
   When the donee fails to comply with any of the conditions which the donor imposed upon the donee.

3. *Under Art. 765 – by reason of ingratitude*

a. If the donee should commit some offense against the person, the honor or the property of the donor, or of his wife or children under his parental authority
b. If the donee imputes to the donor any criminal offense, or any act involving moral turpitude, even though he should prove it, unless the crime or act has been committed against the donee himself, his wife or children under his authority
c. If he unduly refuses him support when the donee is legally or morally bound to give support to the donor

Q: What are the grounds for reduction of donation?

A: The same grounds for revocation under Article 760. The donation shall be reduced insofar as it exceeds the portion that may be freely disposed of by will, taking into account the whole estate of the donor at the time of the birth, appearance, or adoption of a child. *(Art. 761)*

B. HOW DONE

Q: Can a donation be revoked once it is perfected?

A: Once a donation is perfected, it cannot be revoked without the consent of the donee except on grounds provided by law *(Arts. 760, 764, 765, NCC)*

Q: Is revocation or reduction automatic?

A: No. The emergence of the circumstances enumerated in Art. 760 does not automatically revoke or reduce the donation. The revocation or reduction is authorized only if the amount or value of the property donated exceeds the disposable free portion.

Q: For purposes of prescription of action, what is the rule in case of concurrence of two or more grounds for revocation or reduction?

A: In the event that two or more causes are present, the earliest among them shall be the starting point in the reckoning of the period of prescription of the action.

Q: Can a donor execute a donation subject to a condition?

A: Yes. A donor may execute a donation subject to a condition, the non- fulfilment of which authorizes the donor to go to court to seek its revocation (not reduction).

Note: the word "condition" should be understood in its broad sense and not in its strict legal sense. It means charges or burdens imposed by the donor.

Q: In a conditional donation, can revocation be done unilaterally by the donor?

A: No. A donor cannot revoke a conditional donation unilaterally, that is, without going to court, even if the donee had breached any of the obligations imposed in the donation. A Judicial action is essential if the donee refuses to return the property, or pay its value to the donor, or to latter's heirs or assigns. However, the action must be filed within the prescriptive period fixed buy law, otherwise, it will be barred. (*Ongsiaco v. Ongsiaco, 101 Phil 1196*)

Q: Can the creditors of the deceased file an action for reduction of inofficious donation?

A: No. Only compulsory heirs or their heirs and successors in interest may sue for reduction of inofficious donations. The remedy of the creditor is to sue, during the lifetime of the donor, for the annulment of inofficious donation made in fraud of creditors (*Art. 1387*); or they can go against the estate of the deceased and not against the donees.

C. EFFECTS

Q: What are the obligations of the donee upon the revocation or reduction of donation?

A:

1. Return the thing or the object of the donation
2. If the property had already been alienated and could not be recovered anymore, its value shall be paid to the donor. The value shall be the price of the property estimated at the time of the perfection of the donation

   If the property had been mortgaged, the donor may pay the mortgage obligations, subject to reimbursement by the donee. *(Art. 762)*

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Q: Is the donee required to return the fruits?

A:

1. If due to non-compliance with any condition imposed on the donation – fruits acquired after non-compliance shall be returned
2. If due to causes stated under Art. 760, ingratitude, or inofficious donations – fruits acquired from the time the complaint is filed shall be returned *(Art. 768)*

D. PRESCRIPTION

Q: What is the period of prescription of action for revocation or reduction?

A:

	PRESCIPTIVE PERIOD	RECKONING PERIOD
Birth of child	4 years	From the birth of the first child
Legitimation	4 years	From Birth of the legitimated child, not from the date of marriage of the parents
Recognition of an illegitimate child	4 years	From the date the recognition of the child by any means enumerated in Article 712 of the Family Code
Adoption	4 years	From the date of filing of the original petition for adoption, provided a decree of adoption is issued thereafter
Appearance of a child believed to be dead	4 years	From the date an information was received as to the existence or survival of the child believed to be dead
Non-compliance with any condition imposed	4 years	From the non-compliance with the condition
Act of ingratitude	1 year	From the time the donor had learned of the donee's act of ingratitude, provided it was possible for him to file an ation.

Q: What if the donor dies within the four-year prescriptive period?

A: The right of action to revoke or reduce is transmitted to his heirs. *(Pineda Property, p. 589, 1999 ed)*

E. INOFFICIOUS DONATIONS

Q: When is a donation inofficious?

A: A donation is inofficious or excessive when its amount impairs the legitimes of the compulsory heirs.

Note: Donations must be charged only against the disposable free portion. If its amount exceeds the same, the excess is void for being inofficious *(Pineda Property, p. 598, 1999 ed)*

Q: What is the status of an inofficious donation?

A: During the lifetime of the donor, the inofficious donation is effective since the excessiveness of the donation can only be determined after the donor's death.

Note: Consequently, the donee is entitled to the fruits of the property donated during the lifetime of the donor *(Art. 771, Pineda Property, p. 599, 1999 ed)*

Q: May an heir waive his right during the lifetime of the donor to file an action for suppression or reduction of an inofficious donation?

A: No. Such waiver, in whatever form it is extended, is void. *(Art. 772)*

F. INGRATITUDE

Q: Are there any other grounds for revocation of donation by reason of ingratitude other than those enumerated under Article 765?

A: None. The grounds under Article 765 are exclusive.

Q: Suppose the husband of the donee had maligned the donor, is there a ground for revocation by reason of ingratitude?

A: None. The act must be imputable to the donee himself and not to another. *(Pineda Property, p. 593, 1999 ed)*

Q: What if there are mortgages and alienations effected before the notation of the complaint for revocation in the Registry of Property?

A: Such alienations and mortgages shall remain valid and must be respected. *(Art. 766)*

Note: Alienations and mortgages after the registration of the pendency of the complaint shall be void.

Q: What is the remedy of the donor?

A: If the property is already transferred in the name of the buyer or mortgagee, the remedy of the donor is to recover the value of the property determined as of the time of the donation. *(Art. 767, Pineda Property, p. 594, 1999 ed)*

Q: Can the donor make a renunciation of actions to revoke in advance?

A: No. Such waiver is void.

Note: However, the donor may renounce an action to revoke if the act of ingratitude had already been done.

SUMMARY OF THE RULES ON REDUCTION OF DONATIONS

TIME OF FILING OF THE ACTION	TRANSMISSIBILITY OF ACTION	EXTENT OF REDUCTION	RIGHTS TO THE FRUITS
1. Failure of the donor to reserve sufficient means for support (Art. 750, NCC)			
Any time by the donor or by relatives entitled to support during the donor's lifetime (*Art. 750, NCC*)	Not transmissible **Note:** the duty to give and right to receive support are personal (*Art. 195, FC*)	Donation reduced to extent necessary to provide support (*Art. 750, NCC*)	Donee is entitled to the fruits as owner of the property donated (*Art. 441, NCC*)
2. Inofficiousness for being in excess of what the donor can give by will (Art. 750, 771, NCC)			
Within 5 years after the donor's death (*Art. 771, 1149, NCC*)	Transmissible to donor's heirs as donation shall be reduced as regards the excess at donor's death (*Art. 771, NCC*)	Donation effective during the donor's lifetime subject to reduction only upon his death with regard to the excess (*Art. 771, NCC*)	Donee appropriates fruits (*Art. 441, NCC*) -retum those from filing of complaint
3. Birth, appearance or adoption of a child (Art. 760, NCC)			
[Same as in #1 Revocation] W/in 4 years from birth of 1st child, legitimation (recognition),adoption, judicial declaration of filiation or receipt of info of existence of the child believed to be dead (*Art. 763, NCC*)	[Same as in #1 Revocation] To children & descendants of donor upon his death (*Art. 763, 2, NCC*)	[Same as in #1 Reduction] Donation reduced to extent necessary to provide support (*Art. 750, NCC*)	Donee appropriates fruits not affected by reduction (*Art. 441, NCC).* When donation is revoked for any of the cause mentioned in article 760, the donee shall not return the fruits except from the filing of the complaint (Art. 768, NCC).
4. Fraud against creditors (Art. 759, NCC)			
Within 4 years from perfection of donation or from knowledge by the creditor of the donation (*Art. 1389, NCC*)	To creditor's heirs or successors-in-interest (*Art. 1178, NCC*)	Property returned for the benefit of creditors subject to the rights of innocent 3rd persons (*Art. 1387, NCC*)	Fruits shall be returned in case donee acted in bad faith; if impossible to return, indemnify the donor's creditor for damages (*Art. 1388, , NCC*)

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MODES OF EXTINGUISHING OWNERSHIP

Q: What are the modes of extinguishing ownership?

A:

1. Absolute – all persons are affected
   a. physical loss or destruction
   b. legal loss or destruction (when it goes out of commerce of man)

2. Relative – only for certain persons for others may acquire their ownership
   a. law
   b. succession
   c. tradition as a consequence of certain contracts
   d. donation
   e. abandonment
   f. destruction of the prior title or right
      i.e. expropriation , rescission, annulment, fulfillment of a resolutory condition)
   g. Prescription (*Paras, p. 779*)

Q: What is a *de facto* case of eminent domain?

A: Expropriation resulting from the actions of nature as in a case where land becomes part of the sea. In this case, the owner loses his property in favor of the state without any compensation.

PRESCRIPTION

DEFINITION

Q: What is meant by prescription?

A: One acquires ownership and other real rights through the lapse of time in the manner and under the conditions laid down by law. In the same way, rights and actions are lost by prescription. *(Art. 1106, NCC)*

Q: What are the kinds of prescription?

A:

1. *Acquisitive prescription* - one acquires ownership and other real rights through the lapse of time in the manner and under the conditions laid down by law.
    a. *Ordinary* – requires the possession of things in good faith and with a just title for the time fixed by law;
    b. *Extraordinary* – does not require good faith or just title but possession for a period longer than ordinary acquisitive prescription
2. *Extinctive prescription* – loss of property rights or actions through the possession by another of a thing for the period provided by law or failure to bring the necessary action to enforce one's right with in the period fixed by law.

Q: Differentiate acquisitive from extinctive prescription.

A:

ACQUISITIVE	EXTINCTIVE
How acquired	
Requires possession by a claimant who is not the owner	Inaction of the owner of possession or neglect of his right to bring an action
Rights covered	
Applicable to ownership and other real rights	Applicable to all kinds of rights whether real or personal
Effect	
Vests ownership and other real rights in the occupant	Produces the extinction of rights or bars a right of action
Results in the acquisition of ownership or other real rights in a person as well as the loss of said ownership or real rights in another	Results in the loss of a real or personal right or bars the cause of action to enforce the right
How proved	
Can be proven under the general issue without its being affirmatively pleaded	Should be affirmatively pleaded and proved to bar the action or claim of the adverse party
Relationship by owner and possessor	
Relationship between the occupant and the land in terms of possession is capable of producing legal consequences; it is the possessor who is the actor	One does not look to the act of the possessor but to the neglect of the owner

Q: Who may acquire by prescription?
A: PSM

1. **P**ersons who are capable of acquiring property by other legal modes
2. **S**tate
3. **M**inors – through guardians of personally

Q: Who are the persons against whom prescription runs?

A: MAPJ

1. **M**inors and other incapacitated persons who have parents, guardians or other legal representatives.
2. **A**bsentees who have administrators.
3. **P**ersons living abroad who have managers or administrators
4. **J**uridical persons, except the state and its subdivision

Q: Against whom does prescription not run?

A: SPG

1. Between **S**pouses, even though there be a separation of property agreed upon in the marriage settlements or by judicial decree.
2. Between **P**arents and children, during the minority or insanity of the latter.
3. Between **G**uardian and ward during the continuance of the guardianship

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Q: What can be subject of prescription?

A: PP

1. **P**rivate property
2. **P**atrimonial property of the state

Note: Patrimonial property of the state is the property it owns but which is not devoted to public use, public service, or the development of national wealth. It is wealth owned by the state in its private, as distinguished from its public, capacity. *(Paras, p. 58)*

A. ACQUISITIVE

1. CHARACTERISTICS

Q: What is the basis of acquisitive prescription?

A: It is based on the assertion of a usurper of an adverse right for such a long period of time, uncontested by the true owner of the right, as to give rise to the presumption that the latter has given up such right in favour of the former. (*Tolentino, Civil Code of the Philippines, Vol. IV, p. 2)*

Q: What are the basic requirements of prescription as a mode of acquiring ownership?

A:

1. Actual possession of a property, which is susceptible of prescription
2. Possession must be in the concept of an owner and not that of a mere holder (Art. 1118)
3. Possession must be public or open (Art. 1118)
4. Possession must be peaceful (Art. 1118)
5. Possession must be continuous and not interrupted (Art. 1118)
6. Possession must be adverse, that is, exclusive and not merely tolerated
7. Possession must satisfy the full period required by law *(Pineda Succession and Prescription, p. 606, 2009 ed)*

2. ORDINARY

Q: What is ordinary prescription?

A: It requires possession of things in good faith and with just title for the time fixed by law.

A. GOOD FAITH

Q: When is a possessor in good faith?

A: If he is not aware of the existence of any flaw or defect in his title or mode of acquisition which invalidates it (Art. 526 in relation to Art. 1128) and has reasonable belief that the person from whom he received the thing was the owner thereof, and could transmit his ownership (Art. 1127)

Q: When must good faith exist?

A: It must exist not only from the beginning but throughout the entire period of possession fixed by law. *(Pineda Succession and Prescription, p. 643, 2009 ed)*

B. JUST TITLE

Q: What does just title mean?

A: It means that the possessor obtained the possession of the property through one of the modes recognized by law for acquiring ownership but the transferor or grantor was not the owner of the property or he has no power to transmit the right *(Art. 1129)*

Note: Just title is never presumed, it must be proved. *(Art. 1130, NCC)*

Note: The title for prescription must be true and valid *(Art. 1130)*

Q: What is a true title?

A: One which actually exists and is not just a pretended one.

Note: An absolutely simulated or fictitious title is void and cannot be a basis for ordinary prescription. *(Pineda Succession and Prescription, p. 646, 2009 ed)*

Q: What is a valid title?

A: A title which is sufficient to transmit ownership of the property or right being conveyed had the transferor or grantor been the real owner thereof.

3. EXTRAORDINARY

Q: What is extraordinary prescription?

A: Prescription where the possessor is in bad faith. It does not require good faith or just title but possession for a period longer than ordinary acquisitive prescription *(Pineda Succession and Prescription, p. 607, 2009 ed)*

Q: How does ownership of personal property prescribe?

A: Through uninterrupted possession for 8 years, without need of any other condition. *(Art. 1132)*

Q: How about ownership and other real rights over immovables?

A: They prescribe through uninterrupted adverse possession for 30 years, without need of title or of good faith *(Art. 1137)*

Q: What are the requisites of extraordinary prescription?

A: CLAS G

1. **C**apacity of the possessor to acquire by prescription;
2. **S**usceptibility of object to prescription;
3. **A**dverse possession of the character prescribed by law;
4. **L**apse of time required by law;
5. **G**ood faith of possessor or proof of just title.

4. REQUISITES

Q: What are the basic requirements of prescription as a mode of acquiring ownership?

A:

1. Capacity to acquire by prescription;
2. A thing capable of acquisition by prescription;
3. Possession of the thing under certain conditions; and
4. Lapse of time provided by law

NOTE: The first two requisites apply to both ordinary and extraordinary prescription, but the last two requisites vary for each kind.

5. PERIOD

Q: What are the periods as regards prescription as a mode of acquisition of ownership?

A:

1. *Movables*
   a. 4 years- good faith
   b. 8 years- bad faith

2. *Immovables*
   a. 10 years- good faith
   b. 30 years- bad faith

Q: What are the rules for the computation of time necessary for prescription?

A:

1. The present possessor may complete the period necessary for prescription by tacking his possession to that of his grantor or predecessor in interest.
2. It is presumed that the present possessor who was also the possessor at a previous time, has continued to be in possession during the intervening time, unless there is proof to the contrary.
3. The first day shall be excluded and the last day included. *(Art 1138, NCC)*

6. WHAT CANNOT BE REQUIRED BY ACQUISITIVE PRESCRIPTION

Q: What cannot be subject of prescription?

A: PRIM

1. **P**ublic domain;
2. **R**egistered land;
3. **I**ntransmissible rights;
4. **M**ovables possessed through a crime;

Q: Emilio died, leaving 8 children. In 1960, His eldest child, Flores, took possession of and cultivated the land, caused the cancellation of the tax declaration in Emilio's name covering a parcel of land and caused the issuance of another in his own name. The co-heirs of Flores discovered the cancellation. Upon Flores' death, the heirs of his sisters together with his surviving sisters filed a complaint in 1999 against the heirs of Flores for partition of the lot and declaration of nullity of the documents. Did the heirs of Flores acquire ownership over the lot by extraordinary acquisitive prescription?

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A: Yes. While the action to demand partition of a co-owned property does not prescribe, a co-owner may acquire ownership thereof by prescription, where there exists a clear repudiation of the co-ownership, and the co-owners are apprised of the claim of adverse and exclusive ownership. In this case, the respondents never possessed the lot, much less asserted their claim thereto until 1999 when they filed the complaint for partition. In contrast, Flores took possession of the lot after Emilio's death and exercised acts of dominion thereon- tilling and cultivating the land, introducing improvements, and enjoying the produce thereof. The statutory period of prescription commenced in 1960 when Flores, who had neither title nor good faith, secured a tax declaration in his name and may, therefore, be said to have adversely claimed ownership of the lot. On said date, respondents were also deemed to have become aware of the adverse claim. Flores's possession thus ripened into ownership through acquisitive prescription after the lapse of 30 years. (*Heirs of Restar v. Heirs of Cichon, G.R. No. 161720, Nov. 22, 2005*)

Q: Sixto, owner of a parcel of land, died. He was survived by his wife and 3 children. The subject land was donated by his wife to Silverio, who immediately entered into possession of the land, built a fence around it, constructed a residential house, declared it for tax purposes and paid the taxes thereon, and resided there until his death. After 45 years from the time of donation, Soledad, one of Sixto's children, filed a complaint for recovery of ownership, and possession against Silverio. Who is the rightful owner of the land?

A: By extraordinary acquisitive prescription, Silverio became the rightful owner of the land. In extraordinary prescription ownership and other real rights over immovable property are acquired through uninterrupted adverse possession thereof for 30 years without need of title or of good faith.

When Soledad filed the case, Silverio was in possession of the land for 45 years counted from the time of the donation. This is more than the required 30 years of uninterrupted adverse possession without just title and good faith. Such possession was public, adverse and in the concept of an owner. He declared the land for taxation purposes and religiously paid the realty taxes thereon. Together with his actual possession of the land, these tax declarations constitute strong evidence of ownership of the land occupied by him. *(Calicdan v. Cendeña, G.R. No. 155080, Feb. 5, 2004)*

Q: Anthony bought a piece of untitled agricultural land from Bert. Bert, in turn, acquired the property by forging Carlo's signature in a deed of sale over the property. Carlo had been in possession of the property for 8 years, declared it for tax purposes, and religiously paid all taxes due on the property. Anthony is not aware of the defect in Bert's title, but has been in actual physical possession of the property from the time he bought it from Bert, who had never been in possession. Anthony has since then been in possession of the property for one year.

Can Anthony acquire ownership of the property by acquisitive prescription? How many more years does he have to possess it to acquire ownership?

A: Yes, Anthony can acquire ownership of the property by ordinary acquisitive prescription which requires just title and good faith (Art. 1117, CC). There was just title because a deed of sale was issued in his favor even though it was forged, which fact he was not aware of. He needs to possess the land in good faith and in the concept of owner for a total of ten years in order to acquire ownership. Since Anthony possessed the land for only one year, he has not completed the ten-year period. Even if Anthony tacks the 8-year period of possession by Carlo who in the deed of sale is supposed to be his grantor or predecessor in interest (Article 1138[I], CC), the period is still short of ten years.

If Carlo is able to legally recover his property, can he require Anthony to account for all the fruits he has harvested from the property while in possession?

A: Since Anthony is a possessor in good faith, Anthony cannot be made to account for the fruits he gathered before he was served with summons. A possessor in good faith is entitled to the fruits received before the possession was legally interrupted by the service of summons (Art. 544, CC). After Anthony was served with summons, he became a possessor in bad faith and a builder, planter, sower in bad faith. He can also be made to account for the fruits but he may deduct expenses for the production gathering and preservation of the fruits (Art. 443, CC).

Q: If there are standing crops on the property when Carlo recovers possession, can Carlo appropriate them?

A: The value of the standing crops must be prorated depending upon the period of

possession and the period of growing and producing the fruits. Anthony is entitled to a part of the net harvest and a part of the expenses of cultivation in proportion to his period of possession. However, Carlo may allow Anthony to gather these growing fruits as an indemnity for the expenses of cultivation. If Anthony refuses to accept this concession, he shall lose the right to indemnity under Art. 443. (*Art. 545, par. 3, NCC*). **(2008 Bar Question)**

B. EXTINCTIVE

1. CHARACTERISTICS

Q: What is extinctive prescription?

A: It refers to the time within which an action may be brought, or some act done, to preserve a right *(Pineda Succession and Prescription, p. 660, 2009 ed)*

NOTE: It is also referred to as prescription of actions, statute of limitations, and statute of repose

Q: What is the basis of extinctive prescription?

A: It based on the probability, born of experience, that the alleged right which accrued in the past never existed or has already been extinguished; or if it exists, the inconvenience caused by the lapse of time should be borne by the party negligent in the assertion of his right. (*Tolentino, Civil Code of the Philippines, Vol. IV, p. 2)*

2. REQUISITES

Q: What are the basic requirements of prescription as a mode of acquiring ownership?

A:

1. Capacity to acquire by prescription;
2. A thing capable of acquisition by prescription;
3. Possession of the thing under certain conditions; and
4. Lapse of time provided by law

3. PERIODS

Q: What are the periods as regards prescription of actions to recover movables and immovables?

A:

1. *Movables*

    c. 4 years- good faith
    d. 8 years- bad faith *(Art. 1140 in relation to Art. 1132)*

2. *Immovables*

    c. 10 years- good faith
    d. 30 years- bad faith *(Art. 1141)*

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II. NO PRESCRIPTION APPLICABLE

NO PRESCRIPTION APPLICABLE	
By Offender	When it is possessed through a crime such as robbery, theft, or estafa. **Note:** The person who cannot invoke the right of prescription is the offender or person who committed the crime or offense, not a subsequent transferee who did not participate in the crime or offense, unless the latter knew the criminal nature of the acquisition of the property by the transferor. *(Art. 1133, Pineda Succession and Prescription, p. 651, 2009 ed)*
Registered Lands (PD 1529)	1. An action to recover a registered land by the owner 2. Right to petition for the issuance for the issuance of a Writ of Possession filed by the applicant for registered land **Note:** Similarly, an action to recover possession of a registered land never prescribes.
1. Action legal to demand a right of way **2. To abate a nuisance**	Imprescriptible
Action to quiet title if plaintiff in possession	Imprescriptible
Void contracts	Applies to both action and defense. **Note:** However, an action to annul a voidable contract prescribes after 4 years
Action to demand partition Note: Distinguished from laches	As long as the co-ownership is recognized expressly or impliedly *(Art. 494)*
Property of public dominion	Right of reversion or reconveyance to the State of the public properties registered and which are not capable of private appropriation or private acquisition does not prescribe **Note:** In contrast, where private property is taken by the Government for public use without first acquiring title thereto either through expropriation or negotiated sale , the owner's action to recover the land or the value thereof does not prescribe.

III. PRESCRIPTION OR LIMITATION OF ACTIONS

Q: What are the respective prescriptive periods of actions specified under the Civil Code?

ACTIONS	PRESCRIPTIVE PERIOD
Recover Movables	8 years (good faith)or 4 years (bad faith) from the time the possession is lost *(Art. 1140, Pineda Succession and Prescription, p. 666, 2009 ed)*
Recover Immovables	30 years (Recover ownership) *(Art. 1141)* 10 years (Recover real right of possession) *(Art. 555 (4), Pineda Succession and Prescription, p. 667, 2009 ed)*
Mortgage Action	10 years from default of mortgagor *(Art. 1142)*
Based on written contract Note: If contract is oral or quasi, prescriptive period is 6 years (Art. 1145)	10 years
Based on obligation created by law	10 years from the time the right of action accrues
Based on judgment	10 years from the day judgment became final and executory (*Art. 1144)*
Based upon an injury to the rights of plaintiff	4 years
Based on quasi-delicts	4 years (*Art. 1146*)
Forcible entry and detainer	1 year
Defamation	1 year (*Art. 1147)*
All other actions not specified	5 years *(Art. 1149)*

IV. INTERRUPTION

Q: What are the grounds for interruption of prescriptive period?

A:

1. When they are filed before the court.
2. When there is a written extrajudicial demand by the creditors
3. When there is any written acknowledgment of the debt by the debtor. *(Art. 1155)*

V. NUISANCE

Note: see discussion under Nuisance (*X. Nuisance*)

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OBLIGATIONS

I. DEFINITION

Q: What is an obligation?

A: It is a juridical necessity to give, to do, or not to do. *(Art. 1156, NCC)*

It is a juridical relation whereby a person (creditor) may demand from another (debtor) the observance of a determinative conduct (giving, doing, or not doing), and in case of breach, may demand satisfaction from the assets of the latter. *(Arias Ramos)*

Note: Art. 1156 refers only to civil obligations which are enforceable in court when breached. It does not cover natural obligations *(Arts. 1423-1430, NCC)* because these are obligations that cannot be enforced in court being based merely on equity and natural law and not on positive law. *(Pineda, Obligations and Contracts, 2000 ed, p. 3)*

II. ELEMENTS OF AN OBLIGATION

Q: What are the elements of an obligation?

A: JAPOC

1. ***J****uridical or legal tie* – vinculum juris;
2. ***A****ctive subject* – obligee or creditor;
3. ***P****assive subject* – obligor or debtor;
4. ***O****bject* – prestation; and
5. ***C****ause* – efficient cause is the same with vinculum juris.

VINCULUM JURIS

Q: What is vinculum juris?

A: It is the efficient cause or juridical tie by virtue of which the debtor has become bound to perform the prestation.

Q: How is vinculum juris established?

A: By:

1. law (*i.e.* – relation of husband and wife for support)
2. bilateral acts (*i.e.* – contracts)
3. unilateral acts (*i.e.* – crimes and quasi-delicts)*(Tolentino, Civil Code Vol. IV, p. 59, 1999 ed)*

ACTIVE SUBJECT

Q: Who is an active subject?

A: One who is demanding the performance of the obligation. It is he who in his favor the obligation is constituted, established or created. He is called the creditor (CR) or obligee.

PASSIVE SUBJECT

Q: Who is a passive subject?

A: One bound to perform the prestation to give, to do, or not to do. He is called the debtor (DR) or obligor. *(Pineda, Obligations and Contracts, p. 2, 2000 ed)*

Note: When there is a right there is a corresponding obligation. Right is the active aspect while obligation is the passive aspect. Thus, it is said that the concepts of credit and debt are two distinct aspects of unitary concept of obligation. *(Pineda, Obligations and Contracts, p. 2, 2000 ed)*

OBJECT

Q: What are the requisites of a valid object?

A: The object must be:

1. licit or lawful;
2. possible, physically & judicially;
3. determinate or determinable; and
4. pecuniary value or possible equivalent in money.

Note: Absence of either of the first three (licit, possible and/or determinate) makes the object void.

Form is not generally considered essential, though sometimes it is added as the 5th requisite.There is no particular form to make obligations binding, except in certain rare cases. *(Tolentino, Civil Code of the Philippines, Vol. IV, 2002 ed. p. 57)*

III. DIFFERENT KINDS OF PRESTATION

Q: What is prestation?

A: It is a conduct that may consist of giving, doing, or not doing something.

Note: It is the conduct that must be observed by the debtor/obligor.

Q: What are the different kinds of prestation? Distinguish.

A:

OBLIGATION TO GIVE	OBLIGATION TO DO	OBLIGATION NOT TO DO
Consists in the delivery of a movable or immovable thing to the creditor	Covers all kinds of works or services whether physical or mental	Consists in refraining from doing some acts
i.e. – Sale, deposit, pledge, donation, antichresis	*i.e.* – Contract for professional services like painting, modeling, singing, etc.	*i.e.* – Easement prohibiting building proprietor or possessor from committing nuisance*(Art. 682, NCC)*, restraining order or injunction *(Pineda, Obligations and Contracts, p. 3, 2000 ed)*

Q: What are the requisites of a valid prestation?

A:

1. Possible, physically and juridically;
2. Determinate, or at least determinable according to pre-established elements or criteria; and
3. Has a possible equivalent in money *(Tolentino, Civil Code Vol. IV, p. 58, 1999 ed).*

IV. CLASSIFICATION OF OBLIGATIONS

Q: What are the kinds of obligation?

A: From the viewpoint of:

1. *Sanction*
   a. Civil – gives a right of action to compel their performance
   b. Natural– not based on positive law but on equity and natural law; does not grant a right of action to enforce their performance, but after voluntary fulfillment by the obligor, they authorize retention of what has been delivered/ rendered by reason thereof.
   c. Moral– cannot be enforced by action but are binding on the party who makes it in conscience and natural law.
2. *Performance*
   a. Positive – to give; to do
   b. Negative – not to do
3. *Subject matter*
   a. Personal – to do; not to do
   b. Real – to give
4. *Object*
   a. Determinate / specific – particularly designated or physically segregated from all others of the same class.
   b. Generic– is designated merely by its class or genus.
   c. Limited generic– generic objects confined to a particular class (*e.g.* an obligation to deliver one of my horses) *(Tolentino, Civil Code of the Philippines, Vol. IV, 2002 ed, p. 91)*
5. *Person obliged*
   a. Unilateral – only one party is bound
   b. Bilateral – both parties are bound
6. *Creation*
   a. Legal – imposed by law *(Art. 1158, NCC)*
   b. Conventional – established by the agreement of the parties like contracts
7. *Susceptibility of partial fulfillment*
   a. Divisible – obligation is susceptible of partial performance
   b. Indivisible – obligation is not susceptible
8. *Existence of burden or condition*
   a. Pure – is not burdened with any condition or term. It is immediately demandable.
   b. Conditional – is subject to a condition which may be suspensive (happening of which shall give rise to the obligation) or resolutory (happening terminates the obligation).
9. *Character of responsibility or liability*
   a. Joint – each debtor is liable only for a part of the whole liability and to each creditor shall belong only a part of the correlative rights
   b. Solidary – a debtor is answerable for the whole of the obligation without prejudice to his right to

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collect from his co-debtors the latter's shares in the obligation *(Art. 1207, NCC)*

10. *Right to choose and substitution*
    a. Alternative – obligor may choose to completely perform one out of the several prestations*(Art. 1199, NCC)*
    b. Facultative – only one prestation has been agreed upon, but the obligor may render one in substitution of the first one *(Art. 1206, NCC)*

11. *Imposition of penalty*
    a. Simple – there is no penalty imposed for violation of the terms thereof
    b. Obligation with penalty – obligation which imposes a penalty for violation *(Art. 1226, NCC) (Pineda, Obligations and Contracts, 2000 ed, p. 5-7)*

V. SOURCES OF OBLIGATIONS

Q: What are the sources of obligations? Distinguish.

A: LCQ-DQ

Sources	Obligations	Perfection
Law	*ex lege*	From the time designated by the law creating or regulating them.
Contracts	*ex contractu*	**GR:** From the time of the perfection of the contract (*i.e.* meeting of the minds) **XPNs:** 1. When the parties made stipulation on the right of the creditor to the fruits of the thing 2. When the obligation is subject to a suspensive condition or period; arises upon fulfillment of the condition or expiration of the period.
Quasi-contracts	*ex quasi-contractu*	From the time designated by the law creating or regulating them.
Delicts	*ex maleficio or* ex delicto	
Quasi-delict	*ex quasi maleficio* or ex quasi- delicto	

Note: The enumeration is exclusive.

A. OBLIGATION EX LEGE

Q: What are the characteristics of a legal obligation or an obligation ex lege?

A:

1. Does not need the consent of the obligor;
2. Must be expressly set forth in the law creating it and not merely presumed; and
3. In order that the law may be a source of obligation, it should be the creator of the obligation itself.

Q: What governs obligations arising from law?

A: These obligations shall be regulated by the provisions of the law which establishes them. The Civil Code is applicable suppletorily.

B. OBLIGATION EX CONTRACTU

Q: What are the requisites for a contract to give rise to obligations *ex contractu*?

A:

1. It must contain all the essential requisites of a contract
2. It must not be contrary to law, morals, good customs, public order, and public policy

Q: What is "compliance in good faith"?

A: It is performance in accordance with the stipulation, clauses, terms and conditions of the contract.

Note: The contract is the "law" between the parties.

Q: May a party unilaterally evade his obligation in the contract?

A:

GR: Neither party may unilaterally evade his obligation in the contract.

XPNs: Unilateral evasion is allowed when the:
1. contract authorizes such evasion
2. other party assents thereto

Q: Is there a limitation on the right of the parties to freely enter into stipulations?

A: Yes. Parties may freely enter into any stipulations *provided* such are not contrary to law, morals, good customs, public order or public policy

Q: What governs obligations arising from contracts?

A:

GR: These obligations shall be governed primarily by the stipulations, clauses, terms and conditions of the parties' agreements.

XPN: Contracts with prestations that are unconscionable or unreasonable.

Note: In case of unconscionable penalty for breach of contract *(Art. 1229, NCC)*, or liquidated damages *(Art. 2226, NCC)*, the same may be reduced by the court. *(Pineda, Obligations and Contracts, p.13, 2000 ed)*

C. OBLIGATION EX QUASI - CONTRACTU

Q: What is quasi-contract?

A: It is a juridical relation arising from *lawful, voluntary and unilateral* acts based on the principle that no one should unjustly enrich himself at the expense of another.

Q: What is presumptive consent?

A: Since a quasi-contract is a unilateral contract created by the sole act or acts of the gestor, there is no express consent given by the other party. The consent needed in a contract is provided by law through presumption. *(Pineda, Obligations and Contracts, p. 15, 2000 ed)*

Q: What are the principal forms of quasi-contracts?

A:

1. *Negotiorium gestio* (inofficious manager) – arises when a person voluntarily takes charge of the management of the business or property of another without any power from the latter.
2. *Solutio indebiti* (unjust enrichment)– takes place when a person receives something from another without any right to demand for it, and the thing was unduly delivered to him through mistake.

Note: The delivery must not be through liberality or some other cause.

NEGOTIORUM GESTIO

Q: Upon the declaration of martial rule in the Philippines, X, together with his wife and children, disappeared from his residence along Ermita, Manila. Years passed without Y hearing from X and his family. Y continued taking care of X's house, even causing minor repairs to be done at his house to preserve it. In 1976, when business began to perk up in the area, Z, approached Y and proposed that they build stores at the ground floor of the house and convert its second floor into a pension house. Y agreed to Z's proposal and together they spent for the construction of stores at the ground floor and the conversion of the second floor into a pension house. While construction was going on, fire occurred at a nearby house. The houses at the entire block, including X's, were burned. After the EDSA revolution in February 1986, X and his family returned from the United States where they took refuge in 1972.

Upon learning of what happened to his house, X sued Y for damages. Y pleaded as a defense that he merely took charge of his house under the principle of negotiorum gestio. He was not liable as the burning of the house is a fortuitous event.

Is Y liable to X for damages under the foregoing circumstance?

A: No. Y is not liable for damages, because he is a gestor in *negotiorum gestio(Art. 2144, NCC)*.Furthermore, B is not liable to A for any fortuitous event because he did not commit any of the instances provided under Art. 2147 of the Civil Code:
1. He did not undertake risky operation which the owner was not accustomed to embark upon;
2. He has not preferred his own interest to that of the owner;

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3. He has not failed to return the property or business after demand of the owner; and
4. He has not assumed the management in bad faith. **(1993 Bar Question)**

Q: In fear of reprisals from lawless elements besieging his barangay, X abandoned his fishpond, fled to Manila and left for Europe. Seeking that the fish in the fishpond were ready for harvest, Y, who is in the business of managing fishponds on a commission basis, took possession of the property, harvested the fish and sold the entire harvest to Z.

Thereafter, Y borrowed money from W and used the money to buy new supplies of fish fry and to prepare the fishpond for the next crop.

1. **What is the juridical relation between X and Y during X's absence?**
2. **Upon the return of X to the barangay, what are the obligations of Y to X as regards the contract with Z?**
3. **Upon X's return, what are the obligations of X as regards Y's contract with W?**
4. **What legal effects will result if X expressly ratifies Y's management and what would be the obligations of X in favor of Y?**

Explain all your answers.

A:

1. The juridical relation is that of the quasi-contract of "*negotiorum gestio*". Y is the "gestor" or "officious" manager" and X is the "owner" *(Art. 2144, NCC)*.
2. Y must render an account of his operations and deliver to X the price he received for the sale of the harvested fish. *(Art. 2145, NCC)*.
3. X must pay the loan obtained by Y from W because X must answer for obligations contracted with third persons in the interest of the owner *(Art. 2150, NCC)*.
4. Express ratification by X provides the effects of an express agency and X is liable to pay the commissions habitually received by the gestor as manager *(Art. 2149, NCC)*. **(1992 Bar Question)**

SOLUTION INDEBITI

X received his full retirement benefits including those monetary benefits that were properly disallowed by COA to be granted to public officers. GSIS sought the restoration of the said disallowed benefits but the court ruled that such restoration cannot be enforced against X's retirement benefits as this is expressly prohibited by law under R.A. 8291. Is X obliged to return the benefits improperly received by him under the principle of *solutio indebiti*?

A: Yes. It cannot be denied that X was a recipient of benefits that were properly disallowed by the COA. These COA disallowances would otherwise have been deducted from his salaries. The GSIS can no longer recover these amounts by any administrative means due to the specific exemption of retirement benefits from COA disallowances. X resultantly retained benefits to which he was not legally entitled which, in turn, gave rise to an obligation on his part to return the amounts under the principle of *solutio indebiti*. *(GSIS v. COA, G.R. No. 138381, Nov. 10, 2004; GSIS v. Pineda, et. al., G.R. No. 141625, Nov. 10, 2004).*

D. OBLIGATIONS EX DELICTO

Q: What is the basis for civil liability arising from delicts as according to the penal code?

A: Art. 100 of the Revised Penal Code provides that: "Every person criminally liable for a felony is also civilly liable."

Q: What is delict?

A: It is an act or omission punished by law.

E. OBLIGATIONS EX QUASI – DELICTO

Q: What is quasi-delict or tort?

A: It is an act or omission arising from fault or negligence which causes damage to another, there being no pre-existing contractual relations between the parties.

Q: What are the elements of a quasi-delict?

A:

1. Act or omission;
2. Fault or negligence attributable to the person charged;
3. Damage or injury;
4. Direct relation of cause and effect between the act arising from fault/negligence and the damage or injury *(proximate cause)*; and
5. No pre-existing contractual relation between the parties.

Q: What is the scope of civil liability?

A: RRI

1. **R**estitution;
2. **R**eparation for damage caused; and
3. **I**ndemnity for consequential damages.

F. NATURAL OBLIGATIONS

Q: What are natural obligations?

A: They are real obligations to which the law denies an action, but which the debtor may perform voluntarily.

Q: What are the instances of natural obligations?

A:

1. Performance after the civil obligation has prescribed;
2. Reimbursement of a third person for a debt that has prescribed;
3. Restitution by minor after annulment of contract;
4. Delivery by minor of money or fungible thing in fulfillment of obligation;
5. Performance after action to enforce civil obligation has failed;
6. Payment by heir of debt exceeding value of property inherited; and
7. Payment of legacy after will has been declared void.

Q: Distinguish natural from civil obligation.

A:

NATURAL OBLIGATION	CIVIL OBLIGATION
Based on equity and natural law	Based from law, contracts, quasi-contracts, delicts, and quasi-delicts
Cannot be enforced in court because the obligee has no right of action to compel its performance	Can be enforced in court because the obligee has a right of action *(Pineda,Obligations and Contracts, 2000 ed, p. 636)*

Q: May natural obligations be converted into civil obligations?

A: Yes, by way of novation. The natural obligation becomes a valid cause for a civil obligation after it has been affirmed or ratified anew by the debtor. *(Pineda, Obligations and Contracts, 2000 ed, p. 634)*

VI. NATURE AND EFFECTS OF OBLIGATIONS

A. OBLIGATION TO GIVE

Q: In an obligation to deliver a thing, what are the obligations of the debtor?

A: It depends upon the kind of obligation.

SPECIFIC	GENERIC
Deliver the thing agreed upon *(Art. 1165, NCC)*	Deliver the thing which is neither of superior nor inferior quality
Take care of the thing with the proper diligence of a good father of a family *unless* the law requires or parties stipulate another standard of care *(Art. 1163, NCC)*	Specific performance i.e. delivery of another thing within the same genus as the thing promised if such thing is damaged due to lack of care or a general breach is committed
Deliver all accessions, accessories and fruits of the thing *(Art. 1166, NCC)*	If the object is generic, but the source is specified or delimited, the obligation is to preserve the source
Pay damages in case of breach of obligation by reason of delay, fraud, negligence, contravention of the tenor thereof	Pay damages in case of breach of obligation by reason of delay, fraud, negligence, contravention of the tenor thereof *(Art. 1170)*
Fortuitous event extinguishes the obligation	Obligation is not extinguished (*genus nunquamperuit* – genus never perishes)

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Q: In failing to deliver a thing, what are the remedies of the creditor?

A:

SPECIFIC OBLIGATION	GENERIC OBLIGATION
Specific performance	Specific performance (delivery of any thing belonging to the same species)
Rescission (action to rescind under Art. 1380, NCC)	Ask that the obligation be complied with at the debtor's expense
Resolution (action for cancellation under Art. 1191, NCC)	Resolution *or* specific performance, with damages in either case (Art. 1191, NCC)
Damages, in both cases *(Art. 1170, NCC)* **Note:**May be exclusive or in addition to the above-mentioned remedies*(Pineda, Obligations and Contracts, 2000 ed, p. 37)*	

Note: In obligation to deliver a specific thing, the creditor has the right to demand preservation of the thing, its accessions, accessories, and the fruits. The creditor is entitled to the fruits and interests from the time the obligation to deliver the thing arise.

Q: What is the nature of the right of the creditor with respect to the fruits?

A:

1. *Before delivery* – personal right
2. After delivery – real right

Note: The creditor has a right to the fruits of the thing from the time the obligation to deliver it arises. However, he shall acquire no real right over it until the same has been delivered to him *(Art. 1164, NCC)*.

Q: Distinguish personal right from real right.

A:

PERSONAL	REAL
Jus ad rem	*Jus in re*
Enforceable only against a definite person/group of persons	Enforceable against the whole world
Right to demand from another, as a definite passive subject, the fulfillment of the prestation to give, to do or not to do.	Right over a specific thing, without a definite passive subject against whom the right may be personally enforced.
Has a definite passive subject	No definite passive subject

Q: What is the principle of "balancing of equities" as applied in actions for specific performance?

A: In decreeing specific performance, equity requires not only that the contract be just and equitable in its provisions, but that the consequences of specific performance, is likewise be just and equitable. The general rule is that this equitable relief will not be granted if, under the circumstances of the case, the result of the specific performance of the contract would be harsh, inequitable, and oppressive or result in an unconscionable advantage to the plaintiff *(Agcaoili v. GSIS, G.R. No. 30056, Aug. 30, 1988).*

B. OBLIGATION TO DO OR NOT TO DO

Q: What are the types of personal obligations?

A:

1. positive- to do
2. negative- not to do

Q: What are the remedies in personal obligations?

A:

1. **positive personal obligations**
   a. not purely personal act- to have obligation executed at debtor's expense plus damages
   b. purely personal act- damages only.

   Note; same rule applies if obligation is done in contravention of the terms of the obligation.

2. **Negative personal obligation-** to have the prohibited thing undone plus damages. However, if thing cannot be physically or legally undone, only damages may be demanded.

Q: Is specific performance a remedy in personal obligations?

A: No. Otherwise this may amount to involuntary servitude which is prohibited by the Constitution.

Q: When may a thing be ordered undone?

A:

1. if made poorly
2. negative personal obligations

C. BREACHES OF OBLIGATIONS

Q: What are the forms of breach of obligations?

A:

1. *Voluntary* –debtor is liable for damages if he is guilty of:
   a. default *(mora)*
   b. fraud *(dolo)*
   c. negligence *(culpa)*
   d. breach through contravention of the tenor thereof

2. *Involuntary* – debtor is unable to perform the obligation due to fortuitous event *thus* not liable for damages

Q: What is the concept of a good father of the family?

A: The Supreme Court described a good father of a family by first stating who is not. He is not and is not supposed to be omniscient of the future; rather, he is one who takes precautions against any harm when there is something before him to suggest or warn him of the danger or to foresee it*(Picart v. Smith, G.R. No. L-12406, Mar. 15, 1918)*.

1. COMPLETE FAILURE TO PERFORM

Q: What are the effects of breach of obligation?

A: If a person obliged to do something fails to do it, or if he does it in contravention of the tenor of the obligation, the same shall be executed at his cost. And what has been poorly done, be undone. *(Art. 1167, NCC)*

When the obligation consists in not doing, and the obligor does what has been forbidden him, it shall also be undone at his expense. *(Art.1168, NCC)*

Q: What are the instances where the remedy under Art. 1168 is not available?

A:

1. *Where the effects of the act which is forbidden are definite in character* – even if it is possible for the creditor to ask that the act be undone at the expense of the debtor, consequences contrary to the object of the obligation will have been produced which are permanent in character.

2. *Where it would be physically or legally impossible to undo what has been undone* – because of:
   a. the very nature of the act itself;
   b. a provision of law; or
   c. conflicting rights of third persons.

Note: In either case, the remedy is to seek recovery for damages.

DEFAULT (MORA))

Q: When does delay or default arise?

A: Those obliged to deliver or to do something incur in delay from the time the obligee judicially or extrajudicially demands from them the fulfillment of their obligation.

In reciprocal obligations, neither party incurs in delay if the other does not comply in a proper manner with what is incumbent upon him. From the moment one of the parties fulfills his obligations, delay by the other begins. *(Art. 1169, NCC)*

Q: What are the requisites of delay?

A:

1. Obligation must be due, demandable and liquidated;
2. Debtor fails to perform his positive obligation on the date agreed upon;
3. A judicial or extra-judicial demand made by the creditor upon the debtor to fulfill, perform or comply with his obligation; and
4. Failure of the debtor to comply with such demand.

Note: In reciprocal obligations, the moment one party is ready to comply with his obligation, delay by the other begins. There is no need for demand from either party.

2. DELAY

Q: What are the kinds of delay or default?

A:

1. *Mora solvendi* – default on the part of the debtor/obligor
   a. *Ex re* – default in real obligations (to give)
   b. *Ex personae* – default in personal obligations (to do)

2. *Mora accipiendi* – default on the part of the creditor/obligee

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3. *Compensatio morae* – default on the part of both the debtor and creditor in reciprocal obligations

MORA SOLVENDI

Q: What are the requisites of *mora solvendi*?

A:

1. Obligation pertains to the debtor;
2. Obligation is determinate, due and demandable, and liquidated;
3. Obligation has not been performed on its maturity date;
4. There is judicial or extrajudicial demand by the creditor;
5. Failure of the debtor to comply with such demand

Q: Does *mora solvendi* apply in natural obligations?

A: No *(Art. 1423, NCC)*, because performance is optional or voluntary on the debtor's part.

Q: Does *mora solvendi* apply in negative obligations?

A: No because one can never be late in not giving or doing something.

Q: What are the effects of *mora solvendi*?

A:

1. Debtor may be liable for damages or interests; and
2. When it has for its object a determinate thing, debtor may bear the risk of loss of the thing even if the loss is due to fortuitous event *(Art. 1165, NCC)*.

Q: May the debtor's liability be mitigated even if he is guilty of delay?

A: Yes. If the debtor can prove that loss would nevertheless transpire even if he had not been in default, the court may equitably mitigate his liability. *(Art. 2215 (4), NCC; Pineda, Obligations and Contracts, 2000 ed., p. 47)*

MORA ACCIPIENDI

Q: What are the requisites of *mora accipiendi*?

A:

1. Offer of performance by a capacitated debtor;
2. Offer must be to comply prestation as it should be performed; and
3. Refusal of the creditor without just cause.

Q: What are the effects of mora accipiendi?

A:

1. Responsibility of DR is limited to fraud and gross negligence
2. DR is exempted from risk of loss of thing; CR bears risk of loss
3. Expenses by DR for preservation of thing after delay is chargeable to CR
4. If the obligation bears interest, DR does not have to pay from time of delay
5. CR liable for damages
6. DR may relieve himself of obligation by consigning the thing

Q: What are the rules on default?

A:

1. *Unilateral obligations*
   GR: Default or delay begins from extrajudicial or judicial demand – mere expiration of the period fixed is not enough in order that DR may incur delay.

   XPNs:
   a. The obligation or the law expressly so dictates;
   b. Time is of the essence;
   c. Demand would be useless, as DR has rendered it beyond his power to perform; or
   d. DR has acknowledged that he is in default.

2. *Reciprocal obligations*
   GR: Fulfillment by both parties should be simultaneous.

   XPN: When different dates for the performance of obligation is fixed by the parties.

Q: What are reciprocal obligations?

A: These are obligations created and established at the same time, out of the same cause and which results in the mutual relationship between the parties.

Q: In reciprocal obligations, when does a party incur in delay?

A: In reciprocal obligations one party incurs in delay from the moment the other party fulfills his obligation, while he himself does not comply or is not ready to comply in a proper manner with what is incumbent upon him.

Q: In reciprocal obligations, when is demand necessary in order for a party to incur in delay?

A: Only when the respective obligations are to be performed on separate dates.

Q: What is the effect of non-compliance of both parties in reciprocal obligations?

A: If neither party complies with his prestation, default of one *compensates* for the default of the other.

Q: What may cause the cessation of the effects of *mora*?

A:

1. Renunciation (express/implied); or
2. Prescription.

3. FRAUD

Q: What is fraud?

A: It is an intentional evasion of the faithful performance of the obligation *(8 Manresa 72)*.

Q: What type of fraud must be present in order that the obligor may be held liable for damages?

A: The fraud must be incidental fraud, or that which is present during the performance of the obligation, and not causal fraud, or fraud employed in the execution of a contract, which vitiates consent.

WAIVER OF FUTURE FRAUD

Q: May an action arising from fraud be waived?

A: With respect to fraud that has already been committed, the law does not prohibit renunciation of the action for damages based on the same. However, the law *does* prohibit any waiver of an action for future fraud since the same is contrary to law and public policy.

Note: Waiver of *past fraud* is valid since such can be deemed an act of generosity. What is renounced is the effect of fraud, particularly the right to indemnity.

Q: What are the kinds of fraud? Distinguish.

A:

FRAUD DURING THE PERFECTION OF THE CONTRACT OR CAUSAL FRAUD (ART. 1338)	FRAUD DURING THE PERFORMANCE OF THE OBLIGATION OR INCIDENTAL FRAUD (ART. 1344)
When Employed	
Before or during the perfection of a contract	During the performance of a pre-existing obligation
Purpose of Execution	
To secure the consent of another to enter into the contract	To evade the normal fulfillment of the obligation
Resultant Effect	
Vitiation of consent	Breach of an obligation
Status of the Contract	
Voidable	Valid
Right or Remedy of Aggrieved Party	
Right of innocent party to annul the contract with damages	Right of innocent party/creditor to claim for damages

Q: What are the remedies of the defrauded party?

A:

1. Specific performance *(Art. 1233, NCC)*
2. Resolution of the contract *(Art. 1191, NCC)*
3. Damages, in either case

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4. NEGLIGENCE

Q: Distinguish fraud from negligence.

A:

Fraud	Negligence
There is deliberate intention to cause damage	There is no deliberate intention to cause damage or injury even if the act was done voluntarily
Liability cannot be mitigated	Liability may be mitigated
Waiver for future fraud is void	**GR:** Waiver for future negligence may be allowed in certain cases **XPN:**Nature of the obligation or public policy requires extraordinary diligence (*e.g.* common carrier)

Note: When negligence is so gross that it amounts to wanton attitude on the part of the debtor, the laws in case of fraud shall apply.

Where negligence shows bad faith (i.e., deliberately committed) it is considered equivalent to fraud. Any waiver of an action for future negligence of this kind is therefore void. *(De Leon, Obligations and Contract, 2003 ed., p. 57)*

Q: What are the effects of contributory negligence of the creditor?

A:

GR: It reduces or mitigates the damages which he can recover.

XPN: If the negligent act or omission of the creditor is the *proximate cause* of the event which led to the damage or injury complained of, he cannot recover.

Q: Distinguish culpa contractual from culpa aquiliana.

A:

CULPA CONTRACTUAL (CONTRACT)	CULPA AQUILIANA(QUASI-DELICT)
Negligence is merely an incident in the performance of an obligation	Negligence is substantive and independent
There is always a pre-existing contractual relation	There may or may not be a pre-existing contractual relation
The source of obligation of defendant to pay damages is the breach or non-fulfillment of the contract	The source of obligation is defendant's negligence itself
Proof of the existence of the contract and of its breach or non-fulfillment is sufficient *prima facie* to warrant recovery	The negligence of the defendant must be proved
Proof of diligence in the selection & supervision of the employees is not an available defense	Proof of diligence in the selection & supervision of the employees is a defense

Q: What is the degree of diligence required?

A:

1. That agreed upon
2. In the absence of such, that which is required by the law
3. In the absence of the foregoing, diligence of a good father of a family – that reasonable diligence which an ordinary prudent person would have done under the same circumstances. **XPN:**Common carriers requiring extraordinary diligence (Arts. 1998-2002)

5. CONTRAVENTION OF TENOR OF OBLIGATION (VIOLATIO)

Q: What is violation of the terms of the contract?

A: It is the act of contravening the tenor or terms or conditions of the contract. It is also known as "*violatio,"i.e.* failure of common carrier to take its passenger to their destination.*(Pineda, Obligations and Contracts, 2000 ed, p. 50)*

Note: Under Art. 1170, NCC, the phrase "in any manner contravene the tenor" of the obligation includes any illicit act which impairs the strict and faithful fulfillment of the obligation, or every kind of defective performance.

6. FORTUITOUS EVENT

Q: What is fortuitous event?

A: It is an occurrence or happening which could not be foreseen, or even if foreseen, is inevitable *(Art. 1174, NCC)*.

Q: What are the requisites of a fortuitous event?

A:

1. Cause is independent of the will of the debtor;
2. The event is unforeseeable or unavoidable;
3. Occurrence renders it *absolutely impossible* for the debtor to fulfill his obligation in a normal manner; impossibility must be *absolute* not partial, otherwise not force majeure; and
4. Debtor is *free from any participation* in the aggravation of the injury to the creditor.

Note: The fortuitous event must not only be the proximate cause but it must also be the *only* and *sole cause.* Contributory negligence of the debtor renders him liable despite the fortuitous event. *(Pineda, Obligations and Contracts, 2000 ed, p. 62)*

Q: If the happening of an event is difficult to foresee, is it a fortuitous event?

A: No. The mere difficulty to foresee the happening is not impossibility to foresee the same. *(Republic v. Luzon Stevedoring Corp., G.R. No. L-21749, Sept. 29, 1967)*

Q: Distinguish Act of God from Act of Man

A:

ACT OF GOD	ACT OF MAN
Fortuitous event	Force majeure
Event which is absolutely independent of human intervention	Event caused by the legitimate or illegitimate acts of persons other than the obligor
i.e. – earthquakes, storms, floods, epidemics	*i.e.* – armed invasion, robbery, war*(Pineda, Obligations and Contract, 2000 ed, p. 60)*

Note: There is no essential difference between fortuitous event and force majuere; they both refer to causes independent of the will of the obligor. *(Tolentino, Civil Code of the Philippines, Vol. IV, 2002 ed, p. 127)*

Q: Is there liability for loss due to fortuitous event?

A:

GR: There is no liability for loss in case of fortuitous event.

XPNs: LaNS-PCBaG

1. **La**w
2. **N**ature of the obligation requires the assumption of risk
3. **S**tipulation
4. The debtor is guilty of *dolo*, malice or bad faith, has **P**romised the same thing to two or more persons who does not have the same interest
5. The debtor **C**ontributed to the loss *(Tan v. Inchausti & Co., G.R. No. L-6472, Mar. 7, 1912)*
6. The possessor is in **Ba**d faith *(Art. 552)*
7. The obligor is **G**uilty of fraud, negligence or delay or if he contravened the tenor of the obligation *(Juan Nakpil v. United Construction Co., Inc. v. CA, G.R. No. L-47851, Apr. 15, 1988)*

Q: Philcomsat contends that expiration of the RP-US Military Bases Agreement and non-ratification of the treaty is not a fortuitous event. Decide.

A: No. The requisites for fortuitous events are present in the instant case. Philcomsat and Globe had no control over the non-renewal of the term of the RP-US Military Bases Agreement when the same expired in 1991, because the prerogative to ratify the treaty belonged to the Senate. Neither did the parties have control over the subsequent withdrawal of the US military forces and personnel from Cubi Point. The events made impossible the continuation of the agreement without fault on the part of either party. Such fortuitous events rendered Globe exempt from payment of rentals for the remainder of the term of the agreement. *(Philippine Communications Satellite Corp.v.Globe Telecom, Inc.,G.R. No. 147324, May 25, 2004)*

Q: MIAA entered into a compromise agreement with ALA. MIAA failed to pay within the period stipulated. Thus, ALA filed a motion for execution to enforce its claim. MIAA filed a comment and attributed the delays to its being a government agency and the Christmas rush. Is the delay of payment a fortuitous event?

A: No. The act-of-God doctrine requires all human agencies to be excluded from creating the cause

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of the mischief. Such doctrine cannot be invoked to protect a person who has failed to take steps to forestall the possible adverse consequences of loss or injury. Since the delay in payment in the present case was partly a result of human participation - whether from active intervention or neglect - the whole occurrence was humanized and was therefore outside the ambit of a *caso fortuito*.

First, processing claims against the government are certainly not only foreseeable and expectable, but also dependent upon the human will. Second, the Christmas season is not a casofortuito, but a regularly occurring event. Third, the occurrence of the Christmas season did not at all render impossible the normal fulfillment of the obligation. Fourth, MIAA cannot argue that it is free from any participation in the delay. It should have laid out on the compromise table the problems that would be caused by a deadline falling during the Christmas season. Furthermore, it should have explained to ALA the process involved for the payment of AL's claim. *(MIAA v. Ala Industries Corp., G.R. No. 147349, Feb. 13, 2004)*

Q: JAL cancelled all its flight to Manila due to the Mt. Pinatubo eruption and NAIA's indefinite closure. The passengers were then forced to pay for their accommodations and meal expenses from their personal funds. Thus, they filed an action for damages against JAL. Can JAL avoid liability by invoking that delays were caused by *force majeure*?

A: Yes. The Mt. Pinatubo eruption prevented JAL from proceeding to Manila on schedule. Such event can be considered as "force majeure" since the delayed arrival in Manila was not imputable to JAL.

When JAL was prevented from resuming its flight to Manila due to the effects of Mt. Pinatubo eruption, whatever losses or damages in the form of hotel and meal expenses the stranded passengers incurred, cannot be charged to JAL. Indeed, in the absence of bad faith or negligence, JAL cannot be liable for the amenities of its stranded passengers by reason of a fortuitous event. *(Japan Airlines v. CA, G.R. No. 118664, Aug. 7, 1998).*

Q: What are the effects of fortuitous event?

A:

1. On *determinate* obligation – the obligation is extinguished
2. On *generic* obligation – the obligation is not extinguished (*genus nun quam peruit* – genus never perishes)

Q: AB Corp. entered into a contract with XY Corp. whereby the former agreed to construct the research and laboratory facilities of the latter. Under the terms of the contract, AB Corp. agreed to complete the facility in 18 months, at the total contract price of P10 million. XY Corp. paid 50% of the total contract price, the balance to be paid upon completion of the work. The work started immediately, but AB Corp. later experienced work slippage because of labor unrest in his company. AB Corp.'s employees claimed that they are not being paid on time; hence, the work slowdown. As of the 17th month, work was only 45% completed. AB Corp. asked for extension of time, claiming that its labor problems is a case of fortuitous event, but this was denied by XY Corp. When it became certain that the construction could not be finished on time, XY Corp. sent written notice cancelling the contract and requiring AB Corp. to immediately vacate the premises.

Can the labor unrest be considered a fortuitous event?

A: Labor unrest is not a fortuitous event that will excuse AB Corp. from complying with its obligation of constructing the research and laboratory facilities of XY Corp. The labor unrest, which may even be attributed in large part to AB Corp. itself, is not the direct cause of non-compliance by AB Corp. It is independent of its obligation. It is similar to the failure of a DBP borrower to pay her loan just because her plantation suffered losses due to the cadang-cadang disease. It does not excuse compliance with the obligation *(DBP v. Vda. De Moll).*

Additional Answer: The labor unrest in this case is not a fortuitous event. The requisites of fortuitous event are: (1) the event must be independent of human will or at least of the debtor's will; (2) the event could not be foreseen, or if foreseen is inevitable; (3) the event must have rendered impossible debtor's compliance of the obligation in a proper manner; and (4) the debtor must not be guilty of concurrent negligence. All the requisites are absent in this case. AB Corp. could have anticipated the labor unrest which was caused by delays in paying the laborer's wages. The company could have hired additional laborers to make up for the work slowdown.

Can XY Corp. unilaterally and immediately cancel the contract?

A: No. XY Corp. cannot unilaterally and immediately cancel the contract because there is need for a judicial action of rescission. The provisions of Art. 1191 of the Civil Code providing for rescission in reciprocal obligations can only be invoked judicially.

Alternative Answer: Yes, XY Corp. may unilaterally cancel the obligation but this is subject to the risk that the cancellation of the reciprocal obligation being challenged in court and if AB Corp. succeeds, then XY Corp. will be declared in default and be liable for damages.

Must AB Corp. return the 50% down payment?

A: No, under the principle of quantum meruit, AB Corp. had the right to retain payment corresponding to his percentage of accomplishment less the amount of damages suffered by XY Corp. because of the delay or default. **(2008 Bar Question)**

D. REMEDIES

Q: What are the remedies that may be availed of in case of breach?

A:

1. Specific performance, or substituted performance by a third person in case of an obligation to deliver a generic thing, and in obligations to do, unless it is a purely personal act; or
2. Rescission (or resolution in reciprocal obligations);
3. Damages, in any case;
4. Subsidiary remedies of creditors:
    a. *Accion subrogatoria*
    b. *Accion pauliana*
    c. *Accion directa*

1. SPECIFIC PERFORMANCE

Q: What are the remedies in connection with specific performance?

A:

1. Exhaustion of the properties of the debtor (not exempt from attachment under the law)
2. *Accion subrogatoria* (subrogatory action) – an indirect action brought in the name of the debtor by the creditor to enforce the former's rights *except*:
    a. personal rights of the debtor
    b. rights inherent in the person of the debtor
    c. properties exempt from execution (*e.g.*family home)
3. *Accion pauliana* (rescissory action) – an action to impugn or assail the acts done or contracts entered into by the debtor in fraud of his creditor;

    Note: Must be a remedy of last resort, availed of only after all other legal remedies have been exhausted and have been proven futile.

    Presupposes a judgment and the issuance by the trial court of a writ of execution for the satisfaction of the judgment and the failure of the Sheriff to enforce and satisfy the judgment of the court.

Note: Resort to the remedies must be in the order stated above. *(Art. 1177, NCC)*

Q: Saturnino was the registered owner of two parcels of land. The Adorables were lessees of a portion of Lot No. 1. Saturnino and his son, Francisco, obtained a loan from Salvador, in consideration of which they promised to transfer the possession and enjoyment of the fruits of Lot No. 2. Saturnino sold to Francisco part of Lot No. 1, which Francisco sold to Jose Ramos. The portion of land being rented by Salvador was included in the portion sold to Ramos. The deeds of sale evidencing the conveyances were not registered in the office of the register of deeds. When Saturnino and Francisco failed to pay their loan, a demand letter was sent to Francisco, but he refused to pay.

When Salvador learned of the sale made by Francisco to Ramos, Salvador filed a complaint for the annulment or rescission of the sale on the ground that the sale was fraudulently prepared and executed. Can Salvador file an action for the rescission or annulment of the sale?

A: No. As creditor, Salvador does not have such material interest as to allow him to sue for rescission of the contract of sale. At the outset, Salvador's right against Francisco and Ramos is only a personal right to receive payment for the loan; it is not a real right over the lot subject of the deed of sale.

The sale was not made in fraud of creditors. Art. 1177 of the Civil Code provides for successive

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measures that must be taken by a creditor before he may bring an action for rescission of an allegedly fraudulent sale. Without availing of the first and second remedies, Salvador simply undertook the third measure and filed an action for annulment of the sale. This cannot be done.

An action for rescission is a subsidiary remedy; it cannot be instituted except when the party suffering damage has no other legal means to obtain reparation for the same. Considering Article 1380 of the Civil Code, which states that contract validly agreed upon may be rescinded in the cases established by law, Salvador, et al. have not shown that they have no other means of enforcing their credit. *(Adorable, et. al. v.CA, G.R. No. 119466, Nov. 25, 1999)*

Q: While the case was pending, Felix donated his of parcels of land in favor of his children. Judgment was rendered against Felix. When the sheriff, accompanied by counsel of Philam, sought to enforce the *alias* writ of execution, they discovered that Felix no longer had any property and that he had conveyed the subject properties to his children. Thus, Philam filed an *accionpauliana* for rescission of the donations. Felix countered that an action for rescission of the donation had already prescribed since the time of prescription has to run from the date of registration. Has the action filed by Philam prescribed?

A: No. Philam only learned about the unlawful conveyances made by Felix more than four years after the donations were effected, when its counsel accompanied the sheriff to Butuan City to attach the properties. There they found that he no longer had any properties in his name. It was only then that Philam's action for rescission of the deeds of donation accrued because then it could be said that Philam had exhausted all legal means to satisfy the trial court's judgment in its favor. Since Philam filed its complaint for *accion pauliana* against petitioners barely a month from its discovery that Felix had no other property to satisfy the judgment award against him, its action for rescission of the subject deeds clearly had not yet prescribed.*(Khe Hong Cheng v. CA,G.R. No. 144169, Mar. 28, 2000)*

Note: The debtor is liable with all his property, present and future, for the fulfillment of his obligations, subject to the exemptions provided by law *(De Leon, Obligations and Contracts, 2003 ed, p.71)*

Q: What is substitute performance?

A: It is a remedy of the creditor in case of non-performance by the debtor; where another party performs the obligation or the same is performed at the expense of the debtor.

Q: When may there be substitute performance?
A:

1. Positive personal obligation:
    a. If not purely personal- substitute performance; the obligation shall be executed at debtor's cost if he fails to do it. (*Art. 1167, NCC*)
    b. Purely personal- no substitute performance may be demanded because of the personal qualifications taken into consideration. The only remedy is damages.
2. Real obligation:
    a. Generic thing- substitute performance; delivery may be made by a person other than the debtor since the object is merely designated by its class or genus. The creditor may ask that the obligation be complied with at the expense of the debtor. (*1165,NCC*)
    b. Specific thing- specific performance may be demanded, that is, the creditor may compel the debtor to make the delivery.

2. RESCISSION

Q: What is rescission under Article 1191?

A: It refers to the cancellation of the contract or reciprocal obligation in case of breach on the part of one, which breach is violative of the reciprocity between the parties. This is properly called resolution.

Note: The rescission under Art. 1380 is rescission based on lesion or fraud upon creditors.

Q: To what kind of obligation is resolution available?

A: Reciprocal obligation, since resolution is implied therein.

Q: Who may demand resolution?

A: Injured party.

Q: May the injured party demand resolution after he elects specific performance?
A:
GR: No. His right is not conjunctive, thus, he may not choose both remedies of resolution and specific performance.
XPN: Yes, if specific performance should become impossible

Q: When does liability for damages arise?

A: Those liable under Art. 1170 shall pay damages only if aside from the breach of contract, prejudice or damage was caused. (Berg v. Teus, G.R. No. L-6450, Oct 30, 1954)

Q: What are the kinds of damages?
A:

1. Moral
2. Exemplary
3. Nominal
4. Temperate
5. Actual
6. Liquidated

Q: What are the requisites of accion subrogatoria?

A:

1. The debtor's assets must be insufficient to satisfy claims against him
2. The creditor must have pursued all properties of the debtor subject to execution
3. The right of action must not be purely personal
4. The debtor whose right of action is exercised must be indebted to the creditor.

Q: What are the requisites of accion pauliana?

A:

1. Defendant must be indebted to plaintiff
2. The fraudulent act performed by the debtorsubsequent to the contractgives advantage to another
3. The creditor is prejudiced by such act.
4. The creditor must have pursued all properties of the debtor subject to execution
5. The creditor has no other legal remedy.

Q: What is accion directa?

A: It is the right of the lessor to go directly against the sublessee for unpaid rents of the lessee.

Note: Under Art. 1652 of the Civil Code, the sublessee is subsidiarily liable to the lessor for any rent due from the lessee.

VII. KINDS OF CIVIL OBLIGATIONS

Q: What are the kinds of civil obligations?

A:

1. Pure obligations;
2. Conditional obligations;
3. Obligations with a period or term; and
4. Alternative or Facultative obligations

Q: Differentiate a civil obligation from a natural obligation.

A:

CIVIL OBLIGATION	NATURAL OBLIGATION
As to binding force	
Arises from positive law	Arises from equity and justice
As to enforcement in court	
Can be enforced by court action	Cannot be enforced in court. It depends exclusively upon the good conscience of the debtor.

A. PURE OBLIGATIONS

Q: What is pure obligation?

A: One whose effectivity or extinguishment does not depend upon the fulfillment or non-fulfillment of a condition or upon the expiration of a period and is demandable at once. *(Art. 1179, NCC)*

B. CONDITIONAL OBLIGATIONS

Q: What is conditional obligation?

A: It is an obligation subject to a condition and the effectivity of which is subordinated to the fulfillment or non-fulfillment of a future and uncertain event, or upon a past event unknown to the parties.

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Q: Ramon, the judicial administrator of the estate of Juan, found out that Rodriguez had enlarged the area of the land which he purchased from Juan before his death. Thus, Ramon demanded Rodriguez to vacate the portion allegedly encroached by him. Rodriguez refused and contested there was indeed a conditional sale with the balance of the purchase price payable within five years from the execution of the deed of sale. Ramon then filed an action for recovery of possession of the disputed lot. Is the contract of sale a conditional one?

A: No. The stipulation that the "payment of the full consideration based on a survey shall be due and payable in 5 years from the execution of a formal deed of sale" is not a condition which affects the efficacy of the contract of sale. It merely provides the manner by which the full consideration is to be computed and the time within which the same is to be paid. But it does not affect in any manner the effectivity of the contract. *(Heirs of San Andresv.Rodriguez, G.R. No. 135634, May 31, 2000)*

Q: Distinguish period from condition.

A:

PERIOD	CONDITION
As to Time	
Refers to the future	May refer to past event unknown to the parties
As to Fulfillment	
It will happen at an exact date or at an indefinite time, but is sure to arrive	May or may not happen
As to its Influence on the Obligation to be Fulfilled or Performed	
No effect or influence upon the existence of the obligation *but only* in its demandability or performance	May give rise to an obligation (suspensive) or the cessation of one already existing (resolutory)

1. SUSPENSIVE CONDITION

Q: What is a suspensive condition?

A: A condition the fulfillment of which will give rise to the acquisition of a right**.**

Q: Distinguish suspensive from resolutory conditions.

A:

SUSPENSIVE CONDITION	RESOLUTORY CONDITION
Effect of Fulfillment	
Obligation arises or becomes effective	Obligation is extinguished
Effect of Non-fulfillment	
If not fulfilled, no juridical relation is created	If not fulfilled, juridical relation is consolidated
When Rights are Acquired	
Rights are not yet acquired, but there is hope or expectancy that they will soon be acquired	Rights are already acquired, but subject to the threat or danger of extinction

Q: In cases of obligations with a suspensive condition, what are the effects of loss, deterioration, and improvements in real obligations?

A:

WITH DR'S FAULT	WITHOUT DR'S FAULT
Loss	
DR pays damages	Obligation extinguished
Deterioration	
CR- choose b/w rescission of obligation or fulfillment (with indemnity for damages in either case)	Impairment borne by CR
Improvement	
1. *By the thing's nature or by time* – inure to the benefit of the CR 2. *At the debtor's expense* – DR shall have no right other than that granted to a usufructuary	

Q: What are the requisites for Art.1189 to apply?

A:

1. Must be a real obligation;
2. Object is a specific/determinate thing;
3. Obligation is subject to a suspensive condition;
4. The condition is fulfilled; and
5. There is loss, deterioration or improvement of the thing during the pendency of the happening of the condition.

Note: The same conditions apply in case of an obligor in obligations with a resolutory condition. In such cases, the third requisite must read, "subject to a resolutory condition."

Q: GSIS approved the application of Agcaoili for the purchase of a house and lot in the GSIS Housing Project; it is subject to the condition that he should immediately occupy the house. But he could not because the house was uninhabitable. He paid the first installment and other fees but refused to make further payment until GSIS had made the house habitable. GSIS refused and opted to cancel the award and demand the vacation by Agcaoili of the premises. Can GSIS cancel the contract?

A: No. There was a perfected contract of sale between the parties; there had been a meeting of the minds upon the purchase by Agcaoili of a determinate house and lot at a definite price and from that moment, the parties acquired the right to reciprocally demand performance. Based on their contact, it can only be understood as imposing on GSIS an obligation to deliver to Agcaoili a reasonably habitable dwelling in return for his undertaking to pay the stipulated price. Since GSIS did not fulfill that obligation, and was not willing to put the house in habitable state, it cannot invoke Agcaoili's suspension of payment of amortizations as cause to cancel the contract between them.

Note: In reciprocal obligations, neither party incurs in delay if the other does not comply or is not ready to comply in a proper manner with what is incumbent upon him. *(Agcaoili v. GSIS, G.R. No. L-30056, Aug. 30, 1988)*

2. RESOLUTORY CONDITION

Q: What is a resolutory condition?

A: A condition where the rights already acquired are lost upon fulfillment of the condition.

Q: What are the effects of fulfillment of resolutory condition?

A:

1. Real obligations:
   a. The parties shall return to each other what they have received.
   b. Obligation is extinguished.
   c. In case of the loss, deterioration or improvement of the thing, Art. 1189, with respect to the debtor, shall be applied to the party who is bound to return.

2. Personal obligations- the courts shall determine, in each case, the retroactive effect of the condition that has been complied with.

Q: X donated a parcel of land to the municipality of Tarlac under a condition that a public school shall be erected and a public park be made within 6 months from the date of the ratification of the donation by the parties. After the registration of the said donation, X sold the same land to Y. Thereafter, Y brought an action against the Province of Tarlac, alleging that the conditions of the donation is a condition precedent, thus, the municipality of Tarlac did not acquire ownership over the land when it failed to comply with the said condition. Is the contention of Y correct?

A: No. In this case, the condition could not be complied with except after giving effect to the donation. The Municipality of Tarlac could not do any work on the donated land if the donation had not really been effected, because it would be an invasion of another's title, for the land would have continued to belong to the donor so long as the condition imposed was not complied with. Thus, considering that the condition itself was for a public school to be built means that ownership of the land was already with the Municipality. *(Parks v. Province of Tarlac, G.R. No. L-24190, July 13, 1926)*

Q: The late Don Lopez, Sr., who was then a member of the Board of Trustees of CPU, executed a deed of donation in favor of the latter of a parcel of land subject to the condition that it shall be utilized for the establishment and use of a medical college. However, the heirs of Don Lopez, Sr., filed an action for annulment of the donation, reconveyance and damages against CPU alleging that CPU had not complied with the conditions of the donation.

Are the conditions imposed resolutory or suspensive?

A: Under Art. 1181 of the Civil Code, on conditional obligations, the acquisition of rights, as well as the extinguishment or loss of those already acquired, shall depend upon the happening of the event which constitutes the condition. Thus, when a person donates land to another on the condition that the latter would build upon the land a school, the condition imposed was not a condition precedent or a suspensive condition but a resolutory one. It is not correct to say that the schoolhouse had to be constructed before the donation became effective, that is, before the donee could become the owner of the land, otherwise, it would be invading the property rights of the donor. The donation had to be valid before the fulfillment of

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the condition. If there was no fulfillment or compliance with the condition, 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 v. CA, G.R. No. 112127, July 17, 1995)*

Q: What does a constructive fulfillment of a condition entail?

A:When the debtor actually prevents the fulfillment of the condition, then said condition shall be deemed fulfilled.

2. POTESTATIVE CONDITION

Q: When is a condition said to be potestative?

A: When the condition depends upon the will of one of the contracting parties.

Q: Does a condition which depends upon the will of the debtor invalidate both the condition and the obligation? What about a condition which depends upon the will of the creditor?

A: Yes. This is because its validity and compliance is left to the will of the debtor, and cannot therefore be easily demanded. But if the condition is a pre-existing one, only the condition is void, leaving the obligation itself valid. Further, if the condition is resolutory, it is valid because what is left to the sole will of the debtor is not the existence or the fulfillment of the obligation but merely its extinguishment.

If the fulfillment depends upon the will of the creditor, in any case, both the condition and the obligation are valid.

Q: What are the effects of the fulfillment of a suspensive condition?
A:

1. Real obligations:
   GR: Effects retroact to the day of constitution of the obligation.
   XPN: No retroactivity as to;
   a. fruits
   b. interests

   XPN to the XPN: There may be retroactivity as to the fruits and interests in unilateral obligations if such intention appears

2. Personal obligations- the court determines the retroactive effect of the condition fulfilled.

Q: What are the effects of the fulfillment of a resolutory condition?
A:

1. Real obligations:
   a. obligation is extinguished
   b. Parties shall return to each other what they have received.
2. Personal obligations- the court determines the retroactive effect of the condition fulfilled.

Q: What are the other types of conditions?

A: CaMP-NID-CAPI

1. ***Ca****sual* – the performance or fulfillment of the condition depends upon chance and/or the will of a third person
2. ***M****ixed* – the performance or fulfillment of the condition depends partly upon the will of a party to the obligation and partly upon chance and/or the will of a third person
3. ***P****ositive* – involves the doing of an act
4. ***N****egative* – involves the omission of an act
5. ***D****ivisible* – is susceptible of partial performance
6. ***I****ndivisible* – is not susceptible of partial performance
7. ***C****onjunctive* – there are several conditions in an obligation all of which must be performed
8. ***A****lternative* – there are several conditions in an obligation but only one must be performed
9. ***P****ossible* – is capable of fulfillment according to the nature, law, public policy or good customs
10. ***I****mpossible* – is not capable of fulfillment according to nature, law, public policy or good customs *(Art. 1183, NCC)*

Q: What is the effect of an impossible or unlawful condition?

A:

GR: Impossible conditions annul the obligation which depends upon the parties but not of a third person.

XPNs: PD-DoNT.

1. **P**re-existing obligation
2. Obligation is **D**ivisible
3. In simple or remuneratory **Do**nations
4. In case of conditions **N**ot to do an impossible thing
5. In **T**estamentary dispositions

Note: In the foregoing, the obligations remain valid, only the condition is void and deemed to have not been imposed. It is applicable only to obligations *not to do* and *gratuitous* obligations.

Q: When will the effect of fulfillment of a condition retroact?

A:

1. *In an obligation to give* – it retroacts to the day of the constitution of the obligation
2. *In an obligation to do or not to do* – the court may determine to what date retroactivity shall be allowed, or it may even refuse to permit retroactivity *(Tolentino, Civil Code of the Philippines, Vol. IV, 2002 ed, p.166)*

C. OBLIGATIONS WITH A PERIOD

Q: What is an obligation with a period or a term?

A: It is an obligation whose demandability or extinguishment is subject to the expiration of a period or a term. *(Art. 1193, NCC)*

Q: What are the requisites of a valid period or term?

A:

1. Future
2. Certain
3. Possible, legally and physically

Q: Is the statement of a debtor that he will pay when his means permit him to do so relate to a period or a condition? Is such a statement valid considering that the same is left to the will of the debtor?

A: When the debtor binds himself to pay when his means permit him to do so, the obligation is deemed with a period or term. This is valid because it is not the payment itself that is dependent upon the will of the debtor, but the moment of payment.

As the time of payment is not fixed, the court must fix the same before any action for collection may be entertained, *unless*, the prior action of fixing the term or period will only be a formality and will serve no purpose but delay.

Q: For whose benefit is the period constituted?

A:

GR: When a period has been agreed upon for the performance or fulfillment of an obligation, it is presumed to have been established for the benefit of both the creditor and the debtor.

XPN: When it appears from the tenor of the period or other circumstances that it was established for the benefit of one of the parties.

Q: What is the effect of the term being for the benefit of either the CR or the DR?

A:

1. *When it is for the benefit of the Creditor* –Creditor may demand the performance of the obligation at any time but the DR cannot compel him to accept payment before the expiration of the period (*e.g.* "on demand")
2. *When it is for the benefit of the Debtor* –

   Debtor may oppose any premature demand on the part of the CR for performance of the obligation, or if he so desires, he may renounce the benefit of the period by performing his obligation in advance. *(Manresa)*

Q: What is the effect of a fortuitous event in an obligation with a period?

A: It only relieves the contracting parties from the fulfillment of their respective obligation during the term or period.

Q: When may the court fix the period?

A:

1. If the obligation does not fix a period, but from its nature and circumstances it can be inferred that a period was intended by the parties
2. If the duration of the period depends upon the will of the DR
3. In case of reciprocal obligations, when there is a just cause for fixing the period
4. If the DR binds himself when his means permit him to do so

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Q: When may a debtor lose his right to make use of the period?

A:

1. Insolvency of the DR, unless security is provided
2. Did not deliver security promised
3. Impaired security through his own acts or through fortuitous event, unless he gives a new security equally satisfactory (if impairment is without the fault of DR, he shall retain the right)
4. Violates undertaking in consideration of extension of period
5. DR attempts to abscond *(Art. 1198, NCC)*

D. ALTERNATIVE OBLIGATION

Q: Distinguish facultative from alternative obligations.

A:

FACULTATIVE OBLIGATIONS	ALTERNATIVE OBLIGATIONS
Fortuitous loss extinguishes the obligation	Fortuitous loss of all prestation will *not* extinguish the obligation
Culpable loss obliges the debtor to deliver substitute prestation without liability to debtor	Culpable loss of any object due will give rise to liability to debtor
Choice pertains only to debtor	**GR:** Choice pertain to debtor **XPN:** Expressly granted to creditor or third person
Only one object is due	Several objects are due
May be complied with by substitution of one that is due	May be complied with by fulfilling any of those alternately due
If principal obligation is void, the creditor cannot compel delivery of the substitute	If one prestation is void, the others free from vices preserve the validity of the obligation
If there is impossibility to deliver the principal thing or prestation, the obligation is extinguished, even if the substitute obligation is valid	If various prestations are impossible to perform except one, this one must be delivered. If all prestations are impossible to perform, the obligation is extinguished
Loss of substitute before the substitution through the fault of the debtor doesn't make him liable	Where the choice is given to the creditor, the loss of the alternative through the fault of the debtor renders him liable for damages

Q: In alternative obligations, when does the choice made take effect?

A: The choice made takes effect only upon communication of the choice to the other party and from such time the obligation ceases to be alternative *(Art. 1205, NCC).*

Note: The notice of selection or choice may be in any form provided it is sufficient to make the other party know that the election has been made. *(Tolentino, Civil Code of the Philippines, 2002 ed, p. 205)*

Q: Does the choice made by the DR require the concurrence of the CR? What happens when through the CR's fault, selection is deemed impossible?

A: No. To hold otherwise would destroy the very nature of the right to select given to the DR. Once a choice is made, it can no longer be renounced and the parties are bound thereto.

When choice is rendered impossible through the CR's fault, the DR may bring an action to rescind the contract with damages *(Art. 1203, NCC)*.

Q: What are the limitations on the right of choice of the debtor?

A: Debtor cannot choose prestations which are:

1. Impossible;
2. Unlawful; and
3. could not have been the object of the obligation.

Q: When is an alternative obligation converted to a simple obligation?

A: When:

1. the person who has a right of choice has communicated his choice; or
2. only one is practicable. *(Art. 1202, NCC)*

Q: What are the effects of loss of objects of alternative obligations?

A:

	DUE TO FORTUITOUS EVENT	DUE TO DEBTOR'S FAULT
Choice Belongs to Debtor		
All are lost	DR released from the obligation	CR shall have a right to indemnify for damages based on the value of the last thing which disappeared/service which become impossible
Some but not all are lost	DR shall deliver that which he shall choose from among the remainder	DR shall deliver that which he shall choose from among the remainder without damages
Only one remains	Deliver that which remains	
Choice Belongs to Creditor		
All are lost	DR released from the obligation	CR may claim the price/value of any of them with indemnity for damages
Some but not all are lost	DR shall deliver that which he shall choose from among the remainder	CR may claim any of those subsisting without a right to damages OR price/value of one of those lost with right to damages
Only one remains	Deliver that which remains. In case of fault of DR, CR has a right to indemnity for damages	

VIII. JOINT AND SOLIDARY OBLIGATIONS

Q: What are joint obligations?

A: It is where the entire obligation is to be paid or performed proportionately by the debtors *(Art. 1208, NCC)*.

Q: What are solidary obligations?

A: It is where each of the debtors obliges to pay the entire obligation, and where each one of the creditors has the right to demand from any of the debtors, the payment or fulfillment of the entire obligation *(Art. 1207, NCC; Pineda, Obligations and Contracts, 2000 ed, p. 139)*.

Q: Distinguish joint from solidary obligation.

A:

JOINT OBLIGATION	SOLIDARY OBLIGATION
Presumed by law	Not presumed. Must be expressly stipulated by the parties, or when the law or the nature of the obligation requires solidarity. *(Art. 1207, NCC)*
Each debtor is liable only for a proportionate part of the entire debt	Each debtor is obliged to pay the entire obligation
Each creditor, if there are several, is entitled only to a proportionate part of the credit	Each creditor has the right to demand from any of the debtors, the payment or fulfillment of the entire obligation *(Tolentino, Civil CodeVol IV, 1999 ed. p. 217)*

Q: What is the rule as regards the joint or solidary character of an obligation?

A:

GR: When two or more creditors or two or more debtors concur in one and the same obligation, the presumption is that the obligation is *joint.*

XPNs: The obligation shall be solidary when: **ELN-CJ**

1. ***E***xpressly stipulated that there is solidarity;
2. ***L***aw requires solidarity;
3. ***N***ature of the obligation requires solidarity;
4. ***C***harge or ***c***ondition is imposed upon heirs or legatees and the will expressly makes the charge or condition *in solidum (Manresa)*; or
5. solidary responsibility is imputed by a final ***J***udgment upon several defendants.*(Gutierrez v. Gutierrez, 56 Phil 177)*

Q: Chua bought and imported to the Philippines dicalcium phosphate. When the cargo arrived at the Port of Manila, it was discovered that some were in apparent bad condition. Thus, Chua filed with Smith, Bell, and Co., Inc., the claim agent of First Insurance Co., a formal statement of claim for the loss. No settlement of the claim having been made, Chua then filed an action. Is Smith, Bell, and Co., solidarily liable upon a marine insurance policy with its disclosed foreign principal?

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A: No. Article 1207 of the Civil Code clearly provides that "there is a solidary liability only when the obligation expressly so states, or when the law or the nature of the obligation requires solidarity." The well-entrenched rule is that solidary obligation cannot lightly be inferred. It must be positively and clearly expressed. *(Smith, Bell & Co., Inc. v. CA, G.R. No. 110668, Feb. 6, 1997)*

Q: The labor arbiter rendered a decision, the *fallo* of which states that the following respondents as liable, namely: FCMC, Sicat, Gonzales, Chiu Chin Gin, Lo Kuan Chin, and INIMACO. INIMACO questions the execution, alleging that the alias writ of execution altered and changed the tenor of the decision by changing their liability from joint to solidary, by the insertion of the words "AND/OR". Is the liability of INIMACO pursuant to the decision of the labor arbiter solidary or not?

A: INIMACO's liability is not solidary but merely joint. Well-entrenched is the rule that solidary obligation cannot lightly be inferred. There is a solidary liability only when the obligation expressly so states, when the law so provides or when the nature of the obligation so requires. In the dispositive portion of the labor arbiter, the word "solidary" does not appear. The said *fallo* expressly states the following respondents therein as liable, namely: Filipinas Carbon Mining Corporation, Sicat, Gonzales, Chiu Chin Gin, Lo Kuan Chin, and INIMACO. Nor can it be inferred therefrom that the liability of the six respondents in the case below is solidary, thus their liability should merely be joint.*(INIMACO v. NLRC,G.R. No. 101723, May 11, 2000)*

A. JOINT OBLIGATIONS

Q: What are the legal consequences if the obligation is joint?

A:

1. Each debtor is liable only for a proportionate part of the entire debt;
2. Each creditor, if there are several, is entitled only to a proportionate part of the credit;
3. The demand made by one creditor upon one debtor, produces effects of default only as between them;
4. Interruption of prescription caused by the demand made by one creditor upon one debtor, will NOT benefit the co-creditors or the co-debtors;
5. Insolvency of a debtor will not increase the liability of his co-debtors;
6. Vices of each obligation emanating from a particular debtor or creditor will not affect the others; and
7. In indivisible or joint obligation, the defense of *res judicata* of one does not extend to the others.

B. JOINT INDIVISIBLE OBLIGATIONS

Q: What are the different permutations of joint indivisible obligations? What are their effects?

A:

1. If there are two or more debtors, compliance with the obligation requires the concurrence of all the debtors, although each for his own share. The obligation can be enforced only by preceding against all of the debtors.
2. If there are two or more creditors, the concurrence or collective act of all the creditors, although each of his own share, is also necessary for the enforcement of the obligation.
3. Each credit is distinct from one another; therefore a joint debtor cannot be required to pay for the share of another with debtor, although he may pay if he wants to.
4. In case of insolvency of one of the debtors, the others shall not be liable for his shares. To hold otherwise would destroy the joint character of the obligation.

Q: What is the effect of breach of a joint indivisible obligation by one debtor?

A: If one of the joint debtors fails to comply with his undertaking, the obligation can no longer be fulfilled or performed. It is the converted into one of indemnity for damages. Innocent joint DR shall not contribute to the indemnity beyond their corresponding share of the obligation.

C. SOLIDARY OBLIGATIONS

Q: What is the effect of solidary obligation?

A: Each one of the debtors is obliged to pay the entire obligation, and each one of the creditors has the right to demand from any of the debtors the payment or fulfillment of the entire obligation

Q: Joey, Jovy and Jojo are solidary debtors under a loan obligation of P300, 000.00 which has fallen due. The creditor has, however, condoned Jojo's entire share in the debt. Since Jovy has become insolvent, the creditor makes a demand on Joey to pay the debt.

1. **How much, if any, may Joey be compelled to pay?**
2. **To what extent, if at all, can Jojo be compelled by Joey to contribute to such payment?**

A:

1. Joey can be compelled to pay only the remaining balance of P200,000, in view of the remission of Jojo's share by the creditor. *(Art. 1219, NCC)*
2. Jojo can be compelled by Joey to contribute P50,000. When one of the solidary debtors cannot, because of his insolvency, reimburse his share to the debtor paying the obligation, such share shall be borne by all his co-debtors, in proportion to the debt of each.*(par. 3, Art. 1217, NCC)*

Since the insolvent debtor's share which Joey paid was Pl00,000, and there are only two remaining debtors - namely Joey and Jojo - these two shall share equally the burden of reimbursement. Jojo may thus be compelled by Joey to contribute P50,000. **(1998 Bar Question)**

Q: What are the kinds of solidary obligation?

A:

1. *Passive* – solidarity on the part of the debtors
2. *Active* – solidarity on the part of the creditors
3. *Mixed* – solidarity on both sides

Q: Distinguish solidarity from indivisibility.

A:

INDIVISIBILITY	SOLIDARITY
Refers to the prestation or object of the contract	Refers to the vinculum existing between the subjects or parties
Does not require plurality of subjects or parties	Requires the plurality of parties or subjects
In case of breach, it is converted to one of indemnity for damages and the indivisibility of the obligation is terminated	In case of breach, the liability of the solidary debtors for damages remains solidary

Q: What are the rules in a solidary obligation?

A:

1. Anyone of the solidary creditors may collect or demand payment of whole obligation; there is mutual agency among solidary debtors (Arts. 1214, 1215)

2. Any of the solidary debtor may be required to pay the whole obligation; there is mutual guaranty among solidary debtors (Arts. 1216, 1217, 1222)

3. Each one of solidary creditors may do whatever maybe useful to the others, but not anything prejudicial to them (Art. 1212); however, any novation, compensation, confusion or remission of debt executed by any solidary creditor shall extinguish the obligation without prejudice to his liability for the shares of the other solidary creditors.

Q: In cases of solidary creditors, may one act for all? What are the limitations?

A: Yes. However, while each one of the solidary creditors may execute acts which may be useful or beneficial to the others, he may not do anything which may be prejudicial to them. *(Art. 1212, NCC)*

Note: Prejudicial acts may still have valid legal effects, but the performing creditor shall be liable to his co-creditors. *(Pineda, Obligations and Contracts, 2000 ed, p. 157)*

Q: What are the effects of assignment of rights in a solidary obligation?

A:

GR: Solidary creditor cannot assign his right because it is predicated upon mutual confidence, meaning personal qualification of each creditor had been taken into consideration when the obligation was constituted. *(Art. 1213, NCC)*

XPNs:

1. Assignment to co-creditor; or
2. Assignment is with consent of co-creditor.

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Q: To whom must payment be made in a solidary obligation?

A:

GR: To any of the solidary creditors.

XPN: If demand, judicial or extra-judicial, has been made by one of them, payment should be made to him.*(Art. 1214, NCC)*

D. DIVISIBLE AND INDIVISIBLE OBLIGATIONS

Q: What is the primary distinction between divisible and indivisible obligations?

A:

DIVISIBLE	INDIVISIBLE
Susceptibility of an obligation to be performed partially	Non-susceptibility to be performed partially Partial performance is tantamount to non-performance

Q: What is the true test in determining divisibility?

A: Whether or not the prestation is susceptible of partial performance, not in the sense of performance in separate or divided parts, but in the sense of the possibility of realizing the purpose which the obligation seeks to obtain. If a thing could be divided into parts and as divided, its value is impaired disproportionately, that thing is indivisible. *(Pineda, Obligations and Contracts, 2000 ed, p. 174)*

Q: When may an obligation to deliver a *divisible thing* be considered indivisible?

A:

1. When the law so provides; or
2. By stipulation of the parties.*(3rd par., Art. 1255, NCC)*

Q: What is the effect of illegality of a part of a contract?

A:

1. *Divisible contract* – illegal part is void and unenforceable. Legal part is valid and enforceable. *(Art. 1420, NCC)*
2. *Indivisible contract* – entire contract is indivisible and unenforceable.

Q: What is the effect of partial performance in indivisible obligation?

A: It is tantamount to non-performance. *(Pineda, Obligations and Contracts, 2000 ed, p. 179)*

E. OBLIGATIONS WITH A PENAL CLAUSE

Q: What is a penal clause?

A: It is an accessory obligation attached to the principal obligation to assure greater responsibility in case of breach.

Note: Proof of actual damages suffered by the creditor is not necessary in order that the penalty may be demanded. (*Art. 1228, NCC*)

Q: What is the effect of incorporating a penal clause in an obligation?

A:

GR: The penalty fixed by the parties is a compensation or substitute for damages in case of breach.

XPNs: Damages shall still be paid even if there is a penal clause if:

1. there is a stipulation to the contrary
2. the debtor refuses to pay the agreed penalty
3. the debtor is guilty of fraud in the fulfillment of the obligation. *(Art. 1126, NCC)*

Note: The nullity of the penal clause does not carry with it that of the principal obligation.

The nullity of the principal obligation carries with it that of the penal clause. (*Art. 1230, NCC*)

Q: When may *penalty* be reduced by the courts?

A: PIU

1. **P**artial performance of the obligation;
2. **I**rregular performance of the obligation; or
3. Penalty is **U**nconscionable even if there has been no performance.

IX. EXTINGUISHMENT OF OBLIGATIONS

Q: What are the modes of extinguishment of an obligation?

A:

1. Payment or performance
2. Loss of the thing due
3. Condonation or remission of debt
4. Confusion or merger
5. Compensation
6. Novation
7. Annulment
8. Rescission
9. Fulfillment of a resolutory condition
10. Prescription*(Art. 1231, NCC)*

Note: The enumeration is not exclusive.

MUTUAL DESISTANCE

Q: If the parties mutually disagree as regards the obligation, may it be cancelled?

A: Yes. That is in the nature of "mutual desistance" – which is a mode of extinguishing obligations. It is a concept that derives from the principle that since mutual agreement can create a contract, mutual disagreement by the parties can cause its extinguishment.*(Saura v. Development Bank of the Phils., G.R. No. 24968, Apr. 27, 1972)*

A. PAYMENT OR PERFORMANCE

Q: Is the term "payment," as used in the Code, limited to appreciable sums of money?

A:No. *Payment* may consist not only in the delivery of money but also the giving of a thing (other than money), the doing of an act, or not doing of an act.

Q: What is tender of payment?

A: *Tender of payment* is the definitive act of offering the creditor what is due him or her, together with the demand that the creditor accept the same.

Note: There must be a fusion of *intent, ability* and *capability* to make good such offer, which must be absolute and must cover the amount due. *(FEBTC v. Diaz Realty Inc., G.R. No. 138588, Aug. 23, 2001)*

Q: Is the creditor bound to accept payment or performance by a third person?

A:

GR: No, the creditor is not.

XPNs:

1. When made by a third person who has interest in the fulfillment of the obligation
2. Contrary stipulation

Q: What are the rights of a third person who paid the debt?

A:

1. *With knowledge and consent of the debtor:*
   a. can recover entire amount paid (absolute reimbursement)
   b. can be subrogated to all rights of the creditor
2. *Without knowledge or against the will of the* debtor – can recover only insofar as payment has been beneficial to the debtor (right of conditional reimbursement)

NOTE: Payment made by a third person who does not intend to be reimbursed by the debtor is deemed to be a donation, which requires the debtor's consent. But the payment is in any case valid as to the creditor who has accepted it. *(Art. 1238, NCC)*

Q: State the requisites of a valid payment.

A: CCPAD

1. **C**apacity of the payor
2. **C**apacity of the payee
3. **P**ropriety of the time, place, manner of payment
4. **A**cceptance by the creditor
5. **D**elivery of the full amount or the full performance of the prestation

Q: What are the characteristics of payment?

A:

1. Integrity;
2. Identity; and
3. Indivisibility.

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INTEGRITY

Q: How should performance be made?

A:

GR: Performance should always be in full.

XPNs:

1. Substantial performance performed in good faith
2. Creditor accepts the performance knowing its incompleteness or irregularity without protest or objection
3. Debt is partly liquidated and partly unliquidated, but the liquidated part of the debt must be paid in full

IDENTITY

Q: What should be given as payment of an obligation?

A:

GR: Thing paid must be the very thing due and cannot be another thing *even if* of same quality and value.

XPNs:

1. Dation in payment
2. Novation of the obligation
3. Obligation is facultative

INDIVISIBILITY

Q: Can the debtor or creditor be compelled to perform/accept partial prestations?

A:

GR: Debtor *cannot* be compelled by the creditor to perform obligation in parts and neither can the debtor compel the creditor to accept obligation in parts.

XPNs: When:

1. partial performance has been agreed upon
2. part of the obligation is liquidated and part is unliquidated
3. to require the debtor to perform in full is impractical

Q: Is the acceptance by a creditor of a partial payment an abandonment of its demand for full payment?

A: No. When creditors receive partial payment, they are not *ipso facto* deemed to have abandoned their prior demand for full payment.

To imply that creditors accept partial payment as complete performance of their obligation, their acceptance must be made under circumstances that indicate their intention to consider the performance complete and to renounce their claim arising from the defect.

Note: While Article 1248 of the Civil Code states that creditors cannot be compelled to accept partial payments, it does not prohibit them from accepting such payments. *(Selegna Management and Development Corp. v. UCPB, G.R. No. 165662, May 30, 2006)*

Q: To whom payment should be made?

A: Payment shall be made to the person in whose favor the obligation has been constituted, or his successor in interest, or any person authorized to receive it. *(Art. 1240)*

Q: Is payment to an unauthorized person a valid payment?

A:

GR: Payment to an unauthorized person is *not* a valid payment.

XPNs:

1. Payment to an incapacitated person if:
   a. *he kept* the thing delivered, or
   b. it has been *beneficial* to him
2. Payment to a third person insofar as it redounded to the benefit of the CR
3. Payment in good faith to the possessor of credit

SPECIAL FORMS OF PAYMENT

Q: What are the special forms of payment?

A:

CONCEPT
Dation in Payment
Alienation by the DR of a particular property in favor of his CR, with the latter's consent, for the satisfaction of the former's money obligation to the latter, with the effect of extinguishing the said money obligation *(Pineda, Obligations and Contracts, 2000 ed, p. 212)*
Application of Payment
Designation of the particular debt being paid by the DR who has two or more debts or obligations of the same kind in favor of the same CR to whom the payment is made (*Pineda, Obligations and Contracts, 2000 ed, p. 229*)
Payment by Cession
DR cedes his property to his CRs so the latter may sell the same and the proceeds realized applied to the debts of the DR
Tender of Payment
Voluntary act of the DR whereby he offers to the CR for acceptance the immediate performance of the former's obligation to the latter
Consignation
Act of depositing the object of the obligation with the court or competent authority after the CR has unjustifiably refused to accept the same or is not in a position to accept it due to certain reasons or circumstances

1. DATION IN PAYMENT

Q: What does dation in payment or *dacion en pago* entail?

A: *Dacion en pago* is the delivery and transmission of ownership of a thing by the debtor to the creditor as an accepted equivalent of the performance of the obligation. The property given may consist not only of a thing but also of a real right. *(Tolentino, Civil Code of the Philippines, Vol. IV, 2002 ed, p. 293)*

Note: The consent of the creditor is essential.

It is a special mode of payment where the debtor offers another thing to the creditor who accepts it as equivalent of payment of an outstanding debt.

The undertaking partakes of the nature of sale, that is, the creditor is really buying the thing or property of the debtor, payment for which is to be charged against the debtor's debt.

As such, the essential elements of a contract of sale, namely, consent, object certain, and cause or consideration must be present.

In its modern concept, what actually takes place in *dacion en pago* is an objective novation of the obligation where the thing offered as an accepted equivalent of the performance of an obligation is considered as the object of the contract of sale, while the debt is considered as the purchase price. In any case, common consent is an essential prerequisite, be it sale or novation, to have the effect of totally extinguishing the debt or obligation.

Q: Lopez obtained a loan in the amount of P20,000.00 from the Prudential Bank. He executed a surety bond in which he, as principal, and PHILAMGEN as surety, bound themselves jointly and severally for the payment of the sum. He also executed a deed of assignment of 4,000 shares of the Baguio Military Institution in favor of PHILAMGEN. Is the stock assignment made by Lopez dation in payment or pledge?

A: The stock assignment constitutes a pledge and not a *dacion en pago*. Dation in payment is the delivery and transmission of ownership of a thing by the debtor to the creditor as an accepted equivalent of the performance of the obligation. Lopez's loan has not yet matured when he "alienated" his 4,000 shares of stock to Philamgen. Lopez's obligation would arise only when he would default in the payment of the principal obligation which is the loan and Philamgen had to pay for it. Since it is contrary to the nature and concept of dation in payment, the same could not have been constituted when the stock assignment was executed. In case of doubt as to whether a transaction is a pledge or a dation in payment, the presumption is in favor of pledge, the latter being the lesser transmission of rights and interests. *(Lopez v. CA,G.R. No. L-33157, June 29, 1982)*

Q: Cebu Asiancars Inc., with the conformity of the lessor, used the leased premises as a collateral to secure payment of a loan which Asiancars may obtain from any bank, provided that the proceeds of the loan shall be used solely for the construction of a building which, upon the termination of the lease or the voluntary surrender of the leased premises before the expiration of the contract, shall automatically become the property of the lessor. Meeting financial difficulties and incurring an outstanding balance on the loan, Asiancars conveyed ownership of the building on the leased premises to MBTC, by way of "dacion en

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pago."Is the dacion en pago by Asiancars in favor of MBTC valid?

A: Yes. MBTC was a purchaser in good faith. MBTC had no knowledge of the stipulation in the lease contract. Although the same lease was registered and duly annotated, MBTC was charged with constructive knowledge only of the fact of lease of the land and not of the specific provision stipulating transfer of ownership of the building to the Jaymes upon termination of the lease. While the alienation was in violation of the stipulation in the lease contract between the Jaymes and Asiancars, MBTC's own rights could not be prejudiced by Asiancars' actions unknown to MBTC. Thus, the transfer of the building in favor of MBTC was valid and binding. *(Jayme v. CA, G.R. No. 128669, Oct. 4, 2002)*

2. FORM OF PAYMENT

Q: What are the rules as regards payment in monetary obligations?

A:

1. *Payment in cash*– all monetary obligations shall be settled in the Philippine currency which is legal tender in the Philippines. However, the parties may agree that the obligations or transactions shall be settled in any other currency at the time of payment. *(Sec. 1, R.A. 8183)*

   Note: R.A. 8183 amended the first paragraph of Art. 1249 of the Civil Code, but the rest of the article remain subsisting. *(Pineda, Obligations and Contracts, 2000 ed, p. 221)*

2. *Payment in check or other negotiable instrument* – not considered payment, they are not considered legal tender and may be refused by the creditor *except when:*
   a. the document has been cashed; or
   b. it had been impaired through the fault of the creditor.

PAYMENT IN CASH

Q: Northwest Airlines, through its Japan Branch, entered into an International Passenger Sales Agency Agreement with CF Sharp, authorizing the latter to sell its air transport tickets. CF Sharp failed to remit the proceeds of the ticket sales, thus, Northwest Airlines filed a collection suit before the Tokyo District Court which rendered judgment ordering CF Sharp to pay 83,158,195 Yen and damages for the delay at the rate of 6% per *annum.* Unable to execute the decision in Japan, Northwest Airlines filed a case to enforce said foreign judgment with the RTC of Manila. What is the rate of exchange that should be applied for the payment of the amount?

A: The repeal of R.A. 529 by R.A. 8183 has the effect of removing the prohibition on the stipulation of currency other than Philippine currency, such that obligations or transactions may now be paid in the currency agreed upon by the parties. Just like R.A. 529, however, the new law does not provide for the applicable rate of exchange for the conversion of foreign currency-incurred obligations in their peso equivalent. It follows, therefore, that the jurisprudence established in R.A. 529 regarding the rate of conversion remains applicable. Thus, in *Asia World Recruitment, Inc. v. National Labor Relations Commission,* the SC, applying R.A. 8183, sustained the ruling of the NLRC that obligations in foreign currency may be discharged in Philippine currency based on the prevailing rate *at the time of payment*. It is just and fair to preserve the real value of the foreign exchange-incurred obligation to the date of its payment.

If the rate of interest is not stipulated, what should be the rate of interest that should apply? When should the interest begin to run?

A: In *Eastern Shipping Lines, Inc. v. CA,* it was held that absent any stipulation, the legal rate of interest in obligations which consists in the payment of a sum of money is 12% *per annum* to be reckoned from the time of filing of the complaint therein until the said foreign judgment is fully satisfied. *(C.F. Sharp & Co., Inc. v. Northwest Airlines, Inc., G.R. No. 133498, Apr. 18, 2002)*

PAYMENT BY NEGOTIABLE INSTRUMENT

Q: Diaz & Company obtained a loan from Pacific Banking Corp which was secured by a real estate mortgage over two parcels of land owned by the plaintiff Diaz Realty. ABC rented an office space in the building constructed on the properties covered by the mortgage contract. The parties then agreed that the monthly rentals shall be paid directly to the mortgagee for the lessor's account, either to partly or fully pay off the aforesaid mortgage indebtedness. Thereafter, FEBTC purchased the credit of Diaz & Company in favor of PaBC, but it was only after 2 years that Diaz was informed about it. Diaz asked the FEBTC to make an accounting of the monthly

rental payments made by Allied Bank. Diaz tendered to FEBTC the amount of P1,450,000.00 through an Interbank check, in order to prevent the imposition of additional interests, penalties and surcharges on its loan but FEBTC did not accept it as payment, instead, Diaz was asked to deposit the amount with the FEBTC's Davao City Branch Office. Was there a valid tender of payment?

A: Yes. True, jurisprudence holds that, in general, a check does not constitute legal tender, and that a creditor may validly refuse it. It must be emphasized, however, that this dictum does not prevent a creditor from accepting a check as payment. In other words, the creditor has the *option* and the *discretion* of refusing or accepting it. *(FEBTC v. Diaz Realty Inc., G.R. No. 138588, Aug. 23, 2001)*

Q: Who has the burden of proving payment in an action for sum of money?

A: The party who pleads payment as a defense has the burden of proving that such payment has, in fact, been made.

Q: Are receipts the only evidence that can be presented to prove payment?

A: No. Receipts of payment, although not exclusive, are deemed the best evidence of the fact of payment. *(Dela Peña and Villareal v. CA and Rural Bank of Bolinao, Inc., G.R. No. 177828, Feb. 13, 2009*

EXTRAORDINARY INFALTION OR DEFLATION

Q: What is the rule in payment in case of an extraordinary inflation or deflation?

A: In case an extraordinary inflation or deflation of the currency stipulated should supervene, the value of the currency at the time of the establishment of the obligation shall be the basis of payment, unless there is an agreement to the contrary. (*Art. 1250, NCC*)

Q: Does the exchange rate at the time of the establishment of the obligation apply in all cases?

A: No. The rule that the value of the currency at the time of the establishment of the obligation shall be the basis of payment finds application only when there is an official pronouncement or declaration of the existence of an extraordinary inflation or deflation.

4. APPLICATION OF PAYMENTS

Q: What does the concept of application of payments mean?

A: It is the designation of the debt to which the payment must be applied when the debtor has several obligations of the same kind in favor of the same creditor.

Q: What are the requisites of application of payments?

A:

1. One debtor and one creditor
2. Two or more debts of the same kind
3. Amount paid by the debtor must not be sufficient to cover all debts
4. Debts are all due
5. Parties have not agreed previously on the application

Q: What is the governing rule in case the debtor fails to ascertain which debt his payment is to be applied?

A: The choice may be transferred to the creditor as when the debtor makes payment and does not make application and debtor accepts a receipt in which the application is made. In such a case, the debtor cannot complain of the application the creditor has made unless there be a cause for invalidating the contract.

Q: If both the creditor and the debtor fail to apply payments, what rule governs?

A: *Legal application of payment g*overns wherein the law makes the application.

The payment should be applied to the more onerous debts:

1. When a person is bound as principal in one obligation and as surety in another, the former is more onerous.
2. When there are various debts, the oldest ones are more burdensome.
3. Where one bears interest and the other does not, even if the latter is the older obligation, the former is considered more onerous.
4. Where there is an encumbrance, the debt with a guaranty is more onerous than that without security.
5. With respect to indemnity for damages, the debt which is subject to the general rules on damages is less burdensome

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than that in which there is a penal clause.
6. The liquidated debt is more burdensome than the unliquidated one.
7. An obligation in which the debtor is in default is more onerous than one in which he is not. *(Tolentino, Civil Code of the Philippines, Vol. IV, 2002 ed, p. 314-315)*

Note: If the debts happen to be of same nature and burden, the payment shall be applied proportionately.

PAYMENT BY CESSION

Q: What are the circumstances evidencing payment by cession?

A: Debtor abandons all of his property for the benefit of his creditors in order that from the proceeds thereof, the latter may obtain payment of credits.

Note: It presupposes insolvency of the debtor. All the debtor's creditors must be involved and the consent of the latter must be obtained.

Q: What are the difference between Dation in Payment and Payment in Cession?

A:

DATION IN PAYMENT	PAYMENT IN CESSION
Maybe one creditor	Plurality of creditors
Not necessarily in state of financial difficulty	Debtor must be partially or relatively insolvent
Thing delivered is considered as equivalent of performance	Universality or property of debtor is what is ceded
Payment extinguishes obligation to the extent of the value of the thing delivered as agreed upon, proved or implied from the conduct of the creditor	Merely releases debtor for net proceeds of things ceded or assigned, unless there is contrary intention
Ownership is transferred to CR upon delivery	Ownership is not transferred
An act of novation	Not an act of novation
Does not presuppose insolvency	Presupposes insolvency

5. TENDER OF PAYMENT

Q: What constitutes a valid tender of payment?

A: Voluntary act of the debtor whereby he offers to the creditor for acceptance the immediate performance of the former's obligation to the latter.*(Pineda, Obligations and Contracts, 2000 ed, p. 241)*

Tender of payment is the manifestation by debtors of their desire to comply with or to pay their obligation. *(Sps. Benosv.Sps.Lawilao, G.R. No. 172259, Dec. 5, 2006)*

Note: If the creditor refuses the tender of payment without just cause, the debtors are discharged from the obligation by the consignation of the sum due. *(Sps. Benosv.Sps.Lawilao, G.R. No. 172259, Dec. 5, 2006)*

CONSIGNATION

Q: What is consignation?

A: Act of depositing the object of the obligation with the court or competent authority after the CR has unjustifiably refused to accept the same or is not in a position to accept it due to certain reasons or circumstances. *(Pineda, Obligations and Contracts, 2000 ed, p. 241)*

Q: When and where is consignation made?

A: Consignation is made by depositing the proper amount to the judicial authority, before whom the tender of payment and the announcement of the consignation shall be proved. *(Sps. Benosv.Sps.Lawilao, G.R. No. 172259, Dec. 5, 2006)*

Note: Once the consignation has been duly made, the debtor may ask the judge to order the cancellation of the obligation.

Q: When will consignation produce effects of payment?

A:

GR: Consignation shall produce effects of payment only if there is a valid tender of payment.

XPNs: When: **ARTIT**
1. Creditor is **A**bsent or unknown, or doesn't appear at place of payment
2. Creditor **R**efuses to issue a receipt without just cause
3. **T**itle of the obligation has been lost
4. Creditor is **I**ncapacitated to receive payment at the time it is due
5. **T**wo or more persons claim the right to collect

Note: The expenses of consignation, when properly made, shall be charged against the creditor.

Q: What are the requisites of consignation?

A: VP-CPAS

1. **V**alid existing debt which is already due;
2. **P**rior valid tender *except* when prior tender of payment is dispensable;
3. **C**reditor unjustly refuses the tender of payment;
4. **P**rior notice of consignation given to persons interested in the fulfillment of the obligation;
5. **A**mount or thing is deposited at the disposal of judicial authority; and
6. **S**ubsequent notice of the fact of consignation to persons interested in the fulfillment of the obligation.

Q: Can the debtor withdraw the thing deposited?

A:Before the creditor has accepted the consignation, or before a judicial declaration that the consignation has been properly made, the debtor may withdraw the thing or the sum deposited, allowing the obligation to remain in force. (*Art. 1260, NCC*)

NOTE: If, the consignation having been made, the creditor should authorize the debtor to withdraw the same, he shall lose every preference which he may have over the thing. The co-debtors, guarantors and sureties shall be released. (*Art. 1261, NCC*)

Q: Distinguish tender of payment from consignation.

A:

TENDER OF PAYMENT	CONSIGNATION
Nature	
Antecedent of consignation or preliminary act to consignation	Principal or consummating act for the extinguishment of the obligation
Effect	
It does not by itself extinguish the obligation	It extinguishes the obligation when declared valid
Character	
Extrajudicial	Judicial for it requires the filing of a complaint in court *(Pineda, Obligations and Contracts, 2000 ed, p. 242)*

Q: In an ejectment case, X refused to vacate the land alleging that Y had sold to him the additional area, the payment of which would be effected five years after the execution of a formal deed of sale. However, the parties failed to execute a deed of sale. During the pendency of the action, X deposited the payment for the addition to the lot with the court. Is there a valid consignation?

A: No. Under Art. 1257 of this Civil Code, consignation is proper only in cases where an existing obligation is due. In this case, the contracting parties agreed that full payment of purchase price shall be due and payable within 5 years from the execution of a formal deed of sale. At the time Rodriguez deposited the amount in court, no formal deed of sale had yet been executed by the parties, and, therefore, the 5-year period during which the purchase price should be paid had not commenced. In short, the purchase price was not yet due and payable. *(Heirs of San Andresv.Rodriguez, G.R. No. 135634, May 31, 2000)*

Q: Under a *pacto de retro* sale, X sold to Y his lot and the building erected thereon. They agreed that half of the consideration shall be paid to the bank to pay off the loan of X. After paying the first installment, Y, instead of paying the loan to the bank, restructured it twice. Eventually, the loan became due and demandable. Thus, X paid the bank. On the same day, Y also went to the bank and offered to pay the loan, but the bank refused to accept the payment.

Y then filed an action for consignation without notifying X. Is there a valid consignation by Y of the balance of the contract price?

A: No. Y filed the petition for consignation against the bank without notifying the X, resulting to the former's failure to prove the payment of the balance of the purchase price and consignation. In fact, even before the filing of the consignation case, Y never notified the X of their offer to pay.*(Sps. Benosv. Sps.Lawilao, G.R. No. 172259, Dec. 5, 2006)*

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Q: Because of Ligaya's refusal to accept several tenders of payment and notices of consignation given by OSSA in its desire to comply with its obligation to pay on installments, OSSA brought a complaint for consignation against Ligaya before the RTC. The RTC allowed OSSA, among others, to deposit with it,by way of consignation, all future quarterly installments without need of formal tenders of payment and service of notices of consignation.

Ligaya assails the validity of the consignation on the ground that there was no notice to her regarding OSSA's consignation of the amounts corresponding to certain installments. Is Ligaya correct?

A: No. The motion and the subsequent court order served on Ligaya in the consignation proceedings sufficiently served as notice to Ligaya of OSSA's willingness to pay the quarterly installments and the consignation of such payments with the court. For reasons of equity, the procedural requirements of consignation are deemed substantially complied with in the present case *(De Mesa v. CA, G.R. Nos. 106467-68, Oct. 19, 1999)*.

B. LOSS OF THE THING DUE

Q: When is a thing considered lost?

A: When: **DOPE**

1. It **D**isappears in such a way that its existence is unknown;
2. It goes **O**ut of commerce;
3. It **P**erishes; or
4. Its **E**xistence is unknown or if known, it cannot be recovered.

Q: What is the effect of loss of the thing which is the object of the obligation?

A: If the obligation is a:

1. *Determinate obligation to give*:

   GR: The obligation is *extinguished* when the object of the obligation is lost.

   XPNs: LAS-CD-PCG
   a. **L**aw provides otherwise
   b. Nature of the obligation requires the **A**ssumption of risk
   c. **S**tipulation to the contrary
   d. Debtor **C**ontributed to the loss
   e. Loss the of the thing occurs after the debtor incurred in **D**elay
   f. When debtor **P**romised to deliver the same thing to two or more persons who do not have the same interest
   g. When the debt of a certain and determinate thing proceeds from a **C**riminal offense
   h. When the obligation is **G**eneric

2. *Generic obligation to give*:

   GR: The obligation is *not extinguished* because a generic thing never perishes.

   XPN: In case of generic obligations whose object is a particular class or group with specific or determinate qualities (limited generic obligation)

3. *An obligation to do* – the obligation is extinguished when the prestation becomes legally or physically impossible.

Q: Differentiate legal from physical impossibility to perform an obligation to do.

A:

1. *Legal impossibility* – act stipulated to be performed is subsequently prohibited by law.
2. *Physical impossibility* – act stipulated could not be physically performed by the obligor due to reasons subsequent to the execution of the contract. *(Pineda, Obligations and Contracts, 2000 ed, p. 261)*

Q: What is the effect of partial loss?

A:

1. *Due to the fault or negligence of the debtor* – Creditor has the right to demand the rescission of the obligation or to demand specific performance, *plus* damages, in either case.
2. *Due to fortuitous event*:
   a. Substantial loss – obligation is extinguished.
   b. Unsubstantial loss – the CR shall deliver the thing promised in its impaired condition.

Q: What is the effect when the thing is lost in the possession of the debtor?

A:

GR: It is presumed that loss is due to DR's fault.

XPN: Presumption shall not apply in case loss is due to earthquake, flood, storm or other natural calamity.

XPN to the XPN: Debtor still liable even if loss is due to fortuitous event when:

1. Debtor incurred in delay; or
2. Debtor promised to deliver the thing to two or more persons with different interests *(par. 3, Art. 1165, NCC)*

Q: What does *rebus sic stantibus* mean?

A: A principle in international law which means that an agreement is valid only if the same conditions prevailing at time of contracting continue to exist at the time of performance. It is the basis of the principle of unforeseen difficulty of service.

Note: However, this principle cannot be applied absolutely in contractual relations since parties are presumed to have assumed the risk of unfavorable developments. *(Pineda, Obligations and Contracts, 2000 ed, p. 264)*

Q: What are the requisites in order to relieve the debtor from his obligation, in whole or in part, based on unforeseen difficulty of service?

A:

1. Event or change in circumstance could not have been foreseen at the time of the execution of the contract;
2. Such event makes the performance extremely difficult but not impossible;
3. The event must not be due to the act of any of the parties; and
4. The contract is for a future prestation. *(Tolentino, Civil Code of the Philippines, Vol. IV, 2002 ed, p. 347)*

C. CONDONATION

Q: What is condonation?

A: It is an act of liberality by virtue of which the creditor, without receiving any price or equivalent, renounces the enforcement of the obligation, as a result of which it is extinguished in its entirety or in that part or aspect of the same to which the condonation or remission refers. *(Pineda, Obligations and Contracts, 2000 ed, p. 267)*

EXPRESS CONDONATION

Q: What are the requisites of condonation?

A: GAIDE

1. Must be **G**ratuitous;
2. **A**cceptance by the debtor;
3. Must *not* be **I**nofficious;
4. Formalities provided by law on **D**onations must be complied with if condonation is *express*; and
5. An **E**xisting demandable debt.

IMPLIED CONDONATION

Q: What is the effect of the delivery of a private document evidencing a credit?

A:The delivery of a private document evidencing a credit, made voluntarily by the creditor to the debtor, implies the renunciation of the action which the former had against the latter.

If in order to nullify this waiver it should be claimed to be inofficious, the debtor and his heirs may uphold it by proving that the delivery of the document was made in virtue of payment of the debt. (*Art. 1271, NCC*)

NOTE: Whenever the private document in which the debt appears is found in the possession of the debtor, it shall be presumed that the creditor delivered it voluntarily, unless the contrary is proved. (*Art. 1272, NCC*)

It is presumed that the accessory obligation of pledge has been remitted when the thing pledged, after its delivery to the creditor, is found in the possession of the debtor, or of a third person who owns the thing. (*Art. 1274, NCC*)

Q: What is the effect of inofficious condonation?

A: It may be totally revoked or reduced depending on whether or not it is totally or only partly inofficious. *(Pineda, Obligations and Contracts, 2000 ed, p. 268)*

Q: Can there be a unilateral condonation?

A: No. Since it is a donation of an existing credit, considered a property right, in favor of the debtor, it is required that the DR gives his consent thereto by making an acceptance. If there is no acceptance, there is no condonation. *(Pineda, Obligations and Contracts, 2000 ed, p. 267)*

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D. CONFUSION OR MERGER

Q: When is there a confusion or merger of rights?

A: The meeting in one person of the qualities of a creditor and debtor of the same obligation.

Q: What are the requisites of confusion of rights?

A:

1. Merger in the same person of the characters of both a creditor and d debtor;
2. Must take place in the persons of a principal creditor and a principal debtor; and
3. Merger is definite and complete.

Q: What is the effect of confusion or merger of rights?

A: The creditor and debtor becomes the same person involving the same obligation. Hence, the obligation is extinguished. *(Art. 1275, NCC)*

Q: Can there be partial confusion?

A: Yes. It will be definite and complete up to the extent of the concurrent amount or value, but the remaining obligation subsists. *(Pineda, Obligations and Contracts, 2000 ed, p. 278)*

Q: What is the effect when confusion or merger is revoked?

A: If the act which created the confusion is revoked for some causes such as rescission of contracts, or nullity of the will or contract, the confusion or merger is also revoked. The subject obligation is revived in the same condition as it was before the confusion.

Note: During such interregnum, the running of the period of prescription of the obligation is suspended. *(Pineda, Obligations and Contracts, 2000 ed, p. 279)*

Q: What is the effect of confusion or merger in relation to the guarantors?

A:

1. Merger which takes place in the person of the principal debtor or principal creditor benefits the guarantors. The contract of guaranty is extinguished.
2. Confusion which takes place in the person of any of the guarantors does not extinguish the obligation. *(Art. 1276, NCC)*

Q: In a joint obligation, what is the effect of confusion or merger in one debtor or creditor?

A:

GR: Joint obligation is not extinguished since confusion is not definite and complete with regard to the entire obligation. A part of the obligation still remains outstanding.

XPN: Obligation is extinguished with respect only to the share corresponding to the DR or CR concerned. In effect, there is only partial extinguishment of the entire obligation. *(Pineda, Obligations and Contracts, 2000 ed, p. 281)*

E. COMPENSATION

Q: What is compensation?

A: It is a mode of extinguishing to the concurrent amount, the obligations of those persons who in their own right are reciprocally debtors and creditors of each other *(Art. 1232, NCC)*. It involves the simultaneous balancing of two obligations in order to extinguish them to the extent in which the amount of one is covered by that of the other.

Q: What are the requisites of compensation?

A:

1. Both parties must be mutually creditors and debtors in their own right and as principals;
2. Both debts must consist in sum of money or if consumable, of the same kind or quality;
3. Both debts are due;
4. Both debts are liquidated and demandable;
5. Neither debt must be retained in a controversy commenced by third person and communicated with debtor (neither debt is garnished); and
6. Compensation must not be prohibited by law.

Note: When all the requisites mentioned in Art. 1279 of the Civil Code are present, compensation takes effect by operation of law, even without the consent or knowledge of the creditors and debtors.

1. KINDS OF COMPENSATION

Q: What are the kinds of compensation?

A:

1. *Legal compensation* – by operation of law
2. *Conventional* – by agreement of the parties
3. *Judicial* – by judgment of the court when there is a counterclaim duly pleaded, and the compensation decreed

LEGAL COMPENSATION

Q: What are the debts not subject to compensation?

A:

1. Debts arising from contracts of *deposit*
2. Debts arising from contracts of *commodatum*
3. Claims for *support* due by gratuitous title
4. Obligations arising from *criminal* offenses
5. Certain obligations in favor of *government* (*e.g.* taxes, fees, duties, and others of a similar nature)

Note: If a person should have against him several debts which are susceptible of compensation, the rules on the application of payments shall apply to the order of the compensation. (*Art. 1289, NCC*)

Q: De Leon sold and delivered to Silahis various merchandise. Due to Silahis' default, De Leon filed a complaint for the collection of said accounts. Silahis asserts, as affirmative defense, a debit memo as unrealized profit for a supposed commission that Silahis should have received from De Leon. Was there legal compensation?

A: Silahis admits the validity of its outstanding accounts with De Leon. But whether De Leon is liable to pay Silahis a commission on the subject sale to Dole is disputed. This circumstance prevents legal compensation from taking place. *(Silahis Marketing Corp. v. IAC, G. R. No. L-74027, Dec. 7, 1989)*

Note: Compensation is not proper where the claim of the person asserting the set-off against the other is not clear nor liquidated; compensation cannot extend to unliquidated, disputed claim existing from breach of contract. *(Silahis Marketing Corp. v. IAC, G. R. No. L-74027, Dec. 7, 1989)*

CONVENTIONAL

Q: What is conventional compensation?

A: It is one that takes place by agreement of the parties.

JUDICIAL COMPENSATION

Q: What is judicial compensation?

A: One made by order of a court based on a permissive counterclaim. Pleading and proof of the counterclaim must be made.

FACULTATIVE COMPENSATION

Q: What is facultative compensation?

A: One of the parties has a choice of claiming or opposing the compensation.

Q: What are the obligations subject to facultative compensation?

A: When one of the debts arises from:

1. Depositum
2. Obligations of a depositary
3. Obligations in commudatum
4. Claim of support due to gratuitous title
   XPN: Future support.
5. Civil liability from a crime

Q: Distinguish compensation from payment.
A:

COMPENSATION	PAYMENT
A mode of extinguishing to the concurrent amount, the obligations of those persons who in their own right are reciprocally debtors and creditors of each other	Payment means not only delivery of money but also performance of an obligation
Capacity of parties not necessary *Reason:* Compensation operates by law, not by the act of the parties	Debtor must have capacity to dispose of the thing paid; creditor must have capacity to receive payment
There can be partial extinguishment of the obligation	The performance must be complete *unless waived by the creditor*
Legal compensation takes place by operation of law without simultaneous delivery	Involves delivery or action
Parties must be mutually debtors and creditors of each other	It is not necessary that the parties be mutually debtors and creditors of each other

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Q: Distinguish compensation from confusion.

A:

COMPENSATION (Arts. 1278-1279)	CONFUSION (Arts. 1275-1277)
Two persons who are mutual debtors and creditors of each other	One person where qualities of debtor and creditor are merged
At least two obligations	One obligation

Q: Atty. Laquihon, in behalf of Pacweld, filed a pleading addressed to MPCC titled "motion to direct payment of attorney's fee", invoking a decision wherein MPCC was adjudged to pay Pacweld the sum of P10,000.00 as attorney's fees. MPCC filed an opposition stating that the said amount is set-off by a like sum of P10,000.00, collectible in its favor from Pacweld also by way of attorney's fees which MPCC recovered from the same CFI of Manila in another civil case. Was there legal compensation?

A: MPCC and Pacweld were creditors and debtors of each other, their debts to each other consisting in final and executory judgments of the CFI in two separate cases. The two obligations, therefore, respectively offset each other, compensation having taken effect by operation of law and extinguished both debts to the concurrent amount of P10,000.00, pursuant to the provisions of Arts. 1278, 1279 and 1290 of the Civil Code, since all the requisites provided in Art. 1279 of the said Code for automatic compensation "even though the creditors and debtors are not aware of the compensation" were present. *(Mindanao Portland Cement Corp. v. CA,G.R. No. L-62169, Feb. 28, 1983)*

Q: X, who has a savings deposit with Y Bank in the sum of PI,000,000.00, incurs a loan obligation with the said bank in the sum of P800,000.00 which has become due. When X tries to withdraw his deposit, Y Bank allows only P200,000.00 to be withdrawn, less service charges, claiming that compensation has extinguished its obligation under the savings account to the concurrent amount of X's debt. X contends that compensation is improper when one of the debts, as here, arises from a contract of deposit. Assuming that the promissory note signed by X to evidence the loan does not provide for compensation between said loan and his savings deposit, who is correct?

A: Y bank is correct. All the requisites of Art. 1279, Civil Code are present. Compensation shall take place when two persons are reciprocally creditor and debtor of each other. In this connection, it has been held that the relation existing between a depositor and a bank is that of creditor and debtor. As a general rule, a bank has a right of set off of the deposits in its hands for the payment of any indebtedness to it on the part of a depositor" *(Gullas v. PNB, GR No. L-43191, November 13, 1935)*. Hence, compensation took place between the mutual obligations of X and Y bank. **(1998 Bar Question)**

Q: Eduardo was granted a loan by XYZ Bank for the purpose of improving a building which XYZ leased from him. Eduardo executed the promissory note in favor of the bank, with his friend Ricardo as cosignatory. In the PN, they both acknowledged that they are "individually and collectively" liable and waived the need for prior demand. To secure the PN, Ricardo executed a real estate mortgage on his own property. When Eduardo defaulted on the PN, XYZ stopped payment of rentals on the building on the ground that legal compensation had set in. Since there was still a balance due on the PN after applying the rentals, XYZ foreclosed the real estate mortgage over Ricardo's property. Ricardo opposed the foreclosure on the ground that he is only a co-signatory; that no demand was made upon him for payment, and assuming he is liable, his liability should not go beyond half of the balance of the loan. Further, Ricardo said that when the bank invoked compensation between the rentals and the amount of the loan, it amounted to a new contract or novation, and had the effect of extinguishing the security since he did not give his consent (as owner of the property under the real estate mortgage) thereto.

Can XYZ Bank validly assert legal compensation?

A: XYZ Bank may validly assert the partial compensation of both debts, but is should be facultative compensation because not all of the five requisites of legal compensation are present (Art. 1279, NCC). The payment of the rentals by XYZ Bank is not yet due, but the principal obligation of loan where both Eduardo and Ricardo are bound solidarily and therefore any of them is bound principally to pay the entire loan, is due and demandable without need of demand. XYZ Bank may declare its obligation to pay rentals as already due and demand payment from any of the two debtors.

Alternative Answer: Legal compensation can be validly asserted between the bank, Eduardo and Ricardo. This is a case of facultative obligation, thus, the bank can assert partial compensation.

Banks have an inherent right to set off where both obligations are due and demandable (Art. 1279, NCC).

Can Ricardo's property be foreclosed to pay the full balance of the loan?

A: No, because there was no prior demand on Ricardo, depriving him of the right to reasonably block the foreclosure by payment. The waiver of prior demand in the PN is against public policy and violates the right to due process. Without demand, there is no default and the foreclosure is null and void. Since the mortgage, insofar as Ricardo is concerned is not violated, a requirement under Act 3135 for a valid foreclosure of real estate mortgage is absent.

In the case of *DBP v. Licuanan,* it was held that: "the issue of whether demand was made before the foreclosure was effected is essential. If demand was made and duly received by the respondents and the latter still did not pay, then they were already in default and foreclosure was proper. However, if demand was not made, then the loans had not yet become due and demandable. This meant that the respondents had not defaulted in their payment and the foreclosure was premature."

Alternative Answer 1: No. Although the principal obligation of loan is due and demandable without need of further demand the foreclosure of the accessory contract of real estate mortgage, there is a need of notice and demand.

Alternative Answer 2: Yes. Ricardo's property can be foreclosed to pay the full balance of the loan. He is admittedly "individually and collectively" liable. His liability is solidary. He and Eduardo have waived notice for a prior demand as provided in the promissory note.

Does Ricardo have basis under the Civil Code for claiming that the original contract was novated?

A: None of the three kinds of novation is applicable. There is no objective novation, whether express or implied, because there is no change in the object or principal conditions of the obligation. There is no substitution of debtors, either. Compensation is considered as abbreviated or simplified payment and since Ricardo bound himself solidarily with Eduardo, any facultative compensation which occurs does not result in partial legal subrogation. Neither Eduardo nor Ricardo is a third person interested in the obligation under Art. 1302, NCC. **(2008 Bar Question)**

F. NOVATION

Q: What is novation?

A: It is the change of an obligation by another, resulting in its extinguishment or modification, either by changing the object or principal conditions, or by substituting another in the place of the debtor or by subrogating a third person to the rights of the creditor. *(Pineda, Obligations and Contracts, 2000 ed, p. 298)*

Q: What are the requisites of novation?

A:

1. Previous valid obligation;
2. An agreement by the parties to create a new one or a modified version;
3. Extinguishment or modification of the old obligation; and
4. Valid new obligation.

Q: Is novation presumed?

A: No. Novation is never presumed, it must be proven as a fact either by:

1. *Explicit declaration* – if it be so declared in unequivocal terms; or
2. *Material incompatibility* – that the old and the new obligations be on every point incompatible with each other. *(Art. 1293, NCC)*

Q: SDIC issued to Danilo a Diners Card (credit card) with Jeannete as his surety. Danilo used this card and initially paid his obligations to SDIC. Thereafter, Danilo wrote SDIC a letter requesting it to upgrade his Regular Diners Club Card to a Diamond (Edition) one. As a requirement of SDIC, Danilo secured from Jeanette her approval and the latter obliged. Danilo's request was granted and he was issued a Diamond (Edition) Diners Club Card. Danilo had incurred credit charged plus appropriate interest and service charge. However, he defaulted in the payment of this obligation. Was the upgrading a novation of the original agreement governing the use of Danilo Alto's first credit card, as to extinguish that obligation?

A: Yes. Novation, as a mode of extinguishing obligations, may be done in two ways: by explicit declaration, or by material incompatibility.

There is no doubt that the upgrading was a novation of the original agreement covering the

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first credit card issued to Danilo Alto, basically since it was committed with the intent of cancelling and replacing the said card. However, the novation did not serve to release Jeanette from her surety obligations because in the surety undertaking she expressly waived discharge in case of change or novation in the agreement governing the use of the first credit card.*(Molino v. Security Diners International Corp.,G.R. No. 136780, Aug. 16, 2001)*

Q: What are the effects of novation?

A:

1. Extinguishment of principal *also* extinguishes the accessory, *except*:
   a. Mortgagor, pledgor, surety or guarantor agrees to be bound by the new obligation *(Tolentino, Civil Code of the Philippines, Vol. IV, 1999 ed, p. 395)*
   b. Stipulation made in favor of a third person such as stipulation *pour atrui(Art. 1311, NCC)*, *unless* beneficiary consents to the novation.
2. If the new obligation is:
   a. Void – old obligation shall subsist since there is nothing to novate, *except* when the parties intended that the old obligation be extinguished in any event.
   b. Voidable – novation can take place, *except*when such new obligation is *annulled*. In such case, old obligation shall subsist.
   c. Pure obligation – conditions of old obligation deemed attached to the new, unless otherwise stipulated *(Tolentino, Civil Code of the Philippines, Vol. IV, 1999 ed, p. 399)*
   d. Conditional obligation:
      i. *if resolutory*– valid until the happening of the condition
      ii. *if suspensive and did not materialize*– no novation, old obligation is enforced
3. If old obligation is conditional and the new obligation is pure:
   a. *if resolutoryand it occurred* – old obligation already extinguished; no new obligation since nothing to novate
   b. *if suspensive and it did not occur* – it is as if there is no obligation; thus, there is nothing to novate

Did the assignment amount to payment by cession?

A:No.There was only one creditor, the DBP. Article 1255 contemplates the existence of two or more creditors and involves the assignment of all the debtor's property.

Did the assignment constitute *dation* in payment:

A: No. The assignment, being in its essence a mortgage, was but a security and not a satisfaction of indebtedness. *(DBP v. CA, G.R. No. 118342, Jan. 5, 1998)*

CONTRACTS

Q: What is a contract?

A: It is a meeting of the minds between two or more persons whereby one binds himself, with respect to the other, or where both parties bind themselves reciprocally in favor of one another, to fulfill a prestation to give, to do, or not to do. *(Pineda, Obligations and Contracts, 2000 ed, p. 328)*

Q: What is the difference between an obligation and a contract?

A: While a contract is one of the sources of obligations, an obligation is the legal tie or relations itself that exists after a contract has been entered into.

Hence, there can be no contract if there is no obligation. But an obligation may exist without a contract. *(De Leon, Obligations and Contracts, 2003 ed, p. 283-284)*

I. ESSENTIAL REQUISITES OF A CONTRACT

Q: State the essential elements of contracts.

A: COC

1. **C**onsent;
2. **O**bject or subject matter; and
3. **C**ause or consideration.

Q: State the characteristics of a contract.

A: ROMA

1. **R**elativity *(Art. 1311, NCC)*
2. **O**bligatoriness and consensuality*(Art. 1315, NCC)*
3. **M**utuality *(Art. 1308, NCC)*
4. **A**utonomy *(Art. 1306, NCC)*

CONSENT

Q: What are the elements of consent?

A: LM-CR

1. **L**egal capacity of the contracting parties;
2. **M**anifestation of the conformity of the contracting parties;
3. Parties' **C**onformity to the object, cause, terms and condition of the contract must be intelligent, spontaneous and free from all vices of consent; and
4. The conformity must be **R**eal.

Note: We follow the *theory of cognition* and not the theory of manifestation. Under our Civil Law, the offer & acceptance concur only when the offeror comes to know, and not when the offeree merely manifests his acceptance.

Q: What are the requisites of a valid consent?

A: It should be:

1. Intelligent, or with an exact notion of the matter to which it refers;

   Note: Intelligence in consent is vitiated by error; freedom by violence, intimidation or undue influence; and spontaneity by fraud.

2. Free; and
3. Spontaneous.

Q: What is the effect on the validity of a contract if consent is reluctant?

A: A contract is valid even though one of the parties entered into it against his wishes and desires or even against his better judgment. Contracts are also valid even though they are entered into by one of the parties without hope of advantage or profit *(Martinez v. Hongkong and Shanghai Banking Corp., GR No. L-5496, Feb. 19, 1910).*

Q: What are the kinds of simulation of contract?

A:

1. *Absolute* – the contracting parties do not intend to be bound by the contract at all, thus the contract is *void*.

2. *Relative* – the real transaction is hidden; the contracting parties conceal their true agreement; binds the parties to their real agreement when it does not prejudice third persons or is not intended for any purpose contrary to law, morals, etc. If the concealed contract is lawful, it is absolutely enforceable, provided it has all the essential requisites: consent, object, and cause.

   As to third persons without notice, the apparent contract is valid for purposes beneficial to them. As to third persons with notice of the simulation, they acquire no better right to the simulated contract than the original parties to the same.

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Q: Tiro is a holder of an ordinary timber license issued by the Bureau of Forestry. He executed a deed of assignment in favor of the Javiers. At the time the said deed of assignment was executed, Tiro had a pending application for an additional forest concession. Hence, they entered into another agreement.

Afterwards, the Javiers, now acting as timber license holders by virtue of the deed of assignment entered into a forest consolidation agreement with other ordinary timber license holders. For failure of the Javiers to pay the balance due under the two deeds of assignment, Tiro filed an action against them. Are the deeds of assignment null and void for total absence of consideration and non-fulfillment of the conditions?

A: The contemporaneous and subsequent acts of Tiro and the Javiers reveal that the cause stated in the first deed of assignment is false. It is settled that the previous and simultaneous and subsequent acts of the parties are properly cognizable *indicia* of their true intention. Where the parties to a contract have given it a practical construction by their conduct as by acts in partial performance, such construction may be considered by the court in construing the contract, determining its meaning and ascertaining the mutual intention of the parties at the time of contracting. The first deed of assignment is a relatively simulated contract which states a false cause or consideration, or one where the parties conceal their true agreement. A contract with a false consideration is not null and void *per se*. Under Article 1346 of the Civil Code, a relatively simulated contract, when it does not prejudice a third person and is not intended for any purpose contrary to law, morals, good customs, public order or public policy binds the parties to their real agreement. *(Javier v. CA, G.R. No. L-48194, Mar. 15, 1990)*

Q: What are contracts of adhesion?

A: One party has already a prepared form of a contract, containing the stipulations he desires, and he simply asks the other party to agree to them if he wants to enter into the contract.

Q: What are the elements of a valid offer and acceptance?

A:

1. Definite – unequivocal
2. Intentional
3. Complete – unconditional

Q: What are the requisites of a valid offer?

A:

1. Must be certain
2. May be made orally or in writing, *unless* the law prescribes a particular form

Q: When does offer become ineffective?

A:

1. Death, civil interdiction, insanity or insolvency of either party before acceptance is conveyed
2. Express or implied revocation of the offer by the offeree
3. Qualified or conditional acceptance of the offer, which becomes counter-offer
4. Subject matter becomes illegal or impossible before acceptance is communicated

Q: What is the rule on complex offer?

A:

1. *Offers are interrelated* – contract is perfected if all the offers are accepted
2. *Offers are not interrelated* – single acceptance of each offer results in a perfected contract unless the offeror has made it clear that one is dependent upon the other and acceptance of both is necessary.

Q: What is the rule on advertisements as offers?

A:

1. *Business advertisements* –not a definite offer, but mere invitation to make an offer, unless it appears otherwise
2. *Advertisement for bidders* – onlyinvitation to make proposals and advertiser is not bound to accept the highest or lowest bidder, unless it appears otherwise.

Q: What are the effects of an option?

A: Option may be withdrawn anytime before acceptance is communicated but not when supported by a consideration other than purchase price – option money.

Q: What are the requisites of a valid acceptance?

A:

1. Must be absolute; a qualified acceptance constitutes a *counter-offer*
2. No specified form *but* when the offeror specifies a particular form, such must be complied with

Note: Offer or acceptance, or both, expressed in electronic form, is *valid*, *unless otherwise* agreed by the parties (electronic contracts).

Q: What is the period for acceptance?

A:

1. *Stated fixed period in the offer*
   a. Must be made within the period given by the offeror
      i. As to withdrawal of the offer:

      GR: It can be made at any time before acceptance is made, by communicating such withdrawal

      XPN: When the option is founded upon a consideration, as something paid or promised since partial payment of the purchase price is considered as proof of the perfection of the contract

2. *No stated fixed period*
   a. Offer is made to a person present – acceptance must be made immediately
   b. Offer is made to a person absent – acceptance may be made within such time that, under normal circumstances, an answer can be received from him

Note: Acceptance may be revoked before it comes to the knowledge of the offeror (withdrawal of offer)

OBJECT

Q: What are the requisites of an object?

A:

1. Determinate as to kind (even if not determinate, provided it is possible to determine the same without the need of a new contract);
2. Existing or the potentiality to exist subsequent to the contract;
3. Must be licit;
4. Within the commerce of man; and
5. Transmissible.

Note: The most evident and fundamental requisite in order that a thing, right or service may be the object of a contract, it should be in *existence at the moment of the celebration of the contract, or at least, it can exist subsequently or in the future.*

Q: What are the things which can be the object of contracts?

A:

GR: All things or services may be the object of contracts.

XPNs:

1. Things outside the commerce of men;
2. Intransmissible rights;
3. Future inheritance, except in cases expressly authorized by law;
4. Services which are contrary to law, morals, good customs, public order or public policy;
5. Impossible things or services; and
6. Objects which are not possible of determination as to their kind.

Q: A contract of sale of a lot stipulates that the "payment of the full consideration based on a survey shall be due and payable in 5 years from the execution of a formal deed of sale". Is this a conditional contract of sale?

A: No, it is not. The stipulation is not a condition which affects the efficacy of the contract of sale. It merely provides the manner by which the full consideration is to be computed and the time within which the same is to be paid. But it does not affect in any manner the effectivity of the contract. *(Heirs of San Andresv.Rodriguez, G.R. No. 135634, May 31, 2000)*

CAUSE

Q: What are the requisites of a cause?

A: It must:

1. exist
2. be true
3. be licit

Q: What are the two presumptions in contracts as to cause?

A:

1. Every contract is presumed to have a cause; and
2. The cause is valid.

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Q: What are the kinds of causes?

A:

1. *Cause of onerous contracts* – the prestation or promise of a thing or service by the other
2. *Cause of remuneratory contracts*– the service or benefit remunerated
3. *Cause of gratuitous contracts* – the mere liberality of the donor or benefactor
4. *Accessory* – identical with cause of principal contract, the loan which it derived its life and existence (*e.g.*: mortgage or pledge)

Q: Distinguish cause from motive.

A:

CAUSE	MOTIVE
Direct and most proximate reason of a contract	Indirect or remote reasons
Objective and juridical reason of contract	Psychological or purely personal reason
Legality or illegality of cause affects the existence or validity of the contract	Legality or illegality of motive does not affect the existence or validity of contract
Cause is always the same for each contracting party	Motive differs for each contracting party

Q: What is the effect of the error of cause on contracts?

A:

1. Absence of cause (want of cause; there is total lack or absence of cause) – Confers no right and produces no legal effect
2. Failure of cause - Does not render the contract void
3. Illegality of cause (the cause is contrary to law, morals, good customs, public order and public policy)–Contract is null and void
4. Falsity of cause (the cause is stated but the cause is not true)–Contract is void, unless the parties show that there is another cause which is true and lawful
5. Lesion or inadequacy of cause –Does not invalidate the contract, *unless:*
   a. there is fraud, mistake, or undue influence;
   b. when the parties intended a donation or some other contract;or
   c. in cases specified by law (*e.g.*contracts entered when ward suffers lesion of more than 25%)

II. KINDS OF CONTRACT

Q: What are the kinds of contracts?

A:

1. *Consensual* contracts which are perfected by the mere meeting of the minds of the parties

2. *Real contracts* that require *delivery* for perfection –creation of real rights over immovable property must be written

3. *Solemn contracts*– contracts which must appear in writing, such as:

   a. Donations of real estate or of movables if the value exceeding P5,000;
   b. Transfer of large cattle;
   c. Stipulation to pay interest in loans;
   d. Sale of land through an agent;
   e. Partnership to which immovables are contributed;
   f. Stipulation limiting carrier's liability to less than extra-ordinary diligence; or
   g. Contracts of antichresis and sale of vessels.

Q: What is the principle of relativity of contracts?

A:

GR: A contract is *binding not only* between parties *but* extends to the heirs, successors in interest, and assignees of the parties, *provided* that the contract involves transmissible rights by their nature, or by stipulation or by provision of law.

XPNs:

1. *Stipulation pour autrui* (stipulation in favor of a third person) – benefits deliberately conferred by parties to a contract upon third persons.

   Requisites:
   a. The stipulation must be *part*, not whole of the contract;
   b. Contracting parties must have clearly and deliberately *conferred* a favor upon third person;

c. Third person must have *communicated* his acceptance; and
d. *Neither* of the contracting parties bears the legal representation of the third person.

2. When a third person induces a party to violate the contract

   Requisites:
   a. Existence of a valid contract
   b. Third person has knowledge of such contract
   c. Third person interferes without justification
3. Third persons coming into possession of the object of the contract creating real rights

4. Contracts entered into in fraud of creditors

Q: Fieldmen's Insurance issued, in favor of MYT, a common carrier, accident insurance policy. 50% of the premium was paid by the driver. The policy indicated that the Company will indemnify the driver of the vehicle or his representatives upon his death. While the policy was in force, the taxicab driven by Carlito, met with an accident. Carlito died. MYT and Carlito's parents filed a complaint against the company to collect the proceeds of the policy. Fieldmen's admitted the existence thereof, but pleaded lack of cause of action on the part of the parents. Decide.

A: Yes. Carlito's parents- who, admittedly, are his sole heirs have a direct cause of action against the Company. This is so because pursuant to the stipulations, the Company will also indemnify third parties. The policy under consideration is typical of contracts *pour autrui*, this character being made more manifest by the fact that the deceased driver paid 50% of the premiums. *(Coquia v. Fieldmen's Insurance Co., Inc.,G.R. No. L-23276, Nov. 29, 1968)*

Q: What is the obligatory force of contracts?

A: The parties are bound not only by what has been expressly provided for in the contract but also to the natural consequences that flow out of such agreement. *(Art. 1315, NCC)*

Q: Villamor borrowed a large amount from Borromeo, for which he mortgaged his property but defaulted.Borromeo pressed him for settlement. The latter instead offered to execute a promissory note containing a promise to pay his debt as soon as he is able, even after 10 years and that he waives his right to prescription. What are the effects of said stipulation to the action for collection filed by Borromeo?

A: None. The rule is that a lawful promise made for a lawful consideration is not invalid merely because an unlawful promise was made at the same time and for the same consideration. This rule applies although the invalidity is due to violation of a statutory provision, unless the statute expressly or by necessary implication declares the entire contract void. Thus, even with such waiver of prescription, considering that it was the intent of the parties to effectuate the terms of the promissory note, there is no legal obstacle to the action for collection filed by Borromeo. *(Borromeo v. CA,G.R. No. L-22962, Sept. 28, 1972)*

Note: Where an agreement founded on a legal consideration contains several promises, or a promise to do several things, and a part only of the things to be done are illegal, the promises which can be separated, or the promise, so far as it can be separated, from the illegality, may be valid.*(Borromeo v. CA,G.R. No. L-22962, Sept. 28, 1972)*

Q: What is the principle of mutuality of contracts?

A: Contract must be binding to both parties and its validity and effectivity can never be left to the will of one of the parties. *(Art. 1308, NCC)*

Q: What is the principle of autonomy of contracts?

A: It is the freedom of the parties to contract and includes the freedom to stipulate provided the stipulations are not contrary to law, morals, good customs, public order or public policy. *(Art. 1306, NCC)*

A. CONSENSUAL CONTRACTS

Q: What are consensual contracts?

A: They are contracts perfected by mere consent.

Note: This is only the general rule.

B. REAL CONTRACTS

Q: What are real contracts?

A: They are contracts perfected by delivery

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C. FORMAL CONTRACTS

Q: What are formal contracts?

A: Contracts which require a special form for perfection.

Q: What are the formalities required in the following contracts?
A:

1. **Donations:**
   a. personal property- if value exceeds 5000, the donation and acceptance must both be written.
   b. b. real property:
   i. donation must be in a public instrument, specifying therein the property donated and value of charges which donee must satisfy.
   ii. acceptance must be written, either in the same deed of donation or in a separate instrument.
   iii. If acceptance is in a separate instrument, the donor shall be notified therof in authentic form, and this step must be noted in both instruments.

   Note: The acceptance in a separate document must be a public instrument.

2. **Partnership where real property contributed:**
   i. there must be a public instrument regarding the partnership.
   ii. the inventory of the realty must be made, signed by the parties and attached to the public instrument.

3. **Antichresis-** the amount of the principal and interest must be in writing.

4. **Agency to sell real property or an interest therein**- authority of the agent must be in writing.

5. **Stipulation to charge interest-** interest must be stipulated in writing.

6. **Stipulation limiting common carrier's duty of extraordinary diligence to ordinary diligence:**
   i. must be in writing, signed by shipper or owner
   ii. supported by valuable consideration other than the service rendered by the comon carrier
   iii. reasonable, just and not contrary to public policy.

7. **Chattel mortgage-** personal property must be recorded in the Chattel Mortgage Register

III. FORM OF CONTRACTS

Q: What are rules on the form of contracts?

A:

1. Contracts *shall be obligatory*, in whatever form they may have been entered into, provided all essential requisites for their validity are present.

2. Contracts must be in a certain form – *when* the law requires that a contract be in some form to be:
   a. valid;
   b. enforceable; or
   c. for the convenience of the parties.

3. The parties may compel each other to reduce the verbal agreement into writing.

Note:

GR: Form is not required in consensual contracts.

XPNs: When the law requires a contract be in certain for its:
1. validity (formal contracts); or
2. enforceability (under Statute of Frauds).

Q: What are the acts which must appear in a public document?

A:

1. Donation of real properties *(Art. 719)*;
2. Partnership where immoveable property or real rights are contributed to the common fund *(Arts. 1171 & 1773)*;
3. Acts and contracts which have for their object the creation, transmission, modification or extinguishment of real rights over immovable property; sales of real property or of an interest therein is governed by Arts. 1403, No. 2, and 1405 *[Art. 1358 (1)]*;
4. The cession, repudiation or renunciation of hereditary rights or of those of the conjugal partnership of gains *[Art. 1358 (2)]*
5. The power to administer property or any other power which has for its object an act appearing or which should appear in a public document or should prejudice a third person *[Art. 1358 (3)]*;

6. The cession of actions or rights proceeding from an act appearing in a public document *[Art. 1358 (4)]*.

Q: What are contracts that must be registered?

A:

1. Chattel mortgages *(Art. 2140)*
2. Sale or transfer of large cattle *(Cattle Registration Act)*

REFORMATION

Q: What is reformation of instruments?

A: It is a remedy to conform to the real intention of the parties due to mistake, fraud, inequitable conduct, accident. *(Art. 1359)*

Note: Reformation is based on justice and equity.

Q: What are the requisites in reformation of instruments?

A:

1. Meeting of the minds to the contract
2. True intention is not expressed in the instrument
3. By reason of **MARFI**:
    a. **M**istake,
    b. **A**ccident,
    c. **R**elative simulation,
    d. **F**raud, or
    e. **I**nequitable conduct
4. Clear and convincing proof of MARFI

Note: When there is no meeting of the minds, the proper remedy is *annulment* and not reformation.

Q: In what cases is reformation of instruments not allowed?

A:

1. Simple, unconditional donations inter vivos
2. Wills
3. When the agreement is void
4. When an action to enforce the instrument is filed (estoppel)

Q: What is the prescriptive period in reformation of instruments?

A: 10 years from the date of the execution of the instrument.

Q: Who may ask for the reformation of an instrument?

A: It may be ordered at the instance of:

1. if the mistake is mutual – either party or his successors in interest; otherwise;
2. upon petition of the injured party; or
3. his heirs and assigns.

Note: When one of the parties has brought an action to enforce the instrument, no subsequent reformation can be asked (estoppel).

Q: In case of reformation of contracts, is the prescription period in bringing an action for reformation run from the time the contract became disadvantageous to one party?

A: In reformation of contracts, what is reformed is not the contract itself, but the instrument embodying the contract. It follows that whether the contract is disadvantageous or not is irrelevant to reformation and therefore, cannot be an element in the determination of the period for prescription of the action to reform.

IV. DEFECTIVE CONTRACTS

Q: What may be the status of contracts?

A:

1. Valid
2. Void
3. Voidable
4. Rescissible
5. Unenforceable
6. Inexistent

A. RESCISSIBLE CONTRACTS

Q: What are rescissible contracts?

A: Those which have caused a particular economic damage either to one of the parties or to a third person and which may be set aside even if valid. It may be set aside in whole or in part, to the extent of the damage caused. *(Art. 1381, NCC)*

Q: Which contracts are rescissible?

A:

1. Entered into by persons exercising fiduciary capacity:
    a. Entered into by guardian whenever ward suffers damage more than ¼ of value of property.
    b. Agreed upon in representation of absentees, if absentee suffers lesion by more than ¼ of value of property.

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c. Contracts where rescission is based on fraud committed on creditor (*accionpauliana*)
d. Objects of litigation; contract entered into by defendant without knowledge or approval of litigants or judicial authority
e. Payment by an insolvent – on debts which are not yet due; prejudices claim of others
f. Provided for by law *(Arts. 1526, 1534, 1538, 1539, 1542, 1556, 1560, 1567 & 1659, NCC)*

2. Payments made in state of insolvency:
   a. Plaintiff has no other means to maintain reparation
   b. Plaintiff must be able to return whatever he may be obliged to return due to rescission
   c. The things must not have been passed to third persons in good faith
   d. It must be made within 4 yrs.

Q: What are the requisites before a contract entered into in fraud of creditors may be rescinded?

A:

1. There must be credit existing prior to the celebration of the contract;
2. There must be fraud, or at least, the intent to commit fraud to the prejudice of the creditor seeking rescission;
3. The creditor cannot in any legal manner collect his credit (subsidiary character of rescission); and
4. The object of the contract must not be legally in possession of a third person in good faith.

Q: Distinguish rescission from resolution.

RESOLUTION (ART. 1191)	RESCISSION (ARTICLE 1381)
Both presuppose contracts validly entered into and subsisting and both require mutual restitution when proper	
Nature	
Principal action. retaliatory in character	Subsidiary remedy
Grounds for Rescission	
Only ground is non-performance of obligation	5 grounds under Art. 1381. (lesions or fraud of creditors) Non-performance is not important
Applicability	
Applies only to reciprocal obligations	Applies to both unilateral and reciprocal obligations
Person who can Initiate the Action	
Only the injured party who is a party to the contract	Even third persons prejudiced by the contract may bring the action
Fixing of Period by the Court	
Court may fix a period or grant extension of time for the fulfillment of the obligation when there is sufficient reason to justify such extension	Court cannot grant extension of time
Purpose	
Cancellation of the contract	Reparation for damage or injury, allowing partial rescission of contract

Note: While Article 1191 uses the term "rescission," the original term which was used in the old Civil Code, from which the article was based, was "resolution." *(Ongv.CA,G.R. No. 97347, July 6, 1999)*

Q: What is the obligation created by the rescission of the contract?

A: Mutual restitution of things which are the objects of the contract and their fruits and of the price with interest.

Q: When is mutual restitution not applicable?

A:

1. Creditor did not receive anything from contract; or
2. Thing already in possession of third persons in good faith; subject to indemnity only, if there are two or more alienations – liability of first infractor.

Note: Rescission is possible only when the person demanding rescission can return whatever he may be obliged to restore. A court of equity will not rescind a contract unless there is restitution, that is, the parties are restored to the *status quo ante.(Article 1385)*

Q: Reyes (seller) and Lim (buyer) entered into a contract to sell of a parcel of land. Harrison Lumber occupied the property as lessee. Reyes offered to return the P10 million down payment to Lim because Reyes was having problems in removing the lessee from the property. Lim rejected Reyes' offer. Lim learned that Reyes had already sold the property to another.

Trial court, in this case, directed Reyes to deposit the P10 million downpayment with the clerk of court but Reyes refused. Does Reyes have the obligation to deposit the P10 million downpayment in the court?

A: Yes. There is also no plausible or justifiable reason for Reyes to object to the deposit of the P10 million down payment in court. The contract to sell can no longer be enforced because Reyes himself subsequently sold the property. Both Lim and Reyes are seeking for rescission of the contract.

By seeking rescission, a seller necessarily offers to return what he has received from the buyer. Such a seller may not take back his offer if the court deems it equitable, to prevent unjust enrichment and ensure restitution, to put the money in judicial deposit.

Note: In this case, it was just, equitable and proper for the trial court to order the deposit of the down payment to prevent unjust enrichment by Reyes at the expense of Lim. Depositing the down payment in court ensure its restitution to its rightful owner. Lim, on the other hand, has nothing to refund, as he has not received anything under the contract to sell. *(Reyes v. Lim, Keng and Harrison Lumber, Inc., G.R. No. 134241, Aug. 11, 2003)*

Q: What are the badges of fraud attending sales, as determined by the courts?

A:

1. Consideration of the conveyance is *inadequate* or fictitious;
2. Transfer was made by a DR *after* a suit has been begun and while it is pending against him
3. Sale upon credit by an *insolven*t DR;
4. The presence of evidence of *large* indebtedness or complete insolvency of the debtor;
5. Transfer of *all* his property by a DR when he is financially embarrassed or insolvent;
6. Transfer is made between *father and son*, where there are present some or any of the above circumstances; and
7. *Failure* of the vendee to take exclusive possession of the property.

Q: What are the characteristics of the right to rescind?

A:

1. Can be demanded only if plaintiff is ready, willing and able to comply with his own obligation and defendant is not;
2. Not absolute;
3. Needs judicial approval in the absence of a stipulation allowing for extra-judicial rescission, in cases of non-reciprocal obligations;
4. Subject to judicial review if availed of extra-judicially;
5. May be waived expressly or impliedly; and
6. Implied to exist in reciprocal obligations therefore need not be expressly stipulated upon.

Q: May an injured party avail of both fulfillment and rescission as remedy?

A:

GR: The injured party can only choose between fulfillment and rescission of the obligation, and cannot have both.

Note: This applies only when the obligation is possible of fulfillment.

XPN: If fulfillment has become impossible, Article 1191, NCC allows the injured party to seek rescission even after he has chosen fulfillment. *(Ayson-Simon v. Adamos,G.R. No. L-39378, Aug. 28 1984)*

Q: Vermen and Seneca entered into an "offsetting agreement", where Seneca is obliged to deliver construction materials to Vermen, who is obliged to pay Seneca and to deliver possession of 2 condominium units to Seneca upon its completion. Seneca filed a complaint for rescission of the offsetting against Vermen alleging that the latter had stopped issuing purchase orders of construction materials without valid reason, thus resulting in the stoppage of deliveries of construction materials on its part, in violation of the Offsetting Agreement. Can the agreement be rescinded?

A: Yes, because the provisions of the offsetting agreement are reciprocal in nature. Article 1191 of the Civil Code provides the remedy of rescission (more appropriately, the term is "resolution") in case of reciprocal obligations, where one of the obligors fails to comply with that is incumbent upon him.

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The question of whether a breach of contract is substantial depends upon the attendant circumstances. Seneca did not fail to fulfill its obligation in the offsetting agreement. The discontinuance of delivery of construction materials to Vermen stemmed from the failure of Vermen to send purchase orders to Seneca. Vermen would never have been able to fulfill its obligation in allowing Seneca to exercise the option to transfer from Phase I to Phase II, as the construction of Phase II has ceased and the subject condominium units will never be available. The impossibility of fulfillment of the obligation on the part of Vermen necessitates resolution of the contract, for indeed, the non-fulfillment of the obligation aforementioned constitutes substantial breach of the agreement. *(Vermen Realty Development Corp. v. CA and Seneca Hardware Co., Inc., G.R. No. 101762, July 6, 1993)*

Q: Ong and spouses Robles executed an "agreement of purchase and sale" of 2 parcels of land. Pursuant to the contract they executed, Ong partially paid the spouses the by depositing it with the bank. Subsequently, Ong deposited sums of money with the BPI in accordance with their stipulation that Ong pay the loan of the spouse with BPI. To answer for Ong's balance, he issued 4 post-dated checks which were dishonored. Ong failed to replace the checks and to pay the loan in full. Can the contract entered into by Ong and the spouses be rescinded?

A: No. The agreement of the parties in this case may be set aside, but not because of a breach on the part of Ong for failure to complete payment of the purchase price. Rather, his failure to do so brought about a situation which prevented the obligation of the spouses to convey title from acquiring an obligatory force.

The agreement of purchase and sale shows that it is in the nature of a contract to sell. Ong's failure to complete payment of the purchase price is a non-fulfillment of the condition of full payment which rendered the contract to sell ineffective and without force and effect. The breach contemplated in Article 1191, NCC is the obligor's failure to comply with an obligation. In this case, Ong's failure to pay is not even a breach but merely an event which prevents the vendor's obligation to convey title from acquiring binding force.

Note: The contract entered into by the parties in the case at bar does not fall under any of those mentioned by Article 1381. Consequently, Article 1383 is inapplicable.

In a contract to sell, the payment of the purchase price is a positive suspensive condition, the failure of which is not a breach, casual or serious, but a situation that prevents the obligation of the vendor to convey title from acquiring an obligatory force. *(Ongv.CA, G.R. No. 97347, July 6, 1999)*

Q: Goldenrod offered to buy a mortgaged property owned by Barreto Realty to which it paid an earnest money amounting to P1 million. It was agreed upon that Goldenrod would pay the outstanding obligations of Barreto Realty with UCPB. However, Goldenrod did not pay UCPB because of the banks denial of its request for the extension to pay the obligation. Thereafter, Goldenrod, through its brocker, informed Barreto Realty that it could not go through with the purchase of the property and also demanded the refund of the earnest money it paid. In the absence of a specific stipulation, may the seller of real estate unilaterally rescind the contract and as a consequence keep the earnest money to answer for damages in the event the sale fails due to the fault of the prospective buyer?

A: No. Goldenrod and Barretto Realty did not intend that the earnest money or advance payment would be forfeited when the buyer should fail to pay the balance of the price, especially in the absence of a clear and express agreement thereon.

Moreover, Goldenrod resorted to extrajudicial rescission of its agreement with Barretto Realty. Under Article 1385, NCC, rescission creates the obligation to return the things which were the object of the contract together with their fruits and interest. Therefore, by virtue of the extrajudicial rescission of the contract to sell by Goldenrod without opposition from Barretto Realty, which in turn, sold the property to other persons, Barretto Realty, had the obligation to return the earnest money which formed part of the purchase price plus legal interest from the date it received notice of rescission. It would be most inequitable if Barretto Realty would be allowed to retain the money at the same time appropriate the proceeds of the second sale made to another. *(Goldenrod, Inc. v. CA, G.R. No. 126812, Nov. 24, 1998)*

Q: What is the prescriptive period of action for rescission?

A:

1. *Under Art. 1381, no.1* – within 4 years from the time the termination of the incapacity of the ward;
2. *Under Art. 1381, no. 2*- within 4 years from the time the domicile of the absentee is known; or
3. *Under Art. 1381, nos. 3 & 4 & Art. 1382* – within 4 years from the time of the discovery of fraud.

B. VOIDABLE CONTRACTS

Q: What are the characteristics of a voidable contract?

A:

1. Effective until set aside;
2. May be assailed or attacked only in an action for that purpose;
3. Can be confirmed; and
4. Can be assailed only by the party whose consent was defective or his heirs or assigns.

Q: When is there a voidable contract?

A: When:

1. one of the parties is *incapacitated* to give consent; or
2. consent was *vitiated*.

Q: Who are the persons incapacitated to give consent?

A: DIM

1. **D**eaf-mutes who do not know how to read and write (illiterates)
2. **I**nsane or demented persons, *unless* the contract was entered into during a lucid interval
3. **M**inors *except:*
   a. Contracts for necessaries
   b. Contracts by guardians or legal representatives & the court having jurisdiction had approved the same
   c. When there is active misrepresentation on the part of the minor (minor is estopped)
   d. Contracts of deposit with the Postal Savings Bank provided that the minor is over 7 years of age
   e. Upon reaching age of majority – they ratify the same

Q: What are the vices of consent?

A: MIVUF

1. ***M****istake* – substantial mistake and not merely an accidental mistake; must refer to the:
   a. substance of the thing which is the subject of the contract; or
   b. to those conditions which have principally moved one or both parties to enter the contract.

   Note: Mistake as to identity or qualifications of one of the parties will vitiate consent only when such identity or qualifications have been the principal cause of the contract.

2. ***I****ntimidation* – An internal moral force operating in the will and inducing performance of an act.
3. ***V****iolence* – An external, serious or irresistible physical force exerted upon a person to prevent him from doing something or to compel him to do an act.
4. ***U****ndue influence* – Any means employed upon a party which, under the circumstances could not be resisted and has the effect of controlling his volition and inducing him to give his consent to the contract, which otherwise, he would not have entered into.
5. ***F****raud* – Use of insidious words or machinations in inducing another party to enter into the contract, which without them, he would not have agreed.

Q: What are the kinds of mistake?

A:

1. *Mistake of fact*– When one or both of the contracting parties believe that a fact exists when in reality it does not, or that such fact does not exist when in reality it does.

2. *Mistake of law*– When 1 or both parties arrive at erroneous conclusion or interpretation of a question of law or legal effects of a certain act or transaction.

Note:
GR: Mistake as a vice of consent refers to mistake of facts and not of law.

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XPN: When mistake of law involves error as to the effect of an agreement when the real purpose of the parties is frustrated *(Art. 1334, NCC)*.

To determine the effect of an alleged error, both the objective and subjective aspects of the case which is the intellectual capacity of the person who committed the mistake.

Q: When will mistake invalidate consent?

A: Mistake, in order to invalidate consent, should refer to the substance of the thing which is the object of the contract, or to those conditions which have principally moved one or both parties to enter into the contract.*(Leonardo v. CA, G.R. No. 125485, Sept. 13, 2004)*

Q: Leonardo is the only legitimate child of the late spouses Tomasina and Balbino. She only finished Grade three and did not understand English. The Sebastians, on the other hand, are illegitimate children. She filed an action to declare the nullity of the extrajudicial settlement of the estate of her parents, which she was made to sign without the contents thereof, which were in English, explained to her. She claims that her consent was vitiated because she was deceived into signing the extrajudicial settlement. Is the extra-judicial settlement of estate of Tomasina valid?

A: No. When one of the parties is unable to read, or if the contract is in a language not understood by him, and mistake or fraud is alleged, the person enforcing the contract must show that the terms thereof have been fully explained to the former. *(Art. 1332, NCC)* Leonardo was not in a position to give her free, voluntary and spontaneous consent without having the document, which was in English, explained to her. Therefore, the consent of Leonardo was invalidated by a substantial mistake or error, rendering the agreement voidable. The extrajudicial partition between the Sebastians and Leonardo should be annulled and set aside on the ground of mistake. *(Leonardo v. CA, G.R. No. 125485, Sept. 13, 2004)*

Note: Contracts where consent is given by mistake or because of violence, intimidation, undue influence or fraud are voidable. These circumstances are defects of the will, the existence of which impairs the freedom, intelligence, spontaneity and voluntariness of the party in giving consent to the agreement.

Art. 1332 was intended to protect a party to a contract disadvantaged by illiteracy, ignorance, mental weakness or some other handicap. It contemplates a situation wherein a contract is entered into but the consent of one of the contracting parties is vitiated by mistake or fraud committed by the other.*(Leonardo v. CA, G.R. No. 125485, Sept. 13, 2004)*

Q: What are the requisites that ignorance of or erroneous interpretation of law (mistake of law) may vitiate consent?

A:

1. Mistake must be with respect to the legal effect of the agreement;
2. It must be mutual; and
3. Real purpose of the parties must have been frustrated.

Q: What are the requisites of intimidation?

A:

1. One of the parties is compelled to give his consent by a reasonable and well-grounded fear of an evil;
2. The evil must be imminent and grave;
3. It must be unjust; and
4. The evil must be the determining cause for the party upon whom it is employed in entering into the contract.

Q: What are the requisites of violence?

A: It must be:

1. serious or irresistible; and
2. the determining cause for the party upon whom it is employed in entering into the contract.

Q: What are the kinds of fraud?

A:

1. Fraud in the *perfection* of the contract
   a. Causal fraud *(dolo causante)*
   b. Incidental fraud *(dolo incidente)*

2. Fraud in the *performance* of an obligation *(Art. 1170, NCC)*

   Requisites:
   a. Fraud, insidious words or machinations must have been employed by one of the contracting parties;
   b. It must have been serious;
   c. It induced the other party to enter into a contract; and
   d. Should not have been employed by both contracting parties or by third persons.

Q: Distinguish dolo causante from dolo incidente.

A:

DOLOCAUSANTE (ART. 1338)	DOLOINCIDENTE (ART. 1344)
Refers to fraud which is serious in character	Refers to fraud which is not serious in character
It is the cause which induces the party to enter into a contract	It is not the cause which induces the party to enter into a contract
Renders the contract *voidable*	Renders the party *liable for damages*

Note: In contracts, the kind of fraud that will vitiate consent is one where, through insidious words or machinations of one of the contracting parties, the other is induced to enter into a contract which, without them, he would not have agreed to. This is known as *dolo causante* or causal fraud which is basically a deception employed by one party prior to or simultaneous to the contract in order to secure the consent of the other. *(Samson v. CA, G.R. No. 108245, Nov. 25, 1994)*

Q: Santos' lease contract was about to expire but it was extended and he continued to occupy the leased premises beyond the extended term. Samson offered to buy Santos' store and his right to the lease. Santos stated that the lease contract between him and the lessor was impliedly renewed and that formal renewal thereof would be made upon the arrival of a certain Tanya Madrigal, based on the letter to him given by the lessor. When Samson occupied the premises, he was forced to vacate for Santos' failure to renew his lease. He filed an action for damages against Santos for fraud and bad faith claiming that the misrepresentation induced him to purchase the store and the leasehold right. Decide.

A: No, Santos was not guilty of fraud nor bad faith in claiming that there was implied renewal of his contract of lease with his lessor. The letter given by the lessor led Santos to believe and conclude that his lease contract was impliedly renewed and that formal renewal thereof would be made upon the arrival of Tanya Madrigal. Thus, from the start, it was known to both parties that, insofar as the agreement regarding the transfer of Santos' leasehold right to Samson was concerned, the object thereof relates to a future right. It is a conditional contract, the efficacy of which depends upon an expectancy the formal renewal of the lease contract between Santos and lessor. The efficacy of the contract between the parties was thus made dependent upon the happening of this suspensive condition. *(Samson v. CA, G.R. No. 108245, Nov. 25, 1994)*

Q: What are the causes of extinction of action to annul?

A:

1. *Prescription* – the action must be commenced within 4 years from the time the:
   a. incapacity ends; guardianship ceases;
   b. violence, intimidation or undue influence ends; or
   c. mistake or fraud is discovered

2. *Ratification*–cleanses the contract of its defects from the moment it was constituted

   Requisites:
   a. there must be knowledge of the reason which renders the contract voidable;
   b. such reason must have ceased; and
   c. the injured party must have executed an act which expressly or impliedly conveys an intention to waive his right

3. *By loss of the thing* which is the object of the contract through fraud or fault of the person who is entitled to annul the contract

Q: Who may institute action for annulment?

A: By all who are thereby obliged principally or subsidiarily.
Note: He who has capacity to contract may not invoke the incapacity of the party with whom he has contracted.

A third person who is a stranger to the contract cannot institute an action for annulment.

Q: What are the effects of annulment?

A:

1. *If contract not yet consummated* – parties shall be released from the obligations arising therefrom.
2. *If contract has already been consummated* – rules provided in Arts. 1398-1402, NCC, shall govern.

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Q: What is confirmation?

A: It is an act by which a voidable contract is cured of its vice or defect.

Q: What is recognition?

A: It is an act whereby a defect of proof is cured such as when an oral contract is put into writing or when a private instrument is converted into a public instrument.

Q: What is ratification?

A:It is an act by which a contract entered into in behalf of another without or in excess of authority is cured of its defect.

Q: What are the modes of ratification?

A:

1. For contracts infringing the Statute of Frauds:
   a. *expressly*
   b. *impliedly*– by failure to object to the presentation of oral evidence to prove the contract, or by the acceptance of benefits under the contract.
2. If both parties are incapacitated, ratification by their parents or guardian shall validate the contract retroactively

C. UNENFORCEABLE CONTRACTS

Q: What are unenforceable contracts?

A: The following contracts are unenforceable unless they are ratified:

1. Those entered into without or in excess of authority;
2. Those that do not comply with the Statute of Frauds i.e., are not in writing nor subscribed by the party charged or by his agent; or
3. Those where both contracting parties are incapable of giving consent.

Q: What is Statute of Frauds?

A: The Statute of Frauds [Article 1403, (2)] requires certain contracts enumerated therein to be evidenced by some note or memorandum in order to be enforceable. The term "Statute of Frauds" is descriptive of statutes which require certain classes of contracts to be in writing. The Statute does not deprive the parties of the right to contract with respect to the matters therein involved, but merely regulates the formalities of the contract necessary to render it enforceable. Evidence of the agreement cannot be received without the writing or a secondary evidence of its contents. *(Swedish Match, AB v. CA, G.R. No. 128120, Oct. 20, 2004)*

Note: The Statute of Frauds applies only to executory contracts, not to those that are partially or completely fulfilled. Where a contract of sale is alleged to be consummated, it matters not that neither the receipt for the consideration nor the sale itself was in writing. Oral evidence of the alleged consummated sale is not forbidden by the Statute of Frauds and may not be excluded in court. *(Victoriano v. CA, G.R. No. 87550, Feb. 11, 1991)*

Q: What is the purpose of the Statute of Frauds?

A: It is to prevent fraud and perjury in the enforcement of obligations depending for their evidence on the unassisted memory of witnesses, by requiring certain enumerated contracts and transactions to be evidenced by a writing signed by the party to be charged. *(Swedish Match, AB v. CA, G.R. No. 128120, Oct. 20, 2004)*

Q: What are the contracts or agreements covered by the Statute of Frauds?

A:

1. An agreement that by its terms is not to be performed within a year from the making thereof;
2. A special promise to answer for the debt, default or miscarriage of another
3. An agreement made in consideration of marriage, other than a mutual promise to marry;
4. An agreement for the sale of goods, chattels or things in action, at a price not lower that 500 pesos, unless the buyer accepts and receives part of such goods and chattels, or the evidences, or some of them, of such things in action, or pay at the time some part of the entry is made by the auctioneer in his sales book, at the time of the sale, of the amount and kind of property sold, terms of sale, price, names of the purchasers and person on whose account the sale is made, it is a sufficient memorandum
5. An agreement for the leasing for a longer period than one year, or for the sale of real property or of an interest therein;

6. A representation to the credit of a third person

Q: Cenido, as an heir of Aparato and claiming to be the owner of a house and lot, filed a complaint for ejectment against spouses Apacionado. On the other hand, spouses Apacionado allege that they are the owners which are unregistered purchased by them from its previous owner, Aparato. Their claim is anchored on a 1-page typewritten document entitled "Pagpapatunay," executed by Aparato. Is the "Pagpapatunay" entered into by Bonifacio and spouse Apacionado valid and enforceable?

A: It is valid but unenforceable. Generally, contracts are obligatory, in whatever form such contracts may have been entered into, provided all the essential requisites for their validity are present. When, however, the law requires that a contract be in some form for it to be valid or enforceable, that requirement must be complied with.

The sale of real property should be in writing and subscribed by the party charged for it to be enforceable. The "Pagpapatunay" is in writing and subscribed by Aparato, hence, it is enforceable under the Statute of Frauds. Not having been subscribed and sworn to before a notary public, however, the "Pagpapatunay" is not a public document, and therefore does not comply with par. 1, Art. 1358, NCC.
Moreover, the requirement of a public document in Article 1358 is not for the validity of the instrument but for its efficacy. Although a conveyance of land is not made in a public document, it does not affect the validity of such conveyance. The private conveyance of the house and lot is therefore valid between Aparato and the spouses. *(Cenidov.Spouses Apacionado, G.R. No. 132474, Nov. 19, 1999)*

Q: What are the two ways of ratifying contracts which infringe the Statute of Frauds?

A:

1. Failure to object during the trial to the admissibility of parol evidence to support a contract covered by the Statute of Frauds.
2. Acceptance of benefits – when the contract has been partly executed because estoppel sets in by accepting performance.

D. VOID CONTRACTS

Q: What are the kinds of void contracts?

A:

1. *Those lacking in essential elements:*
   No consent, no object, no cause – some or all elements of a valid contract are absent
   a. Those which are *absolutely* simulated or fictitious: no cause
   b. Those whose cause or object did not exist at the time of the *transaction:* no cause or object
   c. Those whose *object* is outside the commerce of man: no object
   d. Those which *contemplate* an impossible service: no object
   e. Those where the *intention* of parties relative to principal object of the contract cannot be ascertained

2. *Contracts prohibited by law*
   a. *Pactum commisorium* – the creditor appropriates to himself the things given by way of pledge or mortgage to fulfill the debt
   b. *Pactum de non alienando* – an agreement prohibiting the owner from alienating the mortgaged immovable
   c. *Pactum leonina* – a stipulation in a partnership agreement which excludes one or more partners from any share in the profits or losses

3. *Illegal or illicit contracts*(*e.g.* contract to sell marijuana)

Q: On July 6, 1976, Honorio and Vicente executed a deed of exchange. Under this instrument, Vicente agreed to convey his 64.22-square-meter lot to Honorio, in exchange for a 500-square-meter property. The contract was entered into without the consent of Honorio's wife. Is the deed of exchange null and void?

A: The deed is valid until and unless annulled. The deed was entered into on July 6, 1976, while the Family Code took effect only on August 3, 1998. Laws should be applied prospectively only, unless a legislative intent to give them retroactive effect is expressly declared or is necessarily implied from the language used. Hence, the provisions of the Civil Code, not the Family Code are applicable. According to Article 166 of the Civil Code, the husband cannot alienate or encumber any real property of the conjugal partnership without the wife's consent. This provision, however, must be

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read in conjunction with Article 173 of the same Code. The latter states that an action to annul an alienation or encumbrance may be instituted by the wife during the marriage and within ten years from the transaction questioned. Hence, the lack of consent on her part will not make the husband's alienation or encumbrance of real property of the conjugal partnership void, but merely voidable. *(Villarandav. Villaranda, G.R. No. 153447, Feb. 23, 2004)*

Q: Judie sold one-half of their lot to Guiang under a deed of transfer of rights without the consent and over the objection of his wife, Gilda and just after the latter left for abroad. When Gilda returned home and found that only her son, Junie, was staying in their house. She then gathered her other children, Joji and Harriet and went to stay in their house. For staying in their alleged property, the spouses Guiang complained before the barangay authorities for trespassing.

Is the deed of transfer of rights executed by Judie Corpuz and the spouses Guiang void or voidable?

A:
It is void. Gilda's consent to the contract of sale of their conjugal property was totally inexistent or absent. Thus, said contract properly falls within the ambit of Article 124 of the FC.

The particular provision in the old Civil Code which provides a remedy for the wife within 10 years during the marriage to annul the encumbrance made by the husband was not carried over to the Family Code. It is thus clear that any alienation or encumbrance made after the Family Code took effect by the husband of the conjugal partnership property without the consent of the wife is null and void. *(Spouses Guiangv.CA, G.R. No. 125172, June 26, 1998)*

Q: Distinguish void contract from voidable contract.

A:

VOID	VOIDABLE
Absence of essential element/s of a contract	Consent is vitiated or there is incapacity to give consent
No effect even if not set aside	Valid contract until set aside
Cannot be ratified	Can be ratified
Nullity can be set up against any person asserting right arising from it, and his successors in interest not protected by law	Nullity can be set up only against a party thereto
Action to declare nullity does not prescribe	Action to annul contract prescribes in 4 years *(Pineda, Obligations and Contracts, 2000 ed, p. 606)*

Q: Distinguish void contract from rescissible contract.

A:

VOID	RESCISSIBLE
Defect is inherent in the contract itself	Defect is in its effects, either against one of the parties or a third person
Nullity is a matter of law and public interest	Based on equity and matter of private interest
No legal effects even if no action is filed to set it aside	Produces legal effects and remains valid if no action is filed
Action to declare its nullity does not prescribe *(Art. 1410, NCC)*	Action to rescind prescribes within 4 years *(Art. 1389, NCC; Pineda, Obligations and Contracts, 2000 ed, p. 605)*

Q: Distinguish void contract from inexistent contract.

A:

VOID CONTRACT	INEXISTENT CONTRACT
Those where all the requisites of a contract are present, but the cause, object or purpose is *contrary to law, morals, good customs, public order or public policy* or the contract itself is *prohibited* or *declared prohibited.*	Those where one or some of the requisites which are essential for validity are *absolutely lacking*
Principle of *in pari delicto* is applicable.	Principle of *in pari delicto* is*not* applicable.

V. EFFECT OF CONTRACTS

Q: Between whom do contracts take effect?

A: Contracts take effect only between the parties, and their assigns and heirs, the latter being liable only to the extent of the property received from the decedent.

Q: What are the instances when the heirs may be liable for the obligation contracted by the decedent?

A: When the rights and obligations arising from the contract are transmissible:

1. By their nature; or
2. By stipulation; or
3. By provision of law.

Q: What are the requisites in order that a third person may demand the fulfillment of the contract?

A:

1. The contracting parties must have clearly and deliberately conferred a favor upon the third person;
2. The third person's interest or benefit in such fulfillment must not be merely incidental; and
3. Such third person communicated his acceptance to the obligor before the stipulations in his favor are revoke.

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SALES

Q: What is a sale?

A: Sale is a contract where one party (seller) obligates himself to transfer the ownership of and to deliver a determinate thing, while the other party (buyer) obligates himself to pay for said thing a price certain in money or its equivalent. *(Tolentino, p.1, 2000 ed.)*

I. INTRODUCTION

A. DEFINITION OF THE CONTRACT OF SALE

Q: What is a contract of sale?

A: By the contract of sale, one of the contracting parties obligates himself to transfer the ownership of and to deliver a determinate thing, and the other to pay therefor a price certain in money or its equivalent. *(Art. 1458, NCC)*

KINDS OF SALES

Q: What are the different kinds of sales?

A: As to:

1. *Nature of the subject matter:*
   a. Sale of real property;
   b. Sale of personal property
2. *Value of the things exchanged:*
   a. Commutative sale;
   b. Aleatory sale
3. *Whether the object is tangible or intangible:*
   a. Sale of property (tangible or corporeal);

      Note: A tangible object is also called *chose in possession*

   b. Sale of a right (*assignment of a right, or a credit or other intangibles such as copyright, trademark, or good will*);

      Note: An intangible object is a *chose in action.*

4. *Validity or defect of the transaction:*
   a. Valid
   b. Rescissible
   c. Voidable
   d. Unenforceable
   e. Void
5. *Legality of the object:*
   a. Licit object
   b. Illicit object
6. *Presence or absence of conditions:*
   a. Absolute
   b. Conditional
7. *Wholesale or retail:*
   a. Wholesale
   b. Retail
8. *Proximate inducement for the sale:*
   a. Sale by description
   b. Sale by sample
   c. Sale by description and sample
9. *When the price is tendered:*
   a. Cash sale
   b. Sale on installment plan

AS TO PRESENCEOR ABSENCE OF CONDITION

ABSOLUTE SALE

Q: When is a sale absolute?

A: The sale is absolute where the sale is not subject to any condition whatsoever and where the title passes to the buyer upon delivery of the thing sold. *(De Leon, p. 15)*

Q: When is a deed of sale considered absolute in nature?

A: A deed of sale is considered absolute in nature where there is neither a stipulation in the deed that title to the property sold is reserved in the seller until the full payment of the price, nor one giving the vendor the right to unilaterally resolve the contract the moment the buyer fails to pay within a fixed period.

CONDITIONAL SALE

Q: When is a sale conditional?

A: It is conditional where the sale contemplates a contingency, and in general, where the contract is subject to certain conditions, usually in the case of the vendee, the full payment of the agreed purchase price and in the case of the vendor, the fulfillment of certain warranties. (De Leon, p. 15)

Q: Distinguish a conditional sale from an absolute sale

A:

CONDITIONAL SALE	ABSOLUTE SALE
One where the seller is granted the right to unilaterally rescind the contract predicated on the fulfillment or non-fulfillment, as the case may be, of the prescribed condition.	One where the title to the property is not reserved to the seller or if the seller is not granted the right to rescind the contract based on the fulfillment or non-fulfillment, as the case may be, of the prescribed condition.
Contract executed between the seller and the buyer	Contracts, first the contract to sell (which is conditional or preparatory sale) and second, the final deed of sale or the principal contract which is executed after full payment of the purchase price

Q: What is the effect of the non-performance of the condition or if the condition did not take place?

A: Where the obligation of either party to a contract of sale is subject to any condition which is not performed, such party may refuse to proceed with the contract or he may waive performance of the condition. Unlike in a non-fulfillment of a warranty which would constitute a breach of the contract, the non-happening of the condition, although it may extinguish the obligation upon which it is based, generally does not amount to a breach of a contract of sale.

Q: In a sale with assumption of mortgage, is the assumption of mortgage a condition without which there will be no perfected contract of sale?

A: Yes. In sales with assumption of mortgage, the assumption of mortgage is a condition to the seller's consent so that without approval by the mortgagee, no sale is perfected *(Ramos v. Court of Appeals, G.R. No. 108294 Sept. 15, 1997)*

B. ESSENTIAL REQUISITES OF A CONTRACT OF SALE

Q: What are the elements of a contract of sale?

A: ANE

1. **A**ccidental elements – dependent on parties' stipulations; Examples:
   a. Conditions
   b. Interest
   c. time & place of payment
   d. penalty

2. **N**atural elements – those that are inherent even in absence of contrary provision.
   E.g. warranties

3. **E**ssential elements – for validity:
   a. Consent
   b. Determinate subject matter
   c. Consideration

Q: What is the effect and/or consequence of the absence of consent of the owner in a contract of sale of said property?

A: The contract of sale is void. One of the essential requirements of a valid contract of sale is the consent of the owner of the property.

FORMALITIES REQUIRED

Q: Is there a formal requirement for the validity of a contract of sale?

A:

GR: No form is required. It is a consensual contract. *(Pineda, p. 78)*

XPN: Under Statute of Frauds, the following contracts must be in writing; otherwise, they shall be *unenforceable*:

1. Sale of personal property at a price not less than P500;
2. Sale of a real property or an interest therein;
3. Sale of property not to be performed within a year from the date thereof;
4. When an applicable statute requires that the contract of sale be in a certain form. *(Art. 1403, par.2)*

Note: Statute of Frauds applies only to executory contracts but not to partially executed contracts. *(Pineda, p.81)*

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Q: Are there instances where the Statute of Frauds is not essential for the validity of a contract of sale?

A: Yes.

1. When there is a note or memorandum in writing and subscribed to by the party or his agent *(contains essential terms of the contract);*
2. When there has been partial performance/execution *(seller delivers with the intent to transfer title/receives price);*
3. When there has been failure to object to presentation of evidence *aliunde* as to the existence of a contract without being in writing and which is covered by the Statute of Frauds;
4. When sales are effected through electronic commerce. (*Villanueva, p. 92*)

C. STAGES OF A CONTRACT OF SALE

Q: What are the 3 stages involved in the formation of a contract of sale?

A:

1. Negotiation/ *Policitation*
2. Perfection
3. Consummation

1. NEGOTIATION/PREPARATORY

A. OFFER

Q: What are the rules in the conception stage about the offer?

A:

OFFER IS FLOATED AND IT IS:	RULE
Offer is floated	Prior to acceptance, may be withdrawn at will by offeror but no authority to modify it
With a period	Must be accepted within the period, otherwise, extinguished at the end of period and may be withdrawn at will by offeror but must not be arbitrary, otherwise, liable for damages
With a condition	Extinguished by happening/ non-happening of condition
without period/ condition	Continues to be valid depending upon circumstances of time, place and person
With a counter-offer	Original offer is extinguished

B. OPTION CONTRACT

Q: What is an option contract?

A: A contract granting a privilege in one person, for which he has paid a consideration, which gives him the right to buy certain merchandise or specified property, from another person, at anytime within the agreed period, at a fixed price.
Note: Consideration in an option contract may be anything or undertaking of value, unlike in sale where it must be a price certain in money.

Q: What is the nature of an option contract?

A: It is a preparatory contract in which one party grants to another, for a fixed period and at a determined price, the privilege to buy or sell, or to decide whether or not to enter into a principal contract. It binds the party who has given the option not to enter into the principal contract with any other person during the period designated, and within that period, to enter into such contract with the one whom the option was granted, if the latter should decide to use the option. It is a separate and distinct contract.

Note: If the option is perfected, it does not result in the perfection or consummation of the sale. *(Diaz, p.7)*

Q: What is the period within which to exercise the option?

A:

1. Within the term stipulated
2. If there is no stipulation, the court may fix the term

Notes: An action for specific performance to enforce the option to purchase must be filed within 10 years from the time the cause of action accrues.

The implied renewal of the lease on a month-to-month basis did not have the effect of extending the life of the option to purchase which expired at the end of the original lease period. The lessor is correct in refusing to sell on the ground that the option had expired. **(2001 Bar Question)**

Q: How is an option exercised?

A: A notice of acceptance must be communicated to offeror even without actual payment as long as payment is delivered in the consummation stage.

Q: What is the effect of a separate consideration in an option contract?

A:

1. *With separate consideration*:
   a. Contract is valid
   b. Offeror cannot withdraw offer until after expiration of the option
   c. Is subject to rescission & damages but not specific performance

2. *Without separate consideration:*
   a. the option contract is not deemed perfected
   b. offer may be withdrawn at any time prior to acceptance

Note: However, even though the option was not supported by a consideration, the moment it was accepted, contract of sale is perfected. *(Art. 1324)*

Q: What is the effect of acceptance and withdrawal of the offer?

A: If the offer had already been accepted and such acceptance has been communicated to before the withdrawal is communicated, the acceptance creates a perfected contract, even if no consideration was as yet paid for the option.

In which case, if the offeror does not perform his obligations under the perfected contract, he shall be liable for all consequences arising from the breach thereof based on any of the available remedies such as specific performance, or rescission with damages in both cases.

C. RIGHT OF FIRST REFUSAL

Q: What is the right of first refusal?

A: It is a right of first priority, all things and conditions being equal; identity of the terms and conditions offered to the optionee and all other prospective buyers, with optionee to enjoy the right of first priority. It creates a promise to enter into a contract of sale and it has no separate consideration.

Note: A deed of sale executed in favor of a 3rd party who cannot be deemed a purchaser in good faith, and which is in violation of the right of first refusal granted to the optionee is valid but rescissible. *(Arts. 1380, 1381 [1])*

Q: NDC and Firestone entered into a contract of lease wherein it is stipulated that Firestone has the right of first refusal to purchase the leased property "should lessor NDC decide to sell the same". After the rumor that NDC will transfer the lot to PUP, Firestone instituted an action for specific performance to compel NDC to sell the property in its favor. PUP moved to intervene arguing that the Memorandum issued by then President Aquino ordered the transfer of the whole NDC compound to the Government, which in turn would convey it in favor of PUP. Can Firestone exercise its right of first refusal?

A: Yes. It is a settled principle in civil law that when a lease contract contains a right of first refusal, the lessor is under a legal duty to the lessee not to sell to anybody at any price until after he has made an offer to sell to the latter at a certain price and the lessee has failed to accept it. The lessee has a right that the lessor's first offer shall be in his favor. *(PUP v. CA, G.R. No. 143513, Nov. 14, 2001)*

Q: In a 20-year lease contract over a building, the lessee is expressly granted a right of first refusal should the lessor decide to sell both the land and building. However, the lessor sold the property to a third person who knew about the lease and in fact agreed to respect it. Consequently, the lessee brings an action against both the lessor-seller and the buyer (a) to rescind the sale and (b) to compel specific performance of his right of first refusal in the sense that the lessor should be ordered to execute a deed of absolute sale in favor of the lessee at the same price. The defendants contend that the plaintiff can neither seek rescission of the sale nor compel specific performance of a "mere" right of first refusal. Decide the case.

A:

a. The action filed by the lessee, for both rescission of the offending sale and specific performance of the right of first refusal which was violated, should prosper. The ruling in *(Equatorial Realty Development, Inc. v. Mayfair Theater, Inc., G.R. No. 106063, Nov. 21, 1996)*, a case with similar facts, sustains both rights of action because the buyer in the subsequent sale knew the existence of right of first refusal, hence, in bad faith.

b. The action to rescind the sale and to compel the right of first refusal will not prosper. *(Ang Yu Asuncion v. CA, G.R.*

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No. 109125, Dec. 2, 1994). The court ruled that the right of first refusal is not founded upon a contract but on a quasi-delictual relationship covered by the principles of human relations and unjust enrichment *(Art 19, et seq. Civil Code).* Hence, the only action that will prosper according to the Supreme Court is an action for damages in a proper forum for the purpose. **(1998 Bar Question)**

Note: The offer of the person in whose favor the right of first refusal was given must conform with the same terms and conditions as those given to the offeree.

Q: Andres leased his house to Iris for a period of 2 years, at the rate of P25, 000 monthly, payable annually in advance. The contract stipulated that it may be renewed for another 2-year period upon mutual agreement of the parties. The contract also granted Iris the right of first refusal to purchase the property at any time during the lease, if Andres decides to sell the property at the same price that the property is offered for sale to a third party. Twenty-three months after execution of the lease contract, Andres sold the house to his mother who is not a third party. Iris filed an action to rescind the sale and to compel Andres to sell the property to her at the same price. Alternatively, she asked the court to extend the lease for another two years on the same terms.

Q: Can Iris seek rescission of the sale of the property to Andres' mother?

A: Iris can seek rescission because pursuant to *Equatorial Realty Co. v. Mayfair Theater* rescission is a relief allowed for the protection of one of the contracting parties and even third persons from all injury and damage the contract of sale may cause or the protection of some incompatible and preferred right.

Q: Will the alternative prayer for extension of the lease prosper?

A: No, the extension of the lease should be upon the mutual agreement of the parties. **(2008 Bar Question)**

Q: Is it necessary that the right of first refusal be embodied in a written contract?

A: Yes, the grant of such right must be clear and express.

Note: It is applicable only to executory contracts and not to contracts which are totally or partially performed.

If a particular form is required under the Statute of Frauds: sale is valid & binding between the parties but not to 3rd persons.

Q: May the right of first refusal be waived?

A: Yes. Like other rights, the right of first refusal may be waived or when a party entered into a compromise agreement. *(Diaz, p. 55)*

Q: Differentiate an option contract from a right of first refusal.

A: An option contract is a preparatory contract in which one party grants to another, for a fixed period and at a determined price, the privilege to buy or sell, or to decide whether or not to enter into a principal contract. It binds the party who has given the option not to enter into the principal contract with any other person during the period designated, and within that period, to enter into such contract with the one whom the option was granted, if the latter should decide to use the option. It is a separate and distinct contract.

In a right of first refusal, while the object may be determinate, the exercise of the right would be dependent not only on the grantor's eventual intention to enter into a binding juridical relation with another but also on terms, including the price, that are yet to be firmed up. *(Diaz, p. 54)*

OPTION CONTRACT	RIGHT OF FIRST REFUSAL
Principal contract; stands on its own	Accessory; cannot stand on its own
Needs separate consideration	Does not need separate consideration
Subject matter & price must be valid	There must be subject matter but price not important
Not conditional	Conditional
Not subject to specific performance	Subject to specific performance

D. POLICITATION/MUTUAL PROMISE TO BUY AND SELL/

Q: What is policitation?

A: *Policitation* is defined as an unaccepted unilateral promise to buy or sell. This produces no judicial effect and creates no legal bond. This is a mere offer, and has not yet been converted into a contract. It covers the period from the time the prospective contracting parties indicate interest in the contract to the time the contract is perfected. *(Villanueva, p. 6).*

Q: Is there a legal bond already created in the negotiation stage?

A: None. In negotiation (*policitation*) stage, the offer is floated as well as the acceptance.

2. PERFECTION

Q: When is a contract of sale deemed perfected?

A:

GR: It is deemed perfected at the moment there is meeting of minds upon the thing which is the object of the contract and upon the price. *(Art.1475, par.1)*

XPN: When the sale is subject to a suspensive condition by virtue of law or stipulation.

Q: Spouses Raet and Mitra negotiated with Gatus about the possibility of buying his rights to certain units at a subdivision developed by Phil-Ville for them to be qualified to obtain loans from GSIS. They paid an amount for which Gatus issued them receipts in her own name. GSIS disapproved their loan application. Phil-Ville advised them to seek other sources of financing. In the meantime, they were allowed to remain in the subject premises. Is there a perfected and enforceable contract of sale or at least an agreement to sell over the disputed housing units?

A: None. There was no contract of sale perfected between the private parties over the said property, there being no meeting of the minds as to terms, especially on the price thereof. At best, only a proposed contract to sell obtained which did not even ripen into a perfected contract due at the first instance to private respondents' inability to secure approval of their GSIS housing loans. As it were, petitioners and private respondents have not hurdled the negotiation phase of a contract, which is the period from the time the prospective contracting parties indicate interest on the contract to the time the contract comes into existence the perfection stage upon the concurrence of the essential elements thereof. *(Sps. Raet & Sps. Mitra v. CA, G.R. No. 128016, Sept. 17, 1998)*

Q: Severino executed two deeds when he sold his property to Henry so that Henry can obtain a loan with Philam Life. He also authorized Henry to file an ejectment suit against the lessees and when the prayer for ejectment was granted, Henry took possession of the property. Severino now claims ownership over the property claiming that the sale is fictitious therefore there was no sale to speak of. Is Severino's contention correct?

A: No. There is a perfected contract of sale due to the second deed of sale in this case. The *basic characteristic* of an *absolutely simulated or fictitious contract* is that the *apparent contract is not really desired or intended to produce legal effects or alter the juridical situation of the parties in any way*. However, in this case, the parties already undertook certain acts which were directed towards fulfillment of their respective covenants under the second deed, indicating that they intended to give effect to their agreement. Further, the fact that Severino executed the two deeds, primarily so that Henry could eject the tenant and enter into a loan/mortgage contract with Philam Life, is a strong indication that he intended to transfer ownership of the property to Henry. For why *(Hernando R. Penalosa v. Severino Santos, G.R. No. 133749, Aug. 23, 2001)*

Q: What is the effect of Severino's and Henry's failure to appear before the notary public who notarized the deed?

A: None. The non-appearance of the parties before the notary public who notarized the deed does not necessarily nullify nor render the parties' transaction void ab initio. Article 1358, NCC on the necessity of a public document is only for convenience, not for validity or enforceability. Where a contract is not in the form prescribed by law, the parties can merely compel each other to observe that form, once the contract has been perfected.

Note: Contracts are obligatory in whatever form they may have been entered into, provided all essential requisites are present. *(Penalosa v. Santos, G.R. No. 133749, Aug. 23, 2001)*

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Q: When is an auction sale perfected?

A: A sale by auction is perfected when the auctioneer announces its perfection by the fall of the hammer, or in other customary manner. *(Art. 1476, par.2)*

Q: Does the seller have the right to bid in an auction sale?

A: Yes. The seller has the right to bid provided that such right was reserved and notice was given to that effect. *(Pineda, p. 53)*

Q: When is a sale of foreign exchange considered perfected?

A: A sale of foreign exchange is considered perfected from the moment the Bangko Sentral ng Pilipinas authorizes the purchase, even if the foreign bank has not yet honored the letter of credit. *(Pacific Oxygen and Acetylene Co. v. Central Bank, G.R. No. L-21881, Mar. 1, 1968)*

3. CONSUMMATION

Q: How does the consummation stage in a contract of sale take place?

A: It takes place by the delivery of the thing together with the payment of the price.

Q: A and PDS Development Corp. executed a contract to sell a parcel of land. A died without having completed the installment on the property. His heirs then took over the contract to sell and assumed his obligations by paying the selling price of the lot from their own funds, and completed the payment. To whom should the final Deed of Absolute Sale be executed by PDS?

A: Having stepped into the shoes of the deceased with respect to the said contract, and being the ones who continued to pay the installments from their own funds, A's heirs became the lawful owners of the said lot in whose favor the deed of absolute sale should have been executed by vendor PDS. *(Dawson v. Register of Deeds of Quezon City, G.R. No. 120600 Sept. 22, 1998)*

D. OBLIGATIONS CREATED

OBLIGATIONS OF THE BUYER

Q: What are the obligations of the buyer?

A:

1. Payment of the price
   GR: Seller is not bound to deliver unless the purchase price is paid
   XPN: A period of payment has been fixed
2. Accept delivery of thing sold
3. Pay for expenses of delivery

Note: A grace period granted the buyer in case of failure to pay is a right not an obligation. Non-payment would still generally require judicial or extrajudicial demand before default can arise.

Q: What are the other obligations of the buyer?

A:

1. To take care of the goods without the obligation to return, where the goods are delivered to the buyer and he rightfully refuses to accept;

   Note: The goods in the buyer's possession are at the seller's risk.

2. To be liable as a depositary if he voluntarily constituted himself as such;
3. To pay interest for the period between delivery of the thing and the payment of the price in the following cases:
   a. should it have been stipulated;
   b. should the thing sold and delivered produces fruits or income; or
   c. should he be in default, from the time of judicial or extra-judicial demand for the payment of the price.

OBLIGATIONS OF THE SELLER

Q: What are the obligations of the seller?

A: DDTWTP

1. **D**eliver the thing sold;
2. **D**eliver fruits & accessions/accessories accruing from perfection of sale;
3. **T**ransfer the ownership;
4. **W**arranties;
5. **T**ake care of the thing, pending delivery, with proper diligence;
6. **P**ay for the expenses of the deed of sale unless there is a stipulation to the contrary

E. CHARACTERISTICS OF A CONTRACT OF SALE

Q: What are the characteristics of a contract of sale?

A:

1. Consensual
2. Bilateral
3. **GR:** Commutative

   XPN: Aleatory – In some contracts of sale, what one receives may in time be greater or smaller than what he has given. *(Tolentino, p. 2, 2000 ed)*
4. Principal
5. Title and not a mode of acquiring ownership
6. Onerous
7. Reciprocal
8. Nominate

Q: Is a contract of sale identified as such based on the nomenclature given to the contract by the parties?

A: No. Contracts are not defined by the parties but by principles of law. To determine the nature of the contract, the courts are not bound by the name or title given to it by the contracting parties. It is the intention of the parties which controls. *(Diaz, Law on Sales as expounded by Jurisprudence, 2006 ed., p.1)*

Q: What are the factors to be considered in determining the nature of the contract?
A:

1. Language of the contract
2. Conduct of parties

F. DISTINCTIONS OF THE CONTRACT OF SALE WITH OTHER CONTRACTS

Q: Distinguish Sale from the following:

1. Donation.

SALE	DONATION
Onerous	Gratuitous/onerous
Consensual	Formal contract
Law on Sales	Law on Donation

2. Barter

SALE	BARTER
Consideration is giving of money as payment	Consideration is giving of a thing
If consideration consists party in money & partly by thing–look at manifest intention; If intention is not clear – Art. 1468	
Value of thing is equal or less than amount of money = Sale	Value of thing is more than amount of money = Barter
Both are governed by law on sales	

3. Agency to Sell

SALE	AGENCY TO SELL
Buyer pays for price of object	Agent not obliged to pay for price; must account for the proceeds of the sale.
Buyer becomes owner of thing	Principal remains the owner even if the object delivered to agent
Seller warrants	Agent assumes no personal liability as long as within authority given
Not unilaterally revocable	May be revoked unilaterally even w/o ground
Seller receives profit	Agent not allowed to profit
Real contract	Personal contract

4. Dacion en Pago

SALE	DACION EN PAGO
No pre-existing credit	Contract where property is alienated to extinguish pre-existing credit/debt
Buyer-seller relationship	Novates creditor-debtor relationship into seller-buyer

5. Lease

SALE	LEASE
Obligation to absolutely transfer ownership of thing	Use of thing is for specified period only with obligation to return
Consideration is the price	Consideration is the rental
Seller needs to be owner of thing to transfer ownership. **Note:** Lease with option to buy – really a contract of sale but designated as lease in name.	Lessor need not be owner

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G. CONTRACT TO SELL

Q: What is a contract to sell?

***A**: It* is one form of conditional sale where ownership or title is retained by the seller until the fulfillment of a positive suspensive condition, normally the payment of the purchase price by the buyer in the manner agreed upon. *(Gomez v. CA, et. al., G.R. 120747, Sept. 21, 2000)*

Q: Distinguish a contract to sell from a contract of sale.

A:

CONTRACT OF SALE	CONTRACT TO SELL
As regards transfer of ownership	
Ownership is transferred to the buyer upon delivery of the object to him. **Note:** Vendor has lost and cannot recover ownership until and unless the contract is resolved or rescinded	Ownership is transferred upon full payment of the purchase price. **Note:** Prior to full payment, ownership is retained by the seller.
As to numbers of contracts involved	
There is only one contract executed between the seller and the buyer.	There are two contracts: 1. The contract to sell **Note**: Conditional or preparatory sale 2. The deed of absolute sale **Note:** The principal contract is executed after full payment of the purchase price.
Payment as a condition	
Non-payment of the price is a resolutory condition. Vendor loses ownership over the property and cannot recover it until and unless the contract is resolved or rescinded.	Full payment of the price is a positive suspensive condition. **Note:** Failure to fully pay the price is not a breach but an event that prevents the obligation of the vendor to convey title from becoming effective.
Remedies available	
1. Specific 2. Performance 3. Rescission 4. Damages	1. Resolution 2. Damages

Q: Having agreed to sell property which they inherited from their father, which was then still in their father's name, the Coronels executed a document entitled "Receipt of Down Payment" in favor of Alcaraz for the purchase of their house and lot, with the condition that Ramona will make a down payment upon execution of the document. The Coronels would then cause the transfer of the property in the name of Ramona and will execute a deed of absolute sale in favor of Ramona. Ramona paid the downpayment as agreed. Is there a perfected contract of sale or a mere contract to sell?

A: The agreement could not have been a contract to sell because the sellers herein made *no express reservation of ownership or title to the subject parcel of land*. The Coronels had already agreed to sell the house and lot they inherited from their father, completely willing to transfer full ownership of the subject house and lot to the buyer if the documents were then in order. However, the TCT was then still in the name of their father, that is why they caused the issuance of a new TCT in their names upon receipt of the down payment. As soon as the new TCT is issued in their names, they were committed to immediately execute the deed of absolute sale. Only then will the obligation of the buyer to pay the remainder of the purchase price arise. This suspensive condition was fulfilled. Thus, the conditional contract of sale became obligatory, the only act required for the consummation thereof being the delivery of the property by means of the execution of the deed of absolute sale in a public instrument, which they unequivocally committed themselves to do as evidenced by the "Receipt of Down Payment." *(Coronel, et al. v. CA, G.R. No. 103577, Oct. 7, 1996)*

Q: Instead of executing a deed of Absolute Sale in favor of Ramona, the Coronels sold the property to Catalina and unilaterally and extrajudicially rescinded the contract with Ramona. Ramona then filed a complaint for specific performance. Will Ramona's action prosper?

A: Yes. Under Article 1187, the rights and obligations of the parties with respect to the perfected contract of sale became mutually due and demandable as of the time of fulfillment or occurrence of the suspensive condition. Hence, petitioner-sellers' act of unilaterally and extrajudicially rescinding the contract of sale cannot be justified, there being no express stipulation authorizing the sellers to extrajudicially rescind the contract of sale. *(Coronel, et al. v. CA, G.R. No. 103577, Oct. 7, 1996)*

Q: What are the instances when what is involved is a contract to sell?

A*:*

1. Where subject matter is indeterminate
2. Sale of future goods
3. Stipulation that deed of sale & corresponding certificate of sale would be issued only after full payment

II. PARTIES TO A CONTRACT OF SALE

Q: Who are the parties to a contract of sale?

A:

1. *Seller* – one who sells and transfers the thing and ownership to the buyer
2. *Buyer* – one who buys the thing upon payment of the consideration agreed upon

A. CAPACITY OF THE PARTIES

Q: Who may enter into a contract of sale?

A:

GR: Any person who has capacity to contract or enter into obligations, may enter into a contract of sale, whether as party-seller or as party-buyer.

XPN:

1. Minors, insane and demented persons and deaf-mutes who do not know how to write
2. Persons under a state of drunkenness or during hypnotic spell
3. Husband and wife - sale by and between spouses

Note: Contracts of sale entered by such legally incapacitated persons are merely voidable, subject to annulment or ratification. However, the action for annulment cannot be instituted by the person who is capacitated since he is disqualified from alleging the incapacity of the person with whom he contracts.

However, status of prohibited sales between spouses is not merely voidable, but null and void.

XPN to XPN:

1. Where necessaries are sold and delivered to a minor or other person without capacity to act, he must pay a reasonable price therefor.
2. In case of sale between spouses:
   a. when a separation of property was agreed upon in the marriage settlements; or
   b. when there has been a judicial separation of property agreed upon between them

B. ABSOLUTE INCAPACITY

Q: Who are those absolutely incapacitated to enter into a contract of sale?

A:

1. Unemancipated minors(*Art. 1327, NCC*);
2. Insane or demented persons, and deaf-mutes who do not know how to write (*Art. 1327, NCC*)

Q: May a capacitated person file an action for annulment using as basis the incapacity of the incapacitated party?

A: No. He is disqualified from alleging the incapacity of the person whom he contracts (*Art. 1397, NCC*);

Q: In a defective contract, where such defect consists in the incapacity of a party, does the incapacitated party have an obligation to make restitution?

A:

GR: he incapacitated person is not obliged to make any restitution.
XPN: insofar as he has been benefited by the thing or price received by him. (*Art. 1399, NCC*)

C. RELATIVE INCAPACITY

Q: Who are those relatively incapacitated to enter into a contract of sale?

A:

1. Spouses *(Art. 1490, NCC)*
2. Agents, Guardians, Executors and Administrators, Public Officers and Employees, Court Officers and Employees, and others specially disqualified by law. *(Art. 1491, NCC)*

Note: Under Art. 1490 of the NCC, spouses cannot sell property to each other, except:

a. When a separation of property was agreed in the marriage settlements; or
b. When there has been a judicial separation of property agreed upon between them.

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Q : What is the status of the following contracts of sale?

A:

1. *That entered into by minors:*
   a. Merely voidable, subject to annulment or ratification
   b. Action for annulment cannot be instituted by the person who is capacitated since he is disqualified from alleging the incapacity of the person with whom he contracts (with partial restitution in so far as the minor is benefited) where necessaries are sold and delivered to a minor or other person without capacity to act, he must pay a reasonable price *(Art. 1489)*

2. *Sale by & between spouses (Art. 1490):*
   a. Status of prohibited sales between spouses:
      GR: Null and void

      XPN: In case of sale between spouses:

      i. When a separation of property was agreed upon in the marriage settlements; or
      ii. When there has been a judicial separation of property agreed upon between them

      Reasons:
      i. Prevent defrauding creditors
      ii. Avoid situation where dominant spouse takes advantage over the weaker spouse
      iii. Avoid circumvention on prohibition of donation between spouses

   b. Contract of sale with 3rd parties:
      GR: Under the law on sales, it would seem that a spouse may, without the consent of the other spouse, enter into sales transactions in the regular or normal pursuit of their profession, vocation or trade*. (in relation with Art. 73, Family Code)*

      XPN: Even when the property regime prevailing was the conjugal partnership of gains, the Supreme Court held the sale by the husband of a conjugal property without the consent of the wife is void, not merely voidable under Art. 124 of the Family Code since the resulting contract lack one of the essential elements of full consent*. (Guiang v. CA, G.R. No. 125172, June 26, 1998)*

3. *Between Common Law Spouses* - also null and void.

   In *Calimlim-Canullas v. Fortun*, the Court decided that sale between common law spouses is null and void because Art. 1490 prohibits sales between spouses to prevent the exercise of undue influence by one spouse over the other, as well as to protect the institution of marriage. The prohibition applies to a couple living as husband and wife without the benefit of marriage, otherwise, the condition of those incurred guilt would turn out to be better than those in legal union*. (Calimlim-Canullas v. Fortun, et. al., G.R. No. L-57499, June 22, 1984)*

   But when the registered property has been conveyed subsequently to a third-party buyer in good faith and for value, then reconveyance is no longer available to common-law spouse-seller, since under the Torrens system every buyer has a right to rely upon the title of his immediate seller. *(Cruz v. CA, G.R. No. 120122, Nov. 6, 1997)*

Q: Who has the right to assail the validity of the transaction between spouses?

A: The following are the only persons who can question the sale between spouses:

1. The heirs of either of the spouses who have been prejudiced;
2. Prior creditors; and
3. The State when it comes to the payment of the proper taxes due on the transactions

Q: Who are the persons with relative incapacity to be the vendee in a contract of sale?

A: AGE-COP

RELATIVELY INCAPACITATED TO BUY	PROPERTIES INVOLVED	STATUS OF SALE	RATIFICATION
Agents	Property entrusted to them for administration or sale **XPN:** When principal gave his consent	Voidable	Can be ratified after the inhibition has ceased *Reason:* the only wrong that subsists is the private wrong to the ward, principal or estate; and can be condoned by the private parties themselves
Guardian	Property of the ward during period of guardianship **Note:** Contracts entered by guardian in behalf of ward are rescissible if ward suffers lesion by more than ¼ of the value of property.		
Executors and administrators	Property of the estate under administration		
Court officers and employees	Property and rights in litigation or levied upon on execution before the court under their jurisdiction	Void	Cannot be ratified *Reason:* It is a private wrong. *(Villanueva, Law on Sales, p. 30-31)*
Others specially disqualified by law			
Pubic officers and employees	Property of the State entrusted to them for administration		

Note: Prohibitions are applicable to sales in legal redemption, compromises and renunciations.

In the case of *Rubias v. Batiller (51 SCRA 120)*, it sought to declare the difference in the nullity between contracts entered into by guardians, agents, administrators and executors, from the contracts entered into by judges, judicial officers, fiscals and lawyers.

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D. SPECIAL DISQUALIFICATIONS

Q: Who are those persons specially disqualified by law to enter into contracts of sale?

A: ALIEN-UnOS

1. **ALIEN**s who are disqualified to purchase private agricultural lands *(Art. XII Secs. 3 & 7)*
2. **Un**paid seller having a right of lien or having stopped the goods in transitu, is prohibited from buying the goods either directly or indirectly in the resale of the same at public/private sale which he may make *(Art. 1533 [5]; Art. 1476 [4])*
3. The **O**fficer holding the execution or deputy cannot become a purchaser or be interested directly or indirectly on any purchase at an execution. *(Sec. 21 Rule 39, Rules of Court)*
4. In **S**ale by auction, seller cannot bid unless notice has been given that such sale is subject to a right to bid in behalf of the seller. *(Art. 1476)*

Q: Atty. Leon G. Maquera acquired his client's property as payment for his legal services, then sold it and as a consequence obtained an unreasonable high fee for handling his client's case. Did he validly acquire his client's property?

A: No. Article 1491 (5) of the New Civil Code prohibits lawyer's acquisition by assignment of the client's property which is the subject of the litigation handled by the lawyer. Also, under Article 1492, the prohibition extends to sales in legal redemption. *(In Re: Suspension from the Practice of Law in the territory of Guam of Atty. Leon G. Maquera, B.M. No. 793, July 30, 2004)*

III. SUBJECT MATTER OF SALE

A. REQUISITES OF A VALID SUBJECT MATTER

Q: What are the requisites of a proper object of sale?

A:

1. *Things*
   a. Determinate or determinable
   b. Lawful (licit), otherwise contract is void
   c. Should not be impossible (within the commerce of men)

2. *Rights*

   GR: Must be transmissible.
   XPN:
   a. Future inheritance
   b. Service – c*annot* be the object of sale. They are not determinate things and no transfer of ownership is available but it can be the object of certain contracts such uas contract for a piece of work. *(Pineda, Sales, 2002 ed., p. 13)*

Q: Rodriguez first purchased a portion of a Lot A consisting of 345 square meters located in the middle of Lot B, which has a total area of 854 square meters, from Juan. He then purchased another portion of said lot. As shown in the receipt, the late Juan received P500.00 from Rodriguez as "*advance payment for the residential lot adjoining his previously paid lot on three sides excepting on the frontage.* Juan's heirs now contests the validity of the subsequent sale, alleging that the object is not determinate or determinable. Decide.

A: Their contention is without merit. There is no dispute that Rodriguez purchased a portion of Lot A consisting of 345 square meters. This portion is located in the middle of B, which has a total area of 854 square meters, and is clearly what was referred to in the receipt as the "previously paid lot." Since the lot subsequently sold to Rodriguez is said to adjoin the "previously paid lot" on three sides thereof, the subject lot is capable of being determined without the need of any new contract. The fact that the exact area of these adjoining residential lots is subject to the result of a survey does not detract from the fact that they are determinate or determinable. Concomitantly, the object of the sale is certain and determinate. (*Heirs of San Andres v. Rodriguez, G.R. No. 135634, May 31, 2000*)

Note: Where land is sold for a lump sum and not so much per unit of measure or number, the boundaries of the land stated in the contract determine the effects and scope of the sale, not the area thereof. The vendors are obligated to deliver all the land included within the boundaries, regardless of whether the real area should be greater or smaller than that recited in the deed. This is particularly true where the area is described as "humigit kumulang," that is, more or less. (*Semira v. CA, G.R. No. 76031, Mar. 2, 1994*)

Q: Can rights be the objects of sale?

A: Yes, if they are transmissible. *(Art. 1347)*

B. PARTICULAR KINDS

Q: What may be objects of sale?

A:

1. *Existing Goods* – owned/ possessed by seller at the time of perfection

2. *Future Goods* – goods to be manufactured, raised, acquired by seller after perfection of the contract or whose acquisition by seller depends upon a contingency *(Art. 1462)*

Note: Sale of future goods is valid only as an executory contract to be fulfilled by the acquisition & delivery of goods specified.

3. Sale of Undivided Interest or Share
   a. Sole owner may sell an undivided interest. (*Art. 1463*) Ex. A fraction or percentage of such property
   b. Sale of an undivided share in a specific mass of fungible goods makes the buyer a co-owner of the entire mass in proportion to the amount he bought. *(Art. 1464)*
   c. A co-owner cannot sell more than his share *(Yturralde v. CA)*

4. Sale of Things in Litigation
   a. Sale of things under litigation is rescissible if entered into by the defendant , without the approval of the litigants or the court *(Art. 1381)*
   b. *No rescission* is allowed where the thing is legally in the possession of a 3rd person

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who did not acted in bad faith.

5. Things subject to Resolutory Condition. Ex. Things acquired under legal or conventional right of redemption, or subject to reserva troncal. *(Art. 1465)*

6. Indeterminate Quantity of Subject Matter
    a. The fact that the quantity is not determinate shall not be an obstacle to the existence of the contract provided it is possible to determine the same, without need of a new contract. *(Art. 1349)*

IV. OBLIGATION OF THE SELLER TO TRANSFER OWNERSHIP

Q: Should the seller be the owner at the time of perfection of the contract?

A:

GR: No. Seller must have the right to transfer ownership at the time of delivery or consummation stage. He need not be the owner at the time of perfection of the contract.

XPN: Foreclosure sale wherein the mortgagor should be the absolute owner.

Q: EJ was subjected to a buy-bust operation where police officers posed to buy 500 pesos worth of "S". She was then charged with a violation of the Dangerous Drugs Act for trafficking drugs. EJ uses as defense her lack of possession of the object of the sale. Would her contention free her from liability?

A: No. Though she was not in possession of the object of sale, Article 1459 merely requires that the vendor must have the right to transfer ownership of the object sold at the time of delivery. In the case at bar, though Beth is not the owner, she had the right to dispose of the prohibited drug. Ownership was thereafter acquired upon her delivery to the men in the alley after her payment of the price. *(People v. Ganguso, G.R. No. 115430, Nov. 23, 1995)*

A. SALE BY A PERSON WHO DOES NOT OWN THE THING SOLD

Q: What is the status of a sale by a person who does not own the thing subject of the sale?

A: It depends upon the stage of the sale.

1. When seller is not owner at perfection stage – the sale is valid.
   Ownership of the subject matter by the seller at this stage is not an essential requirement for the validity of sale. It is necessary at the time of delivery. Hence, a valid contract of sale can cover subject matter that is not yet existing or even a thing having only a potential existence at the time of perfection; or even a thing subject to a resolutory condition.

   Note: If the seller later acquires title thereto and delivers it, title passes by operation of law.

2. When seller is not owner at consummation stage
    a. Old view – the contract of sale is valid, but the transfer of title is void. *(Mindanao-Academy, Inc. v. Yap, G.R. No. L-17681, Feb. 26, 1965)*
    b. New view – the sale by a non-owner of the subject property is void instead of treating the tradition/delivery aspect as having no effect on transferring ownership to the buyer. *(DBP v. CA, G.R. No. 110053, Oct. 16, 1995)*

   Note: *Nemo dat quod non habet* – you cannot give what you do not have, properly applicable to the consummation of a sale.

Q: What is the legal effect of sale by a non-owner?

A:

GR: The buyer requires no better title to the goods than the seller had; caveat emptor (buyer beware).

XPN:

1. Estoppel – when the owner of the goods is by his conduct precluded from denying the seller's authority to sell
2. When the contrary is provided for in recording laws

3. When the sale is made under statutory power of sale or under the order of a court of competent jurisdiction
4. When the sale is made in a merchant's store in accordance with the Code of Commerce and special laws
5. When a person who is not the owner sells and delivers a thing, and subsequently acquired title thereto
6. When the seller has a voidable title which has not been avoided at the time of the sale
7. Sale by co-owner of the whole property or a definite portion thereof
8. Special rights of unpaid seller

Q: What are the instances when the Civil Code recognizes sale of things not actually or already owned by the seller at the time of sale?

A:

1. Sale of a thing having potential existence *(Art.1461, NCC)*
2. Sale of future goods *(Art. 1462, NCC)*
3. Contract for the delivery at a certain price of an article, which the seller in the ordinary course of business manufactures/ procures for the general market, whether the same is on hand at the time or not *(Art. 1467, NCC)*

B. SALE BY A PERON HAVING A VOIDABLE TITLE

Q: What is the effect of a sale made by the seller with voidable title over the object?

A:

1. Perfection stage: valid – buyer acquires title of goods
2. Consummation stage: valid – If the title has not yet been avoided at the time of sale and the buyer must buy the goods under the following conditions:
   a. In good faith
   b. For value
   c. Without notice of seller's defect of title

EMPTIO REI SPERATAE	EMPTIO SPEI
Sale of thing having potential existence	Sale of mere hope or expectancy
Uncertainty is w/ regard to quantity & quality	Uncertainty is w/ regard to existence of thing
Contract deals w/ future thing	Contract deals w/ present thing – hope or expectancy
Sale is valid *only if* the expected thing will exist.	Sale is valid even though expected thing does not come into existence as long as the hope itself validly existed. (*eg*. lotto)

Note: *The presumption is* Emptio Rei Speratae

Q: Jose, as co-owner, sold the entire land in favor of his minor daughter, Ida. Alleging that Jose had fraudulently registered it in his name alone, his sisters, sued him for recovery of 2/3 share of the property. Ida did not pay for the land. Is the sale valid?

A: No. Jose did not have the right to transfer ownership of the entire property to petitioner since 2/3 thereof belonged to his sisters. Also, Ida could not have given her consent to the contract, being a minor at the time. Consent of the contracting parties is among the essential requisites of a contract, including one of sale, absent which there can be no valid contract. Moreover, Ida admittedly did not pay any centavo for the property, which makes the sale void. Article 1471 of the Civil Code provides: If the price is simulated, the sale is void, but the act may be shown to have been in reality a donation, or some other act or contract. *(Labagala v. Santiago, G.R. No. 132305, Dec. 4, 2001)*

V. PRICE

A. MEANING OF PRICE

Q: What is a price?

A: Price signifies the sum stipulated as the equivalent of the thing sold and also every incident taken into consideration for the fixing of the price put to the debit of the buyer and agreed to by him. *(Villanueva, p. 52)*

B. REQUISITES FOR A VALID PRICE

Q: What are the requisites of price?

A: Must be:

1. Real
2. In money or its equivalent
3. Certain or ascertainable at the time of the perfection of the contract

C. HOW PRICE IS DETERMINED

Q: When is price certain?

A:

1. If there is a stipulation
2. If it be with reference to another thing certain

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3. If the determination of the price is left to the judgment of specified person(s)
4. By reference to certain fact(s) as referred to in Art. 1472 *(Art. 1469)*

Note: If the price is based on estimates, it is uncertain.

D. GROSS INADEQUACY OF THE PRICE

Q: What is the effect of gross inadequacy of price?

A:

GR: It does not affect the validity of the sale if it is fixed in good faith and without fraud

XPN: CoRDS

1. If **Co**nsent is vitiated (may be annulled or presumed to be equitable mortgage)
2. If the parties intended a **D**onation or some other act/ contract
3. If the price is so low as to be "**S**hocking to the conscience"
4. If in the event of **R**esale, a better price can be obtained

Note:
GR: The validity of the sale is not necessarily affected where the law gives the owner the right to redeem because the lesser the price, the easier it is for the owner to effect redemption.

XPN: While there is no dispute that mere inadequacy of the price *per se* will not set aside a judicial sale of real property, nevertheless, where the inadequacy of the price is *purely shocking to the conscience*, such that the mind revolts at it and such that a reasonable man would neither directly or indirectly be likely to consent to it, the same will be set aside. *(Cometa v. CA 351 SCRA 294)*

Q: What is the effect if the price is simulated?

A:

GR: Contract of sale is void.

XPN: The act may be shown to have been in reality a donation or some other act or contract.

Q: What is considered reasonable price?

A: Generally the market price at the time and place fixed by the contract or by law for the delivery of the goods.

Q: What is the effect on the contract of sale in case of a breach in the agreed manner of payment?

A: None. It is not the act of payment of price that determines the validity of a contract of sale. Payment of the price has nothing to do with the perfection of the contract, as it goes into the performance of the contract. Failure to pay the consideration is different from lack of consideration. Failure to pay such results in a right to demand the fulfillment or cancellation of the obligation under an existing valid contract. On the other hand, lack of consideration prevents the existence of a valid contract. *(Sps. Bernardo Buenaventura and Consolacion Joaqui v. CA, GR No. 126376, Nov. 20, 2003)*

Q: Is payment of the purchase price essential to transfer ownership?

A: Unless the contract contains a stipulation that ownership of the thing sold shall not pass to the purchaser until he has fully paid the price, ownership of the thing sold shall be transferred to the vendee upon the actual or constructive delivery thereof. *(Diaz, p. 48)*

E. WHEN NO PRICE IS AGREED UPON BY THE PARTIES

Q: What is the effect of failure to determine the price?

A:

1. *Where contract is executory* – ineffective
2. *Where the thing has been delivered to and appropriated by the buyer* – the buyer must pay a reasonable price therefore

Note: The fixing of the price cannot be left to the discretion of one of the parties. However, if the price fixed by one of the parties is accepted by the other, the sale is perfected.

F. MANNER OF PAYMENT

Q: What is the effect of a breach of the agreed manner of payment to the contract of sale?

A: None. A contract of sale being a consensual contract, it becomes binding and valid upon the meeting of the minds as to price.

1. *If there is such meeting of the minds as to price,* the contract of sale is valid, despite the manner of payment, or even the breach of that manner of payment.
2. *If the real price is not stated in the contract*, then the contract of sale is valid but subject to reformation.
3. *If there is no meeting of the minds as to the price because the price stipulated in the contract is simulated*, then the contract is void, in accordance with Article 1471 of the Civil Code. *(Sps. Buenaventura v. CA, G.R. No. 126376, Nov. 20, 2003)*

Note: A definite agreement on the manner of payment of the price is an essential element in the formation of a binding and enforceable contract of sale. *(Co v. CA, G.R. No. 123908, Feb. 9, 1998)*

Q: In an action for specific performance with damages, X alleged that there was an agreement to purchase the lot of Y. As regards the manner of payment, however, Y's receipts contradicted the testimony of X. The receipts failed to state the total purchase price or prove that full payment was made. For this reason, it was contended that there was no meeting of their minds and there was no perfected contract of sale. Decide.

A: The question to be determined should not be whether there was an agreed price, but what that agreed price was. The sellers could not render invalid a perfected contract of sale by merely contradicting the buyer's obligation regarding the price, and subsequently raising the lack of agreement as to the price. *(David v. Tiongson, G.R. No. 108169, Aug. 25, 1999)*

Q: Distinguish the failure to pay the consideration from lack of consideration.

A:

FAILURE TO PAY CONSIDERATION	LACK OF CONSIDERATION
As to validity of contract of sale	
It is not the act of payment of price that determines the validity of a contract of sale. **Note:** Payment of the price has nothing to do with the perfection of the contract. Instead, it goes into the performance of the contract.	Lack of consideration prevents the existence of a valid contract.
As to resultant right	
Failure to pay the consideration results in a right to demand the fulfillment or cancellation of the obligation under an existing valid contract.	The contract of sale is null and void and produces no effect whatsoever

G. EARNEST MONEY VIS-A-VIS OPTION MONEYY

OPTION MONEY

Q: What is the effect of failure to determine the price?

A:

1. *Where contract is executory* – ineffective
2. *Where the thing has been delivered to and appropriated by the buyer* – the buyer must pay a reasonable price therefore

Note: The fixing of the price cannot be left to the discretion of one of the parties. However, if the price fixed by one of the parties is accepted by the other, the sale is perfected.

Q: What is an option money?

A: The distinct consideration in case of an option contract. It does not form part of the purchase price hence, it cannot be recovered if the buyer did not continue with the sale.

Q: When is payment considered option money?

A: Payment is considered option money when it is given as a separate and distinct consideration from the purchase price. Consideration in an option contract may be anything or undertaking of value.

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EARNEST MONEY

Q: What is an earnest money or "arras"?

A: This is the money given to the seller by the prospective buyer to show that the latter is truly interested in buying the property, and its aim is to bind the bargain. *(Pineda, p. 75)*

Q: What is the effect of giving an earnest money?

A: It forms part of the purchase price which may be deducted from the total price. It also serves as a proof of the perfection of the contract of sale. The rule is no more than a disputable presumption and prevails only in the absence of contrary or rebuttable evidence. *(PNB v CA, 262 SCRA 464, 1996)*

Note: Option money may become earnest money if the parties so agree.

Q: When is payment considered an earnest money?

A: When the payment constitutes as part of the purchase price. Hence, in case when the sale did not happen, it must be returned to the prospective buyer.

Q: Distinguish option money from earnest money.

A:

OPTION MONEY	EARNEST MONEY
Money given as distinct consideration for an option contract	Forms part of the purchase price
Applies to a sale not yet perfected	Given only when there is already a sale
Prospective buyer is not required to buy.	When given, the buyer is bound to pay the balance.
If buyer does not decide to buy, it cannot be recovered.	If sale did not materialize, it must be returned. *(Villanueva, p. 87, Pineda, p.77)*

Q: Bert offers to buy Simeon's property under the following terms and conditions: P1 million purchase price, 10% option money, the balance payable in cash upon the clearance of the property of all illegal occupants. The option money is promptly paid and Simeon clears the property of all illegal occupants in no time at all. However, when Bert tenders payment of the balance and asks for the deed of absolute sale, Simeon suddenly has a change of heart, claiming that the deal is disadvantageous to him as he has found out that the property can fetch three times the agreed purchase price. Bert seeks specific performance but Simeon contends that he has merely given Bert an option to buy and nothing more and offers to return the option money which Bert refuses to accept.

1. **Will Bert's action for specific performance prosper? Explain.**
2. **May Simeon justify his refusal to proceed with the sale by the fact that the deal is financially disadvantageous to him? Explain.**

A:

1. Bert's action for specific performance will prosper because there was a binding agreement of sale, not just an option contract. The sale was perfected upon acceptance by Simeon of 10% of the agreed price. This amount is in reality an earnest money which, under Art. 1482, "shall be considered as part of the price and as proof of the perfection of the contract." *(Topacio v. CA, G.R. No. 102606, July 3, 1992; Villongco Realty v. Bormaheco, G.R. No. L-26872, July 25, 1975).*

2. Simeon cannot justify his refusal to proceed with the sale by the fact that the deal is financially disadvantageous to him. Having made a bad bargain is not a legal ground for pulling out of a binding contract of sale, in the absence of some actionable wrong by the other party *(Vales v. Villa, G.R. No. 10028, Dec. 16, 1916)*, and no such wrong has been committed by Bert. **(2002 Bar Question)**

VI. FORMATION OF CONTRACT OF SALE

Note: *see* Introduction, Stages of Contract of Sale *pp. 230-234*

VII. TRANSFER OF OWNERSHIP

A. MANNER OF TRANSFER

Q: What is the effect of delivery?

A:

GR: Title /ownership is transferred

XPN: Contrary is stipulated as in the case of:

1. *Pactum reservatii in domini* – agreement that ownership will remain with seller until full payment of price *(Contract to sell)*;
2. Sale on acceptance/approval;
3. Sale on return;
4. There is implied reservation of ownership;

Note: Seller bears expenses of delivery.

Q: Spouses Bernal purchased a jeepney from Union Motor to be paid in installments. They then executed a promissory note and a deed of chattel mortgage in favor of Union Motor which in turn assigned the same with Jardine Finance. To effectuate the sale as well as the assignment of the promissory note and chattel mortgage, the spouses were required to sign documents, one of which was a sales invoice. Although the Spouses have not yet physically possessed the vehicle, Union Motor's agent required them to sign the receipt as a condition for the delivery of the vehicle. It was discovered that the said agent stole the vehicle even prior to its delivery to the spouses. Was there a transfer of ownership of the subject vehicle?

A: No. The issuance of a sales invoice does not prove transfer of ownership of the thing sold to the buyer; an invoice is nothing more than a detailed statement of the nature, quantity and cost of the thing sold and has been considered not a bill of sale.

The registration certificate signed by the spouses does not conclusively prove that constructive delivery was made nor that ownership has been transferred to the respondent spouses. Like the receipt and the invoice, the signing of the said documents was qualified by the fact that it was a requirement of Union Motor for the sale and financing contract to be approved. In all forms of delivery, it is necessary that the act of delivery, whether constructive or actual, should be coupled with the intention of delivering the thing. The act, without the intention, is insufficient. Inasmuch as there was neither physical nor constructive delivery of a determinate thing, (in this case, the subject motor vehicle) the thing sold remained at the seller's risk. The Union Motor should therefore bear the loss of the subject motor vehicle after its agent allegedly stole the same. *(Union Motor Corp. v. CA, G.R. No. 117187, July 20, 2001)*

Q: How may the buyer accept the delivery of the thing sold?

A:

1. *Express* – he intimates to seller that he has accepted
2. *Implied*
   a. Buyer does not act inconsistent with ownership of seller after delivery
   b. Retains without intimating to seller that he has rejected

Q: What is the effect if the buyer refuses to accept despite delivery of the object of the sale?

A: Delivery is completed. Since delivery of the subject matter of the sale is an obligation on the part of the seller, the acceptance thereof by the buyer is not a condition for the completeness of the delivery. *(Villanueva, p. 117)*

Note: Thus, even with such refusal of acceptance, delivery (actual/constructive), will produce its legal effects. *(e.g. transferring the risk of loss of the subject matter to the buyer who has become the owner thereof) (Villanueva, p. 117)*

Under Art. 1588, when the buyer's refusal to accept the goods is without just cause, the title thereto passes to him from the moment they are placed at his disposal. *(Villanueva, p. 117)*

Q: Is payment of the purchase price essential to transfer ownership?

A: Unless the contract contains a stipulation that ownership of the thing sold shall not pass to the purchaser until he has fully paid the price, ownership of the thing sold shall be transferred to the vendee upon the actual or constructive delivery thereof. *(Diaz, p. 48)*

Q: What are the effects of a sale of goods on installment?

A:

1. Goods must be delivered in full except when stipulated

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2. *When not examined by the buyer* – it is not accepted until examined or at least had reasonable time to examine

Q: When may the buyer suspend payment of the price?

A:

GR:

1. If he is disturbed in the possession or ownership of the thing bought
2. If he has well-grounded fear that his possession or ownership would be disturbed by a vindicatory action or foreclosure of mortgage.

Note: These grounds are not exclusive. It can only be exercised if the price or any part thereof has not yet been paid and the contract is not yet consummated. *(Art. 1590)* If the disturbance is caused by the existence of non-apparent servitude, the remedy is rescission.

XPN:

1. Seller gives security for the return of the price in a proper case;
2. A stipulation that notwithstanding any such contingency, the buyer must make payment;
3. Disturbance or danger is caused by the seller;
4. If the disturbance is a mere act of trespass;
5. Upon full payment of the price.

B. WHEN DELIVERY DOES NOT TRANSFER TITLE

Q: When does delivery does not transfer title?

A:

1. Sale on Trial, Approval, or Satisfaction
2. When there is an EXPRESS RESERVATION
   If it was stipulated that ownership shall not pass to the purchaser until he has fully paid the price (Art. 1478)
3. When there is an IMPLIED RESERVATION
   a. When goods are shipped, but the bill of lading states that goods are deliverable to the seller or his agent, or to the order of the seller or his agent
   b. When the bill of lading is retained by the seller or his agent
   c. when the seller of the goods draws on the buyer for the price and transmits the bill of exchange and the bill of lading to the buyer , and the latter does not honor the bill of exchange by returning the bill of lading to the seller
4. When sale is not VALID
5. When the seller is not the owner of the goods

   XPNs:

   a. Estoppel: when the owner is precluded from denying the sellers authority to sell
   b. Registered land bought in good faith: Ratio: Buyer need not go beyond the Torrens title
   c. Order of Courts in a Statutory Sale
   d. When the goods are purchased in a Merchant's store, Fair or Market *(Art. 1505)*

SALE ON TRIAL, APPROVAL OR SATISFACTION

Q: What is sale on trial, approval or satisfaction?

A: It is a contract in the nature of an option to purchase if the goods prove to be satisfactory, the approval of the buyer being a condition precedent.

Q: What are the rules in case of sale on trial, approval or satisfaction?

A:

Title	Remains with seller
Risk of Loss	**GR:** Borne by seller **XPN:** 1. Buyer is at fault 2. Buyer agreed to bear the loss
As to trial	**GR:** Buyer must give goods a trial **XPN:** Buyer need not do so if it is evident that it cannot perform the work.
When period within which buyer must signify his acceptance runs	It runs only when all the parts essential for the operation of the object has been delivered

Validity of stipulation that a 3rd person must satisfy approval or satisfaction	Valid, provided the 3rd person is in good fath
If the sale is made to a buyer who is an expert on the object purchased	Generally, it cannot be considered a sale on approval

C. KINDS OF DELIVERY

Q: What are the different kinds of delivery?

A:

1. *Actual* – thing sold is placed under the control and possession of buyer/agent;
2. *Constructive* – does not confer physical possession of the thing, but by construction of law, is equivalent to acts of real delivery.

   Requisites:
   a. The seller must have control over the thing
   b. The buyer must be put under control
   c. There must be intention to deliver the thing for purposes of ownership

      i. *Tradicion Symbolica* – delivery of certain symbols representing the thing
      ii. *Tradicion Instrumental* – delivery of the instrument of conveyance.
      iii. *Traditio Longa Manu* – Delivery of thing by mere agreement; when seller points to the property without need of actually delivering
      iv. *Tradicion Brevi Manu* – Before contract of sale, the would-be buyer was already in possession of the would-be subject matter of sale
      v. *Constitutum Possessorium* – at the time of perfection of contract, seller continues to have possession merely as a holder

3. *Quasi-tradition* – delivery of rights, credits or incorporeal property, made by:
   a. Placing titles of ownership in the hands of the buyer;
   b. Allowing buyer to make use of rights
4. *Tradition by operation of law* – Execution of a public instrument is equivalent to delivery. But to be effective, it is necessary that the seller have such control over the thing sold that, at the moment of sale, its material delivery could have been made.

   GR: There is presumption of delivery

   XPN:
   a. Contrary stipulation;
   b. When at the time of execution, subject matter was not subject to the control of seller;
   c. Seller has no capacity to deliver at time of execution;
   d. Such capacity should subsist for a reasonable time after execution of instrument.

Note: Delivery should be coupled with intention of delivering the thing, and acceptance on the part of the buyer to give legal effect of the act. Without such intention, there is no such tradition.

Q: Susan invested in commodity futures trading in OCP, which involves the buying or selling of a specified quantity and grade of a commodity at a future date at a price established at the floor of the exchange. As per terms of the trading contract, customer's orders shall be directly transmitted by OCP as broker to its principal, Frankwell Enterprises, which in turn must place the customer's orders with the Tokyo Exchange. In this case, however, there is no evidence of such transmission. When Susan withdrew her investment, she was not able to recover the entire amount. She thus filed a complaint and the trial court ruled in her favor, saying that the contract is a species of gambling and therefore void. Is the court's ruling correct?

A: Yes. A trading contract is a *contract for the sale of products for future delivery*, in which either seller or buyer may elect to make or demand delivery of goods agreed to be bought and sold, but where no such delivery is actually made. In this case, no actual delivery of goods and commodity was intended and ever made by the parties. In the realities of the transaction, the parties merely speculated on the rise and fall in the price of the goods/commodity subject matter of the transaction. If Susan's speculation was correct, she would be the winner and OCP, the loser, so OCP would have to pay her the "margin".

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But if she was wrong in her speculation then she would emerge as the loser and OCP, the winner. OCP would then keep the money or collect the difference from her. This is clearly a form of gambling provided for with unmistakable certainty under Article 2018. *(Onapal Phils. Commodities, Inc. vs. CA and Susan Chua, G.R. No. 90707, Feb. 1, 1993)*

Note: Futures Commission Merchant/Broker refers to a corporation or partnership, which must be registered and licensed as a Futures Commission Merchant/Broker and is engaged in soliciting or in accepting orders for the purchase or sale of any commodity for future delivery on or subject to the rules of the contract market and that, in connection with such solicitation or acceptance of orders, accepts any money, securities or property (or extends credit in lieu thereof) to margin, guarantee or secure any trade or contract that results or may result therefrom.

Q: Given that actual possession, control and enjoyment is a main attribute of ownership, is symbolic delivery by mere execution of the deed of conveyance sufficient to convey ownership over property?

A: Yes, possession is also transferred along with ownership thereof by virtue of the deed of conveyance. The mere execution of the deed of conveyance in a public document is equivalent to the delivery of the property, prior physical delivery or possession is not legally required. The deed operates as a formal or symbolic delivery of the property sold and authorizes the buyer or transferee to use the document as proof of ownership. Nothing more is required. *(Sps. Sabio v. International Corporate Bank, Inc. et. at. G.R. No. 132709, Sept. 4, 2001*)

Q: Can delivery be effected through a carrier?

A:

GR: Yes, if the seller is authorized. Delivery to carrier is delivery to the buyer.

XPN:

1. A contrary intention appears
2. Implied reservation of ownership under Art. 1503, pars 1, 2, 3.

Q: What are the kinds of delivery to carrier?

A:

1. *FAS (Free Along Side)* – when goods are delivered alongside the ship, there is already delivery to the buyer
2. *FOB (Free On Board)* – when goods are delivered at the point of shipment, delivery to carrier by placing the goods on vessel is delivery to buyer
3. *CIF (Cost, Insurance, Freight)* –
   a. When buyer pays for services of carrier, delivery to carrier is delivery to buyer, carrier as agent of buyer;
   b. When buyer pays seller the price – from the moment the vessel is at the port of destination, there is already delivery to buyer
4. *COD (Collect On Delivery)* – the carrier acts for the seller in collecting the purchase price, which the buyer must pay to obtain possession of the goods.

Q: What are the seller's duties after delivery to the carrier?

A:

1. To enter on behalf of the buyer into such contract reasonable under the circumstances;
2. To give notice to the buyer regarding necessity of insuring the goods.

Q: Where is the place of delivery?

A:

1. That agreed upon
2. Place determined by usage of trade
3. Seller's place of business
4. Seller's residence
5. In case of specific goods, where they can be found

Q: When should the object be delivered?

A:

1. Stipulated time
2. If there is none, at a reasonable hour.

Q: What are the effects of a sale of goods on installment?

A:

1. Goods must be delivered in full *except* when stipulated
2. When not examined by the buyer – it is not accepted until examined or at least had reasonable time to examine

Q: When is the seller not bound to deliver the thing sold?

A:

1. If the buyer has not paid the price;
2. No period for payment has been fixed in the contract;
3. A period for payment has been fixed in the contract but the buyer has lost the right to make use of the time.

D. DOUBLE SALE

Q: When is there a double sale?

A: There is double sale when the same object of the sale is sold to different vendees.

Note: *Requisites:*

1. *Same* subject matter
2. *Same* immediate seller
3. Two or more *different* buyers
4. Both sales are *valid*

Q: What is the rule on double sale?

A: First in time, priority in right

Note: Rule on Double Sale regarding *immovables*:
GR: Apply Art.1544
XPN: Sale of registered lands – apply Torrens System

Q: What are the rules according to Article 1544 of the Civil Code?

A:

c. *Movable* – Owner who is first to possess in good faith
d. *Immovable* –
   d. First to *register* in good faith
   e. No inscription, first to *possess* in good faith
   f. *No inscription & no possession in good faith* – Person who presents *oldest title* in good faith

E. PROPERTY REGISTRATION DECREE

Q: Ten Forty Realty purchased from Galino a parcel of land. However, the Deed of Sale was not recorded in the Registry of Deeds. Subsequently, Galino sold the same property to Cruz who immediately took possession of the said property. Who has a better right between Ten Forty and Cruz?

A: In the absence of the required registration, the law gives preferential right to the buyer who in good faith is first in possession. The subject property had not been delivered to Ten Forty; hence, it did not acquire possession either materially or symbolically. As between the two buyers, therefore, respondent was first in actual possession of the property. *(Ten Forty Realty & Dev't. Corp. v. Cruz, G.R. No. 151212, Sept. 10, 2003)*

Q: Explain the principle of *prius tempore, potior jure*.

A: Knowledge by the first buyer of the second sale cannot defeat the first buyer's rights except when the second buyer first registers in good faith the second sale. Conversely, knowledge gained by the second buyer of the first sale defeats his rights even if he is first to register, since such knowledge taints his registration with bad faith to merit the protection of Art. 1544 (2nd par.), the second realty buyer must act in good faith in registering his deed of sale. *(Diaz, p. 125)*

Note: Where one sale is absolute and the other is a pacto de retro transaction where the period to redeem has not yet expired, Art. 1544 will not apply. *(Pineda, p. 223)*

Q: Juliet offered to sell her house and lot, together with all the furniture and appliances therein, to Dehlma. Before agreeing to purchase the property, Dehlma went to the Register of Deeds to verify Juliet's title. She discovered that while the property was registered in Juliet's name under the Land Registration Act, as amended by the Property Registration Decree, it was mortgaged to Elaine to secure a debt of P80, 000. Wanting to buy the property, Dehlma told Juliet to redeem the property from Elaine, and gave her an advance payment to be used for purposes of releasing the mortgage on the property. When the mortgage was released, Juliet executed a Deed of Absolute Sale over the property which was duly registered with the Registry of Deeds, and a new TCT was issued in Dehlma's name. Dehlma immediately took possession over the house and lot and the movables therein. Thereafter, Dehlma went to the Assessor's Office to get a new tax declaration under her name. She was surprised to find out that the property was already declared for tax purposes in the name of XYZ Bank which had foreclosed the mortgage on the property before it was sold to her. XYZ Bank was also the purchaser in the foreclosure sale of the property. At that time, the property was still unregistered but XYZ Bank registered the Sheriff's Deed of Conveyance in the day book of the Register of Deeds under Act 3344 and obtained a tax declaration in its name.

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Was Dehlma a purchaser in good faith?

A: Yes, Dehlma is a purchaser in good faith. She learned about the XYZ tax declaration and foreclosure sale only after the sale to her was registered. She relied on the certificate of title of her predecessor-in-interest. Under the Torrens System, a buyer of registered lands is not required by law to inquire further than what the Torrens certificate indicates on its face. If a person proceeds to but it relying on the title, that person is considered a buyer in good faith.

The "priority in time" rule could not be invoked by XYZ Bank because the foreclosure sale of the land in favour of the bank was recorded under Act 3344, the law governing transactions affecting unregistered land, and thus, does not bind the land.

Q: Who as between Dehlma and XYZ Bank has a better right to the house and lot?

A: Between Dehlma and the bank, the former has a better right to the house and lot.

Q: Who owns the movables inside the house?

A: Unless there is a contrary stipulation in the absolute deed of sale, Dehlma owns the movables covered by the Deed of Sale and her ownership is perfected by the execution and delivery of public document of sale. The delivery of the absolute deed of sale is a symbolical delivery of the house and lot, including the contents of the house. This is an obligation to deliver a specific thing, which includes the delivery of the specific thing itself and all of its accessions and accessories even though they may not have been mentioned (Art. 1166, CC). **(2008 Bar Question)**

Q: Does prior registration by the second buyer of a property subject of a double sale confer ownership or preferred right in his favor over that of the first buyer?

A: Prior registration of the disputed property by the second buyer does not by itself confer ownership or a better right over the property. Article 1544 requires that such registration must be coupled with good faith.

Knowledge gained by the first buyer of the second sale cannot defeat the first buyer's rights except where the second buyer registers in *good faith* the second sale *ahead* of the first, as provided by the Civil Code.

Knowledge gained by the second buyer of the first sale defeats his rights even if he is first to register the second sale, since such knowledge taints his prior registration with bad faith (Art. 1544) *(Uraca, et. al v. CA, G.R. No. 115158, Sept. 5, 1997)*

VIII. RISK OF LOSS

Q: When is a thing considered lost?

A: It is understood that the thing is lost when it:

1. perishes, or
2. goes out of commerce, or
3. disappears in such a way that its existence is unknown or cannot be recovered. *(Art. 1189, 2nd par.)*

Q: What is deterioration?

A: Deterioration is the lowering of the value or character of a thing. It normally occurs by reason of ordinary wear and tear. *(Pineda, Credit, p. 20)*

Q: Who bears the risk of loss or deterioration?

A:

BEFORE PERFECTION	*Res perit domino* – Seller is the owner so seller bears risk of loss
AT PERFECTION	*Res perit domino* Contract shall be without any effect – the seller bears the loss since the buyer is relieved of his obligation under the contract
AFTER PERFECTION BUT BEFORE DELIVERY	***Two Views:*** **Paras**: Buyer, except: 1. when object sold consists of fungible goods for a price fixed 2. when seller is guilty of fraud, negligence, default, or violation of contractual terms; or 3. when object sold is generic. ***Tolentino*:** Seller; Deterioration & fruits – Buyer bears loss
AFTER DELIVERY	*Res perit domino* Buyer becomes the owner so buyer bears risk of loss Delivery extinguish ownership vis-a-vis the seller & creates a new one in favor of the buyer

Q: What is the effect of the loss of the thing subject of the contract at the time of sale?

A:

1. *Total loss* – contract is void & inexistent
2. *Partial loss* – buyer may elect between withdrawing from the contract or demanding the remaining part, paying its proportionate price

E. When Ownership is Transferred

See Transfer of Ownership. *p. 247*

IX. DOCUMENTS OF TITLE

Q: What is a Document of Title?

A: A document used in the ordinary course of business in the sale or transfer of goods , as proof of the possession or control of the goods , or authorizing or purporting to authorize the possessor of the document to transfer or receive , either by endorsement or by delivery , goods represented by such document *(Art. 1636).*

Q: What is the purpose of the Documents of Title?

A:

1. Evidence of possession or control of goods described therein
2. Medium of transferring title and possession over the goods described therein without having to effect actual delivery (Villanueva, 2009 ed.)
3. The custody of a negotiable warehouse receipts issued to the order of the owner, or to bearer, is a representation of title upon which bona fide purchasers for value are entitled to rely , despite breaches of t rust or violations of agreement on the part of the apparent owner (Siy Cong Bieng v. HSBC, 56 Phil 598)

Negotiable Documents of Title

Q: What is a Negotiable Document of Title?

A*:* A document of title which states that the goods referred therein will be delivered to the bearer, or to the order of any person named in such document *(Art. 1509, NCC).*

Q: Who may negotiate a Negotiable Document of Title?

A:

1. Owner
2. Person to whom the possession pr custody of the document has been entrusted by the owner
    a. If bailee undertakes to deliver the goods to such person
    b. If document is in such form that it may be negotiated by delivery.

Non-Negotiable Documents of Title

Q: What are Non-negotiable documents of title?

A:

1. They are delivered only to a specified person
2. Carrier will not deliver the goods to any holder of the document or to whom such document may have been endorsed by the consignee
3. Must present the deed of sale or donation in his favour

Q: What are the warranties of seller of documents of title?

A:

1. Genuiness of the Document
2. Legal right to negotiate or transfer
3. No knowledge of fact which would impair the validity or worth of the document
4. Right to transfer Title to the goods and merchantability or fitness for a particular purpose, whenever such warranties would have been implied had the contract transfer the goods without a document.

Rules Regarding Levy and Garnishment of Goods

Q: What does a person to whom a non-negotiable instrument has been transferred but not negotiated, acquire as against the transferor?

A: He acquires:

1. Title to the goods, subject to the terms of any agreement with the transferor;
2. Right to notify the bailee who issued the document of the transfer thereof,

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and thereby to acquire the direct obligation of such bailee to hold possession of the goods for him according to the terms of the document.

Q: How may the transferor's creditor defeat the aforementioned rights of the transferee?

A: Prior to the notification to such bailee by the transferor or transferee of a non-negotiable document of title, the title of the transferee to the goods and the right to acquire the obligation of such bailee may be defeated by the transferor's creditor by the levy of an attachment or execution upon the goods**.** *(Art. 1514, NCC)*

Q: If the goods are delivered to a bailee by the owner or by a person whose act in conveying the title to them to a purchaser in good faith for value and a negotiable instrument was issued for them, can the said goods be attached, garnished or levied upon?

A:

GR: No, the goods cannot be attached, garnished or levied upon while they are in the bailee's possession.

XPN:

1. When the document is first surrendered; or
2. When its negotiation is enjoined.

Note: The bailee shall in no case be compelled to deliver the actual possession of the goods until the document is:

1. Surrendered to him; or
2. Impounded by the court.

(Art. 1519, NCC)

Q: What are the rights of a creditor whose debtor is the owner of a negotiable document of title?

A: He is entitled to such aid from courts of appropriate jurisdiction by:
1. injunction;
2. attaching such document;
3. as regards property which cannot be readily attached or levied upon by ordinary legal process - satisfying the claim by means allowed by law or equity. *(Art. 1520, NCC)*

X. REMEDIES OF AN UNPAID SELLER

A. DEFINITION OF UNPAID SELLER

Q: Who is an unpaid seller?

A: The seller of goods is deemed to be an unpaid seller either:

1. when the whole of the price has not been paid or tendered; or
2. when a bill of exchange or other negotiable instrument has been received as conditional payment, and the condition on which it was received has been broken by reason of the dishonor of the instrument, the insolvency of the buyer, or otherwise.

Note: It includes an agent of the seller to whom the bill of lading has been indorsed, or consignor or agent who has himself paid, or is directly responsible for the price, or any other person who is in the position of a seller.

B. REMEDIES OF UNPAID SELLER

Q: What are the remedies of an Unpaid Seller?

A:

I. Ordinary

1. *Action for Price*
   Exercised when:
   a. ownership has passed to buyer;
   b. price is payable on a day certain
   c. goods cannot readily be resold for reasonable price and Art. 1596 is inapplicable

2. *Action for Damages* – In case of wrongful neglect or refusal by the buyer to accept or pay for the thing sold

II. Special

1. *Possessory Lien* – Seller not bound to deliver if buyer has not paid him the price. It is exercisable only in following circumstances:
   a. goods sold without stipulation as to credit
   b. goods sold on credit but term of credit has expired
   c. buyer becomes insolvent

   Note: When part of goods delivered, may still exercise right on goods undelivered

2. *Stoppage in Transitu*
   Requisites: **I-SENT-U**
   a. **I**nsolvent buyer
   b. Seller must **S**urrender the negotiable document of title, if any
   c. Seller must bear the **E**xpenses of delivery of the goods after the exercise of the right.
   d. Seller must either actually take possession of the goods sold or give **N**otice of his claim to the carrier or other person in possession
   e. Goods must be in **T**ransit
   f. **U**npaid seller

3. *Special Right to Resell the Goods*
   Exercised when:
   a. Goods are perishable,
   b. Stipulated the right of resale in case of default, or
   c. Buyer in default for unreasonable time

4. *Special Right to Rescind*
   Requisites:
   a. Expressly stipulated OR buyer is in default for unreasonable time
   b. Notice needed to be given by seller to buyer

Note: Ownership of goods already with buyer but seller may still rescind; ownership is destroyed even without court intervention but in ordinary sale, need to go to court.

Q: What are the instances when possessory lien is lost?

A:

1. Seller delivers without reserving ownership in goods or right to possess them
2. Buyer or agent lawfully obtains possession of goods
3. Waiver

Note: Seller loses lien when he parts with goods (but still, stoppage in transitu can be exercised)

Q: What is the right of stoppage *in transitu*?

A: The seller may resume possession of the goods at any time while they are in transit, and he will then become entitled to the same rights in regard to the goods as he would have had if he had never parted with the possession. *(Art. 1530, NCC)*

Q: When are goods considered to be in transit?

A:

1. After delivery to a carrier or other bailee and before the buyer or his agent takes delivery of them; and
2. If the goods are rejected by the buyer, and the carrier or other bailee continues in possession of them. *(Art. 1531, par. 1)*

Q: When are goods deemed to be no longer in transit?

A:

1. After delivery to the buyer or his agent
2. If the buyer/agent obtains possession of the goods at a point before the destination originally fixed;
3. If the carrier or the bailee acknowledges that he holds the goods in behalf of the buyer/ his agent;
4. If the carrier or bailee wrongfully refuses to deliver the goods to the buyer or his agent. *(Villanueva, p. 181)*

XI. PERFORMANCE OF CONTRACT

A. SALE OF PERSONAL PROPERTY

RULES ON SALE OF PERSONAL PROPERTY

INSTALLMENT SALES LAW

Q: What is the Installment Sales Law?

A: Commonly known as the Recto Law. It is embodied in Art. 1484 of the NCC which provides for the remedies of a seller in the contracts of sale of personal property by installments.

Note: Art. 1484 of the NCC incorporates the provisions of Act No. 4122 passed by the Philippine Legislature on Dec. 9, 1939, known as the "Installment Sales Law" or the "Recto Law," which then amended Art. 1454 of the Civil Code of 1889.

Q: To what does the Recto Law apply?

A: This law covers contracts of sale of personal property by installments *(Act No. 4122)*. It is also applied to contracts purporting to be leases of personal property with option to buy, when the lessor has deprived the lessee of the possession or enjoyment of the thing. *(PCI Leasing and Finance Inc. v. Giraffe- X Creative Imaging, Inc., G.R. No. 142618, July 12, 2007)*

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Q: What are the alternative remedies in case of sale of personal property in installments?

A:

1. *Specific Performance:* Exact fulfillment should the buyer fail to pay

   GR: If availed of, the unpaid seller cannot anymore choose other remedies;

   XPN: if after choosing, it has become impossible, rescission may be pursued

2. *Rescission:* Cancel the sale if buyer fails to pay 2 or more installments

   Deemed chosen when:
   a. Notice of rescission is sent
   b. Takes possession of subject matter of sale
   c. Files action for rescission

3. *Foreclosure:* Foreclose on chattel mortgage if buyer fails to pay 2 or more installments

   GR: Actual foreclosure is *necessary* to bar recovery of balance
   - Extent of barring effect: purchase price

   XPN: Mortgagor refuses to deliver property to effect foreclosure; expenses incurred in attorneys fees, etc.

Q: When the lessor of the property chose to deprive the lessee of the subject personal property, can the former recover any unpaid rentals from the latter?

A: In choosing, through replevin, to deprive the respondent of possession of the leased equipment, the petitioner waived its right to bring an action to recover unpaid rentals on the said leased items.

B. SALE OF REAL PROPERTY

RULES ON SALE OF REAL PROPERTY

REALTY INSTALLMENT BUYER ACT

Q: What is the Realty Installment Buyer Act?

A: Commonly known as the "Maceda Law." It is embodied in R.A. 6552 which provides for certain protection to particular buyers of real estate payable on installments. The law declares as "public policy to protect buyers of real estate on installment payments against onerous and oppressive conditions.

Note: The purpose of the law is to protect buyers in installment against oppressive conditions.

Q: What are the transactions/sale covered by the Maceda Law?

A: The law involves the s*ale of immovables on installment (Maceda Law, R.A. 6552).*

1. *Coverage:* Residential Real Estate *(Villanueva, p. 431)*
2. *Exclude*:
   a. Industrial lots
   b. Commercial buildings (and commercial lots by implication)
   c. Sale to tenants under agrarian laws

Q: What are the rights granted to buyers?

A:

1. Buyer paid *at least 2 years installment*
   a. Pay w/o interest the balance within grace period of 1 month for every year of installment payment. Grace period to be exercised once every 5 years.
   b. When no payment – cancelled; buyer entitled to 50% of what he has paid + 5% for every year but not exceeding 90% of payments made

   Note: Cancellation to be effected 30 days from notice & upon payment of cash surrender value.

2. Buyer paid *less than 2 years installment*
   a. Grace period is not less than 60 days from due date
   b. Cancellation if failure to pay w/in 60 days grace
   c. 30 days notice before final cancellation

   Note: buyer can still pay w/in the 30 days period with interest.

Q: What are the other rights granted to a buyer?

A:

1. Sell or assign rights to another
2. Reinstate contract by updating within 30 days before and cancellation
3. Deed of Sale to be done by notarial act

4. Pay full installment in advance the balance of price anytime w/o interest
5. Have full payment annotated in certificate of title

Note: Applies to contracts even before the law was enacted. Stipulation to the contrary is void

Q: What are the so-called "Maceda" and "Recto" laws in connection with sales on installments? Give the most important features on each law.

A: The Maceda Law (R.A. 6552) is applicable to sales of immovable property on installments. The most important features are:

1. After having paid installments for at least two years, the buyer is entitled to a mandatory grace period of one month for every year of installment payments made, to pay the unpaid installments without interest.

   If the contract is cancelled, the seller shall refund to the buyer the cash surrender value equivalent to fifty percent (50%) of the total payments made, and after five years of installments, an additional five percent (5%) every year but not to exceed ninety percent (90%) of the total payments made.

2. In case the installments paid were less than 2 years, the seller shall give the buyer a grace period of not less than 60 days. If the buyer fails to pay the installments due at the expiration of the grace period, the seller may cancel the contract after 30 days from receipt by the buyer of the notice of cancellation or demand for rescission by notarial act. (*Rillo v. CA, G.R. No. 125347 June 19,* 1997)

The Recto Law (Art.1484) refers to sale of movables payable in installments and limiting the right of seller, in case of default by the buyer, to one of three remedies:

1. Exact fulfillment;
2. Cancel the sale of two or more installments have not been paid;
3. Foreclose the chattel mortgage on the things sold, also in case of default of two or more installments, with no further action against the purchaser. (**1999 Bar Question)**

Q: Bernie bought on installment a residential subdivision lot from DEVLAND. After having faithfully paid the installments for 48 months, Bernie discovered that DEVLAND had failed to develop the subdivision in accordance with the approved plans and specifications within the time frame in the plan. He thus wrote a letter to DEVLAND informing it that he was stopping payment. Consequently, DEVLAND cancelled the sale and wrote Bernie, informing him that his payments are forfeited in its favor.

1. **Was the action of DEVLAND proper? Explain.**
2. **Discuss the rights of Bernie under the circumstances.**
3. **Supposing DEVLAND had fully developed the subdivision but Bernie failed to pay further installments after 4 years due to business reverses. Discuss the rights and obligations of the parties.**

A:

1. Assuming that the land is a residential subdivision project under P.D. No. 957 (The Subdivision and Condominium Buyers Protective Decree), DEVLAND's action is not proper because under Section 23 of said Decree, no installment payment shall be forfeited to the owner or developer when the buyer, after due notice, desists from further payment due to the failure of the owner-developer to develop the subdivision according to the approved plans and within the time limit for complying with the same.

2. Under the same Section of the Decree, Bernie may, at his option, be reimbursed the total amount paid including amortization interests but excluding delinquency interests at the legal rate. He may also ask the Housing and Land Use Regulatory Board to apply penal sanctions against DEVLAND consisting of payment of administrative fine of not more than P20.000.00 and/or imprisonment for not more than 20 years.

3. Under R.A. No. 6552 (Maceda Law), DEVLAND has the right to cancel the contract but it has to refund Bernie the cash surrender value of the payments on the property equivalent to 50% of the total payments made. **(2005 Bar Question**)

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XII. WARRANTIES

Q: What is a warranty?

A: A statement or representation made by the seller of goods, as part of the contract of sale, having reference to the character, quality, or title, of the goods, and by which he promises or undertakes to insure that certain facts are or shall be as he then represents.

Note: May either be express or implied.

Q: What is the effect of a breach of warranty?

A: Buyer may:

1. *Refuse* to proceed with the contract; or
2. *Proceed* with the contract; waive the condition.

Note: If the condition is in the nature that it should happen, the non-performance may be treated as a *breach of warranty.*

Q: What are the kinds of warranties? Distinguish.

A:

i. Express
ii. Implied

A. EXPRESS WARRANTIES

Q: What are express warranties?

A: Any affirmation of fact or any promise by the seller relating to the thing if the natural tendency of such affirmation or promise is to induce the buyer to purchase the same, and if the buyer purchases the thing relying thereon. *(Art. 1546)*

Q: What are the requisites of express warranties?

A: AIR

1. It must be an **A**ffirmation of fact relating to the subject matter of sale
2. Natural tendency is to **I**nduce buyer to purchase subject matter
3. Buyer purchases the subject matter **R**elying thereon

Q: What is the liability of the seller for breach of express warranties?

A: The seller is liable for damages. *(Villanueva, p. 249)*

B. IMPLIED WARRANTIES

Q: What are implied warranties?

A: Warranties *deemed included* in all contracts of sale by operation of law. (Art. 1547)

1. *Warranty that seller has right to sell* – refers to consummation stage. Not applicable to sheriff, auctioneer, mortgagee, pledge

2. *Warranty against eviction*

   Requisites: **JPENS**
   a. Buyer is **E**victed in whole or in part from the subject matter of sale
   b. Final **J**udgment
   c. Basis of eviction is a right **P**rior to sale or act imputable to seller
   d. Seller has been **S**ummoned in the suit for eviction at the instance of buyer; or made 3rd party defendant through 3rd party complaint brought by buyer
   e. **N**o waiver on the part of the buyer

   Note: For eviction – *disturbance in law* is required and not just *trespass in fact*.

3. *Warranty against encumbrances* (non-apparent)

   Requisites:
   a. immovable sold is encumbered with non-apparent burden or servitude not mentioned in the agreement
   b. nature of non-apparent servitude or burden is such that it must be presumed that the buyer would not have acquired it had he been aware thereof

   XPN: warranty not applicable when non-apparent burden or servitude is recorded in the Registry of Property – *unless* there is expressed warranty that the thing is free from all burdens & encumbrances

4. *Warranty against Hidden Defects*

   Requisites: **HENNAS**
   a. Defect is *important or **S**erious*
      i. The thing sold is unfit for the use which it is intended
      ii. Diminishes its fitness for such use or to such an extent that

the buyer would not have acquired it had he been aware thereof

b. Defect is ***H****idden*
c. Defect ***E****xists* at the time of the sale
d. Buyer gives ***N****otice* of the defect to the seller within reasonable time
e. ***A****ction for rescission or reduction of the price* is brought within the proper period
   i. 6 months – from delivery of the thing sold
   ii. Within 40 days – from the delivery in case of animals
f. There must be ***N****o waiver of warranty* on the part of the buyer.

Q: When is implied warranty not applicable?

A: ASAP

1. "**A**s is and where is" sale
2. Sale of **s**econd hand articles
3. Sale by virtue of **a**uthority in fact or law
4. Sale at **p**ublic auction for tax delinquency

C. EFFECTS OF WAIVER OF IMPLIED WARRANTIES

Q: What are the effects of waiver of an implied warranty?

A:

1. Seller in bad faith & there is waiver against eviction –*void*
2. When buyer w/o knowledge of a particular risk, made general renunciation of warranty – is *not a waiver but merely limits liability* of seller in case of eviction
3. When buyer with knowledge of risk of eviction assumed its consequences & made a waiver – *seller not liable* (applicable only to waiver of warranty against eviction)

WARRANTY AGAINST EVICTION

Q: What is a warranty against eviction?

A: In a contract of sale, unless a contrary intention appears, there is an implied warranty on the part of the seller that when the ownership is to pass, and that the buyer shall from that time have and enjoy the legal and peaceful possession of the thing. *(Art. 1547, 1st paragraph)*

Q: What is covered by a warranty against eviction?

A: It covers eviction by a final judgment based on a right prior to the sale or an act imputable to the vendor, the vendee is deprived of the whole or of a part of the thing purchased.

The vendor shall answer for the eviction even though nothing has been said in the contract on the subject. *(Art. 1548, NCC)*

Q: What is the effect of a breach of warranty against eviction?

A: The buyer shall have the right to demand the seller:

1. The return of the value which the thing sold had at the time of the eviction, be it greater or lesser than the price of the sale
2. The income or fruits, if he has been ordered to deliver them to the party who won the suit against him
3. The costs of suit which caused the eviction, and, in a proper case, those of suit brought against the vendor for the waranty
4. The expenses of contract if buyer has paid them
5. The damages and interests and ornamental expenses if sale was made in bad faith.

Note: Vendor is liable for any hidden defect even if he is not aware. (Caveat Venditor)

Purchaser must be aware of the title of the vendor. (Caveat Emptor)

Q: What are the rights of buyer in case of partial eviction?

A:

1. Restitution (with obligation to return the thing w/o other encumbrances than those which it had when he acquired it)
2. Enforcement of warranty against eviction *(Paras, p. 153 and Art. 1556)*

WARRANTY AGAINST HIDDEN DEFECT

Q: What is a hidden defect?

A: A hidden defect is one which is unknown or could not have been known to the buyer. *(Diaz, p. 145)*

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Note: *Seller* does not warrant patent defect; *Caveat emptor* (buyer beware)

Q: What is a redhibitory defect?

A: It is a defect in the article sold against which defect the seller is bound to warrant. The vice must constitute an imperfection, a defect in its nature, of certain importance; and a minor defect does not give rise to redhibition. *(De Leon, Comments and Cases on Sales and Lease, 2005 ed, p. 318)*

Q: What is a redhibitory defect on animals?

A: If the hidden defect of animals, even in case a professional inspection has been made, should be of such a nature that expert knowledge is not sufficient to discover it, the defect shall be considered as redhibitory.

Q: When is the sale of animal void?

A: The sale is *void if animal is*:

1. Suffering from contagious diseases;
2. Unfit for the use or service for which they were purchased as indicated in the contract

Q: When is a vendor responsible for hidden defects?

A: If the hidden defects which the thing sold may have:

1. Render it unfit for the use for which it is intended, or
2. Diminish its fitness for such use to such an extent that, had the vendee been aware thereof, he would not have acquired it or would have given a lower price for it. *(Art. 1561)*

Q: Up to what extent does the seller warrant against hidden defects?

A: The seller is responsible to the vendee for any hidden faults or defects in the thing sold, even though he was not aware thereof.

Q: When is the seller not answerable for the defects of the thing sold?

A:

1. For patent defects or those which are visible, or
2. Even for those which are not visible if the buyer is an expert who, by reason of his trade or profession, should have known them *(Art. 1561*), or
3. If the contrary has been stipulated, and the vendor was not aware of the hidden faults or defects in the thing sold. *(Art. 1566)*

Q: What is the effect of a breach of warranty against hidden defects?

A: It would depend on whether the seller had knowledge of such defect and whether there has been a waiver of the warranty.

1. *If the thing should be lost in consequence of the hidden faults, and seller was aware of them* – he shall:
   a. bear the loss,
   b. return the price and
   c. refund the expenses of the contract with damages

2. *If the thing is lost and seller was not aware of the hidden faults* – he shall:
   a. return the price and interest
   b. reimburse the expenses of the contract which the buyer might have paid, but *not* for damages. *(Villanueva, Law on Sales,2004 ed, pp. 548-549)*

Q: What are the remedies of the buyer in case of sale of things with hidden defects?

A: The vendee may elect between:

1. Withdrawing from the contract, or
2. Demanding a proportionate reduction of the price, with damages in either case.

Q: Is there a waiver of warranty against hidden defects when the lessee inspected the premises and pushed through with the contract?

A: Yes. Under Arts. 1561 and 1653 of the Civil Code, the lessor is responsible for warranty against hidden defects, but he is not answerable for patent defects or those, which are visible. Jon de Ysasi admitted on cross-examination that he inspected the premises three or four times before signing the lease contract. During his inspection, he noticed the rotten plywood on the ceiling, which in his opinion was caused by leaking water or termites. Yet, he decided to go through with the lease agreement. Hence, respondents cannot be held liable for the alleged warranty against hidden defects. *(Jon and Marissa De Ysasi v. Arturo and Estela Arceo, G.R. No. 136586, Nov. 22, 2001)*

IMPLIED WARRANTIES IN CASE OF SALE OF GOODS

Q: What are the specific implied warranties in sale of goods?

A:

1. *Warranty of fitness*

   GR: No implied warranty

   XPN:
   a. Buyer manifests to the seller the particular purpose for which the goods are required; and
   b. Buyer relies upon the seller's skill or judgment

2. *Warranty of merchantability* – That goods are reasonably fit for the general purpose for which they are sold.

CAVEAT EMPTOR

Q: What does the principle of caveat emptor mean?

A: It literally means, 'Let the buyer beware'. The rule requires the purchaser to be aware of the supposed title of the vendor and one who buys without checking the vendor's title takes all the risks and losses consequent to such failure. *(Agcaoili, p. 184)*

Q: In what particular sale transactions does caveat emptor apply?

A:

1. Sales of animals *(Art. 1574)*
2. Double sales *(Art. 1544)*
3. In sheriff's sales *(Art. 1570)*
4. Tax sales *(Art. 1547, last paragraph)*

Note: In the above sales, there is no warranty of title or quality on the part of the seller. The purchaser who buys without checking the title of the vendor is assuming all risks of eviction.

In sheriff's sales, the sheriff does not guarantee the title to real property and it is not incumbent upon him to place the buyer in possession of such property. *(Pineda sales, p. 275)*

Q: Is caveat emptor applicable in sales of registered land?

A: No. The purchaser of a registered land under the Torrens system is merely charged with notice of the burdens and claims on the property which are inscribed on the face of certificate of title. *(Pineda sales, p. 275)*

Q: Does caveat emptor apply in judicial sales?

A: Yes. The purchaser in a judicial sale acquires no higher or better title or right than that of the judgment debtor. If it happens that the judgment debtor has no right, interest, or lien on and to the property sold, the purchaser acquires none. *(Pineda sales, p. 280)*

D. REMEDIES IN CASE OF BREACH OF WARRANTY

Q: What are the remedies of the buyer in case of breach of warranty?

A:

1. *Accept* goods & set up breach of warranty by way of recoupment in diminution or extinction or the price.
2. *Accept* goods & maintain action against seller for damages
3. *Refuse* to accept goods & maintain action against seller for damages
4. *Rescind* contract of sale & refuse to receive goods/return them when already received.

Q: Are the remedies of the buyer in case of breach of warranty absolute?

A: No. The vendee's remedies against a vendor with respect to the warranties against hidden defects of or encumbrances upon the thing sold are not limited to those prescribed in Article 1567 where the vendee, in the case of Arts. 1561, 1562, 1564, 1565 and 1566, may elect either to withdraw from the contract or demand a proportionate reduction of the price, with damages in either case.

The vendee may also ask for the annulment of the contract upon proof of error or fraud, in which case the ordinary rule on obligations shall be applicable. Under the law on obligations, responsibility arising from fraud is demandable in all obligations and any waiver of an action for future fraud is void. Responsibility arising from negligence is also demandable in any obligation, but such liability may be regulated by the courts, according to the circumstances.

The vendor could likewise be liable for *quasi-delict* under Article 2176 of the Civil Code, and an action based thereon may be brought by the vendee. While it may be true that the pre-existing contract between the parties may, as a general

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rule, bar the applicability of the law on *quasi-delict*, the liability may itself be deemed to arise from *quasi-delict*, i.e., the acts which breaks the contract may also be a *quasi-delict*. *(Coca-Cola Bottlers Philippines, Inc. v. CA, G.R. No. 110295, Oct. 18, 1993)*

Q: What are the instances when the buyer cannot rescind the sale in case there is a breach of warranty?

A:

1. *If he knew* of the breach of warranty
2. *If he fails to return* or offer to return goods to seller in substantially as good condition as they were at time ownership was transferred
3. *If he fails to notify* the seller within a reasonable time of his election to rescind

E. CONDITION VIS-À-VIS WARRANTY

Q: What is the effect of non-fulfillment of a condition?

A: *If imposed on the perfection of contract* – prevents the juridical relation itself from coming into existence

The other party may:

1. Refuse to proceed with the contract
2. Proceed w/ contract, waiving the performance of the condition

Q: What is the difference between a condition and a warranty?

A:

CONDITION	WARRANTY
Purports to the existence of obligation	Purports to the performance of obligation
Must be stipulated to form part of the obligation	*Need not be stipulated;* may form part of obligation by provision of law
May attach itself to obligation of seller to deliver possession & transfer	Relates to the subject matter itself or to obligation of the seller as to the subject matter of the sale

XIII. BREACH OF CONTRACT

A. REMEDIES OF THE SELLER

Note: see Recto and Maceda Law (*XI. Performance of Contract*) *p. 258*

B. REMEDIES OF THE BUYER

Q: What are the remedies of the buyer?

A:

I. Immovables in general
   1. Disturbed in possession or with reasonable grounds to fear disturbance – Suspend payment
   2. In case of subdivision or condo projects – If real estate developer fails to comply with obligation according to approved plan:
      a. Rescind
      b. Suspend payment until seller complies

II. Movables
   1. Failure of seller to deliver – Action for specific performance without giving the seller the option of retaining the goods on payments of damages
   2. Breach of seller's warranty – The buyer may, at his election, avail of the following remedies:
      a. Accept goods & set up breach of warranty by way of recoupment in diminution or extinction or the price.
      b. Accept goods & maintain action against seller for damages
      c. Refuse to Accept goods & maintain action against seller for damages
      d. Rescind contract of sale & refuse to receive goods/return them when already received.

Note: When the buyer has claimed and been granted a remedy in any of these ways, no other remedy can thereafter be granted, without prejudice to the buyer's right to rescind, even if previously he has chosen specific performance when fulfillment has become impossible. *(Villanueva, p. 389 in relation with Art. 1191, NCC)*

   3. Disturbed in possession or with reasonable grounds to fear disturbance – Suspend payment

XIV. EXTINGUISHMENT OF SALE

A. CAUSES OF EXTINGUISHMENT

Q: What are the causes for extinguishment of sale?

A: A contract of sale is extinguished by:

1. Same causes as all other obligations, namely:
   a. Payment or performance
   b. Loss of the thing due
   c. Condonation or remission of the debt
   d. Confusion or merger of the rights of creditor and debtor
   e. Compensation
   f. Novation
   g. Annulment
   h. Rescission
   i. Fulfillment of resolutory condition
   j. prescription
2. Causes stated in the preceding articles;
3. Conventional Redemption; or
4. Legal redemption

B. REDEMPTION

Q: What is redemption?

A: It is a mode of extinguishment wherein the seller has the right to redeem or repurchase the thing sold upon return of the price paid.

Q: What are the kinds of redemption?

A:

1. Legal
2. Conventional

Q: Should the right to redeem be incorporated in every contract of sale?

A: The right of the vendor to redeem/ repurchase must appear in the same instrument. However, parties may stipulate on the right of repurchase in a separate document but in this case, it is valid only between the parties and not against third persons. *(Pineda, p. 333)*

Q: What is the difference between pre-emption and redemption?

A:

PRE-EMPTION	REDEMPTION
Arises before sale	Arises after sale
Rescission inapplicable	There can be rescission of original sale
Action is directed against prospective seller	Action is directed against buyer

B. PERIOD OF REDEMPTION

Q: What is the period of redemption?

A:

1. No period agreed upon – 4 years from date of contract
2. When there is agreement – should not exceed 10 years; *but* if it exceeded, valid only for the first 10 years.
3. When period to redeem has expired & there has been a previous suit on the nature of the contract – seller still has 30 days from final judgment on the basis that contract was a sale with pacto de retro:

   Rationale: no redemption due to erroneous belief that it is equitable mortgage which can be extinguished by paying the loan.

4. When period has expired & seller allowed the period of redemption to expire – seller is at fault for not having exercised his rights so should not be granted a new period

Note: Tender of payment is sufficient but it is not in itself a payment that relieves the seller from his liability to pay the redemption price.

Q: When does period of redemption begin to run?

A:

1. Right of legal pre-emption or redemption shall be exercised *within 30 days from written notice by the buyer* – deed of sale not to be recorded in Registry of Property *unless* accompanied by affidavit that buyer has given notice to redemptioners

2. W*hen there is actual knowledge, no need to give written notice;* period of redemption begins to run from actual knowledge

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D. EXERCISE OF THE RIGHT TO REDEEM

Q: Is written notice mandatory for the right of redemption to commence?

A: Yes, the notice must be in writing stating the execution of the sale and its particulars. It may be made in a private or public document. *(Pineda, p. 400)*

Q: Is there a prescribed form for an offer to redeem?

A: There is no prescribed form for an offer to redeem to be properly effected. Hence, it can either be through a formal tender with consignation of the redemption price within the prescribed period. What is paramount is the availment of the fixed and definite period within which to exercise the right of legal redemption.

Note: Art. 1623 does not prescribe any distinctive method for notifying the redemptioner.

Q: Is tender of payment necessary for redemption to take effect?

A: Tender of payment is not necessary; offer to redeem is enough.

Q: What is the effect of failure to redeem?

A: There must be judicial order before ownership of real property is consolidated to the buyer a retro.

TRUST DE SON TORT

Q: What is a trust de son tort?

A: It is a trust created by the purchase or redemption of property by one other than the person lawfully entitled to do so and in fraud of the other.

Q: Do constructive trusts arise only out of fraud or duress?

A: No. A constructive trust, otherwise known as a trust ex maleficio, a trust ex delicto, a trust de son tort, an involuntary trust, or an implied trust, is a trust by operation of law which arises contrary to intention and in invitum, against one who, by fraud, actual or constructive, by duress or abuse of confidence, by commission of wrong, or by any form of unconscionable conduct, artifice, concealment, or questionable means, or who in any way against equity and good conscience, either has obtained or holds the legal right to property which he ought not, in equity and good conscience, hold and enjoy. It has been broadly ruled that a breach of confidence, although in business or social relations, rendering an acquisition or retention of property by one person unconscionable against another, raises a constructive trust. It is raised by equity in respect of property, which has been acquired by fraud, *or where, although acquired originally without fraud*, it is against equity that it should be retained by the person holding it. *(Arlegui v. CA G.R. No. 126437, Mar. 6, 2002)*

Note: "A constructive trust is substantially an appropriate remedy against unjust enrichment. It is raised by equity in respect of property, which has been acquired by fraud, *or where, although acquired originally without fraud*, it is against equity that it should be retained by the person holding it." (*76 Am. Jur. 2d, Sec. 222, p. 447 cited in Arlegui v. CA G.R. No. 126437, Mar. 6, 2002*)

D. CONVENTIONAL REDEMPTION

Q: What is conventional redemption?

A: Seller reserved the right to repurchase thing sold coupled with obligation to return price of the sale, expenses of contract & other legitimate payments and the necessary & useful expenses made on the thing sold

Note: Right to repurchase must be reserved at the time of perfection of sale. *(Pineda, p. 333)*

E. LEGAL REDEMPTION

Q: What is legal redemption?

A: Also referred to as "retracto legal", it is the right to be subrogated upon the same terms and conditions stipulated in the contract, in the place of one who acquires the thing by purchase or by dation in payment or by other transaction whereby ownership is transmitted by onerous title.

Q: What are the instances of legal redemption?

A:

1. Sale of a co-owner of his share to a stranger *(Art. 1620)*
2. When a credit or other incorporeal right in litigation is sold *(Art. 1634)*
3. Sale of an heir of his hereditary rights to a stranger *(Art. 1088)*
4. Sale of adjacent rural lands not exceeding 1 hectare *(Art. 1621)*

5. Sale of adjacent small urban lands bought merely for speculation *(Art. 1622)*

Q: Are there other instances when the right of legal redemption is also granted?

A:

1. Redemption of homesteads
2. Redemption in tax sales
3. Redemption by judgment debtor
4. Redemption in extrajudicial foreclosure
5. Redemption in judicial foreclosure of mortgage

Q: When does legal redemption period begin to run?

A: The right of legal redemption shall not be exercised except within 30 days from the notice in writing by the prospective seller, or seller, as the case may be. The deed of sale shall not be recorded in the Registry of Property unless accompanied by an affidavit of the seller that he has given written notice thereof to all possible redemptioners. *(Art. 1623, NCC)*

C. EQUITABLE MORTGAGE

Q: What is an equitable mortgage?

A: One which lacks the proper formalities, form or words or other requisites prescribed by law for a mortgage, but shows the intention of the parties to make the property subject of the contract as security for a debt and contains nothing impossible or contrary to law

Q: What are the essential requisites of equitable mortgage?

A:

1. Parties entered into a contract of sale
2. Their intention was to secure an existing debt by way of a mortgage.

Q: What is the rule on the presumption of an equitable mortgage?

A: A sale with conventional redemption is deemed to be an equitable mortgage in any of the following cases: *(Art. 1602)* **AIR-STAR**

1. Price of the sale with right to repurchase is unusually **I**nadequate
2. Seller **R**emains in possession as lessee or otherwise
3. Upon or after the expiration of the right to repurchase **A**nother instrument extending the period of redemption or granting a new period is executed
4. Purchaser **R**etains for himself a part of the purchase price
5. Seller binds himself to pay the **T**axes on the thing sold
6. In any other case where the real intention of the parties is that the transaction shall **S**ecure the payment of a debt or the performance of any other obligation.
7. Art. 1602 shall also apply to a contract purporting to be an **A**bsolute sale. *(Art. 1604)*

Note: In case of doubt in determining whether it is equitable mortgage or sale a retro (with right of repurchase); it shall be construed as equitable mortgage.

Remedy is reformation.
An equitable mortgage is one which although lacking in some formality, or form or words, or other requisites demanded by a statute, nevertheless reveals the intention of the parties to charge real property as security for a debt, and contains nothing impossible or contrary to law.

Q: Does inadequacy of price constitute proof sufficient to declare a contract as one of equitable mortgage?

A: Mere inadequacy of the price is not sufficient. The price must be grossly inadequate, or purely shocking to the conscience. *(Diaz, p. 186)*

Q: X transferred three parcels of land in favor of Y. The transaction was embodied in two Deeds of Absolute Sale for the price of P240, 000. The titles of said lots were transferred to Y. However, X failed to vacate and turn over the purchased lots. This prompted Y to file an ejectment suit against X. X claimed that the transactions entered between them were not actually sales, but an equitable mortgage. Does the transaction involve an absolute sale or an equitable mortgage of real property?

A: It is an absolute sale. Decisive for the proper determination of the true nature of the transaction between the parties is the intent of the parties. There is no conclusive test to determine whether a deed absolute on its face is really a simple loan accommodation secured by a mortgage. To determine whether a deed absolute in form is a mortgage in reality, the court is not limited to the written memorials of the transaction. This is so because the decisive factor in evaluating such agreement is the intention of

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the parties, as shown not necessarily by the terminology used in the contract but by all the surrounding circumstances, such as the relative situations of the parties at that time; the attitudes, acts, conduct, and declarations of the parties; the negotiations between them leading to the deed; and generally, all pertinent facts having a tendency to fix and determine the real nature of their design and understanding. As such, documentary and parol evidence may be submitted and admitted to prove the intention of the parties. *(Sps Austria v. Sps Gonzales, G.R. No. 147321, Jan. 21, 2004)*

Q: Ceballos was able to borrow from Mercado certain sum of money and as security, she executed a Deed of Real Estate Mortgage over the subject property. The said mortgage was not registered. Ceballos defaulted. Thereafter, a Deed of Absolute Sale was executed by Ceballos and her husband whereby the mortgaged property was sold to Mercado for the price of P16, 500.00. Ceballos offered to redeem the property from Mercado for the price of P30, 000.00 but the latter's wife refused since the same was already transferred in their names by virtue of the Deed of Absolute Sale. As a consequence, Ceballos filed the case contending that the Contract should be declared as an equitable mortgage. Is the contention of Ceballos correct?

A: No. The instances when a contract, regardless of its nomenclature, may be presumed to be an equitable mortgage are enumerated in Art. 1602 of the Civil Code. Here, none of those circumstances were present. The original transaction was a loan. Ceballos failed to pay the loan; consequently, the parties entered into another agreement — the assailed, duly notarized Deed of Absolute Sale, which superseded the loan document. Ceballos had the burden of proving that she did not intend to sell the property and that Mercado did not intend to buy it; and that the new agreement did not embody the true intention of the parties. *(Ceballos v. Intestate Estate of the Late Emigdio Mercado, G.R. No. 155856, May 28, 2004)*

Q: Eulalia was engaged in the business of buying and selling large cattle. In order to secure the financial capital she advanced for her employees (*biyaheros*) she required them to surrender TCT of their properties and to execute the corresponding Deeds of Sale in her favor. Domeng Bandong was not required to post any security but when Eulalia discovered that he incurred shortage in cattle procurement operation, he was required to execute a deed of sale over a parcel of land in favor of Eulalia. She sold the property to her grandniece Jocelyn who thereafter instituted an action for ejectment against the Spouses Bandong. To assert their right, Spouses Bandong filed an action for annulment of sale against Eulalia and Jocelyn alleging that there was no sale intended but only equitable mortgage for the purpose of securing the shortage incurred by Domeng in the amount of P70, 000.00 while employed as *"biyahero"* by Eulalia. Was the deed of sale between Domeng and Eulalia a contract of sale or an equitable mortgage?

A: It is an equitable mortgage. In executing the said deed of sale, Domeng and Eulalia never intended the transfer of ownership of the subject property but to burden the same with an encumbrance to secure the indebtedness incurred by Domeng on the occasion of his employment with Eulalia. The agreement between Dominador and Eulalia was not avoided in its entirety so as to prevent it from producing any legal effect at all. Instead, the said transaction is an equitable mortgage, thereby merely altering the relationship of the parties from seller and buyer, to mortgagor and mortgagee, while the subject property is not transferred but subjected to a lien in favor of the latter. *(Sps. Raymundo, et al. v. Sps. Bandong, G.R. No. 171250, Jul. 4, 2007)*

G. DISTINGUISHED FROM OPTION TO BUY

Q: On May 19, 1951, the spouses-sellers executed a public instrument of absolute sale in favor of the buyer for a consideration which is sufficiently adequate. A few days thereafter, the buyers executed in favor of the sellers an option to buy within one year, the property subject of the absolute sale, which option was extended for a month. Prior to the expiration of said one-year period, the buyer sold said property to a third person.

If the spouses-sellers would file an action for reformation of instrument where they seek reformation of the absolute sale into one of equitable mortgage, will said action prosper?

A: No, it will not prosper. If a seller has been granted merely an option to buy (not a right to repurchase) within a certain period, and the price paid by the buyer is adequate, the sale is absolute and cannot be construed nor presumed to be one of equitable mortgage, even if the period within which to exercise the option has been extended.

(Villarica, et. al. v. CA, G.R. L-19196, Nov. 29, 1968)

Note: SC held that in this case, there was no sale *a retro* and that the right of repurchase is not a right granted the seller by the buyer in a separate instrument. Such right is reserved by the vendor in the same instrument of the sale as one of the stipulations in the contract.

Also, once the instrument of absolute sale is executed, the seller can no longer reserve the right of repurchase and any right thereafter granted the seller by the buyer cannot be a right of repurchase but some other rights, like that of an option to buy.

XV. LAW ON SALE OF SUBDIVISION AND CONDOMINIUM (PD 957)

SCOPE OF APPLICATION

Q: Are sales or dispositions of subdivision lots or condominium units prior to the effectivity of the decree exempt from compliance with the requirements stated therein?

A: No. It shall be incumbent upon the owner or developer of the subdivision or condominium project to complete compliance with his or its obligations as provided in the decree within two years from the date of effectivity of the Decree, unless otherwise extended by the Authority or unless an adequate performance bond is filed.

Note: Failure of the owner or developer to comply with the obligations under this and the preceding provisions shall constitute a violation punishable under Sections 38 and 39 of the Decree.

DEFINITION OF TERMS

Q: How is "sale" or "sell" defined under the Decree?

A: Shall include:

1. Every disposition, or attempt to dispose, for a valuable consideration, of a subdivision lot, including the building and other improvements thereof, if any, in a subdivision project or a condominium unit in a condominium project;
2. contract to sell;
3. contract of purchase and sale;
4. exchange;
5. attempt to sell;
6. option of sale or purchase;
7. solicitation of a sale;
8. offer to sell, directly or by an agent, or by a circular, letter, advertisement or otherwise; and
9. a. privilege given to a member of a cooperative, corporation, partnership, or any association and/or
   b. the issuance of a certificate or receipt evidencing or giving the right of participation in, or right to, any land in consideration of payment of the membership fee or dues. (Deemed sale)

Q: How are the terms "buy" and "purchase" defined under the Decree?

A: Shall include any contract to buy, purchase, or otherwise acquire for a valuable consideration a subdivision lot, including the building and other improvements, if any, in a subdivision project or a condominium unit in a condominium project.

Q: What is a subdivision project?

A: A tract or a parcel of land registered under Act No. 496 which is partitioned primarily for residential purposes into individual lots with or without improvements thereon, and offered to the public for sale, in cash or in installment terms.

Note: It shall include all residential, commercial, industrial and recreational areas as well as open spaces and other community and public areas in the project.

Q: What is a subdivision lot?

A: Any of the lots, whether residential, commercial, industrial, or recreational, in a subdivision project.

Q: What is a complex subdivision plan?

A: A subdivision plan of a registered land wherein a street, passageway or open space is delineated on the plan.

Q: What is a condominium project?

A: The entire parcel of real property divided or to be divided primarily for residential purposes into condominium units, including all structures thereon.

Q: What is a condominium unit?

A: A part of the condominium project intended for any type of independent use or ownership, including one or more rooms or spaces located in one or more floors (or part of parts of floors) in a

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building or buildings and such accessories as may be appended thereto.

Q: Define the following terms:

1. **Owner.**
   A: Registered owner of the land subject of a subdivision or a condominium project.

2. **Developer.**
   A: person who develops or improves the subdivision project or condominium project for and in behalf of the owner thereof.

3. **Dealer.**
   A: any person directly engaged as principal in the business of buying, selling or exchanging real estate whether on a full-time or part-time basis.

4. **Broker.**
   A: any person who, for commission or other compensation, undertakes to sell or negotiate the sale of a real estate belonging to another.

5. **Salesman.**
   A: person regularly employed by a broker to perform, for and in his behalf, any or all functions of a real estate broker.

REGISTRATION AND LICENSE TO SELL

Q: Upon what agency is exclusive jurisdiction to regulate real estate trade and business vested?

A: National Housing Authority

Q: What must a registered owner of a parcel of land do if he wishes to convert said property into a subdivision or condominium project?

A: He shall:

1. Submit his subdivision plan to the Authority which shall act upon and approve the same, upon a finding that the plan complies with the Subdivision Standards' and Regulations enforceable at the time the plan is submitted.
2. If the conversion desired involves a condominium project, the same procedure shall be followed except that, in addition, the NHA shall act upon and approve the plan with respect to the building or buildings included in the condominium project in accordance with the National Building Code (R.A. No. 6541).
3. The subdivision plan, as so approved, shall then be submitted to the Director of Lands for approval.
4. In case of complex subdivision plans, court approval shall no longer be required.
5. The condominium plan as likewise so approved, shall be submitted to the Register of Deeds of the province or city in which the property lies and the same shall be acted upon subject to the conditions and in accordance with the procedure prescribed in Section 4 of the Condominium Act (R.A. No. 4726).

Q: Part of the required documentary attachments to the application is a certificate of title to the property which is free from all liens and encumbrances. Does this bar an owner of mortgaged property from engaging in subdivision or condominium project while the mortgage is in force?

A: No. In case any subdivision lot or condominium unit is mortgaged, it is sufficient if the instrument of mortgage contains a stipulation that the mortgagee shall release the mortgage on any subdivision lot or condominium unit as soon as the full purchase price for the same is paid by the buyer.

Q: When is a subdivision or condominium project deemed to be registered?

A: Upon completion of the publication requirement

Note: The fact of such registration shall be evidenced by a registration certificate to be issued to the applicant-owner or dealer.

Re: Publication requirement: This is complied with when the NHA has caused to be published a notice of the filing of the registration statement, at the expense of the applicant-owner or dealer, in two newspapers general circulation, one published in English and another in Pilipino, once a week for two consecutive weeks, reciting that a registration statement for the sale of subdivision lots or condominium units has been filed in the National Housing Authority;

Q: After issuance of the registration certificate, may the owner or dealer already sell subdivision lots or condominium units?

A: No. He must first obtain a license to sell the project within two weeks from the registration of such project.

Q: What is the purpose of the requirement of posting of a performance bonds before a license to sell may be issued?

A: It is to guarantee the construction and maintenance of the roads, gutters, drainage, sewerage, water system, lighting systems, and full development of the subdivision project or the condominium project and the compliance by the owner or dealer with the applicable laws and rules and regulations.

Q: Is a license to sell and performance bond required in all subdivision and condominium projects?

A: No. The following transactions are exempt from said requirements:

1. Sale of a subdivision lot resulting from the partition of land among co-owners and co-heirs.
2. Sale or transfer of a subdivision lot by the original purchaser thereof and any subsequent sale of the same lot.
3. Sale of a subdivision lot or a condominium unit by or for the account of a mortgagee in the ordinary course of business when necessary to liquidate a bona fide debt.

Q: When may a license to sell be suspended?

A:

1. Upon verified complaint by a buyer of a subdivision lot or a condominium unit in any interested party, the Authority may, in its discretion, immediately suspend the owner's or dealer's license to sell pending investigation and hearing of the case.
2. The NHA may *motu proprio* suspend the license to sell if, in its opinion, any information in the registration statement filed by the owner or dealer is or has become misleading, incorrect, inadequate or incomplete or the sale or offering for a sale of the subdivision or condominium project may work or tend to work a fraud upon prospective buyers.

Q: When may a license to sell or registration of a subdivision or condominium project be revoked?

A: The Authority may, motu proprio or upon verified complaint filed by a buyer of a subdivision lot or condominium unit, revoke the registration of any subdivision project or condominium project and the license to sell any subdivision lot or condominium unit in said project by issuing an order to this effect, with his findings in respect thereto, if upon examination into the affairs of the owner or dealer during a hearing, it shall appear there is satisfactory evidence that the said owner or dealer:

1. is insolvent; or
2. has violated any of the provisions of this Decree or any applicable rule or regulation of the Authority, or any undertaking of his/its performance bond; or
3. has been or is engaged or is about to engage in fraudulent transactions; or
4. has made any misrepresentation in any prospectus, brochure, circular or other literature about the subdivision project or condominium project that has been distributed to prospective buyers; or
5. is of bad business repute; or
6. does not conduct his business in accordance with law or sound business principles.

Note: Where the owner or dealer is a partnership or corporation or an unincorporated association, it shall be sufficient cause for cancellation of its registration certificate and its license to sell, if any member of such partnership or any officer or director of such corporation or association has been guilty of any act or omission which would be cause for refusing or revoking the registration of an individual dealer, broker or salesman.

DEALERS, BROKERS AMD SALESMEN

Q: What is the duration of the registration of dealers, brokers and salesmen?

A: On the thirty-first day of December of each year.

However, in the case of salesmen, their registration shall also cease upon termination of their employment with a dealer or broker.

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Note: Renewal of registration for the succeeding year shall be granted upon written application therefore made not less than thirty nor more than sixty days before the first day of the ensuing year and upon payment of the prescribed fee, without the necessity of filing further statements or information, unless specifically required by the Authority.

All applications filed beyond said period shall be treated as original applications.

Q: When can there be refusal or revocation of registration as dealers, brokers or salesmen?

A: Such registration may be refused or revoked by the NHA if, after reasonable notice and hearing, it shall determine that such applicant or registrant has:

1. violated any provision of this Decree or any rule or regulation made hereunder; or
2. made a material false statement in his application for registration; or
3. been guilty of a fraudulent act in connection with any sale of a subdivision lot or condominium unit; or
4. demonstrated his unworthiness to transact the business of dealer, broker, or salesman, as the case may be.

Note: In case of charges against a salesman, notice thereof shall also be given the broker or dealer employing such salesman.

Pending hearing of the case, the Authority shall have the power to order the suspension of the dealer's, broker's, of salesman's registration; provided, that such order shall state the cause for the suspension.

The suspension or revocation of the registration of a dealer or broker shall carry with it all the suspension or revocation of the registration of all his salesmen.

WARRANTIES OF THE OWNER OR DEVELOPER

Q: In making advertisements, does the owner or developer make warranties relative to such?

A: Yes.

1. Advertisements that may be made through newspaper, radio, television, leaflets, circulars or any other form about the subdivision or the condominium or its operations or activities must reflect the real facts and must be presented in such manner that will not tend to mislead or deceive the public.
2. The owner or developer shall answerable and liable for the facilities, improvements, infrastructures or other forms of development represented or promised in brochures, advertisements and other sales propaganda disseminated by the owner or developer or his agents and the same shall form part of the sales warranties enforceable against said owner or developer, jointly and severally.

Note: Failure to comply with these warranties shall also be punishable in accordance with the penalties provided for in this Decree.

Q: Within what period must the owner or developer construct and provide the facilities, improvements, infrastructures and other forms of development, including water supply and lighting facilities, which are offered and indicated in the approved subdivision or condominium plans, brochures, prospectus, printed matters, letters or in any form of advertisement?

A:

GR: Within one year from the date of the issuance of the license for the subdivision or condominium project

XPN: Such other period of time as may be fixed by the Authority.

ALTERATION IN APPROVED SUBDIVISION PLAN

Q: What is the rule if the owner desires to make alterations in the approved subdivision plan?

A:

GR: No owner or developer shall change or alter the roads, open spaces, infrastructures, facilities for public use and/or other form of subdivision development as contained in the approved subdivision plan and/or represented in its advertisements

XPN: If he has obtained the permission of the Authority and the written conformity or consent of the duly organized homeowners association, or in the absence of the latter, by the majority of the lot buyers in the subdivision.

RIGHTS AND REMEDIES OF A BUYER

Q: May payment made by a buyer be forfeited in favor of the owner or developer in case the buyer desists from further payment due to the failure of the owner or developer to develop the subdivision or condominium project according to the approved plan within the time limit provided for such? What is the buyer's remedy in this case?

A: No, such forfeiture is not allowed. Such buyer may, at his option, be reimbursed the total amount paid including amortization interests but excluding delinquency interests, with interest thereon at the legal rate.

Q: Does a defaulting buyer have any right under the Decree?

A: Yes. The rights of the buyer in the event of this failure to pay the installments due for reasons other than the failure of the owner or developer to develop the project shall be governed by Republic Act No. 6552.

Where the transaction or contract was entered into prior to the effectivity of Republic Act No. 6552 on August 26, 1972, the defaulting buyer shall be entitled to the corresponding refund based on the installments paid after the effectivity of the law in the absence of any provision in the contract to the contrary.

Q: What is the owner or developer's obligation in case the lot bought and fully-paid by the buyer is mortgaged?

A: In the event a mortgage over the lot or unit is outstanding at the time of the issuance of the title to the buyer, the owner or developer shall redeem the mortgage or the corresponding portion thereof within six months from such issuance in order that the title over any fully paid lot or unit may be secured and delivered to the buyer in accordance herewith.

Q: May the parties waive compliance with the decree?

A: No. Any condition, stipulation, or provision in contract of sale whereby any person waives compliance with any provision of the Decree or of any rule or regulation issued thereunder shall be void.

TAKE OVER DEVELOPMENT

Q: When can there be a Take-Over Development?

A: The NHA may take over or cause the development and completion of the subdivision or condominium project at the expenses of the owner or developer, jointly and severally, in cases where the owner or developer has refused or failed to develop or complete the development of the project as provided for in the Decree.

Note: The Authority may, after such take-over, demand, collect and receive from the buyers the installment payments due on the lots, which shall be utilized for the development of the subdivision.

XVI. THE CONDOMINIUM ACT (RA 4726)

PRELIMINARIES

Q: What is a condominium?

A: It is an interest in real property consisting of 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.

Note: It may include, in addition, a separate interest in other portions of such real property.

Q: What comprises a real right in condominium?

A: The real right in condominium may be ownership or any other interest in real property recognized by law, on property in the Civil Code and other pertinent laws.

Q: What is a condominium unit?

A: It is a part of the condominium project intended for any type of independent use or ownership, including one or more rooms or spaces located in one or more floors (or part or parts of floors) in a building or buildings and such accessories as may be appended thereto.

Q: What is a condominium project?

A: It is the entire parcel of real property divided or to be divided in condominiums, including all structures thereon,

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Q: What are common areas?

A: The entire project excepting all units separately granted or held or reserved.

Q: What is meant by "to divide" real property?

A: To divide the ownership thereof or other interest therein by conveying one or more condominiums therein but less than the whole thereof.

Q: What is the rule as regards acquisition of ownership over common areas?

A: Transfer or conveyance of a unit or apartment, office or store or other space therein shall include the transfer or conveyance of the undivided interests in the common areas or, in a proper case, the membership or shareholdings in the condominium corporation

Q: Are there any restrictions as regards ownership of condominium units provided under the Condominium Act?

A:

1. *As regards individuals:*
   GR: None.

   XPN: where the common areas in the condominium project are owned by the owners of separate units as co-owners thereof, no condominium unit therein shall be conveyed or transferred to persons other than:
   1. Filipino citizens, or
   2. Corporations at least sixty percent of the capital stock of which belong to Filipino citizens

   XPN to the XPN: in cases of hereditary succession.

2. *As regards corporations:*
   Where the common areas in a condominium project are held by a corporation, no transfer or conveyance of a unit shall be valid if the concomitant transfer of the appurtenant membership or stockholding in the corporation will cause the alien interest in such corporation to exceed the limits imposed by existing laws.

   Note: Whenever the common areas in a condominium project are held by a condominium corporation, such corporation shall constitute the management body of the project.

Q: What are the incidents of a condominium grant?

A: Unless otherwise expressly provided in the enabling or master deed or the declaration of restrictions, the incidents of a condominium grant are as follows:

1. The boundary of the unit granted are the interior surfaces of the perimeter walls, floors, ceilings, windows and doors thereof.

   Note: The following are not part of the unit bearing walls, columns, floors, roofs, foundations and other common structural elements of the building:

   a. lobbies, stairways, hallways, and other areas of common use,
   b. elevator equipment and shafts, central heating,
   c. central refrigeration and central air-conditioning equipment,
   d. reservoirs, tanks, pumps and other central services and facilities,
   e. pipes, ducts, flues, chutes, conduits, wires and other utility installations, wherever located, except the outlets thereof when located within the unit.

2. There shall pass with the unit, as an appurtenance thereof, an exclusive easement for the use of the air space encompassed by the boundaries of the unit as it exists at any particular time and as the unit may lawfully be altered or reconstructed from time to time.

   Note: Such easement shall be automatically terminated in any air space upon destruction of the unit as to render it untenantable.

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

4. A non-exclusive easement for ingress, egress and support through the common areas is appurtenant to each

unit and the common areas are subject to such easements.

5. Each condominium owner shall have the exclusive right to paint, repaint, tile, wax, paper or otherwise refinish and decorate the inner surfaces of the walls, ceilings, floors, windows and doors bounding his own unit.

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

7. **GR:** Each condominium owner has also the absolute right to sell or dispose of his condominium.
   XPN: If 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;

Q: May common areas be divided through judicial partition?

A:

GR: Common areas shall remain undivided, and there shall be no judicial partition thereof.

XPN: Where several persons own condominiums in a condominium project, an action may be brought by one or more such persons for partition thereof by sale of the entire project, as if the owners of all of the condominiums in such project were co-owners of the entire project in the same proportion as their interests in the common areas:

Note: However, a partition shall be made only upon a showing that:

1. three years after damage or destruction to the project which renders material part thereof unit for its use prior thereto, the project has not been rebuilt or repaired substantially to its state prior to its damage or destruction, or

2. damage or destruction to the project has rendered one-half or more of the units therein untenantable and that condominium owners holding in aggregate more than thirty percent interest in the common areas are opposed to repair or restoration of the project; or

3. the project has been in existence in excess of fifty years, that it is obsolete and uneconomic, and that condominium owners holding in aggregate more than fifty percent interest in the common areas are opposed to repair or restoration or remodeling or modernizing of the project; or

4. the project or a material part thereof has been condemned or expropriated and that the project is no longer viable, or that the condominium owners holding in aggregate more than seventy percent interest in the common areas are opposed to continuation of the condominium regime after expropriation or condemnation of a material portion thereof; or

5. the conditions for such partition by sale set forth in the declaration of restrictions, duly registered in accordance with the terms of the Act, have been met.

Q: What is the rule regarding issuance of certificate of title where the enabling or master deed provides that the land included within a condominium project are to be owned in common by the condominium owners therein?

A: The Register of Deeds may, at the request of all the condominium owners and upon surrender of all their "condominium owner's" copies, cancel the certificates of title of the property and issue a new one in the name of said condominium owners as pro-indiviso co-owners thereof.

Q: How are deeds, declarations or plans for a condominium project construed?

A:

1. Liberally, to facilitate the operation of the project

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2. Provisions shall be presumed to be independent and severable.

DECLARATION OF RESTRICTIONS

Q: When should a declaration of restrictions be registered and what is the effect of such?

A: The owner of a project shall, prior to the conveyance of any condominium therein, register a declaration of restrictions relating to such project.

Such restrictions shall constitute a lien upon each condominium in the project, and shall insure to and bind all condominium owners in the project.

> **Note:** Such liens, unless otherwise provided, may be enforced by any condominium owner in the project or by the management body of such project.

Q: What should a declaration of restrictions provide?

A: The declaration of restrictions shall provide for the management of the project by anyone of the following management bodies:

1. a condominium corporation,
2. an association of the condominium owners,
3. a board of governors elected by condominium owners, or
4. a management agent elected by the owners or by the board named in the declaration.
5. voting majorities,
6. quorums,
7. notices,
8. meeting date, and
9. other rules governing such body or bodies.

Q: What may a declaration of restrictions provide?

A: Such declaration of restrictions, among other things, may also provide:

1. As to any such management body;
   a. For the powers thereof, including power to enforce the provisions of the declarations of restrictions;
   b. For maintenance of insurance policies, insuring condominium owners against loss by fire, casualty, liability, workmen's compensation and other insurable risks, and for bonding of the members of any management body;
   c. Provisions for maintenance, utility, gardening and other services benefiting the common areas, for the employment of personnel necessary for the operation of the building, and legal, accounting and other professional and technical services;
   d. For purchase of materials, supplies and the like needed by the common areas;
   e. For payment of taxes and special assessments which would be a lien upon the entire project or common areas, and for discharge of any lien or encumbrance levied against the entire project or the common areas;
   f. For reconstruction of any portion or portions of any damage to or destruction of the project;
   g. The manner for delegation of its powers;
   h. For entry by its officers and agents into any unit when necessary in connection with the maintenance or construction for which such body is responsible;
   i. For a power of attorney to the management body to sell the entire project for the benefit of all of the owners thereof when partition of the project may be authorized under Section 8 of the Condominium Act, which said power shall be binding upon all of the condominium owners regardless of whether they assume the obligations of the restrictions or not.
2. The manner and procedure for amending such restrictions: *Provided*, That the vote of not less than a majority in interest of the owners is obtained.
3. For independent audit of the accounts of the management body;
4. For reasonable assessments to meet authorized expenditures, each condominium unit to be assessed separately for its share of such expenses in proportion (unless otherwise provided) to its owners fractional interest in any common areas;

5. For the subordination of the liens securing such assessments to other liens either generally or specifically described;
6. For conditions, other than those provided for in Sections 8 and 13 of the Act, upon which partition of the project and dissolution of the condominium corporation may be made.

Note: Such right to partition or dissolution may be conditioned upon:

a. failure of the condominium owners to rebuild within a certain period;
b. specified inadequacy of insurance proceeds;
c. specified percentage of damage to the building;
d. a decision of an arbitrator; or
e. upon any other reasonable condition.

Q: What is the duty of the Register of Deeds as regards this declaration of restrictions?

A: The Register of Deeds shall enter and annotate the declaration of restrictions upon the certificate of title covering the land included within the project, if the land is patented or registered under the Land Registration or Cadastral Acts.

POWERS OF AND RESTRICTIONS UPON MANAGEMENT BODY

Q: What are the restrictions imposed by the law upon corporations which is also the management body of the condominium project?

A: The restrictions are as follows:

1. The corporate purposes of such a corporation shall be limited to the:
   a. holding of the common areas, either in ownership or any other interest in real property recognized by law,
   b. management of the project, and
   c. to such other purposes as may be necessary, incidental or convenient to the accomplishment of said purposes.
2. The articles of incorporation or by-laws of the corporation shall not contain any provision contrary to or inconsistent with the:
   a. provisions of the Act;
   b. enabling or master deed; or
   c. declaration of restrictions of the project.

Q: May the management body may acquire and hold, for the benefit of the condominium owners, tangible and intangible personal property and dispose of the same by sale or otherwise?

A: Yes, unless otherwise provided for by the declaration of restrictions.
Note: The beneficial interest in such personal property shall be owned by the condominium owners in the same proportion as their respective interests in the common areas.

A transfer of a condominium shall transfer to the transferee ownership of the transferor's beneficial interest in such personal property.

CONDOMINIUM CORPORATIONS

Q: What is a condominium corporation?

A: A corporation specially formed for the purpose, in which the holders of separate interest 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.

Note: As regards title to the common areas, including the land, or the appurtenant interests in such areas, these may be held by a condominium corporation.

Q: What is the term of a condominium corporation?

A: Co-terminus with the duration of the condominium project, the provisions of the Corporation Law to the contrary notwithstanding.

Membership

Q: What are the rules regarding membership in a condominium corporation?

A: Membership in a condominium corporation, regardless of whether it is a stock or non-stock corporation, shall not be transferable separately from the condominium unit of which it is an appurtenance.

Note: When a member or stockholder ceases to own a unit in the project in which the condominium corporation owns or holds the common areas, he shall automatically cease to be a member or stockholder of the condominium corporation.

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Q: May a condominium corporation sell, exchange, lease or otherwise dispose of the common areas owned or held by it in the condominium project?

A:

GR: During its existence, it cannot do so.

XPN: If authorized by the affirmative vote of all the stockholders or members.

Q: Is the so called appraisal right under the Corporation Code available to stockholders or members of a condominium corporation?

A:

GR: Not available. The law provides that "the by-laws of a condominium corporation shall provide that a stockholder or member shall not be entitled to demand payment of his shares or interest in those cases where such right is granted under the Corporation Law xxx"

XPN: If said stockholder or member consents to sell his separate interest in the project to the corporation or to any purchaser of the corporation's choice who shall also buy from the corporation the dissenting member or stockholder's interest.

Note: In case of disagreement as to price, the procedure set forth in the appropriate provision of the Corporation Law for valuation of shares shall be followed.

The corporation shall have two years within which to pay for the shares or furnish a purchaser of its choice from the time of award.

All expenses incurred in the liquidation of the interest of the dissenting member or stockholder shall be borne by him.

Dissolution and Liquidation

Q: What is the effect of involuntary dissolution of a condominium corporation for any of the causes provided by law?

A:

1. The common areas owned or held by the corporation shall, by way of liquidation, be transferred *pro-indiviso* and in proportion to their interest in the corporation to the members or stockholders thereof, subject to the superior rights of the corporation creditors.

   Note: Such transfer or conveyance shall be deemed to be a full liquidation of the interest of such members or stockholders in the corporation.

2. After such transfer or conveyance, the provisions of this Act governing undivided co-ownership of, or undivided interest in, the common areas in condominium projects shall fully apply.

Q: When may voluntary dissolution of a condominium corporation be allowed?

A: A condominium corporation may be voluntarily dissolved only:

1. when the enabling or the master deed of the project in which the condominium corporation owns or holds the common area is revoked; and
2. upon a showing that:
   a. three years after damage or destruction to the project in which the corporation owns or holds the common areas, which damage or destruction renders a material part thereof unfit for its use prior thereto, the project has not been rebuilt or repaired substantially to its state prior to its damage or destruction; or

   b. damage or destruction to the project has rendered one-half or more of the units therein untenantable and that more than thirty percent of the members of the corporation, if non-stock, or the shareholders representing more than thirty percent of the capital stock entitled to vote, if a stock corporation, are opposed to the repair or reconstruction of the project, or

   c. the project has been in existence in excess of fifty years, that it is obsolete and uneconomical, and that more than fifty percent of the members of the corporation, if non-stock, or the stockholders representing more than fifty percent of the capital stock entitled to vote, if a stock corporation, are opposed to the

repair or restoration or remodeling or modernizing of the project; or

d. the project or a material part thereof has been condemned or expropriated and that the project is no longer viable, or that the members holding in aggregate more than seventy percent interest in the corporation, if non-stock, or the stockholders representing more than seventy percent of the capital stock entitled to vote, if a stock corporation, are opposed to the continuation of the condominium regime after expropriation or condemnation of a material portion thereof; or

e. the conditions for such a dissolution set forth in the declaration of restrictions of the project in which the corporation owns or holds the common areas, have been met.

Note: action for voluntary dissolution is that under Rule 104 of the Rules of Court.

Q: May the members or stockholders of a condominium corporation dissolve such corporation?

A: Yes, by the affirmative vote of all the stockholders or members thereof at a general or special meeting duly called for the purpose: *Provided*, that all the requirements of Section 62 of the Corporation Law are complied with.

Q: What is the consequence of voluntary dissolution of a condominium corporation?

A:

GR: The corporation shall be deemed to hold a power of attorney from all the members or stockholders to sell and dispose of their separate interests in the project.
XPN: Unless otherwise provided for in the declaration of restrictions

Q: How is a condominium corporation liquidated?

A: Liquidation of the corporation shall be effected by a sale of the entire project as if the corporation owned the whole thereof, subject to the rights of the corporate and of individual condominium creditors.

Q: What should the Court do if, in an action for partition of a condominium project or for the dissolution of condominium corporation on the ground that the project or a material part thereof has been condemned or expropriated, the Court finds that the conditions provided for in the Condominium Act or in the declaration of restrictions have not been met?

A: The Court may decree a reorganization of the project, declaring which portion or portions of the project shall continue as a condominium project, the owners thereof, and the respective rights of said remaining owners and the just compensation, if any, that a condominium owner may be entitled to due to deprivation of his property.

Note: Upon receipt of a copy of the decree, the Register of Deeds shall enter and annotate the same on the pertinent certificate of title.

Assessment, Notice thereof and Lien Created

Q: If real property has been divided into condominiums, how will it be assessed for taxation purposes?

A: Each condominium separately owned shall be separately assessed, for purposes of real property taxation and other tax purposes to the owners thereof and the tax on each such condominium shall constitute a lien solely thereon.

Q: Who should pay for an assessment upon any condominium made in accordance with a duly registered declaration of restrictions?

A: It is an obligation of the owner thereof at the time the assessment is made.

Q: What are the rules as regards the notice of assessment?

A: The notice:

1. is to be registered with the Register of Deeds of the city or province where such condominium project is located.
2. shall state the following:
   a. amount of such assessment and such other charges thereon as may be authorized by the declaration of restrictions,
   b. a description of the condominium unit against which same has been assessed, and

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c. the name of the registered owner thereof.

3. Such notice shall be signed by an authorized representative of the management body or as otherwise provided in the declaration of restrictions.

Q: What is the effect if the management body causes a notice of assessment to be registered with the register of deeds?

A: The amount of any such assessment plus any other charges thereon, such as interest, costs (including attorney's fees) and penalties, as such may be provided for in the declaration of restrictions, shall be and become a lien upon the condominium assessed.

Note: Effect of payment: Upon payment of said assessment and charges or other satisfaction thereof, the management body shall cause to be registered a release of the lien.

Q: What are the rules as regards the lien created in case of unpaid assessments, etc?

A:

GR: Such lien shall be superior to all other liens registered subsequent to the registration of said notice of assessment

XPNs:

1. real property tax liens are superior;
2. when declaration of restrictions provide for the subordination thereof to any other liens and encumbrances.

Q: What is the rule as regards enforcement of the lien?

A: Such liens may be enforced in the same manner provided for by law for the judicial or extra-judicial foreclosure of mortgages of real property.

Q: Can the management body bid in the foreclosure sale based on the lien for unpaid assessments?

A:

GR: No, the management body shall have power to bid at foreclosure sale.

XPN: Unless otherwise provided for in the declaration of restrictions,

Note: The condominium owner shall have the same right of redemption as in cases of judicial or extra-judicial foreclosure of mortgages.

Q: What are the rules as regards labor performed or services or materials furnished?

A:

1. *If with the consent of or at the request of a condominium owner or his agent or his contractor or subcontractor:*
   GR: it shall not be the basis of a lien against the condominium of any other condominium owner
   XPN: such other owners have expressly consented to or requested the performance of such labor or furnishing of such materials or services.

   Note: Such express consent shall be deemed to have been given by the owner of any condominium in the case of emergency repairs of his condominium unit.

2. *If performed or furnished for the common areas and if duly authorized by the management body provided for in a declaration of restrictions governing the property:* shall be deemed to be performed or furnished with the express consent of each condominium owner.

Q: How may an owner of any condominium remove his condominium from a lien against two or more condominiums or any part thereof?

A: By payment to the holder of the lien of the fraction of the total sum secured by such lien which is attributable to his condominium unit.

SUCCESSION

I. GENERAL PROVISIONS

A. DEFINITION/WHAT IS TRANSMITTED

Q: What is succession?

A: Succession is a mode of acquisition by virtue of which the property, rights and obligations to the extent of the value of the inheritance of a person, are transmitted through his death to another or others either by his will or by operation of law. *(Art. 774)*

Q: What is the basis of succession?

A:

1. *Negative Theories* – refer to those which deny to succession any rational basis and which have been formulated by the individualistic and socialistic schools.
   a. There can be no testamentary succession because these rights are merely the creations of the will of a person who is devoid of any will, being already dead.
   b. There can be no intestate succession because the community of property in the family can only be conceived of as long as the latter exists.

   Note: According to this view, the properties of the deceased are converted into *res nullius* which, to the judgment of others, fall under the ownership of the first occupant who generally is the relative nearest in degree and, to the judgment of others, belong to the state.

2. *Positive Theories* – Those which base succession on the right of property. According to this view, succession is based on individual ownership and the power of the owner to dispose of the same.
   a. If an owner can freely dispose of his properties with such conditions as he may deem convenient, then it follows that he can distribute the same after his death since the will is nothing more than the instrument of alienation subject to the condition of death.
   b. Those which base succession on the right of family

   Note: Under this theory the basis of succession is a sort of family co-ownership with the result that legal succession is the normal procedure and testamentary succession, the exception or one of the limitations.

3. *Eclectic Theory* – According to this view, the basis of testamentary succession is the right of ownership but the basis of legal or intestate succession is the ties of blood and the right of family co-ownership. *(Caguioa, p. 2)*

Q: What are the characteristics of succession?

A:

1. It is a mode of acquisition;
2. Only property, rights and obligations to the extent of the value of the inheritance are transmitted;
3. The transmission takes place only at the time of death;
4. The transmission takes place either by will or by operation of law.

Q: What are the requisites of succession?

A: DATE

1. **D**eath of decedent;
2. **A**cceptance of the inheritance by the successor;
3. **T**ransmissible estate;
4. **E**xistence and capacity of successor, designated by decedent or law.

B. SUCCESSION OCCURS AT THE MOMENT OF DEATH

Q: When are rights to succession transmitted?

A: The rights to succession are transmitted from the moment of the death of the decedent. *(Art. 777)*

Note: Although, the provision states that the rights are transmitted upon the death of a person, it is rather vested upon death.

Q: What is transferred by death in succession?

A: Only the property, rights and obligations not extinguished by death are transmitted to the heirs.

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Q: Are after-acquired properties of the decedent transmissible?

A:

GR: Property acquired during the period between the execution of the will and the death of the testator is not included.

XPN: When a contrary intention expressly appears in the will. *(Art. 793)*
Note: Applies only to legacies and devises and not to institution of heirs.

The inheritance of a person includes not only the property and the transmissible rights and obligations existing at the time of his death, but also those which have accrued thereto since the opening of the succession. *(Art. 781)*

Q: What is the general rule as regards transmissibility of rights?

A: If the right or obligation is *intuitu personae*, it is intransmissible, otherwise it is transmissible.

Note: *Intuitu personae* means strictly personal.

Q: What rights are not transferred by the death of a person?

A:

1. Purely personal rights;
2. Rights which are made intransmissible by stipulation of the parties;
3. Rights which are intransmissible by provision of law.

Note: All other rights are transmissible to the heirs upon the death of a person.

Q: What are the rights that are extinguished by death?

A: PAPULP

1. Partnership rights
2. Agency
3. Personal easements
4. Usufruct
5. Legal support
6. Parental authority

Q: What obligations or contracts are not transmitted by death?

A: Those which are made intransmissible:

1. by their *nature*;
2. by *stipulation*; or
3. by provision of *law (Art. 1311)*

Note: This is an exception to the general rule that contracts or obligations are binding upon the parties, their heirs or successors-in-interest.

Q: What are the obligations that are extinguished by death?

A:

1. *Monetary* obligations are *not* transmitted to the heirs.
2. *Non-monetary* obligations are transmitted to the heirs.

Q: May heirs be held liable for the debts or obligations of the decedent?

A:

GR: No. It is the estate that pays for the debts left by the decedent.

XPN: It is true that the heirs assume liability for the debts of the decedent, although it is limited only to the extent of the value of the inheritance received. *(Estate of Hemady v. Luzon Surety Co., G.R. No. L-8437, Nov. 28, 1956)*

Note: The heirs are not personally liable with their own individual properties for the monetary obligations/debts left by the decedent.

Q: Is a contract of guaranty extinguished by death?

A: No, because a contract of guaranty does not fall in any of the exceptions under Art. 1311 (relativity of contracts). A guarantor's obligation is basically to pay the creditor if the principal debtor cannot pay. Payment does not require any personal qualifications. The personal qualifications become relevant only at the time the obligation is incurred but not so at the time of discharge or fulfillment of the obligation. *(Estate of Hemady v. Luzon Surety Co., Inc., G.R. No. L-8437, Nov. 28, 1956)*

Q: The wife died while the action for legal separation was pending. Her children, however, wanted to continue the action. They ask that they be allowed to substitute their deceased mother, arguing that the action should be allowed to continue. Decide.

A: The children cannot be substituted in an action for legal separation upon the death of their mother who filed the case. *An action for legal separation is purely personal* on the part of the innocent spouse because such an action affects

the marital status of the spouses. *(Bonilla v. Barcena, G.R. No. L-41715, June 18, 1976)*

Q: Fortunata died while her action for quieting of title of parcels of land was pending. Does her death result in the extinguishment of the action or may her heirs substitute her in the case?

A: Her heirs may substitute her because the action is not extinguished by her death. Since the rights to the succession are transmitted from the moment of the death of the decedent, from that moment, the heirs become the absolute owners of his property, subject to the rights and obligations of the decedent, and they cannot be deprived of their rights thereto except by the methods provided for by law. *The right of the heirs to the property of the deceased vests in them upon such death, even before judicial declaration of their being heirs in the testate or intestate proceedings.*

When she died, her claim or right to the parcels of land in litigation was not extinguished by her death but was transmitted to her heirs upon her death. Her heirs have thus acquired interest in the properties in litigation and became parties in interest in the case. *(Bonilla v. Barcena, et al., G.R. No. L-41715, June 18, 1976)*

Q: Can the heir enter into a contract of sale, conveyance or any disposition pertaining to his interest in the inheritance even pending the settlement of the estate?

A: Yes, because his hereditary share/interest in the decedent's estate is transmitted or vested immediately from the moment of decedent's death. This is, however, subject to the outcome of the settlement proceedings.

Q: What is the nature of the transaction entered into by the heir pertaining to his hereditary share in the estate pending the settlement of the estate?

A: The effect of such transaction is to be deemed limited to what is ultimately adjudicated to the heir. However, this *aleatory* character of the contract does not affect the validity of the transaction.

Q: May an heir convey future inheritance?

A: No contract may be entered into upon a future inheritance except in cases expressly authorized by law *(Art. 1347).*

C. KINDS OF SUCCESSORS

Q: What are the kinds of heirs?

A:

1. *Voluntary* – called to succeed either by virtue of the will of the testator:
   a. Devisee
   b. Legatee

   Note: An heir is one who succeeds to the whole (universal) or aliquot part of the estate. Devisee or legatee is one who succeeds to definite, specific, and individualized properties.

2. *Compulsory* – called by law to succeed to a portion of the testator's estate known as legitime.

3. *Legal or Intestate* – by operation of law through intestate succession.

Q: Who are devisees and legatees?

A: *Devisees* are persons to whom gifts of real property are given by virtue of a will. On the other hand, *Legatees are* persons to whom gifts of personal property are given by virtue of a will

Q: What are the distinctions between heirs and legatees/devisees?

A:

HEIRS	DEVISEES OR LEGATEES
As to representation of deceased's juridical person	
Represent the juridical personality of the deceased and acquire their rights, with certain exceptions to his obligations	Never represent the personality of the deceased no matter how big the legacy or the devise is
Determinability of amount of inheritance	
Inherit an undetermined quantity whose exact amount cannot be known *a priori* and which cannot be fixed until the inheritance is liquidated	Are always given a determinate thing or a fixed amount
Extent of successional right	
Succeed to the remainder of the properties after all the debts and all the legacies and devices have been paid or given	Only succeed to the determinate thing or quantity which is mentioned in the legacy or devise
As to when they exist	

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Can exist whether the succession be testate or intestate	Only in testamentary succession
Effect of preterition	
The institution of an heir is entirely annulled	The legacies and devises remain valid insofar as they are not inofficious.
Effect of defective disinheritance	
In case of imperfect or defective disinheritance, the institution of an heir is annulled to the extent that the legitimes are impaired.	The legacies and devisees remain valid insofar as they are not inofficious.

Q: Suppose a person is named to succeed to an entire estate. The estate, however, consists of only one parcel of land. Is he an heir or a devisee?

A: It depends on the manner of his designation in the will. Here, because he is called to inherit the entire estate, he is an heir.

Q: In what instances do the distinctions between heirs and devisees/legatees become significant?

A:

1. Preterition
2. Imperfect/defective disinheritance
3. After-acquired property
4. Acceptance or repudiation of successional rights

Q: What are the classifications of compulsory heirs?

A:

1. *Primary compulsory heirs* – They are not excluded by the presence of other compulsory heirs.

   E.g. legitimate children, surviving spouse
2. *Secondary compulsory heirs* – Those who succeed only in default of the primary compulsory heirs.
   E.g. legitimate ascendants

3. *Concurring compulsory heirs* – They get their legitimes together with the primary or secondary heirs. Neither excludes primary or secondary heirs, nor each other.
   E.g. Surviving spouse and illegitimate children and descendants.

Q: Who are the compulsory heirs?

A:

1. Legitimate children and descendants *(LCD)*
2. Legitimate parents and ascendants *(LPA)*
3. Surviving spouse *(SS)*

Legitimate children and descendants (LCD)

Q: Is an adopted child a compulsory heir?

A: "Legitimate children" includes adopted children and legitimated children.

Under R.A. 8552 or the Domestic Adoption Law adopted children have the same rights granted to the legitimate children. Adopted children, for all intents and purposes are considered as legitimate children.

Hence, the adopted children can already exclude legitimate parents/ascendants.

Legitimate parents and ascendants (LPA)

Q: When do legitimate parents and ascendants inherit?

A: Legitimate parents and ascendants inherit in default of legitimate children and descendants. They are secondary compulsory heirs.

Q: Is the presence of illegitimate children of the decedent exclude the LPA?

A: No. Legitimate parents and ascendants concur with the illegitimate children of the decedent.

However, if the decedent is himself illegitimate, his illegitimate children exclude the illegitimate parents and ascendants.

Surviving spouse (SS)

Q: Can a common law spouse be a compulsory heir?

A: No. There must be valid marriage between the decedent and the surviving spouse. If the marriage is null and void, the surviving spouse cannot inherit.

Q: How can the heirs of the decedent use the nullity of marriage to prevent the surviving spouse from inheriting?

A: The heirs can raise the issue of nullity of the marriage in the same proceeding for the

settlement of the estate. This is allowed because a marriage that is null and void can be collaterally attacked.

However, in case of voidable marriages, if the marriage is not annulled before the decedent died, the surviving spouse can still inherit

Reason: Voidable marriages can only be attacked in a direct proceeding, *i.e.* annulment proceeding.

Note: The surviving spouse is not a compulsory heir of his/her parent-in-law.

Separation-in-fact will not disqualify the surviving spouse from getting his/her legitime, regardless of his/her guilt.

Illegitimate children

Note: Under the Family Code, there is no more distinction between acknowledged natural children and illegitimate children. They are all considered as illegitimate.

Compulsory heirs of a person who is illegitimate:

1. Legitimate children and descendants;
2. Illegitimate children and descendants;
3. In default of the foregoing, illegitimate parents only;
4. Surviving spouse.

Q: In what ways may compulsory heirs inherit?
A: Compulsory heirs inherit either:
1. in their own right; or
2. by right of representation

II. TESTAMENTARY SUCCESSION

WILLS

1. IN GENERAL

A. DEFINITION AND CHARACTERISTICS

Q: What is a will?

A: A *will* is an act whereby a person is permitted, with the formalities prescribed by law, to control to a certain degree the disposition of his estate, to take effect after his death. *(Art. 783)*

Q: What are the characteristics of a will?

A: A will is:
1. *Statutory right* – The making of a will is only a statutory not a natural right. Hence, a will should be subordinated to both the law and public policy.
2. *Unilateral act* – No acceptance by the transferees is needed during the lifetime of the testator.
3. *Strictly personal act* – The disposition of property is solely dependent upon the testator.
4. *Ambulatory* – A will is essentially revocable during the lifetime of the testator.
5. *Free from vices of consent* – A will must have been executed freely, knowingly and voluntarily, otherwise, it will be disallowed.
6. *Individual act* – A will must be executed only by one person. A joint will is not allowed in the Philippines.

   Note: Mutual wills – Separate wills although containing reciprocal provisions are not prohibited, subject to the rule on *disposicion captatoria*.
7. *Solemn or formal act* – A will is executed in accordance with formalities prescribed by law.

(1) PERSONAL ACT; NON-DELEGABILITY OF WILL-MAKING

Q: What is meant by "strictly personal act"?

A: Under *Art. 784,* it means that in the making of a will, preparation thereof cannot be wholly or partially entrusted to a third person or made through an agent or attorney. It refers to the disposition of property. This is so because the essence of making a will is the disposition of property, hence, it cannot be delegated to another.

Q: Can the testator delegate to a third person the power to determine whether or not a testamentary disposition is to be operative?

A: No. It is not only the delegation which is void; the testamentary disposition whose effectivity will depend upon the determination of the third person is the one that cannot be made. Hence, the disposition itself is void. *(Art. 787; Tolentino, p. 33)*

Q: What cannot be delegated to the discretion of a third person?

A: The following cannot be delegated to a third person because they comprise the disposing power of the testator:
1. Duration or efficacy of designation of heirs, legatees, or devisees.

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2. Determination of the portions which the heirs are to receive when referred to by name.
3. Determination as to whether or not a disposition is to be operative. *(Art. 785)*

Q: What, on other hand, may be entrusted to third persons?
A:

1. Distribution of specific property or sums of money that the testator may leave in general to specified classes or causes
2. Designation of the persons, institutions or establishments to which such property or sums are to be given or applied. *(Art. 786)*

Reason: Here, there is really no delegation because the testator has already set the parameters required by law, namely:

a. The specification of property or sums of money
b. The specification of classes or causes.

In effect, the third person will only be carrying out the will of the testator as determined by these parameters.

(2) RULES OF CONSTRUCTION AND INTERPRETATION/LAW GOVERNING FORMAL VALIDITY

Q: How should the provisions of a will be construed?

A: As a general rule, the language of a will should be liberally construed and as much as possible, the intention of the testator should be given effect.

In case of doubt, that interpretation by which the disposition is to be operative shall be preferred.
Reason: Testacy is preferred over intestacy. *(Art. 791)*

Q: What are the rules in the construction of Wills?
A:

1. Words of the will are to be taken in their ordinary and grammatical sense unless there is a clear intention to use them in another sense can be gathered, and that can be ascertained. *(Art. 790)*

2. Technical words are to be taken in their technical sense, unless:
   a. The context clearly indicates a contrary intention or
   b. It satisfactorily appears that he was unacquainted with such technical sense. *(Ibid.)*

3. The invalidity of one of several dispositions contained in a will does not result in the invalidity of the other dispositions unless it is to be presumed that the testator would not have made such other dispositions if the first invalid disposition had not been made. *(Art. 792)*

4. Every devise or legacy shall cover all the interest in the property disposed of unless it clearly appears from the will that he intended to convey a less interest. *(Art. 794)*

Q: What are the kinds of ambiguities in a will?
A:

1. *Latent ambiguities* – Ambiguities which are not apparent on the face of a will but to circumstances outside the will at the time the will was made.

   E.g.
   a. If it contains an imperfect description of person or property;
   b. A description of which no person or property exactly answers

2. *Patent ambiguities* – Those which are apparent on the face of the will.

   *E.g.*Uncertainty which arises upon the face of the will as to the application of any of its provisions. *(Art. 789)*

Q: What are the steps in resolving the ambiguities?
A:

1. Examine the will itself;
2. Refer to extrinsic evidence or the surrounding circumstances, *except* oral declarations of the testator as to his intention.

   Reason: Because the testator can no longer refute whatever is attributed to him.

2. TESTAMENTARY CAPACITY AND INTENT

Q: Who can make a will?

A: All persons who are not expressly prohibited by law may make a will. (*Art. 796*)

The law presumes capacity to make a will; hence, in order that a person may be disqualified to

make one, he must be expressly prohibited by law.

Note: The ability as well as the power to make a will must be present at the time of the *execution* of the will.

Supervening incapacity does not invalidate an effective will, nor is the will by an incapable person validated by the supervening of capacity. *(Art. 801)*

Q: What are the requisites of testamentary capacity?

A:

1. At least 18 years of age; and
2. Of sound mind

Note: It is not necessary that the testator be in full possession of all his reasoning faculties, or that his mind be wholly unbroken, unimpaired, or unshattered by disease, injury or other cause.

It shall be sufficient if the testator was able at the time of making the will to know the:

a. nature of the estate to be disposed of;
b. proper objects of his bounty; and
c. character of the testamentary act.

Q: Who are those persons expressly prohibited by law to make a will?

A:

1. Persons of either sex under 18 years of age *(Art. 797)*
2. Persons who are not of sound mind *(Art. 798)*

Q: Is a person suffering from civil interdiction qualified to make a will?

A: Yes. He is deprived only of the power to dispose of his properties through acts *inter vivos* but not through acts *mortis causa.* (*Art. 34, Revised Penal Code; Rabuya, Civil Law Reviewer, p. 527*)

Q: Is a married woman required to obtain the consent of the husband and the authority of the court before she can make a will?

A: No. She can make a will even without the consent of her husband and the authority of the court. (*Art. 802*)

Note: A married woman may dispose of her separate property and her share in the conjugal or absolute community property.

A. AGE REQUIREMENT

Q: Can a person under eighteen years old make a will?

A: No. Persons of either sex under eighteen years old cannot make a will. (*Art. 797*)

Q: When is soundness of the mind required?

A: It is essential only at the time of the making (or execution) of the will. (*Art. 798; Alsua-Betts v. CA, 92 SCRA 332; Rabuya, Civil Law Reviewer, p. 527)*

Q: What is the status of the will if the testator is not of sound mind at the time of its execution?

A: The will is invalid regardless of his state of mind before or after such execution. In other words, the will of an incapable is not validated by the supervening of capacity. (*Art. 801; id.*)

Note: Conversely, if the testator was of sound mind at the time of the making of the will, the will is valid even if the testator should later on become insane and die in that condition. In other words, supervening incapacity does not invalidate an effective will. (*id.*, pp. 527-528)

Q: If there is no proof as to the soundness of the mind of the testator at the time he executed his will, what is the status of his will assuming that he complies with all other requisites for its validity?

A: The will is valid. This is so because generally, in absence of proof to the contrary, the law presumes that every person is of sound mind.

Such presumption of soundness of mind, however, does not arise if the testator was:

1. Publicly known to be insane, one month, or less, before making his will;
2. Under guardianship at the time of the making of the will.

Note: Mere weakness of mind or partial imbecility from disease of body or from age does not necessarily render a person incapable of making a will.

Q: Who has the burden of proving that the testator acted in lucid interval?

A: The person who maintains the validity of the will based on the said ground. (*Rabuya, Civil Law Reviewer, p. 530*)

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Q: When Brenda was a baby, she was accidentally dropped by her mother when her mother saw a cockroach. As a result, she suffered from insanity. When she was in her thirties, she executed a will. After sometime, her brain damage was totally cured. What is the status of the will?

A: Still void. The will of an incapable cannot be validated by supervening capacity. What is important is that the ability, as well as the power to make a will must be present at the time of the execution of the will.

Q: Will your answer be the same if the situation was the reverse – Brenda developed insanity after she executed her will?

A: No. Supervening incapacity does not invalidate an effective will, hence the will is valid.

Q: May an illiterate execute a will?

A:

GR: Yes, an illiterate can make an ordinary or notarial will because a person who does not know how to read and write does not mean he does not understand the language.

XPN: The illiterate cannot make a holographic will.

3. FORM

A. FORMAL VALIDITY RULES

Q: What law governs the forms and solemnities of wills?

A: It is the law of the country where the will was executed that governs the form and solemnities of wills. (*Art. 17, 1st paragraph; Art. 815*)

Q: What are the effects of a will executed by an alien abroad?

A: The will of an alien who is abroad produces effect in the Philippines if made with the formalities prescribed by the law of the place in which he resides, or according to the formalities observed in his country, or in conformity with those which the Civil Code prescribes. (Art. 816)

Q: What are the effects of a will executed by an alien in the Philippines?

A: It shall produce the same effect as if it was executed in the Philippines if it is executed in accordance with the law of the country where he is a citizen or subject, and which might be proved and allowed by the law of his own country. (Art. 817)

Q: Is a joint will executed by a Filipino in a foreign country valid?

A: No. The same holds true even if it is authorized by the law of the country where the joint will was executed. (*Art. 819*)

(1) LAW GOVERNING SUBSTANTIVE VALIDITY

Q: What are the matters mentioned in Article 15 of the New Civil Code which are governed by Philippine laws?

A: 1. family rights and duties
2. status;
3. condition; and
4. legal capacity of persons. (*Art. 15*)

Q: What are the matters pertaining to intestate and testamentary successions which are regulated by the national law of the deceased?

A: 1. Order of succession
2. amount of successional rights
3. intrinsic validity of testamentary provisions
4. capacity to succeed. *(Art. 16; Art. 1039)*

B. COMMON REQUIREMENTS

Q: What are the formal requirements common to both notarial and holographic wills?

A:

1. In writing;
2. In a language or dialect known to the testator.
3.

Note: The object of the solemnities surrounding the execution of wills is to close the door against bad faith and fraud, to avoid substitution of wills and testaments and to guarantee their truth and authenticity.

(1) IN WRITING

Q: Is the rule that every will must be in writing mandatory?

A: Yes. If the will is not in writing, it is void and cannot be probated. (Rabuya, *Civil Law Reviewer,* p. 531)

Note: Philippine laws do not recognize the validity of "nuncupative wills," which are oral wills declared or

dictated by the testator and dependent merely on oral testimony. (*id.*)

Q: In case of a holographic will, what is the requirement for its validity?

A: It must be entirely handwritten by the testator himself. (*Art. 810*)

Q: What are the rules in relation to notarial or attested wills?

A: Notarial or attested will may be:

1. entirely handwritten by a person other than the testator;
2. partly handwritten by the testator himself and partly handwritten by another person;
3. entirely printed, engraved or lithographed; or
4. partly handwritten (whether by testator or another person) and partly printed, engraved or lithographed. (*Rabuya, Civil Law Reviewer, p. 531*)

(2) LANGUAGE/DIALECT REQUIREMENT

C. NOTARIAL WILLS

Q: Is the rule every will must be executed in a language known to the testator mandatory?

A: Yes, otherwise, the will is void. (*Suroza v. Honrado, 110 SCRA 388; id.*)

Q: Is the fact that the will was executed in a language known to the testator required to be stated in the attestation clause?

A: No. This fact can be established by extrinsic evidence or evidence *aliunde.* (Lopez *v. Liboro,* 81 Phil. 429)

Note: It will be presumed that the will was executed in a language or dialect known to the testator if the will was executed in a certain locality and that the testator was a resident of that locality. (*Rabuya*, *Civil Law Reviewer*, p. 532)

Q: Is it presumed that the testator knows the dialect of the locality where he resides?

A: *If the testator resides in a certain locality*, it can be presumed that he knows the dialect or the language in the said locality. *(Abangan v. Abangan, G.R. No. 13431, Nov. 12, 1919*)

Note: The fact that the testator knew the language need not appear on the face of the will. This fact may be proven by extrinsic evidence.

Q: Does this rule apply to witnesses in a notarial or attested will?

A: No. The rule only applies to the testator, whether in notarial or holographic will. Further, *Art. 805* is clear that the attestation clause need not be in the language known to the witnesses. (See *Rabuya, Civil Law Reviewer, supra*)

(1) ARTS. 805-806

Q: What are the formalities in the execution of a notarial will?

A: WESA-PNAN

1. In **W**riting;
2. **E**xecuted in a language or dialect known to the testator;
3. **S**ubscribed by the testator himself or by the testator's name written by some other person in his presence and under his express direction at the end thereof, at the presence of witnesses;
4. **A**ttested to and subscribed by at least 3 credible witnesses in the presence of the testator and of one another;
5. Each and every **P**age must be signed by the testator or by the person requested by him to write his name, and by instrumental witnesses in the presence of each other, on the left margin;
6. Each and every page of the will must be **N**umbered correlatively in letters placed on the upper part of each page;
7. Must contain an **A**ttestation clause, stating the following:
   a. The number of pages of the will,
   b. Fact that the testator signed the will and every page in the presence of witnesses, or caused some other person to write his name under his express direction,
   c. All witnesses signed the will and every page thereof in the presence of the testator and of one another;
8. Must be acknowledged before a **N**otary public.

Q: What is the effect if one or some of the requisites are lacking?

A: Lack of one of the requisites is a fatal defect which will render the will null and void

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Q: What is the rule in cases of omissions in the will?

A: Omissions which can be supplied by an examination of the will itself, without the need of resorting to extrinsic evidence, will not be fatal and, correspondingly, would not obstruct the allowance to probate of the will being assailed.

However, evidence *aliunde* are not allowed to fill a void in any part of the document or supply missing details that should appear in the will itself. They only permit a probe into the will, an exploration into its confines, to ascertain its meaning or to determine the existence or absence of the requisite formalities of law. *(Cañeda v. CA, G.R. No. 103554, May 28, 1993)*

(2) SPECIAL RULES FOR HANDICAPPED TESTATORS

Q: What are the special requirements if the testator is deaf or mute?

A:

1. If the testator is able to read, he must personally read the will; or
2. If the testator is unable to read, he must designate two persons to read it and communicate to him, in some practicable manner, the contents thereof. (Art. 807; see Rabuya, *Civil Law Reviewer*, p. 559)

Note: The law does not require that the persons reading and communicating the contents of the will be the instrumental witnesses. (*id., p. 560*)

Q: What are the special requirements if the testator is blind?

A: The will shall be read to him twice, once by one of the subscribing witnesses, and another time by the notary public before whom the will is acknowledged. (*Art. 808*; *id.)*

Note: Art. 808 applies not only to blind testators but also to those who, for one reason or another, are incapable of reading their wills, either because of poor or defective eye sight or because of illiteracy. (*id.*)

(3) SUBSTANTIAL COMPLIANCE

Q: When is a will not rendered invalid by reason of defects or imperfections in the form of attestation or in the language used therein?

A: If the will is executed in substantial compliance with all the requirements of Article 805, in the absence of bad faith, forgery, fraud, undue and improper pressure or influence. (*See Art. 809*)

(4) REQUISITES

WITNESSES

Q: What are the qualifications of witnesses?

A: Witnesses to a will must be: **S18-ABCD**

1. Of **S**ound mind.
2. At least **18** years of age.
3. **A**ble to read and write
4. Not **B**lind, deaf or dumb
5. Not have been **C**onvicted by final judgment of falsification of a document, perjury or false testimony.
6. **D**omiciled in the Philippines

Q: Will the beneficial interest of a witness in a will disqualify him as such?

A: Beneficial interest in a notarial will does not disqualify one as a subscribing witness, but it may, or may not nullify the devise or legacy given to the said witness.

A witness who attests the execution of a will, and to whom, or to whose spouse, parent or child, or anyone claiming the right of said witness, spouse, parent or child, a devise or legacy given, shall be void, unless there are 3 other competent witnesses to such will. *(Art. 823 NCC)*

Note: If the witness is instituted as heir, not as devisee or legatee, the rule would still apply, because undue influence or pressure on the part of the attesting witness would still be present.

Creditors of the testator are not disqualified to be a witness to the will.

Q: Stevie was born blind. He went to school for the blind, and learned to read in Braille language. He speaks English fluently. Can he:

1. Make a will?

A: Stevie may make a notarial will. A blind man is not expressly prohibited from executing a will. In fact, Art. 808 of NCC provides for additional formality when the testator is blind. Stevie however, may not make a holographic will in Braille because the writing in Braille is not a handwriting. A holographic will to be valid must be entirely written, signed and dated by the testator in his own handwriting.

2. Act as a witness to a will?

A: A blind man is disqualified by law to be a witness to a notarial will.

3. In either of the instances, must the will be read to him?

A: In case Stevie executes a notarial will, it has to be read to him twice. First by one of the instrumental witnesses, and second by the notary public before whom the will was acknowledged. **(2008 Bar Question)**

D. HOLOGRAPHIC WILLS

(1) REQUIREMENTS

Q: What is a holographic will?

A: A holographic will is one entirely written, dated, and signed by the hand of the testator himself. It is subject to no other form, and may be made in or out of the Philippines, and need not be witnessed. *(Art. 810)*

Q: What are the formalities required in the execution of holographic will?

A: SEED

1. **S**igned by testator *himself*
2. **E**xecuted in a language or dialect known to him *(Art. 804)*
3. **E**ntirely written
4. **D**ated;
5. **Note:** In case of any insertion, cancellation, erasure or alteration in a holographic will, the testator must authenticate the same by his full signature. *(Art. 814)*

Q: What are the effects of insertions or interpolations made by a 3rd person?

A:

GR: When a number of erasures, corrections, cancellation, or insertions are made by the testator in the will but the same have not been noted or authenticated with his full signature, only the particular words erased, corrected, altered will be invalidated, not the entirety of the will.

XPN:

1. Where the change affects the essence of the will of the testator;

   Note: When the holographic will had only one substantial provision, which was altered by substituting the original heir with another, and the same did not carry the requisite full signature of the testator, the entirety of the will is voided or revoked.

   Reason: What was cancelled here was the very essence of the will; it amounted to the revocation of the will. Therefore, neither the altered text nor the original unaltered text can be given effect. *(Kalaw v. Relova, G.R. No. L-40207, Sept. 28, 1984)*

2. Where the alteration affects the date of the will or the signature of the testator.

3. If the words written by a 3rd person were contemporaneous with the execution of the will, even though authenticated by the testator, the entire will is void for violation of the requisite that the holographic will must be entirely in the testator's handwriting.

Q: Natividad's holographic will, which had only one substantial provision, as first written, named Rosa as her sole heir. However, when Gregorio presented it for probate, it already contained an alteration, naming Gregorio, instead of Rosa, as sole heir, but without authentication by Natividad's signature. Rosa opposes the probate alleging such lack of proper authentication. She claims that the unaltered form of the will should be given effect. Whose claim should be granted?

A: None. Both their claims should be denied. As to Gregorio's claim, the absence of proper authentication is fatal to his cause. As to Rosa's claim, to state that the will as first written should be given efficacy is to disregard the seeming change of mind of the testatrix. But that change of mind can neither be given effect because she failed to authenticate it in the manner required by law by affixing her full signature. *(Kalaw v. Hon. Relova, etc., et al., G.R. No. L40207, Sept. 28, 1984)*

DATE

Q: Why is the date in a holographic will important?

A: To establish if there was testamentary capacity at the time the will was executed. Also, should

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there be conflicting wills, it can establish which will was executed later.

Q: Is it required that the date of the will should include the day, month and year of its execution?

A:

GR: The "date" in a holographic will should include the day, month, and year of its execution.

XPN: When there is no appearance of fraud, bad faith, undue influence and pressure and the authenticity of the will is established and the only issue is whether or not the date appearing on the holographic will is a valid compliance with Art. 810, NCC, probate of the holographic will should be allowed under the principle of substantial compliance.

Note: In this case, the date was written as "FEB./61 " (*Roxas v. De Jesus G.R. No. L-38338 January 28, 1985*).

The exact date though indicated only by implication, must be with certainty.

(2) WITNESSES REQUIRED FOR PROBATE

Q: What are the rules governing the probate of holographic wills?

A: In the *post mortem* probate of holographic wills, the following rules are to be observed as to the number of witnesses to be presented:

1. If the will is not contested, it shall be necessary that at least one witness who knows the handwriting and signature of the testator explicitly declares that the will and the signature are in the handwriting of the testator.
2. If the will is contested, at least three of such witnesses shall be required.
3. In the absence of any competent witness and if the court deems it necessary, expert testimony may be resorted to. (Art. 811; Rabuya, *Civil Law Reviewer,* p. 563)

Note: In an earlier case, it was held that even if the genuineness of the holographic will is contested, Article 811 of the NCC cannot be interpreted as to require the compulsory presentation of three witnesses to identify the handwriting of the testator, under penalty of having the probate denied. (*Codoy v. Calugay, 312 SCRA 333; id.,* pp.563-564)

In a later case, however, the Court ruled that the requirement of at least three witnesses in case the will is contested is mandatory. The Court explained that the possibility of a false document being adjudged as the will of the testator cannot be eliminated, which is why if the holographic will is contested, the law requires three witnesses to declare that the will was in the handwriting of the deceased. (id, p. 564)

The execution and contents of a lost or destroyed holographic will may not be proved by the bare testimony of witnesses who have seen or read such will. The will itself must be presented; otherwise, it shall produce no effect. (*Gan v. Yap, 104 Phil. 509; id.*) But a photostatic copy or Xerox copy of the holographic will may be allowed because comparison can be made with the standard writings of the testator. (*Rodelas v. Aranza, 119 SCRA 16; id.)*

ALTERATIONS, REQUIREMENTS

Q: What are the rules in case of insertion, cancellation, erasure or alteration?

A: In case of insertion, cancellation, erasure or alteration in a holographic will, the testator must authenticate the same by his full signature. (Art. 814)

Note: Full signature refers to the testator's habitual, usual and customary signature. (Rabuya, *Civil Law Reviewer,* p. 565)

Q: What is the effect if the insertion, cancellation, erasure or alteration is not authenticated with the testator's full signature?

A: It is considered as not made, but the will is not invalidated. (*id.*)

Note: Where the testator himself crossed out the name of the heir named, and substituted the name of another, without authentication, it was held that this did not result in making the person whose name was crossed as heir. (*Kalaw v. Relova, 132 SCRA 237; id.*)

E. JOINT WILLS

Q: Are joint wills allowed in the Philippines?

A: Two or more persons cannot make a will jointly, or in the same instrument, either for their reciprocal benefit or for the benefit of a third person. (Art. 818)

Wills, prohibited by Article 818, executed by Filipinos in a foreign country shall not be valid in the Philippines, even though authorized by the

laws of the country where they may have been executed. (Art. 819)

Q: What are the kinds of joint wills?

A:

1. *Mutual Wills* – executed pursuant to an agreement between two or more persons to dispose of their property in a particular manner, each in consideration of the other separate wills of two persons, which are reciprocal in their provisions.
2. *Reciprocal Wills* – the testators name each other as beneficiaries under similar testamentary plans.

Q: Manuel, a F ilipino, and his American wife Eleanor, executed a Joint Will in Boston, Massachusetts when they were residing in said city. The law of Massachusetts allows the execution of joint wills. Shortly thereafter, Eleanor died. Can the said will be probated in the Philippines for the settlement of her estate?

A: Yes, the will may be probated in the Philippines insofar as the estate of Eleanor is concerned. While the Civil Code prohibits the execution of joint wills here and abroad, such prohibition applies only to Filipinos. Hence, the joint will which is valid where executed is valid in the Philippines but only with respect to Eleanor. Under Article 819, it is void with respect to Manuel whose joint will remains void in the Philippines despite being valid where executed.

Alternative Answer: The will cannot be probated in the Philippines, even though valid where executed, because it is prohibited under Article 818 of the Civil Code and declared void under Article 819. The prohibition should apply even to the American wife because the Joint will is offensive to public policy. Moreover, it is a single juridical act which cannot be valid as to one testator and void as to the other. **(2000 Bar Question)**

John and Paula. British citizens at birth, acquired Philippine citizenship by naturalization after their marriage. During their marriage the couple acquired substantial landholdings in London and in Makati. Paula bore John three children, Peter, Paul and Mary. In one of their trips to London, the couple executed a joint will appointing each other as their heirs and providing that upon the death of the survivor between them the entire estate would go to Peter and Paul only but the two could not dispose of nor divide the London estate as long s they live. John and Paula died tragically in the London Subway terrorist attack in 2005. Peter and Paul filed a petition for probate of their parents' will before a Makati Regional Trial Court.

Q: Should the will be admitted to probate?

A: No, the will cannot be admitted to probate. Joint wills are void under the New Civil Code. And even if the joint will executed by Filipinos abroad were valid where it was executed, the joint will is still not valid in the Philippines.

Q: Are the testamentary dispositions valid?

A: If a will is void, all testamentary dispositions contained in that will are also void. Hence, all testamentary provisions contained in the void joint will are also void.

Q: Is the testamentary prohibition against the division of the London estate valid?

A: The testamentary prohibition against the division by Peter and Paul of the London estate for as long as they live, is not valid. Art. 494 of NCC provides that a donor or testator may prohibit partition for a period which may not exceed twenty (20) years. **(2008 Bar Question)**

4. CODICILS, DEFINITION AND FORMAL REQUIREMENTS

Q: What is a codicil?

A: A *codicil* is a supplement or addition to a will, made after the execution of a will and annexed to be taken as part thereof, by which any disposition made in the original will is explained, added to, or altered. *(Art. 825)*

Note: A codicil is executed after the execution of a prior will.
It must be executed in accordance with all the formalities required in executing a will.

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Q: What are the distinctions between a codicil and a subsequent will?

A:

CODICIL	SUBSEQUENT WILL
Forms a part of the original will.	It is a new or a separate will.
Supplements the original will, explaining, adding to, or altering any of its dispositions.	Makes dispositions without reference to and independent of the original will.
Does not, as a rule, revoke entirely the prior will.	If it provides for a full disposition of the testator's estate, may revoke the whole prior will by substituting a new and last disposition for the same.
A will and a codicil, being regarded as a single instrument are to be construed together.	A prior will and a subsequent will, being two separate wills, may be construed independently of each other.

5. INCORPORATION BY REFERENCE

Q: What is incorporation by reference?

A: *Incorporation by reference* is the incorporation of an extrinsic document or paper into a will by reference so as to become a part thereof.

Note: The documents or papers incorporated will be considered part of the will even though the same are not executed in the form of a will.
The doctrine of incorporation by reference is *not* applicable in a holographic will unless the documents or papers incorporated by reference are also in the handwriting of the testator.

Q: What are the requisites of incorporation by reference?

A: EDIS

1. Document referred to in the will must be in **E**xistence at the time of the execution of the will;
2. The will must clearly **D**escribe and identify the same;
3. It must be **I**dentified by clear and satisfactory proof as the document or paper referred to therein;
4. It must be **S**igned by the testator and the witnesses on each and every page, except in case of voluminous books of account or inventories. *(Art. 827)*

6. REVOCATION; KINDS

Q: What is revocation?

A: An act of the mind terminating the potential capacity of the will to operate at the death of the testator, manifested by some outward and visible act or sign, symbolic thereof.

Q: When may the testator revoke a will?

A: A will may be revoked by the testator at any time before his death. Any waiver or restriction of this right is void. *(Art. 828)*

Q: May the right of the testator to revoke the will be waived or restricted?

A: No, the testator's right to revoke during his lifetime is absolute. It can neither be waived nor restricted.

Reason: Because a will is ambulatory. *(Art. 828)*

Q: What law governs in case of revocation?

A:

1. *If the revocation takes place in the Philippines*, whether the testator is domiciled in the Philippines or in some other country – Philippine laws

2. *If the revocation takes place outside the Philippines*:
   a. by a testator who is domiciled in the Philippines – Philippine laws
   b. by a testator who is not domiciled in this country –
      i. Laws of the place where the will was made, or
      ii. Laws of the place in which the testator had his domicile at the time of revocation. *(Art. 829)*

Q: What are the modes of revoking a will?

A:

1. By implication of law;
2. By the execution of a subsequent document;
3. By physical destruction through burning, cancelation or obliteration. *(Art. 830)*

REVOCATION BY IMPLICATION OF LAW

Q: Discuss revocation by implication of law.

A: Revocation is produced by implication of law when certain acts or events take place after a will has been made, rendering void or useless either the whole will or certain testamentary dispositions therein.
Rationale: The law presumes a change of mind on the part of the testator due to certain changed circumstance pertaining to the family relations or in the status of the property.

Q: How are wills revoked by operation of law?
A:

1. When after the testator has made a will, he sells or donates the legacy or devise;
2. Provisions in a will in favor of a spouse who has given cause for legal separation;

   Note: The revocation shall take place the moment the decree of legal separation is granted.
3. When an heir, legatee or devisee commits an act of unworthiness;
4. When a credit that has been given as a legacy is judicially demanded by the testator;
5. When one, some or all the compulsory heirs have been preterited or omitted

   Note: The institution of heirs is void.

REVOCATION BY EXECUTION OF ASUBSEQUENT INSTRUMENT

Q: What are the requisites of revocation by subsequent will or codicil?

A:

1. The subsequent instrument must comply with the formal requirements of a will
2. The testator must possess testamentary capacity
3. The subsequent instrument must either contain a revocatory clause or be incompatible with the prior will (totally or partially)
4. The revoking will must be admitted to probate.

Note: The testator must have the testamentary capacity at the time of the making of the subsequent will.

Q: In what ways may revocation by a subsequent will be done?

A: Revocation may be:

a. *Express* – by providing for a revocatory clause;
b. *Implied* – provisions are completely inconsistent with previous will.

Note: The will containing the revocatory clause must itself be valid, and admitted to probate, otherwise, there is no revocation.

Q: What is the Principle of Instanter?

A: The express revocation of the 1st will renders it void because the revocatory clause of the 2nd will, not being testamentary in character, operates to revoke the 1st will instantly upon the execution of the will containing it.

Q: Can there be an instance where a subsequent will, which is incompatible with the prior will, and such prior will subsist at the same time?

A: Yes. The fact that the subsequent will is posterior and incompatible with the first does not mean that the first is entirely revoked because the revocation may be total or partial.

Note: The execution of a subsequent will does not *ipso facto* revoke a prior will.

In case of inconsistent wills, the subsequent will prevails over the prior will because it is the latest expression of testamentary intent of the testator.

The subsequent will which do not revoke the previous will in an express manner, only annuls the dispositions in the previous will which are inconsistent with or contrary to those contained in the subsequent will. *(Art. 831)*

Q: What is the effect if the revoking will becomes inoperative by reason of incapacity or renunciation?

A: A revocation made in a subsequent will shall take effect even if the new will should become inoperative by reason of the incapacity of the heirs, devisees or legatees designated therein, or by their renunciation. *(Art. 832)*

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REVOCATION BY PHYSICAL DESTRUCTION

Q: What are the requisites of revocation by physical act of destruction?

A: OTAP

1. **O**vert act of physical destruction;
2. **T**estamentary capacity of the testator at the time of performing the act of revocation;
3. **A**nimus Revocandi - intention to revoke;
4. **P**erformed by testator himself or other person in the presence and express direction of the testator.

Note: The physical destruction may be done by the testator personally or by another person acting in his presence and by his express direction.
It is not necessary that the will be totally destroyed. It is sufficient if on the face of the will, there is shown some sign of the physical act of destruction. *(Maloto v. CA, G.R. No. 76464, Feb. 29, 1988)*

Q: How can a will be revoked by physical destruction?

A: The physical act of destruction of a will, like burning, does not *per se* constitute an effective revocation, unless the destruction is coupled with *animus revocandi* on the part of the testator. *(Maloto v. CA, G.R. No. 76464, Feb. 29, 1988)*

Q: What is required for a revocation done by a person, other than the testator, be valid?

A:

1. Under the *express direction* of the testator; and
2. Done in the *presence* of the testator.

Note: Elements for a valid revocation done by the testator himself must be present even if the revocation is done by another person.
It goes without saying that the document destroyed must be the will itself.

Q: What is the effect if the person directed by the testator to revoke his will is incapacitated to make a will such as when he is below 18 years of age?

A: None. In revocation of wills, what is essential is the capacity of the testator to revoke. The capacity of the person directed by the testator to revoke his will is immaterial.

Q: In 1919, Miguel executed a will. In the post mortem probate, there was a testimony to the effect that the will was in the testator's possession in 1919, but it can no longer be found. Is the will revoked?

A: Yes, the *Doctrine of Presumed Revocation* applies, which provides that: where a will which cannot be found, is shown to have been in the possession of the testator when last seen, the presumption is, in the absence of other competent evidence, that the same was cancelled or destroyed. The same presumption arises where it is shown that the testator had ready access to the will and it cannot be found after his death. *(Gago v. Mamuyac G.R. No. 26317, Jan. 29, 1927)*

Note: The presumption is, however, not conclusive and anyone who has proof to the contrary may rebut the presumption.

Q: What is the Doctrine of Dependent Relative Revocation?

A: Where the testator's act of destruction is connected with the making of another will, so as fairly to raise the inference that the testator meant the revocation of the old to depend upon the efficacy of the new disposition intended to be substituted, the revocation will be conditional and dependent upon the efficacy of the new disposition; and if, for any reason, the new will intended to be made as a substitute is inoperative, the revocation fails and the original will remains in full force. *(Molo v. Molo, G.R. No. L-2538, Sept. 21, 1951)*

Simply put, for this doctrine to operate, the testator must have intended that the revocation of his first will be dependent on the validity of his second will. In this case the intention of the testator is clear: He does not want to die intestate.

Note: Failure of the new testamentary disposition upon whose validity the revocation depends is equivalent to the non-fulfillment of a suspensive condition and thus prevents the revocation of the original will.

Revocation of a will based on a false cause or an illegal cause is null and void.

Q: Mr. Reyes executed a will completely valid as to form. A week later, however, he executed another will which expressly revoked his first will, which he tore his first will to pieces. Upon the death of Mr. Reyes, his second will was presented for probate by his heirs, but it was denied due to formal defects. Assuming that a copy of the first will is available, may it now be admitted to probate and given effect? Why?

A: Yes, the first will may be admitted to probate and given effect. When the testator tore the first will, he was under the mistaken belief that the second will was perfectly valid and he would not have destroyed the first will had he known that the second will is not valid. The revocation by destruction therefore is dependent on the validity of the second will. Since it turned out that the second will was invalid, the tearing of the first will did not produce the effect of revocation. This is known as the doctrine of dependent relative revocation *(Molo v. Molo, G.R. No. L-2538, Sept. 21, 1951)* **(2003 Bar Question)**

Alternative Answer: No, the first will cannot be admitted to probate. While it is true that the first will was successfully revoked by the second will because the second will was later denied probate, the first will was, nevertheless, revoked when the testator destroyed it after executing the second invalid will. *(Diaz v. De Leon, G.R. No. 17714, May 31, 1922).*

Q: What is the rule in case of revocation based on false or illegal cause?

A: Revocation based on a false or illegal cause is null and void.
Requisites:

1. The cause must be concrete, factual and not purely subjective
2. It must be false
3. The testator must not know of its falsity
4. It must appear from the will that the testator is revoking because of the cause which is false.

Q: The will contains a statement whereby the testator recognizes his illegitimate child. This will was revoked. May the revoked will be used as basis for proving the said recognition?

A: Yes. Recognition in a will of an illegitimate child does not lose its legal effect even if the will is revoked.

7. ALLOWANCE AND DISALLOWANCE OF WILLS

A. PROBATE REQUIREMENT

Q: What is probate?

A: It is a special proceeding mandatorily required for the purpose of establishing the validity of a will.

No will shall pass either real or personal property unless it is proved and allowed in accordance with the Rules of Court. *(Art. 838)*

Note: Probate does not deal with the intrinsic validity of the testamentary provisions.

Even if only one heir has been instituted, there must still be a judicial order of adjudication.

Even if a will has already been probated, if later on a subsequent will is discovered, the latter may still be presented for probate, as long as two wills can be reconciled.

Q: Does prescription apply to probate of wills?

A: The statute of limitations is not applicable to probate of wills (Imprescriptibility of Probate)
Rationale: Probate proceedings are not established in the interest of the surviving heirs, but primarily for the protection of the expressed wishes of the testator.

Q: What are the characteristics of a probate proceeding?

A:

1. Special proceeding;
2. Proceeding *in rem*;
3. Not contentious litigation;
4. Mandatory;
5. Imprescriptible;

Q: What are the different kinds of probate?
A:

1. *Ante-mortem* – testator himself petitions the court for the probate of his own will.
2. *Post-mortem* – another person applies for probate of the will after the testator's death.

(1) ISSUES TO BE RESOLVED IN PROBATE PROCEEDINGS

(A) EXCEPTIONS – WHEN PRACTICAL CONSIDERATIONS DEMAND THE INTRINSIC VALIDITY OF THE WILL BE RESOLVED

Q: What are the questions that can be determined by a probate court?

A:

GR: Probate courts cannot inquire into the intrinsic validity of will
The only questions that can be determined by a probate court are the:

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1. Due execution
2. Testamentary capacity
3. Identity of the will

XPN: Practical considerations (*E.g. when* the will is void on its face)

Q: The testator devised a part of his estate to his concubine, which fact of concubinage was stated in his will. On probate, the court ruled that the will was validly executed but the devise in favor of the concubine is null and void. Can the probate court pass upon the intrinsic validity of the testamentary provision stated in the will?

A: Yes. While as a general rule, in probate proceedings, the court's area of inquiry is limited to an examination and resolution of the extrinsic validity of the will, given exceptional circumstances, the probate court is not powerless to do what the situation constrains it to do and pass upon certain provisions of the will, as in this case. *(Nepomuceno v. CA, G.R. No. 62952, Oct. 9, 1985)*

Note: The SC held as basis it's finding that in the event of probate of the will, or if the court rejects the will, probability exists that the case will come up once again on the same issue of the intrinsic validity or nullity of the will, the same will result in waste of time, effort, expense plus added anxiety.

Q: Can a probate court decide on questions of ownership?

A:

GR: A probate court has no jurisdiction to decide questions of ownership.

XPN:

1. When the parties voluntary submit the issue of ownership to the court;
2. When *provisionally*, the ownership is passed upon to determine whether or not the property involved is part of the estate.
3. The question of ownership is an extraneous matter which the probate court cannot resolve with finality.

Q: When Vic died, he was survived by his legitimate son, Ernesto, and natural daughter, Rosario. Rosario, who had Vic's will in her custody, did not present the will for probate. She instituted an action against Ernesto to claim her legitime on the theory that Vic died intestate because the absence of probate. To support her claim, she presented Vic's will, not for its probate, but for proving that Vic acknowledged her. Is the procedure adopted by Rosario allowed?

A: No. It is in violation of procedural law and an attempt to circumvent and disregard the last will and testament of the decedent. The presentation of a will to the court for probate is mandatory and its allowance by the court is essential and indispensable to its efficacy.

Note: SC held that the case of *Leaño v. Leaño (25 Phil., 180)*, which sanctioned the extrajudicial partition by the heirs of the properties left by a decedent, but not the non-presentation of a will for probate, cannot be relied upon as an authority for the unprecedented and unheard of procedure adopted by Rosario in this case, in the face of express mandatory provisions of the law requiring her to present the will to the court for probate. It does not affirmatively appear in the decision in that case that the partition made by the heirs was not in accordance with the will or that they in any way disregarded the will. No question of law was raised and decided in that case. *(Guevara v. Guevara G.R. No. 48840, Dec. 29, 1943)*

Q: To put an end to the numerous litigations involving decedent Francisco's estate, his heirs entered into a compromise agreement whereby they agreed to pay Tasiana, Francisco's surviving spouse, P800,000 as her full share in the hereditary estate.

When submitted to the court for approval, Tasiana attacked its validity on the ground that the heirs cannot enter into a compromise agreement without first probating Francisco's will. Tasiana relied on *Guevara v. Guevara (74 Phil. 479)* where the court held that the presentation of a will for probate is mandatory and that the settlement and distribution of an estate on the basis of intestacy when the decedent left a will, is against the law and public policy. Decide.

A: The Guevara ruling is not applicable in this case because here, there was *no attempt to settle or distribute the estate* among the heirs before the probate of the will. The clear object of the contract was merely Tasiana's conveyance of any and all her individual share and interest, actual or eventual in the estate. There is no stipulation as to any other claimant, creditor or legatee.

As a hereditary share in a decedent's estate is transmitted or vested immediately from the moment of the death of such *causante* or

predecessor in interest, *there is no legal bar to a successor (with requisite contracting capacity) disposing of her or his hereditary share immediately after such death, even if the actual extent of such share is not determined* until the subsequent liquidation of the estate.
Also, as Francisco's surviving spouse, Tasiana was his compulsory heir. Wherefore, barring unworthiness or valid disinheritance, *her successional interest existed independent of Francisco's last will and testament and would exist even if such will were not probated at all*. Thus, the prerequisite of a previous probate of the will, as established in the Guevara and analogous cases, can not apply to the case.
Note: *Neither the aleatory character of the contract nor* the coetaneous agreement that the numerous litigations between the parties are to be considered settled and should be dismissed, although such stipulation gives the contract the character of a compromise, *affect the validity of the transaction*. *(De Borja, et al. v. Vda. de Borja, G.R. No. L-28040, Aug. 18, 1972)*

Q: When a person dies testate, may his heirs opt for an extrajudicial partition instead of having the will probated?

A: No. In the subsequent case of *Riosa v. Rocha* (1926), *48 Phil. 737*, the Court held that *an extrajudicial partition is not proper in testate succession*.

(2) EFFECT OF FINAL DECREE OF PROBATE, RES JUDICATA ON FORMAL VALIDITY

Q: What is the scope of a final decree of probate?

A: A final decree of probate is conclusive as to the due execution of the will, *i.e.*, as to the extrinsic or formal validity only.

B. GROUNDS FOR DENYING PROBATE

Q: What are the grounds for disallowance of a will?
A: FIFUSM

1. The **F**ormalities required by law have not been complied with;
2. The testator was **I**nsane or mentally incapable of making will;
3. The will was executed through **F**orce or under duress, or influence of fear or threats;
4. The will was procured by **U**ndue and improper pressure and influence, on part of the beneficiary or some other person;
5. The **S**ignature of testator was procured by fraud.
6. The testator acted by **M**istake or did not intend that the instrument he signed should be his will *(Art. 839, NCC)*

Note: The list is exclusive.
A will is either valid or void. There is no such thing as a voidable will.

Q: When do the following constitute as grounds for disallowance?

1. **Violence**
   A: when in order to compel the testator to execute a will, serious or irresistible force is employed

2. **Intimidation**
   A: when the testator is compelled by a reasonable and well-grounded fear of an imminent and grave evil upon his person or property of his spouse, descendants, or ascendants, to execute the will
3. **Undue Influence**
   A: when a person takes improper advantage of his power over the will of another, depriving the latter of a reasonable freedom of choice.

4. **Mistake**
   A: Pertains to the "mistake in execution" which may either be:
   1. mistake as to the identity or character of the instrument which he signed, or
   2. mistake as to the contents of the will itself.

Q: What other defects of the will, if any, can cause denial of probate?

A: There are no other defects of the will that can cause denial of probate. Art. 805 of the Civil Code provides that the will must be subscribed at the end thereof by the testator, and subscribed by three or more credible witnesses in the presence of the testator and of one another. The driver, the cook and the lawyer who prepared the will are credible witnesses. The testator and the instrumental witnesses of the will, shall also sign, each and every page of the will proper, except the last, on the left margin, and all the pages shall be numbered correlatively in letters placed of the upper part of each page.

It has been held, however, that the testator's signature is not necessary in the attestation clause, and that if a will consists of two sheets, the first of which contains the testamentary dispositions, and is signed at the bottom by the

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testator and the three witnesses, and the second sheet contains the attestation clause, as in this case, signed by 3 witnesses, marginal signatures and paging are not necessary. After all, the object of the law is to avoid substitution of any of the sheets of the will. *(Abangan v. Abangan, 40 Phil. 476 [1919]; In Re: Will of Tan Diuco, 45 Phil 807 [1924]).*

B. INSTITUTION OF HEIRS

Q: How is institution of heir defined under Article 840?

A: Institution of heir is an act by virtue of which a testator designates in his will the person or persons who are to succeed him in his property and transmissible rights and obligations *(Art. 840, NCC).*

Note: Institution cannot be allowed to affect the legitime.

There can be an instituted heir only in testamentary succession.

Q: What are the requisites of a valid institution?

A

1. The will must be extrinsically valid;

   Note: The testator must have the testamentary capacity to make the institution.
2. The institution must be intrinsically valid;

   Note: The legitime must not be impaired, the person instituted must be identified or identifiable, and there is no preterition.
3. The institution must be effective.

   Note: No repudiation by the heir; testator is not predeceased by the heir.

Q: What are the effects if a will does not contain an institution of heir?

A: The will shall be valid even though it does not contain an institution of heir, or such institution should not comprise the entire estate, and even though the person so instituted should not accept the inheritance or should be incapacitated to succeed. *(Art. 841)*

Note: Institution of heirs is not indispensable and its absence will not render the will void, provided there are other testamentary dispositions, like devises and legacies or where the will merely disinherits a compulsory heir.

Q: What are the three principles in the institution of heirs?

A:

1. *Equality* – heirs who are instituted without a designation of shares inherit in equal parts.

   Note: Applies only when the heirs are of the same class or same juridical condition and involves only the free portion.

   As between a compulsory heir and a voluntary heir and they are instituted without any designation of shares, the legitime must first be respected and the free portion shall then be equally divided between them.
2. *Individuality* – heirs collectively instituted are deemed individually instituted unless contrary intent is proven.
3. *Simultaneity* – when several heirs are instituted, they are instituted simultaneously and not successively, unless the contrary is proved.

Q: What are the kinds of institution of heirs?

A: Institution of heir may be:
1. with a condition
2. with a term
3. for a certain purpose or cause (modal institution)

Q: May a conceived child be instituted as an heir?

A: A conceived child may be instituted, provided the conditions in Arts. 40 and 41 are present *(Conceptus pro nato habetur).*

Q: What is the effect if the institution of heir is based on a false cause?

A:

GR: The institution of heir is valid. The false cause shall be considered simply as not written.

XPN: If from the will itself, it appears that the testator would not have made the institution if he has known the falsity of the cause, the institution shall be void.

Note: In case of illegal cause, the cause shall be considered as not written, unless the illegal cause is the principal reason or motive for the disposition, in which case the institution shall be void.

Q: The testatrix devised a parcel of land to Dr. Rabadilla. It was provided that Dr. Rabadilla will acquire the property subject to the obligation, until he dies, to give Maria 100 piculs of sugar, and in the event of non-fulfillment, the property will pass to the nearest descendants of the testatrix.

When Dr. Rabadilla died, Maria filed a complaint to reconvey the land alleging that the heirs of Dr. Rabadilla violated the condition. Is the institution of Dr. Rabadilla, a modal institution?

A: Yes, because it imposes a charge upon the instituted heir without, however, affecting the efficacy of such institution.

In a modal institution, the testator states the object of the institution, the purpose or application of the property left by the testator, or the charge imposed by the testator upon the heir. A mode imposes an obligation upon the heir or legatee but it does not affect the efficacy of his rights to the succession. The condition suspends but does not obligate; and the mode obligates but does not suspend. *(Rabadilla v. CA, G.R. No. 113725, June 29, 2000)*

1. PRETERITION

Q: What is preterition?

A: *Preterition* is the omission in testator's will of one, some or all of the compulsory heirs in the direct line, whether living at the time of execution of the will or born after the death of the testator. *(Art. 854)*

Q: What does "born after the death of the testator" mean?

A: It simply means that the omitted heir must already be conceived at the time of death of the testator but was born only after the death of the testator.

Q: What are the requisites of preterition?

A:

1. There is a total omission in the inheritance;
2. The person omitted is a compulsory heir in the direct line;
3. The omitted compulsory heir must survive the testator, or in case the compulsory heir predeceased the testator, there is a right of representation;
4. Nothing must have been received by the heir by gratuitous title.

2. CONCEPT

Q: Who may be preterited?

A: Compulsory heirs in the direct line.

Q: May a spouse be preterited?

A: No. While a spouse is a compulsory heir, he/she is not in the direct line (ascending or descending).

Q: May the decedent's parents be preterited?

A: Yes, if there is an absence of legitimate compulsory heirs in the descending line. This is the effect of the application of the rule on preference of lines.

Q: When is there a total omission of a compulsory heir?

A: There is total omission when the heir:

1. Receives nothing under the will whether as heir, legatee, or devisee;

   Note: If a compulsory heir is given a share in the inheritance, no matter how small, there is no preterition.
   However, if a compulsory heir gets less than his legitime, while this is not a case of preterition. In this case, he is entitled to a completion of his legitime under Art. 906.

2. Has received nothing by way of donation *inter vivos* or *propter nuptias*; and

   Note: If a compulsory heir has already received a donation from the testator, there is no preterition.

   Reason: A donation to a compulsory heir is considered an advance of the inheritance.

3. Will receive nothing by way of intestate succession.

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Q: What are the effects of preterition?

A:

1. Preterition annuls the institution of heirs;
2. Devices and legacies are valid insofar as they are not inofficious;
3. If the omitted compulsory heir dies before testator, institution shall be effectual, without prejudice to right of representation

3. COMPULSORY HEIRS IN THE DIRECT LINE

Q: Who are the compulsory heirs in the direct line?

A:

1. Legitimate children and descendants with respect to their legitimate parents or ascendants;
2. Legitimate parents ot ascendants, with respect to their legitimate children and descendants;
3. Illegitimate children
4. The father or mother of illegitimate children

Note: The surviving spouse is not included.

According to Justice Jurado, an adopted child is by legal fiction considered a compulsory heir in the direct line.

4. PRETERITION VS. DISPOSITION LESS THAN LEGITIME

Q: What are the distinctions and similarities between imperfect disinheritance and preterition?

A:

IMPERFECT DISINHERITANCE	PRETERITION
Distinctions	
The institution remains valid, but must be reduced insofar as the legitime has been impaired.	The institution of heirs is *completely annulled*.
Similarities	
In both cases, the omitted heir and the imperfectly disinherited heir get at least their legitime	
Both legacies and devises remain valid insofar as the legitime has not been impaired.	
Both legacies and devises refer to compulsory heirs.	

5. EFFECTS OF PRETERITION, DEVISEES ONLY ENTITLED TO COMPLETION OF LEGITIME

Q: What is the effect of preterition on the will itself?

A:

GR: The effect of annulling the institution of heirs will be, necessarily, the *opening of a total intestacy* except that proper legacies and devises must be respected. Here, the will is not abrogated.

XPN: If the will contains a *universal institution of heirs to the entire inheritance* of the testator, the will is totally abrogated.
Reason: The nullification of such institution of the universal heirs without any other testamentary disposition in the will amounts to a declaration that nothing at all was written.

Q: What are the rights of the preterited heirs?

A: They are entitled not only to their shares of the legitime but also to those of the free portion which was not expressly disposed of by the testator by way of devises and legacies.

Q: What is the effect if the heir predeceases the testator?

A: If the heir who predeceases the testator is a voluntary heir, a devisee or a legatee, he shall transmit no right to his own heirs.

Note: The rule is absolute with respect to a voluntary heir and a devisee or legatee.

Right of representation only applies to compulsory heirs in the direct descending line, and in the collateral line, only in favor of children of brothers and sisters.

There is no right of representation in the ascending line.

The representative inherits directly not from the person represented, but from the one whom the person would have succeeded.

The rule also applies in case the heir becomes incapacitated to succeed, or was disinherited.

Q: What is the effect if the heir repudiated or renounced his inheritance?

A: An heir who renounced his inheritance, whether as compulsory or as voluntary heir, does not transmit any right to his own heirs.

Note: An heir who repudiated his inheritance, may represent the person whose inheritance he has renounced. *(Art 976)*

Q: What can the compulsory heir do if the testator left title less than the legitime belonging to the former?

A: Any compulsory heir to whom the testator has left by any title less than the legitime belonging to him may demand that the same be fully satisfied. (*Art. 906*)

Note: Testamentary dispositions that impair or diminish the legitime of the compulsory heirs shall be reduced on petition of the same, insofar as they may be inofficious or excessive. (*Art. 907*)

C. SUBSTITUTION OF HEIRS

1. DEFINITION

Q: What is substitution?

A: *Substitution* is the appointment of another heir so that he may enter into the inheritance in default of the original heir.

2. KINDS

Q: What are the different kinds of substitution?

A:

1. *Simple/common* – takes place when the heir instituted:
   a. predeceases testator;
   b. repudiates the inheritance; or
   c. is incapacitated to succeed

   Note: Simple substitution without a statement of the causes, to which it refers, shall comprise the 3 above mentioned situations.

2. *Brief/compendious* – when two or more persons are substituted for one *or* for two or more heirs.

3. *Reciprocal* – one heir designated as substitute for instituted heir while latter is simultaneously instituted as substitute for former.

Note: The substitute enters into the inheritance not as an heir succeeding the first heir, but as an heir of the testator.

3. FIDEICOMMISSARY SUBSTITUTION

Q: What is fideicommissary substitution?

A: Also known as *indirect substitution,* it is a substitution by virtue of which the fiduciary or first heir instituted is entrusted with the obligation to preserve and transmit to a second heir the whole or part of the inheritance.

Note: For its validity and effectivity, such substitution does not go beyond one degree from the heir originally substituted and provided further, that the fiduciary or first heir and the second heir are living at the time of death of the testator.

Q: Who are the parties to a fideicommissary substitution and what are their respective obligations?

A:

PARTIES	OBLIGATIONS
First heir or fiduciary	He has the obligation to preserve and transmit the inheritance.
Second heir or fideicommissary	He eventually receives the property from the fiduciary.
Testator	None

Q: What are the distinctions between direct substitution and indirect substitution?

A:

DIRECT SUBSTITUTION	INDIRECT SUBSTITUTION (Fideicommissary Substitution)
The substitute receives the property in default of the first heir instituted who does not or can not receive the same.	The substitute receives the property after the heir first instituted has enjoyed the same for some time.
There are various liberalities, one that is immediate and the other or others eventual, but with only one of them effective (because ultimately either the instituted heir succeeds or it is the substitute).	There are two liberalities which are both effective but successively enjoyed.
The testator so directs the transmission of his property that one or more heirs enjoy and may freely dispose of the same.	The first heir instituted is obliged to preserve the property for the benefit of one or more succeeding heirs and his power of alienation is curtailed or at least limited.

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No other purpose than to prevent the succession of the intestate heirs.	Has a further social effect as it limits the free circulation of property and for such reason many laws prohibit the same or limit it.
There is only one transfer.	There are 2 transfers
Has the free and absolute disposition and control over the property.	No absolute disposition because it is subject to the condition that he will preserve and transmit the same to the fideicommissary. And also, there is control on the property but there is a limit to the circulation of the property.
The identity of the substitute does not matter.	The fideicommissary is limited to relatives within one degree from the first heir or fiduciary: parent–child.

Q: What are the conditions for a valid fideicommissary substitution?

A:

1. That the institution does not go beyond one degree from the heir originally instituted;
2. That the substitution be expressly made;
3. That both the fiduciary and beneficiary be living at the time of the testator's death;
4. That it should be imposed on the free portion and not on the legitime.

Q: What are the elements/requisites of fideicommissary substitution?

A:

1. There must be a first heir or fiduciary;
2. An absolute obligation is imposed upon the fiduciary to preserve and to transmit to a second heir the property at a given time;
3. There is a second heir who must be one degree from the first heir;
4. The first and second heir must both be living and qualified at the time of the death of the testator.

1. <u>FIDUCIARY</u>

There must be a first heir or fiduciary

Note: The first heir receives property, either upon the death of the testator or upon the fulfillment of any suspensive condition imposed by the will.

The first heir is almost like a usufructuary with right to enjoy the property. Thus, like a usufructuary, he cannot alienate the property.The first heir is obliged to make an inventory but he is not required to furnish a bond.

Q: What are the obligations of a fiduciary?

A:

1. To preserve the inheritance;
2. To deliver the inheritance;
3. To make an inventory of the inheritance.

Q: What is the effect of alienation of the property subject to the fideicommissary substitution by the first heir?

A: The transfer is not valid. The fiduciary cannot alienate the property either by an act *inter vivos* or *mortis causa*. He is bound to preserve the property and transmit it to the second heir or fideicommissary.

Q: What is the period of the fiduciary's tenure?

A:

1. *Primary rule* – the period indicated by the testator
2. *Secondary rule* – if the testator did not indicate a period, then the fiduciary's lifetime

Q: Is the fiduciary allowed to make deductions to the inheritance?

A:

<u>GR</u>: The fiduciary should deliver the property intact and undiminished to the fideicommisary heir upon arrival of the period

<u>XPN</u>: The only deductions allowed, in the absence of a contrary provision in the will are:

1. Legitimate expenses;
2. Credits;
3. Improvements

Note: The coverage of legitimate expenses and improvements are limited to *necessary* and *useful* expenses, but not to ornamental expenses.

2. ABSOLUTE OBLIGATION TO PRESERVE AND TRANSMIT PROPERTY

An absolute obligation is imposed upon the fiduciary to preserve and to transmit to a second heir the property at a given time.

Q: How should an absolute obligation to preserve and to transmit be imposed upon the fiduciary?

A: The obligation to preserve and transmit must be given clearly and expressly by giving it a name "fideicommissary substitution" or by imposing upon the first heir the absolute obligation to preserve and deliver the property to the second heir.

Note: "*Given time*" means the time provided by the testator; if not provided, then it is understood that the period is the lifetime of the first heir.

Q: If the testator provided that the 1st heir shall enjoy the property during his life and that upon his death it shall pass to another expressly designated by the testator, but without imposing the obligation to preserve the property, is there fideicommissary substitution in this case?

A: None. There is no fideicommissary substitution but merely a legacy of the usufruct of the property.

3.FIDEICOMMISSARY

There is a second heir who must be one degree from the first heir.

Q: What does "one degree" mean?

A: "One degree" refers to the degree of relationship; it means "one generation". As such, the fideicommissary can only be either a parent or child of the first heir.

Note: The relationship is always counted from the first heir. However, fideicommissary substitutions are also limited to one transmission. Upon the lapse of time for the first heir, he transmits the property to the second heir. In other words, there can only be one fideicommissary transmission such that after the first, there can be no second fideicommissary substitution.

CAPACITY TO SUCCEED OF FIDUCIARY AND FIDEICOMMISSARY

The first and second heir must both be living and qualified at the time of the death of the testator.

Q: Why must both the first and second heir be living and qualified at the time of the death of the testator?

A: The fideicommissary inherits not from the first heir but from the testator, thus, the requirement that the fideicommissary be alive or at least conceived at the time of the testator's death.

Note: The *fideicommissary* substitution must not be imposed on the legitime, only on the free portion.

Q: Do the heirs to a fideicommissary substitution inherit successively?

A: No. Both the first heir and the fideicommissary inherit the property simultaneously, although the enjoyment and possession are successive.
Note: From the moment of death of the testator, the rights of the first heir and the fiduciary are vested.

Q: What is the effect if the fideicommissary predeceases the fiduciary?

A: If the fideicommissary predeceases the fiduciary, but survives the testator, his rights pass to his own heirs.

Q: What is the remedy of the fideicommissary to protect himself against alienation to an innocent third person?

A: If the first heir was able to register the property in his name, *fideicommissary* should annotate his claim on the land on the title to protect himself against any alienation in favor of innocent third parties.

When the property passes to the fideicommissary, there is no more prohibition to alienate.

Q: What is the effect of the nullity of the fideicommissary substitution?

A: The nullity of the fideicommissary substitution does not prejudice the validity of the institution of the heirs first designated; the fideicommissary clause shall simply be considered as not written.

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Q: If the testator gives the usufruct to different persons successively, what rules will apply?

A: The provisions on fideicommissary substitution also apply in a case where the testator gives the usufruct to various persons successively.

Q: Raymond, single, named his sister Ruffa in his will as a devisee of a parcel of land which he owned. The will imposed upon Ruffa the obligation of preserving the land and transferring it, upon her death, to her illegitimate daughter Scarlet who was then only one year old. Raymond later died, leaving behind his widowed mother, Ruffa and Scarlet. Is the condition imposed upon Ruffa to preserve the property and to transmit it upon her death to Scarlet, valid?

A: When an obligation to preserve and transmit the property to Scarlet was imposed on Ruffa, the testator Raymond intended to create a fideicommissary substitution where Ruffa is the fiduciary and Scarlet is the fideicommisary. Having complied with the requirements of Art. 863 and 869 (NCC), the fideicomissary substitution is valid.

Q: If Scarlet predeceases Ruffa, who inherits the property?

A: If Scarlet predeceases Ruffa, the fideicommissary substitution is rendered null or ineffective under Art.863 (NCC). And applying Art. 868 (NCC), the fideicommissary clause is disregarded without prejudice to the validity of the institution of the fiduciary. In such case Ruffa shall inherit the device free from the condition.

If Ruffa predeceases Raymond, can Scarlet inherit the property directly from Raymond?

A: In a fideicommissary substitution, the intention of the testator is to make the second heir his ultimate heir. The right of the second heir is simply postponed by the delivery of the inheritance to the first heir for him to enjoy the usufruct over the inheritance. Hence, when the first heir predeceased the testator, the first heir did not qualify to inherit and the right of the second heir to receive the inheritance will no longer be delayed provided the second heir is qualified to inherit at the time of the testator's death. In fideicommissary substitution, the first and second heirs inherit from the testator, hence, both should be qualified to inherit from the testator at the time of his death.

In the problem, when Ruffa predeceased Raymund, she did not qualify to receive the inheritance to enjoy it usufruct, hence, the right of Scarlet to receive the inheritance upon the death of the testator will no longer be delayed. However, Scarlet is not qualified to inherit from Rayond because she is barred by Art. 992 of NCC being an illegitimate child of Raymond's illegitimate father. The devise will therefore be ineffective and the property will be disposed of by intestacy. **(2008 Bar Question)**

D. CONDITIONAL TESTAMENTARY DISPOSITIONS AND TESTAMENTARY DISPOSITIONS WITH A TERM

Q: What is a term?

A: It is any future and certain event upon the arrival of which the validity or efficacy of a testamentary disposition subject to it depends.

Note: A disposition with a suspensive term does not prevent the instituted heir from acquiring his rights and transmitting them to his heirs even before the arrival of the term.
Reason: The right of the heir instituted subject to a term is vested at the time of the testator's death - he will just wait for the term to expire.
If the heir dies after the testator but before the term expires, he transmits his rights to his own heirs because of the vested right.

Q: When the disposition is subject to a term, what should be done by the instituted heirs or legal heirs so that they can enjoy possession of the property?

A: If the disposition is subject to a:

1. *Suspensive term* – The legal heirs can enjoy possession of the property until the expiration of the period but they must put up a bond *(caucion muciana)* in order to protect the right of the instituted heir.

2. *Resolutory term* – The legal heirs can enjoy possession of the property but when the term arrives, he must give it to the legal heirs. The instituted heir does not have to file a bond.

E. LEGITIME

1. DEFINITION

Q: Define legitime.

A: Legitime is that part of the testator's property which he cannot dispose of because the law has reserved it for certain heirs who are, therefore, called compulsory heirs. (Art. 886)

Note: There is compulsion on the part of the testator to reserve that part of the estate which corresponds to the legitime.

Q: How is legitime determined?

A: To determine the legitime, the value of the property left at the death of the testator shall be considered, deducting all debts and charges, which shall not include those imposed in the will.

To the net value of the hereditary estate, shall be added the value of all donations by the testator that are subject to collation, at the time he made them. (Art. 908)

Q: Cite the rules governing the donations made by the testator in favor of his children, legitimate and illegitimate, and strangers and those which are inofficious.

A:

1. Donations given to children shall be charged to their legitime.
2. Donations made to strangers shall be charged to that part of the estate of which the testator could have disposed by his last will.
3. Insofar as they may be inofficious or may exceed the disposable portion, they shall be reduced according to the rules established by this Code. (*Art. 909*)
4. Donations which an illegitimate child may have received during the lifetime of his father or mother, shall be charged to his legitime. Should they exceed the portion that can be freely disposed of, they shall be reduced in the manner prescribed by this Code. (*Art. 910*)

Q: In relation to Articles 908 to 910, how shall the reduction from the legitime be made?

A: After the legitime has been determined in accordance with the three preceding articles, the reduction shall be made as follows:

1. Donations shall be respected as long as the legitime can be covered, reducing or annulling, if necessary, the devises or legacies made in the will;
2. The reduction of the devises or legacies shall be pro rata, without any distinction whatever.

   If the testator has directed that a certain devise or legacy be paid in preference to others, it shall not suffer any reduction until the latter have been applied in full to the payment of the legitime.

3. If the devise or legacy consists of a usufruct or life annuity, whose value may be considered greater than that of the disposable portion, the compulsory heirs may choose between complying with the testamentary provision and delivering to the devisee or legatee the part of the inheritance of which the testator could freely dispose. (*Art. 911*)
4. If the devise subject to reduction should consist of real property, which cannot be conveniently divided, it shall go to the devisee if the reduction does not absorb one-half of its value; and in a contrary case, to the compulsory heirs; but the former and the latter shall reimburse each other in cash for what respectively belongs to them. (Art. 912) The devisee who is entitled to a legitime may retain the entire property, provided its value does not exceed that of the disposable portion and of the share pertaining to him as legitime. (*id.*)

Note: If the heirs or devisees do not choose to avail themselves of the right granted by the preceding article, any heir or devisee who did not have such right may exercise it; should the latter not make use of it, the property shall be sold at public auction at the instance of any one of the interested parties. (*Art. 913*)

The testator may devise and bequeath the free portion as he may deem fit. (*Art. 914*)

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RULES ON LEGITIME

Q: Can the testator deprive the compulsory heirs their legitimes?

A: No. The testator cannot deprive the compulsory heirs of their legitimes, except through disinheritance.

Note: Only the legitime is reserved. The free portion may be disposed of by will.

Q: Must compulsory heirs accept their legitimes?

A: No. There is no obligation on the compulsory heirs to accept.

Q: What are the kinds of legitime?

A:

1. *Fixed* – If the amount (fractional part) does not vary or change regardless of whether there are concurring compulsory heirs or not.
   a. legitimate children and descendants (legitimate children's legitime is always ½)
   b. legitimate parents and ascendants

2. *Variable* – If the amount changes or varies in accordance with whom the compulsory heir concur.
   a. surviving spouse
   b. illegitimate children
   c. parents of the illegitimate child

Note: Factors which affect the legitime:
1. Identity of the concurring compulsory heirs and;
2. Number of concurring compulsory heirs.

Q: What are the limitations imposed on the testator regarding his rights of ownership?

A: The testator cannot make donations *inter vivos* which impinge upon the legitime or which are inofficious.

Note: The prohibition does not cover an onerous disposition (sale) because this involves an exchange of values.

Q: What are the rules governing succession in the direct descending line?

A:

1. Rule of preference between lines – descending line is preferred over the ascending line;
2. Rule of proximity;
3. Right of representation, in case of predecease, incapacity and disinheritance;
4. If all the legitimate children repudiate their legitime, the next generation of legitimate descendants, succeed in their own right.

Q: What are the rules governing succession in the ascending line?

A:

1. Rule of proximity – nearer excludes the more remote;
2. Division by line;
3. Equal division within the line.

Q: What is/are the remedy(ies) available to a compulsory heir whose legitime has been impaired?

A:

1. In case of *preterition* – annulment of institution of heir and reduction of devises and legacies
2. In case of *partial impairment* – completion of legitime
3. In case of *inofficious donation* – collation

Q: Is the renunciation or compromise of future legitime allowed?

A: The renunciation or compromise is prohibited and considered null and void.

Q: What is the scope of the prohibition?

A:

1. Any renunciation of future legitimes, whether for a valuable consideration or not;
2. Any waiver of the right to ask for the reduction of an innoficious donation;
3. Compromise between the compulsory heirs themselves during the lifetime of the testator.

Note: The prohibition is not applicable in cases of:
1. Renunciations or compromises made after the death of the testator;
2. Donations or remissions made by the testator to the compulsory heirs as advances of their legitime.

Q: What is the order of preference in reducing testamentary dispositions and donations?

A:

1. Legitime of compulsory heirs
2. Donations *inter vivos*
3. Preferential legacies or devises
4. All other legacies or devises *pro rata*.

Note: The order of preference is applicable when:

1. The reduction is necessary to preserve the legitime of compulsory heirs from impairment whether there are donations *inter vivos* or not; or
2. Although, the legitime has been preserved by the testator himself there are donations *inter vivos.*

Q: What are the steps in the distribution of the estate of the testator?

A:

1. Determine the value of the property left at the death of the testator. *(Gross estate)*
2. Deduct all debt and charges, except those imposed in the will from the gross estate.(*Net asset*)
3. Add the value of all donations by the testator that are subject to collation.

   (Net hereditary estate = [Gross estate – Debts and Charges] + donations)
4. Determine who are the compulsory heirs and their corresponding legitimes using the table of legitimes below.
5. Determine the free portion.

Free portion = net hereditary estate
Less: *legitimes (total amount)*

6. Imputation of donations
7. Distribution of the remaining portion to the legatees and devisees.

Q: What is the effect of donations to the inheritance of an heir?

A: Donations *inter vivos* given to children shall be charged to their legitime, unless otherwise provided by the testator.

Reason: Donations to the compulsory heirs are advances to the legitime.

Note: Donations *inter vivos* to strangers shall be charged to the free portion.

TABLES OF LEGITIMES

Legitimate children or Descendants	
Share of legitimate children and descendants	½ of the net estate
Free portion	½ of the net estate

Legitimate Parents and Ascendants	
Share of legitimate parents and ascendants	½ of the net estate
Free portion	½ of the net estate

One Legitimate child or descendant and Surviving Spouse	
Share of a legitimate child	½ of the net estate
Share of the surviving spouse	¼ of the net estate
Free portion	¼ of the net estate

Illegitimate children and legitimate children	
Share of legitimate children and descendants	½ of the net estate
Share of each illegitimate children	½ of the legitime of each legitimate children or ascendant
Free portion	Whatever remains

Two or more legitimate children or descendant and Surviving Spouse	
Share of a legitimate child	½ of the net estate
Share of the surviving spouse	Portion equal to the legitime of each of the legitimate children or descendant
Free portion	Whatever remains

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Legitimate Parents or Ascendants and Surviving Spouse	
Share of legitimate parents or ascendants	½ of the net estate
Share of the surviving spouse	¼ of the net estate
Free portion	¼ of the net estate

Illegitimate children and Surviving Spouse	
Share of illegitimate children	1/3 of the net estate
Share of the surviving spouse	1/3 of the net estate
Free portion	1/3 of the net estate

Legitimate Parents or Ascendants and Illegitimate Children	
Shares and of legitimate parents and ascendants	½ of the net estate
Illegitimate children	¼ of the net estate
Free portion	¼ of the net estate

Surviving Spouse; Legitimate Children or Ascendants; Illegitimate Children	
Share of legitimate children and descendants	½ of the net estate
Surviving spouse	Equal to the portion of the legitime of each legitimate child
Illegitimate children	½ of the share of each legitimate child
Free portion	Whatever remains

Legitimate Parents; Surviving Spouse; Illegitimate Children	
Shares and of legitimate parents and ascendants	½ of the net estate
Surviving spouse	1/8 of the net estate
Illegitimate children	¼ of the net estate
Free portion	1/8 of the net estate

Surviving Spouse Alone; Exception: Marriage in Articulo Mortis	
Surviving spouse only	½ of the net estate
Free portion	½ of the net estate
Surviving spouse only (marriage in articulo mortis , testator died w/in 3 months)	1/3 of the net estate
Free portion	2/3 of the net estate
Surviving spouse only (marriage in articulo mortis , testator died w/in 3mos. but have been living as H&W for not less than 5yrs)	½ of the net estate
Free portion	½ of the net estate

Illegitimate Children Alone	
Share of illegitimate children	½ of the net estate
Free portion	½ of the net estate

Illegitimate Parents Alone; or With illegitimate children or Legitimate Children or Descendants; or With Surviving Spouse	
Share of the illegitimate parents alone	½ of the net estate
Free portion	½ of the net estate
Share of illegitimate parents	¼ of the net estate
Share of the surviving spouse	¼ of the net estate
Free portion	½ of the net estate

TABLE OF INTESTATE SHARES

LEGEND:

Legit. Children or Descendants	LCD	Illegit. Children or Descendants	ILCD
Legit. Parents or Ascendants	LPA	Illegit. Parents or Ascendants I	LPA
Surviving Spouse	SS	Brothers and Sisters	BS
Nephews and Nieces	NN		

INTESTATE HEIRS	SHARE IN THE FREE PORTION
Any Class alone	**½** of the free portion
LCD alone SS	**¼** (SS)
LCD SS	Remaining portion of estate after paying legitimes Legitimes to be divided equally between total number of children plus the SS
LCD ILCD	Remaining portion of estate after paying legitimes Legitimes to be divided by the ratio of 2: 1
One LCD One ILCD SS	Remaining portion of estate after paying legitimes to be divided by the ratio of 2:1 One part goes to the ILCD Same share as a legitimate child
LCD ILCD SS	Remaining portion of estate after paying legitimes to be divided by the ratio of 2:1 One part goes to the ILCD Same share as a legitimate child, provided legitimes are not impaired
LPA ILCD	 **¼** (ILCD)

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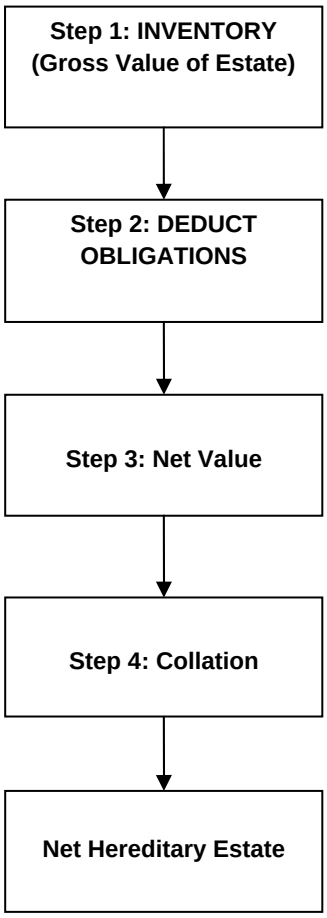
LPA SS	¼ (SS)
LPA SS ILCD	⅛ (SS)
ILCD SS	1/6 1/6
SS	½ or ⅓
ILPA SS	¼ ¼
BS,NN	½
SS BS,NN	½ (BS,NN)

Steps in Determining the Legitime of Compulsory Heirs



- Determination of the gross value of the estate at the time of the death of the testator
- Determination of all the debts and charges which are chargeable against the estate
- Determination of the net valueof the estate by deducting all the debts and charges from the gross value of the estate
- Collation or addition of all the value of all donations inter vivos to the net value of the estate
- Determination of the Net Hereditary Estate from the total thus found
- Imputation of all the value of donations inter vivos made to compulsory heirs against their legitimes and of the value of all donations *inter vivos* made to strangers against the disposable free portion and restoration to the hereditary estate if the donation is inofficious.
- If the legitime is impaired, the following reductions shall be made:
    a. First, reduce pro rata non-preferred legacies and devices, and the testamentary dispositions.
    b. Second, reduce pro rata the preferred legacies and devises
    c. Third, reduce the donations inter vivos according to the inverse order of their dates.

*** As to the remaining portion of the estate, it shall be distributed to the devisees and legatees

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2. COMPULSORY HEIRS AND VARIOUS COMBINATIONS

Q: Who are compulsory heirs?

A: The following are compulsory heirs:

1. Legitimate children and descendants, with respect to their legitimate parents and ascendants;
2. In default of the foregoing, legitimate parents and ascendants, with respect to their legitimate children and descendants;
3. The widow or widower;
4. Acknowledged natural children, and natural children by legal fiction;
5. Other illegitimate children referred to in article 287.

NOTE: Compulsory heirs mentioned in Nos. 3, 4, and 5 are not excluded by those in Nos. 1 and 2; neither do they exclude one another.

In all cases of illegitimate children, their filiation must be duly proved.

The father or mother of illegitimate children of the three classes mentioned, shall inherit from them in the manner and to the extent established by this Code. (*Art. 887*)

Q: What are the classifications of compulsory heirs?

A:

1. *Primary compulsory heirs* – They are not excluded by the presence of other compulsory heirs.

   E.g. legitimate children, surviving spouse
2. *Secondary compulsory heirs* – Those who succeed only in default of the primary compulsory heirs.

   E.g. legitimate ascendants
3. *Concurring compulsory heirs* – They get their legitimes together with the primary or secondary heirs. Neither excludes primary or secondary heirs, nor each other.

   E.g. Surviving spouse and illegitimate children and descendants.

Legitimate children and descendants (LCD)

Q: Is an adopted child a compulsory heir?

A: "Legitimate children" includes adopted children and legitimated children.

Under R.A. 8552 or the Domestic Adoption Law adopted children have the same rights granted to the legitimate children. Adopted children, for all intents and purposes are considered as legitimate children.

Hence, the adopted children can already exclude legitimate parents/ascendants.

Legitimate parents and ascendants (LPA)

Q: When do legitimate parents and ascendants inherit?

A: Legitimate parents and ascendants inherit in default of legitimate children and descendants. They are secondary compulsory heirs.

Q: Is the presence of illegitimate children of the decedent exclude the LPA?

A: No. Legitimate parents and ascendants concur with the illegitimate children of the decedent.

However, if the decedent is himself illegitimate, his illegitimate children exclude the illegitimate parents and ascendants.

Surviving spouse (SS)

Q: Can a common law spouse be a compulsory heir?

A: No. There must be valid marriage between the decedent and the surviving spouse. If the marriage is null and void, the surviving spouse cannot inherit.

Q: How can the heirs of the decedent use the nullity of marriage to prevent the surviving spouse from inheriting?

A: The heirs can raise the issue of nullity of the marriage in the same proceeding for the settlement of the estate. This is allowed because a marriage that is null and void can be collaterally attacked.

However, in case of voidable marriages, if the marriage is not annulled before the decedent died, the surviving spouse can still inherit

Reason: Voidable marriages can only be attacked in a direct proceeding, *i.e.* annulment proceeding.

Note: The surviving spouse is not a compulsory heir of his/her parent-in-law.

Separation-in-fact will not disqualify the surviving spouse from getting his/her legitime, regardless of his/her guilt.

Illegitimate children

Note: Under the Family Code, there is no more distinction between acknowledged natural children and illegitimate children. They are all considered as illegitimate.

Compulsory heirs of a person who is illegitimate:
1. Legitimate children and descendants;
2. Illegitimate children and descendants;
3. In default of the foregoing, illegitimate parents only;
4. Surviving spouse.

Q: In what ways may compulsory heirs inherit?

A: Compulsory heirs inherit either:
1. in their own right; or
2. by right of representation

3. RESERVA TRONCAL

Q: What is reserva troncal?

A: *Reserva troncal* – The ascendant who inherits from his descendant any property which the latter may have acquired by gratuitous title from another ascendant, or a brother or sister, is obliged to reserve such property as he may have acquired by operation of law for the benefit of relatives who are within the third degree and who belong to the line from which said property came. *(Art. 891)*

Purpose: To prevent persons who are outsiders to the family from acquiring, by chance or accident, property which otherwise would have remained with the said family. In short, *to put back the property to the line from which it originally came*.

Note: Other terms used to refer to reserva troncal:
1. Lineal
2. Familiar
3. Extraordinaria
4. Semi-troncal
5. Pseudo-troncal

Q: What are the requisites that must exist in order that a property may be impressed with a reservable character?

A:
1. That the property was acquired by a descendant (called "praepositus" or propositus) from an ascendant or from a brother or sister by gratuitous title when the recipient does not give anything in return;
2. That said descendant (praepositus) died without an issue;
3. That the same property (called "reserva") is inherited by another ascendant (called "reservista") by operation of law (either through intestate or compulsory succession) from the praepositus; and
4. That there are living relatives within the third degree counted from the praepositus and belonging to the same line from where the property originally came (called "reservatarios"). (*Art. 891*; *Chua v. CFI of Negros Occidental, Branch V, 78 SCRA 412;* Rabuya, *Civil Law Reviewer*, pp. 634-635)

Q: Does reserva troncal exist in an illegitimate or adoptive relationship?

A: No. It only exists in the legitimate family. (Centeno v. Centeno, 52 Phil. 322; id, p. 635)

Q: What are the causes for the extinguishment of the reserva?

A: DD LRR P
1. **D**eath of the reservista
2. **D**eath of all the relatives within the third degree prior to the death of the reservista
3. Accidental **L**oss of all the reservable properties
4. **R**enunciation or waiver by the reserves or reservatarios
5. **R**egistration under Act 496 without the reservable character being annotated if it falls into the hands of a buyer in good faith for value
6. By **P**rescription – *reservista seeks to acquire (30 years – immovable; 8 years-movable)*

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Q: Differentiate reserva minima and reserva maxima.

A:

RESERVA MINIMA	RESERVA MAXIMA
All of the properties which the descendant had previously acquired by gratuitous title from another ascendant or from a brother or sister must be considered as passing to the ascendant- reservista partly by operation of law and partly by force of the descendant's will.	All of the properties which the descendant had previously acquired by gratuitous title from another ascendant or from a brother or sister must be included in the ascendants legitime insofar as such legitime can contain.
Applies in testate succession.	Always followed in intestate succession

Q: Who are the parties in reserva troncal?
A:

1. Origin
2. Propositus
3. Reservista
4. Reservatartios/Reservees

ORIGIN

Q: Who must be the origin in reserva troncal?

A: The origin of the property must be an ascendant, brother or sister of the propositus.
Note: The origin must be a legitimate relative because reserva troncal exists only in the legitimate family.

Q: In order for reserva troncal to take place, how should the property be transmitted from the origin to the propositus?

A: The transmission from the origin to the propositus must be by gratuitous title.

Q: Can the origin alienate the property?
A: Yes. While the origin owns the property, there is no reserva yet, and therefore, he has the perfect right to dispose of it, in any way he wants, subject, however to the rule on inofficious donations.

PROPOSITUS

Q: Who must be the propositus?

A: The propositus must be a legitimate descendant or half-brother/sister of the origin of the property.

Note: To give rise to reserve troncal, the propositus must not have any *legitimate* children, otherwise, the reservable property will be inherited by the latter

The presence of illegitimate children of the propositus will not prevent his legitimate parents or ascendants from inheriting the reserved property.
The propositus is the descendant whose death gives rise to the reserva troncal, and from whom therefore the third degree is counted.

Q: Can the propositus alienate the property?

A: Yes. While propositus is still alive, there is no reserva yet, therefore, he is the absolute owner of the property, with full freedom to alienate or dispose or encumber.

Inasmuch as the propositus is the full owner of the property, he may even defeat the existence of any possible reserve by simply not giving the property involved to his ascendant, by way of inheritance by operation of law.

Note: The propositus is referred to as the "arbiter of the reserva".

RESERVISTA

Q: Who is the reservista in reserva troncal?

A: The reservista is the ascendant who inherits from the propositus by operation of law. It is he who has the obligation to reserve.

Note: The relationship between the reservista and the propositus must be legitimate.

If he inherited the property from the propositus, not by legal succession or by virtue of legitime, there is no obligation to reserve.

Q: Does the reservista own the reservable property?

A: The reservista is an absolute or full owner, subject to a resolutory condition. If the resolutory condition is fulfilled, the reservista's ownership of the property is terminated.

Resolutory condition: If at the time of the reservista's death, there should still exist relatives within the third degree (reservatarios) of the propositus and belonging to the line from which the property came.

Note: The reservable property is not part of the estate of the reservista.

Q: Can the reservista alienate the property?

A: The reservista can alienate the property being the owner thereof but subject to the reservation.

Q: Is the reservista required to furnish a bond?

A:

GR: He is required to furnish a bond, security or mortgage to guarantee the safe delivery later on to the reservatarios of the properties concerned, in the proper cases.

XPN: The bond, security or mortgage is not needed when the property has been registered or annotated in the certificate of title as subject to reserva troncal.

Note: Upon the reservista's death the ownership of the reserved properties is automatically vested to the reservatarios who are existing. Hence, the reservista cannot dispose the reserved property by will if there are reservatarios existing at the time of his death.

Q: What are the obligations of the reservista?

A:

1. To make an inventory of the reservable property;
2. To annotate the reservable character of the real property in the Register of Deeds within 90 days from the time he receives the inheritance;
3. To furnish a bond, security, or mortgage to answer for the return of property or its value;
4. To preserve the property for the 3rd degree relatives.

RESERVATARIOS

Q: Who are the reservatarios?

A: The reservatarios are relatives within the third degree of the propositus, who belong to the same line from which the property originally came, who will become the full owners of the property the moment the reservista dies, because by such death, the reserva is extinguished.

Q: Who are the relatives within the third degree from the propositus?

A:

1. Parents;
2. Grandparents;
3. Full and half brothers and sisters;
4. Great grandparents,
5. Nephews and nieces.

Q: What are the requisites for passing of title to the reservatarios?

A:

1. death of the reservista; and
2. the fact that the reservatarios survived the reservista.

Note: The reservatarios inherit the property from the propositus, not from the reservista.

The reservatarios must be legitimate relatives of the origin and the propositus.

Reserva troncal is governed by the following rules on intestate succession: *(Applicable when there are concurring relatives within the third degree)*

1. Proximity - "The nearer excludes the farther"
2. "The direct line is preferred over the collateral line"
3. "The descending line is preferred over the ascending line"

Q: What are the rights of the reservatarios?

A:

1. To ask for the inventory of all reservable property
2. The appraisal of all reservable movable property
3. The annotation in the registry of deeds of the reservable character of all reservable immovable property
4. Constitution of the necessary mortgage.

Q: When does the reservatario acquire the right over the reservable property?

A: Upon the death of the reservista, the reservatario nearest the decedent propositus becomes, automatically and by operation of law, the absolute owner of the reservable property. (*Cano v. Director of Lands*)

Q: Is there right of representation in reserva troncal?

A: There is representation in reserva troncal, but the representative must also be within the third degree from the propositus. (*Florentino v. Florentino*)

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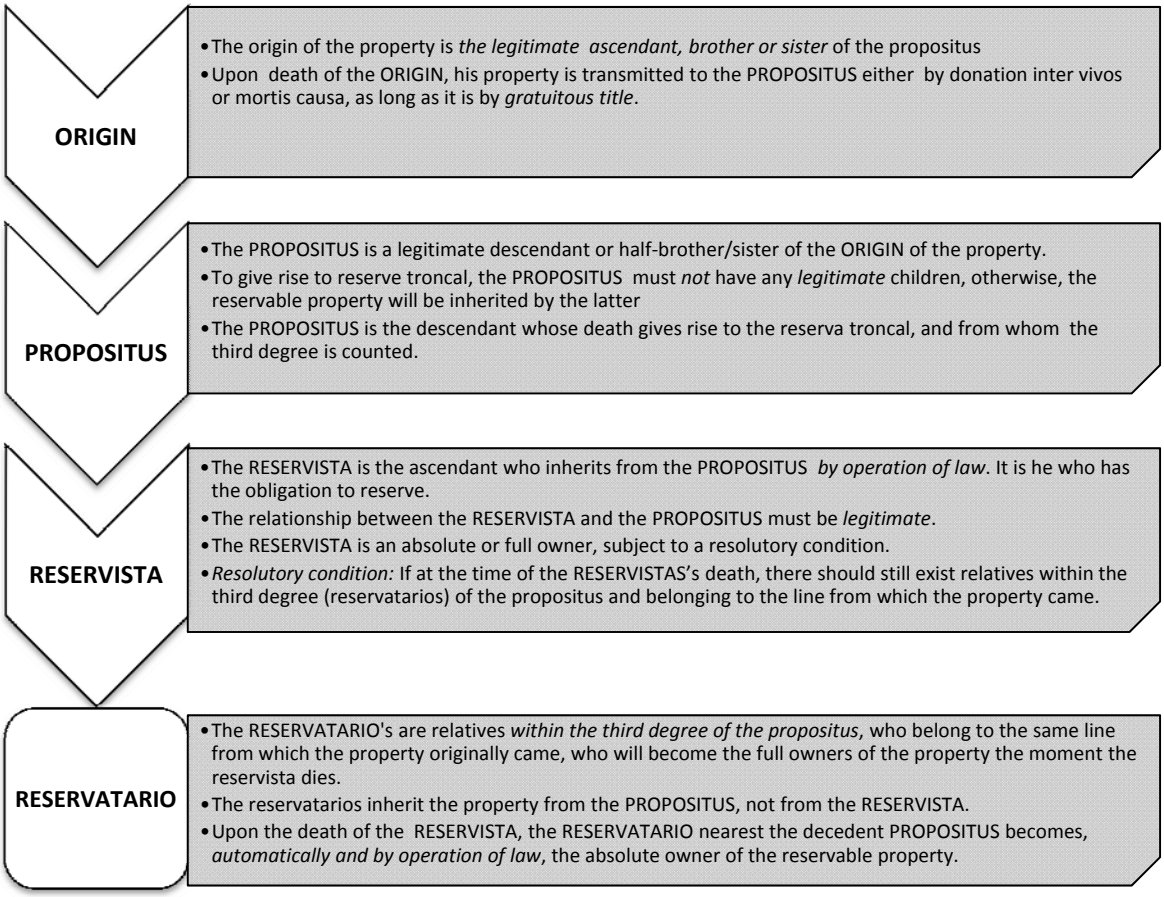
OPERATION OF RESERVA TRONCAL



4. DISINHERITANCE

A. DISINHERITANCE FOR CAUSE

Q: What is disinheritance?

A: *Disinheritance* is the process or act, thru a testamentary disposition of depriving in a will any compulsory heir of his legitime for true and lawful cause.

Note: The only way in which a compulsory heir can be deprived of his legitime is through valid disinheritance.

Disinheritance is not automatic. There must be evidence presented to substantiate the disinheritance and must be for a valid and sound cause.

Effect of disinheritance: Total exclusion to the inheritance, meaning, loss of legitime, right to intestate succession, and of any disposition in a prior will.

Disinheritance, however, is without prejudice to the right of representation of the children and descendants of the person disinherited.

But the disinherited parent shall not have the usufruct or administration of the property which constitutes the legitime.

Q: What are the requisites of a valid disinheritance?

A: Disinheritance must be:

1. Made in a valid will;
2. Identity of the heir is clearly established;
3. For a legal cause;
4. Expressly made;
5. Cause stated in the will;
6. Absolute or unconditional;
7. Total;
8. Cause must be true and if challenged by the heir, it must be proved to be true.

Note: Proponent of disinheritance has the burden of proof.

(1) RECONCILIATION

Q: What is the effect of subsequent reconciliation between the offender and the offended party on the latter's right to disinherit?

A: A subsequent reconciliation between the offender and the offended person deprives the latter of the right to disinherit, and renders ineffectual any disinheritance that may have been made. (*Art. 922*)

(2) RIGHTS OF DESCENDANTS OF PERSON DISINHERITED

Q: What is reconciliation?

A: There is reconciliation when two persons who are at odds decide to set aside their differences and to resume their relations. They need not go back to their old relation.

Note: A handshake is not reconciliation. It has to be something more. It must be clear and deliberate.

In order to be effective, the testator must pardon the disinherited heir. The pardon whether express or tacit, must refer specifically to the heir disinherited and to the acts he has committed, and must be accepted by such heir.

In disinheritance, reconciliation need not be in writing.

Q: What is the effect of reconciliation on a person's right to disinherit?

A:

1. If made before disinheritance – right to disinherit is extinguished.
2. If made after disinheritance – disinheritance is set aside.

B. DISINHERITANCE WITHOUT CAUSE

Q: What is the effect of disinheritance without cause?

A: Disinheritance without a specification of the cause, or for a cause the truth of which, if contradicted, is not proved, or which is not one of those set forth in this Code, shall annul the institution of heirs insofar as it may prejudice the person disinherited; but the devises and legacies and other testamentary dispositions shall be valid to such extent as will not impair the legitime. *(Art. 918)*

Q: What are the grounds for disinheritance?

A:

1. *Common causes for disinheritance of children or descendants, parents or ascendants, and spouse:*

    a. When the heir has been found guilty of an attempt against the life of the testator, his/her descendants or ascendants, and spouse, in case of children or parents.
    b. When the heir by fraud, violence, intimidation, or undue influence causes the testator to make to make a will or to change one already made.
    c. When the heir has accused the testator of a crime for which the law prescribes imprisonment of six years or more, if the accusation has been found groundless.
    d. Refusal without justifiable cause to support the testator who disinherits such heir.

2. *Peculiar Causes for Disinheritance*

    a. Children and Descendants:
        i. Conviction of a crime which carries with it a penalty of civil interdiction
        ii. Maltreatment of the testator b word or deed by the children or descendant
        iii. When the children or descendant has been convicted of adultery or concubinage with the spouse of the testator
        iv. When the children or descendant leads a dishonorable or disgraceful life

    b. Parents or Ascendants:
        i. When the parent or ascendant has been convicted of adultery or concubinage with the spouse of the testator
        ii. When the parents have abandoned their children or induced their daughters to live a corrupt or immoral life, or attempted against their virtue

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iii. Loss of parental authority for causes specified in the Code
iv. Attempt by one of the parents against the life of the other, unless there has been reconciliation between them

c. Spouse:
i. When the spouse has given cause for legal separation
ii. When the spouse has given grounds for the loss of parental authority

5. LEGACIES AND DEVISES

Q: What can be bequeathed or devised?

A: Anything within the commerce of man or which is alienable.

Q: Who may be charged with legacies and devices?

A:

1. Any compulsory heir
2. Any voluntary heir
3. Any legatee or devisee
4. The estate, represented by the executor or administrator *(Jurado, p. 345)*

Q: Can the testator bequeath or devise a thing or property belonging to someone else?

A: It depends on whether:

1. The testator thought that he owned it –

   GR: A legacy or devise of a thing belonging to someone else *when the testator thought that he owned it* is a *void* legacy or devise because it is vitiated by mistake.

   XPN: If the testator acquires it after making his will.

2. The testator knows that he does not own but ordered its acquisition –

   If the thing given as devise or legacy is not owned by the testator at the time he made the will but *he orders his estate to acquire it*, it is a *valid* legacy or devise. The testator knew that he did not own it. There is no mistake.

Q: What is the effect if the thing or property bequeathed or devised belonged to the legatee or devisee at the time the will was executed?

A: The legacy or devise is ineffective even if the legatee or devisee alienates the thing after the will is made.

Q: Suppose the legatee or devisee acquired the property after the will has been executed? Suppose he acquired the thing by onerous title? What would be the effect?

A: If at the time the legacy or devise is made, the thing did not belong to the legatee or devisee but later on he acquires it, then:

1. If he acquired it *by gratuitous title*, then the legacy or devise is void.

   Reason: The purpose of the testator that the property would go to the devisee or legatee has already been accomplished with no expense to the legatee or devisee.

2. If he acquired it *by onerous title*, the legacy or devise is valid and the estate may be required to reimburse the amount.

Q: Suppose the property bequeathed or devised has been pledged or mortgaged, who has the obligation to free the property from such encumbrance?

A:

GR: The pledge or mortgage must be paid by the estate.

XPN: If the testator provides otherwise. However, any other charge such as easements and usufruct, with which the thing bequeathed is burdened, shall be respected by the legatee or devisee.

Q: What is a legacy of credit?

A: It takes place when the testator bequeaths to another a credit against a third person. In effect, it is a *novation* of the credit by the subrogation of the legatee in the place of the original creditor.

Q: What is a legacy of remission?

A: It is a testamentary disposition of a debt in favor of the debtor. The legacy is valid only to the extent of the amount of the credit existing at the time of the testator's death. In effect, the debt is extinguished.

Note:

1. Legacy applies only to the amounts outstanding at the time of the testator's death.
2. The legacy is revoked if the testator files an action (judicial suit) against the debtor.
3. It applies only to credits existing at the time the will was made, and not to subsequent credits.

Q: Is a legacy or devise considered payment of a debt, if the testator has a standing indebtedness to the legatee or devisee?

A: No, legacy or devise is not considered payment of a debt because if it is, then it would be a useless legacy or devise since it will really be paid.

Q: What is the order of payment of legacies and devises?

A:

1. Remuneratory legacies or devises
2. Legacies or devises declared by testator to be preferential
3. Legacies for support
4. Legacies for education
5. Legacies or devises of a specific determinate thing which forms part of the estate
6. All others *pro rata*

Note: The order of preference is applicable when:

1. There are no compulsory heirs and the entire estate is distributed by the testator as legacy/devise; or
2. There are compulsory heirs but their legitime has already been provided for by the testator and there are no donations *inter vivos*.

Q: What is the distinction between Art. 911 and Art. 950?

A:

Order of preference under Art. 911	Order of preference under Art. 950
LDPO: 1. **L**egitime of compulsory heirs; 2. **D**onations inter vivos; 3. **P**referential legacies or devises; 4. All **O**ther legacies or devises pro rata	1. Remuneratory L/D; 2. Preferential L/D; 3. Legacy for support; 4. Legacy for education; 5. L/D of a specific, determinate thing which forms a part of the estate; 6. All others *pro rata*

Note: When the question of reduction is between and among legatees and devisees themselves, Art. 950 governs; but when there is a conflict between compulsory heirs and legatees/devisees, Art. 911 governs.

Q: What are the grounds for the revocation of legacy or devise?

A:

1. Transformation of the thing in such a manner that it does not retain either the form or the denomination it had.
2. Alienation of the thing bequeathed.

   Note:
   GR: The alienation of the property revokes the legacy or devise notwithstanding the nullity of the transaction.
   However, whether or not the legacy or devise is revoked or not depends on the basis for the nullity of the contract:

   If the nullity is based on vitiated consent, the legacy or devise is not revoked because there was no intention to revoke.

   For all other grounds, the legacy or devise is revoked.

   XPN: If the sale is *pacto de retro* and the testator reacquired it during his lifetime.

3. Total loss of the thing bequeathed.

   Note: The loss of the thing bequeathed must not be attributed to the heirs. There should be no fault on the part of the heirs.
4. If the legacy is a credit against a third person or the remission of a debt, and the testator, subsequent to the making of the will, brings an action against the debtor for payment.

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III. LEGAL OR INTESTATE SUCCESSION

A. GENERAL PROVISIONS

1. RELATIONSHIP

Q: What is legal or intestate succession?

A: Legal or intestate succession is that which is effected by operation of law in default of a will. It is legal because it takes place by operation of law; it is intestate because it takes place in the absence or in default of a last will of the decedent. *(Jurado, p. 377)*

Q: What is the formula for application of inheritance?

A: The following are applied successively: **ISRAI**

1. **I**nstitution of an heir (Bequest, in case of legacies or devises)
2. **S**ubstitution, if proper
3. **R**epresentation, if applicable
4. **A**ccretion, if applicable
5. **I**ntestacy, if all of The above are not applicable

Q: When can legal or intestate succession take place?

A: Intestate succession takes place when:

1. there is no will; the will is void, or the will is revoked;
2. the will does not dispose all the property of the testator. (partial intestacy);
3. the suspensive condition attached to the inheritance is not fulfilled;
4. The heir predeceased the testator or repudiates the inheritance and no substitution and no right of accretion take place.
5. The heir instituted is incapacitated to succeed.

Note: The enumeration is not exclusive; there are other causes for intestacy which are not included in the enumeration.

E.g.

1. Preterition;
2. Arrival of the resolutory term or period;
3. Fulfillment of a resolutory condition attached to the inheritance;
4. Non-compliance or impossibility of complying with the will of the testator.

Q: Can there be a valid will which does not institute an heir?

A: Yes, a will is valid even if it contains only a provision for disinheritance or if only legacies and devises are contained in the will.

Q: Who are intestate heirs?

A:

1. Legitimate children or descendants
2. Illegitimate children or descendants
3. Legitimate parents or ascendants
4. Illegitimate parents
5. Surviving spouse
6. Brothers and sisters, nephews and nieces
7. Other collateral relatives up to the 5th degree
8. The State.

2. RIGHT OF REPRESENTATION

Q: What is right of representation?

A: Right created by fiction of law where the representative is raised to the place and degree of the person represented, and acquires the rights which the latter would have if he were living or could have inherited.

Q: What is the effect of representation?

A: Whenever there is succession by representation, the division of the estate shall be made per stirpes, in such manner that the representative or representatives shall not inherit more than what the person they represent would inherit, if he were living or could inherit. *(Art. 974)*

Note: *Per stirpes* means *inheritance by group, all those within the group inheriting in equal shares.* Representation is superior to accretion.

Q: When does right of representation arise?

A: Representation may arise either because of:

1. death,
2. incapacity, or
3. disinheritance.

Q: When is right or representation not available?

A:

1. *As to compulsory heirs:* In case of repudiation, the one who repudiates his inheritance cannot be represented.

Their own heirs inherit in their own right.

2. *As to voluntary heirs:* Voluntary heirs, legatees and devisees who:
   a. Predecease the testator; or
   b. Renounce the inheritance

   cannot be represented by their own heirs, with respect to their supposed inheritance.

Q: Does the representative inherit from the person represented?

A: No. In representation, the representative does not inherit from the person represented but from the testator or decedent.

Q: Where does right of representation take place?

A: Representation takes place in the direct descending line, never in the ascending.
Note: The representative himself must be capable of succeeding the decedent.
An illegitimate child can represent his father, provided that the father was also illegitimate.

Q: Does right of representation apply in the collateral line?

A: Right of representation takes place only in favor of children of brothers or sisters, whether full or half blood and only if they concur with at least one uncle or aunt.

Note: This rule applies only when the decedent does not have descendants.

Q: What is the effect if there is no uncle or aunt upon whom the children, who seek to invoke the right of representation, can concur with?

A: There shall be no right of representation and ultimately they shall not inherit following Art. 975.

Q: May an illegitimate sibling of the decedent be represented?

A: Yes. An illegitimate brother or sister of the deceased can be represented by his children, without prejudice to the application of the Iron Curtain Rule. *(Tolentino, p. 451)*

Q: Does the right of representation apply to adopted children?

A: No. The right of representation cannot be invoked by adopted children because they cannot represent their adopting parents to the inheritance of the latter's parents.

Reason: The law does not create any relationship between the adopted child and the relatives of the adopting parents, not even to the biological or legitimate children of the adopting parents.

Note: Under R.A. 8552 or the Domestic Adoption Law, the adopted child and the adopting parents have *reciprocal successional rights.*

Q: What is the rule on equal division of lines?

A:

GR: Intestate heirs equal in degree inherit in equal shares.

XPN:

1. In the ascending line, the rule of division by line is ½ to the maternal line and ½ to the paternal line, and within each line, the division is *per capita*.
2. In the collateral line, the full-blood brothers/sisters will get double that of the half-blood.
3. The division in representation, where division is *per stirpes* – the representative divide only the share pertaining to the person represented.

Note: The share of an illegitimate child is ½ of the share of a legitimate one.

Full blood brother or sister is entitled to double the share of half brother or sister *(Art. 1006).*

Compulsory heirs shall, in no case, inherit *ab intesto* less than their legitime as provided in testamentary succession.

IRON CURTAIN RULE

Q: What is the iron-curtain rule?

A: Art. 992 of the Civil Code provides that illegitimate children cannot inherit *ab intestato* from the legitimate children and relatives of his mother or father. Legitimate children and relatives cannot inherit in the same way from the illegitimate child.

Note: The iron curtain rule only applies in intestate succession.

There is a *barrier* recognized by law between the legitimate relatives and the illegitimate child so that one cannot inherit from the other and vice-versa.

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Rationale: The law presumes the existence of antagonism between the illegitimate child and the legitimate relatives of his parents.

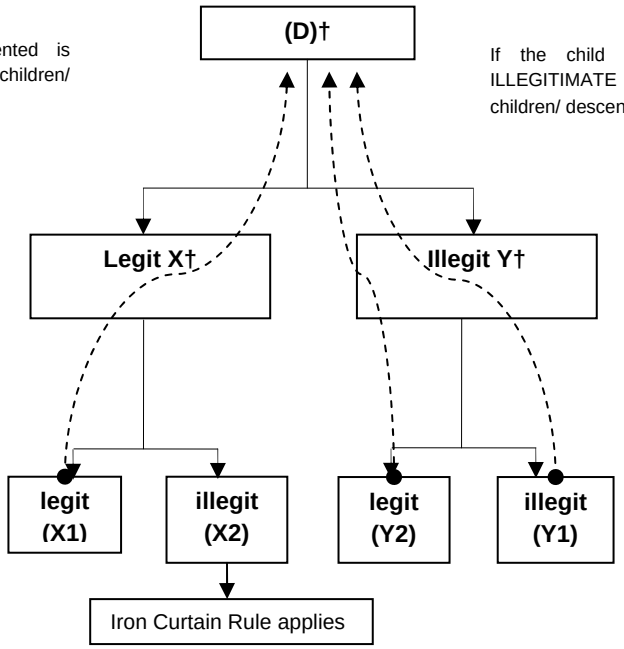
Q: Distinguish the application of iron curtain rule and right of representation.
A:

IRON CURTAIN RULE	RIGHT OF REPRESENTATION
Prohibits absolutely a succession *ab intestato* between the illegitimate child and the legitimate children and relatives of the father or mother of said illegitimate child. **Note:** Iron curtain rule imposes a limitation on right of representation.	Right created by fiction of law where the representative is raised to the place and degree of the person represented, and acquires the rights which the latter would have if he were living or could have inherited.
Applies only in intestate succession	Applies to both intestate and testate succession
Determining factor: who died first? Is it the parent of the illegitimate child or is it the legitimate relative or child of his parent?	
Applies if the one who died first is the illegitimate's parent. *Reason*: illegitimate will be representing his parent because of the predecease, the bar imposed by the iron curtain rule is rendered operative to prevent such.	Applies if the one who died first is the legitimate parent or child of the illegitimate's parent. *Reason:* illegitimate inherits from his parent's estate which includes his parent's inheritance from said legitimate relative or child who died.

Right of Representation and Iron Curtain Rule

If the child to be represented is LEGITIMATE – only legitimate children/ descendants can represent him

If the child to be represented is ILLEGITIMATE – both legit & illegit children/ descendants can represent him



Since X and Y both predeceased D, only X1 can represent X. X2 cannot by virtue of the iron curtain rule. Both Y1 and Y2 can represent Y

B. ORDER OF INTESTATE SUCCESSION

Q: What is the order of preference between lines in legal or intestate succession?

A: Succession takes place:
First, in the *direct descending line;*
Second, in the *direct ascending line;*
Finally, in the *collateral line.*

Q: What is the order of intestate succession to a legitimate child?

A: In general, and without prejudice to the concurrent right of other heirs in proper cases, the order of intestate succession to a legitimate child is as follows:

1. legitimate children and descendants;
2. legitimate parents and ascendants;
3. illegitimate children;
4. the surviving spouse;
5. collaterals up to the fifth degree; and
6. the State. (Rabuya, *Civil Law Reviewer,* p. 678)

Q: What is the order of intestate succession to an illegitimate child?

A:

1. The legitimate children and descendants of a person who is an illegitimate child are preferred over other intestate heirs, without prejudice to the right of concurrence of illegitimate children and the surviving spouse.

2. In the absence of legitimate children and descendants, the illegitimate children (of the illegitimate child) and their descendants succeed to the entire estate, without prejudice to the concurrent right of the surviving spouse.

3. In the absence of children and descendants, whether legitimate or illegitimate, the third in the order of succession to the estate of the illegitimate child is his illegitimate parents. If both parents survive and are entitled to succeed, they divide the estate share and share alike. Although the law is silent, if the surviving spouse of the illegitimate child concurs with the illegitimate parents, the surviving spouse shall be entitled to one-half of the estate while the illegitimate parents get the other half.

   Note: In the ascending line, only the illegitimate parents are entitled to inherit from the illegitimate child; the other illegitimate descendants are not so entitled.

4. In default of children or descendants, legitimate or illegitimate, and illegitimate parents, the surviving spouse shall inherit the entire estate. But if the surviving spouse should survive with brothers and sisters, nephews and nieces, the surviving spouse shall inherit one-half of the estate, and the latter the other half. The brothers and sisters must be by illegitimate filiation, otherwise, the Iron Curtain Rule shall apply.

5. Although the law is silent, illegitimate brothers and sisters who survive alone shall get the entire inheritance. The legitimate children of the illegitimate parents are not entitled to inherit from the illegitimate child by virtue of Article 992 of the NCC.

6. The State. (*id.,* pp. 691-692)

IV. PROVISIONS COMMON TO TESTATE AND INTESTATE SUCCESSION

A. RIGHT OF ACCRETION

1. DEFINITION AND REQUISITES

Q: What is accretion?

A: *Accretion* is a right by virtue of which, when two or more persons are called to the same inheritance, devise or legacy, the part assigned to the one who renounces or cannot receive his share, or who died before the testator, is added or incorporated to that of his co-heir, co-devisees, or co-legatees.

Basis: Accretion is a right based on the presumed will of the deceased that he prefers to give certain properties to certain individuals rather than to his legal heirs. Accretion is preferred over intestacy.

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Q: What are the requisites of accretion?

A:

1. Two or more persons must have been called in the testators will to the same inheritance, legacy or devise, or to the same portion thereof, pro indiviso
2. There must be a vacancy in the inheritance, legacy or devise as a result of predecease, incapacity or repudiation

Q: In testamentary succession, in what instances may accretion take place?

A:

1. Predecease
2. Incapacity
3. Renunciation
4. Non-fulfillment of suspensive condition imposed upon instituted heir
5. Ineffective testamentary disposition

Q: In intestate succession, in what instances may accretion take place?

A:

1. Predecease of legal heir
2. Incapacity of legal heir
3. Repudiation by legal heir

Note: Accretion takes place only if there is no representation.
In renunciation, there is always accretion.

Reason: No representation in renunciation.
In intestacy, apply representation first. If there is none, then accretion will apply.
In testacy, apply substitution first. If there is no substitution, then accretion will apply. However, in testamentary succession, the inheritance must not have been earmarked. Accretion cannot take place if the inheritance is earmarked.

B. CAPACITY TO SUCCEED BY WILL OR INTESTACY

1. PERSONS INCAPABLE OF SUCCEEDING

Q: What does absolute incapacity to succeed mean?

A: It means the person is incapacitated to succeed in any form, whether by testate or intestate succession.

Q: Who are absolutely incapacitated to succeed?

A:

1. Those not living at the time of death of the testator
2. Those who cannot be identified. *(Art. 845)*
3. Those who are not permitted by law to inherit. *(Art. 1027)*

Q: Who are incapacitated to succeed based on morality or public policy?

A: ACO

1. Persons guilty of **A**dultery or concubinage *with the testator* at the time of the making of the will;
2. Persons guilty of the same **C**riminal offense, in consideration thereof;
3. A public officer or his wife, descendants and ascendants, by reason of his **O**ffice. *(Art. 739)*

Q: Who are incapacitated to succeed by reason of unworthiness?

A: P-CAV-AFP-F

1. **P**arents who have abandoned their children or induced their daughters to lead a corrupt or immoral life, or attempted against their virtues;
2. Persons **C**onvicted of an attempt against the life of the testator, his or her spouse, descendants or ascendants;
3. Persons who **A**ccused the testator of a crime for which the law prescribes imprisonment for six years or more, if the accusation has been found to be groundless;
4. Heir of full age who, having knowledge of the **V**iolent death of the testator, should fail to report it to an officer of the law within a month *unless* the authorities have already taken action.

   Note: This prohibition shall not apply to cases wherein, according to law, there is no obligation to make an accusation.

5. Person convicted of **A**dultery or concubinage with the spouse of the testator;
6. Person who by **F**raud, violence, intimidation, or undue influence should cause the testator to make a will or to change one already made;
7. Person who by the same means **P**revents another from making a will, or from revoking one already made, or who supplants, conceals, or alters the latter's will;
8. Person who **F**alsifies or forges a supposed will of the decedent. (*Art. 1032*)

Note: Grounds 1, 2, 3, 5 and 6 are the same grounds as in disinheritance.
Numbers 6, 7 and 8 cover six (6) acts which relate to wills:

1. Causing the testator to make a will
2. Causing the testator to change an existing will
3. Preventing the decedent from making a will
4. Preventing the testator from revoking his will
5. Supplanting, concealing, or altering the testator's will.
6. Falsifying or forging a supposed will of the decedent.

RELATIVE INCAPACITY TO SUCCEED

Q: What is relative incapacity to succeed?

A: It means the person is incapacitated to succeed because of some special relation to the testator.

Q: What are the grounds for relative incapacity to succeed?

A: UMA

1. Undue influence or interest *(Art. 1027)*
2. Morality or public policy *(Art. 739)*
3. Acts of unworthiness *(Art. 1032)*

Q: Who are incapacitated to succeed based on undue influence or interest?

A: PRG-WPI

1. The **P**riest who heard the confession of the testator during his last illness, or the minister of the gospel who extended spiritual aid to him during the same period;

2. The **R**elatives of such priest or minister of the gospel within the fourth degree, the church, order, chapter, community, organization, or institution to which such priest or minister may belong;

3. A **G**uardian with respect to testamentary dispositions given by a ward in his favor before the final accounts of the guardianship have been approved, even if the testator should die after the approval thereof; nevertheless, any provision made by the ward in favor of the guardian when the latter is his ascendants, descendant, brother, sister, or spouse, shall be valid;

4. Any attesting **W**itness to the execution of a will, the spouse, parents, or children, or any one claiming under such witness, spouse, parents, or children;

Note: Numbers 1 to 4 do not apply to legitimes.

5. Any **P**hysician, surgeon, nurse, health officer or druggist who took care of the testator during his last illness;

Note: Number 5 is an absolute disqualification.

6. **I**ndividuals, associations and corporations not permitted by law to inherit.

PRIESTS

Q: Who are covered by this disqualification to inherit?

A: PMRC

1. **P**riest who heard the confession of the testator during his last illness;
2. **M**inister of the gospel who extended spiritual aid to him during the same period;
3. **R**elatives of such priest or minister of the gospel within the fourth degree; or
4. The **C**hurch, order, chapter, community, organization, or institution to which such priest or minister may belong;

Q: What are the requisites for this disqualification to apply?

A:

1. The will was made during the last illness of the testator;
2. The spiritual ministration must have been extended during the last illness;
3. The will was executed during or after the spiritual ministration.

Q: If the confession was made before the will was made, can the priest inherit upon the death of the sick person, if:

1. **The priest is the son of the sick person?**
2. **The priest was the sick person's brother?**

A:

1. Yes. He can get the legitime.

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Note: A priest is incapacitated to succeed when the confession is made *prior to or simultaneously with the making of a will*.

The disqualification applies only to testamentary dispositions.

2. Yes. He can inherit by intestacy.

Note: Despite this apparent restriction to Christian ministers, this applies to all spiritual ministers, *e.g.*, Buddhist monks.

Reason: It is conclusively presumed that the spiritual minister used his moral influence to induce or influence the sick person to make a testamentary disposition in his favor.

GUARDIANS

Q: What is the coverage of this disqualification?

A: It applies to guardians, with respect to testamentary dispositions given by a ward in his favor before the final accounts of the guardianship have been approved, even if the testator should die after the approval thereof.

Q: When does the disqualification apply?

A:

GR: The disqualification applies when the disposition is made after the guardianship began or before guardianship is terminated – approval of final accounts or lifting of guardianship.

XPN: It does not apply even when the disposition is made after the guardianship began or before it is terminated when the guardian is an: **ADBSS**

1. **A**scendant;
2. **D**escendant;
3. **B**rother;
4. **S**ister; or
5. **S**pouse.

ATTESTING WITNESSES

Q: Who are covered by the disqualification?

A:

1. Attesting witness to the execution of a will;
2. The attesting witness':
   a. spouse,
   b. parents, or
   c. children, or
3. Any one claiming under such witness, spouse, parents, or children;

Q: Will the disqualification still apply if there are other witnesses to the will?

A: It depends upon compliance with the requisite number of witnesses. If, notwithstanding the disqualified witness, the number of witnesses is sufficient, the former is not disqualified.

PHYSICIANS

Q: Upon whom does the disqualification apply?

A: PSN-HD

1. **P**hysician;
2. **S**urgeon;
3. **N**urse;
4. **H**ealth officer; or
5. **D**ruggist

Note: For the disqualification to apply, the aforementioned must have taken care of the testator during his last illness.

Q: What must be present for this disqualification to apply?

A:

1. The will was made during the last illness
2. The sick person must have been taken cared of during his last illness. Medical attendance was made.
3. The will was executed during or after he was being taken cared of.

PROHIBITED BY LAW TO INHERIT

Individuals, associations and corporations not permitted by law to inherit.

2. UNWORTHINESS VS. DISINHERITANCE

Q: Distinguish Unworthiness from Disinheritance.

A:

DISINHERITANCE	UNWORTHINESS
Effects on the inheritance	
Deprivation of a compulsory heir of his legitime.	Exclusion from the entire inheritance. However, donations *inter vivos* are not affected.
Effects of pardon or reconciliation	
Reconciliation between the offender and the offended party deprives the latter of the right to disinherit, and renders ineffectual any disinheritance that may have been made.	If the testator pardons the act of unworthiness, the cause of unworthiness shall be without effect.
Manner of reconciliation or pardon	
Express or implied	
Grounds	
There are grounds for disinheritance which are also causes for incapacity by reason of unworthiness.	
Effect of subsequent reconciliation if disinheritance has already been made on any of the grounds which are also causes for unworthiness	
The moment the testator uses one of the causes for unworthiness as a ground for disinheritance, he thereby submits it to the rule on disinheritance. (Rabuya, *Civil Law Reviewer*, pp. 644-649; 704-708)	

C. ACCEPTANCE AND REPUDIATION OF THE INHERITANCE

Q: What are the three principal characteristics of acceptance and repudiation?

A:

1. It is voluntary and free
2. It is retroactive
3. Once made, it is irrevocable

Q: What are the requisites of acceptance and repudiation?

A:

1. Certainty of the death of the decedent
2. Certainty of the right of inheritance

ACCEPTANCE

Q: How may inheritance be accepted?

A:

1. *Express acceptance* – through a public or private instrument
2. *Tacit acceptance* – through acts by which the intention to accept is necessarily implied or which one would have no right to do except in the capacity of an heir.

Q: When is inheritance deemed accepted?

A:

1. When the heir sells, donates, or assigns his rights
2. When the heir renounces it for the benefit of one or more heirs
3. When renunciation is in favor of all heirs indiscriminately for consideration
4. Other tacit acts of acceptance:
   a. Heir demands partition of the inheritance
   b. Heir alienates some objects of the inheritance
   c. Acts of preservation or administration if, through such acts, the title or capacity of the heir has been assumed
   d. Under Art. 1057, failure to signify acceptance or repudiation within 30 days after an order of distribution by the probate court.

REPUDIATION

Q: What are the ways by which the repudiation of the inheritance, legacy or devise may be made?

A:

1. By means of a public instrument
2. By means of an authentic instrument
3. By means of a petition presented to the court having jurisdiction over the testamentary or intestate proceedings.

Q: What is the effect of repudiation if an heir is both a testate and legal heir?

A: If an heir is both a testate and legal heir, the repudiation of the inheritance as a testate heir, he is understood to have repudiated in both capacities. However, should he repudiate as a legal heir, without knowledge of being a testate

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heir, he may still accept the inheritance as a testate heir.

Q: What is the remedy if the heir repudiates the inheritance to the prejudice of his creditors?

A: If the heir repudiates the inheritance to the prejudice of his own creditors, the latter may petition the court to authorize them to accept it in the name of the heir.

Requisites:

1. The heir who repudiated his inheritance must have been indebted at the time when the repudiation is made
2. The heir-debtor must have repudiated his inheritance according to the formalities prescribed by law
3. Such act of repudiation must be prejudicial to the creditor or creditors.
4. There must be judicial authorization *(Art. 1052)*

D. COLLATION

Q: What is collation?

A: It is the process of adding the value of thing donated to the net value of hereditary estate.

To collate is to bring back or return to the hereditary mass, in fact or fiction, property which came from the estate of the decedent, during his lifetime, but which the law considers as an advance from the inheritance.

Collation is applicable to both donations to compulsory heirs and donations to strangers.

GR: Compulsory heirs are obliged to collate.

XPN:

1. When testator should have so expressly provided;
2. When compulsory heir repudiates his inheritance

Q: What are the properties that are to be collated?

A:

1. Any property/right received by gratuitous title *during* testator's lifetime
2. All that may have been received from decedent during his lifetime
3. All that their parents have brought to collation if alive

Q: What are the properties not subject to collation?

A:

1. Absolutely no collation – expenses for support, education (elementary and secondary only), medical attendance, even in extra-ordinary illness, apprenticeship, ordinary equipment or customary gifts.

2. Generally not imputed to legitime:
   a. Expenses incurred by parents in giving their children professional, vocational, or other career *unless* the parents so provide, or *unless* they impair the legitime.
   b. Wedding gifts by parents and ascendants consisting of jewelry, clothing and outfit *except* when they exceed 1/10 of the sum disposable by will.

Note: Only the value of the thing donated shall be brought to collation. This value must be the value of the thing at the time of the donation.

E. PARTITION AND DISTRIBUTION OF ESTATE

1. PARTITION

Q: What is partition and distribution?

A: It is the separation, division and assignment of a thing held in common among those to whom it may belong.

Q: Who may effect partition?

A: The partition may be effected either:

1. By the decedent himself during his lifetime by an act *inter vivos* or by will
2. By a third person designated by the decedent or by the heirs themselves
3. By a competent court in accordance with the New Rules of Court

Q: Who can demand partition?

A: Any:

1. Compulsory heir
2. Voluntary heir
3. Legatee or devisee
4. Person who has acquired an interest in the estate

Q: When partition *cannot* be demanded?

A: Partition cannot be demanded when: **PAPU**

1. Expressly **P**rohibited by testator for a period not more than 20 years
2. Co-heirs **A**greed that estate not be divided for period not more than 10 years, renewable for another 10 yrs
3. **P**rohibited by law
4. To partition estate would render it **U**nserviceable for use for which it was intended

2. PARTITION INTER VIVOS

Q: Can an estate be partitioned inter vivos?

A: Yes. Such partition shall be respected, insofar as it does not prejudice the legitime of compulsory heirs. *(See Art. 1080)*

3. EFFECTS OF PARTITION

Q: What are the effects of partition?

A:

1. Confers upon each heir the exclusive ownership of property adjudicated.

2. After the partition, the co-heirs shall be reciprocally bound to warrant the title to (warranty against eviction) and the quality of (warranty against hidden defects) each property adjudicated.

3. The obligation of warranty shall cease in the following cases:
   a. When the testator himself has made the partition unless his intention was otherwise, but the legitime shall always remain unimpaired.
   b. When it has been expressly stipulated in the agreement of partition, unless there has been bad faith.
   c. When the eviction was due to a cause subsequent to the partition, or has been caused by the fault of the distributee of the property.

4. An action to enforce warranty among co-heirs must be brought within 10 years from the date the right of cause of action accrues.

Q: What are the effects of the inclusion of an intruder in partition?

A:

1. Between a true heir and several mistaken heirs – partition is void.
2. Between several true heirs and a mistaken heir – transmission to mistaken heir is void.
3. Through the error or mistake; share of true heir is allotted to mistaken heir – partition shall not be rescinded unless there is bad faith or fraud on the part of the other persons interested, but the latter shall be proportionately obliged to pay the true heir of his share.

Q: When partition *cannot* be demanded?

A: Partition cannot be demanded when: **PAPU**

1. Expressly **P**rohibited by testator for a period not more than 20 years
2. Co-heirs **A**greed that estate not be divided for period not more than 10 years, renewable for another 10 yrs
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PARTNERSHIP

I. CONTRACT OF PARTNERSHIP

A. DEFINITION

Q: What is partnership?

A: A contract whereby two or more persons bind themselves to contribute money, property, or industry to a common fund, with the intention of dividing the profits among themselves.

Note: Two or more persons may also form a partnership for the exercise of a profession. *(Art. 1767, NCC)*

B. ELEMENTS

Q: What are the essential elements of a partnership?

A:

1. Agreement to contribute money, property or industry to a common fund (mutual contribution to a common stock); and
2. Intention to divide the profits among the contracting parties (joint interest in the profits). *(Evangelista v. Collector of Internal Revenue, G.R. No. L-9996, Oct. 15, 1987).*

Q: What are the requisites of a partnership?

A: ICJ

1. **I**ntention to create a partnership
2. **C**ommon fund obtained from contributions
3. **J**oint interest in dividing the profits (and losses)

Q: What are the characteristics of a partnership?

A: BON-CC-PP

1. ***B****ilateral* – it is entered into by two or more persons and the rights and obligations arising therefrom are reciprocal
2. ***O****nerous* – each of the parties aspires to procure for himself a benefit through the giving of something
3. ***N****ominate* – it has a special name or designation in our law
4. ***C****onsensual* – perfected by mere consent
5. ***C****ommutative* – the undertaking of each of the partners is considered as the equivalent of that of the others
6. ***P****rincipal* – its life does not depend on the existence of another contract
7. ***P****reparatory* – because it is entered into as a means to an end, *i.e.* to engage in business
8. ***F****iduciary* – it is based on trust and confidence

Q: Jose entered into a verbal agreement with Francisco to form a partnership for the purchase of cascoes for a proposed boat rental business. It was agreed that Francisco would buy the cascoes and each partner is to furnish such amount of money as he could, and that the profits will be divided proportionately. After Francisco purchased a casco with the money advanced by Jose, they undertook to draft the articles of partnership and embody the same in an authentic document. However, they did not come to an agreement. So, Francisco returned the money advanced by Jose, which the latter received with an express reservation of all his rights as a partner.

1. **Was there a partnership formed between Jose and Francisco?**
2. **If such partnership existed, was it terminated by the receipt of Jose of the money he advanced?**

A:

1. Yes. Both elements in a contract of partnership exist: a) mutual contribution to a common stock, and b) a joint interest in the profits. If the contract contains these two elements, a partnership relation results, and the law itself fixes the incidents of this relation if the parties fail to do so. In this case, there was money furnished by Jose and received by Francisco for the purchase of the cascoes and there was also an intention to divide the profits proportionately between them. Thus, there is a partnership by virtue of the verbal agreement between Jose and Francisco.

2. No. There was no clear intent on the part of Jose, in accepting the money, to relinquish his rights as a partner. *(Fernandez v. Dela Rosa, G.R. No. 413, Feb. 2, 1903)*

Q: Chim was the owner and manager of a lumber yard. Vicente and Ting participated in the profits and losses. A contract of sawing lumber was entered into by Chim, acting in his own name, with Frank. At the time the contract was

made, they were the joint proprietors and operators of the said lumber yard engaged in the purchase and sale of lumber under the name and style of Chim. In an action to recover the balance under the contract filed by Frank against Chim, Vicente and Ting, the latter two alleged that they are not Chim's partners. Did Chim, Vicente and Ting form a partnership?

A: No. A simple business was formed by Chim exclusively in his own name and under his personal management and he effected every transaction in his name and in the names of other persons interested in the profits and losses of the business. What has been formed is an accidental partnership of *cuentas en participacion*.

Note: Under the Code of Commerce, *cuentas en participacion* means a sort of an accidental partnership constituted in such a manner that its existence was only known to those who had an interest in the same, there being no mutual agreement between the partners, and without a corporate name indicating to the public in some way that there were other people besides the one who ostensibly managed and conducted the business, governed under article 239 of the Code of Commerce. *(Bourns v. Carman, G.R. No. L-2880, Dec. 4, 1906)*

INTENT TO CREATE A PARTNERSHIP

Q: Henry and Lyons are engaged in real estate business and are co-owners of a parcel of land. Henry, with the consent of Lyons, mortgaged the property to raise the funds sufficient to buy and develop the San Juan Estate. Lyons expressed his desire not to be part of the development project, but Henry, nevertheless, pursued the business alone. When the business prospered, Lyons demanded for a share in the business. Is Lyons entitled to the shares in San Juan Estate?

A: No. Lyons himself manifested his desire not to be part of the development project. Thus, no partnership was formed. The mortgage of the land was immaterial to the existence of the partnership. It is clear that Henry, in buying the San Juan Estate, was not acting for any partnership composed of himself and Lyons, and the law cannot be distorted into a proposition which would make Lyons a participant in this deal contrary to his express determination. *(Lyons v. Rosenstock, G.R. No. 35469, Mar. 17, 1932)*

Q: Catalino and Ceferino acquired a joint tenancy over a parcel of land under a verbal contract of partnership. It was stipulated that each of the said purchasers should pay one-half of the price and that an equal division should be made between them of the land thus purchased. Despite Catalino's demand for an equal division between them, Ceferino refused to do so and even profited from the fruits of the land. Are they partners or co-owners?

A: They are co-owners because it does not appear that they entered into any contract of partnership but only for the sole transaction of acquiring jointly or by mutual agreement of the land under the condition that they would pay ½ of the price of the land and that it be divided equally between them. *(Gallemit v. Tabiliran, G.R. No. 5837, Sept. 15, 1911)*

COMMON FUND

Q: May a partnership be formed even if the common fund is comprised entirely of borrowed or loaned money? What would be the liability of the partners in such a case?

A: Yes. A partnership may be deemed to exist among parties who agree to borrow money to pursue a business and to divide the profits or losses that may arise therefrom, even if it is shown that they have not contributed any capital of their own to a "common fund." Their contribution may be in the form of credit or industry, not necessarily cash or fixed assets. Being partners, they are all liable for debts incurred by or on behalf of the partnership. *(Lim Tong Lim v. Philippine Fishing Gear Industries, Inc., G.R. No. 136448, Nov. 3, 1999)*

SHARE IN PROFITS AND LOSSES

Q: Mariano and Isabelo entered into a partnership agreement wherein they are to contribute P15,000 each for the purpose of printing 95,000 posters. Isabelo was unable to print enough posters pursuant to the agreement, thus he executed in favor of Mariano a promissory note in an amount equivalent to the unrealized profit due to insufficient printing. The whole amount became due but Isabelo defaulted payment. Is Mariano entitled to file a case for the recovery of the unrealized profit of the partnership?

A: No. The essence of a partnership is to share in the profits and losses, thus, Mariano should shoulder the losses with Isabelo. *(Moran Jr., v. CA, G.R. No. L-59956, Oct. 31, 1984)*

Q: To form a lending business, it was verbally agreed that Noynoy would act as financier while Cory and Kris would take charge of solicitation of

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members and collection of loan payments. They agreed that Noynoy would receive 70% of the profits while Cory and Kris would earn 15% each. The parties executed the 'Articles of Agreement' which formalized their earlier verbal agreement. Later, Noynoy filed a complaint against Cory and Kris for misappropriation of funds allegedly in their capacities as Noynoy's employees. In their answer, Cory and Kris asserted that they were partners and not mere employees of Noynoy. What kind of relationship existed between the parties?

A: A partnership was formed among the parties. The "Articles of Agreement" stipulated that the signatories shall share the profits of the business in a 70-15-15 manner, with Noynoy getting the lion's share. This stipulation clearly proved the establishment of a partnership. *(Santos v. Spouses Reyes, G.R. No.135813, Oct. 25, 2001)*

Q: Jose conveyed his lots in favor of his four sons in order for them to build their residences. His sons sold the lots since they found the lots impractical for residential purposes because of high costs of construction. They derived profits from the sale and paid income tax. The sons were required to pay corporate income tax and income tax deficiency, on the theory that they formed an unregistered partnership or joint venture taxable as a corporation. Did the siblings form a partnership?

A: No. The original purpose was to divide the lots for residential purposes. If later, they found out that it is not feasible to build their residences on the lots, they can dissolve the co-ownership by reselling said lots. The *division on the profit was merely incidental to the dissolution of the co-ownership* which was in the nature of things a temporary state. *(Obillos, Jr. v. CIR, G.R. No. L-68118, Oct. 29, 1985)*

C. RULES TO DETERMINE EXISTENCE

Q: What are the rules to determine the existence of partnership?

A:

1. Persons who are not partners as to each other are not partners as to third persons.
2. Co-ownership/co-possession does not of itself establish a partnership.
3. Sharing of gross returns does not of itself establish a partnership.
4. Receipt of a person of a share in the profits is a prima facie evidence that he is a partner, *but not when received as payment for :*
    a. Debt as installment
    b. Wages
    c. Annuity
    d. Interest in a loan
    e. Consideration for the sale of a goodwill

Note: in sub-paragraphs a – e, the profits in the business are not shared as profits of a partner as a partner, but in some other respects or for some other purpose.

Q: Distinguish partnership from co-ownership/co-possession.

A:

PARTNERSHIP	CO-OWNERSHIP/ CO-POSSESSION
Intent to derive profits	
The profits must be derived from the operation of the business or undertaking by the members of the association and not merely from property ownership.	**The co-owners share in the profits derived incident to the joint ownership.**
Existence of fiduciary relationship	
There is a well defined fiduciary relationship between them as partners.	**There is no fiduciary relationship between the parties.**
Remedy for dispute	
The remedy for a dispute or difference between them would be an action for dissolution, termination, and accounting.	**The remedy would be an action, as for instance, for non-performance of a contract.**
Intent	
There must be an unmistakable intention to form a partnership.	**There is no intent to form a partnership.**

Q: A and B are co-owners of an inherited properties. They agreed to use the said common properties and the income derived therefrom as a common fund with the intention to produce profits for them in proportion to their respective shares in the inheritance as determined in a project of partition. What is the effect of such agreement on the existing co-ownership?

A: The co-ownership is automatically converted into a partnership. From the moment of partition, A and B, as heirs, are entitled already to their respective definite shares of the estate and the income thereof, for each of them to manage and

dispose of as exclusively his own without the intervention of the other heirs, and, accordingly, he becomes liable individually for all the taxes in connection therewith.

If, after such partition, an heir allows his shares to be held in common with his co-heirs under a single management to be used with the intent of making profit thereby in proportion to his share, there can be no doubt that, even if no document or instrument were executed for the purpose, for tax purposes, at least, an unregistered partnership is formed. *(Ona v. Commissioner of Internal revenue, 45 SCRA 74 [1972])*

Q: What are the typical incidents of partnership?

A:

1. The partners share in profits and losses. *(Arts. 1767,1797-98)*
2. They have equal rights in the management and conduct of the partnership business. *(Art. 1803)*
3. Every partner is an agent of partnership, and entitled to bind the other partners by his acts, for the purpose of its business. *(Art. 1818)*
4. All partners are personally liable for the debts of the partnership with their separate property *(Arts. 1816, 1822-24)* except limited partners.
5. A fiduciary relationship exists between the partners. *(Art. 1807)*
6. On dissolution, the partnership is not terminated, but continues until the winding up of partnership is completed. *(Art 1828)*

Q: What are the rules regarding distribution of profits and losses?

A:

1. *Distribution of profits*
   a. The partners share in the profits according to their agreement
   b. In the absence of such:
      i. Capitalist partner – in proportion to his contribution
      ii. Industrial partner – what is just and equitable under the circumstances

2. *Distribution of losses*
   a. The partners share in the losses according to their agreement
   b. In the absence of such, according to their agreement as to profits
   c. In the absence of profit agreement, in proportion to his capital contribution

Q: What is the rule regarding a stipulation which excludes a partner in the sharing of profits and losses?

A:

GR: Stipulation is *void*.

XPN: Industrial partner is not liable for losses *[Art. 1797(2), NCC]*. *However,* he is not exempted from liability insofar as third persons are concerned.

Note: Loss is different from liability
If, besides his services the industrial partner has contributed capital, he shall also receive a share in the profits in proportion to his capital.

D. HOW PARTNERSHIP IS FORMED

Q: How are partnerships formed?

A: It is created by agreement of the parties (consensual).

Note: There is no such thing as a partnership created by law or by operation or implication of law alone. *(De Leon, Comments and cases on Partnership, Agency and Trust, p. 13, 2005 ed.*

Q: What are the formalities needed for the creation of a partnership?

A:

GR: No special form is required for its validity or existence. *(Art. 1771, NCC)*

XPN: If property or real rights have been contributed to the partnership:

1. *Personal property*
   a. Less than P3,000 – *may be* oral
   b. P 3,000 or more – *must be:*
      i. in a public instrument; and
      ii. registered with SEC *(Art. 1772, NCC)*

      Note: Even if the partnership is not registered with SEC, the partnership is still valid and possesses a distinct personality *(Paras, Civil Code of the Philippines Annotated, Volume 5, p. 412, 1969 6th ed)*
2. *Real property or real rights – must be:*

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a. in a public instrument *(Art. 1771, NCC)*
b. with an inventory of said property
   i. signed by the parties
   ii. attached to the public instrument *(Art. 1773, NCC)*

   Note: Everything must be complied with; otherwise, partnership is void and has no juridical personality even as between the parties *(Art. 1773, NCC)*
   iii. registered in the Registry of Property of the province, where the real property is found to bind third persons *(Paras, p. 412)*

3. *Limited partnership* – must be registered as such with SEC, otherwise, it is not valid as a limited partnership but may still be considered a general partnership with juridical personality *(Paras, Civil Code of the Philippines Annotated, Volume 5, p. 412, 1969 6th ed)*

Q: If the requirements under Art. 1773, as regards contribution of real property to a partnership, has not been complied with, what is the status of the partnership?

A: It is void. Nonetheless, a void partnership under Art. 1773, in relation to Art. 1771 NCC, may still be considered by the courts as an ordinary contract as regards the parties thereto from which rights and obligations to each other may be inferred and enforced. *(Torres v. CA, G.R. No. 134559, Dec. 9 1999)*

Note: *Torres v. CA* does not involve third persons.

Q: What must be done in order that the partnership may be effective as against third persons whenever immovable property is contributed?

A: To be effective against 3rd parties, partnership must be registered in the Registry of Property of the province where the real property contributed is located. (*Art. 1771, NCC*)

Q: Can there be a partnership based on a verbal agreement, and without such agreement being registered with SEC?

A: Yes. *Article 1772 NCC* requires that partnerships with a capital of P3,000 or more must register with SEC. However, this registration requirement is not mandatory. *Article 1768 NCC* explicitly provides that the partnership retains its juridical personality even if it fails to register. The failure to register the contract of partnership does not invalidate the same as among the partners, so long as the contract has the essential requisites, because the main purpose of registration is to give notice to third parties, and it can be assumed that the members themselves knew of the contents of their contract. Non-compliance with this directory provision of the law will not invalidate the partnership.

A partnership may be constituted in any form, except where immovable property of real rights are contributed thereto, in which case a public instrument shall be necessary. Hence, based on the intention of the parties, a verbal contract of partnership may arise. *(Sunga-Chan v. Chua, G.R. No. 143340, Aug. 15, 2001)*

Note: Registration is merely for administration and licensing purposes; hence, it shall not affect the liability of the partnership and the members thereof to third persons. *[Art. 1772, (2), NCC]*

Q: A partnership was entered into between Mauricio and Severino to operate a fishpond. Neither partner contributed a fishpond or a real right over any fish pond. Their capital contributions were in cash in the amount of P1,000 each. While the partnership contract was done in a public instrument, no inventory of the fishpond to be operated was attached in the said instrument. Is there a valid contract of partnership?

A: Yes. There is a valid contract of partnership despite the lack of inventory. The purpose of the partnership was not to engage in the fishpond business but to operate a fishpond. Neither said fishpond nor a real right to any fish pond was contributed to the partnership or become part of the capital thereof. *(Agad v. Mabato, G.R. No. L-24193, June 28, 1968)*

E. PARTNERSHIP TERM

Q: What is a partnership with a fixed term?

A: It is one in which the term of its existence has been agreed upon by the partners either:
1. *Expressly* – there is a definite period
2. *Impliedly* – a particular enterprise or transaction is undertaken

Note: The mere expectation that the business would be successful and that the partners would be able to

recoup their investment is not sufficient to create a partnership for a term.

Q: Can the partners fix any term in the partnership contract?

A: Yes. The partners shall be bound to remain under such relation for the duration of the term.

Q: What is the effect when the fixed term has expired?

A: The expiration of the term fixed or the accomplishment of the particular undertaking specified will cause the automatic dissolution of the partnership.

Q: When does a partnership commence to exist?

A: A partnership commences from the time of execution of the contract if there is no contrary stipulation as to the date of effectivity of the same.

NOTE: Registration to SEC is not essential to give it juridical personality.

There is no time limit prescribed by law for the life of a partnership.

Q: What is a future partnership?

A: It is a kind of partnership where the partners may stipulate some other date for the commencement of the partnership. Persons who enter into a future partnership do not become partners until or unless the agreed time has arrived or the contingency has happened.

NOTE: It is a partnership created by implied agreement, the continued existence of which will depend upon the mutual desire and consent of the partners.

Q: When is a partnership at will terminate?

A: It may be lawfully terminated at any time by the express will of all the partners or any of them.

Q: How is a partnership at will dissolved?

A: Any one of the partners may dictate a dissolution of a partnership at will.

Note: The partner who wants the partnership dissolved must do so in good faith, not that the attendance of bad faith can prevent the dissolution of the partnership, but to avoid the liability for damages to other partners.

CLASSIFICATIONS OF PARTNERSHIP

Q: State the classifications of partnership.
A: As to:

1. *Object*
   a. Universal partnership
      i. of all present property *(Art. 1778, NCC)* – comprises the following:
         - property which belonged to each of the partners at the time of the constitution of the partnership
         - profits which they may acquire from all property contributed
      ii. of all profits *(Art. 1780, NCC)* – comprises all that the partners may acquire by their industry or work during the existence of the partnership
   b. Particular partnership – It is one which has for its object, determinate things, their use and fruits, or a specific undertaking or the exercise of a profession or a vocation. *(Art. 1783, NCC)*

2. *Liability of partners*
   a. General partnership – One where all partners are general partners who are liable even with respect to their individual properties, after the assets of the partnership have been exhausted *(Paras,p. 411)*
   b. Limited partnership – One formed by 2 or more persons having as members one or more general partners and one or more limited partners, the latter not being personally liable for the obligations of the partnership.

3. *Duration*
   a. Partnership at will – Partnership for a particular undertaking or venture which may be terminated anytime by mutual agreement.
   b. Partnership with a fixed period – The term for which the partnership is to exist is fixed or agreed upon or one formed for a particular undertaking.

4. *Legality of existence*
   a. De jure partnership
   b. De facto partnership

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5. *Representation to others*
   a. Ordinary or real partnership
   b. Ostensible or partnership by estoppel – When two or more persons attempt to create a partnership but fail to comply with the legal personalities essential for juridical personality, the law considers them as partners, and the association is a partnership insofar as it is favorable to third persons, by reason of the equitable principle of estoppel *(MacDonald et. al. v. Nat'l. City Bank of New York, G.R. No. L-7991, May 21, 1956)*

6. *Publicity*
   a. Secret partnership – Partnership that is not known to many but only as to its partners.
   b. Notorious or open partnership – It is known not only to the partners, but to the public as well.

7. *Purpose*
   a. Commercial or trading – One formed for the transaction of business.

   b. Professional or non-trading – One formed for the exercise of a profession

Q: What are the different kinds of partnership under the Spanish Civil Code?

A:

1. *Sociedad Anonima* – similar to anonymous partnership
2. *Sociedad Colectiva* – which is general or collective partnership
3. *Sociedad de Cuentas en Participacion* – joint account partnership
4. *Sociedad Mercantile Regular Colectiva* – mercantile partnership company
5. *Sociedad Leonila* – partnership by which the entire profits should belong to some of the partners in exclusion of the rest

Q: Who may be partners?

A:

GR: Any person capacitated to contract may enter into a contract of partnership.

XPNs:

1. Persons who are prohibited from giving each other any donation or advantage cannot enter into a universal partnership. *(Art. 1782, NCC)*
2. Persons suffering from civil interdiction
3. Persons who cannot give consent to a contract:
   a. Minors
   b. Insane persons
   c. Deaf-mutes who do not know how to write

Q: What is the principle of *delectus personae*?

A: This refers to the rule that is inherent in every partnership, that no one can become a member of the partnership association without the consent of all the partners.

Note: Even if a partner will associate another person in his share in the partnership, the associate shall not be admitted into the partnership without the consent of all the partners, even if the partner having an associate should be a manager *(Art. 1804, NCC)*.

Q: May a corporation enter into a partnership with another corporation?

A: As a rule, it is illegal for two corporations to enter into a partnership. Nevertheless, a corporation may enter into a *joint venture* with another if the nature of the venture is in line with the business authorized by its charter. *(Tuason v. Bolaños, G.R. No. L-4935, May 28, 1954)*

Q: What are the different kinds of partners?

A:

1. Capitalist – *Contributes money or property to the common fund*
2. *Industrial* – Contributes only his industry or personal service
3. *General* – One whose liability to 3rd persons extends to his separate or personal property
4. *Limited* – One whose liability to 3rd persons is limited to his capital contribution
5. *Managing* – Manages the affairs or business of the partnership
6. *Liquidating* – Takes charge of the winding up of partnership affairs upon dissolution
7. *Partner by estoppel* – Is not really a partner but is liable as a partner for the protection of innocent 3rd persons
8. *Continuing partner* – Continues the business of a partnership after it has been dissolved by reason of the admission of a new partner, retirement,

death or expulsion of one of the partners

9. *Surviving partner* – Remains after a partnership has been dissolved by death of any partner
10. *Sub-partner* – Is not a member of the partnership; contracts with a partner with reference to the latter's share in the partnership
11. *Ostensible* – Takes active part and known to the public as partner in the business
12. *Secret* – Takes active part in the business but is not known to be a partner by outside parties
13. *Silent* – Does not take any active part in the business although he may be known to be a partner
14. *Dormant* – Does not take active part in the business and is not known or held out as a partner

Q: What are the relations created by a contract of partnership?

A:

1. Partners-Partners
2. Partners-Partnership
3. Partnership-3rd persons with whom it contracts
4. Partners-3rd persons with whom partnership contracts.

F. UNIVERSAL VS. PARTICULAR; GENERAL VS. LIMITED

UNIVERSAL PARTNERSHIP

Q: Distinguish the classes of universal partnership.

A:

ALL PROFITS	ALL PRESENT PROPERTY
What constitutes common property	
Only *usufruct* of the properties of the partners become *common property*	***All properties* actually belonging to the partners are *contributed* – they become common property (owned by all of the partners and the partnership)**
As to profits as common property	
All profits acquired by the *industry* of the partners become *common property* (whether or not they were obtained through the usufruct contributed)	*As to profits from other sources:*
	GR: **Aside from the contributed properties, the *profits* of said property become *common property***
	XPN: **Profits from other sources may become *common* if there is a stipulation to such effect**
	As to properties subsequently acquired:
	GR: Properties subsequently acquired by inheritance, legacy or donation, *cannot* be included in the stipulation
	XPN: **Only fruits thereof can be included in the stipulation *(Art. 1779, NCC)***

Q: If the Articles of Universal Partnership fail to specify whether it is one of all present property or of profits, what shall be the nature of such?

A: Articles of Universal Partnership entered into without specification of its nature only constitutes a universal partnership of profits *(Art. 1781, NCC)*, because it imposes lesser obligations on the partners, since they preserve the ownership of their separate property.

PARTICULAR PARTNERSHIP

Q: What is particular partnership?

A: It is one which has for its object, determinate things, their use and fruits, or a specific undertaking or the exercise of a profession or a vocation. *(Art. 1783, NCC)*

Q: J, P and B formed a limited partnership called Suter Co., with P as the general partner and J and B as limited partners. J and B contributed P18,000 and P20,000 respectively. Later, J and B got married and P sold his share of the partnership to the spouses which was recorded in the SEC. Has the limited partnership been dissolved by reason of the marriage between the limited partners?

A: No. The partnership is not a universal but a particular one. As provided by law, a universal partnership requires either that the object of the association must be all present property of the partners as contributed by them to a common fund, or all else that the partners may acquire by their industry or work. Here, the contributions were fixed sums of money and neither one of them were industrial partners. Thus, the firm is not a partnership which the spouses are forbidden to enter into. The subsequent marriage cannot operate to dissolve it because it is not one of the causes provided by law. The capital contributions were owned separately by them before their marriage and shall remain to be separate under the Spanish Civil Code. Their

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individual interest did not become common property after their marriage. *(Commissioner of Internal Revenue v. Suter, G.R. No. L-25532, Feb. 28, 1969)*

Q: When does a partner bind the partnership?

A:

1. When he is expressly or impliedly authorized
2. When he acts in behalf and in the name of the partnership

GENERAL PARTNERSHIP

Q: What is general partnership?

A: One where all partners are general partners who are liable even with respect to their individual properties, after the assets of the partnership have been exhausted *(Paras, Civil Code of the Philippines Annotated, Volume 5, p. 411, 1969 6th ed)*

Q: Who is a general partner?

A: One whose liability to third persons extends to his separate property; he may be either a capitalist or an industrial partner. (*De Leon, Comments and Cases on Partnership, Agency, and Trust, p. 77, 2005 ed)*

Q: What are the obligations of a partner?

A:

1. Obligations among themselves
2. Obligations to third persons

Q: What is the basis for such obligations?

A: These obligations are based on trust and confidence of the partners since partnership is grounded on the fiduciary relationship of the partners and as well to third persons.

Q: What are the distinctions between a general and a limited partner/partnership?

A:

GENERAL	LIMITED
Extent of Liability	
Personally liable for partnership obligations	Liability *extends only* to his capital contributions
Right in Management	
When manner of management is not agreed upon, all general partners have an equal right in the management of the business	No participation in management
Contribution	
Contribute cash, property or industry	Contribute cash or property only, not industry
If Proper Party to Proceedings By or Against Partnership	
Proper party to proceedings by/against partnership	Not proper party to proceedings by/against partnership, *unless:* **1.** He is also a general partner; or **2.** Where the object of the proceeding is to enforce a limited partner's right or liability to the partnership
Assignment of Interest	
Interest is *not assignable* without consent of other partners	Interest is *freely assignable*
Firm Name	
Name *may* appear in firm name	**GR:** Name *must not* appear in firm name **XPNs:** 1. It is also the surname of a general partner; 2. Prior to the time when the limited partner became such, the business had been carried on under a name in which his surname appeared.
Prohibition to Engage in Other Business	
Prohibited in engaging in business	*No prohibition* against engaging in business
Effect of Death, Insolvency, Retirement, Insanity	
Retirement, death, insolvency, insanity of general partner dissolves partnership	Does not have same effect; rights are transferred to legal representative
Creation	
As a rule, it maybe constituted in any form, by	Created by the members after substantial compliance in

contract or conduct of the partnership	good faith of the requirements set forth by law
Composition / Membership	
Composed only of general partners	Composed of one or more general partners and one or more limited partners

G. PARTNERSHIP BY ESTOPPEL

Q: Who is a partner by estoppel?

A: One who, by words or conduct does any of the following:

1. Directly represents himself to anyone as a partner in an existing partnership or in a non-existing partnership
2. Indirectly represents himself by consenting to another representing him as a partner in an existing partnership or in a non-existing partnership

Q: What are the elements before a partner can be held liable on the ground of estoppel?

A:

1. Defendant represented himself as partner or is represented by others as such, and did not deny/refute such representation.
2. Plaintiff relied on such representation.
3. Statement of defendant is not refuted.

Q: What are the liabilities in case of estoppel?

A:

When Partnership is Liable
If all actual partners consented to the representation, then the liability of the person who represented himself to be a partner or who consented to such representation and the actual partner is considered a partnership liability
When Liability is PRO RATA
When there is no existing partnership and all those represented as partners consented to the representation, then the liability of the person who represented himself to be a partner and all who made and consented to such representation, is *joint* or *pro-rata*
When Liability is SEPARATE
When there is no existing partnership and not all but only some of those represented as partners consented to the representation, or none of the partnership in an existing partnership consented to such representation, then the liability will be *separate*

H. PARTNERSHIP V. JOINT VENTURE

Q: What is a joint venture?

A: An association of persons or companies jointly undertaking some commercial enterprise; generally, all contributes assets and share risks. It requires a community of interest in the performance of the subject matter, a right to direct and govern the policy in connection therewith, and a duty which may be altered by agreement to share both in profits and losses.

Partnership	Joint Venture
Transactions entered into	
The duration of a partnership generally relates to a continuing business of various transactions of a certain kind.	Limited to the period in which the goods are sold or the project is carried on or a single transaction.
Nature	
Permanent, partners are interested in carrying on together of a general and continuing business of a particular kind. **Note:** A *particular partnership* has a limited and temporary or ad hoc nature, being confined to a single undertaking.	Temporary, although it may continue for a number of years.
Firm Name and Liablities	
There must be a partnership or firm name under which the partnership shall operate. The names of the partners may appear in the firm name and the act of the partners will make the partnership liable.	A firm name is not necessary, thus the participating persons can transact business under their own name and can be individually liable therefore.
Corporation as partner	
Corporation cannot enter into a partnership contract, thus it cannot be a partner by reason of public policy; otherwise people other than its officers may be able to bind it *(Albano, Civil Law*	Corporations can engage in a joint venture with others through a contract of agreement if the nature of the venture in line with the business of the corporation and it is

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Reviewer, 1998, p.570)	authorized in its charter.
Legal Personality	
A partnership acquires personality after following the requisites required by law. e.g. *Art. 1771-1773, NCC* **Note:** SEC registration is not required before a partnership acquires legal personality. *(Art. 1768, NCC)*	A joint venture has no legal personality.

I. PROFESSIONAL PARTNERSHIP

Q: What is a professional partnership?

A: It is a partnership formed by persons for the sole purpose of exercising their common profession, no part of the income of which is derived from engaging in any trade or business.

Q: In a professional partnership, who is deemed engaged in the practice of profession?

A: It is the individual partners and not the partnership. Thus, they are responsible for their own acts.

Q: What is prohibited in the formation of a professional partnership?

A: Partnership between lawyers and members of other profession or non-professional persons should not be formed or permitted where any part of the partnership's employment consists of the practice of law. *(Canons of Professional Ethics)*

Q: What are the characteristics of a partnership for the practice of law?

A:

a. A duty of public service, of which the emolument is a by-product
b. A relation as an "officer of court" to the administration of justice
c. A relation to clients in the highest fiduciary degree
d. A relationship to colleagues at the bar characterized by candor, fairness, and unwillingness to resort to current business methods of advertising and encroachment on their practice, or dealing with their clients. *(In the Matter of Petition for Authority to Continue Use of Firm Name "Sycip, Salazar, etc." / "Ozeata Romulo, etc.," 92 SCRA 1 [1979], citing H.S. Drinker, Legal Ethics [1953], pp4-5.)*

Q: What is prohibited in the firm name of a partnership for the practice of law?

A: In the selection and use of firm name, no false, misleading, assumed, or trade names should be used. *(Canons of Professional Ethics)*

J. MANAGEMENT OF THE PARTNERSHIP

Q: What are the modes of appointment of a manager?

A:

Appointment through the Articles of Partnership	***Appointment Other Than in the Articles***
Power is *irrevocable* without just or lawful cause **Note:** *Vote required for removal of manager* 1. For just cause – Vote of the *controlling* partners (controlling financial interest) 2. Without cause or for unjust cause – Unanimous vote	Power to act is *revocable anytime*, with or without cause (should be done by the controlling interest)
Extent of Power	
1. If he acts in good faith, he may do *all acts of administration* (despite opposition of his partners) 2. If he acts in bad faith, he cannot	As long as he is a manager, he can perform all acts of administration (if others oppose, he can be removed)

Q: What is the rule where there are two or more managers?

A:

Without specification of their respective duties and without stipulation requiring unanimity of action
GR: Each may separately execute all acts of administration (unlimited power to administer) **XPN:** If any of the managers opposes, decision of the majority prevails **Note:** *In case of tie* – Decision of the *controlling* interest (who are also managers) *shall prevail*
Nature
GR: Unanimous consent of all the managing partners shall be necessary for the validity of the acts and absence or inability of any managing partner cannot be alleged. *XPN: Where there is an imminent danger of grave or irreparable injury to the partnership.*

Q: What is the rule when the manner of management has not been agreed upon?

A:

1. All partners shall be considered managers and agents
2. Unanimous consent is required for alteration of immovable property

Q: Azucena and Pedro acquired a parcel of land and a building. Azucena obtained a loan from Tai Tong Co., secured by a mortgage which was executed over the land and building. Arsenio, representative of Tai Tong, insured it with Travellers Multi Indemnity Corporation. The building and the contents thereof were razed by fire. Travellers failed to pay the insurance. Hence, Azucena and Pedro filed a case against Travellers wherein Tai Tong intervened claiming entitlement to the proceeds from Travellers. Who is entitled to the proceeds of the policy?

A: Tai Toing is entitled to the insurance proceeds. Arsenio contracted the insurance policy on behalf of Tai Tong. As the managing partner of the partnership, he may execute all acts of administration including the right to sue debtors of the partnership in case of their failure to pay their obligations when it became due and demandable. Or at the very least, Arsenio is an agent of the partnership. Being an agent, it is understood that he acted for and in behalf of the firm. *(Tai Tong Chuache & Co. v. Insurance Commissioner, G.R. No. L-55397, Feb. 29, 1988)*

Note: If refusal of partner is manifestly prejudicial to the interest of partnership, court's intervention may be sought.

Q: What are the remedies available to the creditors of a partner?

A:

1. Separate or individual creditors should first *secure* a judgment on their credit; and
2. *Apply* to the proper court for a *charging order* subjecting the interest of the debtor-partner in the partnership for the payment of the unsatisfied amount of the judgment debt with interest thereon.

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Q: What are the effects of the acts of partners?

A:

ACTS OF A PARTNER	EFFECT
Acts for apparently carrying on in the usual way the business of the partnership	With binding effect *except*: 1. When the partner so acting has in fact no authority to act for the partnership in the particular matter, and 2. The person with whom he is dealing has knowledge of the fact that he has no such authority
Acts not in the ordinary course of business	*Do not bind* partnership *unless* authorized by other partners *(par. 2, Art. 1818, NCC)*
Acts of strict dominion or ownership: 1. Assigning partnership property in trust for creditors; 2. Disposing of goodwill of business; 3. Doing an act which would make it impossible to carry on the ordinary business of partnership; 4. Confessing a judgment; 5. Entering into a compromise concerning a partnership claim or liability; 6. Submitting partnership claim or liability to arbitration; 7. Renouncing claim of partnership	**GR:** One or more but *less than all* the partners have no authority **XPNs:** 1. authorized by the other partners; or 2. p 3. artners have abandoned the business *(par. 2, Art. 1818, NCC)*
Acts in contravention of a restriction on authority	Partnership is *not liable* to 3rd persons having actual or presumptive knowledge of the restriction

Q: What is the effect of conveyance of a real property?

A:

TYPE OF CONVEYANCE	EFFECT
Title in the partnership's name; Conveyance in partnership name	Conveyance passes title but partnership can recover *unless:* 1. a. Conveyance was done in the usual way of business, and b. The partner so acting has the authority to act for the partnership; or 2. The property which has been conveyed by the grantee or a person claiming through such grantee to a holder for value without knowledge that the partner, in making the conveyance, has exceeded his authority
Title in the partnership's name; Conveyance in partner's name	Conveyance does not pass title but only equitable interest, provided*:* 1. Conveyance was done in the usual way of business, or 2. The partner so acting has the authority to act for the partnership
Title in the name of 1 or more partners, and the record does not disclose the right of the partnership; Conveyance in name of partner/s in whose name title stands	Conveyance passes title but the partnership may recover such property if the partners' act *does not* bind the partnership: 1. The partner so acting has *no* authority to act for the partnership, and 2. The person with whom he is dealing has knowledge of the fact *unless* the purchaser of his assignee, is a holder for value, without knowledge
Title in name of 1 or more or all partners or 3rd person in trust for partnership; Conveyance executed in partnership name or in name of partners	Conveyance will *only* pass equitable interest, *provided*: 1. The act is one within the authority of the partner, and 2. Conveyance was done in the usual way of the business
Title in the names of all the partners; Conveyance executed by all the partners	Conveyance *will pass* all the rights in such property

II. RIGHTS AND OBLIGATIONS OF PARTNERSHIP

Q: What are the responsibilities of a partnership to partners?

A:

1. *Refund* the amounts disbursed by partner in behalf of the partnership plus corresponding interest from the time the expenses are made (*e.g.* loans and advances made by a partner to the partnership aside from capital contribution)
2. *Answer for obligations* a partner may have contracted in good faith in the interest of the partnership business
3. *Answer for risks* in consequence of its management *(Art. 1796)*

III. RIGHTS AND OBLIGATIONS OF PARTNERS AMONG THEMSELVES

Q: What are the obligations of partners among themselves?

A:

1. Contribution of property *(Art. 1786)*
2. Contribution of money and money converted to personal use *(Art. 1788)*
3. Prohibition in engaging in business for himself *(Art. 1789)*
4. Contribute additional capital *(Art. 1791)*
5. Managing partner who collects debt *(Art. 1792)*
6. Partner who receives share of partnership credit *(Art. 1793)*
7. Damages to partnership *(Art. 1794)*
8. Render information *(Art. 1806)*
9. Accountable as fiduciary *(Art. 1807)*

CONTRIBUTION OF PROPERTY

Q: What are the obligations of partners with respect to contribution of property?

A: To **CAFPI**

1. **C**ontribute at the beginning of the partnership, or at the stipulated time, the money, property or industry which he may have promised to contribute

2. **A**nswer for eviction in case the partnership is deprived of the determinate property contributed

3. Answer to the partnership for the **F**ruits of the property the contribution of which he delayed, from the date they should have been contributed up to the time of actual delivery

4. **P**reserve said property with the diligence of a good father of a family, pending delivery to the partnership

5. **I**ndemnify the partnership for any damage caused to it by the retention of the same or by the delay in its contribution

Q: Who bears the risk of loss of things contributed?

A:

KIND OF PROPERTY / THING	WHO BEARS THE RISK?
Specific and determinate things which are not fungible where only the use is contributed	partners
Specific and determinate things the ownership of which is transferred to the partnership	partnership
Fungible things (Consumable)	
Things contributed to be sold	
Things brought and appraised in the inventory	

Q: What is the effect if a partner fails to contribute the property which he promised to deliver to the partnership?

A:

1. Partners become *ipso jure* a debtor of the partnership even in the absence of any demand *(Art. 1786, NCC)*
2. Remedy of the other partner is not rescission but specific performance with damages from defaulting partner

CONTRIBUTION OF MONEY AND MONEY CONVERTED TO PERSONAL USE

Q: What are the rules regarding contribution of money to the partnership?

A: CRIP

1. To ***C****ontribute* on the date fixed the amount the partner has undertaken to contribute to the partnership
2. To ***R****eimburse* any amount the partner may have taken from the partnership coffers and converted to his own use
3. To ***I****ndemnify* the partnership for the damages caused to it by delay in the

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contribution or conversion of any sum for the partner's personal benefits
4. To ***P****ay* for the agreed or legal interest, if the partner fails to pay his contribution on time or in case he takes any amount from the common fund and converts it to his own use

CONTRIBUTE ADDITIONAL CAPITAL

Q: What are the rules regarding obligations to contribute to partnership capital?

A:
1. Partners must *contribute* equal shares to the capital of the partnership *unless* there is stipulation to contrary
2. Capitalist partners must *contribute* additional capital in case of imminent loss to the business of the partnership when there is no stipulation to the contrary; Refusal to do so shall create an obligation on the refusing partner to sell his interest to the other partners

Q: What are the requisites before capitalist partners are compelled to contribute additional capital?

A:
1. Imminent loss of the business of the partnership
2. Majority of the capitalist partners are of the opinion that an additional contribution to the common fund would save the business
3. Capitalist partner refuses deliberately to contribute (not due to financial inability)
4. There is no agreement to the contrary

MANAGING PARTNER WHO COLLECTS DEBT

Q: What are the obligations of managing partners who collect his personal receivable from a person who also owes the partnership?

A:
1. Apply sum collected to 2 credits in proportion to their amounts
2. If he received it for the account of partnership, the whole sum shall be applied to partnership credit

Note: *Requisites:*
1. At least 2 debts, one where the collecting partner is creditor and the other, where the partnership is the creditor
2. Both debts are demandable
3. Partner who collects is authorized to manage and actually manages the partnership

PARTNER WHO RECEIVES SHARE OF PARTNERSHIP CREDIT

Q: What is the obligation of a partner who receives share of partnership credit?

A: To bring to the partnership capital what he has received even though he may have given receipt for his share only.

Note: *Requisites:*
1. A partner has received in whole or in part, his share of the partnership credit
2. Other partners have not collected their shares
3. Partnership debtor has become insolvent

Q: May a person who has not directly transacted in behalf of an unincorporated association be held liable for a contract entered into by such association?

A: Yes. The liability for a contract entered into on behalf of an unincorporated association or ostensible corporation may lie in a person who may not have directly transacted on its behalf, but reaped benefits from that contract. *(Lim Tong Lim v. Philippine Fishing Gear Industries Inc., G.R. No. 136448, Nov. 3, 1999)*

PROHIBITION IN ENGAGING IN BUSINESS

Q: What are the rules regarding the prohibition to engage in another business?

A:

INDUSTRIAL PARTNER	CAPITALIST PARTNER
Prohibition	
Cannot engage in business for himself unless the partnership expressly permits him to do so	Cannot engage in business (with same kind of business with the partnership) for his own account, unless there is a stipulation to the contrary
Remedy	
Capitalist partners may: 1. Exclude him from the firm 2. Avail themselves of the benefits which he may have obtained 3. Damages, in either case *(Art. 1789, NCC)*	Capitalist partner, who violated shall: 1. Bring to the common fund any profits accruing to him from said transaction; and 2. Bears all losses *(Art. 1808, NCC)*

Q: Joe and Rudy formed a partnership to operate a car repair shop in Quezon City. Joe provided the capital while Rudy contributed his labor and industry. On one side of their shop, Joe opened and operated a coffee shop, while on the other side, Rudy put up a car accessories store. May they engage in such separate businesses? Why?

A: Joe, the capitalist partner, may engage in the restaurant business because it is not the same kind of business the partnership is engaged in. On the other hand, Rudy may not engage in any other business unless their partnership expressly permits him to do so because as an industrial partner he has to devote his full time to the business of the partnership *(Art. 1789, NCC)*. **(2001 Bar Question)**

DAMAGES TO PARTNERSHIP

Q: What is the rule with regard to the obligation of a partner as to damages suffered by the partnership through his fault?

A:

GR: Every partner is responsible to the partnership for damages suffered by it through his own fault. These damages cannot be offset by the profits or benefits which he may have earned for the partnership by his industry.

XPN: If unusual profits are realized through extraordinary efforts of the guilty partner, the courts may equitably mitigate or lessen his liability for damages. *(Art. 1794, NCC)*

DUTY TO RENDER INFORMATION

Q: What is the duty of the partners with respect to information affecting the partnership?

A: They shall render on demand true and full information of all things affecting the partnership to:

1. the partner; or
2. legal representative of any deceased or legally disabled partner. *(Art. 1806, NCC)*

ACCOUNTABLE AS FIDUCIARY

Q: How are partners accountable to each other as fiduciary?

A: Every partner must account to the partnership for any benefit, and hold as trustee for it any profits derived by him without the consent of the other partners from any transaction connected with the formation, conduct, or liquidation of the partnership or from any use by him of its property. *(Art. 1807, NCC)*

RIGHTS OF GENERAL PARTNERS

Q: What are the property rights of a partner?

A: SIM

1. Right in **S**pecific partnership property
2. **I**nterest in the partnership (share in the profits and surplus)
3. Right to participate in the **M**anagement

Q: What is the nature of a partner's right in specific partnership property?

A:

1. Equal right to possession for partnership purposes
2. Right is not assignable, except in connection with assignment of rights of all partners in the same property
3. Right is limited to his share of what remains after partnership debts have been paid
4. Right is not subject to attachment or execution except on a claim against the partnership
5. Right is not subject to legal support

Q: What are the effects of assignment of partner's whole interest in the partnership?

A:

1. *Rights withheld from the assignee:*
   Such assignment *does not* grant the assignee the right to:
   a. To *interfere* in the management
   b. To *require* any information or account
   c. To *inspect* partnership books

2. *Rights of assignee on partner's interest:*
   a. To *receive* in accordance with his contract the profits accruing to the assigning partner
   b. To *avail* himself of the usual remedies provided by law in the event of fraud in the management
   c. To *receive* the assignor's interest in case of dissolution
   d. To *require* an account of partnership affairs, but only in case the partnership is dissolved, and such account shall cover the period from the date only of the last

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account agreed to by all the partners

Q: What are the effects of conveyance of a partner of his interest in the partnership?

A:

1. Conveyance of his whole interest – partnership may either remain or be dissolved
2. Assignee does not necessarily become a partner; he cannot:
   a. interfere in the management or administration; or
   b. demand information, accounting and inspection of the partnership books.

Note: But the assignee has the following rights:

1. receive in accordance with his contract the profits which the assigning partner would otherwise be entitled
2. avail himself of the usual remedies provided by law in event of fraud in management
3. receive assignor's interest in case of dissolution
4. require and account of partnership affairs but only in case the partnership is dissolved, and such account shall cover the period from the date only of the last account agreed to by all the parties

CRIMINAL LIABILITY FOR MISAPPROPRIATION: ESTAFA

Q: Rosa received from Jois money, with the express obligation to act as Jois' agent in purchasing local cigarettes, to resell them to several stores, and to give Jois the commission corresponding to the profits received. However, Rosa misappropriated and converted the said amount due to Jois to her personal use and benefit. Jois filed a case of estafa against Rosa. Can Rosa deny liability on the ground that a partnership was formed between her and Rosa?

A: No. Even assuming that a contract of partnership was indeed entered into by and between the parties, when a partner receives any money or property for a specific purpose (such as that obtaining in the instant case) and he later misappropriates the same, is guilty of estafa. *(Liwanag v. CA, G.R. No. 114398, Oct. 24, 1997)*

IV. OBLIGATIONS OF PARTNERSHIP/PARTNERS TO THIRD PERSONS

Q: What are the obligations of partners with regard to 3rd persons?

A:

1. Every partnership shall operate under a *firm name*. Persons who include their names in the partnership name even if they are not members shall be liable as a partner
2. All partners shall be liable for *contractual obligations* of the partnership with their property, after all partnership assets have been exhausted:
   a. Pro rata
   b. Subsidiary
3. *Admission or representation made by any partner* concerning partnership affairs within the scope of his authority is evidence against the partnership
4. *Notice to partner* of any matter relating to partnership affairs operates as notice to partnership *except* in case of fraud:
   a. Knowledge of partner acting in the particular matter acquired while a partner
   b. Knowledge of the partner acting in the particular matter then present to his mind
   c. Knowledge of any other partner who reasonably could and should have communicated it to the acting partner
5. Partners and the partnership are solidarily liable to 3rd persons for the *partner's tort or breach of trust*
6. *Liability of incoming partner* is limited to:
   a. His share in the partnership property for existing obligations
   b. His separate property for subsequent obligations
7. *Creditors of partnership are preferred* in partnership property & may attach partner's share in partnership assets

Note: On solidary liability. Art. 1816 should be construed together with Art. 1824 *(in connection with Arts. 1822 and 1823)*. While the liability of the partners is merely joint in transactions entered into by the partnership, a third person who transacted with said partnership may hold the partners solidarily liable for the whole obligation if the case of the third person falls under Articles 1822 and 1823. *(Munasque v. CA, G.R. No. L-39780, Nov. 11, 1985)*

V. DISSOLUTION

Q: Distinguish dissolution, winding up and termination.

Dissolution	Winding up	Termination
A change in the relation of the partners caused by any partner ceasing to be associated in carrying on the business.	Settling the partnership business or affairs after dissolution	Point in time when all partnership affairs are wound up or completed; the end of the partnership life

Q: What are the causes of dissolution?

A:

1. Without violating the agreement:
   a. Termination of the definite term or specific undertaking
   b. Express will of *any* partner in good faith, when there is *no* definite term and *no* specified undertaking
   c. Express will of *all* partners (except those who have assigned their interests or suffered them to be charged for their separate debts) either before or after the termination of any specified term or particular undertaking
   d. Expulsion of any partner in good faith of a member
2. Violating the agreement
3. Unlawfulness of the business
4. Loss
   a. *Specific thing* promised as contribution is lost or perished *before* delivery
   b. Loss of a specific thing contributed *before* or *after delivery*, if only the *use* of such is contributed

   Note: The partnership shall not be dissolved by the loss of the thing when it occurs after the partnership has acquired the ownership thereof.

5. Death of any of the partners
6. Insolvency of any partner or of the partnership
7. Civil interdiction of any partner
8. By decree of court under Art. 1831, NCC
   a. a partner has been declared insane or of unsound mind
   b. a partner becomes in any other way incapable of performing his part of the partnership contract
   c. a partner has been guilty of such conduct as tends to affect prejudicially the carrying on of the business
   d. a partner willfully or persistently commits a breach of the partnership agreement
   e. the business of the partnership can only be carried on at a loss
   f. other circumstances render a dissolution equitable

Q: What are the effects of dissolution?

A:

1. Partnership is not terminated
2. Partnership continues for a limited purpose
3. Transaction of new business is prohibited *(De Leon, Comments and Cases on Partnership, Agency, and Trust, p. 229, 2005 ed)*

Note: The dissolution of a partnership must not be understood in the absolute and strict sense so that at the termination of the object for which it was created the partnership is extinguished, pending the winding up of some incidents and obligations of the partnership, but in such case, the partnership will be reputed as existing until the juridical relations arising out of the contract are dissolved. *(Testate of Motta v. Serra, G.R. No. L-22825, Feb. 14, 1925)*

Dissolution does not automatically result in the termination of the legal personality of the partnership, nor the relations of the partners among themselves who remain as co-partners until the partnership is terminated. (*De Leon, Comments and Cases on Partnership, Agency, and Trust, p. 29, 2005 ed)*

Q: What is the effect of dissolution on the authority of a partner?

A:

GR: The partnership ceases to be a going concern

XPN: The partner's power of representation is confined only to acts incident to winding up or completing transactions begun but not then finished. *(Art. 1832, NCC)*

Note: Subject to the qualifications set forth in Articles 1833 and 1834 in relation to Article 1832, NCC:

1. *In so far as the partners themselves are concerned* – The authority of any partner to bind the partnership by a new contract is immediately terminated when the

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dissolution is *not* by the **A**ct, **I**nsolvency, or **D**eath of a partner **(AID)**.

2. When the dissolution is by the act, insolvency, or death, the termination of authority depends upon whether or not the partner had knowledge or notice of dissolution *(Art. 1833, NCC)*.

Q: The articles of co-partnership provide that in case of death of one partner, the partnership shall not be dissolved but shall be continued by the deceased partner's heirs. When H, a partner, died, his wife, W, took over the management of some of the real properties with permission of the surviving partner, X, but her name was not included in the partnership name. She eventually sold these real properties after a few years. X now claims that W did not have the authority to manage and sell those properties as she was not a partner. Is the sale valid?

A: Yes. The widow was not a mere agent, because she had become a partner upon her husband's death, as expressly provided by the articles of co-partnership, and by authorizing the widow to manage partnership property X recognized her as a general partner with authority to administer and alienate partnership property. It is immaterial that W's name was not included in the firm name, since no conversion of status is involved, and the articles of co-partnership expressly contemplated the admission of the partner's heirs into the partnership. *(Goquiolay v. Sycip, G.R. No. L-11840, Dec. 16, 1963)*

Q: What is the liability of a partner where the dissolution is caused by the act, death or insolvency of a partner?

A:

GR: Each partner is liable to his co-partners for his share, of any liability created by any partner for the partnership, as if the partnership had not been dissolved.

XPNs: Partners shall not be liable when:

1. the dissolution, being by act of any partner, the partner acting for the partnership had knowledge of the dissolution; or
2. the dissolution, being by the death or insolvency of a partner, the partner acting for the partnership had knowledge or notice of the death or insolvency *(Art. 1833, NCC)*

Q: After the dissolution of a partnership, can a partner still bind the partnership?

A:

GR: Yes. A partner continues to bind partnership *even after* dissolution in the following cases:

1. Transactions to wind up partnership affairs/complete transactions unfinished at dissolution;
2. Transactions which would bind partnership if not dissolved dissolution had not taken place, provided the other party/obligee:
   a.
      i. Had *extended* credit to partnership prior to dissolution; and
      ii. Had *no knowledge/notice* of dissolution; or
   b.
      i. *Did not extend* credit to partnership;
      ii. *Had known* partnership prior to dissolution; and
      iii. *Had no knowledge/notice* of dissolution/fact of dissolution not advertised in a newspaper of general circulation in the place where partnership is regularly carried on.

XPNs: Partner cannot bind the partnership anymore after dissolution where dissolution is due to unlawfulness to carry on business

XPN to XPN: Winding up of partnership affairs

1. Partner has become insolvent
2. Act is not appropriate for winding up or for completing unfinished transactions
3. Completely new transactions which would bind the partnership if dissolution had not taken place with third persons in bad faith.
4. Partner is unauthorized to wind up partnership affairs, *except* by transaction with one who:
   a.
      i. *Had extended* credit to partnership prior to dissolution;
      ii. *Had no knowledge or notice* of dissolution; or
   b.
      i. *Did not extend* credit to partnership prior to dissolution;
      ii. *Had known* partnership prior to dissolution; and
      iii. *Had no knowledge/notice* of dissolution/fact of dissolution not advertised in a newspaper of general circulation in the place where partnership is regularly carried on.

Q: Does the dissolution of a partnership discharge existing liability of a partner?

A:

GR: No.

XPN: Said liability is discharged when there is an agreement between:

1. Partner himself;
2. Person/s continuing the business; and
3. Partnership creditors

Q: What is the order of priority in the distribution of assets during the dissolution of a limited partnership?

A: In setting accounts after dissolution, the liabilities of the partnership shall be entitled to payment in the following order:

1. Those to creditors, in the order of priority as provided by law, except those to limited partners on account of their contributions, and to general partners
2. Those to limited partners in respect to their share of the profits and other compensation by way of income on their contributions
3. Those to limited partners in respect to the capital of their contributions
4. Those to general partners other than for capital and profits
5. Those to general partners in respect to profits
6. Those to general partners in respect to capital *(Art. 1863, NCC)*

Note: Subject to any statement in the certificate or to subsequent agreement, limited partners share in the partnership assets in respect to their claims for capital, and in respect to their claims for profits or for compensation by way of income on their contribution respectively, in proportion to the respective amounts of such claims.

WINDING UP

Q: What takes place during the winding up of the partnership?

A: It is during this time after dissolution that partnership business or affairs are being settled. (*De Leon, Comments and Cases on Partnership, Agency, and Trust, p. 229, 2005 ed)*

Note: Examples of winding up:

1. Paying previous obligations
2. Collecting assets previously demandable

Engaging in new business necessary for winding up such as contracting with a demolition company for the demolition of the garage used in a "used car" partnership *(Paras, Civil Code of the Philippines Annotated, Volume 5, p. 485, 1969 6th ed)*

Q: Who are the persons authorized to wind up?

A:

1. Partners designated by the agreement
2. In the absence of such, all partners who have not wrongfully dissolved the partnership
3. Legal representative of last surviving partner who is not insolvent

Q: What are partnership assets?

A:

1. Partnership property
2. Contributions of the partners necessary for the payment of all liabilities *[Art. 1839 (2), NCC]*

Q: What is the order of payment in winding up?

A:

1. Those owing to creditors other than partners
2. Those owing to partners other than for capital or profits
3. Those owing to partners in respect of capital
4. Those owing to partners in respect to profits *[Art. 1839 (2), NCC]*

Q: What is the doctrine of marshalling of assets?

A:

1. Partnership creditors have preference in partnership assets
2. Separate or individual creditors have preference in separate or individual properties
3. Anything left from either goes to the other.

Q: What are the rights of a partner where dissolution is not in contravention of the agreement?

A: *Unless otherwise agreed*, the rights of each partner are as follows:

1. To have the *partnership property* applied to discharge the liabilities of partnership; and
2. To have the *surplus*, if any, applied, to pay in cash the net amount owing to the respective partners.

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Q: What are the rights of a partner where dissolution is in contravention of the agreement?

A: The rights of a partner vary *depending upon whether he is the innocent or guilty partner*.

1. Rights of partner who *has not caused* the dissolution wrongfully:
   a. To have *partnership property applied* for the payment of its liabilities and to receive in cash his share of the surplus
   b. To *be indemnified* for the damages caused by the partner guilty of wrongful dissolution
   c. To *continue the business* in the same name during the agreed term of the partnership, by themselves or jointly with others
   d. To *possess partnership property* should they decide to continue the business

2. Rights of partner who *has wrongfully caused* the dissolution:
   a. *If the business is not continued* by the other partners, to have the partnership property applied to discharge its liabilities and to receive in cash his share of the surplus less damages caused by his wrongful dissolution
   b. *If the business is continued:*
      i. To have the value of his interest in the partnership at the time of the dissolution, less any damage caused by the dissolution to his co-partners, ascertained and paid in cash, or secured by bond approved by the court; and
      ii. To be released from all existing and future liabilities of the partnership

Q: What are the rights of injured partner where partnership contract is rescinded?

A:

1. Right of a *lien on, or retention of*, the surplus of partnership property after satisfying partnership liabilities for any sum of money paid or contributed by him;
2. Right of *subrogation* in place of partnership creditors after payment of partnership liabilities; and
3. Right of *indemnification* by the guilty partner against all debts and liabilities of the partnership.

Q: How are the accounts settled between partners?

A:

1. Assets of the partnership include:
   a. Partnership property (including goodwill)
   b. Contributions of the partners
2. Order of application of the assets:
   a. *First,* those owing to partnership creditors
   b. *Second,* those owing to partners other than for capital and profits such as loans given by the partners or advances for business expenses
   c. *Third,* those owing for the return of the capital contributed by the partners
   d. *Fourth,* the share of the profits, if any, due to each partner

Q: A partnership was formed with Magdusa as the manager. During the existence of the partnership, two partners expressed their desire to withdraw from the firm. Magdusa determined the value of the partners share which were embodied in the document drawn in the handwriting of Magdusa but was not signed by all of the partners. Later, the withdrawing partners demanded for payment but were refused. Considering that not all partners intervened in the distribution of all or part of the partnership assets, should the action prosper?

A: No. A partner's share cannot be returned without first dissolving and liquidating the partnership, for the return is dependent on the discharge of creditors, whose claims enjoy preference over those of the partner, and it is self-evident that all members of the partnership are interested in its assets and business, and are entitled to be heard in the matter of the firm's liquidation and distribution of its property. The liquidation prepared by Magdusa not signed by the other partners is not binding on them. *(Magdusa v. Albaran, G.R. No. L-17526, June 30, 1962)*

Q: What is partner's lien?

A: The right of every partner to have the partnership property applied, to discharge partnership liabilities and surplus assets, if any, distributed in cash to the respective partners,

after deducting what may be due to the partnership from them as partners.

Q: Can a partner demand for his share during the existence of a partnership?

A: No. A share in a partnership can be returned only after the completion of the latter's dissolution, liquidation and winding up of the business.

Since the capital was contributed to the partnership, not to partners, it is the partnership that must refund the equity of the retiring partners. Since it is the partnership, as a separate and distinct entity that must refund the shares of the partners, the amount to be refunded is necessarily limited to its total resources. In other words, it can only pay out what it has in its coffers, which consists of all its assets. *(Villareal v. Ramirez, G.R. No. 144214, July 14, 2003)*

Q: What are the effects when the business of a dissolved partnership is continued?

A:

1. Creditors of old partnership are also creditors of the new partnership who continues the business of the old one without liquidation of the partnership affairs.
2. Creditors have an equitable lien on the consideration paid to the retiring/deceased partner by the purchaser when retiring/deceased partner sold his interest without final settlement with creditors.
3. Rights of retiring/estate of deceased partner:
   a. To have the value of his interest ascertained as of the date of dissolution; and
   b. To receive as ordinary creditor the value of his share in the dissolved partnership with interest or profits attributable to use of his right, at his option.

Note: The right to demand on accounting of the value of his interest accrues to any partner or his legal representative after dissolution in the absence of an agreement to the contrary.

Prescription begins to run only upon the dissolution of the partnership, when the final accounting is done.

Q: Who are the persons required to render an account?

A:

1. Winding up partner;
2. Surviving partner; and
3. Person or partnership continuing the business

Q: Emnace and Tabanao decided to dissolve their partnership in 1986. Emnace failed to submit the statement of assets and liabilities of the partnership, and to render an accounting of the partnership's finances. Tabanao's heirs filed against Emnace an action for accounting, etc. Emnace counters, contending that prescription has set in. Decide.

A: Prescription has not yet set in. Prescription of the said right starts to run only upon the dissolution of the partnership when the final accounting is done. Contrary to Emnace's protestations, prescription had not even begun to run in the absence of a final accounting. The right to demand an accounting accrues at the date of dissolution in the absence of any agreement to the contrary. When a final accounting is made, it is only then that prescription begins to run. *(Emnace v. CA, G.R. No. 126334, Nov. 23, 2001)*

Q: Pauline, Patricia and Priscilla formed a business partnership for the purpose of engaging in neon advertising for a term of five (5) years. Pauline subsequently assigned to Philip her interest in the partnership. When Patricia and Priscilla learned of the assignment, they decided to dissolve the partnership before the expiration of its term as they had an unproductive business relationship with Philip in the past. On the other hand, unaware of the move of Patricia and Priscilla but sensing their negative reaction to his acquisition of Pauline's interest, Philip simultaneously petitioned for the dissolution of the partnership.
Is the dissolution done by Patricia and Priscilla without the consent of Pauline or Philip valid? Explain.

A: Under Art 1830(1)(c), NCC, the dissolution by Patricia and Priscilla is valid and did not violate the contract of partnership even though Pauline and Philip did not consent thereto. The consent of Pauline is not necessary because she had already assigned her interest to Philip. The consent of Philip is also not necessary because the assignment to him of Pauline's interest did not make him a partner, under Art. 1813, NCC.

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Does Philip have any right to petition for the dissolution of the partnership before the expiration of its specified term? Explain.

A: No, Philip has no right to petition for dissolution because he does not have the standing of a partner. *(Art. 1813, NCC)* **(1995 Bar Question)**

VI. LIMITED PARTNERSHIP

A. DEFINITION

Q: What is limited partnership?

A: One formed by two or more persons having as members one or more general partners and one or more limited partners, the latter not being personally liable for partnership debts *(Art. 1843)*

Q: What are the characteristics of limited partnership?

A:

1. It is formed by compliance with the statutory requirements
2. One or more general partners control the business and are personally liable to creditors
3. One or more limited partners contribute to the capital and share in the profits *but do not* participate in the management of the business and are not personally liable for partnership obligations beyond their capital contributions
4. The limited partners may ask for the return of their capital contributions under conditions prescribed by law
5. Partnership debts are paid out of common fund and the individual properties of general partners

B. HOW LIMITED PARTNERSHIP IS FORMED/AMENDED

Q: What are the essential requirements for the formation of limited partnership?

A:

1. Certificate of articles of limited partnership which states the matters enumerated in Art. 1844, NCC, must be signed and sworn; and
2. Certificate must be filed for record in the office of the SEC.

Note: Strict compliance with legal requirements is not necessary. It is sufficient that there is substantial compliance in good faith *(Jo Chun v. Pacific Commercial Co., G.R. No. 19892, Sept. 6, 1923).*

Q: Does a limited partnership have a personality separate and distinct from that of the partners? What are the consequences of such?

A: Yes. The personality of a limited partnership being different from that of its members, it must, on general principle, answer for, and suffer, the consequence of its acts as such an entity capable of being the subject of rights and obligations. If the limited partnership failed to pay its obligations, this partnership must suffer the consequences of such a failure, and must be adjudged insolvent. *(Campos Rueda & Co. v. Pacific Commercial Co., et. al, G.R. No. L- 18703, Aug. 28, 1922)*

Q: When is the certificate or articles of limited partnership cancelled?

A:

1. When the partnership is dissolved
2. When all the limited partners ceased to be such

Q: When may a certificate or articles of limited partnership be amended?

A:

1. It must fall under the following changes and conditions:
   a. There is a change in the name of the partnership or in the amount or character of the contribution of any limited partner
   b. A person is substituted as a limited partner
   c. An additional limited partner is admitted
   d. A person is admitted as a general partner
   e. A general partner retires, dies, becomes insolvent or insane, or is sentenced to civil interdiction and the business is continued under Article 1860
   f. There is a change in the character of the business of the partnership
   g. There is a false or erroneous statement in the certificate
   h. There is a change in the time as stated in the certificate for the dissolution of the partnership or for the return of a contribution
   i. A time is fixed for the dissolution of the partnership, or the return of

a contribution, no time having been specified in the certificate

j. The members desire to make a change in any other statement in the certificate in order that it shall accurately represent the agreement among them *(Art. 1864, NCC)*

2. Must be signed and sworn to by all of the members including the new members if some added; in case of substitution, the assigning limited partner must also sign

3. Must be recorded in the SEC

LIMITED PARTNER

Q: What are the liabilities of a limited partner?

A:

AS CREDITOR	AS TRUSTEE
Deficiency in contribution	Specific property stated as contributed but not yet contributed/ wrongfully returned
Unpaid contribution	Money/other property wrongfully paid/ conveyed to him on account of his contribution

Q: What transactions are allowed or prohibited in a limited partnership?

A:

1. *Allowed*
   a. *Granting* loans to partnership
   b. *Transacting* business with partnership
   c. *Receiving* pro rata share of partnership assets with general creditors if he is not also a general partner

2. *Prohibited*
   a. *Receiving/holding* partnership property as collateral security
   b. *Receiving* any payment, conveyance, release from liability if it will prejudice right of 3rd persons

Note: Violation of the prohibition will give rise to the presumption that it has been made to defraud partnership creditors.

The prohibition is not absolute because there is no prohibition if the partnership assets are sufficient to discharge partnership liabilities to persons not claiming as general or limited partners.

Q: When does a general partner need consent or ratification of all the limited partners?

A: When he:

1. does any act in contravention of the certificate;
2. does any act which would make it impossible to carry on the ordinary business of the partnership;
3. confesses judgment against partnership;
4. possesses partnership property / assigns rights in specific partnership property other than for partnership purposes;
5. admits person as general partner;
6. admits person as limited partner – unless authorized in certificate; or
7. continues business with partnership property on death, retirement, civil interdiction, insanity or insolvency of general partner *unless* authorized in the certificate.

PARTNERSHIP TORT

Q: When is there a partnership tort?

A: Where:

1. by any wrongful act or omission of any partner, acting in the ordinary course of business of the partnership or with authority of his co-partners, *loss or injury* is caused to any person, not being a partner in the partnership;
2. one partner, acting within the scope of his apparent authority, receives money or property from a third person, and *misapplies* it; or
3. the partnership, in the course of its business, receives money or property, and it is *misapplied* by any partner while it is in the custody of the partnership.

Note: Partners are *solidarily liable* with the partnership for any penalty or damage arising from a partnership tort.

C. RIGHTS AND OBLIGATIONS OF A LIMITED PARTNER

Q: What are the specific rights of a limited partner?

A: To:

1. have partnership books kept at principal place of business;
2. inspect/copy books at reasonable hours;

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3. have on demand true and full information of all things affecting partnership;
4. have formal account of partnership affairs whenever circumstances render it just and reasonable;
5. ask for dissolution and winding up by decree of court;
6. receive share of profits/other compensation by way of income; and
7. receive return of contributions, provided the partnership assets are in excess of all its liabilities.

Q: Who is a substituted limited partner?

A: A person admitted to all the rights of a limited partner who has died or assigned his interest in the partnership

Q: What are the rights and liabilities of a substituted limited partner?

A:

GR: He has all the rights and powers and is subject to all the restrictions and liabilities of his assignor.

XPN: Those liabilities which he was ignorant of at the time that he became a limited partner and which could not be ascertained from the certificate

Q: What are the requirements for the admission of a substituted limited partner?

A:

1. All the members must consent to the assignee becoming a substituted limited partner or the limited partner, being empowered by the certificate must give the assignee the right to become a limited partner;
2. The certificate must be amended in accordance with Art. 1865, NCC; and
3. The certificate as amended must be registered in the SEC.

Q: What is the basis of preference given to limited partners over other limited partners?

A: Priority or preference may be given to some limited partners over other limited partners as to the:

1. return of their contributions;
2. their compensation by way of income; or
3. any other matter.

Note: In the absence of such statement in the certificate, *even if* there is an agreement, all limited partners shall stand on equal footing in respect of these matters.

Q: What are the requisites for return of contribution of a limited partner?

A:

1. All liabilities of the partnership have been paid or if they have not yet been paid, the assets of the partnership are sufficient to pay such liabilities;
2. The consent of all the members (general and limited partners) has been obtained *except* when the return may be rightfully demanded; and
3. The certificate of limited partnership is cancelled or amended

Q: When is the return of contribution of a limited partner a matter of right?

A: When all liabilities of the partnership, *except* liabilities to general partners and to limited partners on account of their contributions, have been paid or there remains property of the partnership sufficient to pay them and the certificate is cancelled or so amended as to set forth the withdrawal or reduction:

1. on the dissolution of the partnership;
2. upon the arrival of the date specified in the certificate for the return; or
3. after the expiration of 6 month notice in writing given by him to the other partners if no time is fixed in the certificate for the return of the contribution or for the dissolution of the partnership.

Note: Even if a limited partner has contributed property, he has only the right to demand and receive cash for his contribution. The *exceptions* are:

1. When there is stipulation to the contrary in the certificate; or
2. When all the partners (general and limited partners) consent to the return other than in the form of cash

Q: What are the liabilities of a limited partner?

1. To the partnership

A: Since limited partners are not principals in the transaction of a partnership, their liability as a rule, is to the partnership, not to the creditors of the partnership. The general partners *cannot*,

however waive any liability of the limited partners to the prejudice of such creditors.

2. To the partnership creditors and other partners

2. A limited partner is liable for partnership obligations when he contributed services instead of only money or property to the partnership
3. When he allows his surname to appear in the firm name
4. When he fails to have a false statement in the certificate corrected, knowing it to be false
5. When he takes part in the control of the business
6. When he receives partnership property as collateral security, payment, conveyance, or release in fraud of partnership creditors
7. When there is failure to substantially comply with the legal requirements governing the formation of limited partnerships

3. To separate creditors

A: As in a general partnership, the creditor of a limited partner may, in addition to other remedies allowed under existing laws, apply to the proper court for a charging order subjecting the interest in the partnership of the debtor partner for the payment of his obligation. *(De Leon, Comments and cases on Partnership, Agency and Trust, p. 13, 2005 ed)*

Q: What are the requisites for waiver or compromise of liabilities?

A: The waiver or compromise:

1. is made with the consent of all partners; and
2. does not prejudice partnership creditors who extended credit or whose claims arose before the cancellation or amendment of the certificate.

Q: When may a limited partner have the partnership dissolved?

A:

1. When his demand for the return of his contribution is denied although he has a right to such return; or
2. When his contribution is not paid although he is entitled to its return because the other liabilities of the partnership have not been paid or the partnership property is insufficient for their payment.

SUMMARY OF RIGHTS AND OBLIGATIONS OF PARTNERS

GENERAL PARTNER	LIMITED PARTNER
Rights	
1. Right in specific partnership property 2. Interest in the partnership (share in the profits and surplus) 3. Right to participate in the management 4. Right to associate another person with him in his share without the consent of other partners (sub-partnership) 5. Right to inspect and copy partnership books at any reasonable hour. 6. Right to a formal account as to partnership affairs (even during existence of partnership) a. if he is wrongfully excluded from partnership business or possession of its property by his co-partners. b. if right exists under the terms of any agreement. c. as provided in Art. 1807, NCC d. whenever the circumstances render it just and reasonable.	1. To have partnership books kept at principal place of business 2. To inspect/copy books at reasonable hours 3. To have on demand true and full information of all things affecting partnership 4. To have formal account of partnership affairs whenever circumstances render it just and reasonable 5. To ask for dissolution and winding up by decree of court 6. To receive share of profits/other compensation by way of income 7. To receive return of contributions, provided the partnership assets are in excess of all its liabilities
Obligations	
Obligations of partners among themselves	**To the partnership**
1. Contribution of property 2. Contribution of money and money converted to personal use 3. Prohibition in engaging in business for himself 4. Contribute additional capital	Since limited partners are not principals in the transaction of a partnership, their liability as a rule, is to the partnership, not to the creditors of the partnership. The

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5. Managing partner who collects debt 6. Partner who receives share of partnership credit 7. Damages to partnership 8. Render information 9. Accountable as fiduciary	general partners *cannot*, however waive any liability of the limited partners to the prejudice of such creditors.
Obligations of partners to 3rd persons 1. Every partnership shall operate under a *firm name*. Persons who include their names in the partnership name even if they are not members shall be liable as a partner 2. All partners shall be liable for *contractual obligations* of the partnership with their property, after all partnership assets have been exhausted: a. Pro rata b. Subsidiary 3. *Admission or representation made by any partner* concerning partnership affairs within the scope of his authority is evidence against the partnership 4. *Notice to partner* of any matter relating to partnership affairs operates as notice to partnership *except* in case of fraud: a. Knowledge of partner acting in the particular matter acquired while a partner b. Knowledge of the partner acting in the particular matter then present to his mind c. Knowledge of any other partner who reasonably could and should have communicated it to the acting partner 5. Partners and the partnership are solidarily liable to 3rd persons for the *partner's tort or breach of trust* 6. *Liability of incoming partner is limited* to: a. His share in the partnership property for existing obligations b. His separate property for subsequent obligations 7. *Creditors of partnership are preferred* in partnership property & may attach partner's share in partnership assets	**To the partnership creditors and other partners** 1. A limited partner is liable for partnership obligations when he contributed services instead of only money or property to the partnership 2. When he allows his surname to appear in the firm name 3. When he fails to have a false statement in the certificate corrected, knowing it to be false 4. When he takes part in the control of the business 5. When he receives partnership property as collateral security, payment, conveyance, or release in fraud of partnership creditors 6. When there is failure to substantially comply with the legal requirements governing the formation of limited partnerships
Other obligations 5. Duty to render on demand true and full information affecting partnership to any partner or legal representative of any deceased partner or of any partner under legal disability. 6. Duty to account to the partnership as fiduciary.	**To separate creditors** As in a general partnership, the creditor of a limited partner may, in addition to other remedies allowed under existing laws, apply to the proper court for a charging order subjecting the interest in the partnership of the debtor partner for the payment of his obligation.

AGENCY

Q: What is contract of agency?

A: By contract of agency a person binds himself to render some service or to do something in representation or on behalf of another, with the consent or authority of the latter. *(Art. 1868 NCC)*

Q: What are the characteristics of a contract of agency?

A: BUNC-PP

1. **B**ilateral – If it is for compensation because it gives rise to reciprocal rights and obligations
2. **U**nilateral – If gratuitous, because it creates obligations for only one of the parties
3. **N**ominate
4. **C**onsensual – It is perfected by mere consent
5. **P**rincipal
6. **P**reparatory – It is entered into as a means to an end

Q: What are the classifications of agency?

A:

1. *As to manner of creation*
   a. *Express* – agent has been actually authorized by the principal, either orally or in writing
   b. *Implied* – agency is implied from the acts of the principal, from his silence or lack of action or his failure to repudiate the agency, knowing that another person is acting on his behalf without authority

2. *As to character*
   a. *Gratuitous* – agent receives no compensation for his services
   b. *Onerous* – agent receives compensation for his services

3. *As to extent of business of the principal*
   a. *General* – agency comprises all the business of the principal
   b. *Special* – agency comprises one or more specific transactions

4. *As to authority conferred*
   a. *Couched in general terms* – agency is created in general terms and is deemed to comprise only acts in the name and representation of the principal
   b. *Simple or commission* – agent acts in his own name but for the account of the principal

Q: What are the essential elements of an agency?

A: CORS

1. **C**onsent (express or implied) of the parties to establish the relationship;
2. The **O**bject is the execution of a juridical act in relation to third persons;
3. The agent acts as a **R**epresentative and not for himself; and
4. The agent acts within the **S**cope of his authority.

Q: Are there any formal requirements in the appointment of an agent?

A:

GR: There are no formal requirements governing the appointment of an agent.

XPN: When the law requires a specific form.

i.e. – when sale of land or any interest therein is through an agent, the authority of the latter must be in writing; otherwise, the sale shall be void *(Art. 1874, NCC)*

Q: Who are the parties to a contract of agency? Distinguish.

A:

1. *Principal* – One whom the agent represents and from whom he derives authority; he is the one primarily concerned in the contract.
2. *Agent* – One who represents the principal in a transaction or business.

Note: From the time the agent acts or transacts the business for which he has been employed in representation of another, a third party is added to the agency relationship – the party with whom the business is transacted. *(De Leon, Comments and Cases on Partnership, Agency, and Trust, p. 352, 2005 ed)*

Q: What is the nature of the relationship between principal and agent?

A: It is fiduciary in nature that is based on trust and confidence.

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Q: What are the qualifications of a principal?

A:

1. Natural or juridical person
2. He must have capacity to act

Note: If a person is capacitated to act for himself or his own right, he can act through an agent.

Insofar as third persons are concerned, it is enough that the principal is capacitated. *But* insofar as his obligations to his principal are concerned, the agent must be able to bind himself.

Q: What is the term "joint principals"?

A: Two or more persons appoint an agent for a common transaction or undertaking. *(Art. 1915, NCC)*

Q: What are the requisites for solidary liability of joint principals?

A:

1. There are two or more principals;
2. They have all concurred in the appointment of the same agent; and
3. Agent is appointed for a common transaction or undertaking. *(De Leon, p. 604, 2005 ed)*

Q: What are the kinds of agents?

A:

1. *Universal agent* – one employed to do all acts which the principal may personally do, and which he can lawfully delegate to another the power of doing
2. *General agent* – one employed to transact all business of the principal, or all the business of a particular kind or in a particular place, do all acts connected with a particular trade, business or employment
3. *Special or particular agent* – one authorized to do act in one or more specific transactions or to do one or more specific acts or to act upon a particular occasion

Q: Can agency be created by necessity?

A: No. What is created is additional authority in an agent appointed and authorized before the emergency arose.

Q: What are the requisites for the existence of agency by necessity?

A:

1. Real existence of emergency
2. Inability of the agent to communicate with the principal
3. Exercise of additional authority is for the principal's protection
4. Adoption of fairly reasonable means, premises duly considered

Q: What is the rule regarding double agency?

A:

GR: It is disapproved by law for being against public policy and sound morality.

XPN: Where the agent acted with full knowledge and consent of the principals.

Q: A granted B the exclusive right to sell his brand of Maong pants in Isabela, the price for his merchandise payable within 60 days from delivery, and promising B a commission of 20% on all sales. After the delivery of the merchandise to B but before he could sell any of them, B's store in Isabela was completely burned without his fault, together with all of A's pants. Must B pay A for the lost pants? Why?

A: The contract between A and B is a sale not an agency to sell because the price is payable by B upon 60 days from delivery even if B is unable to resell it. If B were an agent, he is not bound to pay the price if he is unable to resell it. As a buyer, ownership passed to B upon delivery and, under Art. 1504, NCC, the thing perishes for the owner. Hence, B must still pay the price. **(1999 Bar Question)**

Q: Is mere representation of an alleged agent sufficient to prove the existence of a principal-agent relationship?

A: No. The declarations of the agent alone are generally insufficient to establish the fact or extent of agency. It is a settled rule that the persons dealing with the assumed agent are bound at their peril, if they would hold the principals liable, to ascertain not only the fact of agency but also the nature and extent of authority, and in case either is controverted, the burden of proof is upon them to establish it. *(Spouses Yu v. Pan American World Airways, Inc., G.R. No. 123560, Mar. 27, 2000)*

Q: A foreign manufacturer of computers and a Philippine distributor entered into a contract whereby the distributor agreed to order 1,000 units of the manufacturer's computers every month and to resell them in the Philippines at the manufacturer's suggested prices plus 10%. All unsold units at the end of the year shall be bought back by the manufacturer at the same price they were ordered. The manufacturer shall hold the distributor free and harmless from any claim for defects in the units. Is the agreement one for sale or agency?

A: The contract is one of agency not sale. The notion of sale is negated by the following indicia: (1) the price is fixed by the manufacturer with the 10% mark-up constituting the commission; (2) the manufacturer reacquires the unsold units at exactly the same price; and (3) warranty for the units was borne by the manufacturer. The foregoing indicia negate sale because they indicate that ownership over the units was never intended to transfer to the distributor. **(2000 Bar Question)**

II. POWERS

Q: What are the kinds of agency as to extent of powers conferred?

A: *An agency may be couched in general terms or couched in specific terms.*

Q: What is an agency couched in general terms?

A: One which is created in general terms and is deemed to comprise only acts of administration *(Art. 1877, NCC).*

Q: When is an express power necessary?

A: It is necessary to perform any act of strict ownership**.**

Q: What is meant by acts of administration?

A: Those which do not imply the authority to alienate for the exercise of which an express power is necessary.

Q: When is payment an act of administration?

A: *When payment is made in the ordinary course of management.*

Q: When are making gifts an act of administration?

A: The making of customary gifts for charity, or those made to employees in the business managed by the agent are considered acts of administration.

Q: P granted to A a special power to mortgage the former's real estate. By virtue of said power, A secured a loan from C secured by a mortgage on said real estate. Is P personally liable for said loan?

A: No. A special power to mortgage property is limited to such authority to mortgage and does not bind the grantor personally to other obligations contracted by the grantee in the absence of any ratification or other similar act that would estop the grantor from questioning or disowning such other obligations contracted by the grantee.

A. TO BIND PRINCIPAL

Q: When is the act of an agent binding to the principal?

A:

1. When the agent acts as such without expressly binding himself or does not exceed the limits of his authority. *(Art. 1897)*
2. If principal ratifies the act of the agent which exceeded his authority. *(Art. 1898)*
3. Circumstances where the principal himself was, or ought to have been aware. *(Art. 1899)*
4. If such act is within the terms of the power of attorney, as written. *(Art.1900 & 1902)*
5. Principal has ratified, or has signified his willingness to ratify the agent's act. *(Art 1901)*

Q: Does knowledge of a fact by an agent bind the principal?

A:

GR: Knowledge of agent is knowledge of principal.

XPNs:

1. Agent's interests are adverse to those of the principal;
2. Agent's duty is not to disclose the information *(confidential information)*; or
3. Where the person claiming the benefit of the rule colludes with the agent to

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defraud the principal. *(De Leon, Comments and Cases on Partnership, Agency, and Trust, p. 367, 2005 ed)*

Q: What are the effects of the acts of an agent?

A:

1. *With* authority
   a. In principal's name – valid
   b. In his own name – not binding on the principal; agent and stranger are the only parties, *except* regarding *things belonging to the principal* or when the principal *ratifies* the contract or *derives benefit* therefrom

2. *Without* authority
   a. In principal's name – unauthorized and unenforceable but may be ratified, in which case, may be validated retroactively from the beginning
   b. In his own name – valid on the agent, *but* not on the principal

Q: What are the distinctions between authority and the principal's instructions?

A:

AUTHORITY	INSTRUCTIONS
Sum total of the powers committed to the agent by the principal	Contemplates only a private rule of guidance to the agent; independent and distinct in character
Relates to the subject/business with which the agent is empowered to deal or act	Refers to the manner or mode of agent's action
Limitations of authority are operative as against those who have/charged with knowledge of them	Without significance as against those with neither knowledge nor notice of them
Contemplated to be made known to third persons dealing with the agent	Not expected to be made known to those with whom the agent deals

Q: When is the principal bound by the actual or apparent authority of the agent?

A: The principal is bound by the acts of the agent on his behalf, whether or not the third person dealing with the agent believes that the agent has actual authority, so long as the agent has actual authority, express or implied.

Q: What is doctrine of apparent authority?

A: The principal is liable only as to third persons who have been led reasonably to believe by the conduct of the principal that such actual authority exists, although none has been given.

Q: What are the distinctions between apparent authority and authority by estoppel?

A:

Apparent Authority	Authority by Estoppel
That which is though not actually granted, the principal knowingly permits the agent to exercise or holds him out as possessing	Arises when the principal, by his culpable negligence, permits his agent to exercise powers not granted to him, even though the principal may have no notice or knowledge of the agent's conduct
Founded in conscious permission of acts beyond the powers granted	Founded on the principal's negligence in failing properly to supervise the affairs of the agent

Q: Can an agent maintain an action against persons with whom they contracted on behalf of his principal?

A: No. Agents are not a party with respect to that contract between his principal and third persons. As agents, they only render some service or do something in representation or on behalf of their principals. The rendering of such service did not make them parties to the contracts of sale executed in behalf of the latter.

The fact that an agent who makes a contract for his principal will gain or suffer loss by the performance or nonperformance of the contract by the principal or by the other party thereto does not entitle him to maintain an action on his own behalf against the other party for its breach. An agent entitled to receive a commission from his principal upon the performance of a contract which he has made on his principal's account does not, from this fact alone, have any claim against the other party for breach of the contract, either in an action on the contract or otherwise. An agent who is not a promisee cannot maintain an action at law against a purchaser merely because he is entitled to have his compensation or advances paid out of the purchase price before payment to the principal. *(Uy v. CA, G.R. No. 120465, Sept. 9, 1999)*

SUMMARY OF RULES; ACTS OF AN AGENT

In behalf of the principal, within the scope of authority
1. Binds principal; 2. Agent not personally liable
Without or beyond scope of authority
Contract is *unenforceable* as against the principal *but* binds the agent to the third person Binding on the principal when: 1. Ratified or 2. The principal allowed the agent to act as though he had full powers
Within the scope of authority but in the agent's name
1. Not binding on the principal; 2. Principal has no cause of action against the 3rd parties and vice versa Note: When the transaction involves things belonging to the principal: Remedy of the principal – damages for agent's failure to comply with the agency
Within the scope of the written power of attorney but agent has* actually *exceeded his authority according to an understanding between him and the principal
1. Insofar as 3rd persons are concerned (not required to inquire further than the terms of the written power, agent acted within scope of his authority; 2. Principal estopped
With improper motives
Motive is immaterial; as long as within the scope of authority, valid
With misrepresentations by the agent
1. Authorized – principal still liable 2. Beyond the scope of the agent's authority **GR:** Principal not liable **XPN:** Principal takes advantage of a contract or receives benefits made under false representation of his agent
Mismanagement of the business by the agent
1. Principal still responsible for the acts contracted by the agent with respect to 3rd persons; 2. Principal, however, may seek recourse from the agent
Tort committed by the agent
Principal civilly liable so long as the tort is committed by the agent while performing his duties in furtherance of the principal's business
Agent in good faith but prejudices 3rd parties
Principal is liable for damages

B. EXCEPTION

Q: When is the act of an agent not binding to the principal?

A: If an agent acts in his own name. In such case, the agent is the one directly bound in favor of the person with whom he has contracted, as if the transaction were his own. *(Art. 1883, NCC)*

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III. EXPRESS VS. IMPLIED AGENCY

Q: Distinguish express and implied agency.

A:

EXPRESS AGENCY	IMPLIED AGENCY
As to definition	
One where the agent has been actually authorized by the principal, either orally or in writing	One which is implied from the acts of the principal,
As to authority	
When it is directly conferred by words	When it is incidental to the transaction or reasonably necessary to accomplish the purpose of the agency, and therefore, the principal is deemed to have actually intended the agent to possess

Q: Distinguish agency from guardianship.

A:

AGENCY	GUARDIANSHIP
Agent represents a capacitated person	Guardian represents an incapacitated person
Agent derives authority from the principal	Guardian derives authority from the court
Agent is appointed by the principal and can be removed by the latter	Guardian is appointed by the court, and stands in loco parentis
Agent is subject to directions of the principal	**Guardian is *not* subject to the directions of the ward, but must act for the ward's benefit**
Agent can make the principal personally liable	**Guardian has no power to impose personal liability on the ward**

Q: Distinguish agency from judicial administration.

A:

AGENCY	JUDICIAL ADMINISTRATION
Agent is appointed by the principal	Judicial Administrator is appointed by the court
Represents the principal	Represents not only the court but also the heirs and creditors of the estate
Agent does not file a bond	Judicial Administrator files a bond
Agent is controlled by the principal thru the agreement	His acts are subject to specific orders from the court

Q: Distinguish agency from lease of services.

A:

AGENCY	LEASE OF SERVICES
Agent represents the principal	Worker or lessor of services does not represent his employer
Relationship can be terminated at the will of either principal or agent	Generally, relationship can be terminated only at the will of both
Agent exercises discretionary powers	Employee has ministerial functions

Q: Distinguish agency from trust.

A:

AGENCY	TRUST
Agent usually holds no title at all	Trustee may hold legal title to the property
Agent usually acts in the name of the principal	Trustee may act in his own name
Agency usually may be terminated or revoked any time	Trust usually ends by the accomplishment of the purposes for which it was formed
Agency may not be connected at all with property	Trust involves control over property
Agent has authority to make contracts which will be binding on his principal	Trustee does not necessarily or even possess such authority to bind the trustor or the cestui que trust
Agency is really a contractual relation	Trust may be the result of a contract, it may also be created by law

IV. AGENCY BY ESTOPPEL

Q: When is there an agency by estoppel?

A: When one leads another to believe that a certain person is his agent, when as a matter of fact such is not true, and the latter acts on such misrepresentation, the former cannot disclaim liability, for he has created an agency by *estoppel*. *(Paras, Civil Code of the Philippines Annotated, Vol. V, p. 558, 6th ed)*

Q: What are the rules regarding estoppel in agency?

A:

1. Estoppel of agent – *One professing to act as agent for another may be*

estopped to deny his agency both as against his asserted principal and the third persons interested in the transaction in which he engaged.

2. *Estoppel of principal*
   a. As to agent – *One who knows that another is acting as his agent and fails to repudiate his acts, or accepts the benefits, will be estopped to deny the agency as against the other.*
   b. As to sub-agent – *To estop the principal from denying his liability to a third person, he must have known or be charged with knowledge of the fact of the transaction and the terms of the agreement between the agent and sub-agent.*
   c. As to third persons – *One who knows that another is acting as his agent or permitted another to appear as his agent, to the injury of third persons who have dealt with the apparent agent as such in good faith and in the exercise of reasonable prudence, is estopped to deny the agency.*

3. *Estoppel of third persons – A third person, having dealt with one as agent may be estopped to deny the agency as against the principal, agent, or third persons in interest.*

4. *Estoppel of the government – The government is neither estopped by the mistake or error on the part of its agents.*

Q: Distinguish implied agency from agency by estoppel.

A:

IMPLIED AGENCY	AGENCY BY ESTOPPEL
As to liability between principal and agent	
Agent is a true agent, with rights and duties of an agent	If caused by the "agent", he is not considered a true agent, hence, he has no rights as such
As to liability to third persons	
1. The principal is always liable 2. The agent is never personally liable	1. *If caused by the principal*, he is liable, but only if the 3rd person acted on the misrepresentation; 2. *If caused by the agent alone*, only the agent is liable

V. GENERAL vs. SPECIAL AGENCY

Q: Distinguish a general agent from a special agent?

A:

General Agent	Special Agent
Scope of Authority	
All acts connected with the business or employment in which he is engaged	Specific acts in pursuance of particular instructions or with restrictions necessarily implied from the act to be done
Nature of Service Authorized	
Involves continuity of service	No continuity of service
Extent to which the Agent may Bind the Principal	
May bind his principal by an act within the scope of his authority although it may be contrary to the latter's special instructions	Cannot bind his principal in a manner beyond or outside the specific acts which he is authorized to perform
Termination of Authority	
Apparent authority does not terminate by mere revocation of his authority without notice to the third party	Duty imposed upon the third party to inquire makes termination of the relationship effective upon revocation
Construction of Principal's Instruction	
Merely advisory in nature	Strictly construed as they limit the agent's authority

Q: Who is a factor/commission agent?

A: It is one *engaged* in the purchase and sale of personal property for a principal, which, for this purpose, has to be placed in his possession and at his disposal.

Q: Who is a broker?

A: He is a middleman or intermediary who in behalf of others and for a commission or fee *negotiates* contracts/transactions relating to real or personal property.

Q: What is factorage?

A: It is the compensation of a factor or commission agent.

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Q: What is ordinary commission?

A: It is the compensation for the sale of goods which are placed in the agent's possession or at his disposal

Q: What is guaranty commission?

A: It is the fee which is given in return for the risk that the agent has to bear in the collection of credits.

VI. AGENCY COUCHED IN GENERAL TERMS

Q: What is an agency couched in general terms?

A: One which is created in general terms and is deemed to comprise only acts of administration *(Art. 1877, NCC).*

VII. AGENCY REQUIRING SPECIAL POWER OF ATTORNEY

Q: What is special power of attorney (SPA)?

A: It is an instrument in writing by which one person, as principal, appoints another as his agent and confers upon him the authority to perform certain specified acts or kinds of acts on behalf of the principal; primary purpose is to evidence agent's authority to third parties within whom the agent deals.

Q: Should SPA be in writing and notarized in order to be valid?

A: No. SPA is not required to be in writing and need not be notarized in order to be valid. (*De Leon, Comments and Cases on Partnership, Agency, and Trust, p. 443, 2005 ed)*

Q: Is the intervention of a notary public required for the validity of an SPA?

A:

GR: A power of attorney is valid although no notary public intervened in its execution. *(Barretto v. Tuason, G.R. Nos. L-36811, 36827, 36840, 36872, Mar. 31, 1934) (De Leon, p. 443, 2005 ed)*

XPN: When SPA is executed in a foreign country, it must be certified and authenticated according to the Rules of Court, particularly Sec. 25, Rule 132.

Note: When the special power of attorney is executed and acknowledged before a notary public or other competent official in a foreign country, it cannot be admitted in evidence unless it is certified as such in accordance with the foregoing provision of the rules by a secretary of embassy or legation, consul general, consul, vice consul, or consular agent or by any officer in the foreign service of the Philippines stationed in the foreign country in which the record is kept of said public document and authenticated by the seal of his office. *(Medina v. Natividad, G.R. No. 177505, Nov. 27, 2008)*

The failure to have the special power of attorney (executed in a foreign country) authenticated is not merely a technicality – it is a question of jurisdiction. Jurisdiction over the person of the real party-in-interest was never acquired by the courts. *(Ibid.)*

Q: When is a special power necessary?

A: CALL MO SPRING COW

1. to **C**reate or convey real rights over immovable property;
2. Convey or **A**cquire immovable
3. to **L**oan or borrow money, unless the latter act be urgent and indispensable for the preservation of the things which are under administration;
4. to **L**ease any real property to another person for more than one year;
5. to **M**ake such **P**ayments as are not usually considered as acts of administration;
6. to **O**bligate principal as guarantor or surety
7. to bind the principal to render some **S**ervice without compensation;
8. to bind the principal in a contract of **P**artnership;
9. to **R**atify obligations contracted before the agency
10. to Accept or repudiate an **I**nheritance
11. Effect **N**ovation
12. to make **G**ifts, except customary ones for charity or those made to employees in the business managed by the agent
13. **C**ompromise, Arbitration and Confession of Judgment
14. any **O**ther act of strict dominion
15. **W**aive an obligation gratuitously

Q: What are the limitations to a special power of attorney?

A:

1. A special power to sell excludes the power to mortgage
2. A special power to mortgage does *not* include the power to sell *(Art. 1879, NCC)*

3. A special power to compromise does *not* authorize submission to arbitration *(Art. 1880, NCC)*

VIII. AGENCY BY OPERATION OF LAW

Q: When is an agency created by operation of law?

A: When the agent withdraws from the agency for a valid reason, he must continue to act until the principal has had a reasonable opportunity to take the necessary steps like the appointment of a new agent to remedy the situation caused by the withdrawal. *(Art. 1929, NCC)*

IX. RIGHTS AND OBLIGATIONS OF PRINCIPAL

Q: What are the obligations of the principal to the agent?

A: To:

1. comply with all obligations which the agent may have contracted within the scope of his authority *(Art. 1910, NCC)*;
2. advance to the agent, should the latter so request, the sums necessary for the execution of the agency *(Art. 1912, NCC)*;
3. reimburse the agent for all advance made by him, provided the agent is free from fault *(Ibid.)*;
4. indemnify the agent for all damages which the execution of the agency may have caused the latter without fault or negligence on his part *(Art. 1913, NCC)*; and
5. pay the agent the compensation agreed upon, or if no compensation was specified, the reasonable value of the agent's services. *(De Leon, Comments and Cases on Partnership, Agency, and Trust, pp. 545-555, 2005 ed)*

Q: Is the principal liable for the expenses incurred by the agent?

A:

GR: Yes.

XPNs:

1. If the agent acted in contravention of the principal's instructions, *unless* principal derives benefits from the contract;
2. When the expenses were due to the fault of the agent;
3. When the agent incurred them with knowledge that an unfavorable result would ensue, if the principal was not aware thereof; or
4. When it was stipulated that the expenses would be borne by the agent, or that the latter would be allowed only a certain sum.

Q: What is the liability of the principal regarding contracts entered into by the agent?

A:

GR: The principal must comply with all the obligations which the agent may have contracted within the scope of his authority.

XPN: Where the agent exceeded his authority.

XPN to the XPN: When the principal ratifies it.

Note: Even if the agent has exceeded his authority, the principal is solidarily liable with the agent if the former allowed the latter to act as though he had full powers *(Art. 1911, NCC)*

Q: CX executed a special power of attorney authorizing DY to secure a loan from any bank and to mortgage his property covered by the owner's certificate of title. In securing a loan from M Bank, DY did not specify that he was acting for CX in the transaction with the bank. Is CX liable for the bank loan?

A: While as a general rule the principal is not liable for the contract entered into by his agent in case the agent acted in his own name without disclosing his principal, such rule does not apply if the contract involves a thing belonging to the principal. In such case, the principal is liable under Art. 1883, NCC. The contract is deemed made in his behalf. *(Sy-Juco v. Sy-Juco, G.R. No. L-13471, Jan. 12, 1920)* **(2004 Bar Question)**

Q: What is the liability of the principal for tort committed by the agent?

A:

GR: Where the fault or crime committed by the agent is not in the performance of an obligation of the principal, the latter is not bound by the illicit acts of the agent, even if it is done in connection with the agency.

XPNs:

1. Where the tort was committed by the agent because of defective instructions from the principal or due to lack of

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necessary vigilance or supervision on his part; or

2. When the tort consists in the performance of an act which is within the powers of an agent but becomes criminal only because of the manner in which the agent has performed it; the principal is civilly liable to 3rd persons who acted in good faith.

Q: When is the principal not bound by the act of the agent?

A:

1. **GR:** When the act is without or beyond the scope of his authority in the principal's name.

   XPNs:
   a. Where the acts of the principal have contributed to deceive a 3rd person in good faith
   b. Where the limitation upon the power created by the principal could not have been known by the 3rd person
   c. Where the principal has placed in the hands of the agent instruments signed by him in blank
   d. Where the principal has ratified the acts of the agent

2. When the act is within the scope of the agent's authority but in his own name, except when the transaction involves things belonging to the principal.

Note: The limits of the agent's authority shall not be considered exceeded should it have been performed in a manner more advantageous to the principal than that specified by him.

RESPONSIBILITIES AND OBLIGATIONS OF AN AGENT

Q: What are the specific obligations of an agent to the principal?

A: CAFO-FAN-ALAD-RIP-BIR

1. **C**arry out the agency which he has accepted
2. **A**nswer for damages which through his non-performance the principal may suffer
3. **F**inish the business already begun on the death of the principal should delay entail any danger
4. **O**bserve the diligence of a good father of a family in the custody and preservation of the goods forwarded to him by the owner in case he declines an agency, until an agent is appointed *(Art. 1885, NCC)*
5. advance the necessary **F**unds should there be a stipulation to do so *(Art. 1886, NCC)*
6. **A**ct in accordance with the instructions of the principal, and in default thereof, to do all that a good father of a family would do *(Art. 1887, NCC)*
7. **N**ot to carry out the agency of its execution would manifestly result in loss or damage to the principal *(Art. 1888, NCC)*
8. **A**nswer for damages if there being a conflict between his interests and those of the principal, he should prefer his own *(Art. 1889, NCC)*
9. not to **L**oan to himself if he has been authorized to lend money at interest *(Art. 1890, NCC)*
10. render an **A**ccount of his transactions and to deliver to the principal whatever he may have received by virtue of the agency *(Art. 1891, NCC)*
11. **D**istinguish goods by countermarks and designate the merchandise respectively belonging to each principal, in the case of a commission agent who handles goods of the same kind and mark, which belong to different owners *(Art. 1904, NCC)*
12. be **R**esponsible in certain cases for the acts of the substitute appointed by him *(Art. 1890, NCC)*
13. **P**ay interest on funds he has applied to his own use *(Art. 1896, NCC)*
14. **I**nform the principal, where an authorized sale of credit has been made, of such sale *(Art. 1906, NCC)*
15. **B**ear the risk of collection and pay the principal the proceeds of the sale on the same terms agreed upon with the purchaser, should he receive also on sale, a guarantee commission *(Art. 1907, NCC)*
16. **I**ndemnify the principal for damages for his failure to collect the credits of his principal at the time that they become due *(Art. 1908, NCC)*
17. be **R**esponsible for fraud or negligence *(Art. 1909, NCC; De Leon, Comments and Cases on Partnership, Agency, and Trust, pp. 478-479, 2005 ed)*

Note: Every stipulation exempting the agent from the obligation to render an account shall be void *(par. 2, Art. 1891, NCC)*

Q: In case of breach of loyalty, is the agent still entitled to commission?

A: No, The forfeiture of the commission will take place regardless of whether the principal suffers any injury by reason of such breach of loyalty. It does not even matter if the agency is for a gratuitous one, or that the principal obtained better results, or that usage and customs allow a receipt of such a bonus.

Note: An agent has an absolute duty to make a full disclosure or accounting to his principal of all transactions and material facts that may have some relevance with the agency. *(Domingo v. Domingo, G.R. No. L-30573, Oct. 29, 1971)*

Q: When is the obligation to account not applicable?

A:

1. If the agent acted only as a middleman with the task of merely bringing together the vendor and vendees;
2. If the agent informed the principal of the gift/bonus/profit he received from the purchaser and his principal did not object thereto; or
3. Where a right of lien exists in favor of the agent.

Q: What is the responsibility of two or more agents appointed simultaneously?

A:

GR: Jointly liable.

XPN: Solidarity has been expressly stipulated. Each of the agents becomes solidarily liable for:

1. the non-fulfillment of the agency; or
2. fault or negligence of his fellow agent.

XPN to the XPN: When one of the other agents acts beyond the scope of his authority – innocent agent is *not* liable.

Note: An innocent agent has a right later on to recover from the guilty or negligent agent.

Q: What is the rule with regard to the execution of the agency?

A:

GR: The agent is bound by his acceptance to carry out the agency, and is liable for damages which, through his non-performance, the principal may suffer.

XPN: If its execution could manifestly result in loss or damage to the principal

Q: What are the instances when the agent may incur personal liability?

A:

1. Agent expressly bound himself;
2. Agent exceeds his authority;
3. Acts of the agent prevent the performance on the part of the principal;
4. When a person acts as agent without authority or without a principal; or
5. A person who acts as an agent of an incapacitated principal unless the third person was aware of the incapacity at the time of the making of the contract.

Q: What is the scope of the agent's authority as to third persons?

A: It includes not only the actual authorization conferred upon the agent by his principal but also that which is apparent or impliedly delegated to him.

Q: Is the third person required to inquire into the authority of the agent?

A:

1. *Where authority is not in writing* – Every person dealing with an assumed agent must discover upon his peril, if he would hold the principal liable, not only the fact of the agency but the nature and extent of the authority of the agent.
2. *Where authority is in writing* – 3rd person is not required to inquire further than the terms of the written power of attorney.

Note: A third person with whom the agent wishes to contract on behalf of the principal may require the presentation of the power of attorney or the instructions as regards the agency.

Q: What is the rule with regard to the advancement of funds by the agent?

A:

GR: There must be a stipulation in the contract that the agent shall advance the necessary funds

XPN: When the principal is insolvent.

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RIGHTS OF AGENTS

Q: What are the instances when the agent may retain in pledge the object of the agency?

A:

1. If principal fails to reimburse the agent the necessary sums, including interest, which the latter advanced for the execution of the agency *(Art. 1912, NCC)*; or
2. If principal fails to indemnify the agent for all damages which the execution of the agency may have caused the latter, without fault or negligence on his part. *(Art. 1913, NCC)*

Q: What is the rule where two persons deal separately with the agent and the principal?

A: If the two contracts are incompatible with each other, the one of prior date shall be preferred. This is subject however to the rule on double sale under Art. 1544, NCC.

Note: Rules of preference in double sale

1. Personal property – possessor in good faith
2. Real property
   a. Registrant in good faith
   b. Possessor in good faith
   c. Person with the oldest title in good faith *(Art. 1544, NCC)*

If agent acted in good faith, the principal shall be liable for damages to the third person whose contract must be rejected. If agent is in bad faith, he alone shall be liable. *(Art. 1917, NCC)*

PROHIBITED ACTS OF AN AGENT

Q: What are the prohibited acts of an agent?

A:

1. Personal acts
2. Criminal or illegal acts

Note: e.g.:

1. Right to vote
2. Making of a will
3. Under oath statements
4. Attending board meetings of corporations. *(De Leon, p. 358, 2005 ed)*

Q: Can a person acting as an agent escape criminal liability by virtue of the contract of agency?

A: No. The law on agency has no application in criminal cases. When a person participates in the commission of a crime, he cannot escape punishment on the ground that he simply acted as an agent of another party. *(Ong v. CA, G.R. No. 119858, Apr. 29, 2003)*

X. IRREVOCABLE AGENCY

Q: When is agency irrevocable?

A:

1. If a bilateral contract depends upon it
2. if it is the means of fulfilling an obligation already contracted
3. if partner is appointed manager and his removal from the management is unjustifiable. *(Art 1927)*
4. if it has been constituted in the common interest of the principal and the agent *(Art. 1930)*
5. Stipulation pour atrui

Q: How may the agent withdraw from the agency?

A: The agent may withdraw from the agency by giving due notice to the principal. If the latter should suffer any damage by reason of the withdrawal, the agent must indemnify him therefor, unless the agent should base his withdrawal upon the impossibility of continuing the performance of the agency without grave detriment to himself. (1736a)

NOTE: The agent, even if he should withdraw from the agency for a valid reason, must continue to act until the principal has had reasonable opportunity to take the necessary steps to meet the situation.

XI. MODES OF EXTINGUISHMENT

Q: What is "presumption of continuance of agency"?

A: It means that when once shown to have existed, an agency relation will be presumed to have continued, in the absence of anything which shows its termination.

Q: What are the essential elements for continuance of agency?

A: Both principal and agent must be:
1. Present
2. Capacitated
3. Solvent *(De Leon, Comments and Cases on Partnership, Agency, and Trust, p. 610, 2005 ed)*

Q: Can the heirs continue the agency?

A:

GR: No.

Ratio: The agency calls for personal services on the part of the agent since it is founded on a fiduciary relationship; rights and obligations intransmissible.

XPNs:
1. Agency by operation of law, or a presumed or tacit agency
2. Agency is coupled with an interest in the subject matter of the agency (*e.g.* power of sale in a mortgage)

Q: What are the modes of extinguishing an agency?

A: EDWARD
1. **E**xpiration of the period
2. **D**eath, civil interdiction, insanity or insolvency of principal or of the agent
3. **W**ithdrawa**l** by the agent
4. **A**ccomplishment of the object or the purpose of the agency
5. **R**evocation
6. **D**issolution of the firm or corporation which entrusted or accepted the agency.

Note: The list is *not exclusive*; May also be extinguished by the modes of extinguishment of obligations in general whenever they are applicable, like *loss of the thing* and *novation*.

REVOCATION

Q: Is a contract of agency revocable?

A:

GR: Yes. Agency is *revocable* at will by the principal.

XPNs: It cannot be revoked if:
1. a bilateral contract depends upon it
2. it is the means of fulfilling an obligation already contracted
3. a partner is appointed manager of a partnership and his termination is unjustifiable
4. it is created not only for the interest of the principal but also for the interest of third persons

XPN to the XPN: When the agent acts to defraud the principal.

Q: What are the kinds of revocation?

A: Revocation may either be express or implied. (*De Leon, Comments and Cases on Partnership, Agency, and Trust, p. 625, 2005 ed)*

Q: How is agency impliedly revoked?

A: Principal:
1. appoints a new agent for the same business or transaction *(Art. 1923, NCC)*;
2. directly manages the business entrusted to the agent *(Art. 1924, NCC)*; or
3. after granting general power of attorney, grants a special one to another agent which results in the revocation of the former as regards the special matter involved in the latter. *(Art. 1926, NCC)*

Q: How is agency revoked when the agent has been appointed by two or more principals?

A: Any one of the principals is granted the right to revoke the power of attorney without the consent of the others.

Q: Is notice of revocation necessary?

A:
1. *As to the agent* – Express notice is not necessary; sufficient notice if the party to be notified actually knows, or has reason to know, a fact indicating that his authority has been terminated/suspended; revocation without notice to the agent will not render invalid an act done in pursuance of the authority
2. *As to 3rd persons* – Express notice is necessary
   a. *As to former customers* – Actual notice must be given to them because they always assume the continuance of the agency relationship

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b. *As to other persons* – Notice by publication is enough

Note: There is *implied revocation* of the previous agency *when* the principal appoints a new agent for the same business or transaction, provided there is incompatibility. *But* the revocation does not become effective as between the principal and the agent until it is in some way communicated to the latter.

Q: What is the effect of the direct management by the principal?

A:

GR: The agency is revoked for there would no longer be any basis for the representation previously conferred. *But* the principal must act in good faith and not merely to avoid his obligation to the agent.

XPN: The only desire of the principal is for him and the agent to manage the business together.

Q: Richard sold a large parcel of land in Cebu to Leo for P100 million payable in annual installments over a period of ten years, but title will remain with Richard until the purchase price is fully paid. To enable Leo to pay the price, Richard gave him a power-of-attorney authorizing him to subdivide the land, sell the individual lots, and deliver the proceeds to Richard, to be applied to the purchase price. Five years later, Richard revoked the power of attorney and took over the sale of the subdivision lots himself. Is the revocation valid or not? Why?

A: The revocation is not valid. The power of attorney given to the buyer is irrevocable because it is coupled with an interest – the agency is the means of fulfilling the obligation of the buyer to pay the price of the land *(Art. 1927, NCC)*. In other words, a bilateral contract (contract to buy and sell the land) is dependent on the agency. **(2001 Bar Question)**

Q: Eduardo executed a SPA authorizing Zenaida to participate in the pre-qualification and bidding of a NIA project and to represent him in all transactions related thereto. It was granted to them. Zenaida leased Manuel's heavy equipment to be used for the NIA project. Manuel interposed no objection to Zenaida's actuations. Eduardo later revoked the SPA alleging that Zenaida acted beyond her authority in contracting with Manuel under the SPA. Decide.

A: No. Eduardo and Zenaida entered into a partnership with regard to the NIA project. Also, Eduardo was present when Zenaida contracted with Manuel. Under Art. 1818, NCC, every partner is an agent of the partnership for the purpose of its business and each one may separately execute all acts of administration, unless, under Art. 1801, NCC, a specification of their respective duties has been agreed upon, or else it is stipulated that any one of them shall not act without the consent of all the others. *(Mendoza v. Paule, G.R. No. 175885, Feb. 13, 2009)*

DEATH

Q: What is the effect of death of a party to the contract of agency?

A:

GR: The agency is terminated by the death of the principal even if the agency is for a definite period.

XPNs:

1. If it has been constituted in common interest of the principal and the agent or in the interest of the third person who accepted the stipulation in his favor; or
2. Anything done by the agent without the knowledge of the death of the principal or on any other cause which extinguishes the agency is valid and shall be effective on third persons who may have contracted with him in good faith.

Q: Is the sale of the land by the agent after the death of the principal valid?

A: Article 1931, NCC provides that an act done by the agent after the death of the principal is valid and effective if these two requisites concur:

1. that the agent acted without the knowledge of the death of the principal; and
2. that the third person who contracted with the agent himself acted in good faith.

Good faith here means that the third person was not aware of the death of the principal at the time that he contracted with said agent. *(Rallos v. Felix Go Chan, G.R. No. L-24332, Jan. 31, 1978)*

CHANGE OF CIRCUMSTANCES SURROUNDING TRANSACTION

Q: What is the effect of a change of circumstance surrounding the transaction?

A:

GR: The *authority* of the agent is *terminated*.

XPNs:

1. If the original circumstances are restored within a reasonable period of time, the agent's authority may be revived;
2. Where the agent has reasonable doubts as to whether the principal would desire him to act, his authority will not be terminated if he acts reasonably; or
3. Where the principal and agent are in close daily contact, the agent's authority to act will not terminate upon a change of circumstances if the agent knows the principal is aware of the change and does not give him new instructions. *(De Leon, pp. 616-617, 2005 ed)*

WITHDRAWAL BY THE AGENT

Q: Can the agent withdraw from the agency?

A: Yes. The agent may renounce or withdraw from the agency at any time, without the consent of the principal, even in violation of the latter's contractual rights; subject to liability for breach of contract or for tort.

Q: What are the kinds of withdrawal by the agent?

A:

3. *Without just cause* – The law imposes upon the agent the duty to give due notice to the principal and to indemnify the principal should the latter suffer damage by reason of such withdrawal.
4. *With just cause* – The agent cannot be held liable.

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COMPROMISE

I. DEFINITION

Q: What is a compromise?

A: A compromise is a contract whereby the parties, by making reciprocal concessions, avoid litigation or put an end to one already commenced. *(Art. 2028, NCC)*

Q: What are the characteristics of a compromise?

A:

1. **C**onsensual
2. **R**eciprocal
3. **N**ominate
4. **O**nerous
5. **A**ccessory (in the sense that a prior conflict is pre supposed)
6. Once accepted, it is **B**inding on the parties, provided there is no vitiated consent *(McCarthy v. Barber Steamship Lines, 45 Phil. 488)*.
7. It is the **S**ettlement of a *controversy principally,* and is but merely incidentally, the settlement of a claim. *(Ibid)*

Q: What are the kinds of compromise?

A:

1. Judicial – to end a pending litigation
2. Extrajudicial – to prevent a litigation from arising

Q: What is the basic duty of a court whenever a suit is filed?

A: The court shall endeavor to persuade the litigants in a civil case to agree upon some fair compromise. *(Art. 2029, NCC)*

Q: What circumstances may a proceeding in a civil action be suspended?

A:

1. If willingness to discuss a possible compromise is expressed by one or both parties; or
2. if it appears that one of the parties, before the commencement of the action or proceeding, offered to discuss a possible compromise but the other party refused the offer.

Q: X is indebted to Y in the amount of P50, 000 with the stipulation that the same shall earn interest at 40% per *annum.* When X failed to pay, Y sued him. In an effort to settle the case, X offered to pay the principal but begged for the reduction of the interest. Y refused, hence, trial was conducted. Can the judge reduce the rate of interest?

A: Yes. The courts may mitigate the damage to be paid by the losing party who has shown a sincere desire for a compromise. *(Art. 2031, NCC)*

Q: Can there be a compromise on the criminal aspect of a crime?

A: None. There may be a compromise upon the civil liability arising from an offense; but such compromise shall not extinguish the public action for the imposition of the legal penalty. *(Art. 2034, NCC)*

II. VOID COMPROMISE

Q: When is a compromise void?

A:

1. **C**ivil status
2. **V**alidity of a marrieage or a legal separation
3. **A**ny ground for legal separation
4. **F**uture support
5. **J**urisdiction of courts
6. **F**uture legitime

III. EFFECT

Q: What is the effect if two parties enter into a compromise?

A: It has the effect of *res judicata.* A compromise has upon the parties the effect and authority of *res judicata. (Art. 2037, NCC)*

Q: What requirement is necessary in order that a compromise be executed?

A: In order that a compromise may be executed, there must be approval of the court. *(Art 2037, NCC)*

Q: A and B entered into a compromise agreement. A week thereafter, B filed an action in court seeking to annul the compromise agreement contending that it is one-sided. Is the action proper?

A: No, because where the compromise is instituted and carried through in good faith, the fact that there was a mistake as to the law or as to the facts, except in certain cases where the mistake was mutual and correctible as such in equity, cannot afford a basis for setting aside a compromise. Compromises are favored without regard to the nature of the controversial compromise, and they cannot be set aside because the event shows all the gains have been on one side. *(Asong v. Intermediate Appellate Court, May 12, 1989)*

Q: X and Y entered into a compromise agreement whereby X respected the ownership of Y over a part of a creek (now a fishpond). Is the agreement valid?

A: No, because that is contrary to public policy and the law. The creek is a property belonging to the State; hence, it is part of public domain which is not susceptible to private appropriation and acquisition. *(Maneclang v Intermediate Appellate Court, 161 SCRA 469)*

Q: X and Y entered into a compromise agreement, terminating a suit between them. X failed to comply with the terms and conditions of the same. What are the remedies of the aggrieved party?

A: If one of the parties fails or refuses to abide by the compromise, the other party may either enforce the compromise, or regard it as rescinded and insist upon his original demand. *(Art 2041, NCC).*

Q: What is the effect of a contract or a compromise even if it is disadvantageous to one of the parties?

A: It is still a valid one. It is a long established doctrine that the law does not relieve a party from the effects of an unwise, foolish, or disastrous contract, entered into with all the required formalities and with full awareness of what he is doing. Courts have no power to relieve parties from obligations voluntarily assumed, simply because their contracts turned out to be disastrous deals or unwise investments. *(Tanda v. Aldaya, 89 Phil. 497; Villacorte v. Mariano, 89 Phil. 341)*

It is a truism that "a compromise agreement entered into by party-litigants, when not contrary to law, public order, public policy, morals, or good customs is a valid contract which is the law between the parties themselves. It follows, therefore, that a compromise agreement, not tainted with infirmity, irregularity, fraud or illegality is the between the parties who are duty bound to abide by it and observe strictly its terms and conditions". *(Esguerra v. CA, GR 119310, February 3, 1997)*

TEAM: BAROPS

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CREDIT TRANSACTIONS

Q: What is credit?

A: It is a person's ability to borrow money by virtue of confidence or trust reposed in him by the lender that he will pay what he may promise.

Q: What is credit transaction?

A: It refers to agreement based on trust or belief of someone on the ability of another person to comply with his obligations.

Q: What do credit transactions include?

A: They include all transactions involving loans of:

1. goods
2. servicew
3. money extended to another either gratuitously or onerously with a promise to pay or deliver in the future.

Q: What is security?

A: It is something given, deposited, or serving as a means to ensure the fulfillment or enforcement of an obligation or of protecting some interest in the property.

Q: What are the types of security?

A:

Personal: when an individual become a surety or a guarantor.

Real or property: when an encumbrance is made on property.

Q: What are the kinds of credit transactions?

A:

1. *As contracts of security*
   a. *Contracts of real security* – These are contracts supported by collateral/s or burdened by an encumbrance on property such as mortgage and pledge.
   b. *Contracts of personal security* – These are contracts where performance by the principal debtor is not supported by collateral/s but only by a promise to pay or by the personal undertaking or commitment of another person such as in surety or guaranty.

2. *As to their existence*
   a. *Principal contracts* – They can exist alone. Their existence does not depend on the existence of another contract. (*e.g.* commodatum and mutuum)
   b. *Accessory contracts* – They have to depend on another contract. These accessory contracts depend on the existence of a principal contract of loan. (*e.g.* guaranty proper, suretyship, pledge, mortgage and antichresis)

3. *As to their consideration*
   a. *Onerous* – This is a contract where there is consideration or burden imposed like interest.
   b. *Gratuitous* – This is a contract where there is no consideration or burden imposed. (*e.g.* commodatum)

Q: What is bailment?

A: It is the delivery of a personal property for some particular use, or on mere deposit, upon a contract, express or implied, that after the purpose has been fulfilled, it shall be redelivered to the person who delivered it, or otherwise dealt with according to his directions, or kept until he reclaims it, as the case may be.

Note: Generally, no fiduciary relationship is created by bailment. No trustee-beneficiary relationship is created.

Q: What are the contractual bailments with reference to compensation?

A:

1. For the sole benefit of the bailor *(gratuitous)*
   e.g. gratuitous deposit, commodatum

2. For the sole benefit of the bailee *(gratuitous)*
   e.g. commodatum, mutuum

3. For the benefit of both parties *(mutual-benefit bailments)*
   a. *e.g.* deposit for compensaton, involuntary deposit, pledge and *bailments for hire:*
   b. hire of things – temporary use
   c. hire of service – for work or labor
   d. hire of carriage of goods – for carriage
   e. hire of custody – for storage

I. LOAN

Q: What is loan?

A: It is a contract where 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 is called a *commodatum*; or money or other consumable things, 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 (Art. 1933, NCC)*

Q: What are the kinds of loan?

A:

1. *Commodatum* – where the bailor (lender) delivers to the bailee (borrower) a non-consumable thing so that the latter may use it for a given time and return the same thing
2. *Mutuum* – where the bailor (lender) delivers to the bailee (borrower) money or other consumable thing upon the condition that the latter shall pay same amount of the same kind and quality

Q: What may be the object of a contract of loan?

A: It depends upon the kind of loan.

1. Commodatum – the object is generally not consumable;
2. Mutuum – the object is consumable.

Q: Distinguish consumable from non-consumable things.

A: A thing is consumable when it *cannot* be used in a manner appropriate to its nature without being consumed. *(Art. 418)* (*e.g.* food, firewood, gasoline)

On the other hand, a non-consumable thing is a movable thing which *can* be used in a manner appropriate to its nature without it being consumed. *(Art. 418)* (*e.g.* car, television, radio)

Q: Distinguish fungible from non-fungible things.

A: *Fungible thing* is one where the parties have agreed to allow the substitution of the thing given or delivered with an equivalent thing *(3 Manresa 58)*. *Non-fungible thing* is one where the parties have the intention of having the same identical thing returned after the intended use *(Ibid)*.

Note: As to whether a thing is consumable or not, it depends upon the *nature* of the thing.

As to whether it is fungible or not, it depends upon the *intention* of the parties.

Fungibles are usually determined by number, weight or measure.

Q: Are non-fungible things irreplaceable?

A:

GR: Non-fungible things are irreplaceable. They must be returned to the lender after the purpose of the loan had been accomplished.

XPN: Non-fungible things may be replaced by agreement of the parties. In such case, the contract is barter and not loan.

Q: Distinguish loan from:
Credit;
Discount;
Rent or lease; and
Barter.

A:

CREDIT	LOAN
Ability to borrow money by virtue of the confidence reposed by the lender unto him that he will pay what he has promised	Delivery by one party and the receipt by the other party of a given sum of money, upon an agreement, expressed or implied, to repay the sum loaned, with or without interest
DISCOUNT	**LOAN**
Interest is deducted in advance	Interest is taken at the expiration of a credit
Always on double-name paper	Generally on a single-name paper
RENT	**LOAN**
The owner of property does not lose the ownership; he loses his control over the property rented during the period of contract	The thing loaned becomes the property of the obligor
Landlord-tenant relationship	Obligor-obligee relationship
BARTER	*LOAN*
Subject matter are non-fungible things	***Subject matter is money or other fungible things***
Always onerous	***May be gratuitous or onerous***
There is a mutual sale resulting in the transfer of ownership on both sides	***in mutuum, there is transfer of ownership, there is no sale***
The parties do not return the things subject of the exchange	***in commodatum, the bailee returns the thing after the expiration of the period agreed upon***

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Q: What is barter?

A: It is a contract whereby one of the parties binds himself to give one thing in consideration of the other's promise to give another thing. *(Art. 1638, NCC)*

Q: What is the legal effect of an accepted promise to deliver something by way of *mutuum* or *simple loan?*

A: It is binding upon the parties, but the *mutuum* or simple loan itself shall not be perfected until the delivery of the object of the contract *(Art. 1934, NCC)*.

Q: What is the effect if the loan is for an unlawful purpose?

A: If the loan is executed for illegal or immoral or unlawful purpose or use, the contract is void. The bailor may immediately recover the thing *before* any illegal act is committed and provided he is innocent or in good faith *(Arts. 1411 and 1412, NCC)*.

A. COMMODATUM AND MUTUUM

COMMODATUM

Q: What is commodatum?

A: It is a contract where one of the parties (bailor) delivers to another (bailee) something *not* consumable so that the latter may use the same for a certain time and thereafter returns it.

Q: What are the characteristics of a contract of commodatum?

A:

1. *Real contract* – delivery of the thing loaned is necessary for the perfection of the contract
2. *Unilateral contract* – once subject matter is delivered, creates obligations on the part of only one of the parties (the borrower)
3. Essentially *gratuitous*
4. Purpose is to transfer the temporary use of the thing loaned
5. Principal contract
6. Purely personal contract

Q: What are the elements of commodatum?

A: There must be:

1. a bailee and bailor
2. the bailee acquires the use of the thing
3. it must be gratuitous

Q: What could be the subject of *commodatum*?

A:

GR: Under Art. 1933, the subject matter of *commodatum* must be non-consumable because the thing must be returned.

XPN: Consumable goods may be the object of *commodatum* if the purpose is not to consume them such as when they were loaned merely for *ad ostentationem* or exhibition purposes. After the affair, the same and identical goods shall be returned to the lender or bailor *(Art. 1936, NCC).*

Q: What may be the object of commodatum?

A: Both movable and immovable property may be the object of commodatum. *(Art. 1937, NCC)*

Q: What are the kinds of commodatum?

A:

1. *Ordinary commodatum* – bailor cannot just demand the return of the thing at will, because there is a period agreed upon by the parties.

2. *Precarium* – one whereby the bailor may *demand* the thing loaned *at will* in the following cases:
   a. if the duration of the contract had not been stipulated;
   b. if the use to which the thing loaned should be devoted had not been stipulated; or
   c. if the use of the thing is merely by tolerance of the owner

Note: The word "owner" in Art. 1947 (2) is not proper because the bailor need not be the owner of the thing. *(Pineda, Credit Transactions and Quasi contracts, p. 26, 2006 ed)*

Q: What are the consequences of the purely personal character of commodatum?

A:

GR: Commodatum is *purely personal* in character *hence* death of either bailor or bailee extinguishes the contract *(Art. 1939, NCC)*

XPN: By stipulation, the commodatum is transmitted to the heirs of either or both party.

In case of lease of the thing subject of commodatum:

GR: The bailee can neither lend nor lease the object of the contract to a third person.

XPN: Members of the bailee's household may make use of the thing loaned.

Note: Members of the bailee's household are not considered as third persons.

XPN to the XPN:
Contrary stipulation; or
Nature of the thing forbids such use.

Note: Household members are those who permanently living or residing within the same residence including the household helpers.

Q: Distinguish commodatum from lease.

A:

COMMODATUM	LEASE
Real contract	*Consensual*
Object is a non-consumable (non fungible) thing	Object may even be work or service
Essentially gratuitous	*Onerous*

MUTUUM

Q: What is mutuum?

A: It is a contract whereby one of the parties called the "lender" delivers to another called the "borrower", money or other consumable thing subject to the condition that the same amount of the same kind and quantity shall be paid.

Q: What are the characteristics of a contract of *mutuum*?

A:

Borrower acquires ownership of the thing.
If the thing loaned is money, payment must be made in the currency which is legal tender in the Philippines and in case of extraordinary deflation or inflation, the basis of payment shall be the value of the currency at the time of the creation of the obligation.

If fungible thing was loaned, the borrower is obliged to pay the lender another thing of the same kind, quality and quantity.

Note: Mere issuance of checks does not perfect the contract of loan. It is only after the checks have been encashed that the contact may be deemed perfected. Further, when the movable thing delivered in loan is not to be returned to the bailor, but may be substituted or replaced with another equivalent thing, it is a fungible thing.

Q: Distinguish *commodatum* from *mutuum*.

A:

COMMODATUM	MUTUUM
Object	
Non-consumable (Non-fungible)	Consumable
Cause	
Gratuitous, otherwise it is a lease	May or may not be gratuitous
Purpose	
Use or temporary possession of the thing loaned but **GR:** not its fruit because the bailor remains the owner **XPNs:** use of the fruits is stipulated; enjoyment of the fruits is stipulated; or enjoyment of the fruits is incidental to its use	Consumption
Subject Matter	
Real or personal property Generally non-consumable things but may cover consumables if the purpose of the contract is for exhibition.	Only personal property
Ownership of the thing	
Retained by the bailor	Passes to the debtor
Thing to be returned	
Exact thing loaned	Equal amount of the same kind and quality
Who bears risk of loss	
Bailor	Debtor
When to return	
In case of urgent need even before the expiration of term *(the contract is in the meantime suspended)*	Only after the expiration of the term
Contract	
Contract of use	Contract of consumption

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Q: Distinguish mutuum from:
Lease; and
Barter. (see Article 1954)

A:

MUTUUM	LEASE
Object is *money or any consumable (fungible) thing*	Object may be any thing, whether *movable or immovable, fungible or non-fungible*
There is *transfer* of ownership	*No transfer* of ownership
Creditor-debtor relationship	Lessor-lessee relationship
Unilateral	Bilateral

MUTUUM	*BARTER*
Subject matter is money or other fungible things	***Subject matter are non-fungible things***
May be gratuitous or onerous	***Always onerous***
While in mutuum, there is transfer of ownership, there is no sale	***There is a mutual sale resulting in the transfer of ownership on both sides***
The money or consumable thing loaned is not returned but the same amount of the same kind and quantity shall be paid.	***The parties do not return the things subject of the exchange***

Q: What is the cause in a simple loan?

A:

1. *As to the borrower* – the acquisition of the thing
2. *As to the lender* – the right to demand the return of the thing loaned or its equivalent *(Monte de Piedad v. Javier, CA, 36 Off. Gaz. 2176).*

Q: What may be the object of mutuum?

A: Money or fungible and consumable things.

Q: Can loan of money be payable in kind?

A: Yes, if there is an agreement between the parties *(Art. 1958, NCC).*

Q: When is a contract of simple loan perfected?

A: Real contracts, such as deposit, pledge and commodatum, are not perfected until the delivery of the object of the obligation. *(Art. 1316, NCC)* While mutuum or simple loan is not mentioned, it has the same character as commodatum. Hence, mutuum is also a real contract which cannot be perfected until the delivery of the object.

Q: What are the governing rules on payment of loan?

A: It depends on the object of the contract of loan.

Money – governed by Arts. 1249 and 1250, NCC

GR: Payment shall be made in the currency stipulated.

XPN: If not, that currency which is legal tender in the Philippines.

Note: In case of extraordinary inflation – value of the currency at the time of the creation of the obligation.

Consumable or fungible thing – debtor or borrower shall pay another thing of the same kind, quality and quantity even if it should change in value. If cannot be done, the value of the thing at the time of its perfection (delivery) shall be the basis of the payment of the loan.

Q: May a person be imprisoned for non-payment of debt?

A: No. This is because of the constitutional provision under Article III, Section 3 of the 1987 Constitution which expressly provides that no person shall be imprisoned for non-payment of a *debt* or poll tax.

Q: Can estafa be committed by a person who refuses to pay his debt or denies its existence?

A: No, because the debtor in *mutuum* becomes the owner of the thing delivered to him. If he consumed or disposed of the thing, the act which is an act of ownership is not misappropriation. Hence, there is no basis for a criminal prosecution.

Q: Does destruction of the thing loaned extinguish one's obligation in a simple loan?

A: The destruction of the thing loaned does not extinguish one's obligation to pay because his obligation is not to return the thing loaned but to pay a generic thing.

Q: Who are the parties to a commodatum? Distinguish.

A:

1. *Bailor/Comodatario/Commodans* – the giver/ lender - the party *who delivers* the possession or custody of the thing bailed.

2. *Bailee/Comodante/Commodatarius* – the recipient/ borrower - the party *who receives* the possession or custody of the thing thus delivered.

B. OBLIGATIONS OF THE BAILOR AND BAILEE

BAILOR

OBLIGATIONS OF THE BAILOR

Q: What are the obligations of the bailor?

A:

Allow the bailee the use of the thing loaned for the duration of the period stipulated or until the accomplishment of the purpose.

Refund the extraordinary expenses the bailee incurred for the preservation of the thing.

GR: The bailee must bring to the knowledge of the bailor such expenses before incurring the same.

XPN: In case there is urgency and delay would cause imminent danger.

Note: If the extraordinary expenses arise on the occasion of the actual use of the thing loaned by the bailee, the expenses shall be borne by the bailor and bailee equally, even though the bailee is without fault. *(Art. 1949, NCC)*

To be liable for damages for known hidden defects.

Cannot exempt himself from payment of expenses or damages by abandonment of the thing to bailee.

Q: When is the bailor liable for hidden defects?

A: When the following requisites are present:

1. there was a flaw or defect in the thing loaned;
2. the flaw or defect is hidden;
3. the bailor is aware thereof;
4. he does not advise the bailee of the same; and
5. the bailee suffers damages by reason of said flaw or defect.

Q: What is the cause of action against the bailor who did not disclose the flaw or defect?

A: Action for recovery of damages on the ground of *quasi-delict* because of negligence or bad faith.

RIGHTS OF A BAILOR

Q: Can the bailor demand the return of thing loaned anytime he pleases?

A:

GR: No

XPNs:

1. In case of urgent need by the bailor
2. In case *of precarium*
3. If the bailee commits an act of ingratitude to the bailor *(Art. 1948, NCC)*, to wit:

    a. If the bailee should commit some offenses against the person, honor or the property of the bailor, or his wife or children under his parental authority;
    b. If the bailee imputes to the bailor any criminial offense, or any act involving moral turpitude, even though he should prove it, unless the crime or the act has been committed against the bailee, his wife or children under his authority; or
    c. If the bailee unduly refuses the bailor support when the bailee is legally or morally bound to give support to the bailor.

Note: The rationale for the application of Art. 765 which refers to donations is the fact that commodatum, like donation, is gratuitous in nature.

Q: If the contract of commodatum is a precarium, will Art. 1942 (1) and (2) still apply?

A: It depends. If there has been a demand on the part of the bailor before the loss of the thing under the circumstances set forth under Art. 1942 (1) and (2) and the bailee did not return the thing,

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then the latter is liable. However, if there has been no demand on the part of the bailor and the thing was lost, the bailor is estopped and cannot hold the bailee liable for under a contract of precarium, the use of the thing by the bailee depends on the pleasure of the bailor and no time is fixed for such use. Hence, demand on the part of the bailor is needed for the return of the thing. Without such, loss of the thing on the hands of the bailee will not make him liable.

Note: *Article 1942*. The bailee is liable for the loss of the thing, even if it should be through a fortuitous event:

> If he devotes the thing to any purpose different from that for which it has been loaned;
> If he keeps it longer than the period stipulated, or after the accomplishment of the use for which the commodatum has been constituted;
> xxx

Q: Must the bailor be the owner of the thing loaned?

A: No. The bailor in commodatum need not be the owner of the thing loaned. It is sufficient that he has possessory interest over subject matter *(Art. 1938, NCC).*

Note: A mere lessee or usufructuary may gratuitously give the use of the thing leased or in usufruct, provided there is no prohibition against such.

BAILEE

Q: If there are two or more bailees to a contract of commodatum, what is the nature of their liability?

A: When there are 2 or more bailees to whom a thing is loaned in the same contract, they are liable solidarily. *(Art. 1945, NCC)*

Note: Their liability is solidary in order to protect the bailor's rights over the thing loaned.

Q: Following the principle of autonomy of contracts, may the parties to a contract of commodatum validly stipulate that the liability of the bailees shall be joint?

A: No. Article 1245 expressly provides that in a contract of commodatum, when there are two or more bailees to whom a thing is loaned in the same contract, they are liable solidarily. It constitutes as an exception to the general rule of "joint obligations" where there are two or more debtors, who concur in one and same obligation under Articles 1207 and 1208. Solidarity is provided to safeguard effectively the rights of the bailor over the thing loaned.

Note: The concurrence of two or more creditors or two or more debtors in one and the same obligation does not imply that each one of the former has a right to demand, or that each one of the latter is bound to render, entire compliance with the prestation. There is solidary liability only when the obligation expressly so states, or when the law or the nature of the obligation requires solidarity. *(Art. 1207)*

If from the law, or the nature or the wording of the obligations to which the preceding article refers the contrary does not appear, the credit or debt shall be presumed to be divided into as many equal shares as there are creditors or debtors, the credits or debts being considered distinct from one another, subject to the Rules of Court governing the multiplicity of suits. *(Art. 1208)*

OBLIGATIONS OF THE BAILEE

Q: What are the obligations of a bailee?

A:

As to ordinary expenses	Pay for the ordinary expenses for the use and preservation of the thing
As to the loss of the thing in case of fortuitous event	Liable for **l**oss *even through fortuitous event when* **[ask-dl]***:* when being able to **s**ave either of the thing borrowed or his own thing, he chose to save the latter he **k**eeps it longer than the period stipulated, or after the accomplishment of its use (in default); the thing loaned has been delivered with **a**ppraisal of its value when he **l**ends or leases it to third persons who are not members of his household there is **d**eviation from the purpose
As to the deterioration of the thing loaned	Not liable for the deterioration of the thing loaned caused by the ordinary wear and tear of the thing loaned. *(Art. 1943)* **Note:** When there are two or more bailees, their liability is solidary.

RIGHTS OF A BAILEE

Q: What are the rights of a bailee?

A: FRUD

Use of the thing;

Make use of the **f**ruits of the thing when such right is stipulated in the contract;

Not answerable for the **d**eterioration of the thing loaned due to the use thereof and without his fault; and

Right of retention for damages due to hidden defects or flaws of the thing of which he was not advised by the bailor.

Q: Art. 1178 of the NCC provides that all rights acquired by virtue of an obligation are transmissible. Is the right to use the thing by virtue of a contract of commodatum transmissible?

A: No, it is not transmissible for 2 reasons:

Art. 1178 provides that the transmissibility of said acquired rights are either subject to the laws or to a contrary sipulation; and

Art. 1939 provides that a contract of commodatum is purely personal in character.

Note: To rule otherwise would be to run counter to the purely personal character of the commodatum and to the proviso that transmissibility is subject to the law governing such obligations.

Q: Can the bailee lend or lease the object of the contract to a third person?

A:

GR: The bailee can neither lend nor lease the object of the contract to a third person.

XPN: Members of the bailee's household may make use of the thing loaned.

Note: Members of the bailee's household are not considered as third persons.

XPN to the XPN:

Contrary stipulation; or

Nature of the thing forbids such use.

Q: What is the legal effect if the bailee pays for the use of the thing?

A: The contract ceases to be *commodatum*; it becomes lease.

Q: In *commodatum,* does the bailee acquire the use of the fruits of the thing?

A: No. The bailee in commodatum acquires only the use of the thing loaned but not its fruits *(Art. 1935, NCC).*

Q: Is a stipulation that the bailee may make use of the fruits of the thing loaned valid?

A: Yes. It is understood that the enjoyment of the fruits must only be incidental to the use of the thing. It should not be the main cause; otherwise, the contract is not a *commodatum* but a usufruct *(Art. 1940, NCC).*

Q: Will the stipulation that the bailee may make use of the fruits of the thing loaned impair the essence of commodatum?

A: No. It will not impair the essence of commodatum because the actual cause or consideration therefore is still the liberality of the bailor or lender.

Q: Is there right of retention in commodatum?

A:

GR: The bailee cannot retain the thing loaned on the ground that the bailor owes the bailee.

XPN: The bailee has the right of retention for claims of damages which the bailee incurred or suffered by reason of the hidden defects or flaws of the thing loaned, of which he was not informed or advised by the bailor.

Note: The reason for the general rule that there is no right of retention is that "bailment implies a trust that as soon as the time has expired or the purpose accomplished, the bailed property must be returned to the bailor." Also, Art. 1287 provides that compensation shall not be proper when one of the debts arises from the obligations of a bailee in commodatum. *(Art. 1287, reworded)*

Q: Suppose during the said retention of the bailee, the thing is lost due to a fortuitous event. Can the bailor hold the bailee liable for said loss based on Art. 1942 (2)?

A: No, the bailee cannot be held liable for the loss. Art. 1942 (2) contemplates wrongful retention or a situation where the bailee is not entitled to retain the thing loaned.

Note: Article 1942 (2) provides that the bailee is liable for the loss of the thing, even if it should be through a fortuitous event if he keeps it longer than the period stipulated, or after the accomplishment

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of the use for which the commodatum has been constituted.

Q: What if the bailee is entitled to payment or reimbursement of expenses incurred or damages suffered and the bailor offers the thing loaned as payment for said expenses or damages, would such offer be valid or not, in view of the prohibition under Art. 1952 which states that the bailor cannot exempt himself from the payment of expenses or damages by abandoning the thing to the bailee?

A: The offer is not valid. It may be considered as *dation in payment*. In this case, the abandonment done by the bailor was made in favor of the bailee for the payment of the expenses incurred by the latter, hence, a violation of what the law has expressly prohibited under Article 1952.

Q: When is the bailee not entitled to reimbursement for the expenses he incurred?

A: If, for the purpose of making use and preservation of the thing, the bailee incurs expenses other than those ordinary and extraordinary expenses.

Q: Before he left for Riyadh to work as a mechanic, Pedro left his van with Tito, with the understanding that the latter could use it for one year for his personal or family use while Pedro works in Riyadh. He did not tell Tito that the brakes of the van were faulty. Tito had the van tuned up and the brakes repaired. He spent a total amount of P15,000.00. After using the vehicle for two weeks, Tito discovered that it consumed too much fuel. To make up for the expenses, he leased it to Annabelle. Two months later, Pedro returned to the Philippines and asked Tito to return the van.

Unfortunately, while being driven by Tito, the van was accidentally damaged by a cargo truck without his fault.

Who shall bear the P15,000.00 spent for the repair of the van? Explain.

A: The contract between Pedro and Tito is one of *commodatum.* Of the P15, 000.00 spent, Pedro, the bailor, shall bear the expenses for the repair of the faulty brakes, they being extraordinary expenses incurred due to the non-disclosure by the bailor of the defect or fault; Tito, on the other hand, shall shoulder "that part of the P15,000.00 spent for the tune-up", said expense being ordinary for the use and preservation of the van.

Who shall bear the costs for the van's fuel, oil and other materials while it was with Tito? Explain.

A: The costs for the fuel and other materials are considered ordinary expenses, and consequently Tito, the bailee, shall shoulder them *(Art. 1941, NCC)*

Does Pedro have the right to retrieve the van even before the lapse of one year? Explain.

A: No, Pedro cannot demand the return of the van until after the expiration of the one-year period stipulated. However, if in the meantime he should have urgent need of the van, he may demand its return or temporary use.

Who shall bear the expenses for the accidental damage caused by the cargo truck, granting that the truck driver and truck owner are insolvent? Explain.

A: Both Tito and Pedro shall bear equally the costs of the extraordinary expenses, having been incurred on the occasion of actual use of the van by Tito, the bailee, even though he acted without fault. *[Art. 1949(2), NCC]* **(2005 Bar Question)**

C. INTEREST AND THE SUSPENSION OF THE USURY LAW

Q: What is interest?

A: It is nothing more than the compensation to be paid by the borrower for the use of the money lent to him by the lender.

Q: What is the rule on interests?

A:

GR: No interest shall be due unless it is stipulated in writing. *(Art. 1956, NCC)*

XPN: In case of interest on damages or indemnity for damages, it need not be in writing.

Q: What is the basis of the right to interest?

A: It only arises by reason of the contract (stipulation in writing) or by reason of delay or failure to pay principal on which interest is demanded *(Baretto v. Santa Marina, No. 11908, feb. 4, 1918).*

If the obligation consists of the payment of a sum of money, and the debtor incurs delay, the

indemnity for damages shall be the payment of legal interest *(Philrock, Inc. v. Construction Industry Arbitration Commission, G.R. Nos. 132848-49, June 25, 2001)*

Q: Can there be interest in equitable mortgage?

A: No. Interest could not be collected on equitable mortgage because the same is not stipulated in writing *(Tan v. Valdehueza, G.R. No. L-38745, Aug. 6, 1975).*

Note: One which, although it lacks the proper formalities or other requisites of a mortgage required by law, nevertheless reveals the intention of the parties to burden real property as a security for a debt, and contains nothing impossible or contrary to law.

Q: Can paid unstipulated interest be recovered?

A: If paid by mistake the debtor may recover as in the case of *solutio indebiti* or undue payment. However if payment is made voluntarily, no recovery can be made as in the case of natural obligation.

Q: Sabugo granted a loan to Samilin. The loan agreement was not reduced in writing. Thereafter, Sabugo demanded additional interest which was paid by Samilin in cash and checks. Upon advice of her lawyer, Samilin demanded for the return of the amount of interest paid. Is the payment of interest valid?

A: No. Payment of monetary interest is allowed only if:

1. there was an express stipulation for the payment of interest; and
2. the agreement for the payment of interest was reduced in writing.

The concurrence of the two conditions is required for the payment of monetary interest. Thus, collection of interest without any stipulation therefor in writing is prohibited by law. *(Siga-an v. Villanueva, G.R. No. 173227, Jan. 20, 2009.)*

Q: May interest be adjudged on unliquidated claims?

A:

GR: No.

XPN: Unless the same can be established with reasonable certainty. *(Atlantic Gulf and Pacific Company of Manila, Inc. v. CA, G.R. Nos. 114841-42, Aug. 23, 1995)*

Q: In case the interest may be adjudged on unliquidated claim but the pleadings in court did not spell out said amount with certitude, when shall legal interest thereon run?

A: The legal interest thereon shall run only from the promulgation of judgment of said court, it being at that stage that the quantification of damages may be deemed to have been reasonably ascertained. *(Ibid)*

Q: What is the actual base for computing such legal interest?

A: It shall be the amount as finally adjudged by the Supreme Court. *(Ibid)*

Q: What is the basis for computation for indemnity for damages?

A: It shall be the interest agreed upon by the parties and in the absence of stipulation, the legal interest which is 6% per annum *(Art. 2208, NCC).*

Note: 6% because it is based on damages and it has been said that judgments other than loans, forbearance, etc. is based on 6%.

Q: What are the classes of interest?

A:

1. *Simple* – interest which is paid for the use of the money, at a certain rate stipulated in writing by the parties.
2. *Compound* – interest which is imposed upon accrued interest, that is, the interest due and unpaid.
3. *Legal* – that interest which the law directs to be paid in the absence of any agreement as to the rate.

Q: When can there be:

1. **Monetary interest;**
2. **Compensatory interest?**

A:

1. Monetary interest must be expressly stipulated in writing and it must be lawful. *(Art. 1956, NCC)* It is payable on the delay of the use of the money.
2. Indemnity for damages (compensatory interest) – the debtor in delay is liable to pay legal interest (6% or 12%) as indemnity for damages even in the absence of stipulation for the payment interest. Such interest as indemnity for damages is payable only in case of default or non-performance of contract.

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Note: If the obligation consists in the payment of a sum of money and the debtor incurs in delay, the debtor is liable for damages. *(Art. 2209, NCC)*

Q: What is the basis for the interest rate for compensatory interest?

A:

1. Central Bank Circular 416 – 12% per annum in cases of:
    a. Loans
    b. Forbearance of money, goods and credits
    c. Judgement involving such loan or forbearance, in the absence of express agreement as to such rate of interest

    Note: During the interim period from the date of judgment until actual payment.

    d. Pursuant to P.D. No. 116 amending Act No. 2655 (Usury Law), the Central Bank of the Philippines issued Circular No. 416 raising the legal rate of interest from 6% to 12% per annum.

    e. In the absence of a stipulation as to interest, the loan due will now earn interest at the legal rate of 12% per annum. *(Sulit v. CA, G.R. No. 119247, Feb. 17, 1997).*

2. Art. 2209, NCC – 6% per annum in cases of:
    a. Other sources (*i.e.* sale)
    b. Damages arising from injury from person.
    c. Loss of property which does not involve a loan.

3. Interest accruing from unpaid interest – interest due shall earn interest from the time it is judicially demanded although the obligation may be silent upon this point.

Q: What is forbearance?

A: It signifies the contractual obligation of the creditor to forbear during a given period of time to require the debtor payment of an existing debt then due and payable. Such forbearance of giving time for the payment of a debt is, in substance, a loan *(91 C.J.S. 598).*

Q: What is the interest rate imposable for back rentals?

A: Back rentals being equivalent to a loan or forbearance of money, the interest rate due thereon is 12% per annum from the time of extra-judicial demand *(Catungal v. Hao, G.R. No. 134972, Mar. 22, 2001).*

Note: Back rental is the full extended value of land let by lease, payable by tenant for life or years.

Q: What is the rule on compounding of interest?

A:

GR: Accrued interest (interest due and unpaid) shall not earn interest.

XPN: When:
1. judicially demanded; or
2. there is express stipulation made by the parties – that the interest due and unpaid shall be added to the principal obligation and the resulting total amount shall earn interest.

Note: Compounding of interest may be availed only when there is a written stipulation in the contract for the payment of interest.

Q: What is floating interest?

A: It is the interest stipulated by banks which is not fixed and made to depend upon the prevailing market conditions, considering the fluctuating economic conditions.

Q: Is a stipulation for floating interest valid?

A*: No. While it may be acceptable for practical reasons given the fluctuating economic conditions for banks to stipulate that interest rates on a loan not be fixed and instead be made dependent on prevailing market conditions, there should be a* reference rate upon which to peg such variable interest rates *[Consolidated Bank and Trust Corp. (Solid Bank) v. CA, G.R. No. 114672, Apr. 19, 2001].*

Q: What is interest on damages?

A: Interest that which is imposed in a judgment as indemnity for damages.

Note: It need not be in writing and computed from the time of the finality of decision.

Q: A judgment was rendered ordering the defendant Maybel to pay Vanessa with legal interest of 12% from the filing of the complaint until paid. The decision became final and executory. Maybel argues that the rate of 12%

under Central Bank Circular 416 was misapplied. How much by way of legal interest should a judgment debtor pay the judgment creditor?

A: The judgments spoken of and referred to under Central Bank Circular 416 are judgments in litigations involving loans or forbearances of money, goods or credits. Any other kind of monetary judgments which has nothing to do with, nor involving loans or forbearance of any money goods or credits does not fall within the coverage of said law. Coming to the case at bar, the decision herein sought to be executed is one rendered in an Action for Damages for injury to persons and loss of property and does not involve any loan, much less forbearances of any money, goods or credits.

Q: Carlos sues Dino for (a) collection on a promissory note for a loan, with no agreement on interest, on which Dino defaulted, and (b) damages caused by Dino on his (Carlos') priceless Michaelangelo painting on which Dino accidentally spilled acid while transporting.it. The court finds Dino liable on the promissory note and awards damages to Carlos for the damaged painting, with interests for both awards. What rates of interest may the court impose with respect to both awards? Explain.

A: With respect to the collection of money or promissory note, it being a forbearance of money, the legal rate of interest for having defaulted on the payment of 12% will apply. With respect to the damages to the painting, it is 6% from the time of the final demand up to the time of finality of the decision and 12% of the total amount from finality of judgment until judgment credit is fully paid. The court considers the latter as a forbearance of money. *(Eastern Shipping Lines, Inc. v. CA, G.R. No. 97412, July 12, 1994; Arts. 2210 and 2211, NCC)* **(2002 Bar Question)**

Q: Must the principal debt still be paid in usurious transactions?

A: Yes. Under the Usury Law, notwithstanding stipulations of usurious interest, the debtor must still pay the principal debt *(Lopez v. El Hogar Filipino, No. 22678, Jan. 12, 1925).*

Q: What is the rationale behind the validity of unconscionable Interest rate in a loan?

A: The Supreme Court said nothing in said circular (Circular 905) suspending Usury Law grants lender authority to raise interest rates to levels which will either enslave their borrowers or lead to a hemorraghing of their assets *(Almeda v. CA, G.R. No. 113412, Apr. 17, 1996)*

In the case of *Medel v. CA (G.R. No. 131622, Nov. 27, 1998)*, the court ruled that while stipulated interest of 5.5% per month on a loan is usurious pursuant to CBC No. 905, the same must be equitably reduced for being iniquitous, unconscionable and exorbitant. It is contrary to morals. It was reduced to 12% per annum in consonant with justice and fairplay.

Q: Samuel borrowed P300,000.00 housing loan from the bank at 18% per annum interest. However, the promissory note contained a proviso that the bank "reserves the right to increase interest within the limits allowed by law." By virtue of such proviso, over the objections of Samuel, the bank increased the interest rate periodically until it reached 48% per annum. Finally, Samuel filed an action questioning the right of the bank to increase the interest rate up to 48%. The bank raised the defense that the Central Bank of the Philippines had already suspended the Usury Law. Will the action prosper or not? Why?

A: The action will prosper. While it is true that the interest ceilings set by the Usury Law are no longer in force, it has been held that PD No. 1684 and CB Circular No. 905 merely allow contracting parties to stipulate freely on any adjustment in the interest rate on a loan or forbearance of money but do not authorize a unilateral increase of the interest rate by one party without the other's consent *(PNB v. CA, G.R. No. 107569, Nov. 8, 1994*). To say otherwise will violate the principle of mutuality of contracts under Article 1308 of the Civil Code. To be valid, therefore, any change of interest must be mutually agreed upon by the parties *(Dizon v. Magsaysay, G.R. No. L-23399, May 31, 1974)*. In the present problem, the debtor not having given his consent to the increase in interest, the increase is void. **(2001 Bar Question)**

II. DEPOSIT

Q: What is deposit?

A: It is a contract whereby a person *(depositor)* delivers a thing to another *(depositary)*, for the principal purpose of safekeeping it, with the obligation of returning it when demanded.

Q: When is a contract of deposit constituted?

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A: From the moment a person receives a thing belonging to another, with the obligation of safely keeping it and returning the same upon demand.

Q: What are the characteristics of contract of deposit?

A:

1. *Real contract* – because it can only be perfected by the delivery of the object of the contract.

   However, an agreement to constitute a future deposit is a consensual contract and is therefore binding.

   Note: There is no consensual contract of deposit; there is only a consensual promise to deliver which is binding if such is accepted.

2. Object of the contract must be a *movable property*. *However*, in cases of judicial deposit, the subject matter may be a real property.

3. Purpose is for the *safekeeping* of the thing deposited. This must be the principal purpose and not only secondary.

4. It is *gratuitous*, unless there is a:
   a. Contrary agreement; or
   b. The depositary is engaged in the business of storing goods, like a warehouseman.

5. The depositary cannot use the thing deposited, unless:
   a. Permitted by the depositor; or
   b. Preservation of the thing requires its use, but only for said purpose.

   May be made orally or in writing.

Q: Distinguish deposit from:

1. **Mutuum;**
2. **Commodatum;**
3. **Agency;**
4. **Lease; and**
5. **Sale.**

A:

1.

DEPOSIT	MUTUUM
Purpose	
Safekeeping/custody	Consumption
When to return	
Upon demand of the depositor	Upon expiration of the term granted to the borrower
Subject Matter	
Movable (extrajudicial) or may be immovable (judicial)	Money or other fungible thing
Relationship	
Depositor-depositary	Lender-borrower
Compensation	
No compensation of things deposited with each other (*except* by mutual agreement)	There can be compensation of credits

2.

DEPOSIT	COMMODATUM
Principal Purpose	
Safekeeping	Transfer of use
Nature	
May be gratuitous or onerous	Always gratuitous

3.

DEPOSIT	AGENCY
Purpose	
Safekeeping	Representation of the principal by the agent
Reason for custody of the thing	
The custody of the thing is the principal and essential reason for the deposit	It is merely an incidental obligation of the agent
Nature	
Essentially gratuitous	It is generally onerous or for compensation

4.

DEPOSIT	LEASE
Principal Purpose	
Safekeeping	Use of the thing
When to return	
Upon demand of the depositor	Upon termination of the lease contract.

5.

DEPOSIT	SALE
Ownership	
Retained by depositor.	Transferred to buyer.

Q: What are the kinds of deposit?

A:

1. *Judicial (sequestration)*
2. *Extra-judicial*
   a. *Voluntary* – the delivery is made by the will of the depositor.
   b. *Necessary* – made in compliance with a legal obligation, or on the occasion of any calamity, or by

travelers in hotels and inns, or by travelers with common carriers.

Q: Distinguish judicial from extra-judicial deposit?

A:

JUDICIAL	EXTRA-JUDICIAL
Creation	
Will of the court	Will of the contracting parties
Purpose	
Security or to ensure the right of a party to property or to recover in case of favorable judgment	Custody and safekeeping
Subject Matter	
Movables or immovables but generally immovables	Movables only
Cause	
Always onerous	Generally gratuitous but may be compensated
When must the thing be returned	
Upon order of the court or when litigation is ended	Upon demand of depositor
In whose behalf it is held	
Person who has a right	Depositor or third person designated

Q: What is the nature of the rent of safety deposit boxes?

A: The rent of *safety deposit boxes* is an *ordinary contract of lease* of things and not a special kind of deposit because the General Banking Act as revised has deleted the part where banks are expressly authorized to accept documents or papers for safe-keeping.

The case of *Sia v. CA, G.R. No. 102970, May 13, 1993* enunciating that a rent of a safety deposit box is a special kind of deposit, was decided under the former General Banking Act. However, SC has not yet decided a case abandoning the ruling in Sia v. CA, making it conform with the new General Banking Act.

Fixed, savings and current deposits in banks and other similar institutions are not true deposits but are considered simple loans because they earn interest. *(Art. 1980, NCC)*

Q: Is ownership necessary in a contract of deposit?

A: The depositor need not be the owner of the thing deposited because the purpose of the contract is safekeeping and not transfer of ownership.

Note: A deposit may also be made by two or more persons each of whom believes himself entitled to the thing deposited with a third person, who shall deliver it in a proper case to the one to whom it belongs.

Q: What is the nature of advance payment in a contract of sale?

A: A so called deposit of an advance payment in the case of a sale is not the deposit contemplated under Art. 1962. It is that advance payment upon which ownership is transferred to the seller once it is given subject to the completion of payment by the buyer under an agreement. *(Cruz v. Auditor General, No. L-12233, May 30, 1959).*

A. VOLUNTARY DEPOSIT

Q: What are the obligations of depositary in voluntary deposit?

A:

1. To keep the thing safely and return it
2. Exercise same diligence as he would exercise over his own property
3. Not to deposit the thing with a 3rd person unless expressly authorized by stipulation

   Note: Depositary is liable for the loss if:
   a. He deposits the thing to a 3rd person without authority, even though the loss is due to fortuitous events
   b. Deposits the thing to a 3rd person who is manifestly careless or unfit although there is authority.

4. If the thing should earn interest:
   a. collect interest as it falls due
   b. take steps to preserve the value and rights corresponding to it
5. Not to commingle things if so stipulated
6. **GR:** Not to make use of the thing deposited

   XPNs:
   a. When preservation of thing deposited requires its use
   b. When authorized by depositor

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c. **GR:** In such case it is no longer a deposit but a contract of loan or commodatum, as the case may be.

d. **XPN:** Principal reason for the contract is still safekeeping, it is still deposit.

7. When the thing deposited is delivered sealed and closed:
   a. return the thing in the same condition
   b. pay damages if seal be broken through his fault
   c. keep the secret of the deposit when seal is broken w/ or w/o his fault

   d. *However*, the depositary is authorized to open the seal or lock when:
      a. there is presumed authority
      b. out of necessity

8. **GR:** Pay for any loss or damage that may arise due to his fault

   XPN: *Liability of loss through fortuitous event*

   XPNs to XPN: *Even in case of loss through fortuitous event, still liable if* **(USAD):**
   a. **S**tipulated
   b. he **U**ses thing w/o depositor's permission
   c. he **D**elays its return
   d. he **A**llows others to use it (even if he himself is authorized to use it)

9. Return the thing deposited with all its fruits, accessions, and accessories
10. Pay interest on sums converted to personal use if the deposit consists of money

Q: When is a voluntary deposit extinguished?

A:
1. Loss or destruction of thing deposited;
2. In gratuitous deposit, upon death of either depositor or depositary; or
3. Other causes (*e.g.* return of thing, novation, expiration of the term, fulfillment of resolutory condition)

PARTIES

Q: Who are the parties to a contract of deposit?

A:
1. *Depositary* – to whom the thing is deposited
2. *Depositor* – the one who deposits the thing

DEPOSITARY

Q: Who is a depositary?

A: The depositary is the one to whom the thing is deposited.

Q: May the depositary change the manner of the deposit?

A: Yes, if he may reasonably presume that the depositor would consent to the change if he knew of the facts of the situation. However, before the depositary may make such change, he shall notify the depositor thereof and wait for his decision, unless delay would cause danger *(Art. 1974, NCC)*.

Q: Is a guardian a depositary of the ward's property?

A: The guardian is not holding the funds of the ward merely for safekeeping exclusively but also intended for the latter's maintenance and support. Losses, if any without the fault of the guardian shall be deducted from the funds of the ward *(Phil. Trust Co. v. Ballesteros, No. L-8261, April 20, 1956).*

Q: What is the effect when the depositary has permission to use the thing deposited?

A:

GR: The contract loses the concept of a deposit and becomes a loan or *commodatum.*

XPN: Where safekeeping is still the principal purpose of the contract *(Art. 1978, NCC).*

Note: The permission shall not be presumed, and its existence must be proved.

Q: What is the rule with respect to the determination of the value of the thing?

A:

GR: The statement of the depositor shall be accepted as *prima facie* evidence of the value

if the forcible opening of the box or receptacle is imputable to the depositary.

XPN: If there is a clear, strong and convincing evidence to the contrary.

It is significant to know the value of the thing deposited in case when there is a controversy on the value of the thing deposited which is delivered closed and sealed.

Q: Under Art. 1983, what is included in the term "products, accessories and accessions"?

A: The depositor's ownership over the thing carries with it the right to the fruits and all accessions thereto including:

1. Natural fruits
2. Industrial fruits
3. Civil fruits *(Art. 441, NCC)*

Q: When the deposit consists of money, what must be returned upon the extinguishment of contract?

A: The provision of Article 1896 shall apply wherein the money deposited must be returned together with interest for the use thereof. The imposition of interest is in the form of penalty for the use of money there being no agreement to pay the interest at the outset, otherwise, the contract will be a *mutuum.*

Q: Can the depositary demand that the depositor should prove his ownership of the thing deposited?

A:

GR: No.

XPN: Should he discover that the thing has been stolen and who its true owner is, he must advise the latter of the deposit.

Note: If the depositary has reasonable grounds to believe that the thing has not been lawfully acquired by the depositor, the former may return the same.

Q: What should the depositary do if he loses the thing through force majeure or government order and receives money or another thing in its place?

A: He shall deliver the sum or other thing to the depositor.

Q: What is the duty of the depositary's heir if he sold the thing which he did not know was deposited?

A: He shall be bound to return the price he may have received or to assign his right of action against the buyer in case the price has not been paid by him *(Art. 1991, NCC).*

Note: The provision applies only when the depositary has died and left heir/s who took possession of the thing in the concept of an owner and sold it in good faith to a third person.

Q: What is the right of the depositary if he has not been paid the amount due to him?

A: The depositary may retain the thing in pledge until full payment of what may be due him by reason of the deposit *(Art. 1994, NCC).*

Q: May the depositary sell the thing retained in pledge?

A: Yes, Article 2108 provides that if, without the fault of the pledgee, there is danger, destruction, impairment, or diminution in value of the thing pledged, he may cause the same to be sold at public auction. The proceeds of the auction shall be a security for the principal obligation in the same manner as the thing originally pledged. *(Pineda, p. 93, 2006 ed)*

Q: Maneja assigned and conveyed to Serrano her time deposit. Notwithstanding series of demands for encashment of the aforementioned time deposits, OBM refused to honor the time deposits. Is OBM liable to Serrano despite the fact the Central Bank declared that OBM could no longer operate due to its chronic reserve deficiencies?

A: Yes. Bank deposits are in the nature of irregular deposits. They are really loans because they earn interest. All kinds of bank deposits, whether fixed, savings or current, are to be treated as loans and are to be covered by the law on loans. Current and savings deposits are loans to a bank because it can use the same. Serrano, in making time deposits that earn interest with OBM was in reality a creditor of the respondent bank, and not a depositor. The bank was in turn a debtor of Serrano. Failure of OBM to honor the time deposits is failure to pay its obligation as a debtor and not a breach of trust arising from a depositary's failure to return the subject matter of the deposit. *(Serrano v. Central Bank, G.R. No. 30511, Feb. 14, 1980)*

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DEPOSITOR

Q: Who is a depositor?

A: The depositor is the one who deposited the thing.

Q: What is the rule when there are two or more depositors?

A: If they are not solidary, and the thing admits of division, each one cannot demand more than his share.

When there is solidarity or the thing does not admit of division, the provisions of *Art. 1212* and 1214 shall govern. However, if there is a stipulation that the thing should be returned to one of the depositors, the depositary shall return it only to the person designated *(Art. 1985, NCC).*

Q: What are the obligations of depositor?

A:

1. Payment for necessary expenses for preservation
    a. If the deposit is gratuitous – reimburse depositary
    b. With compensation – no need for reimbursement; expenses borne by depositary

2. **GR:** Pay losses incurred by depositary due to the character of the thing deposited.

    XPNs:
    a. When at the time of deposit, the depositor was not aware of the dangerous character of the thing or was not expected to know it;
    b. When the depositor notified the depositary; or
    c. When the depositary was aware of it without advice from the depositor.

3. In case of an onerous deposit, to pay the compensation agreed upon as consideration for the deposit.

Q: To whom should the thing deposited be returned?

A:

1. To the depositor, to his heirs and successors, or to the person who may have been designated in the contract *(Art. 1972, NCC).*

2. If the depositor was incapacitated at the time of making the deposit, to his guardian or administrator or to the depositor himself should he acquire capacity *(Art. 1970, NCC).*

3. Even if the depositor had capacity at the time of making the deposit but he subsequently loses his capacity during the deposit, the thing must be returned to his legal representative *(Art.1988, NCC).*

Q: Where should the thing deposited be returned?

A:

GR: At the place agreed upon.

XPN: In the absence of stipulation, at the place where the thing deposited might be, *even if* it should not be the same place where the original deposit was made *provided* the transfer was accomplished without malice on the part of the depositary.

Q: When should the thing deposited be returned?

A:

GR: Upon demand or at will, whether or not a period has been stipulated.

XPNs:

1. Thing is judicially attached while in the depositary's possession.
2. Depositary was notified of the opposition of a third person to the return or the removal of the thing deposited *(Art. 1986, NCC).*
3. When the thing is stolen and the period of 30 days from notice to the true owner for him to claim it had not yet lapsed, the depositary cannot return the thing deposited to the depositor. This is intended to protect the true owner.
4. In case of gratuitous deposit, if the depositary has a justifiable reason for not keeping the deposit. If the depositor refuses, the depositary may secure its consignation from the court *(Art. 1989, NCC).*

B. NECESSARY DEPOSIT

Q: When is deposit considered as necessary?

A:

1. When it is in compliance with a legal obligation;
2. It takes place on the occasion of any calamity, such as fire, storm, flood, pillage, shipwreck, or other similar events;
3. Made by passengers with common carriers; or
4. Made by travelers in hotels or inns.

Q: When can the keepers of hotels or inns be held responsible for loss of thing in case of deposit?

A: When *both* are present:

1. they have been previously informed by guest about the effects the latter brought in; and
2. the guest has taken precautions prescribed for their safekeeping.

   Note: They are liable *regardless* of the degree of care exercised when:
   a. loss or injury is caused by his employees or even by strangers; or
   b. loss is caused by act of thief or robber when there is no use of arms or irresistible force.

Q: What are the instances when the keepers of hotels or inns are not liable for loss of thing in case of deposit?

A: They are *not* liable when:

1. loss or injury is caused by force majeure;
2. loss due to the acts of guests, his family, his employees, or visitors; and
3. loss arises from the character of the goods.

Q: Are hotel or inn keepers still liable regardless of the posting of notices exempting themselves from any liability?

A: Yes. Hotel/Inn-keepers *cannot* escape or limit liability by stipulation or the posting of notices. Any stipulation between the hotel keeper and the guest whereby the responsibility of the former *(Arts. 1998-2001)* is suppressed or diminished shall be void.

Q: What is the extent of the liability of the hotel keepers in case of loss?

A:

1. It covers liability in hotel rooms which come under the term "baggage" or articles such as clothing as are ordinarily used by travelers.
2. It includes lost or damages in hotels annexes such as vehicles in the hotel's garage.

Q: Can the keepers of the hotels or inns exercise the right of retention?

A: Yes, as security for credits incident to the stay at the hotel (in the nature of a pledge created by operation of law).

C. JUDICIAL DEPOSIT

Q: When does judicial deposit (sequestration) take place?

A: When an attachment or seizure of property in litigation is ordered by a court. (*Art. 2005, NCC*)

Note: It is auxiliary to a case pending in court. The purpose is to maintain the status quo during the pendency of the litigation or to insure the right of the parties to the property in case of a favorable judgment. (De Leon, Comments and cases on credit transaction, p. 154, 2010)

Q: What may be the object of Judicial sequestration?

A: Movables and immovables (*Art. 2006, NCC*)

Q: When will the properties sequestered cease to be in *custodia legis*?

A: When the insolvency proceedings of a partnership terminated because the assignee in insolvency has returned the remaining assets to the firm, said properties cease to be in custodia legis (*Ng Cho Cio, et al. v. Ng Diong & Hodges, L-14832, Jan. 28, 1961*)

III. GUARANTY AND SURETYSHIP

A. NATURE AND EXTENT OF GUARANTY

Q: What is guaranty?

A: It is a contract where a person called the guarantor binds himself to the creditor to fulfill the obligation of the principal debtor in case the latter should fail to do so.

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Q: What is suretyship?

A: It is a contract where a person binds himself solidarily with principal debtor.

Q: Distinguish guaranty from suretyship.

A:

GUARANTY	SURETYSHIP
Collateral undertaking	Surety is an original promissory
Guarantor-secondarily liable	Surety-primarily liable
Guarantor binds himself to pay if the principal *cannot pay*	Surety undertakes to pay if principal *does not pay*
Insurer of solvency of debtor	Insurer of the debt
Guarantor **can avail** of the benefit of excussion and division in case creditor proceeds against him	Surety **cannot avail** of the benefit of excussion and division

Q: What is the similarity between guaranty and suretyship?

A: Both guarantor and surety promise or undertake to answer for the debt, default or miscarriage of another person.

Q: What are the characteristics of guaranty and suretyship?

A: ACCUNCS

1. **A**ccessory
2. **C**onsensual
3. **C**onditional
4. **U**nilateral
5. **N**ominate
6. **C**annot be presumed
7. Covered by the **S**tatute of Frauds

Q: Distinguish guaranty from warranty.

A:

GUARANTY	WARRANTY
a contract by which a person is bound to another for the fulfillment of a promise or undertaking of a third person	an undertaking that the title, quality or quantity of the subject matter of a contract is what it is represented to be, and relates to some agreement made ordinarily by the party who makes the warranty

Q: What are the kinds of guaranty?

A:

1. *General classification*
   a. Personal – guaranty where an individual personally assumes the fulfillment of the principal obligation;
   b. Real – guaranty is property, movable, or immovable.
2. *As to its origin*
   a. Conventional – constituted by agreement of the parties
   b. Legal – imposed by virtue of a provision of law
   c. Judicial – required by a court to guarantee the eventual right of the parties in a case.
3. *As to consideration*
   a. Gratuitous – guarantor does not receive any price or remuneration for acting as such.
   b. Onerous – one where the guarantor receives valuable consideration for his guaranty
4. *As to person*
   a. Single – constituted solely to guarantee or secure performance by the debtor of the principal obligation.
   b. Double or subguaranty – constituted to secure the fulfillment of the obligation of a guarantor by a sub-guarantor
5. *As to scope and extent*
   a. Definite – where the guaranty is limited to the principal obligation only, or to a specific portion thereof.
   b. Indefinite or simple – where the guaranty included all the accessory obligations of the principal, *e.g.* costs, including judicial costs.

B. EFFECTS OF GUARANTY

Q: What are the obligations that may be secured in a contract of guaranty?

A:

1. Valid obligations
2. Voidable obligations
3. Unenforceable obligations
4. Natural obligations – When the debtor himself offers a guaranty for his natural obligation, he impliedly recognizes his liability, thereby transforming the obligation from a natural into a civil one.

5. Conditional obligations – only in case of suspensive condition because it gives rise to the principal and hence, gives rise also to the accessory obligation.

Note: Voidable contract is one which has all the essential elements of a valid contract, except that the element of consent is vitiated. It is valid and obligatory between the parties before its annulment. Unenforceable contact, on the other hand, is one which cannot be enforced by action or complaint in court, unless they have been ratified by the party who did not give his consent thereto. Since both are considered valid obligations between the parties until their annulment, and subject to ratification, they can be secured in a contract of guaranty.

Q: Is a valid principal obligation necessary in contract of guaranty?

A: Since guaranty is an accessory contract, it is an indispensable condition for its existence that there must be a principal obligation. Hence, if the principal obligation is void, it is also void.

Q: In what form should a contract of guaranty be made?

A: It must be expressed and in writing *(par. 2, Art. 1403, NCC)*; otherwise, it is unenforceable unless ratified. It need not be in a public instrument.

Note: Guaranty, as a contract, requires the expression of the consent of the guarantor in order to be bound. It cannot be presumed because of the existence of a contract or principal obligation.

Q: Is acceptance necessary in a contract of guaranty?

A:

GR: The acceptance of the creditor is *not essential* in such contracts.

XPN: When there is a mere offer of a guaranty or a conditional guaranty wherein the obligation does not become binding until it is accepted by the creditor and notice of such acceptance is given to the guarantor.

Q: In case of doubt, in whose favor should a contract of guaranty or surety be resolved?

A:

GR: Strict construction against the creditor and liberal in favor of the guarantor or surety; terms cannot be extended beyond its terms.

XPN: In cases of compensated sureties.

Q: State the general character of guaranty.

A:

GR: Generally gratuitous *(Art. 2048, NCC)*

XPN: Stipulation to the contrary.

Q: Who are the parties to a contract of guaranty?

A:

1. Guarantor
2. Creditor

GUARANTOR

Q: Who is a guarantor?

A: The guarantor is the person who is bound to another for the fulfillment of a promise or undertaking of a third person.

Q: What are the qualifications of a guarantor?

A:

1. Possesses integrity;
2. Capacity to bind himself; and
3. Has sufficient property to answer for the obligation which he guarantees.

Note: The qualifications need only be present at the time of the perfection of the contract.

Q: What is the effect of subsequent loss of required qualifications?

A: The subsequent loss of integrity, property or supervening incapacity of the guarantor would not operate to exonerate the guarantor or the eventual liability he has contracted, and the contract of guaranty continues.

However, the creditor may demand another guarantor with the proper qualifications. But he may waive it if he chooses and hold the guarantor to his bargain.

Q: When is the qualification of the guarantor lost?

A:

Conviction of a crime involving dishonesty
Insolvency

Q: What is the effect of absence of direct consideration or benefit to guarantor?

A: Guaranty or surety agreement is regarded valid despite the absence of any direct consideration

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received by the guarantor or surety, such consideration need not pass directly to the guarantor or surety; a consideration moving to the principal will suffice.

Q: What is the rule when a married woman is a guarantor?

A:

GR: Binds only her separate property.

XPNs:

1. If with her husband's consent, it binds the community or conjugal partnership property.
2. Without husband's consent, in cases provided for by law, such as when the guaranty has redounded to the benefit of the family.

Q: What are the rights of a third person who pays for the debt guaranteed or secured?

A:

1. If payment is made without the knowledge or against the will of the debtor:
   a. Guarantor can recover only insofar as the payment has been beneficial to the debtor
   b. Guarantor cannot compel the creditor to subrogate him in his rights.

2. If payment is made with the knowledge or consent of the debtor – Subrogated to all the rights which creditor had against the debtor.

Q: What is the extent of guarantor's liability?

A:

1. Where the guaranty is *definite* – It is limited in whole or in part to the principal debt to the exclusion of accessories.

2. Where the guaranty is *indefinite or simple* – It shall comprise not only the principal obligation but also all its accessories, including the judicial costs provided that the guarantor shall only be liable for those cost incurred after he has been judicially required to pay.

Q: What are the situations when a guarantor may lawfully be required to pay more than the original obligation of the principal debtor?

A:

1. If upon demand, a guarantor fails to pay the obligation, he can be held liable for interest, even if in thus paying, the liability becomes more than that in the principal obligation. The increased liability is not because of the contract but because of the default and the necessity for judicial collection. It should be noted, however, that the interest runs from the time the complaint is filed, not from the time the debt becomes due and demandable *(Tagawa v. Aldanese, No.18636, sept. 28, 1922).*

2. Creditors suing on a surety bond may recover from the surety, as part of their damages, interest at the legal rate, judicial cost and attorney's fees when appropriate even if the surety would thereby become liable to pay more than the total amount stipulated in the bond *(Dino v. CA, G.R. No. 89775, Nov. 26, 1995).*

3. A penalty clause may also increase the liability of the surety *(General Insurance Surety Co. v. Republic, G.R. No. L-13873, Jan. 31, 1963)*

Q: What is the effect of guarantor's death?

A: His heirs are still liable to the extent of the value of the inheritance because the obligation is not purely personal and is therefore transmissible.

Q: What is the effect of the debtor's death?

A: His obligation will survive. His estate will be answerable. If the estate has no sufficient assets, the guarantor shall be liable.

Q: What is the rule with respect to jurisdiction in an action based on a contract of guaranty?

A: The guarantor shall be subject to the jurisdiction of the court of the place where the obligation is to be complied with.

BENEFIT OF EXCUSSION

Q: What is the benefit of excussion?

A: It is a right by which the guarantor *cannot be compelled* to pay the creditor *unless* the latter has exhausted all the properties of the principal debtor and has resorted to all legal remedies against such debtor.

Q: What are the requisites of benefit of exhaustion or excussion?

A:

The guarantor must set up the right of excussion against the creditor upon the latter's demand for payment from him; and

He must point out to the creditor the available property of the debtor (not exempted from execution) found within the Philippine territory *(Art. 2060, NCC).*

Q: May a complaint be filed against the debtor and guarantor simultaneously in one case before the exhaustion of all the properties of the debtor?

A: Yes. There is nothing procedurally objectionable in impleading the guarantor as a co-defendant. As a matter of fact, the Rules of Court on permissive joinder of parties explicitly allow it. If the creditor obtained a favorable judgment against the debtor and guarantor, the latter is entitled to a deferment of the execution of the said judgment against him until all properties of the debtor shall have been exhausted to satisfy the latter's obligation involved in the case.

Q: What is the effect of declaration of insolvency with respect to the right of excussion?

A: Just because the debtor has been declared insolvent in insolvency proceeding does not necessarily mean that he cannot pay, for part of the debtor's assets may still be available to the creditor. One good proof of the debtor's inability to pay is an unsatisfied writ of execution which has been returned by the implementing sheriff *(Machetti v. Hospicio de San Jose, 43 Phil. 297, Feb. 7, 1920)*

Q: When is there no benefit of excussion?

A: RJS-AIR-FEDS

1. Guarantor has expressly ***r****enounced* it.
2. Guarantor has bound himself ***s****olidarily* with the Debtor.
3. Debtor is ***i****nsolvent*.
4. Guarantor has ***a****bsconded*, or cannot be sued within the Philippines *unless* he left a manager or representative.
5. If it may be presumed that an ***e****xecution* on the property of the Debtor *cannot satisfy* the obligation.
6. Guarantor *does not* invoke the benefit against Creditor upon ***d****emand* to him for payment and he does not point out available property of the Debtor within the Philippines sufficient to cover the obligation *(Art. 2060, NCC).*
7. Guarantor is a ***j****udicial bondsman* or sub-surety.
8. A pledge or mortgage of his own property has been given by Guarantor as ***s****pecial security.*
9. Guarantor ***f****ails to interpose* it as a defense before judgment is rendered.

BENEFIT OF DIVISION

Q: What is the principle of benefit of division?

A: Should there be several guarantors of only one debtor for the same debt, the obligation to answer for the same is divided among all. (Joint liability)

Note:

GR: Creditor can claim from the guarantors only up to the extent they are respectively bound to pay.

XPN: When solidarity has been stipulated.

Should any of the guarantors become insolvent, his share shall be borne by the other guarantors including the paying guarantor in the same joint proportion in accordance with the rule in solidary obligations.

The right to be reimbursed from his co- guarantors is acquired *ipso jure* by virtue of said payment.

Q: Distinguish benefit of division from benefit of contribution.

A:

BENEFIT OF DIVISION	BENEFIT OF CONTRIBUTION
Controversy is between the co-guarantors and the creditor	Controversy between and among the several co-guarantors
There is no payment	There is already

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yet, but there is merely a claim pressed against one or more co-guarantors	payment of debt; the paying co-guarantor is seeking the contribution of the co-guarantors

Q: What is the effect of the creditor's negligence in exhausting the properties of the debtor?

A: He shall suffer the loss to the extent of the value of the pointed property which was not exhausted by the creditor *(Art. 2061, NCC).*

Note: The article applies when the guarantor has complied with the conditions of Art. 2060 (requisites of benefit of excussion).

Q: What is the rule with regard to action of the creditor against the debtor?

A:

GR: Only the principal debtor should be sued alone.

XPN: If the benefit of excussion is not available, the guarantor can be sued jointly with the debtor.

Q: Is the guarantor entitled to be notified of the complaint against the debtor?

A: Yes. If the guarantor desires to set up defenses as are granted him by law, he may have the opportunity to do so.

Q: What are the consequences of the guarantor's appearance or non-appearance in the case against the debtor?

A:

1. If he *does not appear* and judgment is rendered against the debtor, he cannot set up defenses which he could have set up had he appeared; moreover, he cannot question the decision anymore;

2. If he *appears* such as by filing an answer in intervention, he may lose or may win the case. If he losses, he is still entitled to the benefit of excussion. There is no waiver of his benefit of excussion by his appearance in the case.

Q: What is the effect of compromise between the creditor and the debtor to the guarantor?

A: If the compromise is beneficial to the guarantor, it is valid; otherwise, it is not binding upon him *(1st sentence, Art. 2063, NCC).*

Q: What is the effect of compromise between the creditor and the guarantor to the principal debtor?

A: If compromise is beneficial to the principal debtor, it is valid; otherwise, it is not binding upon him *(2nd sentence, Art. 2063, NCC).* To be binding, it must benefit both the guarantor and the debtor.

Q: What is the rule on the right of indemnity and reimbursement of the guarantor who paid the debt?

A:

GR: Guarantor is entitled to be reimbursed by Debtor for:

1. total amount of the debt paid;
2. legal interest from the time payment was made known to the debtor;
3. expenses incurred after notifying debtor that demand to pay was made upon him; and
4. damages in accordance with law.

XPNs:

1. Guaranty is constituted without the knowledge or against the will of the debtor.
   Effect: Guarantor may only recover only so much as was beneficial to the debtor.

2. Payment by 3rd persons who does not intend to be reimbursed.
   Effect: deemed a donation and as such requires the consent of debtor.

Q: What is the right of the guarantor after the payment of the debt is made to the creditor?

A: *Right of subrogation.* The guarantor is subrogated to all the rights which the creditor had against the debtor *(1st par., Art. 2067)*

Q: What happens when guarantor pays without notice to the debtor?

A: The debtor may interpose against the guarantor defenses available to the debtor as against the creditor at the time payment was made.

Note:

GR: Guarantor must 1st notify the debtor before paying, otherwise, if the debtor pays again, the guarantor can only collect from the creditor and guarantor will have no cause of action against the debtor even if the creditor becomes insolvent.

XPN: Guarantor may still recover from debtor if the following circumstances concur:

1. Guaranty is gratuitous;
2. Guarantor was prevented by fortuitous event from notifying the debtor; and
3. Creditor was insolvent.

Q: Can the guarantor proceed against the principal debtor even before having paid the creditor?

A:

GR: No.

XPNs:

1. When he is sued for payment;
2. In case of insolvency of the principal debtor;
3. When the debtor has bound himself to relieve him from the guaranty within a specified period, and this period has expired.
4. When the debt has become demandable by reason of the expiration of the period of payment;
5. After the lapse of ten years, when the principal obligation has no fixed period for its maturity, unless it be of such nature that it cannot be extinguished except within a period longer than ten years;
6. If there are reasonable grounds to fear that the principal debtor intends to abscond; or
7. If the principal debtor is in imminent danger of becoming insolvent.

Note: In all these cases, the cause of action of the guarantor is either to obtain release from the guaranty, or to demand a security that shall protect him from any proceedings by the creditor and from the danger of insolvency of the debtor *(Art. 2071, NCC).*

Q: What is the remedy of a person who becomes a guarantor at the request of another for the debt of a third person who is not present?

A: He has the option of suing either the principal debtor or the requesting party *(Art. 2072, NCC).*

Note: The provision applies when the guarantor has actually paid the debt.

SUB-GUARANTY

Q: What is double or sub-guaranty?

A: It is one constituted to guarantee the obligation of the guarantor.

Note: In case of insolvency of the guarantor for whom he bound himself, he is responsible to the co-guarantors in the same terms as the guarantors *(Art. 2075, NCC).*

Q: Is a sub-guarantor entitled to the right of excussion?

A: Yes, both with respect to the guarantor and to the principal debtor *(Art. 2064, NCC)*.

CONTINUING GUARANTY

Q: What is continuing guaranty or suretyship?

A:

GR: It is not limited to a single transaction but contemplates a future course of dealings, covering a series of transactions generally for an indefinite time or until revoked.

XPN: A chattel mortgage can only cover obligations existing at the time the mortgage is constituted and not to obligations subsequent to the execution of the mortgage.

XPN to the XPN: In case of stocks in department stores, drug stores etc.

Q: What is the test of continuing guaranty?

A: A guaranty shall be construed as continuing when by the terms thereof it is evident that the object is to give a standing credit to the principal debtor to be used from time to time either indefinitely or until a certain period, especially if the right to recall the guaranty is expressly reserved *(Dino v. CA, G.R. No. 89775, Nov. 26, 1995)*

Q: May guaranty secure future debts?

A: Yes. A guaranty may be given to secure even future debts, the amount of which may not be known at the time the guaranty is executed. This is the basis for contracts denominated as continuing guaranty or suretyship. It is one which covers all transactions, including those arising in the future, which are within the description or contemplation of the contract of guaranty, until the expiration or termination thereof. *(Dino v. CA, G.R. No. 89775, Nov. 26, 1995)*

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Q: PAGRICO submitted a Surety Bond issued by R&B Surety to secure an increase in its credit line with PNB. For consideration of the Surety Bond, Cochingyan and Villanueva entered into an Indemnity Agreement with R&B Surety and bound themselves jointly and severally to the terms and conditions of the Surety Bond. When PAGRICO defaulted, PNB demanded payment to R&B Surety; R&B Surety, in turn, demanded payment to Cochingyan and Villanueva. R&B sued them. Villanueva argued that the complaint was premature because PNB had not yet proceeded against R&B Surety to enforce the latter's liability under the Surety Bond. Is the contention correct?

A: No. Indemnity Agreements are contracts of indemnification not only against actual loss but against *liability as well*. While in a contract of indemnity against loss an indemnitor will not be liable until the person to be indemnified makes payment or sustains loss, in a contract of indemnity *against liability*, as in this case, the *indemnitor's liability arises as soon as the liability of the person to be indemnified has arisen without regard to whether or not he has suffered actual loss*. Accordingly, R & B Surety was entitled to proceed against petitioners not only for the partial payments already made but for the full amount owed by PAGRICO to the PNB. *(Cochingyan, Jr. v. R&B Surety and Ins. Co.,GR.No.L-47369, June 30, 1987)*

C. EXTINGUISHMENT OF GUARANTY

Q: What are the grounds for extinguishing a contract of guaranty?

A:

1. Principal obligation is extinguished
2. Same causes as all other obligations
3. If creditor voluntarily accepts immovable or other properties in payment of the debt (even if he should afterwards lose the same through eviction or conveyance of property)
4. Release in favor of one of the guarantors, w/o consent of the others, benefits all to the extent of the share of the guarantor to whom it has been granted
5. Extension granted to debtor by creditor without consent of guarantor
6. When by some act of the creditor, the guarantors even though they are solidarily liable cannot be subrogated to the rights, mortgages, and preferences of the former

D. LEGAL AND JUDICIAL BONDS

Q: What is a Bond?

A: A bond, when required by law, is commonly understood to mean an undertaking that is sufficiently secured, and not cash or currency. Whatever surety bonds are submitted are subject to any objections as to their sufficiency or as to the solvency of the bondsman.

Q: What is a Bondsman?

A: A bondsman is a surety offered in virtue of a provision of law or a judicial order. He must have the qualifications required of a guarantor and in special laws like the Rules of Court.

Q: What are the qualifications to a property bond?

A: The necessary qualifications of sureties to a property bond shall be as follows:

1. Each of them must be a resident owner of real estate with in the Philippines;
2. Where there is only one surety, his real estate must be worth at least the amount of the undertaking;
3. In case there are two or more sureties, they may justify severally in amounts lass than that expressed in the undertaking, if the entire sum justified to is equivalent to the whole amount of bail demanded. *(Sec. 12, Rule 114, Rules of Court)*

Q: What is the nature of a bond?

A: All bonds including "judicial bonds" are contractual in nature.

Q: What is a Judicial Bond?

A: Judicial bonds constitute merely as a special class of contracts of guaranty, characterized by the fact that they are given in virtue of a judicial order.

Q: Is the right of excussion available to a bondsman?

A: No. A judicial bondsman and the sub-surety are not entitled to the benefit of excussion because they are not mere guarantors, but sureties whose liabilities is primary and solidary. *(ART 2084, NCC)*

Q: What is the liability of the surety if the creditor was negligent in collecting the debt?

A: A surety is still liable even if the creditor was negligent in collecting from the debtor. The contract of suretyship is not that the oblige will see that the principal pays the debt or fulfills the contract, but that the surety will see that the principal pay or perform*(PNB v. Manila Surety & Fidelity Co., Inc., 14 SCRA 776, 1965)*

Q: What is the effect of violation by the creditor of the terms of the surety agreement?

A: A violation by the creditor of the terms of the surety entitles the surety to be released therefrom. *(Associated Ins. & Surety Co. v. Bacolod Murcia Milling Co., GR. No. L-12334, May 22, 1959)*

Q: What is the effect of a surety bond filed for an alien staying in the country which is forfeited for violating its terms?

A: The effect of the violation is that its subsequent unauthorized cancellation thru mistake or fraud does not relieve the surety. A bond surrendered thru mistake or fraud may, therefore, be considered as a valid and subsisting instrument. *(Far Eastern Surety and Ins. Co., v. CA, GR No. L-12019, Oct 16, 1958)*

Q: What is the rule when the performance of a bond is rendered impossible?

A: It is the surety's duty to inform the court of the happening of the event so that it may take action or decree in the discharge of the surety when the performance of the bond is rendered impossible by an act of God, or the obligee, or the law. *(People v. Otiak Omal & Luzon Co., Inc., GR. No. L-14457, June 30, 1961)*

PLEDGE, MORTGAGE, AND ANTICHRESIS

Q: What is pledge, mortgage and antichresis? Distinguish.

A:

PLEDGE	MORTGAGE (Real)	ANTICHRESIS
Definition		
An accessory contract whereby a debtor delivers to the creditor or a third person a movable or personal property, or document evidencing incorporeal rights, to secure the fulfillment of a principal obligation with the condition that when the obligation is satisfied, the thing delivered shall be returned to the pledgor with all its fruits and accessions, if any.	It is a contract whereby the debtor secures to the creditor the fulfillment of a principal obligation, specially subjecting to such security, immovable property or real rights over immovable property, in case the principal obligation is not paid or complied with at the time stipulated.	A contract whereby the CR acquires the right to receive the fruits of an immovable of the dedtor, with the obligation to apply them to the payment of interest, if owing, and thereafter to the principal of his credit.
Object of the contract		
movable or personal property, or document evidencing incorporeal rights	immovable property or real rights over immovable property	fruits of an immovable

Q: What are the similarities of pledge and mortgage?

A:

1. Both are accessory contracts;
2. Both pledgor and mortgagor must be the absolute owner of the property;
3. Both pledgor and mortgagor must have the free disposal of their property or be authorized to do so; and
4. In both, the thing proffered as security may be sold at public auction, when the principal obligation becomes due and no payment is made by the debtor.

Q: Are the contracts of pledge, mortgage or antichresis indivisible?

A:

GR: A pledge, mortgage or antichresis is indivisible.

Note: Indivisibility may be waived. Indivisibility only applies to the contracting parties.

XPNs:

1. Where each one of several things guarantees determinate portion of the credit

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2. Where only a portion of the loan was released
3. Where there was failure of consideration

Q: What are the obligations that can be secured by pledge, mortgage and antichresis?

A:

1. Valid obligations
2. Voidable obligations
3. Unenforceable obligations
4. Natural obligations
5. Conditional obligations

Q: What rules are common to pledge and mortgage?

A:

Constituted to secure the fulfillment of a valid principal obligation.

Pledgor or mortgagor must be the absolute owner of the thing pledged or mortgaged.

They must have the free disposal of their property, and in the absence thereof, that they be legally authorized for such purpose.

Debtor retains ownership of the thing given as a security.

Q: May property acquirable in the future be mortgaged?

A: No. Where the mortgagor mortgaged a property and in the contract he agreed to mortgage additional properties which he may acquire in the future, there was no valid mortgage as to the latter because he was not yet the owner of the properties at the time of the mortgage *(Dilag v. Heirs of Ressurrecion, No. 48941, May 6, 1946).*

Q: Is mortgage constituted to secure future advances valid?

A: Yes. It is a continuing security and not discharged by repayment of the amount named in the mortgage, until the full amount of the advances is paid. A chattel mortgage can only cover obligations existing at the time the mortgage is constituted and not to obligations subsequent to the execution of the mortgage.

Q: Is a third person who pledged and mortgaged his property liable for any deficiency?

A:

GR: No.

XPN: If the third party pledgor or mortgagor expressly agreed to be bound solidarily with the principal debtor.

Q: What is the right of an owner of personal property pledged without authority?

A: He may invoke Art. 559, NCC. The defense that pawnshop owner acquired ownership of the thing in good faith is not available.

Note: Art. 559 – The possession of movable property acquired in good faith is equivalent to a title. Nevertheless, one who has lost any movable or has been unlawfully deprived thereof, may recover it from the person in possession of the same.

If the possessor of a movable lost or of which the owner has been unlawfully deprived, has acquired it in good faith at a public sale, the owner cannot obtain its return without reimbursing the price paid therefore.

Q: What is the nature of an assignment of rights to guarantee an obligation of a debtor?

A: It is in effect a mortgage and not an absolute conveyance of title which confers ownership on the assignee *(Manila Banking Corp. v. Teodoro, Jr., G.R. No. 53955, Jan. 13, 1989)*

ACCOMMODATION MORTGAGE

Q: Who is an accommodation mortgagor?

A: He is a third person who is not a party to a principal obligation and secures the latter by mortgaging or pledging his own property.

Q: What is the extent of the liability of an accommodation mortgagor?

A: It extends up to the loan value of their mortgaged property and not to the entire loan itself.

PACTUM COMMISSORIUM

Q: **What is *pactum commisorium?***

A: It is a stipulation whereby the thing pledged or mortgaged or subject of antichresis shall automatically become the property of the creditor in the event of non-payment of the debt within the term fixed. Such stipulation is null and void.

Q: What are the elements of *pactum commissorium?*

A:

1. There is a pledge, mortgage or antichresis of a property by way of security; and
2. There is an express stipulation for the automatic appropriation by the creditor of the property in case of non-payment

Note: What are prohibited are those stipulations executed or made simultaneously with the original contract, and not those subsequently entered into.

Q: ABC loaned to MNO P40,000 for which the latter pledged 400 shares of stock in XYZ Inc. It was agreed that if the pledgor failed to pay the loan with 10% yearly interest within four years, the pledgee is authorized to foreclose on the shares of stock. As required, MNO delivered possession of the shares to ABC with the understanding that the shares would be returned to MNO upon the payment of the loan. However, the loan was not paid on time. A month after 4 years, may the shares of stock pledged be deemed owned by ABC or not? Reason.

A: The shares of stock cannot be deemed owned by ABC upon default of MNO. They have to be foreclosed. Under Article 2088, NCC, the creditor cannot appropriate the things given by way of pledge. And even if the parties have stipulated that ABC becomes the owner of the shares in case MNO defaults on the loan, such stipulation is void for being a pactum commissorium. **(2004 Bar Question)**

Q: To secure a loan obtained from a rural bank, Purita assigned her leasehold rights over a stall in the public market in favor of the bank. The deed of assignment provides that in case of default in the payment of the loan, the bank shall have the right to sell Purita's rights over the market stall as her attorney-in-fact, and to apply the proceeds to the payment of the loan.

Was the assignment of leasehold rights a mortgage or a cession? Why?
Assuming the assignment to be a mortgage, does the provision giving the bank the power to sell Purita's rights constitute *pactum commissorium* or not? Why?

A:
The assignment was a mortgage, not a cession, of the leasehold rights. A cession would have transferred ownership to the bank. However, the grant of authority to the bank to sell the leasehold rights in case of default is proof that no such ownership was transferred and that a mere encumbrance was constituted. There would have been no need for such authority had there been a cession.

No, the clause in question is not a pactum commissorium. It is pactum commissorium when default in the payment of the loan automatically vests ownership of the encumbered property in the bank. In the problem given, the bank does not automatically become owner of the property upon default of the mortgagor. The bank has to sell the property and apply the proceeds to the indebtedness. (2001 Bar Question)

Q: X borrowed money from Y and gave a piece of land as security by way of mortgage. It was expressly agreed between the parties in the mortgage contract that upon nonpayment of the debt on time by X, the mortgaged land would already belong to Y. If X defaulted in paying, would Y now become the owner of the mortgaged land? Why?

A: No, Y would not become the owner of the land. The stipulation is in the nature of *pactum commissorium* which is prohibited by law. The property should be sold at public auction and the proceeds thereof applied to the indebtedness. Any excess shall be given to the mortgagor.

Q: Suppose in the preceding question, the agreement between X and Y was that if X failed to pay the mortgage debt on time, the debt shall be paid with the land mortgaged by X to Y. Would your answer be the same as in the preceding question? Explain.

A: No, the answer would not be the same. This is a valid stipulation and does not constitute *pactum commissorium*. In *pactum commissorium*, the acquisition is automatic without need of any further action. In the instant problem another act is required to be performed, namely, the conveyance of the property as payment *(dacion en pago)*. **(1999 Bar Question)**

Q: In order to secure a bank loan, XYZ Corporation surrendered its deposit certificate, with a maturity date of September 1, 1997 to the bank. The corporation defaulted on the due repayment of the loan, prompting the bank to encash the deposit certificate. XYZ Corporation questioned the above action taken by the bank as being a case of *pactum commissorium*. The bank disagrees. What is your opinion?

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A: I submit that there is no *pactum commissorium* here. Deposits of money in banks and similar institutions are governed by the provisions of simple loans *(Art. 1980, NCC).* The relationship between the depositor and a bank is one of creditor and debtor. Basically, this is a matter of compensation as all the elements of compensation are present in this case. *(BPI v. CA, G.R. No. 104612, May 10, 1994)* **(1997 Bar Question)**

Q: Spouses Uy Tong purchased seven motor vehicles from Bayanihan Investment payable in installments. It was agreed that if the spouses should fail to pay their obligation, Bayanihan will automatically be the owner of the apartment which the spouses has a leasehold right. The spouses after paying the downpayment, failed to pay the balance, hence, Bayanihan filed an action for specific performance against the spouses. The judgment provided that in case the spouses failed to pay the obligation within 30 days from notice, they are to execute a Deed of Absolute Sale over the apartment and/or leasehold rights. Is the stipulation a pactum commissorium?

A: No. The questioned agreement evinces no basis for the application of *pactum commissorium*. There is no contract of pledge or mortgage entered into by the parties. Bayanihan sought the intervention of the court by filing an action for specific performance. Hence there was no automatic appropriation of the property. *(Uy Tong v. CA, G.R. No. 77465, May 21, 1988)*

IV. PLEDGE

A. DEFINITION

Q: What is pledge?

A: A contract where debtor delivers to creditor or 3rd person a movable or document evidencing incorporeal right for the purpose of securing fulfillment of a principal obligation with the understanding that when the obligation is fulfilled, the thing delivered shall be returned w/ all its fruits and accessions.

B. KINDS OF PLEDGE

Q: What are the kinds of pledge?

A:

1. *Conventional* - by agreement of parties
2. *Legal* - by operation of law

Note: A thing lawfully pledged to one creditor, cannot be pledged to another as long as the 1st pledge subsists.

C. ESSENTIAL REQUISITES

Q: What are the essential requisites for a contract of pledge?

A:

1. Constituted to secure the fulfillment of a principal obligation;
2. Pledgor is the absolute owner of the thing pledged;
3. Persons constituting the pledge have the free disposal of their property, and in the absence thereof, that they be legally authorized for the purpose. *(Art. 2085, NCC)*

Note: A contract of pledge not appearing in a public instrument *does not affect* its validity. It is valid between the parties.

Q: What kind of possession is required in pledge?

A: The mere taking of the property is not enough. There must be continuous possession of the thing. However, the pledgee is allowed to temporarily entrust the physical possession of the thing pledged to the pledgor without invalidating the contract. But here, the pledgor would be in possession as a mere trustee and his possession is subject to the order of the pledgee.

Q: Pablo owns a tractor which he left with his son Mike for safekeeping. Mike then offered the said tractor to Calibo as security for the payment of his debt. When Pablo came back and learned that the tractor was in the custody of Calibo, he demanded its return. Calibo, however, refused. Calibo alleged that the tractor was pledged to him, and in the alternative, the tractor was left with him in the concept of deposit and he may validly hold on to it until Mike pays his obligation. Is Calibo correct?

A: No. There is no valid pledge because Mike is not the absolute owner of the property pledged. He who is not the owner or proprietor of the property pledged or mortgaged to guarantee the fulfillment of a principal obligation, cannot legally constitute such a guaranty as may validly bind the property in favor of his creditor, and the pledgee or mortgagee in such a case acquires no right whatsoever in the property pledged or mortgaged. There is likewise no valid deposit, in

this case, where the principal purpose for receiving the object is not safekeeping. *(Calibo Jr. v. CA, G.R. No. 120528, Jan. 29, 2001)*

Q: Is constructive or symbolic delivery of the thing sufficient to constitute pledge?

A:

GR: No.

XPN: If the pledge consists of goods stored in a warehouse for purposes, of showing the pledgee's control over the goods, the delivery to him of the keys to the warehouse is sufficient delivery of possession (constructive/symbolic delivery).

The type of delivery will depend upon the nature and peculiar circumstances of each case *(Yuliongsiu v. PNB, G.R. No. L-19227, Feb. 17, 1968)*

Note: Constructive or symbolic delivery does not confer physical possession of the thing, but by construction of law, is equivalent to acts of real delivery.

Q: What is the rationale behind the requirement that the pledge cannot take effect against third persons if the thing is not described and the date does not appear in a public instrument?

A: To forestall fraud because a debtor may attempt to conceal his property from his creditors when he sees it in danger of execution by simulating a pledge thereof with an accomplice *(Tec Bi & Co. v. Chartered Bank of India, No. 9802, Feb. 5, 1916/March 31, 1917).*

Q: What is a double pledge?

A: A double pledge is when the same thing or property subject of a first pledge will be the subject of another pledge.

Q: Can there be a valid double pledge?

A: No. A property already pledged cannot be pledged while the first pledge is subsisting *(Mission de San Vicente v. Reyes, No. 5508, Aug. 14, 1911).*

Q: Can incorporeal rights evidenced by proper document be pledged?

A: Yes *(Art. 2095, NCC)*. It is, however, required that the actual instrument be delivered to the pledge. More, if the instrument is a negotiable document, it must be indorsed.

D. OBLIGATIONS OF PLEDGOR AND PLEDGEE

Q: Who are the parties in a contract of pledge?

A:

1. *Pledgor* – the debtor; the one who delivers the thing pledged to the creditor
2. *Pledgee* – the creditor; the one who receives the thing pledged

Q: What are the rights of a pledgee?

A:

1. Retain the thing until debt is paid. *(Art. 2018, NCC)*
2. To be reimbursed for the expenses made for the preservation of the thing pledged. *(Art. 2099, NCC)*
3. Creditor may bring any action pertaining to the pledgor in order to recover it from or defend it against a 3rd person.

Q: What are the obligations of a pledgee?

A:

1. Take care of the thing pledged with the diligence of a good father of a family. *(Art. 2099, NCC)*

   Note: Pledgee is liable for the loss or deterioration of the thing by reason of fraud, negligence, delay, or violation of the terms of the contract.

2. **GR:** Pledgee cannot deposit the thing pledged to a 3rd person.

   XPN: Unless there is stipulation to the contract *(Art. 2100, NCC)*

   Note: Pledgee is liable for the loss or deterioration of the thing pledged caused by the acts or negligence of the agents or employees of the pledgee.

3. Apply the fruits, income, dividends, or interests produced or earned by the property, to interests or expenses first, then to the principal. *(Art. 2102, NCC)*

4. **GR:** Cannot use the thing pledged without authority.

   XPNs:

   a. If the pledgor had given him authority or permission to use it;

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b. If the use of the thing is necessary for its preservation but only for that purpose.

5. Return the thing pledged to the pledgor when the principal obligation is fulfilled or satisfied it.

Q: Does the debtor continue to be the owner of the thing in case the same is expropriated by the State?

A: No. Ownership is transferred to the expropriating authority.

Note: The creditor may bring actions pertaining to the owner of the thing pledged in order to recover it from, or defend it against a third person *(Art. 2103, NCC).*

Q: Can the debtor ask for the return of the thing pledged against the will of the creditor?

A:

GR: No.

XPNs:

1. If the debtor has paid the debt and its interest, with expenses in a proper case *(Art. 2105, NCC).*
2. If the thing is in danger of destruction or impairment provided, the pledgor offers an acceptable substitute for it which is of the same kind and not of inferior quality and without prejudice to the application of Art. 2108 whenever warranted.

Q: Can the pledgee cause the sale of the thing pledged in public auction where the obligation is not yet due?

A: Yes, if without the fault of the pledge, there is danger of destruction, impairment or diminution in value of the thing pledged. The proceeds of the auction shall be security for the principal obligation in the same manner as the thing originally pledged *(Art. 2108, NCC).*

Q: What are the rights of the creditor who is deceived on the substance or quality of the thing pledged?

A: To demand:

1. from the pledgor an acceptable substitute of the thing; or
2. the immediate payment of the principal obligation *(Art. 2109, NCC).*

Note: The remedies are alternative and not cumulative. Only one may be chosen. The law used the conjunctive "or". Either one is more convenient than annulment.

Q: What is the effect of the return of the thing pledged to the pledgor by the pledgee?

A: The pledge shall be extinguished. Any stipulation to the contrary shall be void *(Art. 2110, NCC).*

Q: What is the presumption when the thing is found in the possession of the pledgor subsequent to the perfection of the pledge?

A: There is *prima facie* presumption that the thing pledged has been returned by the pledgee to the pledgor or owner, in any of the following circumstances:

1. If the thing is found in the possession of the pledgor or owner after the pledge had been perfected; or
2. If the thing is found in the possession of a third person who received it from the pledgor or owner after the perfection of the pledge *(2nd par., Art. 2110, NCC).*

Note: It is presumed that the accessory obligation of pledge has been remitted when the thing pledged, after its delivery to the creditor, is found in the possession of the debtor, or of a third person who owns the thing *(Art. 1274, NCC).*

Q: What is the requisite for the renunciation or abandonment of the pledge by the pledgee?

A: There must be a statement in writing to that effect *(1st sentence, Art. 2111, NCC).*

Note: The renunciation of the pledge is not contrary to law, public order, public policy, morals or good customs. Further, Art. 1356 of the NCC, which speaks of the form of contracts, must be complied with.

Q: Is acceptance or return of the thing necessary for the validity of the renunciation under Art. 2111?

A: No. it is not a case of donation where acceptance is necessary to make the donation valid.

Q: Suppose the thing was not returned, is there extinction of the pledge?

A: Yes. Even if the thing was not returned, as long as there is an effective renunciation,

abandonment or waiver, the pledge is already extinguished.

The pledgor is considered a depositor and the pledgee shall become a depositary of the thing. Accordingly, the law on deposit will apply.

Q: What is the right of the pledgee when the debt has not been satisfied in due time?

A: The pledgee has the right to proceed with the sale of the thing at a public auction to raise funds for payment of the obligation *(Art. 2112, NCC).*

Q: What are the requisites of public sale?

A:

1. The obligation must be due and unpaid;
2. The sale of the thing must be at a public auction;
3. There must be notice to the pledgor and owner stating the amount for which the sale is to be held; and
4. The sale must be conducted by a Notary Public.

Q: What is deed of acquittance?

A: It is a document of the release or discharge of the pledgor from the entire obligation including interests and expenses. This shall be executed by the pledgee after appropriating the thing in case a no sale was made in a second auction.

Q: May the pledgor participate in the public auction?

A: Yes. Moreover, he shall have a better right if he offers the same terms as the highest bidder *[Art. 2113 (1), NCC].*

Q: Who can bid in the public auction?

A:

1. The public
2. Pledgor/owner/debtor – shall be preferred if same terms as the highest bidder is offered
3. Pledgee/creditor – he must not be the only one bidder, otherwise, his bid is invalid and void

Q: Can checks be accepted as payment as purchase price in a public sale?

A: No, they are not legal tenders. *(CFI v. CA, No. L-4191, April 30, 1952).*

Note: The same rule applies to promissory notes, bill of exchange and other negotiable instruments because they produce the effect of payment only when they have been encashed.

Payment in cash must be made at once.

Q: May a third person pay the pledgor's debt?

A: Yes, if he has any interest in the fulfillment of the principal obligation *(Art. 2117, NCC).*

Q: What is the rule when what has been pledged is a "credit"?

A: The pledgee may collect and receive the amount due. He shall apply the same to the payment of his claim, and deliver the surplus, should there be any, to the pledgor *(Art. 2118, NCC).*

Q: Santos made time deposits with OBM. IRC, through its president Santos, applied for a loan with PNB. To secure the loan, Santos executed a Deed of Assignment of the time deposits in favor of PNB. When PNB tried to collect from OBM, the latter did not pay the CTDs. PNB then demanded payment from Santos and IRC, but the latter refused payment alleging that the obligation was deemed paid with the irrevocable assignment of the CTDs.

Is the liability of IRC deemed paid by virtue of the deed of assignment?
Is OBM liable for damages

A:

1. No. For all intents and purposes, the deed of assignment in this case is actually a pledge. Where a CTD in a bank, payable at a future time, was handed over by a debtor to his creditor, it was not payment, unless there was an express agreement on the part of the creditor to receive it as such.
2. Yes. While it is true that no interest shall be due unless it has been expressly stipulated in writing, this applies only to interest for the use of money. It does not comprehend interest paid as damages. Santos has the right to recover damages resulting from the default of OBM and the measure of such damages is interest at the legal rate of 6% per annum on the amounts due and unpaid at the expiration of the periods respectively provided in the contracts. *(Integrated Realty Corp. v. PNB, G.R. No. 60705, June 28, 1989)*

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Q: What is the rule when two or more things are pledged?

A: The pledgee may choose which he will cause to be sold, unless there is a stipulation to the contrary *(1st sentence, Art. 2119, NCC)*.

Q: What is the restriction on the right of the pledgee under the 1st sentence of Art. 2119?

A: He may only demand the sale of only as many of the things as are necessary for the payment of the debt *(2nd sentence, Art. 2119, NCC).*

E. RIGHTS OF PLEDGOR

Q: What are the rights of the pledgor?

A:

1. Right to dispose the thing pledged, provided there is consent of the pledgee (Art. 2097, NCC)
2. Right to ask that the thing pledged be deposited (Art. 2104 and Art. 2106, NCC)
3. Right to substitute thing pledged (Art. 2107, NCC)

Q: When may the owner ask that the thing pledged be deposited judicially or extrajudicially?

A:

1. If the creditor uses the thing without authority
2. If he misuses the the thing in any other way; or
3. If the thing is in danger of being lost or impaired because of the negligence or willful act of the pledge (*Art. 2106, NCC*)

Q: Does the pledgor have the right to demand the return of the thing pledged against the will of the creditor?

A: No. He cannot ask for its return until the obligation is fully paid including interest due thereon and expenses incurred for its preservation (*Art. 2105, NCC*)

Q: What are the requisites before the pledgor may substitute the thing pledged with another thing?

A:

1. Pledgor has reasonable grounds to fear the destruction or impairment of the thing pledged;
2. No fault on the part of the pledge
3. Pledgor is offering in place of the thing, another thing in pledge which is of the same kind and quality as the former; and
4. Pledgee does not choose to exercise his right to cause the thing pledged to be sold at public auction (*Art. 2107, NCC*)

F. PERFECTION

Q: How is a contract of pledge perfected?

A: A contract of pledge is perfected when the thing pledged is placed in the actual possession of or *delivered* to the pledgee or a third person designated by the parties by common consent. *(Art. 2093, NCC)*

Note: If Art. 2093 is not complied with, the pledge is void.

Q: Four carabaos were pledged by T to E. T is the registered owner of the carabaos. The carabaos were actually in the possession of J. E never took possession of the carabaos. There is nothing in the contract which stated that J was by common consent made the depositary of the carabaos in E's behalf. Is there a lawfully constituted pledge?

A: None. The delivery of possession of the property pledged requires *actual* possession and a mere symbolic delivery is not sufficient. *(Betita v Ganzon, 49 Phil. 87)*

Q: What is the effect when possession or delivery of the thing pledged was not made?

A: An agreement to constitute a pledge only gives rise to a personal action between the contracting parties. Unless the movable given as a security by way of pledge be delivered to and placed in the possession of the creditor or of a third person designated by common agreement, the creditor acquires no right to the property because pledge is merely a lien and possession is indispensable to the right of a lien.

Q: What is the effect if the pledgee fails to take the property pledged into his possession?

A: If a pledgee fails or neglects to take the property pledged into his possession, he is presumed to have waived the right granted him by the contract. *(U.S. v. Terrel, 2 Phil. 222)*

Q: What are the requisites to bind third persons in a contract of pledge?

A: To bind third persons, the pledge must be embodied in a *public instrument* where the following entries must appear -

A description of the thing pledged; and

Statement of date when the pledge was executed. *(Art. 2096, NCC)*

Q: A is indebted to B. A pledges his diamond ring to B. The ring is delivered to B, but in the public instrument executed, there is no description of the ring, and the date of the pledge does not appear. If A sells the ring to C, does C have to respect the pledge in favor of B?

A: No. C does not have to respect the pledge since as to him, the pledge is not effective and valid.

Q: What is the reason behind the requisites?

A: The purpose of the requirements is to forestall fraud, because a debtor may attempt to conceal his property from his creditors when he sees it in danger of execution by simulating a pledge thereof with an accomplice. *(Tec Bi & Co. v. Chartered Bank of India, 41 Phil. 576)*

Q: What is the effect if no public instrument is made?

A: When the contract of pledge is not recorded in a public instrument, it is void as against third persons; the buyer of the thing pledged is a third person. The fact that the person claiming as pledgee has taken actual physical possession of the thing sold will not prevent the pledge from being declared void insofar as the innocent stranger is concerned. *(Tec Bi & Co. v. Chartered Bank of India, Australia and China, 16 O.G. 908; Ocejo, Perez and Co. v. International Bank, 37 Phil. 631)*

Q: What is the effect of an undated contract of pledge?

A: An undated instrument of pledge cannot ripen into a valid pledge. *(Betita v. Ganzon, 49 Phil. 87)*

G. FORECLOSURE

Q: When may a pledgee foreclose the thing pledged?

A: When there is no payment of the debt on time, the object of the pledge may be alienated for the purpose of satisfying the claims of the pledgee.

Q: What is the procedure for the public sale of a thing pledged?

A:

1. The obligation must be due and unpaid
2. The sale of the thing pledged must be at public auction
3. There must be notice to the pledgor and owner, stating the amount for which the sale is to be held
4. The sale must be conducted by Notary Public.

H. PLEDGE BY OPERATION OF LAW

Q: What is a pledge created by operation of law?

A: Pledge by operation of law or Legal Pledges are those constituted or created by operation of law. This refers to the *right of retention*.

Q: What rules apply to legal pledge?

A:

1. The rules governing conventional pledge applies.
2. There is no definite period for the payment of the principal obligation. The pledge must, therefore, make a demand for the payment of the amount due him. Without such demand, he cannot exercise the right of sale at public auction. *(De Leon)*

Q: What are the instances of legal pledges where there is right of retention?

A:

1. *Art. 546* – Right of the possessor in good faith to retain the thing until refunded of necessary expenses.
2. *Art. 1707* – Lien on the goods manufactured or work done by a laborer until his wages had been paid.
3. *Art. 1731* – Right to retain of a worker who executed work upon a movable until he is paid.
4. *Art. 1914* – Right of an agent to retain the thing subject of the agency until reimbursed of his advances and damages *(Arts. 1912 and 1913, NCC)*.
5. *Art. 1994* – Right of retention of a depositary until full payment of what is due him by reason of the deposit.

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6. *Art. 2004* – Right of the hotel-keeper to retain things of the guest which are brought into the hotel, until his hotel bills had been paid.

Q: What must the pledgee do before he may cause sale of the thing pledged?

A: The pledgee must first make a demand of the amount for which the thing is retained. After the demand, the pledgee must proceed with the sale of the thing within thirty (30) days. Otherwise, the pledgor can require of him the return of the thing retained.

Note: there is only one public auction here. *(Paras)*

Q: To whom will the remainder of the price pertain?

A: The remainder of the price of sale shall be delivered to the obligor. *(Art. 2121)*

Q: What are the instances when the pledgor may demand that the thing pledged be deposited judicially or extrajudicially?

A:

1. Creditor uses the thing without authority
2. Creditor misuses the thing
3. The thing is in danger of being lost or impaired due to the negligence or willful acts of the pledgee.

Q: What are the effects of sale of the thing pledged?

A:

1. Extinguish the principal obligation *even if* the proceeds of the sale do not satisfy the whole amount of the obligation.
2. If proceeds from the sale exceed the amount due, the debtor is *not* entitled to the excess, the excess goes to the pledgee. This is to compensate him for the eventuality where the purchase price is lesser than the amount of the debt, wherein he cannot receive any deficiency unless there is a contrary agreement or in case of legal pledge, the pledgor is entitled to the excess
3. If the proceeds of the sale is less than the amount due, the creditor has no right to recover the deficiency and the pledgor is not liable for the deficiency even if there is a stipulation that he be so liable. Such stipulation is void.

Q: What is the meaning of the right of the mortgagee or pledgee to foreclose?

A: If the debtor failed to pay on maturity date, the thing pledged or mortgaged may be sold at public auction as provided by law so that the proceeds may be used for payment of the obligation.

I. PLEDGE DISTINGUISHED FROM MORTGAGE

Q: Distinguish contract of pledge from chattel mortgage.

A:

CHATTEL MORTGAGE	PLEDGE
Delivery	
Delivery is *not necessary*	Delivery is *necessary*
Registration	
Registration in the Chattel Mortgage register is *necessary for its validity*	Registration in the Registry Property is *not necessary.*
Law governing the sale	
Procedure for the sale of the thing given as security is governed by Sec. 14, Act No. 1508	Art. 2112, NCC
Excess	
If the property is foreclosed, *the excess goes to the debtor*	If the property is sold, the debtor is *not entitled* to the excess unless otherwise agreed.
Recovery of deficiency	
The creditor is entitled to recover the deficiency from the debtor *except* if the chattel mortgage is a security for the purchase of property in installments	The creditor is not entitled to recover the deficiency notwithstanding any stipulation to the contrary.
Possession	
Possession *remains* with the debtor	Possession is *vested* in the creditor
Contract	
Formal contract	Real contract
Recording in a public instrument	
Must be recorded in a public instrument to bind third persons	Must be in a public instrument containing description of the thing pledged and the date thereof to bind third persons

Q: Distinguish contract of pledge from real estate mortgage.

A:

PLEDGE	REAL ESTATE MORTGAGE
Real contract	Consensual contract
Subject matter is personal property	Subject matter is real property
Possession of the thing pledged is vested in the creditor	Possession of the thing mortgaged remains with the debtor
Pledgee has the right to receive the fruits of the thing pledged, with the obligation of applying the same to the interest of the debt, if owing, and the balance, if any, to the principal	Mortgagee does not possess such right
Sale at public auction of the thing pledged is always extrajudicial	Sale may be judicial or extrajudicial
Description of the thing and the date of pledge must appear in a public instrument otherwise, it is not valid as to third person	Must be registered, otherwise, it is not valid against third persons although binding between the parties
Not a real right	Real right and real property by itself

V. REAL MORTGAGE

A. DEFINITION AND CHARACTERISTICS

Q: What is real estate mortgage (REM)?

A: It is a contract whereby the debtor secures to the creditor the fulfillment of the principal obligation, specially subjecting to such security immovable property or real rights over immovable property in case the principal obligation is not fulfilled at the time stipulated

Note: Registration is *necessary* to bind third persons but not for the validity of the contract.

Being an accessory contract, its consideration is one and the same as that of the principal obligation.

B. ESSENTIAL REQUISITES

Q: What are the requisites for valid constitution of a real mortgage?

A:

1. It covers only *immovable* property and alienable real rights imposed upon immovables
2. It must appear in a *public instrument*
3. *Registration* in the registry of property is necessary to bind 3rd persons

Q: What are the kinds of real mortgages?

A:

1. *Conventional mortgages* – constituted voluntarily by the contracting parties.
2. *Legal mortgage* – required by law.
3. *Equitable mortgage* – intention of the parties is to make the immovable as a security for the performance of the obligation but the formalities of a real mortgage are not complied with.

Q: Distinguish contract of real estate mortgage from contract of sale with right of repurchase.

A:

REAL ESTATE MORTGAGE	SALE WITH RIGHT OF REPURCHASE
Accessory contract	Principal and independent contract
There is no transfer of title and possession of the property	There is transfer of title and possession of the property, although conditional
Creditor has no right to the fruits of the property during the pendency of the mortgage	The vendee a retro is entitled to the fruits even during the period of redemption
If the debtor fails to pay his debt, the creditor cannot appropriate the property mortgaged nor dispose of it	As soon as there is a consolidation of title in the vendee a retro, he may dispose of it as an absolute owner

Q: Is registration of mortgage a matter of right?

A: Yes. By executing the mortgage, the mortgagor is understood to have given his consent to its registration, and he cannot be permitted to revoke it unilaterally.

Q: What is the meaning of mortgage as a real and inseparable right?

A: The mortgage directly and immediately subjects the property upon which it is imposed, whoever the possessor may be, to the fulfillment of the obligation for whose security it was constituted *(Art. 2126, NCC)*.

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Q: What are the things that are deemed included in the mortgage?

A:

1. Natural accessions
2. Improvements
3. Growing fruits
4. Rents
5. Income
6. Insurance proceeds
7. Expropriation price *(Art. 2127, NCC)*

Q: When does the mortgage lien attach in case of new or future improvements?

A: On the date of the registration of the mortgage *(Luzon Lumber and Hardware Co., Inc, v. Quiambao, G.R. No. L-5638, Mar. 20, 1954).*

Q: What is dragnet clause?

A: It is a mortgage provision which is specifically phrased to subsume all debts of past or future origin. Such clauses are "carefully scrutinized and strictly construed". The mortgage contract is also one of adhesion *(Philippine Bank of Communications v. CA, G.R. No. 118552, Feb. 5, 1996).*

Q: Is the amount stated in the contract controlling in case of mortgage securing future advancements?

A: No. The amount named in the contract does not limit the amount for which the mortgage stand as a security, if, from the four corners of the instrument the intent to secure future and other indebtedness can be gathered.

Q: Petitioner obtained a loan of P20K from defendant Rural Bank of Kawit. The loan was secured by a REM over a parcel of land. The mortgage contract states that the mortgage will cover the payment of the loan of P20K and such other loans or other advances already obtained or to be obtained by the mortgagors from the bank. The loan of P20k was fully paid. Thereafter they again obtained a loan of P18K, secured by the same mortgage. The spouses defaulted. The bank extra judicially foreclosed the mortgage. Was the foreclosure sale valid?

A: Yes. It has long been settled that mortgages given to secure future advancements are valid and legal contracts; that the amounts named as consideration in said contract do not limit the amount for which the mortgage may stand as security, if from the four corners of the instrument the intent to secure future and other indebtedness can be gathered. A mortgage given to secure advancement is a continuing security and is not discharged by repayment of the amount named in the mortgage, until the full amount of the advancements is paid *(Mojica v. CA, G.R. No. 94247, Sept. 11, 1991)*.

Q: May a mortgage credit be alienated or assigned to a third person?

A: Yes, in whole or in part, with the formalities required by law *(Art. 2128, NCC).*

Q: What are the requisites to be followed for assignment of credit?

A: An assignment of a credit, right or action shall produce no effect as against third persons, *unless* it appears in a public instrument, or the instrument is recorded in the Registry of Property in case the assignment involves real property *(Art. 1625, NCC).*

Q: May the creditor claim from the third person in possession of the property payment of the credit?

A: Yes, up to the extent secured by the property which the third party possesses, in terms and with the formalities which the law establishes *(Art. 2129, NCC).*

Q: Is a stipulation forbidding the owner from alienating the immovable mortgaged valid?

A: No. The prohibition to alienate is contrary to public good inasmuch as the transmission of property should not be unduly impeded *(Report, Code Commission, p. 58)*.

Q: What are the laws that govern contract of real mortgage?

A:

1. New Civil Code
2. Mortgage Law
3. Property Registration Decree *(PD 1529)*
4. Sec. 194, as amended by Act No. 3344, Revised Administrative Code *(Phil. Bank of Commerce v. De Vera, G.R. No. L-18816, Dec. 29, 1962)*
5. R.A. 4882 – law governing aliens who become mortgagees.

C. FORECLOSURE

Q: What is foreclosure?

A: It is a remedy available to the mortgagee in which he subjects the mortgaged property to the satisfaction of the obligation.

Q: What are the kinds of foreclosure?

A:

Judicial – governed by Rule 68, Rules of Court

Extrajudicial – mortgagee is given a SPA to sell the mortgaged property (Act No. 3135)

Q: What is the nature of judicial foreclosure?

A: It is an action *quasi in rem (Ocampo v. Domalanta, 20 SCRA 1136).*

Q: Does an action for foreclosure of mortgage survive the death of mortgagor?

A: Yes, because the claim is not pure money claim but an action to enforce a mortgage lien. Being so, the judgment rendered therein may be enforced by a writ of execution. The action may be prosecuted by the interested person against the executor or administrator independently of the testate or intestate proceedings of the settlement of the mortgagor's estate "for the reason that such claims cannot in any just sense be considered claims against the estate, but the right to subject specific property to the claim arises from the contract of the debtor whereby he has during life set aside certain property for its payment, and such property does not, except in so far as its value may exceed the debt, belong to the estate" *(Testamentaria de Don Amadeo Matute Olave v. Canlas, No. L-12709, Feb. 28, 1962).*

Q: What are the options or remedies of the mortgagee in case of death of the debtor?

A:

1. To waive the mortgage and claim the entire debt from the estate of the mortgagor as an ordinary claim;
2. To foreclose the mortgage judicially and prove any deficiency as an ordinary claim; or
3. To rely on the mortgage exclusively, foreclosing the same at any time before it is barred by prescription, without right to file claim for any deficiency *(Maglaque v. Planters Development Bank, GR No. 109472, May 18, 1999).*

Q: When is judicial foreclosure considered completed?

A: A foreclosure sale is not complete until it is confirmed and before such confirmation, the court retains control of the proceedings by exercising sound discretion in regard to it either granting or withholding confirmation as the rights and interests of the parties and the ends of justice may require *(Rural Bank of Oroquieta v. CA, No. 53466, Nov. 10, 1980).*

Q: What is the significance of confirmation in judicial foreclosure?

A: Confirmation cuts off all the rights and interests of the mortgagor and of the mortgagee and persons holding under him, and with them the equity of redemption in the property and vests them in the purchaser. Confirmation retroacts to the date of the sale. It is a final order, not interlocutory *(Ocampo v. Domalanta, No. L-21011, Aug. 30, 1967).*

Note: If the property has been mortgaged in favor of the Philippine National Bank, redemption is allowed within one year from the confirmation of the sale *(Gonzales v. PNB, No. 24850, March 1, 1926).*

The redemption must be made *within one year after the sale*, if the mortgagee is a bank, banking or credit institutions *(Sec. 78, R.A. 337)*.

Q: What are the effects of confirmation of sale?

A: There can be no redemption of the property. Such confirmation retroacts to the date of the auction sale. After the confirmation, the previous owners lose any right they may have had over the property, which rights in turn vested on the Purchaser of the property *(Lonzame v. Amores, No. L-53620, Jan. 31, 1985).*

Q: What is the basis of extrajudicial foreclosure?

A: An extrajudicial foreclosure may only be effected if in the mortgage contract covering a real estate, a clause is incorporated therein giving the mortgagee the power, upon default of the debtor, to foreclose the mortgage by an extrajudicial sale of the mortgage property *(Sec. 1, Act No. 3135, as amended by Act No. 4148).*

The authority to sell may be done in a separate document but annexed to the contract of mortgage. The authority is not extinguished by

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the death of the mortgagor or mortgagee as it is an essential and inseparable part of a bilateral agreement *(Perez v. PNB, No. L-21813, July 30, 1966).*

Q: How is extrajudicial foreclosure initiated?

A: By filing a petition with the office of the sheriff. It may also be initiated through a Notary Public commissioned in the place where the property is situated.

Note: Notice containing the place and date is required before an auction sale is made in extrajudicial foreclosure. *(Sec. 3, Act No. 3135)*

Q: What governs extrajudicial foreclosure by PNB?

A: The same shall be governed by Sections 29, 30 and 34 of Act No. 3135 and not by the PNB Charter *(PNB v. CA, G.R. No. 60208, December 5, 1985).*

Q: What are the requisites of notice of sheriff's sale?

A: It must contain the correct number of the certificate of title and the correct technical description of the real property to be sold *(San Jose v. CA, GR No. 106953, Aug. 19, 1993).*

Q: What is the purpose of notice of sale?

A: To inform the public of the nature and condition of the property sold, and of the time, place and terms of the sale.

Q: MBTC granted a loan to spouses Peñafiel, who mortgaged their two (2) parcels of land in Mandaluyong. The spouses defaulted in the payment. MBTC instituted an extrajudicial foreclosure proceeding under Act No. 3135. The Notice of Sale was published in *Maharlika Pilipinas, which has* no business permit in Mandaluyong and its list of subscribers shows that there were no subscribers from Mandaluyong. Did MBTC comply with the publication requirement under Section 3, Act No. 3135?

A: No. Maharlika Pilipinas is not a newspaper of general circulation in Mandaluyong where the property is located. To be a newspaper of general circulation, it is enough that it is published for the dissemination of local news and general information, that it has a *bona fide* subscription list of paying subscribers, and that it is published at regular intervals. The newspaper must be available to the public in general, and not just to a select few chosen by the publisher. Otherwise, the precise objective of publishing the notice of sale in the newspaper will not be realized. *(Metropolitan Bank and Trust Company, Inc. v. Eugenio Peñafiel, G.R. No. 173976, Feb. 27, 2009)*

Q: May a mortgagor enjoin the implementation of a writ of possession on the ground that there is a pending case for annulment of the extrajudicial foreclosure of the REM?

A: No. As a rule, any question regarding the validity of the mortgage or its foreclosure cannot be a legal ground for refusing the issuance of a writ of possession. Regardless of whether or not there is a pending suit for annulment of the mortgage or the foreclosure itself, the purchaser is entitled to a writ of possession, without prejudice to the outcome of the case. Hence, an injunction to prohibit the issuance of writ of possession is entirely out of place. Prohibition does not lie to enjoin the implementation of a writ of possession. Once the writ of possession has been issued, the trial court has no alternative but to enforce the writ without delay. *(Sps. Ong v. CA, G.R. No. 121494, June 8, 2000)*

Q: Can the mortgagee recover the deficiency?

A: If there be a balance due to the mortgagee after applying the proceeds of the sale, the mortgagee is entitled to recover the deficiency *(DBP v. Mirang, G.R. No. L-29130, Aug. 8, 1975).*

Note: In *judicial foreclosure*, the Rules of Court specifically gives the mortgagee the right to claim for deficiency in case a deficiency exists *(Sec. 6, Rule 70)*.

While Act No. 3135 governing *extrajudicial foreclosures* of mortgage does not give a mortgagee the right to recover deficiency after the public auction sale, neither does it expressly or impliedly prohibit such recovery.

This right to recover deficiency had been categorically resolved in *State Investment v. CA (G.R. No. 101163, January 11, 1993).* Thus, the mortgagee is entitled to recover the deficiency in case the sale proceeds are not sufficient to cover the debt in extrajudicial foreclosures.

The action to recover a deficiency after foreclosure prescribes after ten (10) years from the time the right of action accrues as provided in Article 1144(2), NCC *(DBP v. Tomeldan, G.R. No. 51269, Nov. 17, 1980).*

Q: What is stipulation of upset price?

A: It is a stipulation of minimum price at which the property shall be sold to become operative in the event of a foreclosure sale at public auction. It is null and void.

REDEMPTION

Q: What is redemption?

A: Transaction by which the mortgagor reacquires or buys back the property which may have passed under the mortgage or divests the property of the lien which the mortgage may have created.

Q: What are the kinds of redemption?

A:

1. *Equity of redemption* – right of mortgagor to redeem the mortgaged property after his default in the performance of the conditions of the mortgage *but before the sale* of the mortgaged property or confirmation of sale. It applies in case of judicial foreclosure.
2. *Right of redemption* – right of the mortgagor to redeem the mortgaged property *within one year from the date of registration of the certificate of sale.* It applies in case of extrajudicial foreclosure.

Q: X and Y, judgment creditors of A, obtained the transfer of the title of the mortgaged property in their names. Earlier, A executed a mortgage over the same property in favor of FGU Insurance. The latter mortgage was registered. When A defaulted, FGU foreclosed the property. A certificate of sale was thereafter issued in FGU's favor, which was confirmed by the RTC. However, before the new TCT could be issued, X and Y filed their respective motion for intervention and to set aside the judgment alleging that they are the new owners of the property and the failure of FGU to implead X and Y in the action for foreclosure deprived the latter of due process. Is the contention of X and Y correct?

A: No. Subordinate lien holders acquire only a lien upon the equity of redemption vested in the mortgagor, and their rights are strictly subordinate to the superior lien of the mortgagee. Such equity of redemption does not constitute a bar to the registration of the property in the name of the mortgagee. Registration may be granted in the name of the mortgagee but subject to the subordinate lien holders' equity of redemption, which should be exercised within ninety (90) days from the date the decision becomes final. This registration is merely a necessary consequence of the execution of the final deed of sale in the foreclosure proceedings. *(Looyuko v. CA, G.R. No. 102696, July 12, 2001)*

Q: What are the requisites for valid right of redemption?

A:

1. Must be made within one year from the time of the registration of the sale.
2. Payment of the purchase price of the property plus 1% interest per month together with the taxes thereon, if any, paid by the purchaser with the same rate of interest computed from the date of registration of the sale; and
3. Written notice of the redemption must be served on the officer who made the sale and a duplicate filed with the proper Register of Deeds *(Rosales v. Yboa, G.R. No. L-42282, Feb. 28, 1983).*

Note: The redemptioner should make an actual tender in good faith of the full amount of the purchase price as provided above, *i.e.*, the amount fixed by the court in the order of execution or the amount due under the mortgage deed, as the case may be, with interest thereon at the rate specified in the mortgage, and all the costs, and judicial and other expenses incurred by the bank or institution concerned by reason of the execution and sale and as a result of the custody of said property less the income received from the property. *(Heirs of Quisimbing v. PNB, G.R. No. 178242, Jan. 20, 2009)*

Q: Is the period of redemption a prescriptive period?

A: No. The period of redemption is not a prescriptive period but a condition precedent provided by law to restrict the right of the person exercising redemption.

If a person exercising the right of redemption has offered to redeem the property within the period fixed, he is considered to have complied with the condition precedent prescribed by law and may thereafter bring an action to enforce redemption.

If, on the other hand, the period is allowed to lapse before the right of redemption is exercised, then the action to enforce redemption will not

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prosper, even if the action is brought within the ordinary prescriptive period.

Q: D obtained a loan from C secured by a REM over a parcel of land. When D defaulted, C extrajudicially foreclosed the property. C was declared the highest bidder in the auction. On October 29, 1993, C caused the registration of the certificate of sale. On November 9, 1994 D filed a complaint for annulment of the extrajudicial foreclosure and auction sale. Can D redeem the property beyond the one year redemption period?

A: No. D lost any right or interest over the subject property primarily because of his failure to redeem the same in the manner and within the period prescribed by law. His belated attempt to question the legality and validity of the foreclosure proceedings and public auction must accordingly fail. *(Sps. Landrito v. CA G.R. No. 133079, Aug. 9, 2005)*

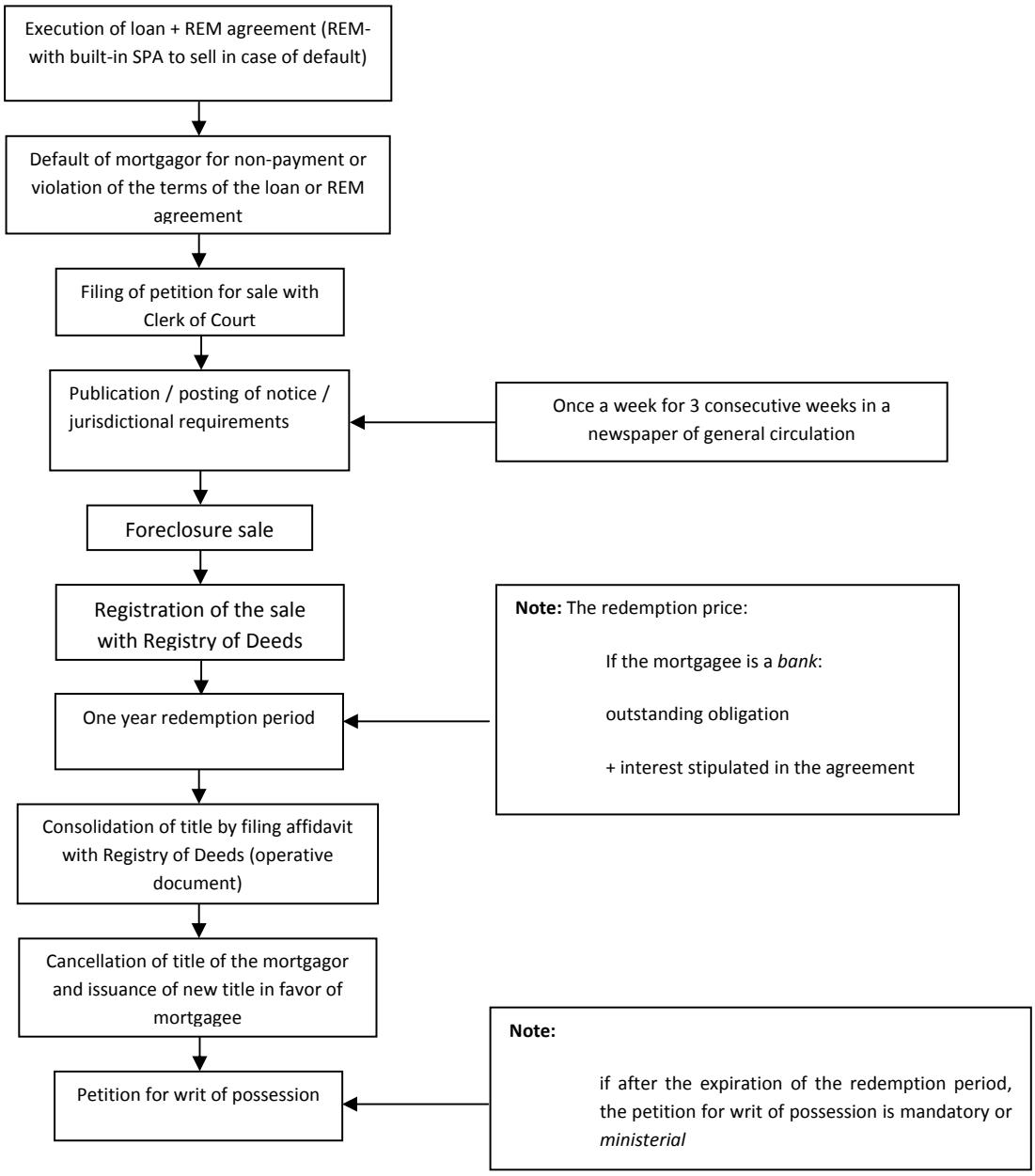
Q: Can a mortgagor, whose property has been extrajudicially foreclosed and sold, validly execute a mortgage contract over the same property in favor of a third party during the period of redemption?

A: Yes. The purchaser at the foreclosure sale merely acquired an inchoate right to the property which could ripen into ownership only upon the lapse of the redemption period without his credit having been discharged, it is illogical to hold that during that same period of twelve months the mortgagor was "divested" of his ownership, since the absurd result would be that the land will consequently be without an owner although it remains registered in the name of the mortgagor. Such mortgage does not involve a transfer, cession or conveyance of the property but only constitutes a lien thereon *(Medida v. CA, G.R. No. 98334, May 8, 1992)*.

Q: DBP guaranteed LCD's loan. When LCD defaulted, DBP paid it and sought reimbursement. LCD failed to reimburse DBP, hence DBP extrajudicially foreclosed the REM, where it was the highest bidder. The Sheriff's certificate of sale was annotated in the certificate of titles on April 30, 1976. La Campana failed to redeem the properties. The court, among others, ordered LCD to pay such sums of money unlawfully collected or received by way of rentals and/or fruits from the subject properties to DBP. When should the period for the remittance of collected/received rentals/fruits from the properties, of LCD to DBP start?

A: In foreclosure proceedings, the buyer becomes the absolute owner of the property purchased if it is not redeemed during the prescribed period of redemption, which is one year from the date of registration of the sale. The Sheriff's certificate of sale was annotated in the certificate of titles on April 30, 1976. DBP became the absolute owner of the properties on May 1, 1977. Thus, the period to be considered in determining the amount of collection should start from May 1, 1997 up to the time when the possession of the properties are actually and completely surrendered to DBP. *(La Campana Development Corporation v. DBP, G.R. No. 146157, Feb. 13, 2009)*

Flowchart of Extra-judicial Foreclosure of Real Estate Mortgage



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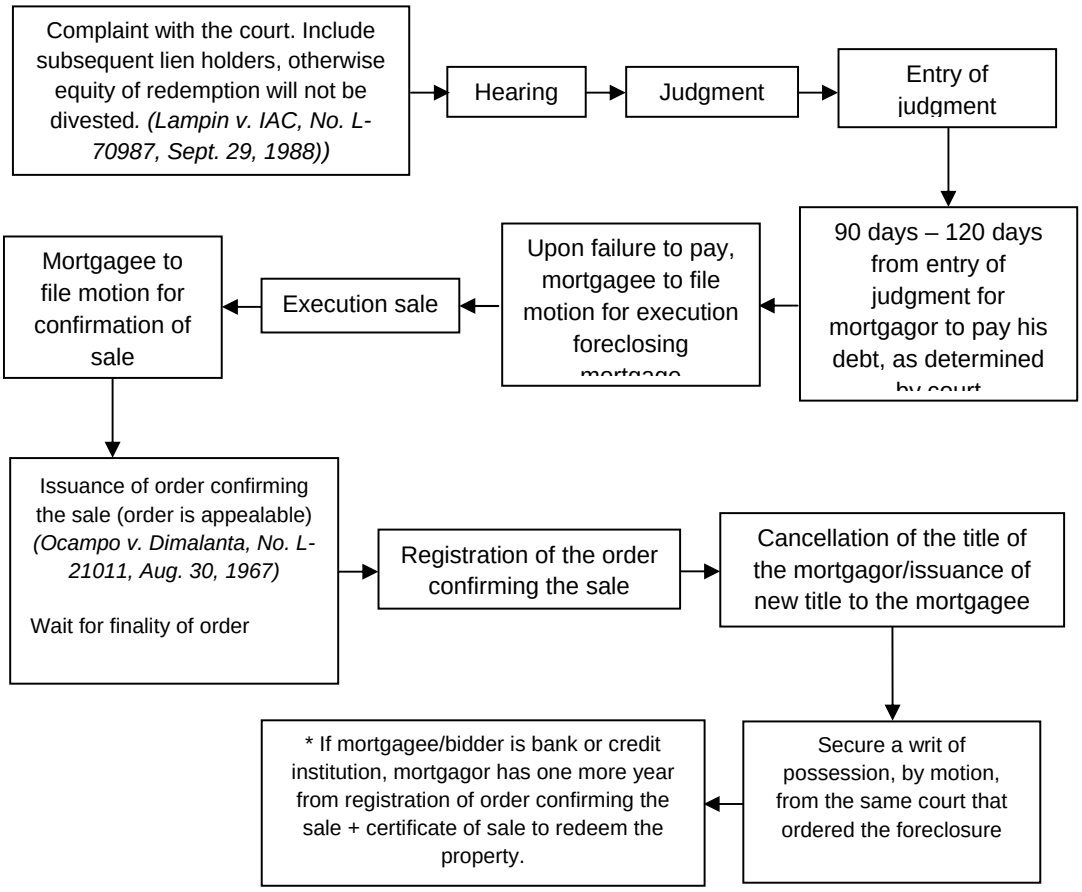
Flowchart for Judicial Foreclosure of Real Estate Mortgage



Note:

GR: In judicial foreclosure, there is only equity of redemption.

XPN: If the mortgagee is a bank or credit institution, there is one year right of redemption.

VI. CHATTEL MORTGAGE

A. DEFINITION AND CHARACTERISTICS

Q: What is chattel mortgage?

A: It is a contract by virtue of which personal property is recorded in the Chattel Mortgage Register as a security for the performance of an obligation.

Q: What are the characteristics of chattel mortgage?

A:

1. It is a formal contract because it must be embodied in a public instrument and recorded in the Chattel Mortgage Register;

2. It is an accessory contract because its existence depends upon an existing valid principal obligation;

3. It is a unilateral contract because the obligation is only on the part of the creditor to free the chattel from encumbrance upon the payment of the principal obligation;

4. It does not convey dominion but is only a security *(In re: Du Tec Chuan, No. 11156, March 28, 1916)*;

5. It creates a real right or a lien which is being recorded and follows the chattel wherever it goes *(Northern Motors, Inc. v. Coquia, No. L-40018, Dec. 15, 1975).*

Q: What are the requisites in a chattel mortgage?

A:

1. **GR:** It covers only movable property

   XPN: When the parties treat as personalty that which is according to its nature realty.

2. Registration with the Chattel Mortgage Register.
3. Description of the property.
4. Accompanied by an affidavit of good faith *to bind 3rd persons*.

Note: The absence of an affidavit of good faith *does not* affect the validity of the contract.

Q: What are the laws that govern chattel mortgages?

A:

1. Chattel Mortgage Law *(Act No. 1508)*
2. Provisions of the Civil Code on pledge

   Note: In case of conflict between nos. 1 and 2, the former shall prevail.

3. Revised Administrative Code
4. Revised Penal Code *(Art. 319)*
5. Other special laws (*i.e.* Motor vehicle law)
6. Ship Mortgage Decree of 1978 *(P.D. No. 1521)*

Q: What may be the subject matter of chattel mortgage?

A:

1. Shares of stock in a corporation;
2. Interest in business;
3. Machinery and house of mixed materials treated by parties as personal property and no innocent third person will be prejudiced thereby *(Makati Leasing and Finance Corp. v. Weaver Textile Mills, Inc., No. L-58469, May, 16, 1983)*;
4. Vessels, the mortgage of which have been recorded with the Philippine Coast Guard in order to be effective as to third persons;
5. Motor vehicles, the mortgage of which had been registered both with the Land Transportation Commission and the Chattel Mortgage Registry in order to affect third persons;
6. House which is intended to be demolished; or
7. Growing crops and large cattle *(pars. 2 and 3, Sec. 7, Act No. 1508)*.

Note: Section 7 of the Chattel Mortgage Law *does not* demand specific description of every chattel mortgaged in the deed of mortgage, *but only* requires that the description of the mortgaged property be such as to enable the parties to the mortgage or any other person to identify the same after a reasonable investigation and inquiry *(Saldana v. Phil. Guaranty Co., Inc., No. L-13194, Jan. 29, 1960)*; otherwise, the mortgage is invalid.

Q: What is affidavit of good faith?

A: It is an oath in a contract of chattel mortgage wherein the parties "severally swear that the mortgage is made for the purpose of securing the obligation specified in the conditions thereof and

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for no other purposes and that the same is a just and valid obligation and one not entered into for the purpose of fraud."

Note: The absence of the affidavit vitiates the mortgage *only as against* third persons without notice like creditors and subsequent encumbrances.

Q: Distinguish contract of chattel mortgage from contract of real estate mortgage.

A:

CHATTEL MORTGAGE	REAL ESTATE MORTGAGE
Subject matter	
Personal property	Real property
Requirement of registration	
Essential for the validity of this contract	Merely for the purpose of binding third persons
Procedure for the foreclosure of a chattel mortgage is different from the procedure of foreclosure for real estate mortgage	

B. REGISTRATION

Q: What is the legal significance of registration?

A: It is tantamount to the symbolic delivery of the mortgage to the mortgagee, which is equivalent to actual delivery *(Meyers v. Thein, No. 5577, Feb. 21, 1910).*

Q: What is the difference in registration of real mortgage and chattel mortgage?

A: A deed of real estate mortgage is considered registered once recorded in the entry book. However, chattel mortgage must be registered not only in the entry book but also in the Chattel Mortgage Register. *(Associated Insurance and Surety Co. v. Lim Ang, (CA) 52 Off. Gaz. 5218)*

Q: What is the effect if the chattel mortgage is not registered in the chattel mortgage register?

A: It is still binding between the parties but it will not be binding to innocent third parties.

Q: When should the registration of the chattel mortgage be made?

A: The law is silent on the time or period when registration should be made. The Court of Appeals has held though that "the law is substantially and sufficiently complied with where the registration is made by the mortgagee before the mortgagor has complied with his principal obligation and no right of innocent third persons is prejudiced *(Ledesma v. Perez, 2 C.A. Rep. 126).*

Q: Should the foreclosure sale in chattel mortgage be done in public auction?

A: Act No. 1508 provides for the foreclosure sale in chattel mortgage be done by public auction. However, the parties are free to stipulate that the foreclosure be done by private sale.

Q: In case of foreclosure sale in chattel mortgage, may the creditor recover deficiency if the redemption price is less than the debt secured?

A:

GR: CR may recover deficiency.

XPN: when the chattel mortgage is used to secure the purchase of personal property in installments (Recto Law).

Q: What is the effect of an increase in mortgage credit?

A: If the parties to a chattel mortgage take an oath that the debt, honestly due and owing from the mortgagor to the mortgagee, it is obvious that a valid mortgage cannot be made to secure a debt to be thereafter contracted (11 C.J. 448). A mortgage that contains a stipulation in regard to future advances in the credit will take effect only from the date of the mortgage. The increase in the mortgage credit becomes a new mortgage *(Belgian Catholic Missionaries v. Magallanes Press, No. 25729, Nov. 24, 1926).*

Q: What is the effect of obtaining a personal judgment on the mortgage lien?

A: It is deemed abandoned.

Q: What are the offenses involving chattel mortgage?

A:

1. Knowingly removing any personal property mortgaged under the Chattel Mortgage Law to any province or city other than the one in which it was located at the time of the execution of the mortgage without the written consent of the mortgagee; or
2. Selling or pledging personal property already mortgaged, or any part thereof, under the terms of the Chattel Mortgage Law without the consent of the mortgagee written on the back of the mortgage and duly recorded in the

Chattel Mortgage Register *(Art. 319, RPC).*

C. FORECLOSURE

Q: How is chattel mortgage foreclosed?

A:

Public sale
Private sale

GR: If there is an express stipulation in the contract.

XPN: Fraud or duress

Q: What is the procedure in foreclosure of a chattel mortgage?

A: The mortgagee may, after thirty (30) days from the time of the default or from the time the condition is violated, cause the mortgaged property to be sold at public auction by a public officer *(Sec. 14, Act No. 1508)*

The 30-day period to foreclose a chattel mortgage is the *minimum period* after violation of the mortgage condition for the mortgage
The creditor has at least ten (10) days notice served to the mortgagor

The notice of time, place and purpose of such sale, is posted

After the sale of the chattel at public auction, the right of redemption is no longer available to the mortgagor. *(Cabral v. Evangelista, 28 L-26860, July 30, 1969)*

Q: What are the legal consequences of establishing a chattel mortgage over a building erected not by the owner of the land?

A: 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 a chattel mortgage but such is binding only between them and not on third parties. As far as third parties are concerned, the chattel mortgage does not exist.

Q: Vini constructed a building on a parcel of land he leased from Andrea. He chattel mortgaged the land to Felicia. When he could not pay Felicia, Felicia initiated foreclosure proceedings, Vini claimed that the building he had constructed on the leased land cannot be validly foreclosed because the building was, by law, an immovable. Is Vini correct?

A: 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. **(1994 Bar Question)**

VII. ANTICHRESIS

A. DEFINITION AND CHARACTERISTICS

Q: What is antichresis?

A: It is a contract whereby the CR acquires the right to receive the fruits of an immovable of the debtor, with the obligation to apply them to the payment of interest, if owing, and thereafter to the principal of his credit.

Q: What are the characteristics of antichresis?

A:

1. Accessory contract.
2. Formal contract – the amount of the principal and of the interest must both be in writing; otherwise the contract of antichresis is void.
3. It deals only with immovable property.
4. It is a real right.
5. The creditor has the right to receive the fruits of the immovable.
6. It is a real contract.
7. It can guarantee all kinds of valid obligations.

Note: It is not essential that the loan should earn interest in order that it can be guaranteed with a contract of antichresis. Antichresis is susceptible of guaranteeing all kinds of obligations, pure or conditional. *[Javier v. Valliser, (CA) N. 2648-R, Apr. 29, 1950; Sta. Rosa v. Noble, 35 O.G. 27241]*

A stipulation authorizing the antichretic creditor to appropriate the property upon the non-payment of the debt within the period agreed upon is void *(Art. 2038, NCC).*

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Q: What is the form of a contract of antichresis and its contents?

A: FDA-Pa

1. Covers only the **F**ruits of real property

2. **D**elivery of the property necessary so that CR may receive the fruits therefrom

Note: Delivery of the property to the creditor is required only in order that the creditor may receive the fruits and not for the validity of the contract.

3. **A**mount of principal and interest must be specified in writing, otherwise, the contract shall be void.

4. Express agreement that debtor will give **P**ossession to the CR and that CR will **a**pply the fruits to the interest and then to the principal.

Note: The fruits of the immovable which is the object of the antichresis must be appraised at their actual market value at the time of the application (Art. 2138).The property delivered stands as a security for the payment of the obligation of the debtor in antichresis. Hence, the debtor cannot demand its return until the debt is totally paid.

Q: Distinguish antichresis from:

1. **Real estate mortgage;**
2. **Pledge; and**
3. ***Pacto de retro* sale.**

A:

ANTICHRESIS	REAL ESTATE MORTGAGE
Property is delivered to creditor	Debtor usually retains possession of the property
Creditor acquires only the right to receive the fruits of the property; does not produce a real right unless registered in the Registry Property	Creditor has no right to receive fruits, but mortgage creates real right against the property
Creditor obliged to pay the taxes and charges upon the estate unless stipulated otherwise	Creditor has no such obligation
There is an express stipulation that the creditor shall apply the fruits to the payment of the interest, if owing, and thereafter to the principal of the debt.	There is no such obligation on the part of the mortgage

2.

ANTICHRESIS	PLEDGE
Refers to real property	Personal property
Formal	Real
Principal and interest must be specified in writing, otherwise contract is void	Need not be in writing, oral evidence may be allowed to prove the same.

3.

ANTICHRESIS	PACTO DE RETRO SALE
Creditor is given the right to enjoy the fruits and apply them to the payment of the interest and to the principal of the loan	Creditor does not have such right

Q: Is prescription as a mode of acquiring ownership available to the creditor in antichresis?

A: No. His possession of the property is not in the concept of an owner but that of a mere holder during the existence of the contract *(Ramirez v. CA, G.R. No. L-38185, September 24, 1986).*

Q: How should the amount of payment in antichresis be determined?

A: The actual market value of the fruits at the time of the application thereof to the interest and the principal shall be the measure of such application *(Art. 2133, NCC).*

Q: What is the effect if the amount of the principal and of the interest is not specified in writing?

A: The contract is void *(Art. 2134, NCC).*

Q: Who are the parties to a contract of antichresis?

A:

1. *Antichretic creditor* – one who receives the fruits on the immovable property of the debtor.
2. *Antichretic debtor* – one who pays his debt through the application of the fruits of his immovable property.

B. OBLIGATIONS OF ANTICHRETIC CREDITOR

Q: What are the obligations of an antichretic creditor?

A: To:

- pay the taxes and charges assessable against the property like real estate taxes and others;
- bear the necessary expenses for the preservation of the property;
- bear the expenses necessary for the repair of the property; and
- apply the fruits received for payment of the outstanding interests, if any, and thereafter of the principal.

Q: When can the antichretic debtor reacquire the possession of his property?

A: The debtor can only demand the return of the property after having fully paid his obligations to the creditor. It is not fair for the debtor to regain the possession of the property when his debt has not been fully paid. Until there is full payment of the obligation, the property shall stand as security therefor *(Macapinlac v. Gutierrez Repide, No. 18574, Sept. 20, 1922).*

Q: How can the creditor be exempted from the obligations imposed by Art. 2135?

A: The creditor may compel the debtor to re-enter into the property.

Note: Article 2135. The creditor, unless, there is a stipulation to the contrary, is obliged to pay the taxes and charges upon the estate.

He is also bound to bear the expenses necessary for its preservation and repair.

The sums spent for the purposes stated in this article shall be deducted from the fruits.

Q: What is the remedy of the creditor in case of nonpayment of his credit?

A: File:

1. an action for collection; or
2. a petition for the public sale of the property *(Barretto v. Barretto, No. 11933, Dec. 1, 1917).*

VIII. QUASI-CONTRACTS

Q: What is a Quasi-Contract?

A: Quasi-contracts are lawful, voluntary, and unilateral acts which generally require a person to reimburse or compensate another in accordance with the principle that no one shall be unjustly enriched at the expense of another. *(Art. 2142, NCC)*

Q: What are the bases for quasi-contracts?

A:

1. No one must unjustly enrich himself at another's expense
2. if one benefits, he must reimburse
3. justice and equity

Q: What are examples of quasi-contracts?

A:

Negotiorum Gestio
Solutio Indebiti

A. NEGOTIORUM GESTIO

Q: What is Negotiorum Gestio?

A: This is a kind of quasi-contract where someone called the *gestor* takes the management of the business or property of another person known as *owner* without the consent or authority of the latter.

Q: What are the essential requisites for negostiorum gestio?

A:

1. No meeting of the minds
2. Taking charge of another's business or property
3. The property or business must have been abandoned or neglected
4. The officious manager (gestor) must not have been expressly or implicitly authorized
5. The officious manager (gestor) must have voluntarily taken charge

Q: What are examples of negotiorum gestio?

A:

1. If an attorney-in-fact continues to manage the principal's estate after the principal's death, the former agent becomes a gestor *(Julian, et al. v. De Antonio, [CA] 2 O.G.966, October 14, 1943).*
2. If a co-ownership is illegally partitioned, the possessors become gestors with the duty to render the accounting *(De Gala v. De Gala & Albatros, 60 Phil 311).*

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Q: What is the required diligence from a gestor?

A: Diligence of a good father of a family *(Art. 2145, NCC).* Hence, a gestor is liable for the acts or negligence of his employees *(MRR Co. v. Compania Transatlantica, 38 Phil. 875).*

Note: The liability for damages, which however, in certain cases, may be mitigated.

Q: What is the effect of ratification of the owner of the business?

A: Ratification produces the effect of an express agency; and this is true even if the business is not successful *(Art 2149, NCC)*.

Q: What are the liabilities of the owner even if there is no ratification?

A:

1. Liability for the obligation incurred in his interest.
2. Liability for necessary and useful expenses and for damages. *(Art 2150, NCC)*

Q: What is the rule if the owner is a minor?

A: Even if the owner is a minor, he is still liable under the article for he should not be unjustly enriched at another's expense. *(Rotea v. Delupio, 67 Phil. 330)*

B. SOLUTIO INDEBITI

Q: What is Solutio Indebiti?

A: Solutio indebiti is the quasi-contract that arises when a person is obliged to return whatever was received by him through error or mistake or received by him although there was no right to demand it.

Q: What are the requisites for solution indebiti?

A:

1. Receipt of something.
2. There was no right to demand it
3. Undue delivery was because of mistake.

Note: When the payment was not by mistake or voluntary, but was made because if the coercive process of the writ of execution, solutio indebiti does not apply *(Manila Surety & Fidelity Co., Inc. v. Lim, GR no. L-0343, December 29, 1959)*

Q: What are examples of solutio indebiti?

A:

1. Erroneous payment of interest not due *(Velez v. Balzarza, 73 Phil. 630)*
2. Erroneous payment of rental not called for in view of the expiration of the lease contract *(Yanson v. Sing, C.A.38 2438)*
3. Taxes erroneously given *(Aquinena and Co. v. Muertequi, 32 Phil. 261)*

Q: Can solutio indebiti be applied because of doubtful or difficult question of law?

A: Yes, there can be payment because of "doubtful or difficult question of law" may lead to solutio indebiti because of the mistake committed. *(Art. 2155, NCC)*

Q: GMC Corp. used to compute and pay its monthly cost of living allowance (COLA) on the basis of 30days a month ever since law mandated the payment of COLA. Wage Order 6 was implemented, increasing the COLA by P3 a day. GMC however multiplied the P3 additional COLA by 22days. The Union objected arguing that the management's unilateral act was tantamount to withdrawal of benefits. Is there a mistake in the application of law?

A: GMC cannot be faulted for the erroneous application of law. Payment may be said to have been made by reason of a mistake in the construction or application of "doubtful or difficult question of law. Since it is a past error that is being corrected, no vested right may be said to have arisen nor any diminution of benefit under Art. 100 of the Labor Code, may be said to have resulted by virtue of the correction. *(Globe Mackay Cable and Radio Corp. v. NLRC, GR no. 74156, June 29, 1988)*

Q: What is the liability of a payee in good faith?

A:

1. In case of impairment or loss, liability is only to the extent of benefit.
2. In case of alienation, the price is to be reimbursed, or in case of credit, the same should be assigned.

IX. CONCURRENCE AND PREFERENCE OF CREDITS

A. MEANING OF CONCURRENCE AND PREFERENCE

Q: What is concurrence of credits?

A: Concurrence of credit implies the possession by two or more creditors of equal rights or privileges over the same property or all the property of a debtor.

Q: What is preference of credit?

A: Preference of credit is a right held by a creditor to be preferred in the payment of his claim above others out of the debtor's assets.

Note: The rules apply when two or more creditors have separate and distinct claims against the same debtor who has insufficient property.

B. CLASSIFICATION OF CREDITS

Q: What are the general categories of credit?

A:

1. *Special preferred credits* – those listed in Arts. 2241-2242, NCC shall be considered mortgages and pledges of real and personal property or liens *(Art. 2243).* Hence, they are not included in the insolvent debtor's assets.
2. *Ordinary preferred credits* – those listed in Art 2244, NCC as amended by Art. 110 of the Labor Code
3. *Common credits* – those listed under Art. 2245, NCC, which shall be paid pro rata regardless of dates.

Q: What is the extent of liability of a debtor for his obligations?

A: The debtor is liable with all his property, present and future, for the fulfillment of his obligations, subject to the exemptions provided by law.

C. PREFERRED CREDITS ON SPECIFIC MOVABLES

Q: What are the preferred credits with respect to the specific movable property?

A:

1. Duties, *taxes* and fees due thereon to the state or any subdivision thereof;
2. Claims arising from *misappropriation*, breach of trust, or malfeasance by public officials committed in the performance of their duties, on the movables, money or securities obtained by them;
3. Claims for the *unpaid price of movable sold*, on said movables, so long as they are in the possession of the debtor, up to the value of the same, and if the movable has been resold by the debtor and the price is still unpaid, the lien may be enforced on the price; this right is not lost by the immobilization of the thing by destination, provided it has not lost its form, substance and identity; neither is the right lost by the sale of the thing together with other property for a lump sum, when the price thereof can be determined proportionally;
4. Credits guaranteed with a *pledge* so long as the things pledged are in the hands of the creditor, or those guaranteed by a chattel mortgage upon the things mortgaged, up to the value thereof;
5. Credits for making *repairs* or preservation or personal property on the movable thus made, repaired, kept or possessed;
6. Claims for *laborers* wages, on the goods manufactured or the work done;
7. For expenses of *salvage*, upon the goods salvaged;
8. Credits between the landlord and the *tenant* arising from the contract of tenancy on shares, on the share of each in the fruits or harvest;
9. Credits for *transportation*, upon the goods carried, for the price of the contract and incidental expenses, until their delivery and for thirty days thereafter;
10. Credits for *lodging and supplies* usually furnished to travelers by hotelkeepers, on the movables belonging to the guest as long as such movables are in the hotel, but not for money loaned to the guests;
11. Credits for seeds and expenses for *cultivation* and harvest advanced to the debtor, upon the fruits harvested;
12. Credits for *rent* for one year, upon the personal property of the lessee existing on the immovable leased on the fruits of the same, but not on money or instruments of credit;
13. Claims in favor of the *depositor* if the depository has wrongfully sold the thing deposited, upon the price of the sale.

Note: In the foregoing cases, if the movables to which the lien or preference attaches have been wrongfully taken, the creditor may demand them from any possessor within thirty (30) days from the unlawful seizures.

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Summary:

1. taxes
2. malversation by public officials
3. vendor's lien
4. pledge, chattel mortgage
5. mechanic's lien
6. laborer's wages
7. salvage
8. tenancy
9. carrier's lien
10. hotel's lien
11. crop loan
12. rentals – one year
13. deposit

D. PREFERRED CREDITS ON SPECIFIC IMMOVABLES

Q: What are the preferred credits with respect to specific immovable property?

A:

1. *Taxes* due upon the land or building;
2. For the *unpaid price* of real property sold upon the immovable sold;
3. *Claims of laborers*. Masons, mechanics and other workmen, as well as of architects, engineers and contractors, engaged in the construction, reconstruction or repair of buildings, canals or other works, upon said buildings, canals or other works;
4. *Claims of furnishers* of materials used in the construction, reconstruction, or repair of buildings, canals, and other works, upon said buildings, canals or other works;
5. *Mortgage* credits recorded in the Registry of Property, upon the real estate mortgage;
6. *Expenses* for the preservation or improvement of real property when the law authorizes reimbursement, upon the immovable preserved or improved;
7. *Credits annotated in the Registry of Property*, by virtue of a judicial order, by attachments or executions, upon the property affected, and only as to later credits;
8. *Claims of co-heirs for warranty* in the partition of an immovable among them, upon the real property thus divided;
9. *Claims of donors or real property* for pecuniary charges or other conditions imposed upon the donee, upon the immovable donated;
10. *Credits of insurers*, upon the property insured, for the insurance premium for two years.

Summary:

1. taxes
2. vendor's lien
3. contractor's lien
4. lien of materialmen
5. mortgage
6. expenses of preservation
7. recorded attachments
8. warranty in partition
9. conditional donations
10. premiums for 2 year – insurers

E. EXEMPT PROPERTIES

Q: What are the exempt properties from execution and sale?

A: FST-BCF-PLB-ELM-CL

1. **GR: F**amily home constituted jointly by husband and wife or by unmarried head of a family *(Art. 152, FC).*

   XPNs: For:
   a. non-payment of taxes;
   b. debts incurred prior to the constitution of the family home;
   c. debts secured by mortgages on the premises before or after such constitution; and
   d. debts due to laborers, mechanics, architects, builders, material men and others who have rendered service or furnished material for the construction of the building

2. Right to receive **S**upport as well as any money or property obtained as such support. *(Art. 205, FC)*
3. **T**ools and implements necessarily used by him in his trade or employment;
4. Two horses, or two cows, or two carabaos or other **B**easts of burden, such as the debtor may select, not exceeding one thousand pesos in value and necessarily used by him in his ordinary occupation;
5. His necessary **C**lothing and that of all his family.
6. Household **F**urniture and utensils necessary for housekeeping and used for that purpose by the debtor, such as

7. **P**rovisions for individual or family use insufficient for three months;
8. The professional **L**ibraries of attorney's, judges, physicians, pharmacists, dentist, engineers, surveyors, clergymen, teachers and other professionals, not exceeding three thousand pesos in value;
9. One fishing **B**oat and net, not exceeding the total value of one thousand pesos, the property of any fisherman, by the lawful use of which he earns a livelihood;
10. So much of the **E**arnings of the debtor for his personal services within the month preceding the levy as are necessary for the support of his family;
11. **L**ettered gravestones;
12. All **M**oneys, benefits, privileges or annuities accruing or in any manner growing out of any life insurance, if the annual premiums paid do not exceed five hundred pesos, and if they exceed the sum, a like exemption shall exist which shall bear the same proportion to the moneys, benefits privileges and annuities so accruing or growing out of such insurance that said five hundred pesos bears to the whole premiums paid;
13. **C**opyrights and other properties especially exempted by law *(Sec. 12, Rule 39)*
14. Property under **L**egal custody and of the public dominion.

Q: What is the order of preference with respect to other properties of the debtor?

A:

1. Proper *funeral expenses* for the debtor, or children under his or her parental authority who have no property of their own, when approved by the court;
2. *Credits for services rendered* the insolvent by employees, laborers, or household helpers for one year preceding the commencement of the proceedings in insolvency;
3. *Expenses during the last illness* of the debtor or of his or her spouse and children under his or her parental authority, if they have no property of their own;
4. *Compensation due to the laborers* of their dependents under laws providing for indemnity for damages in cases of labor accident or illness resulting from the nature of the employment;
5. Credits and advancements made to the debtor for *support* of himself or herself, and family, during the last preceding insolvency;
6. *Support during the insolvency* proceedings, and for three months thereafter;
7. *Fines* and civil indemnification arising from a criminal offense;
8. *Legal expenses*, and expenses incurred in the administration of the insolvent's estate for the common interest of the creditors, when properly authorized and approved by the court;
9. *Taxes* and assessments due the national government, other those mentioned in Articles 2241, No. 1, and 2242, No. 1;
10. Taxes and assessments due any province, other than those mentioned in Articles 2241, No. 1 and 2242, No. 1;
11. Taxes and assessments due any city or municipality other than those mentioned in Articles 2241, No.1 and 2242, No. 1;
12. *Damages* for death or personal injuries caused by a quasi-delict;
13. *Gifts* due to public and private institutions of charity or beneficence;
14. *Credits* which without special privilege, appear in (a) a public instrument; or (b) in the final judgment, if they have been the subject of litigation. These credits shall have preference among themselves in the order of priority of the dates of the instruments and of the judgments, respectively *(Art. 2244).*

Summary:

1. funeral expenses
2. wages of employees – one year
3. expenses of last illness
4. workmen's compensation
5. support for one year
6. support during insolvency
7. fines in crimes
8. legal expenses – administration
9. taxes
10. tort
11. donations
12. appearing in public instrument or final judgment

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F. ORDER OF PREFERENCE OF CREDIT

Q: What is the order of preference of credits?

A:

1. *Those credits which enjoy preference* with respect to specific movable, excluded all others to the extent of the value of the personal property to which the preference refers *(Article 2246).*
2. *If there are two or more credits with respect to the same specific movable property,* they shall be satisfied pro-rata, after the payment of duties, taxes, and fees due the State or any subdivision thereof *(Art. 2247, NCC).*
3. *Those credits which enjoy preference* in relation to specific real property or real rights, exclude all others to the extent of the value of the immovable or real right to which the preference refers *(Art. 8).*
4. *If there are two or more credits with respect to the same specific real property or real rights*, they shall be satisfied pro rata, after the payment of the taxes and assessments upon the immovable property or real right *(Art. 2249, NCC).*
5. *The excess, if any*, after the payment of the credits which enjoy preference with respect to specific property, real or personal, shall be added to the free property which the debtor may have, for the payment of the other credits *(Art. 2250, NCC).*
6. *Those credits which do not enjoy* any preference with respect to specific property *and those which enjoy preference,* as to the amount not paid, shall be satisfied *according to the following rules:*
    a. In the order established in Article 2244;
    b. Common credits referred to in Article 2245 shall enjoy no preference and shall be paid pro rata regardless of dated *(Art. 2251, NCC).*

X. INSOLVENCY LAW

A. DEFINITION OF INSOLVENCY

Q: What is insolvency?

A: The state of a person whose liabilities are more than his assets. The term is frequently used in the more restricted sense to express inability of a person to pay his debts as they become due in the ordinary course of his business.

Q: What are the *tests* to determine insolvency?

A:

1. *Equity test* – A state of inability of a person to pay his debts at maturity.
2. *Balance sheet test* – The assets, if all made immediately available, would not be sufficient to discharge the balance.

Q: What are the remedies of an insolvent debtor?

A:

1. Petition the court to suspend payments of his debts; or
2. To be discharged from his debts and liabilities by voluntary or involuntary insolvency proceedings. *(Sec. 1)*

Q: What is the effect of insolvency proceedings filed by individual debtors?

A:

1. *Suits pending in court* –
    a. secured obligations suspended until assignee appointed
    b. unsecured obligations terminated except to fix amount of obligation
    c. foreclosure suits pending continue
2. *Suits not yet filed* – cannot be filed anymore but claims may be presented to assignee.

Note: The result is different if the petitioner is a corporation because under the Revised Rules on Corporate Recovery, all claims whether secured or unsecured are stayed.

Q: If A is declared an insolvent by the court, what would be the effect, if any, of such declaration on his creditors? Explain.

A:

1. The sheriff shall take possession of all assets of the debtor until the appointment of a receiver or assignee;
2. Payment to the debtor of any debts due to him and the delivery to the debtor of any property belonging to him, and the transfer of any property by him are forbidden;
3. All civil proceedings pending against the insolvent shall be stayed; and
4. Mortgages and pledges are not affected by the order declaring a person insolvent. *(Sec. 59, Insolvency Law)*

Q: Assuming that A has guarantors for his debts, are the guarantors released from their obligations once A is discharged from his debts?

A: The guarantors are not discharged, because the discharge is limited to A only *(Sec. 68).* Precisely under the principle of excussion, the liability of the guarantors arises only after the exhaustion of the assets of the principal obligor. The effect of discharge merely confirms exhaustion of the assets of the obligor available to his creditors.

Q. What remedies are available to the guarantors in case they are made to pay the creditors? Explain.

A: Their remedy is to prove in the insolvency proceeding that they paid the debt and that they substituted for the creditors, if the creditors have not proven their claims *(Sec. 56).*

Under Article 2081 of the Civil Code, the guarantor may set up against the creditor all the defenses that pertain to the principal debtor. The discharge obtained by the debtor on the principal obligation can now be used as a defense by the guarantors against the creditors. The guarantors are also entitled to indemnity under Article 2066 of the Civil Code.

Q: X and Y were employees of ATLAS which hypothecated its certain assets to DBP. When ATLAS defaulted in its obligations, DBP foreclosed and acquired the mortgaged assets by virtue of the foreclosure sale. Meanwhile, X and Y filed an action against both ATLAS and DBP for unpaid wages. The Labor Arbiter ruled in favor of X and Y. Is the LA correct in considering worker's preference under Article 110 of the Labor Code over that of DBP's mortgage lien?

A: Declaration of bankruptcy or a judicial liquidation must be present before the worker's preference may be enforced. A distinction should be made between a preference of credit and a lien. A preference applies only to claims which do not attach to specific properties. A lien creates a charge on a particular property. The right of first preference as regards unpaid wages recognized by Article 110 does not constitute a lien on the property of the insolvent debtor in favor of workers. It is but a preference of credit in their favor, a preference in application. It is a method adopted to determine and specify the order in which credits should be paid in the final distribution of the proceeds of the insolvent's assets. It is a right to a first preference in the discharge of the funds of the judgment debtor. A recorded mortgage is a special preferred credit while the preference given to workers under Article 110 of the Labor Code is an ordinary preferred credit. *(DBP v. NLRC, G.R. No. 86227, Jan. 19, 1994)*

Q: Is the power to petition for the adjudication of bankruptcy granted to juridical persons?

A: The law grants to a juridical person, as well to natural persons, the power to petition for the adjudication of bankruptcy of any natural or juridical person provided that with respect to juridical persons, it is a resident corporation and adjoins at least two other residents in presenting the petition to the Bankruptcy Court. When a foreign bank alleged in its petition that it is licensed to do business in the Philippines and actually doing business in the country, it is in effect stating that it is a resident foreign corporation in the Philippines. *(State Investment House v. Citibank, N.A., G.R. Nos. 79926-27, Oct. 17, 1991)*

B. SUSPENSION OF PAYMENTS

Q: What is suspension of payments?

A: It is the postponement, by court order, of the payment of debts of one who, while possessing sufficient property to cover his debts, foresees the impossibility of meeting them when they respectively fall due.

Q: When is the remedy of suspension of payments available?

A: The debtor who, possessing sufficient property to cover all his debts, foresees the impossibility of meeting them when they respectively fall due, may petition that he be declared in the state of suspension of payments by the court of the province or city in which he has resided for six months next preceding the filing of his petition *(Sec. 2 [1]).*

Q: When does suspension take effect?

A: Upon the filing of the petition.

Q: What are the steps in suspension of payments?

A:

1. Filing of the petition by the debtor *(Sec. 2);*

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2. Issuance by the court of an order calling a meeting of creditors *(Sec. 3);*
3. Publication of the order and service of summons (*Sec. 4*);
4. Meetings of creditors for the consideration of the debtor's proposition *(Sec. 8);*

   Note: To hold a valid meeting, the creditors representing at least 3/5 of the liabilities of the debtor must be present.

5. Approval by the creditors of the debtor's proposition (*Sec. 8, [20]*);
6. The Double Majority Rule applies. To obtain a majority vote, it is necessary that:
   a. At least 2/3 of the creditors must vote on the same proposition, and
   b. Said 2/3 *represent at least 3/5 of the total liabilities of the debtor.*
7. Objections, if any, to the decision must be made within 10 days following the meeting. *(Sec. 11)*;
8. Issuance of order by the court directing that the agreement be carried out in case the decision is declared valid, or when no objection to said decision has been presented.

Q: What are the documents that should accompany the petition?

A:

1. A verified schedule containing a full and true statement of the debts and liabilities of the petitioner together with a list of creditors; *(Secs. 15, 2)*
2. A verified inventory containing a list of creditors, an accurate description of all the property of the petitioner including property exempt from execution and a statement as to the value of each item of property, its location, and encumbrances thereon, if any; *(Secs. 16, 2)*
3. A statement of his assets and liabilities; *(Sec. 2)* and
4. The proposed agreements he requests of his creditors. *(Ibid.)*

Q: What are the effects of filing of the petition?

A:

1. No disposition in any manner of his property may be made by the petitioner except insofar as concerns the ordinary operations of commerce or of industry in which he is engaged; *(Sec. 3 [2])*
2. No payments may be made by the petitioner except in the ordinary course of his business or industry *(Ibid.)*; and;
3. Upon the request to the court, all pending executions against the debtor shall be suspended except execution against property especially mortgaged. *(Sec. 6)*

Q: Who are the creditors affected by the filing of the petition?

A: Only creditors included in the schedules filed by the debtor shall be cited to appear and to take part in the meeting. (*Sec. 5*) Hence, those who did not appear because they were not informed of the proceedings are unaffected by the same.

Q: Who are the creditors not affected by order of suspension of payments?

A:

1. Those having claims for personal labor, maintenance, expenses of the last illness and funeral of wife or child of debtor, incurred during the 60 days immediately preceding the filing of the petition; and

2. Those having legal or contractual mortgages. *(Sec. 9)*

Q: When is a petition for suspension of payments deemed rejected?

A:

1. When the number of creditors representing at least 3/5 of the liabilities not attend; *(Secs. 8, 10)* or
2. When the two majorities required are not in favor of the proposed agreement *(Sec. 10)*.

Q: What is the effect of disapproval of petition?

A: If the decision of the meeting be negative as regards the proposed agreement or if no decision is had in default of such number or of such

majorities, the proceeding shall be terminated without recourse. In such case, the parties concerned shall be at liberty to enforce the rights which correspond to them. *(Sec. 11)*

PETITION FOR ORDINARY SUSPENSION OF PAYMENTS	PETITION FOR CORPORATE REHABILITATION
Purpose	
To obtain deferment in the payment of debts.	To rehabilitate the petitioning company.
Law	
Insolvency Law.	Interim Rules on Corporate Rehabilitation
Creditors	
Does not cover secured creditors.	Covers all creditors, whether secured or not.
Duration	
180 days or 3 months	Suspension valid until: Dismissal of the petition or Termination of the rehabilitation proceedings.
Filed by	
The debtor, natural or juridical person	Corporation, partnership or association, or The creditors holding at least 20% of the debtor's total liabilities.
Effect	
No more need for the court to issue a stay order.	The court, still, has to issue a stay order not later than 5 days from the filing of the petition.
Effects of filing the petition	
All actions or claims against the corporation pending before the court, tribunal, board, or body shall be suspended.	All claims against the debtor are *stayed* upon the issuance of stay order. The creditors may proceed to enforce their claim against the surety even if during the pendency of the rehabilitation proceedings involving the corporate debtor. (*Phil. Blooming Mills, Inc. and Alfredo Ching v. CA, G.R. No. 142381, Oct. 5, 2003)*

Q: What are the modes or forms of suspension of payment?

A:

1. Petition for ordinary suspension of payments under Act 1956
2. Verified petition for rehabilitation under the Interim Rules of Procedure for Corporate Rehabilitation which includes suspension of payments.

C. VOLUNTARY INSOLVENCY

Q: What is a voluntary insolvency?

A: This is availed of a debtor who, having debts exceeding P1,000.00, cannot discharge all of them with all of his existing assets and who, as a consequence, voluntarily goes to court to have himself declared as an insolvent so that his assets may be equitably distributed among his creditors. *(Sec. 14)*

Q: What is the procedure for voluntary insolvency*?*

A:

1. Filing of the petition by the debtor praying for the declaration of insolvency *(Sec.2)*;
2. Issuance of an order of adjudication declaring the petitioner insolvent *(Sec.18)*;
3. Publication and service of the order *(Sec. 19)*;
4. Meeting of the creditors to elect the assignee in insolvency *(Sec. 30)*;
5. Conveyance of the debtor's property by the clerk of court to the assignee *(Sec. 32)*;
6. Liquidation of the debtor's assets and payment of his debts *(Sec. 33);*
7. Composition, if agreed upon *(Sec. 63);*
8. Discharge of the debtor on his application *(Sec. 64),* except a corporation;
9. Objection, if any, to the discharge *(Sec. 66);*
10. Appeal to the SC in certiorari.

Q: X, a well-known architect, is suffering from financial reverses. He has four creditors with a total claim of P26 Million. Despite his intention to pay these obligations, his current assets are insufficient to cover all of them. His creditors are about to sue him. Consequently, he was constrained to file a petition for insolvency. Since X was merely forced by circumstances to petition the court to declare him insolvent, can the judge properly treat the petition as one for involuntary insolvency? Explain.

A: The petition cannot be treated as one of involuntary insolvency, because it was filed by X

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himself, the debtor, and not by his creditors (*Sec. 20*). To treat it as one of involuntary insolvency would unduly benefit X as a debtor, because he would not be subject to the limitation of time within which he is subject in the case of voluntary insolvency for purposes of discharge *(Sec. 65).*

Q: What are the requisites of petition for voluntary insolvency?

A: The petition which must be verified *(Sec. 17)* is to be filed:

1. By an insolvent debtor
2. Owing debts exceeding in amount the sum of P1,000.00
3. In the RTC of the province or city in which he has resided for 6 months next preceding the filing of such petition, and
4. Setting forth in his petition the following:
    a. His place of residence;
    b. The period of residence therein immediately prior to filing said petition;
    c. His inability to pay all his debts in full;
    d. His willingness to surrender all his property, estate, and effects not exempt from execution for the benefit of his creditors; *and*
    e. An application to be adjudged an insolvent. (*Sec. 14*)

Q: What are the documents to accompany the petition?

A:

1. A *verified schedule* must contain:
    a. A full and true statement of all debts and liabilities of the insolvent debtor; and
    b. An outline of the facts giving rise or which might give rise to a cause of action against such insolvent debtor; *(Sec. 15)*

2. A *verified inventory*, which must contain:
    a. An accurate description of all the personal and real property of the insolvent exempt or not from execution including a statement as to its value, location and encumbrances thereon; and
    b. An outline of the facts giving rise or which might give rise to a right of action in favor of the insolvent debtor. *(Sec. 16)*

Q: Who may petition for voluntary insolvency?

A: The petition may be filed by any officer duly authorized by the vote of the board of directors or trustees at a meeting especially called for that purpose, or by assent in writing of the majority of the directors or trustees, as the case may be. *(Sec. 52)*

Q: What is the effect of filing petition?

A: Once the petition is filed, it ipso facto takes away and deprives the debtor petitioner of the right to do or commit any act of preference as to creditors, pending the final adjudication. *(Philippine Trust Co. v. National Bank, 42 Phil 413)*

Q: What are the effects of court order declaring debtor insolvent?

A:

1. All the assets of the debtor not exempt from execution are taken possession of by the sheriff until the appointment of a receiver or assignee;
2. The payment to the debtor of any debts due to him and the delivery to the debtor or to any person for him of any property belonging to him, and the transfer of any property by him are forbidden;
3. All civil proceedings pending against the insolvent debtor shall be stayed; and
4. Mortgages or pledges, attachments, or executions on property of the debtor duly recorded and not dissolved are not affected by the order. *(Sec. 59)*

D. INVOLUNTARY INSOLVENCY

Q: What is an involuntary insolvency?

A: This is availed of by the petition of 3 or more creditors, none of whom became a creditor by assignment within 30 days prior to filing of petition and whose aggregate credit is not less than P1,000.00, because of commission of one or more acts of insolvency. *(Sec. 20)*

Q: What are the acts of insolvency?

A:

1. Such person is about to depart or has departed from the Philippines, with intent to defraud his creditors;

2. Being absent from the Philippines, with intent to defraud his creditors, he remains absent;
3. He conceals himself to avoid the service of legal process for purpose of hindering or delaying or defrauding his creditors;
4. He conceals, or is removing, any of his property to avoid its being attached or taken on legal process;
5. He has suffered his property to remain under attachment or legal process for 3 days for the purpose of hindering or delaying or defrauding his creditors;
6. He has confessed or offered to allow judgment in favor of any creditor or claimant for the purpose of hindering or delaying or defrauding any creditor or claimant;
7. He has willfully suffered judgment to be taken against him by default for the purpose of hindering or delaying or defrauding his creditors;
8. He has suffered or procured his property to be taken on legal process with intent to give a preference to one or more of his creditors and thereby hinder, delay, or defraud any one of his creditors;
9. He has made any assignment, gift, sale, conveyance, or transfer of his estate, property, rights, or credits with intent to delay, defraud, or hinder his creditors;
10. He has, in contemplation of insolvency, made any payment, gift, grant, sale, conveyance, or transfer of his estate, property, rights, or credits;
11. Being a merchant or tradesman he has generally defaulted in the payment of his current obligations for a period of 30 days;
12. For a period of 30 days he has failed after demand, to pay any moneys deposited with him or received by him in a fiduciary capacity; and
13. An execution having been issued against him on final judgment for money, he shall have been found to be without sufficient property subject to execution to satisfy the judgment. *(Sec. 20)*

Q: What is the procedure in involuntary insolvency?

A:

1. Filing of the petition by three or more creditors *(Sec. 20);*
2. Issuance of order requiring the debtor to show cause why he should not be adjudged insolvent *(Sec. 21);*
3. Service of order to show cause *(Sec. 22);*
4. Filing of answer or motion to dismiss *(Sec. 23);*
5. Hearing of the case *(Sec. 24);*
6. Issuance of order or decision adjudging debtor insolvent *(Ibid.)*
7. Publication and service of order *(Sec. 25);*
8. Meetings of creditors for election of an assignee in insolvency *(Sec. 30);*
9. Conveyance of debtor's property by clerk of court to the assignee *(Sec. 32);*
10. Liquidation of the debtor's assets and payment of debts *(Sec. 33);*

Note: Assets of the insolvent which are not exempt from execution will then be distributed among his creditors in accordance with the rules of concurrence and preference of credits in the Civil Code.

11. Composition, if agreed upon *(Sec. 63);*
12. Discharge of the debtor on his application, except a corporation *(Sec. 52);*
13. Objection, if any, to the discharge *(Sec. 66);* and
14. Appeal to the Supreme Court in certain cases *(Sec. 62)*

Q: What are the requisites for filing a petition for Involuntary Insolvency?

A: The petition is filed by:

1. Three or more creditors;
2. None of whom has become such a creditor by assignment, within 30 days prior to the filing of said petition;
3. Whose credits accrued in the Philippines;
4. The total amount of which credits is not less than P1,000.00; and
5. In the RTC of the province or city in which the debtor resides or has his principal place o business.
6. The petition must:
7. be verified by at least 3 of the petitioning creditors;
8. set forth one or more acts of insolvency mentioned in the law; and
9. be accompanied by a bond, approved by the court with at least 2 sureties, in such penal sum as the court shall direct.

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Q: Can a surety institute involuntary proceedings?

A: No, a surety for the debtor is not a creditor. Hence, he cannot institute involuntary proceedings. All he can do is to prove his claim.

Q: Distinguish voluntary insolvency from involuntary insolvency.

A:

VOLUNTARY INSOLVENCY	INVOLUNTARY INSOLVENCY
Filed by the debtor.	Filed by 3 or more creditors.
Only 1 creditor is required.	3 or more creditors are required.
No requirement for creditors.	Requirements for creditors: 1. Residents of the Philippines; 2. Their credits or demands must have accrued in the Philippines; and 3. Must not have been a creditor by assignment within 30 days prior to the filing of the petition.
Venue: where he has resided 6 months prior to the filing of petition.	Where the debtor has residence or has his principal place of business.
No need for the commission of any of the acts of insolvency.	Debtor must have committed any of the acts of insolvency.
Amount of debts must *exceed* P1,000.00.	Amount of debts must not be less than P1,000.00.
Debtor deemed insolvent through an order of adjudication after filing of the petition; adjudication may be granted ex parte.	Debtor is considered insolvent upon the issuance by the court of an order after due hearing declaring him insolvent; adjudication granted only after hearing.
Bond is *not* required.	Bond is required.

Q: Who is an assignee in insolvency?

A: A person elected by the creditors or appointed by the court to whom an insolvent debtor makes an assignment of all his property for the benefit of his creditors.

Note: The assignee must be a person elected by the majority of the creditors who have proven their claims, such majority being in number and amount.

Q: Who are the creditors not entitled to vote in the election of assignee?

A:

1. Those who did not file their claims at least 2 days prior to the time appointed for such election; (*Sec. 29*)
2. Those whose claims are barred by the statute of limitations; *(Ibid.)*
3. Secured creditors unless they surrender their security or lien to the sheriff or receiver or unless they shall first have the value of such security fixed as provided in Sec. 59; and
4. Holders of claims for unliquidated damages arising out of pure tort.

Q: Is the assignee required to give a bond?

A: After his election, the assignee is required to give a bond for the faithful performance of his duties. *(Secs. 30, 31)*

Note: Courts have the power to appoint receivers to hold the property of individuals or corporations although no insolvency proceedings are involved. A receiver appointed by a court before the institution of the insolvency proceedings may be appointed the permanent assignee in such proceedings.

Q: What is the date of cleavage?

A: The date when the petition is filed, from which is counted backward or forward, in determining the effects provided for under the Insolvency Law.

Illustrations:

1. A creditor by assignment of credit made within 30 days from date of cleavage shall be disqualified as petitioning creditor *(Sec. 20);*
2. Attachment levied upon within a period of 30 days before the date of cleavage may be set aside by the assignee *(Sec. 32);*
3. Judgment on cases filed and decided within 30 days prior to the date of cleavage may be set aside by the assignee *(Sec. 32);*
4. Judgments on cases filed before 30 days from the date of cleavage but decided within 30 days because of confession of judgment or declaration of default by debtor may be set aside by action of assignee;
5. Properties acquired after date of cleavage, after discharge of debtor in

good faith shall not be liable for debts incurred prior to the date of cleavage;
6. Fraudulent preferences made within 30 days prior to the date of cleavage may be set aside in action brought by assignee.

Q: What is a dividend in insolvency?

A: A parcel of the fund arising from the assets of the estate, rightfully allotted to a creditor entitled to share in the fund whether in the same proportion with other creditors or in a different proportion. It is paid by the assignee only upon order of the court *(Secs. 43, 44).*

Q: When may a partnership be declared insolvent?

A: A partnership may be declared insolvent by a petition of the partners and may be done during the continuation of the partnership business or after its dissolution and before the final settlement thereof.

A partnership may be declared insolvent notwithstanding the solvency of the partners constituting the same. *(Campos Rueda & Co. v. Pacific Commercial Co., G.R. No. L-18703 Aug. 28, 1922)*

Q: Who may petition for declaration of insolvency of a partnership?

A:

1. Voluntary insolvency – By all the partners or any of them;
2. Involuntary insolvency – By one or more of the partners or three or more creditors of the partnership.

Q: What are the properties included in the insolvency proceedings?

A:

All the property of the partnership; and
All the separate of each of the partners except:
Separate properties of limited partners *(Art. 1843, NCC)*
Properties which are exempt by law *(Sec. 51)*

Q: What are the effects of filing of petition?

A:

1. The proceedings are deemed to commence against the partners at the same time;
2. Upon order of the court, all the properties of the partnership and also all the separate property of each partner, if they are liable, shall be taken; *(Sec. 51)*
3. All creditors of the partnership and the separate creditors of each partner shall be allowed to prove their respective claims; *(Ibid.)*
4. The assignee shall be chosen by the creditors of the partnership; and *(Ibid.)*
5. Pending insolvency proceedings by or against any partnership, person or corporation no statute of limitations shall run upon a claim of or against the estate of the debtor. *(Sec. 73)*

Q: What is the effect of insolvency of partnership or any partner?

A:

1. A partnership may be declared insolvent notwithstanding the solvency of the partners constituting the same.
2. A partnership is not necessarily insolvent because one of its members is insolvent. The solvent members are bound to wind up the partnership affairs.
3. Under the law, a partnership is automatically dissolved by the insolvency of any partner or of the partnership

Q: What is the effect when corporation declared insolvent?

A: Its property and assets shall be distributed to the creditors but no discharge shall be granted to any corporation. *(Sec. 52)*

Q: Is insolvency law applicable to corporations?

A: The Insolvency Law expressly provides that it is not applicable to corporations:

1. Engaged principally in the banking business
2. Any other corporation as to which there is a special provision of law for its liquidation in case of insolvency. *(Ibid*)

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Q: In the filing of claims in an insolvency proceeding, what debts may and may not be proved?

A:

DEBTS THAT MAY BE PROVED	DEBTS THAT MAY NOT BE PROVED
The debts which may be proved against the estate of the debtor in insolvency proceedings are the following: *1.* All debts due and payable from the debtor at the time of adjudication of insolvency; *(Sec. 53)* 2. All debts existing at the time of the adjudication of insolvency but not payable until a future time, a discount being made if no interest is payable by the terms of the contract; 3. Any debt of the insolvent arising from his liability as indorser, surety, bail or guarantor, where such liability became absolute after the adjudication of insolvency but before the final dividend shall have been declare; *(Sec. 54)* 4. Other contingent debts and contingent liabilities contracted by the insolvent if the contingency shall happen before the order of final dividend; *(Sec. 55);* and *5.* Any debt of the insolvent arising from his liability to any person liable as bail, surety, or guarantor or otherwise, for the insolvent, ho shall have paid the debt in full, or in part. *(Sec. 56)*	The following debts are *not provable or allowed in insolvency proceedings:* *1.* Claims barred by the statute of limitations; *(Sec. 29, 73)* *2.* Claims of secured creditors with a mortgage or pledge in their favour unless they surrender the security; *(Sec. 59)* *3.* Claims of creditors who hold an attachment or execution on the property of the debtor duly recorded and not dissolved; *(Sec. 32)* *4.* Claims on account of which a fraudulent preference was made or given; *(Sec. 61)* 5. Support, as it does not arise from any business transaction but from the relation of marriage; and 6. A claim for unliquidated damages arising out of a pure tort, which neither constitutes a breach of an express contract nor results in any unjust enrichment of the tortfeasor that may form the basis of an implied contract.

Q: What is a contingent claim?

A: A claim in which liability depends on some future event that may or may not happen and which makes it uncertain whether there will be any liability.

Note: After the close of the insolvency proceedings and the happening of the contingency, the creditor may pursue any available remedy for the collection of his claim.

Q: How are claims arising or acquired after insolvency treated?

A:

1. *Claim arose after commencement of proceedings* – An obligation coming in force after the initiation of the proceedings is not generally a proper claim to be proved.

2. *Claim owned by insolvent purchased after insolvency* – One indebted to an insolvent will not be permitted to interpose as an offset, a claim owned by the insolvent which he has purchased after the insolvency.

Q: What are the alternative rights of a secured creditor?

A:

1. To maintain his rights under his security or lien and ignore the insolvency proceedings, in which case, it is the duty of the assignee to surrender to him the property encumbered;

2. To waive his right under the security or lien and thereby share in the distribution of the assets of the debtor; or

3. To have the value of the encumbered property appraised and then share in the distribution of the assets of the debtor with respect to the balance of his credit.

Q: What is composition?

A: It is an agreement, made upon a sufficient consideration, between an insolvent or embarrassed debtor and his creditors, whereby the latter for the sake of immediate or sooner payment, agree to accept a dividend less than the whole amount of their claims, to be distributed pro rata, in discharge and satisfaction of the whole debt.

Q: Distinguish composition from accord.

A: *Accord* properly denotes an agreement between a debtor and a single creditor for a discharge of the obligation by a part payment or on different terms.

Composition, on the other hand, designates an arrangement between a debtor and the whole body of his creditors (or at least a considerable portion of them) for the liquidation of their claims by the dividend offered.

Q: What are the requirements for a valid offer of composition?

A:

1. The offer of the terms of composition must be made after the filing of the schedule of the debtor's property and the submission of the list of his creditors;
2. The offer must be accepted in writing by a majority of the creditors representing a majority of the claims which have been allowed;
3. It must be made after the depositing in such place designated by the court, the consideration to be paid and the costs of the proceedings; and
4. The terms of the composition must be approved or confirmed by the court. *(Sec. 63)*

Q: When may the court confirm a composition?

A: When:

1. It is for the best interest of the creditors;
2. The debtor has not been guilty of any of the acts, or of a failure to perform any of the duties which would create a bar to his discharge; and
3. The offer and its acceptance are in good faith and have not been made or procured in a manner forbidden by the Act.

Q: What are the effects of confirmation of composition?

A:

1. The consideration shall be distributed as the judge shall direct;
2. The insolvency proceedings shall be dismissed;
3. The title to the insolvent's estate shall revert in him;
4. The insolvent shall be released from his debts

Q: When may confirmation be set aside?

A: The court may, upon application of a party in interest within 6 months after the composition has been confirmed, set the same aside and reinstate the case if it shall be made to appear upon a trial:

1. That fraud was practiced in the procuring of such composition; and
2. The knowledge thereof has come to the petitioner since the confirmation of such composition. *(Sec. 63*)

Q: What is discharge?

A: Discharge, under the Insolvency Law, is the formal and judicial release of an insolvent debtor from his debts with the exception of those expressly reserved by law.

Note: Only natural persons may ask for discharge; corporations cannot ask for discharge. *(Sec. 52)* When granted, takes effect not from its date, but from the commencement of the proceedings in insolvency.

Q: When insolvent debtor may apply for discharge?

A: A debtor may apply to the RTC for a discharge at anytime after the expiration of 3 months from the adjudication of insolvency, but *not* later than 1 year from such adjudication of insolvency, unless the property of the insolvent has not been converted into money *(Sec. 64) without* his fault, thereby delaying the distribution of dividends among the creditors in which case the court may extend the period

Any creditor may oppose the discharge by filing his objections thereto, specifying the grounds of his opposition. After the debtor has filed and served his verified answer, the court shall try the issue or issues raised. (*Sec. 66*)

Q: What are the requisites for discharge?

A:

1. Compliance with statutory requirements regarding surrender of his assets for the benefit of the creditors and regarding the rendition of an account of his assets and liabilities;

    a. **Note:** A discharge in insolvency is a matter of legislative grace

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or favour to the debtor, to be obtained only by a strict compliance with the conditions prescribed by the statute.

2. Application for discharge should be filed after the expiration of 3 months from the adjudication of insolvency, but not later than 1 year; *(Sec. 64)*; and

3. Insolvent debtor must not have committed any of the acts of insolvency preventing discharge.

Q: What are the acts of debtor or grounds which will prevent discharge?

A: No discharge shall be granted, or if granted, shall be valid, to the following cases:

1. False swearing;
2. Concealment of any part of his estate or effects;
3. Fraud or willful neglect in the care of his property or in the delivery thereof to the assignee;
4. Procuring his properties to be attached or seized on execution within 1 month before the commencement of insolvency proceedings;
5. Destruction, mutilation, alteration or falsification of his books, documents, and papers;
6. Giving fraudulent preference to a creditor;
7. Non-disclosure of the assignee of a proven false or fictitious debt within 1 month after acquiring knowledge;
8. Being a merchant, failure to keep proper books or accounts;
9. Influencing the action of any creditor, at any state of the proceedings, by pecuniary consideration;
10. Effecting any transfer, conveyance or mortgage in contemplation of insolvency;
11. Conviction of any misdemeanor under the Insolvency Law:
12. In case of voluntary insolvency, he has received the benefit of insolvency within 6 years next preceding his application for discharge; and
13. If insolvency proceeding in which he could have applied are pending by or against him in the RTC of any other province or city. *(Sec. 65)*

Q: What are the effects of discharge?

A:

1. It releases the debtor from all claims, debts, liabilities and demand set forth in the schedule or which were or might have been proved against his estate in insolvency. *(Sec. 69).* Hence, non-provable debts are not affected whether or not they were properly scheduled;
2. It operates as a discharge of the insolvent and future acquisitions, but pemits mortgagees and other lien creditors to have their satisfaction out of the mortgage or subject of the lien;
3. It is a special defense which may be pledged and be a complete bar to all suits brought on any such debts, claims, liabilities or demands. *(Ibid.)*
4. It does not operate to release any person liable for the same debt, for or with the debtor, either as partner, joint contractor, indorser, surety or otherwise; *(Sec. 68)*
5. The certificate of discharge is prima facie evidence of the fact of release, and the regularity of such discharge.

Note: Where a debtor is judicially declared insolvent, the remedy of the guarantor or surety would be to file a contingent claim in the insolvency proceeding, if his rights as such guarantor or sureties are not to be barred by the subsequent discharge of the insolvent debtor from all his liabilities.

Q: What are the debts and obligations not affected by discharge of insolvent?

A:

1. Taxes or assessments due the Government, whether national or local;
2. Any debt created by the fraud or embezzlement of the debtor;
3. Any debt created by the defalcation of the debtor as a public officer or while acting in a fiduciary capacity;
4. Debt of any person liable for the same debt, for or with the insolvent debtor, either as partner, joint contractor, inorser, surety or otherwise; *(Sec. 68)*
5. Debts of a corporation *(Sec. 52);*
6. Claim for support;
7. Discharged debt but revived by a subsequent new promise to pay;
8. Debts which have not been duly scheduled in time for proof and allowance, unless the creditors had notice or actual knowledge of the insolvency proceedings, are not discharged as to such creditors;

9. Claims for unliquidated damages arising out of a pure tort;
10. Claims of secured creditors; *(Sec. 59)*
11. Claims not in existence or not mature at the time of the discharge;
12. Claims that are contingent at the time of discharge.

Q: When discharge may be revoked?

A: A discharge may be revoked by the court which granted it on petition of any creditor:

1. Whose debt was proved or provable against the estate in insolvency on the ground that the discharge was fraudulently obtained;

2. Who has discovered facts constituting the fraud subsequent to the discharge and fraudulent transfer; and provided,

3. The petition is filed within 1 year after the date of the discharge. *(Sec. 69)*

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LEASE

Q: What is contract of lease?

A: A contract by which one of the parties agrees to give the other for a fixed time and price the use or profit of a thing or of his service to another who undertakes to pay some rent, compensation or price.

Q: What are the characteristics of a contract of lease?

A:

1. Consensual;
2. Bilateral;
3. Commutative;
4. Principal contract;
5. Nominate;
6. Subject matter must be within the commerce of man;
7. Purpose is to allow enjoyment or use of a thing;
8. Purpose to which the thing will be devoted should not be immoral;
9. Onerous;
10. Period is temporary;
11. Period may be definite or indefinite; and
12. Lessor need not be the owner.

Q: What are the kinds of lease?

A:

1. *Lease of things (immovable/ movable)* – One of the parties binds himself to give to another the enjoyment or use of a thing for a price certain.

   Period: definite or indefinite *but* not more than *99 years.* (*Art. 1634*)

   Note: It may be made orally but if the lease of real property is for more than one year, it must be in the writing (Statute of Frauds).

   Statute of Frauds requires certain agreements to be in writing before they can be proved and enforced in a judicial action. However, non-compliance does not make the oral contract void. The only effect is that no action for the enforcement of the contract can be proved. Moreover, the right to invoke the Statute of Frauds may be waived by failure to object to the presentation of oral evidence, or by cross examining the witness on the issue. *(Pineda, Obligations and Contracts, pgs. 577, 579, 580)*

2. *Lease of work (contract for a piece of work)* – One of the parties binds himself to produce a result out of his work or labor for a certain price.

   Note: Duties of a contractor who furnishes work and materials:
   1. to deliver;
   2. to transfer ownership; and
   3. to warrant eviction and hidden defects.

   Remedy of employer in case of defects:
   1. Ask contractor to remove the defect or to execute another work;
   2. If contractor fails or refuses, employer can ask another at the contractor's expense.

3. *Lease of service* – One party binds himself to render to the other some service for a price certain.

Q: When is lease considered a contract of sale?

A: A lease of personal property with option to buy, where title is transferred at the end of the contract provided rents have been fully paid.

Q: Distinguish lease from sale.

A:

LEASE	SALE
Only the use or enjoyment is transferred	Ownership is transferred
Transfer is temporary	Transfer is permanent
Lessor need not to be the owner	Seller must be the owner at the time of delivery
The price of the object (distinguished from the rent) is usually not mentioned	Usually, the selling price is mentioned

Q: Distinguish lease from usufruct.

A:

LEASE	USUFRUCT
Ownership on the part of the lessor is not necessary	Ownership of the thing on the part of the grantor is necessary
GR: Personal right **XPN:** Real right	Real right
Limited to the use specified in the contract	Includes all possible uses and enjoyment of the thing

Lessor places and maintains the lessee in the peaceful enjoyment of the thing	Owner allows the usufructuary to use and enjoy the property
Definite period	May be for an indefinite period
Created by contract as a general rule	Created by law, contract, last will or prescription
Lessee has no duty to make repairs	Usufructuary has duty to make repairs
Lessee has no duty to pay taxes	Usufructuary has a duty to pay taxes
Lessee cannot constitute a usufruct of the property leased	Usufructuary may constitute a sublease

I. LEASE OF THINGS

Q: Is lease of real property a real right?

A:

GR: Lease of a real property is a personal right

XPNs: It is a real right:

1. If it is for more than one year and to be enforceable – must be writing
2. If it is registered with Registry of Property - regardless of its period

Q: What are the effects if the lease of real property is not registered?

A:

1. It is not binding on third persons;
2. Such third person is allowed to terminate the lease in case he buys the property from the owner-lessor;
3. Actual knowledge of existence and duration of lease is equivalent to registration; or
4. A stranger who knows of the existence of the lease, but was led to believe that the lease would expire soon or before the new lease in favor of him begins, the stranger can still be considered innocent.

Q: What can be the subject matter of a lease?

A: Things within the commerce of man.

Note: Lease of properties belonging to the public domain is void.

Q: What are the properties that may be leased?

A:

1. *By Filipinos* – public domain with an area of 500 hectares and may acquire not more than 12 hectares
2. *By corporations*
   a. *If at least 60% Filipinos*-owned – public domain for a period of 25 years, renewable for another 25 years; the area not to exceed more than 1,000 hectares

Q: What are the rules on lease of things when lessee is an alien?

A:

Personal property – 99 year limit applies.

Aliens *cannot* lease public lands, and cannot acquire private lands except through succession

If lease of real property (private lands), maximum of 25 years renewable for another 25 years *(P.D. 713)*

Under the Investor 's Lease Act of 1995, the 25 year period was extended to 50 years provided the following conditions are met:

Lessee must make investments
Lease is approved by DTI
If terms are violated, DTI can terminate it

Note: The ILA did not do away with P.D. 713, under ILA the consent of DTI is required, while in P.D. 713 no consent is required.

Q: What is rent?

A: The compensation either in money, provisions, chattels or labor, received by the lessor from the lessee.

Q: What are the requisites of rent?

A:

1. Not fictitious or nominal, otherwise the contract becomes gratuitous;
2. Capable of determination; and
3. May be in the form of products, fruits, or construction, as long as it has value.

Note: Owner has the right to fix the rent because the contract is consensual and not imposed by law.

Increasing the rent is not an absolute right of the lessor. The new rate must be reasonable and in no case shall the lessor be allowed to increase the rental when the term has not yet expired, unless, the tenant consents. *(Paras, p. 262)*

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If the rent is fixed for the first time, courts cannot interfere, but if it is a renewal, the courts can settle the disagreements.

Q: What is the right of a purchaser of a leased property?

A:

GR: Purchaser of thing leased can terminate the lease.

XPNs:

1. Lease is recorded in Registry of Property;
2. There is a stipulation in the contract of sale that the purchaser shall respect the lease;
3. Purchaser knows the existence of the lease;
4. Sale is fictitious; or
5. Sale is made with a right of repurchase.

SUBLEASE

Q: What is sublease?

A: It is an agreement between a sublessor and sublessee whereby the former grants temporarily the enjoyment or use of the same thing, service or work subject of the original contract of lease to the latter in exchange for compensation or price, respecting the terms and conditions of original contract of lease between the lessor and lessee.

Q: What is the nature of sublease?

A: It is a separate and distinct contract of lease wherein the original lessee becomes a sublessor to a sublessee.

Q: What are the requisites of a valid sublease?

A: There must be no express prohibition for sublease in a contract of lease. Also, the duration of sublease cannot be longer than that of the lease to which it is dependent

Q: Who are the parties to a sublease?

A:

1. Lessor
2. Sublessor (original lessee in the contract of lease)
3. Sublessee

Q: Does the lessee have the right to sublease the property?

A: Yes, unless expressly stipulated.

Note: If the prohibition to sublease is not express but only implied, the sublease will still be allowed. (*Art.1650*)

Q: What is the remedy of the lessor if the lessee violates the prohibition as to sublease?

A: Rescission and damages or only damages allowing the contract to remain in force. The sublessee is subsidiarily liable for any rent due. The lessor has an *accion directa* against the sublessee for unpaid rentals and improper use of the object.

Q: Can rights under a contract of lease be assigned?

A:

GR: Lessee cannot assign the lease without consent of lessor *(Art. 1649, NCC)*

XPN: Stipulation to the contrary

Q: When does an assignment of lease take place?

A: It exists when the lessee made an *absolute* transfer of his leasehold rights in a contract, and he has disassociated himself from the original contract of lease. *(Pineda, p. 451)*

Note: The assignment has the effect of novation consisting in the substitution. There being a novation, the consent of lessor is necessary to effect assignment unless the contract of lease allows the lessee to assign. *(Pineda, p. 452)*

Q: What is the effect of assignment of lease?

A: The personality of the original lessee disappears and there only remain in the juridical relation of two persons: the lessor and the assignee, who is converted into a lessee. *(Pineda, p. 451)*

Q: Distinguish sublease from assignment of lease.

A:

SUBLEASE	ASSIGNMENT OF LEASE
There are 2 leases and 2 distinct juridical relationships although immediately connected and related to each other	There is only one juridical relationship, that of the lessor and the assignee, who is converted into a lease
Personality of the lessee does not disappear	Personality of the lessee disappears
Lessee does not transmit absolutely his rights and obligations to the sublessee	Lessee transmits absolutely his rights to the assignee
Sublessee, generally, does not have any direct action against the lessor	Assignee has a direct action against the lessor

Q: May a lessee sublease a leased property without the consent of the lessor?

A: Yes, provided that there is no express prohibition against subleasing. Under the law, when in the contract of lease of things, there is no express prohibition, the lessee may sublet the thing leased without prejudice to his responsibility for the performance of the contract toward the lessor. *(Art. 1650, NCC)*

In case there is a sublease of the premises being leased, the sublessee is bound to the lessor for all the acts which refer to the use and preservation of the thing leased in the manner stipulated between the lessor and the lessee. *(Art. 1651, NCC)*

The sublessee is subsidiarily liable to the lessor for any rent due from the lessee. However, the sublessee shall not be responsible beyond the amount of the rent due form him.

As to the lessee, the latter shall still be responsible to the lessor for the rents; bring to the knowledge of the lessor every usurpation or untoward act which any third person may have committed or may be openly preparing to carry out upon the thing leased; advise the owner the need for all repairs; to return the thing leased upon the termination of the lease just as he received it, save what has been lost or impaired by the lapse of time or by ordinary wear and tear or from an inevitable cause; responsible for the deterioration or loss of the thing leased, unless he proves that it took place without his fault. **(1999 Bar Question)**

Q: What is the responsibility of the lessee to the lessor in case he subleases the property?

A: By express provision of Article 1650, NCC, the lessee is still responsible for the performance of his obligations toward the lessor.

Q: What are the responsibilities of a sublessee to the lessor?

A:

GR: No juridical relationship between lessor and sublessee.

XPNs:

All acts which affect the use and preservation of the thing leased

For any rent due to the lessor from the lessee which the latter failed to pay

the lessor must collect first from the lessee

if the lessee is insolvent, the sublessee becomes liable *(subsidiary liability)*

Q: When is a sub-lessee liable to the lessor?

A:

1. All acts which refer to the use and preservation of the thing leased in the manner stipulated between the lessor and the lessee
2. The sublessee is subsidiary liable to the lessor for any rent due from the lessee

REMEDIES IN SUBLEASE

Q: What is *accion directa*?

A: A direct action which the lessor may bring against a sublessee who misuses the subleased property.

Q: What are the remedies when either the lessor or the lessee did not comply with his obligations?

A: RED

1. **R**escission and damages;
2. **D**amages only (contract will be allowed to remain in force); or
3. **E**jectment

IMPLIED NEW LEASE

Q: What is *tacita reconducion* (*implied new lease*)?

A: A lease that arises if at the end of the contract the lessee should continue enjoying the thing leased for 15 days with the acquiescence of the lessor, unless a notice to the contrary had previously been given by the either party.

Q: What are the requisites for *tacita reconducion*?

A:

The term of the original contract has expired
The lessor has not given the lessee a notice to vacate
The lessee continued enjoying the thing leased for at least 15 days with the acquiescence of the lessor

Q: When is there no implied new lease?

A:

1. Before or after the expiration of the term, there is a notice to vacate given by either party;
2. There is no definite fixed period in the original lease contract as in the case of successive renewals.

Q: What are the effects of an implied new lease?

A:

1. The period of the new lease is not that stated in the original contract; but for then legal periods established by law in Art. 1682, if the lease is rural lease, or Art. 1687, if the lease is urban lease.
2. Accessory obligations contracted by a third person are extinguished *(Art. 1672, NCC)*
3. Other terms of the original contract are revived

Note: The terms that are revived are only those which are germane to the enjoyment of possession, but not those with respect to special agreements which are by nature foreign to the right of occupancy or enjoyment inherent in a contract of lease.

DURATION OF SUBLEASE

Q: What is the duration of the lease?

A:

1. *With determinate or fixed period* – Lease will be for the said period and it ends on the day fixed without need of a demand
2. *No fixed period*
    a. *For rural lands (Art. 1682, NCC)* – It shall be all time necessary for the gathering of fruits which the whole estate may yield in 1 year, or which it may yield once
    b. *For urban lands*
3. If rent is paid daily, lease is from the day to day
4. If rent is paid weekly, lease is from week to week
5. If rent paid monthly, lease is from month to month
6. If rent is paid yearly, lease is from year to year

Q: When is the lessee entitled to a reduction of rent?

A:

GR: In case of the loss of more than one-half of the fruits through extraordinary and unforeseen fortuitous events.

XPN: Stipulation to the contrary.

Note: It is applicable only to lease of rural lands.

Q: What are the rules on the extension of the lease period?

A:

1. If a lease contract for a definite terms allows lessee to duly notify lessor of his desire to so extend the term, unless the contrary is stipulated
2. "May be extended" as stipulation – lessee can extend without lessor's consent but lessee must notify lessor
3. "May be extended for 6 years agreed upon by both parties" as stipulation – this must be interpreted in favor of the lessee. Hence, oridinarily the lessee, at the end of the original period, may either:
    a. leave the premises; or
    b. remain in possession
4. In co-ownership, assent of co-owner is needed, otherwise, it is void or

ineffective as against non-consenting co-owners
5. Where according to the terms of the contract, the lease can be extended only by the written consent of the parties thereto, no right of extension can rise without such written consent
6. If the option is given to the lessor, the lessee cannot renew the lease against the former's refusal
7. The lessor may impose additional conditions after the expiration of the original period
8. Par. 2, Art. 1687, NCC provides that in the event that the lessee has occupied the leased premises for over a year, courts may fix a longer term of lease

Note: The power of the courts to establish a grace period is potestative or discretionary, depending on the particular circumstances of the case.

Q: What is perpetual lease?

A: A lease contract providing that the lessee can stay in the premises for as long as he wants and for as long as he can pay the rentals and its increase.

Note: It is not permissible. It is a purely potestative condition because it leaves the effectivity and enjoyment of leasehold rights to the sole and exclusive will of the lessee.

TERMINATION OF LEASE

Q: When does immediate termination of lease apply?

A:
1. Only to dwelling places or any other building intended for human habitation
2. Even if at the time the contract was perfected, the lessee knew of the dangerous condition or waived the right to rescind the contract on account of this condition

Q: What are the grounds for termination of lease?

A: WiRe-LEx-Run
1. **Ex**piration of the period
2. **Re**solution of the right of lessor (i.*e.: when the lessor is a usufructuary and the usufruct is terminated*)
3. By the **w**ill of the purchaser or transferee of the thing
4. **L**oss of the thing
5. **R**escission due to the performance of the obligations of one of the parties stated under Art. 1654 and 1657.
6. The dwelling place or any other building is **un**fit for human habitation and is dangerous to life or health.

Q: Will the death of the lessee extinguish the lease agreement?

A: No. The death of the lessee will not extinguish the lease agreement, since lease is not personal in character and the right is transmissible to the heirs. *(Heirs of Dimaculangan v. IAC, G.R. No. 68021, Feb. 20, 1989)* **(1997 Bar Question)**

Q: What are the remedies of the aggrieved party in case of non-compliance of the other party's obligations under Arts. 1654 (obligations of lessor) and 1657 (obligations of lessee)?

A:
1. Rescission with damages
2. Damages only allowing the lease to subsists

Q: What are the restrictions in exercising the right to rescind?

A: JAS
1. Breach must be **S**ubstantial and fundamental (*de minimis non curat lex* – the law is not concerned with trifles).
2. It requires **J**udicial action.
3. It can be filed only by the **A**ggrieved party.

Q: In case of action to rescind, may the other party validly request for time within which to comply with his duties?

A: No. The aggrieved party seeking rescission will prevail. Under Article 1659, NCC, the court has no discretion to refuse rescission, unlike the situation covered by Art. 1191, NCC, in the general rules on obligations *[Bacalla v. Rodriguez, et. al., C.A. 40 O.G. (supp.), Aug. 30, 1941]*

Q: How is the amount of damages measured?

A: Difference between the rents actually received and that amount stipulated in the contract representing the true rental value of the premises. (*A. Maluenda and Co. vs. Enriquez, 49 Phil. 916)*

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ADVISER: ATTY. ELMER T. RABUYA; **SUBJECT HEAD:** ALFREDO B. DIMAFELIX II;
ASST. SUBJECT HEADS: KAREN FELIZ G. SUPNAD, LAMBERTO L. SANTOS III; **MEMBERS:** PAUL ELBERT E. AMON, ALSTON ANARNA, OZAN J. FULLEROS, CECILIO M. JIMENO, JR., ISMAEL SARANGAYA, JR.; **CONTRIBUTORS:** LOISE RAE G. NAVAL, MONICA JUCOM

Q: Under a written contract dated December 1, 1989, Victor leased his land to Joel for a period of five (5) years at a monthly rental of P1,000.00, to be increased to P1,200.00 and P1,500.00 on the third and fifth year, respectively. On January 1, 1991, Joel subleased the land to Conrad for a period of 2 years at a monthly rental of P1,500.00. On December 31, 1992, Joel assigned the lease to his compadre, Ernie, who acted on the belief that Joel was the rightful owner and possessor of the said lot. Joel has been faithfully paying the stipulated rentals to Victor. When Victor learned on May 15, 1992 about the sublease and assignment, he sued Joel, Conrad and Ernie for rescission of the contract of lease and for damages.

1. **Will the action prosper? If so, against whom? Explain.**
2. **In case of rescission, discuss the rights and obligations of the parties.**

A:

1. Yes, the action for rescission of the lease will prosper because Joel cannot assign the lease to Ernie without the consent of Victor *(Art. 1649, NCC)*. But Joel may sublet to Conrad because there is no express prohibition *(Art. 1650, NCC; Alipio v. CA, G.R. No. 134100, Sept. 29, 2000)*.

   Victor can rescind the contract of lease with Joel, and the assignment of the lease to Ernie, on the ground of violation of law and of contract. The sub-lease to Conrad remained valid for 2 years from January 1, 1991, and had not yet lapsed when the action was filed on May 15, 1992.

2. In case of rescission, the rights and obligations of the parties should be as follows: At the time that Victor filed suit on May 15, 1992, the assignment had not yet lapsed. It would lapse on December 1, 1994, the very same date that the 5-year basic lease would expire. Since the assignment is void, Victor can get the property back because of the violation of the lease. Both Joel and Ernie have to surrender possession and are liable for damages. But Conrad has not yet incurred any liability on the sublease which still subsisted at the time of the filing of the action on May 15, 1992.

   Ernie can file a cross-claim against Joel for damages on account of the rescission of the contract of assignment. Conrad can file a counter-claim against Victor for damages for lack of causes of action at the time of the filing of the suit. **(2005 Bar Question)**

Q: A is the owner of a lot on which he constructed a building in the total cost of P10,000,000. Of that amount B contributed P5,000,000 provided that the building as a whole would be leased to him (B) for a period of ten years from January 1, 1985 to December 31, 1995 at a rental of P100,000 a year. To such condition, A agreed. On December 20, 1990, the building was totally burned. Soon thereafter, A's workers cleared the debris and started construction of a new building. B then served notice upon A that he would occupy the building being constructed upon completion, for the unexpired portion of the lease term, explaining that he had spent partly for the construction of the building that was burned. A rejected B's demand. Did A do right in rejecting B's demand?

A: Yes, A was correct in rejecting the demand of B. As a result of the total destruction of the building by fortuitous event, the lease was extinguished. *(Art. 1655, NCC)* **(1993 Bar Question)**

II. LEASE OF WORK OR SERVICES

Q: What is a contract for a piece of work?

A: A contract whereby one of the parties binds himself to produce a result out of his work or labor and the other party binds himself to pay remuneration therefor.

Q: What is a contract for lease of services?

A: A contract whereby one party binds himself to render some service to the other party consisting his own free activity of labor, and not its result and the other party binds himself to pay a remuneration therefor. *(Pineda Sales, p. 440-441, 2002 ed)*

Q: Distinguish lease of services from agency.

A:

LEASE OF SERVICES	AGENCY
Based on employment – the lessor of services does not represent his employer nor does he execute juridical acts	*Based on representation* – agent represent his principal and enter into juridical acts

Principal contract	Preparatory contract

Q: Distinguish contract of piece of work and contract of lease services.

A:

PIECE OF WORK	LEASE OF SERVICES
Object of contract is the result of the work without considering the labor that produced it	Object of contract is the service itself and not the result which it generates
If the result promised is not accomplished, the lessor or promissory is not entitled to compensation	Even if the result intended is not attained, the services of the lessor must still be paid

Q: What if the value has not been agreed upon in a contract of lease of service?

A: When no rate has been fixed, the same shall be determined by the courts according to the uses and customs of the place and the evidence, unless the services by agreement were to be rendered gratuitously. *(Pineda Sales, p. 444, 20002 ed)*

III. LEASE OF RURAL AND URBAN LANDS

Q: What is a rural land (Product-Producing Lands)?

A: Regardless of site, if the principal purpose is to obtain products from the soil, the lease is of rural lands. Hence, as used here, rural lands are those where the lessee principally is interested in soil products.

Q: What is an urban land (Non-Product Producing Lands)?

A: Lands leased principally for purposes of residence are called urban lands.

Q: What is the form required of a contract of lease of things?

A: Lease may be made orally, but if the lease of real property is for more than a year, it must be in writings under the statute of frauds.

Note: Where the written contract of lease called for the erection by the tenant, of a building of strong wooden materials, but what he actually did construct on the leased premises was semi-concrete edifice at a much higher cost, in accordance with a subsequent oral agreement with the lessor, oral evidence is admissible to prove the verbal modification of the original terms of the lease. *(Paterno v. Jao Yan, GR. No. L-12218, February 28, 1961)*

Q: What is the purpose in recording a lease?

A: A lease does not have to be recorded in the Registry of Property to be binding between the parties; registration is useful only for the purpose of notifying strangers to the transaction. *(Art 1648, NCC)*

Q: What is meant by proper authority?

A: Proper authority means a power of attorney to constitute the lease.

Q: When is a proper authority required?

A:

1. Husband – with respect to the paraphernal real estate of the wife;
2. Father or Guardian – with respect to the property of the minor or the ward;
3. Manager – with respect to the property under administration.

Q: Who is a manager?

A:

1. administrator of a conjugal property
2. administrator of a co-ownership
3. administrator of state patrimonial property

Q: Is the husband the administrator of the paraphernal real property?

A: No, unless such administrator has been transferred to him by virtue of a public document. ***(Art. 110, FC)***

Q: A husband was properly given his wife authority to administer the paraphernal real property. Does this necessarily mean that just because the husband is now the administrator, he can lease said property without any further authority?

A: It depends.

1. If the lease will be for one year or less, no other authority is required.
2. If the lease on the real property will be for more than a year, then a special power of attorney (aside from the public instrument transferring administration) is required. (*Art.1878, NCC*)
3. Furthermore, whether it be a) or b), if the lease is to be recorded, there must

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be a special power of attorney. (*Art 1647, NCC*).

Note: If it is the wife who is administering her paraphernal real estate, the husband has no authority whatever, to lease, in any way, or administer the property.

Q: If a father, who is administering the real estate of his minor son, wants to record the lease, should he ask for judicial permission?

A: Yes (*Art. 1647, NCC*). But even if no judicial authorization is asked, such defect cannot be invoked by a lessee who has dealt with him. (*Summers v. Mahinay, [CA] 40 O.G. [11th S] No. 18, p.40*). Only the son or his own heirs may question the validity of the transaction.

Q: How can leases of personal property be binding on third persons?

A: By executing a public instrument (*by analogy, Art. 1625, NCC*).

A. QUALIFIED PERSONS

Q: Who are persons disqualified to become lessees?

A: Persons disqualified to buy referred to in article 1490 and 1491, are also disqualified to become lessees of the things mentioned therein. *(Article 1646)*

Q: Are foreigners disqualified to lease lands in the Philippines?

A:

GR: Yes

XPN: lease of lands for residential purposes *(Smith, Bell and Co. vs. Register of Deeds, 96 Phil 53)*

B. REGISTRATION

Q: What is the effect of recording of contract of lease?

A: Even if not recorded with the Registry of Property, the lease is binding between the parties. However, if third persons have to be bound, the contract must be recorded.

Note: However, if a purchaser has actual knowledge of the existence of the lease, which knowledge is equivalent to registration, he is bound by the lease. *(Quimson vs. Suarez, 45 Phil. 901)*

Q: When is "proper authority" required for the recording of contract of lease?

A:

1. Spouse with respect to the separate or exclusive properties of the other, unless the administration of such properties has been transferred to said spouse done in a public instrument duly recorded. *(Art. 110, Family Code)*

   Note: Conjugal property cannot be leased without the joint consent of the spouses

2. Father or guardian with respect to the real property of a minor child or ward
3. Administrator or manager of a realty with respect to the property under his administration
   a. *(Art. 1647)*

Note: the proper authority is a special power of attorney duly executed if the lease is for more than one year (Art. 1878 (8))

Q: When is lease of real property a real right?

A: Generally, a lease of real property is a personal right. However, it is considered real under the following condit*ions:*

1. If it is for more than one year and to be enforceable, it must be in writing
2. If it is registered with the Registry of Property, regardless of its period. (Pineda Sales, p. 449, 2002 ed)

C. PROHIBITIONS

Q: What is the rule regarding sublease of rural or urban lands?

A: The lessee may sublet the property in absence of an express prohibition.

Note: the sublease may be of the whole or part only of the thing leased.

This right to sublease is without prejudice to the sublessor's responsibility in the performance of the contract towards the lessor. *(Art. 1650, NCC)*

IV. RIGHTS AND OBLIGATIONS OF LESSORS AND LESSEES

Q: Who are the persons disqualified to become lessees?

A:

GR: Husband and wife with respect to their separate properties.

XPN: Separation of property agreed upon or judicial separation of property.

Those disqualified due to fiduciary relationship.

Q: What are the obligations of the lessor?

A: ReD-CaP

1. To ***D****eliver* the things in such condition as to render it fit for the use intended (cannot be waived)
2. **GR:** To *make*, during the lease all the *necessary* ***Re****pairs* in order to keep it suitable for the use to which it has been devoted

   XPN: Stipulation to the contrary.

3. To maintain the lessee in the ***P****eaceful and adequate enjoyment of the lease* for the entire duration of the contract

4. ***Ca****nnot alter the form* of the thing leased

Q: What are the rules on changing the form of thing leased?

A:

1. Lessor can alter the thing leased provided there is no impairment of the use to which the things are devoted under the terms of the lease
2. Alteration can be made by lessee provided the value of property is not substantially impaired

Q: What are the rules if urgent repairs are necessary?

A:

1. Lessee is obligated to tolerate the work, although it may be annoying to him and although during the same time he may be deprived of a part of the premises, if repairs last for *not more than 40 days*

2. If repairs last for *40 days or more*, lessee can ask for reduction of the rent in proportion to the time – including the 1st 40 days – and the part of the property of which he is deprived

Note: In either case, rescission may be availed of if the main purpose of the lease is to provide a dwelling place and the property becomes uninhabitable.

Q: What are the effects if the lessor fails to make urgent repairs?

A: The lessee may:

1. order repairs at the lessor's cost;
2. sue for damages;
3. suspend the payment of the rent; or
4. ask for rescission, in the case of substantial damage to him.

Q: What are the kinds of trespass in lease?

A:

1. *Trespass in the fact* (perturbation de mere hecho) – physical enjoyment is reduced. Lessor will not be liable.
2. *Trespass in the law* (perturbation de derecho) – a 3rd person claims legal right to enjoy the premises. Lessor will be held liable.

Q: What are the obligations of the lessee?

A: TRUE-PRU

1. ***P****ay the price* of the lease according to the terms stipulated
2. **U**se the thing leased as a *diligent father of a family devoting it to the use stipulated*, and in the absence of stipulation, to that which may be inferred from nature of thing leased, according to the custom of the place
3. *Pay the* ***E****xpenses* of the deed of lease
4. *Notify* the lessor of **U**surpation or untoward acts
5. To *notify* the lessor of need for **R**epairs
6. To ***R****eturn the property* leased upon termination of the lease in the same condition as he receive it except when what has been lost or impaired by lapse of time, ordinary wear and tear or inevitable cause/ fortuitous event
7. **T**olerance of urgent repairs which cannot be deferred until the end of lease *(par. 1, Art. 1662, NCC)*

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Q: What is the effect of the destruction of the thing leased?

A:

1. *Total destruction by fortuitous event* – Lease is extinguished.
2. *Partial destruction*
    a. Proportional reduction of rent; or
    b. Rescission of the lease.

Q: When may lessee suspend payment of rent?

A: When the lessor fails to:

1. undertake urgent repairs; or
2. maintain the lessee in peaceful and adequate enjoyment of the property leased.

Note: For the intervening period, the lessee does not have to pay the rent.

Q: When does the suspension become effective?

A: The right begins:

1. *In the case of repairs* – from the time of the demand and it went unheeded
2. *In case of eviction* – from the time the final judgment for eviction becomes effective

Q: What are the alternative remedies of the aggrieved party in case of non-fulfillment of duties?

A:

1. Rescission and damages
2. Damages only, allowing the contract to remain in force (specific performance)

V. SPECIAL RULES FOR LEASE OF RURAL AND URBAN LANDS

RURAL LANDS

Q: What is the effect of sterility of land in case of rural lease?

A: There is no reduction. The fertility or sterility of the land has already been considered in the fixing of the rent.

Q: What is the effect of damage caused by a fortuitous event on the rural lease?

A:

1. Ordinary fortuitous event – no reduction. The lessee being the owner of crops must bear the loss. *Res perit domino*
2. Extraordinary fortuitous event –
    a. More than one-half of the fruits were lost, there is a reduction (XPN: specific stipulation to the contrary)
    b. Less than one-half, or if the loss is exactly one-half, there is no reduction

Note: The rent must be reduced proportionately.

Q: X leased his land to Y for the purpose of growing crops thereon. Due to an extraordinary fortuitous event, more than one-half of the crops were. In the lease contract, the rent was fixed at an aliquot (proportional) part of the crops. Is Y entitled to a reduction in rents?

A: No, because here the rent is already fixed at an aliquot part of the crops. Thus, every time the crops decrease in number, the rent is reduced automatically. If therefore, the tenant here refuses to give the stipulated percentage, he can be evicted. *(Hijos de I. dela Rama v. Benedicto, 1 Phil. 495)*

Q: What is the rule for reduction of rent?

A: The reduction on rent can be availed of only if the loss occurs *before* the crops are separated from their stalk, root, or trunk. If the loss is *afterwards,* there is no reduction of rent.

Q: What is the duration of rural lease with an unspecified duration?

A: The lease of a piece of rural land, when its duration has not been fixed, is understood to have been for all the time necessary for the gathering of the fruits which the whole estate leased may yield in one year, or which it may yield once, although two or more years have to elapse for the purpose**.** *(Art. 1682, NCC)*

Q: A rural lease was agreed upon to last for a certain definite period. But the tenant planted fruit trees which would require a long period of time to bear fruit, as well as introduce certain more or less valuable improvements. Has this act of the tenant changed the duration of the contract?

A: No, the duration of the lease has not been changed. There was a fixed period for the lease and therefore the nature of the fruit trees or

valuable improvements is immaterial. *(Iturralde v. Garduno, 9 Phil. 605)*

Q: If at the end of the lease, there are still pending crops, who will own them?

A: The lessee. However, a contrary stipulation will prevail.

Q: What is the rule for land tenancy on shares?

A: This refers to the contracts of *aparceria.* Land tenancy on shares are primarily governed by special laws (ex: Agricultural Tenancy Act, RA 1199), and suppletorily, by the stipulations of the parties, the provisions on partnership, and the customs of the place.

Q: Who is a tenant?

A: A tenant is a person, who, himself, and with the aid of available from within his immediate farm household, cultivates the land belonging to, or possessed by another, with the latter's consent for the purpose of production, sharing the produce with the landholder under the share tenancy system, or paying to the landlord a price certain or ascertainable in produce, or in money or both, under the leasehold tenancy system. *(Pangilinan v. Alvendia, GR no. 10690, June 28, 1957)*

Q: What is included in an immediate farm household?

A: This includes the members of the family of the tenant, and such other person/s, whether related to the tenant or not, who are dependent upon him for support, and who usually help him operate the farm enterprise.

Q: Can a tenant work for different landowners?

A: It is prohibited for a tenant, whose holding is *5 hectares or more*, to contract work at the same time on two or more separate holdings belonging to *different* landholders without the knowledge and consent of the landholder with whom he had first entered into the tenancy relationship. *(Sec. 24, RA 1199)*

Q: What are the grounds for ejectment of the tenant on shares?

A:

1. voluntary surrender of the land
2. *bona fide* intention of the landholders to cultivate the land himself personally or thru the employment of farm machineries
3. tenant violates or fails to comply with the terms and conditions of the contract or the RA 1199
4. failure to pay the agreed rental or deliver the landholder's share
5. tenant uses the land for different purpose
6. share-tenant fails to follow farm practices which will contribute towards the proper care and increased production
7. negligence permits serious injury to land which will impair its productive capacity
8. conviction by a competent court of a tenant or any member of his immediate family or farm household of a crime against the landholder or a member of his immediate family.

Q: Will the sale of the land extinguish the farm-tenancy relationship?

A: No. The purchaser or the transferee shall assume the rights and obligations of the former landholder in relation to the tenant.

Q: Does death extinguish the tenancy relationship?

A: It depends.

1. Death of tenant – *extinguishes* relationship but heirs and members of his immediate farm household may continue to work on the land until the close of the agricultural year.
2. Death of landholder – *does not extinguish* the relationship because his heirs shall assume his rights and obligation.

Q: Does the expiration of the period of the contract of tenancy fixed by the parties extinguish the relationship?

A: No. The landlord is required by law, if the tenant does not voluntarily abandon the land or turn it over to him, to ask the court for an order of dispossession of the tenant. *(Sec. 49, RA 1199, as amended by RA 2263)*

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URBAN LANDS

Q: What are the rules applicable to repairs which an urban lessor is liable?

A:

1. Special stipulation
2. If none, custom of the place.

Q: What are the rules when the duration of lease is not fixed?

A:

1. If there is a fixed period - the lease would be for the said period.
2. If there are no fixed period - apply the following:
    a. rent paid daily – lease is from day to day
    b. rent paid weekly – lease is from week to week
    c. rent paid monthly – lease from month to month
    d. rent paid yearly – lease from year to year

VI. HOUSEHOLD SERVICE

Q: What is the scope of household service?

A: It includes the work of family servants and driver but not that of laborers in a commercial or industrial enterprise.

Q: Is working to reduce indebtedness allowed?

A: Yes. What is prohibited is to work as a servant for free.

Q: When is medical attendance given free?

A: Medical attendance shall be given free only if the injury or illness arose out of and in the course of employment.

Q: What is the duration of the contract for household service?

A: 2 years. Any period agreed upon in excess of two years is void.

Note: Upon expiration, however, it is subject to a renewal for such periods as may be agreed upon by the parties. *(Pineda Sales, p. 551, 2002 ed, Article 142, Labor Code)*

Q: What is the effect if the contract for household service is more than 2 years?

A: The contract is void insofar as the excess is concerned.

Q: Is there a form of contract required for household service?

A: No formalities are required for the contract of household service, and even if the term of employment should exceed one year, the Statute of Frauds will not apply because in the contract, performance is supposed to commence right away.

Q: Can house helpers work more than ten hours a day?

A: Yes because the law says "shall not be required." Hence, if the helper agrees to work overtime, this is clearly permissible. *(Baloloy v. Uy, [CA] 62 O.G. 5661)*

Q: When can additional compensation be demanded?

A:

1. if the voluntary overtime work is agreed upon;
2. if the nature of the work so demands such overtime service.

Q: What are included in the computation of period for hours of work?

A: The hours of work include not only those of actual work but also the time during which the services of the helper are "available" to the employer, even if the services are *not* availed of.

Q: What is the rule for *yayas*?

A: A "yaya" or nursemaid for small children, by the nature of her work, may render more than 10 hours work, but she is evidently entitled to a higher rate of compensation.

Q: What is the rule on vacation for helpers?

A: The law says "four days" vacation each month, with pay. If the helper insists on this, the employer must grant the vacation, and he cannot insist on merely giving the monetary value.

VII. CONTRACT OF LABOR

Q: What is a contract of labor?

A: It is a consensual, nominate, principal, and commutative contract whereby one person, called the employer, compensates another, called the laborer, worker, or employee, for the latter's service. It is relationship impressed with public interest in keeping with our constitutional policy of social justice.

Q: What are the essential characteristics of a contract of labor?

A:

1. Employer(Er) freely enters into a contract with the employee(Ee);
2. Employer can select who his Ee will be
3. Employer can dismiss the Ee; the worker in turn can quit his job;
4. Employer must give remuneration; and
5. Employer can control and supervise the conduct of the Ee.

A. OBLIGATION IN CASE OF DEATH OR INJURY OF LABORERS

Q: What are the rules regarding Er's liability in case of death or injury?

A:

1. If the cause of the death or personal injury arose out of and in the course of employment, the Er is liable.
2. If the cause was due to the Ee's own notorious negligence, or voluntary act or drunkenness, the employer shall not be liable.
3. If the cause was partly due to the Ee's lack of sue care, the compensation shall be inequitably reduced.
4. If the cause was due to the negligence of a fellow Ee, the Er and the guilty Ee shall be liable solidarily.
5. If the cause was due to the intentional or malicious act of fellow Ee, the felloe Ee is liable; also the Er *unless* he exercised due diligence in selecting and supervising said Ee.

VIII. CONTRACT FOR PIECE OF WORK

Q: Distinguish contract for piece of work from lease of services.

CONTRACT FOR PIECE OF WORK	LEASE OF SERVICES
The object is the resultant work or object.	The object is services.
The risk is borne by the worker before delivery.	The risk is generally borne by the Er, not by the worker unless the latter is guilty of fault or negligence.

Q: What are the elements of the contract of work?

A:

1. Consent
2. Object – execution of piece of work
3. Cause – certain price or compensation

Q: Who is a contractor?

A: The worker is also called a contractor. He in turn may obtain the services of others, who will work under him.

Q: What is the test to determine if one is an Ee or an independent contractor?

A: The "right of control" test is used. If the person for whom services are to be performed controls only the *end* to be achieved, the worker is a contractor; if the former controls not only the end but also the *manner* and *means* to be used, the latter is an employee.

Q: What can the contractor furnish?

A: The contractor may furnish:

1. Both material and the labor,
2. Or only the labor.

Q: What are the duties of a contractor who furnishes both work and the material?

A: This is equivalent to sale; therefore, these are the duties:

1. To deliver
2. To transfer ownership
3. To warrant against eviction and hidden defects

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Q: What are the remedies of the Er in case of defects?

A:

1. Ask the contractor to remove the defect or to execute another work.
2. If the contractor fails or refuses, the Er can ask *another* at the contractor's expense. If a building is involved, expenses for correction and completion may be recovered.

Q: What is the rule on agreements waiving or limiting the contractor's liability?

A:

1. In the absence of fraud, the agreement would ordinarily be valid.
2. In the absence of prohibitory statute, the validity of a limitation is generally upheld, with a view of obtaining compensation commensurate to the risk assumed.

Q: A asked B to make a radio cabinet. B bound himself to furnish the material. Before the radio cabinet could be delivered, it was destroyed by a fortuitous event. A) Who suffers the loss? B) Is the contract extinguished?

A:

B suffers the loss of both the materials and the work, unless there was *mora accipiendi.* If there was mora accipiendi, it is evident that A suffers the loss.

No, and therefore B may be required to do the work all over again, unless there had been a prior stipulation to the contrary or unless a re-making is possible. *(Art. 1717, NCC)*

Note: The law merely refers to the burden of the loss, and not to the extinguishment of the contract.

Q: Who suffers the loss in case of a fortuitous event or an unavoidable accident?

A: As a general principle, in the absence of an express agreement to the contrary, the contractor must bear the loss from the destruction of work underway, even in case of an unavoidable accident.

Q: What is the effect when the Er accepts the work?

A:

1. The contractor is generally relieved of liability.
2. If the acceptance is made without objection, the Er may still sue for hidden defects.

Q: Where is the place of payment?

A:

1. Where stipulated
2. If no stipulation, then at *time* and *place* of delivery.

Q: What are the rules on liability for collapse of a building?

A:

1. The collapse of the building must be within 15 years from the completion of the structure.
2. The prescriptive period is 10 years following the collapse.
3. If the engineer or architect supervises the construction, he shall be solidarily liable with the contractor.
4. The liability does applies to collapse or ruin, not to minor defects.
5. Even if payment has been made, an action is still possible. *(Art. 1723, NCC)*

Q: Who is liable when a building collapses during an earthquake?

A: It depends.

1. If the proximate cause of the collapse of the building is an earthquake, no one can be held liable in view of the fortuitous event.
2. If the proximate cause is, however, defective designing or construction, or directly attributable to the use of inferior or unsafe material, it is clear that liability exists.

Q: Can the contractor withdraw or demand for a higher price when the work is already stipulated?

A:

GR: the contractor cannot withdraw or demand a higher price even if there be a higher cost of labor or materials.

XPNs:

1. if there was a written authorized change of plans and specifications;
2. if the additional price is also in writing, agreed upon by both parties.

LAND TITLES AND DEEDS

I. TORRENS SYSTEM

A. CONCEPT AND BACKGROUND

Q: What is Torrens System?

A: It is a system for registration of land under which, upon the landowner's application, the court may, after appropriate proceedings, direct the register of deeds for the issuance of a certificate of title.

Q: What are the purposes in adopting the Torrens System of land registration?

A: To:

1. avoid possible conflicts of title regarding real property; and
2. facilitate transactions relative thereto by giving the public the right to rely on the face of the Torrens certificate of title and to dispense with the need of inquiring further.

Q: What is the nature of the proceeding for land registration under the Torrens System?

A: The Torrens system is judicial in character and not merely administrative. Under the Torrens system, the proceeding is *in rem*, which means that it is binding upon the whole world.

Note: In a registration proceeding instituted for the registration of a private land, with or without opposition, the judgment of the court confirming the title of the applicant or oppositor, as the case may be, and ordering its registration in his name, constitutes, when final, res judicata against the whole world.

Q: What bodies implement land registration under the Torrens system?

A:

1. Courts
2. Department of Environment and Natural Resources (DENR)
3. Department of Justice (DOJ) through the Land Registration Authority (LRA) and its Register of Deeds
4. Department of Land Reform (DLR)
5. Department of Agriculture (DAR)

B. CERTIFICATE OF TITLE

Q: What is a Certificate of Title?

A: Certificate of title is the transcript of the decree of registration made by the Register of Deeds in the registry. It accumulates in one document a precise and correct statement of the exact status of the fee simple title which an owner possesses. *(Agcaoili Reviewer, p. 245, 2008 ed)*

Q: What are the two types of certificates of title?

A:

1. *Original Certificate of Title* (OCT) – the first title issued in the name of the registered owner by the Register of Deeds covering a parcel of land which had been registered under the Torrens system by virtue of a judicial or administrative proceeding.

   It consists of one original copy filed in the Register of Deeds, and the owner's duplicate certificate delivered to the owner.

2. *Transfer Certificate of Title* (TCT) – the title issued by the Register of Deeds in favor of a transferee to whom the ownership of a registered land has been transferred by any legal mode of conveyance (*e.g.* sale, donation).

   It also consists of an original and an owner's duplicate certificate.

Q: Differentiate title over land, land title, certificate of title, and deed.

A: *Title* is a juridical act or a deed which is not sufficient by itself to transfer ownership but provides only for a juridical justification for the effectuation of a mode to acquire or transfer ownership.

Land title is the evidence of the owner's right or extent of interest, by which he can maintain control, and as a rule, assert right to exclusive possession and enjoyment of property.

Certificate of title is the transcript of the decree of registration made by the Register of Deeds in the registry. It accumulates in one document a precise and correct statement of the exact status of the fee simple title which an owner possesses. *(Agcaoili Reviewer, p. 245, 2008 ed)*

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A *deed* is the instrument in writing, by which any real estate or interest therein is created, alienated, mortgaged or assigned, or by which title to any real estate may be affected in law or equity.

Q: Is title over land synonymous with ownership?

A: No. Title is a juridical act or a deed which is not sufficient by itself to transfer ownership but provides only for a juridical justification for the effectuation of a mode to acquire or transfer ownership. It provides the cause for the acquisition of ownership. (*i.e.* sale = title; delivery = mode of acquisition of ownership) *(Pineda, Property, p. 485, 1999 ed)*

Ownership, on the other hand, is an independent right of exclusive enjoyment and control of the thing for the purpose of deriving therefrom all advantages required by the reasonable needs of the owner and the promotion of the general welfare but subject to the restrictions imposed by law and the rights of others. *(Art. 427, NCC)*

ACQUISITION OF TITLE

Q: What are the modes of acquiring title over land?

A: I-AS-DO

1. By possession of land since time **I**mmemorial
2. By possession of **A**lienable and disposable public land

   Note: Under the Public Land Act *(CA No. 141),* citizens of the Philippines, who by themselves or through their predecessors-in-interest have been in open, continuous, exclusive and notorious possession and occupation of alienable and disposable agricultural land of the public domain under a bona fide claim of ownership since June 12, 1945, or earlier, (*except* when prevented by war or force majeure), shall be conclusively presumed to have performed all the conditions essential to a government grant and shall be entitled to a certificate of title.

3. By **S**ale, **D**onation, and **O**ther modes of acquiring ownership

Q: What are the modes of acquiring ownership over land?

A: OLD TIPS

1. **O**ccupation
2. **L**aw
3. **D**onation
4. **T**radition
5. **I**ntellectual creation
6. **P**rescription
7. **S**uccession

Q: Differentiate possession from occupation.

A:

OCCUPATION	POSSESSION
It applies only to property without owner.	It applies to properties whether with or without owner.
It confers ownership.	By itself does not confer ownership.
There can be no occupation without ownership.	There can be possession without ownership.

Q: How are land titles acquired?

A: PERA PAID

1. **P**ublic grant
2. **E**mancipation patent or grant
3. **R**eclamation
4. **A**dverse possession / acquisitive prescription
5. **P**rivate grant or voluntary transfer
6. **A**ccretion
7. **I**nvoluntary alienation
8. **D**escent or devise

TORRENS TITLE

Q: What is Torrens title?

A: It is a certificate of ownership issued under the Torrens system of registration by the government, through the Register of Deeds (RD) naming and declaring the owner in fee simple of the real property described therein, free from all liens & encumbrances, *except* as may be expressly noted there or otherwise reserved by law.

Note: It is conclusive against the whole world (including the government and to a holder in good faith), guaranteed to be indefeasible, unassailable & imprescriptible.

Q: Filomena allegedly bought a parcel of unregistered land from Hipolito. When she had

the property titled and declared for tax purposes, she sold it. The Mapili's question the transfer, saying that Filomena falsely stated in her Affidavit of Transfer of Real Property that Hipolito sold it to her in 1949, since by that time, he is already dead. Filomena maintains that she is the lawful owner of such by virtue of the issuance of the Torrens certificate and tax declarations in her name. Is Filomena the lawful owner of such property?

A: No. Torrens certificate pertaining to the disputed property does not create or vest title, but is merely an evidence of an indefeasible and incontrovertible title to the property in favor of the person whose name appears therein. Land registration under the Torrens system was never intended to be a means of acquiring ownership.

Neither does the existence of tax declarations create or vest title. It is not a conclusive evidence of ownership, but a proof that the holder has a claim of title over the property. *(Larena v. Mapili, et. al., G.R. No. 146341, Aug. 7, 2003)*

Q: What are the effects of the issuance of a Torrens title?

A: TRINC

1. The land is placed under the operation of **T**orrens System;
2. Land is **R**elieved from all claims except those noted thereon and provided by law;
3. The land becomes **I**ncontrovertible and indefeasible;
4. Title to the land becomes **N**on-prescriptible; and
5. The certificate of title is not subject to **C**ollateral attack.

Q: What is the probative value of a Torrens title?

A: Torrens title may be received in evidence in all courts of the Philippines and shall be conclusive as to all matters contained therein, principally as to the identity of the land owner except so far as provided in the Land Registration Act (LRA)

A Torrens certificate is an evidence of indefeasible title of property in favor of the person in whose name appears therein – such holder is entitled to the possession of the property until his title is nullified.

INDEFEASIBILITY AND INCONTROVERTIBILITY OF CERTIFICATES OF TITLE

Q: What is meant by indefeasibility and incontrovertibility of certificates of title?

A: The certificate, once issued, becomes a conclusive evidence of the title ownership of the land referred to therein. What appears on the face of the title is controlling on questions of ownership of the property in favor of the person whose name appears therein and such cannot be defeated by adverse, open, and notorious possession; neither can it be defeated by prescription. *(Agcaoili Reviewer, p. 246, 2008)*

Q: What are the rules as regards indefeasibility and incontrovertibility?

A:

1. The certificate of title serves as evidence of an indefeasible title to the property in favor of the person whose name appears therein.

2. After the expiration of the one (1) year period from the issuance of the decree of registration upon which it is based, it becomes incontrovertible.

3. Decree of registration and the certificate of title issued pursuant thereto may be attacked on the ground of actual fraud within one (1) year from the date of its entry and such an attack must be direct and not by a collateral proceeding. The validity of the certificate of title in this regard can be threshed out only in an action expressly filed for the purpose.

Q: There is no specific provision in the Public Land Law (CA No. 141, as amended) or the Land Registration Act (Act 496), now PD 1529, fixing the one (1) year period within which the *public land patent* is open to review on the ground of actual fraud as in Section 38 of the Land Registration Act, now Section 32 of PD 1529, and clothing a public land patent certificate of title with indefeasibility. What is the effect of such absence?

A: None. The rule on indefeasibility of certificates of title was applied by the Court in Public Land Patents because, according to the Court, such application is in consonance with the spirit and intent of homestead laws.

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The Court held that the pertinent pronouncements in cases clearly reveal that Sec. 38 of the Land Registration Act, now Sec. 32 of PD 1529 was applied by implication by this Court to the patent issued by the Director of Lands duly approved by the Secretary of Natural Resources, under the signature of the President of the Philippines in accordance with law.

The date of issuance of the patent, therefore, corresponds to the date of the issuance of the decree in ordinary registration cases because the decree finally awards the land applied for registration to the party entitled to it, and the patent issued by the Director of Lands equally and finally grants, awards, and conveys the land applied for to the applicant. (*Aquino, p. 148; Agcaoili Reviewer p. 409)*

Note: A certificate of title issued under an administrative proceeding pursuant to a homestead patent is as indefeasible as a certificate of title issued under a judicial registration proceeding, provided the land covered by said certificate is a disposable public land within the contemplation of the Public Land Law.

MIRROR DOCTRINE

Q: What is the mirror doctrine?

A: All persons dealing with a property covered by Torrens certificate of title are not required to go beyond what appears on the face of the title. Where there is nothing on the certificate of title to indicate any cloud or vice in the ownership of the property, or any encumbrance thereon, the purchaser is not required to explore further than what the Torrens title upon its face indicates in quest for any hidden defect or inchoate right that may defeat his right thereto.

Note: Stated differently, an innocent purchaser for value relying on the Torrens title issued is protected.

Q: When does the mirror doctrine apply?

A: When a title over a land is registered under the Torrens system *(Agcaoili Reviewer, p. 246, 1999 ed)*

Q: Bee bought a parcel of land with a *clean* TCT. However, when he found some persons occupying it, he fenced the property over the occupants' objection. May Bee invoke the principle that a person dealing with a registered land need not go beyond its certificate of title in this case?

A: No. Although it is a recognized principle that a person dealing on a registered land need not go beyond it certificate of title, it is also a firmly settled rule that where there are circumstances which would put a party on guard and prompt him to investigate or inspect the property being sold to him, such as the presence of occupants/tenants thereon, it is of course, expected from the purchaser of valued piece of land to inquire first into the status or nature of the possession of the occupants, *i.e.*, whether or not the occupants possess the land *en concepto de dueno*, in concept of an owner.

As is the common practice in the real estate industry, an ocular inspection of the premises involved is a safeguard that a cautious and prudent purchaser usually takes. *Should he find out that the land he intends to buy is occupied by anybody else other than the seller who*, as in this case, *is not in actual possession, it would then be incumbent upon the purchaser to verify the extent of the occupant's possessory rights*. The failure of the prospective buyer to take such precautionary steps would mean negligence on his part and would thereby preclude him from claiming or invoking the rights of a "purchaser in good faith." *(Mathay v. CA, G.R. No. 115788, Sept. 17, 1988)*

Q: Spouses X and Y mortgaged a piece of registered land to A, delivering as well the OCT to the latter, but they continued to possess and cultivate the land, giving 1/2 of each harvest to A in partial payment of their loan to the latter. A however, without the knowledge of X and Y, forged a deed of sale of the aforesaid land in favor of himself, got a TCT in his name, and then sold the land to B.

B bought the land relying on A's title, and thereafter got a TCT in his name. It was only then that the spouses X and Y learned that their land had been titled in B's name. May said spouses file an action for reconveyance of the land in question against B? Reason.

A: The action of X and Y against B for reconveyance of the land will not prosper because B has acquired a clean title to the property being an innocent purchaser for value.

A forged deed is an absolute nullity and conveys no title. The fact that the forged deed was registered and a certificate of title was issued in his name, did not operate to vest upon A ownership over the property of X and Y. The registration of the forged deed will not cure the infirmity. However, once the title to the land is

registered in the name of the forger and title to the land thereafter falls into the hands of an innocent purchaser for value, the latter acquires a clean title thereto. A buyer of a registered land is not required to explore beyond what the record in the registry indicates on its face in quest for any hidden defect or inchoate right which may subsequently defeat his right thereto. This is the "*mirror principle*" of the Torrens system which makes it possible for a forged deed to be the root of a good title.

Besides, it appears that spouses X and Y are guilty of contributory negligence when they delivered the OCT to the mortgagee without annotating the mortgage thereon. Between them and the innocent purchaser for value, they should bear the loss. (1999 Bar Question)

Q: Who is a purchaser in good faith and for value?

A: A purchaser in good faith and for value is one who buys property of another, without notice that some other person has a right to, or interest in such property and pays a full and fair price for the same at the time of such purchase, or before he has notice of the claim or interest of some other person in the property. *(San Roque Realty and Development Corp. v. Republic, G.R. No. 163130, Sept. 7, 2007)*

Note: An innocent purchaser for value includes a lessee, mortgagee, or other encumbrances for value.

Purchaser in good faith and for value is the same as an innocent purchaser for value.

Good faith consists in an honest intention to abstain from taking any unconscious advantage of another.

Q: If the land subject of the dispute was not brought under the operation of the Torrens system, will the concept of an innocent purchaser for value apply?

A: If the land in question was not brought under the operation of Torrens system because the original certificate of title is null and void ab initio, the concept of an innocent purchaser for value does not apply.

Note: Good faith and bad faith is immaterial in case of unregistered land. One who purchases an unregistered land does so at his peril *(Agcaoili Reviewer, p. 10, 1999 ed)*

Q: In 1979, Nestor applied for and was granted a Free Patent over a parcel of agricultural land with an area of 30 hectares, located in General Santos City. He presented the Free Patent to the Register of Deeds, and he was issued a corresponding Original Certificate of Title (OCT) No. 375. Subsequently, Nestor sold the land to Eddie. The deed of sale was submitted to the Register of Deeds and on the basis thereof, OCT No. 375 was cancelled and Transfer Certificate of Title (TCT) No. 4576 was issued in the name of Eddie. In 1986, the Director of Lands filed a complaint for annulment of OCT No. 375 and TCT No. 4576 on the ground that Nestor obtained the Free Patent through fraud. Eddie filed a motion to dismiss on the ground that he was an innocent purchaser for value and in good faith and as such, he has acquired a title to the property which is valid, unassailable and indefeasible. Decide the motion.

A: Nestor's motion to dismiss the complaint for annulment of OCT No. 375 and TCT No. 4576 should be denied for the following reasons:

1. Eddie cannot claim protection as an innocent purchaser for value nor can he interpose the defense of indefeasibility of his title, because his TCT is rooted on a void title. Under Sec. 91, CA No. 141, as amended, otherwise known as the Public Land Act, statements of material facts in the applications for public land must be under oath. Sec. 91 of the same act provides that such statements shall be considered as essential conditions and parts of the concession, title, or permit issued, any false statement therein, or omission of facts shall ipso facto produce the cancellation of the concession. The patent issued to Nestor in this case is void *ab initio* not only because it was obtained by fraud but also because it covers 30 hectares which is far beyond the maximum of 24 hectares provided by the free patent law.

2. The government can seek annulment of the original and transfer certificates of title and the reversion of the land to the State. Eddie's defense is untenable. The protection afforded by the Torrens System to an innocent purchaser for value can be availed of only if the land has been titled thru judicial proceedings where the issue of fraud becomes academic after the lapse of one (1) year from the issuance of the decree of registration. In public land grants, the

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action of the government to annul a title fraudulently obtained does not prescribe such action and will not be barred by the transfer of the title to an innocent purchaser for value. **(2000 Bar Question)**

Q: Is the right of the public to rely on the face of a certificate of title absolute?

A: No. This is unavailing when the party concerned has actual knowledge of facts and circumstances that should imply a reasonably cautious man to make such further inquiry.

Q: What are the exceptions to the application of the mirror doctrine?

A: BOB LIKA

1. Where the purchaser or mortgagee is a Bank/financing institution;
2. Where the Owner still holds a valid and existing certificate of title covering the same property because the law protects the lawful holder of a registered title over the transfer of a vendor bereft of any transmissible right;
3. Purchaser in Bad faith;
4. Purchases land with a certificate of title containing a notice of Lis pendens;
5. Sufficiently strong indications to impel closer Inquiry into the location, boundaries and condition of the lot;
6. Purchaser had full Knowledge of flaws and defects in the title; or
7. Where a person buys land not from the registered owner but from whose rights to the land has been merely Annotated on the certificate of title.

Q: Bruce is the registered owner, of a parcel of land with a building thereon and is in peaceful possession thereof. He pays the real estate taxes and collects the rentals therefrom. Later, Catalino, the only brother of Bruce, filed a petition where he, misrepresenting to be the attorney-in-fact of Bruce and falsely alleging that the certificate of title was lost, succeeded in obtaining a second owner's duplicate copy of the title and then had the same transferred in his name through a simulated deed of sale in his favor. Catalino then mortgaged the property to Desiderio who had the mortgage annotated on the title. Upon learning of the fraudulent transaction, Bruce filed a complaint against Catalino and Desiderio to have the title of Catalino and the mortgage in favor of Desiderio declared null and void. Will the complaint prosper, or will the title of Catalino and the mortgage to Desiderio be sustained?

A: The complaint for the annulment of Catalino's title will prosper. In the first place, the second owner's copy of the title secured by him from the Land Registration Court is void ab initio, the owner's copy thereof having never been lost, let alone the fact that said second owner's copy of the title was fraudulently procured and improvidently issued by the court. In the second place, the Transfer Certificate of Title procured by Catalino is equally null and void, it having been issued on the basis of a simulated or forged Deed of Sale. A forged deed is an absolute nullity and conveys no title.

The mortgage in favor of Desiderio is likewise null and void because the mortgagor is not the owner of the mortgaged property. While it may be true that under the *"mirror rinciple"* of the Torrens system of land registration, a buyer or mortgagee has the right to rely on what appears on the certificate of title, and in the absence of anything to excite suspicion, is under no obligation to look beyond the certificate and investigate the mortgagor's title, this rule does not find application in the case at hand because here, Catalino's title suffers from two fatal infirmities, namely:

1. The fact that it emanated from a forged deed of a simulated sale; and
2. The fact that it was derived from a fraudulently procured or improvidently issued second owner's copy, the real owner's copy being still intact and in the possession of the true owner, Bruce.

The mortgage to Desiderio should be cancelled without prejudice to his right to go after Catalino and/or the government for compensation from the assurance fund. **(1991 Bar Question)**

Q: Duran owned two parcels of land which were made subject of a deed of sale in favor of Fe, her mother. After obtaining title in her name, Fe mortgaged the property to Erlinda. With Fe's failure to redeem, Erlinda acquired the property at public auction. Duran, claiming that the deed of sale is a forgery, sought to recover the property. Erlinda invokes the defense of being a purchaser in good faith. Is Erlinda a purchaser in good faith?

A: Yes. Erlinda, in good faith, relied on the certificate of title in the name of Fe. *A fraudulent or forged document of sale may become the root of a valid title if the certificate of title has already*

been transferred from the name of the true owner to the name of the forger or the name indicated by the forger. (Duran v. IAC, G.R. No. L-64159, Sept. 10, 1985)

Q: When may a forged document become the root of a valid title?

A: When the seller thru insidious means obtains the owner's duplicate certificate of title, converts it in his name, and subsequently sells or otherwise encumbers it to an innocent purchaser for value.

Q: X, who did not know how to read and write was, made to sign by her adopted son a paper which turned out to be a deed of sale of her house and lot. She now questions the sale of the properties in favor of the vendee. Who has a better right?

A: The vendee has a better right. This is so because, although generally a forged fraudulent deed is nullity and conveys no title, there are *instances when such a fraudulent document may become the root of a valid title*. One such instance is where the certificate of title was already transferred from the name of the owner to the forger, and while it remained that way, the land was subsequently sold to an innocent purchaser. For then, the vendee had the right to rely upon what appeared in the certificate. *(Fule v. Legare, G.R. No. L-17951, Feb. 28, 1963)*

Q: The Solivels were the registered owners of parcels of land. Juan, claiming to be their attorney-in-fact passed the title to the real property to an innocent purchaser using a forged deed of sale. Was the buyer an innocent purchaser for value protected by law?

A: No. The innocent purchaser for value protected by law is one who purchases a titled land by virtue of a deed executed by the registered owner himself, not on a forged deed. In order that the holder of a certificate for value issued by virtue of the registration of a voluntary instrument may be considered a holder in good faith for value, the instrument registered should not be forged. *(Solivel v. Francisco, G.R. No. 51450, Feb. 10, 1989)*

Q: Cipriano, one of Pablo's heirs, executed an extrajudicial settlement of a sole heir and confirmation sales, declaring himself as the only heir and confirmed the sales made in favor of the spouses Rodolfo. Consequently, a certificate of title was issued in the name of the spouses, who then sold the property to Guaranteed Homes. Pablo's other descendants seek reconveyance of the property sold to the spouses alleging that the extrajudicial settlement was forged. Who is the rightful owner of the property?

A: Guaranteed Homes is the rightful owner, even assuming that the extrajudicial settlement was a forgery. Generally a forged or fraudulent deed is a nullity and conveys no title. There are, however, instances when such a fraudulent document may become the root of a valid title. One such instance is where the certificate of title was already transferred from the name of the true owner to the forger, and while it remained that way, the land was subsequently sold to an innocent purchaser. For then, the vendee had the right to rely upon what appeared in the certificate.

Also, the extrajudicial settlement was recorded in the Register of Deeds. Registration in the public registry is notice to the whole world. *(Guaranteed Homes, Inc. v. Heirs of Valdez, Heirs of Tugade, Heirs of Gatmin, Hilaria Cobero and Alfredo and Siony Tepol, G.R. No. 171531, Jan. 30, 2009)*

II. REGALIAN DOCTRINE

A. CONCEPT

Q: What is Regalian doctrine *(jura regalia)*?

A: A time-honored constitutional precept that all lands of the public domain belong to the State, and that the State is the source of any asserted right to ownership in land, and charged with the conservation of such patrimony.

B. EFFECTS

Q: Discuss the application of the Regalian doctrine.

A: All lands not otherwise appearing to be clearly within private ownership are presumed to belong to the State. Incontrovertible evidence must be shown that the land is alienable or disposable in order to overcome such presumption.

Note: It does not negate native title to lands held in private ownership since time immemorial. *(Cruz v. Secretary of Environment and Natural Resources, G.R. No. 135385, Dec. 6, 2000)*

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C. CONCEPT OF NATIVE TITLE, TIME IMMEMORIAL POSSESSION.

Q: What is a native title?

A: it refers to a pre- conquest rights to lands and domains which, as far back as memory reaches, have been held under a claim of private ownership by Indigenous Cultural Communities of Indigenous Peoples, have never been public lands and are thus indisputably presumed to have been held that way before Spanish conquest. (*Agcaoili, p. 124, 2008 ed*)

Q: What is time immemorial possession?

A: It refers to a period of time as far back as memory can go, certain Indigenous Cultural Communities of Indigenous Peoples are known to have occupied, possessed in the concept of owner, and utilized a defined territory devolved to them, by operation of customary law or inherited from their ancestors, in accordance with their customs and tradition. (*Agcaoili, p. 124, 2008 ed*)

III. CITIZENSHIP REQUIREMENT

Q: Can an alien acquire a private land in the Philippines?

A:

GR: An alien cannot acquire private lands.

XPN: Acquisition by aliens is allowed when:
It is thru hereditary succession.

Note: Succession is limited only to intestate succession

The alien is a former natural-born citizen of the Philippines, provided he only acquires:
1,000 square meters – urban land; or
1 hectare – rural land

Note: Said land should be for his residence.

Q: Spouses Pinoy and Pinay, both natural-born Filipino citizens, purchased property in the Philippines. However, they sought its registration when they were already naturalized as Canadian citizens. Should the registration de denied on the ground that they cannot do so, they being foreign nationals?

A: No. Foreign nationals can apply for registration of title over a parcel of land which they acquired by purchase while still citizens of the Philippines, from a vendor who has complied with the requirements for registration under the Public Land Act. *(Republic v. CA and Lapina, G.R. No. 108998, Aug. 24, 1994)*

Q: Joe, an alien, invalidly acquired a parcel of land in the Philippines. He subsequently transferred it to Jose, a Filipino citizen. What is the status of the transfer?

A: If a land is invalidly transferred to an alien who subsequently becomes a Filipino citizen or transfers it to a Filipino, the flaw in the original transaction is considered cured and the title of the transferee is rendered valid. Since the ban on aliens is intended to preserve the nation's land for future generations of Filipinos, that aim is achieved by making lawful the acquisition of real estate by aliens who became Filipino citizens by naturalization or those transfers made by aliens to Filipino citizens. As the property in dispute is already in the hands of a qualified person, a Filipino citizen, there would be no more public policy to be protected. The objective of the constitutional provision to keep our lands in Filipino hands has been achieved. *(Borromeo v. Descallar, G.R. No. 159310, Feb. 24, 2009)*

Q: If Joe had not transferred it to Jose but he, himself, was later naturalized as a Filipino citizen, will his acquisition thereof remain invalid?

A: No. If a land is invalidly transferred to an alien who subsequently becomes a Filipino citizen or transfers it to a Filipino, the flaw in the original transaction is considered cured and the title of the transferee is rendered valid. *(Borromeo v. Descallar, G.R. No. 159310, Feb. 24, 2009)*

Q: Who may not file an application for registration?

A: PAMP

1. A Public land sales applicant insofar as the land covered by his sales application is concerned

   Reason: He acknowledged that he is not the owner of the land and that the same is a public land.

2. An Antichretic creditor cannot acquire by prescription the land surrendered to him by the debtor.

Reason: His possession is not in the concept of an owner.

3. A Mortgagee or his successor in interest to the mortgage, notwithstanding the lapse of the period for the mortgagor to pay the loan secured to redeem it

   Reason: Such act would amount to a *pactum commissorium*, which is against good morals and public policy.

4. A person or entity whose claim of ownership to land had been Previously denied in a *reinvindicatory* action.

Q: May a corporation own lands?

A: It depends.

Corporation sole can acquire by purchase a parcel of private agricultural land without violating the constitutional prohibition since it has no nationality.

Corporation

Private Lands

1. At least 60% Filipino *(Sec. 7, Art. XII, 1987 Constitution)*
2. Restricted as to extent reasonably necessary to enable it to carry out purpose for which it was created
3. If engaged in agriculture, it is restricted to 1,024 hectares.

Patrimonial property of the State *(Sec. 3, Art. XII, 1987 Constitution)*

1. Lease (cannot own land of the public domain) for 25 years renewable for another 25 years
2. Limited to 1,000 hectares
3. Applies to both Filipinos and foreign corporations.

Q: May a corporation apply for registration of a parcel of land?

A: Yes, through lease not exceeding 1,000 hectares. Such lease shall not exceed twenty five (25) years and renewable for not more than twenty five (25) years. *(Sec. 3, Art. XII, 1987 Constitution)*

Note: Determinative of this issue is the character of the parcels of land – whether they were still public or already private – when the registration proceedings were commenced.

If they are already private lands, the constitutional prohibition against acquisitions by a private corporation would not apply.

IV. ORIGINAL REGISTRATION

Q: What laws govern land registration?

A:

1. Property Registration Decree *(PD 1529, as amended)*
   Note: Amended and superseded C.A. No. 496.
2. Cadastral Act *(Act 2259, as amended)*
3. Public Land Act *(CA No. 141,as amended)*
4. Emancipation Decree *(PD 27, as amended)*
5. Comprehensive Agrarian Reform Law of 1988 *(R.A. 6657)*
6. Indigenous Peoples Rights Act (*R.A. 8371*)

Q: What are the purposes of land registration?

A: To: **QUIP-CC**

1. **Q**uiet title to the land and to stop forever any question as to the legality of said title;
2. relieve land of **U**nknown claims;
3. guarantee the **I**ntegrity of land titles and to protect their indefeasibility once the claim of ownership is established and recognized;
4. give every registered owner complete **P**eace of mind;
5. issue a **C**ertificate of title to the owner which shall be the best evidence of his ownership of the land; and
6. avoid **C**onflicts of title in real estate and to facilitate transactions.

Q: What is original registration?

A: It is a proceeding brought before the MTC where there is no controversy or opposition, or contested lots where the value of which does not exceed P100,000.00 *(Sec. 4, R.A. 7691)* or in the RTC (as a land registration court) when the value exceeds P100,000 to determine title or ownership of land on the basis of an application for registration or answer/opposition by a claimant in a cadastral registration.

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Q: What are the kinds of original registration? Distinguish.

A:

JUDICIAL/ VOLUNTARY/ ORDINARY	ADMINISTRATIVE/ INVOLUNTARY/ CADASTRAL
Filing with the proper court an application by the private individual himself under PD 1529 (Property Registration Decree) under Sec. 48 of CA 141 (Public Land Act)	Compulsory registration initiated by the government, to adjudicate ownership of land and involuntary on the part of the claimants, but they are compelled to substantiate their claim or interest through an answer.

A. WHO MAY APPLY

1. UNDER PD 1529

Q: When is ordinary registration proper?

A: When property is acquired by:

1. *open, continuous, exclusive, and notorious* possession and occupation of alienable and disposable lands of public domain under a bona fide claim of ownership since *June 12,1945 or earlier* (**OCENCO**);
2. prescription;
3. accession or accretion; or
4. any other manner provided by law.

Q: Who may apply for registration in ordinary registration proceedings?

A:

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

2. Those who have acquired ownership of private lands by prescription under provisions of existing laws;

3. Those who have acquired ownership of private lands or abandoned river beds by right of accession or accretion; or

4. Those who have acquired ownership of land by any other manner provided by law.

5. Where the land is owned in common, all the co-owners shall file the application jointly. *(Sec. 14, PD 1529)*

Q: May private corporations hold alienable lands of public domain?

A: No. The word "persons" refers to natural persons who are citizens of the Philippines. Juridical or artificial persons are excluded. Sec. 3, Art. XII of the 1987 Constitution prohibits private corporations or associations from holding alienable lands of the public domain except by lease.

Q: Noynoy, Erap, Manny and Gibo are co-owners of a parcel of land. May Manny seek registration in his name of the land in its entirety?

A: Since a co-owner cannot be considered a true owner of a specific portion until division or partition is effected, he cannot file an application for registration of the whole area without joining the co-owners as applicants. *(Agcaoili reviewer, p. 19, 2008 ed)*

Q: Who may apply for registration of a land subject to a:

1. Pacto de retro sale?

GR: Vendor a retro may apply for registration.

XPN: Vendee a retro, should the period for redemption expire during pendency of registration proceedings and ownership to property is consolidated in vendee a retro.

Note: Pacto de retro sale refers to a sale with right to repurchase.

2. Trust?

GR: Trustee may apply for registration.

XPN: Unless prohibited by the instrument creating the trust.

Note: Trusteeship or trust is a fiduciary relationship with respect to property which involves the existence of equitable duties imposed upon the holder of the title to the property to deal with it for the benefit of another

3. Reserva troncal?

Reservor has the right to apply for registration but the reservable character of the property will be annotated in the title.

Note: In reserva troncal the ascendant who inherits from his descendant any property which the latter may have acquired by gratuitous title from another ascendant, or a brother or sister, is obliged to reserve such property as he may have acquired by operation of law for the benefit of relatives who are within the third degree and who belong to the line from which said property came.

2. UNDER CA 141

Q: Who may apply for registration under the Public Land Act or CA No. 141?

A: Those who by themselves or through their predecessors-in-interest have been in open, continuous, exclusive and notorious possession and occupation of alienable and disposable agricultural lands of the public domain, under a *bona fide* claim of acquisition or ownership, *since June 12, 1945,* except when prevented by wars or *force majeure*.

Note: The following conditions must concur in order that the benefits of the Public Land Act on the confirmation of imperfect or incomplete title may be availed of:

1. the applicant must be a Filipino citizen;
2. he must have, by himself or through his predecessors-in-interest, possessed and occupied an alienable and disposable agricultural portion of the public domain;
3. such possession and occupation must have been open, continuous, exclusive, notorious and in the concept of owner, since June, 12, 1945; and
4. the application must be filed with the proper court.

Q: When is a person deemed to possess an imperfect title over property?

A: When the applicant for confirmation of imperfect title has shown possession and occupation that is: **(OCENI)**

1. open,
2. continuous,
3. exclusive and
4. notorious
5. in the concept of an owner

Q: What is the effect of possession of an imperfect title?

A: When the conditions set by law are complied with, the possessor of the land, by operation of law, acquires a right to government grant, without the necessity of a certificate of the title being issued.

Q: In 1913, Gov. Gen. Forbes reserved for provincial park purposes a parcel of land which, sometime thereafter, the court ordered registered in Palomo's name. In 1954, then Pres. Magsaysay converted the land into the Tiwi Hot Spring National Park, under the management of the Bureau of Forest Development. The area was never released as alienable or disposable. The Palomos, however, continued to possess the said property, had introduced improvements therein as well as paid real estate taxes. The Republic now seeks the cancellation of the titles over the subject land. Should the cancellation be granted?

A: Yes. The adverse possession which may be the basis of a grant of title in confirmation of imperfect title cases applies only to alienable lands of the public domain. There is no question that the lands in the case at bar were not alienable lands of the public domain. The records show that such were never declared as alienable and disposable and subject to private alienation prior to 1913 up to the present. *(Sps. Palomo, et. al., v. CA, et. al., G.R. No. 95608, Jan. 21, 1997)*

Q: Bracewell asserts that he has a right of title to a parcel of land having been, by himself and through his predecessors-in-interest, in xxx occupation xxx under a bona fide claim of ownership since 1908. The land has been classified as alienable or disposable only on May 27, 1972. May his application for confirmation of imperfect title be granted?

A: No. The land was only classified as alienable or disposable on May 27, 1972. Prior to said date,

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when the subject parcels of land were classified as inalienable or not disposable, the same could not be the subject of confirmation of imperfect title. *There can be no imperfect title to be confirmed over lands not yet classified as disposable or alienable*. In the absence of such classification, the land remains unclassified public land until released and opened to disposition. Indeed, it has been held that the rules on the confirmation of imperfect title do not apply unless and until the land classified as forest land is released in an official proclamation to that effect so that it may form part of the disposable agricultural lands of the public domain. *(Bracewell v. CA, G.R. No. 107427, Jan. 25, 2000)*

Q: In an application for judicial confirmation of imperfect title filed by Naguit, the OSG argues that the property xxx must first be alienable. Since the subject land was declared alienable only on 1980, Naguit could not have maintained a *bona fide* claim of ownership since June 12, 1945, as required by Section 14 of the Property Registration Decree, since prior to 1980, the land was not alienable or disposable. Is it necessary under Section 14(1) of the Property Registration Decree *(now Sec. 48 (b) of the Public Land Act)* that the subject land be first classified as alienable and disposable before the applicant's possession under a *bona fide* claim of ownership could start?

A: No. Section 14(1) merely requires the property sought to be registered as already alienable and disposable at the time the application for registration of title is filed. If the State, at the time the application is made, has not yet deemed it proper to release the property for alienation or disposition, the presumption is that the government is still reserving the right to utilize the property; hence, the need to preserve its ownership in the State irrespective of the length of adverse possession even if in good faith. However, if the property has already been classified as alienable and disposable, as it is in this case, then there is already an intention on the part of the State to abdicate its exclusive prerogative over the property. *(Republic v. CA and Naguit, G.R. No. 144057, Jan. 17, 2005)*

Note: This case is distinguishable from *Bracewell v. CA*, where the claimant had been in possession of the land since 1908 and had filed his application in 1963, or nine (9) years before the property was declared alienable and disposable in 1972. Hence, registration was denied. The Bracewell ruling will not apply in this case because here, the application was made years after the property had been certified as alienable and disposable.

A different rule obtains for forest lands, such as those which form part of a reservation for provincial park purposes the possession of which cannot ripen into ownership. It is elementary in the law governing natural resources that forest land cannot be owned by private persons. As held in *Palomo v. CA*, forest land is not registrable and possession thereof, no matter how lengthy, cannot convert it into private property, unless such lands are reclassified and considered disposable and alienable. In the case at bar, the property in question was undisputedly classified as disposable and alienable; hence, the ruling in *Palomo* is inapplicable.

Q: Who may apply for judicial confirmation?

A:

1. Filipino citizens who by themselves or through their predecessors-in-interest have been in open, continuous, exclusive and notorious possession and occupation of alienable and disposable lands of public domain under a bona fide claim of acquisition since *June 12, 1945* or prior thereto or since time immemorial;

2. Filipino citizens who by themselves or their predecessors-in-interest have been, prior to the effectivity of PD 1073 on *January 25, 1977*, in open, continuous, exclusive and notorious possession and occupation of agricultural lands of the public domain under a bona fide claim of acquisition or ownership for at least 30 years, or at least since *January 24, 1947*;

3. Private domestic corporations or associations which had acquired lands from Filipino citizens who had possessed the same in the manner and for the length of time indicated in paragraphs 1 & 2 above; or

4. Natural-born citizens of the Philippines who have lost their citizenship and who has the legal capacity to enter into a contract under Philippine laws may be a transferee of private land up to a maximum are of 5,000 sq.m., in case of urban land, or 3 hectares in case of rural land to be used by him for business or other purposes.

Q: What must an applicant for judicial confirmation prove?

A:

1. That the land is alienable and disposable land of public domain; and

2. That they have been in open, continuous, exclusive, and notorious possession and occupation of the land for the length of time and in the manner and concept provided by law.

Note: Extended period for filing of application – Sec. 1, R.A. 9176 provides in part that, "The time to be fixed in the entire archipelago for the filing of applications shall not extend beyond December 31, 2020. Provided that the area applied for does not exceed 12 hectares."

Q: Doldol occupied a portion of land for 32 years, since 1959, which was reserved by Pres. Aquino as a school site. In view of his refusal to vacate, the school filed a complaint for accion possessoria. Who has a better right over the land in dispute?

A: The school has a better right. Doldol has no imperfect title over the land because he failed to meet the requirements provided for under Sec. 48(b) of CA No. 141, as amended by PD 1073, *viz*:

> Those who by themselves or through their predecessors-in-interest have been in open, continuous, exclusive and notorious possession and occupation of agricultural lands of the public domain, under a *bona fide* claim of acquisition or ownership, *since June 12, 1945, or earlier, immediately preceding the filing of the application for confirmation of title*, except when prevented by wars or *force majeure*.

While the land is classified as an alienable and disposable tract of public land, thus meeting the first requirement, Doldol could not have acquired an imperfect title to the disputed lot since his occupation started only in 1959, much later than June 12, 1945. Not having complied with the conditions set by law, Doldol cannot be said to have acquired a right to the land in question as to segregate the same from the public domain. Doldol cannot, therefore, assert a right superior to the school. *(Republic v. Doldol, G.R. No. 132963, Sept. 10, 1998)*

3. UNDER RA 8371

Q: What law governs the ownership and disposition of ancestral lands and ancestral domains?

A: RA 8371 of the Indigenous Peoples Rights Act of 1997 (IPRA) which was enacted October 29, 1997. The IPRA is a law dealing with a specific group of peoples, ie., the Indigenous cultural communities or the indigenous peoples. The law allows indigenous peoples to obtain recognition of their right of ownership over ancestral lands and ancestral domains by virtue of native title.

B. REGISTRATION PROCESS AND REQUIREMENTS

Q: What are the modes of registering land titles?

A: There are two modes:

1. Original registration proceedings under the Property Registration Decree (PD 1529), and
2. Confirmation of imperfect or incomplete title under Section 48(b) of the Public Land Act, as amended.

Q: What are the steps or requisites in ordinary registration proceedings and judicial confirmation of imperfect title?

A: SA-ST-PSA-HPIEST

1. **S**urvey of land by Bureau of Lands or any duly licensed private surveyor
2. Filing of **A**pplication for registration by applicant
3. **S**etting of date for initial hearing by the court
4. **T**ransmittal of application and date of initial hearing together w/ all documents or other pieces of evidence attached thereto by clerk of court to National Land Titles and Deeds Registration Administration (NALTDRA)
5. **P**ublication of notice of filing of application and date and place of hearing
6. **S**ervice of notice by sheriff upon contiguous owners, occupants and those known to have interest in the property
7. Filing of **A**nswer or opposition to the application by any person whether named in the notice or not

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8. **H**earing of case by court
9. **P**romulgation of judgment by court
10. **I**ssuance of a decree by court declaring the decision final, and instructing the NALDTRA to issue a decree of confirmation and registration
11. **E**ntry of decree of registration in NALDTRA
12. **S**ending of copy of the decree of registration to corresponding RD
13. **T**ranscription of decree of registration in the registration book and issuance of owner's duplicate original certificate of title (OCT) of applicant by RD, upon payment of prescribed fees

Note: After judgment has become final and executory, the issuance of decree and OCT is ministerial on the part of LRA and RD. *(Aquino, p. 14-15;* Agcaoili, *Registration Decree and Related Laws, p. 182-183)*

Q: Are the Rules of Court applicable in land registration proceedings?

A: The Rules of Court could be applied in land registration proceedings in a *suppletory* character or whenever practicable or convenient.

Note: Motion to intervene in a land registration case is not allowed.

1. APPLICATION

FORM AND CONTENTS

Q: What is the form of the application for registration or judicial confirmation?

A:

In writing;

1. Signed by the applicant or person duly authorized in his behalf;

2. Sworn to before an officer authorized to administer an oath for the province or city where the application was actually signed; and

3. If there is more than 1 applicant, they shall be signed and sworn to by and in behalf of each.

Q: What are the contents of the application?

A: D CAME FAR N

1. Description of the land applied for together with the buildings and improvements; the plan approved by Director of Lands and the technical descriptions must be attached

2. Citizenship and civil status of the applicant
   a. If married, name of spouse
   b. If the marriage has been legally dissolved, when and how the marriage relation was terminated

3. Assessed value of the land and the buildings and other improvements based on the last assessment for taxation purposes

4. Manner of acquisition of land

5. Mortgage or Encumbrance affecting the land or names of other persons who may have an interest therein, legal or equitable

6. The court may require Facts to be stated in the application in addition to those prescribed by the Decree not inconsistent therewith and may require the filing of additional papers

7. Full names and addresses of All occupants of the land and those of the adjoining owners, if known, and if not known, the applicant shall state the extent of the search made to find them

8. If the application describes the land as bounded by a public or private way or Road, it shall state whether or not the applicant claims any portion of the land within the limits of the way or road, and whether the applicant desires to have the line of way or road determined

9. If the applicant is a Non-resident of the Philippines, he shall file an instrument appointing an agent residing in the Philippines and shall agree that service of any legal process shall be of the same legal effect as if made upon the applicant within the Philippines *(Sec.16, PD 1529)*

Q: What documents must accompany the application?

A: All muniments of titles and copies thereof with survey plan approved by Bureau of Lands must accompany the application.

Q: What are muniments of title?

A: They are instruments or written evidence which the applicant holds/possesses to enable him to substantiate and prove title to his estate.

Q: If what is sought to be registered are two or more parcels of land, must the applicant file separate applications for each?

A: Generally, yes. However, an application may include two or more parcels of land as long as they are situated within the same province or city.

WHERE FILED

Q: Where shall the application be filed?

A: If the application covers asingle parcel of land situated within:

1. *only one city or province:*
   RTC or MTC, as the case may be, of the province or city where the land is situated.

2. *two or more provinces or cities:*
   a. *When boundaries are not defined* – in the RTC or MTC of the place where it is declared for taxation purposes.
   b. *When boundaries are defined* – separate plan for each portion must be made by a surveyor and a separate application for each lot must be filed with the appropriate RTC or MTC.

Note: MeTC, MCTC, and MTC has jurisdiction to decide cadastral and land registration cases, *provided:*

1. There is no controversy or opposition (uncontested lots); or
2. Value of contested lots does not exceed P100,000 (Sec. 4, R.A. 7691)

In other cases, the RTC has jurisdiction.

Jurisdiction of the MTCs was delegated through the *Judiciary Reorganization Act of 1980* (R.A. 7691).

In cases of delegated jurisdiction to the MTC, appeal is directed to the CA. *(Sec. 34, BP 129, as amended by Sec. 4, R.A. 7691)*

Q: Does the RTC acting as a land registration court have general or limited jurisdiction?

A: Sec. 2 of P.D. No. 1529 has eliminated the distinction between the general and the limited jurisdiction of the registration court. All conflicting claims of ownership and interest in the land, and related issues submitted to the court with or without the unanimity of the parties, may now be heard and resolved by the court. The court is now authorized to hear and decide not only non-controversial cases but even contentious issues which used to be beyond its competence. *(Agcaoili Reviewer, p. 157-158)*

AMENDMENT OF THE APPLICATION

Q: When may an amendment of the application be had?

A: Amendments to the application including joinder, substitution, or discontinuance as to the parties may be allowed by the court at any stage of the proceedings upon just and reasonable terms. *(Sec. 19, PD 1529)*

Q: Who may order that an amendment be done?

A: The court may at anytime, order an application to be amended by striking out one or more parcels of land or by severance of the application. *(Sec.18, PD 1529)*

Q: What are the requirements in amending the application?

A:

Publication

1. *Mailing of notice* – Within 7 days after publication of said notice in the OG to:
   a. Persons named in the notice
   b. Secretary of Public Highways, Provincial Governor, and Mayor, if the applicant requests to have the line of a public way or road determined
   c. Secretary of Agrarian Reform, Solicitor General, Director of Lands, Director of Fisheries, and Director of Mines, if the land borders on a river, navigable stream, or shore, or on an arm of the sea where a river or harbor lies

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d. Other persons as the court may deem proper

Note: Service of notice upon contiguous owners is indispensable and lack of service constitutes extrinsic fraud.

Posting – In conspicuous place on subject land and on bulletin board of the municipal building for at least fourteen (14) days before the initial hearing.

Q: Is publication and notice necessary in case the application is amended?

A: Publication and notice are necessary where the amendment to the application consists in: **SIA**

1. Substantial change in the boundaries
2. Increase in the area of the land applied for
3. The inclusion of Additional land

Note: If amendment includes a parcel of land not previously included in the application as published, a new publication of the amended application must be made *(Inclusion)*.

Without such publication, the registration court cannot acquire jurisdiction over the area that is added.

Q: When is publication not necessary in case the application is amended?

A:

1. If the amendment consists in the exclusion of a portion of the area covered by the original application and the original plan as previously published, a new publication is not necessary *(Exclusion)*.

   Note: In this case, the jurisdiction of the court is not affected by the failure of filing a new application.

2. Amendments to the application including joinder, substitution or discontinuance as to the parties.

   a. *Joinder* means joining of two or more defendants or plaintiffs involved in a single claim, or where two or more claims or remedies can be disposed of in the same legal proceedings.

   b. *Substitution* means the replacement of one of the parties in a lawsuit because of events that prevent the party from continuing with the trial.

   c. *Discontinuance* means the voluntary termination of litigation by a plaintiff who has elected not to pursue it or by both parties pursuant to a settlement.

      Note: This may be allowed by the court at any stage of the proceedings upon just and equitable terms.

3. An amendment due to change of name of the applicant.

2. PUBLICATION OF NOTICE OF FILING OF APPLICATION AND DATE AND PLACE OF HEARING

Q: What are the purposes of the publication requirement for notice of the filing of the application and the date and place of hearing?

A: To:

1. charge the whole world with knowledge of the application of the land involved, and invite them to take part in the case and assert and prove their rights over the subject land; and
2. confer jurisdiction over the land applied for upon the court.

Note: The settled rule is that once the registration court had acquired jurisdiction over a certain parcel, or parcels of land in the registration proceedings by virtue of the publication of the application, that jurisdiction attaches to the land or lands mentioned and described in the application.

Q: May publication of the notice of filing of application and date and place of hearing be dispensed with?

A: No. Publication of the notice of filing of application and date and place of hearing is mandatory.

Q: Where must the said notice be published?

A:

1. Once in the Official Gazette (OG) – this confers jurisdiction upon the court; and
2. Once in a newspaper of general circulation

Note: Publication in the Official Gazette is sufficient to confer jurisdiction upon the court. (Sec. 23, P.D. 1529)

DEFECTIVE PUBLICATION

Q: When is publication defective?

A: There is a defective publication in the following instances:

1. Where what was published in the Official Gazette is the description of a bigger lot which includes the lands subject of registration.

   Reasons:

   a. Sec. 15, PD 1529 requires that the application for registration should contain the description of the land subject of registration and this is the description to be published;
   b. It is the publication of specific boundaries of lands to be registered that would actually put the interested parties on notice of the registration proceedings and enable them, if they have rights and interests in the property, to show why the application for registration should not be granted;
   c. The adjoining owners of the bigger lot would not be the same owners of the smaller lots subject of registration. Hence, notice to adjoining owners of the bigger lot is not notice to those of the smaller lots.

2. Where the actual publication of the notice of initial hearing was after the hearing itself.

Q: What is the effect of a defective publication?

A: It deprives the court of jurisdiction.

GR: If it is later shown that the decree of registration had included land or lands not included in the publication, then the registration proceedings and the decree of registration must be declared null and void – *but only insofar* – as the land not included in the publication concerned. But the proceedings and the decree of registration, relating to the lands that were included in the publication, are valid.

XPN: However, if the difference is not as substantial as would affect the identity of the land, failure to publish the bigger area (insubstantial inclusion) does not perforce affect the court's jurisdiction.

3. OPPOSITION

Q: What are the requisites for a valid opposition?

A:

1. Set forth objections to the application;
2. State interest claimed by oppositor;
3. Apply for the remedy desired; and
4. Signed and sworn to by him or by some other duly authorized person.

Note: The opposition partakes of the nature of an answer with a counterclaim.

Q: Who may be an oppositor to the application for registration or judicial confirmation?

A: Any person whether named in the notice or not, *provided*, his claim of interest in the property applied for is based on a right of dominion or some other real right independent of, and not subordinate to, the rights of the government.

Q: Who may be proper oppositors in specific cases?

A: The following may be proper oppositors:

1. A homesteader who has not yet been issued his title but who had fulfilled all the conditions required by law to entitle him to a patent.
2. A purchaser of friar land before the issuance of the patent to him.
3. Persons who claim to be in possession of a tract of public land and have applied with the Bureau of Lands for its purchase.
4. The Government relative to the right of foreshore lessees of public land as the latter's rights is not based on dominion or real right independent of the right of the government.

Q: May a private person oppose registration on the ground that the land sought to be registered is owned by the government?

A: No. A private person may not oppose an application for registration on the ground that the land applied for is a property of the government. (*Agcaoili, p. 172, 2006)*

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ASST. SUBJECT HEADS: KAREN FELIZ G. SUPNAD, LAMBERTO L. SANTOS III; **MEMBERS:** PAUL ELBERT E. AMON, ALSTON ANARNA, OZAN J. FULLEROS, CECILIO M. JIMENO, JR., ISMAEL SARANGAYA, JR.; **CONTRIBUTORS:** LOISE RAE G. NAVAL, MONICA JUCOM

Q: Should an oppositor have title over the disputed land?

A: No. The oppositor need not show title in himself; he should however appear to have interest in the property. (*Agcaoili, p. 171, 2006)*

Q: Should an oppositor's interest over the land be legal or may it be merely equitable?

A: It is immaterial whether his interest is in the character of legal owner or is of a purely equitable nature as where he is a beneficiary of a trust.

ABSENCE OF OPPOSITION OR FAILURE TO OPPOSE DEFAULT

Q: When may a person be declared in default in land registration proceedings?

A: A person may be declared in default if he fails to file an opposition.

Q: What is the effect of failure to oppose?

A: *Order of default* – The court shall, upon motion of the applicant, no reason to the contrary appearing, order a default to be recorded and require applicant to present evidence.

Q: A judge declared in default an oppositor who had already filed with the court an opposition based on substantial grounds for his failure to appear at the initial hearing of the application for registration. Is the default order proper? If not, what is his remedy?

A: No, it is not. Failure of the oppositor to appear at the initial hearing is not a ground for default. In which case, his proper remedy is to file a petition for *certiorari* to contest the illegal declaration or order of default, not an appeal. (*Agcaoili, p. 175, 2006)*

Q: What is the effect of an order of default in land registration proceedings?

A: A default order in land registration proceedings is entered "against the whole world", so that all persons, except only the parties who had appeared and filed pleadings in the case, are bound by said order.

Q: What is the effect of the absence of an opposition as regards allegations in the application?

A: When there is no opposition, all allegations in the application are deemed confessed on the part of the opponent.

Q: What if a certificate of title was issued covering non-registrable lands without the government opposing such, is the government estopped from questioning the same?

A: The government cannot be estopped from questioning the validity of the certificates of title, which were granted without opposition from the government. The principle of estoppel does not operate against the government for the acts of its agents.

Q: If an order of general default is issued, may the court automatically grant the application?

A: No. Even in the absence of an adverse claim, the applicant still has to prove that he possesses all the qualifications and none of the disqualifications to obtain the title. If he fails to do so, his application will not be granted. *(Agcaoili Reviewer, p. 174, 2008)*

Q: What is the remedy of a person who was declared in default by the court?

A:

1. *Motion to set aside default order* – A defaulted interested person may gain standing in court by filing such motion at any time after notice thereof and before judgment, upon proper showing that:
    a. his failure to answer (or file an opposition as in ordinary land registration case) was due to: **FAME:**
        i. **F**raud
        ii. **A**ccident
        iii. **M**istake
        iv. **E**xcusable Neglect
    b. and that he has a meritorious defense. *(Sec. 3, Rule 9, Rules of Court)*

2. *Petition for Certiorari* – Failure of the oppositor to appear at the initial hearing is not a ground for default. In which case, his proper remedy is to file a petition for *certiorari* not later than sixty (60) days from notice of judgment, order or resolution to contest the illegal declaration or order of default, not an appeal. *(Sec. 4, Rule 65, Rules of Court)*

Note: The petition shall be filed not later than 60 days from notice of the order. In case a motion for reconsideration or new trial is timely filed, whether such motion is required or not, the petition shall be filed not later than 60 days counted from the notice of the denial of the motion. (*Sec. 4, Rule 65, Rules of Court)*

4. EVIDENCE

Q: What must the applicant for land registration prove?

A: The applicant must prove: **DIP**

1. Declassification – That the land applied for has been declassified and is a public agricultural land, alienable and disposable or otherwise capable of registration;
2. Identity of the land; and
3. Possession and occupation of the land for the length of time and in the manner required by law.

EVIDENCE OF DECLASSIFICATION

Q: What may constitute sufficient proof to establish declassification of land from forest to alienable or disposable, or agricultural?

A: POEM-CIL

1. **P**residential proclamation
2. Administrative **O**rder issued by the Secretary of Environment and Natural Resources
3. **E**xecutive order
4. Bureau of Forest Development (BFD) Land Classification **M**ap
5. **C**ertification by the Director of Forestry, and reports of District Forester
6. **I**nvestigation reports of Bureau of Lands investigator
7. **L**egislative act, or by statute *(Aquino, p. 63, 2007 ed)*

Q: The Cenizas applied for registration of their title over a parcel of public land which they inherited. Without presenting proof that the land in question is classified as alienable or disposable, the court granted the application, holding that mere possession for a period as provided for by law would automatically entitle the possessor the right to register public land in his name. Was the court ruling correct?

A: No. Mere possession for a period required by law is not enough. The applicant has to establish first the disposable and alienable character of the public land, otherwise, public lands, regardless of their classification, can be subject of registration of private titles, as long as the applicant shows that he meets the required years of possession. The applicant must establish the existence of a positive act of the government, such as a presidential proclamation or an executive order; administrative action; reports of Bureau of Lands investigators and a legislative act or a statute. *(Republic v. Ceniza, G.R. No. 127060, Nov. 19, 2002)*

EVIDENCE OF IDENTITY OF THE LAND

Q: What may be presented as proof of the identity of the land sought to be registered?

A: ST^{2}D

1. Survey plan in general
2. Tracing cloth plan and blue print copies of plan
3. Technical description of the land
4. Tax Declarations

Q: In an application for judicial confirmation of imperfect title, is submission of the original tracing cloth plan mandatory?

A: Yes. The Supreme Court declared that the submission of the tracing cloth plan is a statutory requirement of mandatory character. The plan of the land must be duly approved by the Director of Lands, otherwise the same have no probative value. (*Director of Lands v. Reyes, G.R. No. L-27594, Nov. 28, 1975)*

Note: However, under LRA Circular 05-2000, only a certified copy of the original tracing cloth plan need be forwarded to the LRA *(Agcaoili, Reviewer in property registration and related proceedings, p. 52, 2008 ed)*

Although mere blue print copies were presented in court as evidence, the original tracing cloth plan was attached to the application for registration and was available to the court for comparison. Hence, the approval of registration was proper (*Republic v. IAC, G.R. No. L-70594, Oct. 10, 1986)*

Q: In case of conflict between areas and boundaries, which prevails?

A:

GR: Boundaries prevail over area.

XPNs:

Boundaries relied upon do not identify land beyond doubt.

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Boundaries given in the registration plan do not coincide with outer boundaries of the land covered and described in the muniments of title.

EVIDENCE OF POSSESSION AND OCCUPATION

Q: What may constitute proof of possession?

A: To prove possession, it is not enough to simply declare one's possession and that of the applicant's predecessors-in-interest to have been "adverse, continuous, open, public, peaceful and in concept of owner" for the required number of years. The applicant should present specific facts to show such nature of possession because bare allegations, without more, do not amount to preponderant evidence that would shift the burden to the oppositor. *(Diaz v. Republic, G.R. No. 141031, Aug. 31, 2004)*

Q: What are some specific overt acts of possession which may substantiate a claim of ownership?

A:

1. Introducing valuable improvements on the property like fruit-bearing trees;
2. Fencing the area;
3. Constructing a residential house thereon; or
4. Declaring the same for taxation purposes.

Note: Evidence to be admissible must, however, be credible, substantial and satisfactory *(Agcaoili Reviewer, p. 147, 1999 ed)*

Q: What are insufficient proofs of possession?

A: COF-3T

1. Mere Casual cultivation of portions of the land by claimant.

   Reason: Possession is not exclusive and notorious so as to give rise to a presumptive grant from the State.

2. Possession of Other persons in the land applied for impugns the exclusive quality of the applicant's possession.

3. Mere failure of Fiscal representing the State to cross-examine the applicant on the claimed possession.

4. Tax declaration of land sought to be registered which is not in the name of applicant but in the name of the deceased parents of an oppositor.

   Reason: Possession of applicant is not completely adverse or open, nor is it truly in the concept of an owner.

5. Holding of property by mere Tolerance of the owner.

   Reason: Holder is not in the concept of owner and possessory acts no matter how long do not start the running of the period of prescription.

5. Where applicants Tacked their possession to that of their predecessor-in-interest but they did not present him as witness or when no proofs of what acts of ownership and cultivation were performed by the predecessor.

Q: Mauricio and Carmencita testified to establish their claim over the subject lots. When the application was granted, the OSG appealed, arguing that weight should not be given to the self-serving testimonies of the two; that their tax declaration is not sufficient proof that they and their parents have been in possession of the property for at least thirty years, said tax declaration being only for the year 1994 and the property tax receipts presented by them were all of recent dates. Are the said pieces of evidence sufficient to establish actual possession of land for the period required by law thus warranting the grant of the application?

A: No. Their bare assertions of possession and occupation by their predecessors-in-interest are hardly "the well-nigh incontrovertible" evidence required in cases of this nature. Proof of specific acts of ownership must be presented to substantiate their claim. They cannot just offer general statements which are mere conclusions of law than factual evidence of possession.

The law speaks of *possession and occupation*. Possession is broader than occupation because it includes constructive possession. When, therefore, the law adds the word *occupation*, it seeks to delimit the all encompassing effect of constructive possession. Taken together with the words open, continuous, exclusive and notorious, the word *occupation* serves to highlight the fact that for an applicant to qualify, his possession must not be a mere fiction.

Actual possession of a land consists in the manifestation of acts of dominion over it of such a nature as a party would naturally exercise over his own property. *(Republic v. Alconaba, G.R. No. 155012, Apr. 14, 2004)*

Note: "Well-nigh incontrovertible evidence" refers to the degree of proof of registrable rights required by law in registration proceedings.

Q: Are tax declarations presented by them sufficient proof of possession and occupation for the requisite number of years?

A: No. The records reveal that the subject property was declared for taxation purposes by the respondents only for the year 1994. *While belated declaration of a property for taxation purposes does not necessarily negate the fact of possession, tax declarations or realty tax payments of property are, nevertheless, good indicia of possession in the concept of an owner*, for no one in his right mind would be paying taxes for a property that is not in his actual or, at least, constructive possession. *(Republic v. Alconaba, G.R. No. 155012, Apr. 14, 2004)*

EVIDENCE OF PRIVATE OWNERSHIP

Q: What are the proofs of private ownership of land?

A: STOP

1. **S**panish title, impending cases.

   Note: *However,* Spanish titles are now inadmissible and ineffective as proof of ownership in land registration proceedings filed after Aug. 16, 1976. It is mere indicia of a claim of ownership that the holder has a claim of title over the property.

2. **T**ax declaration and tax payments.

   Note: While tax declarations and real estate tax receipts are not conclusive evidence of ownership, if presented as documentary evidence coupled with proof actual possession for the period required by law of the land, they are good evidence of ownership.

   Even if belatedly declared for taxation purposes, it does not negate possession especially if there is no other claimant of the land.

   Mere failure of the owner of the land to pay the realty tax does not warrant a conclusion that there was abandonment of his right to the property.

3. **O**ther kinds of proof.

   E.g. Testimonial evidence (*i.e.* accretion is on a land adjacent to a river).

   Note: Any evidence that accretion was formed through human intervention negates the claim.

4. **P**residential issuances and legislative acts.

   Note: It is constitutive of a "fee simple" title or absolute title in favor of the grantee.

Q: Are tax declarations or payment of realty tax conclusive evidence of ownership?

A: No. Tax declarations or realty tax payment of property are not conclusive evidence of ownership. However, they are good indicia of possession in the concept of an owner, for no one in his right mind would be paying taxes for a property that is not in his actual or at least constructive possession. They constitute at least proof that the holder has a claim of title over the property.

Note: The voluntary declaration of a piece of property for taxation purposes manifests not only one's sincere and honest desire to obtain title to the property and announces his adverse claim against the State and all other interested parties, but also the intention to contribute needed revenues to the Government. Such an act strengthens one's bona fide claim of acquisition of ownership. *(Agcaoili, Reviewer in property registration and related proceedings, p. 155, 2008 ed; Aquino, p. 75-76)*

Q: Agustin executed an Affidavit of Transfer of Real Property where Ducat is to perform all the necessary procedures for the registration and acquisition of title over several parcels of land possessed and occupied by Agustin. Before Ducat was able to accomplish his task, Agustin died and Bernardo administered the properties. Ducat then filed an Application for Free Patent over the land, which was granted. The parcels of land were registered in the names of Ducat and Kiong. The heirs of Bernardo sought the reconveyance of the land with damages but did not question the authenticity of the agreement. Who is the rightful owner of the property?

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A: The spouses Ducat and Kiong. The Affidavit of Transfer of Real Property proved Ducat's ownership of the property. It stated that Ducat bought the subject property from Cecilio and Bernardo. The heirs did not question the authenticity and due execution of said document. It constitutes an admission against interest made by Bernardo, petitioners' predecessor-in-interest.

Bernardo's admission against his own interest is binding on his heirs. The heirs' predecessor-in-interest recognized Ducat and Kiong as the legal owner of the lot in dispute.

Thus, there is no proof that the titling of the subject property was fraudulently obtained by Ducat and Kiong in their names. *(Heirs of Bernardo Ulep v. Sps. Cristobal Ducat and Flora Kiong, G.R. No. 159284, Jan. 27, 2009)*

Q: What proofs are insufficient to establish private ownership or right over land?

A:

1. Compromise agreement among parties to a land registration case where they have rights and interest over the land and allocated portions thereof to each of them.

   Note: Assent of Director of Lands and Director of Forest Management to compromise agreement did not and could not supply the absence of evidence of title required of the applicant.

2. Decision in an estate proceeding of a predecessor-in-interest of an applicant which involves a property over which the decedent has no transmissible rights, and in other cases where issue of ownership was not definitely passed upon .

3. Survey plan of an inalienable land.

   Note: Such plan does not convert such land into alienable land, much less private property.

Q: After due hearing for registration, what will the court do?

A: If the court, after considering the evidence and report of the LRA, finds that the applicant or the oppositor has sufficient title proper for registration, it shall render judgment confirming the title of the applicant, or the oppositor, to the land or portions thereof, as the case may be. *(Sec. 29, P.D. 1529, Agcaoili, Reviewer in property registration and related proceedings, p. 158, 2008 ed;* Agcaoili, *Registration Decree and Related Laws*, p. 15-16)

5. JUDGMENT AND DECREE OF REGISTRATION

Q: What must a judgment in land registration proceedings contain?

A: When judgment is rendered in favor of the plaintiff, the court shall order the entry of a new certificate of title and the cancellation of the original certificate and owner's duplicate of the former registered owner.

Q: What is decree of registration?

A: It is a document prepared in the prescribed form by the LRA Administrator, signed by him in the name of the court, embodying the final disposition of the land by the court and such other data found in the record, including the name and other personal circumstances of the adjudicate, the technical description of the property, liens and encumbrances affecting it, and such other matters as determined by the court in its judgment *(Agcaoili Reviewer, p. 169. 2008;* Agcaoili, *Registration Decree and Related Laws,* p. 508)

Q: In a registration case, the court rendered a decision granting Reyes' application, hence the Director of Lands appealed. Reyes moved for the issuance of a decree of registration pending appeal. May his motion be granted?

A: No. Innocent purchasers may be misled into purchasing real properties upon reliance on a judgment which may be reversed on appeal. *A Torrens title issued on the basis of a judgment that is not final is a nullity* as it violates the explicit provisions of the LRA, which requires that a decree shall be issued only after the decision adjudicating the title becomes final and executory. *(Dir. of Lands v. Reyes, G.R. No. L-27594, Nov. 28, 1975)*

Q: After final adjudication in a land registration proceeding, Pepito and his family took possession of the land subject of the registration proceedings. Don Ramon moved for their summary ouster from the land. Rule on his motion.

A: It should be denied. Persons who are not parties to registration proceedings who took

possession of the land after final adjudication of the same cannot be summarily ousted by a mere motion. The remedy is to resort to the courts of justice and institute a separate action for unlawful entry or detainer or for reinvidicatory action, as the case may be. Regardless of any title or lack of title of said person, he cannot be ousted without giving him a day in court in a proper independent proceeding. *(Agcaoili, Reviewer in property registration and related proceedings, p. 167, 2008 ed)*

Q: What does a decree of registration cover?

A: Only claimed property or a portion thereof can be adjudicated. A land registration court has no jurisdiction to adjudge a land to a person who has never asserted any right of ownership thereof.

Q: May the court render a partial judgment in land registration proceedings?

A: Partial judgment is allowed in a land registration proceeding, where only a portion of the land, subject of registration is contested, the court may render partial judgment *provided* that a subdivision plan showing the contested land and uncontested portions approved by the Director of Lands is previously submitted to said court.

Q: What is the effect of a decree of registration?

A: The decree of registration binds the land, quiets title, subject only to such exceptions or liens as may be provided by law.

It is conclusive upon all persons including the national government and all branches thereof. And such conclusiveness does not cease to exist when the title is transferred to a successor.

Note: Title once registered cannot be impugned, altered, changed, modified, enlarged or diminished, except in a direct proceeding permitted by law.

Q: In 1950's, the Government acquired a big landed estate in Central Luzon from the registered owner for subdivision into small farms and redistribution of bonafide occupants. F was a former lessee of a parcel of land, five hectares in area. After completion of the resurvey and subdivision, F applied to buy the said land in accordance with the guidelines of the implementing agency. Upon full payment of the price in 1957, the corresponding deed of absolute sale was executed in his favor and was registered, and in 1961, a new title was issued in his name. In 1963, F sold the said land to X; and in 1965 X sold it to Y, new titles were successively issued in the names of the said purchasers.

In 1977, C filed an action to annul the deeds of sale to F, X and Y and their titles, on the ground that he (C) had been in actual physical possession of the land, and that the sale to F and the subsequent sales should be set aside on the ground of fraud. Upon motion of defendants, the trial court dismissed the complaint, upholding their defenses of their being innocent purchasers for value, prescription and laches. Plaintiff appealed.

Is the said appeal meritorious? Explain your answer

The appeal is not meritorious. The trial court ruled correctly in granting defendant's motion to dismiss for the following reasons:

1. While there is the possibility that F, a former lessee of the land was aware of the fact that C was the bona fide occupant thereof and for this reason his transfer certificate of title may be vulnerable, the transfer of the same land and the issuance of new TCTs to X and Y who are innocent purchasers for value render the latter's titles indefeasible. A person dealing with registered land may safely rely on the correctness of the certificate of title and the law will not in any way oblige him to go behind the certificate to determine the condition of the property in search for any hidden defect or inchoate right which may later invalidate or diminish the right to the land. This is the mirror principle of the Torrens System of land registration.

2. The action to annul the sale was instituted in 1977 or more than (10) years from the date of execution thereof in 1957, hence, it has long prescribed.

Under Sec. 45, Act 496, "the entry of a certificate of title shall be regarded as an agreement running with the land, and binding upon the applicant and all his successors in title that the land shall be and always remain registered land. A title under Act 496 is indefeasible and to preserve that character, the title is cleansed anew with every transfer for value *(De Jesus v. City of Manila, G.R. No. L-26816, Feb. 28, 1967; Laperal v. City of Manila, G.R. No. L-16991, Mar. 31, 1964; Penullar v. PNB, G.R. No. L-32762 Jan. 27, 1983)*

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Suppose the government agency concerned joined C in filing the said action against the defendants, would that change the result of the litigation? Explain.

Even if the government joins C, this will not alter the outcome of the case so much because of estoppel as an express provision in Sec. 45, Act 496 and Sec. 31, PD 1529 that a decree of registration and the certificate of title issued in pursuance thereof "shall be conclusive upon and against all persons, including the national government and all branches thereof, whether mentioned by name in the application or not." **(1990 Bar Question)**

Q: May the court reopen the judgment or decree of registration?

A: The court has no jurisdiction or authority to reopen the judgment or decree of registration, nor impair the title or other interest of a purchaser holding a certificate for value and in good faith, or his heirs and assigns, without his or their written consent.

ENTRY OF DECREE OF REGISTRATION

Q: What are the effects of the entry of the decree of registration in the National Land Titles and Deeds Registration Authority (NALDTRA)?

A:

1. This serves as the reckoning date to determine the 1-year period from which one can impugn the validity of the registration.
2. 1 year after the date of entry, it becomes incontrovertible, and amendments will not be allowed except clerical errors. It is deemed conclusive as to the whole world.
3. Puts an end to litigation.

WRIT OF POSSESSION

Q: What is writ of possession?

A: It is a writ employed to enforce a judgment to recover the possession of land, commanding the sheriff to enter into the land and give the possession thereof to the person entitled under the judgment. *(Pineda, Property, p. 45, 1999 ed)*

Note: It may be issued only pursuant to a decree of registration in an original land registration proceeding.

Q: How may possession of property be obtained?

A: Possession of the property may be obtained by filing an *ex parte* motion with the RTC court of the province or place where the property is situated. Upon filing of the motion and the required bond, it becomes a ministerial duty of the court to order the issuance of a writ of possession in favor of the purchaser. After the expiration of the one-year period without redemption being effected by the property owner, the right of the purchaser to the possession of the foreclosed property becomes absolute. *(PNB v. Sanao Marketing Corporation, G.R. No. 153951, July 29, 2005)*

Q: PNCB purchased a parcel of land in a foreclosure sale and applied for a writ of possession after the lapse of more than 1 year. On appeal, however, it was held that the writ of possession cannot be issued because the foreclosure sale, upon which it is based, was infirm. Is said ruling correct?

A: No. Any question regarding the regularity and validity of the sale, as well as the consequent cancellation of the writ, is to be determined in a subsequent proceeding as outlined in Sec. 8, Act 3135, as amended by Act 4118. Such question is *not to be raised as a justification for opposing the issuance of the writ of possession, since, under the Act, the proceeding is ex parte.*

As the purchaser of the properties in the extra-judicial foreclosure sale, the PNCB is entitled to a writ of possession therefore. The basis of this right to possession is the purchaser's ownership of the property. Mere filing of an *ex parte* motion for the issuance of the writ of possession would suffice, and no bond is required. *(Sulit v. CA, G.R. No. 119247, Feb. 17, 1997)* (Agcaoili, *Registration Decree and Related Laws, p. 508-509)*

Q: Against whom may a writ of possession be issued?

A: In a registration case, a writ of possession may be issued against:

1. The person who has been defeated in a registration case; and
2. Any person adversely occupying the land or any portion thereof during the land registration proceedings up to the issuance of the final decree *(Agcaoili Reviewer, p. 167, 2008 ed)*

Q: Yano filed an application for registration which was granted. Consequently, a writ of possession was issued. Vencelao, who occupies the land, contends that he was not the defeated oppositor in the case, hence a writ of possession may not be issued against him. May a writ of possession be issued against Vencelao?

A: Yes. In a registration case, the judgment confirming the title of the applicant and ordering the registration in his name necessarily carried with it the delivery of possession which is an inherent element of the right of ownership.

A writ of possession may be issued not only against the person who has been defeated in a registration case but also against anyone unlawfully and adversely occupying the land or any portion thereof during the land registration proceedings up to the issuance of the final decree. (Vencelao v. Yano, G.R. No. 25660, Feb. 20, 1993)

Q: If the court granted the registration, must the applicant move for the issuance of a writ of possession in case he is deprived of possession over the land subject of the registration proceedings?

A:
Yes, if it is against:

1. the person who has been defeated in a registration case; and
2. any person adversely occupying the land or any portion thereof during the land registration proceedings up to the issuance of the final decree.

No, if it is against persons who took possession of the land after final adjudication of the same in a registration proceeding. In which case, the remedy is file a separate action for:

1. unlawful entry;
2. unlawful detainer; or
3. reinvindicatory action, as the case may be, and only after a favorable judgment can the prevailing party secure a writ of possession. *(Agcaoili Reviewer, p. 168, 2008 ed, citing Bernas v. Nuevo, G.R. No. L-58438, Jan. 31, 1984)*

Q: Does petition for the issuance of a writ of possession prescribe?

A:

GR: No.

XPN: If a party has once made use of the benefit of a writ of possession, he cannot again ask for it, if afterwards he loses possession of the property obtained by virtue of the original writ.

6. DECREE OF CONFIRMATION AND REGISTRATION

Q: What is decree of confirmation and registration?

A: It is issued by LRA after finality of judgment, and contains technical description of land. It is subject only to an appeal.

It is conclusive evidence of the ownership of the land referred to therein and becomes indefeasible and incontrovertible after one year from the issuance of the decree. *(Agcaoili Reviewer, p. 169)*

Q: Differentiate decree of confirmation and registration from decree of registration.

A: *Decree of registration* is issued pursuant to the Property Registration Decree, where there already exists a title which is confirmed by the court.

Decree of confirmation and registration of title is issued pursuant to the Public Land Act, where the presumption always is that the land applied for pertains to the State, and that the occupants and possessors only claim an interest in the same by virtue of their imperfect title or continuous, open, and notorious possession. *(Limcoma Multi-Purpose Cooperative v. Republic, G.R. No. 167652, July 10, 2007)*

Q: What is the doctrine of non-collateral attack of a decree or title?

A: A decree of registration and registered title cannot be impugned, enlarged, altered, modified, or diminished either in collateral or direct proceeding, after the lapse of one year from the date of its entry.

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Q: Differentiate direct from collateral attack.

A:

DIRECT ATTACK	COLLATERAL ATTACK
The issues are raised in a direct proceeding in an action instituted for that purpose.	It is made when, in another action to obtain a different relief, an attack on the judgment is made as an incident in said action. e.g. Torrens title is questioned in the ordinary civil action for recovery of possession

Q: Valentin's homestead application was approved. After 19 years of possession, his occupation was interrupted when Arcidio forcibly entered the land. He filed an action for recovery of possession which was granted.

In his appeal, may Arcidio seek the nullity of Valentin's title, invoking as defense the ruling of the Director of Lands in an administrative case that Valentin has never resided in said land and declared that the homestead patent was improperly issued to him?

A: No, a collateral attack is not allowed. It was erroneous for Arcidio to question the Torrens OCT issued to Valentin in an ordinary civil action for recovery of possession filed by the registered owner – Valentin – of the said lot, by invoking as affirmative defense in his answer the Order of the Bureau of Lands issued pursuant to the investigatory power of the Director of Lands under Section 91 of Public Land Law *(CA No. 141 as amended)*. *Such a defense partakes of the nature of a collateral attack against a certificate of title brought under the operation of the Torrens system of registration* pursuant to Sec. 122, Land Registration Act, now Sec. 103, PD 1259. *(Ybanez v. IAC, G.R. No. 68291, Mar. 6, 1991)*

Q: In a case for recovery of possession based on ownership, is a third-party complaint to nullify the title of the third-party defendant considered a direct attack on the title?

A: If the object of the third-party complaint is to nullify the title of the third-party defendant, the third-party complaint constitutes a direct-attack on the title because the same is in the nature of an original complaint for cancellation of title. *(Agcaoili Reviewer, p. 264. 2008)*

Q: If an attack is made thru a counterclaim, should it be disregarded for being a collateral attack?

A: No. A counterclaim is also considered an original complaint, and as such, the attack on the title is direct and not collateral. *(Agcaoili Reviewer, p. 264. 2008)*

C. REMEDIES IN.REGISTRATION PROCEEDINGS

Q: What are the remedies of an aggrieved party in registration proceedings?

A: RADAR-CAN-QP

1. **R**elief from judgment
2. **A**ppeal
3. Action for **D**amages
4. Action for Compensation from the **A**ssurance Fund
5. Action for **R**econveyance
6. **C**ancellation of suits
7. **A**nnulment of judgment
8. **N**ew trial
9. **Q**uieting of title
10. **P**etition for Review (of a Decree)

APPEAL

Q: In land registration cases, within what period may an appeal be filed?

A: It must be filed within 15 days from receipt of the judgment or final order appealed from.

Q: Which courts have appellate jurisdiction over land registration cases?

A: Under PD 1529, judgments and orders in land registration cases are appealable to the CA or to the SC in the same manner as ordinary actions.

Q: Who may file an appeal in land registration cases?

A: Only those who participated in the proceedings can interpose an appeal.

Q: In land registration cases, may a party validly move for execution pending appeal?

A: No. A motion for execution pending appeal is not applicable to land registration proceedings. The reason is to protect innocent purchasers.

PETITION FOR REVIEW

Q: What are the requisites of a petition for review of the decree?

A:

Petitioner has a real right;
He has been deprived thereof;
The deprivation is through fraud (actual/extrinsic);
Petition is filed within 1 year from issuance of the decree; and
The property has not yet passed to an innocent purchaser for value.

Q: In land registration cases, when may a petition for review be filed?

A: Any person may file a petition for review to set aside the decree of registration on the ground that he was deprived of their opportunity to be heard in the original registration case not later than 1 year after the entry of the decree.

Q: On what grounds may a petition for review be filed?

A:

1. That a land belonging to a person has been registered in the name of another or that an interest has been omitted in the application;
2. Registration has been procured thru actual fraud;
3. Petitioner is the owner of the said property or interest therein;
4. Property has not been transferred to an innocent purchaser for value;
5. Action is filed within one year from the issuance and entry of the decree of registration; or
6. Actual fraud must be utilized in the procurement of the decree and not thereafter

Note: What is contemplated by law is extrinsic fraud. (Garingan v. Garingan, G.R. No. 144095, Apr. 12, 2005)

RECONVEYANCE

Q: What is action for reconveyance?

A: It is an action seeking to transfer or reconvey the land from the registered owner to the rightful owner.

Q: What is the purpose of an action for reconveyance?

A: An action for reconveyance does not aim or purport to re-open the registration proceedings and set aside the decree of registration but only to show that the person who secured the registration of the questioned property is not the real owner thereof. The action, while respecting the decree as incontrovertible, seeks to transfer or reconvey the land from the registered owner to the rightful owner.

Note: This action may be filed even after the lapse of 1 year from entry of the decree of registration as long as the property has not been transferred or conveyed to an innocent purchaser for value.

Q: What are the grounds and their corresponding period for filing an action for reconveyance?

A:

GROUNDS	PRESCRIPTIVE PERIOD
Fraud	4 years from the discovery of the fraud (deemed to have taken place from the issuance of the original certificate of title) **Note:** The State has an *imprescriptible right* to cause the reversion of a piece of property belonging to the public domain if title has been acquired through fraudulent means.
Implied or Constructive Trust	10 years from the date of the issuance of the OCT or TCT. It does not apply where the person enforcing the trust is in actual possession of the property because he is in effect seeking to quiet title to the same which is imprescriptible.
Express Trust	Not barred by prescription
Void Contract	Imprescriptible

Q: In 1987, an Emancipation Patent OCT was issued in Remy's favor. In 1998, Madarieta filed a Complaint for Annulment and Cancellation of the OCT against Remy before the DARAB, alleging that the Department of Agrarian Reform (DAR) mistakenly included her husband's lot as part of Luspo's property where Remy's house was constructed and that it was only on 1997 that she discovered such mistake. Is Madarieta's action barred by prescription?

A: Yes. Considering that there appears to be a mistake in the issuance of the subject

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emancipation patent, the registration of the title to the subject property in Remy's name is likewise erroneous, and consequently, Remy holds the property as a mere trustee. An action for reconveyance based on an implied or constructive trust prescribes in 10 years from the issuance of the Torrens title over the property. The title over the subject land was registered in Remy's name in 1987 while Madarieta filed the complaint to recover the subject lot only in 1998. More than 11 years had lapsed before Madarieta instituted the action for annulment of the patent OCT, which in essence is an action for reconveyance – the remedy of the rightful owner of the erroneously registered property. It is thus barred by prescription. *(Rementizo v. Heirs of Vda. De Madarieta, G.R. No. 170318, Jan. 15, 2009)*

Note: In an action for reconveyance, the decree of registration is respected as incontrovertible but what is sought instead is the transfer of the property wrongfully or erroneously registered in another's name to its rightful owner or to one with a better right. The person in whose name the land is registered holds it as a mere trustee.

Q: If the ground relied upon for an action for reconveyance is fraud, what is the period for filing the same?

A: If ground relied upon is fraud, action may be filed within 4 years from discovery thereof. Discovery is deemed to have taken place when said instrument was registered. It is because registration constitutes constructive notice to the whole world.

Q: On September 10, 1965, Melvin applied for a free patent covering two lots - Lot A and Lot B - situated in Santiago, Isabela. Upon certification by the Public Land Inspector that Melvin had been in actual, continuous, open, notorious, exclusive and adverse possession of the lots since 1925, the Director of Land approved Melvin's application on 04 June 1967. On December 26, 1967, Original Certificate of Title (OCT) No. P-2277 was issued in the name of Melvln.

On September 7, 1971, Percival filed a protest alleging that Lot B which he had been occupying and cultivating since 1947 was included in the Free Patent issued in the name of Melvin. The Director of Lands ordered the investigation of Percival's protest. The Special Investigator who conducted the investigation found that Percival had been in actual cultivation of Lot B since 1947.

On November 28, 1986, the Solicitor General filed in behalf of the Republic of the Philippines a complaint for cancellation of the free patent and the OCT issued in the name of Melvin and the reversion of the land to public domain on the ground of fraud and misrepresentation in obtaining the free patent. On the same date, Percival sued Martin for the reconveyance of Lot B.

Melvin filed his answers interposing the sole defense in both cases that the Certificate of Title issued in his name became incontrovertible and indefeasible upon the lapse of one year from the issuance of the free patent.

Given the circumstances, can the action of the Solicitor General and the case for reconveyance filed by Percival possibly prosper?

A: If fraud be discovered in the application which led to the issuance of the patent and Certificate of Title, this Title becomes ipso facto null and void. Thus, in a case where a person who obtained a free patent, knowingly made a false statement of material and essential facts in his application for the same, by stating therein that the lot in question was part of the public domain not occupied or claimed by any other person, his title becomes ipso facto canceled and consequently rendered null and void.

It is to the public interest that one who succeeds In fraudulently acquiring title to public land should not be allowed to benefit therefrom and the State, through the Solicitor General, may file the corresponding action for annulment of the patent and the reversion of the land involved to the public domain *(Dinero v. Director of Lands; Kayaban v. Republic L-33307, Aug. 20, 1973; Director of Lands vs. Animas, L-37682, Mar. 29, 1974).*

This action does not prescribe.

With respect to Percival's action for reconveyance, it would have prescribed, having been filed more than ten (10) years after registration and issuance of an OCT in the name of Melvin, were it not for the inherent infirmity of the latter's title. Under the facts, the statute of limitations will not apply to Percival because Melvin knew that a part of the land covered by his title actually belonged to Percival. So, instead of nullifying *in toto* the title of Melvin, the court, in the exercise of equity and jurisdiction, may grant prayer for the reconveyance of Lot B to Percival who has actually possessed the land under a claim of ownership since 1947. After all, if Melvin's title is declared

void ab initio and the land is reverted to the public domain, Percival would just the same be entitled to preference right to acquire the land from the government. Besides, well settled is the rule that once public land has been in open, continuous, exclusive and notorious possession under a bonafide claim of acquisition of ownership for the period prescribed by Sec. 48, Public Land Act, the same *ipso jure* ceases to be public and in contemplation of law acquired the character of private land. Thus, reconveyance of the land from Melvin to Percival would be the better procedure. *(Vital v. Anore, G.R. No. L-4136, Feb. 29, 1952; Pena, Land Titles and Deeds, p. 427, 1982 ed)* **(1997 Bar Question)**

Q: Rommel was issued a certificate of title over a parcel of land in Quezon City. One year later, Rachelle, the legitimate owner of the land, discovered the fraudulent registration obtained by Rommel. She filed a complaint against Rommel for reconveyance and caused the annotation of a notice of lis pendens on the certificate of title issued to Rommel. Rommel now invokes the indefeasibility of his title considering that one year has already elapsed from its issuance. He also seeks the cancellation of the notice of lis pendens.

Will Rachelle's suit for reconveyance prosper? Explain.

A: Yes, Rachelle's suit will prosper because all the elements of an action for reconveyance are present, namely:

1. Rachelle is claiming dominical rights over the property;
2. Rommel procured his title to the land by fraud;
3. The action was brought within the statutory period of four years from discovery of the fraud and not later than 10 years from the date of registration of Rommel's title; and
4. Title to the land has not yet passed into the hands of an innocent purchaser for value.

Rommel can invoke the indefeasibility of his title if Rachelle had filed a petition to re-open or review the decree of registration. But Rachelle instead filed an ordinary action *in personam* for reconveyance. In the latter action, indefeasibility is not a valid defense, because in filing such action, Rachelle is not seeking to nullify nor to impugn the indefeasibility of Rommel's title. She is only asking the court to compel Rommel to reconvey the title to her as the legitimate owner of the land.

May the court cancel the notice of lis pendens even before final judgment is rendered? Explain.

A: A notice of *lis pendens* may be cancelled even before final judgment upon proper showing that the notice is for the purpose of molesting or harassing the adverse party or that the notice of lis pendens is not necessary to protect the right of the party who cause it to be registered. *(Sec. 77, PD 1529)*

In this case, it is given that Rachelle is the legitimate owner of the land in question. It can be said, therefore, that when she filed her notice of *lis pendens* her purpose was to protect her interest in the land and not just to molest Rommel. It is necessary to record the *lis pendens* to protect her interest because if she did not do it, there is a possibility that the land will fall into the hands of an innocent purchaser for value and in that event, the court loses control over the land making any favorable judgment thereon moot and academic. For these reasons, the notice of *lis pendens* may not be cancelled. **(1995 Bar Question)**

Q: Juan, et. al. seek reconveyance of the property, imputing fraud to Ines, without adducing evidence, saying that she used a forged affidavit to obtain title over the property despite full knowledge that she owned only 1/5 portion thereof. Note that when Ines applied for a free patent over the property, Juan, et. al. filed their claims, but when the Bureau of Lands denied their claims, they did not contest such denial any further. Should the reconveyance be granted?

A: No. It appears that they were notified of Ines' application for free patent and were duly afforded the opportunity to object to the registration and to substantiate their claims, which they failed to do and they never contested the order of the Bureau of Lands disregarding their claims. This could only mean that they either agreed with the order or decided to abandon their claims.

Also, they failed to prove fraud in the execution of the affidavit used by Ines to obtain title to the disputed property. No evidence was adduced by them to substantiate their allegation that their signatures therein were forged. *It is not for private respondents to deny forgery. The burden of proof that the affidavit of waiver is indeed spurious rests on petitioners*. Yet, even as they

insist on forgery, they never really took serious efforts in establishing such allegation by preponderant evidence. Mere allegations of fraud are not enough. Intentional acts to deceive and deprive another of his right or in some manner injure him, must be specifically alleged and proved. *(Brusas v. CA, G. R. No. 126875, Aug. 26, 1999)*

DAMAGES

Q: When may an action for damages be resorted to in land registration cases?

A: It may be resorted to when a petition for review and an action for reconveyance is no longer possible because the property has passed to an innocent purchaser for value and in good faith.

Q: When will an action for damages in land registration cases prescribe?

A: An ordinary action for damages prescribes in ten (10) years after the issuance of the Torrens title over the property.

CANCELLATION SUIT

Q: What is cancellation suit?

A: It is an action for cancellation of title brought by a private individual, alleging ownership as well as the defendant's fraud or mistake, as the case may be, in successfully obtaining title over a disputed land claimed by the plaintiff. *(Aquino, p. 155, 2007 ed)*

Q: When is resort to a cancellation suit proper?

A:

1. When two certificates of title are issued to different persons covering the same parcel of land in whole or in part;

2. When certificate of title is issued covering a non-registrable property; or

3. Other causes such as when the certificate of title is issued pursuant to a judgment that is not final or when it is issued to a person who did not claim and applied for the registration of the land covered. *(Aquino, p. 141, 2007 ed)*

Q: What are the rules as regards cancellation of certificates of title belonging to different persons over the same land?

A: Where two certificates are issued to different persons covering the same land, the title earlier in date must prevail. The latter title should be declared null and void and ordered cancelled.

Q: What is meant by *prior est temporae, prior est in jura*?

A: It is a principle which means he who is first in time is preferred in right. *(Agcaoili Reviewer, p. 189, 1999 ed)*

Q: Pablo occupied a parcel of land since 1800. In 1820, he was issued a certificate of title over said land. In 1830, however, the land was reclassified as alienable and disposable, as it was originally a forest land. In 1850, Pedro was able to obtain a certificate of title over the same land. Upon learning of such, Pablo sought to have Pedro's title declared null and void. Decide.

A: As a general rule, the earlier in date must prevail. However, this principle cannot apply if it is established that the earlier title was procured through fraud or is otherwise jurisdictionally flawed. *(Republic v. CA and Guido, et. al., G.R. No. 84966, Nov. 21, 1991)*. The rule is valid only absent any anomaly or irregularity tainting the process of registration. Where the inclusion of land in the certificate of title of prior date is a mistake, the mistake may be rectified by holding the latter of the two certificates to be conclusive. *(Legarda v. Saleeby, G.R. No. 8936, Oct. 2, 1915)* Since the earlier title was issued when the disputed land was still a non-registrable property, the same may be challenged through a cancellation suit and may be declared as null and void. Pedro's title must prevail.

QUIETING OF TITLE

Q: What is action for quieting of title?

A: It is an action that is brought to remove clouds on the title to real property or any interest therein, by reason of any instrument, record, claim, encumbrance, or proceeding which is apparently valid or effective but is in truth and in fact invalid, ineffective, voidable or unenforceable, and may be prejudicial to said title.

Q: Who may file an action to quiet title?

A:

Registered owner;
A person who has an equitable right or interest in the property; or
The State.

Note:
Criminal action – State may criminally prosecute for perjury the party who obtains registration through fraud, such as by stating false assertions in the sworn answer required of applicants in cadastral proceedings.

Action for damages – Filed in an ordinary action for damages if the property has passed unto the hands of an innocent purchaser for value.

REMEDY IN CASE OF LOSS OR DESRUCTION OF CERTIFICATE OF TITLE:

Q: What is the remedy in case a person lost his certificate of title?

A: It depends.

1. If what is lost is the OCT or TCT – Reconstitution of certificate of title;
2. If, however, it is the duplicate of the OCT or TCT – Replacement of lost duplicate certificate of title.

RECONSTITUTION OF CERTIFICATE OF TITLE

Q: What is the remedy in case a certificate of title is lost or destroyed?

A: Remedy is reconstitution of lost or destroyed certificate of title in the office of Register of Deeds in accordance with R.A. 26. *(Aquino, p. 454, 2007 ed)*

Q: What is reconstitution of certificate of title?

A: The restoration of the instrument which is supposed to have been lost or destroyed in its original form and condition, under the custody of Register of Deeds.

Q: What is the purpose of reconstitution of title?

A: To have the same reproduced, after proper proceedings, in the same form they were when the loss or destruction occurred.

Q: Does reconstitution determine ownership of land covered by a lost or destroyed certificate of title?

A: A reconstituted title, by itself, does not determine or resolve the ownership of the land covered by the lost or destroyed title. The reconstitution of a title is simply the re-issuance of a lost duplicate certificate of title in its original form and condition. It does not determine or resolve the ownership of the land covered by the lost or destroyed title. A reconstituted title, like the original certificate of title, by itself does not vest ownership of the land or estate covered thereby. *(Alonso, et. al. v. Cebu Country Club Inc., G.R. No. 130876, Dec. 5, 2003)*

Q: May a writ of possession be issued in a petition for reconstitution?

A: No, because, reconstitution does not adjudicate ownership over the property. A writ of possession is issued to place the applicant-owner in possession.

Q: What are the elements of reconstitution of certificates of title?

A:

1. Certificate has been lost or destroyed;
2. Petitioner is the registered owner or has an interest therein; and
3. Certificate was in force at the time it was lost or destroyed.

Q: What are the jurisdictional requirements in petitions for reconstitution of title?

A: Notice thereof shall be:

1. Published twice in successive issues of the Official Gazette;
2. Posted on the main entrance of the provincial building and of the municipal building of the municipality or city, where the land is situated; and
3. Sent by registered mail to every person named in said notice

Note: The above requirements are mandatory and jurisdictional.

Q: What are the kinds of reconstitution of title?

A:

1. *Judicial* – partakes the nature of a land registration proceeding in rem. The registered owners, assigns, or any person having an interest in the property may file a petition for that purpose with RTC where property is located. RD is not the proper party to file the petition.

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2. *Administrative* – may be availed of only in case of:
   a. Substantial loss or destruction of the original land titles due to fire, flood, or other force majeure as determined by the Administrator of the Land Registration Authority
   b. The number of certificates of title lost or damaged should be at least 10% of the total number in the possession of the Office of the Register of Deeds
   c. In no case shall the number of certificates of title lost or damaged be less than P500
   d. Petitioner must have the duplicate copy of the certificate of title *(R.A. 6732)*

Note: The law provides for retroactive application thereof to cases 15 years immediately preceding 1989.

Q: From what sources may a certificate of title be reconstituted?

A: *(Agcaoili, Registration Decree and Related Laws, p. 757-758)*

Judicial reconstitution

For OCT (in the following order):

1. Owner's duplicate of the certificate of title
2. Co-owner's, mortgagee's or lessee's duplicate of said certificate
3. Certified copy of such certificate, previously issued by the Register of Deeds
4. Authenticated copy of the decree of registration or patent, as the case may be, which was the basis of the certificate of title
5. Deed or mortgage, lease or encumbrance containing description of property covered by the certificate of title and on file with the Registry of Deeds, or an authenticated copy thereof
6. Any other document which, in the judgment of the court, is sufficient and proper basis for reconstitution

For TCT (in the following order):

1. Owner's duplicate of the certificate of title
2. Co-owner's, mortgagee's or lessee's duplicate of said certificate
3. Certified copy of such certificate, previously issued by the Register of Deeds
4. Deed of transfer of other document containing description of property covered by the transfer certificate of title and on file with the Registry of Deeds, or an authenticated copy thereof
5. Deed or mortgage, lease or encumbrance containing description of property covered by the certificate of title and on file with the Registry of Deeds, or an authenticated copy thereof
6. Any other document which, in the judgment of the court, is sufficient and proper basis for reconstitution

Administrative reconstitution

1. Owner's duplicate of the certificate of title
2. Co-owner's, mortgagee's or lessee's duplicate of said certificate

REPLACEMENT OF LOST DUPLICATE CERTIFICATE OF TITLE

Q: If what is lost or destroyed is the duplicate title, is reconstitution the proper remedy?

A: No. When the duplicate title of the landowner is lost, the proper petition is not reconstitution of title, but one filed with the court for issuance of new title in lieu of the lost copy.

Q: Who are the persons entitled to a Duplicate Certificate of Title?

A:

1. Registered owner
2. Each co-owner

Q: What are the requirements for the replacement of lost duplicate certificate of title?

A:

1. Due notice under oath shall be sent by the owner or by someone in his behalf to the Register of Deeds of the province or city where the land lies as soon as the loss or theft is discovered.
2. Petition for replacement should be filed with the RTC of the province or city where the land lies.
3. Notice to Solicitor General by petitioner is not imposed by law but it is the Register of Deeds who should request

for representation by the Solicitor General.
4. A proceeding where the certificate of title was not in fact lost or destroyed is null and void for lack of jurisdiction and the newly issued duplicate is null and void.

AMENDMENT OR CORRECTION OF TITLE

Q: What are the grounds for amendment or correction of certificate of title?

A: When:
1. registered interests of any description, whether vested, contingent or inchoate have terminated and ceased;
2. new interests have arisen or been created which do not appear upon the certificate;
3. any error, omission or mistake was made in entering a certificate or any memorandum thereon or on any duplicate certificate;
4. the name of any person on the certificate has been changed;
5. the registered owner has been married, or registered as married, the marriage has terminated and no right or interest of heirs or creditors will thereby be affected;
6. a corporation, which owned registered land and has been dissolved, has not conveyed the same within 3 years after its dissolution; or
7. there is a reasonable ground for the amendment or alteration of title.

Q: What are the requisites for the amendment or correction of title?

A: FREON-U
1. It must be **F**iled in the original case;
2. By the **R**egistered owner or a person in interest;
3. On grounds **E**numerated;
4. All parties must be **N**otified;
5. There is **U**nanimity among them; and
6. Original decree must not be **O**pened.

CANCELLATION OF TITLE

Q: What are the grounds for cancellation of title?

A:
1. When title is void;
2. Title is replaced by one issued under a cadastral proceeding; or
3. When condition for its issuance has been violated by the registered owner.

SURRENDER OF WITHHELD DUPLICATE CERTIFICATE OF TITLE

Q: What are the grounds for surrender of withheld duplicate certificate of title?

A:
1. When it is necessary to issue a new certificate of title pursuant to any involuntary instrument which divests the title of the registered owner against his consent;
2. Where a voluntary instrument cannot be registered by reason of the refusal or failure of the holder to surrender the owner's duplicate certificate of title; or
3. Where the owner's duplicate certificate is not presented for amendment or alteration pursuant to a court order.

REVERSION

Q: What is meant by reversion?

A: It is an action instituted by the government, through the Solicitor General, for cancellation of certificate of title and the consequential reversion of the land covered thereby to the State. *(Aquino, p. 154, 2007 ed)*

Note: The difference between reversion suit and action for declaration of nullity of title is that in the former, the allegations in the complaint would admit State ownership of the disputed land. On the other hand, action for declaration of nullity of title requires allegation of the plaintiff's ownership of the contested lot prior to the issuance of free patent and certificate of title. *(Aquino, p. 155, 2007 ed)*

Q: When does reversion apply?

A: Generally, reversion applies in all cases where lands of public domain and the improvements thereon and all lands are held in violation of the Constitution. *(Agcaoili Reviewer, p. 221, 1999 ed)*

Q: What are the grounds for reversion of lands covered by a patent?

A:
1. Violation of Sec.s 118, 120, 121 and 122, Public Land Act (*e.g.* alienation or sale of homestead executed within the 5 year prohibitory period

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2. When land patented and titled is not capable of registration
3. Failure of the grantee to comply with the conditions imposed by law to entitle him to a patent grant
4. When the area is an expanded area
5. When the land is acquired in violation of the Constitution *(e.g. land acquired by an alien may be reverted to the State)*

Q: Luis filed a complaint for annulment of title involving a foreshore land which was granted in Flores' favor, alleging that his application therefor was granted by the government. Is Luis the real party in interest with authority to file a complaint for annulment of title of foreshore land?

A: No. In all actions for the reversion to the Government of lands of the public domain or improvements thereon, the Republic of the Philippines is the real party in interest. The action shall be instituted by the Solicitor General or the officer acting in his stead, in behalf of the Republic of the Philippines. Petitioners must first lodge their complaint with the Bureau of Lands in order that an administrative investigation may be conducted under Sec. 91, Public Land Act. *(Manese v. Sps. Velasco, G.R. No. 164024, Jan. 29, 2009)*

Note: Indefeasibility of title, prescription, laches and estoppel do not bar reversion suits.

D. CADASTRAL LAND REGISTRATION

Q: What is cadastral registration?

A: It is a proceeding *in rem*, initiated by the filing of a petition for registration by the government, not by the persons claiming ownership of the land subject thereof, and the latter are, on the pain of losing their claim thereto, in effect compelled to go to court to make known their claim or interest therein, and to substantiate such claim or interest.

Q: What is the purpose of cadastral registration?

A: Here, the government does not seek the registration of land in its name. The objective of the proceeding is the adjudication of title to the lands or lots involved in said proceeding.

Q: What is the procedure in cadastral registration?

A:

1. Cadastral survey
2. Filing of petition
3. Publication of notice of initial hearing
4. Filing of answer
5. Hearing of case
6. Decision
7. Issuance of decree & certificate of title

Q: What is the extent of authority of cadastral courts?

A: The cadastral court is not limited to merely adjudication of ownership in favor of one or more claimants. If there are no successful claimants, the property is declared public land.

Cadastral courts do not have the power to determine and adjudicate title to a lot already covered by homestead patent to a person other than a patentee.

Cadastral court possesses no authority to award damages.

Note: A parcel of forestland is within the exclusive jurisdiction of the Bureau of Forestry and beyond the power and jurisdiction of the cadastral court to register under the Torrens system.

V. SUBSEQUENT REGISTRATION

Q: What is subsequent registration?

A: It is where incidental matters after original registration may be brought before the land registration court by way of motion or petition filed by the registered owner or a party in interest.

Q: What are the rules as to the necessity and effects of subsequent registration?

A:

GR: The mere execution of deeds of sale, mortgages, leases or other voluntary documents serves only 2 purposes:

1. as a contract between the parties thereto
2. as evidence of authority to the RD to register such documents *(Sec. 51, PD 1529)*

XPN: Wills that purport to convey or affect a registered land.

Note: It is only the act of registering the instrument in the RD of the province or the city where the land lies which is the operative act that conveys ownership or affects the land insofar as third persons are concerned *(Sec. 51, PD 1529)*.

The act of registration creates a constructive notice to the whole world of such voluntary or involuntary instrument or court writ or process. *(Sec. 52, PD 1529)*

Q: Is mere registration in the entry or day book of the deed of sale without the presentation of the duplicate certificate enough to effect conveyance?

A: It depends.

No, in case of voluntary transfer.

Reason: Such is the willful act of the owner. It is presumed that he is interested in registering the instrument.

Yes, in case of involuntary transfer.

Reason: Such registration is contrary to the interests of the owner. Mere entry is enough.

Note: The fact that no transfer certificate of title has as yet been issued by the RD in the name of the vendor, cannot detract from the rights of a purchaser for value and in good faith entitled to the protection of law, once the deed of sale has been recorded in the day book. What remains to be done lies not within his power to perform.

When a land subject of a sale is registered in the name of the purchaser, registration takes effect retroactively as of the date the deed was noted in the entry book by the RD.

Q: Differentiate voluntary from involuntary dealings in land?

A:

VOLUNTARY DEALINGS	INVOLUNTARY DEALINGS
Concept	
Refer to deeds, instruments or documents which are the results of free and voluntary acts of the parties thereto	Refer to such writ, order or process issued by a court of record affecting registered land which by law should be registered to be effective, and also to such instruments which are not the willful acts of the registered owner and which may have been executed even without his knowledge or against his consent
Kinds	
1. Sale 2. Real property mortgage 3. Lease 4. Pacto de retro sale 5. Extra-judicial settlement 6. Free patent / homestead 7. Powers of attorney 8. Trusts	1. Attachment 2. Sale on execution of judgment or sales for taxes 3. Adverse claims 4. Notice of lis pendens
Effects of Registration	
An innocent purchaser for value of registered land becomes the registered owner the moment he presents and files a duly notarized and valid deed of sale and the same is entered in the day book and at the same time he surrenders or presents the owner's duplicate certificate of title covering the land sold and pays the registration fees	Entry thereof in the day book of the RD is sufficient notice to all persons even if the owner's duplicate certificate of title is not presented to the RD
Requirement to present title	
Need to present title to record the deed in registry and to make memorandum on title	No presentation required; annotation in entry book is sufficient

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VOLUNTARY DEALINGS

Q: Must voluntary dealings be registered?

A: No. Registration is not a requirement for validity of the contract as between the parties. However, the act of registration shall be the operative act to convey or affect the land insofar as third parties are concerned. *(Agcaoili Reviewer, p. 276, 1999 ed)*

Q: What are the requirements for registrability of deeds and other voluntary acts of conveyance?

A: PIPE

1. Presentation of owner's duplicate certificate whenever any duly executed voluntary instrument is filed for registration;
2. Inclusion of one extra copy of any document of transfer or alienation of real property, to be furnished to the city or provincial assessor;
3. Payment of prescribed registration fees and requisite doc stamps; and
4. Evidence of full payment of real estate tax as may be due.

Q: What is the effect of registration of such voluntary dealings?

A: It:

1. creates a lien that attaches to the property in favor of the mortgagee; and
2. constitutes constructive notice of his interest in the property to the whole world.

B. INVOLUNTARY DEALINGS

Q: Must involuntary dealings be registered?

A: Yes. It is the act of registration which creates a constructive notice to the whole world of such instrument or court writ or process and is the operative act that conveys ownership or affects the land insofar as third persons are concerned. *(Aquino, p. 185, 2007 ed)*

ATTACHMENT

Q: What is attachment?

A: It is a writ issued at the institution or during progress of an action commanding the sheriff to attach the property, rights, credits, or effects of the defendant to satisfy demands of the plaintiff.

SALE ON EXECUTION

Q: What is sale on execution?

A: A sale of property by the sheriff under authority of a court's writ of execution in order satisfy an unpaid obligation.

ADVERSE CLAIM

Q: What is adverse claim?

A: It is a notice to third persons that someone is claiming an interest on the property or has a better right than the registered owner thereof, and that any transaction regarding the disputed land is subject to the outcome of the dispute.

Q: When is a claim of interest adverse?

A:

1. Claimant's right or interest in registered land is adverse to the registered owner;
2. Such right arose subsequent to the date of original registration; or
3. No other provision is made in the decree for the registration of such right or claim.

Q: What are the formal requisites of an adverse claim for purposes of registration?

A: WNR

1. Adverse claimant must state the following in Writing:
   a. his alleged right or interest;
   b. how and under whom such alleged right of interest is acquired;
   c. description of the land in which the right or interest is claimed; and
   d. certificate of title number

2. Such statement must be signed and sworn to before a Notary public; and
3. Claimant shall state his Residence or place to which all notices may be served upon him.

Q: How are adverse claims registered?

A: By filing a sworn statement with the Register of Deeds of the province where the property is located, setting forth the basis of the claimed right together with other data pertinent thereto. *(Agcaoili, p. 538, 2006)*

Note: Entry of the adverse claim filed on the day book is sufficient without the same being annotated at the back of the corresponding certificate of title

(Director of Lands v. Reyes, G.R. No. L-27594, Feb. 27, 1976)

Q: What claims may be registered as adverse claims?

A: Any claim of part or interest in registered land that are adverse to the registered owner, arising subsequent to the date of the original registration *(Sec. 70, PD 1529)*

Note: A mere money claim cannot be registered as an adverse claim. *(Aquino, p. 216, 2007 ed)*

Q: What is the effect of the registration of an adverse claim?

A: It renders the adverse claim effective and any transaction regarding the disputed land shall be subject to the outcome of the dispute *(Aquino, p. 217, 2007 ed)*

Q: What is the effect of non-registration of an adverse claim?

A: The effect of non-registration or invalid registration of an adverse claim renders it ineffective for the purpose of protecting the claimant's right or interest on the disputed land, and could not thus prejudice any right that may have arisen thereafter in favor of third parties *(Aquino, p. 217, 2007 ed)*

Q: What are the limitations to the registration of an adverse claim?

A: Yes.

1. No second adverse claim based on the same ground may be registered by the same claimant.
2. A mere money claim cannot be registered as an adverse claim.

Q: May an adverse claim exist concurrently with a subsequent annotation of a notice of lis pendens?

A: Yes, an adverse claim may exist concurrently with a subsequent annotation of a notice of *lis pendens.* When an adverse claim exists concurrently with a notice of *lis pendens*, the notice of adverse claim may be validly cancelled after the registration of such notice, since the notice of *lis pendens* also serves the purpose of the adverse claim. *(Agcaoili, Registration Decree and Related Laws, p. 539, 2006)*

Q: What is the lifespan of a registered adverse claim?

A: The adverse claim shall be effective for a period of thirty (30) days from the date of registration and it may be cancelled. *(Agcaoili Reviewer, p. 341. 2008)*

Q: What is the effect of the expiration of the period of effectivity of an adverse claim?

A: The expiration does not ipso facto terminate the claim. The cancellation of the adverse claim is still necessary to render it ineffective, otherwise, the inscription will remain annotated and shall continue as a lien to the property. *(Agcaoili Reviewer, p. 341, 2008)*

Q: May the RD cancel an adverse claim?

A: The RD cannot, on its own, automatically cancel the adverse claim.

Note: Before the lapse of 30-day period, the claimant may file a sworn petition withdrawing his adverse claim, or a petition for cancellation of adverse claim may be filed in the proper Regional Trial Court *(Aquino, p. 219, 2007 ed)*.

Q: What must an interested party do if he seeks the cancellation of a registered adverse claim?

A: The interested party must file with the proper court a petition for cancellation of adverse claim, and a hearing must also first be conducted.

NOTICE OF LIS PENDENS

Q: What is notice of lis pendens?

A: *Lis pendens* literally means a pending suit. The doctrine of lis pendens refers to the jurisdiction, power or control which a court acquires over property involved in a suit, pending the continuance of the action, and until final judgment. *(Agcaoili Reviewer, p. 343, 2008 ed)*

It merely creates a contingency and not a lien. It does not produce any right or interest which may be exercised over the property of another. It only protects the applicant's rights which will be determined during trial. *(Aquino, p. 221, 2007 ed; Agcaoili Reviewer, p. 255, 1999 ed)*

Q: What are the purposes of a notice of lis pendens?

A: To:

1. protect the rights of the party causing the registration of the lis pendens; and
2. advise third persons who purchase or contract on the subject property that

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they do so at their peril and subject to the result of the pending litigation. *(Agcaoili Reviewer, p. 344, 2008)*

Note: A notice of *lis pendens* is intended to constructively advise, or warn all people who deal with the property that they so deal with it at their own risk, and whatever rights they may acquire in the property in any voluntary transaction, are subject to the results of the action, and may well be inferior and subordinate to those which may be finally determined and laid down therein.

Q: When may a notice of lis pendens be had and when may it not be resorted to?

A:

NOTICE OF LIS PENDENS	
When applicable	***When Inapplicable***
1. Recover possession of real estate 2. Quieting of title 3. Remove clouds upon title 4. For Partition 5. Any other proceeding of any kind in court directly affecting title to the land or its use or occupation or the building thereon	1. Attachments 2. Levy or execution 3. Proceedings on probate or wills 4. Administration of the real estate of deceased person 5. Proceedings for the recovery of money judgments

Q: What are the effects of the annotation of notice of lis pendens?

A: The filing of notice of lis pendens has 2 effects:

1. It keeps the subject matter of litigation within the power of the court until the entry of the final judgment to prevent the defeat of the final judgment by successive alienation; and

2. It binds a purchaser, bona fide or not, of the land subject of the litigation to the judgment or decree that the court will promulgate subsequently *(Agcaoili Reviewer, p. 344, 1999 ed)*

Q: What statutory liens affecting title are not barred even though not noted in the title?

A: LUPD

1. Liens, claims or rights arising or existing under the laws and the Constitution, not required by law to appear of record in the RD;

2. Unpaid real estate taxes levied and assessed within two (2) years immediately preceding the acquisition of any right over the land by an innocent purchaser for value without prejudice to right of the government to collect taxes payable before that period from the delinquent taxpayer alone;

3. Public highway or private way established or recognized by law or any government irrigation canal or lateral thereof; and

4. Any Disposition of the property or limitation on the use thereof by virtue of laws or regulations on agrarian reform (Sec. 44, PD 1529).

Q: When may a notice of lis pendens be cancelled?

A: A notice of lis pendens may be cancelled in the following cases before final judgment upon order of the court: **MEND-PC**

1. When it is shown that the notice is for the purpose of **M**olesting the adverse party;

2. Where the **E**vidence so far presented by the plaintiff does not bear out the main allegations of the complaint;

3. When it is shown that it is **N**ot necessary to protect the right of the party who caused the registration thereof;

4. Where the continuances of the trial are unnecessarily **D**elaying the determination of the case to the prejudice of the defendant;

5. Upon verified **P**etition of the party who caused the registration thereof; or

6. It is deemed **C**ancelled after final judgment in favor of defendant, or other disposition of the action, such as to terminate all rights of the plaintiff to the property involved.

Q: May a notice of lis pendens be cancelled despite the pendency of the case?

A: Yes. Though ordinarily a notice of lis pendens cannot be cancelled while the action is still

pending and undetermined, the proper court has discretionary power to cancel it under peculiar circumstances, as for instance, where the evidence so far presented by the plaintiffs does not bear out the main allegations of his complaint, and where the continuances of the trial, for which the plaintiffs is responsible are unnecessarily delaying the determination of the case to the prejudice of the defendants. *(Baranda v. Gustillo, G.R. No. L-81163, Sept. 26, 1988)*

VI. NON-REGISTRABLE PROPERTIES

Q: What are non-registrable lands?

A: These are properties of public dominion which, under existing legislation, are not the subject of private ownership and are reserved for public purposes. *(Aquino, p. 38, 2007 ed)*

Q: What is the reason behind their non-registrability?

A: They are intended for public use, public service or development of the national wealth. They are outside the commerce of men and, therefore, not subject to private appropriation.

Q: Which lands are non-registrable?

A:

1. Property of public domain or those intended for public use, public service or development of the national wealth.
2. Forest or timber lands
3. Water sheds
4. Mangrove swamps
5. Mineral lands
6. Parks and plazas
7. Military or naval reservations
8. Foreshore lands
9. Reclaimed lands
10. Submerged areas
11. River banks
12. Lakes
13. Reservations for public and semi-public purposes
14. Others of similar character *(Agcaoili Reviewer, p. 82, 2008)*

FOREST LAND

Q: In 1913, Gov. Gen. Forbes reserved a parcel of land for provincial park purposes. Sometime thereafter, the court ordered said land to be registered in Ignacio Palomo's name. What is the effect of the act of Gov. Gen Forbes in reserving the land for provincial park purposes?

A: As part of the reservation for provincial park purposes*, they form part of the forest zone*. It is elementary in the law governing natural resources that *forest land cannot be owned by private persons. It is not registrable and possession thereof, no matter how lengthy, cannot convert it into private property, unless such lands are reclassified and considered disposable and alienable*. *(Sps. Palomo, et. al. v. CA, et. al., G.R. No. 95608, Jan. 21, 1997)*

FORESHORE LAND

Q: What is foreshore land?

A: A strip of land that lies between the high and low water marks and is alternatively wet and dry according to the flow of tide. It is that part of the land adjacent to the sea, which is alternately covered and left dry by the ordinary flow of tides.

Note: Foreshore land forms part of the alienable land of the public domain and may be disposed of only by lease and not otherwise. Foreshore land remains part of the public domain and is outside the commerce of man. It is not capable of private appropriation.

MANGROVE SWAMPS

Q: What are mangrove swamps?

A: These are mud flats, alternately washed and exposed by the tide, in which grows various kindred plants which will not live except when watered by the sea, extending their roots deep into the mud and casting their seeds, which also germinate there. These constitute the mangrove flats of the tropics, which exist naturally, but which are also, to some extent cultivated by man for the sake of the combustible wood of the mangrove and like trees as well as for the useful nipa palm propagated thereon. *(Montano v. Insular Government, G.R. No. 3714, Jan. 26, 1909)*

MINERAL LANDS

Q: What are mineral lands?

A: Mineral land means any land where mineral resources are found.

Mineral resources, on the other hand, means any concentration of mineral/rocks with potential economic value.

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WATERSHED

Q: What is watershed?

A: It is a land area drained by a stream or fixed body of water and its tributaries having a common outlet for surface runoff.

Q: What is watershed reservation?

A: It is a forest land reservation established to protect or improve the conditions of the water yield thereof or reduce sedimentation.

VII. DEALINGS WITH UNREGISTERED LANDS

Q: Which lands are registrable?

A:

1. Alienable and disposable public agricultural lands; and
2. Private lands.

Q: What are the general incidents of registered land?

A: Registered land or the owners are not relieved from the following:

1. any rights incident to the relation of husband and wife, landlord and tenant;
2. liability to attachment or levy on execution;
3. liability to any lien of any description established by law on the land and buildings thereon, or in the interest of the owner in such land or building;
4. any right or liability that may arise due to change of the law of descent;
5. the rights of partition between co-owners;
6. the right of government to take the land by eminent domain;
7. liability to be recovered by an assignee in insolvency or trustee or bankruptcy under the laws relative to preferences; and
8. any other rights or liabilities created by law and applicable to unregistered land.

A. ADVERSE POSSESSION

Q: When is possession adverse?

A: Possession of land is adverse when it is open and notorious. It is *open* when it is patent, visible, and apparent and it is *notorious* when it is so conspicuous that it is generally known and talked of by public or the people in the neighborhood. *(Aquino, p. 33, 2007 ed)*

Q: Is adverse possession similar with the possession required in acquisitive prescription?

A: Yes. Possession, to constitute the foundation of a prescriptive right, must be possession under a claim of title or it must be adverse. *(Cuaycong v. Benedicto, G.R. No. 9989, Mar. 13, 1918)*

Q: What are the requisites in order to acquire land title thru adverse possession?

A:

1. Possession must be: **OCENCU**
   a. **O**pen;
   b. **C**ontinuous;
   c. **E**xclusive;
   d. **N**otorious;
   e. In the **C**oncept of an owner; and
   f. **U**ninterrupted possession for:
      i. *10 Years* – If possession is in good faith and with just title
      ii. *30 Years* – If possession is in bad faith and without just title

2. Land possessed must be an alienable or disposable public land

Q: An Emancipation Patent OCT was issued in Remy's favor. However, Madarieta filed a complaint for annulment and cancellation of the OCT against Remy before the DARAB, alleging that the Department of Agrarian Reform mistakenly included her husband's lot as part of Luspo's property where Remy's house was constructed. From the facts of the case, what is the nature of Remy's possession of the subject land?

A: Remy possessed the subject land *in the concept of an owner*. No objection was interposed against his possession of the subject land and Remy did not employ fraud in the issuance of the emancipation patent and title. In fact, Madarieta faulted the DAR, not him. *(Rementizo v. Heirs of Vda. De Madarieta, G.R. No. 170318, Jan. 15, 2009)*

Q: RP opposed the application for registration filed by Manna Properties under Sec. 48(b), CA No. 141 arguing that, as a private corporation, it is disqualified from holding alienable lands of the public domain, except by lease, citing Sec. 3, Art. XII, 1987 Constitution. On the other hand, Manna Properties claims that the land in question has been in the open and exclusive

possession of its predecessors-in-interest since the 1940s, thus, the land was already private land when Manna Properties acquired it from its predecessors-in-interest. Decide.

A: Lands that fall under Sec. 48, CA No. 141 are effectively segregated from the public domain by virtue of *acquisitive prescription*. Open, exclusive and undisputed possession of alienable public land for the period prescribed by CA No. 141 *ipso jure* converts such land into private land. Judicial confirmation in such cases is only a formality that merely confirms the earlier conversion of the land into private land, the conversion having occurred in law from the moment the required period of possession became complete.

Under CA No. 141, the reckoning point is June 12, 1945. If the predecessors-in-interest of Manna Properties have been in possession of the land in question since this date, or earlier, Manna Properties may rightfully apply for confirmation of title to the land. Manna Properties, a private corporation, may apply for judicial confirmation of the land without need of a separate confirmation proceeding for its predecessors-in-interest first. *(Republic v. Manna Properties Inc., G.R. No. 146527, Jan. 31, 2005)*

Note: Sec. 48(b), CA 141 or Public Land Act governs the confirmation of imperfect or incomplete titles to lands of the public domain.

Q: Against whom can acquisition of ownership by prescription not be used?

A: Acquisition of ownership by prescription is unavailing against the registered owner and his hereditary successors because under Section 47 of the Property Registration Decree, registered lands are not subject to prescription. No title to registered land in derogation of the title of the registered owner shall be acquired by prescription or adverse possession. *(Agcaoili, Reviewer in property registration and related proceedings, p. 341, 2008 ed)*

B. ACQUISITION OF TITLE BY LAW

Q: How may land titles be acquired by law?

A:

1. Free Patents based on Public Land Act;
2. Title to Accretion in river banks;
3. Reclamation; or
4. Title by Escheat *(Rule 91, Rules of Court)*

PATENTS UNDER THE PUBLIC LAND ACT

Q: What are the different kinds of patents under the Public Land Act? To whom are they granted and what are the requirements for acquisition of such?

A:

TO WHOM GRANTED	REQUIREMENTS
Homestead Patent	
To any Filipino citizen over the age of 18 years or head of a family	Does not own more than 24 hectares of land in the Philippines or has not had the benefit of any gratuitous allotment of more than 24 hectares Must have resided continuously for at least 1 year in the municipality where the land is situated Must have cultivated at least 1/5 of the land applied for
Free Patent	
To any natural born citizen of the Philippines	Does not own more than 12 hectares of land Has continuously occupied and cultivated, either by himself or his predecessors-in-interest tract/s of agricultural public land subject to disposition
Sales Patent	
Citizens of the Philippines of lawful age or such citizens not of lawful age who is head of a family may purchase public agricultural land of not more than 12 hectares	To have at least 1/5 of the land broken and cultivated within 5 years from the date of the award Shall have established actual occupancy, cultivation and improvement of at least 1/5 of the land until the date of such final payment
Special Patents	
To non-Christian Filipinos under Sec. 84 of the Public Land Act	Sec. of the DILG shall certify that the majority of the non-Christian inhabitants of any given reservation have advanced sufficiently in civilization

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Q: How are patents acquired?

A: By:

1. *Succession* (testate or intestate)
   a. By *descent* – title is acquired when an heir succeeds the deceased owner whether by testate or intestate.
   b. By *devise* – person acquires land from one who may or may not be a relative, if he is named in the deceased's will as devisee for such property.

2. *Prescription* – Possession of land for required number of years and assertion of ownership through an uninterrupted actual possession of property within the period of time prescribed by law. *(Arts. 712, 1134, 1137, NCC)*

LAND PATENTS

Q: How are public lands suitable for agricultural purposes disposed of?

A: Public Lands suitable for agricultural purposes are disposed as follows:

1. homestead settlement;
2. sale;
3. lease;
4. confirmation of imperfect title or incomplete titles either by judicial or administrative legalization; or
5. free title.

Note: When a free patent title is issued to an applicant and the sea water moves toward the estate of the title holder, the invaded property becomes part of the foreshore land. The land under the Torrens system reverts to the public domain and the title is annulled.

After a free patent application is granted and the corresponding certificate of title is issued, the land ceased to be part of the public domain and becomes private property over which the Director of Lands had neither control nor jurisdiction.

Q: What are the restrictions on alienation or encumbrance of lands titled pursuant to patents?

A:

1. Lands acquired under free patent or homestead patent is prohibited from being alienated, except if in favor of the government, 5 years from and after the issuance of the patent or grant.
2. No alienation, transfer or conveyance of any homestead after five (5) years and before twenty-five (25) years after the issuance of title shall be valid without the approval of the Secretary of DENR. (C.A. No. 141 as amended by C.A. No. 458)
3. It cannot be alienated within five (5) years after approval of such patent application.
4. It cannot be liable for the satisfaction of debt within five (5) years after the approval of such patent application.
5. It is subject to repurchase of the heirs within five (5) years after alienation when such is already allowed.
6. No private corporation, partnership or association may lease such land unless it is solely for commercial, industrial, educational, religious or charitable purposes, or right of way (subject to the consent of the grantee and the approval of the Secretary of the DENR). *[The Public Land Act (C.A. No. 141)].*

Q: What are the exceptions to the rule on restrictions on alienation or encumbrance of lands titled pursuant to patents?

A:

1. Actions for partition because it is not a conveyance,
2. Alienations or encumbrances made in favor of the government.

Q: What is the proper action in cases of improper or illegal issuance of patents?

A: *Reversion suits***,** the objective of which is the cancellation of the certificate of title and the consequent reversions of the land covered thereby to the State.

ACCRETION

Q: Differentiate accretion from alluvium.

A: *Alluvium* is the soil imperceptibly and gradually deposited on lands adjoining the banks of rivers caused by the current of the water.

Accretion is the process whereby the soil is so deposited. *(Pineda, Property, p. 124, 1999 ed)*

Q: What are the requisites of accretion?

A:

1. The deposit of soil or sediment be gradual and imperceptible;
2. It is the result of the current of the waters (river/sea); and
3. The land where accretion takes place is adjacent to the banks of rivers or the sea coast.

Note: Alluvion must be the exclusive work of nature.

Q: To whom does accretion belong?

A: It depends.

1. *Accretions on the bank of a lake* – belong to the owners of the estate to which they have been added.
2. *Accretion on the sea bank* – still of public domain, and is not available for private ownership until formally declared by the government to be no longer needed for public use *(Republic v. Amanda Vda. De Castillo, G.R. No. L-69002 June 30, 1988).*

Note: The land adjoining the bank of the river is the principal and the alluvial deposits along such riparian land constitute the accessory. *(Rabuya, Property, p. 262, 2007)* Accessory follows the principal.

Q: If the area of a non-registrable land is increased due to accretion, may the alluvial deposits be subjected to private ownership?

A: No. Non-registrable lands (property of public dominion) are outside the commerce of man, they are not subject to private appropriation. *(Agcaoili Reviewer, p. 83, 2008 ed)*

Q: If the land, the area of which is increased by accretion, has already been registered, is there still a need to register the alluvion?

A: Yes. Accretion does not automatically become registered. It needs a new registration.

Q: If the land area has been diminished due to accretion, may the riparian owner claim protection against such diminution based on the fact of registration of his land?

A: Registration does not protect the riparian owner against diminution of land through accretion. Accretions become the property of the owners of the banks and are natural incidents to land bordering on running streams and the provisions of the Civil Code thereon are not affected by the Land Registration Act (now Property Registration Decree). *(Republic v. CA and Tancinco, G.R. No. L-61647, Oct. 12, 1984)*.

The properties of Jessica and Jenny, who are neighbors, lie along the banks of the Marikina River. At certain times of the year, the river would swell and as the water recedes, soils, rocks and other materials are deposited on Jessica's and Jenny's properties. This pattern of the river swelling, receding and depositing soil and other materials being deposited on the neighbors' properties have gone on for many years. Knowing this pattern, Jessica constructed a concrete barrier about 2 meters from her property line and extending towards the river, so that when the water recedes, soil and other materials are trapped within this barrier. After several years, the area between Jessica's property line to the concrete barrier was completely filled with soil, effectively increasing Jessica's property by 2 meters. Jenny's property, where no barrier was constructed, also increased by one meter along the side of the river.

Can Jessica and Jenny legally claim ownership over the additional 2 meters and one meter, respectively, of land deposited along their properties?

A: Jenny can legally claim ownership of the lands by right of accession (accretion) under Article 457 of the Civil Code. The lands came into being over the years through the gradual deposition of soil and silt by the natural action of the waters of the river.

Jessica cannot claim the two meter-wide strip of land added to her land. Jessica constructed the cement barrier two meters in front of her property towards the river not to protect her land from the destructive forces of the water but to trap the *alluvium*. In order that the riparian owner may be entitled to the *alluvium* the deposition must occur naturally without the intervention of the riparian owner (*Republic v. CA* 132 SCRA 514 [1984]).

If Jessica's and Jenny's properties are registered, will the benefit of such registration extend to the increased area of their properties?

A: No, the registration of Jessica's and Jenny's adjoining property does not automatically extend to the accretions. They have to bring their lands under the operation of the Torrens system of land

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registration following the procedure prescribed in P.D. No. 1529.

Assume the two properties are on a cliff adjoining the shore of Laguna Lake. Jessica and Jenny had a hotel built on the properties. They had the earth and rocks excavated from the properties dumped on the adjoining shore, giving rise to a new patch of dry land. Can they validly lay claim to the patch of land?

A: Jessica and Jenny cannot validly lay claim to the price of dry land that resulted from the dumping of rocks and earth materials excavated from their properties because it is a reclamation without authority. The land is part of the lakeshore, if not the lakebed, which is inalienable land of the public domain. **(2008 Bar Question)**

RECLAMATION

Q: What is reclamation?

A: Reclamation is the act of filling up of parts of the sea for conversion to land.

Note: It must be initially owned by the government. It may be subsequently transferred to private owners.

Q: Who may undertake reclamation projects?

A: Only the National Government may engage in reclamation projects.

Q: To whom does a reclaimed area belong?

A: Under the Regalian doctrine, the State owns all waters and lands of the public domain, including those physically reclaimed. *(Agcaoili Reviewer, p. 110, 2008 ed)*

ESCHEAT

Q: Differentiate action for reversion from escheat proceeding.

A: An action for reversion is slightly different from escheat proceeding, but in its effects they are the same. They only differ in procedure. Escheat proceedings may be instituted as a consequence of a violation of the Constitution which prohibits transfers of private agricultural lands to aliens, whereas an action for reversion is expressly authorized by the Public Land Act. *(Rellosa v. Gaw Chee Hun, G.R. No. L-1411, Sept. 29, 1953)*

REGISTER OF DEEDS

Q: What is the Office of the Register of Deeds?

A: It constitutes a public repository of records or instruments affecting registered or unregistered lands and chattel mortgages in the province or city where such office is situated.

Note:
Register: book containing a list, record, etc.
Registrar: person whose duty is to keep a register.
Registry: office or place where registers are kept.

Q: What is the nature of the functions of the RD?

A:

GR: The function of the RD with reference to registration of deeds, encumbrances, instruments, and the like is *ministerial* in nature.

XPN: Instances when RD may deny registration:

1. When there are several copies of the title (co-owner's title) but is only one is presented with the instrument to be registered.
2. When the property is presumed to be conjugal but the instrument of conveyance bears the signature of only one person.
3. When there is a pending case on court where the character of the land and validity of the conveyance are in issue. *(Agcaoili, Registration Decree and Related Laws, p. 56. 2006; Aquino, p. 11)*
4. When the instrument is not notarized *(Agcaoili Reviewer, p. 16, 2008)*

Note: A deed of sale executed in a place other than where the property is located does not affect extrinsic validity of the instrument as long as the notary public concerned has authority to acknowledge the document executed within his territorial jurisdiction.

Notarial acknowledgment attaches full faith and credit to the document and vests upon it the presumption of regularity.

Q: Is registration of an instrument by the RD ministerial?

A: Yes, it is enough that in the RD's opinion an instrument is registerable, for him to register it. The act, being administrative in character, does

not contemplate notice to and hearing of interested parties.

Q: Will mandamus lie to compel the RD to register an instrument where a party opposes such registration?

A: No. Mandamus does not lie to compel the RD to register the deed of sale. Where any party in interest does not agree with the RD, the question shall be submitted to the Commissioner of Land Registration, where decision on the matter shall be binding upon all RDs. *(Almirol v. Register of Deeds of Agusan, G.R. No. L-22486, Mar. 20, 1968)*

Q: Is it required that before the RD registers an instrument, its validity should first be determined?

A: The law on registration does not require that only valid instruments shall be registered. If the purpose of registration is merely to give notice, then questions regarding the effect or invalidity of instruments are expected to be decided *after*, not before registration. It must follow as a necessary consequence, that registration must first be allowed, and validity or effect, litigated afterwards.

Q: Almirol purchased a parcel of land covered by an OCT in the name of Arcenio Abalo, married to Nicolasa Abalo (deceased). When Almirol went to the Register of Deeds to register the deed of sale and to secure in his name a TCT, the RD refused such, saying that it is a conjugal property and that it is necessary that the property be first liquidated and transferred in the name of the surviving spouse and heirs by means of extrajudicial settlement of partition. Was the RD correct?

A: No. Whether a document is valid or not, is not for the RD to determine, this function belongs properly to a court of competent jurisdiction. *(Almirol v. Register of Deeds of Agusan, G.R. No. L-22486, Mar. 20, 1968)*

Q: What action should the RD take in case he is in doubt as to whether the instrument should be registered or not?

A: When the RD is in doubt as to the proper action to take on an instrument or deed presented to him for registration, he should submit the question to the *Administrator of LRA en* consulta *(Sec. 117, PD 1529)*.

LAND REGISTRATION AUTHORITY

Q: What is LRA?

A: It is an agency of the government charged with the execution of laws relative to the registration of lands and under the executive supervision of DOJ.

Note: The authority is headed by an Administrator and is assisted by two Deputy Administrators, all of whom are appointed by the President of the Philippines upon recommendation of the Secretary of Justice. *(Aquino, Land Registration and Related Proceedings,p. 8, 2007)*

Q: What are the functions of the LRA Administrator?

A: DR VICES

1. Issues Decrees of registration pursuant to final judgments of the courts in land registration proceedings and cause the issuance by the Registers of Deeds of the corresponding certificates of title;

2. Resolves cases elevated *en consulta* by or on appeal from the decision of the Register of Deeds;

3. Verify and approve subdivision, consolidation and survey plans of properties titled under Act 496 and PD 1529 except those covered by PD 957;

4. Implements all orders, decisions, and decrees promulgated relative to the registration of lands, and issue, subject to the approval of the Secretary of Justice, all needful rules and regulations;

5. Acts as Clerk of court in land registration proceedings;

6. Exercises Executive supervision over all clerks of court and personnel of the courts with respect to the discharge of their duties and functions in relation to the registration of lands; and

7. Exercises Supervision and control over all Registers of Deeds and other personnel of the Commission.

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Q: What is *appeal en consulta*?

A: Where the instrument is denied registration, the Register of Deeds shall notify the interested party in writing, setting forth the defects of the instrument or legal grounds relied upon, and advising him that if he is not agreeable to such ruling, he may, without withdrawing the documents from the Registry, elevate the matter by *consulta* within five (5) days from receipt of notice of the denial of registration to the Commissioner of Land Registration. *(Sec. 117, PD 1529)*

Q: What are the functions of the RD, LRA and the courts in land registration?

A:

RD	LRA	COURTS
1. Registration of an instrument presented for registration dealing with real or personal property which complies with the requisites for registration 2. See to it that said instrument bears the proper documentary and stamps and that the same are properly cancelled 3. If the instrument is not registerable: 4. deny the registration thereof and inform the presentor of such denial in writing, stating the ground or reason therefore, and 5. advising him of his right to appeal by consulta in accordance with Sec. 117 of PD 1529 6. Prepare and keep an index system which contains the names of all registered owners and lands registered	1. Assistance to the Department of Agrarian Reform, the Land Bank, and other agencies in the implementation of the land reform program of the government 2. Assistance to courts in ordinary and cadastral land registration proceedings 3. Central repository of records relative to the original registration of lands titled under the Torrens system, including the subdivision and consolidation plans of titled lands. 4. Adjudicate appeal – *en consulta cases*	Jurisdiction over: 1. Applications for original registration of title to lands, including improvements and interests therein 2. Petitions filed after original registration, with power to hear and determine all questions arising upon such application or petitions.

TORTS AND DAMAGES

BOOK I – TORTS
I. PRINCIPLES

A. ABUSE OF RIGHT; ELEMENTS

Q: What is the principle of abuse of rights?

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

NOTE: This principle is based upon the famous maxim *suum jus summa injuria* (*the abuse of a right is the greatest possible wrong*). *(Arlegui v. CA G.R. No. 126437, Mar. 6, 2002)*

Q: What are the elements of the principle of abuse of rights?

A:

1. Legal right or duty
2. The right or duty is exercised in bad faith, and
3. For the sole intent of prejudicing or injuring another

B. UNJUST ENRICHMENT

Q: What is the principle behind the prohibition against unjust enrichment?

A: "*Nemo cum alteris detrimento locupletari potest*" or no one shall unjustly enrich himself at the expense of another.

Coverage: the article applies only if:

i. Someone acquires or comes into possession of "something" which means delivery or acquisition of "things"; and
ii. Acquisition is undue and at the expense of another which means without any just or legal ground.

NOTE: The government is not exempted from the principle of unjust enrichment.

Q: What is the remedy for unjust enrichment?

A: *Accion In Rem Verso*. It is an action for recovery of what has been paid without just cause.

NOTE: This is only a subsidiary action.

NOTE: Mistake is not an essential element, as opposed to solutio indebiti where mistake is an essential element.

Protection of Human Dignity – Every person shall respect the dignity, personality, privacy and peace of mind of his neighbors and other persons.

Q: What are the requisites for *accion in rem verso*?

A:

1. That the defendant has been enriched;
2. That the plaintiff has suffered a loss;
3. That the enrichment of the defendant is without just or legal ground
4. That the plaintiff has no other action based on contract, *quasi*-contract, crime or *quasi-delict.*

Q: When may *accion in rem verso* be availed of?

A: It can only be availed of if there is no other remedy to enforce it based on contract, *quasi*-contract, crime or *quasi-delict.*

Q: Distinguish *accion in rem verso* from *solutio indebiti.*

A:

ACCION IN REM VERSO	SOLUTIO INDEBITI
It is not necessary that payment be made by mistake	Payment by mistake is an essential element

Q: Is rendition of services included under Art. 22?

A: No. If services were rendered by someone benefiting another, it does not mean that the latter is exempted from indemnifying the former. The liability will lie on *quasi*-contract under Article 2146.

C. LIABILITY WITHOUT FAULT

Q: Is Liability Without Fault different with *Damnum Absque Injuria*?

A: Yes. Liability without Fault includes:

a. Strict Liability – there is strict liability if one is made independent of fault, negligence or intent after establishing certain facts specified by law. It includes liability for conversion and for injuries caused by animals, ultra-hazardous activities and nuisance.
b. Product Liability – is the law which governs the liability of manufacturers and sellers for damages resulting from defective products. *(Aquino, T., Torts and Damages, 2005, Second Ed.)*

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Q: What is the concept of *Damnum Absque Injuria*?

A: A person who only exercises his legal rights does no injury. If damages result from such exercise of legal rights, the consequences must be borne by the injured person alone. The law affords no remedy for damages resulting from an act which does not amount to a legal injury or wrong.

Q: Is the owner of a property obliged to take reasonable care towards a trespasser for his protection or from concealed danger?

A:

GR: No.

XPN:

1. *Visitors* – Owners of buildings or premises owe a duty of care to visitors.

2. *Tolerated Posession* – The owner is still liable if the plaintiff is inside his property by tolerance or by implied permission.

   Common carriers may be held liable for negligence to persons who stay in their premises even if they are not passengers.

3. *Doctrine of Attractive Nuisance*

4. *State of Necessity (Art. 432)* – A situation of present danger to legally protected interests, in which there is no other remedy than the injuring of another's also legally protected interest.

D. ACTS CONTRARY TO LAW

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

Q: Does the above stated rule apply to all cases violation of law?

A: No. Generally, laws provide for their own sanctions and methods of enforcement thereof. Article 20 applies only in cases where the law does not provide for its own sanction. Said article provides for a general sanction –indemnification for damages. *(Pineda, 2004)*

Q: In view of the general sanction provided for under Art. 20, may a person have an absolute right to be indemnified?

A: No. It is essential that some right of his be impaired. Without such, he is not entitled to indemnification. *(Pineda, 2004)*

E. ACTS CONTRARY TO MORALS

Q: Differentiate Article 20 from Article 21 of the Civil Code.

A: *Article 20* speaks of the general sanction for all other provisions of law which do not especially provide for their own sanction. *Article 21* on the other hand, speaks of act which is legal but is contrary to morals, good custom, public order or public policy and is done with intent to injure.

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

Q: What are the elements of acts *contra bonus mores* under Art. 21, NCC*?*

A:

1. There is an act which is legal;
2. but which is contrary to morals, good custom, public order, or public policy; and
3. it is done with intent to injure.

Q: When is breach of promise to marry an actionable wrong?

A: It becomes actionable if there are additional circumstances such as:

1. there was financial damage;
2. social humiliation was caused by to one of the parties; and,
3. where there was moral seduction. *(Aquino, T., Torts and Damages, Second Ed., p351)*

II. CLASSIFICATION OF TORTS

A. ACCORDING TO MANNER OF COMMISSION

Q: What are the classes of torts according to manner of commission?

A:

1. *Negligent torts* – It involves voluntary acts or omissions which results in injury to others, without intending to cause the same.

2. *Intentional torts* – The actor desires to cause the consequences of his act or believes the consequences are substantially certain to result therefrom.

3. *Strict liability* – The person is made liable independent of fault or negligence upon submission of proof of certain facts.

4. *Constitutional torts* – The violation of a person's rights under Article III (Bill of Rights) of the 1987 Constitution as contemplated in Article 32 constitutes constitutional tort.

B. ACCORDING TO SCOPE: GENERAL OR SPECIFIC

1. *General* – the catch-all provisions on torts provided for in the civil code i.e. Articles 19, 20 and 21. The effect is that "there is a general duty owed to every person not to cause harm either willfully or negligently. Articles 19, 20, and 21 are provisions on human relations that "were intended to expand the concept of torts in this jurisdiction by granting adequate legal remedy for the untold number of moral wrongs which is impossible for human foresight to specifically provide for in the statutes." *(Aquino, 2005, citing PNB v. CA, et al. 83 SCRA 237)*

2. Specific torts - It includes trespass, assault and battery, negligence, products liability, and intentional infliction of emotional distress. As defined, torts fall into three different categories: intentional, negligent and liability (manufacturing and selling defective products), product liability tort.

    a. art 19, 20, 21 (catch-all provisions)
    b. unjust enrichment (arts. 22, 23, 2142 & 2143)
    c. violation of right of privacy and family relations
    d. dereliction of official duty of public officers
    e. unfair competition
    f. malicious prosecution
    g. violation of rights and liberties of another person
    h. nuisance

III. THE TORTFEASOR

A. THE DIRECT TORTFEASOR

Q: Who are the persons liable for a quasi-delict?

A: Defendants in tort cases can either be natural or artificial beings.

Q: Can a corporation be held liable for torts?

A: Yes. A corporation is civilly liable in the same manner as natural persons. (*PNB v. CA, 83 SCRA 237*)

NOTE: With respect to close corporations, the stockholders who are personally involved in the operation of the corporation may be personally liable for corporate torts under Section 100 of the Corporation Code.

RE: Corporation by Estoppel: all persons who assume to act as a corporation knowing it to be without authority to do so shall be liable as general partners for all debts, liabilities and damages incurred or arising as a result thereof.

With respect to partnerships, the partnership is solidarily liable with the partner if the latter commit tortuous acts while acting in the pursuit of partnership business. This principle is consistent with the mutual agency rule in partnership.

Subject to rules regarding waiver of immunity from suits, defendants may include the State, its political subdivisions, and government-owned and controlled corporations.

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B. PERSONS MADE RESPONSIBLE FOR OTHERS

1. IN GENERAL

Q: Who are the persons made responsible for others?

A:

1. Father/ mother for their minor children.
2. Guardians are liable for the minors and incapacitated persons under their authority.
3. Owners/managers of establishment or enterprise for their employees
4. Employers for their employees and household helpers.
5. State for their special agents
6. Teachers/Heads of establishment of arts and trades for their pupils/students/apprentices *(Art. 2180, NCC).*

Q: What is the difference between a minor child and an incapacitated person in the preceding number?

A: Minors here refer to those who are below twenty-one years (21) and not to those below 18 years. While incapacitated persons refer to persons beyond twenty-one (21) years of age but are incapacitated such as those who are insane or imbecile. *(Pineda, Torsts and Damages, 2009, p.81)*

Q: What are the requisites of vicarious liability of parents?

A:

1. The child is below twenty-one (21) years of age
2. The child committed a tortuous act to the damage and prejudice of another person
3. The child lives in the company of the parent concerned whether single or married.

Q: Who is responsible for an illegitimate child?

A: If the child is illegitimate and acknowledged by the father and lives with the latter, the father is responsible. However, an illegitimate child who is not recognized by the putative father but is under the custody and supervision of the mother, it is the latter who is the one vicariously liable.

Q: Is the mother liable simultaneously with the father?

A: No. The law does not make the father and mother simultaneously liable. It is only in the case of death or incapacity of the father, that the mother may be held liable.

NOTE: Consequently, the wife as a co-defendant with the husband or if impleaded alone while the husband is alive and well, may move to dismiss the case filed against her for being premature. *(Romano v. Parinas, 101 Phil. 141)*

Q: Are *de facto* guardians vicariously liable?

A: Yes. It is but just that if the children commit tortuous acts while living with them and are below 21 years of age, the law should be applied by analogy.

Note: *De facto* guardians are relatives and neighbors who take unto themselves the duty to care and support orphaned children without passing through judicial proceedings.

Q: What is the rule in vicarious liability of owners and managers?

A:

GR: A mere manager, who does not own the business, is not to be considered an employer because as a manager, he is just a high class employee.

XPN: A manager who is not an owner but who *assumes* the responsibility of supervision over the employees of the owner may be held liable for the acts of the employees.

NOTE: To be liable, the manager must be acting as an employer of with the same authority as the owner.

Q: When is the employer liable for the tortuous act of the employee?

A: To make the employer liable under Art 2180(5 and 6), it must be established that the injurious or tortuous act was committed at the time the employee was performing his functions.

Note: If there is deviation from the scope of employment, the employer is not liable, no matter how short in time is the deviation. *(Pineda, Torsts and Damages, 2009, p.97)*

Q: What is the rule on independent contractors?

A:

GR: An independent contractor is not an employee of the person who engaged his services. The independent contractor is free to execute the work without being subject to the orders of the employer on the details of work.

XPN: If the employer retains the control and supervision over the person engaged with respect to the work to be done, there is between them an employer-employee relationship.

A. QUASI-DELICTS UNDER ARTICLE 2180, HOW INTERPRETED

Q: How is quasi-delict under *Art. 2180* interpreted?

A: A person or juridical entity is made liable solidarily with a tortfeasor simply by reason of his relationship with the latter. The relationship may either be a parent and child; guardian and ward; employer and employee; school and student.

NOTE: *Art. 2176, NCC* - Whoever by act or omission causes damage to another, there being no fault or negligence is obliged to pay for the damage done. Such fault or negligence, if there is no pre-existing contractual relation between the parties, is called a quasi-delict and is governed by the provisions of this Chapter.

Q: When is the actual tortfeasor not exempted from liability?

A: The minor, ward, employee, special agent, pupil, students and apprentices who actually committed the delictual acts are not exempted by the law from personal responsibility. They may be sued and made liable alone as when the person responsible for them or vicarious obligor proves that he exercised the diligence of a good father of a family or when the minor or insane person has no parents or guardians. In the latter instance, they are answerable with their own property.

Q: What are the remedies of an injured party for the tortuous act of an employee?

A:

1. Filing a civil action for damages based on quasi-delict under Art. 2180 – liability of the employer is primary, direct and solidary
2. Filing a criminal case: (offender found guilty) the civil liability of the employer is subsidiary.

Q: What is the defense for the persons liable under Art. 2180?

A: The persons liable shall be exempted from liability if they can prove that they have exercised all the diligence of a good father of a family to prevent damage.

Q: What is the basis of quasi-delicts under Art. 2180?

A: *Pater Familias*. The reason for the master's liability is the negligence in the supervision of his subordinates.

Note: The "master", however, in *pater familias* under Art. 2180 will be freed from liability if he can prove that he had observed all the diligence of a good father of a family.

Q: What is the nature of responsibility if the vicarious obligor?

A: The liability of the vicarious obligor is primary and direct and not subsidiary. He is solidarily liable with the tortfeasor. His responsibility is not conditioned upon the insolvency of or prior recourse against the negligent tortfeasor.

FAMILY CODE

Q: Who is a minor under Art 221 of the Family Code?

A: The term "unemancipated minor" found in Art 221(FC) means children below 18 years of age. This is in contrast with the "minor children" found in Art 2180(2)(NCC) which refers to children below 21 years. To avoid the overlapping in ages, the better option to settle the conflict is to consider Art 221 as totally *superseded* by Art 236(FC) as *amended* by R.A. 6809. Thus:

GR: 18 years of age – parental authority ceases (emancipation)

XPNS: 21 years of age in the following cases
1. marriage
2. Art. 2180(2) NCC

Note: Art 221. Family Code provides that parents and other persons exercising parental authority shall be civilly liable for the injuries and damages caused by the act or omission or their unemancipated

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children living in their company and under parental authority subject to the appropriate defenses provided by law.

Q: Distinguish between Articles 218 of the Family Code and 2180 of the New Civil Code.

A:

ARTICLE 218	ARTICLE 2180
School, its administrators, teachers engaged in child care are made expressly liable	Teachers, head of establishment in arts and trades are made expressly liable
Liability of school, its administrators, teachers is solidary and parents are made subsidiary liable	No such express solidary nor subsidiary liability is stated
Students involved must be a minor	Students involved are not necessarily minors

Q: Is the application of Article 2180 limited to school of arts and trades?

A: No. It applies to all, including academic institutions.

Q: Can the liability be imputed to the teacher-in-charge even if the student has already reached the age of majority?

A: Yes. Under Article 2180, age does not matter.

Q: Is it required that the student be only within the school premises in order for the liability to arise under this article?

A: No. Authority and responsibility shall apply to all authorized activities whether inside or outside the premises of the school, entity or institution.

Q: What is the nature of the liability of the persons enumerated under Art. 218?

A: Those given authority and responsibility under the preceding Article (Art. 218) shall be principally and solidarily liable for damages caused by the acts or omissions of the unemancipated minor. The parents, judicial guardians or the persons exercising substitute parental authority over said minor shall be subsidiarily liable.

The respective liabilities shall not apply if it is proved that they exercised proper diligence required under the particular circumstances *(Art 219).*

Q: A 15-year-old high school student stabs his classmate who is his rival for a girl, while they were going out of the classroom after their last class. Who may be held liable?

A: Under Section 218 of the Family Code, the school, its administrators and teachers, or the individual, entity or institution engaged in child care shall have special parental authority and responsibility over the minor child while under their supervision, instruction or custody. Authority and responsibility shall apply to all authorized activities whether inside or outside the premises of the school, entity or institution.

Q: What defense, if any, is available to them?

A: These persons identified by law to be liable may raise the defense that they exercised proper diligence required under the circumstances. Their responsibility will cease when they prove that they observed all the diligence of a good father of a family to prevent damage. As regards the employer, if he shows to the satisfaction of the court that in the selection and in the supervision of his employees he has exercised the care and diligence of a good father of a family, the presumption is overcome and he is relieved from liability. *(Layugan v. IAC, G.R. No. L-49542, Sept. 12, 1980)*. **(2005 Bar Question)**

(1) ELEMENTS; DEFINITION

Q: What are the elements of a quasi-delict?

A:

1. Negligent or wrongful act or omission;
2. Damage or injury caused to another;
3. Causal relation between such negligence or fault and damage;
4. No pre-existing contractual relationship between the parties (some authorities believe this element not essential). *(Art. 2176)*

Note: Liability for tort may arise even under a contract where tort is that which breaches the contract. *(Light Rail Transit Authority et al. v. Navidad, et al., GR No. 145804, Feb. 6, 2003)*

If there is pre-existing contractual relation between the parties and the same is violated, the proper cause of action is not anchored on quasi-delict but breach of contract or culpa contractual.

However, there may be cases of contractual relations where quasi-delict may arise when the contract was *grossly violated*. The tort liability is not

based on the contract of carriage but on some other bases like *deliberate and malicious violation of the contract (Air France v. Carroscoso, G.R. No. L-21438, Sept. 28, 1966).*

Q: When is a person liable for a quasi-delict?

A: He is liable for such when, by his act or omission, he causes damage to another, there being fault or negligence, and there is no pre-existing contractual relationship between them. *(Art. 2176, NCC)*

NOTE: A single act or omission may give rise to two or more causes of action. Thus, an act or omission may give rise to an action based on delict, quasi-delict or contract.

In negligence cases, prior conduct should be examined, that is, conduct prior to the injury that resulted, or in proper case, the aggravation thereof.

Q: When is Art. 2176 (on quasi-delict) inapplicable?

A:

1. When there was a pre-existing contractual relation. Otherwise, what results is a breach of contract.

   Note: However, if the act that breaches the contract is tortuous, the pre-existing contractual relation will not bar the recovery of damages *(Singson v. BPI, G.R. No. L-24837, June 27, 1968)*

2. When the fault or negligence is punished by law as a crime. Art. 100 of RPC shall be applicable

3. If the action for quasi-delict is instituted after four (4) years, it is deemed prescribed.

4. When the injury suffered by a person is the result of a fortuitous event without human intervention.

5. If there is no damage or injury caused to another.

(2) DISTINGUISHED FROM CULPA CONTRACTUAL AND CULPA CRIMINAL

Q: Distinguish quasi delict from culpa contractual and culpa criminal.

A:

CULPA CONTRACTUAL	CULPA AQUILIANA	CULPA CRIMINAL
Contractual Negligence	Civil Negligence, Quasi-Delict, Tort, or Culpa Extra-Contractual	Criminal Negligence
Proof Needed		
Preponderance of evidence	Preponderance of evidence	Proof of guilt beyond reasonable doubt
Onus Probandi		
Contracting party must prove: 1. The existence of the contract; 2. The breach thereof.	Victim must prove: 1. The damage suffered; 2. The negligence of the defendant; 3. The causal connection between the damage and the negligence.	Prosecution must prove the guilt of the accused beyond reasonable doubt.
Defense Available		
Exercise of extraordinary diligence (in contracts of carriage), *Force majeure*	Exercise of diligence of a good father of a family in the selection and supervision of employees	Defenses provided for under the Revised Penal Code.
Existence of Contract between the Parties		
There is pre-existing contract	No pre-existing contract	No pre-existing contract

Note: The result in the criminal case, whether acquittal, or conviction is irrelevant in the independent civil action under the Civil Code (*Dionisio vs Alyendia, 102 Phil 443, '57, cited in Mckee vs IAC, 211 SCRA 536*) unless acquittal is based on the court's declaration that the fact from which the civil action arose did not exist, hence the dismissal of criminal action carries with the extinction of the civil liability. (*Andamo vs IAC, 191 SCRA 204, '90 J. Fernan*)

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B. INDIRECT LIABILITY FOR INTENTIONAL ACTS

See Vicarious Liability.

C. PRESUMPTION OF NEGLIGENCE ON PERSONS INDIRECTLY RESPONSIBLE

Q: What is the presumption of negligence on persons indirectly responsible?

A: The presumption of law is that there was negligence on the part of the master or employer either in the selection of the servant or employee (*culpa in eligiendo)* or in the supervision over him after the selection (*culpa vigilando*), or both.

Note: The presumption is *juris tantum* and not *juris et de jure;* subsequently, it may be rebutted. Accordingly, if the employer shows to the satisfaction of the court that in the selection and supervision of his employee he has exercised the care and diligence of a good father of a family, the presumption is overcome and he is relieved of the liability.

D. NATURE OF LIABILITY; JOINT OR SOLIDARY

Q: What is the principle of vicarious liability or law on imputed negligence?

A: Under Art. 2180, a person is not only liable for torts committed by him, but also for torts committed by others with whom he has a certain relation or for whom he is responsible.

Q: What is the nature of the responsibility of a vicarious obligor?

A: His liability is *primary and direct,* not subsidiary. He is solidarily liable with the tortfeasor. His responsibility is not conditioned upon the insolvency of or prior recourse against the negligent tortfeasor *(De Leon Brokerage v. CA, G.R. 15247, Feb. 28, 1962)*

Q: Who are the persons vicariously liable?

A: F-GOES-T

1. **F**ather, or in case of death or incapacity, mother:
   a. damage caused by minor children
   b. living in their company
2. **G**uardians:
   a. for minors or incapacitated persons
   b. under their authority
   c. living in their company
3. **O**wners and managers of establishments:
   a. for their employees
   b. in the service of the branches in which they are employed, or;
   c. on the occasion of their functions
4. **E**mployers:
   a. damages caused by employees and household helpers
   b. acting within the scope of their assigned tasks
   c. even if the employer is not engaged in any business or industry
5. **S**tate – *acting through a special agent* and not when the damage has been caused by the official to whom the task done properly pertains.
6. **T**eachers or heads of establishments:
   a. of arts and trades
   b. for damages caused by their pupils and students or apprentices
   c. so long as they remain in their custody *(Art. 2180, NCC)*

Q: Give the distinctions on the employer's liability under Art 2180 NCC and Revised Penal Code.

A:

a. *Under the Civil Code:* the liability is direct and primary (solidary),the employer may be sued even without suing the employee

   NOTE: Diligence of a good father is a defense.
   Employer is liable even if not engaged in business. Proof of negligence is by mere preponderance of evidence

b. *Under the Revised Penal Code:* the liability is subsidiary

   NOTE: Diligence of a good father is *not* a defense.
   Must prove employer is engaged in business.
   Proof beyond reasonable doubt is required.

2. IN PARTICULAR

A. PARENTS

Q: What is the basis of the parents' vicarious liability?

A: This liability is made natural as logical consequences of the duties and responsibilities of parents exercising parental authority which

includes controlling, disciplining and instructing their children. In this jurisdiction the parent's liability is vested by law (NCC and FC) which assumes that when a minor or unemancipated child living with their parent, commits a tortuous act, the parents are presumed negligent in the performance of their duty to supervise the children under their custody. A presumption which *juris tantum*, not *juris es de jure*, rebuttable-overcome by proof having exercised and observed all the diligence of a good father of a family (diligentissimi patris familias). (***Tamagro vs CA, 209 SCRA 519***)

Q: In the event of death or incapacity of the parents, who are liable for acts or omissions of minors?

A: In default of the parents or a judicially appointed guardian, parental authority shall be exercised by the following persons in the order indicated:

1. Surviving grandparents;
2. Oldest sibling, over 21 years old unless unfit or unqualified;
3. Child's actual custodian, over 21 years old unless unfit or disqualified.

Note: Judicially *adopted children* are considered legitimate children of their adopting parents. Thus, adopters are civilly liable for their tortuous/criminal acts if the children live with them and are minors.

As for an *illegitimate child,* if he is acknowledged by the father and live with the latter, the father shall be responsible. However, if he is not recognized by the putative father but is under the custody and supervision of the mother, it is the latter who is the one vicariously liable *(Pineda, p.87, 2009 ed).*

B. GUARDIAN

Q: Who is a minor under this article?

A: Minors here refer to those who are below twenty-one (21) years and *not* to those below 18 years. The law reducing the majority age from 21 to 18 years did not amend these paragraphs. *(Art. 236 Family Code as amended by RA No. 6809) (Pineda, pp. 81-82, 2009 ed.)*

Q: Are de facto guardians covered by Art. 2180?

A: Yes, the law should be applied by analogy. De facto guardians are relatives and neighbors who take upon themselves the duty to care and support orphaned children without passing through judicial proceedings. *(Pineda, p.88, 2009 ed.)*

C. OWNERS AND MANAGERS OF ESTABLISHMENTS AND ENTERPRISES

Q: In what sense do the terms "owners and managers" used?

A: They are used in the sense of "employer" and do not include the manager of a corporation who himself is just an employee *(Phil. Rabbit Bus Lines v. Phil. American Forwarders, Inc., G.R. No. L-25142, Mar. 25, 1975).*

Q: What is the extent of liability for damage of owners and managers of establishments?

A: They are liable for damage caused by their employees in the service of the branches in which they are employed, or on the occasion of their functions.

D. EMPLOYERS

(1) MEANING OF EMPLOYERS

Q: Who is an employer?

A: Employer includes any person acting directly or indirectly in the interest of an employer in relation to an employee and shall include the government and all its branches, subdivisions and instrumentalities, all government-owned or controlled corporations and institutions, as well as non-profit private institutions, or organizations. *(Art. 97, P.D. 442)*

(2) REQUISITES

Q: When is an employer liable?

A: The employer is liable only if the employee was performing his assigned task at the time the injury was caused. This includes any act done by the employee in the furtherance of the interest of the employer at the time of the infliction of the injury or damage. *(Aquino, T., Torts and Damages, 2005, Second Ed., p 697)*

(A) EMPLOYEE CHOSEN BY EMPLOYER OR THROUGH ANOTHER

Q: What is required before an employer may be held liable for the act of its employees?

A:

1. The employee was chosen by the employer personally or through another;

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2. The service is to be rendered in accordance with orders which the employer has the authority to give all times;
3. That the elicit act of the employee was on the occasion or by reason of the functions entrusted to him.

Note: Before the employer's subsidiary liability is exacted, there must be proof that:

1. they are indeed the employer's of the convicted employee
2. the former are engaged in some kind of industry
3. the crime was committed by the employees in the discharge of their duties
4. that the execution against the latter has not been satisfied due to insolvency.

(B) SERVICES RENDERED IN ACCORDANCE WITH ORDERS WHICH EMPLOYER HAS AUTHORITY TO GIVE

See discussion below.

(C) ILLICIT ACT OF EMPLOYEE WAS ON THE OCCASION OR BY REASON OF THE FUNCTIONS ENTRUSTED TO HIM

Q: Is it required that the employee must be performing his assigned task at the time that the injury is caused?

A: Yes. The vicarious liability of employers attaches only when the tortuous conduct of the employee relates to, or is in the course of his employment. (*Valenzuela v. CA*)

It is not necessary that the task performed by the employee is his regular job or that which was expressly given to him by the employer. It is enough that the task is indispensable to the business or beneficial to the employer. (*Filamer Christian Institute v. IAC, 212 SCRA 637*)

(D) PRESUMPTION OF NEGLIGENCE

Q: What is the presumption on the negligence of the employer?

A: The employer is presumed to be negligent and the presumption flows from the negligence of the employee. Once the employee's fault is established, the employer can then be made liable on the basis of the presumption that the employer failed to exercise *diligentissimi patris families* in the selection and supervision of its employees. *(LRTA v. Navidad, G.R. 145804, Feb. 6, 2003)*

(3) EMPLOYER NEED NOT BE ENGAGED IN BUSINESS OR INDUSTRY

Q: Is it required that the employer is engaged in some kind of industry or work?

A: No. Negligent acts of employees, whether or not the employer is engaged in a business or industry, are covered so long as they were acting within the scope of their assigned task. For, admittedly, employees oftentimes wear different hats. They perform functions beyond their office, title or designation but which, nevertheless, are still within the call of duty. (*Castilex Industrial Corporation v. Vasquez., et al.)*

(4) DEFENSE OF DILIGENCE IN SELECTION AND SUPERVISION

Q: What are the defenses available to an employer?

A:

1. Exercise of due diligence in the selection and supervision of its employees (except in criminal action);
2. The act or omission was made outside working hours and in violation of company's rules and regulations.

Q: What are the remedies of the injured party in pursuing the civil liability of the employer for the acts of his employees?

A:

1. If he chooses to file a *civil action* for damages based on quasi-delict under Article 2180 and succeeds in proving the negligence of the employee, the liability of the employer is *primary, direct and solidary.* It is *not* conditioned on the insolvency of the employee *(Metro Manila Transit Corp. v. CA, G.R. No. 118069, Nov. 16, 1998*).

2. If he chooses to file a *criminal case* against the offender and was found guilty beyond reasonable doubt, the civil liability of the employer is *subsidiary*. The employer cannot use as a defense the exercise of the diligence of a good father of a family.

   Once there is a conviction for a felony, final in character, the employer under

Article 103 of the RPC, is subsidiary liable, if it be shown that the commission thereof was in the discharge of the duties of the employee. A previous dismissal of an action based on culpa aquiliana could not be a bar to the enforcement of the subsidiary liability required by Art. 103 RPC. *(Jocson, et al. v. Glorioso, G.R. L-22686, Jan. 30, 1968) (Pineda, pp. 101-102, 2009 ed.)*

Q: Would the defense of due diligence in the selection and supervision of the employee available to the employer in both instances?

A: The defense of diligence in the selection and supervision of the employee under Article 2180 of the Civil Code is available only to those primarily liable thereunder, but not to those subsidiary liable under Article 103 of the Revised Penal Code. *(Yumul v. Juliano, G.R. No. 47690, Apr., 28, 1941)* **(1997 Bar Question)**

(5) NATURE OF EMPLOYER'S LIABILITY

Q: What is the nature of the employer's vicarious liability?

A: If based on culpa aquiliana under Art. 2176 and 2180 of the Civil Code, the liability is primary, while that under Art. 103 of the Revised Penal Code is subsidiary.

E. STATE

Q: When is the State liable for the acts of others?

A: The State is only liable for the negligent acts of its officers, agents and employees when they are acting as *special agents*. The State has voluntarily assumed liability for acts done through special agents.

NOTE: The State assumes the role of an ordinary employer and will be held liable for the special agent's torts (*Fontanilla vs Malianan*)

Q: Who is a special agent?

A: A *special agent* is one who receives a definite and fixed order or commission, foreign to the exercise of the duties of his office.

An employee who on his own responsibility performs functions inherent in his office and naturally pertaining thereto is *not* a special agent

Q: What are the aspects of liability of the State?

A:

1. *Public/Governmental* – where the State is liable only for the tortuous acts pf its special agents.
2. *Private/Non-governmental* – when the State is engaged in private business or enterprise, it becomes liable as an ordinary employer.

Note: If the special agent is not a public official and is commissioned to perform non-governmental functions, then the State assumes the role of an ordinary employer and will be held liable as such for the tortuous acts of said agent. If the State commissioned a private individual to perform a special governmental task, it is acting through a special agent within the meaning of the provision.

F. TEACHERS AND HEADS OF ESTABLISHMENTS OF ARTS AND TRADES

Q: What is the basis of the teacher's vicarious liability?

A: The basis of the teacher's vicarious liability is, as such, they acting in *Loco Parentis* (in place of parents). However teachers are not expected to have the same measure of responsibility as that imposed on parent for their influence over the child is not equal in degree. The parent can instill more lasting discipline more lasting disciple on the child than the teacher and so should be held to a greater accountability than the teacher or the head for the tort committed by the child.

Q: When are teachers and heads of schools liable?

A:

GR: The teacher-in-charge is liable for the acts of his students.

XPN: In the case of establishments of arts and trades, it is the head thereof, and only he, who shall be liable. *(Amadora v CA, 160 SCRA 315)*

Note: There is really no substantial difference distinction between the academic and non-academic schools in so far as torts committed by their students are concerned. The same vigilance is expected from the teacher over the student under their control and supervision, whatever the nature of the school where he is teaching.

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Q: When is a student considered in the custody of the school authorities?

A: The student is in the custody of the school authorities as long as he is under the control and influence of the school and within its premises, whether the semester has not ended, or has ended or has not yet begun. The term "custody" signifies that the student is within the control and influence of the school authorities. The teacher in charge is the one designated by the dean, principal, or other administrative superior to exercise supervision over the pupils or students in the specific classes or sections to which they are assigned. It is not necessary that at the time of the injury, the teacher is physically present and in a position to prevent it.

C. JOINT TORTFEASORS

Q: Who are joint tortfeasors?

A: All the persons who command, instigate, promote, encourage, advice, countenance, cooperate in, aid, or abet the commission of a tort, or who approve it after it is done, if done for their benefit; they are each liable as a principal, to the same extent and in same manner as if they have performed the wrongful act themselves.

IV. ACT OR OMISSION AND ITS MODALITIES

A. CONCEPT OF ACT

Q: What is an act?

A: Any bodily movement tending to produce some effect in the external world, it being unnecessary that the same be actually produced, as the possibility of its production is sufficient. (*People v. Gonzales, 183 SCRA 309, 324*)

V. PROXIMATE CAUSE

A. CONCEPT

1. DEFINITION

Q: What is proximate cause?

A: An act from which an injury results as a natural, direct, uninterrupted consequence and without which the injury would not have occurred.

2. TEST

Q: What are the tests to determine whether a cause is proximate?

A:

1. *Cause-In-Fact Test* – It is necessary that there is proof that defendant's conduct is a factor in causing plaintiff's damage. Determines whether the defendant's act or omission is a causally relevant factor

    a. *But For Test / Sine Qua Non Test*
    b. *Substantial Factor Test*
    c. *Necessary and Sufficient Test (NESS)* – The act or omission is a cause-in-fact if it is a necessary element of a sufficient set.

2. *Policy test* – The law limits the liability of the defendant to certain consequences of his action; if the damage or injury to the plaintiff is beyond the limit of the liability fixed by law, the defendant's conduct cannot be considered the proximate cause of the damage.

    NOTE: Such limit of liability is determined by applying these subtests of the policy test:
    a. Foreseeability Test;
    b. Natural and Probable Consequence Test;
    c. Natural and Ordinary or Direct Consequences Test;
    d. Hindsight Test;
    e. Orbit of Risk Test;
    f. Substantial Factor Test.

3. DISTINGUISHED FROM IMMEDIATE CAUSE, INTERVENING CAUSE, REMOTE AND CONCURRENT

Q: Distinguish proximate, immediate intervening remote and concurrent causes.

A:

PROXIMATE CAUSE	INTERVENING CAUSE	REMOTE CAUSE	CONCURRENT CAUSE
It is the cause which, in natural and continuous sequence, unbroken by any efficient intervening cause, produces the injury, and without which the result would not have occurred.	One that destroys the causal connection between the negligent act and injury and thereby negatives liability. **Note:** Foreseeable Intervening causes cannot be considered sufficient intervening causes	That cause which some independent force merely took advantage of to accomplish something not the natural effect thereof.	Causes brought about by the acts and omissions of third persons which makes the defendant still liable. Here, the proximate cause is not necessarily the sole cause of the accident

B. CAUSE IN FACT

1. BUT FOR

Q: What is the "but for" test?

A: It considers whether the injury would not have occurred but for the defendant's negligent act. Defendant's conduct is the cause in fact of the injury if the damage would not have resulted had there been no negligence on the part of the defendant.

2. SUBSTANTIAL FACTOR TEST

Q: What is the substantial factor test?

A: It makes the negligent conduct the cause-in-fact of the damage if it was a substantial factor in producing the injuries. It is important in cases where there are concurrent causes

3. CONCURRENT CAUSES

Q: What is the principle of concurrent causes?

A: Where the concurrent or successive negligent acts or omissions of two or more persons, although acting independently, are in combination with the direct and proximate cause of a single injury to a 3rd person, and it is impossible to determine what proportion each contributed to the injury, either of them is responsible for the whole injury, even though his act alone might not have caused the entire injury.

C. LEGAL CAUSE

1. NATURAL AND PROBABLE CONSEQUENCES

Q: Explain natural and foreseeable test.

A: Where the defendant's liability is recognized only if the harm or injury suffered is the natural and probable consequence of his act or omission complained of. *(Banzon v. CA, 175 SCRA 297)*

2. FORESEEABILITY

Q: Explain the foreseeability test.

A: Where the particular harm was reasonably foreseeable at the time of the defendant's misconduct, his act or omission is the legal cause thereof. To be negligent, the defendant must have acted or failed to act in such a way that an ordinary reasonable man would have realized that certain interests of certain persons were unreasonably subjected to a general but definite class of risk which made the actor's conduct negligent, it is obviously the consequence for the actor must be held legally responsible.

D. EFFICIENT INTERVENING CAUSE

Q: What is an efficient intervening cause?

A: It is one which destroys the causal connection between the negligent act and the injury and thereby negatives liability *(novus actus interviens).*

Q: When is there no efficient intervening cause?

A: If the force created by the negligent act or omission have either:

1. remained active itself;

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2. created another force which remained active until it directly caused the result; or
3. created a new active risk of being acted upon by the active force that caused the result

E. CAUSE VS. CONDITION

Q: Distinguish cause and condition.

A: Cause is the active force while condition is the passive situation. The former is the active "cause" of the harm and the latter is the existing "conditions" upon which the cause operated.

Note: If the defendant has created only a passive static condition which made the damage possible, the defendant is said not to be liable.

F. LAST CLEAR CHANCE

Q: What is the doctrine of last clear chance?

A: The contributory negligence of the party injured will not defeat the claim for damages if it is shown that the defendant could, by the exercise of reasonable care and prudence, have avoided the consequences of the negligence of the injured party.

Q: What are the requisites of the doctrine of last clear chance?

A:

1. Both plaintiff and defendant were negligent. (This is an exception to concurrent negligence rule);
2. Plaintiff was in a position of danger by his own negligence;
3. Defendant knew of such position of the plaintiff;
4. Defendant had the last clear chance to avoid the accident by exercise of ordinary care but *failed to exercise such last clear chance;*
5. Accident occurred as proximate cause of such failure.

Q: Is the doctrine of last clear chance applicable in case of collision?

A: Yes. In case of collision, it applies in a suit between the owners and drivers of colliding vehicles and *not* where a passenger demands responsibility from the carrier to enforce its contractual obligations.

Note: There is a different rule in case of collision of vessels.

Q: What are the instances when the doctrine of last clear chance is inapplicable?

A:

1. The party charged is required to act instantaneously, and the injury cannot be avoided by the application of all means at hand after the peril is or should have been discovered; *(Pantranco North Expressway v. Baesa, G.R. Nos. 79050-51, Nov. 14, 1989)*

2. If the defendant's negligence is a concurrent cause and which was still in operation up to the time the injury was inflicted;

3. Where the plaintiff, a passenger, filed an action against a carrier based on contract; *(Bustamante v. CA, G.R. No. 89880, Feb. 6, 1991)*

4. If the actor, though negligent, was not aware of the danger or risk brought about by the prior fraud or negligent act;

5. In case of a collapse of a building or structure. *(De Roy v. CA, G.R. No. L-41154, Jan. 29, 1988) (Pineda, p.60, 2009 ed.)*

Q: What are the alternative views regarding the doctrine of last clear chance?

A:

1. Prevailing view: The law is that the person who has the last fair chance to avoid the impending harm and fails to do so is chargeable with the consequences, without reference to the prior negligence of the other party.

2. Minority view: The last clear chance doctrine is inapplicable in Philippine jurisdiction in determining the proximate cause of the accident.

3. Third view: That the doctrine of comparative negligence and the last clear chance doctrine are not inconsistent with each other.

VI. LEGAL INJURY

A. CONCEPT

Q: What is injury as distinguished from damage?

A: Injury is the illegal invasion of a legal right while damage is the loss, hurt or harm. Injury refers to any indeterminate right or property, but also to honor and credit.

B. ELEMENTS OF RIGHT

Q: What is a right?

A: It is a legally enforceable claim of one person against another, that the other shall do a given act, or shall not do a given act *(Pineda, Persons, p. 23)*

Q: What are the kinds of rights? Distinguish.

A:

1. *Natural Rights* – Those which grow out of the nature of man and depend upon personality.

   E.g. right to life, liberty, privacy, and good reputation.

2. *Political Rights* – Consist in the power to participate, directly or indirectly, in the establishment or administration of government.

   E.g. right of suffrage, right to hold public office, right of petition.

3. *Civil Rights* – Those that pertain to a person by virtue of his citizenship in a state or community.

   E.g.
   1. property rights,
   2. marriage,
   3. equal protection of laws,
   4. freedom of contract, trial by jury. *(Pineda, Persons, p. 24)*
   5. Rights of personalty or human rights;
   6. Family rights; and
   7. Patrimonial rights:
      i. Real rights
      ii. Personal rights. (*Rabuya Persons, p. 19*)

C. VIOLATION OF RIGHT OR LEGAL INJURY

Q: What are the available remedies for a person whose rights have been violated?

A: Legal remedies are either preventive or compensatory. Every remedy in a certain sense is preventive because it threatens certain undesirable consequences to those who violate the rights of others.

The primary purpose of a tort action is to provide compensation to a person who was injured by the tortuous conduct of the defendant. The remedy of the injured person is therefore primarily an action for damages against the defendant. *(Aquino, p.20, 2005 ed.)*

D. CLASSES OF INJURY

1. INJURY TO PERSONS

Q: What are the torts committed against persons?

A:
1. assault,
2. battery,
3. false imprisonment,
4. intentional infliction of emotional distress, and
5. fraud

2. INJURY TO PROPERTY

Q: What are the torts committed against property?

A:
1. trespass to land,
2. trespass to chattels, and
3. conversion.

3. INJURY TO RELATIONS

Q: What are the torts that cause injury to relations?

A:
1. Family relations
   a. Alienation of affection
   b. Loss of consortium
   c. Criminal conversation (adultery)
2. Social relations
   a. Meddling with or disturbing family relations

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   b. Intriguing to cause another to be alienated from his friends
3. Economic relations
   a. Interference with contractual relations
   b. Unfair competition
4. Political relations
   a. Violation of right to suffrage
   b. Violation of other political rights (freedom of speech, press, assembly and petition, etc.)

VII. INTENTIONAL TORTS

A. GENERAL

1. CONCEPT

Q: What is intentional tort?

A: Tort or wrong perpetrated by one who intends to do that which the law has declared wrong as contrasted with negligence in which the torfeasor fails to exercise that degree of care in doing what is otherwise permissible *(Black's Law Dictionary, 6th edition, p. 1489).*

Note: Intentional torts are those which involve malice or bad faith.

2. CLASSES

A. INTERFERENCE WITH PERSONS AND PROPERTY

(1) PHYSICAL HARMS

Q: What the kinds of physical harms?

A:

1. Violation of persons security, physical injuries
   a. battery (physical injury)
   b. assault (grave threat)
2. False imprisonment (illegal detention)
3. Trespass to land
4. Interference with personal property
   a. trespass to chattels
   b. conversion

(2) NON-PHYSICAL HARMS

Q: What the kinds of non-physical harms?

A:

1. Violation of personal dignity
2. Infliction of emotional distress
3. Violation of privacy
   a. Appropriation
   b. Intrusion
   c. public disclosure of private facts
   d. false light in the public eye
4. Disturbance of peace of mind
5. Malicious prosecution
6. Defamation

B. INTERFERENCE WITH RELATIONS

See Injury to Relations.

B. INTERFERENCE WITH RIGHTS TO PERSONS AND PROPERTY

1. INTENTIONAL PHYSICAL HARMS

A. GENERAL

(1) CONCEPT

(2) KINDS

B. VIOLATION OF PERSONS SECURITY, PHYSICAL INJURIES

(1) BATTERY (PHYSICAL INJURY)

Q: What is battery as a basis for tort liability?

A: It is the intentional, unprivileged, and either harmful or offensive contact with the person of another.

NOTE: At common law, **battery** is the tort of intentionally and voluntarily bringing about an unconsented harmful or offensive contact with a person or to something closely associated with them.

Q: When is a person liable for tort based on battery?

A: An actor is subject to liability to another for battery if:

1. he acts intending to cause a harmful or offensive contact with the person of the other or a third person, or an imminent apprehension of such a contact, and
2. a harmful/offensive contract with the person of the other directly or indirectly results

Q: What are the elements of battery?

A:

1. Intent
2. Harmful or offensive conduct
3. Absence of privilege

Q: Is actual contact necessary in battery?

A: No. Unlike assault, battery involves an actual contact. The contact can be by one person (the tortfeasor) of another (the victim), or the contact may be by an object brought about by the tortfeasor. For example, the intentional contact by a car is a battery.

NOTE: Unlike criminal law, which recognizes degrees of various crimes involving physical contact, there is but a single tort of battery. Lightly flicking a person's ear is battery, as is severely beating someone with a tire iron. Neither is there a separate tort for a battery of a sexual nature.

Q: What are some rules in determining liability for tort based on battery?

A:

1. The victim of a battery need not be aware of the act at the time for the tort to have occurred.
2. Battery is a form of trespass to the person and as such no actual damage (e.g. injury) needs to be proved. Only proof of contact (with the appropriate level of intention or negligence) needs to be made.
3. If there is an attempted battery, but no actual contact, that may constitute a tort of assault.
4. Battery need not require body-to-body contact. Touching an object "intimately connected" to a person (such as an object he or she is holding) can also be battery.
5. A contact may constitute a battery even if there is a delay between the defendant's act and the contact to the plaintiff's injury.

Q: What are the defenses in trespass to the person which are applicable to battery?

A: The standard defenses to trespass to the person are:

1. necessity,
2. consent,
3. self defense, and
4. defense of others.

Note: Self defense as to battery can consist only of engaging in physical contact with another person in order to prevent the other person from themselves engaging in a physical attack.

Privilege is a defense for battery. Defendant has burden to prove.

(2) ASSAULT (GRAVE THREAT)

Q: What is assault in the context of torts?

A: It is the tort of acting intentionally and voluntarily causing the reasonable apprehension of an immediate harmful or offensive contact.

Q: What are the elements of assault as a basis for tort liability?

A:

1. An act by defendant creating a reasonable apprehension in plaintiff
2. of immediate harmful or offensive contact to plaintiff's person
3. Intent
4. Causation

Q: When is an actor liable for tort based on assault?

A: An actor is liable for assault if:

1. He acts intending to cause a harmful or offensive contact with the person of the other, or an imminent apprehension of such a contact, and
2. The other is thereby put in such imminent apprehension.

Note: Assault requires intent.

Actual ability to carry out the apprehended contact is not necessary.

Q: When is an act not considered an assault?

A: An act intended as a step toward the infliction of a future contact, which is so recognized by the other, does not make the actor liable for an assault under the rule.

Q: Is actual contact necessary in assault?

A: No. As distinguished from battery, assault need not to involve actual contact—it only needs intent and the resulting apprehension. However, assault requires more than words alone. For example, wielding a knife while shouting threats could be construed as assault if an apprehension was created.

Note: A battery can occur without a preceding assault, such as if a person is struck in the back of the head. Fear is not required, only anticipation of subsequent battery.

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Q: When is contact said to be "harmful"?

A: While the law varies by jurisdiction, contact is often defined as "harmful" if it objectively intends to injure, disfigure, impair, or cause pain.

Q: When is an act deemed to be "offensive"?

A: The act is deemed "offensive" if it would offend a reasonable person's sense of personal dignity.

Q: In what context is "imminence" understood in determining tort liability for assault?

A: "Imminence" is judged objectively and varies widely on the facts, it generally suggests there is little to no opportunity for intervening acts.

Q: Distinguish apprehension from fear.

A: The state of "apprehension" should be differentiated from the general state of fear, as apprehension requires only that the person be aware of the imminence of the harmful or offensive act.

Q: What are some defenses in assault?

A: Assault can be justified in situations of self-defense or defense of a third party where the act was deemed reasonable. It can also be justified in situations where consent can often be implied (i.e. sports competitions).

C. FALSE IMPRISONMENT (ILLEGAL DETENTION)

Q: What are the elements of false imprisonment as a basis for tort liability?

A:

1. An act or omission on the part of defendant that confines or restrains plaintiff
2. That plaintiff is confined or restrained to a bounded area;
3. Intent; and
4. Causation

Q: When is an actor liable for false imprisonment?

A: Under the law on torts, an actor is liable for false imprisonment if:

1. he acts intending to confine the other within boundaries fixed by the actor,
2. his act directly or indirectly results in such a confinement, and
3. the other is conscious of the confinement or is harmed by it.

D. TRESPASS TO LAND

(1) CONCEPT

Q: What is trespass to real property?

A: It is a tort that is committed when a person unlawfully invades the real property of another.

Q: When may damages be awarded in deprivation of real property?

A: Damages may be awarded if the real owner was deprived of possession of his property by a possessor in bad faith or by a person who does not have any right whatsoever over the property.

Note: Damages may be awarded to the real owner if he suffered such damages because he was deprived of possession of his property by a possessor in bad faith or by a person who does not have any right whatsoever over the property.

Anybody who builds, plants or sows on the land of another knowing full well that there is a defect in his title is liable for damages. The liability is in addition to the right of the landowner in good faith to appropriate what was built, planted or sown or to remove the same.

Liability for damages under the above-cited provisions of the RPC and the NCC requires intent or bad faith.

(2) ELEMENTS

Q: Is intent or bad faith necessary for liability to attach?

A: Yes, the Revised Penal Code and the New Civil Code requires intent or bad faith.

Note: Chief Justice Concepcion observed however that trespass may even be committed in good faith. *(Republic v. de los Angeles, G.R. L-26112, Oct. 4, 1971)*

Q: What is the extent of trespass to personal property?

A: In the field of tort, trespass extends to all cases where a person is deprived of his personal property even in the absence of criminal liability. *(Aquino, T., Torts and Damages, 2005, Second Ed. P.368)*

E. INTERFERENCE WITH PERSONAL PROPERTY

(1) TRESPASS TO CHATTELS

Q: What is trespass to chattels?

A: It is where a person took possession of the property of another in bad faith.

(2) CONVERSION

Q: What are the elements of conversion?

A:

1. An act by defendant that interferes with plaintiff's right of possession in a chattel.

2. The interference is so serious that it warrants requiring defendant to pay the chattel's full value.

Q: What may be included in conversion?

A: Conversion may include:

1. Cases where the defendant deprived the plaintiff of personal property for the purpose of obtaining possession of a real property, as when a landlord deprived his tenants of water in order for them to vacate the lot they were cultivating.
2. Unjustified deprivation of access to property such as unjustified disconnection of electricity service

2. INTENTIONAL NON-PHYSICAL HARMS

A. GENERAL

(1) CONCEPT

(2) KINDS

B. VIOLATION OF PERSONAL DIGNITY

Q: What is the rule with regard to the right of a person to his dignity, personality, privacy and peace of mind?

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

1. Prying into the privacy of another's residence;
2. Meddling with or disturbing the private life or family relations of another;
3. Intriguing to cause another to be alienated from his friends;
4. Vexing or humiliating another on account of his religious beliefs, lowly station in life, place of birth, physical defect, or other personal condition. (*Art. 26, NCC*)

C. INFLICTION OF EMOTIONAL DISTRESS

Q: What are the requisites for one to be able to recover for the intentional infliction of emotional distress?

A: The plaintiff must show that:

1. The conduct of the defendant was intentional or in reckless disregard of the plaintiff;
2. The conduct was extreme and outrageous;
3. There was a causal connection between the defendant's conduct and the plaintiff's mental distress; and
4. The plaintiff's mental distress was extreme and severe.

Note: Even if there was no intentional infliction of emotional distress in one case, the SC recognized the possibility that one may be made liable for the tort of intentional infliction of emotional distress.

Q: What does "extreme and outrageous conduct" mean?

A: It is conduct that is so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency, and to be regarded as atrocious, and utterly intolerable in civilized society.

Q: What does "emotional distress" mean?

A: It is any highly unpleasant mental reaction such as extreme grief, shame, humiliation, embarrassment, anger, disappointment, worry, nausea, mental suffering and anguish, shock, fright, horror, and chagrin.

Note: "Severe emotional distress" in some jurisdictions, refer to any type of severe and disabling emotional or mental condition which may be generally recognized and diagnosed by professionals trained to do so, including

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posttraumatic stress disorder, neurosis, psychosis, chronic depression, or phobia.

The plaintiff is required to show, among other things, that he or she suffered emotional distress so severe that no reasonable person could be expected to endure it; severity of the distress is an element of the cause of action, not simply a matter of damages.

The plaintiff cannot recover merely because of hurt feelings. Liability cannot be extended to every trivial indignity. The plaintiff must necessarily be expected and required to be hardened to a certain amount of rough language, and to acts that are definitely inconsiderate and unkind.

Q: Distinguish emotional distress from defamation.

A: An emotional distress tort action is personal in nature. It is a civil action filed by an individual to assuage the injuries to his emotional tranquility due to personal attacks on his character.

Emotional distress properly belongs to the reactive harm principle while defamation calls for the application of the relational harm principle.

NOTE: The principle of relational harm includes harm to social relationships in the community in the form of defamation as distinguished from the principle of reactive harm which includes injuries to individual emotional tranquility.

Q: What is the so called "parasitic" damage for emotional distress?

A: These are damages which depend on the existence of another tort.

D. VIOLATION OF PRIVACY

Q: What are the zones of privacy under the NCC, RPC, Rules of Court, and special laws?

A:

1. That every person shall respect the dignity, personality, privacy and peace of mind of his neighbors and other persons and any act of a person of meddling and prying into the privacy of another is punishable as an actionable wrong;

2. That a public officer or employee or any private individual shall be liable for damages for any violation of the rights and liberties of another person, and recognizes the privacy of letters and other private communications;

3. The RPC makes a crime the:
   i. violation of secrets by an officer,
   ii. revelation of trade and industrial secrets, and
   iii. trespass to dwelling.

4. Invasion of privacy is likewise an offense in special laws such as the:
   i. anti-wiretapping law; and
   ii. secrecy of bank deposits act; and

5. The Rules of Court provisions on privileged communication.

Q: What is the standard to be applied in determining the existence of a violation of the right to privacy?

A: The right to privacy is not a guaranty to hermitic seclusion. The standard to be applied is that of a person of ordinary sensibilities. It is relative to the customs of the time and place, and is determined by the norm of an ordinary person.

NOTE: The essence of privacy is the right to be let alone.

Q: What is the two-part test in determining the reasonableness of a person's expectation of privacy?

A:

1. Whether by his conduct, the individual has exhibited an expectation of privacy; and
2. Whether this expectation is one that society recognizes as reasonable.

Q: What are the four general classes of tort actions for invasion of privacy?

A:

1. appropriation;
2. intrusion;
3. public disclosure of private facts; and
4. false light in the public eye

(1) APPROPRIATION

Q: What is appropriation?

A: It consists of appropriation, for the defendant's benefit or advantage, of the plaintiff's name or likeness.

Q: What does this tort protect?

A: The tort of commercial appropriation of likeness has been held to protect various aspects of an individual's identity from commercial exploitation:

1. name
2. likeness
3. achievements
4. identifying characteristics
5. actual performances
6. fictitious characters created by a performer
7. phrases and other things associated with an individual.

(2) INTRUSION

Q: What is intrusion?

A: Consists in the intrusion upon the plaintiff's solitude or seclusion.
It includes:

1. prying into the privacy of one's home;
2. invading his home;
3. invading one's privacy by looking from outside;
4. eavesdropping; or
5. persistent and unwanted telephone calls.

NOTE: The tort of intrusion upon a person's solitude protects a person's sense of locational and psychological privacy.

Intrusion in public places:

Generally, there is no invasion of the right to privacy when a journalist records, photographs, or writes about something that occurs in public places.

However, while merely watching a person in public places is not a violation, one does not automatically make public everything that he does in public. It should not be tantamount to harassment or overzealous shadowing.

This protection is not limited to public figures. Everyone is protected.

Intrusion and administrative investigation:

There is no intrusion when an employer investigates its employee or when a school investigates its student. In the latter case, the investigation may cover an alleged offense committed outside the school premises.

Intrusion and public records:

Generally , there is no intrusion into the right of privacy of another if the information sought are matters of public record. This is especially true in case the persons who are invoking the right to privacy are public officers and the matter involved is of public concern.

However, if the matter sought to be revealed does not involve anything of public concern, there can be a violation or the right to privacy.

(3) PUBLIC DISCLOSURE OF PRIVATE FACTS

Q: What is public disclosure of private facts?

A: Consists of a cause of action in publicity, of a highly objectionable kind, given to private information about the plaintiff, even though it is true and no action would lie for defamation.

Q: What is violated in public disclosure of private facts?

A: The interest sought to be protected is the right to be free from unwarranted publicity, from the wrongful publicizing of the private affairs and activities of an individual which are outside the realm of legitimate concern.

Q: What are the elements of public disclosure of private facts?

A:

1. there must be a public disclosure;
2. the facts disclosed must be a private fact;
3. the matter be one which would be offensive and objectionable to a reasonable person of ordinary sensibilities.

Q: Who is a "public figure"?

A: a person who, by his accomplishments, fame or mode of living, or by adopting a profession or calling which gives the public a legitimate interest in his doings, his affairs, and his character, has become a 'public personage'

Q: Is it a tortuous conduct for one to publish facts derived from official proceedings?

A: If the facts published are not declared by law to be confidential, it is not tortuous.

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Q: Is a governmental agency or officer tasked with, and acting in, the discharge of public duties vested with a right to privacy?

A: No, said right belongs only to individuals acting in a private capacity.

(4) FALSE LIGHT IN THE PUBLIC EYE

Q: What is false light in the public eye?

A: It is a tort committed by putting a person in a false light before the public. It is a non-defamatory falsehood in that a false impression is conveyed.

Q: What is the interest to be protected in this tort?

A: The interest to be protected in this tort is the interest of the individual in not being made to appear before the public in an objectionable false light or false position.

Q: How is false light in the public eye different from defamation?

A: In false light, the gravamen of the claim is not reputational harm but rather the embarrassment of a person in being made into something he is not.

Publication in defamation is satisfied if a letter is sent to a third person; while in false light cases, the statement should be actually made public.

In defamation, what is published lowers the esteem in which the plaintiff is held. In false light cases, the defendant may still be held liable even if the statements tell something good about the plaintiff.

E. DISTURBANCE OF PEACE OF MIND

See Emotional Distress.

F. MALICIOUS PROSECUTION

Q: What is a tort action for malicious prosecution?

A: It is an action for damages brought by one against another whom a a criminal prosecution, civil suit, or other legal proceedings has been instituted maliciously and without probable cause, after the termination of such prosecution, suit or proceeding in favor of defendant therein.

Note: Malice and probable cause must concur.

RE: Malice: The presence of probable cause signifies, as a legal consequence, the absence of malice.The absence of malice, therefore, involves good faith on the part of the defendant. This good faith may even be based on mistake of law.

Re: Acquittal: Acquittal presupposes that a criminal information is filed on court and final judgment is rendered dismissing the case against the accused. It is not enough that the plaintiff is discharged on a writ of *habeas corpus* and granted bail. Such discharge is not considered the termination of the action contemplated to warrant the institution of a malicious prosecution suit against those responsible for the filing of the information against him.

Nevertheless, it is believed that prior "acquittal" may include dismissal by the prosecutor after preliminary investigation.

Q: What are the elements of malicious prosecution?

A: In criminal cases:

1. the fact of the prosecution and the further fact that the defendant was himself the prosecutor, and that the action was terminated with an acquittal;
2. that in bringing the action, the prosecutor acted without probable cause;
3. the prosecutor was actuated or impelled by legal malice. *(Yasona v. Ramos, G.R. 156339, Oct. 6, 2004)*

Note: the term "prosecutor" includes the complainant who initiated the case; the prosecutor himself; any other public officer authorized to file and prosecute the criminal case.

Mere witnesses are not included, but are liable for false testimony or perjury for their falsehoods.

In civil cases:

1. the defendant filed a civil action against the plaintiff previously;
2. the action was dismissed for clear lack of merit or for being baseless, unfounded, and malicious;
3. the defendant who filed the previous complaint as plaintiff was motivated by ill-will or sinister design;
4. the present plaintiff suffered injury or damage by reason of the previous complaint filed against him.

Q: When is an action for malicious prosecution premature?

A: If the action filed by a party is still pending trial, the filing by the defendant of an action based on malicious prosecution anchored on the first case is premature. Its dismissal is in order. (*Pineda, 2004 citing Cabacungan v. Corrales, 95 PHIL 919*)

Q: Is there liability for malicious prosecution in case a suit is unsuccessful?

A: None. The mere filing of a suit does not render the plaintiff liable for malicious prosection should he be unsuccessful. Persons should have free resort to the courts. The law does not impose a penalty on the right to litigate. (*Pineda, 2004*)

Note: However, the repeated filing of a complaint all of which were dismissed, shows malicious prosecution entitling the injured party to an award of moral damages. (*Pineda, 2004 citing Hawpia v. CA, 20 SCRA 536*)

G. DEFAMATION

Q: What is defamation and what does it cover?

A: Defamation is tarnishing the reputation of someone; It is a public and malicious imputation of a crime, or of a vice or defect, real or imaginary, or any act, omission, condition, status, or circumstance tending to cause the dishonor, discredit, or contempt of a natural or juridical person, or to blacken the memory of one who is dead. (Art. 353, RPC). It has two varieties, *slander* and *libel*.

Note: Actual damages need not be proved, at least where the publication is libelous *per se*, or where the amount of damages is more or less nominal.

Q: What are the elements of defamation as a basis for tort liability?

A:

1. Defamatory language;
2. of or concerning the plaintiff;
3. Publication thereof by defendant to a third person; and
4. Damage to plaintiff's reputation.

Note: "Publication" is the communication of the defamatory matter to some third person or persons.

Q: What is libel?

A: it is a defamation committed by means of writing, printing, lithography, engraving, radio, phonograph, painting or theatrical or cinematographic exhibition, or any similar means.

Q: What is slander?

A: An oral defamation.

Q: What is slander by deed?

A: It is a crime committed by any person who performs an act that costs dishonor, discredit or contempt upon the offended party in the presence of other person or persons.

Q: Is the imputation of criminal intention libelous?

A: No, because intent to commit a crime is not a violation of law.

(1) DEFENSES

(A) ABSENCE OF ELEMENTS

Q: Is the allegation that the offender merely expresses his opinion or belief a defense in defamation cases?

In order to escape criminal responsibility, it is not enough for the offender to say that he expresses therein no more than his opinion or belief. The communication must be made in the performance of a "legal, moral, or social duty."

Q: What is retraction and what is its effect as regards liability for defamation?

A: When a periodical gives currency, whether innocently or otherwise, to a false and defamatory statement concerning any person, it is under both a legal and moral duty to check the propagation of such statement as soon as practicable by publishing a *retraction.*

Retraction may mitigate the damages provided that it contains an admission of the falsity of the libelous publication and evince a desire to repair the wrong occasioned thereby.

Q: What is the effect if the publication was by reason of an honest mistake?

A: It only serves to mitigate liability where the article is libelous *per se*.

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(B) PRIVILEGE

Q: If the defamatory imputations were made in a privileged communication, is there liability therefor?

A: None. An absolutely privileged communication is one for which, by reason of the occasion on which it is made, no remedy is provided for the damages in a civil action for slander or libel.

H. FRAUD OR MISREPRESENTATION (FORMERLY DECEIT)

Q: What are the elements of misrepresentation in torts cases?

A:

1. Affirmative misrepresentation of a material fact;
2. Defendant knew that statement being made was false;
3. Intent;
4. Causation;
5. Justifiable reliance; and
6. Damages

I. SEDUCTION

Q: When is a defendant liable for damages in case of seduction?

A: Seduction, by itself, is an act which is contrary to morals, good customs and public policy. The defendant is liable if he employed deceit, enticement, superior power or abuse of confidence in successfully having sexual intercourse with another.

Note: There is liability even if there is no breach of promise to marry.

Q: What is included in "sexual assault"?

A: The defendant would be liable for all forms of sexual assault. These include rape, acts of lasciviousness and seduction.

NOTE: Gender is immaterial in seduction and sexual assault.

J. UNJUST DISMISSAL

Q: What is the rule on dismissal of employees?

A: It is a basic rule that an employer has a right to dismiss an employee in the manner and on the grounds provided for under the NCC. If the dismissal is for a valid cause, his dismissal is consistent with the employer's right to protect his interest in seeing to it that his employees are performing their jobs with honesty, integrity and good faith.

However, such exercise of the right to terminate must be consistent with the general principles provided for under articles 19 and 21, NCC. If there is non-compliance with said provisions, the employer may be held liable for damages. The right to dismiss an employee should not be confused with the manner in which the right is exercised and the effects flowing therefrom. If the dismissal is done anti-socially or oppressively then the employer should be deemed to have violated article 1701, NCC (which prohibits acts of oppression by either capital or labor against the other) and article 21.

An employer may be held liable for damages if the manner of dismissing the employee is contrary to morals, good customs and public policy. This may be done by false imputation of misdeed to justify dismissal or any similar manner of dismissal which is done abusively.

C. INTERFERENCE WITH RELATIONS

1. GENERAL

A. CONCEPT

B. KINDS

Q: What are the four kinds of interference?

A: Interference with:

1. Family relations;
2. Social relations;
3. Economic relations; and
4. Political relations.

2. FAMILY RELATIONS

A. ALIENATION OF AFFECTION

Q: What is alienation of affection?

A: This consists of depriving one spouse of the affection, society, companionship and comfort of the other. *(Aquino, T., Torts and Damages, 2005, Second Ed., p.480)*

Note: The Family Code imposes on the spouses the obligation to live together, observe mutual love, respect and fidelity, and render mutual help and support. (Article 68) Interference with such

may result in the tort liability of alienation of affection.

The gist of the tort is an interference with one spouse's mental attitude toward the other and the conjugal kindness of marital relations resulting in some actual conduct which materially affects it.

Q: In general, what is the scope of the tort 'alienation of affections'?

A: It extends to all cases of wrongful interference in the family affairs of others whereby one spouse is induced to leave the other spouse or to conduct himself or herself in a manner that the comfort of married life is destroyed.

Q: Who may be liable for alienation of affections?

A: The defendant who purposely entices the spouse of another, to alienate his or her affections with his or her spouse, even if there are no sexual intimacies is liable for damages under this article. Likewise, a person who prevented the reconciliation of spouses after their separation is liable for alienation of affections.

Note: It is not necessary that there is adultery or the spouse is deprived of household services.

Q: What are some cases where there is no tort liability for alienation of affections?

A:

1. A woman cannot be made liable for alienation of the affections of the husband (of another woman) for being merely the object of the affections of said husband. To be liable, she must have done some active acts calculated to alienate the affections of the husband. She must, in a sense, be the "pursuer, not merely the pursued";
2. A prostitute is not liable for alienation of affections of the husband for having sexual intimacies with him on a chance occasion.
3. When there is no more affection to alienate.

Q: May parents be liable for alienation of affections?

A: Yes. However, parents are presumed to act for the best interest of their child. The law recognizes the right of a parent to advise his/her child and when such advise is given in good faith, the act, even if it results in separation, does not give the injured party a right of action.

In such case, malice must be established and it must appear that the defendant's acts were the controlling cause of the loss of affection.

B. LOSS OF CONSORTIUM

Q: What is loss of consortium?

A: A spouse has a legal obligation to live with his or her spouse. If a spouse does not perform his or her duty to the other, he may be held liable for damages for such omission because the same is contrary to law, morals and good customs.

Moral damages were awarded because of the wife's refusal to perform her wifely duties, her denial of consortium and desertion of her husband. Her acts constitute a willful infliction of injury upon her husband's feelings in a manner contrary to morals, good customs or public policy. (*Tenchaves v. Escaño, G.R. No. L-19671, July 26, 1966*)

C. CRIMINAL CONVERSATION (ADULTERY)

Q: When is adultery committed?

A: Adultery is committed by any married woman who shall have sexual intercourse with a man not her husband and by the man who has carnal knowledge of her knowing her to be married, even if the marriage was subsequently declared void. (*Art. 333, RPC*)

Note: Concubinage is committed by a husband who shall:

1. keep a mistress in the conjugal dwelling;
2. have sexual intercourse with her, under scandalous circumstances, with a woman not his wife; or
3. cohabit with her in any other place. (Art. 334, RPC)

Liability for adultery or concubinage based on the law on torts: not only moral damages but also for other appropriate damages.

No moral damages is due in case of bigamy.

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3. SOCIAL RELATIONS

A. MEDDLING WITH OR DISTURBING FAMILY RELATIONS

See Interference with family relations.

B. INTRIGUING TO CAUSE ANOTHER TO BE ALIENATED FROM HIS FRIENDS

Q: Who may be held liable for the tort intriguing to cause another to be alienated from his friends?

A: A person who committed affirmative acts intended to alienate the existing friendship of one with his friends is liable for damages. (*Pineda, 2004*)

4. ECONOMIC RELATIONS

A. INTERFERENCE WITH CONTRACTUAL RELATIONS

Q: What is interference with contract?

A: Any third person who induces another to violate his contract shall be liable for damages to the other contracting parties. *(Art.1314, NCC)*

Q: Why is interference with contract tortuous?

A: Such interference is tortious because it violates the right of the contracting parties to fulfill the contract and to have it fulfilled, to reap the profits resulting therefrom, and to compel the performance by the other party.

Q: What are the elements of interference to contractual realation?

A:

1. existence of a valid contract;
2. knowledge on the part of the third person of the existence of the contract;
3. interference of the third person without legal justification or excuse.

Q: What is interference with prospective advantage?

A: If there is no contract yet and the defendant is only being sued for inducing another not to enter into a contract with the plaintiff, the tort committed is appropriately called interference with prospective advantage.

Q: What is the extent and nature of the liability of the intermeddler?

A: His liability is solidary and cannot be more than the liability that will be incurred by the party in whose behalf he intermeddled. Otherwise, that will result in injustice and unfairness.

Q: Is malice essential to make the intermeddler liable?

A:

GR: Yes.
XPN: If the intention of the intermeddler is honest and laudable such as when the interference is intended to protect the contracting party he is intermeddling for, from danger to his life or property, he should not be made liable for damages for the breach of the contract.

B. UNFAIR COMPETITION

Q: What is included in unfair competition?

A: Art. 28, NCC provides for unfair competition which includes:

1. Passing off or disparagement of products
2. Interference with contractual relations
3. Interference with prospective advantage
4. Fraudulent misappropriation against a competition
5. Monopolies and predatory pricing

Q: What is predatory pricing?

A: It is a practice of selling below costs in the short run in the hope of obtaining monopoly gains later, after driving the competition from the market.

5. POLITICAL RELATIONS

A. VIOLATION OF RIGHT TO SUFFRAGE (NCC, ART. 32)

Q: What is the rule in case of violation of the right to suffrage?

A: Under Article 32 NCC, any public officer or employee, or any private individual, who directly or indirectly obstructs, defeats, violates or in any manner impedes or impairs any of the following rights and liberties of another person shall be liable to the latter for damages:
xxx (5) Freedom of suffrage; (*Art. 32, NCC*)

B. VIOLATION OF OTHER POLITICAL RIGHTS (FREEDOM OF SPEECH, PRESS, ASSEMBLY AND PETITION, ETC.)

See Violation of Constitutional Rights

6. DEFENSES

A. ABSENCE OF ELEMENT

Q: What is the defense on interference?

A: The defendants are free from liability if they can prove that at the time of the commission, the plaintiff knew of the act of interference or omission.

B. PRIVILEGE

Q: What is the defense of privilege in torts cases?

A: To say that an act is "privileged" connotes that the actor owes no legal duty to refrain from such contact.

Q: Distinguish consensual and non-consensual privilege.

A: Consensual privileges depend on the plaintiff agreeing to the defendant's otherwise tortious act. On the other hand, nonconsensual privileges shield the defendant from liability for otherwise tortious conduct even if the plaintiff objects to the defendant's conduct.

1. CONSENT

Q: When is consent a defense in torts cases and what is its basis?

A: Typically, one cannot hold another liable in tort for actions to which one has consented. This is frequently summarized by the phrase "*volenti non fit injuria*" (Latin: "to a willing person, no injury is done" or "no injury is done to a person who consents"). It operates when the claimant either expressly or implicitly consents to the risk of loss or damage.

Note: Consent is willingness in fact for the conduct to occur.

Q: What are some rules in determining whether consent is present as a defense?

A:

1. It need not be communicated to the defendant.
2. In determining whether plaintiff consented, defendant must reasonably interpret her overt act and manifestations of her feelings.

   Note: The defendant's subjective state is based on the plaintiff's objective actions.

3. Plaintiff has burden of proof to show intent to commit the act, lack of consent, and harm.

Q: Is consent a defense if the plaintiff or offended party is a minor?

A: No. For one to surrender the right to be free from intentional interference by others, one must have the mental capacity to consent. Defendant can be liable despite the fact that the plaintiff was subjectively willing and communicated that willingness to the defendant.

NOTE: In common law countries, most courts have applied statutory rape statutes in civil cases regardless of proof that the plaintiff was able to understand the consequences of her act and consent.

Q: When is consent not necessary in order to absolve one from the injuries he caused to another?

A: Conduct that injures another does not make the actor liable to the other, even though the other has not consented to it if:

1. an emergency makes it necessary or apparently necessary to act before there is opportunity to obtain consent or one empowered to consent for him, and
2. the actor has no reason to believe that the other would decline.

Q: What is the rule if consent is procured by fraud or duress?

A: Consent will not shield the defendant from liability if it is procured by means of fraud or duress.

Note: Courts invalidate consent procured by duress when defendants threaten the plaintiff or plaintiff's loved ones with physical harm.

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2. SELF-DEFENSE AND DEFENSE OF OTHERS

SELF DEFENSE

Q: Why is self defense a defense in tort cases?

A: An actor is privileged to use reasonable force, not intended or likely to cause death or serious bodily harm, to defend himself against unprivileged harmful contract which he reasonably believes that another is about to inflict.

Q: When is an actor privileged to defend himself?

A: An actor is privileged to defend himself against another by force likely to cause death or serious bodily harm when he reasonably believes that:

1. the other is about to inflict upon him an intentional contact and
2. he is thereby put in peril of death or serious bodily harm which can safely be prevented only by immediate use of such force.

NOTE: Court requires objective and subjective belief (reasonable person could have seen the situation as dangerous and subject believed that he was in danger).

Q: When does the privilege of self defense exist and when does it not exist?

A: The privilege exists even if the actor believes he can avoid defending himself by:

1. retreating within his dwelling place, or
2. permitting the other to intrude upon his dwelling place, or
3. abandoning an attempt to effect a lawful arrest.

The privilege does not exist if the actor believes that he can avoid defending himself by:

1. retreating in any place other than his dwelling place or
2. relinquishing the exercise of any right other than his privilege to prevent intrusion onto his dwelling place.

Q: May the actor use any means in order to defend himself?

A: The actor is not privileged to use any means of self defense which is intended or likely to cause a bodily harm in excess of that which the actor correctly or reasonably believes to be necessary for his protection.

Note: A party claiming self-defense must prove not only that he acted honestly in using force, but that his fears were reasonable under the circumstances, and the means of self-defense were reasonable.

DEFENSE OF OTHERS

Q: Is a person protecting a total stranger liable?

A: The self-defense privilege extends to protecting total strangers as well.

Q: May the intervener use any means or amount of force in defending the other?

A: No. The force that may be used by an intervener to repel an attack on another is measured by the force that the other could lawfully use.

Q: What is the consequence of a mistake on the part of the intervener?

A: If the intervener is mistaken, even reasonably mistaken, the privilege is unavailable if it would not be available to the person to be protected.

NOTE: The intervener's mistake need only be reasonable; there is no need to show that the victim also had the privilege to defend himself.

3. DEFENSE OF PROPERTY

Q: Up to what extent is an actor privileged to defend his property from intrusions?

A: An actor is privileged to use reasonable force, not intended or likely to cause death or serious bodily harm, to prevent or terminate another's intrusion upon the actor's land if:

1. the intrusion is not privileged;
2. the actor reasonably believes that the intrusion can be prevented only by the force used; and
3. the actor has first requested the other to desist or the actor believes such request will be useless or substantial harm will be done before it can be made.

Note: The intentional infliction which is intended or likely to cause death or serious bodily harm, for the purpose of preventing or terminating the other's intrusion upon the actor's possession of land, is privileged only if the actor reasonably believes that the intruder is likely to cause death or serious bodily harm.

4. NECESSITY

The owner or lawful possessor of a thing has the right to exclude any person from the enjoyment and disposal thereof. For this purpose, he may use such force as may be reasonably necessary to repel or prevent an actual or threatened unlawful physical invasion or usurpation of his property. (*Art. 429, NCC*)

Q: Is the owner's right provided for in the said article an absolute right?

A: No. In the following instances, this right may not be invoked by the owner:

1. One may sacrifice the personal property of another to save his life or the lives of his fellows;
2. One is privileged by necessity to trespass when there is a serious threat to life and no other lifesaving option is available; and
3. The owner of property may not eject a trespasser if the trespasser requires entry to protest himself and his property from harm.

Note: In these instances, intrusion is said to be privileged.

The necessity privilege to enter the land of another in order to avoid serious harm is coupled with an obligation on the part of the entrant to pay for whatever harm he caused.

MISCELLANEOUS PRIVILEGES

Q: What are the miscellaneous or other privileges in connection with necessity as a defense?

A:

1. To at least some extent, teachers and parents are exempt from battery claims brought on behalf of children they have physically disciplined;
2. Other privileges include those relating to the arrest of lawbreakers and the prevention of crime, the enforcement of military orders, and the recapture of land and possessions.

Note: The reasonableness of the actor's perception of the need to use force, as well as the reasonableness of the harm actually inflicted, are typically the touchstones upon which the availability of the privilege turns.

5. AUTHORITY OF LAW

C. PRESCRIPTION

See Defenses; Prescription

D. WAIVER

See Persons: Waiver of Rights

E. FORCE MAJEURE

Q: What are the two general causes of fortuitous events?

A:

1. By nature, such as earthquakes, storms, floods, epidemics, fires, etc.; and
2. By the act of man, such as an armed invasion, attack by bandits, governmental prohibitions, robbery, etc.

Q: What are the essential characteristics of fortuitous event?

A:

1. The cause of the unforeseen and unexpected occurrence, or of the failure of the debtor to comply with his obligation, must be independent of the human will;
2. It must be impossible to foresee the event which constitutes the *caso fortuito,* or if it can be foreseen, it must be impossible to avoid;
3. The occurrence must be such as to render it impossible for the debtor to fulfill his obligation in a normal manner; and
4. The obligor must be free from any participation in the aggravation of the injury resulting to the creditor.

Q: When is there liability for damages caused by fortuitous events?

A: As an exception to the general rule that a person is not liable if the cause of the damage was an event which could not be foreseen or which though foreseen was inevitable (fortuitous), if the negligence of the defendant concurred with the fortuitous event or resulted in the aggravation of the injury to the plaintiff, he will be liable even if there was a fortuitous event.

If upon the happening of a fortuitous event of an act of God, there concurs a corresponding fraud,

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negligence, delay or violation or contravention of the tenor of the obligation as provided for in Article 1170, NCC, which results in loss or damage, the obligor cannot escape liability.

VIII. NEGLIGENCE

A. CONCEPT

Q: What is negligence?

A: The omission of that degree of diligence which is required by the nature of the obligation and corresponding to the circumstances of the persons, of the time and place. *(Art. 1173, NCC)*

Q: What is the test of negligence?

A: The test is: Would a prudent man, in the position of the tortfeasor, foresee harm to the person injured as a reasonable consequence of the course about to be pursued? If so, the law imposes a duty on the actor to take precaution against its mischievous results, and failure to do so constitutes negligence. (Picart v. Smith, G.R. No. L-12219, Mar. 15, 1918.)

Q: What are the degrees of negligence? Distinguish.

A:

1. *Simple negligence* – want of slight care and diligence only

2. *Gross negligence* – there is a glaringly obvious want of diligence and implies conscious indifference to consequences; pursuing a course of conduct which would probably and naturally result to injury; utter disregard of the consequences

Q: What are the circumstances to be considered in determining whether an act is negligent?

A:

1. *Person Exposed to the Risk* – A higher degree of diligence is required if the person involved is a child.

2. *Emergency* – The actor confronted with an emergency is not to be held up to the standard of conduct normally applied to an individual who is in no such situation.

3. *Social Value or Utility of Action* – Any act subjecting an innocent person to unnecessary risk is a negligent act if the risk outweighs the advantage accruing to the actor and even to the innocent person himself.

4. *Time of the day* – May affect the diligence required of the actor *(Art. 1173)*; *e.g.* a driver is required to exercise more prudence when driving at night

5. *Gravity of the Harm to be Avoided* – Even if the odds that an injury will result are not high, harm may still be considered foreseeable if the gravity of harm to be avoided is great.
6. *Alternative Cause of Action* – If the alternative presented to the actor is too costly, the harm that may result may still be considered unforeseeable to a reasonable man. More so if there is no alternative thereto.

7. *Place* – A man who should occasion to discharge a gun on an open and extensive marsh, or in a forest would be required to use less circumspection and care, then if he were to do the same thing in an inhabited town, village or city.

8. *Violation of Rules and Statutes*
   a. Statutes
   b. Administrative Rules
   c. Private Rules of Conduct

9. *Practice and Custom* – A practice which is dangerous to human life cannot ripen into a custom which will protect anyone who follows it *(Yamada v. Manila Railroad, G.R. No.10073, Dec. 24, 1915).*

Q: Will intoxication signify negligence?

A:

GR: Mere intoxication is not negligence per se nor establishes want of ordinary care. But it may be one of the circumstances to be considered to prove negligence. *(Wright v. Manila Electric Railroad & Light Co., GR No. L-7760, Oct. 1, 1914)*

XPN: It is presumed that a person driving a motor vehicle is negligent if at the time of the mishap, he was violating traffic regulations. *(Art. 2185)*

Q: What is contributory negligence?

A: It is conduct on the part of the injured party, contributing as a legal cause to the harm he has suffered, which falls below the standard to which he is required to conform for his own protection *(Valenzuela v. CA, G.R. No. 115024, Feb. 7, 1996).*

Q: What is the doctrine of comparative negligence?

A: The negligence of both the plaintiff and the defendant are compared for the purpose of reaching an equitable apportionment of their respective liabilities for the damages caused and suffered by the plaintiff. *(Pineda, p. 50, 2009 ed.)*
Note: The relative degree of negligence of the parties is considered in determining whether, and to what degree, either should be responsible for his negligence (apportionment of damages).

B. GOOD FATHER OF A FAMILY OR REASONABLY PRUDENT MAN

Q: What is the concept of a good father of the family (*pater familias)*?

A: The Supreme Court described a good father of a family by first stating who is not. He is not and is not supposed to be omniscient of the future; rather, he is one who takes precautions against any harm when there is something before him to suggest or warn him of the danger or to foresee it *(Picart v. Smith, G.R. No. L-12406, Mar. 15, 1918)*.

Note: A good father of a family is likewise referred to as the reasonable man, man of ordinary intelligence and prudence, or ordinary reasonable prudent man. In English law, he is sometimes referred to as the man on top of a Clapham omnibus. (*Aquino, 2005*)

Q: What is the test of negligence?

A: The test is: Would a prudent man, in the position of the tortfeasor, foresee harm to the person injured as a reasonable consequence of the course about to be pursued? If so, the law imposes a duty on the actor to take precaution against its mischievous results, and failure to do so constitutes negligence. *(Picart v. Smith, G.R. No. L-12219, Mar. 15, 1918.)*

Q. Does the standard of conduct applied to adults apply equally to children?

A.

GR: The action of a child will not necessarily be judged according to the standard of an adult.

XPN: If the minor is mature enough to understand and appreciate the nature and consequences of his actions. In such a case, he shall be considered to have been negligent.

Note: R.A. 9344 (Juvenile Justice and Welfare Act of 2006): 15 years of age or younger – age of absolute irresponsibility.

Nevertheless, absence of negligence does not absolutely excuse the child from liability, as his properties, if any, can be held subsidiarily liable. Nor will such absence of negligence excuse the child's parent's vicarious liability.

Q: What is "diligence before the fact"?

A: The conduct that should be examined in negligence cases is prior conduct or conduct prior to the injury that resulted or, in proper cases, the aggravation thereof.

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C. STANDARD OF CARE

STANDARD OF CONDUCT or DEGREE OF CARE REQUIRED
In General
If the law or contract does not state the diligence which is to be observed in the performance, that which is expected of a good father of a family shall be required (*Article 1173, 2nd paragraph, NCC*). **Note:** Diligence of a good father of a family - *bonos pater familias* - A reasonable man is deemed to have knowledge of the facts that a man should be expected to know based on ordinary human experience. *(PNR v. IAC, GR No. 7054, Jan. 22, 1993)*
Persons who have Physical Disability
GR: A weak or accident prone person must come up to the standard of a reasonable man, otherwise, he will be considered as negligent. **XPN:** If the defect amounts to a real disability, the standard of conduct is that of a reasonable person under like disability.
Experts and Professionals
GR: They should exhibit the case and skill of one who is ordinarily skilled in the particular field that he is in. **Note:** This rule does not apply solely or exclusively to professionals who have undergone formal education. **XPN:** When the activity, by its very nature, requires the exercise of a *higher degree of diligence* *e.g.* Banks; Common carriers
Insane Persons
The same rule applies under the New Civil Code. The insanity of a person does not excuse him or his guardian form liability based on quasi-delict. (*Arts. 2180 and 2182, NCC*). This means that the act or omission of the person suffering from mental defect will be judged using the standard test of a reasonable man. The bases for holding a permanently insane person liable for his torts are as follows: Where one of two innocent person must suffer a loss it should be borne by the one who occasioned it; To induce those interested in the estate of the insane person (if he has one) to restrain and control him; and The fear that an insanity defense would lead to false claims of insanity to avoid liability. (*Bruenig v. American Family Insurance Co., 173 N.W. 2d 619[1970]).* **Note:** Under the RPC, an insane person is exempt from criminal liability. However, by express provision of law, there may be civil liability even when the actor is exempt from criminal liability. An insane person is still liable with his property for the consequences of his acts, though they performed unwittingly. *(US v. Baggay, Jr. G.R. No. 6706, Sept. 1, 1911)*
Employers
That degree of care as mandated by the Labor Code or other mandatory provisions for proper maintenance of the work place or adequate facilities to ensure the safety of the employees. **Note:** Failure of the employer to comply with mandatory provisions may be considered negligence per se.
Employees
Employees are bound to exercise due care in the performance of their functions for the employers. Liability may be based on negligence committed while in the performance of the duties of the employee *(Araneta v. De Joya, G.R. No. 83491, Aug. 27, 1990)*
Owners, Proprietors and Possessors of Property
GR: The owner has no duty to take reasonable care towards a trespasser for his protection or even to protect him from concealed danger. **XPN:** 1. *Visitors* 2. *Tolerated Possession* 3. *Doctrine of Attractive Nuisance* 4. *State of Necessity*
Doctors
If a General Practitioner – Ordinary care and diligence in the application of his knowledge and skill in the practice of his profession *If a Specialist* – The legal duty to the patient is generally considered to be that of an average physician.
Lawyers
An attorney is bound to exercise only a reasonable degree of care and skill, having reference to the business he undertakes to do *(Adarne v. Aldaba, Adm. Case No. 80, June 27, 1978).*

1. NCC, ART. 1173

Q: What is the general standard of diligence provided for under the NCC?

A: *Bonus Pater Familias* or that of a good father of a family.

Note: If the law or contract does not state the diligence which is to be observed in the performance, that which is expected of a good father of a family shall be required. (*Art. 1173 (2)*)

Q: What is the rule in case of fault or negligence of an obligor?

A: Art. 1173. The fault or negligence of the obligor consists in the omission of that diligence which is required by the nature of the obligation and corresponds with the circumstances of the persons, of the time and of the place. When negligence shows bad faith, the provisions of Articles 1171 and 2201, paragraph 2, shall apply.

NOTE: Art. 1171. Responsibility arising from fraud is demandable in all obligations. Any waiver of an action for future fraud is void.

Art. 2201. In contracts and quasi-contracts, the damages for which the obligor who acted in good faith is liable shall be those that are the natural and probable consequences of the breach of the obligation, and which the parties have foreseen or could have reasonably foreseen at the time the obligation was constituted.

In case of fraud, bad faith, malice or wanton attitude, the obligor shall be responsible for all damages which may be reasonably attributed to the non-performance of the obligation.

2. EMERGENCY RULE

Q: What is the emergency rule?

A: One who suddenly finds himself in a place of danger, and is required to act without time to consider the best means that may be adopted to avoid the impending danger, is not guilty of negligence, if he fails to adopt what subsequently and upon reflection may have been a better method, unless the emergency in which he finds himself is brought about by his own negligence.

Note: Emergency rule exempts common carriers.

D. UNREASONABLE RISK OF HARM

Q: In determining whether a person has exposed himself to an unreasonable great risk, what must be present?

A: Reasonableness, the elements of which are as follows:

3. Magnitude of the risk
4. Principal object
5. Collateral object
6. Utility of the risk
7. Necessity of the risk

If the magnitude of the risk is very great and the principal object, very valuable, yet the value of the collateral object and the great utility and necessity of the risk counterbalanced those considerations, the risk is made reasonable.

Note: In the Philippines, the courts do not use any formula in determining if the defendant committed a negligent act or omission. What appears to be the norm is to give negligence a common sense, intuitive interpretation.

In the field of negligence, interests are to be balanced only in the sense that the purposes of the actor, the nature of his act and the harm that may result from action or inaction are elements to be considered. Some may not be considered depending on the circumstances.

The following are circumstances to be considered:

1. Time
2. Place
3. Emergency
4. Gravity of harm to be avoided
5. Alternative course of action
6. Social value or utility of activity
7. Person exposed to the risk

E. EVIDENCE

F. PRESUMPTION OF NEGLIGENCE

1. LEGAL PROVISIONS

Q: Discuss the provisions relative to presumptionof negligence.

A: Persons are generally presumed to have taken ordinary care of his concerns.There are however exceptions when negligence is presumed.

1. Article 2184. xxx. It is disputably presumed that a driver was negligent, if he had been found guilty of reckless driving or violating traffick regulations

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at least twice within the next preceding two months. Xxx

2. Article 2185. Unless there is proof to the contrary, it is presumed that a person driving a motor vehicle has been negligent if at the time of the mishap, he was violating any traffic regulation.

   Note: Proof of traffic violation required.

3. Article 2188. There is *prima facie* presumption of negligence on the part of the defendant if the death or injury results from his possession of dangerous weapons or substances, such as firearms and poison, except when possession or use thereof is indispensable in his occupation or business.

   Note: Proof of possession of dangerous weapons or substances required.

2. RES IPSA LOQUITUR

Q: What does *res ipsa loquitur* mean?

A: The thing speaks for itself. The fact of the occurrence of an injury, taken with surrounding circumstances, may permit an inference or raise a presumption of negligence, or make out a plaintiff's *prima facie* case, and present a question of fact for defendant to meet with an explanation.

Note: However, *res ipsa loquitur* is not a rule of substantive law and, as such, does not create nor constitute an independent or separate ground of liability. Instead, it is considered as merely evidentiary or in the nature of a procedural rule.

Q: What are the requisites for the application of the doctrine of *res ipsa loquitur*?

A:

1. That the accident is of a kind which ordinarily does not occur in the absence of someone's negligence;
2. It is caused by an instrumentality within the exclusive control of the defendant/s; and
3. The possibility of contributing conduct which would make plaintiff responsible is eliminated.

Q: What are some cases where the doctrine was held to be inapplicable?

A:

1. Where there is direct proof of absence or presence of negligence;
2. Where other causes, including the conduct of the plaintiff and third persons, are not sufficiently eliminated by the evidence;
3. When one or more requisite is absent.

G. DEFENSES

1. COMPLETE

Q: Why are they called "complete" defenses?

A: They are called "complete" defenses because they completely bar recovery as opposed to partial defenses which only serve to mitigate liability.

a. ABSENCE OF ELEMENT

(1) DUE DILIGENCE

See Rules on Degree or Standard of Care

(2) ACTS OF PUBLIC OFFICERS

b. ACCIDENT OR FORTUITOUS EVENT

See Force Majeure or Fortuitous Event

c. DAMNUM ABSQUE INJURIA

Q: What is meant by *damnum absque injuria*?

A: There is no liability even if there is damage because there was no injury.

Note: There can be damage without injury in those instances in which the loss or harm was not the result of a violation of a legal duty. In such cases, the consequences must be borne by the injured person alone.

Q: What is injury?

A: it is the legal invasion of a legal right.

Q: What is damage?

A: it is the loss, hurt or harm which results from the injury. They are the recompense or compensation awarded for the damage suffered.

Q: What is meant by the maxim *qui jure suo utitur nullum damnum facit?*

A: One who exercises a right does no injury.

d. AUTHORITY OF LAW

e. ASSUMPTION OF RISK

Q: What is meant by *volenti non fit injuria*?

A: To a willing person, no injury is done.

Q: What are the elements of the doctrine of assumption of risk?

A:

1. The plaintiff must know that the risk is present;
2. He must further understand its nature; and
3. His choice to incur it is free and voluntary.

Q: What are the two kinds of assumption of risk?

A:

1. Express waiver of the right to recover;
2. Implied assumption
   a. Dangerous Conditions
   b. Contractual Relations
   c. Dangerous Activities
   d. Defendant's negligence

Q: What is meant by:

1. **Dangerous conditions?**
   A: A person who, knowing that he is exposed to a dangerous condition, voluntarily assumes the risk of such dangerous condition may not recover from the defendant who maintained such dangerous condition.

2. **Contractual relations?**
   A: There may be an implied assumption of risk if the plaintiff entered into contractual relations with the defendant. By entering into a relationship freely and voluntarily where the negligence of the defendant is obvious, the plaintiff may be found to accept and consent to it, and to undertake to look out for himself and to relieve the defendant of the duty.

3. **Dangerous activities?**
   A: A person who voluntarily participates in dangerous activities assumes the risks which are usually present in such activities.

4. **Defendant's negligence?**
   A: When the plaintiff is aware of the risk created by the defendant's negligence, yet he voluntarily proceed to encounter it, there is implied assumption of risk on the part of the plaintiff.

f. LAST CLEAR CHANCE

See Last Clear Chance

g. PRESCRIPTION

Q: What is the prescriptive period for quasi-delict?

A: Four (4) years reckoned from the date of the accident**.**

h. WAIVER

See Persons: Waiver of Rights.

i. DOUBLE RECOVERY

Q: What is the rule against double recovery?

A: The plaintiff cannot recover damages twice for the same act or omission of the defendant. (*Art. 2177, NCC*)

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IX. SPECIAL LIABILITY IN PARTICULAR ACTIVITIES

A. GENERAL

1. CONCEPT

B. PRODUCTS LIABILITY

Q: What is product and service liability?

A: Product Liability is the law which governs the liability of manufacturers and sellers for damages resulting from defective products. It is meant to protect the consumers by providing safeguards when they purchase or use consumer products. *(Aquino, T., Torts and Damages, 2005, Second Ed.)*

1. MANUFACTURERS OR PROCESSORS

a. ELEMENTS

b. CONSUMER ACT

Q: What is the consumer act (RA 7394)?

A: Consumer Act prohibits fraudulent sales acts or practices. Chapter I of Title III expressly provides for protection against defective, unfair and unconscionable sales acts and practices. The Act likewise contains provisions imposing warranty obligations on the manufacturers and sellers. This Act also imposes liability for defective service "independently of fault".

Q: Who are the persons made liable under the consumer act?

A: The strict liability under the Act is imposed on the manufacturer.

NOTE: A manufacturer is any person who manufactures, assembles or processes consumer products, except that if the goods are manufactured, assembled or processed for another person who attaches his own brand name to the consumer products, the latter shall be deemed the manufacturer. In case of imported products, the manufacturer's representatives or, in his absence, the importer, shall be deemed the manufacturer. *(Art. 4, RA 7394)*

Q: What are the kinds of defects in products?

A:

1. *Manufacturing defect* – defects resulting from manufacture, construction, assembly and erection.
2. *Design defect* – defects resulting from design and formulas.
3. *Presentation defect* – defects resulting from handling, making up, presentation or packing of the products.
4. *Absence of Appropriate Warning* – defect resulting from the insufficient or inadequate information on the use and hazards of the products.

Q: What are the defenses of a manufacturer and supplier?

A:
The manufacturer shall not be liable when it evidences:

1. that it did not place the product on the market;
2. that although it did place the product on the market such product has no defect;
3. that the consumer or the third party is solely at fault.

The supplier shall not be liable when it is proven:

1. that there is no defect in the service rendered;
2. that the consumer or the third party is solely at fault.

Q: What are the remedies of a consumer in the consumer act?

A: Section 60 of the law expressly provides that the court may grant injunction restraining the conduct constituting the contravention of illegal sales act and practices and/or actual damages and such other orders as it thinks fit to redress injury to the person affected by such conduct.

C. NUISANCE

1. NUISANCE PER SE AND NUISANCE PER ACCIDENCE

Q: What are the kinds of nuisance?

A:

1. As to the number of persons affected:
   a. Public (or common) – is one which affects a community ir neighborhood or considerable number of persons.
   b. Private – is one which affects an individual or few persons only.
2. Other classification:
   a. Nuisance Per Se – that kind of nuisance which is always a nuisance. By its nature, it is always a nuisance all the time under any circumstances regardless of location or surroundings.
   b. Nuisance Per Accidens – that kind of nuisance by reason of location, surrounding or in a manner it is conducted or managed.
   c. Temporary – that kind which if properly attended does not constitute a nuisance.
   d. Permanent – that kind which by nature of structure creates a permanent inconvenience.
   e. Continuing – that kind which by its nature will continue to exist indefinitely unless abated
   f. Intermittent – that kind which recurs off and on may be discontinued anytime.
   g. Attractive Nuisance – one who maintains on his premises dangerous instrumentalities or appliances of a character likely to attract children in play, and who fails to exercise ordinary care to prevent children from playing therewith or resorting thereto, is liable to a child of tender years who is injured thereby, even if the child is technically a trespasser in the premises.

2. PUBLIC NUISANCE AND PRIVATE NUISANCE

Q: What are the remedies against public nuisances?

A:

1. Prosecution under the RPC or any local ordinance
2. Civil action
3. Abatement, without judicial proceeding

Q: Who may avail of remedies?

A:

1. Public officers
2. Private persons - if nuisance is specially injurious to himself; the ff. steps must be made:
   i. demand be first made upon owner or possessor of the property to abate the nuisance
   ii. that such demand has been rejected
   iii. that the abatement be approved by the district health officer and executed with the assistance of local police
   iv. that the value of destruction does not exceed P3,000

Q: What is a private nuisance?

A: one that affects an individual or a limited number of individuals only

Q: What are the remedies against private nuisances?

A:

1. Civil action
2. Abatement, without judicial proceedings

Q: Who may avail of remedies?

A:

1. Public officers
2. Private persons - if nuisance is specially injurious to himself; the ff. steps must be made:
   i. demand be first made upon owner or possessor of the property to abate the nuisance
   ii. that such demand has been rejected

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iii. that the abatement be approved by the district health officer and executed with the assistance of local police
iv. that the value of destruction does not exceed P3,000

3. ATTRACTIVE NUISANCE

Q: What is an attractive nuisance?

A: A dangerous instrumentality or appliance maintained in one's premises which is likely to attract children at play.

One who maintains an attractive nuisance on his estate without exercising due care is liable to a child of tender years even if a trespasser.

Note: the attractiveness of the premises or of the dangerous instrumentality to children of tender years is to be considered as an implied invitation, which takes the children who accepted it out of the category of a trespasser and puts them in the category of invitees, towards whom the owner of the premises or instrumentality owes the duty of ordinary care

D. VIOLATION OF CONSTITUTIONAL RIGHTS

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

1. Freedom of religion;
2. Freedom of speech;
3. Freedom to write for the press or to maintain a periodical publication;
4. Freedom from arbitrary or illegal detention;
5. Freedom of suffrage;
6. The right against deprivation of property without due process of law;
7. The right to a just compensation when private property is taken for public use;
8. The right to the equal protection of the laws;
9. The right to be secure in one's person, house, papers, and effects against unreasonable searches and seizures;
10. The liberty of abode and of changing the same;
11. The privacy of communication and correspondence;
12. The right to become a member of associations or societies for purposes not contrary to law;
13. The right to take part in a peaceable assembly to petition the government for redress of grievances;
14. The right to be free from involuntary servitude in any form;
15. The right of the accused against excessive bail;
16. The right of the accused to be heard by himself and counsel, to be informed of the nature and cause of the accusation against him, to have a speedy and public trial, to meet the witnesses face to face, and to have compulsory process to secure the attendance of witness in his behalf;
17. Freedom from being compelled to be a witness against one's self, or from being forced to confess guilt, or from being induced by a promise of immunity or reward to make such confession, except when the person confessing becomes a State witness;
18. Freedom from excessive fines, or cruel and unusual punishment, unless the same is imposed or inflicted in accordance with a statute which has not been judicially declared unconstitutional; and
19. Freedom of access to the courts. (Art. 32, NCC)

1. VIOLATION OF CIVIL LIBERTIES

Q: What is the rationale for the inclusion of Art. 32 in the New Civil Code?

A: The creation of an absolutely separate and independent civil action for the violation of civil liberties is essential to the effective maintenance of democracy.

E. VIOLATION OF RIGHTS COMMITTED BY PUBLIC OFFICERS

Q: In what instances can a public officer be liable for damages?

A: When a member of a city or municipal police force refuses or fails to render aid or protection to any person in case of danger to life or property, such peace officer shall be primarily liable for damages. *(Art. 34, NCC)*

An action may be brought by any person suffering from material or moral loss because a public servant refuses or neglects, without just cause to perform his official duty (*ART, 27 NCC*).

Requisites:

i. defendant is a public officer charged with the performance of a duty in favor of the plaintiff
ii. he refused or neglected without just cause to perform such duty (ministerial)
iii. plaintiff sustained material or moral loss as consequence of such non-performance
iv. the amount of such damages, if material

Q: What is the intention of making public officers liable under Art 34, NCC?

A: Art. 34 is intended to afford a remedy against police officers who connive with bad elements, are afraid of them or simply indifferent to duty.

F. PROVINCES, CITIES AND MUNICIPALITIES

Q: What instance would make cities and municipalities liable for damages?

A: Cities and municipalities shall be subsidiarily liable for the neglect of duty of a member of a city or municipal police force. *(Art. 34, NCC)*

G. OWNER OF MOTOR VEHICLE

Q: What is the liability of the owner of a vehicle in case of an accident?

A: In motor vehicle mishaps, the owner is solidarily liable with his driver, if the former, who was in the vehicle, could have, by the use of the due diligence, prevented the misfortune. It is disputably presumed that a driver was negligent, if he had been found guilty or reckless driving or violating traffic regulations at least twice within the next preceding two months. (*Art. 2184, NCC*)

H. PROPRIETOR OF BUILDING OR STRUCTURE OR THING

Q: What is the rule regarding the liability of proprietors of buildings:

A:

a. The proprietor of a building or structure is responsible for the damages resulting from its total or partial collapse, if it should be due to the lack of necessary repairs. (*Art. 2190, NCC*)
b. Proprietors shall also be responsible for damages caused:

    1) By the explosion of machinery which has not been taken care of with due diligence, and the inflammation of explosive substances which have not been kept in a safe and adequate place;
    2) By excessive smoke, which may be harmful to persons or property;
    3) By the falling of trees situated at or near highways or lanes, if not caused by force majeure;
    4) By emanations from tubes, canals, sewers or deposits of infectious matter, constructed without precautions suitable to the place. (*Art. 2191, NCC*)

I. HEAD OF FAMILY

See Persons Made Responsible For Others; Parents

X. STRICT LIABILITY

Q: When is there strict liability?

A: There is strict liability if one is made independent of fault, negligence or intent after establishing certain facts specified by law. It includes liability for conversion and for injuries caused by animals, ultra-hazardous activities and nuisance.

A. ANIMALS

1. POSSESSOR AND USER OF AN ANIMAL

Q: Who is liable for damages caused by animals?

A: The possessor or whoever makes use of the animal is liable independent of fault.

Note: The only exception is when the damage is caused by *force majeure* or by the person who suffered the damage.

Q: What are the rules on liability of owners for damage caused by his animals?

A:

1. An owner is strictly liable for reasonably foreseeable damage done by a trespass of his animals.
2. An owner is strictly liable to licensees and invitees for injuries caused by wild

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animals as long as the injured person did nothing to bring about the injury.

3. An owner is not strictly liable for injuries caused by domestic animals unless he has knowledge of that particular animal's dangerous propensities that are not common to the species.
4. Strict liability will generally not be imposed in favor of trespassers in the absence of the owner's negligence. An exception is recognized for injuries inflicted by vicious watchdogs.

B. NUISANCE

See Nuisance.

1. CLASSES

See Nuisance.

2. EASEMENT AGAINST NUISANCE

Q: What is easement against nuisance?

A: Easement against nuisance is established by *Art. 682 – 683.* It is intended to prohibit the proprietor or possessor of a building or land from committing nuisance therein through noise, jarring, offensive odor, smoke, heat, dust, water, glare, and other causes. *(Gonzalez-Decano, Notes on Torts & Damages Under the Civil Code of the Philippines, 2010, p166)*

C. PRODUCTS LIABILITY

1. CONSUMER ACT

See Manufacturers or Processors; Consumer Act.

BOOK II – DAMAGES

I. GENERAL CONSIDERATIONS

A. CLASSIFICATION

Q: What are damages?

A: The pecuniary compensation, recompense or satisfaction for an injury sustained or as otherwise expressed the pecuniary consequences which the law imposes for the breach of some duty or violation of some rights.

Note: A complaint for damages is personal in nature (personal action)

Q: What are the kinds of damages?

A: MENTAL

1. **M**oral
2. **E**xemplary
3. **N**ominal
4. **T**emperate
5. **A**ctual
6. **L**iquidated

ACTUAL/ COMPENSATORY	MORAL	NOMINAL
According to purpose		
Actual or compensatory damages simply make good or replace the loss caused by the wrong.	Awarded only to enable the injured party to obtain means, diversion or amusement that will alleviate the moral suffering he has undergone, by reason of defendants culpable action. *(Robleza v. CA, 174 SCRA 354)*	Vindicating or recognizing the injured party's right to a property that has been violated or invaded. *(Tan v. Bantegui, 473 SCRA 663)*
According to manner of determination		
Claimant must produce competent proof or the best evidence obtainable such as receipts to justify an award therefore. Actual or compensatory damages *cannot be presumed* but must be proved with reasonable certainty. *(People v. Ereno, Feb. 22, 2000)*	No proof of pecuniary loss is necessary. The assessment is left to the discretion of the court according to the circumstances of each case. However, there must be proof that the defendant caused physical suffering etc. *(Compania Maritima v. Allied Free Worker's Union, G.R. No. L-31379, Aug. 29, 1988)*. **GR:** Factual basis must be alleged. Aside from the need for the claimant to satisfactorily prove the existence of the factual basis of the damages, it is also necessary to prove its causal relation to the defendant's act *(Raagas v. Trava, G.R. No. L-20081, Feb. 27,1968; People v. Manero, G.R. Nos. 86883-85, Jan. 29, 1993).* **XPN:** Criminal cases. Moral damages may be awarded to the victim in criminal proceedings in such amount as the court deems just without need for pleading or proof of the basis thereof *(People v. Paredes, July 30, 1998).*	No proof of pecuniary loss is necessary. Proof that a legal right has been violated is what is only required. Usually awarded in the absence of proof of actual damages.
Special/Ordinary		
Ordinary **Note:** Ordinary Damages are those generally inherent in a breach of a typical contract	Special **Note:** Special Damages are those which exist because of special circumstances and for which a debtor in good faith can be held liable if he had been previously informed of such. circumstances.	Special

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TEMPERATE	LIQUIDATED	EXEMPLARY/ CORRECTIVE
According to purpose		
When the court is convinced that there has been such a loss, the judge is empowered to calculate moderate damages rather than let the complainant suffer without redress. *(GSIS v. Labung-Deang, 365 SCRA 341)*	Liquidated damages are frequently agreed upon by the parties, either by way of penalty or in order to avoid controversy on the amount of damages.	Exemplary or corrective damages are intended to serve as a deterrent to serious wrongdoings. *(People v. Orilla, 422 SCRA 620)*
According to manner of determination		
May be recovered when the court finds that some pecuniary loss has been suffered but its amount cannot, from the nature of the case, be proved with certainty. No proof of pecuniary loss is necessary.	If intended as a penalty in obligations with a penal cause, proof of actual damages suffered by the creditor is not necessary in order that the penalty may be demanded *(Art. 1228, NCC).* *No proof of pecuniary loss* is necessary.	1. That the claimant is entitled to moral, temperate or compensatory damages; and 2. That the crime was committed with 1 or more aggravating circumstances, or the quasi-delict was committed with gross negligence, or in contracts and quasi-contracts the act must be accompanied by bad faith or done in wanton, fraudulent, oppressive or malevolent manner. No proof of pecuniary loss is necessary.
Special/Ordinary		
Special	Special	Special

II. ACTUAL AND COMPENSATORY DAMAGES

A. CONCEPT

Q: What are actual or compensatory damages?

A: It comprehends not only the value of the loss suffered but also that of the profits which the obligee failed to obtain. The amount should be that which would put the plaintiff in the same position as he would have been if he had not sustained the wrong for which he is now getting compensation or reparation. To recover damages, the amount of loss must not only be capable of proof but must actually be proven.

Q: What are the kinds of actual or compensatory damages?

A:

1. *General damages* – natural, necessary and logical consequences of a particular wrongful act which result in injury; need not be specifically pleaded because the law itself implies or presumes that they resulted from the wrongful act.

2. *Special damages* – damages which are the natural, but not the necessary and inevitable result of the wrongful act; an example would be attorney's fees.

B. REQUISITES

1. ALLEGED AND PROVED WITH CERTAINTY

Q: Is it necessary that loss be proved?

A:

GR: Loss must be proved before one can be entitled to damages.

XPN: Loss need not be proved in the following cases:

1. Liquidated damages previously agreed upon;
   Note: Liquidated damages take the place of actual damages except when additional damages are incurred.
2. If damages other than actual are sought;
3. Forfeiture of bonds in favor of the government for the purpose of promoting public interest or policy;
4. Loss is presumed.

2. NOT SPECULATIVE

Q: What is the required proof for actual damages?

A: It is necessary that the claimant produces competent proof or the best evidence obtainable such as receipts to justify an award therefore. Actual or compensatory damages *cannot be presumed* but must be proved with reasonable certainty *(People v. Ereno, Feb. 22, 2000)*

Any person who seeks to be awarded actual or compensatory damages due to acts of another has the burden of proving said damages as well as the amount thereof. Actual damages cannot be allowed unless supported by evidence on the record. The court cannot rely on speculations, conjectures or guesswork as to the fact and amount of damages *(Banas, Jr. v. CA, Feb. 10, 2000)*

C. COMPONENT ELEMENTS

1. VALUE OF LOSS; UNREALIZED PROFIT

Q: What does actual damages cover?

A: It comprehends not only the value of the loss suffered but also that of the profits which the obligee failed to obtain.

1. *Dano emergente* – loss of what a person already possesses

2. *Lucro cessante* – failure to receive as a benefit that would have pertained to him

Note: Loss or impairment of earning capacity in cases of temporary or permanent personal injury.

In case of business establishments, it covers injury to the business standing or commercial credit.

Q: What must be considered in determining the amount of damages recoverable?

A: Much is left to the discretion of the court considering the moral and material damages involved. There can be no exact or uniform rule for measuring the value of a human life. The amount recoverable depends on the particular facts and circumstances of each case.

The life expectancy of the deceased or of the beneficiary, whichever is shorter, is an important factor. Other factors that are usually considered are:

1. Pecuniary loss to plaintiff or beneficiary;
2. Loss of support;
3. Loss of service;
4. Loss of society;
5. Mental suffering of beneficiaries; and
6. Medical and funeral expenses.

Thus, life expectancy is, not only relevant, but, also, an *important* element in fixing the amount recoverable, although it is not the *sole* element determinative of said amount.

Q: Is it proper for the heirs to claim as damages the full amount of earnings of the deceased?

A: No. Said damages consist, *not* of the full amount of his earnings, but of the *support they received or would have received* from him had he not died in consequence of the negligence of the bus' agent. Stated otherwise, the amount recoverable is not loss of the entire earning, but rather the loss of that *portion* of the earnings which the beneficiary would have received. In other words, only *net earnings*, not gross earning, are to be considered.

In fixing the amount of that support, the *"necessary expenses of his own living" should be deducted from his earnings*. Earning capacity, as an element of damages to one's estate for his death by wrongful act, is necessarily his net earning capacity or his capacity to acquire money, *less the necessary expense for his own living*. *(Villa Rey Transit, Inc. v. CA, et al., G.R. No. L-25499 Feb. 18, 1970)*

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2. ATTORNEY'S FEES AND EXPENSES OF LITIGATION

Q: What are the two concepts of attorney's fees? Distinguish one from the other.

A:

1. Ordinary
2. Extraordinary

ORDINARY	EXTRAORDINARY
Nature	
The reasonable compensation paid to a lawyer for the legal services rendered to a client who has engaged him	An indemnity for damages ordered by the court to be paid by the losing to the prevailing party in litigation
Basis	
The fact of employment of the lawyer by the client	Any cases authorized by law
To whom payable	
Lawyer	Client

Q: To what does Article 2208 pertain?

A: Article 2208 pertains to extraordinary attorney's fees. They are actual damages due to the plaintiff. Plaintiff must allege the basis of his claim for attorney's fees in the complaint.

Q: Are attorney's fees recoverable as actual damages?

A:

GR: *Not* recoverable.

XPN: SWISS- MUD- ERC

1. **S**tipulation between parties
2. Recovery of **W**ages of household helpers, laborers and skilled workers
3. Actions for **I**ndemnity under workmen's compensation and employer liability laws
4. Legal **S**upport actions
5. **S**eparate civil action to recover civil liability arising from crime
6. **M**alicious prosecution
7. Clearly **U**nfounded civil action or proceeding against plaintiff
8. When **D**ouble judicial costs are awarded
9. When **E**xemplary damages are awarded
10. Defendant acted in gross & evident bad faith in **R**efusing to satisfy plaintiff's just & demandable claim
11. When defendant's act or omission **C**ompelled plaintiff to litigate with 3rd persons or incur expenses to protect his interest

3. INTEREST

Q: When can interest be part of damages?

A: In crimes and quasi-delicts, the court may appropriately impose interest on the amount of the damages adjudicated by the court. The basis of interest is the legal rate which is 6% per annum.

D. EXTENT OR SCOPE OF ACTUAL DAMAGES

1. IN CONTRACTS AND QUASI-CONTRACTS

Q: What should be the amount of actual damages?

A: The amount should be that which would put the plaintiff in the same position as he would have been if he had not sustained the wrong for which he is now getting compensation or reparation.

1. *Property* – value at the time of destruction, or market value, plus, in proper cases, damages for the loss of use during the period before replacement, value of use of premises, in case of mere deprivation of possession.

2. Personal injury – Medical expenses; P 75,000 by way of civil indemnity in case of rape committed or effectively qualified under which the death penalty is imposed by law, or P 50,000 in other rape cases.

3. *Death* – Wake and burial expenses, P 50,000 by way of civil indemnity *ex delicto* which requires no proof other than the fact of death of the victim and the assailant's responsibility therefor.

Q: Can actual damages be mitigated?

A: Yes, in the following cases:

1. *For Contracts:*
   a. Violation of terms of the contract by the plaintiff himself;
   b. Obtention or enjoyment of benefit under the contract by the plaintiff himself;
   c. Defendant acted upon advice of counsel in cases where the exemplary damages are to be

awarded such as under Articles 2230, 2231 and 2232;
d. Defendant has done his best to lessen the plaintiff's injury or loss.

2. *For Quasi-contracts:*
   a. In cases where exemplary damages are to be awarded such as in Article 2232;
   b. Defendant has done his best to lessen the plaintiff's injury or loss.

3. *For Quasi-delicts:*
   a. That the loss would have resulted in any event because of the negligence or omission of another, and where such negligence or omission is the immediate and proximate cause of the damage or injury;
   b. Defendant has done his best to lessen the plaintiff's injury or loss.

2. IN CRIMES AND QUASI-DELICTS

Q: What is the amount of damages in cases where death resulted from a crime or quasi-delict?

A: Art. 2206 provides that the amount of damages for death caused by a crime or quasi-delict shall be at least 50 thousand pesos, even though there may have been mitigating circumstances.
In addition to the amount to be awarded, the defendant shall also be liable for the following:

1. Loss of the earning capacity of the deceased, and the indemnity shall be paid to the heirs of the latter; such indemnity shall in every case be assessed and awarded by the court, unless the deceased on account of permanent physical disability not caused by the defendant, had no earning capacity at the time of his death;

2. If the deceased was obliged to give support according to the provisions of Article 291, the recipient who is not an heir called to the decedent's inheritance by the law of testate or intestate succession, may demand support from the person causing the death, for a period not exceeding five years, the exact duration to be fixed by the court;

   Note: The article only mentioned heir. Consequently, it cannot speak of devisees and legatees who are receiving support from the deceased.

3. The spouse, legitimate and illegitimate descendants and ascendants of the deceased may demand moral damages for mental anguish by reason of the death of the deceased.

III. MORAL DAMAGES

A. CONCEPT

Q: Why are moral damages awarded?

A: They are awarded to enable the injured party to obtain means, diversions or amusement that will serve to alleviate the moral suffering he has undergone by reason of the defendant's culpable action.

Q: How can the plaintiff recover moral damages?

A:

GR: The plaintiff must allege and prove:
1. The *factual basis* for moral damages and
2. The *causal relation* to the defendant's act

XPN: Moral damages may be awarded to the victim in criminal proceedings without the need for pleading of proof or the basis thereof.

B. WHEN RECOVERABLE

Q: When is moral damages recoverable?

A: Moral damages may be recovered in the following and analogous cases:
1. A criminal offense resulting in physical injuries;
2. Quasi-delicts causing physical injuries;
3. Seduction, abduction, rape, or other lascivious acts;
4. Adultery or concubinage;
5. Illegal or arbitrary detention or arrest;
6. Illegal search;
7. Libel, slander or any other form of defamation;
8. Malicious prosecution;
9. Acts mentioned in Article 309; and

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10. Actions referred to in Articles 21, 26, 27, 28, 29, 30, 32, 34, and 35. (*Art. 2219, NCC*)

N534: To award moral damages, a court must be satisfied with proof of the following:

1. an injury – whether physical, mental or psychological;
2. a culpable act or omission factually established;
3. a wrongful act or omission of the defendant as the proximate cause of the injury sustained by the claimant;
4. the award of damages predicated on any of the cases stated in Art. 2219.

Art. 2219, NCC speaks provides for criminal offense resulting from physical injuries and quasi-delicts causing physical injuries.

1. IN SEDUCTION, ABDUCTION, RAPE AND OTHER LASCIVIOUS ACTS

Q: Is there any instance wherein the plaintiff may not prove the factual basis for moral damages as well as the causal relation to the defendant's act?

A: Yes. In criminal proceedings for rape.

Requisites:

1. There must be an injury whether physical, mental or psychological, clearly sustained by the claimant
2. There must be culpable act or omission
3. Such act or omission is the proximate cause of the injury
4. The damage is predicated on the cases cited in Art. 2219

Q: In rape cases, is civil indemnity the same with moral damages?

A: No, civil indemnity is different from moral damages. It is distinct from and should not be denominated as moral damages which are based on different jural foundations and assessed by the court in the exercise of sound discretion *(People v. Caldona, G.R. No. 126019, Mar. 1, 2001).*

When the fact of rape has been established, civil indemnity is mandatory. If it is simple rape, civil indemnity is P50,000.00. If there is qualifying circumstance as to justify the imposition of death penalty, it should be no less than P75,000.00 *(People v. Banago ; People v. Mahinay, G.R. No. 109613, July 17, 1995) (Pineda, p. 247, 2009 ed.).*

2. IN ACTS REFERRED TO IN ARTS. 21, 26, 27, 28, 29, 32, 34 & 35, NCC

Q: What are those tortuous acts referred to in Articles 21, 26, 27, 28. 29, 32, 34 and 35 of the Civil Code, wherein the plaintiff may recover moral damages?

A:

1. Willful acts contrary to morals, good customs or public policy
2. Disrespect to the dignity, personality, privacy and peace of mind of neighbors and other persons
3. Refusal or neglect of a public servant to perform his official duty without just cause
4. Unfair competition in enterprise or in labor
5. Civil action for damages against accused acquitted on reasonable doubt
6. Violation of civil rights
7. Civil action for damages against city or municipal police force
8. When the trial court finds no reasonable ground to believe that a crime has been committed after a preliminary investigation or when the prosecutor refuses or fails to institute criminal proceedings.

3. IN CASES OF MALICIOUS PROSECUTION

Q: What is an action for malicious prosecution?

A: It has been defined as an action for damages brought by or against whom a criminal prosecution, civil suit, or other legal proceeding has been instituted maliciously and without probable cause, after the termination of such prosecution, suit or other proceeding in favor of the defendant therein. *(Diaz v. Davao Light and Power Co., 520 SCRA 510, 2007)*

Q: May moral and exemplary damages be granted if a marriage was dissolved on the ground of psychological incapacity?

A: By declaring petitioner as psychologically incapacitated, the possibility of awarding moral damages was negated, which should have been proved by specific evidence that it was *done deliberately*. Thus, as the grant of moral damages was not proper, it follows that the grant of exemplary damages cannot stand since the Civil Code provides that exemplary damages are imposed in addition to moral, temperate, liquidated or compensatory damages. Finally,

since the award of moral and exemplary damages is no longer justified, the award of attorney's fees and expenses of litigation is left without basis. *(Buenaventura v. CA, G.R. No. 127358, Mar. 31, 2005)*

IV. NOMINAL DAMAGES

A. CONCEPT

Q: What is the purpose of nominal damages?

A: In order that a right of the plaintiff which has been violated or invaded by the defendant may be vindicated or recognized, *and not for the purpose of* indemnifying the plaintiff for any loss suffered by him.

Note: Elements:

1. Plaintiff has a right;
2. Such right is violated;
3. The purpose of awarding damages is to vindicate or recognize the right violated.

B. WHEN AWARDED

Q: In what cases are nominal damages awarded?

A: nominal damages are small sums fixed by the court without regard to the extent of the harm done to the injured party. They are damages in name only and are allowed simply in recognition of a technical injury based on a violation of a legal right.

Note: Nominal damages cannot co-exist with actual or compensatory damages *because* nominal damages are recoverable when the damages suffered cannot be proved with reasonable certainty. The law presumes damage although actual or compensatory damages are not proven. Award of actual, moral, temperate or moderate damages preclude nominal damages. But it may be awarded together with attorney's fees. *(Pineda, pp. 284-285, 2009 ed)*

V. TEMPERATE OR MODERATE DAMAGES

A. CONCEPT

Q: What are temperate damages?

A: Those damages, which are more than nominal but less than compensatory, and may be recovered when the court finds that some pecuniary loss has been suffered but its amount cannot be proved with certainty.

In cases where the resulting injury might be continuing and possible future complications directly arising from the injury while certain to occur, are difficult to predict, temperate damages can and should be awarded on top of actual or compensatory damages. In such cases there is no incompatibility between actual and temperate damages

Note: *Elements:*

1. Some pecuniary loss;
2. Loss is incapable of pecuniary estimation;
3. The damages awarded are reasonable.

VI. LIQUIDATED DAMAGES

A. CONCEPT

Q: What are liquidated damages?

A: Those agreed upon by the parties in a contract, to be paid in case of breach thereof.

Q: When may liquidated damages be equitably reduced?

A:

1. Iniquitous or unconscionable
2. Partial or irregular performance

B. RULES GOVERNING IN CASE OF BREACH OF CONTRACT

Q: What is the rule governing in case of breach of contract?

A: Art. 2228, NCC, provides that when the breach of contract committed by the defendant is not the one contemplated by the parties in agreeing upon the liquidated damages, the law shall determine the measure of damages, and not the stipulation.

VII. EXEMPLARY OR CORRECTIVE DAMAGES

A. CONCEPT

Q: What is the purpose of exemplary damages?

A: Imposed by way of example or correction for the public good, in addition to the moral, temperate, liquidated or compensatory damages; intended to serve as a deterrent to serious wrongdoings and as a vindication of undue sufferings and wanton of invasion of the rights of

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an injured or a punishment for those guilty of outrageous conduct.

B. WHEN RECOVERED

Q: In what cases may exemplary damages be imposed as accessory damages?

A:

GR: Exemplary damages cannot be recovered as a matter of right *(Art. 2233, NCC)*

XPN:

1. *Criminal offense* – when the crime was committed with one or more aggravating circumstances *(Art. 2230)*
2. *Quasi-delicts* – when the defendant acted with gross negligence *(Art. 2231)*
3. *Contracts and Quasi-contracts* – when defendant acted in wanton, fraudulent, reckless, oppressive, or malevolent manner *(Art. 2232) (Pineda, p. 301, 2009 ed)*

Q: What are the damages that can be recovered in case of death?

A: MEA-I^3

1. **M**oral damages
2. **E**xemplary damages
3. **A**ttomey's fees and expenses for litigation
4. **I**ndemnity for death
5. **I**ndemnity for loss of earning capacity
6. **I**nterest in proper cases

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C. REQUISITES

Q: When is temperate damages recoverable?

A:

1. The claimant's right to exemplary damages has been established
2. Their determination depends upon the amount of compensatory damages that may be awarded to the claimant
3. The act must be accompanied by bad faith or done in wanton, fraudulent, oppressive or malevolent manner

VIII. DAMAGES IN CASE OF DEATH

A. IN CRIMES AND QUASI-DELICTS CAUSING DEATH

Q: What is the rule with regard to crimes and quasi- delicts causing death?

A: In case of death, the plaintiff is entitled to the amount that he spent during the wake and funeral of the deceased. However, it has been ruled that expenses after the burial are not compensable.

Note: The amount of damages for death caused by a crime or quasi-delict shall be at least three thousand pesos, even though there may have been mitigating circumstances. In addition:

1. The defendant shall be liable for the loss of the earning capacity of the deceased, and the indemnity shall be paid to the heirs of the latter; such indemnity shall in every case be assessed and awarded by the court, unless the deceased on account of permanent physical disability not caused by the defendant, had no earning capacity at the time of his death;
2. If the deceased was obliged to give support according to the provisions of Article 291, the recipient who is not an heir called to the decedent's inheritance by the law of testate or intestate succession, may demand support from the person causing the death, for a period not exceeding five years, the exact duration to be fixed by the court;
3. The spouse, legitimate and illegitimate descendants and ascendants of the deceased may demand moral damages for mental anguish by reason of the death of the deceased. (*Art. 2206, NCC*)

1. IN DEATH CAUSED BY BREACH OF CONDUCT BY A COMMON CRIME

IX. GRADUATION OF DAMAGES

Q: What is the rule in graduation of damages in torts cases?

A: Generally, the degree of care required is graduated according to the danger a person or property attendant upon the activity which the actor pursues or the instrumentality he uses. The greater the danger the greater the degree of care required.

However, foreseeability is not the same as probability. Even if there is lesser degree of probability that damage will result, the damage may still be considered foreseeable.

NOTE: The test as respects foreseeability is not the balance of probabilities, but the existence, in the situation in hand, of some real likelihood of some damage and the likelihood is of such appreciable weight and moment to induce, or which reasonably should induce, action to avoid it on the part of a person or a reasonably prudent mind.

A. DUTY OF INJURED PARTY

1. ART. 2203

Q: What is the duty of the injured party?

A: The injured party is obligated to undertake measures that will alleviate and not aggravate his condition after the infliction of the injury or nuisance. The injured party has the burden of explaining why he did not do so. *(Art. 2203, NCC)*

B. RULES

1. IN CRIMES

Q: How are damages adjudicated in case of crimes?

A: In crimes, the damages to be adjudicated may be respectively increased or lessened according to the aggravating or mitigating circumstances. (*Art. 2204, NCC*)

2. IN QUASI-DELICT

Q: When can damages be reduced in quasi delict?

A: The contributory negligence of the plaintiff shall reduce the damages he may recover. *(Art. 2214, NCC)*

3. IN CONTRACTS, QUASI-CONTRACTS AND QUASI-DELICTS; NCC ART. 2215

Q: When can the court equitably mitigate the damages in contract, quasi-contracts and quasi-delicts?

A: The court can mitigate the damages in the following instances other than in Art. 2214:

1. That the plaintiff himself has contravened the terms of the contract;
2. That the plaintiff has fderived some benefit as a result of the contract;
3. In cases where exemplary damages are to be awarded, that the defendant acted upon the advice of counsel;
4. That the loss would have resulted in any event;
5. That since the filing of the action, the defendant has done his best to lessen the plaintiff's loss or injury. *(Art. 2215, NCC)*

4. LIQUIDATED DAMAGES

Q: When can liquidated damages be equitably reduced?

A: Liquidated damages, whether intended as an indemnity or a penalty, shall be equitably reduced if they are iniquitous or unconscionable. *(Art. 2227, NCC)*

5. COMPROMISE

Q: What is a compromise?

A: A compromise is a contract whereby the parties, by making reciprocal concessions, avoid a litigation or put an end to one already commenced. *(Art. 2028, NCC)*

Q: What is the essence of a compromise?

A: The element of reciprocal concessions.

Q: What is the rule regarding compromise in case liability has a civil and criminal aspect?

A: If a crime has been committed, there can be compromise on the *civil* liability, but not, as a general rule, on the *criminal* liability.

Note: In a civil case, compromise must be entered into before or during litigation, never after final judgment has been rendered.

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Compromise during litigation may be in the form of a confession of judgment.

Q: What is the rule regarding compromise of criminal liability?

A:
GR: not allowed

XPN: in case of crimes against chastity and violations of the National Internal Revenue Code.

X. MISCELLANEOUS RULES

Damages that cannot co-exist	*Damages that must co-exist*	*Damages that must stand alone*
Nominal Damages cannot co-exist with Exemplary Damages	Exemplary Damages must co-exist with Moral, Temperate, Liquidated or Compensatory Damages	Nominal Damages