TITLE I – OBLIGATIONS

CHAPTER 1
GENERAL PROVISIONS

1156. An obligation is a juridical necessity to give, to do, or not to do.

JURIDICAL NECESSITY – juridical tie; connotes that in case of noncompliance, there will be legal sanctions.

- An *obligation* is nothing more than the duty of a person (obligor) to satisfy a specific demandable claim of another person (obligee) which, if breached, is enforceable in court.

- A contract necessarily gives rise to an obligation but an obligation does not always need to have a contract.

DAMAGES – sum of money given as a compensation for the injury or harm suffered by the obligee for the violation of his right.

KINDS OF OBLIGATION

A. From the viewpoint of "sanction" -
   (a) CIVIL OBLIGATION – that defined in Article 1156; an obligation, if not fulfilled when it becomes due and demandable, may be enforced in court through action; based on law; the sanction is *judicial due process*
   (b) NATURAL OBLIGATION – a special kind of obligation which cannot be enforced in court but which authorizes the retention of the voluntary payment or performance made by the debtor; based on equity and natural law. (i.e. when there is prescription of duty to pay, still, the obligor paid his dues to the obligee – the obligor cannot recover his payment even there is prescription) the sanction is the *law*, but only conscience had originally motivated the payment.
   (c) MORAL OBLIGATION – the sanction is conscience or morality, or the law of the church. (Note: If a Catholic promises to hear mass for 10 consecutive Sundays in order to receive P1,000, this obligation becomes a civil one.)

B. From the viewpoint of subject matter -
   (a) REAL OBLIGATION – the obligation to give
   (b) PERSONAL OBLIGATION – the obligation to do or not to do (e.g. the duty to paint a house, or to refrain from committing a nuisance)

C. From the affirmativeness and negativeness of the obligation -
   (a) POSITIVE OR AFFIRMATIVE OBLIGATION – the obligation to give or to do
   (c) NEGATIVE OBLIGATION – the obligation not to do (which naturally inludes not to give)

D. From the viewpoint of persons obliged - "sanction" -
   (a) UNILATERAL – where only one of the parties is bound (e.g. Plato owes Socrates P1,000. Plato must pay Socrates.)
   (d) BILATERAL – where both parties are bound (e.g. In a contract of sale, the buyer is obliged to deliver)

- may be:
(b.1) reciprocal
(b.2) non-reciprocal – where performance by one is non-dependent upon performance by the other

ELEMENTS OF OBLIGATION

a) ACTIVE SUBJECT – (Creditor / Obligee) the person who is demanding the performance of the obligation;
b) PASSIVE SUBJECT – (Debtor / Obligor) the one bound to perform the prestation or to fulfill the obligation or duty;
c) PRESTATION – (to give, to do, or not to do) object; subject matter of the obligation; conduct required to be observed by the debtor;
d) EFFICIENT CAUSE – the JURIDICAL TIE which binds the parties to the obligation; source of the obligation.
e) CAUSA (causa debendi/causa obligationes) - why obligation exists

PRESTATION (Object)

1. TO GIVE – delivery of a thing to the creditor (in sale, deposit, pledge, donation);
2. TO DO – covers all kinds of works or services (contract for professional services);
3. NOT TO DO – consists of refraining from doing some acts (in following rules and regulations).

Requisites of Prestation / Object**:**

1) licit (if illicit, it is void)
2) possible (if impossible, it is void)
3) determinate or determinable (or else, void)
4) pecuniary value

- INJURY – wrongful act or omission which causes loss or harm to another
- DAMAGE – result of injury (loss, hurt, harm)

1157. Obligation arises from – (1) law; (2) contracts; (3) quasi-contracts; (4) acts or omissions punished by law; (5) quasi-delicts.

(1) LAW (Obligation ex lege) – imposed by law itself; must be expressly or impliedly set forth and cannot be presumed - [*See Article 1158*]

(2) CONTRACTS (Obligation ex contractu) – arise from stipulations of the parties: meeting of the minds / formal agreement
- must be complied with in good faith because it is the "law"

between parties; neither party may unilaterally evade his obligation in the contract, unless:

a) contract authorizes it
b) other party assents

Note:
Parties may freely enter into any stipulations, provided they are not contrary to law, morals, good customs, public order or public policy
- [See Article 1159]

(3) QUASI-CONTRACTS (Obligation ex quasi-contractu) – arise from lawful, voluntary and unilateral acts and which are enforceable to the end that no one shall be unjustly enriched or benefited at the expense of another
- 2 kinds:

a. Negotiorum gestio - unauthorized management; This takes place when a person voluntarily takes charge of another's abandoned business or property without the owner's authority
b. Solutio indebiti - undue payment; This takes place when something is received when there is no right to demand it, and it was unduly delivered thru mistake

- [*See Article 1160*]

(4) DELICTS (Obligation ex maleficio or ex delicto) – arise from civil liability which is the consequence of a criminal offense
- Governing rules:

1. Pertinent provisions of the RPC and other penal laws subject to Art 2177 Civil Code

[Art 100, RPC – Every person criminally liable for a felony is also civilly liable]

2. Chapter 2, Preliminary title, on Human Relations (Civil Code)
3. Title 18 of Book IV of the Civil Code – on damages

- [*See Article 1161*]

(5) QUASI-DELICTS / TORTS (Obligation ex quasi-delicto or ex quasi-maleficio) – arise from damage caused to another through an act or omission, there being no fault or negligence, but no contractual relation exists between the parties
- [See Article 1162]

1158. Obligations from law are not presumed. Only those (1) expressly determined in this code or (2) in special laws are demandable, and shall be regulated by the precepts of the law which establishes them; and as to what has not been foreseen, by the provisions of this code.

- Unless such obligations are EXPRESSLY provided by law, they are not demandable and enforceable, and cannot be presumed to exist.
- The Civil Code can be applicable suppletorily to obligations arising from laws other than the Civil Code itself.
- Special laws – refer to all other laws not contained in the Civil Code.

1159. Obligations arising from contracts have the force of law between the contracting parties and should be complied with in good faith.

CONTRACT – meeting of minds between two persons whereby one binds himself, with respect to the other, to give, to do something or to render some service; governed primarily by the agreement of the contracting parties.

VALID CONTRACT – it should not be against the law, contrary to morals, good customs, public order, and public policy.

- In the eyes of law, a void contract does not exist and no obligation will arise from it.

OBLIGATIONS ARISING FROM CONTRACTS – primarily governed by the stipulations, clauses, terms and conditions of their agreements.

- If a contract's prestation is unconscionable (unfair) or unreasonable, even if it does not violate morals, law, etc., it may not be enforced totally.

- Interpretation of contract involves a question of law.

COMPLIANCE IN GOOD FAITH – compliance or performance in accordance with the stipulations or terms of the contract or agreement.

FALSIFICATION OF A VALID CONTRACT – only the unauthorized insertions will be disregarded; the original terms and stipulations should be considered valid and subsisting for the partied to fulfill.

1160. Obligations derived from quasi-contracts shall be subject to the provisions of chapter 1, title 17 of this book.

QUASI-CONTRACT – juridical relation resulting from lawful, voluntary and unilateral acts by virtue of which, both parties become bound to each other, to the end that no one will be unjustly enriched or benefited at the expense of the other.

- There is no consent - consent is PRESUMED.

(1) NEGOTIORUM GESTIO – juridical relation which takes place when somebody voluntarily manages the property affairs of another without the knowledge or consent of the latter; owner shall reimburse the gestor for necessary and useful expenses incurred by the latter for the performance of his function as gestor.
(2) SOLUTIO INDEBITI – something is received

when there is no right to demand it and it was unduly delivered through mistake; obligation to return the thing arises on the part of the recipient. (e.g. If I let a storekeeper change my P500 bill and by error he gives me P560, I have the duty to return the extra P60)

1161. Civil obligations arising from criminal offenses shall be governed by the penal laws, subject to the provisions of Article 2177, and of the pertinent provisions of Chapter 2, Preliminary in Human Relations, and of Title 18 of this book, regulating damages.

Governing rules:

1. Pertinent provisions of the RPC and other penal laws subject to Art 2177 Civil Code

[Art 100, RPC – Every person criminally liable for a felony is also civilly liable]

2. Chapter 2, Preliminary title, on Human Relations (Civil Code)
3. Title 18 of Book IV of the Civil Code – on damages

- Every person criminally liable for a felony is also criminally liable (art. 100, RPC)

CRIMINAL LIABILITY INCLUDES:

(a) RESTITUTION – restoration of property previously taken away; the thing itself shall be restored, even though it be found in the possession of a third person who has acquired it by lawful means, saving to the latter his action against the proper person who may be liable to him.
(b) REPARATION OF THE DAMAGE CAUSED – court determines the amount of damage: price of a thing, sentimental value, etc.
(c) INDEMNIFICATION FOR CONSEQUENTIAL DAMAGES – includes damages suffered by the family of the injured party or by a third person by reason of the crime.

*Effect of acquittal in criminal case**:***

a. when acquittal is due to reasonable doubt – no civil liability
b. when acquittal is due to exempting circumstances – there is civil liability
c. when there is preponderance of evidence – there is civil liability

1162. Obligations derived from quasi-delicts shall be governed by the provisions of chapter 2, title 17 of this book, and by special laws.

QUASI-DELICT (culpa aquiliana) – an act or omission by a person which causes damage to another giving rise to an obligation to pay for the damage done, there being fault or negligence but there is no pre-existing contractual relation between parties.

REQUISITES:

a. omission
b. negligence
c. damage cause to the plaintiff
d. direct relation of omission, being the cause, and the damage, being the effect
e. no pre-existing contractual relations between parties

Fault or Negligence – consists in the omission of that diligence which is required by the nature of the obligation and corresponds with the circumstances of the person, time, and of the place.

BASIS	DELICTS	QUASI-DELICTS
1. INTENT	Criminal / malicious	Negligence
2. INTEREST	Affects PUBLIC interest	Affects PRIVATE interest
3. LIABILITY	Criminal and civil liabilities	Civil liability
4. PURPOSE	Purpose – punishment	Indemnification
5.COMPROMISE	Cannot be compromised	Can be compromised
6. GUILT	Proved beyond reasonable doubt	Preponderance of evidence

Note:
The SC in Sagrada v. Naccoco implied that the sources of obligation in Art 1162 is exclusive. Many commentators believe, however that it should not be. At present, there is one more possible source of obligations - PUBLIC OFFER (Public Offer is in fact a source of obligation in the German Civil Code) – Ateneo memory aid

**** The enumeration in 1157 is not scientific because in reality there are only 2 sources of obligations: law and contract (quasi-contract, delicts, and quasi-delicts are imposed by law) [Leung Ben v. O'Brien, 38 Phil. 182]*

CHAPTER 2
NATURE AND EFFECT OF OBLIGATIONS

1163. Every person obliged to give something is also obliged to take care of it with the proper diligence of a good father of a family, unless the law or the stipulation of the parties requires another standard of care.

- Speaks of an obligation to care of a DETERMINATE

thing (that is one which is specific; a thing identified by its individuality) which an obligor is supposed to deliver to another.
- Reason: the obligor cannot take care of the whole class/genus

DUTIES OF DEBTOR:

- Preserve or take care of the things due.
  - DILIGENCE OF A GOOD FATHER – a good father does not abandon his family, he is always ready to provide and protect his family; ordinary care which an average and reasonably prudent man would do.
  - ANOTHER STANDARD OF CARE – extraordinary diligence provided in the stipulation of parties.
  - FACTORS TO BE CONSIDERED – diligence depends on the nature of obligation and corresponds with the circumstances of the person, time, and place.

** Debtor is not liable if his failure to deliver the thing is due to fortuitous events or force majeure… without negligence or fault in his part.

- Deliver the fruits of a thing
- Deliver the accessions/accessories
- Deliver the thing itself
- Answer for damages in case of non-fulfillment or breach

1164. The creditor has a right to the fruits of the thing from the time the obligation to deliver it arises. However, he shall acquire no real right over it until the same has been delivered to him.

REAL RIGHT (jus in re) – right pertaining to person over a specific thing, without a passive subject individually determined against whom such right may be personally enforced.
– a right enforceable against the whole world

PERSONAL RIGHT (jus ad rem) – a right pertaining to a person to demand from another, as a definite passive subject, the fulfillment of a prestation to give, to do or not to do.
– a right enforceable only against a definite person or group of persons.

- Before the delivery, the creditor, in obligations to give, has merely a personal right against the debtor – a right to ask for delivery of the thing and the fruits thereof.
- Once the thing and the fruits are delivered, then he acquires a real right over them.
- Ownership is transferred by delivery which could be either *actual* or *constructive*. (Art. 1477)
- The remedy of the buyer when there is no delivery despite demand is to file a complaint for "SPECIFIC PERFORMANCE AND DELIVERY" because he is not yet the owner of the property before the delivery.

 ACTUAL DELIVERY – actual delivery of a thing from the hand of the grantor to the hand of the grantee (presonally), or manifested by certain possessory acts executed by the grantee with the consent of the grantor (realty).
 CONSTRUCTIVE TRADITION – representative of symbolical in essence and with intention to deliver the ownership.

FRUITS:
1. NATURAL – spontaneous products of the soil, the young and other products of animals;
2. INDUSTRIAL – produced by lands of any cultivation or labor;
3. CIVIL – those derived by virtue of juridical relation.

1165. When what is to be delivered is a determinate thing, the creditor … may compel the debtor to make delivery. If the thing is indeterminate or generic, he may ask that the obligation be complied with at the expense of the debtor. If the obligor delays or has promised to deliver the same ting to two or more persons who do not have the same interest, he shall be responsible for any fortuitous event until he has effected the delivery.

DETERMINATE THING
- something which is susceptible of particular designation or specification;
- obligation is extinguished if the thing is lost due to fortuitous events.

INDETERMINATE THING
- something that has reference only to a class or genus;
- obligation to deliver is not so extinguished by fortuitous events.

REMEDIES FOR FAILURE OF DELIVERY (determinate thing)
1. Complaint for specific performance – an action to compel the fulfillment of the obligation.
2. Complaint for rescission of the obligation – action to rescind
3. Complaint for damages – action to claim for compensation of damages suffered

- As a general rule, "no person shall be responsible for those events which could not be foreseen, or which, though foreseen, are inevitable, except:
  1. in cases expressly specified by the law
  2. when it is stipulated by the parties
  3. when the nature of the obligation requires assumption of risk
- An indeterminate thing cannot be object of destruction by a fortuitous event because genus never perishes.

1166. The obligation to give a determinate thing includes that of delivering all its accessions and

accessories, even though they may not have been mentioned.

ACCESSIONS – fruits of the thing or additions to or improvements upon the principal
- those which are naturally or artificially attached to the thing

ACCESSORIES – things included with the principal for the latter's embellishment, better use, or completion

When does right to fruits arise? – from the time the obligation to deliver arises
- Conditional – from the moment the condition happens
- With a term/period – upon the expiration of the term/period
- Simple – from the perfection of the contract

1167. If a person obliged to do something fails to do it, the same shall be executed at his cost. This same rule shall be observed if he does it in contravention of the tenor of the obligation … it may be decreed that what has been poorly done be undone.

THREE SITUATIONS:
a) Debtor's failure to perform an obligation
- creditor may do the obligation, or by another, at the expense of the debtor;
- recover damages

b) Performance was contrary to the terms agreed upon
- order of the court to undo the same at the expense of the debtor

c) Performance in a poor manner
- order of the court to undo the same at the expense of the debtor

1168. When the obligation consists in NOT DOING and the obligor does what has been forbidden him, it shall also be undone at his expense.

1169. Those obliged to deliver or to do something incur in delay from the time the obligee judicially or extrajudicially demands from them the fulfillment of their obligation.
However, the demand by the creditor shall not be necessary in order that delay may exists:

- **When the law or obligation so expressly declares;**
- **When from the nature of the contract, time us the essence and motivating factor for its establishment;**
- **When demand would be useless (prestation is impossible);**
- **In reciprocal obligations, from the moment one of the parties fulfills his obligation;**
- **When the debtor admits he is in default**

ORDINARY DELAY – mere failure to perform an obligation at the appointed time.
LEGAL DELAY (DEFAULT) – tantamount to non-fulfillment of the obligation and arises after an extrajudicial or judicial demand was made upon the debtor.

KINDS OF DEFAULT:

a) **MORA SOLVENDI** – delay on the part of the debtor to fulfill his obligation;

REQUISITES:
1. failure of the obligor to perform obligation on the DATE agreed upon;
2. demand (j/ej) by the creditor;
3. failure to comply with such demand

EFFECTS:
1) debtor – liable for damages and interests
2) debtor – liable for the loss of a thing due to a fortuitous event

KINDS:
1) mora solvendi ex re – default in real obligations (to give)
2) mora solvendi ex persona – default in personal obligations (to do)

b) **MORA ACCIPIENDI** – delay on the part of the creditor to accept the performance of the obligation;

Effects:
1. creditor – liable for damages
2. creditor – bears the risk of loss of the thing
3. debtor – not liable for interest from the time of creditor's delay
4. debtor – release himself from the obligation

c) **COMPENSATIO MORAE** – delay of the obligors in reciprocal obligation.

Effect: the default of one compensates the default of the other; their respective liabilities shall be offset equitable.

- Default / Delay in negative obligation is not possible. (In negative obligation, only fulfillment and violation are possible)

1170. Those who in the performance of their obligations are guilty of fraud, negligence, or delay, and those who in any manner contravene the tenor thereof, are liable for damages.

FRAUD (dolo) – deliberate intentional evasion of the faithful fulfillment of an obligation;
NEGLIGENCE (culpa or fault) – voluntary act or omission of diligence, there being no malice, which prevents the normal

fulfillment of an obligation;
DELAY (mora) – default or tardiness in the performance of an obligation after it has been due and demandable;
CONTRAVENTION OF TERMS OF OBLIGATION (violatio)– violation of terms and conditions stipulated in the obligation; this must not be due to a fortuitous event.

1171. Responsibility arising from fraud is demandable in all obligations. Any waiver of an action for future fraud is void.

- To allow such waiver will necessarily render the obligatory force of contracts illusory.
- The law does not prohibit waiver of an action for damages based on fraud already committed.
- Any deliberate deviation from the normal way of fulfilling the obligation may be a proper basis for claim for damages against the guilty party.

INCIDENTAL FRAUD – committed in the performance of an obligation already existing because of a contract.
CAUSAL FRAUD – employed in the execution of contract in order to secure consent; remedy is annulment bec of vitiation of consent.

1172. Responsibility arising from negligence in the performance of every kind of obligation is also demandable, but such liability may be regulated by the courts, according to circumstances.

Court's discretion because:
(a) negligence depends upon the circumstances of a case – good or bad faith of the obligor may be considered as well as the conduct or misconduct of the obligee;
(b) it is not as serious as fraud.

Negligence – lack of foresight or knowledge
Imprudence – lack of skill or precaution

TEST OF NEGLIGENCE
Did the defendant, in doing the alleged negligent act, use the reasonable care and caution which an ordinary prudent man would have used in the same situation?

TWO TYPES OF NEGLIGENCE:

Basis	1. Culpa Aquiliana (Quasi-delict)	2. Culpa Contractual (Breach of contract)
DEFINITION	Negligence between parties not so related by pre-existing contract	Negligence in the performance of contractual obligation
NATURE OF NEGLIGENCE	Direct, substantive and independent	Incidental to the performance of the obligation.
GOOD FATHER OF THE FAMILY DEFENSE	Complete and proper defense (parents, guardian, employers)	Not complete and proper defense in the selection of employees.
PRESUMPTION OF NEGLIGENCE	No presumption – injured party must prove negligence of the defendant.	There is presumption – defendant must prove that there was no negligence in the carrying out of the terms of the contract.

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 he time and of the place... If the law or contract does not state the diligence which is to be observed in the performance, that which is expected if a good father of a family shall be required.

FRAUD distinguished from NEGLIGENCE

FRAUD	NEGLIGENCE
There is deliberate intention to cause damage.	There is no deliberate intention to cause damage.
Liability cannot be mitigated.	Liability may be mitigated.
Waiver for future fraud is void.	Waiver for future negligence may be allowed in certain cases: 1. gross – can never be excused in advance; against public policy 2. simple – may be excused in certain cases

DILIGENCE – the attention and care required of a person in a given situation and is opposite of negligence.

NEGLIGENCE – consists in the omission of that diligence which is required by the nature of the particular obligation and corresponds with the circumstances of the persons, of the time, and of the place.

KINDS of DILIGENCE:
1. DILIGENCE OF A GOOD FATHER – a good father does not abandon his family, he is always ready to provide and protect his family; ordinary care which an average and reasonably prudent man would do.
2. Diligence required by the law governing the particular obligation
3. Diligence stipulated by the parties

1174. Except in cases expressly specified by the law, or when it is otherwise declared by stipulation, or when the nature of the obligation requires the assumption of risk, no person shall be responsible for those events which could not be foreseen, or which, though foreseen, were inevitable.

FORTUITOUS EVENT – an occurrence or happening which could not be foreseen or even if foreseen, is inevitable; absolutely independent of human intervention; act of God.

FORCE MAJEURE - an event caused by the legitimate or illegitimate acts of persons other than the obligor; there is human intervention.

- conditions which exempt obligor from liability:

1. event is independent of the will of obligor
2. it must either be unforeseeable or unavoidable
3. occurrence must render it impossible for the debtor to fulfill the obligation in a normal matter
4. the obligor is free of partiipation in injury to creditor.

REQUISITES OF FORTUITOUS EVENT:

1. Independent of the human will (or at least of the obligor's)
2. Unforeseen or unavoidable
3. Of such character as to render it impossible for the obligor to comply with his obligation in a normal manner
4. Obligor – free from any participation/aggravation of the injury to the obligee (no negligence or imprudence)

EXEPTIONS:

1. When it is expressly stipulated that he shall be liable even if non-performance of the obligation is due to fortuitous events;
2. When the nature of the obligation requires the assumption of risk;
3. When the obligor is in delay;
4. When the obligor has promised the same thing to two or more persons who do not have the same interest;
5. When the possessor is in bad faith and the thing lost or deteriorated due to fortuitous event;
6. When the obligor contributed to the loss of the thing.

1175. Usurious transactions shall be governed by special laws.

USURY – contracting for or receiving interest in excess of the amount allowed by law for the loan or use of money, goods, etc.

SIMPLE LOAN – one of the parties delivers to another, money or other consumable thing upon the condition that the same amount of the same kind and quality shall be paid.

USURY LAW – makes the usurers criminally liable if the interest charged on loans are more that the limit prescribed by law.

- This law is repealed – Circular No. 905 of the Central Bank has expressly removed the interest ceilings prescribed by the USURY LAW.

1176. The receipt of the principal by the creditor without reservation with respect to the interest, shall give rise to the presumption that said interest has been paid.
The receipt of a later installment of a debt without reservation as to prior installments, shall likewise raise the presumption that such installments have been paid.

- These are mere presumptions.
- To be sure – write the interest and the dates covered by such payment in the receipt.

1177. The creditors, after having pursued the property in possession of the debtor to satisfy their claims, may exercise all the rights and bring all the actions of the latter for the same purpose, save those which are inherent in his person; they may also impugn the acts which the debtor may have done to defraud them.

REMEDIES AVAILABLE TO CREDITORS FOR THE SATISFACTION OF THEIR CLAIMS:

1. Exact fulfillment with right to damages
2. Exhaustion of the debtor's properties still in his possession – writ of attachment (before judgment) or writ of execution (for final judgment not yet executed)
3. ACCION SUBROGATORIA – an action where the creditor whose claims had not been fully satisfied, may go after the debtors (3rd person) of the defendant debtor.
4. ACCION PAULIANA – an action where the creditor files an action in court for the RESCISSION of acts or contracts entered into by the debtor designed to defraud the former.

1178. Subject to the laws, all rights acquired in virtue of an obligation are transmissible, if there has been no stipulation to the contrary.

EXCEPTIONS:

a) Those not transmissible by their nature like purely personal rights;
b) Those not transmissible by provision of law;
c) Those not transmissible by stipulation of parties.

CHAPTER 3
DIFFERENT KINDS OF OBLIGATIONS

Section 1 – Pure and Conditional Obligations

1179. Every obligation whose performance does not depend upon a future or uncertain event, or upon a past event unknown to the parties, is demandable at once.
Every obligation which contains a resolutory condition shall also be demandable, without prejudice to the effects of the happening of the event.

CONDITION – an event which is both future and uncertain upon which the existence or extinguishment of an obligation is made to depend.

PURE OBLIGATION – an obligation which does not contain any condition or term upon which the fulfillment is made to depend; immediately demandable by the creditors and the debtor cannot be excused from not complying with his prestation.

CONDITIONAL OBLIGATION – an obligation subject to a condition.

a) Suspensive Obligation – its fulfillment gives rise to an obligation; the demandability of the obligation or the effectivity of the contract can take place only after the condition has been fulfilled.
b) Resolutory Obligation – its happening extinguishes the obligation which is already existing;

1180. When the debtor binds himself to pay when his means permit him to do so, the obligation shall be deemed to be one with a period, subject to the provisions of Article 1197.

- Speaks of a period depending on the will of the DEBTOR. If its purpose is to delay, immediate action is allowed. The court fixes the terms.

PERIOD – a future and certain event upon the arrival of which, the obligation subject to it either arises or is extinguished.

INDICATIONS OF A TERM OR PERIOD:
When the debtor binds himself to pay –
- when his means permit him to do so
- little by little
- as soon as possible
- from time to time
- as soon as I have the money
- in partial payment
- when in the position to pay

1181. In conditional obligations, the acquisition of rights, as well as the extinguishment or loss of those already acquired, shall depend upon the happening of the event which constitutes the condition.

Suspensive Condition – the acquisition of rights by the creditor depends upon the happening of the event which constitutes the condition; if such condition does not take place, it would be as of the conditional obligation had never existed.
(e.g. promise to give a car after graduating from law school as cum laude)

Resolutory Condition – the rights and obligations already existing are under threat of extinction upon the happening or fulfillment of such condition.
(e.g. donation by reason of marriage – the celebration of marriage is a resolutory condition; if the marriage did not push through, the donation may be revoked)

1182. When the fulfillment of the condition depends upon the sole will of the debtor, the conditional obligation shall be void. If it depends upon chance or upon the will of a third person, the obligation shall take effect in conformity with the provisions of this Code.

- Applies only to suspensive conditions.

3 KINDS OF CONDITIONS UNDER THIS ARTICLE:

1. POTESTATIVE – a suspensive condition which depends upon the will of one of the contracting parties = if at the sole will of the debtor, it is void; if at the creditor's, still valid. this is to prevent the establishment of illusory obligations.
2. CASUAL – the condition depends upon chance or the will of a third person;(i.e. cellphone warranty)
3. MIXED – the condition depends partly upon the will of the parties and partly upon chance or the will of a third person; (example ni Atty. De Chavez: passing the bar)

1183. Impossible conditions, those contrary to good customs or public policy and those prohibited by law shall annul the obligation which depends upon them. If the obligation is divisible, that part thereof which is not affected by the impossible or unlawful condition shall be valid.
The condition not to do an impossible thing shall be considered as not having been agreed upon.

POSSIBLE CONDITION – if it is capable of realization or actualization according to nature, law, public policy or good customs.

2 KINDS OF IMPOSSIBLE CONDITIONS:

1. Physically Impossible – cannot exist or cannot be done in its nature;
2. Legally Impossible – contrary to law, good customs, or public policy.

When a conditional obligation is VOID – impossible conditions annul the obligation which depends upon them; the obligor knows his obligation cannot be fulfilled, he has no intention to comply with his obligation.

When a conditional obligation is VALID – if the condition is negative (not to do an impossible thing), it is disregarded and the obligation is rendered pure and valid.

Only the affected obligation is void, if the obligation is divisible, and the part thereof not affected by the impossible condition is valid.

Only the condition is void if there is already a pre-existing obligation and it does not depend upon the fulfillment of the condition which is impossible.

1184. The condition that some event happen at a determinate time shall extinguish the obligation as soon as the time expires or if it has become indubitable that the event will not take place.

Positive condition – refers to the fulfillment of an event or performance of an act

Negative condition – refers to the non-fulfillment or non-performance of an act.

POSITIVE SUSPENSIVE CONDITION
The obligation is extinguished:

1. As soon as the TIME EXPIRES without the event taking place;
2. As soon as it has become certain that the EVENT WILL NOT TAKE PLACE although the time specified has not yet expired.

** TIME is the condition – should happen for the obligation to extinguish.

1185. The condition that some event will not happen at a determinate time shall render the obligation effective from the moment the time indicated has elapsed, or if it has become evident that the event cannot occur.
If no time has been fixed, the condition shall be deemed fulfilled at such time as may have probably been contemplated, bearing in mind the nature of the obligation.

** This is a condition of non-happening of a future event.

The obligation shall become effective and binding:

a) From the moment the time indicated has elapsed without the event taking place;
b) From the moment it has become evident that the event cannot occur, although the time indicated has not yet elapsed.

1184 -vs- 1185

1184 (POSITIVE SUSPENSIVE)	**1185 (NEGATIVE SUSPENSIVE)**
Jose obliges himself to give the pregnant woman Maria P5000 if she would give birth on or before December 30.	*Jose obliges himself to give the pregnant woman Maria P5000 if she would NOT give birth on December 30.*
a. Jose is LIABLE if Maria gives birth on or before December 30.	a. Jose is NOT LIABLE if Maria gives birth on December 30.
b. Jose is NOT LIABLE if Maria gives birth after December 30.	b. Jose is LIABLE if Maria DID NOT give birth on December 30 – if Maria gives birth BEFORE or AFTER December 30.
c. If Maria would have a miscarriage before December 30, the obligation is EXTINGUISHED.	c. If Maria would have a miscarriage before December 30, the obligation is deemed FULFILLED.

1186. The condition shall be deemed fulfilled when the obligor voluntarily prevents its fulfillment.

– This provision speaks of the DOCTRINE OF CONSTRUCTIVE FULFILLMENT

- REQUISITES:
  1. The condition is SUSPENSIVE;
  2. The obligor ACTUALLY PREVENTS the fulfillment of the condition;
  3. He acts VOLUNTARILY.

  - Malice or fraud is not required, as long as his purpose is to prevent the fulfillment of the condition.
  - No person shall profit by his own wrong.

1187. The effects of a conditional obligation to give, once the condition has been fulfilled, shall retroact to the day of the constitution of the obligation. Nevertheless, when the obligation imposes reciprocal prestations upon the parties, the fruits and interests during the pendency of the condition shall be deemed to have been mutually compensated. If the obligation is unilateral, the debtor shall appropriate the fruits and interests received, unless from the nature and circumstances of the obligation it should be inferred that the intention of the person constituting the same was different.
In obligations to do and not to do, the courts shall determine, in each case, the retroactive effect of the condition that has been complied with.

- Applies only to *fulfilled* suspensive conditions.
- Retroactive statute
- The effects of the obligation is deemed to commence not from the fulfillment of the obligation but from the day of its constitution (similar to the legitimation of a natural child)

- The article does not require the delivery of fruits or payment of interests accruing (accumulating) before the fulfillment of the suspensive condition.

- Obligations to do or not to do – the retroactive effect shall be determined by the *court* using its sound discretion without disregarding the intentions of the parties.

1188. The creditor may, before the fulfillment of the condition, bring the appropriate actions for the preservation of his right.
The debtor may recover what during the same time he has paid by mistake in case of a suspensive condition.

Preservation of the rights of CREDITOR – the debtor may render nugatory (not serious, ignore) the obligation upon the happening of the obligation.

- Action for prohibition restraining the alienation of the thing pending the happening of the suspensive condition;
- Action to demand security if the debtor has become insolvent;
- Action to set aside alienations made by the debtor in fraud of creditors;
- Actions against adverse possessors to interrupt the running prescriptive period.
- To have his rights annotated in the registry.

Rights of the DEBTOR – entitled to recover what has been paid by mistake prior to the happening of the suspensive condition.

1189. When the conditions have been imposed with the intention of suspending the efficacy of an obligation to give, the following rules shall be observed in case of the improvement, loss or deterioration of the thing during the pendency of the condition:

LOSS

(1) debtor without fault – obligation is extinguished
(2) debtor with fault – obligation to pay damages

DETERIORATION

1. debtor without fault – impairment is to be borne by the creditor
2. debtor with fault – creditor chooses: rescission of obligation, fulfillment, indemnity

IMPROVEMENT

1. by nature or time – improvement: inure to the benefit of the creditor
2. at the expense of the debtor – granted to the usufructuary

1190. When the conditions have for their purpose the extinguishment of an obligation to give, the parties, upon the fulfillment of said conditions, shall return to each other what they have received.
In case of the loss, deterioration or improvement of the thing, the provisions which, with respect to the debtor, are laid down in the preceding article shall be applied to the party who is bound to return.
As for the obligations to do and not to do, the provisions of the second paragraph of Article 1187 shall be observed as regards the effect of the extinguishment of the obligation.

- Refers to the fulfillment of a resolutory condition.
- When the resolutory condition happened, the obligation is considered as if it did not exist.
- The parties are bound to return or restore whatever they have received from each other – "reciprocal restitution"
- Donation by reason of marriage – if the marriage does not happen, such donation should be returned to the donor.
- Loss, deterioration and improvement – governed by 1189.
- In obligations to do and not to do, the courts shall determine, in each case, the retroactive effect of the condition that has been complied with.

1191. The power to rescind obligations is implied in reciprocal ones, in case one of the obligors should not comply with what is incumbent upon him.
The injured party may choose between the fulfillment and the rescission of the obligation, with the payment of damages in either case. He may also seek rescission, even after he has chosen fulfillment, if the latter should become impossible.
The court shall decree the rescission claimed, unless there be just cause authorizing the fixing of a period.
This is understood to be without prejudice to the rights of third persons who have acquired the thing, in accordance with Articles 1385 and 1388 and the Mortgage Law.

RECIPROCAL – arise from same causse; each is a debtor and creditor of the other

RESCISSION – resolution or cancellation of the contract

- Applies only to reciprocal obligations where two parties are mutually debtor and creditor of each other in the same transaction. The cause must be identical ad the obligations must arise simultaneously.
- The party who can demand rescission should be the party who is ready, willing, and able to comply with his own obligations while the other is not capable to perform his own.

REMEDIES:

1. Specific performance or fulfillment of obligation with damages;
2. Rescission of contract with damages.

Effect of rescission: the parties must surrender whatever they have received from the other, and the obligation to pay is extinguished.

If there is an express stipulation of *automatic rescission* between parties – such resolution shall take place only after the creditor has notified the debtor of his choice of rescission subject to judicial scrutiny.

1192. In case both parties have committed a breach of the obligation, the liability of the first infractor shall be equitably tempered by the courts. If it cannot be determined which of the parties first violated the contract, the same shall be deemed extinguished, and each shall bear his own damages.

FIRST INFRACTOR KNOWN
The liability of the first infractor should be equitably reduced. – equitably offset each other's damages.

FIRST INFRACTOR CANNOT BE DETERMINED
The court shall declare the extinguishment of the obligation and each shall bear his own damages.

Section 2 – Obligations with a Period

1193. Obligations for whose fulfillment a day certain has been fixed, shall be demandable only when that day comes.
Obligations with a resolutory period take effect at once, but terminate upon arrival of the day certain.
A day certain is understood to be that which must necessarily come, although it may not be known when.
If the uncertainty consists in whether the day will come or not, the obligation is conditional, and it shall be regulated by the rules of the preceding Section.

PERIOD / TERM – consists in a space or length of time upon the arrival of which, the *demandability* or the *extinguishment* of an obligation *is determined*; it may be definite (exact date or time is known) or indefinite (arrival of date is unknown but sure to come).
- Future + Certain event

GENERAL CLASSIFICATIONS:

a) EX DIE / SUSPENSIVE PERIOD – from a day certain give rise to the obligation; suspensive effect.
b) IN DIEM / RESOLUTORY PERIOD – arrival of a term certain terminated the obligation; resolutory effect.

Term – length of time sure to come
Condition – fact or event uncertain to come

Basis	Period/Term	Condition
1. TIME	Always refers to FUTURE	Can refer to past events unknown to the parties
2. FULFILLMENT	Sure to happen at an exact date or indefinite time but sure to come.	May or may not happen.
3. INFLUENCE	Merely fixes the time for the demandability or performance of obligation.	May cause the arising or cessation of the obligation.

REQUISITES:
3. Future
4. Certain, sure to come
5. Physically or legally possible

1194. In case of loss, deterioration or improvement of the thing before the arrival of the day certain, the rules in Article 1189 shall be observed.

1195. Anything paid or delivered before the arrival of the period, the obligor being unaware of the period or believing that the obligation has become due and demandable, may be recovered, with the fruits and interests.

- The payment or delivery is done before the arrival of the period.

CONSEQUENCES:

1. If he was not aware of the period or he believes that the obligation has become due and demandable – he can recover what he paid or delivered including fruits and interests;
2. If he was aware and he paid voluntarily – he cannot recover the delivery made; it is deemed a waiver of the benefit of the term and the obligation is considered already matured.

- The presumption is that the debtor knew that the debt was not yet due. He has the burden of proving that he was unaware of the period.

1196. Whenever in an obligation a period is designated, it is presumed to have been established for the benefit of both the creditor and the debtor, unless from the tenor of the same or other circumstances it should appear that the period has been established in favor of

one or of the other.

- PRESUMPTION: Obligation with a period is for the benefit of both the creditor and debtor.
- EXCEPTION: when it appears that the period is for the benefit of one or the other

- This cannot apply when the court was authorized by the parties to fix a reasonable term.

- The benefit of the term may be the subject of stipulation of the parties.
    1. Term is for the benefit of the debtor alone – he cannot be compelled to pay prematurely, but he can if he desires to do so.

- Example: A obliges himself to pay B within 5 years. A cannot be compelled to pay prematurely, but he can pay anytime within 5 years (A will benefit because he can pay anytime he wants as long as it is within 5 years; B will not benefit from the interests if A decides to pay early).

    2. Term is for the benefit of the creditor – He may demand fulfillment even before the arrival of the term but the debtor cannot require him to accept payment before the expiration of the stipulated period.

- Example: A borrows money from B and is obliged to make the payment on December 5. B may compel A to make the payment before December 5, but A may not compel B to receive the payment before December 5 (B will benefit from the interests that will accrue before December 5).

- The creditor may have reasons other than the maturity of interest, that's why, unless the creditor consents, the debtor has no right to accelerate the time of payment even if the premature tender includes an offer to pay the principal and interest in full.

1197. If the obligation does not fix a period, but from its nature and the circumstances it can be inferred that a period was intended, the courts may fix the duration thereof.
The courts shall also fix the duration of the period when it depends upon the will of the debtor.
In every case, the courts shall determine such period as may under the circumstances have been probably contemplated by the parties. Once fixed by the courts, the period cannot be changed by them.

JUDICIAL PERIOD – period designated by the court.
CONTRACTUAL PERIOD – period fixed by the parties in their contract.

Court will fix a period:
1. When no period is mentioned, but it is inferable from the nature and circumstances of the obligation that a period was intended by the parties.
2. When the period is dependent upon the will of the debtor.

- If the obligation does not state and intend a period, the court is not authorized to fix a period.
- The court must fix the duration of the period to prevent the possibility that the obligation may never be fulfilled or to cure a defect in a contract whereby it is made to depend solely upon the will of one of the parties.

Court cannot fix the period:
1. If there is a period agreed upon by the parties and it has already lapsed or expired.
2. From the very moment the parties give their acceptance and consent to the period fixed by the court, it becomes a law governing their contract.

1198. The debtor shall lose every right to make use of the period:
(1) When after the obligation has been contracted, he becomes insolvent, unless he gives a guaranty or security for the debt;
(2) When he does not furnish to the creditor the guaranties or securities which he has promised;
(3) When by his own acts he has impaired said guaranties or securities after their establishment, and when through a fortuitous event they disappear, unless he immediately gives new ones equally satisfactory;
(4) When the debtor violates any undertaking, in consideration of which the creditor agreed to the period;
(5) When the debtor attempts to abscond.

The period is disregarded and the obligation becomes pure and immediately demandable: [IGIVA]

- **[I]** When debtor becomes **i**nsolvent;
    - The insolvency need not be judicially declared. It is sufficient that debtor could not pay his debts due to lack of money or funds.
- **[G]** When the debtor does not furnish **g**uaranties or securities;
- **[I]** When guaranties or securities given have been **i**mpaired or have disappeared;
    - If security was lost through debtor's fault - *impairment*
    - If security was lost through fortuitous event - *disappearance*
- **[V]** When debtor **v**iolates an undertaking;

If such undertaking is the reason for the creditor to agree with such period.

- **[A]** When debtor attempts to **a**bscond (escape).

Mere attempt to abscond is sufficient. It is an indication of bad faith.

Section 3 – Alternative Obligations

1199. A person alternatively bound by different prestations shall completely perform one of them. The creditor cannot be compelled to receive part of one and part of the other undertaking.

OBLIGATIONS WITH PLURAL PRESTATIONS:

1. CONJUNCTIVE/COMPOUND OBLIGATION - an obligation where the debtor has to perform ALL the several prestations in the contract to extinguish the obligation.
2. ALTERNATIVE OBLIGATION – an obligation where the debtor is required to fulfill ONLY ONE of the several prestations to extinguish the obligation.
3. FACULTATIVE OBLIGATION – an obligation where the debtor is bound to perform ONLY ONE prestation, with a reserved right to choose another prestation as SUBSTITUTE for the principal.

1200. The right of choice belongs to the debtor, unless it has been expressly granted to the creditor. The debtor shall have no right to choose those prestations which are impossible, unlawful or which could not have been the object of the obligation.

Implied grant to the creditor is not allowed. If it does not appear on the agreement as to whom among them has the right to choose, it is the debtor who can choose.

1201. The choice shall produce no effect except from the time it has been communicated.

1. The choice shall not produce any legal effect until it has been duly communicated to the other party.
2. It can be done in writing, verbally, impliedly, or any unequivocal means.
3. Once the choice has been communicated to the other party:

1. The obligation is now LIMITED only to the PRESTATION CHOSEN, with all the natural consequences flowing therefrom;
2. The choice is IRREVOCABLE.

a. The performance of prestation without announcing the choice to the creditor is NOT BINDING.
b. The consent of the other party is NOT REQUIRED in making the choice – that will in effect frustrate the clear intention of the law and the nature of the alternative obligation.
c. If there is delay in the making of choice – punish the one who is supposed to exercise the right of choice for the delay he caused – court may order the debtor to make a choice, or creditor to make the choice within certain period, or court makes the choice.

1202. The debtor shall lose the right of choice when among the prestations whereby he is alternatively bound, only one is practicable.

- There being but one prestation available, this prestation becomes a simple obligation.

1203. If through the creditor's acts the debtor cannot make a choice according to the terms of the obligation, the latter may rescind the contract with damages.

(1) If the debtor could not make a choice due to the creditor's act of making the prestations impossible, debtor may RESCIND the contract with damages - rescission takes place at the initiative of the debtor.
(2) If the debtor is being prevented to choose only a particular prestation, and there are others available, he is free to choose from them, after notifying the creditor of his decision.

1204. The creditor shall have a right to indemnity for damages when, through the fault of the debtor, all the things which are alternatively the object of the obligation have been lost, or the compliance of the obligation has become impossible.
The indemnity shall be fixed taking as a basis the value of the last thing which disappeared, or that of the service which last became impossible.
Damages other than the value of the last thing or service may also be awarded.

- If the impossibility of all the objects of the alternative obligation is caused by the debtor, the creditor is entitled to damages.
- If such impossibility is caused by a fortuitous event, the obligation is extinguished and the debtor is released from responsibility, unless the contrary is stipulated by the parties.
- The creditor cannot claim for damages if the debtor can still perform the remaining prestations.
- The damages that may be recovered is based on the last thing which disappeared or the service which became impossible. This last one is converted into a simple obligation.

1205. When the choice has been expressly given to the creditor, the obligation shall cease to be alternative from the day when the selection has been communicated to the debtor.
Until then the responsibility of the debtor shall be governed by the following rules:

A. only one thing lost – fortuitous event – creditor chooses from the remainder – debtor delivers the choice to creditor;
B. only one remains – debtor delivers the same to the creditor;
C. only one thing lost – fault of the debtor
    1. creditor may choose any one of the

remainders;
2. creditor may choose the price or value of the one which was lost;
3. may choose 1 or 2 plus damages

D. all things lost – fault of the debtor – creditor may choose the price of ANYONE of the things, with damages if warranted.

The same rules shall be applied to obligations to do or not to do in case one, some or all of the prestations should become impossible.

- This article applies only when the right of choice has been expressly granted to the creditor.

1206. When only one prestation has been agreed upon, but the obligor may render another in substitution, the obligation is called facultative.
The loss or deterioration of the thing intended as a substitute, through the negligence of the obligor, does not render him liable. But once the substitution has been made, the obligor is liable for the loss of the substitute on account of his delay, negligence or fraud.

- If loss or deterioration happened before substitution is made, obligor is not liable; after substitution is communicated, he is liable for loss (through delay, negligence or fraud)

Section 4 – Joint and Solidary Obligations

1207. The concurrence of two or more creditors or of two or more debtors in one and the same obligation does not imply that each one of the former has a right to demand, or that each one of the latter is bound to render, entire compliance with the prestation. There is a <u>solidary liability</u> only when the <u>obligation expressly so states</u>, or <u>when the law or the nature of the obligation requires solidarity</u>.

INDIVIDUAL OBLIGATION – one debtor and one creditor

COLLECTIVE OBLIGATION – two or more debtors and two or more creditors

1. JOINT – entire obligation is to be paid or performed *proportionately* by the debtors;
2. SOLIDARY – *each* one of the debtors are obliged to pay the *entire obligation*, each one of the creditors has the right to demand from any of the debtors, the fulfillment of the entire obligation;

A. Passive Solidarity – solidarity on the part of the DEBTORS
B. Active Solidarity – solidarity on the part of the CREDITORS.

- SOLIDARITY SHOULD BE EXPRESSED – law, stipulation, nature of obligation.
- When the obligation is ambiguous, it must be considered as joint obligation.

<u>CONSEQUENCES OF SOLIDARITY:</u>

1. <u>Passive Solidarity</u> – full payment made by anyone of the solidary debtors extinguishes the obligation. The one who paid can claim reimbursement from his co-debtors as regards their corresponding shares in the obligation.

A, B, & C are solidary debtors of D in the sum of P900.
D can demand payment of the entire obligation when it becomes due, from any one of the debtors or from all of them at the same time.
If C paid the whole P900 to D, he may claim reimbursement from A and B.

2. <u>Active Solidarity</u> – full payment to any of the creditors extinguishes the obligation. The creditor who received the entire amount will be liable to pay the corresponding shares of his co-creditors in accordance with their internal agreement.

Garfield owes the sum of P40,000 to Mickey, Minnie, Donald, and Pluto, who are solidary creditors. Garfield can pay anyone of them. If Mickey received the P40,000, he is liable to pay the corresponding shares of his co-creditors.

<u>MIXED SOLIDARITY</u>

a. Solidary Debtors, Joint Creditors
- P9,000.00 – total debt

Debtors (Solidary)	**Creditors (Joint)**
Aida pays P4,500.00	~~John = P 4,500.00~~
Lorna pays P4,500.00	~~Marsha = P 4,500.00~~
Fe	

b. Joint Debtors, Solidary Creditors
- P 9,000.00 – total debt

Debtors (Joint)	**Creditors (Solidary)**
Aida (P 3,000.00)	John (can claim from debtors)
Lorna (P 3,000.00)	Marsha (-same-)
Fe (P 3,000.00)	

1208. If from the law, or the nature or the wording of the obligations to which the preceding article refers the contrary does not appear, the credit or debt shall be presumed to be divided into as many shares as there are creditors or debtors, the credits or debts being considered distinct from one another, subject to the Rules of Court governing the multiplicity of suits.

- This provision speaks of JOINT DIVISIBLE OBLIGATION.
- When there is a concurrence of several creditors or of several debtors in one and in the same obligation, there is a presumption that the obligation is **joint**.

- Each of the creditors shall be entitled to demand only the payment of his proportionate share of the credit.
- Each of the debtors may be compelled to pay only his proportionate share of the debt.
- The credits or debts shall be considered distinct from one another.

CONSEQUENCES OF JOINT OBLIGATION:

1. Each debtor – liable for a proportionate part of the entire debt;

Thales, Socrates, Plato, & Aristotle owe P100 to Bruce Lee
= 4 debts and 1 credit
Each of them owes Bruce Lee P25
Bruce Lee cannot collect the entire P100 from any one of them.

2. Each creditor – entitled to a proportionate part of the credit;

Piggy owes P100 to Froggy and Fishy
= 1 debt and 2 credits
Froggy can only collect 50 from Piggy,
Same with Fishy

3. Demand made by one creditor upon one debtor produces the effects of default only as between them, but not with respect to the others;

Bubbles demanded payment from Buttercup; Buttercup was in default. This does not mean that the others are in default too because Bubbles did not demand from them.

4. The interruption of prescription caused by the demand made by one creditor upon one debtor will not benefit the co-creditors;

Wittgenstein extended the period in which Tarski should have paid his debt to him. This does not mean that the same extension applies to Tarski's debt to Davidson.

5. The insolvency of one debtor will not increase the liability of his co-debtors, nor will it allow a creditor to demand anything from the co-creditors.

If Husserl and Merleau-Ponty are debtors of Sartre for P1,000,000.00 and Husserl becomes insolvent, the liability of Merleau-Ponty will only be P500,000.00 representing his proportional share of ½ in the whole obligation.

1209. If the division is impossible, the right of the creditors may be prejudiced only by their collective acts, and the debt can be enforced only by proceeding against all the debtors. If one of the latter should be insolvent, the others shall not be liable for his share.

JOINT INDIVISIBLE OBLIGATION – an obligation where solidarity is not provided and the prestation or object is not susceptible of division; its fulfillment requires the concurrence of all debtors, while doing each one's parts.

Batman and Robin jointly obliged themselves to deliver a brand new Toyota Fortuner worth P1,500,000.00 to Superman. The object, a vehicle, is indivisible. They must deliver the thing jointly. In case of breach, the obligation is converted into monetary obligation for indemnity for damages. Batman and Robin will be liable only for P 750,000.00 each.

- The act of one is not binding (others must concur)

1210. The indivisibility of an obligation does not necessarily give rise to solidarity. Nor does solidarity of itself imply indivisibility.

- Solidarity is expressed in the stipulations of the party, law governing the obligation, or the nature of the obligation.

INDIVISIBLE OBLIGATION – an obligation where the prestation or object to be delivered cannot be performed by parts without altering its essence or substance.

Basis	Indivisibility	Solidarity
1. Nature	Refers to the *prestation* of the contract	Refers to the *tie* existing between parties of the obligation (who is liable)
2. Number of subjects / parties	Does not require plurality of parties	Requires plurality of parties
3. Effect of breach of obligation	Obligation is converted into monetary obligation for indemnity for damages – each debtor is liable only for his part in the indemnity.	The liability, even if converted into indemnity for damages, remains solidary.

1211. Solidarity may exist although the creditors and the debtors may not be bound in the same manner and by the same periods and conditions.

- The solidarity of the debtors is not affected even if different terms and conditions are made applicable to them.
- Enforcement of the terms and conditions may be made at different times. The obligations which have matured can be enforced while those still undue will have to be awaited. Enforcement can be made against any one of the solidary debtors although it can happen that a particular obligation chargeable to a particular debtor is not yet due. He will be answerable for all the prestations which fall due although chargeable to the other co-debtors.

Sad Face, Happy, and Fanny got a loan of P150 from Smiley. They signed a promissory note solidarily binding themselves to pay Smiley under the following terms:
Sad Face will pay P50 with 3% on December 30,

2006
Happy will pay P50 with 4% on December 30, 2007
Fanny will pay P50 with 5% on December 30, 2008
On December 31, 2006, Smiley can collect his P50 with 3% from any one of the debtors, but not the whole P150 because it is not yet entirely due. The maturity of the other amounts should still be awaited. If maturity comes, Smiley can collect from any of the debtors, because they are expressly solidary in liabilities, and not affected by the secondary stipulations.

1212. Each one of the solidary creditors may do whatever may be useful to the others, but not anything which may be prejudicial to the latter.

- Every solidary creditor is benefited by the useful acts of any one of them.
- If a solidary creditor performs an act which is not fair to his co-creditors, the act may have valid legal effects or the obligation of the debtor due to them may be extinguished, but the performing creditor shall be liable to his co-creditors.

- **Question**: May solidary creditors perform an act that is beneficial to others?

1213. A solidary creditor cannot assign his rights without the consent of the others.

Assign – transfer of right

- The assignee does not become a solidary creditor, and any payment made upon him by the debtor does not extinguish the obligation. He is considered a STRANGER, and his acts are not binding to the solidarity.

- DOCTRINE OF MUTUAL AGENCY - In solidary obligations, the act of one is act of the others.
- Exceptions to the doctrine:
  1. Art. 1212 – a creditor may not perform an act prejudicial to other creditors
  2. Art. 1213 – a creditor cannot transfer his right without consent

1214. The debtor may pay any one of the solidary creditors; but if any demand, judicial or extrajudicial, has been made by one of them, payment should be made to him.

- The debtor can pay any one of the solidary creditors. Such payment when accepted by any of the solidary creditors will extinguish the obligation.
- To avoid confusion on the payment of the obligation, the debtor is required to ay only to the demanding creditor and that payment is sufficient to effect the extinguishment of the obligation.
- In case two or more demands made by the other creditors, the first demand must be given priority.

1215. Novation, compensation, confusion or remission of the debt, made by any of the solidary creditors or with any of the solidary debtors, shall extinguish the obligation, without prejudice to the provisions of Article 1219.
The creditor who may have executed any of these acts, as well as he who collects the debt, shall be liable to the others for the share in the obligation corresponding to them.

NOVATION – obligations are modified by:
1. Changing their object or principal conditions;
2. Substituting the person of the debtor; and
3. Subrogating (placing) a third person in the rights of the creditor. [Art. 1291, CC]

COMPENSATION – takes place when two persons, in their own right, become creditors and debtors of each other
– the amount of one is covered by the amount of the other

Erap borrowed P100 from Fernando.
Fernando borrowed P75 from Erap.
Erap's obligation to Fernando is now P25 only, because the original obligation was offset by Fernando's supposed-to-be obligation to Erap.

CONFUSION – takes place when the characters of creditor and debtor are merged in the same person.

Tito pays his debt to Vic with a check payable to "cash".
Vic paid his debt to Joey with the same check.
Joey paid his debt to Tito, with the same check Tito issued to Vic.
Tito becomes paid by his own check. He becomes the debtor and the creditor of himself at the same time.

REMISSION – the gratuitous abandonment by the creditor of his right; acceptance of the obligor is necessary.

- These 4 modes of extinguishing obligations are acts prejudicial to the other solidary co-creditors because these have the effect of extinguishing the debt or obligation which is due to all of them.
- The only recourse of the co-creditors is to let the one who executed any of those acts be liable for the shares corresponding to all his co-creditors (in their internal agreement).

1216. The creditor may proceed against any one of the solidary debtors or some or all of them simultaneously. The demand made against one of them shall not be an obstacle to those which may subsequently be directed against the others, so long as the debt has not been fully collected.

- When there is passive solidarity, the creditor can proceed against:
  1. Any of the solidary debtors;

2. Some of the solidary debtors;
3. All of the solidary debtors, simultaneously.

Extrajudicial demands - first demand shall not prevent subsequent demands on the other co-debtors, if co-debtor first to have been required to fulfill obligation did not act on it.

1217. Payment made by one of the solidary debtors extinguishes the obligation. If two or more solidary debtors offer to pay, the creditor may choose which offer to accept.
He who made the payment may claim from his co-debtors only the share which corresponds to each, with the interest for the payment already made. If the payment is made before the debt is due, no interest for the intervening period may be demanded.
When one of the solidary debtors cannot, because of his insolvency, reimburse his share to the debtor paying the obligation, such share shall be borne by all his co-debtors, in proportion to the debt of each.

Payment – consists in the delivery of the thing or the rendition (rendering) of the service whish is the object of the obligation.

Interest – compensation for the use of borrowed money

Partial payment – the solidary debtor who made the partial payment is entitles to be reimbursed only for such amount of money which he had paid and which exceeds his own share in the obligation.

If one of the debtors is insolvent and could not pay his share in the obligation, all solidary debtors including the paying debtor shall share proportionately in the settlement of the corresponding share of the insolvent debtor. [In short, his co-debtors will save his ass.]

1218. Payment by a solidary debtor shall not entitle him to reimbursement from his co-debtors if such payment is made after the obligation has prescribed or become illegal.

No reimbursement if:

1. Obligation PRESCRIBES
- The creditor did not make any demand for more than 10 years.
2. Obligation becomes ILLEGAL
- Law has been passed, making such prestation illegal.

1219. The remission made by the creditor of the share which affects one of the solidary debtors does not release the latter from his responsibility towards the co-debtors, in case the debt had been totally paid by anyone of them before the remission was effected.

- Atty De Chavez: Ito ay provision sa tanga... (siyempre, 'pag nagbayad na, wala nang obligation, wala na ding ire-remit...)

- Any belated (delayed) remission by the creditor of the share of any of the debtor has no effect on the internal relationship of the co-debtors.

Payment before remission: A, B, and C solidarily owe D P1,500.00. B paid the entire obligation. After which, D remitted the share of C. B can collect P500.00 each from A and C even if the share of C in the obligation had been remitted.

Remission before payment: A, B, and C solidarily owe D P1,500.00. D remitted the share of C. Thereafter, B paid the entire obligation. B can collect P500.00 from A but not from C. However, B may ask D to give back P500, which is the supposed-to-be share of C.

- After the prior payment of the entire obligation, there is nothing to remit because the obligation had been extinguished.

1220. The remission of the whole obligation, obtained by one of the solidary debtors, does not entitle him to reimbursement from his co-debtors.

- There is nothing to be reimbursed because he did not spend any money, the remission being a gratuitous act.

1221. If the thing has been lost or if the prestation has become impossible without the fault of the solidary debtors, the obligation shall be extinguished.
If there was fault on the part of any one of them, all shall be responsible to the creditor, for the price and the payment of damages and interest, without prejudice to their action against the guilty or negligent debtor.
If through a fortuitous event, the thing is lost or the performance has become impossible after one of the solidary debtors has incurred in delay through the judicial or extrajudicial demand upon him by the creditor, the provisions of the preceding paragraph shall apply.

Loss of the thing or impossibility of prestation –

1. NO FAULT – solidary debtors – obligation is extinguished
2. FAULT of any one of them – all are liable because of their mutual agency
3. FORTUITOUS EVENT – delay on the part of the debtors – all will be liable

- If the thing due was not lost, but there is merely a delay, fraud or negligence on the part of one of the

solidary debtors, all (including the innocent) debtors will share in the payment of the PRINCIPAL prestation. The damages and interest imposed will be borne by the guilty debtor.
- Obligation to deliver is converted into an obligation to pay indemnity when there us loss or impossibility of performance.

1222. A solidary debtor may, in actions filed by the creditor, avail himself of all defenses which are derived from the nature of the obligation and of those which are personal to him, or pertain to his own share. With respect to those which personally belong to the others, he may avail himself thereof only as regards that part of the debt for which the latter are responsible.

DEFENSES OF A SOLIDARY DEBTOR:

1. Defense arising from the nature of the obligation – such as payment, prescription, remission, statute of frauds, presence of vices of consent, etc.
2. Defenses which are personal to him or which pertains to his own share alone – such as minority, insanity and others purely personal to him.
3. Defenses personal to the other solidary creditors but only as regards that part of the debt for which the other creditors are liable.

Section 5 – Divisible and Indivisible Obligations

1223. The divisibility or indivisibility of the things that are the object of obligations in which there is only one debtor and only one creditor does not alter or modify the provisions of Chapter 2 of this Title.

DIVISIBILITY – refers to the susceptibility of an obligation to be performed partially.
- Obligation to deliver 100 sacks of rice or a particular type

INDIVISIBILITY – refers to the non-susceptibility of an obligation to partial performance.
- Obligation to deliver a particular computer set

If a thing could be divided into parts and as divided, its value is impaired disproportionately, that thing is INDIVISIBLE.

1224. A joint indivisible obligation gives rise to indemnity for damages from the time anyone of the debtors does not comply with his undertaking. The debtors who may have been ready to fulfill their promises shall not contribute to the indemnity beyond the corresponding portion of the price of the thing or of the value of the service in which the obligation consists.

JOINT INDIVISIBLE OBLIGATION – the object is indivisible but the liability of the parties is joint.
- The unfulfilled undertaking (duty) is converted into a monetary obligation which is not divisible.
- The guilty debtor is liable for damages.

1225. For the purposes of the preceding articles, obligations to give definite things and those which are not susceptible of partial performance shall be deemed to be indivisible.
When the obligation has for its object the execution of a certain number of days of work, the accomplishment of work by metrical units, or analogous things which by their nature are susceptible of partial performance, it shall be divisible.
However, even though the object or service may be physically divisible, an obligation is indivisible if so provided by law or intended by the parties.
In obligations not to do, divisibility or indivisibility shall be determined by the character of the prestation in each particular case.

The following are considered INDIVISIBLE obligations:
1. Obligation to give definite things
2. Obligations which are not susceptible of partial performance
3. Even though the object or service may be physically divisible, it is indivisible if:
    a. the law so provides
    b. when the parties intended it to be indivisible

The following obligations are deemed DIVISIBLE:
1. When the object of the obligation is the execution of a certain number of days of work
2. When the object of the obligation is the accomplishment of work measured in units
3. When the object of the obligation is susceptible of partial compliance
4. When the object of the obligation is such that the debtor is required to pay in installments

- If the contract is divisible, and a part of it is illegal, the illegal part is void, and the rest shall be valid and enforceable.
- If the contract is indivisible, and a part of it is illegal, the entire contract is void.
- Partial performance of an indivisible obligation is tantamount to non-performance.

Section 6 – Obligations with a Penal Clause

1226. In obligations with a penal clause, the penalty shall substitute the indemnity for damages and the payment of interests in case of noncompliance, if there is no stipulation to the contrary. Nevertheless, damages shall be paid if the obligor refuses to pay the penalty or is guilty of fraud in the fulfillment of the obligation.
The penalty may be enforced only when it is demandable in accordance with the provisions of this

Code.

PENALTY CLAUSE

- Purposes: Jurado book
- This is an accessory obligation attached to the principal obligation, which imposes an additional liability in case of breach of the principal obligation.
- It pushes the debtor to perform his obligation faithfully and without delay – within the period agreed upon, or else, he suffers a fixed civil penalty without need of proving the damages of the other party.

The penalty imposable is a substitute for the indemnity for:

a. damages
b. payment of interest in case of breach of obligation
    1. unless the contrary is stipulated!

EXCEPTIONS – additional damages may be recovered from the following acts:

4. If the debtor refuses to pay the penalty
5. If the debtor is guilty of fraud in the fulfillment of the obligation
6. If there is express stipulation that the other damages or interests are demandable to the penalty in the penal clause

1227. The debtor cannot exempt himself from the performance of the obligation by paying the penalty, save in the case where this right has been expressly reserved for him. Neither can the creditor demand the fulfillment of the obligation and the satisfaction of the penalty at the same time, unless this right has been clearly granted him. However, if after the creditor has decided to require the fulfillment of the obligation, the performance thereof should become impossible without his fault, the penalty may be enforced.

- A debtor cannot evade from payment of his principal obligation by choosing to pay the penalty stipulated, except when the debtor is EXPRESSLY granted with the right to substitute the penalty for the principal obligation. – an obligation with penalty clause cannot be turned to facultative obligation unless expressly stipulated in the contract.
- The creditor cannot demand the stipulated fulfillment of the principal obligation and the penalty at the same time, except
    a. when the creditor was clearly given the right to enforce both the principal obligation and penalty;
    b. when the creditor has demanded fulfillment of the obligation but cannot be fulfilled due to the
        1. debtor's fault – creditor may demand for penalty
        2. creditor's fault – he cannot claim the penalty
        3. fortuitous event – principal obligation and penalty are extinguished

1228. Proof of actual damages suffered by the creditor is not necessary in order that the penalty may be demanded.

d. As long as the agreement or contract is breached.
e. The mere non-fulfillment of the principal obligation entitles the creditor to the penalty stipulated.
f. The purpose of the penalty clause is precisely to avoid proving damages.

1229. The judge shall equitably reduce the penalty when the principal obligation has been partly or irregularly complied with by the debtor. Even if there has been no performance, the penalty may also be reduced by the courts if it is iniquitous or unconscionable.

JUDICIAL REDUCTION OF PENALTY

- Principal obligation – partly complied with by the debtor (but not in indivisible obligation, because it is tantamount to non-compliance)
- Principal obligation – complied not in accordance with the tenor of the agreement (refers to irregular performance)
- Penalty – iniquitous or unconscionable
    - Judge's power to reduce penalties are limited to private contracts.

INIQUITOUS OR UNCONSCIONABLE – when it is revolting to the conscience or common sense; grossly disproportionate to the damages suffered.

PENALTY NOT ENFORCEABLE:

1. Impossible performance of principal obligation due to fortuitous events
2. Creditor prevented the debtor from fulfilling the obligation
3. Penalty is contrary to good morals or good customs
4. Both parties are guilty of breach of contract
5. Breach of contract by the creditor
6. None of the parties committed any willful or culpable violation of the agreement

1230. The nullity of the penal clause does not carry with it that of the principal obligation.
The nullity of the principal obligation carries with it that of the penal clause.

Because the penal clause is only an accessory to the principal obligation, it cannot exist alone.
If the penal clause is void, the principal obligation remains enforceable.

The nullity of penal clause does not mean the nullity of the

principal.
For example:
In case of non-payment of P10,000, P1,000 per day as penalty shall be imposed. It is a void contract but it is not an excuse that you don't have to pay the principal which is P10,000.

CHAPTER 4
EXTINHGUISHMENT OF OBLIGATIONS

GENERAL PROVISIONS

1231. Obligations are exringuished:

5. **by payment or performance**
6. **by loss of the thing due**
7. **by condonation or remission**
8. **by confusion or merger of the rights of creditor and debtor**
9. **by compensation**
10. **by novation**

Other causes of extinguishment of obligations, such as annulment, rescission, fulfillment of a resolutory condition, and prescription, are governed elsewhere in this Code.

1232. Payment means not only the delivery of money but also the performance, in any other manner of an obligation.

Payment means not only delivery of money but also the performance.

- It is the fulfillment of the prestation due that extinguishes the obligation by the realization of the purposes for which it was constituted
- It is a juridical act which is voluntary, licit and made with the intent to extinguish an obligation
- Requisites:
    1. person who pays
    2. the person to whom payment is made
    3. the thing to be paid
    4. the manner, time and place of payment etc
- The paying as well as the one receiving should have the requisite capacity
- Kinds:

1. normal –when the debtor voluntarily performs the prestation stipulated
2. abnormal – when he is forced by means of a judicial proceeding either to comply with prestation or to pay *indemnity*

1233. A debt shall not be understood to have been paid unless the thing or service in which the oligatoin consists has been completely delivered or rendered, as the case may be.

- States 2 requisites of payment:

a.) identity of prestation - the very thing or service due must be delivered or released
b.) integrity – prestation must be fulfilled completely

- Time of payment – the payment or performance must be on the date stipulated (may be made even on Sundays or on any holiday, although some states like the Negotiable Instruments Law states that payment in such case may be made on the next succeeding business day)
- The burden of proving that the obligation has been extinguished by payment devolves upon the debtor who offers such a defense to the claim of the plaintiff creditor
- The issuance of a receipt is a consequence of usage and good faith which must be observed (although our Code has no provision on this) and the refusal of the creditor to issue a receipt without just cause is a ground for consignation under Art 1256 (if a receipt has been issued by payee, the testimony alone of payer would be insufficient to prove alleged payments)

1234. If the obligation has been substantially performed in good faith, the obligor may recover as though there had been a strict and complete fulfillment, less damages suffered by the obligee.

- In order that there may be substantial performance of an obligation, there must have been an attempt in good faith to perform, without any willful or intentional departure therefrom
- The non-performance of a material part of a contract will prevent the performance from amounting to a substantial compliance
- A party who knowingly and willfully fails to perform his contract in any respect, or omits to perform a material part of it cannot be permitted under the protection of this rule to compel the other party to perform; and the trend of the more recent decisions is to hold that the percentage of omitted or irregular performance may in and of itself be sufficient to show that there has not been a substantial performance
- The party who has substantially performed may enforce specific performance of the obligation of the other party or may recover damages for their breach upon an allegation of performance, without proof of complete fulfillment.
- The other party, on the other hand, may by an independent action before he is sued, or by a counterclaim after commencement of a suit against him, recover from the first party the damages which he has sustained by the latter's failure to completely fulfill his obligation

1235 – When the oblige accepts the performance, knowing its incompleteness or irregularity, and without expressing any protest or objection, the obligation is

deemed fully complied with

- A person entering into a contract has a right to insist on its performance in all particulars, according to its meaning and spirit. But if he chooses to waive any of the terms introduced for his own benefit, he may do so.
- But he is not obliged to accept anything else in place of that which he has contracted for and if he does not waive this right, the other party cannot recover against him without performing all the stipulations on is part
- To constitute a waiver, there must be an intentional relinquishment of a known right. A waiver will not result from a mere failure to assert a claim for defective performance/payment. There must have been acceptance of the defective performance with actual knowledge if the incompleteness or defect, under circumstances that would indicate an intention to consider the performance as complete and renounce any claim arising from the defect
- A creditor cannot object because of defects in performance resulting from his own acts or directions

1236. The creditor is not bound to accept payment or performance by a third person who has no interest in the fulfillment of the obligation, unless there is a stipulation to the contrary. Whoever pays for another may demand from the debtor what he has paid, except that if he paid without the knowledge or against the will of the debtor, he can recover only insofar as the payment has been beneficial to the debtor

- Reason for this article: whenever a third person pays there is a modification of the prestation that is due.
- Generally, the 3rd person who paid another's debt is entitled to recover the full amount he paid. The law, however limits his recovery to the amount by which the debtor has been benefited, if the debtor has no knowledge of, or has expressed his opposition to such payment
- If the debt has been remitted, paid compensated or prescribed, a payment by a third person would constitute a payment of what is not due; his remedy would be against the person who received the payment under such conditions and not against the debtor who did not benefit from the payment
- payment against debtor's will – even if payment of the third party is against the will of the debtor, upon payment by the third party, the obligation between the debtor and creditor is already extinguished

1237. Whoever pays on behalf of the debtor without the knowledge or against the will of the latter, cannot compel the creditor to subrogate him in his rights, such as those arising from a mortgage, guaranty or penalty

- This article gives to the third person who paid only a simple personal action for reimbursement, without the securities, guaranties and other rights recognized in the creditor, which are extinguished by the payment

1238. Payment made by a third person who does not intend to be reimbursed by the debtor is deemed to be a donation, which requires the debtor's consent/ but the payment is in any case valid as to the creditor who has accepted it

ART 1239. In obligations to give, payment made by one who does not have the free disposal of the thing due and capacity to alienate it shall not be valied, without prejudice to the provisions of article 1427 under the Title on "Natural Obligations"

- consignation will not be proper here. In case the creditor accepts the payment, the payment will not be valid except in the case provided in article 1427

1240. Payment shall be made to the person in whose favor the obligation has been constituted, or his successor in interest, or any person authorized to receive it

- the authority of a person to receive payment for the creditor may be

a.) legal – conferred by law (e.g.,guardian of the incapacitated, administrator of the estate of the deceased)

b.) conventional – when the authority has been given by the creditor himself (e.g., agent who is appointed to collect from the debtor

- payment made by the debtor to a wrong party does not extinguish the obligation as to the creditor (void), if there is no fault or negligence which can be imputed to the latter (even when the debtor acted in utmost good faith, or through error induced by the fraud of the 3rd person). It does not prejudice the creditor and the accrual of interest is not suspended by it

1241. Payment to a person who is incapacitated to administer his property shall be valid if he has kept the thing delivered, or insofar as the payment has been beneficial to him. Payment made to a third person shall also be valid insofar as it has redounded to the benefit of the creditor. Such benefit to the creditor need not be proved in the following cases:

(1) If after the payment, the third person acquires the creditor's rights;

(2) If the creditor ratifies the payment to the third person;

(3) If by the creditor's conduct, the debtor has been led to believe that the third person had authority to receive the payment. (1163a)

- payment shall be considered as having benefited the incapacitated person if he made an intelligent and reasonable use thereof, for purposes necessary or useful to him, such as that which his legal representative would have or could have done under similar circumstances, even if at the time of the complaint the effect of such use no longer exists (e.g., taxes on creditor's property, money to

extinguish a mortgage on creditor's property)

- the debtor is not released from liability by a payment to one who is not the creditor nor one authorized to receive the payment, even if the debtor believed in good faith that he is the creditor, except to the extent that the payment inured to the benefit of the creditor
- in addition to those mentioned above, payment to a third person releases the debtor:

a.) when, without notice of the assignment of credit, he pays to the original creditor

b.) when in good faith he pays to one in possession of the credit

- even when the creditor receives no benefit from the payment to a third person, he cannot demand payment anew, if the mistake of the debtor was due to the fault of the creditor

1242. Payment made in good faith to any person in possession of the credit shall release the debtor. (1164)

- the person in possession of the credit is neither the creditor nor one authorized by him to receive payment, but appears under the circumstances of the case, to be the creditor. He appears to be the owner of the credit, although in reality, he may not be the owner (e.g., an heir who enters upon the hereditary estate and collects the credits thereof, but who is later deprived of the inheritance because of incapacity to succeed)
- it is necessary not only that the possession of the credit be legal, but also that the payment be in good faith

1243. Payment made to the creditor by the debtor after the latter has been judicially ordered to retain the debt shall not be valid. (1165)

- the payment to the creditor after the credit has been attached or garnished is void as to the party who obtained the attachment or garnishment, to the extent of the amount of the judgment in his favor.
- The debtor upon whom garnishment order is served can always deposit the money in court by way of consignation and thus relieve himself from further liability

1244. The debtor of a thing cannot compel the creditor to receive a different one, although the latter may be of the same value as, or more valuable than that which is due. In obligations to do or not to do, an act or forbearance cannot be substituted by another act or forbearance against the obligee's will. (1166a)

- Upon agreement of consent of the creditor, the debtor may deliver a different thing or perform a different prestation in lieu of that stipulated. In this case there may be dation in payment or novation
- The defects of the thing delivered may be waived by the creditor, if he expressly so declares or if, with knowledge thereof, he accepts the thing without protest or disposes of it or consumes it

1245. Dation in payment, whereby property is alienated to the creditor in satisfaction of a debt in money, shall be governed by the law of sales. (n)

- This 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 (such as a usufruct)
- Considered as a novation by change of the object
- Where the debt is money, the law on sale shall govern; in this case, the act is deemed to be a sale with the amount of the obligation to the extent that it is extinguished being considered as price
- Difference between Dation and Cession (see Art. 1255)

1246. When the obligation consists in the delivery of an indeterminate or generic thing, whose quality and circumstances have not been stated, the creditor cannot demand a thing of superior quality. Neither can the debtor deliver a thing of inferior quality. The purpose of the obligation and other circumstances shall be taken into consideration. (1167a)

- If there is disagreement between the debtor and the creditor as to the quality of the thing delivered, the court should decide whether it complies with the obligation, taking into consideration the purpose and other circumstances of the obligation
- Both the creditor and the debtor may waive the benefit of this article
- see Art. 1244

1247. Unless it is otherwise stipulated, the extrajudicial expenses required by the payment shall be for the account of the debtor. With regard to judicial costs, the Rules of Court shall govern. (1168a)

- This is because the payment is the debtor's duty and it inures to his benefit in that he is discharged from the burden of the obligation

1248. Unless there is an express stipulation to that effect, the creditor cannot be compelled partially to receive the prestations in which the obligation consists. Neither may the debtor be required to make partial payments.

However, when the debt is in part liquidated and in part unliquidated, the creditor may demand and the debtor may effect the payment of the former without waiting for the liquidation of the latter. (1169a)

- The creditor who refuses to accept partial prestations does not incur delay except when there is abuse of right or if good faith requires acceptance
- This article does not apply to obligations where there

are several subjects or where the various parties are bound under different terms and conditions

1249. The payment of debts in money shall be made in the currency stipulated, and if it is not possible to deliver such currency, then in the currency which is legal tender in the Philippines. The delivery of promissory notes payable to order, or bills of exchange or other mercantile documents shall produce the effect of payment only when they have been cashed, or when through the fault of the creditor they have been impaired.
In the meantime, the action derived from the original obligation shall be held in the abeyance. (1170)

- LEGAL TENDER means such currency which in a given jurisdiction can be used for the payment of debts, public and private, and which cannot be refused by the creditor
- so long as the notes were legal tender at the time they were paid or delivered, the person accepting them must suffer the loss if thereafter they became valueless
- the provisions of the present article have been modified by RA No. 529 which states that payments of all monetary obligations should now be made in currency which is legal tender in the Phils. *A stipulation providing payment in a foreign currency is null and void but it does not invalidate the entire contract*
- A check, whether a manager's check or an ordinary check is not legal tender and an offer of the check in payment of debt is not a valid tender of payment

1250. In case an extraordinary inflation or deflation of the currency stipulated should supervene, the value of the currency at the time of the establishment of the obligation shall be the basis of payment, unless there is an agreement to the contrary. (n)

- Applies only where a contract or agreement is involved. It does not apply where the obligation to pay arises from law, independent of contracts
- Extraordinary inflation of deflation may be said to be that which is *unusual or beyond the common fluctuations in the value of the currency*, which parties could not have reasonably foreseen or which was manifestly beyond their contemplation at the time when the obligation was constituted

1251. Payment shall be made in the place designated in the obligation. There being no express stipulation and if the undertaking is to deliver a determinate thing, the payment shall be made wherever the thing might be at the moment the obligation was constituted. In any other case the place of payment shall be the domicile of the debtor.

- If the debtor changes his domicile in bad faith or after he has incurred in delay, the additional expenses shall be borne by him. These provisions are without prejudice to venue under the Rules of Court.(1171a)
- Since the law fixes the place of payment at the domicile of the debtor, it is the duty of the creditor to go there and receive payment; he should bear the expenses in this case because the debtor cannot be made to shoulder the expenses which the creditor incurs in performing a duty imposed by law and which is for his benefit.
- But if the debtor changes his domicile in bad faith or after he has incurred in delay, then the additional expenses shall be borne by him
- When the debtor has been required to remit money to the creditor, the latter bears the risks and the expenses of the transmission. In cases however where the debtor chooses this means of payment, he bears the risk of loss.

SUBSECTION 1
APPLICATION OF PAYMENTS

1252. He who has various debts of the same kind in favor of one and the same creditor, may declare at the time of making the payment, to which of them the same must be applied. Unless the parties so stipulate, or when the application of payment is made by the party for whose benefit the term has been constituted, application shall not be made as to debts which are not yet due.
If the debtor accepts from the creditor a receipt in which an application of the payment is made, the former cannot complain of the same, unless there is a cause for invalidating the contract. (1172a)

- Requisites:
  1. 1 debtor and 1 creditor only
  2. 2 or more debts of the same kind
  3. all debts must be due
  4. amount paid by the debtor must not be sufficient to cover the total amount of all the debts
- It is necessary that the obligations must all be due. Exceptions: (1) whe there is a stipulation to the contrary; and (2) the application of payment is made by the party for whose benefit the term or period has been constituted (relate to Art. 1196).
- It is also necessary that all the debts be for the same kind, generally of a monetary character. This includes obligations which were not originally of a monetary character, but at the time of application of payment, had been converted into an obligation to pay damages by reason of breach or nonperformance.
- If the debtor makes a proper application of payment but the creditor refuses to accept it because he wants to apply it to another debt, such creditor will

incur in delay

- RIGHT OF DEBTOR TO MAKE APPLICATION. If at the time of payment, the debtor does not exercise his right to apply it to any of his debts, the application shall be understood as provided by law, unless the creditor makes the application and his decision is accepted by the debtor. This application of payment can be made by the creditor only in the receipt issued at the time of payment (although the application made by creditor may be contested by the debtor if the latter's assent to such application was vitiated by such causes as mistake, violence, intimidation, fraud, etc)
- The debtor and the creditor by agreement, can validly change the application of payment already made without prejudice to the rights of third persons acquired before such agreement

1253. If the debt produces interest, payment of the principal shall not be deemed to have been made until the interests have been covered. (1173)

- Interest paid first before principal
- Applies both to compensatory interest (that stipulated as earnings of the amount due under the obligation) and to interest due because of delay or mora on the part of the debtor
- SC held that this provision applies only in the absence of a verbal or written agreement to the contrary (merely directory, not mandatory)

1254. When the payment cannot be applied in accordance with the preceding rules, or if application can not be inferred from other circumstances, the debt which is most onerous to the debtor, among those due, shall be deemed to have been satisfied. If the debts due are of the same nature and burden, the payment shall be applied to all of them proportionately. (1174a)

- As to which of 2 debts is more onerous is fundamentally a question of fact, which courts must determine on the basis of the circumstances of each case
- Debts are not of the same burden (1st par.)– Rules:
    1. Oldest are more onerous than new ones
    2. One bearing interest more onerous than one that does not
    3. secured debt more onerous than unsecured one
    4. principal debt more onerous than guaranty
    5. solidary debtor more onerous than sole debtor
    6. share in a solidary obligation more onerous to a solidary debtor
    7. liquidated debt more onerous than unliquidated
- Debts are of the same burden (2nd par.)– the payment shall be applied to all of them *pro rata* or proportionately.
- Example: debtor owes his creditor several debts, all of them due, to wit: (1) unsecured debt, (2) a debt secured with mortgage of the debtor's property, (3) a debt with interest, (4) a debt in which the debtor is solidarily liable with another. Partial payment was made by the debtor, without specification as to which the payment should be applied.

    The most onerous is (4), followed by (2), then (3), then (1). Consequently, payment shall be made in that order.

SUBSECTION 2
PAYMENT BY CESSION

1255. The debtor may cede or assign his property to his creditors in payment of his debts. This cession, unless there is stipulation to the contrary, shall only release the debtor from responsibility for the net proceeds of the thing assigned. The agreements which, on the effect of the cession, are made between the debtor and his creditors shall be governed by special laws. (1175a)

- Cession is a special form of payment whereby the debtor abandons or assigns all of his property for the benefit of his creditors so that the latter may obtain payment of their credits from the proceeds of the property.
- Requisites:
    1. plurality of debts
    2. partial or relative insolvency of the debtor
    3. acceptance of cession by the creditors
- Kinds of Cession:
    1. Contractual (Art. 1255)
    2. Judicial (Insolvency Law)
- Must be initiated by debtors
- Requires two or more creditors, debtors insolvent, cession accepted by creditors
- Such assignment does not have the effect of making the creditors the owners of the property of the debtor unless there is an agreement to that effect
- Difference between Dation and Cession

DATION	CESSION
may be 1 creditor	many creditors
does not require insolvency	requires partial or relative insolvency
delivery of **a** thing	delivery of **all** the property
transfer of ownership of the property	no transfer of ownership (only of possession and administration)
a novation	
payment extinguishes obligation (to the extent of the value of the thing	the effect is merely to release debtor from the net proceeds of the property; hence, partial

delivered)	extinguishment of obligation.

SUBSECTION 3
TENDER OF PAYMENT AND CONSIGNATION

1256. If the creditor to whom tender of payment has been made refuses without just cause to accept it, the debtor shall be released from responsibility by the consignation of the thing or sum due.
Consignation alone shall produce the same effect in the following cases:
(1) When the creditor is absent or unknown, or does not appear at the place of payment;
(2) When he is incapacitated to receive the payment at the time it is due;
(3) When, without just cause, he refuses to give a receipt;
(4) When two or more persons claim the same right to collect;
(5) When the title of the obligation has been lost. (1176a)

- **Tender of payment** : manifestation made by the debtor to the creditor of his desire to comply with his obligation; The act of the debtor of offering to the creditor the thing or amount due
- **Consignation** : Deposit of the object or the amount due with the proper court after refusal or inability of the creditor to accept the tender of payment
- Tender of payment by certified check is valid; a mere check would also be valid for tender of payment if the creditor makes no prompt objection, but this does not estop the latter from later demanding payment in cash
- When a tender of payment is made in such a form that the creditor could have immediately realized payment if he had accepted the tender, followed by a prompt attempt of the debtor to deposit the means of payment in court by way of consignation, the accrual of interest on the obligation will be suspended from the date of such tender. But when the tender of payment is not accompanied by the means of payment, and the debtor did not take any immediate step to make a consignation, then the interest is not suspended from the time of such tender.

- GENERAL REQUISITES OF VALID CONSIGNATION vs SPECIAL REQUISITES
  General Req : relative to payment (Arts. 1232 - 1251)
  Special Req : very nature of consignation (Arts. 1256 – 1258)

- Special Requisites of consignation: **[DLN-DN]**

1. **[D]** There was a **d**ebt due
2. **[L]** The consignation of the obligation was made because of some **l**egal cause provided in the present article
3. **[N]** That previous **n**otice of the consignation has been given to persons interested in the performance of the obligation
4. **[D]** The amount or thing due was placed at the **d**isposal of the court
5. **[N]** After the consignation had been made the persons interested had been **n**otified thereof

- If the reason for consignation is the unjust refusal of the creditor to accept payment, it must be shown:

1. That there was previous tender of payment, without which the consignation is ineffective
2. That the tender of payment was of the very thing due, or in case of money obligations that legal tender currency was offered
3. That the tender of payment was unconditional and
4. That the creditor refused to accept payment without just cause

- Exception to requirement for tender of payment: **[AIR-TT]**

1. **[A]** When creditor is **a**bsent or unknown or does not appear at place of payment
2. **[I]** When he is **i**ncapacitated to receive payment
3. **[R]** When he refuses to give **r**eceipt, without just cause
4. **[T]** When **t**wo or more persons claim same right to collect
5. **[T]** When **t**itle of the obligation has been lost

- The 1st and 2nd Special Requisites of Consignation are embodied in Article 1256.
- As to the 2nd requisite ([L] – legal cause) the following musst be present:

(a) the tender of payment must have been made *prior to the consignation*
(b) that it must have been *unconditional* [e.g. where the debtor tendered a check for P3,250 to the creditor as payment of a debt conditioned upon the signing by the latter of a motion to dismiss a complaint for legal separation, such tender of payment is invalid.]
(c) that the creditor must have refused to accept the payment *without just cause* [it is not necessary for the court where the thing or the amount is deposited to determine whether the refusal of the creditor to accept the same was with or without just cause. The question will be resolved anyway in a subsequent proceeding. Hence, the mere refusal of the creditor to accept the tender of payment will be sufficient (Manresa)]

1257. In order that the consignation of the thing due may release the obligor, it must first be announced to the persons interested in the fulfillment of the obligation.
The consignation shall be ineffectual if it is not made

strictly in consonance with the provisions which regulate payment. (1177)

- The lack of notice does not invalidate the consignation but simply makes the debtor liable for the expenses
- The tender of payment and the notice of consignation sent to the creditor may be made in the same act. In case of absent or unknown creditors, the notice may be made by publication

- 1st paragraph of this article – pertains to the 3rd Special Requisite of Consignation ([N] Previous Notice)
  - Tender of Payment vs Previous Notice : the former is a friendly and private act manifested only to the creditor; the latter is manifested also to other persons interested in the fulfillment of the obligation.
- 2nd paragraph of this article – pertains to the General Requisites of Consignation (Arts. 1232-1251), which must be complied with

1258. Consignation shall be made by depositing the things due at the disposal of judicial authority, before whom the tender of payment shall be proved, in a proper case, and the announcement of the consignation in other cases.
The consignation having been made, the interested parties shall also be notified thereof. (1178)

- 1st paragraph hereof - 4th Special Requisite of Consignation ([D] Disposal of the Court)
  - this is complied with if the debtor depostis the thing or amount with the Clerk of Court
- 2nd paragraph hereof - 5th Special Requisite of Consignation ([N] Subsequent Notice)
  - this is to enable the creditor to withdraw the goods or money deposited.

1259. The expenses of consignation, when properly made, shall be charged against the creditor. (1179)

- The consignation is properly made when:

1.) after the thing has been deposited in court, the creditor accepts the consignation without objection and without any reservation of his right to contest it because of failure to comply with any of the requisites for consignation; and
2.) when the creditor objects to the consignation but the court, after proper hearing, declares that the consignation has been validly made

*in these cases, the creditor bears the expenses of the consignation

1260. Once the consignation has been duly made, the debtor may ask the judge to order the cancellation of the obligation. Before the creditor has accepted the consignation, or before a judicial declaration that the consignation has been properly made, the debtor may withdraw the thing or the sum deposited, allowing the obligation to remain in force. (1180)

- Consignation has a retroactive effect and the payment is deemed to have been made at the time of the deposit of the thing in court or when it was placed at the disposal of the judicial authority
- The effects of consignation are: 1.) the debtor is released in the same manner as if he had performed the obligation at the time of the consignation because this produces the same effect as a valid payment, 2.) the accrual of interest on the obligation is suspended from the moment of consignation, 3.) the deteriorations or loss of the thing or amount consigned occurring without fault of the debtor must be borne by the creditor, because the risks of the thing are transferred to the creditor from the moment of deposit 4.) any increment or increase in value of the thing after the consignation inures to the benefit of the creditor.
- When the amount consigned does not cover the entire obligation, the creditor may accept it, reserving his right to the balance. If no reservations are made, the acceptance by the creditor of the amount consigned may be regarded as a waiver of further claims under the contract

1261. If, the consignation having been made, the creditor should authorize the debtor to withdraw the same, he shall lose every preference which he may have over the thing. The co-debtors, guarantors and sureties shall be released. (1181a)

- When the consignation has already been made and the creditor has accepted it or it has been judicially declared as proper, the debtor cannot withdraw the thing or amount deposited unless the creditor consents thereto. If the creditor authorizes the debtor to withdraw the same, there is a revival of the obligation, which has already been extinguished by the consignation, and the relationship of debtor and creditor is restored to the condition in which it was before the consignation. But third persons, solidary co-debtors, guarantors and sureties who are benefited by the consignation are not prejudiced by the revival of the obligation between the debtor and the creditor

SECTION 2
LOSS OF THE THING DUE

1262. An obligation which consists in the delivery of a determinate thing shall be extinguished if it should be lost or destroyed without the fault of the debtor, and before he has incurred in delay.
When by law or stipulation, the obligor is liable even for fortuitous events, the loss of the thing does not extinguish the obligation and he shall be responsible for damages. The same rule applies when the nature of the obligation requires the assumption of risk.

1263: In an obligation to deliver a generic thing, the loss or destruction of anything of the same kind does not extinguish the obligation. (n)

1264. The courts shall determine whether, under the circumstances, the partial loss of the object of the obligation is so important as to extinguish the obligation. (n)

1265. Whenever the thing is lost in the possession of the debtor, it shall be presumed that the loss was due to his fault, unless there is proof to the contrary, and without prejudice to the provisions of article 1165. This presumption does not apply in case of earthquake, flood, storm, or other natural calamity. (1183a)

- 3rd paragraph of Art. 1165: whe the obligor delays, or has promised to deliver the same thing to two or more persons who do not have the same interest, he shall be liable for any fortuitious event until he has effected the delivery
- Hence, in cases where Art. 1165, par. 3 is applicable, even if the debtor can prove that the loss of the thing in his possession was not through his fault or that it was through a fortuitous event, he shall still be liable to the creditor for damages.

1266. The debtor in obligations to do shall also be released when the prestation becomes legally or physically impossible without the fault of the obligor. (1184a)

LEGAL IMPOSSIBILITY : may either be -

1. direct (when the law prohibits the performance or execution of the work agreed upon, i.e. when it is immoral or dangerous)
2. indirect (the law imposes duties of a superior character upon the obligor which are incompatible with the work agreed upon, although the latter may be perfectly licit, as where the obligor is drafted for military service or for a civil function)

PHYSICAL IMPOSSIBILTY : examples – death of the debtor; when there is an accident...

1267. When the service has become so difficult as to be manifestly beyond the contemplation of the parties, the obligor may also be released therefrom, in whole or in part. (n)

DOCTRINE OF UNFORESEEN EVENT
(rebus sic stantibus)
It refers to obligation "to do" (personal obligation)
Parties are presumed to have the risk
It does not apply aleatory contracts (insurance contract)
Excluded highly speculative business (stock exchange)
Monatory obligations are excluded (governed by 1357)

Requisites:

1. event or change in the circumstances could have been foreseen of the time of the execution contract
2. it makes the performance of the contract extremely difficult but not impossible
3. the event must not be due to the act of any of the parties
4. the contract is for a future prestation. If the contract is of immediate fulfillment, the gross inequality of the reciprocal prestations may be involve desion or want of cause.

1268. When the debt of a thing certain and determinate proceeds from a criminal offense, the debtor shall not be exempted from the payment of its price, whatever may be the cause for the loss, unless the thing having been offered by him to the person who should receive it, the latter refused without justification to accept it. (1185)

Example: X hit Y; Y claim damages for X and X run after the insurance. The insurance is not the 3rd party

1269. The obligation having been extinguished by the loss of the thing, the creditor shall have all the rights of action which the debtor may have against third persons by reason of the loss. (1186)

NOTE:
* There is no such thing as loss of a generic thing

1270. Condonation or remission is essentially gratuitous, and requires the acceptance by the obligor. It may be made expressly or impliedly.
One and the other kind shall be subject to the rules which govern inofficious donations. Express condonation shall, furthermore, comply with the forms of donation. (1187)

1271. The delivery of a private document evidencing a credit, made voluntarily by the creditor to the debtor, implies the renunciation of the action which the former had against the latter.
If in order to nullify this waiver it should be claimed to be inofficious, the debtor and his heirs may uphold it by proving that the delivery of the document was made in virtue of payment of the debt. (1188)

1272. Whenever the private document in which the debt appears is found in the possession of the debtor, it shall be presumed that the creditor delivered it voluntarily, unless the contrary is proved. (1189)

1273. The renunciation of the principal debt shall extinguish the accessory obligations; but the waiver of the latter shall leave the former in force. (1190)

1274. It is presumed that the accessory obligation of pledge has been remitted when the thing pledged, after its delivery to the creditor, is found in the possession of the debtor, or of a third person who owns the thing.

(1191a)

SECTION 4
CONFUSION OR MERGER OF RIGHTS

1275. The obligation is extinguished from the time the characters of creditor and debtor are merged in the same person. (1192a)

- Merger or confusion is the meeting in one person of the qualities of creator and debtor with respect to the same obligation. It erases the plurality of subjects of the obligation. Further, the purposes for which the obligation may have been created are considered as fully realized by the merger of the qualities of debtor and creditor in the same person.
- Requisites of merger or confusion are:
  (1) It must take place between the creditor and the principal debtor,
  (2) the very same obligation must be involved, for if the debtor acquires rights from the creditor, but not the particular obligation in question in question there will be no merger,
  (3) the confusion must be total or as regards the entire obligation.
- The effect of merger is to extinguish the obligation.

1276. Merger which takes place in the person of the principal debtor or creditor benefits the guarantors. Confusion which takes place in the person of any of the latter does not extinguish the obligation. (1193)

- The extinguishment of the principal obligation through confusion releases the guarantor's because the obligation of the latter is merely accessory. When the merger takes place in the person of a guarantor, the obligation is not extinguished.

1277. Confusion does not extinguish a joint obligation except as regards the share corresponding to the creditor or debtor in whom the two characters concur. (1194)

SECTION 5
COMPENSATION

1278. Compensation shall take place when two persons, in their own right, are creditors and debtors of each other. (1195)

- Compensation is a mode of extinguishing to the concurrent amount, the obligations of those persons who in their own right are reciprocally debtors and creditors of each other. It is the offsetting of two obligations which are reciprocally extinguished if they are of equal value. Or extinguished to the concurrent amount if of different values.
- Kinds of Compensation:
  - As to their effects
    - compensation may be total (when the two obligations are of the same amount); or
    - partial (when the amounts are not equal).
  - As to origin
    1. it may be legal;
    2. facultative;
    3. conventional;
    4. or judicial.
  - It is legal when it takes place by operation of law because all requisites are present.
  - It is facultative when it can be claimed by one of the parties, who, however, has the right to object to it, such as when one of the obligations has a period for the benefit of one party alone and who renounces that period so as to make the obligation due.
  - It is conventional when the parties agree to compensate their mutual obligations even if some requisite is lacking.
  - It is judicial when decreed by the court in a case where there is a counterclaim.

From Dean Pineda:
Compensation Distinguished From Payment. In compensation, there can be partial extinguishment of the obligation; in payment, the performance must be completer, unless waived by the creditor. Payment involves delivery of action, while compensation (legal compensation) takes place by operation of law without simultaneous delivery.
Compensation Distinguished from Merger. In compensation, there are at least two persons who stand as principal creditors and debtor of each other, in merger, there is only one person involved in whom the characters of creditor and debtor are merged. In merger, there is only one obligation, while in compensation, there are two obligations involved.

1279. In order that compensation may be proper, it is necessary:
(1) That each one of the obligors be bound principally, and that he be at the same time a principal creditor of the other;
(2) That both debts consist in a sum of money, or if the things due are consumable, they be of the same kind, and also of the same quality if the latter has been stated;
(3) That the two debts be due;
(4) That they be liquidated and demandable;
(5) That over neither of them there be any retention or controversy, commenced by third persons and communicated in due time to the debtor. (1196)

- For compensation to take place, the parties must be mutually debtors and creditors (1) in their own right, and (2) as principals. Where there is no relationship of mutual creditors and debtors, there can be no

compensation. Because the 1st requirement that the parties be mutually debtors and creditors in their own right, there can be no compensation when one party is occupying a representative capacity, such as a guardian or an administrator. The 2nd requirement is that the parties should be mutually debtors and creditors as principals. This means that there can be no compensation when one party is a principal creditor in one obligation but is only a surety or guarantor in the other.

- The things due in both obligations must be fungible, or things which can be substituted for each other.
- Both debts must be due to permit compensation.
- Demandable means that the debts are enforceable in court, there being no apparent defenses inherent in them. The obligations must be civil obligations, including those that are purely natural. An obligation is not demandable, therefore, and not subject to compensation, in the following cases: (1) when there is a period which has not yet arrived, including the cases when one party is in a state of suspension of payments; (2) when there is a suspensive condition that has not yet happened; (3) when the obligation cannot be sued upon, as in natural obligation.
- A debt is liquidated when its existence and amount is determined. Compensation can only take place between certain and liquidated debts.

From Dean Pineda:
The **five requisites of a legal compensation** are enumerated in the Article. All requisites must be present before compensation can be effectual.

6. First Requisite—That each of the obligators be bound principally and that he be at the same time a principal creditor of the other. >>The parties must be mutual creditor and debtor of each other and their relationship is a principal one, that is, they are principal debtor and creditor of each other.

- Second Requisite—That both debts consist in such a sum of money, or if the things due are consumable, they be of the same kind, and also of the same quality if the latter has been stated. >>When the debts consist of money, there is not much of a problem when it comes to compensation to the concurrent amount. It is a matter of mathematical computation. When the debt consist of things, it is necessary that the things are consumable which must be understood as 'fungible' and therefore susceptible of substitution. More than that they must be of the same kind. If the quality has been states, the things must be of the same quality.
- Third Requisite—That the two debts are due. >> A debt is 'due' when its period of performance has arrived. If it is a subject to a condition, the condition must have already been fulfilled. However, in voluntary compensation, the parties may agree upon the compensation of debts which are not yet due.
- Fourth Requisite—That they be liquidated and demandable. >> A debt is considered 'liquidated' when its amount is clearly fixed. Of if it is not yet specially fixed, a simple mathematical computation will determine its amount or value. It is 'unliquidated' when the amount is not fixed because it is still subject to a dispute or to certain condition.

It is not enough that the debts be liquidated. It is also essential that the same be demandable. A debt is demandable if it is not yet barred by prescription and it is not illegal or invalid.

- Fifth Requisite—That over neither of them there be any retention or controversy, commenced by third persons and communicated in due time to the debtor. >> A debt of a thing cannot be a subject of compensation if the same had been subject of a garnishment of which the debtor was timely notified. When a credit or property had been properly garnished of attached, it cannot be disposed of without the approval of the court.

1280. Notwithstanding the provisions of the preceding article, the guarantor may set up compensation as regards what the creditor may owe the principal debtor. (1197)

- The liability of the guarantor is only subsidiary; it is accessory to the principal obligation of the debtor. If the principal debtor has a credit against the creditor, which can be compensated, it would mean the extinguishment of the guaranteed debt, either totally or partially. This extinguishment benefits the guarantor, for he can be held liable only to the same extent as the debtor.

From Dean Pineda:
Exception to the Rule On Compensation; Right of Guarantor to Invoke Compensation Against Creditor. The general rule is that for compensation to operate, the parties must be related reciprocally as principal creditors and debtors of each other. Under the present Article, the guarantor is allowed to set up compensation against the creditor.

1281. Compensation may be total or partial. When the two debts are of the same amount, there is a total compensation. (n)

- Total Compensation—debts are of the same amount.
- Partial Compensation—Debts are not of the same amount; operative only up to the concurrent amount.

1282. The parties may agree upon the compensation of debts which are not yet due. (n)

- Voluntary compensation is not limited to obligations which are not yet due. The parties may compensate by agreement any obligations, in which the objective requisites provided for legal compensation are not present. It is necessary, however, that the parties should have the capacity to dispose of the credits

which they compensate, because the extinguishment of the obligations in this case arises from their wills and not from law.

1283. If one of the parties to a suit over an obligation has a claim for damages against the other, the former may set it off by proving his right to said damages and the amount thereof. (n)

Art. 1284. When one or both debts are rescissible or voidable, they may be compensated against each other before they are judicially rescinded or avoided. (n)

- Although a rescissible or voidable debt can be compensated before it is rescinded or annulled, the moment it is rescinded or annulled, the decree of rescission or annulment is retroactive, and the compensation must be considered as cancelled. Recission of annulment requires mutual restitution; the party whose obligation is annulled or rescinded can thus recover to the extent that his credit was extinguished by the compensation, because to that extent he is deemed to have made a payment.

1285. The debtor who has consented to the assignment of rights made by a creditor in favor of a third person, cannot set up against the assignee the compensation which would pertain to him against the assignor, unless the assignor was notified by the debtor at the time he gave his consent, that he reserved his right to the compensation.

If the creditor communicated the cession to him but the debtor did not consent thereto, the latter may set up the compensation of debts previous to the cession, but not of subsequent ones.

If the assignment is made without the knowledge of the debtor, he may set up the compensation of all credits prior to the same and also later ones until he had knowledge of the assignment. (1198a)

- Assignment after Compensation. When compensation has already taken place before the assignment, inasmuch as it takes place ipso jure, there has already been an extinguishment of one of the other of the obligations. A subsequent assignment of an extinguished obligation cannot produce any effect against the debtor. The only exception to this rule is when the debtor consents to the assignment of the credit; his consent constitutes a waiver of the compensation, unless at the time he gives consent, he informs the assignor that he reserved his right to the compensation.
- Assignment before compensation. The assignment may be made before compensation has taken place, either because at the time of assignment one of the debts is not yet due or liquidated, or because of some other cause which impedes the compensation. As far as the debtor is concerned, the assignment does not take effect except from the time he is notified thereof. If the notice of assignment is simultaneous to the transfer, he can set up compensation of debts prior to the assignment. If notice was given to him before the assignment, this takes effect at the time of the assignment; therefore the same rule applies. If he consents to the assignment, he waives compensation even of debts already due, unless he makes a reservation.
- But if the debtor was notified of the assignment, but he did not consent, and the credit assigned to a third person matures after that which pertains to the debtor, the latter may set up compensation when the assignee attempts to enforce the assigned credit, provided that the credit of the debtor became due before the assignment. But it f the assigned credit matures earlier than that of the debtor, the assignee may immediately enforce it, and the debtor cannot set up compensation, because the credit is not yet due.
- If the debtor did not have knowledge of the assignment, he may set up by way of compensation all credits maturing before he is notified thereof. Hence, if the assignment is concealed, and the assignor still contracts new obligation in favor of the debtor, such obligation maturing before the latter learns of the assignment will still be allowable by way of compensation. The assignee in such case would have a personal action against the assignor.

1286. Compensation takes place by operation of law, even though the debts may be payable at different places, but there shall be an indemnity for expenses of exchange or transportation to the place of payment. (1199a)

- This article applies to legal compensation and not to voluntary compensation.

1287. Compensation shall not be proper when one of the debts arises from a depositum or from the obligations of a depositary or of a bailee in commodatum.

Neither can compensation be set up against a creditor who has a claim for support due by gratuitous title, without prejudice to the provisions of paragraph 2 of Article 301. (1200a)

E. The prohibition of compensation when one of the debts arises from a depositum (a contract by virtue of which a person [depositary] receives personal property belonging to another [depositor], with the obligation of safely keeping it and returning the same) or commodatum (a gratuitous contract by virtue of which one of the parties delivers to the other a non-consumable personal property so that the latter may use it for a certain time and return it) is based on justice. A deposit of commodatum is given on the basis of confidence in the depositary of the borrower. It is therefore, a matter of morality, the depositary or borrower performs his obligation.

- With respect to future support, to allow its extinguishment by compensation would defeat its exemption from attachment and execution. , and may expose the recipient to misery and starvation. Common humanity and public policy forbid this consequence. Support under this provision should be understood, not only referring to legal support, to include all rights which have for their purpose the subsistence of the debtor, such as pensions and gratuities.

1288. Neither shall there be compensation if one of the debts consists in civil liability arising from a penal offense. (n)

- If one of the debts consists in civil liability arising from a penal offense, compensation would be improper and inadvisable because the satisfaction of such obligation is imperative.
- The person who has the civil liability arising from crime is the only party who cannot set up the compensation; but the offended party entitled to the indemnity can set up his claim in compensation of his debt.

Art. 1289. If a person should have against him several debts which are susceptible of compensation, the rules on the application of payments shall apply to the order of the compensation. (1201)

- It can happen that a debtor may have several debts to a creditor. And vice versa. Under these circumstances, Articles 1252 to 1254 shall apply.

1290. When all the requisites mentioned in Article 1279 are present, compensation takes effect by operation of law, and extinguishes both debts to the concurrent amount, even though the creditors and debtors are not aware of the compensation.

- Legal compensation takes place from the moment that the requisites of the articles 1278 and 1270 co-exist; its effects arise on the very day which all its requisites concur.
- Voluntary of conventional compensation takes effect upon the agreement of the parties.
- Facultative compensation takes place when the creditor declares his option to set it up.
- Judicial compensation takes place upon final judgment.
- Effects of Compensation:

(1) Both debts are extinguished to the concurrent amount;
(2) interests stop accruing on the extinguished obligation of the part extinguished;
(3) the period of prescription stops with respect to the obligation or part extinguished;
(4) all accessory obligations of the principal obligation which has been extinguished are also extinguished.

- Renunciation of Compensation. Compensation can be renounces, either at the time an obligation is contracted or afterwards. Compensation rests upon a potestative right, and a unilateral decision of the debtor would be sufficient renunciation. Compensation can be renounced expressly of impliedly.
- No Compensation. Even when all the requisites for compensation occur, the compensation may not take place in the following cases: (1) When there is renunciation of the effects of compensation by a party; and (2) when the law prohibits compensation.

(Unless otherwise indicated, commentaries are sourced from the Civil Code book IV by Tolentino).

SECTION 6
NOVATION
HOW OBLIGATIONS ARE MODIFIED

1291. Obligations may be modified by:
(1) Changing their object or principal condition
(2) Substituting the person of the debtor
(3) Subrogating a third person in the rights of a creditor

- Novation is the extinguishment of an obligation by a substitution or change of the obligation by a subsequent one which extinguishes or modifies the first either by:

changing the object or principal conditions
by substituting the person of the debtor
subrogating a third person in the rights of the creditor

- Novation is a juridical act of dual function. At the time it extinguishes an obligation it creates a new one in lieu of the old
- Classification of Novation
  - as to nature
    1. Subjective or personal – either passive or active. Passive if there is substitution of the debtor. Active if a third person is subrogated in the rights of the creditor.
    2. Objective or real – substitution of the object with another or changing the principal conditions
    3. Mixed – Combination of subjective and objective
  - as to form
- Express – parties declare that the old obligation is substituted by the new
- Implied – an incompatibility exists between the old and the new obligation that cannot stand together
- as to effect

2. Partial – when there is only a modification or change in some principal conditions of the obligation
1. Total – when the old obligation is completely extinguished

- Requisites of Novation:

- A previous **valid** obligation
  - Agreement of **all parties**
  - Extinguishment of the old contract – may be express of implied
  - **Validity** of the new one

TITLE II.
CONTRACTS

CHAPTER 1
GENERAL PROVISIONS

GENERAL PROVISIONS

Art. 1305. A contract is a meeting of the minds between two persons whereby one binds himself, with respect to the other to give something or to render some service.

* relate to Art. 1159 of CC
* Definition:

4. Sanchez Roman – a juridical convention manifested in legal form, by virtue of which one or more persons bind themselves in favor of another or others, or reciprocally, to the fulfillment of a prestation to give, to do or not to do.

* Other Terms:

c) Perfect promise – distinguished from a contract, in that the latter establishes and determines the obligations arising therefrom; while the former tends only to assure and pave the way for the celebration of a contract in the future.
d) Imperfect Promise – mere unaccepted offer
e) Pact – a special part of the contract, sometimes incidental and separable for the principal agreement
f) Stipulation – similar to a pact; when the contract is an instrument, it refers to the essential and dispositive part, as distinguished from the exposition of the facts and antecedents upon which it is based.

* Number of Parties:

- The Code states "two persons"; what is meant actually is "two parties". For a contract to exist, there must be two parties.
- A party can be one or more persons.

* Husband & Wife:

c. Husbands and wives cannot sell to each other as a protection of the conjugal partnership.
d. They can however enter into a contract of agency.

* Auto-contracts:

4. It means one person contracts himself.
5. As a general rule, it is accepted in our law. The existence of a contract does not depend on the number of persons but on the number of parties.
6. There is no general prohibition against auto-contracts; hence, it should be held valid.

* Contracts of Adhesion:

5) Contracts prepared by another, containing provisions that he desires, and asks the other party to agree to them if he wants to enter into a contract.
Example: transportation tickets

f. It is valid contract according to Tolentino because the other party can reject it entirely.

* Characteristics of Contracts:

4. 3 elements:
1. Essential elements – without which there is no contract; they are a) consent, b) subject matter and c) cause
2. Natural elements – exist as part of the contract even if the parties do not provide for them, because the law, as suppletory to the contract, creates them
3. Accidental elements – those which are agreed by the parties and which cannot exist without stipulated

**** Stages of a Contract:***

4. 3 stages:
1. Preparation, conception, or generation – period of negotiation and bargaining, ending at the moment of agreement of the parties
2. Perfection or birth of the contract – the moment when the parties come to agree on the terms of the contract
3. Consummation or death – the fulfillment or performance of the terms agreed upon in any contract

1306. The contracting parties may establish such stipulations, clauses, terms & conditions as they may deem convenient, provided they are not contrary to law, morals, good customs, public order, or public policy.

- This article embodies the *principle of autonomy of contracts*

* Freedom to contract:

7. Any person has the liberty to enter into a contract so long as they are not contrary to law, morals, good customs, public order or public policy.
8. The legislature, under the constitution, is prohibited from enacting laws to prescribe the terms of a legal contract.

* Validity of Stipulations:

3. Any and all stipulations not contrary to law, morals, good customs, public order or public policy is valid

* Trust Receipts:

5. Trust receipts, as contracts, in a certain manner partake of the nature of a conditional sale as provided by the Chatter Mortgage Law, that is, the importer becomes the absolute owner of the imported merchandise as soon as he had paid its price.

* Other Stipulations:

(3) Other valid stipulations: Venue of Action, Escalation clauses, & Limitation of carrier's liability

* Compromises:

3. Compromises create reciprocal concessions so that parties avoid litigation.
4. The Court must approve it and once approved, the parties are enjoined to comply strictly and in good faith with the agreement.

* Juridical Qualification:

4. Juridical Qualification is different from validity. It is the law that determines juridical qualification.
5. The contract is to be judged by its character and courts will look into the substance and nor to the mere from of the transaction.

* Limitations on Stipulation:

3. An act or a contract is illegal per se is on that by universally recognized standards us inherently or by its nature, bad, improper, immoral or contrary to good conscience.

* Contrary to law:

3. Freedom of contract is restricted by law for the good of the

public.

4. It is fundamental postulate that however broad the freedom of the contracting parties may be, it does not go so far as to countenance disrespect for or failure to observe a legal prescription. The Statute takes precedence.
   Examples:
3. A promissory note which represents a gambling debt is unenforceable in the hands of the assignee.
4. Stipulations to pay usurious interests are void.
5. A contract between to public service companies to divide the territory is void because it impairs the control of the Public Service Commission.
6. Agreement to declare valid a law or ordinance is void.

   * Contrary to Morals:

d) Morals mean good customs or those generally accepted principles of morality which have received some kind of social and practical confirmation.
   Examples:

d. a promise to marry or nor to marry, to secure legal separation, or to adopt a child
e. a promise to change citizenship, profession, religion or domicile
f. a promise not to hold public office or which limits the performance of official duties
g. a promise to enter a particular political party or separate from it
h. contracts which limit in an excessive manner the personal or economic freedom of a person
i. to make an act dependent on money or some pecuniary value, when it is of such a nature that it should not depend thereon; payment to kill another.

   * Contrary to Public Order:

4. Public order means the public weal or public policy. It represents the public, social, and legal interest in private law that which is permanent and essential in institutions, which, even if favoring some individual to whom the right pertains, cannot be left to his own will.
5. A contract is said to be against public order if the court finds that the contract as to the consideration or the thing to be done, contravenes some established interest of society, or is inconsistent with sound policy and good morals, or tends clearly to undermine the security of individual rights.
   Examples:

(d) Common carrier cannot stipulate for exemption for liability unless such exemption is justifiable and reasonable and the contract is freely and fairly made.
(e) Payment to intermediaries in securing import licenses or quota allocations.
(f) Contract of scholarship stipulating that the student must remain in the same school and that he waives his right to transfer to another school without refunding the school

Art. 1307. Innominate contracts shall be regulated by the stipulations of the parties, by the provisions of Titles I & II of this Book, by the rules governing the most analogous nominate contracts, and by the customs of the place.

INNOMINATE CONTRACTS – those which lack individuality and are not regulated by special provisions of law.

* Innominate Contracts:
do ut des (I give that you may give) – An agreement in which A will give one thing to B, so that B will give another thing to A.
do ut facias (I give that you may do) – An agreement under which A will give something to B, so that B may do something for A.
facio ut facias (I do that you may do) – An agreement under which A does something for B, so that B may render some other service for A.
facio ut des (I do that you may give) – An agreement under which A does something for B, so that B may give something to A.

* Analogous contracts:

3) Innominate contracts, in the absence of stipulations and specific provisions of law on the matter, are to be governed by rules applicable to the most analogous contracts.

Art. 1308. The contract must bind both contracting parties; its validity or compliance cannot be left to the will of one of them.

* *Principle of Mutuality of Contract*:

3. The binding effect of contract on both parties is based on the principles:
○ that obligations arising from contracts have the force of law between the contracting parties
○ that there must be mutuality between the parties based on their essential equality, to which is repugnant to have one party bound by the contract leaving the other free therefrom.
A contract containing a condition which makes its fulfillment dependent exclusively upon the uncontrolled will of one of the contracting parties is void.

* Unilateral Cancellation:
Just as nobody can be forced to enter into a contract, in the same manner once a contract is entered into, no party can renounce it unilaterally or without the consent of the other. Nobody is allowed to enter into a contract, and while the contract is in effect, leaves, denounces or disavows the contract to the prejudice of the other.

* When Stipulated:

F. However, when the contract so stipulates that one may terminate the contract upon a reasonable period is valid.
G. Judicial action for the rescission of the contract is no longer necessary when the contract so stipulates that it may be revoked and cancelled for the violation of any of its terms and conditions. This right of rescission may be waived.

* Express Agreement:

The article reflects a negative form of rescission as valid.
Negative Form of Rescission – a case which is frequent in certain contracts, for in such case neither is the article violated, nor is there any lack of equality of the persons contracting; such as cancellation of a contract due to default or non-payment or failure to do service.

Art. 1309. The determination of the performance may be left to a third person, whose decision shall not be binding until it has been made known to both contracting parties.

- Exception to Art. 1308 (Mutuality of Contract)
- A third person may be called upon to decide whether or not performance has been done for the fulfillment of the contract. Such decision becomes binding when the contracting parties have been informed of it.

Art. 1310. The determination shall be obligatory if it is evidently inequitable. In such case, the courts shall decide what is equitable under the circumstances.

- Exception to Art. 1308 (Mutuality of Contract)

11. However, when the decision cannot be arrived due to inequity, the courts shall decide what is equitable for the parties involved.

Art 1311. Contracts take effect only between the parties, their assigns and heirs, except in case where the rights and obligations arising from the contracts are not transmissible by their nature, or by stipulation or by provision of law. The heir is not liable beyond the value of the property he received from the decedent.

If a contract should contain some stipulation in favor of a third person, he may demand its fulfillment provided he communicated his acceptance to the obligor before its revocation. A mere incidental benefit or interest of a person is not sufficient. The contracting parties must have clearly and deliberately conferred a favor upon a third person.

- 1st paragraph of this article embodies the *principle of relativity of contract*

- Four exceptional instances where a contract may produce effect on third persons: Art. 1311-1314

* Parties bound by contract:

3. Generally, only the parties that agreed on the contracts are bound by the contract.
4. Transmission is possible to the heirs or assignees if so stipulated and in certain contracts.

* Third persons not bound:

4. It is s general rule that third parties are not bound by the acts of another.
5. A contract cannot be binding upon and cannot be enforced against one who is not a party to it, even if he has knowledge of such contract and has acted with knowledge thereof.
6. Important Latin maxim: Res inter alio acta aliis necque nocet prodest.

* Third persons affected:

c) There are exceptions to the rule. They are:
A contract creating a real right affects third persons who may have some right over the thing. (article 1312)
A contract may reduce the properties of a debtor and thus diminish the available security for the claims of creditors. (article 1313)
In some cases as in composition in insolvency and in suspension of payments, certain agreements are made binding by law on creditors who may not have agreed thereto.

* Enforcement of contract:

d) Only a party to the contract can maintain an action to enforce the obligations arising under said contract.

* Annulment of contracts:

7. A third person cannot ask for a contract's annulment because he is not party to it.
8. Exception: when it is prejudicial to his rights, the third person may ask for its rescission.

* Contracts bind heirs:

- General rule: rights and obligations under a contract are transmissible to heirs.
- Heirs are not third persons because there is privity of interest between them and their predecessor.

* Intransmissible Contracts:

4. Exceptions:
contracts of purely personal in nature – partnership and agency
contracts for payment of money debts are charged not to the heirs but to the estate of the decedent

* Stipulations for Third Parties:

(3) Second paragraph creates an exception to the first.
(4) When there is such stipulation pour autrui, it can be enforced.
(5) 2 Divisions:
those where the stipulation is intended for the sole benefit of such third person
those where an obligation is due from the promisee to the third person and the former seeks to discharge it by means of such stipulation

* Requisites of Article:

(d) To apply the second paragraph, the following are necessary:
stipulation in favor of a third persons
stipulation in favor of a third persons should be a part, not the whole, of the contract
clear and deliberate conferment of favor upon a third person by the contracting parties and not a mere incidental benefit or interest
stipulation should not be conditioned or compensated by any kind of obligation whatever
that the third person must have communicated his acceptance to the obligor before its revocation
neither of the contracting parties bears the legal representation or authorization of the third party

* Beneficiaries:

4. A stipulation may validly be made in favor of indeterminate persons, provided that they can be determined in some manner at the time when the prestation from the stipulation has to be performed.

* Test of Beneficial Stipulation:

4. To constitute a valid stipulation pour autrui, it must be the purpose and intent of the stipulating parties to benefit the third person, and it is not sufficient that the third person may be incidentally benefited by the stipulation.
5. Test of Beneficial Stipulation: intention of the parties as disclosed by their contract.
6. To apply this, it matters not whether the stipulation is in the nature of a gift or whether there is an obligation owing from the promisee to the third person.

* Acceptance of Third Party:

5. Stipulation pour autrui has no binding effect unless it is accepted by the third party.
6. Acceptance is optional to the third person: he is not obliged to accept it.
7. It may be in any form, express or implied, written or oral
8. There is no time limit to acceptance until the stipulation is

revoked before the third person's acceptance.
* Rights of Parties:
c. The original parties, before acceptance of the third persons, still have the right to revoke or modify the contract.
* Dependence on Contract:
(e) Right of the third person emanates from the contract; defenses are also available against the contract.
(f) If after the third person has accepted the stipulation and the parties failed to perform or defaulted, he can sue wither for specific performance or resolution, with indemnity for damages, as authorized by article 1191.
* Who may revoke:
(b) General Rule: it pertains to the other contracting party or promisee, who may exercise it without the consent of the promisor. But it may be agreed that the revocation should have the consent of the promisor.
(c) The right of revocation cannot be exercised by the heirs or assignees of the promisee; they might not want to honor the decedent's promise.
* Collective contracts:
(c) Definition: contracts where the law authorizes the will of the majority to bind a minority to an agreement notwithstanding the opposition of the latter, when all have a common interest in the juridical act.

Art 1312. In contracts creating real rights, third persons who come into possession of the object of the contract are bound thereby, subject to the provisions of the Mortgage Law and the Land Registration laws.
* Real Rights in Property
- A real right directly affects property subject to it; hence, whoever is in possession of such property must respect that real right.

Art 1313. Creditors are protected in cases of contracts intended to defraud them.
* Contracts in Fraud of Creditors
- When a debtor enters into a contract in fraud of his creditors, such as when he alienated property gratuitously without leaving enough for his creditors (article 1387), the creditor may ask for its rescission.

Art 1314. Any third person who induces another to violate his contract shall be liable for damages to the other contracting party.
* see Arts. 1177 and 1380
* Interference of Third Persons:
- If a third person induced a party to violate his side of the contract, the other party may sue the third person for damages.
- Requisites:
- the existence of a valid contract
- knowledge by the third person of the existence of a contract
- interference by the third person in the contractual relation without legal justification

Jurisprudential basis: Manila Railroad Co. vs. Compañia Transatlantica
1. ...the process must be accomplished by distinguishing clearly between the right of action arising from the improper interference with the contract by a stranger thereto, considered as an independent act generative of civil liability, and the right of action ex contractu against a party to the contract resulting form the breach thereof.
* Extent of Liability:
(3) The extent of liability of a third person interfering is limited to the damage that the other party incurred.
(4) Liability is solidary, the offending party and the third person, because in so far as the third person is concerned, he commits a tortious act or a quasi-delict, for which solidary responsibility arises.

Art 1315. Contracts are perfected by mere consent, and from that moment the parties are bound not only to the fulfillment of what has been expressly stipulated but also to all the consequences which, according to their nature, may be in keeping with good faith, usage and law.
* embodies the *Principle of Consensuality*:
4. Perfection of a contract, in general: the moment from which it exists; the juridical tie between the parties arises from that time.
5. Perfection of Consensual Contracts: the mere consent which is the meeting of the minds of the parties upon the terms of the contract
1. consent may not be expressly given.
* Binding Effect of Consensual Contracts:
2. The binding force of such contracts are not limited to what is expressly stipulated, but extends to all consequences which are the natural effect of the contract, considering its true purpose, the stipulations it contains, and the object involved.

Art 1316. Real contracts, such as deposit, pledge or commodatum, are not perfected until the delivery of the object of the obligation.
- Exception to Art. 1315 or Principle of Consensuality

* Perfection of real contracts:
Real contract is not perfect by mere consent. The delivery of the thing is required.
Delivery is demanded, neither arbitrary nor formalistic.

Art 1317. No one may contract in the name of another without being authorized by the latter, or unless he has by law a right to represent him.
A contract entered into in the name of another by one who has no authority or legal representation, or who has acted beyond his powers, shall be unenforceable, unless it is ratified, expressly or impliedly, by the person on whose behalf it has been executed, before it is revoked by the other contracting party.
* Ratification necessary:
- A contract entered into in behalf of another who has not authorized it is not valid or binding on him unless he ratifies the transaction.
- When ratified, he is estopped to question the legality of the transaction.
- Kinds of ratification:

1. express
2. implied

- The ratification has a retroactive effect from the moment of its celebration, not from its ratification.
- Before ratification, the contract is in a state of suspense; its effectivity depends on its ratification. The other party must not do anything prior to ratification that shall prejudice the rights of the other party.
- When not ratified, the person who entered into a contract in behalf of another without authority becomes liable to the other party, if he did not inform the latter that he does not have any representation or authority.
- When such deficiency or lack of authority has been relayed to the other, he cannot claim for damages against he person without authority.

CHAPTER 2

ESSENTIAL REQUISITES OF CONTRACTS

GENERAL PROVISIONS

Art. 1318. There is no contract unless the following requisites concur:
(1) Consent of the contracting parties;
(2) Object certain which is the subject matter of the contract;
(3) Cause of the obligation which is established. (1261)

- There must be at least 2 parties to every contract. The number of parties, however, should not be confused with the number of persons.
- A single person can represent 2 parties, and one party can be composed of 2 or more persons.
- Consent presupposes capacity. There is no effective consent in law without the capacity to give such consent.
- REQUISITES of CONTRACT IN GENERAL:
  - may either be =
  - ESSENTIAL= without which there would be no contract;
  - COMMON = present in all contracts
    = **C**onsent, **o**bject and **c**ause **[COC]**
  - SPECIAL =present only in certain contracts (e.g. delivery in real contracts or form in solemn ones)
  - EXTRAORDINARY = peculiar to a specific contract (e.g. price in a contract of sale)
  - NATURAL = derived from the nature of the contract, and as a consequence, ordinarily accompany the same, although they can be excluded by the contracting parties if they so desire
  - ACCIDENTAL = those which exist only when the contracting parties expressly provide for them for the purpose of limiting or modifying the normal effects of the contract.

- In descending order, the *law* imposes the essential elements, presumes the natural and authorizes the accidental.
- Conversely, the *will of the contracting parties* conforms to the first, accepts or repudiates the second and establishes the third.

SECTION 1

CONSENT

Art. 1319. Consent is manifested by the meeting of the offer and the acceptance upon the thing and the cause which are to constitute the contract. The offer must be certain and the acceptance absolute. A qualified acceptance constitutes a counter-offer.
Acceptance made by letter or telegram does not bind the offerer except from the time it came to his knowledge. The contract, in such a case, is presumed to have been entered into in the place where the offer was made. (1262a)

- CONSENT (*cum sentire*) : agreement of wills.
- CONSENT (as applied to contracts) : concurrence of the wills of the contracting parties with respect to the object and the cause which shall constitute the contract
- Requisites:
  - consent must be manifested by the concurrence of the offer and the acceptance (Arts. 1319-1326);
  - contracting parties must possess the necessary legal capacity (Arts. 1327-1329); and
  - consent must be intelligent, free, spontaneous and real (Arts. 1330-1346)
- Forms: Consent may either be express or implied. There is also a presumptive consent, which is the basis of quasi-contracts.
- Manifestation: Consent is manifested by the concurrence of offer and acceptance with respect to the object and the cause of the contract. Once there is such a manifestation, the period or stage of negotiation is terminated. If consensual, the contract is perfected.
- A unilateral proposition must be definite (distinguished from mere communications), complete (stating the essential and non-essential conditions desired by the offeror), and intentional (serious) when accepted by another party for such proposition to form a valid contract.
- According to Tolentino, however, a unilateral promise is not recognized by our Code as having obligatory force. To be so, there must be an acceptance that shall convert it into a contract.
- Mental reservation—when a party makes a declaration but secretly does not desire the effects of such declaration. The mental reservation of the offeror, unknown to the other, cannot affect the validity of the offer.
- Complex offers: In cases where a single offer involves two or more contracts, the perfection where there is only partial acceptance will depend upon the relation of the contracts between themselves, whether due to their nature, or due to the intent of the offeror.
- Simultaneous offers: As a rule, the offer and the acceptance must be successive in order that a contract may arise. When there are crossed offers, however, no contract is formed unless one of the parties accepts the offer received by him.
- Acceptance must not qualify the terms of the offer to produce a contract. It should be unequivocal,
- Successive agreements: If the intention of one or both parties is that there be concurrence on all points, the contract is not perfected if there is a point of disagreement—even if there is already agreement on the essential elements of the contract.

- Meanwhile, if there is no declaration that agreement on an accessory or subordinate matter is necessary, the contract will be perfected as soon as there is concurrence on the object and the cause.
- Intermediary: If he carries the offer and the acceptance in written form, the rule applicable to acceptance by letter will apply (see illustration below). If carries the offer verbally, and the acceptance is also verbal, the perfection of the contract will be at the moment he makes the acceptance known to the offeror.
- By correspondence: When the offer to buy was written or prepared in Tokyo, and the acceptance thereof in Manila was sent by the offeree by airmail to and received by the offeror in Tokyo, the contract is presumed to have been entered into in Tokyo.
- Effect of silence: Modern jurists require the following in order that silence may produce the effect of tacit acceptance—1) that there is a duty or the possibility to express oneself; 2) that the manifestation of the will cannot be interpreted in any other way; 3) that there is a clear identity in the effect of the silence and the undisclosed will.
- The general rule, however, is that silence is ambiguous and does not authorize any definite conclusion. Circumstances will have to be taken into consideration.
- Withdrawal of offer: Both the offer and the acceptance can be revoked before the contract is perfected.

Art. 1320. An acceptance may be express or implied. (n)

- Implied acceptance may arise from acts or facts which reveal the intent to accept, such as the consumption of the things sent to the offeree, or the fact of immediately carrying out of the contract offered.

Art. 1321. The person making the offer may fix the time, place, and manner of acceptance, all of which must be complied with. (n)

3. The offer with a period lapses upon the termination of the period. Thus the acceptance, to become effective, must be known to the offeror before the period lapses.

Art. 1322. An offer made through an agent is accepted from the time acceptance is communicated to him. (n)

- An intermediary who has no power to bind either the offeror or the offeree is not an agent; his situation is similar to that of a letter carrier.

Art. 1323. An offer becomes ineffective upon the death, civil interdiction, insanity, or insolvency of either party before acceptance is conveyed. (n)

- The disappearance of either party or his loss of capacity before perfection prevents the contractual tie from being formed.

Art. 1324. When the offerer has allowed the offeree a certain period to accept, the offer may be withdrawn at any time before acceptance by communicating such withdrawal, except when the option is founded upon a consideration, as something paid or promised. (n)

c) It is not the moment of sending but the time of receipt of the revocation or acceptance which is controlling.
d) The delay in transmission is at the risk of the sender, because he is the one who selects the time and the manner of making the transmission.
e) Contract of Option: This is a preparatory contract in which one party grants to the other, for a fixed period and under specified conditions, the power to decide whether or not to enter into a principal contract. It must be supported by an independent consideration, and the grant must be exclusive.

Art. 1325. Unless it appears otherwise, business advertisements of things for sale are not definite offers, but mere invitations to make an offer. (n)

- Sales advertisements: A business advertisement of things for sale may or may not constitute a definite offer. It is not a definite offer when the object is not determinate.
- When the advertisement does not have the necessary specification of essential elements of the future contract, it cannot constitute of an offer. The advertiser is free to reject any offer that may be made.

Art. 1326. Advertisements for bidders are simply invitations to make proposals, and the advertiser is not bound to accept the highest or lowest bidder, unless the contrary appears. (n)

d) In judicial sales, however, the highest bid must necessarily be accepted.

Art. 1327. The following cannot give consent to a contract:
(1) Unemancipated minors;
(2) Insane or demented persons, and deaf-mutes who do not know how to write. (1263a)

- Unemancipated minors cannot enter into valid contracts, and contracts entered into by them are not binding upon them, unless upon reaching majority they ratify the same.
- Insane persons: It is not necessary that there be a previous of declaration of mental incapacity in order that a contract entered into by a mentally defective person may be annulled; it is enough that the insanity existed at the time the contract was made.
- Being deaf-mute is not by itself alone a disqualification for giving consent. The law refers to the deaf-mute who does not know how to write.

Art. 1328. Contracts entered into during a lucid interval are valid. Contracts agreed to in a state of drunkenness or during a hypnotic spell are voidable. (n)

- The use of intoxicants does not necessarily mean a complete loss of understanding. The same may be said of drugs. But a person, under the influence of superabundance of alcoholic drinks or excessive use of drugs, may have no capacity to contract.
- In hypnotism and somnambulism, the utter want of understanding is a common element.

f) **Art. 1329. The incapacity declared in Article 1327 is subject to the modifications determined by law, and is understood to be without prejudice to special**

disqualifications established in the laws. (1264)

- The Rules of Court provide a list of incompetents who need guardianship: persons suffering from the penalty of civil interdiction, hospitalized lepers, prodigals, deaf and dumb who are unable to write and read, those of unsound mind (even though they have lucid intervals), and persons not being of unsound mind but by reason of age, disease, weak mind, and other similar causes cannot, without outside aid, take care of themselves and manage their property—becoming an easy prey for deceit and exploitation.
- Special disqualification: Persons declared insolvent or bankrupt, husband and wife (incapacity to sell property to each other).
- The incapacity to give consent to contracts renders the contract merely voidable, while special disqualification makes it void.

Art. 1330. A contract where consent is given through mistake, violence, intimidation, undue influence, or fraud is voidable. (1265a)

6. Requisites of consent: 1) It should be intelligent or with an exact notion of the matter to which it refers; 2) It should be free; and 3) It should be spontaneous.
7. Defects of the will: intelligence is vitiated by error; freedom by violence, intimidation, or undue influence; and spontaneity by fraud.

Art. 1331. In order that mistake may invalidate consent, it should refer to the substance of the thing which is the object of the contract, or to those conditions which have principally moved one or both parties to enter into the contract.
Mistake as to the identity or qualifications of one of the parties will vitiate consent only when such identity or qualifications have been the principal cause of the contract.
A simple mistake of account shall give rise to its correction. (1266a)

- Ignorance and error are 2 different states of mind. Ignorance means the complete absence of any notion about a particular matter, while error or mistake means a wrong or false notion about such matter.
- Annulment of contract on the ground of error is limited to cases in which it may reasonably be said that without such error the consent would not have been given.
- An error as to the person will invalidate consent when the consideration of the person has been the principal cause of the same.
- Mistake as to qualifications, even when there is no error as to person, is a cause vitiating consent, if such qualifications have been the principal cause of the contract.
- A mistake as to the motive of a party does not affect the contract; to give it such effect would destroy the stability of contractual relations. When the motive has, however, been expressed and was a condition of the consent given, annulment is proper—because an accidental element is, by the will of the parties, converted into a substantial element.

Art. 1332. When one of the parties is unable to read, or if the contract is in a language not understood by him, and mistake or fraud is alleged, the person enforcing the contract must show that the terms thereof have been fully explained to the former. (n)

Art. 1333. There is no mistake if the party alleging it knew the doubt, contingency or risk affecting the object of the contract. (n)

- To invalidate consent, the error must be excusable. It must be a real error and not one that could have been avoided by the party alleging it. The error must arise from facts unknown to him.
- A mistake that is caused by manifest negligence cannot invalidate a juridical act.

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

- Three requisites under this article: 1) the error must be as to the legal effect of an agreement; 2) it must be mutual; and 3) the real purpose of the parties is frustrated.
- The legal effects include the rights and obligations of the parties, not as stipulated in the contract, but as provided by the law. The mistake as to these effects, therefore, means an error as to what the law provides should spring as consequences from the contract in question.
- An error as to the nature or character is always essential, and makes the act juridically inexistent.

Art. 1335. There is violence when in order to wrest consent, serious or irresistible force is employed.
There is intimidation when one of the contracting parties is compelled by a reasonable and well-grounded fear of an imminent and grave evil upon his person or property, or upon the person or property of his spouse, descendants or ascendants, to give his consent.
To determine the degree of intimidation, the age, sex and condition of the person shall be borne in mind.
A threat to enforce one's claim through competent authority, if the claim is just or legal, does not vitiate consent. (1267a)

g. Duress is that degree of constraint or danger either actually inflicted (violent) or threatened and impending (intimidation), sufficient to overcome the mind and will of a person of ordinary firmness.
h. Violence refers to physical force or compulsion, while intimidation refers to moral force or compulsion.
i. Requisites of violence: 1) That the physical force employed must be irresistible or of such degree that the victim has no other course, under the circumstances, but to submit; and 2) that such force is the determining cause in giving the consent to the contract.
j. Requisites of intimidation: 1) that the intimidation must be the determining cause of the contract, or must have caused the consent to be given; 2) that the threatened act be unjust or unlawful; 3) that the threat be real and serious, there being an evident disproportion between the evil and the resistance which all men can offer; and 4) that it produces a reasonable and well-grounded fear from the fact that the person from whom it comes has the necessary means or

ability to inflict the threatened injury.

Art. 1336. Violence or intimidation shall annul the obligation, although it may have been employed by a third person who did not take part in the contract. (1268)

Art. 1337. There is undue influence when a person takes improper advantage of his power over the will of another, depriving the latter of a reasonable freedom of choice. The following circumstances shall be considered: the confidential, family, spiritual and other relations between the parties, or the fact that the person alleged to have been unduly influenced was suffering from mental weakness, or was ignorant or in financial distress. (n)

- In intimidation, there must be an unlawful or unjust act which is threatened and which causes consent to be given, while in undue influence there need not be an unjust or unlawful act. In both cases, there is moral coercion.
- Moral coercion may be effected through threats, expressed or implied, or through harassing tactics.
- Undue influence is any means employed upon a party which, under the circumstances, he could not well resist, and which controlled his volition and induced him to give his consent to the contract—which otherwise he would not have entered into.
- A contract of adhesion is one in which one of the parties imposes a ready-made form of contract, which the other party may accept or reject, but which the latter cannot modify. These are contracts where all the terms are fixed by one party and the other has merely "to take it or leave it."
- A contract of adhesion is construed strictly against the one who drew it. Public policy protects the other party against oppressive and onerous conditions.

Art. 1338. There is fraud when, through insidious words or machinations of one of the contracting parties, the other is induced to enter into a contract which, without them, he would not have agreed to. (1269)

- Fraud is every kind of deception, whether in the form of insidious machinations, manipulations, concealments, or misrepresentations, for the purpose of leading another party into error and thus executing a particular act.
- Fraud produces qualified error; it induces in the other party an inexact notion of facts. The will of another is maliciously misled by means of false appearance of reality.
- "Insidious words or machinations" include false promises; exaggeration of hopes or benefits; abuse of confidence; and fictitious names, qualifications, or authority.
- Kinds of fraud: 1) dolo causante—which determines or is the essential cause of the consent; 2) dolo incidente—which does not have such a decisive influence and by itself cannot cause the giving of consent, but refers only to some particular or accident of the obligation.
- Dolo causante can be a ground for annulment; dolo incident cannot be a ground for annulment.
- The result of fraud is error on the part of the victim.
- Requisites of fraud: 1) it must have been employed by one contracting party upon the other; 2) it must have induced the other party to enter into the contract; 3) it must have been serious; 4) and it must have resulted in damage or injury to the party seeking annulment.

Art. 1339. Failure to disclose facts, when there is a duty to reveal them, as when the parties are bound by confidential relations, constitutes fraud. (n)

- Silence or concealment, by itself, does not constitute fraud, unless there is a special duty to disclose certain facts, or unless according to good faith and the usages of commerce, the communication should be made.
- Thus, the innocent non-disclosure of a fact does not affect the formation of the contract or operate to discharge the parties from their agreement.

Art. 1340. The usual exaggerations in trade, when the other party had an opportunity to know the facts, are not in themselves fraudulent. (n)

c) Tolerated fraud includes minimizing the defects of the thing, exaggeration of its good qualities, and giving it qualities that it does not have. This is lawful misrepresentation known as dolus bonus. This is also called lawful astuteness.

d) These misrepresentations are usually encountered in fairs, markets, and almost all commercial transactions. They do not give rise to an action for damages, either because of their insignificance or because the stupidity of the victim is the real cause of his loss.

e) The thinking is that where the means of knowledge are at hand and equally available to both parties, one will not be heard to say that he has been deceived.

Art. 1341. A mere expression of an opinion does not signify fraud, unless made by an expert and the other party has relied on the former's special knowledge. (n)

c. An opinion of an expert is like a statement of fact, and if false, may be considered a fraud giving rise to annulment.

Art. 1342. Misrepresentation by a third person does not vitiate consent, unless such misrepresentation has created substantial mistake and the same is mutual. (n)

- The general rule is that the fraud employed by a third person upon one of the parties does not vitiate consent and cause the nullity of a contract.
- Exception: If one of the parties is in collusion with the third person, or knows of the fraud by the third person, and he is benefited thereby, he may be considered as an accomplice to the fraud, and the contract becomes voidable.

Art. 1343. Misrepresentation made in good faith is not fraudulent but may constitute error. (n)

Art. 1344. In order that fraud may make a contract voidable, it should be serious and should not have been employed by both contracting parties.
Incidental fraud only obliges the person employing it to pay damages. (1270)

- Fraud is serious when it is sufficient to impress, or to lead an ordinarily prudent person into error; that which cannot

deceive a prudent person cannot be a ground for nullity.

- Besides being serious, the fraud must be the determining cause of the contract. It must be dolo causante.
- When both parties use fraud reciprocally, neither one has an action against the other; the fraud of one compensates that of the other. Neither party can ask for the annulment of the contract.

Art. 1345. Simulation of a contract may be absolute or relative. The former takes place when the parties do not intend to be bound at all; the latter, when the parties conceal their true agreement. (n)

- Simulation is the declaration of a fictitious will, deliberately made by agreement of the parties, in order to produce, for the purposes of deception, the appearance of a juridical act which does not exist or is different from that which was really executed.

Art. 1346. An absolutely simulated or fictitious contract is void. A relative simulation, when it does not prejudice a third person and is not intended for any purpose contrary to law, morals, good customs, public order or public policy binds the parties to their real agreement. (n)

c. In absolute simulation, there is color of a contract, without any substance thereof, the parties not having any intention to be bound.
d. In relative simulation, the parties have an agreement which they conceal under the guise of another contract. Example: a deed of sale executed to conceal donation.
e. 2 juridical acts under relative simulation: ostensible act, that which the parties pretend to have executed; hidden act, that which consists the true agreement between the parties.

SECTION 2. - Object of Contracts

- The object of a contract is its subject matter. It is the thing, right, or service which is the subject-matter of the obligation arising from the contract.
- Requisites: 1) It must be within the commerce of man; 2) it must be licit, or not contrary to law, morals, good customs, public policy, or public order; 3) it must be possible ; and 4) it must be determinate as to its kind.

Art. 1347. All things which are not outside the commerce of men, including future things, may be the object of a contract. All rights which are not intransmissible may also be the object of contracts.
No contract may be entered into upon future inheritance except in cases expressly authorized by law.

3. **All services which are not contrary to law, morals, good customs, public order or public policy may likewise be the object of a contract. (1271a)**

- Things which are outside the commerce of man:

1. Services which imply an absolute submission by those who render them, sacrificing their liberty, their independence or beliefs, or disregarding in any manner the equality and dignity of persons, such as perpetual servitude or slavery;
1. Personal rights, such as marital authority, the status and capacity of a person, and honorary titles and distinctions;
2. Public offices, inherent attributes of the public authority, and political rights of individuals, such as the right of suffrage;
3. Property, while they pertain to the public dominion, such as the roads, plazas, squares, and rivers;
4. Sacred things, common things, like the air and the sea, and res nullius, as long as they have not been appropriated.

- Even future things can be the object of contracts, as long as they have the possibility or potentiality of coming into existence.
- The law, however, generally does not allow contracts on future inheritance. A contract entered into by a fideicommissary heir with respect to his eventual rights would be valid provided that the testator has already died. The right of a fideicommissary heir comes from the testator and not from the fiduciary.

Art. 1348. Impossible things or services cannot be the object of contracts. (1272)

- Things are impossible when they are not susceptible of existing, or they are outside the commerce of man. Personal acts or services impossible when they beyond the ordinary strength or power of man.
- The impossibility must be actual and contemporaneous with the making of the contract, and not subsequent thereto.
- The impossibility is absolute or objective when nobody can perform it; it is relative or subjective when due to the special conditions or qualifications of the debtor it cannot be performed.
- The absolute or objective impossibility nullifies the contract; the relative or subjective does not.

Art. 1349. The object of every contract must be determinate as to its kind. The fact that the quantity is not determinate shall not be an obstacle to the existence of the contract, provided it is possible to determine the same, without the need of a new contract between the parties. (1273)

- The thing must have definite limits, not uncertain or arbitrary.
- The quantity of the of the object may be indeterminate, so long as the right of the creditor is not rendered illusory.

SECTION 3. - Cause of Contracts

- The cause of the contract is the "why of the contract," the immediate and most proximate purpose of the contract, the essential reason which impels the contracting parties to enter into it and which explains and justifies the creation of the obligation through such contract.
- The cause as to each party is the undertaking or prestation to be performed by the other. The object of the contract is the subject matter thereof (e.g., the land which is sold in a sales contract). Consideration, meanwhile, is the reason, motive, or inducement by which a man is moved to bind himself by an agreement.
- Requisites: 1) it must exist; 2) it must be true; and 3) it must be licit.

Art. 1350. In onerous contracts the cause is understood to be, for each contracting party, the prestation or promise of a thing or service by the other; in remuneratory ones, the service or benefit which is remunerated; and in contracts of pure beneficence, the mere liberality of the benefactor. (1274)

6. In onerous contracts, the cause need not be adequate or an exact equivalent in point of actual value, especially in dealing with objects which have a rapidly fluctuating price. There are equal considerations.
7. A remuneratory contract is one where a party gives something to another because of some service or benefit given or rendered by the latter to the former, where such service or benefit was not due as a legal obligation. The consideration of one is greater than the other's.
8. A gratuitous contract is essentially an agreement to give donations. The generosity or liberality of the benefactor is the cause of the contract. There is nothing to equate.

Art. 1351. The particular motives of the parties in entering into a contract are different from the cause thereof. (n)

- Cause is the objective, intrinsic, and juridical reason for the existence of the contract itself, while motive is the psychological, individual, or personal purpose of a party to the contract.
- As a general principle, the motives of a party do not affect the validity or existence of a contract. Exceptions: When motive predetermines the purpose of the contract, such as
- When the motive of a debtor in alienating property is to defraud his creditors, the alienation is rescissible;

1. When the motive of a person in giving his consent is to avoid a threatened injury, as in the case of intimidation, the contract is voidable; and
2. When the motive of a person induced him to act on the basis of fraud or misrepresentation by the other party, the contract is voidable.

Art. 1352. Contracts without cause, or with unlawful cause, produce no effect whatever. The cause is

unlawful if it is contrary to law, morals, good customs, public order or public policy. (1275a)
Art. 1353. The statement of a false cause in contracts shall render them void, if it should not be proved that they were founded upon another cause which is true and lawful. (1276)

- Where the cause stated in the contract is false, the latter may nevertheless be sustained by proof of another licit cause.
Art. 1354. Although the cause is not stated in the contract, it is presumed that it exists and is lawful, unless the debtor proves the contrary. (1277)
- Unless the contrary is proved, a contract is presumed to have a good and sufficient consideration. This presumption applies when no cause is stated in the contract.
Art. 1355. Except in cases specified by law, lesion or inadequacy of cause shall not invalidate a contract, unless there has been fraud, mistake or undue influence. (n)
- In case of lesion or inadequacy of cause, the general rule is that the contract is not subject to annulment.
- In cases provided by law, however, such as those mentioned in Art 1381, the lesion is a ground for rescission of the contract.
- Gross inadequacy naturally suggests fraud and is evidence thereof, so that it may be sufficient to show it when taken in connection with other circumstances.

CASES

SANCHEZ VS RIGOS

June 14, 1972

Nicolas Sanchez and Severina Rigos executed an "Option to Purchase" whereby Rigos "agreed, promised, and committed' to sell to Sanchez a parcel of land for P1,510. The understanding was that the Option will be deemed "terminated and elapsed" if Sanchez fails to exercise his right to buy said property within 2 years from the execution of the agreement. Sanchez did tender several payments within the specified period but Rigos rejected said payments, arguing that the Option was a unilateral promise to sell and was unsupported by any valuable consideration and by force of the Civil Code. And therefore, pointed out Rigos, the Option was null and void.

HELD: The Option was not a contract to buy and sell. It did not impose upon Sanchez the obligation to purchase Rigos' property. It merely granted Sanchez an option to buy. There is nothing in the contract to indicate that Rigos' agreement or promise was supported by a consideration "distinct from the price" stipulated for the sale of land.

Under Arts 1324 and 1479 of the Civil Code, however, a unilateral promise to sell—although not binding as a contract in itself for lack of a separate consideration—nevertheless generates a bilateral contract of purchase and sale upon acceptance.

In other words, since there may be no valid contract without a cause or consideration, the promisor is not bound by his promise and may, accordingly, withdraw it. Pending notice of his withdrawal, his accepted promise partakes of the nature of an offer to sell which, if accepted as in the case at bar, results in a perfected contract of sale. Decision: for Sanchez.

"An option implies the legal obligation to keep the offer to sell open for the time specified. It could be withdrawn before acceptance, if there was no consideration for the option. But once the offer to sell is accepted, a bilateral promise to sell and to buy ensues, and the offeree ipso facto assumes the obligations of a purchaser." – J. Antonio, concurring opinion.

HILL VS VELOSO

July 24, 1915

Maximina Veloso claimed that she was tricked by her son-in-law Domingo Franco into signing a blank document, unknowingly binding her to a debt of P6,319 to Michael & Co. She thought, according to her, she was made to sign to acknowledge an obligation to pay for the guardianship of the minor children of Potenciano Veloso (her brother?). And that she learned of the true nature of the document (a promissory note to Michael & Co.) only after Franco's death. But, clearly, her signatures on the promissory note were obtained by means of fraud.

HELD: Granted there was deceit in executing the Promissory Note to Michael & Co., still the deceit and error alleged could not annul the consent of Veloso nor exempt her from the obligation incurred. The deceit, in order that it may annul the consent, must be that which the law defines as a cause. "There is deceit when by words or insidious machinations on the part of one of the contracting parties, the other is induced to execute a contract which without them he would not have made." (Art 1269, Civil Code)

Franco was not one of the contracting parties who may have deceitfully induced the other contracting party, Michael & Co., to execute the contract. The one and the other of the contracting parties, to whom the law refers, are the active and passive subjects of the obligation, the party of the first part and the party of the second part who execute the contract. The active subject and the party of the first part of the Promissory Note in question was Michael & Co., and the passive subject and party of the second part were Veloso and Franco. Veloso and Franco, therefore, composed a single contracting party in contractual relation with or against Michael & Co.

Franco, like any other person who might have induced Veloso into signing the Promissory Note under the influence of deceit, would be but a third person. Under the Civil Code, deceit by a third person does not in general annul consent. This deceit may give rise to more or less extensive and serious responsibility on the part of the third person (Franco) and a corresponding right of action for the contracting party prejudiced (Veloso). [Veloso will probably just have to file an action against the estate of Franco.]

Veloso ordered to pay Michael & Co.

MAPALO VS MAPALO

May 19, 1966

Spouses Miguel and Candida Mapalo—simple and illiterate farmers—donated the eastern half of their property to Maximo Mapalo, Miguel's brother, who was about to get married. Maximo, however, deceived Miguel and Maxima into signing a deed of absolute sale over the entire property in his favor. Maximo and his notary public led the spouse to believe that the deed of sale covered only the eastern half of the property. The deed even stated an alleged consideration of P500, which the spouses never received. Thirteen years later, Maximo sold

the entire property to Evaristo, Petronila, Pacifico, and Miguel Narciso—who first took possession of the eastern half and later demanded Miguel and Candida to vacate the western half. The spouses moved to declare the deeds of sale over the western half of the property null and void.
HELD: Consent in the case at bar was admittedly given, albeit under the influence of fraud. Accordingly, said consent, although defective, did exist. In such case, the defect in the consent would provide a ground for annulment of a voidable contract, not a reason for nullity ab initio.
As for the cause or consideration, liberality did not exist as regards the western portion of the Mapalo property. There was no donation with regard to the same. Under the Civil Code, contracts without a cause or consideration produce no effect whatsoever. The alleged consideration of P500 in the deed of sale was totally absent as it was not received by the spouses. Decision: for Miguel and Candida.

SANTOS VS COURT OF APPEALS
August 1, 2000
Rosalinda Santos sold her property in Parañaque to Carmen Caseda. Caseda gave an initial payment and took possession of the property, which she then leased out. Caseda, however, suffered from bankruptcy and failed to pay the remaining balance. Santos re-possessed the property and collected the rentals from the tenants thereof. Caseda sold her fishpond in Batangas and raised money enough to pay the balance. Santos, however, wanted a higher price now taking into consideration the real estate boom in Metro Manila. Caseda filed a petition either to have Santos execute the final deed of conveyance over the property or, in default thereof, to reimburse the amount she had already paid.
HELD: Taking into consideration the essential requisites of a contract, the Court concluded that there was no transfer of ownership simultaneous with the delivery of the property purportedly sold to Caseda. The records clearly showed that, notwithstanding the fact that Caseda took possession of the property, the title had remained always in the name of Santos. Thus, the contract between Santos and Caseda was a contract to sell—ownership is reserved by the vendor and is not to pass until full payment of the purchase price.
Since the case at bar involves a contract to sell, a judicial rescission of the agreement is not necessary. In a contract to sell, the payment of the purchase price is a positive suspensive condition. Failure to pay the price agreed upon is not a mere breach, casual or serious, but a situation that prevents the obligation of the vendor to convey title from acquiring an obligatory force. Thus, if the vendor should eject the vendee for failure to meet the condition precedent, he is enforcing the contract and not rescinding it.
For comparative purposes, in a contract of sale, non-payment of the price is a negative resolutory condition. The vendor has lost ownership of the thing sold and cannot recover it unless the contract is rescinded and set aside.
Decision: For Santos.

SANTOS VS HEIRS OF JOSE MARIANO AND ERLINDA MARIANO-VILLANUEVA
October 24, 2000
Spouses Macario Mariano and Irene Peña-Mariano owned 6 parcels of land. When Macario died and left no will, his share over the properties passed on to his children and Irene. Irene, who was appointed the heirs' lawful representative and agent, subsequently executed an Affidavit of Merger whereby she merged unto her name the land titles covering all the properties in question. Over the years, she remarried and disposed of all 6 parcels of land in favor of one Raul Santos. The children learned of all this only after Irene's death.
ISSUE: Whether the supposed contracts of sale of various pieces of real property entered into between Irene as vendor and the respective vendees were bona fide contracts, legal, and binding upon the children—who were registered co-owners of said real properties.
HELD: Even with a duly executed written document purporting to be a contract of sale, the Court cannot rule that the subject contracts of sale are valid, when the evidence presented in the courts below show that there had been no meeting of the minds between the supposed seller and corresponding buyers of the parcels of land in the case at bar. The case is replete with evidence tending to show that there was really no intention to sell the subject properties as far as the children were concerned.

MMDA vs JANCOM
Facts: Jancom won the bid to operate the waste disposal site in San Mateo, Rizal under the Build-Operate-Transfer (BOT) scheme.Aafter a series of meetings and consultations between the negotiating teams of EXECOM and JANCOM, the BOT Contract for the waste-to-energy project was signed between JANCOM and the Philippine Government, represented by the Presidential Task Force on Solid Waste Management through DENR Secretary Victor Ramos, CORD-NCR Chairman Dionisio dela Serna, and MMDA Chairman Prospero Oreta. The BOT contract was submitted to President Ramos for approval but this was too close to the end of his term which expired without him signing the contract. President Ramos, however, endorsed the contract to incoming President Joseph E. Estrada. However, due to the clamor of residents of Rizal province, President Estrada had, in the interim, also ordered the closure of the San Mateo landfill. Due to these circumstances, the Greater Manila Solid Waste Management Committee adopted a resolution not to pursue the BOT contract with JANCOM. MMDA decided to hold a new bidding for other waste management in other locations. Jancom won a court order compelling the MMDA to push through with their contract.
Issue: Was there a valid contract despite the lack of signature by the President and valid notice of award?
Held: Yes
Ratio:
1. Article 1315 of the Civil Code, provides that a contract is perfected by mere consent. Consent, on the other hand, is manifested by the meeting of the offer and the acceptance upon the thing and the cause which are to constitute the contract (See Article 1319, Civil Code).
2. In the case at bar, the signing and execution of the contract by the parties clearly show that, as between the parties, there was a concurrence of offer and acceptance with respect to the material details of the contract, thereby giving rise to the perfection of the contract.
3. To illustrate, when petitioners accepted private respondents' bid proposal (offer), there was, in effect, a meeting of the minds upon the object (waste management

project) and the cause (BOT scheme). Hence, the perfection of the contract.
4. Despite the lack of valid notice of award, the defect was cured by the subsequent execution of the contract entered into and signed by authorized representatives of the parties;
5. In any event, petitioners, as successors of those who previously acted for the government (Chairman Oreta, et al), are estopped from assailing the validity of the notice of award issued by the latter. As private respondents correctly observed, in negotiating on the terms and conditions of the BOT contract and eventually signing said contract, the government had led private respondents to believe that the notice of award given to them satisfied all the requirement of the law.
6. There being a perfected contract, MMDA cannot revoke or renounce the same without the consent of the other. From the moment of perfection, the parties are bound not only to the fulfillment of what has been expressly stipulated but also to all the consequences which, according to their nature, may be in keeping with good faith, usage, and law (Article 1315, Civil Code). The contract has the force of aw between the parties and they are expected to abide in good faith by their respective contractual commitments, not weasel out of them. Just as nobody can be forced to enter into a contract, in the same manner, once a contract is entered into, no party can renounce it unilaterally or without the consent of the other. It is a general principle of law that no one may be permitted to change his mind or disavow and go back upon his own acts, or to proceed contrary thereto, to the prejudice of the other party. Nonetheless, it has to be repeated that although the contract is a perfected one, it is still ineffective or unimplementable until and unless it is approved by the President.

Palma vs Canizares
Facts:
Saturnina Salazar and Juan Canizares took part in a game of chance. Canizares lost and as a result thereof, became indebted to Salazar in the amount of $5,000. This was evidenced in a promissory note signed by the brother-in-law of Canizares. Canizares paid 500, leaving a balance of 4500. Salazar meanwhile, received 4500 from Palma. She indorsed the note to Palma who demanded the sum from Canizares.
Issue: Is Canizares under obligation to pay Palma?
Held: No
Ratio:
It is indubitable that the indebtedness of 5,000 pesos expressed in the note referred to arose in a monte game, a game of chance, and therefore expressly prohibited by law. As the law does not allow an action for the recovery of money won in such games (art. 1798 of the Civil Code), it follows that the action brought by Palma can not be maintained, nor can any judgment be rendered by the courts directing the payment of the sum claimed in the complaint.
The undertaking expressed in the note executed by a third person in favor of the woman, Salazar, by order of Cañizares does not constitute a ratification or confirmation of the obligation contracted to pay the sum lost in a monte game.
Furthermore, it has not been proven that Canizares gave his consent to the subrogation
Thus, the obligation of the supposed debtor, because of its vicious origin, is not enforceable in court, it follows that no recovery can be had in this suit.

Dumez vs. NLRC
Facts:
Petitioner is a French company which hires Filipino workers through a ECCOI, a company existing in the Philippines. Dumez needed 4 Senior Draftsmen who were willing to work for $600/month at Saudi Arabia. Private respondent Jose was among the draftsmen that were hired by ECCOI in behalf of Dumez. The employment agreement of Jose showed that his monthly base salary would be $680. This discrepancy was discovered when Dumez began preparing the papers related to respondent's first month salary. The discrepancy was reported to ECCOI who in turn claimed that it was a mere typographical error. Meanwhile, Jose insisted on being paid $680 per month as stated in his employment agreement. Dumez eventually dismissed Jose on the grounds of "surplus employee, excess of manpower and retrenchment." A case was filed by Jose before the POEA and then before the NLRC who ordered Dumez to pay the respondent's salary for the unexpired portion of 1 year.
Issue: WON there existed a valid contract between Dumez and Jose?
Held: NO
Ratio:
The amount of monthly salary base was a prime consideration of the parties in signing the employment contract. Mutual mistake, however, prevented the proposed contract from arising.
The mutual mistake here should be distinguished from a mistake which vitiates consent in a voidable contract.
The element of consent was not present at all in this case. There was no concurrence of the offer and acceptance upon the subject matter and the cause which are to constitute the contract.
In a situation wherein one or both parties consider that certain matters or specifics, in addition to the subject matter and the causa should be stipulated and agreed upon, the area of agreement must extend to all points that the parties deem material or there is no contract.

Somoso vs. CA
Facts:
The spouses Somosa purchased from Conpinco one unit VHS (23k) with accessories and one unit Cinema Vision (124.5k) with complete accessories. They made partial payments which were evidenced by provisional receipts. However, by Aurgust 27, 1979, no further payments were made. On November of the same year, petitioner demanded that Conpinco pull out the VHS unit because "it was not the unit requested for demonstration." Petitioner also requested the return of the 15k deposit. In response, conpinco sent petitioners a collection letter for the Cinema Vision and for the National VHS. Petitioners are claiming that there was no perfected contract of sale between them and respondent Conpinco as there was no meeting of the minds of the parties upon the thing which is the object of the contract and upon the price of the said thing. Petitioners claim they only requested a demonstration.
Issue: WON there was a contract?
Held: YES

Ratio:
The claims of petitioners are belied by the two documents of sale signed by the spouses as buyers which documents were notarized.
The acts of petitioners before and after the delivery of the National VHS negates any claim that the set was delivered for demonstration purposes only and that there was no meeting of the minds between the parties as to the subject of the sale and its price. (delivery of checks as partial downpayment etc.)

Yuvienco vs. Dacuycuy
Facts:
Petitioners were selling a parcel of land located in Tacloban. They expressed willingness to sell the property at 6.5M to private respondents as long as the latter would make known its decision to buy not later than July 31, 1978. The private respondents reply, thru a letter stated "we agree to buy property proceed to Tacloban to negotiate details." The respondents are now filing a complaint for specific performance which the petitioners want dismissed on the ground of lack of cause of action. The judge ruled negatively on the motion to dismiss.
Issue: WON the facts show the existence of a perfected contract of sale?
Held: NO
Ratio:
Art. 1319 CC: Consent is manifested by the meeting of the offer and the acceptance upon the thing and the cause which are to constitute the contract. The offer must be certain and the acceptance absolute. A qualified acceptance constitutes a counter-offer. Acceptance made by letter or telegram does not bind the offerer except from the time it came to his knowledge. The contract, in such a case, is presumed to have been entered into in the place where the offer was made.
The telegram instructing Atty Gamboa to "proceed to Tacloban to negotiate details" is the key that negates and makes it legally impossible for the court to hold that respondents' acceptance of petitioners offer, was the "absolute" one that Art. 1319 requires.
"to negotiate" is practically the opposite of the idea that an agreement has been reached.
There was a failure of any meeting of the minds of the parties. It was because of their past failure to arrive at an agreement that petitioners had to put an end to the uncertainty by writing the letter dating July 12, 1978.

FORM OF CONTRACTS

Dauden-Hernaez vs. De los Angeles (1969)
This is a petition for a writ of certiorari to set aside certain orders of the CFI of Quezon City dismissing a complaint for breach of contract and damage, etc.
Facts:

- Marlene Dauden-Hernaez is a motion picture actress who has filed a complaint against private resp Hollywood Far East Productions Inc and its President Ramon Valuenzela to recover P14, 700 representing a balance due to said actress for her services as leading actress in two motion pictures produced by the company and to recover damages.
- Her petition was dismissed by the lower court because "it was defective because not evidenced by any written document, either public or private considering that the claim is more than P500 " thereby violating Article 1356 and 1358 of the Civil Code.

Issue:
WON the court below abused its discretion in ruling that a contract for personal services involving more than P500 was either invalid or unenforceable under the last par of 1358 of the CC.
Held:

- Yes. The court below abused its discretion. There was a misunderstanding of the role of the written form in contracts, as ordained in the present CC.
- The contractual system of our CC still follows that of the Spanish Code of 1889 and of the "Ordenamiento de Alcala" (ah so Leghis) of upholding the spirit and intent of the parties over formalities, hence, in general, contracts are valid and binding from their perfection regardless of the form, whether they be oral of written as provided by Art 1315 (Contracts are perfected by mere consent xxx) and by 1356 (Contracts shall be obligatory in whatever form they may have been entered into xxx).
  - The essential requisites are present in the contract- C-O-C.
  - However 1356 also provides two exceptions:

a. Contracts for which the law itself requires that they be in some particular form (writing) in order to make them valid and enforceable (the so-called solemn contracts).
Ex.
1. donation of immovable property (in public ins) (Art. 749)
2. donation of movables worth more than P5,000 (Art. 748)
3. contracts to pay interest in loans (mutuum) (Art. 1956).
4. agreements contemplated in:
4.1. Art 1744: Stipulation bet the common carrier and the shipper or the owner limiting the liability of the former for the loss destruction or deterioration of the goods to a degree less than extraordinary diligence xxx
4.2. Art 1773: A contract of partnership is void, whenever immovable property is contributed thereto, if an inventory of said property is not made, signed by the parties, and attached to the public instrument.
4.3. Art. 1874: When a sale of a piece of land or any interest therein is through an agent, the authority of the latter shall be in writing; otherwise, the sale shall be void.
4.4. Art. 2134: The amount of the principal and of the interest shall be specified in writing; otherwise the contract of antichresis shall be void.
Note: Antichresis: a contract whereby the creditor acquires the right to receive the fruits of an immovable of his debtor, with the obligation to apply them to the payment of the interest, if owing and thereafter to the principal of his credit (Art. 2132).

a. Contracts that the law requires to be proved by some writing (memorandum) of its terms as in those covered by the old Statute of Frauds, now Art. 1403(2) of the CC. (This is needed for enforceability of the contract by an action in court).

- The basis error in the court's decision lies in overlooking that in our contractual system it is not enough that the law should require that the contract be in writing, as it does in Art. 1358.

The law MUST further PRESCRIBE that without the writing the contract is not valid or enforceable by action.

5. Order set aside and case remanded to court of origin for further proceedings.

Alano et al vs. Babasa (1908)

Facts:

(e) Juana Cantos assisted by her husband Jose Alano filed a complaint against the defendant Jose Babasa alleging that the complainant Cantos has the right to repurchase the land which her father pledged to guarantee a debt of P1300 in favor of Fulgencio Babasa and Maria Cantos, the parents of the defendant (relative siguro ng complainant yung defendant, pinsan siguro).

(f) The contract entered into on July 18, 1883 stipulated a condition that the creditors should enjoy the usufruct of said land from the date of contract and that for seven years to take possession of the land as if their own and that after 7 years, the debtor is entitled to redeem the land by paying the debt.

(g) Petitioner claims that they talked to defendant and that in the beginning engaged to permit its redemption later on offered to definitely purchase said land at an increase price but plaintiff did not agree.

(h) Defendant made a general denial and alleged that the land described had been sold with right of repurchase and that the parents of the plaintiff had lived years after the expiration of the 7-year period provided and that they never exercised the right to repurchase.

Issue:

WON the plaintiff can repurchase the said land taking into consideration that the Civil Code was enacted in Dec. 1889 which provides a different prescriptive period.

Held:

No. Her action has already prescribed.

- The contract was entered into on July 18, 1883 and the 7 year expiration has commenced on June 19, 1890 and at that time the CC became effective already thus the provisions of the Code can be applied on the case.
- Art. 1939 shall be the applicable to the case which states that: Prescription, which began to run before the publication of this code, shall be governed by the prior laws; but if, after this code became operative, all the time required in the same for prescription has elapsed, it shall be effectual, even if according to said prior laws a longer period of time may be required.
- Excerpt from the contract: "it has been agreed to between us that we shall convey to him the said land from this day, and that he will cause the same to be worked from this date as if it were his own property for a period of seven years; that we shall have the right to redeem it for the said sum of P1,000 at the expiration of seven years in such a manner that said land shall be under his care as long as we do not pay the redemption money".
- In the absence of an express agreement, the right to redeem the thing sold shall only last and may only be exercised within 4 years counted from the date of the contract (in this case, it shall be counted from 1889 when the said code went into effect). It has already expired when the action was brought in 1907.
- Relevance of case under the title: It is a contract of sale with right to repurchase and it is valid, perfect and efficient because the three requisites are present and is also binding notwithstanding the fact that it has been drawn up as a private document, and the legalization of a contract by means of a public writing and its entry in the register are not essential solemnities or requisites for its validity and efficacy as between the contracting parties, but just conditions of form which the law imposes in order that it may be effective and recorded agreement may be respected by the latter.
- Judgment affirmed.

REFORMATION OF INSTRUMENTS

Atilano vs. Atilano (1969)

Facts:

- In 1916, Eulogio Atilano I acquired by purchase from Villanueva lot no. 535 in Zamboanga, obtained the transfer certificate of title in his name and in 1920 divided the said lot into 5 parts identified as lots Nos. 535-A, 535-B, 535-C, 535-D, 535-D, 535-E.
- On May 18, after the subdivision of the said lot, he executed a deed of sale cover lot E in favor of his brother Eulogio Atiliano II, who obtained lot E, and the three other lots were sold to other persons. Atilano I retained for himself only the remaining portion of the land presumably Lot A.
- In 1952, Atilano II died, thus his widow and children obtained the transfer certificate over E in their names as co-owners but in 1959 they decided to subdivide the lot and they then discovered upon the results of the survey that the land they were actually occupying was lot A and not E.
- Because of this, they demanded that Lot E be surrendered to them and offered to surrender Lot A to the descendants of Atilano I but they refused. It is understandable that they wanted Lot E because it has an area of 2612 sqm as compared to 1808 sqm of lot A.
- Defendants (Atilano II descendants) answered that it was just an involuntary error and that the intention of the parties was to convey the lot correctly identified as A. Atilano I had been possessing and had his house on the portion designated as E and in fact increased the area by purchasing the adjacent lot from its owner Carpio.
- RTC rendered judgment for the plaintiff on the sole ground that since the property was registered under the Land Registration Act, the defendants could not acquire it through prescription.

Issue:

WON the lower court was correct in rendering the judgment for the plaintiff.

Held:

No. One sells or buys the property as he sees it, in its actual setting and by its physical metes and bounds, and not by the mere lot number assigned to it in the certificate or title.

- The portion correctly referred to as lot A was already in the possession of Atilano II who had constructed his residence therein even before the sale in his favor.
- The sale was a simple mistake in the drafting of the document. The mistake did not vitiate the consent of the

parties or affect the validity and binding effect of the contract between them.

- The new CC provides a remedy for such a situation by means of reformation of the instrument. This remedy is available when, there having been a meeting of the minds of the parties to a contract, their true intention is not expressed in the instrument purporting to embody the agreement by reason of mistake, fraud, inequitable conduct or accident (1359).
- In this case, the deed of sale executed in 1920 need no longer be reformed. The parties have retained possession of their respective properties conformably to the real intention of the parties to that sale, and all they should do is to execute mutual deeds of conveyance.

Investors Finance Corporation vs. CA (1991)

Facts:

- Before April 30, 1974 resp Richmann Tractors Inc, with Pajarillaga as president were the owners of certain construction equipment and being in need of financing (for operation of their construction and logging business) went to Investor's Finance Corporation (or FNCB Finance) with their equipment as collateral. In the documents which were executed, it was made to appear that FNCB was the owner of the equipments and that private resp were merely leasing them. As a consideration for the lease, private resp were to pay monthly amortizations over a period of 36 mos).
- On April 30, 1974, petitioner FNCB Finance and respondent Richmann Tractors executed a Lease Agreement covering various properties described in the Lease Schedules attached to the Lease Agreement. As security for the payment of resp Richmann's obligations under the Lease Agreement, resp Pajarillaga's executed a Continuing Guaranty dated April 30, 1974.
- Richmann also applied for and was granted credit financing facilities by petitioner in the amount of almost 1M payable in installments.
- Private respondents defaulted in their respective obligations. FNCB demanded for the obligations to be fulfilled and thereafter filed a complaint for seizure.
- A writ of replevin was issued for the seizure of the heavy equipment and machineries subject of the lease agreement and when served upon the Pajarillaga's, they panicked and proceeded to the office of the FNCB and its counself and thereafter signed a Compromise agreement which states among others that the Pajarillaga's acknowledge that plaintiff is the owner of all the properties and that they have been allowed to temporarily operated the properties under the direct control and supervision of plaintiff and/or its representatives with the express understanding that defendants acknowledge and recognize plaintiff's ownership and right to repossess and take custody of said properties.
- This agreement was approved by Branch XXI of this Court and a decision was rendered enjoining the parties thereto to faithfully comply with the terms and conditions. But the Pajarillaga's still did not comply with the compromise agreement thus the sheriff levied on 27 pieces of heavy equipment.
- The Pajarillaga's claim that there was fraud because they signed the Compromise agreement without the help of their counsel and that it was just one-sided in favor of FNCB, thus, filed for an annulment of the compromise agreement and the simulated lease agreement. (RTC and CA ruled in favor of the Pajarilla's)

Issue:

WON annulment should be the proper remedy for the Pajarillaga spouses.

Held:

f. No. According to the Court, their action for annulment of the simulated lease agreement was seasonably filed in 1979, within 10 years from the date of its execution in 1974 (1144 CC). However the trial court and the CA should have treated it as an action for reformation of contract.

g. For when the true intention of the parties to a contract is not expressed in the instrument purporting to embody their agreement by reason of mistake, fraud, inequitable conduct or accident, the remedy of the aggrieved party is to ask for the reformation, not annulment, of the instrument to the end that their true agreement may be expressed therein.

h. If the true transaction between FNCB and Pajarillaga or Richman Tractors—an loan with chattel mortgage—had been reflected in the documents, instead of a simulated financial leasing, the creditor-mortgagee (FNCB), upon the mortgagor's default in paying the debt, would have been entitled to seize the mortgaged machinery and equipment from Pajarillaga for the purpose of foreclosing the chattel mortgage therein. The mortgagors would have had no cause of action for actual, moral and exemplary damages arising from the replevin of their mortgaged machinery and equipment by the creditor, FNCB.

INTERPRETATION OF CONTRACTS

Borromeo v CA 1972

Facts: Jose A. Villamor, the debtor, borrowed from Canuto O. Borromeo, the original creditor, a large sum of money for which he mortgaged his house and lot. Said mortgage, however, was not properly drawn up and registered, so that the mortgaged house and lot ended up attached to a separate civil action initiated by a certain Mr. Miller against Villamor. When Villamor was being pressed to settle his obligation with Borromeo, the former assured his creditor that he would still pay the debt and executed a written document promising to pay his debt to Borromeo even after the lapse of ten years, the legal prescriptive period for recovery of debts. The creditor never instituted any action against the debtor within the ten years following the execution of the said document Action to recover the sum from the debtor was filed only after ten years and was rejected by CA for 2 main reasons: (1)ten-year prescriptive period for recovery of debts had elapsed, (2) document promising to pay even after ten years was void because promise was illegal, it being violative of principle "that a person cannot renounce future prescription".

Issue: WON written document promising to pay after ten years is void for being illegal.

Held: No. In the interpretation of the written document or contract wherein Villamor promised to pay his debt even after ten years, CA relied too heavily on the words employed in said document without taking the intention of the parties into

consideration. Reference to the prescriptive period of ten years is susceptible to the construction that only after the lapse thereof could the demand be made for the payment of the obligation.
Prescriptive period to file action thus started to run only after ten years had lapsed. This is consistent with the actions and intent of the two parties.
In declaring the said contract to be void, CA ran counter to the well-settled maxim that between two possible interpretations, that which saves rather than destroys is to be preferred.

Lim Yhi Luya v CA 1980

Facts: Lim Yhi Luya entered into a contract of sale with private respondent, Hind Sugar Company, wherein the latter sold to the former 4,085 piculs of sugar. The terms of the contract which was drawn by the respondent company explicitly stated "cash upon signing of this contract". Much of the sugar was properly delivered to the plaintiff in the next few months except for a remaining 350 piculs of sugar. When plaintiff filed an action to compel the delivery of the remaining 350 piculs, private respondent company contended that no payment had yet been made by the plaintiff, contrary to the terms stipulated in their contract. Plaintiff had no receipt to prove that payment had been made but contends that the terms stipulated in the contract is sufficient proof that payment had been made at around the time the contract was signed.
Issue: WON the statement "cash upon signing of this contact" in the contract of sale drawn up by the respondent company may be interpreted as sufficient proof that payment had in fact been made.
Held: Yes. Although the contract is ambiguous enough to admit of several valid interpretations, the interpretation to be taken shall not favor the respondent company since it is the party who caused the ambiguity in its preparation. (see Art 1377) The ambiguity raised by the use of the words or phrases in the questioned provision must be resolved and interpreted against the respondent company.
Respondent company's act of delivering to the petitioner four delivery orders covering all the 4,035 piculs of sugar, viewed in the light of the established fact that all sugar transactions between petitioner and respondent are always in cash.. is a clear confirmation of the fact that petitioner paid in cash the cost of the sugar.. on the very day that the contract was signed..

Riviera Filipina v CA 2002

Facts Riviera Filipina, Inc. entered into a contract of lease with Juan Reyes involving 1,018 square meters of real property owned by Reyes. Paragraph 11 of the lease contract expressly provided that "lessee shall have the right of first refusal should the lessee decide to sell the property during the term of the lease." When Reyes decided to sell the property in 1988, he entered into a series of negotiations with Riviera Filipina but the parties failed to agree on the price for the subject property. Riviera Filipina, Inc. clearly expressed its refusal to go beyond the price of 5,000 per square meter. Another interested party offered to purchase the same property for 5,300 per square meter. Riviera Filipina was well-informed that there were other interested buyers but did not know of specific price offered by other party. Riviera Filipina now filing suit against Reyes and 3rd party purchaser, contending that their right of first refusal was violated because they were not given the opportunity to match the offer of 5,300 per square meter.
Issue WON right of first refusal in the contract of lease may be interpreted as to require that the lessee have specific knowledge of the price offered by other interested parties, thereby amounting to a right to match.
Held No. "Intention of the parties shall be accorded primordial consideration and in case of doubt, their contemporaneous and subsequent acts shall be principally considered."
The actions of the two principal parties involved in the contract of lease shaped their understanding and interpretation of the "right of first refusal" to mean simply that should Reyes decide to sell the property during the term of the lease, such sale should first be offered to Riviera. Riviera's stubborn approach in its negotiations with Reyes showed crystal clear that there was never any need to disclose such information.

DEFECTIVE CONTRACTS:

RESCISSIBLE CONTRACTS

Art. 1380. Contracts validly agreed upon may be rescinded in the cases established by law. (1290)

Art. 1381. The following contracts are rescissible:

(1) Those which are entered into by guardians whenever the wards whom they represent suffer lesion by more than one-fourth of the value of the things which are the object thereof;

(2) Those agreed upon in representation of absentees, if the latter suffer the lesion stated in the preceding number;

(3) Those undertaken in fraud of creditors when the latter cannot in any other manner collect the claims due them;

(4) Those which refer to things under litigation if they have been entered into by the defendant without the knowledge and approval of the litigants or of competent judicial authority;

(5) All other contracts specially declared by law to be subject to rescission. (1291a)

Art. 1382. Payments made in a state of insolvency for obligations to whose fulfillment the debtor could not be compelled at the time they were effected, are also rescissible. (1292)

Art. 1383. The action for rescission is subsidiary; it cannot be instituted except when the party suffering damage has no other legal means to obtain reparation for the same. (1294)

Art. 1384. Rescission shall be only to the extent necessary to cover the damages caused. (n)

Art. 1385. Rescission creates the obligation to return the things which were the object of the contract, together with their fruits, and the price with its interest; consequently, it can be carried out only when he who demands rescission can return whatever he may be obliged to restore.

Neither shall rescission take place when the things which are the object of the contract are legally in the possession of third persons who did not act in bad faith.

In this case, indemnity for damages may be demanded from the person causing the loss. (1295)
Art. 1386. Rescission referred to in Nos. 1 and 2 of Article 1381 shall not take place with respect to contracts approved by the courts. (1296a)
Art. 1387. All contracts by virtue of which the debtor alienates property by gratuitous title are presumed to have been entered into in fraud of creditors, when the donor did not reserve sufficient property to pay all debts contracted before the donation.
Alienations by onerous title are also presumed fraudulent when made by persons against whom some judgment has been issued. The decision or attachment need not refer to the property alienated, and need not have been obtained by the party seeking the rescission.
In addition to these presumptions, the design to defraud creditors may be proved in any other manner recognized by the law of evidence. (1297a)
Art. 1388. Whoever acquires in bad faith the things alienated in fraud of creditors, shall indemnify the latter for damages suffered by them on account of the alienation, whenever, due to any cause, it should be impossible for him to return them.
If there are two or more alienations, the first acquirer shall be liable first, and so on successively. (1298a)
Art. 1389. The action to claim rescission must be commenced within four years.
For persons under guardianship and for absentees, the period of four years shall not begin until the termination of the former's incapacity, or until the domicile of the latter is known. (1299)
Notes:
* 4 years from when? Example insane , from lucid interval ba?
* 1st remedy (since subsidiary action ang rescission) is to ask for the amount of lesion to be repaired.

UFC V CA
May 13, 1970
Magdalo V. Francisco, Sr. invented the Mafran sauce, a food seasoning made out of banana (ketchup?) and had the formula patented and the name registered as his own trademark.
In May 1960, Francisco Sr. entered into a contract with Universal Food Corporation entitled "Bill of Assignment" wherein Francisco assigned the USE of the Mafran sauce formula to UFC (right to mass produce and sell) in exchange for a permanent assignment as Second Vice President and Chief Chemist with a salary of P300/month, and becoming a member of the Board of Directors.
On November 30, 1960 UFC dismissed Francisco and the staff working on the Mafran sauce on the pretense of scarcity and high prices of raw materials; but 5 days later, the President and General Manager of UFC Tirso T. Reyes, ordered the Auditor/Superintendent and the Assistant Chief Chemist to produce the Mafran sauce in full swing, to recall the laborers dismissed (except for Francisco Sr.) and to hire additional daily laborers. The Mafran sauce produced was of inferior quality because of the absence of Francisco Sr. who alone knew the exact formula.
GM Reyes also admitted that "I consider the two months we paid him (Francisco Sr.) is the separation pay."
Thus Francisco Sr. filed an action for Rescission of the contract. Lower court dismissed the case. CA reversed: rescinded the contract and ordered UFC to 1. Return the Mafran Sauce formula and trademark 2. Pay Francisco Sr. his salary since Dec 1960 until the return of the Mafran formula and trademark and 3. Pay attorney's fees and costs.
Held: CA correctly observed that UFC schemed and maneuvered to ease out and dismiss Francisco Sr. from the service as chief chemist, in flagrant violation of the Bill of Assignment; and that the notice of recall was to placate Francisco Sr. Therefore in addition UFC is 4. Enjoined from using in any manner said Mafran sauce trademark and formula and 5. pay legal interest on Francisco Sr.'s salary.
Doctrine:
The general rule is that rescission of a contract will not be permitted for a slight or casual breach, but only for such substantial and fundamental breach as would defeat the very object of the parties making the agreement. The question of whether a breach of a contract is substantial depends upon the attendant circumstances.
Recall: Art 1191 CC: The power to rescind obligations is implied in reciprocal ones, in case one of the obligors should not comply with what is incumbent upon him.
The injured party may choose between the fulfillment and the rescission of the obligation with the payment of damages in either case. He may also seek rescission even after he has chosen fulfillment, if the latter should become impossible.
The Court shall decree the rescission claimed, unless there be just cause authorizing the fixing of a period.
This is understood to be without prejudice to the rights of third persons who have acquired the thing, in accordance with Art 1385 and Art 1388 of the Mortgage Law.
Tolentino: Art 1191 Rescission is used, instead of Resolution which is more apt.
Difference of Art 1191 to Art 1381:
J. J.B.L. Reyes:
A rescission for breach of contract under Art 1191 CC is not predicated on injury to economic interests of the party plaintiff, but on the breach of faith by the defendant, that violates the reciprocity between the parties. It is not a subsidiary action, and Art 1191 may be scanned without disclosing anywhere that the action for rescission thereunder is subordinated to anything other than the culpable breach of his obligations by the defendant. This rescission is a principal action retaliatory in character, it being unjust that a party be held bound to fulfill his promise, when the other violates his. Hence the reparation of damages for the breach is purely secondary.
In Art 1381, the cause of action is subordinated to the existence o f that prejudice because it is the raison d' etre as well as the measure of the right to rescind. Hence, when the defendant makes good the damage caused, the action cannot be maintained or continued, as expressly provided in Art. 1383 and 1384. But the operation of these 2 articles is limited to the cases of rescission for lesion enumerated in Article 1381 of the CC, and does not apply to cases under Art. 1191.

Equitorial V Mayfair, ibid. (case #14 sa page 1 syllabus)
Nov. 21, 1996
In 1967, Carmelo entered a contract of lease with Mayfair

Theater for a portion of Carmelo's property with a stipulation (par. 8) of an exclusive option by Mayfair to purchase the property in case Carmelo decides to sell it.
In 1974, Mr. Pascal of Carmelo called Mr. Yang of Mayfair because another party was willing to buy the property.
Despite Mayfair giving notice of interest to buy; Carmelo sold the property to Equatorial on 1978.
Mayfair then brought suit for the annulment of the sale of the leased premises to Equatorial.
RTC dismissed the petition and found par. 8 to be an option clause that cannot bind Carmelo for lack of separate and distinct consideration.
CA reversed; par. 8 – right of first refusal according to art. 1479 par. 2.
Held: Par. 8 is a right of first refusal, so the contract between Carmelo and Equatorial must be rescinded.
Ratio: the right was incorporated for Mayfair's protection; Mayfair should be given the right to match the P11.3M price. Equatorial is a buyer in bad faith.
Doctrine: same with Guzman, Bocaling V Bonnevie

Guzman, Bocaling V Bonnevie

March 2, 1992
Africa Valdez de Reynoso, the administratrix of a parcel of land leased it to the Bonnevies for P4,000 per month with a stipulation that the Bonnevies will be given first priority to purchase the land should Reynoso decide to sell it.
According to Reynoso, she notified the Bonnevies via registered mail on Nov 3, 1976 her intention to sell the property for P600K, giving them 30 days to exercise their right, which she failed to prove. The Bonnevies allege that they didn't receive any letter.
Reynoso sold the land to Guzman, Bocaling and Co. for P400K.
The Bonnevies filed an action for annulment of the sale, and that Reynoso be required to sell the property to them which CFI granted and CA affirmed.
Held: The CA correctly held that the Contract of Sale was not voidable but Rescissible.
Doctrine:
Under Art. 1380 to 1381 (3) of the Civil Code, a contract otherwise valid may nonetheless be subsequently rescinded by reason of injury to third persons like creditors. The status of creditors could be validly accorded the Bonnevies for they had substantial interests that were prejudiced by the sale of the subject property to the petitioner without recognizing their right of first priority under the Contract of Lease.
According to Tolentino, rescission is a remedy granted by law to the contracting parties and even to third persons, to secure reparation for damages caused to them by a contract, even if this should be valid, by means of the restoration of things to their condition at the moment prior to the celebration of said contract.
It is a relief allowed for the protection of one of the contracting parties and even third persons from all injury and damage the contract may cause, or to protect some incompatible and preferent right created by the contract.
Rescission implies a contract which, even if initially valid, produces a lesion or pecuniary damage to someone that justifies its invalidation for reasons of equity

Voidable Contracts

Voidable Contracts

- Contracts that are voidable or annullable:
  - When either party is incapable of giving consent to a contract
  - When consent is vitiated by mistake, violence, intimidation, undue influence, fraud
  - Binding, unless annulled by a proper court action
  - Ratifiable (Art. 1390)
- Prescription for action of annulment: 4 years to begin:
  - when vice is due to intimidation, violence or undue influence – from the time defect of consent ceases
  - mistake or fraud – from the time of discovery
  - entered into by minors or those incapable of giving consent – the moment guardianship ceases (Art. 1391)
- Ratification
  - extinguishes action for annulment (Art. 1392)
  - may be express or tacit (Art. 1393)
- tacit ratification – the execution of an act which necessarily implies an intention to waive his right by the party, who, knowing of the reason which renders the contract voidable, has a right to invoke annulment.
  - may be effected by the guardian of the incapacitated person (Art. 1394)
  - does not require the conformity of the person who does not have a right to bring an action for annulment (Art. 1395)
  - cleanses the contract from all its defects from the moment it was constituted (Art. 1396)
- Annulment
  - Who may institute (Art. 1397)
- By all who are obliged principally or subsidiarily
- Exceptions:
- Persons capable **cannot allege the incapacity** of those with whom they contracted
- Persons who exerted violence, undue influence, who employed fraud or caused mistake – action for annulment cannot be based on these flaws
  - Gives rise to the responsibility of restoring to each other things subject matter of the contract, with fruits, price with its interest, except in cases provided by law (Art. 1398)
- Service – value thereof will serve as the basis for damages
- Incapacitated persons not obliged to make restitutions except insofar as he has been benefited by the thing or price received by him (Art. 1399)
- If objects cannot be returned because these were lost through his fault, he shall return the fruits received and the value of the thing at the time of the loss, with interests from the same date (Art. 1400)
- As long as one of the contracting parties does not restore what in virtue of the annulment decree he is bound to return, the other cannot be compelled to comply with what is incumbent upon him. (Art. 1402)
  - Extinguishment of action (Art. 1401)
- if object is lost through the fault or fraud of person who has the right to institute the proceedings
- if action based on incapacity of any one of contracting parties, loss of thing shall not be an obstacle to the success of action, unless loss or fraud took place through the plaintiff's fault

CASES

Uy Soo Lim v. Tan Unchuan

Facts:

- An action for annulment of a contract whereby Uy Soo Lim sold to Pastrano all his interest in the estate of the late Santiago Pastrano
- Santiago migrated to the Philippines when he was 13. Married Candida Vivares, had two children with her – Francisca (defendant in the suit and wife of co-defendant) and Concepcion.
- Santiago returned to China and had illicit relations with Chan Quieg. Came back to the Philippines and never saw her again. Received a letter from her saying that she borne him a son named Uy Soo Lim.
- Believing that Uy Soo Lim being his only son, he dictated his will leaving to him 7/9 of his properties to the son.
- Claimants to the estate:
  - Candida – ½ as widow
  - Francisca and Concepcion – that Uy Soo Lim was not entitled for not being a son, legitimate or illegitimate
  - Chan Quieg – ½ as widow (their marriage was valid under the laws of China)
- Uy Soo Lim appointed Choa Tek Hee as adviser and agent and executed a power of attorney in favor of him to represent him in the negotiations
- Compromise was reached – Uy Soo Lim to divest his interest in the estate for P82,000.00, Francisca declared the sole owner of all the properties.
- Uy Soo Lim filed a case to annul the contract alleging that undue influence was exerted on him, and that his youth was taken advantage of.

Issue: WON Uy Soo Lim can file for annulment

Held: No.

Ratio:

e) Although he was a minor at the time of the execution of the contract, he failed to repudiate it immediately upon reaching the age of majority

f) He also tacitly ratified the contract when he disposed of the greater part of the proceeds when he became of age and after he had full knowledge of facts upon which he is trying to disclaim

g) If he were seeking to annul the contract, he would also have asked that payments to him by the defendants be stopped. Instead, he proceeded to secure, spend and dispose of every cent of the proceeds)

h) Art. 1393 – express or tacit ratification

i) Art. 1398 – responsibility of restoring to each other things subject matter of the contract

j) Art. 1401 – extinguishment of action for annulment: if object is lost through the fault or fraud of person who has the right to institute the proceedings

Sps. Theis v. CA

Facts:

- Carlsons Dev't. Corp. owned three adjacent lots
  1. Lot covered by TCT 15515
  2. Lot covered by TCT 15516
  3. Lot covered by TCT 15684
- A fourth lot was adjacent to Lot 15684, which was not owned by Carlsons Dev't.
- 1985: Carlsons constructed a two-storey house on the third lot (erroneously indicated to be covered by TCT 15515)
- Lots 15515 and 15516 mistakenly surveyed to be located on lot number 4
- The fourth lot was sold to Sps. Theis by Carlsons Dev't., covered by said TCTs. The Theis did not immediately occupy the lot; went to Germany instead. Upon return, they discovered that the lot was owned by another
- Theis insisted on buying lot number 4, which was not possible as it was not owned by Carlsons; instead, Carlsons Dev't. offered lots 1 and 2, which was refused.
- This time, Theis insisted on lot number 3; counter-offer by Carlson to return purchase price x 2, refused.
- Carlsons filed an action for annulment on the ground of mistake

Issue: WON Carlsons can seek for annulment on the ground of mistake

Held: Yes

Ratio:

- Carlsons' mistake was made in good faith
  - When mistake was discovered, offers were made to offset the damage caused by the mistake
- The nature of mistake as to vitiate consent must be that which speaks of the substance of the contract
  - Consent being an essential element of contracts, when it is given by mistake, the validity of contractual relations becomes legally impaired

Rural Bank of Caloocan v. CA

Facts:

5. Maxima Castro, accompanied by Valencia, applied to RBC for an industrial loan of 3 thousand
6. The Valencia spouses applied for a 3 thousand peso loan as well, which was also granted
7. Both loans being granted, Castro was made to sign a promissory note, as a principal in the first, and as a co-maker in the Valencia note. They were secured by a real-estate mortgage on Castro's house and lot.
8. Castro received a Notice of Sheriff's Sale in satisfaction of the obligation covering the two promissory notes

Only then did she realize that the mortgage was encumbrance not just for her 3k loan, but also for the 3k loan of the Valencias; she was made to sign without knowledge of this fact

She filed a suit for annulment from the second promissory note and the mortgage covering this, and the annulment of the foreclosure sale.

Issue: WON fraud can be alleged to free Castro from responsibility with respect to the 2nd promissory note

Held: Yes

Ratio:

- The mistake committed by both Castro and the bank which led to the vitiation of consent is due to the Valencias fraud and misrepresentation
- A contract may be annulled on the ground of vitiated consent due to fraud by a third person even without the connivance with one of the contracting parties
- The bank committed a mistake in not ensuring the extent of the coverage of the mortgage.

MWSS v. CA

Facts:

g. 1965: MWSS leased around 128 hectares of land to CHGCCI for 25 years renewable for another 15 years with a stipulation allowing for the exercise of a right of first refusal should it be put up for sale
h. President Marcos issued an LOI directing MWSS to cancel the lease and to dispose the property. MWSS and CHGCCI agreed on the sale
i. MWSS approved the sale in favor of Silhouette, CHGCCI's assignee for 25M.
j. Silhouette entered a deed of sale with Ayala (1984)
k. 1993: MWSS filed an action seeking the declaration of nullity of the MWSS-Silhouette sale due to Silhouette's fraudulent acts and Marcos's undue influence over MWSS

Issue: WON the sale can be declared null and void
Held: No.
Ratio:

- All the essential requisites being present, the contract can only be voidable, and not void, as all the essential requisites of the contract are present.
- Being voidable at the most, prescriptive period of four years from the time of the discovery of the mistake and from the time the undue influence ceases should be observed.
- If the vice of consent is based on Marcos's undue influence, the four years should be counted from the moment the undue influence ceased, which is in 1986
- If mistake is alleged, prescriptive period of four years to begin from the discovery of the same, it should've begun from the date of the execution of the sale of documents, deemed to have taken place on the date of registration of the deeds with the Register of Deeds as registration is constructive notice to the world
- Furthermore, there was ratification on the part of MWSS, both impliedly (making demands for payment) and expressly (signing of the contract of sale itself) made.

UNENFORCEABLE CONTRACTS[2]

UNENFORCEABLE CONTRACTS

Art. 1403. The following contracts are unenforceable, unless they are ratified:

(1) Those entered into in the name of another person by one who has been given no authority or legal representation, or who has acted beyond his powers;

(2) Those that do not comply with the Statute of Frauds as set forth in this number. In the following cases an agreement hereafter made shall be unenforceable by action, unless the same, or some note or memorandum, thereof, be in writing, and subscribed by the party charged, or by his agent; evidence, therefore, of the agreement cannot be received without the writing, or a secondary evidence of its contents:

(a) An agreement that by its terms is not to be performed within a year from the making thereof;

(b) A special promise to answer for the debt, default, or miscarriage of another;

(c) An agreement made in consideration of marriage, other than a mutual promise to marry;

(d) An agreement for the sale of goods, chattels or things in action, at a price not less than five hundred pesos, unless the buyer accept and receive part of such goods and chattels, or the evidences, or some of them, of such things in action or pay at the time some part of the purchase money; but when a sale is made by auction and entry is made by the auctioneer in his sales book, at the time of the sale, of the amount and kind of property sold, terms of sale, price, names of the purchasers and person on whose account the sale is made, it is a sufficient memorandum;

(e) An agreement of the leasing for a longer period than one year, or for the sale of real property or of an interest therein;

(f) A representation as to the credit of a third person.

(3) Those where both parties are incapable of giving consent to a contract.

4. Unenforceable contracts cannot be enforced unless it is first ratified in the manner provided by law. An unenforceable contract does not produce any effect unless it is ratified. Unenforceable contracts cannot be sued upon unless ratified (Paras, 2003).
5. As to defectiveness, an unenforceable contract is nearer to absolute nullity than voidable or rescissible contracts.
6. There are 3 kinds of unenforceable contracts:
   a) unauthorized contracts;
   b) those that fail to comply with the Statute of Frauds;
   c) those where both parties are incapable of giving consent to a contract.

UNAUTHORIZED CONTRACTS

e) When a person enters into a contract for and in the name of the another, without authority to do so, the contract does not bind the latter, unless he ratifies the same. The agent, who has entered into the contract in the name of the purported principal, but without authority from him, is liable to third persons upon the contract; it must have been the intention of the parties to bind someone, and, as the principal was not bound, the agent should be. Ex: Without my authority, my brother sold my car, in my name to X. The contract is unauthorized and cannot affect me unless I ratify the same expressly or implicitly, as by accepting the proceeds of the sale. (Paras)

- Mere lapse of time, no matter how long, is not the ratification required by law of an unenforceable contract (Tipton v. Velasco, 6 Phil 67, as cited in Paras).

STATUTE OF FRAUDS

4. Meaning: descriptive of statutes which require certain classes of contracts to be in writing.
5. Purpose: to prevent fraud and perjury in the enforcement of obligations depending for their evidence upon 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.
6. Application: This statute does not deprive the parties the right to contract with respect to matters therein involved, but merely regulates the formalities of the contract necessary to render it unenforceable. The statute of frauds, however, simply provides for the manner in which contracts under it shall be proved. It does not attempt to make such contracts invalid if not executed in writing but only makes ineffective the action for specific performance. The statute of frauds is

not applicable to contracts which are either totally or partially performed, on the theory that there is a wide field for the commission of frauds in executory contracts which can only be prevented by requiring them to be in writing, a fact which is reduced to a minimum in executed contracts because the intention of the parties becomes apparent by their execution, and execution concludes, in most cases, the rights of the parties.

7. A note or memorandum is evidence of the agreement, and is used to show the intention of the parties. No particular form of language or instrument is necessary to constitute a memorandum or note as a writing under the Statute of Frauds.

General Rules of Application (mainly Paras):

- Applies only to executory contracts. But it is not enough for a party to allege partial performance in order to render the Statute inapplicable; such partial performance must be duly proved, by either documentary or oral evidence;
- Cannot apply if the action is neither for damages because of the violation of an agreement nor for the specific performance of said agreeement;
- Exclusive, i.e. it applies only to the agreements or contracts enumerated herein;
- Defense of the Statute may be waived;
- Personal defense, i.e. a contract infringing it cannot be assailed by third persons;
- contracts infringing the Statute are not void; they are merely unenforceable;
- The Statute of Frauds is a rule of exclusion, i.e. oral evidence might be relevant to the agreements enumerated therein and might therefore be admissible were it not for the fact that the law or the statute excludes oral evidence;
- The Statute does not determine the credibility or weight of evidence. It merely concerns itself with the admissibility thereof;
- The Statute does not apply if it is claimed that the contract does not express the true agreement of the parties. As long as true or real agreement is not covered by the Statute, it is provable by oral evidence.

THE SPECIFIC AGREEMENTS UNDER THE STATUTE OF FRAUDS

1. Performance within a year. The 'making' of an agreement, for the purpose of determining WON the period for performance brings the agreement within the Statute, means the day on which the agreement is made, and the time begins to run from the day the contract is entered into, and not from the time that performance of it is entered upon. There must be intention that the performance should not be performed within a year.
2. Guaranty of Another's Debt. Test as to whether a promise is within the Statute: lies in the answer to the question whether the promise is an original or a collateral one. If the promise is original or independent, as to when the promisor is primarily liable, it is outside the Statute. If the promise is collateral, the promise must be in writing.
3. Consideration of marriage. Applies to promises by a 3rd person to one of the parties contemplating the marriage. Thus, a promise made by the father of a prospective bride to give a gift to the prospective husband is covered by the statute.
4. Sale of personalty. Price of the property must be at least P500 and covers both tangible and intangible property. The Statute will not apply where there has been part payment of the purchase price. If there is more than one item, which exceeds P500, the operation of the statute depends upon WON there is a single inseparable contract or several one. If inseparable, Statute applies. If the contract is separable, then each article is taken separately, and the application of the statute to it depends upon its price. Meaning of "things in action": incorporated or intangible personal property (Paras)
5. Lease or sale of realty. Evidence to prove an oral contract of sale of real estate must be disregarded if timely objections are made to its introduction. But the statute does not forbid oral evidence to prove a consummated sale of real property.
6. Representation as to Credit. Limited to those which operate to induce the person to whom they are made to enter into contractual relations with the 3rd person, but not those representations tending to induce action for the benefit of the person making them. The statute does not cover representations deceitfully made.

INCAPACITATED PARTIES

- Ratification by one party converts the contract into a voidable contract- voidable at the option of the party who has not ratified.

Art. 1404. Unauthorized contracts are governed by Article 1317 and the principles of agency in Title X of this Book.

1. Art. 1317. No one may contract in the name of another without being authorized by the latter, or unless he has by law a right to represent him.

- A contract entered into in the name of another by one who has no authority or legal representation, or who has acted beyond his powers, shall be unenforceable, unless it is ratified, expressly or impliedly, by the person on whose behalf it has been executed, before it is revoked by the other contracting party. (1259a)

(6) Requisites for a Person to contract in the name of another: a) he must be duly authorized (expressly or impliedly) or b) he must have by law a right to represent him (like the guardian, or the administrator) or c) the contract must be subsequently ratified (expressly or impliedly, by word or by deed). (Paras).

Art. 1405. Contracts infringing the Statute of Frauds, referred to in No. 2 of Article 1403, are ratified by the failure to object to the presentation of oral evidence to prove the same, or by the acceptance of benefit under them.

– Two ways of ratification of contracts infringing the Statute are: a) failure to object to the presentation of oral evidence; b) acceptance of benefits under them, since the Statute does not apply to contracts which are partially executed. Cross examination of the witnesses testifying orally on the contract amounts to a waiver or to a failure to object. (Abrenica v. Gonda,as cited by Paras; Maam Rowie also made reference to this in one of her short kwentos).

Art. 1406. When a contract is enforceable under the Statute of Frauds, and a public document is necessary

for its registration in the Registry of Deeds, the parties may avail themselves of the right under Article 1357.

- Art. 1357. If the law requires a document or other special form, as in the acts and contracts enumerated in the following article, the contracting parties may compel each other to observe that form, once the contract has been perfected. This right may be exercised simultaneously with the action upon the contract. (1279a)
- The right of one party to have the other execute the public document needed for convenience in registration, is given only when the contract is both valid and enforceable. (Paras)

Art. 1407. In a contract where both parties are incapable of giving consent, express or implied ratification by the parent, or guardian, as the case may be, of one of the contracting parties shall give the contract the same effect as if only one of them were incapacitated.

If ratification is made by the parents or guardians, as the case may be, of both contracting parties, the contract shall be validated from the inception.

f) Self-explanatory, hehe. Both Paras and Tolentino, walang comments. However, we should take note of the retroactive effect of a ratified contract.

Art. 1408. Unenforceable contracts cannot be assailed by third persons.

- The defense of the Statute is personal to the party to the agreement. Thus, it cannot be set up by strangers to the agreement.
- Just as strangers cannot attack the validity of voidable contracts, so also can they not attack a contract because of its unenforceability. Indeed the Statute of Frauds cannot be set up as a defense by strangers to the transaction. (Ayson v. CA, 97 Phil. 965).

CASES:

Yuvienco v. Dacuycuy, 1981

See facts in previous discussion. Under this heading, the question is WON the claim for specific performance of the private respondents is enforceable under the Statute of Frauds.

Held: No, since the agreement does not appear in any note or writing or memorandum signed by either of the petitioners or any of the respondents. Thus, such oral contract involving the "sale of real property" comes squarely under the Statute of Frauds.

Doctrine:

In any sale of real property on installments, the Statute of Frauds read together with the perfection requirements of Article 1475 of the Civil Code must be understood and applied in the sense that the idea of payment on installments must be in the requisite of a note or memorandum therein contemplated. Under the Statute of Frauds, the contents of the note or memorandum, whether in one writing or in separate ones merely indicative for an adequate understanding of all the essential elements of the entire agreement, may be said to the contract itself, except as to the form.

Coronel v. Constantino, 2003

Honoria Aguinaldo owned real property. When she died, ½ of the property was inherited by Emilia Meking vda. De Coronel and sons-Benjamin, Catalino and Ceferino; the other half by Florentino Constantino and Aurea Buensuceso. Emilia Meking sold the property to Jess Santos and Priscilla Bernardo, who later sold it to Constantino. In 1991, Constantino filed a complaint for declaration of ownership, quieting of title and damages. CA ruled for Constantino.

Issues/Held:

1) WON the contract of sale executed by Emilia, in her own behalf is unenforceable with respect to the shares of her co-heirs-children

Yes. It has been shown that the contract was not signed by petitioner Benjamin and the shares of Catalino and Cferino in the subject property were not sold by them. Since it cannot be disputed that Benjamin did not sign the document, the contract is unenforceable against him.

2) WON the minor children can ratify unauthorized actions of their parents.

Yes. But in this case, no evidence was presented to show that the 3 brothers were aware of the sale made by their mother. Unaware of such sale, the 3 could not be considered to have remained silent and knowingly chose not to file an action for annulment of the sale. Their alleged silence and inaction may not be interpreted as an act of ratification on their part. And there is also no evidence that the 3 brothers benefited from the sale.

Doctrine:

Ratification means that one under disability voluntarily adopts and gives sanction to some unauthorized act or defective proceeding, which without his sanction would not be binding on him. It is this voluntary choice, knowingly made, which amounts to a ratification of what was theretofore unauthorized, and becomes the authorized act of the party so making the ratification.

Regal Films,Inc. v. Concepcion, 2001

Gabby Concepcion, thru his manager Lolit Solis, entered into a contract with Regal for services to be rendered by respondent in petitioner's movies. Petitioner undertook to give 2 parcels of land of land to respondent, on top of talent fee. In 1994, actor, and manager, filed an action against the movie outfit, alleging that he was entitled to rescind the contract, owing to Regal's failure to honor the contract. Petitioner alleged that there was an agreement, and an addendum to the original contract. In September 1994, Solis moved for the dismissal of the complaint averring that there already was an amicable settlement. Concepcion opposed saying that he had no consent and the contract was grossly disadvantageous to him. By 1995, and after the confluence of events (read: Manila Filmfest scam), Regal intimated that it was willing to release Concepcion from the contracts rather than pursue the addendum. Concepcion then filed a motion indicating that he was willing to honor the addendum. The Court held that Concepcion's attempt to ratify the addendum came too much late as Regal already revoked it.

Issue3:

1) WON a contract entered into in the name of another is unenforceable if consent was not given by the party in whose behalf it was executed

Yes. A contract entered into in the name of another by one who ostensibly might have but who in reality, had no real

authority or legal representation, or who having such authority, acted beyond his powers, would be unenforceable.
2) Assuming that the addendum was unenforceable, WON it is susceptible to ratification by the person in whose behalf it was executed
Yes. But ratification should be made before its revocation by the other contracting party.

National Power Corp v. National Merchandising Corp., 1982

In 1956, National Power Corp (NPC) and National Merchandising Corp (Namerco), the latter as representative of the International Commodities Corp of New York, entered into a contract for the purchase by the NPC of from the New York firm of 4 thousand long tons of crude sulfur. A performance bond was executed by Domestic Insurance Company (DIC) to guarantee Namerco's obligation. Under the contract, seller would deliver the sulfur within 60 days from notice of establishment in its favor of a letter of credit. Failure to do would make the seller and surety liable for damages. The New York firm advised Namerco that it might not secure the availability of a vessel and DIC disclaimed responsibility for the terms of the contract. Namerco did not disclose such instructions from its principal and proceeded with the perfection of the contract. When the sulfur was not delivered, NPC sued DIC and Namerco. The court dismissed the action against DIC for lack of jurisdiction.
Issue:
1) WON Namerco exceeded its authority and in effect, acted in its own name
Yes. The agent took chances, despite the principal's instructions and thus, it acted on its own name.
2) WON the stipulation for liquidated damages is unenforceable since the contract was allegedly unenforceable
No. Article 1403 refers to unenforceability of the contract against the principal. In this case, the contract containing the stipulation for liquidated damages is not being enforced against its principal but against the agent and its surety. Article 1897[4] implies that the agent who acts in excess of his authority is personally liable to the party with whom he contracted. Since Namerco exceeded the limits of its authority, it virtually acted in its own name and it is therefore, bound by the contract of sale, which, however is not enforceable against its principal.

Jovan Land v. CA, 1997

Eugenio Quesada owns Q Building in Manila and wanted to sell it. Thru co-petitioner Mendoza, Jovan Land Pres. Joseph Sy learned of this development and sent offers to Quesada. The owner rejected the offers. In his third written offer, Sy enclosed a check worth P12M with a similar check for P1M as earnest money. Annotated on this 3rd letter-offer was the phrase 'received original, '9-4-89' beside which appears the signature of Quesada. Petitioner then filed action for specific performance.
Issue: WON the 'contract of sale' as alleged by Sy was unenforceable
Held: No. The document was merely a memorandum of the receipt by the former of the latter's offer. The requisites of a valid contract of sale are lacking in said receipt and therefore the 'sale' is neither valid nor enforceable. No written agreement was reached. Under the Statute of Frauds, an agreement for the sale of real property or of an interest therein, to be enforceable, must be in writing and subscribed by the party charged or by an agent therof.

Cenido v. Apacionado, 1999

Bonifacio Aparato owns a parcel of unregistered land. He sold it to spouses Apacionado, who took care of him for 20 years prior to his death. In the contract (Pagpapatunay) purporting to the sale, it can be gleaned that because the Apacionados took care of him, Bonifacio sold it for P10,000 and her signed it with his full knowledge and consent, and there were 2 witnesses to the signing of the contract. It was not notarized. One Renato Cenido claimed ownership over the property and alleged that he was Aparato's illegitimate son and he was recognized as such by Bonifacio's brother, Gavino, and the two partitioned his estate among themselves. Cenido caused the issuance to his name of a Tax Declaration over the subject property.
Issue:
1) WON the document is valid
Yes. The private conveyance of the house and lot is therefore valid between Aparato and the spouses. It is a private document but this fact does not detract from its validity. 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. Under Article 1358 requires that certain acts and contracts must be in a public document. Under Art. 1403, sales of real property must be in writing. Since the Pagpapatunay is in writing, it is enforceable under the Statute. But since it is not a public document, it does not comply with Art. 1358. However, the requirement of Art. 1358 is not for the validity but for its efficacy.

Villanueva v. CA, 1997

The Villanuevas are the tenants of the Dela Cruzes. In 1986, the latter proposed the sale of the property and they agreed at the price of P550,000. The Dela Cruzes asked for P10,000 which would form part of the sale price. Sometime thereafter, the Dela Cruzes told the Villanuevas that they are selling the other half of the property to the Sabios, another tenant of the Dela Cruzes. The Villanuevas agreed to such an arrangement and they, together with the Sabios, decided to pay only P265,000 each corresponding to the value of ½ of the property. In 1987, the Dela Cruzes sold the portion which the Villanuevas were supposed to buy to the spouses Pile. The Villanuevas then instituted this action.
Issue: 1) WON there was a perfected contract of sale between the petitioners and the Dela Cruzes
Held: No. Sale is a consensual contract. In this case, what is clear from the evidence is that there was no meeting of the minds as to the price, expressly or impliedly, directly or indirectly. No contract was presented in evidence.
2) WON the Statute of Frauds is applicable though it was a contract of sale that was partly executed
No. The Statute applies only to executory contracts, but there is no perfected contract in this case, therefore there is no basis for the application of the Statute. The application of such statute presupposes the existence of a perfected contract and requires only that a note or memorandum be

executed in order to compel judicial enforcement thereof. What took place was only prolonged negotiation to buy and sell.

VOID OR INEXISTENT CONTRACTS

What contracts are void or inexistent?

The following contracts are void or inexistent from the beginning:

- Those whose cause, object or purpose is contrary to law, morals, good customs, public order or public policy;
- Those which are absolutely simulated or fictitious;
- Those whose cause or object did not exist at the time of the transaction;
- Those whose object is outside the commerce of men;
- Those which contemplate an impossible service;
- Those where the intention of the parties relative to the principal object cannot be ascertained;
- Those expressly prohibited or declared void by law. (a-g, Art 1409, NCC).
- Those which are the direct results of previous illegal contracts (Art 1422, NCC).

Cases

Liguez vs Hon. Court of Appeals

Petitioner Conchita Liguez was the recipient of a donation of the parcel of land subject of this petition. Donation was allegedly made by and in view of the desire of one Salvador Lopez, a married man of mature years, to have sexual relations with her, Liguez back then a minor, only 16 years of age. After the donation, Liguez and Lopez cohabited and lived as husband and wife until Lopez was killed. It was found that the donation was part of the land belonging to the conjugal partnership of Lopez and his legal wife Maria Ngo. CA held that the donation was inoperative and null and void because (1) the husband had no right to donate conjugal property to Liguez; and (2) because the donation was tainted with illegal causa or consideration, of which the donor and donee were participants.

SC reversed CA decision.

Doctrine: SC held that the CA erred in applying the pari delicto rule in this case. Both parties to donation here not having equal guilt; there had been no finding that Liguez had full knowledge of the terms of the bargain entered into by and between Lopez and her parents. Moreover, the rule that parties to illegal contracts will not be aided by the law should also be understood as barring the parties from pleading illegality of the bargain either as a cause of action or as a defense. Thus, the heirs of Lopez cannot set up this plea, as Lopez himself, even if he were living, had no right to such pleading.

The right of the husband to donate community property is strictly limited by law. However, donation made in contravention of the law is not void in its entirety, but only in so far as it prejudices the interest of the wife, whether donation is gratuitous or onerous.

Rellosa vs Gaw Chee Hun

Petitioner Dionisio Rellosa sold to Gaw Chee Han a parcel of land together with the house erected thereon situated in Manila. The vendor remained in possession of property under a contract of lease. Alleging that the sale was executed subject to the condition that the vendee (Chinese) would obtain the Japanese Military Administration's approval, and that even if said condition was met, the sale would still be void under article XIII of the Constitution, the vendor prayed for annulment of the contracts of sale and lease. Defendant answered the complaint putting up the defense of estoppel and that the sale was binding not being contrary to public policy, law and morals. TC declared the contracts valid and binding and dismissed complaint. CA affirmed decision in toto.

The SC sustained that the sale in question was indeed entered into in violation of the Constitution, what's left to be determined is, can petitioner have the sale declared null and void and recover the property considering the effect of the law governing rescission in contracts? SC answered in the negative. The sale in question is null and void, but plaintiff is barred from taking the present action under the principle of pari delicto.

Doctrine: The contracting parties here were prevented from seeking relief because they both have voluntarily entered into the contract knowing that what they were doing violated the Constitution (they are presumed to know the law). Well established is the doctrine that where the parties are in pari delicto, no affirmative relief of any kind will be given to one against the other. It is true that this doctrine is subject to one important limitation, namely, "whenever public policy is considered as advanced by allowing either party to sue for relief against the transaction." The cases in which this limitation may apply only "include the class of contracts which are intrinsically contrary to public policy—contracts in which the illegality itself consists in their opposition to public policy, and any other species of illegal contracts (example: usurious contracts, marriage-brokerage contracts). The present case does not fall under the exception because it is not intrinsically contrary to public policy as its illegality consists in its being against the Constitution.

Phil Banking Corp vs Lui She

Justina Santos and her sister Lorenza were the owners of a piece of land in Manila. The sisters lived in one of the houses while they leased the other house to a Chinese named Wong Heng and his family. When Lorenza died with no other heir, Justina became the sole owner of the property. As she was then already about 90 years, Wong was her trusted man, trusting him with receiving rentals for her other properties and paying for her other expenses. In grateful acknowledgement, Justina entered into a number of contracts with Wong (a lease covering more than the current portion occupied by Wong, a contract of option to buy leased premises payable in ten years, another contract extending the lease term to 99 years, and another fixing the term of the option to 50 years).

This petition was filed alleging that the contracts were obtained by Wong "through fraud, misrepresentation, inequitable conduct, undue influence and abuse of confidence…" and the Court was asked to cancel the registration of the contracts.

TC rendered decision declaring all of the contracts null and void except for the first contract of lease. Both parties appealed.

SC modified TC's decision in that it also declared the first contract of lease as null and void along with the rest.

Doctrine: SC cancelled the contract of lease in this case not on the basis of it allegedly being contrary to the expressed will of one of the contracting parties (Santos'), rather it was voided because of its illegal causa. Based on the testimonies gathered, the contracts were entered into in an effort to circumvent the Constitutional prohibition against the transfer of lands to aliens. It became clear that the arrangement was a virtual transfer of ownership whereby the owner divests himself in stages not only of the right to enjoy the land, but also of the right to dispose of it—rights the sum total of which is ownership. Thus, this illicit purpose became the illegal causa rendering the contracts void.

Francisco vs. Herrera

Eligio Herrera Sr., father of respondent is the owner of two parcels of land. Petitioner Julian Francisco brought from said land owner the first parcel, and later on, also the second. Contending that the contract price was inadequate, the children of Herrera tried to negotiate to increase the purchase price. When Francisco refused, the Herreras filed a complaint for annulment of sale alleging that the sale was null and void on the ground that at the time of sale, Eligio Sr was incapacitated to give consent to the contract because he was afflicted with senile dementia, characterized by deteriorating mental and physical condition.

TC, later on affirmed by CA, declared the contract to be null and void, ordered Francisco to return the lots in question and the Herreras to return to the former the purchase price paid. Francisco appealed, contesting that the CA erred in completely ignoring the basic difference between a void and merely voidable contract. Issue before the SC thereby is: whether the assailed contracts of sale are void or merely voidable and hence capable of being ratified.

SC reversed the CA decision, the assailed contracts are only voidable and were in fact ratified, therefore valid and binding.

Doctrine: A void or inexistent contract is one which has no force and effect from the beginning. These are of two types:

(1) those where one of the essential requisites as provided for by Art 1318 is wanting;

(2) those declared to be so under Art 1409.

By contrast, a voidable or annullable contract is one in which the essential requirements for validity under Art 1318 are present, but vitiated. Such contracts may be rendered perfectly valid by ratification, which can be express or implied.

Art 1327 provides that insane or demented persons cannot enter into contracts, But, if ever they do, the legal effect is that the contract is voidable or annullable as provided for in Art 1390. Hence, the contract in above case is merely voidable. Ratification in this case is implied and consisted in Eligio's children receiving payments on behalf of their father and their non-immediate filing of an action for reconveyance as in fact they only filed it after Francisco did not agree to them increasing the purchase price.

Agan, Jr. vs Philippine International Air Terminals Co., Inc.

Petitioner seek to prohibit the Manila International Airport Authority (MIAA) and the Dept of Transportation and Communications (DOTC) from implementing contracts and agreements executed by the Philippine Givernment through the DOTC and the MIAA and the Phil Intl Air Terminals Co., Inc (PIATCO).

DOTC engaged the services of Aeroport de Paris (ADP) to conduct a comprehensive study of the Ninoy Aquino Intl Airport (NAIA) and determine whether the present airport can cope with the traffic development up to 2010. A group of business leaders formed Asia's Emerging Dragor Corp (AEDC) to explore the possibility of investing in the construction and operation of a new airport terminal. AEDC submitted an unsolicited proposal to the Government through DOTC/MIAA for the development of NAIA International Passenger Terminal III (NAIA IPT III). A committee called the Prequalification Bids and Awards Committee (PBAC) was constituted by the DOTC for the implementation of the NAIA IPT III project. A consortium headed by People's Air Cargo and Warehousing Co., Inc. (Paircargo), among others, submitted their proposal to PBAC. PBAC found Paircargo as the most qualified to undertake the project. Sometime after this determination, Paircargo incorporated with PIATCO. AEDC, along with a slew of other petitioners, filed with the RTC Pasig a petition to declare the 1997 Concession Agreement between the Government and PIATCO null and void for being contrary to the Constitution, the BOT (Build-Operate-Transfer) Law and its Implementing Rules and Regulations.

SC declared the assailed agreement as void for being contrary to public policy. A close comparison of the draft Concession Agreement attached to the Bid Documents and the 1997 Concession Agreement reveals that the documents differ in at least two very important respects. While the Court concedes that a winning bidder is not precluded from modifying certain provisions of the contract bidded upon, such changes must not constitute substantial or material amendments that would alter the basic parameters of the contract and would constitute a denial to the other bidders of the opportunity to bid on the same terms

Doctrine: It is inherent in public biddings that there shall be fair competition among the bidders. Any contract that circumvents this concept shall be declared null as being contrary to public policy.

III. NATURAL OBLIGATIONS

1. Definition

Natural obligations are those based on equity and natural law, which are not enforceable by means of court action, but which, after voluntary fulfillment by the obligor, authorize the retention by the oblige of what has been delivered or rendered by reason thereof. In other words, they refer to those obligations without sanction, susceptible of voluntary performance, but not through compulsion by legal means.

2. vs Civil Obligations

	Natural Obligations	**Civil Obligations**
Basis	Equity and natural law	Positive law
Enforceability	Not enforceable by court action	Enforceable by court action

3. vs Moral Obligations

	Natural Obligations	**Moral Obligations**
Existence of juridical tie	There exists a juridical tie between the parties not enforceable by court action.	No juridical tie whatsoever.
Effect of fulfillment	Voluntary fulfillment	Voluntary fulfillment

	produces legal effects which the courts recognize and protect.	does not produce legal effects which the courts recognize and protect.

4. Example
One example would be the one that is regulated in Art 1424 of the NCC. According to this article, when a right to sue upon an obligation has lapsed by extinctive prescription, the obligor who voluntarily performs the contract cannot recover what he has delivered or the value of the service he has rendered.

IV. TRUSTS

What is a trust?

1. Trust is a legal relationship between one person having an equitable ownership in property and another person owning the legal title to such property, the equitable ownership of the former entitling him to the performance of certain duties and the exercise of certain powers by the latter (Tolentino)
1. It is the right to beneficial enjoyment of property, the legal title of which is vested in another. It is a fiduciary relationship concerning property which obliges the person holding it to deal with the property for the benefit of another (Paras).

Characteristics of a Trust (Paras)

1. It is a fiduciary relationship.
2. Created by law or agreement.
3. Where the legal title is held by one, the equitable title or beneficial title is held by another.

Trust distinguished from Guardianship or Executorship:

- In a trust, the trustee or holder has LEGAL title to the property.
- A guardian, administrator or executor does not have.

Trust distinguished from a Stipulation Pour Autrui

- A trust may exist because of a legal provision or because of an agreement; a stipulation pour autrui can arise only in the case of contracts.
- A trust refers to specific property; a stipulation pour autrui refers to a specific property or to other things.

Co-Ownership as Trust

- A Co-Ownership is a form of trust, with each co-owner being a trustee for each of the others.

CHAPTER 1
GENERAL PROVISIONS

Parties to a Trust

7. trustor or settler –he establishes the trust (may at the same time be the beneficiary)
8. trustee –hold the property in trust for the benefit of another
9. beneficiary or cestui que trust –the person for whose benefit the trust has been created.

Elements of a Trust:

1. parties to the trust
2. the trust property or the trust estate or the subject matter of the trust.

Note: cf this with the ratio of the Mindanao Development Authority v. CA & Ang Bansing case below

- Express Trusts—created by the parties, or by intention of the trustor
- Implied Trusts—created by operation of the law; two kinds
- Resulting trust (also bare or passive trusts)—there is intent to create a trust but it is not effective as an express trust (cf Art. 1451).
- Constructive Trust—no intention to create a trust is present, but a trust is nevertheless created by law to prevent unjust enrichment or oppression (cf 1456)
- The law of trusts has been much more frequently applied in England and in the US than in Spain, so we may draw freely from American precedents in determining the effects of trusts.

CHAPTER 2
EXPRESS TRUSTS

Formalities Re Express Trusts:

- Express trusts are to be written for enforceability and not for validity as to between the parties; hence, by analogy, can be included under the Statute of Frauds.
- By implication, since the article applies to immovable property only, trust over personal property on oral agreement is valid and enforceable between the parties.
- 3rd Persons—trust must be made in a public instrument and REGISTERED in the Registry of Property, if it concerns Real Property.

How an Express Trust is Created:

1. By conveyance to the trustee by an act inter vivos or mortis causa (as in a will).
2. By admission of the trustee that he holds the property, only as a trustee.
3. Clear Intent—there must be a clear intention to create a trust.
4. Capacity—The trustor must be capacitated to convey property (hence, a minor cannot create an express or conventional trust of any kind).
5. Administration of the trust. The trustee must:

a. File a bond
b. Make an inventory of the real and personal property in trust
c. Manage and dispose of the estate and faithfully discharge his trust in relation thereto, according to the law or terms of the trust as long as they are legal and possible.
d. Render a true and clear account.
e. Not acquire property held in trust by prescription as long as the trust is admitted.

Effect if Trustee Declines

- The trust ordinarily continues even if the trustee declines. Why? The Court will appoint a new trustee unless otherwise provided for in the trust instrument (Sec. 3, Rule 98, Rules of Court). A new trustee has to be appointed; otherwise the trust will not exist.
- Beneficiary necessarily has to accept either expressly, impliedly or presumably. Acceptance is presumed if the granting of benefit is purely gratuitous (no onerous condition).

How Express Trusts are ended:

1. Mutual agreement by all parties.
2. Expiration of the Term
3. Fulfillment of the resolutory condition
4. Rescission or annulment
5. Loss of subject matter of the trust
6. Order of the court
7. Merger
8. Accomplishment of the purpose of the trust.

CHAPTER 3
IMPLIED TRUSTS

- Trusts are recognized only if they are not in conflict with the Civil Code, Code of Commerce, Rules of Court and Special Laws.
- This is a resulting trust because a trust is intended.
- Example:
- A buys a piece of land from B. A pays the price so that he (A) may have the beneficial interest in the land BUT the legal title is given to C. C is the trustee and A is the beneficiary.
- This is again a resulting trust where the donee becomes the trustee of the real beneficiary.
- Example:
- A donated land to B. But it was agreed that B is supposed to have only 1/3 of the products of said land. There is a trust here and B is the trustee.
- This is a constructive trust, the reason of the law being to prevent unjust enrichment.
- Example:
- A wants to buy land from B but A has no money. So A asks C to pay for the land. The land is then given in C's name. This is supposed to be C's security until the debt of A is paid. Here, an implied trust is created. C is a trustee and the beneficiary is A. When A has the money, he may redeem the property from C and compel a conveyance to A.
  NOTE: This is not the same as mortgage. Mortgage is when A borrows money from C and A later buys land in his own name. A then executes a mortgage on the land in favor of C. This is not an implied trust.
  Trust Receipts
- Partakes of a nature of a conditional sale…the importer being the absolute owner of the imported merchandise as soon as he has paid its price; until the owner or the person who advanced payment has been paid in full, or if the merchandise has already been sold, the proceeds turned over to him, the ownership continues to be vested in such person."
- This is a resulting trust for a trust is intended.
- Example:
- A inherited a piece of land from his father, but A caused the legal title to be put in the name of X, a brother. Here a trust is impliedly established, with X as trustee and A as beneficiary.
- This is a resulting trust in view of the intent to create a trust.
- Example:
- A group of Chinese wanted to buy a lot with a house on it to be used a clubhouse. The name of the property was registered under only one of them. The registered owner leased the property, collected rents and when asked for accounting, refused to on account that he was the owner. Nope, he is a mere trustee and is therefore obliged render proper accounting. The beneficiaries are all members of the club.
- This is a resulting trust in view of the owner's intention to create a trust.
  - Example:
    - A bought from B a parcel of land and it was conveyed to A on A's statement or declaration that he would hold it in behalf of C. Here, A is merely a trustee and C is the beneficiary.

5. This is a constructive trust the purpose of the law to prevent unjust enrichment to the prejudice of the true owner.

1. Example:

1. A owe's B. To guarantee his debt, A sold her parcel of land to B. Here, a trust is created. If A pays his debt when it becomes due, A may demand the resale of property to her.

- This is a constructive trust and this article applies to any trustee, guardian or persons holding a fiduciary relationship (eg, an agent).
- Example:
- An agent using his principal's money purchases land in his own name. He also registers it under his name. Here, he will only be considered a trustee and the principal is the beneficiary. The principal can bring an action for conveyance of the property to himself, so long as the rights of innocent third persons are not adversely affected.
- This is a constructive trust.

1. Example:

- A was given a car by B although it should have been given to C. A is considered merely a trustee of the car for the benefit of C.
  NOTE: The mistake referred to in this article is one made my a third person, not one who is a party to the contract. If made by any of the parties, then no trusts is created.
  DO TRUSTS PRESCRIBE?

5. Express trusts DO NOT. Implied Trusts—resulting trusts do not prescribe but constructive trusts do prescribe (see Salao v. Salao in the cases below)

- This article applies whether it is real or personal property. Even if it is oral evidence, said evidence must be trustworthy oral evidence, for oral evidence may be easily fabricated.

CASES

Salao v. Salao

Facts:

- Spouses Manuel Salao and Valentina Ignacio has 4 children—Patricio (who died survived by son Valentin), Alejandra, Juan and Ambrosia. Spouses died leaving partition of different fishponds to the three surviving children and nephew Valentin.
- Main contention in this case is the Calunuran fishpond which the plaintiffs assert were co-owned by Juan, Ambrosia and Valentin and that Juan and Ambrosia were just holding in trust the part of Valentin. Plaintiffs here are the heirs of Valentin against the heirs of Juan and Ambrosia. Plaintiffs say that they are enforcing a trust that Juan Salao violated.

Issue:

- WON there was a trust between Juan and Ambrosia Salao with Valentin Salao?

Held:

5. No, there was no trust—either express or implied (resulting and constructive trust)

Ratio:

- A trust is defined as the right, enforceable solely on equity, to the beneficial enjoyment of property, the legal title to which is vested in another, but the word "trust" is frequently employed to indicate duties, relations and responsibilities which are not strictly technical trusts.
- Not a scintilla of documentary evidence was presented by the plaintiffs to prove that there was an express trust over the Calunuran fishpond in favor of Valentin Salao. Purely parol evidence was offered by them to prove the alleged trust. Their claim that in the oral partition in 1919 of the two fishponds was assigned to Valentin Salao is legally untenable—Article 1443—parol evidence cannot be used to prove an express trust.
- How about an implied trust? It was not proven by any competent evidence. It is quite improbable because the alleged estate of Manuel Salao was likewise not satisfactorily proven. The Court found it incredible that 47 hectares of Calunuran fishpond would be adjudicated merely by word of mouth. The plaintiffs also never bothered (for nearly 40 years) to procure any documentary evidence to establish their supposed interest or participation in the two fishponds. Prescription and laches applies.
- There was no resulting trusts because there was never any intention on the part of Juan Salao, Ambrosia and Valentin to create a trust—the registration of the fishpond were registered in the names of Juan and Ambrosia and was not vitiated by fraud or mistake.
- Even if there was an implied trust, laches and prescription has barred their action—they slept on their rights (vigilanti prospiciunt jura or the law protects him who is watchful of his rights). There was not mention of a period for laches or prescription to apply.
- Plaintiffs failed to measure up to the yardstick that a trust must be proven by clear, satisfactory and convincing evidence. It cannot rest on vague and uncertain evidence or on loose, equivocal or indefinite declarations.

Doctrine:

- Prescription applies to constructive trusts. Parol evidence cannot be accepted in an express trust but can be accepted in an implied trust if it is trustworthy.

Fabian v. Fabian

Facts:

- Pablo Fabian bought Lot 164 from the Phil. Gov't. He died leaving four children who are the plaintiffs in this case. Silbina Fabian and Teodora Fabian, niece of Pablo Fabian, executed an affidavit saying that they are legal heirs and as such a sale certificate was issued to them. In 1929, they took physical possession of the land, enjoyed its fruits and from 1929 to present (1960), has been paying real estate taxes thereon.
- Plaintiffs filed this action for reconveyance averring that the certificate of sale was gained through fraud. Defendants aver that Pablo did not really own the land in question at the time of his death and the present action for reconveyance has already prescribed.

Issue:

- WON defendants have acquired the property by acquisitive prescription?

Held: Yes

Ratio:

5. The Friar Lands Act governs the sale of land to Pablo Fabian wherein title of the land sold is reserved to the Gov't until the purchaser makes full payment of all required installments and the interest thereon. The equitable and beneficial title really went to the purchaser the moment he paid the first installment and was given a certificate of sale. Pending the completion of the purchase price, the purchaser is entitled to all the benefits and advantages which may accrue to the land as well as suffer the loss. He was therefore the owner of the land and as such the legal rights to the land passed onto his four daughters. Therefore, Silbina and Teodora were just trustees of the land in question upon the principle that if property is acquired through fraud, the person obtaining it is considered a trustee of an implied trust for the benefit of the person from whom the property comes.
6. However, laches may bar an action to enforce a constructive trust such as the one in the case at bar. Defendants herein have been in possession of the land in question since 1928 up to present publicly and continuously under claim of ownership; they have cultivated it, harvested and appropriated the fruits for themselves. The statute of limitations is within four years from the discovery of the fraud—this may start when they first registered the land (not mentioned in the case when).
7. The court also used sec. 41 of Act 190 saying that 10 years of actual adverse possession by any person claiming to be the owner for that time of any land or interest in land, uninterruptedly continued for ten years by occupancy, descents, grants, or otherwise, in whatever way such occupancy may have commenced or continued shall vest in every actual occupant or possessor of such land in full and complete title.
8. Plaintiffs' action has prescribed and defendants have acquired the land by acquisitive prescription.

Doctrine/s:

4. Prescription bars an action for constructive trusts—within 4 years, and actual possession and occupancy of land entitles one to acquire such land.
5. Property gained through fraud is considered held in trust (Art. 1456)

Bueno v. Reyes

Facts

- Francisco H. Reyes claimed property in Laoag as belonging to him and his two brothers—Juan and Mateo (defendants herein). Plaintiffs are the heirs of Jorge Bueno whom they say was the original owner. One of his children is Eugenia who was supposedly the wife of Francisco Reyes.
- Francisco Reyes was entrusted to file an answer in a cadastral proceeding in acquiring that certain property in Laoag. He was entrusted with obtaining a title thereto for and in behalf of all the heirs of Jorge Bueno, including the wife Eugenia Bueno.
- Plaintiffs say that either in bad faith or by mistake, Francisco Reyes filed an answer and obtained title to the property in his name and the defendant's. Plaintiffs allege that they only have discovered these things this year.
- CFI and defendants proceeded on the theory that the action for reconveyance was predicated on an implied trust and as such, the action prescribes in 10 years (1936—Francisco

Reyes acquired title on the land; 1962—time of the petition of reconveyance, total of 23 years).
Issues:

- WON the trust was express or implied. WON the action for reconveyance has prescribed.

Held:

2. The trust was implied and remanded to lower court for further proceedings to determine whether there has been constructive notice.

Ratio

- The trust given to Francisco Reyes was supposed to be an express trust but it never materialized. This was an implied trust arising by operation of the law. This was specifically a constructive trust since the allegation avers that the property was taken by mistake or fraud (Art. 1456). Hence, prescription can supervene. Remember that an express trust is imprescriptible. Under Sec. 40 of the Old CivPro, action for recovery of property prescribes in 10 years.
- From what time should the prescriptive period start? The cadastral proceeding where Reyes and his brothers obtained title thereto cannot be taken as constructive notice since it is an action in rem. Case remanded to trail court for further proceedings to establish when the prescriptive period started.

Doctrine/s:

5. Constructive implied trusts prescribe 10 years from the time defendants are given constructive notice. Express trusts do not prescribe. Constructive notice can be the actual registration of the land since this is a notice to the whole world.

Tamayo v. Callejo

Facts

2. Mariano and Marcos Tamayo appealed from the decision of the CA granting the petition of Aurelio Callejo that a certain piece of land belonged to Callejo.
3. Spouses Vicente and Cirila Tamayo owned a piece of land in Pangasinan. Vicente died leaving to his sons the property (wife waived her portion). Before he died, he sold part of the land to Domantay who in turn subsequently sold it to Aurelio Callejo. When Mariano sold a part of his land to someone and a surveyor went to check it out, the surveyor was denied access by Callejo, saying that that part of the land is his. Thus, this petition.
4. Mariano Tamayo's defense is that the land in dispute is outside the perimeter of the certificate of title and he also alleged prescription. Tamayo argues that if the land bought by Domantay was erroneously included in his certificate of title, then it created an implied trust between him and Domantay but the action for reconveyance has already prescribed in 10 years (1915—when title was issued to him; this case was instituted 1952).

Issue:

9. WON the action for reconveyance has prescribed.

Held: No

Ratio:

- While it may have been a constructive, implied trust, its substance was substantially affected when Mariano Tamayo and Domantay executed a public instrument whereby Mariano explicitly acknowledged that his parents had sold to Domantay the parcel of land and stipulating that Domantay is the absolute owner. This action made it an express trust which is subsisting, not subject to the statute of limitations until repudiated, in which event the period of prescription begins to run only from the time of the repudiation. This took place in June 1952 when Mariano rejected Callejo's demand. Prescription does not attach since the action for reconveyance was instituted a few days after the express trust was repudiated.

Doctrine:

- Express trusts do not prescribe unless repudiated in which event the period of prescription starts from the repudiation.

Mindanao Dev't Authority v. CA & Ang Bansing

Facts

j. Francisco Ang Bansing owned a 300,000 sq.m. piece of land in Davao wherein he sold part of it to Juan Cruz who subsequently sold it also to the Commonwealth of the Philippines. In the contract between Juan Cruz and Ang Bansing, it is stipulated that Juan Cruz will agree to work for the titling of the entire area of land under his own expenses and the expenses for the titling of the portion sold to him.

k. The President of the Philippines issued Proclamation no. 459 transferring the ownership of certain parcels of lands in Davao to the Mindanao Dev't Authority (MDA) subject to private rights, if any. MDA filed a complaint against Ang Bansing for reconveyance alleging that the stipulation in the contract between Juan Cruz and Ang Bansing made Ang Bansing a trustee thereby obligating Ang Bansing to deliver the portion of land sold to Juan Cruz.

l. Ang Bansing alleges that any ownership right over the property has prescribes since it has already been 30 years.

m. CFI found that there was an express trust. CA says there was no express trust.

Issue:

- WON there was an express trust created between Juan Cruz and Ang Bansing.

Held: Nada

Ratio:

- Trusts are either express or implied. A trusts necessarily includes the following: (1) competent trustor and trustee, (2) an ascertainable trust res, and (3) sufficiently certain beneficiaries.
- The stipulation alluded to is nothing but a condition that Ang Bansig shall pay the expenses for the registration of his land and for Juan Cruz to shoulder the expenses for the registration of the land sold to him. The stipulation does not categorically create an obligation on the part of Ang Bansing to hold the property in trust for Juan Cruz.
- There is no express trust as there was no unequivocal disposition of property making himself a trustee for the benefit of another. The intent to create a trust must be definitive and particular.
- Even if we consider it as an implied trust, it has already prescribed because more than 28 years has passed. Acton for reconveyance has prescribed.

Doctrine:

- Trusts are created unequivocally and with the clear intent to create a trust.

Tala Realty v. Banco Filipino Savings and Mortgage

Bank

Facts

2. Tala Realty Services is the absolute owner of several parcels of land by virtue of a Deed of Sale executed between Tala and respondent Bank. At issue here is one of those parcels of land-the Bulacan property. On the same day that Tala acquired the property, Tala and the Bank executed a lease contract renewable in 20 years and subsequently changed to 11 years, renewable for 9 years. After 11 years, Tala reminded the Bank that the contract will expire soon and negotiated for a renewable of the lease agreement.
3. There was no final agreement and in the end when the Bank was not able to comply with the requirements of Tala, Tala filed complaints for ejectment and/or unlawful detainer.
4. The Bank's defense story was that it undertook an expansion program where they will buy a head office but if they do so, they would exceed the limit of real estate investment set by the General Bankings Act. To avoid the limit set by law, they reduced their branch site holdings by leasing instead of owning branch sites. Thus they entered into a "warehousing agreement" with Tala wherein it is stipulated that the properties will be reconveyed to the Bank at the Bank's demand or pleasure. This was not written in the contract but the Bank was confident that Tala will honor this agreement.

Issue:

- WON the conveyance of property was a trust under the "warehousing agreement."

Held: No

Ratio:

- It is clear that the Bank transferred ownership to Tala when the former sold it to the latter. The Bank counters that it was not really a sale because what Tala paid was actually the advance rentals that the Bank gave to Tala and therefore the contract should be understood as a "warehousing agreement" whereby Tala holds the property for the bank (just like a trust). Not meritorious.
- While there may have been a contract of sale and lease back of the property which created an implied trust "warehousing agreement" for the reconveyance of the property, under the law, this implied trust is inexistent and void for being contrary to law (the "warehousing agreement" was meant to curtail the limitations set by the General Bankings Act which prohibits a Bank from owning more than the limit of real estate investment).
- An implied trust could not have been formed between the Bank and Tala "where the purchase is made in violation of an existing statute and in evasion of its express provision, no trust can result in favor of the party who is guilty of the fraud.

  Using Ramos v. CA, the Court held that "if the purpose of the payor of the consideration having title placed in the name of the another was to evade some rule of common or statute law, the Courts will not assist the payor in achieving his improper purpose by enforcing a resultant