

CLSE

WEEK 1

A. Introduction

The study of law is not only the concern of lawyers but to everyone. For without law, there will be no norms of conduct that would govern the relationship between and among men, and between men and government.

Law tells us our rights, duties and obligations as members of the body politic. Note that knowledge of the law will forewarn us whether or not our course of action conforms to it or not; thus, avoiding its legal consequences.

Imperatively, **law** is coterminous with any civil society. Without it, there will be disturbance and chaos.

Law consists of the entire body of principles that govern the conduct and the observance of which can be enforced in courts. In other words, **law** is a collection of the rules of conduct promulgated by the supreme authority.

****In the Philippines, it is promulgated by the *Batasang Pambansa (B.P.)* where the so-called *legal sovereignty* is vested.**

B. Objectives of the Law:

1. **Protection of the State.** Laws designed to protect the sovereignty of the State are provided not only in the Revised Penal Code but also in other special laws. Crimes against national security such as espionage and correspondence with hostile country are examples of those punishable by the Revised Penal Code.
2. **Protection of public health, safety, and morals.** Under the police power of the state, laws may be enacted to promote the welfare of the people. The law requiring motor vehicles to be equipped with early warning device

purposely to prevent accident was held constitutional by the highest tribunal.

3. **Protection of one's self.** Laws are enacted to protect the life and safety of an individual. Thus, a person treacherously attacked by another resulting in the death of the former can be charged for the crime of murder.
4. **Protection of property.** Institution of property is one of the rights enshrined and safeguarded by the constitution. Thus, private property cannot be taken for public use without just compensation. Note that even the State cannot abuse its governmental powers to invade property rights. Anti-Fencing law was promulgated to protect property rights. Also, the anticarnapping law is designed to preserve the institution of private property.
5. **Protection of the right of personal action.** Examples of these are:
 - a.) freedom of speech and of the press, and
 - b.) freedom of religion. These are specifically guaranteed under Article IV, of the New Philippine Constitution.
6. **Protection of the right of use of property.** There are laws to insure one's right of use of property. A law punishing trespassing of one's property and anti-squatting law are the concrete examples. It must be noted, however, that one's right of use is not absolute. Thus, in the exercise of police power, zoning law or ordinance may be passed to implement the social justice enunciated in the constitution; a law may be passed regulating acquisition, ownership, and enjoyment of property rights. Emancipation of the tenants regulates the property right of landlords.

C. Origin of the Law

Ancient laws of the Philippines can be traced to the **Sumakwel and Kalantiao Codes**.

- In the Sumakwel Code laziness is punishable with slavery.
- In the Kalantiao code, modern arson, sacrilege and sorcery are punishable with death.
- The Philippine Civil and Penal Codes were actually patterned after **Codigo Civil and Codigo Penal of Spain**. Note that in case of conflict the provisions of, the Spanish Codes will prevail.

D. World Legal Systems

History, as the sole judge of the world, reveals that there are many legal systems that have grown and some died with the death of the state which was responsible for their inception.

1. **Roman law.** Roman law comprehends all the laws which prevailed among the Romans, without regard to the time of their origin, including the collections of Justinians. In its restricted sense, the term merely means the law of the Justinian. It must be noted that the first set of recorded laws, the Digests was published in A.D. 553, under the advocacy of Emperor Justinian, who commissioned legal experts to codify Roman law. **This is the reason why sometimes Roman law is referred to as Justinian law.**
2. **Mohammedan law.** One of the great systems of customary law is the Moslem or Mohammedan law. Its sources are:
 - a. the Koran, the Moslem's bible;
 - b. the sayings of and stories about the great Mohammed;
 - c. writings of Islamic jurists and Muslim scholars (ulamas).

Mohammedan law is the necessary part of the Philippine legal system for one of the largest regions, Mindanao, is populated with Muslims.

- a **Code of Muslim Personal Laws was enacted by virtue of Presidential Decree No. 1083**. Under this law, an Islamic Court was established known as the **Sharia Court** which is tasked to effectively administer and enforce Muslim personal laws. It will prosecute Muslims violating the Philippine Islamic Code.

3. **Anglo-American law.** Anglo-American law is the system popularly known as **Common or customary law**. As distinguished from law enacted by the legislature, common law comprises the body of those principles and rules of action, relating to government and security of persons and property, which derive their authority solely from usages and customs of immemorial antiquity, or from the judgments and decrees of the courts recognizing, affirming, and enforcing such usages and customs. **Example of this is the ancient unwritten law of England.**

E. Sources of Law

1. **Constitution.** It is derived from the Latin word "**constituto**" which means fixed or settled. As defined by Judge Cooley, constitution is a "body of rules and maxims in accordance with which the powers of sovereignty are habitually exercised." With particular reference to the Philippines, it is "a written instrument by which the fundamental powers of the government are established, limited, and defined and by which these powers are distributed among the several departments for their safe and useful exercise for the benefit of the body politic." It is often referred to as "**fundamental law**" or **highest law**" of the land. This is

so for all laws to be enacted should conform to it.

2. **Legislation.** Legislation is one that is laid down, established, or ordained by the lawmaking authority of the state which must be obeyed and followed by citizens, subject to sanctions or legal consequences. It is a rule or method which defines the relations of people among themselves or between the people and government.

Law-making is an exercise of legal sovereignty. This is vested in the Batasang Pambansa.

3. **Executive orders, regulations and rulings.** Orders, rules and regulations issued by administrative officials under legislative authority are designed to clarify or explain the law and carry into effect its general provisions by providing the details of administration and procedure.
4. **Precedent.** Prior cases which are close in facts or legal principles to the case under consideration are called precedents. Thus, a rule of law established for the first time by a court for a particular type of case and thereafter referred to in deciding similar cases is precedent. **The doctrine of precedent is consistent with the civil code which states, "judicial decisions applying or interpreting the laws or the constitution shall form part of the legal system of the Philippines."**
5. **Custom or Usage.** Customs consist of those habits and practices which through long and uninterrupted usage have become acknowledged and approved by society as binding rules of conduct. When recognized and enforced by the state, customs have the force of law. Custom or usage results from a long

series of actions, constantly repeated, which have by such repetition and by uninterrupted acquiescence acquired the force of a tacit and common consent.

6. **Principles of justice and equity.** These principles have to be applied in the absence of law, precedent, customs and usages. They conform to the mandate of the civil code on Human Relations which states, "every person must in the exercise of his rights, act with justice, give everyone his due and observe honesty and good faith."

- The provisions on **quasicontracts** such as **negotiorum gestio** and **solutio indebiti** bolster the above principles of equity and justice.
- Under the law, **negotiorum gestio is the voluntary management of the property or affairs of another without the knowledge or consent of the latter.**
- **Solutio indebiti** is the judicial relation which is created when something is received when there is no right to demand it and it was unduly delivered through mistake.
- In other words, **under the principles of quasi contract**, no one should be enriched or benefited at the expense of another. This will be discussed extensively under the topic, **"Law on Contracts."**

WEEK 2-3

A. KINDS OF LAW

1. **Natural law.** Natural law or **jus naturale** was largely used in the philosophical speculations of the Roman jurists of the Antonine age. It was designed to denote a system of rules and principles for the guidance of human conduct which might be discovered by the rational intelligence

of man, and would be found to grow out of and conform to his nature, meaning by that word his whole mental, moral, and physical constitution. Simply, it is defined as the divine inspiration in man of the sense of justice, fairness, righteousness and equity, not by divine revelation or formal promulgation, but by internal dictate of reason alone. **It is therefore binding on all men everywhere and at all times.**

2. **Divine law.** Divine law is the law of religion and faith which concerns itself with the concept of sin and salvation, of death and life, of the temporal and the eternal. It is formally promulgated by God and revealed or divulged to mankind through the various means of divine revelation such as vision, or deep religious experience.
3. **Moral law.** Moral law is that system of rules of human action which has its origin in the general sense, on the part of the members of the community, of **what is right and wrong, and which finds its sanction in the general disapprobation when any act in violation of it is committed.** It is a truism that at an early stage of their existence, human beings learned that it was good for the welfare of the group, **that the privilege to determine what is right or wrong,** was not left to each member of the group.
4. **Physical law.** Physical law resembles that of divine law but it is not exactly divine law. It is only divine in the sense that it is ordained by God for the operation or course of the universe. They are the uniformities of action and orders of sequence which human beings' sense and feel. It is characterized by the elements of imperativeness and regularity; thus, it is fixed and unbreakable. For instance, somebody

tosses a coin up in the air. It is fixed that a coin will naturally land on the ground.

5. **Municipal or positive law.** Positive law is that system of rules of human action established by the governmental power in a state. It differs from divine or moral law, for it is laid down by a determinate authority and enforceable by determinate sanctions. Laws on murder and theft are examples of positive law. However, they also retain moral sanctions, for a person who commits these offenses is not only jailed but also socially ostracized.
6. **Substantive law.** Substantive law is that part of law which creates, defines, and regulates rights, as opposed to "adjective or remedial law," which prescribes the method of enforcing the rights or obtaining redress for their invasion. The Civil and Revised Penal Codes are substantive laws; while law of pleadings and evidence are remedial or procedural laws.

B. JUDICIAL ORGANIZATION

1. **Regular courts.** At the top of the judicial tree is the Supreme Court. Under Batas Pambansa 129 (Judiciary Reorganization Act) the following regular courts are created:
 - a) **Intermediate Appellate Court.** It operates in 10 divisions each comprising five members. It sits en banc only to exercise administrative, ceremonial or other nonadjudicatory functions;
 - b) **Regional Trial Court.** It is presided by 720 Regional Trial judges in each of the 13 regions of the country.
 - c) **Metropolitan Trial Court.** It exists in each Metropolitan area established by law; a Municipal Trial Court in every city not forming part of Metropolitan area

and in each of the municipalities not comprised within a Metropolitan area; and a Municipal Circuit Trial Court in each area defined as a Municipal Circuit comprising one or more municipalities grouped together according to law.

2. **Special Courts.**

Examples of these are:

- a) **Court of Tax Appeals.** It is created by virtue of R.A. No. 1125 as amended, purposely to exercise excluding appellate jurisdiction to review on appeal decisions of the Commissioner of Internal Revenue and the Commissioner of Customs.
- b) **Under Section 5. Article XIII,** of the Constitution the Batasang Pambansa is mandated to create a specialized court to be known as Sandiganbayan in the implementation of this constitutional mandate.

3. **Quasi-judicial bodies.** They are administrative organs of the government exercising judicial functions such as the Civil Service Commission, Securities and Exchange Commission, National Labor Relations Commission, etc. These bodies usually belong to the executive department except those that are constitutionally mandated as independent commissions.

C. **Judiciary Reorganization Act (B.P. 129)**

This act was conceived to usher a major revamp in the judiciary, which is the first reorganization of all courts except the Supreme Court and the Sandiganbayan. The primary objectives of the reorganization are:

- 1) To restructure the judicial system;
- 2) To appoint new judges of integrity and competence;
- 3) To retain those of magnificent records of dedication to the public service; and 4) to promote the

deserving and eliminate the inefficient. To sum it all, the primary aim is to preserve the democratic doctrine that "public office is a public trust."

D. **Courts Created Under Batas Pambansa 129**

Under Batas Pambansa No. 129, the present Court of Appeals is renamed Intermediate Appellate Court with 50 members in 10 divisions of 5 justice each. Four of the ten divisions will concentrate on criminal cases and the two on specialized cases.

E. **Law on Agency**

By the contract of agency, a person binds himself to render some service or to do something in representation or on behalf of another with the consent or authority of the latter. This codal definition was criticized by **Justice J.B.L. Reyes** as defective, for the true essence of agency lies in that the agent enters or is designed to enter into judicial (juridical) relations, with or without representation of the principal. In its simplest definition, **agency is a relation based upon an express or implied agreement whereby one person, the agent, is authorized to act under the control of and for another, his principal, in making contracts with third persons.**

Agency enables man to increase the range of his individual and corporate activity by enabling him to be constructively present in many places and to carry on diverse activities at the same time.

Parties to the contract. The parties to the contract of agency are the principal and the agent. The principal is the one primarily concerned with the contract. It is he whom the agent represents and from whom he derives authority. On the other hand, the agent is the one who acts or stands for another.

Who may be the principal. Any person, if he is competent to act for himself, may act through an agent. He must therefore be capacitated to give consent. The principal maybe natural (human being) or a juridical person such as a corporation lawfully organized. Under the law, an emancipated minor can be a principal. In other words a minor maybe a principal; however, his resulting act is voidable.

Who may be an agent? Under the law, the agent must be able to bind himself, but only as far as his obligations to his principal are concerned. The principal must be capacitated, for it is immaterial whether or not the agent is capacitated to make a contract for himself because he (agent) assumes no personal liability.

Creating the agency. There are five types of creating agency, namely; a) Authorization by appointment; b) Authorization by conduct; c) Agency by ratification; d) Agency by estoppel; a d) Agency by operation of law.

- 1) **Authorization by appointment.** The usual method of creating agency is by express authorization. This one of the kinds of agency is according to the manner of constitution. Observe that there are transactions where the law requires the contract of agency to be in writing. An example is Article 1874 of the New Civil Code which states that "when a sale 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". A written authorization of agency is known as power of attorney. It is either a general or special power of attorney.
- 2) **Authorization by conduct.** According to manner of constitution, an agency may be implied from (a) acts of the principal - such as the principal's

conduct that gives an agent a reasonable belief that the principal consents to his acting as agent; (b) principal's silence such as acquiescence by the principal for failing to object to acts done by an alleged agent; (c) principal's lack of action; and (d) principal's failure to repudiate the agency.

- 3) **Agency by ratification.** An agent who enters into a conduct in excess of his authority, the principal is not bound, unless there is subsequent ratification by him (principal). Example: An agent was only authorized to sell principal's land in Pangasinan. But what he sold was the principal's land in Paranaque. The sale is null and void, unless ratification is obtained by the agent from the principal.
- 4) **Agency by estoppel.** A person who clothes another with apparent authority as his agent, and holds him out to the public as such, cannot be permitted to deny the authority of such person to act as his agent to the prejudice of third person dealing with him in good faith. Example: "A" informs "B" that "X" is "A's" agent, when in fact he is not. "B" acted on the basis of "A's" misrepresentation. In this example "A" cannot deny liability, for what was created is an agency by estoppel.
- 5) **Agency by operation of law.** Under Article 165 of the New Civil Code, the husband as administrator of the conjugal partnership is an agent who can bind conjugal property subject to legal restrictions. Also, the wife may be appointed as agent or husband

Termination of Agency

- 1.) **Revocation.** Agency is generally revocable at the will of the principal

because the trust and confidence may have been lost. Thus, the principal may compel the agent to return the document evidencing the agency. The revocation so made may be expressed or implied.

- 2.) **Withdrawal of the agent.** The agent may withdraw from the agency by giving due notice to the principal. If the principal will stand to suffer damages by reason of the withdrawal or renunciation, the agent is liable for damages that the principal sustains. However, the agent will not be liable if the renunciation is based upon the impossibility of continuing the performance of the agency without grave detriment to him, such as by reasons of health.
- 3.) **Death.** The death of either the principal or agent terminates the agency, even if a period had been stipulated and such period has not yet ended. However, anything done by the agent, without knowledge of the death of the principal or of any other cause which extinguishes the agency is valid and shall be fully effective with respect to third persons who may have contracted with in good faith.
- 4.) **Insanity.** The insanity of either the principal or agent terminates the agency. However, if the incapacity is temporary the authority is only suspended not terminated.
- 5.) **Dissolution.** The dissolution of the firm or corporation whether it is the principal or agent, extinguishes the agency.
- 6.) **Accomplishment.** The accomplishment of the object or

purpose of the agency terminates the contract of agency.

- 7.) **Expiration.** When it is provided in the contract that the agency shall last for a specified period of time, it terminates upon the expiration of such period.
- 8.) **Rescission.** The contract of agency may be terminated by rescission to the same extent that any other contract may also be terminated.
- 9.) **Engineer as agent.** As an agent of his client (owner), an engineer has certain duties to perform under the law. Being considered qualified and competent in his learned skill, it is implicit that in the exercise of his knowledge he must take proper care and diligence of a good father of the family contemplated under the New Civil Code. Otherwise, failure on his part to undertake the duties expected of him will make him liable. It must be noted that the contract of agency is **fiduciary** that is based on trust and confidence.

F. Law on Property

Under Article 414 of the New Civil Code *property*, considered as an object, is that which is or may be appropriated. While it is true that property is a thing, not all things are properties.

Kinds of property. Properties may be classified in so many ways, namely:

- (a) mobility or non-mobility - such as personal property (like building);
- b) ownership - such as public dominion (like rivers) and private dominion (like a pencil) ;

c) alienability - within the commerce of man (like a house) and outside the commerce of man (like opium)

d) existence - such as present property and future property.

Personal property (movable). All things which can be transported from place to place without impairment of the real property to which they are fixed are personal properties. Under the law, personal property includes:

(a) those movables susceptible of appropriation which are not considered real properties;

(b) real property which by any special provision of law is considered as personal; and

(c) forces of nature which are brought under control by science.

Real property (immovable). Real property refers to anything fixed, permanent and immovable, such as land, buildings, roads and constructions of all kinds adhered to the soil, etc. It is classified according to:

(a) nature (like trees)

(b) incorporation (like building);

(c) destination or purpose (like an art work engraved on the wall by the owner with the intention to attach it permanently); and

(d) analogy (like easements, servitude, or contract for public works).

Ownership is independent and general right of a person to control a thing particularly in his possession, enjoyment, disposition, and recovery, subject to no restrictions except those imposed by the State or private persons, subject to the provisions of the law. It may be exercised over things or rights.

Rights of an owner. Under Article 428 of the New Civil Code the owner has the right:

a) to enjoy;

b) to dispose; and

c) to recover or vindicate his property.

The right to enjoy includes the right:

a) to possess;

b) to use; and

c) to the fruits.

the right to dispose includes the right

a) to consume, destroy or abuse; and

b) to encumber or alienate, that is, he may sell his property.

Under Article 523 of the New Civil Code, **possession** is the holding of a thing or the enjoyment of a right. It has a dual aspect,

a) right to possession, and b) right of possession.

Right to possession is an incident of ownership. Thus, if one owns a house; he has also the right to possess it.

Right of possession is independent of ownership. If by virtue of a lease contract "A" leased his house to "B", "A" owns the house but "B" is entitled to possess the house during the lease period.

G. Law on Patent

A **patent** is an exclusive right over an invention to sell, use and make of the same whether for commerce or industry. It is a grant by the State or Sovereign to a designated person or corporation, of a certain right or privilege, generally in consideration of some act or service performed by the grantee.

Patentable inventions. Under the law, an invention is patentable if it complies with the following essential requisites: a) it is new, and b) it consists of a useful machine,

manufactured product or substance or process or improvement.

Inventions not patentable. Under the law, inventions not patentable include: a) those that are immoral and against public policy; and b) those that are mere abstract ideas or theorems. Also, a product of nature is not patentable. A claim covering a fresh shrimp having its head removed, and its vein and waste matter removed, is a product of nature, therefore, not patentable.

Rights of patentee-inventor. The patentee acquires the following rights under his patent for the duration of 17 years from the date of issuance: (a) the exclusive right to sell, use and make the invention; (b) the use of invention for industry and commerce; and (c) to sue for infringement.

Infringement may be defined as the unlawful invasion of the right of monopoly granted to a patentee. It may refer also to a substantial copy of a patented work.

Patent Office. In cases arising from the violation of the patent right, the same should be filed at the Patent Office. Hearing officers may make preliminary rulings on question raised during the hearing. However, the ultimate decision on the merits of all issues and the questions should be exercised by the Director of Patents.

Law on Copyright Copyright is governed by the law on intellectual creation that is, Presidential Decree No. 49 which was promulgated on November 14, 1972. As it has been defined, **copyright** is an intangible incorporeal right to certain literary, scholarly, scientific and artistic productions granted by law to the author or creator of the work, and giving him, his heirs and assigns the privilege to:

1. Print, reprint, publish, copy, distribute, sell and photo-reproduce the work;

2. Translate, arrange, adapt, and convert the work from dramatic to non-dramatic and vice-versa;
3. Exhibit, perform, represent, produce or reproduce the work for profit or otherwise; and
4. To make any other use or disposition of it.

Works protected.

Under the law, the following works are protected:

1. Books, manuscripts, directories, gazettes;
2. Periodicals;
3. Lectures and sermons;
4. Letters;
5. Dramatic compositions and choreographic works;
6. Musical compositions;
7. Works of drawing, painting, architecture, sculpture and other works of art;
8. Reproductions of works of art;
9. Ornamental designs;
10. Maps, sketches, plans, and chart;
11. Drawings or plastic works;
12. Photographic works;
13. Cinematographic works;
14. Computer programs;
15. Prints, label, tags, box wraps;
16. Dramatizations, translations of the literary, musical, or artistic works or of works of the government;
17. Collections of literary, scholarly or artistic work.

Works not protected. The following may not be copyrighted:

- 1) Work of any government officer or employee as part of his regularly prescribed duties;

2) Statutes (laws) rules and regulations of government offices, and decisions rendered by the court; and

3) Reports by media of current events.

Infringement and remedies. Infringements is an invasion of a copyrighted work, that is, use without the permission of copyright holder. To determine whether or not there is copyright infringement, the factors to be considered include; 1) The purpose and character of the use; 2) The nature of the copyrighted works; 3) The amount and substantiality of the portion used in relation to the copyrighted work as a whole; and 4) The effect of the use upon the potential market for value of the copyrighted work.

H. Law on Trademarks, Tradenames, Service marks

The term **trademark** includes any word, name symbol, or device or any combination thereof adopted and used by a manufacturer or merchant to identify his goods and distinguish them from those manufactured or sold by others; Example: Magnolia Ice Cream.

Trade name is any designation which is adopted and used by a person to identify the goods he markets, services which he renders or business which he conducts. It is descriptive of manufacturer or dealer for protection in trade, to avoid confusion in business, and to secure the advantages of a good reputation and is applied more to the goodwill of a business than as identification of the product; Example: San Miguel Corporation.

Service-mark is any mark used in the sale or advertising of service rendered to the public by a person to identify his service and distinguish it from the services of others.

Trademarks, names or marks not registrable. The following marks or names cannot be registered:

1. Those which are immoral, deceptive and scandalous;
2. Those bearing the Philippine flag, coat of arms, or ensign;
3. Names of living persons and names of deceased Philippine Presidents.

Infringement and remedies. The unauthorized use or colorable imitation of the mark already appropriated by another, on goods of a similar class is infringement. It exists if words or designs used by the defendant are identical with or so similar to complainant's that they are likely to cause confusion, or deceive or mislead others. The remedies in case of infringement include: a) injunction, b) seizure and destruction of all necessary paraphernalia, and c) damages.

I. Criminal Law

Acts and omissions punishable by law are **felonies (delitos)**. **Felonies (crimes)** are committed not only by means of deceit but also by means of fault. Note that there is deceit when the act is performed by deliberate intent and there is fault when the wrongful act results from imprudence, negligence, lack of foresight or lack of skill.

1) By any person committing a felony (delito) although the wrongful act done be different from that which he intended.

Example: "A", without intent to kill, strikes, "B" with a first blow causing the latter's head to hit a cemented road pavement, resulting to "B's" death. In this example, "A" is criminally liable although the wrongful act done is different from that which he intended.

2) By any person performing an act which would be an offense against person or property, were it not for the inherent impossibility of its accomplishment or on account of the employment of inadequate or ineffectual means.

Example: "A" who harbors ill feeling "B" shoots the latter, not knowing that "B" is

already dead. In this case, "A" is liable for a crime where the penalty imposed is arresto mayor (one month, one day to six months) or a fine from P200 to 500.

Stages in the commission of a felony. The following are stages in the commissions of the felony:

- 1) *A felony is consummated*, when all the requisites necessary for its execution and accomplishment are present such as a person who killed another resulting in the latter's death.
- 2) *A felony is frustrated* when all the acts of execution have been performed but the felony is not produced because of a cause independent of the perpetrator's will, such as a perpetrator with an intent to kill, shoots another person; but due to the immediate surgical operation, the latter did not die.
- 3) *A felony is attempted*, when the offender commences the commission of a felony directly by overt acts, and does not perform all the acts of execution which should produce the felony by reason of some cause or accident other than his own voluntary desistance, such as the passing by of police patrol car which prevents the continuation of the overt acts.

Criminal negligence. Any person who, by reckless imprudence shall commit any act which, had it been intentional would constitute either as a grave felony, less grave felony, or light felony, is liable under the law.

J. Legal Responsibility of a Professional

The standard of care. Under Article 1173 of the Civil Code, "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 persons, of the 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 of a good father of a family shall be required." The concept of diligence or standard of care in common law is many. It is variously referred to as "a reasonable man," "a man of ordinary prudence" or "a man using ordinary care and skill."

Test to determine the existence of negligence. To determine whether or not an engineer exercises reasonable and proper degree of care and skill, one has to consider the practice of the profession.

Tort as basis of liability. Under Article 2176 of the New Civil Code, "Whoever by act or omission causes damage to another, there being fault or negligence, is obliged to pay for the damage done. Such fault or negligence, if there is no preexisting contractual relation between the parties, is called quasi-delict,"

Contract as basis of liability. Obligations arising from contracts have the force of law between the contracting parties and should be complied with in good faith. The contract contemplated here is either expressed or implied.

Damages. A pecuniary compensation or indemnity, which may be recovered in the courts by any person who has suffered loss, detriment or injury, whether to his person, property, or rights, through the unlawful act or omission or negligence of another is damages. Similarly, **damages** is a sum of money awarded to a person injured by the tort of another.

The Technologist as technical adviser. The technologist may be invited or employed as a technical adviser in areas where his services are needed. In investigations or inquiries being conducted by judicial or quasi-judicial bodies on a particular question of science, art, or trade.

The Technologist as an expert witness. In the practice of his profession, a technologist may unavoidably be dragged to case

litigation. In other words, he may be called upon to testify on a *stand or position* as an expert. The opinion of a witness is not admissible except when it is an expert evidence. Under the Rules of Court, **expert evidence** is the opinion of a witness regarding a question of science, art or trade, when he is skilled therein.

WEEK 4

The term "**obligation**" comes from the Latin word "**obligare**," meaning to bind. The Civil Code defines obligation as a juridical necessity to give, to do or not to do. Under this definition, an obligation consists either in (a). giving, (b) doing, or (c) not doing something.

Examples:

Obligation to give. "A" entered into contract with "B" whereby the former bound himself to deliver to "B" a specific car on June 5, 1985.

Obligation to do. "C" and "D" entered into an agreement whereby the former obliged himself to fix the car of "D".

Obligation not to do. "X" and "Y" signed a contract whereby the former bound himself with "Y" not to construct a fence on a land belonging to the latter for the period of (5) years.

An **obligation** is a legal duty, however created, the violation of which may become the basis of an action of law.

Law is defined as a rule of conduct, just and obligatory, promulgated by the legitimate authority, for common observance and benefit.

"Prestation is a payment in money or in services. A duty to do or not do something in fulfillment of an obligation, or the performance of such a duty: The contract

imposes reciprocal prestations upon the parties."

Sources of Obligations

Article 1157 of the New Civil Code provides that obligations arise from; (l) law, (b) contracts, (c) quasi-contract, (d) acts or omissions punished by law and (e) quasi-delicts.

1. Obligations derived from law.

Obligations derived from law are not presumed. Only those expressly determined in this Code or in special laws are demandable and shall be regulated by the precepts of the law which establishes them, and as to what has not foreseen by the provisions of the Civil Code.

Examples of obligations arising from law are the obligation of the spouses to mutually support each other; the obligation to pay taxes pursuant to the National Internal Revenue Code; the obligation mandating every person to act with justice, give everyone his due and observe honesty and good faith in the exercise of his rights and in the performance of his duties.

2. Obligations derived from contracts.

Obligations arising from contracts have the force of law between the contracting parties and should be complied with in good faith. While it is a truism that an agreement between the parties has the force of law, the contract must however be valid and enforceable and must not be contrary to law, morals, good customs, public order or public policy.

Examples:

1) "X" agrees to sell his car to "Y" and the latter agrees to buy the car of "X" voluntarily. The agreement has the force of law. Thus, neither may not violate the terms and conditions of the contract for it is required

by the law that the same must be complied with in good faith.

2) "A" agrees with "B" to steal the car of "C" for and in consideration of P2,000.00. This contract is void ab initio for it is against the law to steal someone's car.

3. Obligations derived from quasi-contracts. A quasi-contract is the juridical relation resulting from lawful, voluntary and unilateral acts by virtue of which the parties become bound to each other to the end that no one will be unjustly enriched or benefited at the expense of another. This particular source of obligation is considered quasi contract because it lacks the element of consent.

Negotiorum gestio. It is the voluntary management of the property or affairs of another without the knowledge or consent of the latter.

Example: "A" went abroad with his family without leaving anybody to look after his house. While abroad, a strong earthquake occurred resulting in the destruction of "A's" house. Because of the kindness of "B," the neighbor of "A", the house was repaired. However, "B", incurred some expenses. In this case, "A" is obliged to reimburse the expenses of "B" in a legal relationship known as negotiorum gestio.

Solutio indebiti. It is a juridical relation which takes place when something is received when there is no right to demand it, and it was unduly delivered through mistake, giving rise to the obligation to return it.

Example: "A" owes "B" the sum of P2,000.00. "A" paid "B" the sum of P3,000.00 not knowing that the former incurred only a debt amounting to P2,000.00. In this example, "B" is dutybound to return the excess of P1,000.00 based on the principle of solutio indebiti.

Obligations derived from delicts or crimes. Acts or omissions punished by law are crimes or delicts. Under the law a person who commits a criminal offense, such as murder, is obliged to pay for the injury thus inflicted. This is categorically spelled out in the Revised Penal Code which provides that, "Every person criminally liable for a felony (crime) is also civilly liable.

Obligations derived from quasi-delicts. Obligations arising from quasi-delicts or torts are governed by Articles 2176 to 2194 of the New Civil Code. A quasi-delict is an act or omission by one person which causes damage to another giving rise to the obligation to pay for the damage done, there being fault or negligence, and there is no pre-existing contractual relation between the parties. Example is a pedestrian who was hit by a speeding jeepney due to negligence may claim damages by reason of quasi-delict or culpa aquiliana.

Scope of quasi-delicts. Quasi-delicts include acts, whether punishable by law or not, whether or not criminal in character, whether intentional or voluntary, or negligent, which result in damage to another. This is consistent with the spirit of law, equity and justice, and more in harmony with modern progress.

Person liable for damages arising from quasi-delicts. Obligations arising from quasi-delicts are demandable not only from the person directly responsible for the damages incurred.

Nature and Effect of Obligation

Obligation to be diligent. Article 1163 of the New Civil Code provides that, "Every person obliged to give something is also obliged to take care of it with the proper diligence of a good father of the family, unless the law or the stipulation of the parties requires another standard of care."

Obligation to give a determinate thing.

Under Article 1166 of the New Civil Code, the obligation to give a determinate thing includes that of delivering all its accessions and accessories even though they may not have been mentioned. **Accession** pertains to the fruits of a thing or additions to or improvements upon a thing (the principal) such as trees planted on a land, and rents on buildings. **Accessories**, on the other hand, pertain to things joined to or included with the principal thing for the latter's embellishment, better use, or perfection. Examples of these are a frame of a picture, keys of a car, etc.

Obligation to do. Article 1167 of the New Civil Code states that if a person obliged to do something, fails to do it, the same shall be executed at his cost. The same rule shall apply if he does it in contravention of the tenor of the obligation. Moreover, if he performs an obligation in a poor manner, it can be decreed that it must be undone.

Obligation to deliver. The obligor may bind himself to deliver either a specific (determinate) or generic (indeterminate) thing. It is **specific or determinate**, when it is particularly designated or physically segregated from all others of the same class, such as the Volkswagen car model 1980, and with plate no. NLL-859 or the house located at Lot 24 Block 2, Second Road, Multinational Village, Paranaque, Metro Manila. It is **generic or indeterminate** when it refers only to a class or genus and cannot be pointed out with particularity, such as a dog, a car, a calendar watch.

Right to the fruits. The creditor has a right to the fruits of the thing from the time the obligation to deliver it arises. However, he shall not acquire no real right over it until the same has been delivered to him.

The kinds of fruits contemplated under Article 1164 of the New Civil Code are the following:

1) Natural fruits. They are the spontaneous products of the soil, and the young and other products of animals. Note that these products came out or produced without the intervention of human labor, such as trees or grasses in the forest.

2) Industrial fruits. They are produced through cultivation; thus, with the intervention of labor such as vegetables planted in the garden.

3) Civil Fruits. They pertain to those derived by virtue of juridical or legal relations such as rents on houses or buildings by virtue of a lease contract. Note that the creditor is entitled to the fruits to be delivered from the time the obligation to make delivery arises.

Obligation with a period. An obligation whose performance is subject to the expiration of said period or term is an obligation with a period. Legally, a period or term is a future and certain event upon the arrival of which, the right subject to it either arises or is terminated. It is a day certain which must necessarily come although it may not be known when, such as the death of a person.

a) **Ex die or suspensive period.** It is a period having a suspensive effect. Example: I will give you a gift on your birthday.

b) **In diem or resolutive period.** It is that which takes effect immediately but is terminated upon the arrival of the day certain. Example: I will give you a 200- peso allowance until you finish your course.

c) **Legal period.** If the period for compliance is fixed by the law such as payment of taxes.

d) **Conventional or voluntary period.** One that is agreed upon by the parties.

e) **Judicial period.** One that is provided or fixed by the courts.

Alternative obligation. An alternative obligation is one wherein various prestations

are due, but the performance of one of them is sufficient determined by the choice which rightfully belongs to the debtor (obligor) unless it has been granted expressly to the creditor (obligee).

Facultative obligation. An obligation where one prestation is due but the obligor (debtor) may substitute another.

Solidary obligation. An obligation where each of the debtors is liable for the whole obligation and each of the creditors has a right to demand compliance of the entire obligation.

Divisible obligation. An obligation capable of partial performance is divisible obligation. Example: If "A" agrees to pay "B" P6,000.00 in two installments, the obligation is divisible because it is capable of partial performance.

Indivisible obligation. An obligation not capable of partial performance is indivisible obligation. Example: If "A" agrees to deliver a car to "B", the car must be delivered as a whole object for the car itself is indivisible. Note that under the law the controlling test in determining whether an obligation is divisible or indivisible in cases where the object is physically divisible, is the purpose of the obligation or the intention of the parties.

Obligation with a penal clause. An obligation which contains an accessory undertaking to assume greater liability in case of breach is obligation with a penal clause.

Payment or performance. Ordinarily, **payment** is the delivery of money. As a concept in civil law, the term payment consists of not only the delivery of money but also the performance, in any other manner, of an obligation. Thus, debt is not considered to have been paid unless the thing or service in which the obligation consists has been completely delivered or rendered, as the case may be.

Confusion or merger. Confusion or merger is the union of the qualities of debtor and creditor in the same person, the effect of which is generally to extinguish the debt.

Compensation. As a concept in civil law, *compensatio* is set-off. Under the law, compensation takes place when two persons, in their own right are creditors and debtors of each other. In other words, compensation takes effect by operation of law and extinguishes the concurrent amount of both debts although the parties (creditors and debtors) are not aware of the compensation.

Novation. A novation takes place when it substitutes a new party and discharges one of the original parties to a contract by agreement of all the parties. A new contract is created with the same terms as the original one, but only the parties are changed.

Kinds of substitution. Substitution of debtor takes place into two ways:

- a) **Expromision.** It takes place when a third person at his own initiative and without the knowledge or against the will of the debtor assumes the latter's obligation with the consent of the creditor.
- b) **Delegacion.** It takes place when the debtor asks the creditor to accept a third person to take his place as obligor. The creditor may withhold his approval.