

WEEKS 1 to 4 – LAW ON SALES

Contract of Sale is a contract whereby one of the contracting parties (i.e., seller or vendor) obligates themselves to transfer the ownership of and to deliver a determinate thing and the other one (i.e., buyer or vendee) to pay therefor a price certain in money or its equivalent.

Sale as Distinguished from Other Contracts

1. Dacion en Pago or Dation in Payment

Sale	Dacion en Pago
There is no pre-existing credit.	There is a pre-existing credit.
It creates obligations.	It extinguishes obligations.
The consideration is the price (from the seller's view) and the delivery of the thing sold (from the buyer's view).	The consideration is the extinguishment of the obligation (from the debtor's point of view) and the delivery of the thing offered in place of the credit (from the creditor's point of view).
There is greater freedom in fixing the price.	There is lesser freedom in fixing the price.

- Contract for a Piece of Work** – The article sold is specially manufactured and upon the special order of the customer. Article is not sold in the ordinary course of business.

3. Contract to sell

Sale	Contract to sell
Title to the property passes to the vendee upon delivery of the thing sold.	Ownership is reserved to the vendor and is not to pass to the vendee until full payment of the purchase price.
Non-payment of the price is a negative resolutive condition, i.e., the vendor loses the ownership of property and cannot recover it until and unless the contract of sale is resolved or rescinded.	Full payment of the purchase price is a positive suspensive condition, i.e., the title remains in the vendor if the vendee does not comply with the condition precedent of making payment at the time specified in the contract.
Risk of loss is on the seller.	Risk of loss is on the buyer.

4. Barter

Sale	Barter
A thing is given in exchange for a price certain in money or its equivalent.	A thing is given in exchange for another thing.
Applicable law is the Law on Sales.	Applicable law is the Law on Barter or Exchange.
The rule on the Statute of Frauds, which applies to the sale of real property and personal property bought at P500 or more, apply.	The rule on the Statute of Frauds, which applies to the sale of real property and personal property bought at P500 or more, does not apply.

Rules if Consideration is Partly Money and Partly Goods

- Manifest intention of the parties.
- If intention could not be determined, consider the value of the thing given:
 - If the value of the thing is **more than** the value of the money, it is **BARTER**.
 - If the value of the thing is **less than** the value of the money, it is **SALE**.
 - If both values are the **same**, it is **SALE**.

Elements of Contract of Sale

- Essential Elements** – Those without which, there can be no valid sale (**COC**)
 - Consent** – This refers to the consent on the part of the seller to transfer and deliver and on the part of the buyer to pay.
 - Object** – This refers to the determinate thing, which is the object of the contract.
 - Cause/Consideration** – This refers to a price certain in money or its equivalent.
- Natural Elements** – Those which are deemed to exist in the contract in the absence of contrary stipulations
 - Warranty against eviction
 - Warranty against hidden defects
- Accidental Elements** – Those which may exist only if stipulated, such as the time and place of payment

Earnest Money and Option Money

Earnest Money	Option Money
Money is given as part of the purchase price.	Money is given as a distinct consideration for an option contract.
When given, the buyer is bound to pay the balance.	

Earnest Money	Option Money
There is already a sale.	This applies to a sale not yet perfected.
In case of non-payment, an action for specific performance or rescission can be filed by the injured party.	In case of non-payment, there can be an action for specific performance.

Requisites on the Object of Contract of Sale

1. The thing must be within the commerce of men.
2. The thing must not be contrary to law, morals, good customs, public order or public policy.
3. The thing must be determinate.
4. The vendor must have the right to transfer ownership at the time of delivery

Things Having Potential Existence

1. **Emptio rei speratae** – Sale of thing with potential existence (future thing)
Note: Future inheritance, however, cannot be sold.
2. **Emptio spei** – Sale of mere hope or expectancy (present thing)

Price

It is the sum stipulated as the equivalent of the thing sold, and every incident taken into consideration for the fixing of the same, put to the debit of the vendee, and agreed to by him.

Requisites

1. Real – There is every intention on the part of the buyer to pay the price and every intention on the part of the seller to receive such price.
2. Certain or ascertainable

Effect of Gross Inadequacy of Price

Mere inadequacy of the price does not affect the validity of the sale, **EXCEPT**:

1. When there is fraud, accident mistake, or undue influence (**FAMI**) indicative of a defect in consent present
2. When it shows that the parties really intended a donation or some other act or contract
3. If the price is simulated or false such as when the vendor really intended to transfer the thing gratuitously, then the sale is void except if it can be shown to be a donation or another contract.

Perfection of Contract of Sale

GENERAL RULE: A contract of sale is perfected at the moment there is a “meeting of the minds” upon the thing, which is the object of the contract and upon the price; consensual contract.

EXCEPTION: When the sale is subject to a suspensive condition

- Sale being a consensual contract, no form is required for its validity (may be oral or written).

When form is important for validity; exception by specific provision of law

- Sale of a piece of land or any interest therein through an agent
- Sale of large cattle
- Sale of land by non-Muslim hill tribe cultural minorities

When form is important in enforceability (Statute of Frauds)

1. Sale of personal property at a price not less than five hundred pesos (P500.00);
2. Sale of real property or an interest therein regardless of the price involved;
3. Sale of property or of an interest therein not to be performed within a year from the date thereof regardless of the nature of the property and the price involved; and
4. When an applicable statute requires that the contract of sale be in a certain form

Capacity to Buy or Sell

GENERAL RULE: All persons, whether natural or juridical, who can bind themselves, have the legal capacity to buy and sell.

Two (2) Kinds of Incapacity

1. **Absolute Incapacity** – Party cannot bind himself in any case. This includes minors, insane or demented persons, and deaf-mutes who do not know how to write.

Note: Minors in contract for necessities must pay a reasonable price.

2. **Relative Incapacity** – Certain persons under certain circumstances cannot buy certain property.

Example: Sale of property between husband and wife. Generally, a sale by one spouse to another is void. The husband and wife cannot sell property to each other, **EXCEPT**:

- When a separation of property was agreed upon by the spouses;
- When there has been a judicial separation of property under Article 134 and 135 of the Family Code.

Persons Relatively Incapacitated to Buy (PAGEJO)

1. Public officers and employees – Property of State
2. Agents – Property of Principal unless with consent
3. Guardian – Property of Ward
4. Executors and administrators – Estate
5. Justices, judges, prosecuting attorneys, clerks, and employees of court – Property/Rights under litigation
6. Others disqualified by law

Status of Sale: Voidable (1-3); Void (4-6)

Transfer of Ownership

There is a transfer of ownership of the thing sold upon the actual or constructive delivery of the object to the buyer.

Who Bears Risk of Loss/Deterioration/Fruits

1. BEFORE PERFECTION

- *Res perit domino* – The thing perishes with the owner
- The owner is the seller, so seller bears risk of loss

2. AT PERFECTION

- *Res perit domino*
- Contract is merely inefficacious because loss of the subject matter does not affect the validity of the sale
- Seller cannot comply with obligation anymore so buyer cannot be compelled anymore

3. AFTER PERFECTION BUT BEFORE DELIVERY

- Loss – two (2) views:
 - Paras: **BUYER**, i.e., buyer is obliged to pay the price.
 - Tolentino: **SELLER**, i.e., buyer is not obliged to pay the price.

Note: The second rule is more consistent with the principle of “res perit domino,” which means “the thing perishes with the owner.”

- Deterioration and fruits – Buyer bears loss

4. AFTER DELIVERY

- *Res perit domino*
- Delivery extinguishes ownership to the seller and creates a new one in favor of the buyer

Obligations of the Vendor (TDWP)

1. Transfer Ownership (not waivable)
2. Deliver the thing (not waivable)
3. Warrant the thing sold (waivable and may be modified)
4. Preserve thing from perfection to delivery (Art. 1163)

Ownership of the Thing Sold

- As a rule, no one can dispose a thing that does not belong to him and that the buyer acquires no better title than the seller had.
- If the seller's title is **voidable**, but the same has not been avoided at the time of sale, the buyer acquires a good title to the goods, provided he buys them in good faith, for value, and without notice of the seller's defect of title.

DELIVERY

Kinds

1. Actual or Real
2. Legal or Constructive
 - a. **Legal formalities** – Execution of public instrument
 - b. **Traditio simbolica** – Keys delivered
 - c. **Traditio longa manu** – By mere consent/agreement if the movable sold cannot yet be transferred to the possession of the buyer at the time of the sale
 - d. **Traditio brevi manu** – If the buyer already had the possession of the object even before the purchase (lessee becomes owner)
 - e. **Traditio constitutum possessorium** – Possession as owner changed (owner becomes lessee)
3. **Quasi-traditio** – Delivery of rights, credits or incorporeal property (e.g., stock certificate)

Sale or Return and Sale on Approval

Sale or Return	Sale on Approval or on Trial/Satisfaction
Ownership of the goods passes to the buyer upon delivery.	Ownership passes to the buyer upon his acceptance of the goods or the expiration of the time given to him to signify his acceptance.
The risk of loss is on the buyer.	The risk of loss is on the seller.
The buyer may return the goods even if he is satisfied with its quality.	The buyer has no right to return the goods if he is satisfied with its quality.

Completeness of Delivery of Immovables

1. Rules when the quantity is more than what was contracted to sell

The buyer may:

- a. Accept the goods agreed upon and reject the rest;
- b. Accept the whole and pay for them at the contract rate; or

- c. Reject the whole if indivisible.

2. Rules when the quantity is less than agreed upon

The buyer may:

- a. Reject all; or
- b. Accept all.

Rights of Unpaid Seller

The seller is deemed an unpaid seller if:

- The whole of the price has not been paid or tendered; or
 - A negotiable instrument (e.g., bill of exchange, check etc.) has been received as a conditional payment, and the condition on which it was received has been broken by dishonor of the instrument.
1. **Possessory lien or the right to retain the goods while he is in possession of them** – This is available to the seller when he is unpaid and the goods are in his possession, notwithstanding that he may be an agent or bailee for the buyer.
 2. **Right of stoppage in transit** – This is the right of an unpaid seller to resume possession of the goods sold while in transit, and he will then become entitled to the same rights with the goods as he would have had if he had never parted with the possession.
 3. **Right of resale** – This is available to the seller when the goods are perishable, when the seller reserves the right of resale in case the buyer should make default, or when the buyer has been in default for an unreasonable time.
 4. **Right of rescission** – This is the right of the seller to cancel the sale.

Completeness of Delivery of Immovables

1. Sale of Real Estate for a Unit of Measure

- a. *Less in area or of inferior or different quality*
 - 1) Ask for the proportionate reduction on the price if the lack in area is **less than** one-tenth of that stated in the contract (*Accion quanti minoris*); or
 - 2) Rescind the sale if the lack in area is **more than or equal to** one-tenth (*Accion redhibitoria*).
- b. *Greater in area*
The buyer may:
 - 1) Accept the area stated in the contract and reject the rest; or
 - 2) Accept the whole area and pay for them at a contract rate.

2. Sale of Real Estate for a Lump Sum

- There shall be no increase or decrease in the price, although there be a greater or lesser area or number than that stated in the contract.
- In case where the vendor does not deliver the area within the boundaries stated in the contract, the buyer may:
 - a. *Accion quanti minoris*; or
 - b. *Accion redhibitoria*.

Double Sale

- Two (2) or more transactions must constitute valid sales.
- They must pertain exactly to the same object or subject matter.
- They must be bought from the same or immediate seller.
- Two (2) or more buyers who are at odds over the rightful ownership of the subject matter must represent conflicting interests.

1. Movable

- a. First possessor in good faith

2. Immovables

In the sale of immovable properties to different vendees, in order of priority:

- a. First registrant in good faith
- b. If no one registered the sale, first possessor in good faith
- c. In the absence of both registration and possession, person who presents the *oldest title in good faith*

Note: In all of the above cases, good faith is essential, being the basic premise of preferential rights granted to the person claiming ownership of the immovable.

WARRANTIES

Warranty

A statement or representation made by the seller of goods, contemporaneously and as part of the contract of sale, having reference to the character, quality or title of the goods, and by which he promises or undertakes to ensure that certain facts are or shall be as he then represents

1. Warranty in Case of Eviction

- **Eviction** is a juridical process whenever, by a final judgment based on a right prior to the sale or an act imputable to the vendor, the vendee is deprived of the whole or a part of the thing purchased.
- When evicted, the buyer is deprived of the object because of a right existing at the time of sale, provided the seller is given the opportunity to defend.

- If the seller acted in bad faith, any stipulation exempting him from the obligation to answer for eviction should be void.
- Where no warranty has been agreed upon, or there was no stipulation exempting the vendor from liability, he shall still be liable for eviction if he acted in bad faith.
- If the property is sold for non-payment of taxes due and not made known to the vendee before the sale, the vendor is liable for eviction, **EXCEPT**, if waived:
 - *Waiver consciente* – The vendor shall be liable only for the value of the things at the time of eviction.
 - *Waiver intencionada* – The vendor shall not be liable for anything provided he did not act in bad faith.

2. Warranty against hidden defects

- Vendor guarantees that the thing sold is free from any hidden faults or defects or any charge or encumbrance not declared or known to the buyer.
- Hidden faults or defects pertain only to those that make the object unfit for the use for which it was intended at the time of the sale.

Responsibility for Hidden Defects

GENERAL RULE: The vendor shall be liable to the vendee for any hidden faults or defects in the thing sold because the ignorance of the vendor does not relieve him from liability.

EXCEPTION: The vendor shall not be liable if there is a stipulation exempting him from such defects and he was not aware thereof.

Remedies of the vendee

- Accion redhibitoria* – Rescission with damages
- Accion quanti minoris* – Proportionate reduction in the price with damages

Note: These remedies are alternative, i.e., they cannot be simultaneously filed because they are incompatible with each other.

3. Warranty against redhibitory defects on animals

- If the hidden defect of animals should be of such a nature that expert knowledge, even in case of professional inspection, is not sufficient to discover, the defect shall be considered redhibitory. However, if the veterinarian, through ignorance or bad faith, should fail to discover or disclose it, he shall be liable for damages.

- If two (2) or more animals are sold together, the redhibitory defect of one shall only give rise to its redhibition, and not that of the others, **EXCEPT** when the redhibitory defect of one shall give rise to the redhibition of all the animals sold, including the sound ones, if it should appear that the vendee would not have purchased the sound animal or animals without the defective one.
- **The sale of animals is void when:**
 - The animals are suffering from contagious diseases; and
 - The animals are found to be unfit for use or service stated in the contract for which they were acquired.
- **Requisites to make the vendor liable in the sale of animals**
 - The disease existed at the time of sale;
 - The disease must have been the cause of death; and
 - The animals died within three (3) days from the time of purchase.

Obligations of the Vendee

- To accept delivery of the thing sold;
- To pay the price of the thing sold at the time and place stipulated in the contract; and
- To bear the expenses for the execution and registration of the sale and putting the goods in a deliverable state, if such is the stipulation

EXTINGUISHMENT OF SALE

- By the same causes as all other obligations
- By redemption, whether conventional or legal redemption

Conventional Redemption

- *Pacto de retro* sale or sale with a right to repurchase
- It occurs when the vendor reserves the right to repurchase the thing sold, provided he returns to the vendee the following:
 - price of the sale;
 - expenses of the contract;
 - necessary and useful expenses made on the thing sold; and
 - any other legitimate payments made because of the sale.
- The right to redeem must be reserved by the seller through a stipulation to that effect in the contract of sale.
- There cannot be conventional redemption unless it has been stipulated upon in the contract of sale.

- **Period to repurchase**
 - If without stipulation – Four (4) years from the date of the contract
 - If with stipulation – Maximum of 10 years
 - The vendor who fails to repurchase the property within the period agreed upon may, however, exercise the right to repurchase within 30 days from the time final judgment was rendered in a civil action on the basis that the contract was a true sale with right of repurchase.
- **Equitable mortgage** – It is a kind of mortgage that lacks the formalities required by the law but shows the true intention of the parties to secure debt with real property.
- A sale with conventional redemption is deemed to be an **equitable mortgage** in any of the following cases:
 - Possession by the vendor remains, as lessee or otherwise;
 - Extension of redemption period after expiration;
 - Retention by the vendee of part of the purchase price
 - Unusually inadequate purchase price
 - Any other case where the parties really intended that the transaction should secure the payment of a debt or the performance of any obligation
 - When there is doubt as to whether the contract is a contract of sale with right to repurchase
 - Vendor binds himself to pay the taxes of the thing sold

Legal Redemption

- It is the right to be subrogated, upon the same terms and conditions stipulated in the contract, in the place of one who acquires a thing by purchase or dation in payment, or by any other transaction whereby ownership is transmitted by onerous title .
- The right of pre-emption or redemption shall be exercised **within 30 days** from the written notice by the prospective vendor, or by the vendor, as the case may be.

Instances of Legal Redemption

1. Sale of a co-owner of his share to a third person
2. Sale of adjacent rural lands not exceeding one (1) hectare
3. Sale of adjacent rural-urban land
4. Legal redemption in sale of credit or other incorporeal rights in litigation

Assignment of Credits – It is a contract whereby a person transfers his credit, right, or action against a third person to another person for a consideration which is certain in money or its equivalent.

RULES ON INSTALLMENT SALES

Sale of Personal Property in Installments (Recto Law)

Remedies of the Seller

1. Exact fulfillment of the obligation (*specific performance*) should the vendee fail to pay, regardless of the number of installments defaulted.
2. Cancel the sale, should the vendee's failure to pay cover two (2) or more installments.
3. Foreclose the chattel mortgage on the thing sold, if one has been constituted, should the vendee's failure to pay cover two (2) or more installments.

Sale of Real Property in Installments (Maceda Law)

Rights of the Buyer

1. If the buyer has paid at least two (2) years of installments

- a. The buyer must pay, without additional interest, the unpaid installments due within the total grace period earned by him. There shall be one (1) month grace period for every year of installment payments made.

Note: *This right shall be exercised by the buyer ONLY once in every five (5) years of the life of the contract AND its extensions.*

- b. Actual cancellation can only take place after 30 days from receipt by the buyer of the notice of cancellation OR demand for rescission by a notarial act AND upon full payment of the cash surrender value to the buyer.

Note: *The seller shall refund to the buyer the cash surrender value of the payments on the property equivalent to 50% of the total payments made. After five (5) years of installments, there shall be an additional 5% every year but not to exceed 90% of the total payments made.*

- c. The buyer shall have the right to sell his rights or assign the same to another person OR to reinstate the contract by updating the account during the grace period and before the actual cancellation of the contract.
- d. The buyer shall have the right to pay in advance any installment or the full unpaid balance of the purchase price any time without interest and to have such full payment of the purchase price annotated in the certificate of title covering the property.

2. If the buyer has paid less than two (2) years of installments

- The seller shall give the buyer a grace period of **NOT** less than 60 days from the date the installment became due.
- If the buyer fails to pay the installments due at the expiration of the grace period, the seller may cancel the contract after 30 days

from receipt by the buyer of the notice of cancellation or the demand for rescission of contract by a notarial act.

- Same as paragraph c and d above.

Note: Down payments, deposits, or options on the contract shall be included in the computation of the total number of installment payments made.

WEEK 6 – LAW ON CREDIT TRANSACTIONS

Comparison of Pledge, Mortgage, and Antichresis

Basis of Difference	Pledge	Real Estate Mortgage	Chattel Mortgage	Antichresis
Type of contract as to perfection	Real – by delivery of the object	Consensual – by mere consent	Formal – by registration of the contract in the Chattel Mortgage Registry	Formal – by execution of written agreement of antichresis with a statement of the amount of principal and interest of the contract of loan
To bind third persons	It must be in a public instrument showing a description of the thing pledged and the date of the pledge.	It must be registered in the Registry of Property.	It must be accompanied by an affidavit of good faith.	It must be registered in the Registry of Property.
Object of contract	Movable or personal property	Immovable or real property	Movable or personal property	Immovable or real property
Prohibition against pactum commissorium	Applicable	Applicable	Applicable	Applicable
Indivisibility of the contract	Indivisible	Indivisible	Indivisible	Indivisible
Remedy of creditor in case of debtor's default	Foreclosure security and sell the collateral in public auction with the proceeds to be applied to the unpaid obligation	Foreclosure security and sell the collateral in public auction with the proceeds to be applied to the unpaid obligation	Foreclosure security and sell the collateral in public auction with the proceeds to be applied to the unpaid obligation	Gather the fruits of the land and apply the fair market value of the fruits at the time of application first to the interest of the loan and the remainder to the principal of the loan
As to deficiency	Deficiency can never be recovered even if there is a stipulation. Any stipulation for recovery of deficiency is null and void. Exception: Legal Pledge	Deficiency can be recovered unless there is stipulation to the contrary.	Deficiency can be recovered unless there is stipulation to the contrary. Exception: In case of personal property sold in installments under Recto Law	Deficiency can be recovered through the continuous gathering of fruits.
As to excess of proceeds	Excess belongs to the pledgee-creditor unless there is a stipulation to the contrary. Exception: Legal Pledge	Excess belongs to the mortgagor unless there is a stipulation to the contrary.	Excess belongs to the mortgagor unless there is a stipulation to the contrary.	Excess fruits belong to the owner of the land or antichretic debtor.

Basis of Difference	Pledge	Real Estate Mortgage	Chattel Mortgage	Antichresis
As to appropriation of property	The pledgee may appropriate the thing pledged if the same is not sold in two (2) public auctions.	The mortgagee cannot appropriate the thing mortgaged.	The mortgagee cannot appropriate the thing mortgaged.	The antichretic creditor cannot appropriate the land used as collateral but may sell the fruits to be applied to interest and principal of loan.
As to selling of property after pledge or mortgage by the owner	The pledgor may only sell the property with the consent of the pledgee.	The mortgagor can sell the property. Any stipulation prohibiting the mortgagor from selling the property is void.	The mortgagor can sell the property. Any stipulation prohibiting the mortgagor from selling the property is void.	The antichretic debtor can sell the land.

Comparison of Special Contracts

Name of Contract	Commodatum	Mutuum or Simple Loan	Deposit	Lease
Definition	It is a contract wherein one of the parties delivers to another, <i>something not consumable</i> , so that the latter may use the same for a certain time and return it.	It is a contract wherein one the contracting parties delivers to another, <i>money or other consumable thing</i> , upon the condition that the same amount of the same kind and quality shall be paid.	It is a contract wherein a person receives a thing belonging to another, with the obligation of <i>safely keeping it and returning the same</i> , and that the safekeeping of the thing delivered is the principal purpose of the contract.	It is a contract wherein one party binds himself to give another the <i>enjoyment or use of a thing for a price certain</i> , and for a period which may be definite or indefinite.
Subject matter	<ul style="list-style-type: none"> Non-consumable thing Consumable thing but only for exhibit 	<ul style="list-style-type: none"> Money Consumable thing 	<ul style="list-style-type: none"> Consumable thing Non-consumable thing 	<ul style="list-style-type: none"> Real property Personal property
Characteristics	<ul style="list-style-type: none"> Real Essentially gratuitous 	<ul style="list-style-type: none"> Real Onerous if there is interest Gratuitous if there is no interest 	<ul style="list-style-type: none"> Real Onerous if there is depositary fee Gratuitous if for free 	<ul style="list-style-type: none"> Consensual Onerous

WEEK 7 – FINANCIAL REHABILITATION AND INSOLVENCY ACT

- **Insolvent** refers to the financial condition of a debtor that is generally unable to pay its or his liabilities as they fall due in the ordinary course of business or has liabilities that are greater than its or his assets.
- **Commencement date** is the date on which the court issues the Commencement Order, which shall be retroactive to the date of filing of the petition for voluntary or involuntary proceedings.
- **Excluded Debtors**
 - Bank
 - Insurance company
 - Pre-need company
- **Suspension of Payments**
 - Only an individual debtor may file a petition for suspension of payment.
 - The debtor has sufficient property to cover all his debts but foreseeing the impossibility of meeting them when they respectively fall due.
 - The purpose is to delay the payment of debts.
- **Rehabilitation** refers to the restoration of the debtor to a condition of successful operation and solvency, if it is shown that its continuance of operation is economically feasible, and its creditors can recover by way of the present value of payments projected in the plan, more if

the debtor continues as a going concern than if it is immediately liquidated.

Types of Rehabilitation

1. Court-supervised rehabilitation
 - a. Voluntary court-supervised rehabilitation
 - b. Involuntary court-supervised rehabilitation
2. Pre-negotiated rehabilitation
3. Out-of-court restructuring or informal rehabilitation

The rehabilitation proceedings shall commence upon the issuance of the Commencement Order, which shall include, among others, a Stay Order or Suspension Order.

Liquidation

- a. Liquidation of individual debtors may be voluntary or involuntary

Voluntary Liquidation of Individual Debtor	Involuntary Liquidation of Individual Debtor
1. Debtor is insolvent.	1. Debtor is insolvent.
2. Acts of insolvency need not be alleged and proved.	2. Creditors must prove acts of insolvency
3. The debts must be at least P500,000.00.	3. The debts must be at least P500,000.00.
4. The individual debtor files the petition.	4. A creditor or group of creditors files the petition.
5. The debtor is not absent as he files the petition.	5. It applies even in the case of absent debtor (debtor resides outside or has departed from the Philippines, cannot be found, or conceals himself) (Section 108).
6. Posting of bond by creditors is not required.	6. Posting of bond by creditors is required (Section 105).
7. Liquidation Order is issued without trial (Section 104).	7. Liquidation Order is issued after trial (Section 107).

- b. Involuntary liquidation of individual debtors distinguished from involuntary liquidation of business organizations

Involuntary Liquidation of Individual Debtor	Involuntary Liquidation of Sole Proprietorship, Partnership, and Corporation
1. At least three (3) creditors are required.	1. There can be one (1) or more creditors.
2. The debts must be at least P500,000.00.	2. The debt or aggregate of debts must be at least P1,000,000.00 or equivalent to 25% of the subscribed capital or partner's contribution, whichever is higher.
3. The individual can continue his business.	3. The business organization will be dissolved.
4. There must be an act of insolvency.	4. An act of insolvency is not required.

WEEK 8 – PHILIPPINE DEPOSIT INSURANCE CORPORATION (PDIC) LAW

Functions of PDIC

1. Deposit Insurer
 2. Co-regulator of Banks
 3. Receiver and Liquidator of Closed Banks
- **Deposit** is the unpaid balance of money or its equivalent received by a bank in the usual course of business.
 - Maximum deposit insurance coverage is **P500,000 per depositor per bank**.
 - Membership with Philippine Deposit Insurance Corporation (PDIC) is mandatory for all banks licensed by the Bangko Sentral ng Pilipinas (BSP) to operate in the Philippines.
 - In the case where a depositor is the sole beneficial owner of a single "By," "In Trust For" (ITF), or "For the Account of" (FAO) accounts, the consolidated balances of these accounts shall be insured up to P500,000.
 - The depositor's total shares in his/her joint accounts shall be separately insured up to P500,000.

- A depositor with single accounts and joint accounts may have insured deposits of up to P1,000,000.
- Depositors have two (2) years from PDIC's takeover of the closed bank to file their deposit insurance claims.
- Membership with PDIC is mandatory for all banks licensed by the BSP to operate in the Philippines.
 - a. Banks incorporated under Philippine laws, such as commercial banks, savings banks, mortgage banks, stock savings and loan associations, development banks, cooperative banks, and rural banks
 - b. Domestic branches of foreign banks

WEEK 9 – BANK SECRECY LAWS

Investment in Government Bonds – This refers to investment in bonds issued by the government of the Philippines, its political subdivisions, and its instrumentalities (e.g., treasury bills, treasury notes, risk-free bonds),

GENERAL RULE: All deposits of whatever nature with banks or banking institutions in the Philippines, including investments in bonds issued by the Government of the Philippines, its political subdivisions and its instrumentalities, are hereby considered as of an **absolutely confidential** nature and may not be examined, **EXCEPT:**

1. When there is written permission or consent in writing by the depositor or investor;
2. In cases of impeachment cases;
3. Upon order of the court in cases of bribery or dereliction of duty of public officials; and
4. Upon order of the court in cases where the money deposited or invested is the subject matter of the litigation.
 - Foreign currency deposits may be examined, inquired, or looked into when there is a written permission of the depositor (Section 8, R.A. 6426 Foreign Currency Deposit Act);
 - Republic Act No. 1405, otherwise known as An Act Prohibiting Disclosure of or Inquiry into, Deposits with Any Banking Institution and Providing Penalty Therefor, does not prohibit attachment or garnishment of bank accounts.
 - Foreign currency deposits shall be **exempt** from attachment, garnishment, or any other order or process of any court, legislative body, government agency, or any administrative body whatsoever.

Unclaimed Balances

- It shall include credits or deposits of money, bullion, security, or other evidence of indebtedness of any kind, and interest thereon with banks, buildings and loan associations, and trust corporations, as hereinafter defined, in favor of any person known to be dead or who has not made further deposits or withdrawals during the preceding 10 years or more.
- Deposits that have become dormant for a period of 10 years may be escheated in favor of the government.

Covered Institutions

1. All banks
2. Trust corporations
3. Mutual building and loan associations; and
4. All banking institutions of every kind covered under Act No. 3936, as amended by PD 679

WEEK 11 – GENERAL BANKING LAW

Banks – Entities engaged in the lending of funds obtained in the form of deposits

Quasi-banks – Entities engaged in the borrowing of funds through the issuance, endorsement, or assignment with recourse or acceptance of deposit substitutes for purposes of relending or purchasing of receivables and other obligations

Banks are classified into:

1. **Universal banks** – Banks that have authority to exercise, in addition to the powers and functions of commercial banks, powers of an investment house and the power to invest in non-allied enterprises
2. **Commercial banks** – Banks that are given all such power necessary to engage in commercial banking in addition to general corporate powers
3. **Thrift banks** – Composed of savings and mortgage banks, stock savings and loan associations, and private development banks
4. **Rural banks** – Banks that are created to make needed credit available and readily accessible in the rural areas for the purpose of promoting comprehensive rural development
5. **Cooperative banks** – Banks that primarily provide financial, banking, and credit services to cooperative organizations and their members
6. **Islamic banks**
7. **Other classifications of banks** as determined by the Monetary Board of the Bangko Sentral ng Pilipinas

Basic Functions of Banks

1. Deposit function
2. Loan function

Other Functions (Section 53)

1. Receive in custody funds, documents, and valuable objects;
2. Act as financial agent and buy and sell, by order of and for the account of their customers, shares, evidence of indebtedness, and all types of securities;
3. Make collections and payments for the account of others and perform such other services for their customers as are not incompatible with banking business;
4. Upon prior approval of the Monetary Board, act as managing agent, adviser, consultant, or administrator of investment management/ advisory/consultancy accounts; and
5. Rent out safety deposit boxes.

Prohibited Acts

1. Engaging in insurance business as the insurer
2. Outsourcing of functions

Kinds of Deposits

1. **Savings Deposit** – It is the most common type of deposit and is usually evidenced through passbook.
2. **Foreign Currency Deposit**
3. **Demand Deposit** – All those liabilities of banks which are denominated in Philippine currency and are subject to payment in legal tender upon demand by presentation of checks (New Central Bank Act, Sec. 58)
4. **Negotiable Order of Withdrawal (NOW) Accounts** – These are interest-bearing deposit accounts that combine the payable on-demand feature of checks and investment feature of savings accounts
5. **Time Deposit** – It is an account with a fixed term—payment of which cannot be legally required within such a specified number of days.

WEEK 12 – ANTI-MONEY LAUNDERING ACT (AMLA)

Money Laundering

It is a criminal offense that involves an act or combination of acts whereby proceeds of an unlawful activity, whether in cash or other assets, are concealed or disguised to make them appear to have originated from legitimate sources.

Predicate Crimes of Money Laundering

Unlawful Activity – It refers to any act or omission, or series or combination thereof, involving or having a direct relation to the following:

1. Kidnapping for ransom
2. Drug trafficking and other violations
3. Graft and corruption
4. Plunder
5. Robbery and extortion
6. Jueteng and masiao
7. Piracy on the high seas
8. Qualified theft
9. Swindling
10. Smuggling

For the complete list of unlawful activities, refer to **Pages 1–3 of 10 Handout 1**.

Covered Transaction – It refers to:

1. A transaction in cash or other equivalent monetary instrument exceeding five hundred thousand pesos (P500,000); and
2. A transaction exceeding one million pesos (P1,000,000) in cases of jewelry dealers, dealers in precious metals, and dealers in precious stones.
3. Casino refers to a business authorized by the appropriate government agency to engage in gaming operations for single casino transactions in excess of P5,000,000.

Suspicious Transaction – It refers to a transaction, regardless of amount, where any of the following circumstances exists:

1. There is no underlying legal or trade obligation, purpose, or economic justification;
2. The client is not properly identified;
3. The amount involved is not commensurate with the business or financial capacity of the client;
4. Taking into account all known circumstances, it may be perceived that the client's transaction is structured in order to avoid being the subject of reporting requirements under the AMLA;
5. Any circumstance relating to the transaction, which is observed to deviate from the profile of the client and/or the client's past transactions with the covered person;
6. The transaction is in any way related to an unlawful activity or any money laundering activity/offense that is about to be committed, is being committed, or has been committed; or
7. Any transaction that is similar, analogous, or identical to any of the foregoing.

Covered Persons

1. Persons supervised or regulated by Bangko Sentral ng Pilipinas (BSP)
2. Persons supervised or regulated by the Insurance Commission
3. Persons supervised or regulated by the Securities and Exchange Commission (SEC)
4. Designated Non-Financial Businesses and Professions (DNFBPs)

WEEK 13 – THE NEW CENTRAL BANK ACT (NCBA)

- There is hereby established an independent central monetary authority, which shall be a body corporate known as the Bangko Sentral ng Pilipinas, hereafter referred to as **Bangko Sentral**.
- The capital of the Bangko Sentral shall be **two hundred billion pesos (P200,000,000,000)** to be fully subscribed by the Government: Provided, that the increase in capitalization shall be funded solely from the declared dividends of the Bangko Sentral in favor of the National Government.
- The Monetary Board is the governing body of Bangko Sentral. The powers and functions of the Bangko Sentral shall be exercised the Monetary Board, composed of seven (7) members appointed by the President of the Philippines, for a term of six (6) years.

Primary objectives of the BSP

1. To maintain price stability conducive to a balanced and sustainable growth of the economy; and
2. To promote and maintain monetary stability and the convertibility of the peso

Legal Tender and Power Over Coins and Notes

- The unit of monetary value in the Philippines is “peso,” which is represented by the sign “₱.”
- The peso is divided into 100 equal parts called “centavo,” which is represented by the sign “¢.”
- All notes and coins issued by the BSP shall be fully guaranteed by the Government of the Republic of the Philippines and shall be legal tender in the Philippines for all debts, both public and private.
- **Legal tender** – It refers to the type of currency that a debtor can compel a creditor to accept in case of obligation to pay a sum of money.

1. Coins

- a. 1-centavo, 5-centavo, 10-centavo, and 25-centavo coins: One hundred pesos (P100.00)

- b. 1-peso, 5-peso and 10-peso coins: One thousand pesos (P1,000.00)
- c. P20, P50, P100, P200, P500, and P1,000 bills or notes: Unlimited legal tender

2. Checks

Those representing demand deposits do not have legal tender power and their acceptance in the payment of debts, both public and private, is at the option of the creditor.

Replacement of Currency Unfit for Circulation

- The Bangko Sentral shall withdraw from circulation and shall demonetize all notes and coins which, for any reason, are unfit for circulation and shall replace them by adequate notes and coins: provided, however, that the Bangko Sentral shall **NOT** replace:
 - Notes and coins the identification of which is impossible;
 - Coins which show signs of filing, clipping, or perforation; and
 - Notes which have lost more than two-fifths of their surface or all of the signatures inscribed thereon.

Notes and coins in such mutilated conditions shall be withdrawn from circulation and demonetized without compensation to the bearer.

WEEK 15 – INTELLECTUAL PROPERTY CODE OF THE PHILIPPINES

Intellectual Property

It refers to creations of the mind, such as inventions, literary and artistic works, symbols, names, images, and designs, which are used in commerce.

Intellectual Property consists of:

- a. Copyright and related rights;
 - b. Trademarks and service marks;
 - c. Patents;
 - d. Geographic indications;
 - e. Layout design (topographies) of integrated circuits;
 - f. Protection of undisclosed information; and
 - g. Industrial design.
- **Patent** is a grant issued by the government through the Intellectual Property Office (IPO) of the Philippines. It is an exclusive right granted for a product, process, or an improvement of a product or a process that is new, inventive, and useful.

The right to a patent belongs to the inventor, his heirs, or assigns. When two (2) or more

persons have jointly made an invention, the right to a patent shall belong to them jointly.

The term of a patent shall be **20 years** from the **filing date** of the application.

- **Inventions Created Pursuant to a Commission**
 1. The person who commissions the work shall own the patent, unless otherwise provided in the contract.
 2. In case the employee made the invention in the course of his employment contract, the patent shall belong to:
 - a. The **employee**, if the inventive activity is not a part of his regular duties even if the employee uses the time, facilities, and materials of the employer.
 - b. The **employer**, if the invention is the result of the performance of his regularly assigned duties, unless there is an agreement, express or implied, to the contrary.
- **Trademark** – It is any visible sign capable of distinguishing the goods (trademark) or services (service mark) of an enterprise and shall include a stamped or marked container of goods. It is protected from the moment of registration to the Intellectual Property Office.
- **Collective mark** – It is any visible sign designated as such in the application for registration and capable of distinguishing the origin or any other common characteristic, including the quality of goods or services of different enterprises, which use the sign under the control of the registered owner of the collective mark.
- **Trade name** – It is the name or designation identifying or distinguishing an enterprise. There is no need to register trade names in order to secure protection for them.
- **Trademark Infringement** – It is the unauthorized issue of a trademark or service mark on or in connection with goods or services in a manner that is likely to cause confusion, deception, or mistake about the source of the goods or services.
- **Unfair Competition** – This occurs when another company uses deceptive trade practices to gain a competitive advantage.
- **Copyright** – It is the right over literary and artistic works that are original intellectual creations in the literary and artistic domain protected from the moment of creation.

Ownership of Copyright

Copyright ownership shall be governed by the following rules:

1. In the case of **original literary and artistic works**, copyright shall belong to the author of the work.
2. In the case of works of **joint authorship**, the co-authors shall be the original owners of the copyright, and in the absence of agreement, their rights shall be governed by the rules on co-ownership.
3. In the case of **work created by an author during and in the course of his employment** (work for hires), the copyright shall belong to:
 - a. The **employee**, if the creation of the object of copyright is not a part of his regular duties even if the employee uses the time, facilities, and materials of the employer; and
 - b. The **employer**, if the work is the result of the performance of his regularly assigned duties, unless there is an agreement, express or implied, to the contrary.
4. In the case of a **work commissioned by a person other than an employer of the author** and who pays for it and the work is made in pursuance of the commission, the person who so commissioned the work shall have ownership of the work, but the copyright thereto shall remain with the creator, unless there is a written stipulation to the contrary.
5. In the case of **audiovisual work**, the copyright shall belong to the producer, the author of the scenario, the composer of the music, the film director, and the author of the work so adapted.
6. In respect of **letters**, the copyright shall belong to the writer.

The fair use of a copyrighted work for criticism, comment, news reporting, teaching including limited number of copies for classroom use, scholarship, research, and similar purposes is not an infringement of copyright.

WEEK 16 – DATA PRIVACY ACT (DPA)

- **Personal information** – This refers to any information, whether recorded in a material form or not, from which the identity of an individual is apparent or can be reasonably and

directly ascertained by the entity holding the information, or when put together with other information, would directly and certainly identify an individual.

- **Personal information controller** – This refers to a person or organization that controls the collection, holding, processing or use of personal information, including a person or organization that instructs another person or organization to collect, hold, process, use, transfer, or disclose personal information on his/her behalf. The term excludes:
 - A person or organization that performs such functions as instructed by another person or organization; and
 - An individual who collects, holds, processes, or uses personal information in connection with the individual's personal, family, or household affairs.
- **Personal information processor** – It refers to any natural or juridical person qualified to act as such under the DPA to whom a personal information controller may outsource the processing of personal data pertaining to a data subject.
- **Privileged information** – It refers to all forms of data that, under the Rules of Court and other pertinent laws, constitute privileged communication.
- **Sensitive personal information** – It refers to personal information:
 - About an individual's race, ethnic origin, marital status, age, color, and religious, philosophical or political affiliations;

- About an individual's health, education, genetic or sexual life of a person, or to any proceeding for any offense committed or alleged to have been committed by such person, the disposal of such proceedings, or the sentence of any court in such proceedings;
- Issued by government agencies peculiar to an individual which includes, but is not limited to, social security numbers, previous or current health records, licenses or its denials, suspension or revocation, and tax returns; and
- Specifically established by an executive order or an act of Congress to be kept classified.

Note: *Processing of sensitive personal information and privileged information is generally prohibited.*

- **Data subject** – It refers to an individual whose personal information is processed.

Rights of Data Subject

- Right to be informed
- Right to access
- Right to object
- Right to erasure or blocking
- Right to damages
- Right to file a complaint
- Right to rectification
- Right to data portability

END