

TITLE V – PRESCRIPTION
Chapter 1
GENERAL PROVISIONS

Art. 1106. By prescription, one acquires ownership and other real rights through the lapse of time in the manner and under the conditions laid down by law.

In the same way, rights and actions are lost by prescription.

Definition:

Prescription – is a mode of acquiring (or losing) ownership and other real rights thru the lapse of time in the manner and under the condition laid down by law, namely, that possession must be:

- (a) in the concept of the owner
- (b) public
- (c) peaceful
- (d) uninterrupted
- (e) adverse

Laches – (or “estoppel by laches”) is unreasonable delay in the bringing of a cause of action before the courts of justice; it is failure or neglect, for an unreasonable and unexplained length of time, to do that which, by exercising due diligence, could or should have been done earlier; it is negligence or omission to assert a right within a reasonable time, warranting a presumption that the party entitled thereto either has abandoned it or declined to assert it.

Art. 1107. Persons who are capable of acquiring property or rights by the other legal modes may acquire the same by means of prescription.

Minors and other incapacitated persons may acquire property or rights by prescription, either personally or through their parents, guardians or legal representatives.

Art. 1108. Prescription, both acquisitive and extinctive, runs against:

- (1) Minors and other incapacitated persons who have parents, guardians or other legal representatives;
- (2) Absentees who have administrators, either appointed by them before their disappearance, or appointed by the courts;
- (3) Persons living abroad, who have managers or administrators;
- (4) Juridical persons, except the State and its subdivisions.

Persons who are disqualified from administering their property have a right to claim damages from their legal representatives whose negligence has been the cause of prescription.

Art. 1109. Prescription does not run between husband and wife, even though there be a separation of property agreed upon in the marriage settlements or by judicial decree.

Neither does prescription run between parents and children, during the minority or insanity of the latter, and between guardians and ward during the continuance of the guardianship.

Exceptions – when prescription is specifically provided for by law, such as:

- 1) the prescriptive period for legal separation suits;
- 2) alienations made by the husband, without the wife’s consent.

Art. 1110. Prescription, acquisitive and extinctive, runs in favor of, or against a married woman.

Art. 1111. Prescription obtained by a co-proprietor or a co-owner shall benefit the others.

Art. 1112. Persons with capacity to alienate property may renounce prescription already obtained, but not the right to prescribe in the future.

Prescription is deemed to have been tacitly renounced when the renunciation results from acts which imply the abandonment of the right acquired.

Art. 1113. All things which are within the commerce of men are susceptible of prescription, unless otherwise provided. Property of the state or any of its subdivisions not patrimonial in character shall not be the object of prescription.

Things or properties that cannot be acquired by prescription:

- (a) those protected by a Torrens Title
- (b) movables acquired thru a crime
- (c) those outside the commerce of men
- (d) properties of spouses, parents and children, wards and guardians, under the restrictions imposed by law

Art. 1114. Creditors and all other persons interested in making the prescription effective may avail themselves thereof notwithstanding the express or tacit renunciation by the debtor or proprietor.

Art. 1115. The provisions of the present Title are understood to be without prejudice to what in this Code or in special laws is established with respect to specific cases of prescription.

Art. 1116. Prescription already running before the effectivity of this Code shall be governed by laws previously in force; but if since the time this Code took effect the entire period herein required for prescription should elapse, the present Code shall be applicable, even though by the former laws a longer period might be required.

Transitional Rules for Prescription

- (a) If the period for prescription BEGAN and ENDED under the OLD laws, said OLD laws govern.
- (b) If the period for prescription BEGAN under the NEW Civil Code, the NEW Civil Code governs.
- (c) If the period began under the OLD law, and continues under the NEW Civil Code, the OLD law applies.

Exceptions: In this third rule, it is the NEW Civil Code that will apply, provided two conditions are present:

- 1) The NEW Civil Code requires a shorter period;
- 2) This shorter period has already elapsed since Aug. 30, 1950, the date when the NEW Civil CODE became effective.

Chapter 2 PRESCRIPTION OF OWNERSHIP AND OTHER REAL RIGHTS

Art. 1117. Acquisitive prescription of dominion and other real rights may be ordinary or extraordinary.

Ordinary acquisitive prescription requires possession of things in good faith and with just title for the time fixed by law.

Requisites common to Ordinary and Extraordinary Prescription

- (a) capacity of acquirer to acquire by prescription
- (b) capacity of loser to lose by prescription
- (c) object must be susceptible of prescription
- (d) lapse of required period of time
- (e) the possession must be:
 - 1) in concepto de dueño (concept of owner)

- 2) public
- 3) peaceful
- 4) continuous or uninterrupted

Art. 1118. Possession has to be in the concept of an owner, public, peaceful and uninterrupted.

Art. 1119. Acts of possessory character executed in virtue of license or by mere tolerance of the owner shall not be available for the purposes of possession.

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

Art. 1121. Possession is naturally interrupted when through any cause it should cease for more than one year.

The old possession is not revived if a new possession should be exercised by the same adverse claimant.

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

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

Art. 1124. Judicial summons shall be deemed not to have been issued and shall not give rise to interruption:

- (1) If it should be void for lack of legal solemnities;
- (2) If the plaintiff should desist from the complaint or should allow the proceedings to lapse;
- (3) If the possessor should be absolved from the complaint.

In all these cases, the period of the interruption shall be counted for the prescription.

Art. 1125. Any express or tacit recognition which the possessor may make of the owner's rights also interrupts possession.

Art. 1126. Against a title recorded in the Registry of Property, ordinary prescription of

ownership or real rights shall not take place to the prejudice of a third person, except in virtue of another title also recorded; and the time shall begin to run from the recording of the latter.

As to lands register under the Land Registration Act, the provisions of that special law shall govern.

Art. 1127. The good faith of the possessor consists in the reasonable belief that the person from whom he received the thing was the owner thereof, and could transmit his ownership.

Art. 1128. The conditions of good faith required for possession in Articles 526, 526, 528 and 529 of this Code are likewise necessary or the determination of good faith in the prescription of ownership and other real rights.

Art. 1129. For the purposes of prescription, there is just title when the adverse claimant came into possession of the property through one of the modes recognized by law for the acquisition of ownership or other real rights, but the grantor was not the owner or could not transmit any right.

Art. 1130. The title for prescription must be true and valid.

Art. 1131. For the purposes of prescription, just title must be proved; it is never presumed.

Art. 1132. The ownership of movables prescribes through uninterrupted possession for four years in good faith.

The ownership of personal property also prescribes through uninterrupted possession for eight years, without need of any other condition.

With regard to the right of the owner to recover personal property lost or of which he has been illegally deprived, as well as with respect to movables acquired in a public sale, fair, or market, or from a merchant's store the provisions of Articles 559 and 1505 of this Code shall be observed.

Art. 1133. Movables possessed through a crime can never be acquired through prescription by the offender.

However, by implication, subsequent acquirers from the "offender" may acquire the property by prescription.

Art. 1134. Ownership and other real rights over immovable property are acquired by ordinary prescription through possession of ten years.

Art. 1135. In case the adverse claimant possesses by mistake an area greater, or less, than that expressed in his title, prescription shall be based on the possession.

Art. 1136. Possession in wartime, when the civil courts are not open, shall not be counted in favor of the adverse claimant.

Art. 1137. Ownership and other real rights over immovables also prescribe through uninterrupted adverse possession thereof for thirty years, without need of title or of good faith.

Art. 1138. In the computation of time necessary for prescription, the following rules shall be observed:

(1) The present possessor may complete the period necessary for prescription by tacking his possession to that of his grantor or predecessor in interest;

(2) It is presumed that the present possessor who was also the possessor at a previous time, has continued to be in possession during the intervening time, unless there is proof to the contrary;

(3) The first day shall be excluded and the last day included.

Chapter 3 PRESCRIPTION OF ACTION

Art. 1139. Actions prescribe by the mere lapse of time fixed by law.

Art. 1140. Actions to recover movables shall prescribe eight years from the time the possession thereof is lost, unless the possessor has acquired the ownership by prescription for a less period, according of Article 1132, and without prejudice to the provisions of Articles 559, 1505, and 1133.

Art. 1141. Real action over immovables prescribe after thirty years.

This provision is without prejudice to what is established for the acquisition of ownership and other real rights by prescription.

Art. 1142. A mortgage action prescribes after ten years.

Art. 1143. The following rights among others specified elsewhere in this Code, are not extinguished by prescription:

- (1) To demand a right of way, regulated in Article 649;
- (2) To bring an action to abate a public or private nuisance.

Art. 1144. The following actions must be brought within ten years from the time the right of action accrues:

- (1) Upon a written contract
- (2) Upon an obligation created by law;
- (3) Upon a judgment.

Art. 1145. The following actions must be commenced within six years:

- (1) Upon an oral contract;
- (2) Upon a quasi-contract.

Art. 1146. The following actions must be instituted within four years:

- (1) Upon an injury to the rights of the plaintiff;
- (2) Upon a quasi-delict.

Art. 1147. The following actions must be filed within one year:

- (1) For forcible entry and detainer;
- (2) For defamation.

Art. 1148. The limitations of action mentioned in Articles 1140 to 1142, and 1144 to 1147 are without prejudice to those specified in other parts of this Code, in the Code of Commerce, and in special laws.

Art. 1149. All other actions whose periods are not fixed in this Code or in other laws must be brought within five years from the time the right of action accrues.

Art. 1150. The time for prescription for all kinds of actions, when there is no special provision which ordains otherwise, shall be counted from the day they may be brought.

Art. 1151. The time for the prescription of actions which have for their object the enforcement of obligations to pay principal with interest or annuity runs from the last payment of the annuity or of the interest.

Art. 1152. The period for prescription of actions to demand the fulfillment of obligations declared by a judgment commences from the time the judgment became final.

Art. 1153. The period for prescription of action to demand accounting runs from the day the persons who should render the same cease in their functions.

The period for the action arising from the result of the accounting runs from the date when said result was recognized by agreement of the interested parties.

Art. 1154. The period during which the obligee was prevented by a fortuitous event from enforcing his right is not reckoned against him.

Art. 1155. The prescription of actions is interrupted when they are filed before the court, when there is a written extrajudicial demand by the creditors, and when there is any written acknowledgment of the debt by the debtor.

BOOK IV OBLIGATIONS AND CONTRACTS

TITLE I – OBLIGATIONS

Chapter 1

GENERAL PROVISIONS

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

Elements of an Obligation:

- (a) an ACTIVE subject (called the obligee or creditor) – the possessor of a right; he in whose favor the obligation is constituted
- (b) a PASSIVE subject (called the obligor or debtor) – he who has the duty of giving, of doing or not doing
- (c) the OBJECT or prestation (the subject matter of the obligation)
- (d) the efficient CAUSE (the vinculum or juridical tie) – the reason why the obligation exists
- (e) in a few cases, FORM – or the manner in which the obligation is manifested – is also important

Art. 1157. Obligations arise from:

- (1) Law;
- (2) Contracts;
- (3) Quasi-contracts;
- (4) Acts or omissions punished by law; and
- (5) Quasi-delicts.

Art. 1158. 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 been foreseen, by the provisions of this Book.

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

The So-called INNOMINATE CONTRACTS:

- (a) *Do ut des* – I give that you may give.
- (b) *Do ut facias* – I give that you may do.
- (c) *Facio ut des* – I do that you may give.
- (d) *Facio ut facias* – I do that you may do.

Art. 1160. Obligations derived from quasi-contracts shall be subject to the provisions of Chapter 1, Title XVII, of this Book.

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

Art. 1162. Obligations derived from quasi-delicts shall be governed by the provisions of Chapter 2, Title XVII of this Book, and by special laws.

Chapter 2 NATURE AND EFFECT OBLIGATIONS

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

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

As a consequence of certain contracts, it is not agreement but tradition or delivery that transfers ownership.

Art. 1165. When what is to be delivered is a determinate thing, the creditor, in addition to the right granted him by Article 1170, may compel the debtor to make the delivery.

If the thing is indeterminate or generic, he may ask that the obligation be complied with at the expense of the debtor.

If the obligor delays, or has promised to deliver the same thing to two or more persons who do not have the same interest, he shall be responsible for fortuitous event until he has effected the delivery.

Art. 1166. The obligation to give a determinate thing includes that of delivering all its accessions and accessories, even though they may not have been mentioned.

Art. 1167. If a person obliged to do something fails to do it, the same shall be executed at his cost.

This same rule shall be observed if he does it in contravention of the tenor of the obligation. Furthermore, it may be decreed that what has been poorly done be undone.

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

Art. 1169. Those obliged to deliver or to do something incur in delay from the time the obligee judicially or extrajudicially demands from them the fulfillment of their obligation.

However, the demand by the creditor shall not be necessary in order that delay may exist:

(1) When the obligation or the law expressly so declares; or

(2) When from the nature and the circumstances of the obligation it appears that the designation of the time when the thing is to be delivered or the service is to be rendered was a controlling motive for the establishment of the contract; or

(3) When demand would be useless, as when the obligor has rendered it beyond his power to perform.

In reciprocal obligations, neither party incurs in delay if the other does not comply or is not ready to

comply in a proper manner with what is incumbent upon him. From the moment one of the parties fulfills his obligation, delay by the other begins.

Different kinds of Mora

- (a) *mora solvendi* (default on the part of the DEBTOR)
 - 1) *mora solvendi ex re* (debtor's default in real obligations)
 - 2) *mora solvendi ex persona* (debtor's default in personal obligations)
- (b) *mora accipiendi* (default on the part of the CREDITOR)
- (c) *compensatio morae* (when in a reciprocal obligation both parties are in default; here it is as if neither is in default).

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

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

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

Art. 1173. The fault or negligence of the obligor consists in the omission of that diligence which is required by the nature of the obligation and corresponds with the circumstances of the person, of the time and of the place. When negligence shows bad faith, the provisions of Articles 1171 and 2201, paragraph 2, shall apply.

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

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

General Rule:

No liability for a FORTUITOUS EVENT (that which could not be foreseen, or which even if foreseen, was inevitable)

Exceptions:

The debtor is responsible for a fortuitous event in the following cases:

- (a) When expressly declared by the law
- (b) When expressly declared by stipulation or contract
- (c) When the nature of the obligation requires the assumption of risk (the doctrine of CREATED RISK)

Art. 1175. Usurious transactions shall be governed by special laws.

Art. 1176. The receipt of the principal by the creditor, without reservation with respect to the interest, shall give rise to the presumption that said interest has been paid.

The receipt of a later installment of a debt without reservation as to prior installment, shall likewise raise the presumption that such installments have been paid.

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

Rights of Creditors:

- (a) exact payment
- (b) exhaust debtor's properties, generally by attachment (except properties exempted by the law)
- (c) *accion subrogatoria* (subrogatory action) – exercise all rights and actions except those inherent in the person
- (d) *accion pauliana* (impugn or rescind acts or contracts done by the debtor to defraud the creditors)

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

Chapter 3 DIFFERENT KINDS OF OBLIGATIONS

Section 1 PURE AND CONDITIONAL OBLIGATIONS

Art. 1179. Every obligation whose performance does not depend upon a future or uncertain event or upon a past event unknown to the parties, is demandable at once.

Every obligation which contains a resolutive condition shall also be demandable, without prejudice to the effects of the happening of the event.

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

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

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

Art. 1183. Impossible conditions, those contrary to good customs or public policy and those prohibited by law shall annul the obligation which depends upon them. If the obligation is divisible, that part thereof which is not affected by the impossible or unlawful condition shall be valid.

The condition not to do an impossible thing shall be considered as not having been agreed upon.

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

Art. 1185. The condition that some event will not happen at a determinate time shall render the obligation effective from the moment the time indicated has elapsed, or if it has become evident that the event cannot occur.

If no time has been fixed, the condition shall be deemed fulfilled at such time as may have probably been contemplated, bearing in mind the nature of the obligation.

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

Art. 1187. The effects of a conditional obligation to give, once the condition has been fulfilled, shall retroact to the date of the constitution of the obligation. Nevertheless, when the obligation imposes reciprocal prestations upon the parties, the fruits and interests during the pendency of the condition shall be deemed to have been mutually compensated. If the obligation is unilateral, the debtor shall appropriate the fruits and interests received, unless from the nature and circumstances of the obligation it should be inferred that the intention of the person constituting the same was different.

In obligation to do and not to do, the courts shall determine, in each case, the retroactive effect of the condition that has been complied with.

Art. 1188. The creditor may, before the fulfillment of the condition, bring the appropriate actions for the preservation of his right.

The debtor may recover what during the same time he has paid by mistake in case of a suspensive condition.

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

(1) If the thing is lost without the fault of the debtor, the obligation shall be extinguished;

(2) If the thing is lost through the fault of the debtor, he shall be obliged to pay damages; it is understood that the thing is lost when it perishes, or goes out of commerce, or disappears in such a way that its existence is unknown or it cannot be recovered;

(3) When the thing deteriorates without the fault of the debtor, the impairment is to be borne by the creditor;

(4) If it deteriorates through the fault of the debtor; the creditor may choose between the rescission of the obligation and its fulfillment, with indemnity for damages in either case;

(5) If the thing is improved by its nature, or by time, the improvement shall inure to the benefit of the creditor;

(6) If it is improved at the expense of the debtor, he shall have no other right than that granted to the usufructuary.

Art. 1190. When the conditions have for their purpose the extinguishment of an obligation to give, the parties, upon the fulfillment of said conditions, shall return to each other what they have received.

In case of the loss, deterioration or improvement of the thing, the provisions which, with respect to the debtor, are laid down in the preceding articles shall be applied to the party who is bound to return.

As for obligations to do and not to do, the provisions of the second paragraph of Article 1187 shall be observed as regards the effect of the extinguishment of the obligation.

Art. 1191. The power to rescind obligations is implied in reciprocal ones, in case one of the obligors should not comply with what is incumbent upon him.

The injured party may choose between fulfillment and rescission of the obligation, with the payment of damages in either case. He may also seek rescission, even after he has chosen fulfillment, if the latter should become impossible.

The court shall decree the rescission claimed, unless there be just cause authorizing the fixing of a period.

This is to be understood to be without prejudice to the rights of third persons who have acquired the thing, in accordance with Articles 1385 and 1388 and the Mortgage Law.

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

Section 2 OBLIGATIONS WITH A PERIOD

Art. 1193. Obligations for whose fulfillment a day certain has been fixed, shall be demandable only when that day comes.

Obligations with a resolutive period take effect at once, but terminate upon arrival of the day certain.

A day certain is understood to be that which must necessarily come, although it may not be known when.

If the uncertainty consists in whether the day will come or not, the obligation is conditional and it shall be regulated by the rules of the preceding Section.

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

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

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

Art. 1197. If the obligation does not fix a period, but from its nature and the circumstances it can be inferred that a period was intended, the courts may fix the duration thereof.

The courts shall also fix the duration of the period when it depends upon the will of the debtor.

In every case the courts shall determine such period as may under the circumstances have been probably contemplated by the parties. Once fixed by the courts, the period cannot be changed by them.

Art. 1198. The debtor shall lose every right to make use of the period:

(1) When after the obligation has been contracted, he becomes insolvent, unless he gives a guaranty or security for the debt;

(2) When he does not furnish to the creditor the guaranties or securities which he has promised;

(3) When by his own acts he has impaired said guaranties or securities after their establishment, and when through a fortuitous event they disappear, unless he immediately gives new ones equally satisfactory;

(4) When the debtor violates any undertaking, in consideration of which the creditor agreed to the period;

(5) When the debtor attempts to abscond.

When the Debtor Loses the Benefit of the Period – the term is extinguished, and the obligation is DEMANDABLE AT ONCE.

Section 3 ALTERNATIVE OBLIGATIONS

Art. 1199. A person alternatively bound by different prestations shall completely perform one of them.

The creditor cannot be compelled to receive part of one and part of the other undertaking.

Alternative obligation) - is one where out of the two or more prestations which may be given, only one is due.

Art. 1200. The right of choice belongs to the debtor, unless it has been expressly granted to the creditor.

The debtor shall have no right to choose those prestations which are impossible, unlawful or which could not have been the object of the obligation.

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

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

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

Art. 1204. The creditor shall have a right to indemnity for damages when, through the fault of the debtor, all the things which are alternatively the object of the obligation have been lost, or the compliance of the obligation has become impossible.

The indemnity shall be fixed taking as a basis the value of the last thing which disappeared, or that of the service which last become impossible.

Damages other than the value of the last thing or service may also be awarded.

Art. 1205. When the choice has been expressly given to the creditor, the obligation ceases to be alternative from the day when the selection has been communicated to the debtor.

Until then the responsibility of the debtor shall be governed by the following rules:

(1) If one of the things is lost through a fortuitous event, he shall perform the obligation by delivering that which the creditor should choose from among the remainder, or that which remains if only one subsists;

(2) If the loss of one of the things occurs through the fault of the debtor, the creditor may claim any of those subsisting, or the price of that which, through the fault of the former has disappeared, with a right to damages;

(3) If all the things are lost through the fault of the debtor, the choice by the creditor shall fall upon the price of any one of them, also with indemnity for damages.

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

Art. 1206. When only one prestation has been agreed upon, but the obligor may render another in substitution, the obligation is called facultative.

The loss or deterioration of the thing intended as a substitute, through the negligence of the obligor, does not render him liable. But once the substitution has been made, the obligor is liable for the loss of the substitute on account of his delay, negligence or fraud.

Facultative Obligation – one where only one prestation has been agreed upon but the obligor may render another in substitution.

Section 4 JOINT AND SOLIDARY OBLIGATION

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

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

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

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

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

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

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

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

Art. 1215. Novation, compensation, confusion or remission of the debt, made by any of the solidary creditors or with any of the solidary debtors, shall extinguish the obligation, without prejudice to the provision of Article 1219.

The creditor who may have executed any of these acts, as well as he who collects the debt, shall be liable to the others for the share in the obligation corresponding to them.

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

Art. 1217. Payment made by one of the solidary debtors extinguishes the obligation. If two or more solidary debtors offer to pay, the creditor may choose which offer to accept.

He who made the payment may claim from his co-debtors only the share which corresponds to each, with the interests for the payment already made. If the payment is made before the debt is due, no interest for the intervening period may be demanded.

When one of the solidary debtors cannot, because of his insolvency, reimburse his share to the debtor paying the obligation, such share shall be borne by all his co-debtors, in proportion to the debt to each.

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

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

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

Art. 1221. If the thing has been lost or if the prestation has become impossible without the fault of the solidary debtors, the obligation shall be extinguished.

If there was fault on the part of any one of the, all shall be responsible to the creditor for the price and the payment of damages and interest, without prejudice to their action against the guilty or negligent debtor.

If through a fortuitous event, the thing is lost or the performance has become impossible after one of the solidary debtors has incurred in delay through the judicial or extrajudicial demand upon him by the creditor, the provisions of the preceding paragraph shall apply.

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

regards that part of the debt for which the latter are responsible.

Section 5 DIVISIBLE AND INDIVISIBLE OBLIGATIONS

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

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

Art. 1225. For the purposes of the preceding articles, obligations to give definite things and those which are not susceptible of partial performance shall be deemed to be indivisible.

When the obligation has for its object the execution of a certain number of days of work, the accomplishment of work by metrical units, or analogous things which by their nature are susceptible of partial performance, it shall be divisible.

However, even though the object or service may be physically divisible, an obligation is indivisible if so provided by law or intended by the parties.

In obligations not to do, divisibility or indivisibility shall be determined by the character of the prestation in particular case.

Section 6 OBLIGATIONS WITH A PENAL CLAUSE

Art. 1226. In obligations with a penal clause, the penalty shall substitute the indemnity for damages and the payment of interests in case of non-compliance, if there is no stipulation to the contrary. Nevertheless, damages shall be paid if the obligor refuses to pay the penalty or is guilty of fraud in the fulfillment of the obligation.

The penalty may be enforced only when it is demandable in accordance with the provisions of this Code.

Art. 1227. The debtor cannot exempt himself from the performance of the obligation by paying the penalty, save in the case where this right has been expressly reserved for him. Neither can the creditor

demand the fulfillment of the obligation and the satisfaction of the penalty at the same time, unless this right has been clearly granted him. However, if after the creditor has decided to require the fulfillment of the obligation, the performance thereof should become impossible without his fault, the penalty may be enforced.

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

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

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

The nullity of the principal obligation carries with it that of the penal clause.

Chapter 4 EXTINGUISHMENT OF OBLIGATION GENERAL PROVISIONS

Art. 1231. Obligations are extinguished:

- (1) By payment or performance;
- (2) By the loss of the thing due;
- (3) By the condonation or remission of the debt;
- (4) By the confusion or merger of the rights of creditor and debtor;
- (5) By compensation;
- (6) By novation.

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

Section 1 PAYMENT OR PERFORMANCE

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

Art. 1233. A debt shall not be understood 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. (General Rule)

Art. 1234. If the obligation has been substantially performed in good faith, the obligor may recover as though there has been strict and complete fulfillment, less damages suffered by the obligee. (Exception #1)

Art. 1235. When the obligee accepts the performance knowing its incompleteness or irregularity, and without expressing any protest or objection, the obligation is deemed fully complied with. (Exception #2)

Art. 1236. The creditor is not bound to accept payment or performance by a third person who has no interest in the fulfillment of the obligation, unless there is a stipulation to the contrary.

Whoever pays for another may demand from the debtor what he has paid, except that if he paid without the knowledge or against the will of the debtor, he can recover only insofar as the payment has been beneficial to the debtor.

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

Subrogation – the act of putting somebody into the shoes of the creditor, hence, enabling the former to exercise all the rights and actions that could have been exercised by the latter.

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

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

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

Art. 1241. Payment to a person who is incapacitated to administer his property shall be valid

if he has kept the thing delivered, or insofar as the payment has been beneficial to him.

Payment made to a third person shall also be valid insofar as it has redounded to the benefit of the creditor. Such benefit to the creditor need not be proved in the following cases:

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

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

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

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

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

Art. 1244. The debtor of a thing cannot compel the creditor to receive a different one, although the latter may be of the same value as, or more valuable than that which is due.

In obligation to do or not to do, an act or forbearance cannot be substituted by another act or forbearance against the obligee's will.

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

Dation in Payment – mode of extinguishing an obligation whereby the debtor alienates in favor of the creditor, property for the satisfaction of monetary debt

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

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

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

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

Art. 1249. The payment of debts in money shall be made in the currency stipulated, and if it is not possible to deliver such currency, then in the currency which is legal tender in the Philippines.

The delivery of promissory notes payable to order, or bills of exchange or other mercantile documents shall produce the effect of payment only when they have been cashed, or when through the fault of the creditor they have been impaired.

In the meantime, the action derived from the original obligation shall be held in abeyance.

Legal tender – is that which a debtor may compel a creditor to accept in payment of the debt

Delivery of Commercial Instruments

General Rule:

A check is not legal tender and, therefore, the creditor cannot be compelled to accept payment thru this means.

Exceptions:

Instances when a check or a commercial document should be accepted as payment:

- 1) when the creditor is in *estoppel* or he had previously promised he would accept a check;
- 2) when the check has lost its value because of the fault of the creditor
- 3) when payment occurs not because of a debt but because of the exercise of the right of conventional redemption

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

Art. 1251. Payment shall be made in the place designated in the obligation.

There being no express stipulation and if the undertaking is to deliver a determinate thing, the payment shall be made wherever the thing might be at the moment the obligation was constituted.

In any other case the place of payment shall be the domicile of the debtor.

If the debtor changes his domicile in bad faith or after he has incurred in delay, the additional expenses shall be borne by him.

These provisions are without prejudice to venue under the Rules of Court.

Subsection 1 APPLICATION OF PAYMENTS

Art. 1252. He who has various debts of the same kind in favor of one and the same creditor, may declare at the time of making the payment, to which of them the same must be applied. Unless the parties so stipulate, or when the application of payment is made by the party for whose benefit the term has been constituted, application shall not be made as to debts which are not yet due.

If the debtor accepts from the creditor a receipt in which an application of the payment is made, the former cannot complain of the same, unless there is a cause for invalidating the contract.

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

Art. 1254. When payment cannot be applied in accordance with the preceding rules, or if application cannot be inferred from other circumstances, the debt which is most onerous to the debtor, among those due, shall be deemed to have been satisfied.

If the debts due are of the same nature and burden, the payment shall be applied to all of them proportionately.

Subsection 2 PAYMENT BY CESSION

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

Cession or Assignment in Favor of the Creditors

- is the process by which a debtor transfers all the properties not subject to execution in favor of his creditors so that the latter may sell them, and thus apply the proceeds to their credits.

Subsection 3

TENDER OF PAYMENT AND CONSIGNATION

Tender of payment – the act of offering the creditor what is due him together with a demand that the creditor accept the same

Consignation – the act of depositing the thing due with the court or judicial authorities whenever the creditor cannot accept or refuses to accept payment.

Art. 1256. If the creditor to whom tender of payment has been made refuses without just cause to accept it, the debtor shall be released from responsibility by the consignation of the thing or sum due.

Consignation alone shall produce the same effect in the following cases:

- (1) When the creditor is absent or unknown, or does not appear at the place of payment;
- (2) When he is incapacitated to receive the payment at the time it is due;
- (3) When, without just cause, he refuses to give a receipt;
- (4) When two or more persons claim the same right to collect;
- (5) When the title of the obligation has been lost.

Art. 1257. In order that the consignation of the thing due may release the obligor, it must first be announced to the persons interested in the fulfillment of the obligation.

The consignation shall be ineffectual if it is not made strictly in consonance with the provisions which regulate payment.

Art. 1258. Consignation shall be made by depositing the things due at the disposal of judicial authority, before whom the tender of payment shall be proved, in a proper case, and the announcement of the consignation in other cases.

The consignation having been made, the interested parties shall also be notified thereof.

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

Art. 1260. Once the consignation has been duly made, the debtor may ask the judge to order the cancellation of the obligation.

Before the creditor has accepted the consignation, or before a judicial declaration that the consignation has been properly made, the debtor may withdraw the thing or the sum deposited, allowing the obligation to remain in force.

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

Section 2

LOSS OF THE THING DUE

Loss:

- (a) when the object perishes (physically, it is destroyed)
- (b) when it goes out of commerce
- (c) when it disappears in such a way that
 - 1) its existence is unknown
 - 2) or it cannot be recovered
- (d) impossibility of performance

Art. 1262. An obligation which consists in the delivery of a determinate thing shall be extinguished if it should be lost or destroyed without the fault of the debtor, and before he has incurred in delay.

When by law or stipulation, the obligor is liable even for fortuitous events, the loss of the thing does not extinguish the obligation, and he shall be responsible for damages. The same rule applies when the nature of the obligation requires the assumption of risk.

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

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

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

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

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

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

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

Section 3

CONDONATION OR REMISSION OF THE DEBT

Art. 1270. Condonation or remission is essentially gratuitous, and requires the acceptance by the obligor. It may be made expressly or impliedly.

One and the other kinds shall be subject to the rules which govern inofficious donations. Express condonation shall, furthermore, comply with the forms of donation.

Remission or Condonation – is “the gratuitous abandonment by the creditor of his right.”

Art. 1271. The delivery of a private document evidencing a credit, made voluntarily by the creditor to the debtor, implies the renunciation of the action which the former had against the latter.

If in order to nullify this waiver it should be claimed to be inofficious, the debtor and his heirs ay uphold it by proving that the delivery of the document was made in virtue of payment of the debt.

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

Art. 1273. The renunciation of the principal debt shall extinguish the accessory obligation; but the waiver of the latter shall leave the former in force.

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

Section 4

CONFUSION OR MERGER OF RIGHTS

Art. 1275. The obligation is extinguished from the time the characters of creditor and debtors are merged in the same person.

Merger or Confusion – the meeting in one person of the qualities of creditor and debtor with respect to the same obligation

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

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

Section 5

COMPENSATION

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

Art. 1279. In order that compensation may be proper, it is necessary:

(1) That each one of the obligors be bound principally, and that he be at the same time a principal creditor of the other;

(2) That both debts consist in a sum of money, or if the things due are consumable, they be of the same kind, and also of the same quality if the latter has been state;

(3) That the two debts be due;

(4) That they be liquidated and demandable;

(5) That over neither of them there be any retention or controversy, commenced by third persons and communicated in due time to the debtor.

Art. 1280. Notwithstanding the provisions of the preceding article, the guarantor may set up

compensation as regards what the creditor may owe the principal debtor.

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

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

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

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

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

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

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

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

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

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

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

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

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

Section 6 NOVATION

Art. 1291. Obligations may be modified by:

- (1) Changing their object or principal conditions;
- (2) Substituting the person of the debtor;
- (3) Subrogating a third person in the right of the creditor.

Novation – the substitution or change of an obligation by another, which extinguishes or modifies the first, either changing its object or principal condition, or substituting another in place of the debtor, or subrogating a third person in the right of the creditor.

Art. 1292. In order that an obligation may be extinguished by another which substitutes the same, it is imperative that it be so declared in unequivocal terms, or that the old and the new obligation be on every point incompatible with each other.

Art. 1293. Novation which consists in substituting a new debtor in the place of the original one, may be made even without the knowledge or against the will of the latter, but not without the consent of the creditor. Payment by the new debtor gives him the rights mentioned in Articles 1236 and 1237.

Art. 1294. If the substitution is without the knowledge or against the will of the debtor, the new debtor's insolvency or non-fulfillment of the obligation shall not give rise to any liability on the part of the original debtor.

Art. 1295. The insolvency of the new debtor, who has been proposed by the original debtor and accepted by the creditor, shall not revive the action of the latter against the original obligor, except when said insolvency was already existing and of public

knowledge, or known to the debtor, when he delegated his debt.

Art. 1296. When the principal obligation is extinguished in consequence of a novation, accessory obligations may subsist only insofar as they may benefit third persons who did not give their consent.

Art. 1297. If the new obligation is void, the original one shall subsist, unless the parties intended that the former relation should be extinguished in any event.

Art. 1298. The novation is void if the original obligation was void, except when annulment may be claimed only by the debtor, or when ratification validates acts which are voidable.

Art. 1299. If the original obligation was subject to a suspensive or resolutive condition, the new obligation shall be under the same condition, unless it is otherwise stipulated.

Art. 1300. Subrogation of a third person in the rights of the creditor is either legal or conventional. The former is not presumed, except in cases expressly mentioned in this Code; the latter must be clearly established in order that it may take effect.

Art. 1301. Conventional subrogation of a third person requires the consent of the original parties and of the third person.

Art. 1302. It is presumed that there is legal subrogation:

- (1) When a creditor pays another creditor who is preferred, even without the debtor's knowledge;
- (2) When a third person, not interested in the obligation, pays with the express or tacit approval of the debtor;
- (3) When, even without the knowledge of the debtor, a person interested in the fulfillment of the obligation pays, without prejudice to the effects of confusion as to the latter's share.

Art. 1303. Subrogation transfers to the person subrogated the credit with all the rights thereto appertaining, either against the debtor or against third persons, be they guarantors or possessors of mortgages, subject to stipulation in a conventional subrogation.

Art. 1304. A creditor, to whom partial payment has been made, may exercise his right for the remainder, and he shall be preferred to the person who has been subrogated in his place in virtue of the partial payment of the same credit.

TITLE II. CONTRACTS

Chapter 1

GENERAL PROVISIONS

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

Elements of a Contract

- (a) *essential elements* – without which a contract cannot exist

i.e. consent, subject matter, cause or consideration

(In some contracts, *FORM* is also essential; still in others, *DELIVERY* is likewise essential.)

- (b) *natural element* – those found in certain contracts and presumed to exist, unless the contrary has been stipulated

i.e. warranty against eviction and against hidden defects in the contract of sale

- (c) *accidental elements* – these are the various particular stipulations that may be agreed upon by the contracting parties in a contract; they are called accidental, because they may be present or absent, depending upon whether or not the parties have agreed upon them.

i.e. the stipulation to pay credit; the stipulation to pay interest; the designation of the particular place for delivery or payment

STAGES OF A CONTRACT

- (a) *Preparation (or Conception)* – here the parties are progressing with their negotiations; they have not yet arrived at any definite agreement, although there may have been a preliminary offer and bargaining
- (b) *Perfection (or Birth)* – here the parties have at long last come to a definite agreement, the elements of definite subject matter and valid cause have been accepted by mutual consent.
- (c) *Consummation (or Death or Termination)* – here the terms of the contract are performed, and the contract may be said to have been full executed.

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

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

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

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

Art. 1310. The determination shall not be obligatory if it is evidently inequitable. In such a case, the courts shall decide what is equitable under the circumstances.

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

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

Exceptions:

- (a) Where the obligations arising from the contract are not transmissible by NATURE, by STIPULATION, or by PROVISION OF LAW.
- (b) Where there is a *STIPULATION POUR AUTRUI* (a stipulation in favor of a third party).
- (c) Where a third person induces another to violate his contract.
- (d) Where the law authorizes the creditor to sue on a contract entered into by his debtor.

Art. 1312. In contracts creating real rights, third persons who come into possession of the object of the contract are bound thereby, subject to the provisions of the Mortgage Law and the Land Registration Laws. (Exception)

Art. 1313. Creditors are protected in cases of contracts intended to defraud them. (Exception d)

Art. 1314. Any third person who induces another to violate his contract shall be liable for damages to the other contracting party. (Exception c)

Art. 1315. Contracts are perfected by mere consent, and from that moment that the parties are bound not only to the fulfillment of what has been expressly stipulated but also to all the consequences which, according to their nature, may be in keeping with good faith, usage, and law.

Art. 1316. Real contracts, such as deposit, pledge, and *commodatum*, are not perfected until the delivery of the object of the obligation

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

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

Chapter 2 ESSENTIAL REQUISITES OF CONTRACTS GENERAL PROVISIONS

Art. 1318. There is no contract unless the following requisites concur:

- (1) Consent of the contracting parties;
- (2) Object certain which is the subject matter of the contract
- (3) Cause of the obligation which is established

Real Contracts

- (4) Delivery

Section 1 CONSENT

Art. 1319. Consent is manifested by the meeting of the offer and the acceptance upon the thing and the cause which are to constitute the contract. The offer must be certain and the acceptance absolute. A qualified acceptance constitutes a counter-offer.

Acceptance made by letter or telegram does not bind the offerer except from the time it came to his knowledge. The contract, in such a case, is presumed to have been entered into in the place where the offer was made.

Art. 1320. An acceptance may be express or implied.

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

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

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

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

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

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

Art. 1327. The following cannot give consent to a contract:

- (1) Unemancipated minors;
- (2) Insane or demented persons, and deaf-mute who do not know how to write.

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

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

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

Art. 1331. In order that mistake may invalidate consent, it should refer to the substance of the thing which is the object of the contract, or to those conditions which have principally moved one or both parties to enter into the contract.

Mistake as to the identity or qualifications of one of the parties will vitiate consent only when such identity or qualifications have been the principal cause of the contract.

A simple mistake of account shall give rise to its correction.

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

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

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

Art. 1335. There is violence when in order to rest consent, serious or irresistible force is employed.

There is intimidation when one of the contracting parties is compelled by a reasonable and well-grounded fear of an imminent and grave evil upon his person or property, or upon the person or property of his spouse, descendants or ascendants, to give his consent.

To determine the degree of the intimidation, the age, sex and condition of the person shall be borne in mind.

A threat to enforce one's claim through competent authority, if the claim is just or legal, does not vitiate consent.

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

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

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

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

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

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

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

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

Art. 1344. In order that fraud may make a contract voidable, it should be serious and should not have been employed by both contracting parties.

Incidental fraud only obliges the person employing it to pay damages.

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

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

Section 2 OBJECT OF CONTRACTS

Art. 1347. All things which are not outside the commerce of men, including future things, may be the object of a contract. All rights which are not intransmissible may also be the object of contracts.

No contract may be entered into upon future inheritance except in cases expressly authorized by law.

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

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

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

Section 3 CAUSE OF CONTRACTS

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

Cause – is the essential and impelling reason why a party assumes an obligation.

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

MOTIVE DISTINGUISHED FROM CAUSE

- (a) The motive of a person may vary although he enters into the same kind of contract; the cause is always the same.
- (b) The motive may be unknown to the other; the cause is always known.
- (c) The presence of a motive cannot cure the absence of cause.

Art. 1352. Contracts without cause, or with unlawful cause, produce no effect whatsoever. The cause is unlawful if it is contrary to law, morals, good customs, public order or public policy.

Art. 1353. The statement of false cause in contracts shall render them void, if it should not be proved that they were founded upon another cause which is true and lawful.

Art. 1354. Although the cause is not stated in the contract, it is presumed that it exists and is lawful, unless the debtor proves the contrary.

Art. 1355. Except in cases specified by law, lesion or inadequacy of cause shall not invalidate a contract, unless there has been fraud, mistake or undue influence.

Lesion – inadequacy of cause, like an insufficient price for a thing sold

General Rule:

Lesion or inadequacy of price does not invalidate a contract.

Exceptions:

- (a) When, together with *lesion*, there has been:
 - 1) fraud
 - 2) mistake
 - 3) or undue influence
- (b) In cases expressly provided by law (in the following, the contracts may be *rescinded*):
 - 1) "Those which are entered into by guardians whenever the wards they represent suffer *lesion* by more than one-fourth of the value of the things which are the objects thereof." (Art. 1381, par.1, Civil Code)
 - 2) "Those agreed upon in representation of absentees, if the latter suffer the *lesion* in

the preceding number." (Art. 1381, par.2, Civil Code)

- 3) Partition among co-heirs, when anyone of them received things with a value less by at least one-fourth than the share to which he is entitled. (Art. 1098, Civil Code)

Chapter 3 FORM OF CONTRACTS

Art. 1356. Contracts shall be obligatory, in whatever form they may have been entered into, provided all the essential requisites for their validity are present. However, when the law requires that a contract be in some form in order that it may be valid or enforceable, or that a contract be proved in a certain way, that requirement is absolute and indispensable. In such cases, the rights of the parties stated in the following article cannot be exercised.

When form is important:

- (a) For VALIDITY (*This is true in formal or solemn contracts*)
- (b) For ENFORCEABILITY (*This is true for the agreements enumerated under the Statute of Frauds, but of course this requirement may be waived by acceptance of benefits (partial) or by failure to object to the presentation of oral (parol) evidence.*)
- (c) For CONVENIENCE (*This is true for the contracts enumerated for example under Art. 1385, Civil Code*).

Art. 1357. If the law requires a document or other special form, as in the acts and contracts enumerated in the following article, the contracting parties may compel each other to observe that form, once the contract has been perfected. This right may be exercised simultaneously with the action upon the contract.

Art. 1358. The following must appear in a public document:

- (1) Acts and contracts which have for their object the creation, transmission, modification or extinguishment of real rights over immovable property; sales of real property or of an interest therein are governed by Articles 1403, No. 2, and 1405;
- (2) The cession, repudiation or renunciation of hereditary rights or of those of the conjugal partnership of gains;
- (3) The power to administer property, or any other power which has for its object an act appearing

- or which should appear in a public document, or should prejudice a third person;
- (4) The cession of actions or rights proceeding from an act appearing in a public document.

All other contracts where the amount involved exceeds five hundred pesos must appear in writing, even a private one. But sales of goods, chattels or things in action are governed by Articles 1403, No. 2 and 1405.

Chapter 4 REFORMATION OF INSTRUMENTS

Reformation – is that remedy in equity by means of which a written instrument is made or construed so as to express or conform to the real intention of the parties when some error or mistake has been committed.

Art. 1359. When, there having been a meeting of the minds of the parties to a contract, their true intention is not expressed in the instrument purporting to embody the agreement, by reason of mistake, fraud, inequitable conduct or accident, one of the parties may ask for the reformation of the instrument to the end that such true intention may be expressed.

If mistake, fraud, inequitable conduct, or accident has prevented a meeting of the minds of the parties, the proper remedy is not reformation of the instrument but annulment of the contract.

Art. 1360. The principles of the general law on the reformation of instruments are hereby adopted insofar as they are not in conflict with the provisions of this Code.

Art. 1361. When a mutual mistake of the parties causes the failure of the instrument to disclose their real agreement, said instrument may be reformed

When Reformation May Be Asked Because of Mutual Mistake

- (a) Under this Article, the mistake must be mutual.
- (b) The mistake may be unilateral under the conditions set forth in Arts. 1362 and 1363 of the Civil Code.
- (c) The mistake must be of fact – usually. Therefore, generally an error of law is not enough.

Art. 1362. If one part was mistaken and the other acted fraudulently or inequitably in such a way

that the instrument does not show their true intention, the former may ask for the reformation of the instrument.

Art. 1363. When one party was mistaken and the other knew or believed that the instrument did not state their real agreement, but concealed that fact from the former, the instrument may be reformed.

Art. 1364. When through the ignorance, lack of skill, negligence or bad faith on the part of the person drafting the instrument or of the clerk or typist, the instrument does not express the true intention of the parties, the courts may order that the instrument be reformed.

Art. 1365. If two parties agree upon the mortgage or pledge of real or personal property, but the instrument states that the property is sold absolutely or with a right of repurchase, reformation of the instrument is proper.

Art. 1366. There shall be no reformation in the following cases:

- (1) Simple donations *inter vivos* wherein no condition is imposed;
- (2) Will;
- (3) When the real agreement is void.

Art. 1367. When one of the parties has brought an action to enforce the instrument he cannot subsequently ask for its reformation.

Art. 1368. Reformation may be ordered at the instance of either party or his successors in interest, if the mistake was mutual; otherwise, upon petition of the injured party, or his heirs and assigns.

Art. 1369. The procedure for the reformation of instruments shall be governed by Rules of Court to be promulgated by the Supreme Court.

Chapter 5 INTERPRETATION OF CONTRACTS

Art. 1370. If the terms of a contract are clear and leave no doubt upon the intention of the contracting parties, the literal meaning of its stipulations shall control.

If the words appear to be contrary to the evident intention of the parties, the latter shall prevail over the former.

Art. 1371. In order to judge the intention of the contracting parties, their contemporaneous and subsequent acts shall be principally considered.

Art. 1372. However general the terms of a contract may be, they shall be understood to comprehend things that are distinct and cases that are different from those upon which the parties intended to agree.

Art. 1373. If some stipulation of any contract should admit of several meanings, it shall be understood as bearing that import which is most adequate to render it effectual.

Art. 1374. The various stipulations of a contract shall be interpreted together, attributing to the doubtful ones that sense which may result from all of them taken jointly.

Art. 1375. Words which may have different significations shall be understood in that which is most in keeping with the nature and object of the contract.

Art. 1376. The usage or custom of the place shall be borne in mind in the interpretation of ambiguities of a contract, and shall fill the omission of stipulations which are ordinarily established.

Art. 1377. The interpretation of obscure words or stipulations in a contract shall not favor the party who caused the obscurity.

Art. 1378. When it is absolutely impossible to settle doubts by the rules established in the preceding articles, and the doubts refer to incidental circumstances of a gratuitous contract, the least transmission of rights and interests shall prevail. If the contract is onerous, the doubt shall be settled in favor of the greatest reciprocity of interest.

If the doubts are case upon the principal object of the contract in such a way that it cannot be known what may have been the intention or will of the parties, the contract shall be null and void.

Art. 1379. The principles of interpretation stated in Rule 123 of the Rules of Court shall likewise be observed in the construction of contracts.

FOUR KINDS OF DEFECTIVE CONTRACTS

- (a) Rescissible – is valid until rescinded; there is a sort of *extrinsic defect* consisting of an economic damage or *lesion*
- (b) Voidable – is valid till annulled. It can be annulled. It cannot be annulled, however, if there has been a ratification. The defect is more or less intrinsic, as in the case of *vitiating consent*.
- (c) Unenforceable – cannot be sued upon or enforced, unless it is ratified. In a way, it may be considered as a validable transaction, that is, it has *no effect* now, but it may be effective upon ratification.
- (d) Void – one that has no effect at all; it cannot be ratified or validated.

Chapter 6 RESCISSIBLE CONTRACTS

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

'Rescission' Defined

- It is a relief to protect one of the parties or a third person from all injury and damages which the contract may cause, to protect some preferential right

Two Kinds of Rescission:

- 1) Rescission in general (*Art. 1380*)
 - a) is based on *lesion* or fraud upon creditors;
 - b) here, the action is instituted by either of the contracting parties or by third persons;
 - c) here, the courts *cannot* grant a period or term within which to comply;
 - d) here, non-performance by the other party is immaterial
- 2) Rescission under Art. 1191 (*resolution*)
 - a) is based on non-performance or non-fulfillment of the obligation;
 - b) here, the action may be instituted only by the injured part to the contract;
 - c) here, in some cases, the courts may grant a term;
 - d) here, non-performance by the other party is important.

Art. 1381. The following contracts are rescissible:

- (1) Those which are entered into by the guardians whenever the wards whom they represent suffer lesion by more than one-fourth of the value of the things which are the object thereof;
- (2) Those agreed upon in representation of absentees, if the latter suffer the lesion stated in the preceding number;
- (3) Those undertaken in fraud of creditors when the latter cannot in any manner collect the claims due them;
- (4) Those which refer to things under litigation if they have been entered into by the defendant without the knowledge and approval of the litigants or of competent judicial authority;
- (5) All other contracts specially declared by law to be subject to rescission.

Lesion – damage or injury to the party asking for rescission (generally, disparity between the *price* and the *value*)

Accion pauliana – the action to rescind contracts made in fraud of creditors

Requisites before *accion pauliana* can be brought:

- 1) There must be a creditor who became such PRIOR to the contract sought to be rescinded (whether the party asking for rescission is a judgment creditor already or not, is likewise *immaterial*).
- 2) There must be an alienation made *subsequent* to such credit.
- 3) The party alienating must be in BAD FAITH (that is, he *knew* that damages would be caused his creditors *whether or not he intended* to cause such damage).
- 4) There must be no other remedy for the prejudiced creditor – “inability to collect the claims due them.”

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

Art. 1383. The action for rescission is subsidiary; it cannot be instituted except when the

party suffering damage has no other legal means to obtain reparation for the same.

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

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

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

In this case, indemnity for damages may be demanded from the person causing the loss.

Art. 1386. Rescission referred to in Nos. 1 and 2 of Article 1381 shall not take place with respect to contracts approved by the courts.

Art. 1387. All contracts by virtue of which the debtor alienates property by gratuitous title are presumed to have been entered into in fraud of creditors, when the donor did not reserve sufficient property to pay all debts contracted before the donation.

Alienations by onerous title are also presumed fraudulent when made by persons against whom some judgment has been rendered in any instance or some writ of attachment has been issued. The decision or attachment need not refer to the property alienated, and need not have been obtained by the party seeking the rescission.

In addition to these presumptions, the design to defraud creditors may be proved in any other manner recognized by the law of evidence.

BADGES OF FRAUD – there are some circumstances indicating that a certain alienation has been made in fraud of creditors

Art. 1388. Whoever acquires in bad faith the things alienated in of creditors, shall indemnify the latter for damages suffered by them on account of the alienation, whenever, due to any cause, it should be impossible for him to return them.

If there are two or more alienations, the first acquirer shall be liable first, and so on successively.

Art. 1389. The action to claim rescission must be commenced within four years.

For persons under guardianship and for absentees, the period of four years shall not begin until the termination of the former's incapacity, or until the domicile of the latter is known.

Chapter 7 VOIDABLE CONTRACTS

Art. 1390. The following contracts are voidable or annulable, even though there may have been no damage to the contracting parties:

- (1) Those where one of the parties is incapable of giving consent to a contract;
- (2) Those where the consent is vitiated by mistake, violence, intimidation, undue influence or fraud.

These contracts are binding, unless they are annulled by a proper action in court. They are susceptible of ratification.

Grounds for Annulment (Declaration of Nullity)

- (a) incapacity to consent (of one of the contracting parties)
- (b) vitiated consent

Art. 1391. The action for annulment shall be brought within four years.

This period shall begin:

In cases of intimidation, violence or undue influence, from the time the defect of the consent ceases.

In case of mistake or fraud, from the time of the discovery of the same.

And when the action refers to contracts entered into by minors or other incapacitated persons, from the time the guardianship ceases.

Art. 1392. Ratification extinguishes the action to annul a voidable contract.

Confirmation – to cure a defect in a *voidable contract*.

Ratification – to cure the defect of lack of authority in an *authorized contract* (entered into by another)

Acknowledgment – to remedy a deficiency of proof

****Under the New Civil Code, all the three terms are now uniformly called RATIFICATION.**

Art. 1393. Ratification may be effected expressly or tacitly. It is understood that there is a tacit ratification if, with knowledge of the reason which renders the contract voidable and such reason having ceased, the person who has a right to invoke it should execute an act which necessarily implies an intention to waive his right.

Art. 1394. Ratification may be effected by the guardian of the incapacitated person.

Art. 1395. Ratification does not require the conformity of the contracting party who has no right to bring the action for annulment.

Art. 1396. Ratification cleanses the contract from all its defects from the moment it was constituted.

Art. 1397. The action for the annulment of contracts may be instituted by all who are thereby obliged principally or subsidiarily. However, persons who are capable cannot alleged the incapacity of those with whom they contracted; nor can those who exerted intimidation, violence, or undue influence, or employed fraud, or caused mistake base their action upon these flaws of the contract.

Art. 1398. An obligation having been annulled the contracting parties shall restore to each other the things which have been the subject matter of the contract, with their fruits, and the price with its interest, except in cases provided by law.

In obligations to render service, the value thereof shall be the basis for damages.

Art. 1399. When the defect of the contract consists in the incapacity of one of the parties, the incapacitated person is not obliged to make any restitution except insofar as he has been benefited by the thing or price received by him.

Art. 1400. Whenever the person obliged by the decree of annulment to return the thing cannot do so because it has been lost through his fault, he shall return the fruits received and the value of the thing at the time of the loss, with interest from the same date.

Art. 1401. The action for annulment of contracts shall be extinguished when the thing which is the object thereof is lost through the fraud or fault of the person who has a right to institute the proceedings.

If the right of action is based upon the incapacity of any one of the contracting parties, the loss of the thing shall not be an obstacle to the success of the action, unless said loss took place through the fraud or fault of the plaintiff.

Art. 1402. As long as one of the contracting parties does not restore what in virtue of the decree of annulment he is bound to return, the other cannot be compelled to comply with what is incumbent upon him.

Chapter 8 UNENFORCEABLE CONTRACTS

Kinds of Unenforceable Contracts

- (a) Unauthorized contracts.
- (b) Those that fail to comply with the Statute of Frauds.
- (c) Those where both parties are incapable of giving consent to a contract.

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

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

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

- (a) An agreement that by its terms is not to be performed within a year from the making thereof;
- (b) A special promise to answer for a debt, default, or miscarriage of another;
- (c) An agreement made in consideration of marriage, other than a mutual promise to marry;

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

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

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

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

Statute of Frauds – to prevent fraud, and not to encourage the same. Thus, certain agreements are required to be in writing so that they may be enforced.

Some Basic and Fundamental Principles Concerning the Statute of Frauds (General Rules of Application)

- 1) The Statute of Frauds applies only to executor contracts (contracts where no performance has yet been made) and not partially or completely executed (consummated contracts).
- 2) The Statute of Frauds cannot apply if the action is *neither for damages* because of the *violation of an agreement* nor for the *specific performance* of said agreement.
- 3) The Statute of Frauds is exclusive, that is, it *applies only* to the agreements or contracts enumerated herein.
- 4) The defense of the Statute of Frauds may be waived.
- 5) The Statute of Frauds is a personal defense, that is, a contract infringing it cannot be assailed by third persons.
- 6) Contracts infringing the Statutes of Frauds are not void; they are merely unenforceable.
- 7) The Statute of Frauds is a Rule of Exclusion, *i.e.*, oral evidence might be relevant to the agreements enumerated therein and might

therefore be admissible were it not for the fact that the law or the statute excludes said oral evidence.

- 8) The Statute of Frauds does *not* determine the *credibility* or *weight* of evidence. It merely concerns *itself* with the *admissibility* thereof.
- 9) The Statute of Frauds does *not* apply if it is claimed that the contract does not express the true agreement of the parties. As long as the true or real agreement is not covered by the Statute of Frauds, it is provable by oral evidence.

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

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

Art. 1406. When a contract is enforceable under the Statute of Frauds, and a public document is necessary for its registration in the Registry of Deeds, the parties may avail themselves of the right under Article 1357.

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

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

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

Chapter 9 VOID OR INEXISTENT CONTRACTS

Art. 1409. The following contracts are in-existent and void from the beginning:

(1) Those whose cause, object or purpose is contrary to law, morals, good customs, public order, or public policy;

(2) Those which are absolutely simulated or fictitious;

(3) Those whose cause or object did not exist at the time of the transaction;

(4) Those whose object is outside the commerce of men;

(5) Those which contemplate an impossible service;

(6) Those where the intention of the parties relative to the principal object of the contract cannot be ascertained;

(7) Those expressly prohibited or declared void by law.

These contracts cannot be ratified. Neither can the right to set up the defense of illegality be waived.

TWO KINDS OF VOID CONTRACTS:

- (a) In-existent – those where essential formalities are not complied with; *i.e., a donation of land in a private instrument; this produces no effect whatsoever*
- (b) Illegal or illicit – like a donation made because of an immoral condition, such as illicit sexual intercourse, here, in some way, the donation produces some effect in that he who gave the donation cannot get back what he has given

Art. 1410. The action or defense for the declaration of the in-existence of a contract does not prescribe.

Art. 1411. When the nullity proceeds from the illegality of the cause or object of the contract, and the act constitutes a criminal offense, both parties being in *pari delicto*, they shall have no action against each other, and both shall be prosecuted. Moreover, the provisions of the Penal Code relative to the disposal of effects or instruments of a crime shall be applicable to the things or the price of the contract.

This rule shall be applicable when only one of the parties is guilty; but the innocent one may claim what he has given, and shall not be bound to comply with his promise.

Art. 1412. If the act in which the unlawful or forbidden cause consists does not constitute a criminal offense, the following rules shall be observed:

(1) When the fault is on the part of both contracting parties, neither may recover what he has

given by virtue of the contract, or demand the performance of the other's undertaking;

(2) When only one of the contracting parties is at fault, he cannot recover what he has given by reason of the contract, or ask for the fulfillment of what has been promised him. The other, who is not at fault, may demand the return of what he has given without any obligation to comply with his promise.

Art. 1413. Interest paid in excess of the interest allowed by the usury laws may be recovered by the debtor, with interest thereon from the date of payment.

Art. 1414. When money is paid or property delivered for an illegal purpose, the contract may be repudiated by one of the parties before the purpose has been accomplished, or before any damage has been caused to a third person. In such case, the courts may, if the public interest will thus be subserved, allow the party repudiating the contract to recover the money or property.

Art. 1415. Where one of the parties to an illegal contract is incapable of giving consent, the courts may, if the interest of justice so demands, allow recovery of money or property delivered by the incapacitated person.

Art. 1416. When the agreement is not illegal *per se* but is merely prohibited, and the prohibition by the law is designed for the protection of the plaintiff, he may, if public policy is thereby enhanced, recover what he has paid or delivered.

Illegal *per se* – are those *forbidden* because of *public* interest

Merely prohibited – are those forbidden because of *private* interests

Art. 1417. When the price of any article or commodity is determined by statute, or by authority of law, any person paying any amount in excess of the maximum price allowed may recover such excess.

Art. 1418. When the law fixes, or authorizes the fixing of the maximum number of hours of labor, and a contract is entered into whereby a laborer undertakes

to work longer than the maximum thus fixed, he may demand additional compensation for service rendered beyond the time limit.

Art. 1419. When the law sets, or authorizes the setting of a minimum wage for laborers, and a contract is agreed upon by which a laborer accepts a lower wage, he shall be entitled to recover the deficiency.

Art. 1420. In case of a divisible contract, if the illegal terms can be separated from the legal ones, the latter may be enforced.

Art. 1421. The defense of illegality of contracts is not available to third persons whose interests are not directly affected.

Art. 1422. A contract which is the direct result of a previous illegal contract, is also void and inexistent.

TITLE III. – NATURAL OBLIGATIONS

Art. 1423. Obligations are civil or natural. Civil obligations give a right of action to compel their performance. Natural obligations, not being based on positive law but on equity and natural law, do not grant a right of action to enforce their performance, but after voluntary fulfillment by the obligor, they authorize the retention of what has been delivered or rendered by reason thereof. Some natural obligations are set forth in the following articles.

Art. 1424. When a right to sue upon a civil obligation has lapsed by extinctive prescription, the obligor who voluntarily performs the contract cannot recover what he has delivered or the value of the service he has rendered.

Art. 1425. When without the knowledge or against the will of the debtor, a third person pays a debt which the obligor is not legally bound to pay because the action thereon has prescribed, but the debtor later

voluntarily reimburses the third person, the obligor cannot recover what he has paid.

Art. 1426. When a minor between eighteen and twenty-one years of age who has entered into a contract without the consent of the parent or guardian, after the annulment of the contract voluntarily returns the whole thing or price received, notwithstanding the fact that he has not been benefited thereby, there is no right to demand the thing or price thus returned.

Art. 1427. When a minor between eighteen and twenty-one years of age, who has entered into a contract without the consent of the parent or guardian, voluntarily pays a sum of money or delivers a fungible thing in fulfillment of the obligation, there shall be no right to recover the same from the obligee who has spent or consumed it in good faith.

Art. 1428. When, after an action to enforce a civil obligation has failed, the defendant voluntarily performs the obligation, he cannot demand the return of what he has delivered or the payment of the value of the service he has rendered.

Art. 1429. When a testate or intestate heir voluntarily pays a debt of the decedent exceeding the value of the property which he received by will or by the law of intestacy from the estate of the deceased, the payment is valid and cannot be rescinded by the payer.

Art. 1430. When a will is declared void because it has not been executed in accordance with the formalities required by law, but one of the intestate heirs, after the settlement of the debts of the deceased, pays a legacy in compliance with a clause in the defective will, the payment is effective and irrevocable.

TITLE IV. – ESTOPPEL (n)

Art. 1431. Through estoppel an admission or representation is rendered conclusive upon the person

making it, and cannot be denied or disproved as against the person relying thereon.

ESTOPPEL – is a bar which precluded a person from denying or asserting anything contrary to that which has been, in contemplation of law, established as the truth either by acts of judicial or legislative officers, or by his own deed or representation either express or implied.

Art. 1432. The principles of estoppel are hereby adopted, insofar as they are not in conflict with the provisions of this Code, the Code of Commerce, the Rules of Court and special laws.

Art. 1433. Estoppel may be *in pais* or by deed.

KINDS OF ESTOPPEL

- (a) Estoppel *IN PAIS* (equitable estoppel); this may be *estoppel*:
 - 1) by conduct or by acceptance of benefits,
 - 2) by representation or concealment,
 - 3) by silence,
 - 4) by omission,
 - 5) by laches (unreasonable delay in suing)
- (b) Estoppel *BY DEED* (technical estoppel); this may be:
 - 1) estoppel by deed proper (*written instrument* may also be in the form of a bond or a *mortgage*)
 - 2) estoppel by judgment as a *court record* (this happens when there could have been *RES JUDICATA*)

FOUR ELEMENTS OF *LACHES*:

- a) conduct on the part of the defendant, or of one under whom he claims, giving rise to the situation of which the complaint is made and for which the complaint seeks a remedy;
- b) delay in asserting the complainant's rights, the complainant having had knowledge or notice of the defendant's conduct and having been afforded an opportunity to institute a suit;

- c) lack of knowledge or notice on the part of the defendant that the complainant would assert the right on which he bases his suit;
- d) injury or prejudice to the defendant in the event relief is accorded to the complainant, or the suit is *not* held barred

Art. 1434. When a person who is not the owner of a thing sells or alienates and delivers it, and later the seller or grantor acquires title thereto, such title passes by operation of law to the buyer or grantee.

Art. 1435. If a person in representation of another sells or alienates a thing, the former cannot subsequently set up his own title as against the buyer or grantee.

Art. 1436. A lessee or a bailee is estopped from asserting title to the thing leased or received, as against the lessor or bailor.

Art. 1437. When in a contract between third persons concerning immovable property, one of them is misled by a person with respect to the ownership or real right over the real estate, the latter is precluded from asserting his legal title or interest therein, provided all these requisites are present:

(1) There must be fraudulent representation or wrongful concealment of facts known to the party estopped;

(2) The party precluded must intend that the other should act upon the facts as misrepresented;

(3) The party misled must have been unaware of the true facts; and

(4) The party defrauded must have acted in accordance with the misrepresentation.

Art. 1438. One who has allowed another to assume apparent ownership of personal property for the purpose of making any transfer of it, cannot, if he

received the sum for which a pledge has been constituted, set up his own title to defeat the pledge of the property, made by the other to a pledgee who received the same in good faith and for value.

Art. 1439. Estoppel is effective only as between the parties thereto or their successors in interest.

AGENCY BY ESTOPPEL – the following must be established:

1. the principal manifested a representation of the agent's authority or knowingly allowed the agent to assume such authority; or
2. the third person, in good faith, relied upon such representation; or
3. relying upon said representation, a third person has changed his position to his detriment.

TITLE V. – TRUSTS

Chapter 1

GENERAL PROVISIONS

Trust – is the right to the beneficial enjoyment of property, the legal title to which is vested in another

- is a fiduciary relationship concerning property which obliges the person holding it to deal with the property for the benefit of another

CHARACTERISTICS OF A 'TRUST'

- (a) It is a fiduciary relationship
- (b) Created by law or by agreement
- (c) Where the legal title is held by one, and the equitable title or beneficial title is held by another

Art. 1440. A person who establishes a trust is called the trustor; one in whom confidence is reposed as regards property for the benefit of another person is known as the trustee; and the person for whose benefit the trust has been created is referred to as the beneficiary.

Art. 1441. Trusts are either express or implied. Express trusts are created by the intention of the trustor or of the parties. Implied trusts come into being by operation of law.

CLASSIFICATION OF TRUSTS

- (a) *Express trust* – created by the parties, or by the intention of the trustor.
- (b) *Implied trust* – created by operation of law (“trust by operation of law”)

TWO KINDS OF IMPLIED TRUSTS:

- 1) *Resulting trust* – (also called bare or passive trust) there is an intent to create a trust but it is not effective as an express trust. [Example: Art. 1451, where a person who inherits property registers the same in another’s name whom he does *not* intend to have any beneficial interest therein for he wants this for himself.]
- 2) *Constructive trust* – No intention to create a trust is present, but a trust is nevertheless created. [Example: If a person acquires property by *mistake*, he is considered by the law as a trustee while he holds the same.]

Art. 1442. The principles of the general law of trusts, insofar as they are not in conflict with this Code, the Code of Commerce, the Rules of Court and special laws are hereby adopted.

Chapter 2 EXPRESS TRUSTS

Art. 1443. No express trusts concerning an immovable or any interest therein may be proved by parol evidence.

Art. 1444. No particular words are required for the creation of an express trust, it being sufficient that a trust is clearly intended.

Art. 1445. No trust shall fail because the trustee appointed declines the designation, unless the contrary should appear in the instrument constituting the trust.

Art. 1446. Acceptance by the beneficiary is necessary. Nevertheless, if the trust imposes no onerous condition upon the beneficiary, his acceptance shall be presumed, if there is no proof to the contrary.

HOW EXPRESS TRUSTS ARE ENDED

- (a) Mutual agreement by *all the parties*
- (b) Expiration of the term
- (c) Fulfillment of the resolutive condition
- (d) Rescission or annulment (as in other contracts)
- (e) Loss of subject matter of the trust (physical loss or legal impossibility)
- (f) Order of the court (as when the purpose of the trust is being frustrated)
- (g) Merger
- (h) Accomplishment of the purpose of the trust

Chapter 3 IMPLIED TRUSTS

Art. 1447. The enumeration of the following cases of implied trust does not exclude others established by the general law of trust, but the limitation laid down in article 1442 shall be applicable.

Art. 1448. There is an implied trust when property is sold, and the legal estate is granted to one party but the price is paid by another for the purpose of having the beneficial interest of the property. The former is the trustee, while the latter is the beneficiary. However, if the person to whom the title is conveyed is a child, legitimate or illegitimate, of the one paying the price of the sale, no trust is implied by law, it being disputably presumed that there is a gift in favor of the child.

Art. 1449. There is also an implied trust when a donation is made to a person but it appears that although the legal estate is transmitted to the donee, he

nevertheless is either to have no beneficial interest or only a party thereof.

Art. 1450. If the price of a sale of property is loaned or paid by one person for the benefit of another and the conveyance is made to the lender or payor to secure the payment of the debt, a trust arises by operation of law in favor of the person to whom the money is loaned or for whom it is paid. The latter may redeem the property and compel a conveyance thereof to him.

TRUST RECEIPT – a security transaction intended to aid in financing importers and retail dealers who do not have sufficient funds or resources to finance the importation or purchase of merchandise, and who may not be able to acquire credit except thru utilization, as collateral, of the merchandise imported or purchased.

Art. 1451. When land passes by succession to any person and he causes the legal title to be put in the name of another, a trust is established by implication of law for the benefit of the true owner.

Art. 1452. If two or more persons agree to purchase property and by common consent the legal title is taken in the name of one of them for the benefit of all, a trust is created by force of law in favor of the others in proportion to the interest of each.

Art. 1453. When property is conveyed to a person in reliance upon his declared intention to hold it for, or transfer it to another or the grantor, there is an implied trust in favor of the person whose benefit is contemplated.

Art. 1454. If an absolute conveyance of property is made in order to secure the performance of an obligation of the grantor toward the grantee, a trust by virtue of law is established. If the fulfillment of the obligation is offered by the grantor when it becomes

due, he may demand the reconveyance of the property to him.

Art. 1455. When any trustee, guardian or other person holding a fiduciary relationship uses trust funds for the purchase of property and causes the conveyance to be made to him or to a third person, a trust is established by operation of law in favor of the person to whom the funds belong.

Art. 1456. If property is acquired through mistake or fraud, the person obtaining it is, by force of law, considered a trustee of an implied trust for the benefit of the person from whom the property comes.

Art. 1457. An implied trust may be proved by oral evidence.