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.

CONTRACTS

The word contract (*cum traho*) simply means an agreement or convention. It is a juridical convention manifested in legal form, by virtue of which one or more persons bind themselves in favor of another or others, or reciprocally, to the fulfillment of a prestation to give, to do or not to do (*Jurado, 354*).

NOTE: Although [contract] is not exactly synonymous with convention. While the latter is broad enough to include any kind of agreement which may create, modify or extinguish patrimonial and even family relations, the former is limited exclusively to those agreements which produce patrimonial obligations (*Id.*).

NOTE: Convention is the genus, while contract is the specie (*Id.*).

CONTRACTS	OTHER JURIDICAL CONVENTIONS
As to the principal source	
The agreement of the parties;	The law itself;
As to characteristics	
Concrete, limited and transitory.	More or less elastic, absolute and permanent

Id., 355

ORDINARY CONTRACT	CONTRACT OF MARRIAGE
As to parties	
May be two or more persons of the same or different sexes;	It is necessary that the parties must be one man and one woman;
As to what governs	
The nature, consequences and incidents are governed primarily by the agreement of the parties;	Nature, consequences and incidents of the marriage are governed by law;
As to result	
Once executed, the result is a contract;	Once marriage is celebrated, the result is a status
As to termination	
It can be terminated or dissolved by mere agreement of the parties;	Cannot;
As to remedy in case of breach	
To institute an action against the other party for damages.	To institute a civil action against the other party for legal separation or a criminal action for adultery or concubinage

Id.

NOTE: Contracts must not be confused with perfected or imperfect promises, nor with pacts or stipulations A perfected promise merely tends to insure and pave the way for the celebration of a future contract. An imperfect promise (*policitacion*) is a mere unaccepted offer. A pact is an incidental part of a contract which can be separated from the principal agreement, while stipulation is an essential and dispositive part which cannot be separated from such principal (*Jurado, 355*).

NUMBER OF PARTIES

General Rule

There must be at least two persons or parties. This is so because a person cannot enter into a contract with himself (*De Leon, 442*).

Exception

Auto-contract – a contract wherein apparently, there is only one party involved, but in reality, said party merely acts in the name and for the account of two distinct contracting parties (*Jurado, 357*). *E.g.*, his own and that of another for whom he acts as agent, or of two principals for both of whom he acts in a representative capacity (*De Leon, 442; see Arts. 1491 & 1890*).

BASIC DUTIES OF PERSONS WHEN ENTERING INTO CONTRACTS

All men are *presumed to be sane and normal and subject to be moved by substantially the same motives*. In this contests, *men must depend upon themselves* – upon their own abilities, talents, training, senses, acumen, judgment. One cannot complain because another is more able, or better trained, or has better sense or judgment than he has. *The law furnished no protection to the inferior simply because he is inferior*, any more than it protects the strong because he is strong. *The law furnishes protection to both alike* – to one no more or less than the other. Courts operate not because one person has been defeated or overcome by another, but because he has been defeated or overcome illegally (*Valles v Villa, 35 Phil. 769*).

DUTIES OF THE COURT IN INTERPRETING CONTRACTS

To interpret the one which the parties have made for themselves without regard to its wisdom or folly as the court cannot supply material stipulations or read into the contract words which it does not contain (*Cuizon v CA, 260 SCRA 645*).

LEGAL EFFECTS OF A CONTRACT

Determined by extracting the intention of the parties from the language they used and from their contemporaneous and subsequent acts. This principle gains more force when third parties are concerned. To require such persons to go beyond what is clearly written in the document is unfair and unjust. They cannot possible delve into the contracting parties' minds and suspect that something is amiss, when the language of the instrument appears clear and unequivocal (*Cruz v CA, GR No. 126713 [27.07.98]*).

TERMINATION OR CANCELLATION OF PRE-EXISTING CONTRACT

1. *Termination by Stipulation of the Parties* – the unilateral termination of a contract by a party is violative of the principal of mutuality of contracts ordained in Art. 1308 (*Home Dev. Mutual Fund v CA, 288 SCRA 617*);

   Note: Contract may be superseded by a compromise agreement (*Art. 2028*) provided it is not contrary to law, morals, good customs, public order or public policy (*Art. 1306*). To be valid, a compromise agreement is merely required by law to be based on real claims and to be actually agreed upon in good faith (*Manila International Airport v ALA Industries Corp. 422 SCRA 603*).

2. *Termination, by stipulation, at option of one party* – a contract may provide that it shall come to an end at the option of one or either parties and such stipulation will be enforced if not contrary to equity and good conscience.

   Note: When the contract is for an indefinite term subject to the right of either party to terminate it any time after a written notice of 30 days, it is immaterial that the termination is for cause or without cause, as long as a 30-day written notice is given. It is the unilateral act, without any legal basis or justification, of one party in terminating a contract which will make him liable for damages (*Riser Aironditioning Services Corp v Confield Construction Dev. Corp., 438 SCRA 471*).

3. *Termination by one party with conformity of the other* – the dissolution or cancellation of the original agreement necessarily involves restoration of the parties to the status quo ante prevailing immediately prior to the execution of the agreement (*Floro Enterprises, Inc. v CA, 249 SCRA 354*).

TERMINATION	RESCISSION
Necessarily entail enforcement of its terms prior to the declaration of its cancellation in the same way that before a lessee is ejected under a lease contract, he has to fulfill his obligation that had accrued prior to his ejectment.	To declare a contract void in its inception and to put an end to it as though it never were. It is to abrogate it from the beginning and restore the parties to their relative positions which they would have occupied had no contract ever been made.

CONTRACT VS OBLIGATION

Contract is one of the sources of obligation. On the other hand, obligation is the legal tie or relation itself that exists after a contract has been entered into. Hence, there can be no contract if there is no obligation. But an obligation may exist without a contract (*De Leon, 444*).

NOTE: All contracts are agreements but not all agreements are contracts (*Id.*).

IMPORTANCE OF CONTRACTS

The movement of the progressive societies has hitherto been a movement from Status to Contract (*Id.*).

BASIS OF CONTRACTS

The limitation of man and his insufficiency to obtain by himself the means necessary for the fulfillment of his purposes; contract being the most adequate instrument for which the realization of individual and social life and social cooperation (*Id., 445*).

PURPOSE OF CONTRACTS

The attainment by him of those means for the satisfaction of his necessities from the other contracting party. Contract serves as the juridical means of effecting in a practical manner the effectiveness and development of the economic principle of the division of labor (*Id.*).

ELEMENTS OF CONTRACTS

1. *Essential* – those without which there can be no contract:
    a. *Communes* – those which are present in all contracts, such as consent, object certain and cause.
    b. *Especiales* – present only in certain contracts such as delivery in real contracts or form in solemn ones;
    c. *Especialisimos* – those peculiar to a specific contract such as price in a contract of sale;
2. *Natural* – those which are derived from the nature of the contract and ordinarily accompany the same. Presumed by the law, although they can be excluded by the contracting parties if they so desire, *e.g.,* warranty against eviction in a contract of sale;
3. *Accidental* – those which exist only when the parties expressly provide for them for the purpose of limiting or modifying the normal effects of the contract, *e.g.,* conditions, terms or modes (*Jurado, 357*).

CONTRACT IMPLIED IN FACT

It is a contract, the existence and ters of which are manifested by conduct and not by direct or explicit words between parties but is to be deduced from conduct of the parties, language used, or things done by them, or other pertinent circumstances attending the transaction (*UP v Philab, GR No. 152411 [29.09.2004]*).

BREACH OF CONTRACT

It is the failure, without legal reason, to comply with the terms of the contract or to perform any promise which forms the whole or part of the contract (*Sps Omengan v PNB, GR No. 161319 [23.01.2007]*).

STAGES OF CONTRACTS

1. *Generation or Preparation or Conception* – comprehends the preparation or conception. It is the period of negotiation and bargaining, ending at the moment of agreement of the parties;
2. *Perfection or Birth* – the moment when the parties come to agree on the terms of the contract;
3. *Consummation or Death or Termination* – it is the fulfillment or performance of the terms agreed upon in the contract (*ABS-CBN Broadcasting Copr. V CA, GR No. 128690 [21.01.99]*).

BASIC PRINCIPLES OR CHARACTERISTICS OF CONTRACT [MARCO]

1. **M**utuality – contracts must bind both and not one of the contracting parties; their validity or compliance cannot be left to the will of one of them (*Art. 1308*);
2. **A**utonomy (Freedom of Contract) – the 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, and public policy (*Art. 1306*);
3. **R**elativity – contracts take effect only between the parties, their assigns and heirs, except in cases where the rights and obligations arising from the contract are not transmissible by their nature, or by stipulation, or by provision of law. (*Art. 1311*);
4. **C**onsensuality – contracts are perfected by mere consent, and from that moment the parties are bound not only by 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. 1315*);
5. **O**bligatory force – obligations arising from contracts have the force of the law between the contracting parties and should be complied with in good faith (*Arts. 1159 & 1315*).

CO-EXISTENCE OF A CONTRACT WITH A QUASI-DELICT (TORT)

The existence of a contract between the parties does not constitute a bar to the commission of a tort by one against the other, and the consequent recovery of damages (*Araneta v de Joya, GR No. L-25172 [24.05.74]*).

CLASSIFICATIONS OF CONTRACT

According to their relations to the other contracts

1. Preparatory – preliminary step towards the celebration of another subsequent contract, *e.g.,* partnership, agency;
2. Principal – can subsist independently from other contracts, *e.g.,* sale, lease;
3. Accessory – can exist only as a consequence of, or in relation with, another prior contract, *e.g.,* pledge, mortgage (*Jurado, 359*).

According to their perfection

1. Consensual – those which are perfected by the mere agreement of the parties, *e.g.,* sale, lease;
2. Real – those which require not only the consent of the parties for their perfection, but also the delivery of the object by one party to the other, *e.g.,* commodatum, deposit, pledge.

According to their form

1. Common or informal – those which require no particular form, *e.g.,* loan;
2. Special or formal – those which require some particular form, *e.g.,* donations, chattel mortgage.

According to their purpose

1. Transfer of ownership – *e.g.*, sale;
2. Conveyance of use – *e.g.*, commodatum;
3. Rendition of services – *e.g.*, agency.

According to their subject matter

1. Things – *e.g.*, sale, deposit, pledge;
2. Services – *e.g.*, agency, lease of services.

According to the nature of the vinculum which they produce

1. Unilateral – those which give rise to an obligation for only one of the parties, *e.g.*, commodatum, gratuitous deposit;
2. Bilateral – those which give rise to reciprocal obligations for both parties, *e.g.*, sale, lease;

According to their cause

1. Onerous – those in which each of the parties aspires to procure for himself a benefit through the giving of an equivalent or compensation, *e.g.*, sale;
2. Gratuitous – those in which one of the parties proposes to give to the other a benefit without any equivalent or compensation, *e.g.*, commodatum.

According to the risk involved

1. **Commutative** – those where each of the parties acquires an equivalent of his prestation and such equivalent is pecuniarily appreciable and already determined from the moment of the celebration of the contract, *e.g.*, lease;
2. **Aleatory** – those where each of the parties has to his account the acquisition of an equivalent of his prestation, but such equivalent, although pecuniarily appreciable, is not yet determined at the moment of the celebration of the contract, since it depends upon the happening of an uncertain event, thus charging the parties with the risk of loss or gain, *e.g.*, insurance.

According to their names or norms regulating them

1. **Nominate** – those which have their own individualily and are regulated by special provisions of law, *e.g.*, sale, lease;
2. **Innominate** – those which lack individuality and are not regulated by special provisions of law:
    a. *Do ut des* – I give that you give;

        Note: According to some, *do ut des* is no longer an innominate contract. I has already been given a name of its own, *i.e.*, barter or exchange (*see Art. 1638*).

    b. *Do ut facias* – I give that you do;
    c. *Facio ut des* – I do that you give;
    d. *Dacio ut facias* – I do that you do.

    Note: Innominate contracts are regulated by:
    a. The stipulations of the parties;
    b. The general provisions of the Civil Code on obligations and contracts;
    c. The rules governing the most analogous nominate contracts;
    d. The customs of the place (*see Art. 1307*).

CONTRACT OF ADHESION

Contracts in which one of the parties imposes a ready-made form of contract, which the other party may accept or reject, but which the latter cannot modify (*PCIB v CA, GR No. 97785 [29.03.96]*).

A contract of adhesion is so-calle because its terms are prepared by only one party which the other party merely affixes is signature signifying his adhesion thereto (*DBP v Perez, GR No. 148541 [11.11.2004]*).

NOTE: Such contracts are construed strictly against the party wo drew the same (*see Art. 1377*).

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.

RIGHT TO CONTRACT

The freedom to contract is both a constitutional and a statutory right. It also signifies the right to choose with whom one desires to contract. The Constitution prohibits the passage of any law impairing the obligation contracts (*Art. III, Sec. 10*). The constitutional prohibition against the impairment of contractual obligations refers only to legally valid contracts (*San Diego v Mun of Naujan, 107 Phil. 118*) and cannot be invoked as against the right of the State to exercise its police power. Hence, one does not have an absolute right to enter into any kind of contract (*Lozano v Martinez, 146 SCRA 323*).

DUTY OF THE COURT

To uphold this right, courts should move with all the necessary caution and prudence in holding contracts void (*Gabriel v Monte de Piedad, 71 Phil. 497*).

PRESUMPTION OF VALIDITY

The binding force of a contract must be recognized as far as it is legally possible to do so (*Lopez v vda. de Cuaycong, 74 Phil. 601*). The legal presumption is always on the validity of contracts (*De Leon, 448*).

LIMITATIONS ON CONTRACTUAL STIPULATIONS

1. **Law** – refers to those:
    a. Which are mandatory or prohibitive in character;
    b. Which are expressive of fundamental principles of justice, and thus, cannot be overlooked by the contracting parties;
    c. Which impose essential requisites without which the contract cannot exist.

    Illustrations of contracts contrary to law

    Where the parties stipulated in their contract that all judicial and extrajudicial acts necessary under the terms thereof should take place in a certain municipality. Such stipulation is contrary to law since the right to fix the jurisdiction of courts can only be exercised by the legislative branch (*Molina v De a Riva, 6 Phil. 12*).

    Where the parties stipulated that in case the debtor cannot pay his obligation at maturity, the creditor may appropriate for himself the thin which is given as security. Such is contrary to the provisions of Art. 2088, which prohibits pactum commissorium (*Puig v Sellner, 45 Phil. 286*). *Note, however, that the pactum commissorium is null and void, but the mortgage remains valid (Paras, 548).*

    Note: The law in force at the time the contract was made generally govern its interpretation and application (*Banco Filipino Savings and Mortgage Bank v Ybañez, 445 SCRA 482*).

2. **Morals** – refer to those principles which are incontrovertible and are universally admitted and which have received social and practical recognition (*Jurado, 363*);

    Illustrations of contracts contrary to morals

    When the parties stipulated in their contract that the defendant shall be obliged to render services to the plaintiff as a domestic servant without any remuneration whatsoever because of a certain loan obtained by the former from the latter (De los Reyes v Alojado, 16 Phil. 499).

When the Emeterio Cui, was about to transfer to another school, was asked to reimbursed the scholarship grant given to him since the agreement precisely provided for a refund in case of transfer. Scholarship should not be propaganda matter (*Cui v Arellano University, 2 SCRA 205*).

3. **Good customs** – those that have received for a period of time practical and social confirmation (*Paras, 553*). Customs consist of habits and practices which through long usage have been followed and enforced by society or some part of it as binding rules of conduct. It has the force of law when recognized and enforced by law (*De Leon, 453*).

   Note: If a moral precept or custom is not recognized universally, but is sanctioned by the practice of a certain community, then it shall be included within the scope of good customs (*Jurado, 364*);

4. **Public order** – it deals with public weal (*Bough v Cantiveros, 40 Phil. 209*). Refers to the safety, as well as the peace and order, of the country or of any particular community (*Id.*). It is not as broad as public policy, as the latter may refer not only to public safety but also to considerations which are moved by the common good (*Report of the Code Commission, 134*);

   Illustration of contracts contrary to public policy

   X stole the car of Y. later, they entered into a contract whereby Y would not prosecute X in consideration of P5M. It is to the interest of society that crimes be punished. The agreement between X and Y is, therefore, contrary to public policy because it seeks to prevent or stifle the prosecution of X for theft. To permit X to escape the penalties prescribed by law by the purchase of immunity from Y, a private individual, would result in a manifest perversion of justice. (Arroyo v Berwin, 36 Phil. 386).

5. **Public policy** – it, which varies according to the culture of a particular country, is the public, social and legal interest in private law (*Ferrazzini v Gsell, 34 Phil. 697*). It is a principle of law which holds that no person can lawfully do that which has a tendency to be injurious to the public or against the public good (*Jurado, 364*). It refers not only to public safety but also to considerations which are moved by the common good (*De Leon, 454-455*).

6. **Police power** – public welfare is superior to private rights. The policy of protecting contracts against impairment presupposes the maintenance of a government by virtue of which contractual relations are worthwhile – a government which retains adequate authority to secure the peace and good order of society. In short, all contractual obligations are subject – as an implied reservation therein – to the possible exercise of the police power of the state (*De Leon, 449*).

   Note: There is an implied reservation of the exercise of the State of its police power, so that mere contractual provisions cannot prevent the State from exercising its police power (*Ortigas & Co. v Feati Bank, GR NO. L-24670 [14.12.79]*).

COMPROMISE AGREEMENT

It is a contract whereby the parties, by making reciprocal concessions, avoid a litigation or put an end to one already commenced, adjust their difficulties by mutual consent in the manner which they agreed on, and which everyone of them prefers in the hope of gaining, balanced by the danger of losing (*Jurado, 370*).

GENERAL RULE

A compromise has upon the parties the effect and authority of *res judicata*, with respect to the matter definitely stated therein, or which by implication from its terms should be deemed to have been included therein (*Id., 371*).

NOTE: The compromise agreement as a consensual contract became binding between the parties upon its execution and not upon its court approval (*Id.*). However, to have the force of *res judicata*, the compromise agreement must be approved by fi nal order of the court. To be valid, the compromise agreement must be based on real claims and actually agreed upon in good faith (*Id.*).

ART. 1307

Innominate contracts shall be regulated by the stipulations 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

NOMINATE CONTRACTS

Those which have their own distinctive individuality and are regulated by special provision of law (*Id., 372*).

1. Sales (*Arts. 1458-1637*);
2. Barter or exchange (*Arts. 1638-1641*);
3. Agency (*Arts. 1868-1932*);
4. Loan (*Arts. 1933-1961*);
5. Deposit (*Arts. 1962-2009*);
6. Aleatory contracts such as insurance, gambling and life annuity (*Arts. 2010-2027*);
7. Compromise and arbitration (*Arts. 2028-2046*);
8. Guaranty (*Arts. 2047-2084*);
9. Pledge, mortgage and antichresis (*Arts. 2085-2141*).

INNOMINATE CONTRACTS

Those which lack individuality and are not regulated by special provisions of law (*Id.*).

1. *Do ut des* — I give that you give;
2. *Do ut facias* — I give that you do;
3. *Facio ut des* — I do that you give;
4. *Facio ut facias* — I do that you do.

NOTE: Innominate contracts are governed by the following as expressly stated by Art. 1307:

1. Stipulations of the parties;
2. General provisions or principles of obligations and contracts;
3. Rules governing the most analogous nominate contracts;
4. Customs of the place (*see Perez v Pomar, 2 Phil. 682*).

REASON FOR INNOMINATE CONTRACTS

The impossibility of anticipating all forms of agreement on one hand, and the progress of man's sociological and economic relationships on the other, justify this provision. A contract will not be considered invalid for failure to conform strictly to the standard contracts outlined in the Civil Code provided it has all the elements of a valid contract (*De Leon, 463-464; see Art. 1318*).

BASIS FOR INNOMINATE CONTRACTS

Innominate contracts are based on the well-known principle that "no one shall unjustly enrich himself at the expense of another (*Corpus v CA, 98 SCRA 424*).

NOTE: When a person does not expect to be paid for his services there cannot be a contract implied in fact to make compensation for said services. In the same manner, when the person rendering services has renounced his fees, the services are not demandable obligations (*Aldaba v CA, 27 SCRA 263*).

ART. 1308

The contracts must bind both contracting parties; its invalidity 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 case, the courts shall decide what is equitable under the circumstances.

MUTUALITY OF CONTRACTS

Can be deduced from the very nature of contracts and also from Art 1308. It refers to the position of essential equality that is occupied by both contracting parties in relation to the contract. The contract must bind both contracting parties (*Jurado, 358*).

PURPOSE OF ARTICLE 1308

To nullify a contract containing a condition which makes its fulfillment or pre-termination dependent exclusively upon the uncontrolled will of one of the contracting parties (*GF Equity, Inc. v Valenzuela, 462 SCRA 466*).

GENERAL RULE

The following cannot be delegated to one of the contracting parties:

1. The power to determine whether or not the contract shall be valid;
2. The power to determine whether or not the contract shall be fulfilled (*Id., 374*).

NOTE: A contract containing a condition which makes its fulfillment or extinguishment dependent exclusively upon the uncontrolled will of one of the contracting parties is void (*Garcia v Rita Legarda, Inc., 21 SCRA 555*).

NOTE: It is perfectly licit to leave the fulfillment of a contract to the will of one of the contracting parties in the negative form of rescission, a case which is frequent in certain contracts, because in such case, neither is the prohibition in the article violated nor is there inequality between the parties since they remain with the same faculties with respect to fulfillment (*see PNB v Lui She, 21 SCRA 52*).

EXCEPTION

The validity or fulfilment may be left to the:

1. Will of a third person, whose decision shall not be binding until made known to both the contracting parties (*Art. 1309; see also Arts. 2042-2046*);

   Note: A contracting party is not bound by the determination if it is evidently inequitable or unjust as when the third person acted in bad faith or by mistake. In such case, the courts shall decide what is equitable under the circumstances (*De Leon, 470*).

   Illustration:

   *S sold his parcel of land to B. it was agreed that X, a real estate appraiser, would be the one to determine the reasonable price of the land (*see Art. 1469*). X, then, fixed the price after considering all the circumstances and factors affecting the value of the lad. In this case, X must make known his decision to S and B who will be bound by the same (Id.).*

2. Chance.

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

NOTE: The fact that a third party may not have fully understood the legal effect of the contract is no ground for setting it aside. Nor will the mere fact that one has made a poor bargain be a ground for setting aside the agreement. The unilateral act of one party in terminating the contract without legal justification makes it liable for damages (*Tolentino, 425*).

BREACH OF CONTRACT

It is the failure, without legal reason, to comply with the terms of the contract or to perform any promise which forms the whole or part of the contract (*Sps Omengan v PNB, GR No. 161319 [23.01.2007]*).

PROOF OF ALLEGED DEFECT IN CONTRACT

The alleged defect must be conclusively proved since the validity and fulfillment of contracts cannot be left to the will of one of the contracting parties (*Joaquin v Mitsumine, 34 Phil. 858*).

It is the duty of every contracting party to learn and know the contents of a document before he signs and delivers it (*Olbes v China Banking Corp., 484 SCRA 330*).

RELEASE OF OBLIGOR FROM COMPLIANCE

Where the performance of the contract has *become so difficult* as to be manifestly beyond the contemplation of the parties (*see Art.1267*) or when the prestation has become *legally or physically impossible without the fault of the obligor* (*see Art. 1266*), the obligor may be released therefrom in whole or in part (*De Leon, 468*).

ART. 1311

Contracts take effect only between the parties, their assigns and heirs, except in case where the rights and obligation 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.

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

REAL PARTIES IN INTEREST

General Rule

Contracts take effect only between the parties, their assigns and heirs (*Art. 1311*).

Third Person

Anyone who has not taken part in the act or contract recorded (*Mojica v Fernandez, 9 Phil. 403*).

Subrogation

Assignment or transfer by a contracting party has the effect of subrogating the assignee to all the rights and obligations of the assignor (*De la Riva v Escobar, 51 Phil. 243*). The heirs, by virtue of the right of succession, are subrogated to all the rights and obligations of the deceased and cannot be regarded as third parties with respect to the deceased (*Barios v Dolor, 2 Phil. 44*).

Note: However, with respect to the assignees or heirs, the general rule is not applicable if the rights and obligations arising from the contract are not transmissible by their nature, or by stipulation or by provision of law, or when the obligation are purely personal (*see Art. 1311*).

Non-transmission of monetary obligations

The monetary obligations that the decedent might have incur during his lifetime cannot be transmitted to his heirs through succession. This is so because according to the Rules of Court, such obligation must be liquidated in the testate or intestate proceeding for the settlement of the estate of the decedent (*Sec. 5, Rule 86*).

It is the estate left by the decedent, instead of the heirs directly, that becomes vested and charged with his rights and obligations which survive after his death (*Ledesma v*

Mclaughlin, 66 Phil. 547), and the estate must be considered as the continuation of the decedent's personality (*Limjoco v Intestate Estate of Fragante, 80 Phil. 776*).
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Note: A lease contract is not essentially personal in character. Thus, the rights and obligations therein are transmissible to the heirs (*Inocencio v Hospicio de San Jose, GR No. 201787 [25.09.2013]*).

Note: Even though the contract may have been executed ostensibly in the name of another person or entity, it shall produce effect only insofar as the real contracting party is concerned, provided that such fact was known to the other party (*Tuazon & San Perdro v Zamora, 2 Phil. 305*).

Exceptions:

When the rights and obligations arising from contract are not transmissible:

1. By their nature, *e.g.,* when the special or personal qualification of the obligor constitutes one of the principal motives for the establishment of the contract (*Art. 1726*);
2. By stipulation of the parties, *e.g.,* when the contract expressly provides that the obligor shall perform an act by himself and not through another;
3. By provisions of law, *e.g.,* those arising from a contract of partnership or of agency (*Art. 1830, No. 5; Art. 1919, No. 3*).

STRANGERS OR THIRD PERSONS IN A CONTRACT

General Rule

A contract cannot produce any effect whatsoever as far as third persons are concerned (*Art. 1830, No. 5; Art. 1919, No. 3*). He who is not a party to a contract, or an assignee thereunder, has no legal capacity to challenge its validity (*Jurado, 381*). This is in conformity with the principle of *res inter alios acta aliis negue nocet prodest,* a thing done between others does not harm or benefit others (*Id., 359; see also Rule 130, Sec. 28 of RoC*).

Exceptions

1. *Stipulation pour autrui* – a stipulation in favor of a third person conferring a clear and deliberate favor upon him, and which stipulation is merely a part of a contract entered into by the parties and such third person may demand its fulfillment provided that he communicates his acceptance to the obligor before it could be revoked (*Florentino v Encarnacion, 79 SCRA 192*);

   Note: When a third person accepts the benefits of a contract to which he is not a party, he is also bound to accept the concomitant obligations corresponding thereto. He should not take advantage of the contract when it suits him to do so, and rejects its provisions when he thinks they are prejudicial or onerous to him (*Bernabe and Co., Inc., v Delgado Bros., Inc., 107 Phil. 287*).

   Requisites [SPF C²A]

   a. There must be a stipulation in favor of a third person;
   b. The stipulation must be a part, not the whole of the contract;
   c. The contracting parties must have clearly and deliberately conferred a favor upon a third person, not a mere incidental benefit or interest;
   d. The favorable stipulation should not be conditioned or compensated by any kind of obligation whatsoever;
   e. The third person must have communicated his acceptance to the obligor before its revocation;

      Note: Before such acceptance, there is legally no obligor (*Tolentino, 434-435*).

      Note: The acceptance must be unconditional (*BPI v Concepcion y Hijos, Inc., 53 Phil. 806*). The acceptance by the third person or beneficiary does not have to be done in any particular form. It may be done expressly or impliedly (*Florentino v Encarnacion, 79 SCRA 192*).

   f. Neither of the contracting parties bears the legal representation or authorization of the third party (*Jurado, 383*).

Note: A stipulation *pour autrui* can be revoked by both parties, or at least by the party at whose instance the stipulation was included in the contract (*Kauffman v PNB, GR No. 16454 [29.09.1921]*).

Kinds of Stipulations *Pour Autrui*

a. Those where the stipulation is intended for the sole benefit of such third person;
b. Those where an obligation is due from the promise to the third person and the former seeks to discharge it y means of such stipulation (*Uy Tam v Leonard, 30 Phil. 471*).

Test of Beneficial Stipulation

It must be the purpose and intent of the parties to benefit the third person. The test is whether or not the parties deliberately inserted terms in their agreement with the avowed purpose of conferring a favor upon such third person (*Id.*).

Q: A and B entered into a contract of compromise. In the contract, there is a stipulation wherein the parties ceded a house and lot to X. Upon the signing of the contract, X entered into the possession of the property. Ten years later, after the death of both A and B, their heirs revoked the beneficial stipulation. Subsequently, they brought an action against X for the recovery of the property. Will the action prosper?

A: No. The stipulation in the instant case is a stipulation pour autrui. All of the requisites of a valid and enforceable stipulation pour autrui are present. It is a part, not the whole, of a contract; it is not conditioned or compensated by any kind of obligation whatever, and neither A nor B bears the legal representation or authorization of X. Additionally, there was an implied acceptance by X when he entered into the possession of the property. That implied acceptance is recognized by the law is now well-settled. Therefore, the act of the heirs of A and B in revoking the stipulation is an absolute nullity. Since the stipulation was accepted by X, it is crystal clear that there was a perfected agreement, with A and B as stipulators or benefactors and X as beneficiary, although still constituting a part of the main contract. Consequently, the cardinal rules of contracts, such as the obligatory force of contracts and the mutuality of contracts based on the essential equality of the parties are directly applicable to the beneficial stipulation itself. It can no longer be revoked (*Florentino v Encarnacion, 79 SCRA 192*).

2. *When the third person comes into possession of the object of a contract creating real right (Art. 1312);*
3. *Where the contract is entered into in order to defraud a creditor (Art. 1313);*

   Note: Here, the creditor may ask for its rescission (*Jurado, 389*).

4. *Tortious interference* – where the third person induces a contracting party to violate his contract. Such third person can be held liable for damages (*Art. 1314*);

Requisites [EKI]

a. The existence of a valid contract;
b. Knowledge on the part of the third person of the existence of the contract;
c. Interference by third person without legal justification or excuse (*Jurado, 359*).

Note: As a general rule, justification for interfering with the business relations of another exists where the actor's motive is to benefit himself. Such justification does not exist where the actor's motive is to cause harm to the other (*Lagon v CA, GR No. 119107 [18.05.2005]*).

5. *Contracts creating "status" – e.g.,* the resulting status of marriage must be respected, even by strangers, while the contract is in force;
6. In the quasi-contract of *negotiorum gestio*, the owner is bound in a proper case, by contracts entered into by the *gestor* (*see Art. 2150*);
7. In collective contracts where the majority rules over the minority;
8. Where the situation contemplated in Art. 1729 obtains (*De Leon, 475*).

ART. 1312

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

REAL RIGHT

A right belonging to a person over a specific thing, without a passive subject individually determined, against whom such right may be personally enforced. It is enforceable against the whole world (*Jurado, 388*).

Illustration:

If A mortgages his house and lot to the PNB in order to secure an obligation of P20,000, and such mortgage is registered in the Registry of Property, the effect of such registration is to create a real right which will be binding against the whole world (see Art. 2125). Hence, if the property is subsequently sold to B, the contract of mortgage between A and the PNB will be binding upon him (Id., 389).

If a third person comes into possession by whatever title of a certain property which had been leased by the previous owner to another person, and such lease was recorded in the Registry of Property, such third person shall be bound thereby (see Art. 1676).

NOTE: If the real right is not registered, third persons who acted in good faith are protected under the provisions of the Property Registration Decree (*De Leon, 487*).

NOTE: Persons dealing with registered land have the legal right to rely on the face of the Torrens Certificate of Title (TCT) and to dispense with the need to inquire further, except when the party concerned has actual knowledge of facts and circumstances that would impel a reasonably cautious man to make such inquiry (*Seno v Mangabote, 156 SCRA 113*).

ART. 1313

Creditors are protected in cases of contracts intended to defraud them.

RIGHTS OF CREDITORS TO IMPUGN CONTRACTS INTENDED TO DEFRAUD THEM

The creditor, although he is not a party to the contract, is given the right to impugn the contracts of his debtor intended to defraud him (*see Arts. 1177 & 1381, 3*). He can sue to rescind the contract to prevent fraud upon him (*De Leon, 487*).

RIGHT OF CREDITOR TO ENFORCE CONTRACTS OF DEBTOR WITH A THIRD PERSON

1. Those who put their labor upon or furnish materials for a piece of work undertaken by the contractor have an action against the owner up to the amount owing from the latter to the contractor at the time the claim is made (*Art. 1729*);
2. The lessor may recover rent due from a sublessee since the sublessee is subsidiarily liable to the lessor for any rent due from the lessee (*Art. 1652*).

ART. 1314

Any third person who induces another to violate his contract shall be liable for damages to the other contracting party.

REASON

The right to perform a contract and to reap the profits resulting from such performance, and also the right to performance by the other party, are property rights which entitle each party to protection, and to seek compensation by an action in tort for any interference therewith (*Jurado, 390*).

REQUISITES

1. Existence of a valid contract;
2. Knowledge on the part of the third person of the existence of the contract;
3. Interference by the third person without legal justification or excuse (*Id.*).

INDUCE

Refers to situations where a person causes another to choose one course of conduct by persuasion or intimidation. The inducement gives rise to liabilities for damages because it violates the property rights of a party in a contract to reap the benefits that should result therefrom (*Lagon v CA, 453 SCRA 616*).

NOTE: Injunction s the appropriate remedy to prevent a wrongful interference with contracts by strangers to such contracts where the legal remedy is insufficient and the resulting injury is irreparable (*Yu v CA, 217 SCRA 328*).

MALICE IS NOT NECESSARY

It is enough if the wrongdoer, having knowledge of the existence of the contract relation, in bad faith sets about to break it up. Whether his motive is to benefit himself or to gratify his spite by working mischief to a contracting party is immaterial. Malice in the sense of ill-will or spite is not essential (*Daywalt v Corporacion de LP Agustinos Recoletos, 39 Phil. 587*).

It is sufficient that the defendant must have been driven by purely impious reasons to injure the plaintiff. In other words, his act cannot be justified (*Lagon v CA, 453 SCRA 616*)

WHERE LEGAL JUSTIFICATION EXISTS

1. If a party enters into a contract to go with another upon a journey to a remote and unhealthful climate, and a third person with a bona fi de purpose of benefiting the one who is under contract to go, dissuades him from the step, no action will lie (*Id.*);
2. An unpaid seller commits no act of unlawful interference in giving notice to a prospective buyer of property that the unpaid seller has not yet been paid by the vendor who brought the real property from him and that he still have the option to rescind the sale of the property to the vendor (*Rubio v CA, 141 SCRA 488*).

ART. 1315

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

and law.

ART. 1316

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

CLASSIFICATION OF CONTRACTS ACCORDING TO PERFECTION

1. *Consensual Contract* – that which is perfected by mere consent, *e.g.,* sale, lease, agency (*see Arts. 1315 & 1319*);

   Note: They are obligatory in whatever form they may have been entered into, provided, all the essential requisites for their validity are present (*Art. 1356*).

   Note: In the absence of delivery, perfection does not transfer title or create real right, yet, it gives rise to obligation binding upon both parties (*see Arts. 1305 & 1308*).

2. *Real Contract* – perfected, in addition to the above, by delivery, actual or constructive, of the thing, *e.g.,* depositum, pledge, commodatum;
3. *Solemn Contract* – requires compliance with certain formalities prescribed by law such prescribed form being thereby an essential element thereof, *e.g.,* donation of real property (*De Leon, 493*).

   Note: A donation of real property cannot be perfected until it is embodied in a public instrument (*see Art. 749*).

NOTE: Until the contract is perfected, it cannot, as an independent source of obligation, serve as a binding juridical relation (*Asuncion v CA, 238 SCRA 601*).

NOTE: Signing is not, generally, a legal requirement in entering into a contract where there is a meeting of the minds (*Art. 1319, 1*).

NOTE: One who approved or authorized such contract may be considered a party and held equally liable (*De Leon, 500*).

EFFECT OF PERFECTION OF THE CONTRACT

Once a contract is shown to have been consummated or fully performed by the parties thereto, its existence and binding effect can no longer disputed (*Weldon Construction Corp. v CA, 154 SCRA 618*). From the moment the parties come to an agreement on a definite subject matter and valid consideration, they are bound:

1. To the fulfillment of what has been expressly stipulated;
2. To all the consequences which according to their nature, may be in keeping with good faith, usage, and law (*Art. 1315*).

GUIDE FOR PERFORMANCE OF CONTRACT

The ordinary meaning of "execution" includes signing or concluding of the contract and also the performance or implementation or accomplishment of all terms and conditions (*Eastern Assurance & Security Corp. v IAC, 179 SCRA 561*). Good faith and regularity are always presumed (*Guillen v CA, 179 SCRA 789*).

1. *Scope and limitation of contractual obligation* – often, only the bare skeleton of the contract is stipulated, leaving so much of the details to be furnished in its performance by the good faith of the parties. First, determine the nature of the contract, and then the obligation arising from the same shall be performed in accordance with good faith, usage, and law (*Uy Yet v Leonard, 30 Phil. 471*). Aside from the express contract, an implied one may arise from the conduct of the parties (*Bayer Phil. Inc., v CA, 340 SCRA 437*);
2. *Observance of terms and conditions thereof* – a judicial or quasijudicial body cannot impose upon the parties a judgment different from their real agreement or against the terms and conditions thereof without running the risk of contravening the principle established in Article 1159 that a contract is the law between the parties (*Phil. Bank of Communications v Echiverri, 99 SCRA 508*);
3. *Condition imposed on perfection of contract/performance of obligation* –
   a. *Perfection of contract* – failure to comply results in the failure of the contract;
   b. *Performance of obligation* – failure to comply merely gives the other party options and/or remedies to protect his interests (*Babasa v CA, 290 SCRA 532*).
4. *Adjustment of rights of parties by court* – the court may adjust the rights of parties in accordance with the circumstances obtaining at the time of rendition of judgment, when these are significantly different from those existing at the time of generation of those rights, *e.g.,* when there has been a depreciation of the currency (*Agcaoili v GSIS, 165 SCRA 1*).

PERTINENT PROVISIONS OF LAW DEEMED INCORPORATION IN CONTRACTS

Any agreement or contract to be enforceable is understood to incorporate therein the pertinent provision/s of law specifying the rights and obligations of the parties under such contract (*Commissioner of Internal Revenue v US Lines Co., 5 SCRA 175*).

An existing law enters into and forms part of a valid contract without the need for the parties expressly making reference to it (*De Leon, 504-505*).

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.

NOTE: The principle enunciated in Art. 1317 of the Code is a logical corollary to the principles of the obligatory force and the relativity of contracts. It is also the basis of the contract of agency (*Arts. 1868-1932*).

UNAUTHORIZED CONTRACTS ARE UNENFORCEABLE

A person is not bound by the contract of another of which he has no knowledge or to which he has not given his consent. A contract involves the free will of the parties and only he who enters into the contract can be bound thereby (*De Leon, 505*).

UNAUTHORIZED CONTRACTS VS VOIDABLE CONTRACTS

The latter are binding, unless annulled by proper action in court, while the former cannot be sued upon or enforced, unless they are ratified. As regards the degree of defectiveness, voidable contracts are farther away from absolute nullity than unenforceable contracts. In other words, an unenforceable contract occupies an intermediate ground between a voidable and void contract (*Report of the Code Commission, 139*).

RATIFICATION OF UNAUTHORIZED CONTRACTS

Mere lapse of time cannot give efficacy to such a contract. The defect is such that it cannot be cured except by the subsequent ratification (*Art. 1405*) of the person in whose name the contract was entered into or by his duly authorized agent and not by any other person not so empowered. (*Tipton v Velasco, 6 Phil. 67*).

It must be clear and express so as not to admit of any doubt or vagueness (*Asia Integrated Corp. v Alikpala, 72 SCRA 285*).

REQUISITES FOR A PERSON TO BE BOUND BY THE CONTRACT OF ANOTHER

1. The person entering into the contract must be duly authorized, expressly or impliedly, by the person in whose

name he contracts or he must have, by law, a right to represent him;
2. He must act within his power (*De Leon, 506*).

Note: A contract entered into by an agent in excess of his authority is unenforceable against the principal, but the agent is personally liable to the party with whom he contracted where such party was not given sufficient notice of the limits of the powers granted by the principal (*see Art. 1897*).

CHAPTER 2
ESSENTIAL REQUISITES OF CONTRACT

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.

CLASSES OF ELEMENTS OF A CONTRACT

1. **Essential Elements –** *those without which no contract can validly exist.* They are also known as *requisites* of a contract.
    a. ***Common*** – those present in all contracts, *i.e.,* consent, object, and cause (*Art. 1318*);
    b. ***Special***– those not common to all contracts or those which must be present only in or peculiar to certain specified contracts, which may be as regards to:
        i. ***Form*** – public instrument in donation of immovable property (*Art. 749*); delivery in real contracts (*Art. 1316*); registration in real estate mortgage (*Art. 2125*) and chattel mortgage (*Art. 2145*);
        ii. ***Subject-matter*** – real property in antichresis (*Art. 2132*); personal property in pledge (*Art. 2049*);
        iii. ***Consideration or cause*** – price in sale (*Art. 1458*) and lease (*Arts. 1643, 16544*); liberality in commodatum (*Art. 1935*);
2. **Natural Elements –** *presumed to exist in certain contracts* unless the contrary is expressly stipulated by the parties, *e.g.,* warranty against eviction (*Art. 1548*) or warranty against hidden defects in sale (*Art. 1561*);
3. **Accidental Elements –** particular *stipulations, clauses, terms, or conditions established by the parties* in their contract (*Art. 1306*), for the purpose of clarifying, restricting, or modifying its legal effects, like conditions, period, interest, penalty, etc., and they exist only when they are expressly provided by the parties (*De Leon, 508*).

NOTE: Good faith is immaterial in determining the validity of contract (*Ballesteros v Abios, 482 SCRA 23*).

INFLUENCE OF THE TWO GREAT BASES OF CONTRACTS

LAW	WILL OF THE PARTIES
Impose the essential elements;	Conforms with the essential elements;
Presumes the natural elements;	Accepts or repudiates the natural elements;
Authorizes the accidental elements;	Establishes the accidental elements.

Jurado, 1319

NOTE: Absent one of the essential requisites, no contract can arise. The non-observance of the natural or accidental elements may affect the effectivity but not the validity of the contract (*Heirs of Escanlar v CA, 281 SCRA 1997*).

CONFLICTS RULE ON ESSENTIAL VALIDITY

The rule followed by most legal systems is that the intrinsic validity of a contract must be governed by the *lex contractus* or "proper law of the contract." This is the law voluntarily agreed upon by the parties (*De Leon, 509*).

NOTE: Philippine courts would do well to adopt the first and most basic rule in most legal systems, namely, to allow the parties to select the law applicable to their contract, subject to the limitation that it is not against the law, morals, or public policy of the forum and that the chosen law must bear a substantive relationship to the transaction (*Phil. Export and Foreign Loan Guarantee Corp. v VP Eusebio Construction, Inc., 434 SCRA 202*).

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.

CONSENT

The *conformity of wills and with respect to contracts*, it is the agreement of the will of one contracting party with that of another or others, upon the object and terms of the contract (*De Leon, 510*).

In its derivative sense, consent (*cum sentire*) merely means the *agreement of wills*. Consequently, it is the *concurrence of the wills of the contracting parties with respect to the object and the cause* which shall constitute the contract (*Jurado, 397*).

REQUISITES OF CONSENT [CLIF SR]

1. Must be manifested by the *concurrence of the offer and the acceptance* (*Arts. 1319-1326*);
2. Contracting parties must possess the necessary *legal capacity* (*Arts. 1327-1329*);
3. Must be *intelligent, free, spontaneous, and real* (*Arts. 1330-1346*).

NOTE: To form a valid and legal agreement it is necessary that there be a party capable of contracting and a party capable of being contracted with. Hence, if any one party to a supposed contract was already dead at the time of its execution, such contract is undoubtedly simulated and false and, therefore, null and void by reason of it having been made after the death of the party who appears as one of the contracting parties therein. The death of a person terminates contractual capacity (*Milagros De Belen Vda. De Cabalu v Sps. Renato Dolores Tabu and Laxamana, GR No. 188417 [24.09.2012]*).

MANIFESTATION OF CONSENT

Consent is manifested by the *meeting of the offer and the acceptance upon the thing and the cause which are to constitute the contract*. Once there is such manifestation, the period of negotiation is terminated. The contract, if consensual, is perfected (*Jurado, 398*).

CONCURRENCE OF OFFER AND ACCEPTANCE

It is the meeting of minds between the parties which expresses their intent in entering into the contract respecting the subject matter

and the cause or consideration thereof (*Yuiengco v Dacuycuy, 104 SCRA 668*).

NOTE: The *minds of the parties must meet as to all the terms and nothing is left open for further arrangement*. Contract *changes must be made with the assent or consent of the contracting parties*; otherwise, such act has no more efficacy than those done under duress or by a person of unsound mind (*PNB v CA, 238 SCRA 20*).

NOTE: The fact that the signatures of the witnesses and the notary public were forged does not negate the existence of the contract for as long as the parties consented to it. The signatures of the witnesses and the notary public are necessary simply to make the contract binding on the third person (*Soriano v Soriano, GR No. 130348 [03.09.2007]*).

OFFER

A *proposal* made by one party (*offerer*) to another (*offeree*) to enter into a contract which is really a promise to act or to refrain from acting on condition that the terms thereof are accepted by the person to whom it is made (*De Leon 511*).

A *unilateral proposition* which one party makes to the other for the celebration of a contract. It exists only if the contract can come into existence by the mere acceptance by the offeree, without any further action on the offeror (*Tolentino, 448*).

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

REQUISITES OF OFFER [D DIC]

1. **Directed to a person**/s *with whom the offeror intends to enter into a contract with*, except definite offers which are directed not to a particular person but to the general public, *i.e.*, public auction;
2. **Definite** – must be *certain and clear, not vague or speculative* so that the liability (or rights) of the parties may be exactly fixed because it is necessary that the acceptance be identical with the offer to create a contract without any further act on the part of the offeror (*De Leon, 511*);

   Exception

   The offer may be indeterminate in certain respects which the offeror leaves to the determination of the other party. This is the same type of offer which exists in cases of slot machines where the buyer determines the quantity of goods he will get (*Tolentino, 449*).

3. **Intentional** – an offer without seriousness is absolutely without juridical effects and cannot give rise to a contract (*Id.*);
4. **Complete** – it must *indicate with sufficient clearness* the kind of contract intended and definitely stating the essential conditions of the proposed contract, as well as the non-essential ones desired by the offeror (*Id.*).

NOTE: *Pending* the acceptance of an offer, the *offeror can perfect a contract over the same thing with another person* (*Tolentino, 458*).

MENTAL RESERVATION

It exists when the manifestation of the will is made by one party for the purpose of inducing the other to believe that the *former intends to be bound, when in fact he does not*. The mental reservation of the offeror, unknown to the other, cannot affect the validity of the offer (*Id., 450*).

WITHDRAWAL OF OFFER

Offer or proposal may be withdrawn so long as the offeror has no knowledge of acceptance by offeree. This is implied from the rule that the offeror is not bound by the acceptance except from the time it comes to his knowledge (*see Laudico v Arias, 43 Phil. 270*).

NOTE: An offer implies an obligation on the part of the offeror to maintain it for such a length of time as to permit the offeree to decide whether to accept or not. If the offeror disregards this right of the offeree, and arbitrarily revokes the offer, he must be held liable for damages which the offeree may suffer (*Id., 465*).

EXCEPTION

Option contract – if it is founded upon a consideration, as something paid or promised (*Art. 1324*).

LAPSE OF TIME

An *offer without a period must be considered as becoming ineffective after the lapse of time* necessary for its acceptance, taking into consideration the circumstances and social conditions (*Tolentino, 458*).

COMPLEX OFFER

When (1) a single offer involves two or more contracts, or (2) single contract covering various things, the perfection, where there is only partial acceptance, will depend upon the relation of the contracts between themselves (*Tolentino, 452*) or the intent of the person making the offer (*De Leon, 518*).

RULES ON COMPLEX OFFER

1. **Offers are interrelated** – contract is perfected if *all the offers are accepted*;
2. **Offers are not interrelated** – *single acceptance of each offer results in a perfect contract* unless the offeror has made it clear that one is dependent upon the other and acceptance of both is necessary (*Jurado, 401*).

ACCEPTANCE

Manifestation by the offeree of his assent to the terms of the offer (*De Leon, 515*).

NOTE: Without acceptance, there can be no meeting of the minds between the parties (*see Art. 1305*). A mere offer produces no obligation (*Id.*).

NOTE: It is necessary that the acceptance by unequivocal and unconditional, and the acceptance and the proposition shall be without any variation whatsoever; and any modification or variation from the terms of the offer annuls the latter and frees the offeror (*Beaumont v Prieto, GR No. L-8988 [30.03.1916]*).

REQUISITES OF ACCEPTANCE [ADI TiC]

1. **A**bsolute (no vitiation);
2. **D**irected to the offeror;
3. Made with the **i**ntention to be bound (*animus contrahendi*);
4. Made within the proper **ti**me;
5. **C**ommunicated to the offeror and learned by him unless the offeror knows of the acceptance.

Illustration:

S offered to sell his property to B for P1M cash. If its amount could not be paid in cash, the balance was to be paid within a period not exceeding three years. B accepted the offer, tendering the sum of P100,000.00 as first payment.

In this case, the acceptance of B involved a proposal which in turn required acceptance on the part of S. In the offer, a part of the price was to be paid in cash but the amount of the first payment was not determined, hence there is no proper acceptance (Zayco v Serra, 44 Phil. 326).

Illustration:

B wrote S a letter, which began as follows: "In connection with the yacht Bronzewing, I am in position and am willing to entertain the purchase of it under the following terms: . . ." To this letter, S affixed his signature at the bottom thereof just below that of B as follows: "Proposition accepted (Sgd.) S."

In this case, the letter is not a definite offer, hence, its acceptance did not create a binding contract of sale. The word "entertain" applied to an act does not mean the resolution to perform said act, but simply a position to deliberate for deciding to perform or not to perform said act. Taking into

account only the literal and technical meaning of the word "entertain,'' the letter of B cannot be interpreted as a definite offer to purchase, but simply a position to deliberate whether or not he would purchase the yacht. It was but a mere invitation to a proposal being made to him, which might be accepted by him or not (Resonstock v Burke, 46 Phil. 217).

QUALIFIED ACCEPTANCE OR COUNTER OFFER

If it is subject to a condition, or modifies or varies the terms of the offer, it merely constitutes a *counter-offer* or a new proposal which is considered a rejection of the original offer and an attempt by the parties to enter into a contract on a different basis (*Logan v Phil. Acetylene Co. 33 Phil. 177*).

NOTE: A qualified acceptance or a counter-offer must, in turn, be accepted absolutely in order that there will be a contract (*De Leon, 516*).

WHEN QUALIFIED ACCEPTANCE IS NOT A COUNTER-OFFER

So long as it is clear that the meaning of the acceptance is positively and equivocally to accept the offer, *whether such request for changes in the terms is granted or not, contract is formed* (*Id., 517-518*). This is provided that no element of the contract is modified (*ABS-CBN Broadcasting Corp. v CA, 301 SCRA 572*).

Illustration:

Where the changes or qualifications in the offer are not material or are mere clarifications of what the parties had previously agreed upon cannot be categorized as a major alterations of the offer that will prevent a meeting of the minds between the parties (Villonco Realty Co. v Bormacheco, Inc., 65 SCRA 350).

THEORIES THAT DETERMINE THE EXACT MOMENT OF PERFECTION WHEN ACCEPTANCE IS MADE BY LETTER OR TELEGRAM

1. **Manifestation Theory –** the contract is perfected from the moment the *acceptance is declared or made*. This is followed by the Code of Commerce (*see Art. 54, Code of Commerce*);
2. **Expedition Theory**– the contract is perfected from the moment the *offeree transmits the notification of acceptance* to the offeror, as when the letter is placed in the mailbox. This is followed by the majority of American courts;
3. **Reception Theory** – contract is perfected from the moment that the *notification of acceptance is in the hand of the offeror* in such a manner that he can, under ordinary conditions, procure the knowledge of its contents, even if he is not able actually to acquire such knowledge by reason of absence, sickness or some other cause. This is followed by the German Civil Code;
4. **Cognition Theory –** contract is perfected from the moment the *acceptance comes to the knowledge of the offeror*. This is followed by the Spanish Civil Code and our jurisdiction (*Jurado, 402*).

   Note: The rule is applicable to all cases of *contratación entre ausentes*, or acceptance is made by a person who is not in the presence of the offeror, provided he is not acting through an agent (*Id.*)

   General Rule

   Once it is established that the offeror has received the letter or telegram, there arises a presumption that he has read the contents thereof. What is required by the law is actual knowledge of the acceptance. Mere receipt of the telegram is not sufficient (*Id., 404*).

   Exception

   Although the offeror was able to receive the letter or telegram, no presumption will arise if the offeror was absent or incapacitated at the time of the receipt of the same (*Id.*).

   Exception to the exception

   If the offeror is capacitated or present when the letter or telegram was given but he refused to open the letter or telegram for some reasons. The offeror, then, has already a *constructive knowledge* of the contents of the letter or telegram thereby binding him by the acceptance made by the offeree (*Id.*).

REVOCATION OF ACCEPTANCE

The offeree may revoke the acceptance he has already sent, provided, the revocation reaches the offeror before the latter learns of the acceptance (*De Leon, 520*).

ART. 1320
An acceptance may be express or implied.

FORM OF ACCEPTANCE

1. *Express* – may be oral or written;
2. *Implied* – inferred from act or conduct (*De Leon, 521*).

ACCEPTANCE BY PROMISE

An offer of a promise or an act may be accepted by giving a promise and the other accepts by promising to so pay according to the conditions of the offer. Such need not be by words but may be inferred from the acts of the parties, as by one or both acting on it as though it were a completed agreement (*De Leon, 521*).

ACCEPTANCE BY ACT

E.g., where an offer is made that the offerer will do something else, if the offeree shall do a particular thing. The performance is the only thing needful to complete the agreement and to create a binding promise (*Id.*).

Illustration

X did not affix her signature to the document evidencing the subject concessionaire agreement. However, she performed the tasks indicated in the said agreement for a period of 3 years without any complaint or question which fact was held as showing that she had given her implied acceptance of or consent to the agreement (Lopez v Bodega City, 532 SCRA 56).

NOTE: Where a person accepts the services of another, whether solicited or not, he has the obligation to pay the reasonable value of the services thus rendered upon the implied contract of lease of service unless it is shown that the service was rendered gratuitously (*Perez v Pomar, 2 Phil. 682*).

ACCEPTANCE BY SILENCE OR INACTION

General Rule

Silence cannot be construed as acceptance. The acceptance must be affirmatively and clearly made and evidenced by words or some acts or conduct communicated to the offeror (*PNB v CA, 238 SCRA 20*).

Exceptions

1. The parties agree expressly or impliedly, that it shall amount to acceptance;
2. The specific provisions of law so declare (*e.g., Arts. 1670, 1870-1873*);
3. Under the circumstances such silence constitutes estoppel (*see Art. 1431*).

IMPLIED REJECTION

Refusal or rejection of an offer may also be inferred form acts and circumstances, like the failure to act on an offer of compromise before the court enters final judgment on a case (*Batangan v Cojuangco, 78 Phil. 481*). Similarly, an offer to remit interest, provided the principal is paid, is deemed rejected when the debtor fails to pay the debt, and the creditor was constrained to sue for collection thereof (*Gamboa v Gonzales, 17 Phil. 381*).

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.

NOTE: An offer is terminated when it is rejected by the offeree. An acceptance departing from the terms of the offer constitutes a counter-offer which has the effect of extinguishing the offer (*De Leon, 523*).

SILENCE AS TO THE PERIOD OF ACCEPTANCE

1. Offer is made to a **person present** – acceptance must be made *immediately*;
2. Offer is made to a **person absent** – acceptance may be made *within such time that*, under normal circumstances, *an answer can be expected from him* (*Malbarosa v CA, 402 SCRA 168*).

NOTE: One receiving a proposal to change a contract to which he is a party, is not obliged to answer the proposal (*PNB v CA, 238 SCRA 29*).

COMMUNICATION OF ACCEPTANCE TO AGENT

By legal fiction, an agent is considered an extension of the personality of his principal (*Art. 1910 par. 1*). If duly authorized, the act of the agent is the act of the principal (*De Leon, 523*).

NOTE: Art. 1322 applies only if the offer is made through the agent and the acceptance is communicated through him. Hence, there would be no meeting of the minds if the principal himself made the offer and the acceptance is communicated to the agent unless, of course, the latter is authorized to receive the acceptance (*Id.*).

WHEN OFFER BECOMES INEFFECTIVE

1. If the offer was *withdrawn before its acceptance*;
2. *Death, civil interdiction, insanity, insolvency* of either party before acceptance is conveyed (*Art. 1323*);

   Note: The word "conveyed" refers to that moment when the offeror has knowledge of the acceptance by the offeree (*Juardo, 410*).

   Note: The list in Art. 1323 is not exclusive (*De Leon, 524*).

3. *Failure to comply with the condition of the offer* as to the time, place, and the manner of payment (*Art. 1321*);
4. *Expiration of the period fixed* in the offer for acceptance (*Art. 1324*);
5. *Destruction of the thing due* before acceptance (*Art. 1262*);
6. *Rejection* of the offer (*De Leon, 524*).

FORMATION AND VALIDITY OF ELECTRONIC CONTRACTS

No contract shall be denied validity or enforceability on the sole ground that it is in the form of an electronic data message or electronic document, or that any or all the elements required under existing laws for the formation of the contracts is expressed demonstrated and proved by means of e-data messages or e-documents (*Sec. 16[1], RA 8792 [Electronic Commerce Act of 2000]*).

NOTE: A declaration of will or other statement shall not be denied legal effect, validity or enforceability solely on the ground that it is in the form of an e-data message or e-document (*Sec. 17, Id.*).

ATTRIBUTION OF ELECTRONIC DATA MESSAGE

An e-data message or e-document is that of the originator if it was sent by the originator himself.

As between the originator and the addressee, an e-data message or e-document is deemed to be that of the originator if it was sent:

1. by a person who had the authority to act on behalf of the originator with respect to that e-data message or e-document;
2. by an information system programmed by, or on behalf of the originator to operate automatically.

As between the originator and the addressee, an addressee, under certain conditions, is entitled to regard an e-data message or e-document as being that of the originator, and to act on that assumption (*Sec. 18, Id.*).

ADDRESSEE

A person who is intended by the originator to receive the e-data message or e-document, but does not include a person acting as an intermediary with respect to that e-data message or e-document (*Sec. 5[a], Id.*).

ORIGINATOR

A person by whom, or on whose behalf, the e-document purports to have been created, generated and/or sent. The term does not include a person acting as an intermediary with respect to that e-document (*Sec. 5[i], Id.*).

ELECTRONIC DATA MESSAGE

Refers to information generated, sent, received or stored by electronic, optical or similar means (*Sec. 5[c], Id.*).

ELECTRONIC DOCUMENT

Refers to information or the representation of information, data figures, symbols or other modes of written expression, described or however represented, by which a right is established or an obligation is extinguished, or by which a fact may be proved and affirmed, which is received, recorded, transmitted, stored, processed, retrieved or produced electronically (*Sec. 5[f], Id.*).

INFORMATION AND COMMUNICATIONS SYSTEM

Refers to a system for generating, sending, receiving, storing or otherwise processing electronic data messages or electronic documents and includes the computer system or other similar device by or in which data is recorded or stored and any procedures related to the recording or storage of electronic data message or electronic document (*Sec. 5[d], Id.*).

TIME OF RECEIPT OF ELECTRONIC DATA MESSAGE OR ELECTRONIC DOCUMENTS

Unless otherwise agreed upon, the time of receipt

1. occurs at the *time when the e-data message or e-document enters the designated information system* when the addressee has designated an information system for purposes of receiving such;
2. occurs at the *time when the e-data message or e-document is retrieved by the addressee* if the originator and the addressee are both participants in the designated information system or when the e-data message or e-document is sent to an information system of the addressee that is not the designated information system;
3. occurs when the e-data message or e-document *enters an information system of the addressee* if the addressee has not designated an information system (*Sec. 22, Id.*).

PLACE OF DISPATCH AND RECEIPT OF eDATA MESSAGE OR eDOCUMENT

Deemed to be dispatched at the place where the originator has its *place of business* and received at the place where the addressee has its *place of business*, unless otherwise agreed upon (*Sec. 23, Id.*).

Q: A, who resides in Lipa City, wrote to his friend B, who is residing in Tuguegarao City, stating in the letter that A is donating

to B a new car worth P5M. Upon receipt of the letter, B, called A and said that he is accepting the donation. The same day B wrote and mailed a letter to A accepting the donation. Immediately after mailing the letter, B died of a heart failure due to over excitement. Who is entitled to the car now, A or the heirs of B?

A: A is entitled to the car. This is because the donation in the instant case cannot produce any effect whatsoever. According to Art. 748 CC, if the value of the personal property donated exceeds P5,000, the donation and the acceptance shall be in writing; otherwise, the donation is void. True, the acceptance by B was actually written mailed, however, B died after mailing such. The effect is to bring into play the provision of Art. 1323 CC which is certainly applicable here, considering the provision of Art. 732. According to Art. 1323, an offer becomes ineffective upon the death, civil interdiction, insanity, or insolvency of either party before acceptance is conveyed. Analysing the provision, it is clear that the offer of A has become ineffective and that the contract of donation, as a consequence, has never been perfected (*1962 Bar Question*).

Q: A donated a piece of land to B in a donation inter vivos. B accepted the donation in a separate instrument (see Art. 749) but A suddenly died in an accident before the acceptance could be communicated to him. Is the donation valid?

A: No. Under Art. 749 which enunciates the different formalities required in the execution of donations *inter vivos*, the law declares that if the acceptance is made in a separate public instrument, the donor shall be notified thereof in authentic form, and this step shall be noted in both instruments. It is obvious that in the instant case the requirement of notification of the donor in authentic form (*constancia autentica*) has not been complied with. It is of course axiomatic under the law on donations that all of the formalities prescribed in Art. 749 of the Code are essential for validity.

Moreover, Art. 734 declares that a donation is perfected from the moment the donor knows of the acceptance by the donee. It is also obvious that in the instant case A never came to know of the acceptance by B because he suddenly died in an accident before such acceptance could be communicated to him. Consequently, the contract of donation was never perfected.

Lastly, Art. 1323 declares that an offer becomes ineffective upon the death, civil interdiction, insanity or insolvency of either party before acceptance is conveyed (*1971 Bar Question*).

ART. 1324

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

OPTION CONTRACT

A preparatory contract in which o*ne party grants to the other, for a fixed period and under specified conditions, to decide* whether or not to enter into a principal contract (*Tolentino, 466*).

It is separate and distinct from the projected main agreement or principal contract itself (subject matter of the option) which the parties may enter into upon the consummation of the option or which will be perfected upon the acceptance of the offer (*De Leon, 527*).

May also refer to the privilege itself given to the offeree to accept an offer within a certain period (*Id.*).

A *contract by virtue of which A, in consideration of the payment of a certain sum to B, acquires the privilege of buying* from, *or selling* to B, certain securities or properties *within a limited time* at a specified price (*Beaumont v Prieto, 41 Phil. 670*).

NOTE: It binds the party who has given the option not to enter into the principal contract with any other person during the period designated, and within that period, to enter into such contract to whom the option was granted if the latter should decide to use the option (*Tolentino, 466-467*).

REQUISITES

1. It is *supported by an independent consideration*;

   Note: If the option is without a consideration, it is a mere offer to sell/buy which is not bonding until accepted. If, however, acceptance is made before a withdrawal, it constitutes a binding contract (*Sanchez v Rigos, GR No. L-25494 [14.06.1972]*).

2. It is *exclusive* (*Tolentino, 466*).

OPTION PERIOD

The period given within which the offeree must decide whether or not to enter into the principal contract (*Id.*).

OPTION MONEY

It is the money paid or promised to be paid as a distinct consideration for the option contract (*Id.*).

EARNEST MONEY

A partial payment of the purchase price and is considered as proof of the perfection of the contract (*see Art. 1482*).

NOTE: The consideration need not be monetary; it may consist of other thing or undertaking but they must be of value, in view of the onerous nature of the contract of option (*Bible Baptist Church v CA, 444 SCRA 399*).

WITHDRAWAL OF OFFER WHERE PERIOD FOR ACCEPTANCE STIPULATED

General Rule

The offer (not founded upon a separate consideration) *may be withdrawn as a matter of right at any time* before acceptance (*De Leon, 528*).

Note: The right to withdraw must not be exercised whimsically or arbitrarily; otherwise, it could give rise to a damage claim under Art. 19 of the Civil Code (*Asuncion v CA, 238 SCRA 602*).

Exceptions

1. When the *option is founded upon a separate consideration*, as something paid or promised in which case, a *contract of option is deemed perfected*, and the *offer may not be withdrawn before the lapse of the option period*; otherwise, it would be a breach of the contract of option;
2. The offerer may not withdraw his offer *after it has been accepted* (*De Leon, 528*).

AS STATED IN A DIFFERENT WAY

If the option is without consideration, it is a mere offer to sell which is not binding until accepted. If, however, acceptance is made before a withdrawal, it constitutes a binding contract of sale. There is already a concurrence of both offer and acceptance. Under Art. 1319 of the Civil Code, the contract is perfected (*Jurado, 413*).

Illustration

X offers to construct the house of Y for P5M giving the latter 10 days within which to make up his mind.

Under Art. 1324, X may withdraw the offer even before the lapse of 10 days unless Y has already accepted the offer. After acceptance, withdrawl is not possible as there is no more offer to withdraw.

Even before acceptance, X may not withdraw the offer if the option is covered by a consideration as when Y paid or promised to pay a sum of money to X for giving him the 10-day period. There is here an option contract. After the 10-day period, in the absence of acceptance, the offer becomes ineffective (De Leon, 529).

INAPPLICABILITY OF SPECIFIC PERFORMANCE

The optionee-offeree may not sue for specific performance on the proposed contract before it has reached its own stage of perfection (*Asuncion v CA, 238 SCRA 602*). Only when the option is

exercised, may the contract be perfected (*Cavite Dev. Bank v Lim, 324 SCRA 346*).

Q: A agreed to seel to B a parcel of land for P5M. B was given up to 1 Jan. 2020 within which to raise the necessary funds. It was further agreed that if B could not produce the money on or before said data, no liability would to attach to him. Before 1 Jan. 2020, A backed out of the agreement. Is A obliged to sell the property to B?

A: Assuming that the offer of A to sell the land to B is merely a unilateral offer to sell, and that there is still no bilateral agreement in the sense that B had already agreed to buy the land, A is NOT OBLIGED TO SELL the property to B. In such case, it is clear that the general rule stated in Art. 1324 and the particular rule stated in Art. 1479, par. 2 are applicable. As a matter of fact, even if B has formally accepted the option given to him by A, such acceptance would be of no moment since the option is not supported by any consideration distinct from the purchase price. A can always chance his mind at any time. The option does not bind him for lack of a cause or consideration.

It would have been different if B had accepted the offer to sell within the period of the option before said offer was withdrawn by A. in such case, a contract of sale would have been generated right then and there. As it turned out, A withdrew his offer in time (*Sanchez v Rigor, 45 SCRA 368*).

NOTE: In Art. 1479, par. 2, "Accepted" refers to the option, not to the offer, to buy or to sell; in other words, it refers to the acceptance by either prospective vendee or vendor of the option of a certain period within which he shall decide whether or not he shall buy or sell the thing (*Jurado, 414*).

NOTE: If A offers to sell a lot to B for P5M, and gives the latter an option of 90 days within which to decide whether or not he shall buy the property, and the latter accepts the option, two possible situations may arise:

1. In accepting the option, B pays to A an option money of, for example, P100,000 which is distinct from the purchase price. In such case, there is already a perfected preparatory contract of option. A is bound by his offer. B shall now decide within the period of the option whether or not he shall buy the property. If he decides to buy, he shall then pay to B the price of P5M; if he decides otherwise, no contract of sale will ever be perfected.
2. In accepting the option, B does not pay any option money to A. In such case, there is no perfected preparatory contract of option for lack of a consideration. The result is a mere offer to sell, acceptance or which will be sufficient to generate a perfected contract of sale. But suppose that meanwhile, A has changed his mind? The lot is no longer for sale. B, on the other hand, has decided to buy the property. What will now happen? Under this situation, the one who is first to notify the other of his decision emerges the victor. If A is the first to notify B of his change of mind, no contract of sale will ever be perfected; if B is the first to notify A of his acceptance of the offer, a contract of sale has already been perfected

Q: A, the owner of a house and lot in Lipa City, gave an option to B to purchase said property for P5M within 90 days from 1 Jan. 2020. B gave A P50 as option money. Before the expiration of the 90-day period, B went to A to exercise his option to pay the purchase price but A refused because somebody wanted to buy his property for P6M and because there was no sufficient consideration for the option. B sued A to compel him to accept payment and execute a deed of sale in his favor. Will the action prosper?

A: Yes for the reason that there is already a perfected contract. Undoubtedly, there is a unilateral offer of A to sell the subject property to B. For that purpose, the latter is given an option of 90 days within which to exercise the option. The consideration for the option is P50. According to the Civil Code, since there is a consideration for the option, A is now bound by his promise to sell the property to B so long as the latter will exercise the option within the agreed period of 90 days. B exercised his option. Therefore, there is already a perfected contract of sale (*see Arts. 1324 & 1479, par. 2*).

As a matter of fact, even assuming that there is no consideration for the option, the end result would still be the same. Since B accepted the offer before it could be withdrawn or revoked by A, there is already a perfected contract of sale.

True, A will suffer some sort of lesion or prejudice if what he says about another desiring to buy the property for P6M is established. True also, the consideration of P50 for the option is grossly inadequate. The Civil Code, however, declares that 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. Here, there is none which would be a possible basis for invalidating either the preparatory contract of option or the principal contract of sale (*see Art. 1355*) (*Jurado, 415*).

OPTION CONTRACT	RIGHT OF FIRST REFUSAL
A preparatory contract in which one party grants to another, for fixed period and at a determined price, the privilege to buy or sell, or to decide whether or not to enter into a principal contract. It binds the party who has given the option not to enter into the principal contract with any other person during the period designated, and within that period, to enter into such contract with the one to whom the option was granted, if the latter should decide to use the option.	While the object might be made determinate, the exercise of the right would be dependent not only on the grantor's eventual intention to enter into a binding juridical relation with another but also on terms, including the price, that are yet to be firmed up (*Vasquez v Ayala Corp., 443 SCRA 231*).

De Leon, 532

OPTION CONTRACT	CONTRACT OF SALE
An accepted offer. An option contract states the terms and conditions on which the owner is willing to sell his property, if the holder elects to accept them within the time limited. If the holder does so elect, he must give notice to the other party, and the accepted offer thereupon becomes a valid and binding contract. If an acceptance is not made within the time fixed, the owner is no longer bound by his offer, and the option is at an end	Fixes definitely the relative rights and obligations of both parties at the time of its execution. The offer and the acceptance are concurrent, since the minds of the contracting parties meet in the terms of the agreement.

Id.

TEST TO DETERMINE WHETHER IT IS AN OPTION OR CONTRACT OF SALE OR PURCHASE

Whether or not the agreement could be specifically enforced. There is no doubt that the obligation of the purchaser to pay the purchase price is specified, definite and certain and consequently, bind and enforceable (*Id., 533*).

CONTRACT OF SALE	CONTRACT TO SELL
The title passes to the vendee upon the delivery of the thing sold;	By agreement the ownership is reserved in the vendor and is not to pass until the full payment of the price;
The vendor has lost and cannot recover ownership until and unless the contract is resolved or rescinded;	Title is retained by the vendor until the full payment of the price, such payment being a positive suspensive condition and failure of which is not a

	breach but an event that prevents the obligation of the vendor to convey title from becoming effective

SUMMARY OF RULES ON OPTION CONTRACT

	With consideration	*Without consideration*
Before acceptance	Offeror cannot withdraw the offer because it is already a perfected contract of option. Offeror is bound to sell so long as offeree will exercise the option;	The offeror can withdraw;
After acceptance	Contract is sale is perfected.	Contract of sale is perfected.

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.

BUSINESS ADVERTISEMENTS

General Rule

They are mere invitations to make an offer and not definite offers, unless it appears otherwise (*Art. 1325*).

Exception

Where a party publishes an offer to the world and before it is withdrawn another acts upon it, the party making the offer is bound to perform his promise. This article is frequently applied in cases of the offer of rewards (*De La Rosa v BPI, GR No. L-22359 [28.11.1924]*).

Q: Are business advertisements of things for sale definite offers?

A: It depends (*Paras, 618*):

1. If appears to be a definite offer containing all the specific particulars needed in a contract, it really is a definite offer;

   Illustration:

   "For Sale: 900sqm lot with a brand new 2 storey house at 1445 Perdigon, Paco Manila for P10M cash." This is a definite offer, from which the advertiser cannot back out, once it is accepted by another.

2. If important details are left out, the advertisement is not a definite offer, but a mere invitation to make an offer.

   Illustration:

   "For Sale: 1,000sqm lots at P100M to P150M a lot at South Forbes Parl. Tel. 88-00-00." This is clearly merely an invitation to make an offer, which the advertiser is free to accept or to reject.

GENERAL OFFER

General Rule

An offer is made to a particular person because a party has a right to select and determine with whom he will contract, and cannot have another person thrust upon him without his consent (*De Leon, 539*).

Exception

General offer made to the public, or to a particular class of persons, may be accepted by any one or by any one coming within the description of the class, as for example, an offer of a prize for a design for a public building or a bonus to anyone who will make a certain improvement or of a reward and other like cases. Such offers cannot be made into an agreement until they have been accepted by an ascertained person (*De Leon, 539*).

NOTE: The acceptance must be in strict conformity with the offer and a qualified acceptance does not create a contract (*Montinola v Victoria Milling Co., 54 Phil. 782*).

BIDDING

In its comprehensive sense, bidding means making an offer or an invitation to prospective contractors whereby the government manifests its intention to make proposals for the purchase of supplies, materials and equipment for official business or public use, or for public work or repair (*De Leon, 542*).

ADVERTISEMENTS FOR BIDDERS

The advertiser is not the one making the offer; the bidder is the one making the offer which the advertiser is free to accept or reject (*De Leon, 540*).

ACCEPTANCE OF BID

Acceptance by the advertiser of a given bid is necessary for a contract to exist between the advertiser and the bidder, regardless of the terms and conditions of his bid (*Surigao Mineral Reservation Board v Cloribel, 24 SCRA 898*).

The mere determination of a public offi cial or board to accept the proposal of a bidder does NOT constitute a contract; the decision must be communicated to the bidder (*Jalandoni v National Resettlement & Rehabilitation Adm., GR No. L-15198 [30.05.60]*).

General Rule

The advertiser is not bound to accept the highest bidder (as when the offer is to buy) or the lowest bidder (as when the offer is to construct a building) unless the contrary appears (*De Leon, 540*).

Exception

In judicial sales, the sheriff or auctioneer is bound to accept the highest bid (*Sec. 19, Rule 39, Rules of Court*).

Note: Where a seller reserved the right to refuse to accept the bid made, a binding sale is not perfected until the seller accepts the bid. The seller may exercise his right to reject any bid after the auctioneer has accepted a bid (*Caugma v People, 486 SCRA 611*).

RECEIPT OF THE NOTICE OF ACCEPTANCE OF BID

Where under the rules of the bidding it is only upon receipt of the notice of acceptance of the bid that the formal contract shall be executed, in the absence of such notice and execution of the contract, there is no meeting of the minds (*Santamaria v CA, 187 SCRA 186*).

BIDDER SUBMITS TO CONDITIONS

Anybody participating in the bidding at a public auction is understood to have submitted himself to all the conditions set forth at such sale (*Leoquinco v Postal Savings Bank, 47 Phil. 772*).

ESTABLISHMENT OF TERMS AND CONDITIONS IN THE BID

The owner of the property which is advertised for sale, either at public or private auction, has the right to prescribe the manner, conditions and terms of the sale and anybody participating in such sale is bound by all the conditions, whether he knew them or not (*Id.*).

NOTE: Even a government-owned corporation, after acceptance of a bid, in the absence of justifiable reasons, cannot simply refuse to execute the contract and thereby avoid it to the prejudice of the other party under the guise of protecting the public interest; otherwise, the door would be wide open to abuses and anomalies more detrimental to public interest (*Central Bank v CA, 63 SCRA 431*).

PRINCIPLES OF PUBLIC BIDDING

1. Offer to the public;
2. Opportunity for competition;

   Note: A contract granted without the competitive bidding required by law is void (*De Leon, 542*).

3. Basis for exact comparison of bids (*Oani v People, 454 SCRA 416*).

NOTE: Unless an unfairness or injustice is shown, after the Government has made its choice, the losing bidder has no cause to complain, nor right to dispute that choice (*Mata v San Diego, 63 SCRA 170*).

"LOWEST BIDDER"

He who offers the lowest price (*Borromeo v City of Manila, 62 Phil. 512*).

"LOWEST RESPONSIBLE BIDDER"

Includes not only financial ability, but also the skill and capacity necessary to complete the job for which the bidder would become answerable (*Id.*).

"LOWEST AND BEST BIDDER"

Includes not only financial responsibility, skill, and capacity, but also the reputation of the bidders for dealing fairly and honestly with the government, their mechanical facilities, and business organization tending to show dispatch in their work and harmonious relations with the government, the magnitude and urgency of the job, the kind and quality of materials to be used, and other factors as to which a bidder may offer greater advantages than another (*Id.*).

ART. 1327

The following cannot give consent to a contract:

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

ART. 1328

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

NOTE: To form a valid and legal agreement, it is necessary that there be a party capable of contracting and a party capable of being contracted with (*Heirs of Ingjug-Tiru v Sps. Casals, 363 SCRA 435*).

CLASSIFICATION OF CAPACITY

1. **Natural Capacity** – only natural persons have natural capacity, but in order that they may have full capacity to contract, they must not only have the natural capacity to contract, but also the legal capacity;
2. **Legal Capacity** – refers not only to natural persons, but also to artificial as well. The absence of legal capacity results in legal incapacity, the causes of which are based on positive provisions of law, and exist in opposition to, or as limitations of, natural capacity, as in the case of persons under civil interdiction (*De Leon, 543*). Based on:
   a. Existence of superior rights of third persons;
   b. Ground of public policy or for the protection of public interest (*see Art. 1491*).

NOTE: *Capacity to give consent is presumed* in the Civil Code (*De Leon, 544*).

NOTE: *A person is not incapacitated to contract merely because of advanced years or by reason of physical infirmities*, unless such age and infirmities impair his mental faculties to the extent that he is unable to properly intelligently and fairly understand the provisions of the contract (*Loyola v CA, 326 SCRA 285*).

NOTE: Capacity shown to have previously existed in other acts done or contracts entered into is presumed to continue (*De Leon, 544*).

INCAPACITATED PERSONS

A contract entered into where one of the parties is incapable of giving consent to a contract is voidable (*Art. 1390*). If both parties are incapable of giving consent, the contract is unenforceable unless they are ratified (*Art. 1403, 3*).

1. Unemancipated minors;
2. Insane or demented persons;

   Note: It is broad enough to cover all cases where one or both of the contracting parties are unable to understand the nature and consequences of the contract at the time of its execution such as drunkenness or under a hypnotic spell or suffering from any kind of mental incapacity whatsoever (*Jurado, 417*).

3. Deaf-mutes who do not know how to write.

NOTE: The only way by which any one of those enumerated above can enter into a contract is to act through a parent or guardian (*Id.*).

NOTE: There is no effective consent in law without the capacity to give such capacity (*Feliz Gochan v Heirs of R Baba, 409 SCRA 306*).

UNEMANCIPATED MINORS

Refer to those persons who have not yet reached the age of majority (18) and are still subject to parental authority (*see RA 6809*).

EXCEPTIONS

1. When the contract is entered into by a minor who *actively misrepresents his age* not merely constructive representation (*Mercado v Espiritu, GR No. L-11872 [01.12.1917]*);

   Note: This is *based on estoppel*. Estoppel presupposes capacity to misrepresent. The circumstances of the minor must be of such nature that it could have been relied upon by the other party (*Id.*).

   Note: The above doctrine is not applicable where the vendor, *a minor, did not pretend to be of age*, and his minority was known to the purchaser (*Bambalan v Maramba, 51 Phil. 457*).

2. When it involves the sale and *delivery of necessaries* to minors (*Art. 1489, par. 2*);
3. When it *involves a natural obligation* and such obligation is *fulfilled voluntarily by the minor* (*Art. 1425-1427*);
4. Contracts *entered into by guardians or legal representatives* (*Jurado, 418*);
5. When upon *reaching the age of majority*, they *ratify* the same (*Ibañez v Rodriguez, GR No. 23153 [07.03.1925]*);
6. When a minor *opens a savings account* without the assistance of his parents, provided that the minor is *at least 7 years old* and can *read* and *write* (*PD 1734*);
7. When it is a life, health or accident *insurance* taken on the life of the minor, provided that the minor is 18 years old or more and the beneficiary appointed is the minor's estate, his father, mother, husband, wife, child, brother, or sister (*Act. 3424, as amended*)
8. A contract is valid where a minor between 18-21 years of age voluntarily pays a sum of money or delivers a fungible thing in fulfillment of his obligation thereunder and the obligee has spent or consumed it in good faith (*Art. 1427*).

INSANE OR DEMENTED PERSONS

Includes any person, who, at the time of the celebration of the contract, cannot understand the nature and consequences of the act or transaction by reason of any cause affecting his intellectual or sensitive faculties, whether permanent or temporary (*Jurado, 421*).

Illustration:

Where it was established that one of the contracting parties was suffering from monomania or delusion of wealth at the time of the execution of the contract believing himself to be very wealthy when as a matter of fact he is not, it was held that such fact alone will not be sufficient to invalidate the contract so long as it was not proved that at the moment of the execution of the contract he was incapable, crazy, insane, or out of his mind (Standard Oil Co. v Arenas, 19 Phil. 363)

NOTE: It is not necessary that there be a previous declaration of mental incapacity in order that a contract entered into by a mentally defective person may be annulled; it is enough that the insanity existed at the time the contract was made (*Tolentino, 471*).

DEMENTED PERSON

Those who are in the same category as in a state of drunkenness or under a hypnotic spell, when it declares in Art. 1328 that a contract entered into by such person is voidable (*Jurado, 422*).

EXCEPTION

When the contract was entered into during a lucid interval.

LUCID INTERVAL

A person under guardianship for insanity may still enter into a valid contract and even convey property, provided it is proven that at the time of entering into said contract, he was not insane or that his mental defect, if mentally deranged, did not interfere with or affect his capacity to appreciate the meaning and significance of the transaction entered into by him (*Tolentino, 472*).

It is a temporary period of sanity. A contract entered into by an insane or demented person during a lucid interval is valid. It must be shown, however, that there is a full return of the mind to sanity as to enable him to understand the contract he is entering into (*De Leon, 547*).

NOTE: *Mental incapacity to enter into a contract is a question of fact* which must be decided by the courts (*Tolentino, 423*).

PRESUMPTION OF CAPACITY

There is a *prima facie* presumption that every person of legal age possesses the necessary capacity to execute a contract (*Id.*).

DEAF-MUTES WHO DO NOT KNOW HOW TO WRITE

Being a deaf-mute is not by itself alone a disqualification for giving consent. The law refers to the deaf-mute who does not know how to write (*Tolentino, 471*).

1. *Knows how to write* – contract is valid;
2. *Knows how to read, but not write* – valid because reading means that the person is capable of understanding (*De Leon, 546*).

INCOMPETENCE

Incompetence under the Rules of Court is not necessarily a disqualification to give consent to contracts (*Sec. 2, Rule 92, Rules of Court*). Includes:

1. Person suffering from civil interdiction;
2. Hospitalized lepers;
3. Prodigals;
4. Deaf and dumb who are unable to read and write;
5. Those who are of unsound mind, even though they have lucid intervals;
6. Those who by reason of age, weak mind, and other similar causes, cannot, without outside aid, take care of themselves and manage their property (*Id.*).

NOTE: A person is not incapacitated to enter into a contract merely because of advanced years or by reason of physical infirmities, unless such age and infirmities impair his mental faculties to the extent that he is unable to properly, intelligently and fairly understand the provisions of said contract (*Sps. Yason v Arciaga, GR No. 145017 [28.01.2005]*).

ART. 1329

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

DISQUALIFICATION TO CONTRACT

Refers to those who are prohibited from entering into a contract with certain persons with regard to certain property under certain circumstances and not to those who are incapacitated to give consent to a contract (*see Arts. 1490-1491, 1782*).

CAPACITY TO GIVE CONSENT	DISQUALIFICATION TO CONTRACT
As to restriction	
Restrains the exercise of the right to contract;	Restrains the very right itself;
As to basis	
Based upon subjective circumstances of certain persons;	Based upon public policy and morality;
As to validity	
Voidable	Void.

Jurado, 427-428

ART. 1330

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

VICES OF CONSENT

1. Vices of Will (*Vicios de la formacion de la voluntad*) [**MUVIF**]
   a. **M**istake (*Art. 1331*);
   b. **U**ndue influence (*Art. 1335*);
   c. **V**iolence (*Id.*);
   d. **I**ntimidation (*Art. 1337*);
   e. **F**raud (*Art. 1338*).
2. Vices of Declaration (*Vicios de la declaracion*) – simulated contracts (*Id., 428*).

NOTE: Art. 1330 enumerates in a negative way the different requisites of consent objectively considered.

1. Intelligent – mistake;
2. Free – violence, intimidation, and undue influence;
3. Spontaneous – fraud;
4. Read – simulation of contracts (*Id.*).

CAUSES OF VITIATION OF CONSENT	CAUSES OF INCAPACITY
Temporary;	More or less permanent;
Refer to the contract itself;	Refer to the person entering into the contract.

De Leon, 553

CONTRACT OF ADHESION

When a party imposes upon another a ready-made form of contract and the other is reduced to the alternative of taking it or leaving it, giving no reason for negotiation and depriving the latter of the opportunity to bargain on equal footing, a contract of adhesion results. While such contract is not necessarily void, it must nevertheless be construed strictly against the one who drafted the same (*Geraldez v CA, 230 SCRA 320*).

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.

MISTAKE

Not only as the *wrong conception of a thing, but also as the lack of knowledge with respect to a thing* (*Jurado, 429*).

False notion of a thing or a fact material to the contract (*De Leon, 555*).

Includes both ignorance, which is the absence of knowledge with respect to a thing, and error properly speaking, which is a wrong conception about said thing, or a belief in the existence of some circumstance, fact, or event, which in reality does not exist (*Tolentino, 476*)

NATURE OF MISTAKE

Mistake may be of *fact* or of *law*. The mistake contemplated by law is substantial *mistake of fact*, that is, the party would not have given his consent had he known of the mistake. Hence, not every mistake will vitiate consent and make a contract voidable (*De Leon, 556*).

MISTAKE OF FACT	MISTAKE OF LAW
As to existence	
One or both contracting parties believe that a fact exists when in reality it does not or vice versa;	One or both contracting parties arrive at an erroneous conclusion regarding the interpretation of a question of law or legal effects of a certain act or transaction;
As to vitiation of consent	
Vitiates consent.	Does not vitiate consent except when it involves mutual error as to the effect of an agreement when the real purpose is frustrated.

Jurado, 429

MISTAKE OF FACT TO WHICH THE LAW REFERS

In order that mistake may vitiate consent, it must refer to:

1. The *substance of the thing* which is the object of the contract;

   Note: Includes mistake regarding the nature of the contract, as when the contracting parties believe that the other is selling, when in truth and in fact, both are buying (*Madrigal & Co. v Stevenson & Co., 15 Phil. 38*).

2. Those *conditions which have principally moved one or both parties* to enter into the contract;
3. The *identity or qualifications of one of the parties*, provided, the same was the principal cause of the contract (*Id.*).

MISTAKE OF FACT WHICH DOES NOT VITIATE CONSENT (*Id.*)

1. Error as regards the incidents of the thing or *accidental qualities* thereof not taken as principal consideration, unless error is caused by fraud (*Art. 1338*);
2. Mistake as to *quantity* does not also vitiate consent but only gives rise to its correction, unless it goes to the essence of the contract (*Gonzales v Harty and Hartiga, 32 Phil. 328*);
3. Error as regards the *motives* of the contract (*see Art. 1351*), unless the motives constitute a condition or cause of the contract;
4. Mistake as regards the identity or qualifications of a party because the contracts are entered into more in consideration of the things or services which form their subject matter rather than of persons. Unless, such identity or qualifications have been the principal cause of the contract;
5. Error *which could have been avoided* by the party alleging it, or which refers to a fact known to him, or which he should have known by the exercise of ordinary diligence, or which is so patent and obvious that nobody could have made it, will not invalidate consent (*Alcasid v CA, 237 SCRA 419*).

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

NOTE: See Art. 24, CC.

NOTE: Art. 1332 does not cover absence of consent.

NOTE: Art. 1332 was intended for the protection of a party to a contract who is at a disadvantage due to his illiteracy, ignorance, mental weakness or other handicap. It contemplates a situation wherein a contract has been entered into, but the consent of one of the parties is vitiated by mistake or fraud committed by the other contracting party (*Jurado, 433*).

NOTE: This provision expressly enjoins the protection by the courts of the disadvantaged in order to insure that justice and fair play characterize the relationship of the contracting parties (*Sweet Lines, Inc. v Teves, 83 SCRA 361*).

NOTE: Art. 1332 assumes that the consent of the contracting party imputing the mistake or fraud was given, although vitiated, and does not cover a situation where there is a complete absence of consent (*Hemedes v CA, 316 SCRA 348*).

PRESUMPTION

When a person signs a document, the presumption is that he does so with full knowledge of its contents and consequences (*De Leon, 561*).

BURDEN OF PROOF

It is the party enforcing the contract who is duty bound to show that there has been no fraud or mistake and that the terms of the contract have been fully explained to the former in a language understood by him. If he fails to discharge this burden, the presumption of mistake or fraud stands unrebutted (*Mayor v Belen, 430 SCRA 561*).

DUTY OF THE COURTS

In all contractual, property or other relations, when one of the parties is at a disadvantage on account of his moral dependence, ignorance, indigence, mental weakness, tender age or other handicap, the courts must be vigilant for his protection (*Art. 24*).

Q: Leonardo is the only legitimate child of the late spouses Tomasina and Balbino. She only finished Grade three and did not understand English. The Sebastians, on the other hand, are illegitimate children. She filed an action to declare the nullity of the extrajudicial settlement of the estate of her parents, which she was made to sign without the contents thereof, which were in English, explained to her. She claims that her consent was vitiated because she was deceived into signing the extrajudicial settlement. Is the extra-judicial settlement of estate of Tomasina valid?

A: No. When one of the parties is unable to read, or if the contract is in a language not understood by him, and mistake or fraud is alleged, the person enforcing the contract must show that the terms thereof have been fully explained to the former(Art. 1332). Leonardo was not in a position to give her free, voluntary and spontaneous consent without having the document, which was in English, explained to her. Therefore, the consent of Leonardo was invalidated by a substantial mistake or error, rendering the agreement voidable. The extrajudicial partition between the Sebastians and Leonardo should be annulled and set aside on the ground of mistake (*Leonardo v CA, GR No. 125485 [03.09.2004]*).

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.

EFFECT OF KNOWLEDGE OF RISK

If a party knew beforehand the doubt, contingency, or risk; affecting the object of the contract, it is to be assumed that he was willing to take chances and cannot, therefore, claim mistake (*Martinez v CA, 56 SCRA 647*).

Illustration:

A bought a fountain pen which was represented as possibly being able to write even under water. A also knew that the pen's ability was questionable, and yet A bought said pen. Here, A cannot alleged mistake since he knew beforehand of the doubt, risk, or contingency affecting the object of the contract.

MISTAKE OF LAW

That which arises from an ignorance of some provisions of law, or from an erroneous interpretation of its meaning, or from an erroneous conclusion as to the legal effect of an agreement, on the part of one of the parties (*De Leon, 564*).

General Rule

Mistake of law will not vitiate consent. *Ignorantia legis non excusat*.

Exception

Mutual error as to the effect of an agreement when the real purpose of the parties is frustrated, may vitiate consent (*Jurado, 434*). When there is mistake on a doubtful question of law, or on the construction or application of law, this is analogous to a mistake of fact (*Report of the Code Commission, 136*).

REQUISITES OF VITIATION OF CONSENT DUE TO MUTUAL ERROR [PaLM F]

1. Mistake must be of a **pa**st or present fact;
2. It must be with respect to the **l**egal effect of an agreement;
3. It must be **m**utual;
4. Parties' real purpose must have been **f**rustrated (*Jurado, 434*).

NOTE: Remedy is annulment.

NOTE: For Art. 1332 to apply, it must first be convincingly established that the illiterate or disadvantaged party could not read or understand the language in which the contract was written, or that the contract was left unexplained to said party (*Dela Cruz v Dela Cruz, GR No. 146222 [15.01.2004]*).

ART. 1335

There is violence when in order to wrest consent, serious or irresistible force is employed.

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

To determine the degree of 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.

VIOLENCE

When, in order to wrest consent, serious or *irresistible force* is employed.

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.

NOTE: Because of the similarity between violence and intimidation, especially with regard to their effects both upon the will of the person upon whom they are exercised and upon the contract which is produced thereby, the two are sometimes known as *duress* (*Id., 435*).

VIOLENCE	INTIMIDATION
External;	Internal;
Prevents the expression of the will substituting it with a material act dictated by another;	Influences the operation of the will, inhibiting it in such a way that the expression thereof is apparently that of a person who has freely given his consent.
Physical compulsion	Moral compulsion.

NATURE OF VIOLENCE OR FORCE

Requires employment of physical force. The force employed must be either serious or irresistible (*De Leon, 566*).

REQUISITES OF VIOLENCE [SIDC]

1. The force employed to wrest consent must be **s**erious or **i**rresistible;
2. It must be the **d**etermining **c**ause for the party upon whom it is employed in entering into the contract (*Jurado, 436*).

REQUISITES OF INTIMIDATION [FR PIG]

1. Produce a reasonable and well-grounded **f**ear of an evil;
2. It is the **r**eason why he enters into the contract.
3. The evil must be upon his **p**erson or property, or that of his spouse, descendants, or ascendants;
4. The evil must be **i**mminent and **g**rave (*De Leon, 566*).

FACTORS TO DETERMINE DEGREE OF INTIMIDATION

1. Age;
2. Sex,
3. Condition of the person.

Note: Condition includes the resolute or weak character of the person intimidated and also his other circumstances, such as his capacity or culture, which permits him to appreciate whether or not there is an imminent danger, financial condition (*Jurado, 441*).

NATURE OF INTIMIDATION

It requires that one of the contracting parties should be 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. This presupposes that the threat or intimidation must be actual, serious and possible of realization, and that the actor can and still will carry out his threat (*Id., 436*).

REVERENTIAL FEAR

General Rule

If a contract is signed merely because of "fear of displeasing persons to whom obedience and respect are due," the contract is still

valid, because reverential fear by itself does not annul consent in the absence of actual threat (*Sabalvaro v Erlanger, 64 Phil. 588).*

Exception

If the fear so deprives one of a reasonable freedom of choice as to justify the reasonable inference that undue influence has been exercised (*see Art. 1337*), then the consent is vitiated.

COLLECTIVE FEAR

General Rule

Does not vitiate consent.

Exception

Where there are specific acts or instances of such nature and magnitude as to have inflicted fear or terror that his execution cannot be considered voluntary.

VALIDITY OF A CONTRACT IF CONSENT IS RELUCTANT

It is clear that one acts as voluntarily and independently in the eyes of the law when he acts reluctantly and with hesitation, as when he acts spontaneously and joyously. But when his sense, judgment, and his will rebel and he refuses absolutely to act as requested, but is nevertheless overcome by force or intimidation to such an extent that he becomes a mere automaton and acts mechanically only, it is considered duress (*Vales v Villa, 35 Phil. 769*).

JUST OR LEGAL THREAT

A threat to enforce one's claim through competent authority, if the claim is just or legal, does not vitiate consent (*Art. 1335, par. 4*). Consequently, even if it can be established that the reason or motive of a party in entering into a contract was the threat of the other to proceed against him through the courts, the contract would still be perfectly valid and not voidable (*Doronilla v Lopez, 3 Phil. 360*).

EFFECT OF GENERAL OR COLLECTIVE FEELING OF FEAR

In order to cause the nullification of acts executed during the occupation, the duress or intimidation must be more than the "general feeling of fear" on the part of the occupied over the show of might by the occupant. Aside from such "general" or "collective apprehension," there must be specific acts or instances of such nature and magnitude as to have, of themselves, inflicted fear or terror upon the subject thereof that his execution of the questioned deed or act cannot be considered voluntary (*Lacson v Granada, 1 SCRA 876*).

WHEN COLLECTIVE OR GENERAL DURESS NOT APPLICABLE

The warnings that his refusal to sell his property was bad and constituted a hostile act, were sufficient to give S an inkling of what would happen to him and his family if he showed non-cooperation for it was of common knowledge that many were tortured and killed by the Japanese invaders on flimsy reasons or on signs of lack of cooperation (*Laperal v Rogers, 13 SCRA 27*).

THREAT TO PROSECUTE SPOUSE

General Rule

Threat of sending to jail a husband amounts to the intimidation of his wife (*Jalbuena v Ledesma, 8 Phil. 601*).

Exception

Not every contract, however, made by a wife to relieve her husband from the consequences of his crime is voidable. Subject to certain restrictions, a wife may legally dispose of her property as she pleases. She may give it away. She may pledge or transfer it to keep her husband from legal prosecution. The question in each case is the same, was she acting from fear or according to the dictates of her judgment? (*Martinez v HSBC, 15 Phil. 252*)

VIOLENCE OR INTIMIDATION BY A THIRD PERSON

Violence or intimidation may be employed by a third person who did not take part in the contract. However, to make the contract voidable or annullable, it is necessary that the violence or intimidation must be of the character required in Article 1335 (*De Leon, 574*).

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.

UNDUE INFLUENCE

To be sufficient, the influence must be of a kind that so *overpowers and subjugates the mind of a party as to destroy his free agency* and make him express the will of another, rather than his own (*Coso v Fernandez-Deza, 42 Phil. 596*).

ELEMENTS [DAW]

1. **D**eprivation of the latter's will of a reasonable freedom of choice;
2. Improper **a**dvantage;
3. Power over the **w**ill of another (*Jurado, 443*).

NOTE: The influence must be *undue or improper*. It is not to be inferred alone from age, sickness, or debility of body, if sufficient intelligence remains (*Loyola v CA, 326 SCRA 285*).

DUE INFLUENCE

Solicitation, importunity, argument, and persuasion are not undue influence and a contract is not to be set aside merely because one party used these means to obtain the consent of the other. Influence obtained by persuasion or argument or by appeals to the affection is not prohibited either in law or morals and is not obnoxious even in courts of equity (*Banes v CA, 59 SCRA 15*).

UNDUE INFLUENCE	DUE INFLUENCE
Influence attained by superiority of will, mind, or character under circumstances which give dominion over the will of another to such an extent as to destroy free agency or to constrain him to do against his will what he is unable to refuse.	With full recognition of the liberty due every true owner to obey the voice of justice, the dictates of friendship, of gratitude, or of benevolence, as well as the claims of kindred, and, when not hindered by personal incapacity or particular regulations, to dispose of his own property according to his own free choice

De Leon, 575

TEST TO DETERMINE EXISTENCE OF UNDUE INFLUENCE

Whether or not the influence has so overpowered or subjugated the mind of a contracting party as to destroy his free agency, making him express the will of another rather than his own (*Jurado, 444*).

CIRCUMSTANCES TO CONSIDER

1. Confidential, family, spiritual and other relations between the parties,
2. Mental weakness,
3. Ignorance, or
4. Financial distress of the person alleged to have been unduly influenced.

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.

FRAUD

Refers 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. 1338*).

KINDS OF CIVIL FRAUD

1. **Fraud in the perfection of a contract** (*Art. 1338*);
   Employed by a party to the contract in securing the consent of the other (*Jurado, 444*).
   a. ***Dolo Causante*** **–** refers to those deceptions or misrepresentations of a serious character employed by one party and without which the other party would not have entered into the contract (*Art. 1338*)**;**
   b. ***Dolo Incidente*** **–** refers to those deception or misrepresentations which are not serious in character and without which the other party would still have entered into the contract (*Art. 1344*)**.**

2. **Fraud in the performance of an obligation** (*Art. 1170*).
   Employed by the obligor in the performance of a pre-existing obligation

REQUISITES OF FRAUD IN THE PERFECTION [ESIN]

1. Fraud or insidious words or machinations must have been employed by one of the contracting parties;

   Insidious Words or Machinations
   Includes fal*se promises, exaggerated expectations or benefits, abuse of confidence, fictitious names, qualities, or power;* in fine, the thousand forms of fraud, which can deceive a contracting party, producing a vitiated consent (*De Leon, 577*). It is not necessary that they constitute estafa or partake of any other criminal act subject to the penal law (*Eguaras v Great Eastern Life Assurance Co. 33 Phil. 263*).
   A deceitful scheme or plot with an evil design, or in other words, with a fraudulent purpose. Thus, deceit which avoids a contract need not be by means of misrepresentation in words (*Strong v Gutierrez Repide, 41 Phil. 947*).

2. The fraud or insidious words or machinations must have been serious;
3. The fraud or insidious words or machinations must have induced the other party to enter into the contract;
4. The fraud should not have been employed by both of the contracting parties or by third persons.

REQUISITES OF DOLO CAUSANTE [SB KI]

1. It should be serious (*Art. 1341*);

   Note: The fraud or dolo causante must be that which determines or is the essential cause of the contract (*Caram, Jr. v Laureta, 102 SCRA 7*). It case it is not serious, the aggrieved party is entitled to demand an adjustment in the price or consideration (*De Leon, 591*).

2. It should not have been employed by both contracting parties, i.e., they should not be in *pari delicto* (*see Valdez v Sibal, 46 Phil. 930*);
3. It should not have been known by the other contracting party (*Ternate v Aniversario, 8 Phil. 292*);
4. It should be invoked by the proper party (*Reyes v CA, 216 SCRA 152*).

MUTUAL FRAUD

When both parties used fraud reciprocally, neither one has an action against the other, and neither party can ask for the annulment of the contract, *in pari delicto* (*Valdez v Sibai, GR No. L-26278 [04.08.27]*).

BADGES OF FRAUD [ISSEF PED]

1. The fact that the consideration of the conveyance is fictitious or is inadequate;
2. A transfer made by a debtor after suit has begun and while it is pending against him;
3. A sale upon credit by an insolvent debtor;
4. Evidence of large indebtedness or complete insolvency;
5. The fact that the transfer is made between father and son, when there are present other of the above circumstances;
6. The failure of the vendee to take exclusive possession of all the property;
7. The transfer of all or nearly all of his property by a debtor, especially when he is insolvent or greatly embarrassed financially (*Oria v McMicking, GR No. L-7003 [18.01.1912]*);
8. Gross disparity between the price and the value of the property (*Asia Banking Corporation v Jose, GR No. L-28945 [31.03.28]*).

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.

FRAUD BY CONCEALMENT

A neglect or failure to communicate that which a party to a contract knows and ought to communicate constitutes concealment which is equivalent to misrepresentation (*De Leon, 582*).

It presupposes a purpose or design to hide facts which the other party ought to know (*Id.*).

It is the failure to disclose facts, when there is a duty to reveal them, as when the parties are bound by confidential relations (*Jurado, 447*).

NOTE: If the failure is unintentional, the basis of the action for annulment is not fraud but mistake or error (*Art. 1343*); if unintentional and there is no duty to make the disclosure, the parties are bound by their contract (*De Leon, 582*).

FRAUD BY MISREPRESENTATION OF AGE

General Rule

The failure of a minor to disclose his minority when making a contract does not *per se*, constitute a fraud which can be made the basis of an action of deceit (*Id.586*).

Exception

In order to hold the minor liable, the fraud must be actual and not constructive (*Braganza v De Villa Abrille, 105 Phil. 456*).

ART. 1340

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

NOTE: This is known as tolerated fraud which includes minimizing the defects of the thing, exaggerating its good qualities, and giving it qualities that it does not have. They do not affect the validity of the contract so long as they do not go to the extent of malice or bad faith (*Tolentino, 510*).

NOTE: When the person dealing with them had an opportunity to know the facts, the usual exaggerations in trade are not in themselves fraudulent. The law allows considerable latitude to seller's statements or dealer's talk and experience teaches that it is exceedingly risky to accept it at its face value. Customers are expected to know how to take care of their concerns and to rely on their own independent judgment (*De Leon, 587*).

NOTE: *Dealer's talk* or *trader's talk* are representations which do not appear on the face of the contract and these do not bind either party (*Puyat v Arce Amusement Co., 72 Phil. 402*).

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.

NOTE: An opinion of an expert is like a statement of a fact, and if false, may be considered a fraud giving rise to annulment (*Tolentino, 511*).

REQUISITES

1. Must be *made by an expert*;
2. The other contracting party has rel*ied on the expert's opinion*;
3. The opinion *turned out to be false or erroneous* (*De Leon, 588*).

ART. 1342

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

FRAUD BY A THIRD PERSON

Fraud by a third person does not vitiate consent and merely gives rise to an action for damages by the party injured against such third person unless:

1. It has created a substantial mistake and the same is mutual;
2. A third person makes the misrepresentation with the complicity, or at least with the knowledge but without the objection, of the contracting party who is favoured (*Jurado, 449*).

Q: C, an old — C, an old and ignorant woman, was helped by V in obtaining a loan of P3,000.00 from X Rural Bank secured by a mortgage on her house and lot. On the day she signed the promissory note and the mortgage covering the loan, she also signed several documents. One of these documents signed by her was promissory note of V for a loan of P3,000.00 also secured by a mortgage on her house and lot. Several years later, she received advice from the sheriff that her property shall be sold at public auction to satisfy the two obligations. Immediately she fi led suit for annulment of her participation as co-maker in the obligation contracted by V as well as of the mortgage in relation to said obligation of V on the ground of fraud and mistake. Upon fi ling of the complaint, she deposited P3,383.00 in court as payment of her personal obligation including interests.

*a. **Can C be held liable for the obligation of V? Why?***

*b. **Was there a valid and effective consignation considering that there was no previous tender of payment made by C to the Bank? Why?***

A: (a) C cannot be held liable for the obligation of V. It is crystal clear that C's participation in V's obligation both as co-maker and as mortgagor is voidable not on the ground of fraud because the Bank was not a participant in the fraud committed by V, but on the ground of mistake. There was substantial mistake on the part of both C and the Bank mutually committed by them as a consequence of the fraud employed by V (*see Rural Bank of Caloocan City v CA, 104 SCRA 151*).

(b) Despite the fact that there was no previous tender of payment made directly to the Bank, nevertheless, the consignation was valid and effective. The deposit was attached to the record of the case and the Bank had not made any claim thereto. Therefore, C was right in thinking that it was useless and futile for her to make a previous offer and tender of payment directly to the Bank. Under the foregoing circumstances, the consignation was valid, if not under the strict provisions of the law, under the more liberal consideration of equity (*Id.*).

ART. 1343

Misrepresentation made in good faith is not fraudulent by may constitute error.

NOTE: Fraud is definitely more serious than mistake; hence, the party guilty of fraud is subject to greater liability (*De Leon, 590*).

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.

MAGNITUDE OF FRAUD

The fraud employed by one of the contracting parties will vitiate the consent of the other is that it should be serious in character (*Art. 1344, par. 1*).

The annulment of a contract cannot be invoked just because of the presence of minor or common acts of fraud whose veracity could easily have been investigated; neither can such annulment be invoked because of the presence of ordinary deviations from the truth, deviations, which are almost inseparable from ordinary commercial transactions, particularly those taking place in fairs or markets (*Jurado, 451*).

RELATION BETWEEN FRAUD AND CONSENT

Fraud must be the principal or causal inducement or consideration for the consent of the party who is deceived in the sense that he would never have given such consent were it not for the fraud. This is called *dolo causante* or *dolus causam dans* (*Id.*).

If fraud is merely incidental in the sense that the party who is deceived would have agreed to the contract even without it, his consent is not vitiated and, as a consequence, the validity of the contract is not at all affected. Its only effect is to render the party who has employed it liable for damages. This is called *dolo incidente* or *dolus incidens* (*Id.*).

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.

SIMULATION OF A CONTRACT

It is otherwise called as vice of declaration or *vicios de la declaracion* (*Jurado, 454*).

The act of deliberately deceiving others, by feigning or pretending by agreement, the appearance of a contract which is either non-existent or concealed or is different from that which was really executed (*Tongoy v CA, 123 SCRA 99*).

REQUISITES [DAP]

1. Deliberate declaration contrary to the will of the parties;
2. Agreement of the parties to the apparent valid act;
3. Purpose is to deceive or to hide from third persons although it is not necessary that the purpose be illicit or for purposes of fraud (*Loyola v CA, GR No. 115734 [23.02.2000]*).

KINDS OF SIMULATED CONTRACTS

1. **Absolute (*Simulados*)** – when there is *colourable contract but it has no substance as the contracting parties do not intend to be bound by the contract at all,* as when a debtor simulates the sale of his properties to a friend in order to prevent their possible attachment by creditors. Characterized by the fact that the apparent contract is not really desired or intended to produce legal effects or in any way alter the juridical situation of the parties (*Rodriguez v Rodriguez, 28 SCRA 229*);

2. **Relative (*Dissimulados*)** - when the contracting parties *state a false cause in the contract to conceal their true agreement*, as when a person conceals a donation by simulating a sale of the property to the beneficiary for a fictitious consideration.

NOTE: The primary consideration in determining the true nature of a contract is the intention of the parties. Such intention is determined from the express terms of their agreement as well as from their contemporaneous and subsequent acts (*Tating v Marcella, GR No. 15528 [27.03.2007]*).

EFFECTS

1. **Absolute –** *void*;
2. **Relative** – *binds the parties* and the parties *may recover from each other what they may have given* under the contract when it does not prejudice a third person and is not intended for any purpose contrary to law, morals, good customs, public order or public policy (*Gaudencio Valerio v Vicenta Refresca, GR No. 163687 [28.03.2006]*).

REQUISITES OF SIMULATED CONTRACTS [DAD]

1. An outward **d**eclaration of will different from the will of the parties;
2. False **a**ppearance must have been intended by mutual agreement;
3. The purpose is to **d**eceive third person (*Loyola v CA, 326 SCRA 285*).

TWO JURIDICAL ACTS IN RELATIVELY SIMULATED CONTRACTS

1. **Ostensible Act (apparent or fictitious)** – the contract that the parties pretend to have executed;
2. **Hidden Act (real)** – the true agreement between the parties.

NOTE: If the concealed or hidden act is lawful, it is enforceable if the essential requisites are present, such as when the true consideration was not stated. Its validity and effects will be governed by the rules applicable to it, and not by those applicable to the apparent contract (*Tolentino, 518*).

NOTE: With respect to a third person acting in good faith, the apparent contract must be considered as the true contract. The declaration that the contract is simulated does not prejudice him (*Id., 519*).

NOTE: Relative simulation is presumed by law in cases involving the badges of an equitable mortgage under Art. 1602 (*Id., 518*).

SIMULATED CONTRACTS	FRAUDULENT CONTRACTS
Fictitious contracts, and intended to hide the violation of law;	Serious, real and intended for the attainment of a prohibited result;
Implies that there is no existing contract, no real act executed	There is a true and existing transfer or contract;
Can be attacked by any creditor, including one subsequent to the contract;	Can be assailed only by the creditors before the alienation;
The insolvency of the debtor making the simulated transfer is not a prerequisite to the nullity of the contract;	The action to rescind, or *accion pauliana*, requires that the creditor cannot recover in any other manner what is due him;
action to declare a contract absolutely simulated does not prescribe (*Art. 1409 & Art. 1410*).	The *accion pauliana* to rescind a fraudulent alienation prescribes in four years (*Art. 1389*).

Manila Banking Corp. v Silverio, 466 SCRA 438

S E C T I O N 2
OBJECT OF CONTRACT

OBJECT OF CONTRACT

The thing, right or service which is the subject matter of the obligation arising from the contract (*Jurado, 456*).

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 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 an obstacle to the existence of the contract, provided it is possible to determine the same, without the need of a new contract between the parties.

KINDS OF OBJECT OF CONTRACT

1. **Things;**
2. **Rights;**
   Gen. Rule: All rights may be the object of a contract.
   Exception: When they are intransmissible:
   a. By nature;
   b. By the stipulation;
   c. By provision of law (*Art. 1311, 1*).
3. **Services** (*De Leon, 598*).

REQUISITES OF OBJECT OF CONTRACTS

1. **Must be within the *commerce of men*** (*Art. 1347*);
   a. The thing, right or service should be susceptible of appropriation;
   b. It should be transmissible from one person to another (*Jurado, 458*).

2. **Must *not be impossible*, legally or physically** (*Art. 1348*);
   a. Physical impossibility
      i. *Absolute impossibility (objective)* – arises from the very nature or essence of the act or service itself, renders the contract *void*;
      ii. *Relative impossibility (subjective)* - arises from the circumstances or qualifications of the obligor rendering him incapable of executing the act or service, allows the perfection of the contract, although the fulfillment thereof is hardly probable (*Jurado, 461*).
   b. *Legal impossibility* – when the thing or service is contrary to law, morals, good customs, public order, or public policy (*De Leon, 604*).

Difficulty in performance

A showing of mere inconvenience, unexpected impediments, or increased expenses is not to relieve a party of the obligation (*De Castro v Longa, GR No. L-2152-53 [31.07.51]*).

3. **Must be *in existence* or capable of *coming into existence*** (*Arts. 1461, 1493, 1494*);

Exception to future things

No contract may be entered into with respect to future inheritance (*see also Arts. 905 & 2035, no. 6, CC*). Thus, an agreement for the partition of the estate of a living person, made between those who, in case of death, would inherit the estate is null and void (*Arroyo v Gerona, 58 Phil. 226*).

Future Inheritance

Any property or right, not in existence or capable of determination at the time of the contract, that a person may inherit in the future (*Blas v Santos, 1 SCRA 899*).

Requisites of inheritance to be future

a. The succession has not yet been opened at the time of the contract;
b. The object of contract forms part of the inheritance;
c. The promissor has, with respect to the object, an expectancy of a right which is purely hereditary in nature (*JLT Agro Inc. v Balansag, 453 SCRA 211*)**.**

Exceptions to the exception

1. Future spouses may give or donate to each other in their marriage settlement their future property to take effect upon the death of the donor and to the extent laid down by the provisions of the Civil Code relating to testamentary succession (*Art. 84, 2, FC*);
2. A person may make a partition of his estate by an act *inter vivos*, provided that the legitime of compulsory heirs is not prejudiced (*Art. 1080, CC*).

Future things, interpretation

a. **Conditional Contract –** if its efficacy should depend upon the future existence of the thing;
b. **Aleatory Contract –** if one of the contracting parties should bear the risk that the thing will never come into existence (*Id., 459*).

Note: In case of doubt, it must be deemed to be conditional because of the principle stated in Art. 1378 that the doubt shall be resolved in favor of the greatest reciprocity of interests (*Jurado, 459*).

4. **Must be *determinate* or *determinable* without the need of a new contract between the parties** (*Arts. 1349; 1460, 2*).

Determinate

The genus of the object should be expressed although there might be no determination of the individual specie

Note: As long as it is possible to determine the quantity of the object without the necessity of any new contract, there can be no question about the validity of a contract in which there is no specification of the quantity (*Liebenow v Phil. Vegetable Co., 39 Phil. 63*).

THINGS NOT INCLUDED IN THE COMMERCE OF MEN

1. Those from their very nature;
   a. Air or sea;
   b. Sacred things;
   c. *Res nullius;*
   d. Property belonging to public domain.
2. Those specially prohibited by law;
   a. Poisonous substances;
   b. Drugs;
   c. Arms;
   d. Explosives;
   e. Contrabands.
3. Those rights which are intransmissible.
   a. Those arising from the relationship of husband and wife (*Jus consortium*);
   b. Those from the relationship of paternity and filiation (*patria potestas*):
   c. Honorary or political in character (right to hold public office or suffrage) (*Id.*).

S E C T I O N 3
CAUSE OF CONTRACT

ART. 1350

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

ART. 1351

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

CAUSE OR CONSIDERATION

It is the immediate, direct or most proximate reason which explains and justifies the creation of an obligation through the will of the contracting parties (*Jurado, 464*).

It is the why of the contract, the essential reason which moves the contracting parties to enter into the contract (*Gonzales v Trinidad, 67 Phil. 682*).

CAUSE	OBJECT
In Remuneratory Contracts	
the service or benefit which is remunerated;	The thing which is given in remuneration;
In Gratuitous Contracts	
The liberality of the donor or benefactor;	The thing which is given or donated;
In Contract of Sale	
Vendor – the acquisition of the purchase price Vendee – the acquisition of the thing	The thing which is sold and the price which is paid
In Onerous Contracts	
The prestation or promise of a thing or service by the other;	The thing or service itself;
As to thing	
Prestation or promise of a thing or service by the other;	The thing or service itself;
As to contracting parties	
Different with respect of each party.	May be the same for both the parties

Jurado, 464-465

CAUSE	MOTIVE
As to proximity	
Direct and most proximate or essential reason of a contract;	Indirect or particular or remote reason;
As to characteristic of reason	
Objective or juridical reason for the existence of a contract;	Psychological individual or purely personal reason;
As to contracting parties	
Always the same for each contracting party;	Differs for each contracting party;
To effect in the validity of contract	
Its legality affects the existence or validity of the contract.	Its legality does not affect the existence or validity of contract.

Id., 466

NOTE: The motive becomes the *causa* when it predetermines the purpose of the contract (*Id.*).

MORAL OBLIGATION NOT AS CAUSE

Where the moral obligation arises whole from ethical consideration, unconnected with any civil obligations, it cannot constitute a sufficient cause or consideration to support an onerous contract (*Fisher v Robb, 69 Phil. 101*).

MORAL OBLIGATION AS CAUSE

Where such moral obligation is based upon a previous civil obligation which has already been barred by the statute of limitations at the time when the contract is entered into, it constitutes a sufficient cause or consideration to support a contract (*Villaroel v Estrada, 71 Phil. 140*).

ART. 1352

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

ART. 1353

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

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.

REQUISITES OF CAUSE

1. The cause should be *in existence* at the time of the celebration of the contract;
2. The cause should be *licit or lawful*;
3. The cause should be *true or real* (*De Leon, 616*).

EFFECT OF LACK, ILLEGALITY, FALSITY, INADEQUACY OR FAILURE OF CAUSE

1. *Total lack or absence of cause* – the contract confers no right and produce no legal effect (*Art. 1352*);
2. *Illegal/Unlawful cause* – the contract is null and void (*Art. 1409, 1*);
3. *False cause* – the contract is valid unless it should be proved that it be founded upon another cause which is true an lawful (*Art. 1346*);
4. *Inadequacy of cause/lesion* – the contract is valid unless there has been fraud, mistake or undue influence and in those cases provided in Art. 1381;
5. *Failure to pay cause* – it is not essential that payment or full payment should be made at the time of the contract (*Puato v Mendoza, 64 Phil. 417*); but a contract totally without cause is void.

NOTE: Even if the consideration for the contract is only P1.00, it will not render the contract void, because it is the absence of consideration, not mere inadequacy which will result in a void contract (*Carantes v CA, GR No. L-33360 [25.04.77]*).

CHAPTER 3

FORMS OF CONTRACT

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.

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.

MEANING OF FORM OF CONTRACT

Refers to the manner in which a contract is executed or manifested (*De Leon, 634*).

General Rule

Whatever may be the form in which a contract may have been entered into, it shall be obligatory provided all of the essential requisites for its validity are present (*Jurado, 479*).

> **Note:** We have, therefore, retained the "spiritual system" of the Spanish Code by virtue of which the law looks more at the spirit rather than at the form of contracts. Hence, under our legal system, the form in which a contract is executed has no effect, as a general rule, upon its obligatory force, provided all of the essential requisites for its validity are present (*Id.*).

> **Note:** The requirement that certain contracts be in certain forms to be valid or enforceable is calculated to avoid litigation. Oral contracts frequently lead to fraud in the fulfillment of obligations or to false testimony. So long as the possibility of dishonesty exists in contractual relations, the "spiritual system" cannot be adopted in an unqualified manner (*Report of Code Commission, 138*).

Exception

1. When the law requires that the contract must be in a certain form *in order to be valid*;
2. When the law requires that the contract must be in a certain form *in order to be enforceable*;
3. When the law requires that a contract be in some form *for the convenience of the parties* or for the purpose of *affecting third persons* (*Arts. 1356-1358*).

NOTE: The contract can be enforced even if it may not be in writing (*Shaffer v Palma, 22 SCRA 934*). But before the contract can be

reduced in proper form or enforced, it may be necessary to prove its existence (*De Leon, 644*).

FORMS OF CONTRACT

1. Parol or oral;
2. In writing (must be in a public or private instrument);
3. Partly oral and partly writing (*De Leon, 634*).

NOTE: A contract may be collected from different writing which do not conflict with each other and which when connected, show the parties, subject matter, terms and consideration, as in contracts entered into by correspondence (*Id.*).

NOTE: A contract may be encompassed in several instruments even though every instrument is not signed by the parties since it is sufficient if the unsigned instruments are clearly identified or referred to and made part of the signed instrument or instruments (*Id.*).

NOTE: A written agreement of which there are two copies, one signed by each of the parties is binding on both to the same extent as though there had been only one copy of the agreement and both had signed (*Id., 634-635*).

WHEN CONTRACT IS CONSIDERED IN WRITTEN FORM

It is generally recognized that to be a written contract, all its terms must be in writing. So, a contract partly in writing and partly oral is, in legal effect, an oral contract (*Manuel v Rodiguez, 109 Phil. 1*).

TWO ASPECTS OF CONTRACTS

The concurrence of the elements in Art. 1318 in the minds of the parties without expression will not produce a contract. A contract consists of two aspects:

1. **Intent or Will –** an internal and psychological fact which produces no legal effect;
2. **Expression of such intent or will –** to produce legal effect, it must be expressed or declared which is the form.
    a. **Formal or Solemn** – that which is required by law for its efficacy to be in certain specified form;
    b. **Informal or Common –** that which may be entered into in whatever form, provided, all the essential requisites are present; this refers only to consensual contracts (*De Leon, 636*).

CLASSIFICATIONS OF THE FORMALITIES FOR VALIDITY

1. Contracts which must appear in writing;
    a. Donation of personal property the value of which exceeds P5,000 (*Art. 748*)
    b. Sale of land through an agent (*Art. 1874*);
    c. Contract of antichresis (*Art. 2134*);
    d. Stipulation to pay interest (*Art. 1956*);
    e. Contract of partnership (*Arts. 1771 & 1773*);
    f. Negotiable instruments (*Sec. 1, Act. No. 2031*).
2. Contracts which must appear in a public document;
    a. Donation of real property (*Art. 749*);
    b. Partnership where immovable property or real rights are contributed to the common fund (*Arts. 1771 & 1773*);
3. Contracts which must be registered
    a. Chattel mortgages (*Art. 2140*);
    b. Transfer or sale of large cattle (*Sec. 22, Act. No. 22*) (*Jurado, 481*).

FORM FOR ENFORCEABILITY OF CONTRACT

In the cases of contracts covered by the Statute of Frauds, the law requires that they be in writing subscribed by the party charged or by his agent (*Art. 1403, 2*). If the contract is not in writing, the contract is valid (assuming all the essential elements are present) but, upon the objection of a party, it cannot be proved and, therefore, it cannot be enforced unless it is ratified (*Art. 1405*).

PRINCIPLES DEDUCED FOR THE FORMALITIES FOR EFFICACY

1. Arts. 1357 & 1358 require the execution of contract either in public or in private document in order *insure its efficacy*, so that after its existence has been admitted, the *party bound may be compelled to execute the necessary document* (*Doliendo v Depino, 12 Phil. 758*);
2. Even where the contract has not been reduced to the required form, *it is still valid and binding as far as the contracting parties are concerned* (*Thunga Chiu v Que Bentec, 2 Phil. 251*);

    Note: Both articles presuppose the existence of a contract which is valid and enforceable (*Solic v Barroso, 53 Phil. 913*);

3. From the moment one of the contracting parties invokes the provisions of Arts. 1357 and 1358 by means of a proper action, the effect is to p*lace the existence of the contract in issue*, which must be resolved by the ordinary rules of evidence (*Peyer v Peyer, 77 Phil. 366*);
4. Art. 1357 *does not require that the action to compel the execution of the necessary document must precede the action upon the contract* (*Rodriguez v Pamintuan, 37 Phil. 876*). As a matter of fact, both actions may be exercised simultaneously;
5. From the moment when any of the contracting parties invokes said provisions, it is evident that *under them the execution of the required document must precede the determination of the other obligations derived from the contract* (*Manalo v De Mesa, 25 Phil. 495*).

PROBATIVE VALUE OF PUBLIC DOCUMENTS

1. The effect of the notarization of a private document is to convert the said document into a public one and render it admissible in evidence in court without further proof of its authenticity and due execution (*Nadayag v Grageda, 237 SCRA 202*);
2. Public documents are entitled to full faith and credit on their face in the absence of any clear and convincing evidence, more than merely preponderant, that their execution was tainted by defects or irregularities that would warrant a declaration of nullity (*Anchuelo v IAC, 147 SCRA 434*);
3. They enjoy the presumption of validity and regularity (*Santiago v CA, 277 SCRA 98*).

Q: Sps. Y and X wanted to sell their house. They found a prospective buyer, Z. X negotiated with Z for the sale of the property. They agreed on a fair price of P2 Million. Z sent X a letter confirming her intention to buy the property. Later, another couple, A and B , offered a similar house at a lower price of P1.5 Million. But Z insisted on buying the house of Y and X for sentimental reasons. Z prepared a deed of sale to be signed by the couple and a manager's check for P2 Million. After receiving the P2 Million, Y signed the deed of sale. However, X was not able to sign it because she was saying she changed her mind. X filed suit for nullification of the deed of sale and for moral and exemplary damages against Z. Does Z have any cause of action against Y and X?

A: Considering that the contract has already been perfected and taken out of the operation of the statute of frauds, Z can compel Y and X to observe the form required by law in order for the property to be registered in the name of Z which can be filed together with the action for the recovery of house (*Art. 1357*). In the alternative, she can recover the amount of P2 Million that she paid. Otherwise, it would result in solution indebiti or unjust enrichment (*Jurado, 486*).

NOTE: The action of the parties to *compel each other to have the contract reduced in proper form* may be filed simultaneously with the action to *enforce the contract*. The latter may even be brought without the bringing of the former (*De Leon, 644*).

NOTE: The reduction to writing in a public or private document, required by the law with respect to certain contracts, is not an

essential requisite of their existence, but is simply a coercive power granted to the contracting parties by which they can reciprocally compel the observance of these formal requisites (*Thunga Chui v Que Bentec, 2 Phil. 651*).

SIGNING OF INSTRUMENT

A contract may be encompassed in several instruments even though every instrument is not signed by the parties since it is sufficient if the unsigned instruments are clearly identified or referred to and made part of the signed instruments (*BF Corp. v CA, GR No. 120105 [27.03.88]*).

ELECTRONIC CONTRACTS

The formal requirements to make contracts effective as against third persons and to establish the existence of a contract are deemed complied with provided that the electronic document is unaltered and can be authenticated as to be usable for future reference (*RA 8792, Sec. 2a*).

CHAPTER 4
REFORMATION OF INSTRUMENTS

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. 1361

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.

DOCTRINE OF REFORMATION OF INSTRUMENTS

The remedy through which 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 (*Jurado, 487*).

REASON

It would be unjust and inequitable to allow the enforcement of a written instrument which does not reflect or disclose the real meeting of the minds of the parties. It is to forestall the effects of mistake, fraud, inequitable conduct or accident (*Report of the Code Commission, 56*).

NOTE: The courts, by reformation, do not attempt to make a new contract for the parties, but to make the instrument *express their real agreement* (*Jurado, 487*).

REQUISITES OF REFORMATION [MeN MiFIA IP]

1. There must be a **me**eting of minds of the contracting parties;
2. Their true intention is **n**ot expressed in the instrument;
3. Such failure is due to **mi**stake, **f**raud, **i**nequitable conduct or **a**ccident;
4. The fact upon which relief by way of reformation of the instrument is sought are put in **i**ssue by the pleadings (*De Leon, 648*);
5. **C**lear and convincing **p**roof of mistake, accident, relative simulation, fraud or inequitable conduct (*Jurado, 488*).

Inequitable conduct

Consist in doing acts, or omitting to do acts, which the court finds to be unconscionable (*De Leon, 652*).

ULTIMATE FACTS WHICH MUST BE PROVED IN ACTION FOR REFORMATION

1. That the true agreement or intention of the parties and that the instrument to be reformed does not express such agreement or intention (*Garcia v Bisaya, 97 Phil. 609*);
2. The *onus probandi* is upon the party who insists that the contract should be reformed because the presumption is that an instrument sets out the true agree of the parties (*Mata v CA, 207 SCRA 753*).

NOTE: A contract may not be reformed simply because a party later finds itself at the shorter end of an unwise bargain. It is only when the agreement is shown to be so grossly unjust as to be unduly oppressive that the strong arm of equity may intervene to grant relief to the aggrieved party (*Huibonhoa v CA, 320 SCRA 625*).

NOTE: Expediency and convenience are not grounds for the reformation of an instrument (*Multi-Ventures Capital and Management Corp., v Stalwar Management Services Corp., GR No. 157349 [04.07.2007]*).

REFORMATION	ANNULMENT
As to validity of contract	
Presupposes that there is a valid contract but the document or instrument executed does not express their true intention;	The contract was not validly entered into as when their minds did not meet or if the consent was vitiated;
As to effect	
Gives life to the contract by making the instrument conform to the true intention of the parties.	Involves a complete nullification of the contract.

Id., 488-489

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.

ART. 1362

If one party 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 or 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.

GROUNDS FOR REFORMATION [MUCIS]

1. **M**utual mistake (*Art. 1361*);

Requisites [MFFC]

a. Mistake must be mutual;
b. Mistake must be of a fact;
c. Mistake must cause the failure of the instrument to express their true intention;
d. There must be clear and convincing proof of the mutual mistake (*De Leon, 720*).

Note: In case of mutual mistakes, reformation may be ordered at the instance of either parties or his successors in interest; otherwise, it may only be brought by the petition of the injured party or his heirs and assigns (*Art. 1368*).

2. Unilateral mistake and the other party acted fraudulently (*Art. 1362*);
3. Concealment of mistake by other party (*Art. 1363*);
4. Ignorance, lack of skill, negligence of bad faith on the part of the person drafting the instrument (*Art. 1364*);
5. When parties agree upon the mortgage or pledge of a real or personal property, but the instrument states that the property is sold absolutely or with a right of repurchase (*Art. 1365*).

ART. 1366
There shall be no reformation in the following cases:
1. Simple donation *inter vivos* wherein no condition is imposed;
2. Wills;
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.

WHEN THERE CAN BE NO REFORMATION [DWiVoB]

1. Simple donations *inter vivos* wherein no condition is imposed (*Art. 1366, 1*);

   Reason: An action to reform an instrument is in the nature of specific performance and requires a valuable consideration – an element lacking between donor and donee, and between testator and beneficiary (*Tolentino, 556*).

2. Wills (*Art. 1366, 2*);

   Note: Only imperfect or erroneous descriptions of persons or property can be corrected, but the manner in which the testator disposes of his property cannot be changed by a reformation of the instrument (*Tolentino, 556*).

3. When real agreement is void (*Art. 1366, 3*);

   Note: Upon the reformation of an instrument the general rule is that it relates back to and takes effect form the time of its original execution as between the parties.

   Note: If mistake, fraud, inequitable conduct or accident has prevented a meeting of the minds of the parties, the property remedy is not reformation but annulment of the contract (*Art. 1359, par. 2*).

4. When one of the parties has brought an action to enforce the instrument, no subsequent reformation can be asked due to *principle of estoppel* (*Art. 1367*).

CONTRACT OF ADHESION

One in which one of the parties imposes a ready-made from of contract, which the other party may accept or reject, but which the latter cannot modify (*PCIB v CA, 255 SCRA 299*).

NOTE: A contract of adhesion in itself is not an invalid agreement (*Ayala Corp. v Ray Burton Dev. Corp., 294 SCRA 48*).

NOTE: Contracts of adhesion call for greater strictness and vigilance on the part of the courts of justice with a view to protecting the weaker party from abuses and imposition, and prevent their becoming traps for the unwary (*DBP v Perez, GR No. 14854 [11.11.2004]*).

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.

PARTY ENTITLED TO REFORMATION

1. Either of the parties, if the mistake is mutual (*Arts. 1361, 1364, and 1365*);
2. In all other cases, the injured party, under (*Arts. 1362, 1363, 1364, and 1365*);
3. The heirs or successors in interest, in lieu of the party entitled (*Art. 1368*).

NOTE: The effect of reformation is retroactive from the time of the execution of the original instrument (*De Leon, 650*).

ART. 1369
The procedure for the reformation of instruments shall be governed by rules of court to be promulgated by the Supreme Court.

NOTE: All persons interested in the subject matter of litigation, whether it is a legal or an equitable interest should be made parties in suits to reform written instruments, so that the court may settle all of their rights at once and thus, prevent the necessity of a multiplicity of suits. Thus, in an action to reform a deed of sale, all parties claiming an interest in the property or any part thereof purportedly conveyed by the instrument sought to be reformed and whose interests will be affected by the reformation of the instrument are necessary parties to the action (*Toyota Motor Phili. Corp. v CA, 216 SCRA 236*).

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 not 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 the 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 interests.

If the doubts are cast 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.

INTERPRETATION OF CONTRACTS

The determining of the meaning of the terms or words used by the parties in their contract. Determining the intent of the parties is usually what court say it is when they interpret a contract's language in particular cases (*De Leon, 660*).

NOTE: Interpretation of contract involves a question of law since a contract is in the nature of law as between the parties and their successors in interests (*Melliza v City of Iloilo, 23 SCRA 477*).

HOW TO JUDGE INTENTION

Their *contemporaneous and subsequent acts* shall be principally considered without prejudice to the consideration of other factors fixed or determined by the other rules of interpretation mentioned in the Civil Code and Rules of Court (*Jurado, 497; see also Nielsen & Co. v Lepanto Consolidated Mining Co., 18 SCRA 1040*).

NOTE: Documents are interpreted in the precise terms in which they are expressed, but the courts are called upon to admit direct and simultaneous circumstantial evidence necessary for their interpretation with the purpose of making the true intention of the parties prevail (*Aves v Orillenedo, 70 Phil. 262*).

Q: What is the cardinal rule applicable in a case where the terms of a contract are clear and leave no doubt upon the intention of the contracting parties?

A: It is a cardinal rule that if the terms of a contract are clear and leave no doubt as to the intention of the contracting parties, the literal meaning of its stipulation shall control. In the case of *Philippine National Construction Corporation v CA* (*GR No. 159417 [25.01.2007]*), the Court held that the contract between parties is the formal expression of the parties' rights, duties and obligations. It is the best evidence of the intention of the parties. Thus, when the terms of an agreement have been reduced to writing, it is considered as containing all the terms agreed upon and there can be, between the parties and their successors in interest, no evidence of such terms other than the contents of the written agreement. It is further required that the various stipulations of a contract shall be interpreted together, attributing to the doubtful ones that which may result from all of them taken jointly (*Frias v San Diego-Sison, GR No.155223 [03.04.2007]*).

INTERPRETATION OF CONTRACTS

1. If the terms are clear and no doubt upon the intention of the parties, the literal meaning of its stipulation shall control (*Art. 1370, par. 1*);

   Note: The contract is the law between the parties and when the words of the contract are clear and can easily be understood, there is no room for construction (*Olivares & Robles v Sarmiento, GR No. 158384 [12.06.2008]*).

   Note: Whatever is not found in writing must be understood as waived and abandoned (*Del Rosario v Santos, GR No. L-46892 [30.09.81]*).

   Note: A contract is what the law defines it to be, and not what it is called by the contracting parties (*Novesteras v CA, GR No. L-36654 [03.03.87]*).

2. If words are contrary to the intention, the latter shall prevail over the former (*Id., par. 2*);

   Note: When the true intent and agreement of the parties is established, it must be given effect and prevail over the bare words of the written contract (*Tolentino, 559-560*).

3. The contemporaneous and subsequent acts of the parties shall be considered (*Art. 1371*);

   Note: Where the parties themselves have placed an interpretation to their contract or its terms, the court must follow such interpretation as indicating the intention of the parties (*Tolentino, 561-562*).

4. If the terms in a contract are general, they shall not be understood to comprehend things that are distinct and different from those which the parties intended (*Art. 1372*);

   Note: A particular intent will control over a general one that is inconsistent with it (*Tolentino, 562*).

5. If some stipulations admit of several meanings, it shall be understood as bearing that import which is most adequate to render it effectual (*Art. 1373*);

   Note: Where the instrument is susceptible of two interpretations, one which will make it invalid and illegal and another which will make it valid and legal, the latter interpretation should be adopted (*Tolentino, 563*).

6. Various stipulations shall be interpreted together (*Art. 1374*);

   Note: A contract cannot be construed by parts, but its clauses should be interpreted in relation to one another.

The whole contract must be interpreted or read together in order to arrive at its true meaning (*Tolentino, 563*).

Principle of effectiveness in contract interpretation

Where two interpretations of the same contract language are possible, one interpretation having the effect of rendering the contract meaningless while the other would give effect to the contract as a whole, the latter interpretation must be adopted (*PNB v Utility Assurance & Surety, Co., Inc., 177 SCRA 393*).

7. Words with different significations shall be understood in that which is most keeping with the nature and object of the contract (*Art. 1375*);
8. Usage or custom of the place shall be taken in the interpretation of the ambiguities of a contract and shall fill the omissions which are ordinarily established (*Art. 1376*);
9. Interpretation of obscure words or stipulations shall not favor those who caused the obscurity (*Art. 1377*);
10. Rule 123 of the RoC shall likewise be observed in the construction of contracts (*Art. 1379*).

Note: When an instrument consists partly of written words and partly of printed form, and the two are inconsistent, the former controls the latter (*Rule 130, Sec. 15, RoC*).

RULES ON SETTLING DOUBTS IN CONTRACTS

1. Gratuitous contracts – when the doubts refer to its incidental circumstances, the least transmission of rights and interests shall prevail (*Art. 1378*);
2. Onerous contracts – the doubt shall be settled in favor of the greatest reciprocity of interest (*Id.*);
3. Principal object – if the doubts are cast 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 (*Id.*).

RESCISSIBLE	VOIDABLE	UNENFORCEABLE	VOID/INEXISTENT
		As to defect	
Economic damage or lesion to either one of the parties or to 3rd persons; declaration by law;	Incapacity of one of parties to give consent or vitiated consent;	Entered without authority or in excess thereof; non-compliance with Statute of Frauds; incapacity of both parties to give consent;	Illegality (void) or absence of any of essential requisites of a contract (inexistent);
		As to necessity of damage or prejudice	
Suffered by – either one of parties or 3rd person;	As to the other contracting party - not necessary;	Not necessary;	Not necessary;
		As to effect of prescription	
Curable;	Curable;	Not curable;	Not curable;
		As to effect	
Valid & legally enforceable until judicially rescinded;	Valid & legally enforceable until judicially annulled;	Inoperative until ratified; not enforceable in court without proper ratification;	None;
		As to remedy	
Rescission or rescissory action;	Annulment of contract;	Only personal defense;	Declaration of nullity of contract;
		As to nature of action	
Must be a direct action;	Direct action needed;	Direct or collateral action;	Direct or collateral action;
		As to who can file the action	
GR: Contracting party; **XPN**: Defrauded Creditors;	Contracting party;	Contracting party;	Assailed by a contracting party and a third person whose interest is directly affected;
		As to susceptibility of ratification	
Susceptible but not of ratification proper;	Susceptible;	Susceptible;	Not susceptible;
		As to susceptibility of prescription	
Action for rescission prescribes after 4 years.	Action for annulment prescribes after 4 years.	Action for recovery; specific performance or damages prescribes (10 years if based on a written contract; 6 years if unwritten).	Action for declaration of nullity or putting of defense of nullity does not prescribe.

RESCISSIBLE CONTRACTS			
	HOW IS IT CURED	**CURED BY WHOM**	**PERIOD OF CURING**
Those entered by the guardians where the ward suffers lesion of more than ¼ of the value of the things which are objects thereof;	By ratification;	By ward;	Four years from gaining capacity
Those agreed upon in representation of absentees, if the latter suffers lesion by more than ¼ of the value of the things which are subject thereof;		By absentee;	Four years from knowledge of domicile or knowledge of fraudulent contract;
Those undertaken in fraud of creditors when the latter cannot in any manner claim what are due them;		Creditor;	Four years from knowledge of fraudulent act;
Payments made in a state of insolvency for obligations whose fulfillment the debtor could not be compelled at the time they were effected;		Creditor;	Four years from knowledge of fraudulent contract;
Those which refer to the things under litigation if they have been entered into by the defendant without the knowledge and approval of the litigants and the court;		Party litigant;	Within four years from knowledge of fraudulent contract.
VOIDABLE CONTRACTS			
Those where one of the parties is incapable of giving consent to the contract;	By ratification;	The party who is incapacitated;	Four years from gaining or regaining capacity to act;
Vitiation of consent;		The party whose consent was vitiated;	Four years from cessation of force, intimidation or undue influence; four years from discovery of fraud or mistake;
UNENFORCEABLE CONTRACTS			
Contract entered into in the name of the owner without authority or	By ratification;	Person in whose name the contract is entered into;	

in excess of authority;		
Contract entered which does not comply with the Statues of Fraud;	By acknowledgement or by performance of oral contract or by failure to object seasonably to presentation of oral evidence, or by acceptance of benefits under the contract;	By party against whom the contract is being enforced;
Both contracting parties do not possess required legal capacity.	By confirmation.	By parents or guardians of both contracting parties after regaining capacity to act.

CHAPTER 6
RESCISSIBLE CONTRACTS

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

ART. 1381
The following contracts are rescissible:
1. **Those which are entered into by guardians whenever the wards whom they represent suffer lesion by more than one-fourth of the value of the things which are the object thereof;**
2. **Those agreed upon in representation of absentees, if the latter suffer the lesion stated in the preceding number;**
3. **Those undertaken in fraud of creditors when the latter cannot in any 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.**

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.

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

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

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.

RESCISSIBLE CONTRACTS

These are contracts which are valid but are defective because of injury or damage to either of the contracting parties or to third persons, as a consequence of which it may be rescinded by means of proper action for rescission (*Jurado, 502-503*).

CONCEPT OF RESCISSION

Rescission is a remedy granted by law to the contracting parties and even to third persons, to secure the reparation of damages caused to them by a contract, even if this should be valid, by means of the restoration of things to their condition at the moment prior to the celebration of the contract (*Tolentino, 576*).

NATURE OF AN ACTION FOR RESCISSION

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. 1383*). Hence, it must be availed of as the last resort, availed only after all legal remedies have been exhausted and proven futile (*Khe Hong Cheng v CA, GR No. 144169 [28.03.2001]*).

RESOLUTION FOR BREACH OF STIPULATION (Art. 1191)	RESCISSION BY REASON OF LESION OR DAMAGE (Arts. 1380-1381)
As to nature of action	
Principal action; retaliatory action against the other party;	Subsidiary action and involves a partial resolution;
As to basis	
Based on breach of trust;	Based on lesion or economic prejudice, rendering the contract rescissible by law; NOTE: Not all economic prejudices are recognized by law.
As to requirement of mutual restitution	
Requires mutual restitution as governed by Art. 1191;	Requires mutual restitution as governed by Art. 1381;
As to effect	
Termination of the obligation and release of the parties from further obligations from each other;	Abrogation of the contract from the beginning and to restore the parties to their relative positions as if no contract has been made; To declare the contract void at its inception and to put an end to it though it never was;
As to party who may institute action	
May be demanded only by a party to the contract;	May be demanded by a third person prejudiced in the contract;
As to power of the courts	
May be denied by court when there is sufficient reason to	Extension of time does not affect the right to ask for rescission;

justify the extension of time;	
as to causes	
Non-performance is the only ground for the right to rescission;	Various reasons of equity are grounds for rescission;
As to contracts which may be rescinded or resolved	
Applies only to reciprocal obligations where only party has failed to comply with what is incumbent upon him.	Applies to both reciprocal or unilateral obligations and whether the contract has been fully fulfilled or not.

(Congregation of the Religious of the Virgin Mary v Orola, GR No. 169790 [30.04.2008])

NOTE: While Art. 1191 uses the term "rescission," the original term which was used in the old Civil Code, from which the article was based, was "resolution" (*Ong v CA, GR No. 97349 [06.06.99]*).

CHARACTERISTICS OF RESCISSIBLE CONTRACTS

1. It has all the elements of a valid contract;
2. It has a defect consisting of an injury (generally in the form of economic damage or lesion, fraud, and alienation of the property) to one of the contracting parties or to a third person;
3. It is valid and effective until rescinded;
4. It can be attacked only directly;
5. It is susceptible of convalidation only by prescription (*Jurado, 503*).

REQUISITES

1. Action must be brought within 4 years (*Art. 1389*);
2. Things which are the object of the contract must not have passed legally to the possession of a third person acting in good faith (*Art. 1385*);
3. Party asking for rescission must have no other legal means to obtain reparation for the damages suffered by him (*Art. 1383*);
4. Contract must be rescissible under Arts. 1381-1382;
5. Person demanding rescission must be able to return whatever he may be obliged to restore if rescission is granted (*Art. 1385*).

CONTRACTS THAT ARE RESCISSIBLE [GALFIS]

1. Due to lesion;

Lesion

The injury which one of the parties suffers by virtue of a contract which is disadvantageous for him. To give rise to rescission, the lesion must be known or could have been known at the time of the making of the contract (*Tolentino, 574*).

a. Those entered into by guardians where the ward suffers lesion of more than ¼ of the value of the things which are objects thereof;

Note: Under the Rules of Court, a judicial guardian entering into a contract with respect to the property of his ward must ordinarily secure the approval of a competent court (*see Rules 95-96 thereof*).

Note: If a guardian sells, mortgages or otherwise encumbers real property belonging to his ward *without judicial approval* (*Art. 1403, 1 and Art. 1317*), the contract is unenforceable, and not rescissible even if the latter suffers lesion or damage of more than one-fourth of the value of the property (*Jurado, 506*).

Note: If the guardian enters into a contract falling *within the scope of his powers as guardian* of the person and property, or only of the property, of his ward, such as when the contract involves acts of administration, express judicial approval is not necessary, in which case the contract is rescissible if the latter suffers the lesion or damage mentioned in No. 1 of Art. 1381 of the Code (*Id.*).

b. Those agreed upon in representation of absentees, if the latter suffer lesion by more than ¼ of the value of the things which are subject thereof.

Note: The abovementioned contracts are not rescissible if they have been approved by the courts (*see Art. 1386*).

Requisites

1. The contract must have been entered into by a guardian in behalf of his ward or by a legal representative in behalf of an absentee (*Art. 1381, Nos. 1 & 2*);
2. The ward or absentee must have suffered lesion of more than one-fourth of the value of the property which is the object of the contract (*Id.*);
3. The contract must have been entered into without judicial approval (*Art. 1386*);
4. There must be no other legal means for obtaining reparation for the lesion (*Art. 1383*);
5. The person bringing the action must be able to return whatever he may be obliged to restore (*Art. 1385, par. 1*);
6. The object of the contract must not be legally in the possession of a third person who did not act in bad faith (*Id., par. 2*).

NOTE: If the object of the contract is legally in the possession of a third person who did not act in bad faith, the remedy available to the person suffering the lesion is *indemnification for damages* and not rescission (*Id., par. 3*).

2. Due to fraud.
   a. Those which refer to things under litigation if they have been entered into by the defendant without the knowledge and approval of the litigants and the court;
   b. Those undertaken in fraud of creditors when the latter cannot in any manner claim what are due them;

Note: Complements Art. 1177 which states that one of the remedies available to the creditor after he has exhausted all the property in possession of the debtor is to impugn the acts which the latter may have done to defraud him (*Jurado, 508*).

Note: If the object of the contract is legally in the possession of a third person who did not act in bad faith, the remedy available to the creditor is to *proceed against the person causing the loss for damages* (*Art. 1385, par. 3*).

Requisites

1. There must be fraud, or at least, the intent to commit fraud to the prejudice of the creditor seeking rescission;
2. The creditor cannot in any legal manner collect his credit (subsidiary character of rescission);

3. The object of the contract must not be legally in possession of a third person in good faith.

THINGS UNDER LITIGATION	IN FRAUD OF CREDITORS
The purpose is to secure the possible effectivity of a claim;	The purpose is to guarantee an existing credit;
There is a real right involved;	There is a personal right, both of which deserve the protection of the law;
The person who can avail of the remedy of rescission is a stranger to the contract	

Jurado, 509

c. Payments made in a state of insolvency for obligations whose fulfillment the debtor could not be compelled at the time they were effected.

Insolvency

Refers to the financial situation of the debtor by virtue of which it is impossible for him to fulfill his obligations (*Id., 510*)

Note: A judicial declaration of insolvency is not, therefore, necessary (*see Sec. 70, Insolvency law, Act. 1956*).

Requisites

1. It must have been made in a state of insolvency;
2. The obligation must have been one which the debtor could not be compelled to pay at the time such payment was effected (*Jurado, 509*).

Q: *A is indebted to B for P10,000 and to C for P5,000. Let us say that the obligation in favor of C is subject to a suspensive period. While in a state of insolvency, A pays his obligation to C before the expiration of the term or period. Can B rescind the payment?*

A: Under Art. 1382, there is no question that the payment is rescissible, but then this conclusion would be in direct conflict with the provision of No. 1 of Art 1198 of the Code under which A can be compelled by C to pay the obligation even before the expiration of the stipulated term or period since by his insolvency he has already lost his right to the benefit of such term or period. According to Manresa, however, the conflict can easily be resolved by considering the priority of dates between the two debts. If the obligation with a period became due before the obligation to the creditor seeking the rescission became due, then the latter cannot rescind the payment even if such payment was effected before the expiration of the period; but if the obligation with a period became due after the obligation to the creditor seeking the rescission became due, then the latter can rescind the payment (*Id., 510*).

3. All other contracts specially declared by law to be subject to rescission (*see Arts. 1381-1382*).
   a. Partition of inheritance where an heir suffers lesion of at least ¼ of the share to which he is entitled (*see Art. 1098*);
   b. Deterioration of the thing through the fault of the debtor, if the creditor chooses to rescind (*see Art. 1189, par. 4*);
   c. Right of unpaid seller to rescind (*see Art. 1526[4]*);
   d. Deterioration of the object of the sale (*see Art. 1538*);
   e. Sale of a real estate with an statement of its area, at the rate of a certain price for a unit of measure or number and the vendor failed to deliver the area stated, the vendee may ask for rescission of the contract if the lack of area is not less than 1/10 of that stated (*see Art. 1539*);
   f. The vendee does not accede to the failure to deliver what has been stipulated (*see Art. 1542*);
   g. When through eviction, the vendee loses a part of the thing sold of such importance, in relation to the whole, that he would not have bought it without said part (*see Art. 1556*);
   h. If immovable sold is encumbered with any non-apparent burden or servitude of such nature that it cannot be presumed that the vendee could not have acquired it had he been aware thereof, the vendee may ask for rescission (*see Art. 1560*);
   i. Election of the vendee to withdraw from the contract in the cases under Arts. 1561, 1562, 1564, 1565 & 1566 (*see Art. 1567*);
   j. Rescission by the aggrieved party in a contract of lease when the other party does not comply with Arts. 1656 & 1657 (*see Art. 1659*).

***ACCIÓN PAULIANA* (In Re: Fraud of Creditors)**

It presupposes a judgment and unsatisfied execution which cannot exist when the debt is not yet demandable at the time the rescissory action is brought (*Tolentino, 576*).

Creditors have the right to impugn the acts which the debtor may have done to defraud them.

It refers to the right available to the creditor by virtue of which he can secure the rescission of any act of the debtor which is in fraud and to the prejudice of his rights as a creditor.

NOTE: All acts of the debtor which reduce his patrimony in fraud of his creditors, whether by gratuitous or onerous title, can be revoked by this action, but payment of pre-existing obligations which are already due, whether natural or civil, cannot be impugned by this action.

REQUISITES OF *ACCIÓN PAULIANA*

1. Creditor has a credit prior to the alienation by the debtor, although demandable later;
2. Debtor has made a subsequent contract conveying a patrimonial benefit to a third person;
3. Creditor has no other remedy but to rescind the debtor's contract to the third person,
4. A third person who received the property, if it is by onerous title, is an accomplice in the fraud;
5. Act being impugned is fraudulent (*Jurado, 508-509*).

DO ALL CREDITORS BENEFIT FROM THE RESCISSION OF THE CONTRACT?

General Rule

The rescission should benefit only the creditor who obtained the rescission, because the rescission is to repair the injury caused to him by the fraudulent alienation. If a balance is left after satisfying the claim of the creditor who brought the action, other creditors who are qualified to bring an *acción pauliana* should be given the benefit of rescission, instead of requiring them to bring other rescissory actions (*Tolentino, 583*).

Exception

Creditors who only became such after the fraudulent alienation cannot benefit from the rescission (*Id.*).

NOTE: While it is necessary that the credit of the plaintiff in the accion pauliana must exist prior to the fraudulent alienation, the date of the judgment enforcing it is immaterial. Even if the judgment be subsequent to the alienation, it is merely declaratory, with retroactive effect to the date when the credit was constituted (*Siguan v Lim, GR No. 134685 [19.11.99]*).

PRESUMPTIONS OF FRAUD

1. Alienation of property by gratuitous title without reserving sufficient property to pay debts prior to donation (*Art. 1387, par. 1*);
2. Alienation by onerous title if made by a debtor against whom some judgment has been rendered in any instance or some writ of attachment has been issued (*Art. 1387, par. 2*).

BADGES OF FRAUD

1. The fact of inadequate or fictitious cause or consideration of the conveyance;
2. Transfer by a debtor after suit has begun and while it is pending against him;
3. Sale on credit by an insolvent debtor;
4. Evidence of large indebtedness or complete insolvency;
5. Transfer is made between father and son, where there are present some or any of the above circumstances;
6. Failure of the vendee to take exclusive possession of the property;
7. Transfer of all, or nearly all, his property by a debtor when he is financially embarrassed or insolvent (*Oria v McMicking, GR No. L-7003 [18.01.1912]*);
8. Gross disparity between the price and the value of the property (*Asia Banking Corp. v Jose, GR No. L-28946 [31.03.1928]*).

TEST OF FRAUDULENT CONVEYANCE

Whether or not it prejudices the rights of the creditors. The fraud that justifies the accion pauliana is not characterized by the intention to injure the creditor but by the knowledge that damage would be inflicted (*Tolentino, 580*).

MUTUAL RESTITUTION

Rescission of contract creates an obligation of *mutual restitution* of the objects of the contract, their fruits, and the price with interest.

Rescission is possible only when the person demanding rescission can return whatever he may be obliged to restore. A court of equity will not rescind a contract unless there is restitution, that is, the parties are restored to the status *quo ante* (*see Art. 1385*).

WHEN MUTUAL RESTITUTION IS NOT APPLICABLE

1. Creditor did not receive anything from contract;
2. Thing already in possession of third persons in good faith; subject to indemnity only, if there are two or more alienations – liability of first infractor.

PARTIES WHO MAY INSTITUTE ACTION FOR RESCISSION

1. The creditor who is defrauded in rescissory actions on ground of fraud, and other person authorized to exercise the same in other rescissory actions;
2. Their representatives;
3. Their heirs;
4. Their creditors by virtue of subrogatory action defined in Art. 1177 (*Jurado, 511*).

Q: Reyes (seller) and Lim (buyer) entered into a contract to sell a parcel of land. Harrison Lumber occupied the property as lessee. Reyes offered to return the P10 million down payment to Lim because Reyes was having problems in removing the lessee from the property. Lim rejected Reyes' offer. Lim learned that Reyes had already sold the property to another. Both Reyes and Lim are now seeking rescission of the contract to sell. However, Reyes does not want to deposit the 10M to the court because according to him, he has the "right to use, possess and enjoy" of the money as its owner before the contract to sell is rescinded. Is Reyes' contention correct?

A: No. There is also no plausible or justifiable reason for Reyes to object to the deposit of the P10 million down payment in court. The contract to sell can no longer be enforced because Reyes himself subsequently sold the property. Both Lim and Reyes are seeking for rescission of the contract. By seeking rescission, a seller necessarily offers to return what he has received from the buyer. Such a seller may not take back his offer if the court deems it equitable, to prevent unjust enrichment and ensure restitution, to put the money in judicial deposit.

NOTE: In this case, it was just, equitable and proper for the trial court to order the deposit of the down payment to prevent unjust enrichment by Reyes at the expense of Lim. Depositing the down payment in court ensure its restitution to its rightful owner. Lim, on the other hand, has nothing to refund, as he has not received anything under the contract to sell (*Reyes v Lim, Keng and Harrison Lumber, Inc., GR No. 134241 [11.08.2003]*).

Q: Goldenrod offered to buy a mortgaged property owned by Barreto Realty to which it paid an earnest money amounting to P1 million. It was agreed upon that Goldenrod would pay the outstanding obligations of Barreto Realty with UCPB. However, Goldenrod did not pay UCPB because of the banks denial of its request for the extension to pay the obligation. Thereafter, Goldenrod, through its brocker, informed Barreto Realty that it could not go through with the purchase of the property and also demanded the refund of the earnest money it paid. In the absence of a specific stipulation, may the seller of real estate unilaterally rescind the contract and as a consequence keep the earnest money to answer for damages in the event the sale fails due to the fault of the prospective buyer?

A: No. Goldenrod and Barretto Realty did not intend that the earnest money or advance payment would be forfeited when the buyer should fail to pay the balance of the price, especially in the absence of a clear and express agreement thereon. Moreover, Goldenrod resorted to extrajudicial rescission of its agreement with Barretto Realty. Under Article 1385, rescission creates the obligation to return the things which were the object of the contract together with their fruits and interest. Therefore, by virtue of the extrajudicial rescission of the contract to sell by Goldenrod without opposition from Barretto Realty, which in turn, sold the property to other persons, Barretto Realty, had the obligation to return the earnest money which formed part of the purchase price plus legal interest from the date it received notice of rescission. It would be most inequitable if Barretto Realty would be allowed to retain the money at the same time appropriate the proceeds of the second sale made to another (*Goldenrod, Inc. v CA, GR No. 126812 [24.11.98]*).

EFFECTS OF RESCISSION

1. **As to the parties** – mutual restitution of the objects of the contract, together with their fruits and the price with its interest (*Art. 1385*).

   Note: This is applicable only to rescissory actions on the ground of lesion and not to rescissory actions on the ground of fraud (*Jurado, 513*).

2. **As to third persons**
   a. *Bad faith or not legally in possession* – obliged to return, and the creditor prejudiced can run after the third person in possession of the thing;
   b. *Legally in possession and in good faith* – no rescission; however, indemnity for damages may be demanded from the person causing the loss (*Art. 1388*).

Note: The moment the property has legally passed to an innocent purchaser for value, rescission is not allowed anymore (*Honrado v Marcayda, GR No. 83086 [19.06.91]*).

PRESCRIPTIVE PERIOD FOR ACTION FOR RESCISSION

1. Under Art. 1381, No. 1 – within 4 years from the time of the termination of the incapacity of the ward;
2. Under Art. 1381, No. 2 – within 4 years from the time the domicile of the absentee is known;
3. Under Art. 1381, Nos. 3 & 4 and Art. 1382 – within 4 years from the time of the discovery of fraud.

NOTE: In certain cases of contracts of sale which are specially declared by law to be rescissible, however, the prescriptive period for the commencement of the action is 6 months or even 40 days, counted from the day of delivery (*see Arts. 1543, 1571 & 1577*).

CHAPTER 7
VOIDABLE CONTRACTS

VOIDABLE CONTRACTS

Those in which all of the essential elements for validity are present, although the element of consent is vitiated either by lack of legal capacity of one of the contracting parties, or by mistake, violence, intimidation, undue influence, or fraud. They are binding until they are annulled by a competent court (*Jurado, 531*).

CHARACTERISTICS [CBCP]

1. Their defect consists in the *vitiation of consent* of one of the contracting parties;
2. They are *binding until they are annulled* by a competent court;
3. They are susceptible of *convalidation by ratification* or by prescription;
4. The defect or voidable character *cannot be invoked by a 3rd person* (*Id., 531-532*).

VOIDABLE	RESCISSIBLE
The defect is intrinsic because it consists of a vice which vitiates consent;	The defect is external because it consists of damage or prejudice either to one of the contracting parties or to a third person;
The contract is voidable even if there is no damage or prejudice;	The contract is not rescissible if there is no damage or prejudice;
The annulability of the contract is based on the law;	The rescissibility of the contract is based on equity;
Annulment is both a remedy and sanction;	Rescission is a remedy;
Predominated by public interest;	Predominated by private interest;
Susceptible of ratification;	Not susceptible of ratification;
May be invoked only by a contracting party.	Ay be invoked either by a contracting party or by a third person who is prejudiced.

Id., 532

ART. 1390

The following contracts are voidable or annullable, 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.

NOTE: In voidable contract all of the essential requisites for validity are present, although the requisite of consent is defective. If consent is absolutely lacking or simulated, the contract is inexistent, not voidable (*see Arts. 1345 & 1409, no. 2*).

NOTE: Damage between the parties is not essential. Whether a contract which the law considers as voidable has already been consummated or is merely executory is immaterial; it can always be annulled by a proper action in court (*Jurado, 533*).

KINDS OF VOIDABLE CONTRACTS

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

"PROPER ACTION IN COURT"

The validity of a voidable contract may only be attacked either by way of a *direct action* or by way of a *defense via a counterclaim*, and not as a special or affirmative defense (*Id.*).

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.

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.

MODES OF EXTINGUISHMENT

1. **Prescription** (*Art. 1391*);
   a. **Incapacitated persons** – within 4 years from the time guardianship ceases;
   b. **Consent is vitiated by violence, intimidation or undue influence** – within 4 years from the time such violence, intimidation or undue influence ceases;
   c. **Vitiated by mistake or fraud** – within 4 years from the time of the discovery of such mistake or fraud.

Note: The discovery of fraud must be reckoned from the time the document was registered in the office of the register of deeds. Registration constitutes constructive notice to the whole world (*Carantes v CA, GR No. L-33350 [25.04.97]*).

2. **Ratification** - the act or means by virtue of which efficacy is given to a contract which suffers from a vice of curable nullity (*Art. 1392*);

Requisites [TEK D]
1. The contract should be tainted with a vice which is susceptible of being cured;
2. The confirmation should be effected by the person who is entitled to do so under the law;
3. It should be effected with knowledge of the vice or defect of the contract;
4. The cause of the nullity or defect should have already disappeared (*Jurado, 547*).

Forms of ratification
1. **Express ratification** - the desire of the innocent party to convalidate the contract, or his waiver or renunciation of his right to annul the contract is clearly manifested verbally or formally in writing;
2. **Implied ratification** – it is the 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 (*Id., 548*).

Who may ratify
1. Entered into by incapacitated persons;
   a. Guardian;
   b. Injured party himself, provided he is already capacitated.
2. Voidable due to mistake;
   a. Party whose consent was vitiated.

Effects of ratification
1. Extinguishes the action for annulment of a voidable contract (*Art. 1392*);
2. Cleanses the contract of its defects from the moment it was constituted (*Art. 1396*).

Note: The right to ratify may be transmitted to the heirs of the party entitled to such right.

Retroactive effect of ratification
GE: Retroacts to the time of perfection of contract.
Exp: When the rights of innocent persons will be prejudiced.

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

3. **Loss of the thing** which is the object of the contract through fraud or fault of the person who is entitled to institute the action (*Art. 1401*).

CONFIRMATION	RECOGNITION
It is an act by which a voidable contract is cured of its vice or defect.	It is an act whereby a defect of proof is cured such as when an oral contract is put into writing or when a private instrument is converted into a public instrument/

Luna v Linatoc, GR No. L-48403 [28.10.42]

Q: Mrs. S borrowed P20,000.00 from PG. She and her 19-year old son, Mario, signed the promissory note for the loan, which note did not say anything about the capacity of the signers. Mrs. S made partial payments little by little. After seven (7) years, she died leaving a balance of P10,000.00 on the note. PG demanded payment from Mario who refused to pay. When sued for the amount, Mario raised the defense: that he signed the note when he was still a minor. Should the defense be sustained? Why?

A: The defense should not be sustained. Mario cannot be bound by his signature in the promissory note. It must be observed that the promissory note does not say anything about the capacity of the signers. In other words, there is no active fraud or misrepresentation; there is merely silence or constructive fraud or misrepresentation. It would have been different if the note says that Mario is of age. The principle of estoppel would then apply. Mario would not be allowed to invoke the defense of minority. The promissory note would then have all the effects of a perfectly valid note. Hence, as far as Mario's share in the obligation is concerned, the promissory note is voidable because of minority or non-age. He cannot, however, be absolved entirely from monetary responsibility. Under the Civil Code, even if his written contract is voidable because of minority he shall make restitution to the extent that he may have been benefited by the money received by him (*Art. 1399*). True, more than four years have already elapsed from the time that Mario had attained the age of 21. Apparently, his right to interpose the defense has already prescribed. It has been held, however, that where minority is used as a defense and no positive relief is prayed for, the four-year period (*Art. 1391*) does not apply. Here, Mario is merely interposing his minority as an excuse from liability (*Braganza v Villa Abrille, 105 Phil. 456*)

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 allege 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.

WHO MAY INSTITUTE ACTION FOR ANNULMENT
General Rule

By all who are thereby obliged principally or subsidiarily. However, persons who are capable cannot allege the incapacity of those with whom they contracted nor can those who exerted intimidation, violation, or undue influence, or employed fraud, or caused mistake base their action upon these flaws of the contract (*Jurado, 550-551*).

Requisites
1. Plaintiff must have interest in the contract;
2. The victim and not the party responsible for the vice or defect must assert the same (*Id., 550*).

Exception

If a 3rd person is prejudiced in his rights with respect to one of the contracting parties, and can show detriment which would positively result to him from the contract in which he has no intervention (*Teves v People's Homesite & Housing Corp., GR No. 21498 [27.06.68]*).

Q: X, of age, entered into a contract with Y, a minor. X knew and the contract specifically stated the age of Y. May X successfully demand annulment of the contract? (1971 Bar Question)

A: X cannot successfully demand annulment of the contract. True, said contract is voidable because of the fact that at the time of the celebration of the contract, Y, the other contracting party, was a minor, and such minority was known to X (*Arts. 1327, no. 1, 1390*). However, the law is categorical with regard to who may institute the action for annulment of the contract. In addition to the requirement that the action may be instituted only by the party who has an

interest in the contract in the sense that he is obliged thereby either principally or subsidiarily, Art. 1397 of the Civil Code further requires that in case of contracts voidable by reason of incapacity of one of the contracting parties, the party who has capacity cannot allege the incapacity of the party with whom he contracted. Because of this additional requisite, it is clear that Y and not X can institute the action for annulment.

Q: Pedro sold a piece of land to his nephew Quintin, a minor. One month later, Pedro died. Pedro's heirs then brought an action to annul the sale on the ground that Quintin was a minor and therefore without legal capacity to contract. If you are the judge, would you annul the sale? (1974 Bar Question)

A: I will not annul the sale. The Civil Code in Art. 1397 is explicit. Persons who are capable cannot allege the incapacity of those with whom they contracted. True, Pedro who sold the land to the minor Quintin is alreadydead, and it is his heirs who are now assailing the validity of the sale. However, under the principle of relativity of contracts recognized in Art. 1311 of the Civil Code, the contract takes effect not only between the contracting parties, but also between their assigns and heirs. Furthermore, the 2nd requisite (The victim or the incapacitated person and not the party responsible for the vice or defect must assert the same) of annulment is lacking.

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.

EFFECTS OF ANNULMENT

1. **If contract has not yet been consummated** – parties shall be released from the obligations arising therefrom;
2. **If contract has already been consummated** – rules provided in Art. 1398-1402 shall govern (*Jurado, 552*).

OBLIGATION OF MUTUAL RESTITUTION

1. **Obligation to give** – the parties shall *restore to each other things which have been the subject matter of the contract* with fruits and the price with interest; except in cases provided by law (*Art. 1398*).

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

   Note: The profit or benefit received by the incapacitated person, which obliges him to make restitution, is not necessarily a material and permanent increase in fortune, but any prudent and beneficial use by the incapacitated of the thing he received for his necessities, social disposition or discharge of his duties to others (*Tolentino, 611*).

   Note: It is presumed in the absence of proof that no such benefit has accrued to the incapacitated person (*Jurado, 553*).

   Note: Art. 1399 cannot be applied to those cases where the incapacitated person can still return the thing which he has received (*Id., 554*).

2. **Obligation to do or not to do** – there will be an *apportionment of damages based on the value of such prestation* with corresponding *interests* (*Id.*).

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.

EFFECT OF FAILURE TO MAKE RESTITUTION

1. **Due to fault of defendant** – he shall return the fruits received and the value of the thing at the time of loss, with interest form the same date;
2. **Due to fault or fraud of defendant** – the action for annulment shall be extinguished;
3. Due to fault of the incapacitated persons – whether the loss occurred during the plaintiff's incapacity or after he has acquired capacity, the action for annulment would still be extinguished in accordance with Art. 1401, par. 1;
4. **Due to fortuitous event** – contract can still be annulled, but the defendant can be held liable only for the value of the thing at the time of loss without interest thereon (*Jurado, 555-557*).

CHAPTER 8
UNENFORCEABLE CONTRACTS

UNENFORCEABLE CONTRACTS

Those which cannot be enforced by a proper action in court, unless they are ratified, because:

1. They are entered into without or in excess of authority (*Art. 1403, 1; Art. 1317*);
2. They do not comply with the statute of frauds (*Art. 1403, 2*);
3. Both of the contracting parties do not possess the required legal capacity (*Art. 1403, 3*).

CHARACTERISTICS

1. Cannot be enforced by a proper action in court (*Art. 1403*);
2. Susceptible of ratification (*Arts. 1403, 1405, 1407, 1371*);
3. Cannot be assailed by third persons (*Art. Art. 1408*).

NOTE: An unenforceable contract is valid although it produces no legal effect.

ART. 1403

The following contracts are unenforceable, unless they are

ratified:

1. **Those entered into in the name of another person by one who has been given no authority or legal representation, or who has acted beyond his powers;**
2. **Those that do not comply with the Statute of Frauds as set forth in this number. In the following cases an agreement hereafter made shall be unenforceable by action, unless the same, or some note or memorandum thereof, be in writing, and subscribed by the party charged, or by his agent; evidence, therefore, of the agreement cannot be received without the writing, or a secondary evidence of its contents:**
    a. **An agreement that by its terms is not to be performed within a year from the making thereof;**
    b. **A special promise to answer for the debt, default, or miscarriage of another;**
    c. **An agreement made in consideration of marriage, other than a mutual promise to marry;**
    d. **An agreement for the sale of goods, chattels or things in action, at a price not less than Five hundred pesos, unless the buyer accept and receive part of such goods and chattels, or the evidences, or some of them, of such things in action, or pay at the time some part of the purchase money, but when a sale is made by auction and entry is made by the auctioneer in his sales book, at the time of the sale, of the amount and kind of property sold, terms of sale, price, names of the purchasers and person on whose account the sale is made, it is a sufficient memorandum;**
    e. **An agreement 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.**

PRINCIPLES UNDER CONTRACTS WITHOUT OR IN EXCESS OF AUTHORITY

- No one may contract in the name of another without being authorized by the latter or unless he has a right to represent him. If he is duly authorized, he must act within the scope of his powers (*Arts. 1317 & 1881*);
- 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, is unenforceable (*Arts. 1403, 1; Art. 1317*). This principle is reiterated in the law on agency (*see Art. 1898*);
- Such contract may be ratified, expressly or impliedly, by the person in whose behalf it has been executed, before it is revoked by the other contracting party (*Art. 1317*).

CONFIRMATION/RATIFICATION	RECOGNITION
Confirmation tends to cure a vice of nullity, and ratification is for the purpose of giving authority to a person who previously acted in the name of another without authority	Merely to cure a defect of proof. In recognition, there is no vice to be remedied such as fraud, violence or mistake, so that the case is distinguished from confirmation. The person acting on behalf of another is duly authorized to do so.

Luna v Linatoc, 74 Phil. 15

STATUTES OF FRAUD

The term "Statute of Frauds" is *descriptive of statutes which require certain classes of contracts to be in writing*. It requires certain contracts enumerated therein *to be evidenced by some note or memorandum subscribed by the party charged or by his agent in order to be enforceable.* The Statute does not deprive the parties of the right to contract with respect to the matters therein involved, but merely regulates the formalities of the contract necessary to render it enforceable. Evidence of the agreement cannot be received without the writing or a secondary evidence of its contents (*Swedish Match, AB v CA, GR No. 128120 [20.10.2004]*).

NOTE: The Statute of Frauds *applies only to executory contracts, not to those that are partially or completely fulfilled*. Where a contract of sale is alleged to be consummated, it matters not that neither the receipt for the consideration nor the sale itself was in writing. Oral evidence of the alleged consummated sale is not forbidden by the Statute of Frauds and may not be excluded in court (*Victoriano v CA, GR No. 87550 [11.02.91]*).

PURPOSE OF STATUTES OF FRAUD

To *prevent fraud and perjury in the enforcement of obligations* depending for their evidence on the unassisted memory of witnesses, by *requiring certain enumerated contracts and transactions to be evidenced by a writing signed by the party* to be charged (*Swedish Match, AB v CA, GR No. 128120 [20.10.2004]*)

NOTE: The Statute of Frauds simply *provides the method by which the contracts enumerated therein may be proved*. It *does not declare the said contracts are invalid because they are not reduced to writing*. A contract exists and is valid even though it is not clothed with the necessary form (*Jurado, 563*).

CONTRACTS OR AGREEMENTS COVERED BY THE STATUTES OF FRAUD [1PC SaLReRe]

1. An agreement that by its terms is not to be performed within **1** year from the making thereof;

   Note: Only full or complete performance by one party within a year from the execution thereof will take the case out of the Statute of Frauds (*Jurado, 563*).

2. A special promise to answer for the debt, default or miscarriage of another;

   Note: If the promise is an original one or independent one, that is, the promisor becomes thereby primarily liable for the payment of the debt, the promise is not within the Statutes. But on the other hand, if the promise is collateral to the agreement of another, the promissory must be in writing (*Reiss v Memjie, GR No. 5447 [01.03.1910]*).

3. An agreement made in consideration of marriage, other than a mutual promise to marry (*e.g.,* pre-nuptial agreement, marriage settlements, and donation *propter nuptias*);

   Note: When the marriage is a mere incident, and the end to be attained by the agreement, the contract is not in consideration of the marriage, and oral evidence can prove the agreement (*Tolentino, 622*).

4. An agreement for the sale of goods, chattels or things in action, at a price not less than 500 pesos, unless the buyer accepts and receives part of such goods and chattels, or the evidences, or some of them, of such things in action, or pay at the time some part of the purchase money; but when a sale is made by an 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;

   Note: Where there is a purchase of a number of articles which separately do not have a price of P500 each but has

an aggregate sum exceeding P500, the statute is only applicable if the transaction is inseparable (*Tolentino, 623*).

5. An agreement for the leasing for a longer period than one year;
6. An agreement for the sale of real property or of an interest therein;

   Note: The application of Art. 1403, 2(e) presupposes the existence of a perfected, albeit unwritten, contract of sale. It is thus evident that the statutes of fraud does not contemplate cases involving a right of first refusal, and need not to be written to be enforceable and may be proven by oral evidence (*Rosencor Dev. Corp. v Inquing, GR No. 140479 [08.03.2001]*).

7. A representation as to the credit of a third person

   Note: This serves as the basis for an action for damages against the party who made the representation, if it turns out to be false or incorrect.

NOTE: The enumeration is exclusive (*Pineda, 638*).

PRINCIPLES GOVERNING STATUTES OF FRAUD

- It only applies to executory contracts and not partially or completely executed (*Almirol & Carino v Monserrat, 48 Phil. 67*);
- It cannot apply if the action is neither for damages because of violation of an agreement nor for the specific performance of said agreement (*Lim v Lim, 10 Phil. 635*);
- It is exclusive as it applies only to the agreements or contracts enumerated in Art. 1403 (*Quintos v Morata, 54 Phil. 481*);
- The defense of Statute of Frauds may be waived (*see Art. 1405; Conclu v Araneta & Guanko, 15 Phil 387*);
- It is a personal defense; it cannot be assailed by third persons (*Art. 1403; Moore v Crawford, 130 US 122*);
- Contracts infringing the Statute of Frauds are not void; they are merely unenforceable (*Art. 1403*);
- It is a Rule of Exclusion as it excludes oral testimony (*Paras, 791*);
- It does not determine the credibility or weight of evidence. It merely concerns itself with the admissibility (*Id.*);
- It does not apply if the claim is that the contract does not express the true agreement of the parties (*Cayugan v Santos, 34 Phil. 100*).

Q: Cenido, as an heir of Aparato and claiming to be the owner of a house and lot, filed a complaint for ejectment against spouses Apacionado. On the other hand, spouses Apacionado allege that they are the owners which are unregistered purchased by them from its previous owner, Aparato. Their claim is anchored on a one-page typewritten document entitled "Pagpapatunay," executed by Aparato. Is the "Pagpapatunay" entered into by Bonifacio and spouse Apacionado valid and enforceable?

A: Yes, it is valid and enforceable. Generally, contracts are obligatory, in whatever form such contracts may have been entered into, provided all the essential requisites for their validity are present. When, however, the law requires that a contract be in some form for it to be valid or enforceable, that requirement must be complied with. The sale of real property should be in writing and subscribed by the party charged for it to be enforceable. The "*Pagpapatunay*" is in writing and subscribed by Aparato, hence, it is enforceable under the Statute of Frauds. Not having been subscribed and sworn to before a notary public, however, the "*Pagpapatunay*" is not a public document, and therefore does not comply with par. 1, Art. 1358. Moreover, the requirement of a public document in Article 1358 is not for the validity of the instrument but for its efficacy. Although a conveyance of land is not made in a public document, it does not affect the validity of such conveyance. The private conveyance of the house and lot is therefore valid between Aparato and the spouses. For greater efficacy of the contract, convenience of the parties and to bind third persons, respondent spouses have the right to compel the vendor or his heirs to execute the necessary document to properly convey the property (*Cenidon v Spouses Apacionado, GR No. 132474 [19.11.99]*).

PRINCIPLES UNDER CONTRACTS WHERE BOTH PARTIES ARE INCAPACITATED

- If only one of the parties is incapacitated, the contract is voidable (*Art. 1390*);
- The contract may be ratified by the parents or guardians of the contracting parties, or by the parties themselves upon attaining or regaining capacity (*Jurado, 572*).

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 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.

MODES OF RATIFICATION UNDER THE STATUTE

1. Failure to object to the admissibility of parol evidence to support a contract covered by the Statute of Frauds during the trial;
2. Acceptance of benefits – When the contract has been partly executed because estoppel sets in by accepting performance.

Q: Can an oral sale of land be judicially enforced as between the contracting parties, if the land has not been delivered but the buyer has paid 10% of the purchase price?

A: Yes, an oral sale of land where the land has not been delivered but the buyer has paid 10% of the purchase price may be judicially enforced. Well-settled is the rule that the Statute of Frauds by virtue of which oral contracts are unenforceable by court action is applicable only to those contracts which are executory and not to those which have been consummated either totally or partially. The reason is obvious. In effect, there is already a ratification of the contract because of acceptance of benefits. As a matter of fact, this reason is now embodied in the New Civil Code. According to Art. 1405 of said Code, contracts infringing the Statute of Frauds 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.

Q: — O verbally leased his house and lot to L for two years at a monthly rental of P250.00 a month. After the first year, O demanded a rental of P500.00 claiming that due to the energy crisis, with the sudden increase in the price of oil, which no one expected, there was also a general increase in prices. O proved an inflation rate of 100%. When L refused to vacate the house, O brought an action for ejectment. O denied that they had agreed to a lease for two years.

1. ***Can the lessee testify on a verbal contract of lease?***
2. ***Assuming that O admits the two-year contract, is he justified in increasing the rental? Why?***

A:

1. Yes, the lessee L may testify on the verbal contract of lease. Well-settled is the rule that the Statute of Frauds by virtue of which oral contracts (such as the contract in the instant case) are unenforceable by court action is applicable only to those contracts which have not been consummated, either totally or partially. The reason for this is obvious. In effect, there is already a ratification of the contract by acceptance of benefits. Here L has been paying to O a monthly rental of P250.00 for one year. The case is, therefore, withdrawn from the coverage of the Statute of Frauds.
2. Yes, O is justified in increasing the monthly rental. Since it is admitted that the contract of lease is for a definite term or period of two years, it is crystal clear that the case is withdrawn from the coverage of the new rental law. Now during the hearing of the case, O as able to prove an inflation rate of 100%. Therefore, an increase is justified.

CHAPTER 9
VOID OR INEXISTENT CONTRACTS

VOID OR INEXISTENT CONTRACT

One which lacks absolutely either in fact or in law one or some of the elements which are essential for its validity. It has no force and effect from the very beginning, as if it has never been entered into, and which cannot be validated either by time or by ratification (*Jurado, 574*).

CHARACTERISTICS OR VOID/INEXISTENT CONTRACTS

1. They produce no legal effects whatsoever in accordance with the principle *quod nullum est nullum producit effectum*;
2. They are not susceptible of ratification;
3. The right to set up the defense of inexistence or absolute nullity cannot be waived or renounced;
4. The action or defense for the declaration of their inexistence or absolute nullity is imprescriptible;
5. The inexistence or absolute nullity of a contract cannot be invoked by a person whose interests are not directly affected (*Tongos v CA, 123 SCRA 99*).

EFFECTS

General Rule

Does not produce legal effects.

Exception

Under Arts. 1411 and 1412 of the Civil Code, nullity of contracts due to illegal cause or object, *when executed* (and not merely executory), w*ill produce the effect of barring any action by a guilty to recover* what he has already given under the contract (*Liguez v CA, 102 Phil. 577*).

VOID	INEXISTENT
Those where all of the requisites of a contract are present, but the cause, object or purpose is contrary to law, morals, good customs, public order or public policy, or contract itself is prohibited or declared void by law;	Those where one or some or all of those requisites which are essential for the validity of a contract are absolutely lacking, such as those which are absolutely simulated or fictitious, or those where the cause or object did not exist at the time of the transaction;
The principle of *in pari delicto* is applicable;	The principle of *in pari delicto* is not applicable;
May produce legal effects;	Cannot produce any effect;
Covers Art. 1409 nos. 1, 4, 5, 6, & 7	Covers Art. Nos. 2 & 3.

Id.

VOID/INEXISTENT	RESCISSIBLE
As a rule, such contracts produce no effect if it is not set aside by a direct action;	Valid, unless it is rescinded;
The defect consists in absolute lack in fact or in law of one or some of the essential elements of a contract;	The defect consists in lesion or damage to one of the contracting parties or to third persons;
The nullity or inexistence of the contract is based on the law;	The rescissible character is based on equity;
Absolute nullity is not only a remedy but a sanction;	rescission is a mere remedy;
Predominated by public interest;	Predominated by private interest;
Action for nullity or inexistence is imprescriptible;	Action for rescission is prescriptible;
Cannot be assailed by third persons.	May be assailed by third persons.

Id., 575-576

VOID/INEXISTENT	VOIDABLE
Produces as a rule no effect even if it is not set aside by a direct action;	Binding, unless it is annulled;
Not susceptible of ratification;	Susceptible of ratification;
Imprescriptible;	Prescriptible;
The defense of inexistence or absolute nullity is available to third persons whose interests are directly affected.	The defense of annulability is not available to third persons.

Id., 576

VOID/INEXISTENT	UNENFORCEABLE
There is in reality no contract at all;	There is actually a contract which cannot be enforced by a court action, unless it is ratified;
Not susceptible of ratification;	Susceptible of ratification;
Can be assailed by third persons whose interests are directly affected.	Cannot be assailed by third persons.

Id., 576-577

ART. 1409

The following contracts are inexistent 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.

KINDS OF VOID CONTRACTS

1. Those lacking in essential elements (*see Art. 1409, nos. 1-6*);
2. Those prohibited by law.
    a. *Pactum comissorium* – a stipulation that allows creditor to appropriate the things given by way of pledge or mortgage or dispose of them (*Art. 2088*);
    b. *Pactum de non alienado* – a stipulation forbidding the owner from alienating the mortgaged immovable (*Art. 2130*);
    c. *Pactum leonine* – a stipulation which excludes one or more partners from any share of the profits or losses (*Art. 1799*).

NOTE: No. 7 in Art. 1409 is broad enough to include all other contracts which are not included in the enumeration. The first part is a reiteration of the principle declared in Art. 5 of the Code that acts which are executed against the provisions of mandatory or prohibitory laws shall be void, except when the law itself authorizes their validity. Examples of such acts are those regulated by Arts. 133, 1490, 1491, 1689, 1782, 1799, 2035, 2088 and 2130 of the Code (*Jurado, 578*).

Q: Judie sold ½ of their lot to Guiang under a deed of transfer of rights without the consent and over the objection of his wife, Gilda and just after the latter left for abroad. When Gilda returned home and found that only her son, Junie, was staying in their house. She then gathered her other children, Joji and Harriet and went to stay in their house. For staying in their alleged property, the spouses Guiang complained before the barangay authorities for trespassing. Is the deed of transfer of rights executed by Judie Corpuz and the spouses Guiang void or voidable?

A: It is void. Gilda's consent to the contract of sale of their conjugal property was totally inexistent or absent. Thus, said contract properly falls within the ambit of Article 124 of the FC. The particular provision in the old Civil Code which provides a remedy for the wife within 10 years during the marriage to annul the encumbrance made by the husband was not carried over to the Family Code. It is thus clear that any alienation or encumbrance made after the Family Code took effect by the husband of the conjugal partnership property without the consent of the wife is null and void (*Sps. Guiang v CA, GR No. 125172 [26.06.98]*).

Q: On 6 July 1976, Honorio and Vicente executed a deed of exchange. Under this instrument, Vicente agreed to convey his 64.22-square-meter lot to Honorio, in exchange for a 500-squaremeter property. The contract was entered into without the consent of Honorio's wife. Is the deed of exchange null and void?

A: The deed is valid until and unless annulled. The deed was entered into on July 6, 1976, while the Family Code took effect only on August 3, 1998. Laws should be applied prospectively only, unless a legislative intent to give them retroactive effect is expressly declared or is necessarily implied from the language used. Hence, the provisions of the Civil Code, not the Family Code are applicable. According to Article 166 of the Civil Code, the husband cannot alienate or encumber any real property of the conjugal partnership without the wife's consent. This provision, however, must be read in conjunction with Article 173 of the same Code. The latter states that an action to annul an alienation or encumbrance may be instituted by the wife during the marriage and within ten years from the transaction questioned. Hence, the lack of consent on her part will not make the husband's alienation or encumbrance of real property of the conjugal partnership void, but merely voidable (*Villaranda v Villaranda, GR No. 153447 [23.02.2004]*).

Art. 1410
The action or defense for the declaration of the inexistence 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 the 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
When 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.

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.

IN PARI DELICTO

When the defect of a void contract consists in the illegality of the cause or object of the contract, and both of the parties are at fault or in pari delicto, the law refuses them every remedy and leaves them where they are.

The rule is expressed in the maxims: "*Ex dolo malo non oritur actio*'' and "*In pari delicto potior est conditio defendantis*'' (*Jurado, 592*).

EFFECT WHEN BOTH PARTIES ARE AT FAULT AND THE ACT DOES NOT CONSTITUTE A CRIMINAL OFFENSE

1. Neither may recover what he has given by virtue of the contract;
2. Neither can demand the performance of the other's undertaking (*Art. 1412, par. 1*).

EFFECT IF ONLY ONE PARTY IS AT FAULT AND THE ACT DOES NOT CONSTITUTE A CRIMINAL OFFENSE

1. **When the contract has already been executed –** the *guilty party is barred from recovering* what he has given to the other party by reason of the contract; the *innocent party, however, may demand for the return* of what he has given;
2. **When the contract is merely executory –** it *cannot produce any legal effect* whatsoever. *Neither of the contracting parties can demand for the fulfillment* of any obligation arising from the contract nor be compelled to comply with such obligation (*Id., 601-602*).

EFFECT WHEN BOTH PARTIES ARE AT FAULT AND THE ACT CONSTITUTES A CRIMINAL OFFENSE

1. They shall have no action against each other;
2. Both shall be prosecuted;
3. The effects or instruments of the crime shall be confiscated in favor of the government (*see Art. 1411*).

EFFECT IF ONLY ONE PARTY IS AT FAULT AND THE ACT CONSTITUTES A CRIMINAL OFFENSE

1. The guilty party will be prosecuted;
2. The instrument of the crime will be confiscated;
3. The innocent one may claim what he has given, or if he has not given anything yet, he shall not be bound to comply with his promise (*Id.*).

EXCEPTIONS TO *IN PARI DELICTO* PRINCIPLE

1. Payment of usurious interest (*Art. 1413*);
2. Payment of money or delivery of property for an illegal purpose, where the party who paid or delivered repudiates the contract before the purpose has been accomplished, or before any damage has been caused to a third person (*Art. 1414*);
3. Payment of money or delivery of property by an incapacitated person (*Art. 1415*);
4. Agreement or contract which is not illegal per se but is merely prohibited by law, and the prohibition is designed for the protection of the plaintiff. (*Art. 1416*);

   Note: The exception should not be applied if public policy will not thereby be enhanced or subserved (*Philippine Banking Corp. v Lui She, GR No. L-17587 [12.09.67]*).

5. Payment of any amount in excess of the maximum price of any article or commodity fixed by law (*Art. 1417*);
6. Contract whereby a laborer undertakes to work longer than the maximum number of hours fixed by law (*Art. 1418*);

   Note: The laborer may still demand additional compensation for service rendered beyond the time limit even if the contract was signed voluntarily by the laborer (*Luzon Stevedoring Co., Inc. v Luzon Marine Department Union, GR No. L-9265 [29.04.57]*).

7. Contract whereby a laborer accepts a wage lower than the minimum wage fixed by law (*Art. 1419*);
8. In case of divisible contracts, the legal terms may be enforced separately from the illegal terms (*Art. 1420*);
9. One who lost in gambling because of fraudulent schemes practiced on him. He is allowed to recover his losses (*Art. 315[3][b], RPC*) even if gambling is prohibited (*Jurado, 602-603*).

Q: A partnership borrowed P20,000.00 from "A'' at clearly usurious interest. Can the creditor recover anything from the debtor?

A: Yes, the creditor can recover from the debtor the following: the principal, legal interest on the principal from the date of demand (*Art. 2209*), legal interest on the legal interests from the time of judicial demand (*Art. 2212*), and attorney's fees, if proper, under Art. 2208 of the Civil Code. In a usurious contract of loan, there are always two stipulations. They are: first, the principal stipulation whereby the debtor undertakes to pay the principal; and second, the accessory stipulation whereby the debtor undertakes to pay a usurious interest. These two stipulations are divisible. According to Art. 1420 of the Civil Code, in case of a divisible contract, if the illegal terms can be separated from the legal ones, the latter may be enforced. It is clear that what is illegal is the prestation to pay the stipulated interest. Hence, being separable, the latter only should be deemed void (*Angel Jose v Chelda Enterprises, 23 SCRA 119*).

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.

NATURAL OBLIGATIONS

Those based on equity and natural law, which do not grant a right of action to enforce their performance, but after voluntary fulfillment by the obligor, authorize the retention of what has been delivered or rendered by reason thereof (*Art. 1423*).

NOTE: The bind tie of these obligations is in the conscience of man, for under the law, they do not have the necessary efficacy to give rise to an action.

NECESSITY OF JURIDICAL TIE

In order that there may be a natural obligation there must exist a juridical tie which is not prohibited by law and which in itself could give a cause of action but because of some special circumstances is actually without legal saction or means of enforcing compliance by intervention of courts (*Tolentino, 646*).

TWO CONDITIONS NECESSARY FOR NATURAL OBLIGATIONS

1. That there be a juridical tie between two persons;
2. That this tie is not given effect by law (*Jurado, 636*).

NOT: The first requirement distinguishes the natural obligation from the mora, and the second distinguishes it from the civil (*Tolentino, 646*).

CONVERSION INTO CIVIL ACTION

The promise to perform a natural obligation is as effective as performance itself, and converts the obligation into a civil obligation (*Id., 649*).

NOTE: A natural obligation may also be converted into a civil obligation by novation or by confirmation or ratification (*Id., 550*).

EFFECT OF PARTIAL PAYMENT

As a general rule, partial payment of a natural obligation does not make it civil; the part paid cannot be recovered but payment of the balance cannot be enforced (*Id.*).

NATURAL OBLIGATION	MORAL OBLIGATION
As to juridical tie	
There is a juridical tie between the parties which is not enforceable by court action;	No juridical tie whatsoever;
As to legal effect of voluntary fulfillment	
Voluntary fulfillment of such produces legal effects which the court will recognize and protect;	Voluntary fulfillment of such does not produce any legal effect which the court will recognize and protect;
As to domain	
Within the domain of law.	Within the domain of morals

Id., 647-648

EXAMPLES OF NATURAL OBLIGATIONS

1. Performance after civil obligation has prescribed (*Art. 1424*);
2. Reimbursement of a third person for a debt that has prescribed (*Art. 1425*);
3. Performance after action to enforce civil obligation has failed (*Art. 1428*);
4. Payment by heir of debt exceeding value of property inherited (*Art. 1429*);
5. Payment of legacy after the will has been declared void (*Art. 1430*).

Q: A borrowed from B P5M which amount B failed to collect. After the debt has prescribed, A voluntarily paid B who accepted the payment. After a few months, being in need of money, A demanded the return of the P5M on the ground that there was a wrong payment, the debt having already prescribed, B refused to return the amount paid. May A succeed in collecting if he sues B in court? Reason out your answer.

A: A will not succeed in collecting the P5M if he sues B in court. The case is expressly covered by Art. 1424 of the Civil Code which declares that 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. Because of extinction prescriptive, the obligation of A to pay his debt of P5M to B became a natural obligation. While it is true that a natural obligation cannot be enforced by court action, nevertheless, after voluntary fulfillment by the obligor, under the law, the obligee is authorized to retain what has been paid by reason thereof.

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.

Q: A borrowed from B P1,000 which amount B failed to collect. After the debt has prescribed, A voluntarily paid B who accepted the payment. After a few months, being in need of money, A demanded the return of the P1,000 on the ground that there was a wrong payment, the debt having already prescribed, B refused to return the amount paid. May A succeed in collecting if he sues B in court?

A: No. The case is expressly covered by Art. 1424 of the Civil Code which declares that 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. Because of extinction prescriptive, the obligation of A to pay his debt of P1,000 to B became a natural obligation. While it is true that a natural obligation cannot be enforced by court action, nevertheless, after voluntary fulfillment by the obligor, under the law, the obligee is authorized to retain what has been paid by reason thereof.

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.

T I T L E I V
ESTOPPEL

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

It is a condition or state by virtue of which an admission or representation is rendered conclusive upon the person making it and cannot be denied or disproved as against the person relying thereon (*Art. 1431*).

NOTE: Estoppel cannot be predicated on an illegal act. As between the parties to a contract, validity cannot be given to it by estoppel if it is prohibited by law or is against public policy (*Tolentino, 657*).

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

1. **Estoppel *in pais* or by conduct** – applies to a situation where, because of something which a person has done or omitted to do, a party is denied the right to plead or prove an otherwise important fact (*Id., 664*);

    a. **Estoppel by silence or inaction (Art. 1437) –** arises when a party, who has a right and opportunity to speak or act ass well as a duty to do so under the circumstances, intentionally or through culpable negligence, induces another to believe certain facts to exist and such other relies and acts on such belief, as a consequence of which he would be prejudiced if the former is permitted to deny the existence of such facts;

    b. Estoppel by acceptance of benefits (Art. 1438) – refers type of estoppel *in pais* which arises when a party, by accepting benefits derived from a certain act or transaction, intentionally or through culpable negligence, induces another to believe certain facts to exit and such other relies and act on such belief, as a consequence of which he would be prejudiced if the former is permitted to deny the existence of such facts;

    c. Promissory estoppel – a promise to do or not to do results in estoppel, provided that the promise was intended to be relied upon, was relied upon and refusal to enforce it would sanction fraud or injustice (*Tolentino, 658*).

    Elements

    a. Conduct amounting to false representation or concealment of material facts, or at least calculated to convey the impression that the facts are otherwise than, and inconsistent with, those which the party subsequently attempts to assert;
    b. Intent, or at least expectation that this conduct shall be acted upon by, or at least influence, the other party;
    c. Knowledge, actual or constructive, of the real facts (*Id., 664*).

2. **Estoppel by deed or technical estoppel**
    a. Estoppel by deed proper – a party to a deed is precluded from asserting as against the other party, any material fact asserted therein;
    b. Estoppel by record – a party is precluded from denying the truth of matters set forth in a record, whether judicial or legislative (*Jurado, 640*).
        i. **Estoppel by judgment** - it is the preclusion of a party to a case from denying the facts adjudicated by a court of competent jurisdiction. It must not be confused with res judicata. Estoppel by judgment bars the parties from raising any question that might have been put in issue and decided in a previous litigation whereas, res judicata makes a judgment conclusive between the same parties as to the matter directly adjudged (*PNB v Barreto, 52 Phil. 818*).
3. **Estoppel by laches** - the failure or neglect, for an unreasonable length of time, to do that which by exercising due diligence could or should have been done earlier; its negligence or omission to assert a right within a reasonable time, warranting a presumption that the party entitled to assert it either has abandoned it or declined to assert it. It is also known as stale demands (*Lim Tay v CA, 293 SCRA 634*). It is based upon grounds of public policy which requires for the peace of society, discouragement of state claims.

    Elements

    a. Delay in asserting complainant's right after he had knowledge of the defendant's conduct and after he has opportunity to exercise it;
    b. Injury or prejudice to the defendant in the event relief is accorded to the complainant;
    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. Conduct on the part of the defendant or one under whom he claims, giving rise to the situation complained of (*Miguel v Catalino, GR No. L-23072 [29.11.68]*).

    Note: While a person may not acquire title to the registered property through continuous possession, the heir of the latter may lose his right to recover the possession of the property and the title thereto, by reason of laches. The petitioners' laches extends to his heirs, since they stand in privity with him (*Heirs of Lacamen v Heirs of Laruan, GR No. 27088 [31.07.75]*).

PRESCRIPTION	LACHES
As to its relation to delay	
Concerned with the fact of delay;	Concerned with the effect of delay;
As to nature	
Question or matter of time;	Question of inequity of permitting the claim to be enforced
As to basis	
Statutory	Not statutory
As to application	
Applies in law	Applies in equity

As to availability as a defense	
Cannot be availed of unless it is specifically pleaded as an affirmative allegation	Being a defense in equity, it need not be specifically pleaded;
As to basis in respect of fixed time	
Based on fixed time.	Not based on a fixed time.

Jurado, 648-649

NOTE: The doctrine of laches is inapplicable when the claim was filed within the prescriptive period set forth under the law.

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.**
5.

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.