

CIVIL LAW

LABOR LAW

AND SOCIAL

LEGISLATION

September 20, 2023

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PERSONS AND FAMILY RELATIONS

I. Persons

A. When Law Takes Effect Doctrine

- (a) When the law provides for date of effectivity
1. The law takes effect on date indicated, provided there is complete publication.
 2. "Immediately upon approval" means on the date of complete publication.
- (b) When the law does not provide for date of effectivity
1. After 15 days following complete publication in the OG or NPGC **AFCON**.
 2. The law takes effect on the 16th day from publication.
 3. "unless it is otherwise provided" pertains to the 15-day period, not the requirement of publication.
– (i) 15d period can be shortened; (ii) but publication requirement cannot be dispensed with.
- (c) Publication requirement
1. Must be in OG/NPGC
 2. Purposes – (i) due process: to inform the general public of the existence of the law; (ii) to charge the public with the knowledge of law so that ignorance of the law can no longer be invoked.

B. Ignorance of the Law

- (a) Mistake of law
1. Mistake of the law is not a defense. Ignorance of the law excuses no one from compliance therewith.
 2. XPN: if the law is difficult or doubtful. The CC treats mistake upon a difficult or doubtful provision of law as a mistake of fact.
- (b) Mistake of fact
1. Mistake of fact is a defense.
 2. E.g., solutio indebiti.
- (c) Proving the existence of law
- Ph laws**
1. Subject of mandatory judicial notice. They need not be proved.
 2. They are conclusively presumed to be known by everyone due to the publication requirement, unless the law is difficult or doubtful.
- Foreign laws**
1. Must be alleged and proven as facts.
 2. If not proved, foreign law is presumed the same as Ph law [processual presumption/presumed-identity approach].
 3. However, processual presumption will not apply if (a) the judgement will not be recognized or enforced in the Ph, and (b) the applicable law is the foreign law which the Ph court does not have knowledge of.
 4. E.g., failure to prove foreign law in an action of nullity of marriage between two alien spouses. Ph laws cannot be applied by default since its judgment will not be recognized by the foreign court.

C. Retroactivity of Laws

- GR: laws are prospective.
1. To not impair vested rights.
 2. To not impair obligations of contracts.
- XPNs: **PERCS**
1. The law itself provides for retroactivity (**express provision**). XPN to XPN – (i) ex-post facto law¹; (ii)

¹ Ex-post facto law:

1. Criminalizes an act which was innocent at the time of commission

- if there will be impairment of obligations of contracts, unless police power regulation, which is superior.
2. **Penal** law that is favorable to the accused. XPN to XPN: habitual delinquent.
 3. Law is **remedial** or procedural in nature – (i) No vested right may attach to procedural laws; (ii) they may apply to cases pending and undetermined at the time of passage. The law must be purely procedural to allow retroaction. E.g., Art. 40 FC, while procedural, affects substantive rights, it cannot be given retroactive effect re: prosecution for bigamy.
 4. Law is **curative** in nature.
 5. **Substantive** rights are created for the first time. XPN to XPN: the new law should not prejudice vested rights of the same origin.

Judicial decisions

1. Decisions of the Supreme Court form part of the law of the land, and they have **retroactive** effect.
2. Interpretations of the law is integral part of the law and deemed written to it from the original date of its enactment.
3. XPN: Decisions **abandoning a previous interpretation** of the court, cannot be applied retroactively to the prejudice of a party who relied in the earlier ruling.
4. XPN to XPN: When the abandonment of a ruling involves a penal law, and the new interpretation favors the accused. – e.g., Pulido v. People on the availability of defense of nullity of first marriage in a bigamy case, with/out judicial declaration of its absolute nullity can be applied retroactively.

**** The court will only interpret a provision of law when there is an actual case or controversy calling for such interpretation. It cannot do so on its own volition.**

D. Mandatory or Prohibitory Laws

Acts executed against the provisions of mandatory or prohibitory laws shall be void, except when the law itself authorizes their validity (Art. 5).

xxx Prohibitive laws concerning persons, their acts or property, and those which have for their object public order, public policy and good customs shall not be rendered ineffective by laws or judgments promulgated, or by determinations or conventions agreed upon in a foreign country. PapOgcopp LJ DC (Art. 17[3])

E. Waiver of Rights

Requisites

1. Possession of an existing right – right in esse.
2. Capacity and power to dispose the right
3. Clear and unequivocal, though it may be expressed or implied.
4. Not contrary to Imgcopp, or prejudicial to 3p who has a right recognized by law. – e.g., parties to a mortgage contract cannot waive the notice and publication requirements since it is intended for the protection of debtor to prevent the sacrifice of the propeprty.

F. Presumption and Applicability of Custom

Customs which are contrary to law, public order or public policy shall not be countenanced (Art. 11).

A custom must be **proved as a fact**, according to the rules of evidence (Art. 12).

G. Legal Periods

NCC c.f.: AC

Period	CC	AC ²
Year [1]	365 days; the actual number of days is important	12 calendar months; the actual number of days is not important
Month	30 days, if month is undesignated Actual days, if month is designated by name	Same
Days	24 hours	Same
Night	From sunset to sunrise	Same

1. AC **impliedly repealed** Sec. 13 of the CC with respect to counting a year.³
2. E.g., One year after Sep. 12, 2022, is Sep. 12, 2023 (just change the year.)

H. Territoriality Principle

The state exercises exclusive sovereignty over the persons in its jurisdiction, whether the person is a national of the state or not. Domestic laws are enforceable within the territories of the state.

c.f.: Generality principle

1. Philippine penal laws, laws for public security and safety are obligatory upon **all persons** within the Ph territory – (i) whether the stay is permanent or temporary; (ii) whether Filipinos or aliens.
2. XPNs: (i) Treaty provisions; (ii) Laws of preferential application; (iii) Principles of public international law, e.g., immunity from suit of heads of state, diplomatic representatives (but not consuls).

I. Conflict of Laws

Summary	Subject	XPN
Lex Nationalii	FSCoL	(i) Legal capacity re: deeds involving property – lex rei sitae applies; (ii) if contrary to important public policy – Ph law applies
Lex Rei Sitae	R/P Property, including legal capacity to execute relevant documents	Succession (T/I) re: OACI – lex nationalii applies
Lex Loci Celebrationis	Forms and solemnities	Deeds involving property – lex rei sitae applies

1. Lex Nationalii

Laws relating to family rights and duties, or to the status, condition, and legal capacity of persons FSCoL are binding upon citizens of the Philippines, even though living abroad.

1. Applies not only to Filipinos but also to aliens who are bound by their national laws with respect to FSCoL.
2. Intended by Congress to be the Ph conflict of law rule.
3. Family rights and duties – e.g., in duty to give support, while an alien is bound by his national law, Ph law will apply if (i) the foreign law is contrary to an important public policy of the forum state; (ii) the application of the foreign law will cause undeniable injustice to the citizens of the forum (XPN).
4. Status of persons – e.g., Validity of absolute divorces obtained abroad: (i) may be recognized in

² ADMINISTRATIVE CODE OF 1987
BOOK I – Sovereignty and General Administration
CHAPTER 8 – Legal Weights, Measures and Period
SECTION 31. Legal Periods.—“Year” shall be understood to be twelve calendar months; “month” of thirty days, unless it refers

Ph for foreign or mixed marriages; (ii) but not for Filipino marriages.

5. Legal capacity of persons – e.g., (i) Marriage of minor Filipino abroad is also void in Ph; (ii) capacity of foreigners to adopt with respect to foreign adoption.
6. Sex is determined by the national law of the person.

2. Lex Rei Sitae

Real property as well as personal property is subject to the law of the country where it is situated.

However, intestate and testamentary successions, both with respect to the order of succession and to the amount of successional rights and to the intrinsic validity of testamentary provisions, shall be regulated by the national law of the person whose succession is under consideration, whatever may be the nature of the property and regardless of the country wherein said property may be found (Art. 16).

GR: Lex rei sitae applies to

1. Matters relating to **title** or disposition of real property.
2. **Modes** by which the title or interest on property can pass, gained, or lost.
3. **Capacity of persons** making the deed – XPN to lex nationalii.

XPN – Lex nationalii applies to OACI

1. Order of succession
2. Amount of successional rights
3. Capacity to succeed
4. Intrinsic validity of the provisions of the will

3. Lex Loci Celebrationis

The **forms and solemnities** of contracts, wills, and other public instruments shall be governed by the laws of the country in which they are executed.

When the acts referred to are executed before the diplomatic or consular officials of the Republic of the Philippines in a foreign country, the solemnities established by Philippine laws shall be observed in their execution.

Prohibitive laws concerning persons, their acts or property, and those which have for their object public order, public policy and good customs shall not be rendered ineffective by laws or judgments promulgated, or by determinations or conventions agreed upon in a foreign country.

Wills

1. A Filipino may execute a will in a foreign country following the law of that country with respect to extrinsic validity.
2. XPN: they cannot execute a joint will even if the same is allowed in the foreign country.

Contracts

1. XPN: Contracts involving real property – lex loci rei sitae applies.
2. Intrinsic validity – no conflict of law rule. The law voluntarily agreed upon (*Lex loci voluntatis*) or intended by the parties, express or implied (*Lex loci intentionis*), or the place of performance (*Lex loci solutionis*) may apply.
3. Choice of law clause generally applies. If none, law of the state with the most significant relationship may be considered.

Instances when foreign law will not be applied

to a specific calendar month in which case it shall be computed according to the number of days the specific month contains; “day,” to a day of twenty-four hours; and “night,” from sunset to sunrise.

³ CIR v. Primetown Property Group, Inc., 531 SCRA 436 (2007)

1. When the foreign law is contrary to an important **public policy** of the forum.
2. When the application of the foreign law will work **undeniable injustice** to the citizens of the forum.
3. When the case involves real or personal property situated in the forum.
4. When the application of the foreign law might endanger the vital interest of the state.
5. When the foreign law is contrary to good morals.

4. Doctrine of Renvoi

Procedure whereby the law of the forum refers a legal matter to a foreign law, and the foreign law in turn refers the matter either to the forum law (remission) or the laws of a third state (transmission).

1. Theoretically, renvoi can work only if one of the states rejects it and that it achieves harmony of decisions only if the states concerned do not agree on applying it the same way.
- 2.

Dealing with the problem of renvoi

1. Reject renvoi – Reference to foreign law means only internal law, meaning without considering the conflict rules of the foreign law.
2. Accept renvoi – Reference to foreign law means the whole foreign law, including choice-of-law rules.
3. Desistance/mutual disclaimer of jurisdiction – In referring to a foreign law, the forum court finds that the foreign law applies only to nationals of the state, and not to non-nationals; N.B.: similar effect with rejecting renvoi but the process is different, i.e., desistance.
4. Foreign court theory – The forum court would assume the same position the foreign court would take were the case litigated in said foreign country.

J. Human Relations in Relation to Persons

(a) Basic provisions – Arts. 19-21

1. Art. 19 provides for the standard of conduct. Every person must, in the exercise of his rights and in the performance of his duties, act with justice, give everyone his due, and observe honesty and good faith. [ER PD AGO](#)
2. Arts. 20-21 provides for the remedies, i.e., action for damages.

Distinctions	Art. 20	Art. 21	Art. 2176 ⁴
What constitutes	Willful and negligent acts contrary to law , causing injury	Willful acts contra bonos mores, causing injury.	Negligent act causing damage to another
Basis for injury	Violation of existing law	Violation of morals, good customs, public order, or policy	Quasi-delict. The negligent act itself.
Moral damages?	No	Yes	No

(b) Abuse of rights

1. Happens when the right lawfully exists being recognized by law, but the person in exercising the same did not AGO.
2. The right ends when it disappears, and the right disappears the moment it is abused.
3. Elements – (i) Existence of legal right or duty; (ii) Exercise in bad faith, or not in accordance with the standards of conduct set forth under Art. 19; (iii) Sole intent is to prejudice or injure others.
4. E.g., MERALCO's act violated the provisions of R.A. 7832 which although authorizes the

disconnection of customers found pilfering electricity requires that (i) the inspection be attended by an ERB representative, and (ii) that there be prior notice of disconnection before the actual disconnection was made. MERALCO's act is contrary to law. – Art. 20 applicable.

(c) Breach of promise to marry

1. GR: Not an actionable wrong. – not contrary to law or public policy.
2. XPNs: (i) When contrary to morals; (ii) When contrary to good customs.
3. Contrary to morals when – moral seduction in the form of promise to marry was the proximate cause for the woman to agree to the sexual congress.
4. Contrary to good customs when – the groom walked out of the marriage two days prior to the event when the bride already incurred expenses for in preparation of the wedding (Wassmer v. Velez). Actual, moral, exemplary damages may be awarded.

(d) Accion in rem verso (Art. 22), unjust enrichment

1. Every person who through an act or performance by another, or any other means, **acquires** or comes into possession of something at the **expense** of the latter without just or legal ground, shall return the same to him.
2. Elements – (i) the defendant was enriched; (ii) the enrichment was without legal ground; (iii) the plaintiff suffered loss; (iv) the plaintiff has no other cause of action/ available remedy from contract, quasi-contract, delict, quasi-delict.
3. c.f.: solutio indebiti – under Art. 22, mistake of fact is not an element. The defendant may have acquired the thing due to any other causes. It may be due to a mistake of law that is not doubtful or difficult.

(e) Damnum absque injuria

1. Loss/damage without injury.
2. Right is lawfully exercised, but it caused damage to another. A right is lawfully exercised when made according to Art. 19.
3. The injured person does not have the right to file an action for damages if the other party acted in legitimate exercise of rights. The injured person alone bears the damage.
4. The resulting damage does not amount to a legal injury.

(f) Other causes of action for damages

Sec.	Cause of action
23	COA for indemnity – if a person benefits from an act or event, even though the same is not due to his fault or negligence
24	Contractual, property other relations – duty of vigilance imposed upon courts to protect the disadvantaged
25	COA for injunction – (a) against thoughtless extravagance in expenses for pleasure or display (b) in favor of government or private charitable institutions (c) in cases of acute public want or emergencies
26	COA for damages – for violation of personality, dignity, privacy, peace of mind of neighbors or other persons
27	COA for damages – (a) against public officer or EE; (b) who refuses or neglects to perform his official duties; (c) causing material or moral loss to another. Presupposes the attendance of malice or inexcusable negligence.
28	COA for damages – (a) unfair competition; (b) using oppressive means; (c) causing damage to another. Broader than the unfair competition provided in Intellectual Property Law.
29	COA for damages – in criminal prosecutions where the accused was acquitted on account of reasonable doubt. Civil liability ex-delicto is not extinguished. c.f.: when the court declared that the accused is not the author of a

⁴ Article 2176. Whoever by act or omission causes damage to another, there being fault or negligence, is obliged to pay for the damage done. Such fault or negligence, if there is no pre-

existing contractual relation between the parties, is called a quasi-delict and is governed by the provisions of this Chapter.

	crime, civil liability ex-delicto is extinguished, but civil liability from other causes, e.g., quasi-delict, are not extinguished.
30	Separate civil action arising from criminal offense
31	Civil action not based on delict
32*	COA for damages – for violation of rights and liberties of another; includes moral and exemplary damages. There must be a particular wrong or injury caused to the plaintiff. An individual cannot invoke the prejudice committed as against the general public as a cause of action to claim damages.
33*	COA for damages – in case of defamation, fraud, physical injuries. The offenses are used in the generic sense, not in the technical sense as they are used in RPC.
34*	COA for damages – (a) in case of failure to render aid or support in the event of danger to life or property; (b) against city or municipal police [primarily] or the city or municipality [subsidiarily]
35	COA for damages – (a) arising from criminal offense where no separate civil action is allowed; and (b) judge finds no reasonable ground that crime was committed, or prosecutor refuses or fails to institute criminal proceeding. If criminal action is subsequently filed, civil action shall be suspended until termination of the latter

**Independent civil actions. Limit: the plaintiff cannot recover damages twice for the same act or omission charged in the criminal action.*

(g) Prejudicial questions (Art. 36)

1. Requisites – (i) a previously instituted civil action raises an issue that is similar or intimately related to an issue raised in a subsequent criminal action; (ii) The resolution of the issue in the civil action determines whether the criminal action shall proceed, or the guilt or innocence of the accused.
2. Under RRCP – (i) The criminal action may only be **suspended** not dismissed; (ii) Only upon petition of the accused, not motu proprio.
3. Generally, applies to pending civil and criminal actions only. However, the Court applied the principle behind the rule on prejudicial questions (i.e., to avoid conflicting decisions) even to those cases not involving criminal action. – e.g., both civil cases, one civil and one administrative case.

K. Capacity to Act

Juridical capacity	Capacity to act
Fitness to be the subject of legal relations (civil personality)	The power to do acts with legal effect
Inherent in natural persons	Not inherent but may be acquired upon attainment of the age of majority
Lost only through death in natural persons	May be lost through other means
May not be limited/restricted	May be limited/restricted

1. Restrictions on Capacity to Act

Restrictions on capacity to act

1. Minority
2. Insanity or imbecility
3. State of being a deaf-mute
4. Prodigality
5. Civil interdiction

****Do not exempt the incapacitated person from certain obligations, e.g., those arising from his acts or from property relations, such as easements. MIDIPC FAITA**

Modify or limit capacity to act

1. Age
2. Insanity
3. Imbecility
4. State of being a deaf-mute
5. Penalty
6. Prodigality
7. Family relations
8. Alienage

9. Absence
10. Insolvency and trusteeship. **MIDPPFAAIT**

Not limitations on capacity to act

1. Religious belief or political opinion.
2. Being married – A married woman, 21y or above, is qualified for all acts of civil life, except in cases specified by law.

Personality of juridical persons

1. State and political subdivisions, other entities created by law – As soon as constituted according to law.
2. Private corporations – From the date of issuance of certificate of incorporation.
3. Partnerships – upon agreement of the parties, or upon compliance with formalities if real property is contributed (inventory of the property or rights signed and attached to the public instrument).
4. Sole proprietorships have no separate juridical personality from the proprietor.

2. Birth and Death of Natural Persons

In natural persons, birth determines civil personality or juridical capacity.

When is a person considered born

1. $\geq 7m$ IU life – When completely delivered from womb (when umbilical cord cut).
2. $< 7m$ IU life – Survival for at least 24 after complete delivery.

Provisional [and conditional] personality of unborn child

1. The conceived child is considered born only for purposes **favorable** to it.
2. The unborn child was given juridical capacity but not capacity to act for purposes of acquiring rights, but not for incurring obligations.
3. The rights acquired are conditional to the child being born under circumstances set forth under Art. 41.
4. Rights include – (i) to be a donee; (ii) to support; (iii) to succeed; (iv) to be a beneficiary in an insurance policy.
5. Donations/testamentary disposition in favor of unborn child must be simple only, not modal.
6. If the unborn child is omitted in the will of his parents, preterition occurs.
7. It is necessary to determine the personality of the conceived child only when his juridical capacity is at issue, i.e., whether he acquired rights. E.g., In claiming death indemnity (Art. 2206) which is a derivative right. It is proper only if the deceased, if alive, may file the action himself, but not when he does not have right to enforce the same as in the case of a fetus. In the latter, no such right is passed to the heirs. HELD: the father was not entitled to damages for the death of the unborn child, the latter not having any personality (Geluz v. CA).
8. But if what is in question is the right of the parent to receive benefits for the death of the dependent, civil personality of the unborn child is not in question. The only question with respect to him is whether he died which is possible even if he did not acquire legal personality. Civil personality is not a condition sine qua non for death.

3. Presumption of Survivorship

(a) Governing rules

1. If issue is succession – Art. 43 NCC
2. If issue is not succession – ROC

(b) Art. 43

Requisites

1. Survivorship involves persons who are called to succeed each other, by will or by operation of law (reciprocal heirs) **PSEO**.
2. The issue involves the transmission of successional rights between them **ITSR**.

Rules

1. The burden of proof lies with the person alleging the one died prior to the other.
2. In the absence of proof, it will be presumed that both died at the same time, and there will be no transmission of successional rights.

(c) ROC: Presumption of survivorship

Requisites

1. Two persons perish in the same calamity, etc.
2. It is not shown who died first, and there are no circumstances from which it can be inferred.
3. For purposes of **other than succession**. – e.g., determining beneficiaries in LI policy.

Rules

1. Both <15y – older survives
2. Both >60y – younger survives
3. <15y and >60y – former survives
4. Both >15y and <60y, different sex – male survives
5. Both >15y and <60y, same sex – older survives
6. One is <15y or >60y, other is not – latter survives

L. Surnames

(a) Legitimate children

1. They have the right to bear the surnames of mother and father.
2. But must **principally** use father's surname. – (i) does not mean exclusively. An IRR providing for the mandatory use of father's surname is void; (ii) if there are valid reasons, the child has right to use the mother's surname. Use of father's surname is mandatory at first instance, only when there are valid reasons may the mother's surname be used. – e.g., to prevent confusion, to prevent animosity in use of Japanese surname.
3. Use of stepfather's surname is not allowed in lieu of the father's as it may cause confusion on the child's paternity.
4. The omission of the mother's surname as the child's middle name is mere clerical error which can be corrected administratively – (i) the right to use the mother's surname is granted to the child; (ii) the omission may be corrected by reference to existing records.

(b) Illegitimate children

1. If not recognized by father, the child **must** use the mother's surname. He will have no middle name.
2. If recognized by father, the child has the option not the obligation to use the father's surname. The father may not compel the use of his surname, even if he recognized the child.
3. The recognition must be express and voluntary – (i) through record of birth appearing in the civil register or in a final judgment; (ii) admission of paternity made in public document or private handwritten instrument.
4. If the birth certificate is void (e.g., registered by father without mother's consent), the child also does not acquire the right to use the father's surname. A void instrument cannot give rise to rights.
5. Use of stepfather's name is allowed to remove the stigma of illegitimacy. The child will also be entitled to use his mother's surname as middle name.
6. If the illegitimate child was registered in the father's surname, he may change it to her mother's surname upon reaching the age of majority. Court authority is still required, but the

child is no longer required to show valid reason c.f.: legitimate child.

(c) Adopted children

1. The adopted child may use surname of adopter, as if he is a legitimate child.
2. If joint adoption by married adopters – same rules with legitimate children.
3. If not joint adoption – the adoptee has right to use the surname of the adopter him/herself and not one which the adopter acquired through marriage. e.g., (i) wife adopts illegitimate child with husband's consent; (ii) spouses are legally separated; (iii) adoption made by woman prior to marriage.
4. If adopted by illegitimate father, the child may use the mother's surname as middle name. There is no prohibition, and this will maintain the child's maternal lineage. However, the child must secure court authority. N.B.: use of mother's surname as middle name is not one of the rights granted to the illegitimate child.
5. The child may be allowed to drop the adopter's surname if there are valid reasons, e.g., embarrassment.

(d) Married women

Options upon marriage

1. maiden first name and surname + husband's surname
2. maiden first name + husband's surname
3. husband's full name + "Mrs."
4. ****If the woman wants to change her name during marriage after adopting the husband's surname, she will not need court authority since she is merely exercising her right to choose under the law.**

Upon legal separation

1. Woman shall continue to use the name she adopted prior to the separation.
2. Legal separation does not terminate the matrimonial bond between the spouses.

Upon death of a spouse or annulment of marriage

1. GR: Wife may revert to her maiden name, but she may also continue using her married name.
2. XPNs: (i) if she is the guilty spouse, she must resume the use of her maiden name; (ii) even if she is the innocent spouse, she must resume the use of her maiden name if (a) the court decrees otherwise; or (c) she or former husband were married again to different person.

Upon declaration of nullity of marriage

1. Wife must revert to the use of her maiden name and surname.
2. The parties are not really spouses and the wife did not acquire the right to use the husband's surname.

****Under Ph Passport Act, the married woman may revert to the use of his maiden name only in case of annulment, divorce, declaration of nullity, or death of the husband.**

M. Rules Governing Persons Who are Absent

(a) Absence is a special legal status. A person is deemed absent if he:

1. Disappears in his domicile.
2. His whereabouts unknown and it is uncertain whether he is dead or alive.
3. Without appointing an agent or administrator.

(b) Stages of absence

1. Provisional absence – if a person is absent (see above) and the appointment of representative with respect to the property is urgent or necessary.

2. Declared absence – if a person has been absent (see above) (i) for 2y, if he left no administrator, or (ii) for 5y, if he left an administrator.
3. Presumptive death

Presumptive death

1. If the person has been absent for the period set forth by law.

Purpose	Ordinary	Qualified
Definition	No danger of death	In danger of death [2]
Remarriage [3]	4y	2y
Opening of succession	10y or 5y, if >75y upon disappearance	4y
All other purposes	7y	4y

2. If the absentee was – (i) On board a vessel or plane; (ii) member of the armed forces who had taken part in the war; (iii) otherwise in danger of death.
3. Period of absence + (i) Well-founded belief by spouse present that the absentee spouse was already dead; (ii) The spouse present obtained a **judicial declaration of presumptive death**.

(b) Judicial declaration Of absence

1. Grounds – (i) absentee has properties to be taken care of or administered; (ii) spouse present is asking for separation of property; (iii) spouse present is asking that the administration of exclusive properties be transferred to him/her.
2. Who may apply – (i) spouse present; (ii) legal heirs; (iii) those having rights over the properties of the absentee subordinate to absence or death.
3. Spouse present shall be preferred in the appointment administrator. In default, any competent person may be appointed as administrator.
4. The administrator cannot dispose of the property of the absentee without judicial authority.
5. The declaration of absence shall take effect after **6 months** from the time of publication in a NPGC.
6. Declaration of absence need not be made in a separate proceeding. It may be combined with a petition for administration.

Of presumptive death

1. Required only for purposes of remarriage.
2. For purposes other than remarriage, judicial declaration of presumptive death is prohibited, and the courts have no authority to issue judicial decree of presumptive death.
3. Art. 390 and 391 merely expresses rule of evidence. Declaration is no longer necessary as the presumption is already provided for by law.
4. E.g., for purposes of claiming death benefits of the army husband, the Veteran's office may make its own determination of the propriety of applying the presumption under Arts. 390, 391.

II. Marriage

A. General Principles

Marriage is a **special contract** of **permanent** union between a **man and a woman** entered into in accordance with law for the establishment of conjugal and family life. It is the foundation of the family and an inviolable **social institution** whose nature, consequences, and incidents NCI are governed by law and not subject to stipulation, except that marriage settlements may fix the property relations during the marriage within the limits provided by this Code. **SCPU EAL ECFL**

1. Marriage is a contract not subject to stipulation of the parties, except with respect to the property relation to govern the spouses during their

marriage, which may be expressed in a marriage settlement executed before the marriage.

2. Rebuttable presumptions in favor of marriage – (i) Fact of marriage is presumed from the deportment of man and woman as husband and wife; (ii) Validity of marriage is presumed, he who claims the nullity of the same has the burden of proof.
3. The purpose of the parties for entering into the marriage generally does not affect its validity, even though the FC expressly provided that marriage shall be for the purpose of establishing conjugal and family life.

Governing law on marriage

1. FC – if celebrated on or after Aug. 3, 1988.
2. CC – if before.

****The validity is determined by the law in force at the time of the celebration of marriage.**

1. Essential Requisites

(a) Legal capacity of the parties who must be a man and a woman; (b) Consent freely given in the presence of a solemnizing officer

(a) Legal capacity of the parties who must be a man and a woman

Legal capacity

1. Legal capacity is determined by the person's national law. (i) for foreigners, they must submit a certificate of legal capacity to contract marriage issued by their diplomatic or consular official if the marriage is to be celebrated in Ph; (ii) for Filipinos, FC governs.
2. Parties: (i) must be at least 18y; (ii) must not be suffering from any legal impediment to marry [incestuous, contrary to public policy, bigamous/polygamous].
3. Lack of legal capacity renders the marriage void.

Man and woman

1. The sex of a person is determined by his national law.
2. For Filipinos: (i) sex reassignment is not a ground for change of sex; (ii) sex is determined at birth by virtual examination by the birth attendant; (iii) sex cannot be changed during the person's lifetime unless ambiguous due to physiological condition. In the latter, the person may decide his proper sex upon attaining the age of majority.
3. For foreigners, if their national law recognizes sex reassignment as a ground for change of sex, such shall be recognized in Ph even for purposes of contracting marriage.
4. In Ph, same-sex marriage not recognized, **not even a void one. It is no marriage at all.**

(b) Consent freely given in the presence of a solemnizing officer

1. Consent in marriage is the **personal declaration** made by the husband and wife that they take each other as such during the marriage ceremony.
2. The State is a party to the marriage, as represented by the solemnizing officer.
3. The personal motives/purpose of parties in contracting marriage are irrelevant in determining its validity. Consent must be based on objective standards. E.g., lack of love, for purpose of acquiring citizenship only are not grounds for declaring the marriage void.
4. Effects – (i) If lacking, there is no marriage at all; (ii) if defective, marriage is voidable.

2. Formal Requisites

ALC

- (a) **Authority** of the solemnizing officer

- (b) Valid marriage **license**, except marriages of exceptional character
- (c) Marriage **ceremony**

(a) **Authority** of the solemnizing officer

Solemnizing officers **JRS MCM**

1. Incumbent members of the **judiciary** – (i) within the court's jurisdiction; (ii) SC/CA justices have jurisdiction over the entire Ph; (iii) XPNs – **WAR** (a) **Articulo mortis** marriage; (b) Marriage solemnized in a remote place; (c) Upon written request of the parties to the marriage. Provided that the venue is still within the court's jurisdiction.
2. **Religions** solemnizing officers – (i) duly authorized, in writing, by the church or sect where he belongs; (ii) authority registered with the civil registrar; (iii) he must act within the limits of his authority; (iv) at least one of the parties must belong to the church or sect.
3. **Consul**-general, consul, vice-consul – (i) marriage abroad where the consul holds office; (ii) between Ph citizens.
4. **Mayors** – (i) under LGC; (ii) but the governor does not have authority to solemnize marriage.
5. **Ship** captain, airplane pilot – (i) **articulo mortis**; (ii) between passengers/crew members; (iii) while at sea or in flight, or while at stopovers.
6. **Military** commanders of a unit – (i) **articulo mortis**; (ii) commissioned officer; (iii) chaplain is absent; (iv) within the zone of military operations; (v) between military or civilians.

Effects

1. If lacking, marriage is void. XPNs: (a) if celebrated abroad and valid there, (b) if the parties believed in **good faith** that the solemnizing officer had legal authority [based on mistake of fact]
2. If defective, marriage is valid but the persons causing the irregularity shall be held administratively, civilly, and criminally liable. E.g., the judge solemnized a marriage outside his jurisdiction.

(b) Valid marriage **license**, except marriages of exceptional character

Valid marriage license

1. When truly **issued** by the LCR where either party habitually resides or appearing in its the **records**.
2. When not yet **expired** – valid for 120d after issuance, after which, it is automatically cancelled.
3. Effects – (i) if lacking, marriage is void; (ii) if defective, marriage is valid but the persons causing the irregularity shall be held administratively, civilly, and criminally liable. E.g., lack/improper of publication, issued by municipality which is not the residence of spouses.

Marriage contract

1. Best (but not exclusive) evidence of marriage.
2. Also, evidence of consent since it contains the personal declaration of the husband and wife that they take each other as such.
3. Its absence does not affect validity of marriage.
4. Other evidence that may establish marriage – (i) testimony of witness, (ii) public and open cohabitation of the couple after supposed marriage, (iii) birth and baptismal certificate of children born during the union, (iv) other documents.

Marriages of exceptional character (exempt from license requirement) **CRAMO**

1. In **articulo mortis**
2. Marriages celebrated in accordance with **Muslim**, ethnic customs, rites, practices between its members.
3. Where residence of parties is **remote**
4. Between **cohabitating** partners
5. Marriages celebrated **outside Ph.** – if no license is required by the law of the place of celebration.

[1] Articulo mortis

1. Either or both parties are at point of death, or under the consciousness of an impending death.
2. Marriage remains valid if the spouse survives.
3. May be solemnized by ship captains, airplane pilots, commission military officers.
4. The SO must execute an affidavit stating the fact of marriage, and that he took the necessary steps to verify the age, relationship of parties, and the existence of any impediment.
5. Non-execution of affidavit is mere irregularity.

[3] Where residence of parties is remote

1. Either party resides in a place where there is no means of transportation that would allow their physical presence before the civil registrar; or if the means of transportation is too restrictive.
2. Affidavit of solemnizing officer is also required.

[4] Between cohabitating partners

1. Man and woman lived together as husband and wife for at least 5y – (i) must be continuous and uninterrupted, (ii) characterized by exclusivity CUE; (iii) counted backwards from date of marriage.
2. The parties have no impediment to marry – (i) during the period of cohabitation, and (ii) at the time of marriage [common requirement for all marriages].
3. Execution of affidavit of cohabitation – (i) not formal but procedural requisite to serve as proof of compliance with the requirements of valid exemption; (ii) if false, marriage is void ab initio for lack of valid marriage license⁵ [not mere irregularity in marriage license]; (iii) but the falsity of affidavit in the second marriage cannot be used as a defense in a bigamy case,⁶ although it may be used in an action for the declaration of the nullity of marriage;⁷ (iv) intended to benefit the solemnizing officer as justification for the performance of marriage without license.
4. Execution of affidavit by solemnizing officer.

Absence or irregularity

1. Certification of no record issued by LCR is sufficient to prove lack of marriage license, for the purpose of a petition for declaration of nullity of marriage, but not as a defense in the prosecution for bigamy. The latter is accompanied by circumstances of suspicion – (i) temptation for government officials to falsify for consideration, (ii) temptation for accused to induce falsification.
2. The certificate need not mention that diligent search was performed since there is already a presumption of regularity in the performance of official duty.
3. However, the certification is insufficient if it did not categorically state that the license does not exist in the office, or it cannot be located despite diligent search (volume of work, no turnover).
4. Certification is no longer required if the absence of marriage license is patent on the face of the marriage contract.

⁵ Republic v. Dayot

⁶ Santiago v. People

⁷ The parties are not estopped since marriage is a special contract whose nature, consequences or incidents are governed by law, not subject to stipulation of the parties.

(c) Marriage **ceremony**:

Requirements: No prescribed form provided **ADW**

1. Parties personally **appeared** before the solemnizing officer. – (i) Marriage via videoconferencing or by proxy are not valid in the Philippines; (ii) mere private signing of marriage contract without a solemnizing officer is not a marriage.
2. They personally **declare** that they take each other as husband and wife. – may be implied by signing of the marriage contract in the presence of the solemnizing officer.
3. Done in the presence of at least two **witnesses** of legal age.

Notes:

1. If marriage is celebrated abroad and valid there, the same is valid in the Ph, except as provided in FC.
2. Effects – (i) if lacking, no marriage at all; (ii) if defective, marriage is valid but the persons causing the irregularity shall be held administratively, civilly, and criminally liable.

Requisite	Absence	Defect / Irregularity
Legal capacity	Void	N/A. Only consent is susceptible of being defective
Man and woman	No marriage	N/A
Consent	No marriage. ⁸ Non-consenting person is not a party.	Voidable (Art. 45)
Authority of solemnizing officer	Void. XPN: If parties believed in GF that the solemnizing is authorized	Valid. Person responsible is liable
Valid marriage license	Void	"
Marriage ceremony	No marriage. ⁹ If state is not made a party through the solemnizing officer, there is no marriage.	"

If no marriage, the remedy is not petition for declaration of nullity but petition for correction/cancellation of entries in civil registry.

B. Mixed Marriages and Foreign Divorce

GR: Absolute divorce is not recognized in Philippine law, and the courts cannot grant the same.

1. Between Filipinos – not valid even if obtained abroad.
2. Between Aliens – may be recognized in the Ph if: (i) divorce is in accordance with their national laws, and (ii) foreign law is properly pleaded and proven.

In mixed marriages

1. May be recognized in the Ph if: **OCP** – (i) Valid divorce was **obtained** abroad, either by the alien or the Filipino spouse or jointly by them; (ii) the divorce **capacitated** the alien spouse to remarry; (iii) foreign divorce decree and foreign law properly pleaded and **proven**.
2. Applies even if the Filipino spouse was the one who filed the petition for declaration.
3. Only the Filipino spouse can avail of the benefits under Art. 26(2), the alien spouse can claim no right under the provision. Its purpose is to benefit the Filipino spouse by clarifying his marital status and settling any doubt created by the divorce decree.
4. The divorce must be made in accordance with the nationality of alien spouse.

5. Art. 26 also applies to foreign judgments nullifying the marriage on ground of bigamy.
6. The pertinent nationality is the parties' nationality at the when the valid divorce decree was obtained,¹⁰ not the time of marriage.
7. Art. 26 FC is an exception to the nationality principle.
8. A valid foreign divorce decree may be raised as a defense in a prosecution for bigamy.

Petition the recognition of the foreign divorce decree

1. The capacity of Filipino spouse to remarry is not automatically restored. He/she must petition the **recognition** of the foreign divorce decree.
2. In the petition for recognition of the foreign divorce decree, the court may also declare the Filipino spouse is capacitated to remarry.
3. Separate petition is not required – (i) the foreign divorce may be pleaded as an integral aspect of his claim or defense,¹¹ e.g., as defense in a crime of bigamy; (ii) may be made in a Rule 108 petition.
4. The effect of recognition shall retroact to the day when the divorce decree was obtained.
5. AM No. 02-11-10-SC covers only void and voidable marriages but not petitions for recognition of foreign divorce decrees. MR is not condition precedent in appealing judgments in the latter.

Proof of foreign divorce decree

1. (i) Official publication; (ii) If kept in Ph, attested copy by the legal custodian or deputy; (iii) If not kept in Ph, attested copy by the legal custodian + certification that the attesting officer is the legal custodian of the document issued by Ph diplomatic or consular official and authenticated by the seal of his office.
2. The divorce decree required to prove the fact of divorce is the judgment itself as rendered by the foreign court and not a mere certification of its existence.
3. The foreign law in accordance with which the foreign divorce decree was obtained must also be proven. This is necessary to determine: (i) conformity of the divorce decree with the law, and (ii) effect of the divorce decree, i.e., whether it capacitated the alien spouse to remarry.

C. Void Marriages (See *Tan-Andal v. Andal*, G.R. No. 196359, May 11, 2021)

A void marriage is one which is considered a marriage in Ph law, but one/some/all requisites were lacking.

1. The marriage must be between a man and woman.
2. A marriage ceremony was celebrated, not a mere private signing of contract. – the solemnizing officer must be present to witness the personal declaration of the spouses, as representative of the State who is also a party.
3. Parties must have consented to be parties to the marriage.

****Otherwise, there is no marriage at all.**

Judicial declaration of nullity of void marriage

1. GR: not required since a void marriage has no legal effects at all.
2. XPN: for purposes of remarriage, the invalidity of former marriage may be invoked solely based on a judgment declaring its nullity. Otherwise, second marriage is void ab initio.
3. R108 petition is no longer necessary for recognition of judgment declaring nullity of

⁸ Republic v. Olaybar

⁹ Morigo v. People

¹⁰ Republic v. Orbecido III

¹¹ Sarto v. People

marriage, the judgment will simply be annotated in the marriage record with LCR.

Characteristics

Open to direct or collateral attack

1. Direct attack through a petition for the declaration of the absolute nullity of marriage. A.M. No. 02-11-10-SC is applicable.
2. Collateral attack – (i) Determination of heirship; (ii) Illegitimacy of children; (iii) Settlement of estate; (iv) Dissolution of property regime; (v) Criminal case (for bigamy); (vi) Action for support; (vii) Claim for death benefit; (viii) Petition for letters administration. In these cases, the court may declare the nullity of the marriage even if it not the main action.
3. However, the attack cannot be done through a R108 Petition since it has the same objective as a petition for the declaration of nullity of marriage, i.e., to establish the status of the parties. R108 petition cannot substitute a PDNM.
4. The trial court has no jurisdiction to nullify marriage in a special proceeding for the correction and/or cancellation of entry in the civil registry. It is only proper when there is an entry of marriage in the civil registry but no marriage happened in fact.

Imprescriptible

1. Action or defense of nullity of marriage does not prescribe.
2. Even after death of spouses, it is still susceptible to collateral attack. However, direct attack is no longer available if the marriage was celebrated during FC.

Who may file action

Direct attack

1. Marriage during CC: (i) husband and wife (A.M. No. 02-11-10-SC); (ii) aggrieved spouse in prior marriage, if the ground is bigamy. Provided that the parties to the second bigamous marriage are still alive and the former marriage was not yet annulled.
2. Marriage during CC: any real-party-in-interest – (i) husband and wife; (ii) aggrieved spouse in case of bigamous marriage; (iii) compulsory heirs if the husband and wife they already died.

Collateral attack

1. Only compulsory or intestate heirs for purposes of protecting their successional rights

Void marriages

1. Art. 35 – **MALBIS** (1) **Minority**; (2) Absence of **authority** of solemnizing officer; (3) Absence of valid marriage **license**; (4) **Bigamous** or polygamous marriage; (5) Mistake as to the physical **identity** of the other party; (6) Void **subsequent** marriage under Art. 53
2. Art. 36 – (7) Psychological incapacity
3. Art. 37 – (8) Incestuous marriages
4. Art. 38 – (9) Prohibited marriages due to public policy
5. Art. 40 – (10) “Bigamous” marriage. – Subsequent marriage without securing judicial declaration of nullity of former void marriage.

(1) Minority

1. Void due to lack of an essential requisite.
2. Not curable by consent of guardian since age is a positive required of FC.
3. Marriage is void even if valid in the place of celebration.

(2) Absence of authority of solemnizing officer

1. Void due to lack of a formal requisite.

2. XPN: if either or both of the parties believed in good faith that the solemnizing officer had legal authority (mistake of fact).

(3) Absence of valid marriage license

1. Except marriages of exceptional character **CRAMO**
2. Certificate of no record from LCR as proof (see above)

(4) Bigamous or polygamous marriage

1. Marriages celebrated during the existence of a pre-existing valid or voidable marriage. c.f.: Art. 40.
2. Crime of bigamy under Art. 349 RPC.
3. Property regime of second bigamous is that under Art. 148 since there is legal impediment to marry.

XPN: Art. 41

1. A second marriage despite the subsistence of a prior valid marriage is not void for being bigamous if there is a prior judgment declaring the presumptive death of the spouse absent in the former marriage.
2. Requirements: (i) absence of a spouse for 4y or 2y (if in danger of death); (ii) well-founded belief of spouse present that the spouse absent was already dead; (iii) judicial declaration of presumptive death of the spouse absent.
3. Judicial declaration of presumptive death of the spouse absent is required only for purposes of remarriage. For any other purpose, such declaration is not necessary since the FC/NCC provisions on presumption of death are mere rules on evidence. Once the absence for the specified period was established, the presumption arises.
4. (i) If all requisites are complied with, the second marriage is valid, (ii) otherwise, it is void for being bigamous under Art. 35(4).
5. If second marriage is valid ACP/CPG/CSP governs.

Status of second marriage

1. **Spouse present in GF**, second spouse in GF = valid
2. **Spouse present in GF**, second spouse in BF = valid
3. Spouse present in BF, second spouse in GF = void
4. Spouse present in BF, second spouse in BF = void

****What is material is the GF (well-founded) belief of spouse present.**

Remedies in case of reappearance of spouse absent

1. If second marriage valid – (i) by filing and recording affidavit of reappearance with LCR, or (ii) petition for dissolution of second marriage. **Termination of second marriage not automatic upon reappearance of absentee spouse**, the remedies must be availed.
2. If second marriage valid – Petition for the declaration of nullity of second marriage. The aggrieved spouse (spouse absent) has personality to file the petition.

Effects of dissolution of second marriage **LADIS**

1. Rules presupposes that the second marriage was **valid**, either: (i) both spouses acted in GF, or (ii) spouse present acted in GF and second spouse acted in BF.
2. If the marriage was void under Art. 35(4), the consequence of void marriage applies.

Effects

Both acted in GF

Second spouse acted in BF

Legitimacy	Legitimate if conceived prior to dissolution	Same
ACP/CPG	ACP/CPG is dissolved, subject to liquidation.	Forfeiture of share in the net profits of the second spouse in the community assets in favor of: common children, children of first spouse, children of present spouse (in order of priority)
Donations	Donations propter nuptias remain valid.	Donation propter nuptias in favor of second spouse revoked by operation of law.
Insurance	Designation of second spouse as beneficiary in life insurance policy cannot be revoked (unless revocable at first instance).	Designation of second spouse as beneficiary in life insurance policy may be revoked even if not revocable.
Succession	Second spouse not disqualified from inheriting from the other spouse	Disqualification from inheritance from the present spouse, testate or intestate

(5) Mistake as to the physical identity of the other party

1. Mistake of fact on the actual physical identity of a person, not other attributes.
2. E.g., twins, other party's face was concealed.

(6) Void subsequent marriage under Art. 53

1. (i) Art. 53 declares void those marriages which did not comply with Art. 52; (ii) Art. 52 pertains to the procedural requirements for Arts. 50 and 51; (iii) Art. 50 pertains to marriages annulled by final judgment or declared void ab initio under Arts. 45 and 40.
2. Under Art. 52, if marriage was annulled or declared void under Art. 40, there is need to: (i) liquidate, partition, distribute properties of the spouses, (ii) deliver the legitimes of compulsory heirs; and (iii) record the judgment (not the decree) of annulment or declaration of nullity, and the liquidation, partition, distribution of properties, and delivery of legitimes in the proper civil registry. The decree will be issued after compliance within this requirement.
3. The requirement applies only to: (i) voidable marriages under Art. 45 that was annulled; or (ii) void marriage under Art. 40 that was declared void ab initio. These marriages are governed by ACP/CPG, not Art. 147/148, and Art. 52 applies only when property regime is ACP/CPG; and (iii) there is remaining property in the property regime.
4. Effects of non-compliance – (i) second marriage is declared void; (ii) children of the marriage are legitimate; (iii) no criminal liability for bigamy.

(7) Psychological incapacity

1. Psychological incapacity under the FC is not a medical concept but a legal concept, which need not be by reason of a mental illness or disorder.
2. It is simply the **personal conditions** of a person, or the enduring and durable aspects of his personality (personality structure) that is so dysfunctional and renders him totally unable to understand marriage and to comply with the essential marital obligations, and which forms part of his identity or character (acts of dysfunctionality that undermines the family).
3. The personality structure may be brought about by **genuine psychic issues**, which need not be a medical reason but ordinary events and influences in the person's life while growing up.
4. **Expert testimony is not indispensable** for as long as there are witnesses to saw the respondent growing up or the environment,

influences he grew up in, as well as important events in his life.

5. The petition for declaration of nullity may be filed by either party, the psychologically incapacitated party is not barred from invoking his own incapacity.
6. Quantum of proof is **clear and convincing evidence** (presumption of validity of marriage), considering the totality of evidence.

Characteristics [GraJ](#)

1. Gravity – seriousness of the incapacity that renders the person unable to comply with the essential marital obligations, manifested by acts that clearly undermine the family. It which need not be by reason of a mental illness or disorder but simply the personal conditions of a person or the enduring and durable aspects of his personality called his personality structure.
2. Juridical antecedence – the incapacity must be shown to exist prior or at the time of marriage, although it becomes manifest only after the celebration. It must be rooted on genuine psychic issues or events in the life of the concerned spouse growing up testified to by ordinary witnesses, and not necessarily by a medical expert.
3. Incurability – incapacity is so enduring and persistent with respect to a specific partner such that the couple's respective personality structures are so incompatible and antagonistic it would inevitably result in the and irreparable breakdown of the marriage. It is a legal concept and need not be absolute or a medically or clinically permanent condition.

(8) Incestuous marriage

1. Between descendants and ascendants, regardless of degree (il/legitimate).
2. Between brothers and sisters, whole/half-blood, il/legitimate.
3. ****Marriage between stepsiblings is no longer void under FC (formerly under CC). However, if celebrated under CC, the effectivity of FC does not automatically validate the same. The validity of marriage is determined by the law in force at the time of its celebration.**

(9) Prohibited marriages due to public policy [CISKA](#)

1. Between **collateral** blood relatives up to 4th civil degree of con (not aff), except siblings under Art. 37.
2. Between [former] **step**-parents and children
3. Between [former] parents and children-in-law
4. Between persons by reason of adoption – (i) Adopter-adopted; (ii) Adopter-surviving spouse of adopted; (iii) Adopted-legitimate child of adopter; (iv) Adopted-other adopted child of the same adopter.
5. Between a surviving spouse and the another who (i) intentionally killed his/her spouse; (ii) to do away with the latter and for the purpose of marrying such surviving spouse. Applies even if the widow/er did not conspire; prior criminal conviction is not necessary to render the marriage void.

****Under [2] [3], the prohibition subsists even if the marriage creating the relation was already terminated.**

(10) "Bigamous" marriage

1. Marriage celebrated without securing judgement declaring the absolute nullity of a former marriage.
2. Property regime of second "bigamous" marriage is ACP/CPG. c.f.: bigamous marriage under Art. 35(4) is Art. 148.

3. The requirement applies only if the second marriage is celebrated during FC, since there is no such requirement under the regime of CC. Under CC, if the prior marriage is void ab initio, the second marriage is perfectly valid. FC cannot be applied retroactively to invalidate such marriage.

Effect on criminal liability (*Pulido v. People*)

1. Non-compliance produces only civil, not criminal effects. Hence, it will not result in the commission of the crime of bigamy.
2. Art. 40 did not modify the Art. 349 RPC on bigamy which contemplates the celebration of a subsequent marriage during the subsistence of a valid or voidable marriage.
3. The absolute nullity of the prior marriage is now a defense in the prosecution for the crime of bigamy, even without prior declaration of its nullity.
4. Pulido may be applied retroactively since it is favorable to the accused.
5. A void marriage may be subject to collateral attack in a prosecution for bigamy. The court may declare the nullity of marriage in the criminal action, even if it is not the subject of the main case.

D. Voidable Marriages

Marriages which have all the essential and formal requisites, but the consent given is vitiated by reasons provided for under Art. 45.

1. Unlike void marriages, voidable marriages cannot be subject to a collateral attack. The nullity must be raised in a petition for annulment of marriage. Hence, a voidable marriage is not a defense in the prosecution for bigamy without judicial declaration annulling the marriage. It also cannot be raised in cases involving heirship.
2. The petition for annulment must be filed during the lifetime of spouses. Upon death of either or both, the validity of marriage is fixed.
3. Only parties to the marriage may file a petition for annulment.
4. Property regime is ACP/CPG/CSP.
5. Children conceived prior to judgment annulling the marriage are legitimate.

Grounds LUFFIS

1. Lack of parental consent
2. Unsound mind
3. Fraud
4. Force, intimidation, undue influence
5. Impotency
6. Incurable STD

(1) Lack of parental consent

1. (i) Both parties are of legal age, but (ii) at least one of them is below 21y.
2. For legitimate children, the consent of – (i) father, (ii) mother, (iii) surviving parent or guardian, (iv) person having legal charge, in order.
3. For illegitimate children, the consent of – (i) mother, or (ii) person exercising substitute parental authority, in order.

(2) Unsound mind: either party is of unsound mind at the time of the celebration of the marriage.

(3) Fraud CPSPD

1. (Mere) failure to disclose of prior **conviction** by final judgement of a crime involving moral turpitude.
2. Concealment by wife of **pregnancy** (i) by other man, (ii) existing at time of marriage, (iii) where the wife is aware of such facts, and (iv) the groom unaware of the same. – if the child was already 3y

at the time of marriage, and later the husband learned that the child is not his, he cannot file for annulment since the pregnancy must have existed at the time of marriage.

3. Concealment of **STD** at time of marriage, regardless of nature (serious or not, in/curable)
4. Concealment of **drug** addiction, habitual alcoholism, homosexuality, lesbianism **DAHL**

(4) Force, intimidation, undue influence

1. Force – physical/external fear
2. Intimidation – moral/internal fear; fear that harm will befall her if he did not accede to the other's demands.
3. Undue influence – taking advantage of superiority over the other to achieve his desires.

(5) Impotency

1. Physical inability to consummate marriage which appears incurable existing at the time of marriage, i.e., total inability to engage in sexual intercourse.
2. Sterility is not a ground for annulment.
3. Either on the part of the groom or bride.
4. Need not be by physical causes, may also be by psychological causes.
5. The other spouse must not be aware of the same at the time of the celebration of the marriage.
6. Presumption is always in favor of potency.

Action for annulment

Ground	Who may file	Period to file	Ratification
Lack of consent	Parent whose consent is required; or the party if already 21	5y from attaining 21y, before ratification; during lifetime	Free cohabitation after attaining 21y
Unsound mind	(i) sane spouse unaware of the other's condition; (ii) rep. of insane spouse; or (iii) sane spouse upon gaining sanity or on lucid interval	Lifetime of spouses	Free cohabitation after gaining sanity
Fraud	Aggrieved spouse	5y from discovery; during lifetime	Free cohabitation with full knowledge of fraud
Force	Aggrieved spouse	5y from cessation; during lifetime	Free cohabitation after cessation
Impotency	Aggrieved spouse unaware of the other's condition	5y from marriage	Cannot be ratified
STD	Aggrieved spouse unaware of the other's condition	5y from marriage	Cannot be ratified

E. Effect of Defective Marriages

Effects	Effect of annulment	Effect of judicial declaration of nullity
Right to remarry	Spouses may remarry, subject to Art. 52	Spouses may remarry. If based on Art. 40, subject to Art. 52
Wife's surname	If guilty, she must resume maiden name. If innocent, she may resume maiden name or use married name. XPN: (i) court decrees otherwise, (ii) either spouse	Woman must resume maiden name since she acquires no right to use the husband's surname.

	contracted another marriage.	
Status of children	Legitimate if conceived before finality of judgement of annulment	Illegitimate. XPNs: Under Art. 36, 53 – legitimate if conceived before finality of judgement
Property relations	ACP/CPG/CSP is automatically terminated upon finality of judgment, subject to Art. 52	Art. 147/148 governs from the beginning. XPN: Under Art. 40, same with effect of annulment.
Donations propter nuptias	Donation remains valid. XPN: revoked by operation of law if donee acted in BF	Same rule if ground is violation of Art. 40
Designation in LI policy	Cannot be revoked. XPN: if beneficiary acted in BF, even if irrevocable	Same rule if ground is violation of Art. 40
Successional rights	Guilty party is DQ, the innocent party's right is not affected	No reciprocal successional rights. XPN: if ground is Art. 40, same with effect of annulment.
Prior to judgment	Marriage is valid; not open to collateral attack	Marriage already void; open to collateral attack
Effect of judgment	Produces the invalidity or annuls of marriage	Merely confirms or declares the invalidity of marriage

F. Foreign Marriages

(a) Between aliens in Ph

1. Their capacity is governed by their national laws.
2. Must submit a certificate of legal capacity to contract marriage issued by their diplomatic or consular official.

(b) Between Filipinos abroad

1. *Lex loci celebrationis*. – (i) law of the foreign state governs as to formalities; (ii) valid in Ph if valid under the laws of state where celebrated (Art. 26).

XPNs: the marriage is void in Ph even if valid in place of celebration if void under

1. Art. 35(1) – minority
2. Art. 35(4) – bigamous/polygamous
3. Art. 35(5) – mistake in identity of contracting party
4. Art. 35(6) – subsequent marriage under Art. 53
5. Art. 36 – PI
6. Art. 37 – incestuous marriages: as/descendants, siblings
7. Art. 38 – prohibited marriages due to public policy **CSIAK**

G. Legal Separation

Grounds **RAFPALCASA**

1. **Repeated** acts of physical violence, grossly abusive conduct against (i) petitioner, (ii) common child, (iii) child of petitioner. – “Grossly abusive conduct” covers emotional, psychological, sexual, etc. abuses. Single act is sufficient if it falls under [2] [4] or [8].
2. **Attempt**/connivance to corrupt or induce engagement in prostitution of – (i) petitioner, (ii) common child, (iii) child of petitioner.
3. **Final** judgment sentencing respondent to imprisonment >6y, even if pardoned.
4. **Physical** violence or moral pressure to compel the petitioner to change religious or political affiliation. **RBPA**
5. Drug **addiction**, habitual alcoholism. – (i) acquired after marriage, (ii) if before marriage it may be a ground for annulment if concealed, or ground declaration of nullity under Art. 36.
6. **Lesbianism**, homosexuality. – same with [5]
7. **Contracting** bigamous marriage, in Ph or abroad. – the ground is the mere act of contracting the

marriage, even if the spouse cannot be prosecuted for bigamy as when the second marriage is celebrated abroad or void.

8. **Attempt** against the life of petitioner.
9. **Sexual** infidelity or perversion. – (i) infidelity need not constitute adultery and concubinage, may be with a person of the same gender; (ii) perversion pertains to EO sexual acts without the consent of the other spouse.
10. **Abandonment** without just cause for >1y.

****The grounds are committed after marriage.**

Action for legal separation

Cooling-off period

1. 6m wherein – (i) the court is prohibited from trying the case on the merits; (ii) but it may hear and grant provisional remedies injunction to prevent the other spouse from managing ACP/CPG.
2. XPN: if the ground is “violence” under Anti-VAWC Law where the law prohibits the cooling-off period, especially if there is application for protection order.

Effect of decree of legal separation

1. Bed and board separation.
2. Marital bond is not severed. – (i) they cannot remarry; (ii) they cannot have sex with other persons. Otherwise, they may be guilty of adultery/concubinage.
3. Not res judicata to a petition for annulment or DNM since the validity of marriage is not put in issue.
4. Custody of minor children shall be awarded to the innocent spouse. XPN: if below 7y, the child should be with the mother unless the court finds compelling reasons. The custody of minor child/ren shall not be given to the abuser in Anti-VAWC Law.
5. DLS cannot be issued based on (i) stipulation of facts; (ii) confession of judgment. The court shall order the fiscal to ensure that there is no collusion or connivance by the parties, and that evidence are fabricated or suppressed. If there one spouse confessed, DLS may still be issued if there is independent evidence of commission of the offense.

LMC ADIS

Effect	Decree of legal separation	Decree of reconciliation
Duty to live together	Spouses are exempted from the obligation of living together. The husband is no longer entitled to consortium.	Spouses are obliged to live together. If the other refuses, he may lose right to support.
Mutual support	Obligation terminates. XPN: if the court orders guilty spouse to support the innocent spouse.	Obligation is restored.
Consent	Consent of other spouse on matters required is excused.	Consent is no longer be excused.
ACP/CPG	(i) ACP/CPG is automatically terminated, subject to liquidation; (ii) from termination, CSP governs; (iii) share of the guilty spouse in the net profits [not net assets] is forfeited in favor of: (a) common children; (b) children of guilty spouse	Property regime is not automatically revived (see requirements for revival)

	by previous marriage; (c) innocent spouse. ¹²	
Donations propter nuptias	Donations propter nuptias remain valid but if the donee is the guilty spouse, it becomes revocable. The action for revocation must be filed within 5y from the finality of DLS.	Innocent spouse loses right to revoke donations. Those already revoked by final judgment are not restored.
Insurance policy	Designation of guilty spouse as beneficiary in LI policy of innocent spouse becomes revocable.	Innocent spouse loses right to revoke designation. That already revoked by final judgment is not restored.
Successional rights	If innocent spouse, unaffected. If guilty spouse: (i) DQ from being compulsory or legal heir; (ii) testamentary dispositions in the will of innocent spouse existing as at the time of the finality of the DLS in his favor are revoked by operation of law. Guilty spouse may be designated as voluntary heir after the finality of the DLS.	Successional rights of guilty spouse are automatically reinstated, including testamentary dispositions which were revoked by operation of law.

Defenses

1. Condonation – (i) unilateral act on part of innocent spouse pardoning the commission of the offense; (ii) may be implied by the continuous cohabitation despite knowledge of the infidelity; (iii) does not cover future acts.
2. Consent – (i) unilateral act on part of innocent spouse approving the offense before its commission; (ii) while the agreement is legally void, it may constitute good defense in a case for legal separation; (iii) necessarily covers future acts.
3. Connivance – (i) the ground was participated by both spouses; (ii) involves tacit permission by one spouse for the other to commit the marital offense for purposes of securing DLS.
4. Collusion – the ground was not really committed but the parties are making it appear as though it was committed for purposes of obtaining a DLS.
5. Mutual guilt or recrimination – (i) both parties gave ground for legal separation; (ii) if the W abandoned the husband on ground of his physical violence, there is no pari delicto.
6. Prescription – 5y from occurrence of the ground. In case of repeated physical violence, each repetition is a separate ground.

In case of death of other spouse

1. Pending petition – (i) petition shall be dismissed; (ii) death of either spouse abates the action.
2. After issuance of DLS. – must be given effect as regards property relations of the parties.

Reconciliation

1. If de facto, no effect on DLS.
2. If decree of reconciliation was secured from the court which issued it – (i) the DLS is set aside. (ii) XPN: in property relations: (a) the separation of property, and (b) forfeiture of the net profits subsist.

¹² Same effect with respect to guilty spouse in case of: (i) dissolution of second marriage upon reappearance of spouse absent; (ii) annulment of voidable marriage; (iii) declaration of nullity of void marriage under Art. 40.

¹³ One spouse is deemed to have abandoned the other if:

- (a) He/she has left conjugal dwelling

3. Effects of decree of reconciliation (see above).

Revival of property regime

1. Parties must execute a sworn agreement of revival.
2. The agreement must indicate (i) properties contributed anew, and (ii) properties to remain separate. If the spouses want to remove the effects of forfeiture in the net profits, then they must include the forfeited properties as part of common properties.
3. The property regime is revived upon court approval of the agreement.
4. However, the parties are not allowed to adopt a new property regime.

Separation de facto

1. Does not affect the property relations of spouses.
2. Spouse refusing to live conjugal home without just cause has no right to be supported.
3. Judicial authorization may be obtained via summary proceedings – (i) in transactions requiring the consent of the absent spouse; (ii) for the present spouse to administer or encumber separate property of the absent spouse when necessary for the support of the family.
4. Abandonment¹³ by one spouse of the other is grounds to petition court for: (i) receivership, (ii) JSP, (iii) sole administration of ACP, CPG.

H. Property Relations Between Spouses

1. Donation Propter Nuptias

Requisites PCF

1. Made **prior** to the celebration of the marriage
2. In **consideration** or by reason of marriage
3. In **favor** or either or both of the spouses – the donor may be (i) either of the future spouses, (ii) 3p.

Subject matter

1. Present property – valid regardless of donor.
2. Future property – (i) valid if donor is the other future spouse; (ii) void if donor is 3p.
3. Donation of future property

Formalities

1. If present property, formalities of donations inter vivos apply. – (i) <5k, may be made orally, coupled with simultaneous delivery; (ii) ≥5k, must be in writing; (iii) if real property, must be in a public instrument, subject to notation and notification requirement as to acceptance; (iv) if intended to take effect after death, formalities of will applies.
2. If future property, formalities of will apply. It is also governed by the law on testamentary succession. N.B.: valid only if donated by the other future spouse.

Limitations on donation of present property

1. Property regime other than ACP – (i) Spouses cannot donate to each other more than 1/5 of their present property; (ii) only the excess will be invalid. Properties donated will not form part of CPG/CSP.
2. If ACP, no limit.

Grounds for revocation NoVALIC

The donation remains valid but it comes revocable upon

1. **Non**-celebration of marriage – XPN: donation becomes void if incorporated in marriage

- (b) Without intention of returning
A spouse is presumed without intent to return if:
 - (a) He/she left for a period of three months, or
 - (b) He/she failed to give information of his/her whereabouts for three months

<p>settlement since MS start to govern from the precise moment of marriage.</p> <p>2. Marriage judicially declared void – XPN: donation is revoked by operation of law if the donee acted in BF under (a) Art. 40, (b) Art. 41 [reappearance of spouse absent].</p> <p>3. Marriage annulled – XPN: donation is revoked by operation of law if the donee acted in BF.</p> <p>4. Issuance of decree of legal separation – XPN: donation is revoked by operation of law if the donee acted in BF.</p> <p>5. Fulfillment of a resolutive condition attached to the donation.</p> <p>6. Commission of an act of ingratitude by the donee under Art. 765.¹⁴</p> <p><i>**As GR, donation propter nuptias is irrevocable since it is an inter vivos donation.</i></p>

2. Void Donations by the Spouses

GR: Every donation or grant of gratuitous advantage, direct or indirect, during the marriage or cohabitation shall be void. <i>Applies:</i>
<ol style="list-style-type: none"> Between spouses with valid and voidable marriages. Between persons living together as husband and wife without a valid marriage – (i) common law spouses, (ii) couples with void ab initio marriage.
XPNs: Moderate gifts on the occasion of any family rejoicing.

PROPERTY REGIMES

Marriage under FC

Regime	Valid / Voidable	Void Art. 40	Void
ACP	(i) if agreed in MS; (ii) if there is no MS; (iii) if MS is void	(i) if agreed in MS; (ii) if there is not MS; (iii) if MS is void	N/A
CPG	Only if agreed in MS	Only if agreed in MS	N/A
CSP	(i) Only if agreed in MS; (ii) upon issuance of DLS; (iii) upon JSP; (iv) non-compliance with Arts. 103 / 130	Only if agreed in MS	NA
Art. 147	N/A	N/A	(i) common law spouses; (ii) spouses with void marriage – with no legal impediments to marry; exclusive
Art. 148	N/A	N/A	(i) common law spouses; (ii) spouses with void marriage – with legal impediments to marry; non-exclusive

Marriage under CC

Regime	Valid / Voidable	Void
ACP	Only if agreed in MS	N/A
CPG	(i) if agreed in MS; (ii) if there is no MS; (iii) if MS is void	N/A

¹⁴ ARTICLE 765. The donation may also be revoked at the instance of the donor, by reason of ingratitude in the following cases:

(1) If the donee should commit some offense against the person, the honor or the property of the donor, or of his wife or children under his parental authority;

CSP	(i) Only if agreed in MS; (ii) upon issuance of DLS; (iii) upon JSP; (iv) non-compliance with Arts. 103 / 130, if spouse died during FC regime	NA
Art. 147	N/A	(i) common law spouses; (ii) spouses with void marriage – with no legal impediments to marry; exclusive
Art. 148	N/A	(i) common law spouses; (ii) spouses with void marriage – with legal impediments to marry; non-exclusive

ACP/CPG

Distinctions	ACP	CPG
Nature	Special type of co-ownership	Special type of co-partnership
Effect, in general	Spouses become co-owners of all the properties in the marriage	Spouses become co-owners: (i) the fruits of their separate properties, and (ii) the properties they acquire during marriage.
Suppletory provisions	Provisions on co-ownership	Provisions on partnership
Properties included	(i) All properties owned by the spouses at the time of celebration of the marriage; and (ii) those acquired during marriage	(i) Fruits of common and separate properties due or receive during marriage; (ii) properties acquired during marriage, which are presumed conjugal ,** whether by common funds, by chance, by work/industry.
Exclusive properties	DBPE (i) Those excluded in the community properties in the marriage settlement (ii) Those acquired before marriage with legitimate descendants by a prior marriage, including fruits (iii) Properties for the personal and exclusive use of either spouse. XPN: jewelry (iv) Those acquired during marriage via gratuitous title, including fruits. XPN: if the donor expressly states that it shall form part of the community properties.	PreGO (i) Separate properties owned by the spouses prior to marriage. (ii) Those acquired during marriage through gratuitous title. (iii) Those acquired during marriage via redemption , barter, exchange using the separate property of either spouse (iv) Purchased during marriage via the separate property of either spouse.
Properties at time of marriage	It is possible for the spouses to have community properties at the start of marriage, i.e., those acquired prior to the marriage brought into by spouses.	It is impossible for CPG to have properties at the start of the marriage since all those acquired by the spouses prior to marriage remain exclusive properties
Computation	MV of assets at time of liquidation Less: Community debts Equals: Net assets Less: MV of assets at time of marriage Equals: Net profits (subject to forfeiture)	MV of assets at time of liquidation Less: Conjugal debts Equals: Net profits (subject to forfeiture)

(2) If the donee imputes to the donor any criminal offense, or any act involving moral turpitude, even though he should prove it, unless the crime or the act has been committed against the donee himself, his wife or children under his authority;

(3) If he unduly refuses him support when the donee is legally or morally bound to give support to the donor.

Obligations of ACP/CPG

Obligations	ACP/CPG	EXC	ACP/CPG to Advance
Support	(i) spouses; (ii) common children ^A ; (iii) legitimate children of either spouse ^B	(i) illegitimate children of either spouse; (ii) legitimate ascendants; (iii) il/legitimate descendants, other than ^{A/B} ; (iv) il/legitimate brother or sister	ACP, if financially capable may be compelled to advance the support chargeable to EXC. CPG may be compelled only if financially capable AND <u>after obligations of the conjugal partnership were covered</u>
Ante-nuptial debts	If debt redounded to benefit of the family	If debt did not redound to benefit of the family	
Debts contracted during marriage	If contracted: (i) by both spouses; (ii) by one other's consent; (iii) by one without other's consent, to the extent that the family was benefited; ¹⁵ (iv) by the administrator-spouse for the benefit of the ACP, CPG	Contracted by one spouse without the consent of the other, and the family was not benefited	ACP, CPG will not advance even if debtor-spouse has no separate properties (no provision)
Taxes and expenses for repair	(i) All taxes, liens, charges and expense, major and minor repairs on community or conjugal partnership property (ii) to ACP, taxes on, expenses of preservation of exclusive property used by the family (iii) to CPG, taxes on, expenses of preservation of exclusive property [whether used by the family or not]	To ACP, taxes on, expenses of preservation of exclusive property not used by the family	ACP, CPG will not advance even if debtor-spouse has no separate properties (no provision)
Civil liability for delict	Not chargeable	Chargeable	ACP shall advance since it is covered by "liabilities incurred by either spouse by reason of a crime or a quasi-delict" (Art. 94[9]) CPG shall not advance since only "fines and indemnities imposed upon them" shall be advanced (Art. 122). This covers only civil liability ex-delicto (convicted) but not other civil liabilities if the spouse was acquitted. The latter is treated as debt incurred without the consent of other spouse during the marriage.

Other obligations chargeable to ACP/CPG:

1. Cost of professional or vocational course and other activity for self-improvement of spouses.
2. Cost of professional or vocational course and other activity for self-improvement of common legitimate children, donated or promised to be donated by the spouses.
3. Cost of litigation between spouses, unless the same is groundless.

¹⁵ The creditor has the burden to prove that the debt redounded to the benefit of the family. There is presumption that the debt redounded to the benefit of the family if:

- (a) The husband contracts the obligation on behalf of the family business.
- (b) Husband himself is the principal obligor in the contract.
- (c) Husband directly received the money and services used in the business.

If the husband acted as mere surety or guarantor, and the money or services are given to another person, there is no

presumption that the same redounded to the benefit of the family.

N.B.: Even if the loan agreement was not signed by the other spouse, he may be held solidarily liable for the obligation considering that the proceeds benefited the marriage/family.

Benefit – the benefit contemplated by the law must arise directly from the proceeds of the loan and not merely indirectly or as a byproduct of its use. The mortgaging of conjugal assets to secure debts for the rehabilitation of the corporation where the husband was an officer will not produce direct benefit of the family.

3. Absolute Community of Property Regime/ Conjugal Partnership of Gains Regime

Common provisions

1. ACP/CPG regimes can start only at the precise moment the marriage is celebrated (Art. 88); contrary stipulation is void.
2. Waiver of rights, interest, share, and effects **RISE** during the subsistence of the property regime is void. – (i) such RISE are merely inchoate prior to the dissolution of the property regime; (ii) RISE is conditioned on the existence of net remainder after liquidation.

Administration and management

1. **Joint administration.** – The spouses are generally co-administrators or co-managers of their common properties.
2. In case of disagreement – (i) H's decision prevails; (ii) W's remedy is an action for rescission within 5y from the date of contract implementing the husband's decision.
3. Sole administration is allowed if other spouse is incapacitated or unable to participate in the administration of the properties – (i) covers only acts of administration; (ii) for acts of strict dominion, the administrator-spouse had to secure: (a) **court authority** or (b) written **consent** of the other spouse.
4. Separation de facto does not affect the property relations of the spouses. If consent of the other spouse is needed for any transaction involving common property: (i) judicial authorization may be obtained in lieu thereof, or (ii) the spouse present may petition the court for administration of the common properties.
5. In case of abandonment, the spouse present may petition the court for (i) receivership; (ii) JSP; (iii) sole administration of the ACP/CPG. There is presumption of abandonment when the spouse was absent for 3 continuous months with his whereabouts being unknown.

Disposition or encumbrance, including donation, testamentary dispositions

1. Requirement: (i) written **consent** of the other spouse, or (ii) **court** authority. XPN: Moderate donations for charity or on occasions of family rejoicing or distress.
2. Non-compliance renders the Disposition or encumbrance is **void in its entirety**, even with respect to the share of the consenting spouse. The transaction is void for lack of object (inchoate). There is no ideal share in conjugal/community assets during its subsistence as the share of each spouse is conditioned on the existence of a net remainder.
3. The void contract is construed as continuing offer on the part of consenting spouse and third party (offerors), the offeree being the non-consenting spouse. It is perfected by – (i) acceptance of the other spouse; or (ii) court authority. The perfection does not retroact to the original date of the contract but takes effect only as of the date of acceptance or authorization (not ratification since contract is void).
4. Under CC, the disposition by H without the W's consent of conjugal property is **voidable** (not void). The wife may seek annulment (i) during marriage, and (ii) within 10y from the date of the questioned transaction. The rule in FC may be applied even if the conveyance occurred during the regime of FC.

XPNs: unconsented or unauthorized contract will not be invalidated if:

1. Death of one spouse intervened – even though the sale made by one spouse during his lifetime was

void in its entirety, the SC did not invalidate such contract on account of the intervening death of the contracting spouse pending action for the declaration of the nullity of sale. Upon death, the ACP/CPG is terminated and subject to liquidation and the inchoate share of spouses materialized to their ideal shares or actual interests.

2. The buyer is in GF. The buyer must prove that he exercised due diligence in: (i) verifying the validity of seller's title over the property, and (ii) the authority or capacity of the transacting spouse is selling the community or conjugal property.

CPG

Presumption of conjugal ownership**

1. Property acquired during marriage is presumed conjugal.
2. For the presumption to apply, there must be proof of when the property was acquired, which must be during the marriage.
3. Presumption applies even if it appears that the acquisition was made, contracted, or registered in the name of only one of the spouses. – (i) does not destroy the conjugal nature of the property; (ii) not conclusive proof of exclusive ownership of the spouse in whose name the property was registered.
4. Not applicable if – (i) date of acquisition of property was not shown to be during marriage; (ii) in case of mixed marriages where the property concerned is real property. The alien spouse cannot prove that the property is conjugal/community, or that it is his exclusive property.

Special provisions on CPG

SM	Conjugal if:	Exclusive if:
Ownership of exclusive property where improvements made during the marriage at the expense of conjugal partnership or efforts of either/both of them	[[Improvement Cost] + [Increase in Value]] > [Original Value] E.g., H owns land worth 300k, house was built for P290k. After which, land is valued at 315k. Land is CPG since [290k+15k] > 300k.	[[Improvement Cost] + [Increase in Value]] < [Original Value] <i>Principle of reversed accession</i>
Ownership of property bought by one of the spouses before marriage in installments paid partly by exclusive funds of one spouse and partly by conjugal funds	Title vested during marriage, subject to reimbursement	Title vested prior marriage, subject to reimbursement
Ownership of credit belonging to one of the spouses payable in installments where sums are collected during marriage	Interest falling due during marriage	(i) Interest falling due before marriage, and (ii) principal payment
Livestock	In excess of the number of each kind brought to the marriage by either spouse (offsprings)	Livestock brought into the CPG as exclusive

Dissolution

Grounds **DJAVoST**

- (a) Death
- (b) Judicial Separation of Property (see below)
- (c) Finality of decree of annulment of marriage
- (d) Finality of decree declaration of nullity of marriage
- (e) Finality of decree of legal separation (see above)
- (f) Termination/dissolution of subsequent marriage on reappearance of spouse absent.

(a) Death

1. The surviving spouse **MUST liquidate** the community or conjugal property (i) within **one year** (ACP) of 6 months (CPG) from the death of spouse, (ii) judicially or extrajudicially (Arts. 103, 130). – new requirement not found in CC.
2. Applies to both CPG and ACP. For CPG established during CC, the requirement applies if the spouse died during effectivity of FC.
3. Effects of non-compliance – (i) mandatory **CSP** for the subsequent marriage; (ii) encumbrance and disposition of the community or conjugal properties of the terminated marriage shall be **void** in its entirety.
4. Modification by jurisprudence – the sale of conjugal or community assets by the surviving spouse without prior liquidation of the property regime is not void but shall be treated as sale of an ideal share of a co-owner. – (i) co-ownership is created among co-heirs; (ii) buyer becomes a co-owner with other heirs; (iii) the sale is unenforceable as to the shares of the non-consenting heirs.

(b) (c) Finality of decree of annulment or declaration of nullity

1. Applies to (i) voidable marriages annulled under Art. 45, or (ii) void marriages under Art. 40 declared null and void.
2. Upon finality of decree, the property regime is dissolved, subject to liquidation.
3. Requirement – (i) liquidation, partition of conjugal/community assets; (ii) delivery of presumptive legitimes; (iii) recording of judgment and deeds of conveyance with LCR and RD. If not complied, subsequent marriage is void.
4. For other void marriages, the requirement of mandatory liquidation of property does not apply since the property regime is that provided under Arts. 147/148.

(f) Termination/dissolution of subsequent marriage on reappearance of spouse absent

1. Applies when a spouse who was judicially declared as presumptively dead, reappears after the spouse present has contracted a subsequent marriage.
2. Second marriage is terminated upon – (i) recording of the Affidavit of Reappearance by the absent spouse (administrative); (ii) declaration of termination or dissolution of second marriage by the court.
3. The termination of the second valid marriage also terminates ACP/CPG, subject to forfeiture of the net profits of the second spouse if he/she acted in bad faith.

Liquidation

1. Inventory. – the listing of all the properties of (i) the ACP, CPG, and (ii) the exclusive properties of the spouses.
2. Crediting of advances. – (i) amounts advanced by ACP, CPG for the personal obligations of the spouses must be reimbursed; (ii) the reimbursement is included as part of conjugal or community assets
3. Payment of debts. – (i) ACP, CPG debts are paid out of ACP, CPG assets; (ii) if insufficient, spouses are solidarily liable with their separate properties.
4. Delivery of remaining exclusive properties. – whatever remains of exclusive properties of the spouses shall be delivered to them.
5. Determination and division of net remainder.
6. Delivery of presumptive legitimes of the common children.
7. Adjudication of the conjugal dwelling to the spouse with whom majority of the children choose

to remain, unless the parties agreed otherwise. If there is no majority, the court shall decide.

Net remainder

1. In ACP, net assets; in CPG, net profits.
2. GR: equal division between the spouses. XPN: (i) agreement of different proportion in the marriage settlements; (ii) voluntary waiver of the share by one spouse.

Computation

1. MV of assets at the time of dissolution
2. Less: Conjugal/community debts
3. = Net assets (ACP) or **Net profits (CPG)**
4. Less: MV of assets at the time of marriage (ACP only)
5. = **Net profits (ACP)**

****Net profits is subject to forfeiture.**

5. Separation of Property Regime

Regime where the spouses exclusively own their separate properties during marriage.

1. With respect to earnings from profession, business, industry; fruits from separate properties.
2. Spousal consent is not necessary for the disposition, possession, administration enjoyment of the separate property.
3. Family expenses – (i) borne in **proportion** to the income of spouses; (ii) if insufficient, charged against separate properties; (iii) spouses are **solidarily** liable for family expenses.
4. If government official, the proper of his spouse need not be included in the SALN.

When it governs

1. If provided in the marriage settlements. – (i) may cover present or future property or both; (ii) may be total or partial by indicating in the marriage settlements, the properties that will form part of the ACP/CPG, and those that will remain separate.
2. In case of JSP. – Unlike, ACP/CPG which commences at the precise moment of marriage, CSP may commence during the marriage upon JSP (see above).
3. In case of subsequent marriage where the prior marriage was terminated by the death of one spouse, and the surviving spouse failed to liquidate the property regime. The subsequent marriage shall be governed by mandatory CSP.

Transfer of administration of the exclusive property to the other spouse

1. By agreement. – May be done through a public instrument recorded in the RD.
2. Upon court order if one spouse – (i) became the guardian of another; (ii) was judicially declared absent; (iii) was sentenced with penalty carrying civil interdiction; (iv) becomes a fugitive from justice.
3. Automatic termination of administration. – (i) If the administrator spouse alienates the property of other spouse under his administration; (ii) Proceeds of the sale shall be turned over to the owner-spouse.

6. Property Regime of Unions Without Marriage

(a) Applicability

Regime	Void marriages other than due to Art. 40	Common law marriage
Art. 147	Parties are (i) legally capacitated to marry and (ii) do not suffer from any legal impediment. Art. 36: psychological incapacity	Parties are: (i) Legally capacitated to marry. (ii) Do not suffer from any legal impediment

	Art. 35(2): lack of authority of solemnizing officer Art. 35(3): lack of valid marriage license Art. 35(5): mistake as to the identity of the other party Art. 35(6): void marriages under Art. 53	(iii) Exclusive cohabitation.
Art. 148	Either or both parties (i) are legally incapacitated or (ii) suffer from legal impediment Art. 35(1): Below 18 years c.f.: legitimation Art. 35(4): bigamous or polygamous marriage Art. 37: incestuous marriage Art. 38: marriages prohibited by reason of public policy. Art. 41: where both parties to second marriage acted in bad faith (bigamous)	Either or both parties (i) Are legally incapacitated or (ii) Suffer from legal impediment OR (iii) The cohabitation is not exclusive.

1. Applies from the very beginning of marriage or cohabitation.
2. Marriage settlement, if any, will not govern.
3. Provisions on liquidation of co-ownership under CC applies. Provision on ACP/CPG inapplicable.
4. Partition may be made by agreement of the parties or by judicial proceedings.
5. Liquidation need not be made in the same proceeding for the declaration of nullity of marriage.
6. Even if the cohabitation or void marriage started or was celebrated during regime of CC, property regimes under Arts. 147/148 may be applied retroactively since it is curative, in the sense that it fills up the deficiencies of CC.
7. Same sex cohabitations are not covered. – the property relations are governed by the law on property.
8. Parties whose property regime is governed by Arts. 147/148 are also prohibited from giving donations to each other under second part of Art. 87 – unions without valid marriage.

(b) Property regimes

Distinctions	Art. 147	Art. 148
Salaries and wages	Owned by the parties in equal shares even if the other did not contribute	Owned exclusively by the earner
Properties acquire during cohabitation	Presumed (i) co-owned; (ii) acquired by joint work or industry	(i) No presumption of co-ownership; (ii) properties are owned in proportion to actual contribution; (iii) claimant has burden to prove actual contribution
Recognized contributions	(i) Actual contribution of money, property, or industry; (ii) constructive contribution by way of care and maintenance of the family or the household	Only actual contribution in money, property, industry. Constructive contribution by way of maintenance of the family or household is not recognized.
Interest	Presumed equal	Presumed equal, provide there is proof of actual contribution

Art. 147

Prohibition from disposition

1. **During the cohabitation, either of the parties is prohibited from disposing through acts inter vivos or encumbering his ideal share in the co-owned properties without the consent of the other party. c.f.: ordinary co-ownership.**

2. If violated, the disposition or encumbrance is **void in the entirety**. Art. 147(3) is a prohibitory provision. See Perez, Jr. v. Perez-Senerpida.
3. If a co-owner cannot even sell his ideal share, more so that which do not belong to him but to the other co-owner.

Other rules

1. **Forfeiture** of the entire share (not just net profits) of the guilty spouse in the co-owned property upon termination of cohabitation in favor of: (i) the common children; (ii) in default, the descendants of the party who acted in bad faith; (iii) the innocent spouse. – applies when marriage was void due to fault of one party.
2. The properties covered include those acquired during cohabitation, before or after the void marriage.
3. Fruits of separate properties are not included as part of co-ownership.

Art. 148

1. Property titled in the name of both the parties is not proof of actual contribution.
2. **Parties are not prohibited from disposing or encumbering their ideal shares during the cohabitation even without the consent of the other party. GR on co-ownership applies.**
3. If one party has a valid marriage, his share shall accrue to the ACP/CPG of the valid marriage.
4. If there is no valid marriage, the share of a party acting in bad faith (either or both) is forfeited in favor of: (i) the common children; (ii) in default, the descendants of the party who acted in bad faith; (iii) the innocent spouse.

7. Judicial Separation of Property

GR: The spouses cannot adopt a separation of property regime during their marriage.

XPNs: (i) express declaration in the marriage settlements; (ii) JSP. EJ separation of property is void. Property relations of spouses during marriage is governed by law in the absence of marriage settlement.

JSP

1. Separation of property of the spouses effected during marriage.
2. Kinds – (a) Voluntary; (b) For sufficient cause.

(a) Voluntary

1. Made through joint filing of verified **petition** by spouses for (i) dissolution of ACP, CPG, and (ii) separation of common properties.
2. Requires notice to creditors of (i) ACP, CPG, and (ii) personal creditors of spouse.
3. The list of creditors shall be indicated in the petition. The court shall take measures to protect their interests and of others financially interested.

(b) For sufficient cause **CAPASA**

1. Spouse of petitioner sentenced with a penalty carrying with is **civil** interdiction.
2. Judicial declaration of **absence** of petitioner's spouse.
3. Judicial decree of loss of **parental** authority of petitioner's spouse.
4. **Abandonment** of failure to comply with marital obligations under Art. 101 by petitioner's spouse.
5. **Abuse** of power by the administrator spouse under the marriage settlement.
6. **Separation** de facto by the spouses for at least 1 year at time of the filing of petition, and reconciliation is highly improbable.

****In [1] [2] [3], presentation of final judgment against guilty or absent spouse shall be sufficient basis for the grant of separation of properties.**

Effects of JSP

1. During pendency of proceedings, **support** of spouses and common children shall be charged to the common properties.
2. Upon issuance of decree of separation: (i) ACP, CPG shall be **liquidated**; (ii) petition and final judgment shall be **recorded** in the LCR and RD.
3. After dissolution – (i) **CSP** shall govern the property relation of spouses; (ii) rights previously acquired by **creditors** shall not be prejudiced.
4. Court may transfer of administration of property to one spouse if other spouse – (i) became the **guardian** of the other; (ii) was judicially declared **absentee**; (iii) sentenced to a penalty carrying **civil interdiction**; (iv) became **fugitive** from justice.

Revival of old regime

1. Made through a **motion** filed in the same proceedings where separation of property was decreed.
2. If granted, the procedure for revival shall be the same in the case of issuance of decree of reconciliation.

Voluntary

1. Agreement by spouses and filing of joint petition for revival of old regime.
2. No voluntary separation may thereafter be granted.

For sufficient cause. Upon:

1. Termination of **civil** interdiction.
2. Appearance of spouse judicially declared **absent**.
3. Judicial restoration of **parental** authority of the spouse deprived thereof.
4. Resumption of common life by spouse who left conjugal abode without legal separation (abandonment).
5. Court authorization of resumption of administration by the spouse named in the marriage settlements, upon being satisfied that he will not again **abuse** the power.
6. Upon reconciliation and resumption of common life by spouses **separated** de facto.

****The spouses are not barred from again petitioning for the judicial separation of their properties based on a different ground.**

I. The Family

1. General Principles

(b) Who are included

1. husband and wife
2. parents and children
3. descendants and ascendants
4. brothers and sisters, whole or half-blood

****Exclusive list. – (i) collateral relatives other than siblings are not included; (ii) relatives by affinity also no included.**

(b) Requirement of earnest efforts towards compromise EETC

1. Applies only: (i) to family members mentioned above; (ii) the suit is exclusively between/among them; (iii) the matter may be compromised.
2. Condition precedent for filing suit – (i) EETC; (ii) failure and inability to do so.
3. Non-compliance – (i) affirmative defense of non-compliance with condition precedent; (ii) must be raised in answer, otherwise, deemed waived; (iii) not jurisdictional but affects the statement of

cause of action and renders the complaint dismissible for being premature.

Not applicable

1. Suit must be **exclusively** among members of the same family. If a stranger is a party to the suit, whether necessary or indispensable, plaintiff or defendant, EETC requirement will not apply.
2. Cases which may not be the subject of compromise under Art. 2035 of the NCC, i.e., (i) the **civil** status of persons; (ii) the **validity** of a marriage or a legal separation; (iii) any **ground** for legal separation; (iv) **future** support; (v) the **jurisdiction** of courts; and (vi) **future** legitime; (vii) validity of Torrens title or reconstituted Torrens title
CJ GroV Fsul

J. The Family Home

1. General Principles

The family home is the dwelling house where the family resides, and the land on which it is situated.

1. A real right, gratuitous, inalienable, and free from **attachment, execution or forced sale**.
2. FC provisions on FH also applies to those constituted as such before its effectivity.

Conditions for protection

1. Due constitution as a family home upon **actual** (not merely constructive) occupation as a family residence by any **beneficiary**. Under FC, FH need not be constituted extra/judicially.
2. Constituted – (i) jointly by the spouses or (ii) by an unmarried head of a family. A person may constitute only one family home.
3. May be constructed on – (i) ACP, CPG property; (ii) Exclusive property of either spouse, with consent of the owner; (iii) Property of unmarried head of the family; (iv) Property subject of conditional sale on installments whose title is reserved by seller only for the purpose of securing payment. Otherwise, the protection will not attach.
4. Value at the time of constitution – (i) in urban ≤300k; (ii) in rural ≤200k.

Duration of protection

1. Protection subsists from time of constitution until any of the beneficiaries reside therein.
2. Death of the person constituting the family home does not result to its automatic discontinuance. If there are still beneficiaries living therein, the family home continues for 10 more years. After 10y, the FH expires, unless there is still a minor beneficiary living there until he comes of age.
3. Beneficiaries – (i) Persons constituting the family home; (ii) Dependents of [i] who are – (a) Parents, asc/descendants, siblings, il/legitimate; (b) **actually living** in the family home; (c) **dependent** upon the head of family for **legal** support.
4. Heirs cannot partition the family home during continuance. XPN: if the court finds compelling reasons.

Claim for exemption

1. Claim for exemption must be set-up and proved to the sheriff before the sale of property to public auction.
2. Failure to set up the status of as FH at the time of litigation or levy, or after a reasonable time, may result to **waiver** of the privilege or bar by laches.
3. The judgment debtor must invoke the privilege. The sheriff is not the proper party to invoke the same. It cannot be invoked only after foreclosure, and after they leased back the property from judgment creditor.

Exception to protection: FH is not exempt from execution, forced sale, attachment under the following instances

TaMPS

1. Taxes
2. Prior debts. – incurred prior to the constitution.
3. Secured debts. – secure by mortgage on the premises **before or after** the constitution.
4. Materialmen's lien. – due to laborers, mechanics, architects, builders, material men and those who rendered services and materials for the construction of the dwelling.
5. In case of increase in value, upon application by a creditor

Loss of exemption [5]

1. If the value of FH is increased beyond the statutory maximum, a creditor may **apply** for an order for the sale of the dwelling, provided he is able to prove the conditions.
2. Conditions – (i) at the time of the constitution, the actual value of the family home did not exceed the statutory maximum; (ii) there is increase in the value of the dwelling; (iii) the increase in value resulted from the **voluntary** improvements by the person **constituting** the home, its **owners** or **beneficiaries**; (iv) the increased actual value exceeds the statutory maximum.
3. The exemption is not lost: (i) even if there is voluntary improvement if the increased actual value does not exceed the statutory limit, (ii) if the increase in value is due to involuntary improvement.

K. Paternity and Filiation

1. Concepts of Paternity, Filiation, and Legitimacy

1. Paternity is the civil status of the father in relation to the child; filiation is the civil status of the child in relation to the father.
2. Kinds – (i) Natural: by reason of blood relationship, [il/legitimate], including artificial insemination; (ii) Artificial: by reason of adoption.
3. Status of children is primarily determined by the status of the parents' marriage, either legitimate or illegitimate.

2. Legitimate Children

a) Who are Legitimate Children

1. Children conceived or born (by the wife) during a **valid marriage** are presumed legitimate.
2. Children of **voidable marriage** are declared legitimate, conceived before the finality of the judgment of annulment, even if born after.
3. Children of **void marriages** under Arts. 36, 53 declared legitimate.
4. Legitimated children. – formerly illegitimate children whose status was converted by operation of law to legitimacy upon the marriage of parents after the child's birth.
5. Legally adopted children.
6. Child conceived through **artificial insemination (AI)** declared legitimate.

Child conceived through AI

1. AI is when the egg of the mother is fertilized through artificial means with the sperm of the father or the donor. (i) Natural fertilization is not allowed for a donor sperm. lol; (ii) Donor egg cell is also not allowed; (iii) Only the fertilization is artificial.
2. Requisites – (i) **ratification** of both husband and wife of the insemination in a written instrument; (ii) the written instrument is **signed** and executed **before** the child's birth; (iii) wife bore the child in her womb (not surrogate); (iv) the sperm donor may either be the husband or another person.
3. If AI is done through surrogacy, the child is the illegitimate child of the surrogate mother.

b) Proof of Filiation of Legitimate Children

Presumption of legitimacy

1. Children conceived or born during a valid marriage is presumed a legitimate child of spouse.
2. To rebut the presumption, the H must prove impossibility of sexual access within the first 120 days of the 300 days immediately preceding conception.
3. The presumption arises only when the child is undisputedly born of the wife, not when the allegation is that the child is not born of the spouses at all. Action to impugn legitimacy is not applicable, the proper remedy is an action for the declaration of nullity of the birth certificate. The latter is imprescriptible.
4. c.f.: there is no presumption of illegitimacy. Filiation as illegitimate child must be proved.

Presumption in case the mother remarries

1. Requirements for applicability – (i) previous marriage is terminated; (ii) mother contracted another marriage within 300 days after the termination of the first marriage; (iii) child is born within 300 days after the termination of the previous marriage.
2. First husband is the father, if child is born within 180 days after celebration of second marriage, and within 300 days after the termination of first marriage.
3. Second husband is the father, if child is born after 180 days after celebration of second marriage, even if born within the 300 days after the termination of first marriage.
4. No presumption if child is born after 300 days following the termination of the first marriage. His il/legitimacy shall be proved by whoever alleges the il/legitimacy.

Action to claim legitimate filiation

1. Civil status of persons may not be the subject of compromise or contracts.
2. Paternity and filiation, where disputed, must be **judicially established**.
3. Action to claim legitimate filiation. – **action filed by the child** to prove that he is the legitimate child of a certain couple who are validly married. **The factual basis for filing the action is the existence of a valid marriage between the spouses, which must be proven.**
4. In one case, the child was able to prove his legitimate filiation using SSS Form E-1, which is a public document.
5. Must be filed during the child's lifetime, or even after the death of the parents, whether the action is based on the first or second paragraphs of Art. 172.
6. May be filed by heirs within 5y from death of the child if the child – (i) died during **minority**, or (ii) in a state of **insanity**.

Proof of filiation

1. Two kinds: (i) Voluntary admission of filiation 172[1]; (ii) Compulsory recognition of filiation 172[2].
2. Voluntary admission of filiation is a consummated act and there is generally no more need to file an action to claim filiation. The latter is filed only if the legitimate child is denied his rights under the law.

Voluntary admission of filiation

1. Record of birth registered in the civil registry or in a final judgment.
2. Public instrument signed by the parent.
3. Private handwritten instrument signed by the parent.

****If the child is presumed the legitimate child of another, an admission of his filiation by another cannot be given legal effect.**

[1] Record of birth

1. May be declared and signed by the birth attendant only. It is possible for the birth certificate to be signed by neither parent.
2. If only the birth attendant signed, the certificate alone is not sufficient proof of **legitimate** filiation. The existence of the **marriage** of the parents must first be established with independent proof. Also, if the birth certificate contained the names of the parents but no details were provided as to their marriage, although the status of child as legitimate was ticked.
3. If either parent **signed**, indicating that he/she was **married** to the spouse not signing, this will be **sufficient proof** of the existence of the **marriage** of the parents. This certificate will be **competent** proof to establish **legitimate** filiation since the law itself did not require both parents to sign, even as against the father even if he did not sign the same. The signature of one parent will bind the other since they are married.
4. The ruling by SC that the record of birth by the child may be considered proof of the alleged marriage of the parents presupposes that at least one parent signed the certificate of birth.

[2] Public instrument signed by the parent

1. Requirements – (i) must **contain** a written admission of filiation; (ii) **purposefully** executed with admission of filiation as one of the purposes; (iii) the admission was made personally by the parent him/herself; (iv) must be signed by the parent.
2. E.g., (i) notarial agreement to support accompanied by putative father's admission of filiation. But mere undertaking to provide support without such admission is insufficient; (ii) notarial and holographic wills, even if not strictly complying with legal formalities; (iii) SSS Form E-1 of the father naming the child a beneficiary as former's child. Admitting by SC as proof of legitimate filiation because the parents were married.

[3] Private handwritten instrument

1. Requirements – (i) must be made in the parent's own handwriting; (ii) **must contain a statement of admission of paternity or filiation**; (iii) must be **signed** by the parent concerned.
2. E.g., diary, greeting cards, love letters to the mother.
3. Unsigned instrument where there is no controversy as to the father's handwriting – (i) incompetent proof if, the instrument is the **lone** piece of evidence to prove filiation. Strict compliance is required; (ii) competent proof if, the instrument is merely **corroborative**. Substantial compliance is sufficient.

Compulsory recognition of filiation

1. Open and continuous possession of status as il/legitimate child.
2. Any other means allowed by rules of court or special laws.

[1] Open and continuous possession of status as il/legitimate child

1. Requisites – (i) proof of the permanent **intention** of the putative father to consider the child as his which recognition has been consistently shown and manifested throughout the years publicly, spontaneously, continuously, and in an uninterrupted manner; (ii) proven actions must

show clear manifestations of parental affection and care, not attributable to pure charity.

2. Enjoyment by the child of the positive and privileges usually attached to the status of legitimate child.
3. Proven **actions** of the father showing the **intention** to treat the child as his, characterized by parental care and affection which must **not be explained by charity**.
4. Must be consistent, habitual, and continuous, not sporadic or isolated, not be intermittent while it lasts.
5. May be proven by witnesses.
6. E.g., attendance to PTA meetings, going to the child's school in his behalf, attendance to father-son bonding, attendance to the child's important events.

[2] Any other means allowed by rules of court or special laws

1. Result of DNA test – (i) Competent evidence to prove or disprove filiation and paternity; (ii) DNA testing order does not violate the father's right against self-incrimination; (iii) death of the putative father will not negate the application for DNA testing as long as there exists appropriate biological samples of his DNA; (iv) prima facie or reasonable possibility of paternity must first be shown by the applicant. The admission by mother that he falsified the child's birth certificate indicating her marriage with the putative father will not negate the grant of DNA testing order given that prima facie case of paternity was already established by the mother's admission that she had sexual relations with the putative father.
2. Result of blood test – (i) Not conclusive for establishing paternity; (ii) But conclusive for denying paternity.
3. Physical resemblance
4. Other means – e.g., baptismal certificate, pedigree, family tree, judicial admission, common reputation, testimony of witnesses.
5. Proof must be clear and convincing.

c) Rights of Legitimate Children

(a) Use of surname	
Legitimate	Illegitimate
Has right to use the surnames of the father and mother	Even if recognized, use of father's surname is optional to the child
Must principally use the surname of father	May use father's surname only latter's voluntary and express admission of filiation**
May use mother's surname if there are valid reasons. "Principally" does not mean exclusively	Must use the mother's surname, if not recognized by father
Use of stepfather's surname is not allowed as it may cause confusion as to the child's paternity	Use of stepfather's surname is allowed as this will remove the stigma of illegitimacy

**** (i) record of birth appearing in the civil registry or final judgment; (ii) public or private handwritten instrument signed by father.**

(b) To receive support

Legitimate	Illegitimate
Liability of ACP, CPG	Liability of the exclusive property of the illegitimate parent
If absent/insufficient, spouses shall be solidarily liable with their separate properties	If absent/ insufficient – (i) ACP shall advance the support if financially capable; (ii) CPG shall advance support if financially capable but only after payment of conjugal liabilities
Filiation need not be proved before the child can be entitled to support	If unrecognized, filiation must be proved before the child can be entitled to support either in separate action to claim filiation, or in the action to claim support where the issue of filiation is integrated.

(c) To successional rights

1. Both are compulsory and legal heirs of the parents, but the share of illegitimate child shall be $\frac{1}{2}$ of that of a legitimate child.
2. If unrecognized, filiation must be proved before the child can be entitled to successional rights either in separate action to claim filiation, or in the action to claim inheritance where the issue of filiation is integrated.

(d) Citizenship

Legitimate	Illegitimate
Follows the citizenship of the father	Follows the citizenship of the mother
If of alien father, the child acquires the alien nationality, but he may elect Ph nationality upon reaching the age of majority	If of alien father, the child no longer had to perform any act to acquire Ph nationality; he is automatically a Filipino citizen.

d) Grounds to Impugn Legitimacy

(a) Legitimate filiation **may not be subject to collateral attack.**

1. It may only be assailed through a direct action to impugn the child's legitimacy.
2. Does not apply in case of illegitimate filiation. Only legitimate filiation is not open to collateral attack.
3. Legitimacy of the child cannot be assailed through a Rule 108 petition.

(b) Action to impugn legitimate filiation

Legal personality

1. Only the **husband** (putative father) can impugn child's legitimacy by filing an action to impugn the child's legitimacy – (i) the right is strictly personal.
2. XPN: heirs of the husband if – (i) the husband died before the expiration of the prescriptive period for filing an action; (ii) the husband died after filing of the complaint, without having desisted therefrom; (iii) the child was born after the husband's death.

Persons who cannot impugn child's legitimacy

1. Mother. – child's legitimacy is not affected by mother's (i) declaration against legitimacy, or (ii) her conviction of adultery.
2. Mother's paramour – by voluntarily recognizing paternity over the child (collateral attack).
3. Child himself – by claiming illegitimate filiation of his biological father (collateral attack).

Prescriptive period

1. Counted from the knowledge of birth or its recording in the civil registry (constructive knowledge), whichever comes first.
2. 1y, if the husband or heirs reside in the city or municipality where child was born, or the birth recorded.
3. 2y, if the husband or all heirs do not reside in the city or municipality where child was born or the birth recorded, but all are residing in the Philippines.
4. 3y, if the husband or all heirs reside outside the Philippines.

****If the prescriptive period expires without the legitimate status of the child being impugned, the same is rendered fixed and conclusive.**

Exclusive grounds PilsBA

1. Physical impossibility of sexual intercourse throughout the first 120 days of the 300 days immediately preceding the birth of the child due to – **ILS** (i) **impotency** of the husband, but not sterility; (ii) husband and wife **living** separately and sexual intercourse was highly impossible; (iii)

serious illness of husband which absolutely prevented sexual intercourse.

2. Biological or scientific reasons – (i) Blood test results are conclusive proof of non-paternity; (ii) DNA results may be used to establish paternity or non-paternity. If the husband agreed to the use of donor sperm at AI, he can no longer impugn the child's legitimacy using biological or biological evidence.
3. Ground in artificial insemination. – written authorization of ratification of either parent was obtained through VIMFU.

3. Illegitimate Children

a) Who are Illegitimate Children

Conceived AND born outside of a valid marriage.

1. Includes: (i) children of unmarried parents, and (ii) children of parents whose marriage is void, **except when ground is either Art. 36 or 53 FC.**

b) Proof of Filiation of Illegitimate Children

Action to claim illegitimate filiation

1. Action filed by the child to prove that he is the biological child of the putative parent, although conceived and born after wedlock.
2. Ordinarily, an action to prove paternity; but **may also be an action to prove maternity.**
3. Must be filed during the child's lifetime, or even after the death of the parents, where the action is based on the first paragraph of Art. 172. **If the action is based on the second paragraph, the action may be brought only during the putative parent's lifetime.** But if the action for support was filed during the lifetime of the putative parent, the same is not barred by Art. 172 FC even if the parent dies during the pendency of the action. The rule on substitution of parties under ROC applies.

Proof of filiation

1. Two kinds: (i) Voluntary admission of filiation 172[1]; (ii) Compulsory recognition of filiation 172[2].
2. Same as the proof required in establishing legitimate filiation, the only difference lies in the applicable prescriptive period. If proof is consisting in compulsory recognition of filiation 172[2], there is double prescriptive period, i.e., lifetime of child and of the putative parent. Hence, the action may no longer be filed after the parent's death.
3. They also differ as to the requirement for the record of birth

Voluntary admission of filiation; Record of birth

1. Only the mother's signature is **mandatory**. The father may sign if he admits paternity.
2. If only the father registered the birth of the child without the mother's consent, the certificate is void. **The void document cannot be used as basis for the child's right to use the father's surname, even if signed by the father. A void document cannot give rise to a right.**
3. Competent proof if – (i) The father **signed**; or (ii) The father **had a hand in the preparation** of birth certificate, even though he failed to sign the certificate, e.g., he went to the civil registry to give data about the child's birth including his paternity, he caused the registration of the certificate and signed in the LCR. This is competent proof of filiation against the father, provided there are witness who can testify as to his participation. As a voluntary admission of filiation, it may be used by the child as proof of filiation even after the father's death.
4. Not competent proof if – (i) The father **did not sign** the birth certificate, and his name is placed upon it by the mother, doctor, register or another

person. The LCR has no authority to record the paternity of illegitimate child based on the information of third persons; (ii) **Delayed registration of birth made after the death** of the putative parent.

c) Rights of Illegitimate Children

**See above (comparative)

d) Grounds to Impugn Filiation

**See above (same with legitimate children)

4. Legitimated Children

a) Who May be Legitimated

1. Illegitimate child.
2. At the time of conception, the parents were – (i) capacitated to marry each other; (ii) if incapacitated, only by reason of minority; and (iii) not suffering from any legal impediments.

b) How Legitimation Takes Place

Legal process whereby the status of an illegitimate child is elevated, **by operation of law**, from illegitimacy to legitimacy upon the subsequent marriage of his parents.

1. Marriage is celebrated after child's birth.
2. The marriage is not void ab initio – (i) valid or voidable; (ii) void on ground of Art. 36 or Art. 53.
3. Legitimation happens by operation of law upon celebration of marriage by the parents. They need not perform any other act to complete the legitimation.
4. The legitimation retroacts to the date of birth.

c) Grounds to Impugn Legitimacy

1. Sole ground is non-compliance with the requisites of legitimation.
2. Only those whose successional rights are affected by the legitimation may impugn the same. – heirs of other legitimate children of the parents since their shares will be reduced.
3. Must be filed within 5y from death of the parent from whom plaintiff is a compulsory or intestate heir

5. Adopted Children

a) Domestic Administrative Adoption and Alternative Child Care Act (RA 11642)

1. Took effect January 28, 2022.
2. Adoption is converted to an administrative proceeding (formerly judicial). – (i) DAA is expressly repealed; (ii) Courts no longer have authority to entertain petitions for adoption, but Orders for Adoption are appealable to CA within 10d from receipt; (iii) **Order for Adoption** issued by the ED of the NACC replaces the decree of adoption.
3. Created the National Authority for Child Care **NACC** which has EOJ over – (i) Declaring child legally available for adoption [transferred from DSWD]; (ii) Domestic administrative adoption; (iii) Adult adoption; (iv) Foster care; (v) Adoptions under R.A. 11222, "Simulated Birth Rectification Act"; (vi) Inter-country Adoption.
4. Governs both domestic and inter-country adoption.

Implied repeal

1. Inter-country Adoption Act. ICAB is reorganized to NACC.
2. Foster Care Act.
3. Simulated Birth Rectification Act. – (i) requirement that the child to be adopted should be living with the adopters for at least 3y prior to the effectivity of the law as a condition for administrative

adoption was rendered obsolete since under the new law, all cases of adoption are purely administrative in nature; (ii) prescriptive period of filing petition for adoption under the SBRA of 10 years from effectivity of the law still applies, up to March 2029.

b) Who May Adopt

(a) Filipino citizen

1. Common requirements **ANGCEP** – (i) **Age**: At least 25y, and at least 16y older than adoptee, unless: (a) biological parent of the adoptee; (b) spouse of the biological parent; (ii) **Not** convicted of any crime involving moral turpitude; (iii) **Good** moral character; (iv) Has full **civil** capacity and legal rights; (v) **Emotionally** and psychologically capable of caring for the child; (v) In a **position** to support and care for the adopted child in keeping with the means of the family.
2. **Legal** guardian with respect to the ward. – (i) After termination of guardianship; (ii) after clearance from financial accountabilities.
3. **Foster** parent with respect to foster child.
4. Philippine **government** officials and employees deployed or stationed abroad, IF they can bring the child with them.

(b) Foreign national

1. **ANGCEP**
2. **Permanent or habitual resident** of Ph for at least 5y prior to filing of petition (need not be continuous).¹⁶ XPNs: (i) Former Filipino seeking to adopt **relative*** within 4th degree (con/aff), who must also be habitually residing in Ph¹⁷; (ii) Spouse of Filipino seeking to adopt legitimate child of the latter; (c) Spouse of Filipino seeking to jointly adopt relative* of the latter.
3. From country with **diplomatic** relations with RP.
4. **Laws** of adopter's country will (i) acknowledge certificate of adoption as valid, (ii) acknowledge the child as legal child of the adopter, and (iii) allow entry of the child into the country.

(c) Married adopters

1. Must adopt jointly.
2. XPNs – **LIS** (i) **Legitimate** child of one spouse to be adopted by the other spouse; (ii) **illegitimate** child to be adopted by own natural parent with consent of the other spouse [indispensable]; (iii) spouses are legally **separated**.

c) Who May be Adopted

CLIAF RRD

1. **CLAA**
2. **Legitimate** child of one spouse by the other spouse
3. **Illegitimate** child by qualified adopter
4. Filipino of legal age. – **Adult** adoption requires that adopters have consistently considered and treated the child as their own for at least 3y.
5. **Foster** child
6. Child whose adoption was **rescinded**.
7. Child whose biological or adoptive parents have **died**. – no petition for adoption shall be initiated within 6 months after said death.
8. **Relative** of adopter

CLAA

1. A child declared legally available for adoption **CLAA** by the NACC through the issuance of certificate. XPNs – **RSA** (i) relative up to 4th degree (con/aff); (ii) step-parent adoption; (iii) adult adoptee.

¹⁶ Former requirement: Continuously reside in the Philippines for at least 3 years prior to the filing of petition for adoption.

¹⁷ No same requirement under DAA.

2. Who may be declared CLAA – (i) Abandoned child below 18y; or (ii) 18y or above but unable to take care of or protect himself from abuse, cruelty, neglect, exploitation, or discrimination due to physical or psychosocial disability; (iii) Adult offspring of the adopter.

Certification Declaring a Child Legally Available for Adoption CDCLAA is issued

1. (i) After establishing the fact of abandonment or neglect through the submission of documents (involuntary commitment); (ii) Child who was voluntarily committed by the parents or legal guardian; (iii) child was a foundling.
2. Final administrative order issued by the NACC – (i) declaring the child abandoned or neglected; (ii) committing the child to the care of the NACC through foster parent, guardian, duly licensed child-caring or child-placing agency.
3. **Upon issuance, the rights of the biological parent, guardian or other custodian to exercise authority over the child shall cease.**
4. Best evidence that the child is legally available in a domestic adoption or inter-country adoption proceeding.

Consent requirement

1. Adoptee, if 10y or over.
2. Legal custodian. – (i) Biological parents, legal guardian, proper government agency. XPN: adult adoption.
3. Legitimate and adopted children of adopter, if 10y or over.
4. Illegitimate children of adopter – (i) if 10y or over; (ii) living with adopter, or over whom the adopter exercises parental authority; (iii) spouse, if any.
5. Spouse of the adopter or adoptee.
6. Must be –(i) after counseling, (ii) informed of their right to give or withhold consent; (iii) in writing.

d) Effects of a Decree of Adoption (See Article Nos. 189-190 of the Family Code)

(a) Order of Adoption

1. Has the same effect as Decree of Adoption under DAA.
2. NACC, through ED shall issue the Order containing the name by which the child shall be known.
3. Adopter shall be ordered to submit certified true copy of the Order to the LCR where the child was originally registered within 30d from receipt.
4. Civil Registrar shall be ordered – (i) to seal the original birth record of the adopted; (ii) to submit to NACC proof of compliance within 30d from receipt of Order. All records relating to the adoption shall be strictly confidential.
5. Retroactive application not expressly provided. – under the DAA, the effects of the adoption decree **retroact to the day of the filing of the petition** for adoption. However, there is no such express declaration in R.A. No. 11642. ELR: Effects of Order of Adoption may still be given retroactive effect as R.A. 11642 provides that an Order for Adoption “has the same effects” as that of a Decree of Adoption, and one of the effects of the latter is its retroactive application.
6. For purposes of imposing vicarious liability to adopters for the tort committed by the minor adopted child, there is no retroactive application (only from acquisition of actual custody) in any case since such liability presupposes the actual custody over the child.

(b) On legitimacy

1. The legitimate filiation is not personal. **It extends to the adopter's parents, legitimate siblings, and legitimate descendants PSD.** BUT the filiation was not extended to the child of the adoptee. – (i) the adoptee may represent the

adopter in the estate of the latter's parents; (ii) but the adoptee's child may not represent the adopted in the estate of the adopter.

2. In case the adopter dies, the legal ties between the adopted and his biological parents will not be automatically reinstated (rule under former law).
3. Impediments to marriage by reason of adoption remains.
4. Since adoption establishes legitimate filiation, it cannot be collaterally attacked.

(b) On parental authority

1. Adopters shall exercise full parental authority over the adopted.
2. All legal ties with biological parent are severed. XPN: when the adopter is the spouse of the parent, in which case, the adopter and the parent shall exercise joint parental authority.
3. Joint parental authority also applies if – (i) Spouse adopts the legitimate child of the other spouse; (ii) Joint adoption.

(c) On Succession

1. Adopter and adoptee acquire reciprocal rights of succession without distinction from natural legitimate filiation.
2. The reciprocal rights between the adoptee and his biological parents are at the same time terminated.
3. If the adoptee and biological parents left a will, rules of testamentary succession shall govern. The adoptee and biological parent are not disqualified from being testamentary heirs, legatee or devisee of each other. **Thus, the biological parent may inherit from the adoptee and vice versa, only by way of a will.**

(e) On right to surname

1. The adopted child shall have the right to use the surname of the adopter him/herself, and not his name acquired by virtue of marriage (subject to the rule on joint adoption by spouses).
2. A child adopted by his illegitimate father was allowed by the Court to use the surname of the natural mother as middle name since (i) there is no law prohibiting the same, (ii) it will maintain the maternal lineage of the child.
3. In another case, the Court also allowed the adopted child to drop the adopter's surname and revert back to the natural father's surname. – (i) the surname Wong embarrassed him, being a Chinese name, when he is, in fact, a Muslim Filipino; (ii) change of name does not affect the child's family relations, rights and duties, legal capacity, civil status or citizenship.

(d) Rescission of administrative adoption

1. **Only the adoptee** may file the action. The adopter may only disinherit the adopted child for grounds provided for under Art. 919 CC.
2. Grounds for rescission – (i) **Repeated** physical or verbal maltreatment; (ii) **Attempt** against the life; (iii) **Sexual** abuse; (iv) **Abandonment**, neglect, or failure to comply with parental obligations.
3. Effect of rescission – (i) reciprocal rights and obligations between the adopter and the adoptee terminates; (ii) parental authority is restored to the biological parent, only if the latter petitioned for the same, or (iii) grant of custody to NACC if (a) parents did not petition for restoration of parental authority, (b) they are unknown, (c) restoration of parental authority is not in the best interest of the child.
4. N.B.: under the DAA, the restoration of the parental authority to the biological parent upon the termination of the adoption is “automatic.” R.A. No. 11642 provides for automatic restoration of

custody to NACC; biological parents may be entitled to recover custody only upon petition.

L. Support

1. What Comprises Support

Everything indispensable for the sustenance, dwelling, clothing, medical attention, education and transportation, **SDCMET** in keeping with the financial capacity of the family.

1. Support for education includes schooling or training for some profession, trade or vocation even beyond the age of majority.
2. Support for transportation includes expenses in going to and from school, or to and from work.
3. Support is **purely personal**. – (i) It can be given only to the persons entitled to it under the law; (ii) it can be demanded only from the persons indicated under the law who are obliged to give the same.
4. Other characteristics – (i) not subject to attachment or execution; (ii) intransmissible; (iii) cannot be renounced. XPN: Support in arrears which may be transferred, renounced, be the subject of onerous or gratuitous transactions, or compensation.
5. Future support cannot be the subject of compromise.
6. Widow's allowance during the pendency of the settlement of the husband's estate is in the nature of support which may not be the object of any contract.

2. Who are Obligated to Give Support

The persons who are obliged to give and entitled to receive the legal support is also fixed by law based on family relations. **SAPS**

1. Legitimate **spouses**. – (i) marriage is either void/able; (ii) if void, there is no mutual obligation for support; (iii) nullity of marriage may be raised as defense in an action for support. This is acceptable since a void marriage may be subject to collateral attack.
2. Legitimate **as/descendants**
3. **Parents** and children, il/legitimate, and the latter's children, il/legitimate. – (i) barrier rule¹⁸ in succession does not apply to legal support; (ii) includes adopted children.
4. Legitimate **siblings** – (i) whole or half blood; (ii) includes adopted child of the parent since the New Adoption Act already extends the filiation to the legitimate descendants of the adopter.
5. Illegitimate siblings. – ceases when (i) the sibling is of legal age, and (ii) the need for support is due to causes attributable to his fault or negligence. Barrier rule also not applicable.

***In the collateral line, only siblings are required to give support.*

Basis for legal support

1. Filiation, not parental authority. Legal support is not co-terminous with parental authority. The grandparents cannot refuse to give support to their grandchildren only on the ground that the latter are not under their parental authority since they are not living in their dwelling.
2. Emancipated children are still entitled to legal support from parents, if financially incapable.
3. Illegitimate father is obliged to support child if filiation is duly established, even if former does not exercise parental authority over the latter.
4. Grandparents are obliged to support grandchildren, even if parents are still exercising parental authority, if parents are financially incapable.

3. Source of Support

Amount of support must be in **proportion** to (i) the resources or means of the giver, and (ii) the necessities of the recipient.

1. The amount is always variable depending on these two factors.
2. Any judgment for support does not attain finality with respect to the amount since it is dependent on the resources or means of the giver, and the necessities of the recipient, which may change over time. Parties may move for modification of the judgment.
3. Right accrues from the time the person entitled to support needs the same for his maintenance (when the need arises).
4. Payment shall be made upon judicial or extrajudicial demand, provided the right to support was established.
5. There is no legal formality as regards demand for support. A request for plea from the person to be supported is already considered a demand.

Manner of payment

1. Prerogative of the giver either (i) Payment of fixed allowance; (ii) Receiving and maintaining the person entitled to support in the family dwelling unless **there is legal or moral obstacle**. If there is legal or moral obstacle, support may be given only by payment of fixed allowance.
2. Legal obstacle – e.g., illegitimate father cannot choose second option since parental authority over the child is solely with the mother.
3. Moral obstacle – e.g., (i) strained relations between the grandparents and grandchildren due to filing of petition for legitimate filiation and denial by grandparents of such; (ii) when wife is entitled to separate maintenance or justified to live separately from husband when she surprises the latter in the act of sexual infidelity in with a maid in his parents' house.

4. Order of Support

When two or more persons are obliged to give support.

SDAS

1. Spouse
2. Descendants of nearest degree
3. Ascendants of nearest degree
4. Siblings

If there are two or more payors

1. Support shall be divided in proportion to their resources.
2. Provisional support may be given only by of several persons if there is urgent need or special circumstance. The court may order only one of the persons obliged to give support, subject to reimbursement.

If there are two or more payees

1. When the support is obliged from one person who does not have the capacity to satisfy the demands for support.
2. GR: order of liability shall be followed. XPN: child subject to parental authority shall be preferred over the spouse in case both require support at the same time.

M. Parental Authority

1. Concept of Parental Authority

(a) Concept

1. Juridical institution whereby parents lawfully assume **control and protection** over their

¹⁸ ARTICLE 992. An illegitimate child has no right to inherit ab intestato from the legitimate children and relatives of his father

or mother; nor shall such children or relatives inherit in the same manner from the illegitimate child.

unemancipated minor child to the extent of the latter's **needs**.

2. Mass of **rights and obligations** granted and imposed upon the parents over the persons and property of their unemancipated minor children¹⁹ for the child's preservation, development, cultivation of intellect, education of hearts and senses.
3. **Primarily consists of obligations**, where the rights are merely ancillary for the proper discharge of parental duties.

Renunciation/Transfer

1. Parental authority cannot be renounced or transferred.
2. Permanent custody is an aspect of parental authority which cannot likewise be waived.
3. E.g., contract for surrogacy where the surrogate mother waives her rights over the child for a consideration is void.²⁰ Under Ph law, the surrogate mother is the illegitimate parent of the child.
4. XPNs: In cases authorized by law (i) adoption; (ii) guardianship; (iii) commitment of the child (voluntary or involuntary) to the NACC or to any accredited child placement agencies; (iv) in disciplinary proceedings concerning the child where the parental authority may be terminated or suspended if found that the plaintiff-parent is one at fault; (v) foster parents shall have the rights, duties, liabilities of persons exercising substitute parental authority under the FC.

(b) Parental authority

1. Exercise over minor children. XPNs [limited parental authority]: (i) parental consent necessary for contracting marriage [18-21y]; (ii) parent or guardian whose consent is required for marriage must also be a party to the marriage settlement, if any; otherwise, the same is void; (iii) vicarious liability of parents remains for quasi-delict of child **living in their company**.

(c) Over legitimate children

1. Joint parental authority. – (i) in case of conflict, H's decision prevail; (ii) W may seek relief from courts.
2. Parent **present**, in case of death, absence, unsuitability of **either** parent. Remarriage of spouse present does not affect parental authority, unless the court appoints a guardian for the person or property of child.
3. Who exercises – (i) If parents are living together, joint exercise; (ii) If parents are separated, depends on age of child, court order.

If parents are separated, and child <7y

1. Child's custody and parental authority **shall** be with the mother following the tender age presumption.
2. Agreement between spouses for joint custody or custody in favor of the father is void.
3. XPN: if the court finds compelling reasons to order otherwise.
4. Compelling reasons include actions of the mother will have adverse effect on the growth of the child – (i) neglect and abandonment; (ii) unemployment and immorality; (iii) habitual drunkenness; (iv) drug addiction; (v) maltreatment; (vi) insanity; (vii) being sick with a communicable disease.
5. Leaving the child in a day care when the mother works does not automatically amount to a compelling reason.

If parents are separated, and child ≥7y

1. Parental authority shall be exercised by the parent designated by the court, considering the child's choice and his best interest.
2. Agreement between spouses for joint custody or custody in favor of the father is valid.

Custody cases

1. Resolves the issue of who has exclusive **right to the exercise** of parental authority since in the case of legitimate children the parents are entitled to joint parental authority.
2. Criteria: best interest of the child. If child is <7y, the law already presumes that it is in the best interest of the child to be in the mother's custody.
3. The court **must designate** a parent entitled to exercise parental authority. It cannot order exercise of joint custody or joint exercise of parental authority as it will not resolve the issue between the parties.
4. **Court judgment regarding custody of child does not attain finality**. Circumstances may change; best interest of the child is always the criteria.
5. The custodial parent is entitled to the sole exercise of parental authority over the child.
6. The non-custodial parent does not lose parental authority, only that for the meantime, he/she is not entitled to exercise the same. – (i) he cannot interfere with the decisions of the custodial parent regarding the child; (ii) he is entitled to visitation rights.

(d) Over illegitimate children

1. **Mother has sole parental authority**, and as consequence, sole custody of the child, absent showing of compelling reasons that she is unfit.
2. If the mother is found unfit, she shall be under the custody of persons entitled to exercise substitute parental authority (not automatically the illegitimate father).
3. Recognition of the child does not vest the illegitimate father right over the child's custody (sole or joint), but the recognition is a ground to – (i) order him to give child **support**; (ii) authorizing child to use his **surname**, if the recognition is by express voluntary admission of paternity. Parental authority is provided for by law, the father cannot give unto himself parental authority by merely recognizing the child.
4. Illegitimate father may be entitled to exercise substitute parental authority and have custody of the child by virtue of him being the **actual custodian**. In one case, SC held that the order of priority for the exercise of substitute parental authority shall not be applied mechanically, and that it shall still be determined whether it will be in the best interest of the child to be under the custody and care of his father (dispute between maternal grandparent and illegitimate father over the child's custody). Outright dismissal of the case is not proper, and the court should have received evidence to determine who is in best position to care for the child.
5. Illegitimate father has visitation rights if – (i) there is parent-child relationship. If the child is presumed legitimate child by the husband of prior marriage, the biological father has no visitation rights; (ii) if the legal ties are not severed by adoption of the child with the illegitimate father's consent.
6. Visitation right is a natural right of every parent. However, it does not cover temporary custody.

¹⁹ In the Philippine law, emancipation is attained upon reaching the age of majority.

²⁰ In the Philippine law, the surrogate mother is the illegitimate mother of the child.

2. Substitute Parental Authority

- (a) Parental authority exercised by persons designated by law in default of the parent(s) entitled to exercise parental authority.
1. Upon the death, absence or unavailability **DAU** of one/both parents, or in default of court-appointed guardian.
 2. Over the persons or property of unemancipated or minor children.
 3. If child is legitimate, in default of both the parents. The death of one spouse does not affect the parental authority of the other over the legitimate children, even if the latter remarries.
 4. If child is illegitimate, in default of the mother.
- (b) Order of priority
1. The surviving grandparents – (i) if legitimate, both maternal and paternal grandparents. Tender-age presumption may not be invoked since it is available only to the mother; (ii) if illegitimate, only the maternal grandparents. The father himself does not have parental authority.
 2. Oldest brother or sister over 21, unless unfit or disqualified.
 3. Actual custodian over 21, unless unfit or disqualified. If illegitimate father is actual custodian of the child, he may be entitled to substitute parental authority in default of grandparents, siblings. **This is the only situation under our laws where the illegitimate father may exercise parental authority, in default of the foregoing.**
 4. Heads of the children's homes, orphanages and other similar institutions duly accredited by the proper government agencies. – in cases of foundlings, abandoned, neglected, or abused children, and those similarly situated.

Under Foster Care Act

1. The foster parents shall have the rights, duties and responsibilities of persons exercising substitute parental authority under the FC.
2. With respect to discipline, they only have the rights of persons exercising special parental authority, such that they are prohibited from imposing corporal punishment.
3. Imposition of corporal punishment to foster child is ground for (i) cancellation of license, and (ii) termination of placement authority.

3. Special Parental Authority

- (a) Parental authority exercised by persons, entities, institutions designated by law.
1. Based on the special relation of these persons, entities, institutions to children under their supervision, instruction, or actual custody, considering that most of the waking hours of the minor is spent in these institutions.
 2. Exercised simultaneously with parents' or substitute over **minors** within the supervision, instruction, custody of educational institutions.
 3. Covers all **authorized activities**, whether inside or outside the school, entity, institution, e.g., field trip, excursions, other affairs authorized by the school or its teachers.
 4. Exercised by – (i) the school; (ii) school administrators; (iii) schoolteachers; (iv) individual, entity, or institution engaged in childcare.
- (b) Civil liability for quasi-delict
1. When the minor causes damage to another while under special parental authority – (i) primary liability is upon persons exercising special parental authority [solidary]; (ii) subsidiary liability is upon the parents or persons exercising substitute parental authority.

2. If child commits the quasi-delict outside school premises, while not under special parental authority, vicarious liability attaches to persons exercising parental authority or substitute parental authority.
3. Whether primarily or subsidiarily liable, they are not liable if it is proved that they exercised due diligence required under the particular circumstance.

4. Effects of Parental Authority

- (a) Upon persons of children
1. Right to custody, which is a natural right incident to parenthood.
 2. Duty to provide support and education. – not based on parental authority but on familial relationships established under FC.
 3. Duty of representation with respect to all matters affecting their interest, e.g., court representation for litigation, without prejudice to the court's authority to appoint guardian ad litem if in the best interest of the child.
 4. Duty to give or withhold consent. – (i) may extend up to 21y in case of marriage (see above); (ii) provision in RH law dispensing with the written consent of parents for minors to access modern family planning methods was declared unconstitutional by SC for being anti-family.

Right to discipline

1. Only as may be required under the circumstances. This contemplates **moderate punishments** only.
2. Treatment of child with excessive harshness or cruelty – (i) may be a ground for the suspension of parental authority upon petition to court; (ii) may be a ground for criminal prosecution for child abuse under R.A. 7610.
3. Persons exercising parental authority may petition the court for the imposition of appropriate disciplinary measures.
4. Persons exercising special parental authority are prohibited from inflicting corporal punishment, including foster parents.
5. Curfew ordinance issued by LGUs do not violate the constitutional right of parents to rear their children. The State as *parens patriae* has inherent right and duty to aid parents in the moral development of their children.

(b) Upon property of children

1. GR: Parents exercise joint legal guardianship over properties of their minor children without the need of court appointment. XPN: If best interest of the child would require appointment of legal guardian.
2. Bond requirement – (i) if market value of the **property** or annual **income** >P50,000; (ii) Bond amount shall not be less than 10% of such value or income.
3. If the disinherited or incapacitated parent is represented by his minor child, the court shall appoint judicial administrator to administer the properties inherited.
4. Child's property should be devoted exclusively to child's support and education. XPN: contrary provision in the title or transfer.
5. The parents are allowed to use only the fruits of the income – (i) primarily, for the child's support; (ii) secondarily, for the family's collective needs.
6. Parents may not dispose or encumber children's property without court authorization (only acts of administration). Right of administration extends to: (i) preservation of the thing, (ii) receipt of fruits according to natural purpose of thing.

7. If property of child is disposed without court authority, the same is **unenforceable**,²¹ unless the child ratifies the sale upon reaching age of majority.
8. Parents may lease child's property without court authorization (act of administration). XPNs: court authorization is required if – (i) The lease is registered in the registry of property; (ii) The lease is for a period of more than one year (act of dominion).

Grounds for termination

(1) death of parent	Permanent
(2) death of child	
(3) emancipation of child	
(4) adoption of child	May be revived through court judgment
(5) appointment of general guardian	
(6) judicial declaration of abandonment of child in the case filed for the purpose	
(7) final judgment divesting the party concerned of parental authority	
(8) judicial declaration of absence or incapacity of persons exercising parental authority	
(9) subjecting the child or allowing him to be subjected to sexual abuse	Permanent

Grounds for suspension

(1) conviction of a crime which carries with it the penalty of civil interdiction	Suspension is automatic; restoration is automatic upon service of sentence
(2) treating the child with excessive harshness or cruelty	Suspension is upon court decree in a case filed for the purpose or related case; restoration is also upon court decree upon finding that the ground has ceased and will not be repeated
(3) giving the child corrupting orders, counsel, or examples	
(4) compelling the child to beg	
(5) subjecting or allowing the child to be subjected to acts of lasciviousness.	

PROPERTY, OWNERSHIP, AND ITS MODIFICATIONS

I. Classification of Property

A. Immovables

(a) Kinds NIDA

1. By nature. – by nature, cannot be moved from one place to another.
2. By incorporation. – property which are movable by nature but has become part of an immovable by attachment or incorporation as to make it an integral part of the latter
3. By destination. – property which are movable by nature but considered an immovable by virtue of the purpose or intent of their placement on the immovable, and the utility derived from them.
4. By analogy. – intangible properties or rights involving real properties.

(b) Enumeration under Art. 415

1. Land, buildings, roads, constructions adhered to the soil.
2. Trees, plants, and growing fruits, while (i) attached to the land or (ii) form an integral part of an immovable.
3. Everything attached to an immovable in a fixed manner, such that it cannot be separated without breaking or deterioration.
4. Statues, reliefs, paintings or other objects for use or ornamentation, (i) placed in buildings/lands by the **owner** of the immovable (ii) such that it reveals the **intention** to attach them permanently therein.

5. Machinery, etc. (i) intended by the **owner** of the tenement for an **industry** or works carried on in a building/land, and (ii) which tend directly to meet the **needs** of said industry or works.
6. Animal houses, similar breeding places, (i) placed or preserves by their owner on a land; (ii) with the intention to have them permanently attached thereto; (iii) the animals in these places are included.
7. Fertilizer actually used on a piece of land.
8. Mines, quarries, and slag dumps, (i) while the matter forms part of the bed, and (ii) waters either running or stagnant.
9. Docks and structures (i) which, though floating, are intended by their nature and object to remain at a fixed place (ii) on a river, lake, or coast **RLC**.
10. (i) Contracts for public works, and (ii) servitudes and (iii) other real rights over immovable property.

[1] Land (N), buildings (I), roads (N), constructions (I)

1. Buildings/construction **B/C** are immovable treated separately from land.
2. B/C are immovable if permanently attached, regardless of who constructed: owner, lessee, etc. B/C may be movable if – (i) merely superimposed to land; (ii) for immediate demolition; (iii) parties treated the B/C as movable as between them. Binds only the parties to the contract and does not alter the nature of B/C as immovable. However, the RD cannot refuse the registration of chattel mortgage over the building (ministerial).

[2] Trees, plants, and growing fruits (I)

1. T/P is immovable if (i) attached to the land, or (ii) form an integral part thereof. If uprooted or detached, the T/P lose their character as immovable. XPN: if they form an integral part of the immovable, e.g., timber which are natural product of the tenement retain their character as immovable, even if removed.
2. Growing fruits are immovable if unharvested. XPN: under PPSA, for purposes of (i) sale, (ii) attachment or execution, (iii) mortgage, growing fruits are considered movables, even if they are still unharvested.

[3] Everything attached to an immovable (I)

1. Incorporation is attachment to the immovable in a fixed manner such that it cannot be separated with breaking or deterioration.

[4] Statues, reliefs, paintings (D)

1. Placed by owner of land.
2. Manner of placement reveals intention of the owner to attach them permanently to the tenements.
3. They must not be incorporated. The owner merely "places" the thing. Otherwise, they will fall under par. 3.

[5] Machinery (D)

1. Machineries were **intended** for an industry or work. – (i) must be an essential and principal element of the industry or work, not merely incidental; (ii) need not be incorporated in the tenement; (iii) e.g., repair equipment placed on the premises of the bus station are not immovable since they do not tend directly to meet the needs of said industry (merely incidental)
2. Industry or work is carried out in the **building or land**. – includes industry carried out in waters, e.g. submarine cables.
3. The **owner** of tenement placed the machineries therein. – c.f., for RPT purposes, even if the property was not placed by owner, it may still be

²¹ Arts. 1317, 1403(1)

considered RP subject to RPT if ADE used to meet the needs of an industry conducted on the land/building.

***If the parties treated the machineries are movable, they may be the subject of replevin. They are estopped from claiming otherwise.*

[6] Animal houses (D)

1. The houses were **placed** or preserved permanently on the land (not soil), for the particular purpose (breeding).
2. The **owner** placed the houses on the land.
3. Need not be incorporated.

[7] Fertilizer (D)

[8] Mines, quarries, and slag dumps

1. Mines, quarries, and slag dumps are immovable if not yet extracted.
2. Waters therein, running or stagnant, are also immovable.

[9] Docks and structures (D)

1. Intended by their nature and object to remain at a fixed place on a river, lake, or coast.
2. Need not be incorporated.
3. E.g., Boathouse tied to the shore and used as residence.

[10] Contracts for public works

1. Contracts for public works; contracts for servitudes; other real rights over immovables, e.g., usufruct (A).
2. **Personal rights** are generally considered movable property whether exercised over personal or real property. XPN are contracts for public works/servitudes which are considered real property.
3. Real rights may be a movable or immovable depending on the subject matter – (i) Movable property if the subject is movable, e.g., under PPSA; (ii) real property if the subject is immovable, e.g., easements.

(c) For purposes of RPT

1. LGC definition prevails, being a special law c.f., NCC.
2. Transformers, electric posts, transmission lines, insulators, electric meters qualify as “machinery” under LGC subject to RPT.
3. Submarine and undersea communication cables are akin to electric transmission lines and may qualify as “machinery” under LGC subject to RPT.
4. Machinery is taxable RP if ADE used for the work or industry, even if not placed by the owner of land/ building.
5. Properties of government corporate entities are properties of the State, since they do not have separate personality. – (i) generally, not subject to RPT, unless beneficial use is granted to a taxable person. RPT is imposed on the latter; (ii) if the taxable person fails to pay, the government property cannot be sold on auction to satisfy the tax liabilities. The remedy is to file a personal action for collection against the taxable person.

(d) Classification based on ownership

Owner	Of public dominion (1)	Of private ownership (2)
Of State	Property of public dominion (3)	Patrimonial property of State (4)
Of LGUs	Property for public use (5)	Patrimonial property of LGUs (6)
Of private persons	N/A	Property belonging to private individual

(1) Properties owned in public capacity.

(2) Properties owned in private capacity.

(3) Property of public dominion

1. Intended for public use. – (i) open for the indiscriminate and indefinite use by public; (ii) ports, shores, reclaimed lands, waters and natural beds, creeks, roads, military reservation, waterworks system for public use.
2. Intended for some public service. – open for the use only by persons authorized by proper authority.
3. Intended for the development of national wealth.

***Mere intent to devote property for such purposes is sufficient to classify property as property of public dominion, even if not actually used as such.*

Characteristics

1. Outside the commerce of men. – cannot be the subject of contracts, except as provided in the Const., e.g., EDU of natural resources.
2. Not susceptible of appropriation. – acquisitive prescription does not lie.
3. Cannot be the subject of auction sale, levy, encumbrance, disposition by public or private sale.
4. Cannot be burdened by voluntary easement. – may be subject to legal easement.

Lands of the public domain

1. Broader concept that property of public dominion in terms of land as it covers all lands owned by the State, even that owned in private capacity.
2. Kinds – (i) Agricultural; (ii) Forest or timber; (iii) Mineral; (iv) National parks.

A&D lands of the State

1. Kinds – (i) A&D lands of the public domain: limited only to agricultural land; (ii) patrimonial property without limitation.
2. Conversion from property of public dominion to patrimonial property – (i) **Acts** of abandonment, withdrawal, or non-use showing that the property is no longer intended for public use, public service, or development of national wealth. Express declaration of intent to abandon applies only with respect to lands of the public domain; (ii) Affirmative act of conversion (a) by law, or (b) by Presidential Proclamation, if the President was authorized by law, expressly **declaring** that the property is no longer intended for public use, public service, or development of national wealth.
3. In the case of Republic v. PRCI, the SC declared that the **operative act which converts a land of public dominion to patrimonial property is its declaration as A&D.**

(4) Patrimonial property of State

1. Property owned by State, not in a character of property of public dominion, held in private capacity.
2. May be – (i) Patrimonial property by **nature**: properties never utilized nor intended by state for public use/ service or the development of national wealth, or (ii) **Converted** patrimonial property, which can come only from the properties under Art. 420, i.e., previously devoted for public use/service or development of national wealth (Republic v. PRCI). The conversion requires affirmative act of the government.
3. Susceptible to prescription.

(5) Property for public use of LGUs

- (i) those intended for public use, enumerated in Art. 424(1); (ii) public works for public service paid for by the LGU; (iii) those actually used for public governmental purpose, e.g., local administration, public education, or public health, even though not enumerated under Art. 424(1).
- Hence, it includes (i) all those expressly enumerated by law, and (ii) those not so enumerated but **actually used** for some governmental purpose.
- The classification "those actually used for public governmental purpose," is derived from the law on municipal corporations, which is considered a special. Under the law, the classification of property owned by local governments is based on the **actual use** to which the properties are devoted (actual use test). This is also the regime of property classification under political law. The purpose is to prevent dire consequences to public service if these properties are held patrimonial property which may be the subject of attachment or execution.
- E.g., (i) City hall and capitol site are property for public use, even if not enumerated in Art. 424(1) since it is actually used for some governmental purpose, i.e., public administration; (ii) land where state college is erected being for public education.

Characteristics

- Not alienable or disposable.
- Not subject to registration under PD 1529/Torrens title.
- Not susceptible to acquisitive prescription.
- Cannot be leased, sold, or be the subject of a contract.
- Cannot be burdened by voluntary easements.
- Subject to Congressional control.**

(6) Patrimonial property of LGUs

- (i) Property of LGU not expressly mention under Art. 424(1) AND (ii) devoted to proprietary or private purpose (classification based on actual use).
- Not subject to Congressional control.
- If property is for public use, the same may be taken by Congress without payment of just compensation since it is within its control. If patrimonial, it must pay just compensation.

B. Movables

- Properties susceptible of appropriation not included in Art. 415.
- Real property considered as personalty by special provision of law, e.g., unharvested growing fruits are considered personal property for purposes of (i) sale of whole crops, (ii) chattel mortgage/PPSA, (iii) attachment or execution.
- Forces of nature brought under control by science, e.g., gas, electricity.
- Portable things. – things that can be transported from place to place without damaging the immovable to which they are fixed, e.g., vessels.
- Obligations, actions which have for their object movables or demandable sums.
- Shares of stock of agricultural, commercial, and industrial entities, although they may have real estate, e.g., golf club shares.

II. Bundle of Rights

A. Ownership

Ownership is a relation in private law by virtue of which a thing pertaining to a person is **completely subjected to his will** in everything not prohibited by law or the concurrence with the rights of another.

- Things and rights may be owned.
- Actual possession** under claim of ownership raises the disputable presumption of ownership. If

another person claims to be the real owner of the property, he must resort to judicial process to recover the property.

Bundle of rights

- To enjoy – (i) fruits, (ii) possession, (iii) use, (iv) abuse;
- To dispose
- To recover
- To exclude others
- To enclose or fence
- To compensation in case of ED
- To surface, sub-surface, space above land
- To hidden treasure
- To accession

(a) Right to enjoy

- To **exclusive** enjoyment, includes the right to exclude others from enjoying the same.
- Owner has right to fence his property.
- Doctrine of self-help. – The property owner or lawful possessor may likewise use reasonable force to prevent or repel an actual or threatened unlawful physical invasion or usurpation of the property. This may be exercised only before actual dispossession. Otherwise, the owner/possessor must avail of judicial remedies.

Doctrine of state of necessity

- Limitation to one's exclusive enjoyment of his property rights by allowing a 3p to interfere therein for the limited purpose of averting an imminent danger.
- Requisites – (i) a situation of actual or imminent threat or danger upon the actor, 3p or their property; (ii) interference is necessary to avert the danger; (iii) the threatened damage is greater than the damage arising to the owner/possessor by reason of the interference; (iv) the state of necessity is not brought about by the intentional provocation of the party invoking it, or from the property itself.
- The owner/possessor may demand indemnification from the person benefited by the interference.

Distinctions	Self-help	State of necessity	Self-defense
Third-party interference	Unlawful	Lawful	
May owner prevent invasion?	Yes	No	
Source of danger		External source	Property itself

(g) Right to surface, sub-surface, space above land

- The owner of the land is entitled not only to (i) the surface but also to (ii) the land underneath and (iii) the airspace up to a reasonable height.
- Limitations – (i) Servitudes or easements; (ii) Special laws; (iii) Ordinances; (iv) Reasonable requirements of airspace navigation; (v) Rights of third persons; (v) Contracts.
- Right to sub-surface. – (i) soil has no value separate from the land in case of expropriation; (ii) if the landowner is prevented from digging his property, there is already deprivation of beneficial use of property which will entitle the owner to full JC.

(h) Right to hidden treasure

- Hidden treasure – (i) Any deposit of money, jewelry, or other precious objects which is hidden or unknown AND (ii) The lawful ownership of which does not appear.
- Excludes minerals found on land, which is State property.

3. If found by chance – (i) by LO, 100% belongs to LO; (ii) by finder who is not a trespasser, 50% each belongs to LO and finder; (iii) by finder who is a trespasser, 100% belongs to LO. By chance may mean absence of deliberate search (strict), or simply good luck, even if there is deliberate search.
4. If found by deliberate search – Treasure hunting permit must be secured from National Heritage Commission or DENR.
5. Things of interest to science or arts may be acquired by State at just price to be divided as above.

Limitations on property rights

1. For the benefit of the state, e.g., expropriation, demolition of ruinous building in exercise of police power, tax imposition on properties.
2. Imposed by law, e.g., principle of state of necessity (see above); principle of abuse of rights.
3. Imposed by grantor or transferor.
4. Imposed by owner on himself

B. Rights of Accession

1. General Principles

The right of the owner of the thing to likewise be the owner of:

1. Anything produced by the thing itself (accession discreta)
2. Anything inseparably attached or incorporated thereto, either naturally or artificially (accession continua).

(a) Accession discreta

1. Natural fruits – spontaneous products of the soil, and the young and other products of animals.
2. Industrial fruits – produced by land by cultivation or labor.
3. Civil fruits – rents of buildings, annuities and other similar fruits.

(b) Accession continua

1. On immovables – (i) natural; (ii) industrial [BPS].
2. On movables – (i) adjunction/conjunction, (ii) commixtion/confusion; (iii) specification.

Nature of union

1. To cause accession, the union between the principal and accessory things but me of such character that separation is impossible without causing substantial injury.
2. If the two things can be restored to their original state without incurring substantial expenses, they are still separable. Hence, no accession.

2. Accession Industrial

A kind of accession continua with respect to immovable properties, where the owner of the principal thing becomes the owner of anything inseparably attached or incorporated thereto **artificially**.

Good faith in general

1. Belief that one has right to use the materials or to BPS on property belonging to another, and the knowledge on the lack of such right was acquired only after the BPS was already completed, or

2. Timely objecting to the use of materials or the BPS on the land upon acquisition of such knowledge before the BPS was completed.
3. GF belief must be based on just **title**²² or claim to such title with the actor having no knowledge of any flaw or defect in such title which invalidates it.
4. The character of possession, whether in the concept of owner or holder does not determine GF. A possessor in the concept of an owner is not always a possessor in GF.

Bad faith in general

1. Knowledge that one has no right to use the materials or to BPS on property belonging to another, and the concerned person still continued on using the materials or the BPS in the land, or
2. Failure to timely object to the use of materials or the BPS on the land despite acquisition of such knowledge before the BPS was completed.

Industrial accession does not apply in instances governed by (i) other provisions of NCC, (ii) special laws, (iii) contractual stipulations.

1. Pacto de retro sales Arts. 1606/1616.
2. Lease Art. 1678.
3. Usufruct Art. 579-580.
4. Condominium (Condominium Act, Master Deed of Restrictions, By-laws of the Condominium Corporation). The exclusive ownership of the unit owner is limited to the area within his own unit. Areas outside the unit is already considered common area including the land on which the condominium is constructed, and the airspace. Constructions on the roof deck by a unit owner is not proper since the Condominium Corp. owns the airspace. He is also not a builder in GF since the provisions on industrial accession are not applicable.
5. Co-owned property. XPN: if after partition, it appears that a co-owner's BPS encroached on a portion adjudicated to another.
6. ****If LO BPS on his land but later loses ownership thereof (e.g., due to non-payment of real estate taxes),²³ Art. 448 may be applied by analogy.**

Various situations:

- (a) LO BPS in his own land with materials of MO
- (b) Br, Pr, Sr (own materials) BPS on land of LO
- (c) Br, Pr, Sr (materials of MO) BPS on land of LO

(a) LO BPS in his own land with materials of MO

	LO in GF	LO in BF
MO in GF	(i) LO must appropriate the materials and indemnify the MO; (ii) MO may remove only when no injury will result to the BPS (no accession)	MO may choose: (i) indemnification, or (ii) removal at the expense of LO, even though removal may cause injury to the BPS + damages
MO in BF	MO loses the materials without indemnity + damages	As if they both acted in GF

(b) Br, Pr, Sr (own materials) BPS on land of LO

	LO in GF	LO in BF
BPS in GF	(i) LO has primary right to appropriate the BPS upon and indemnify the BPS [2]; (ii) LO may compel Br/Pr to purchase the land if its value is not considerably more than	BPS may choose: (i) indemnification for materials and reasonable compensation for labor, or (ii) removal at

²² Title is a juridical act which in itself is not sufficient to transfer ownership although it provides for a means for such transmission. Title is a preparatory act for the transmission of ownership.

Meanwhile, "mode" is the immediate means of acquiring ownership. Under Art. 712, there are seven (7) modes of acquiring ownership: Occupation, Intellectual Creation, Law,

Donation, Tradition (in consequences of certain contracts), Prescription, Succession.

N.B.: **Tradition** is the mode which first requires a title. There must first be a preparatory act or a contract before the delivery of the thing can transmit ownership thereof.

²³ This is possible when in the public auction, only the land is sold but not the building.

	the value of the BPS [3], or lease the same if otherwise; (iii) LO may compel Sr to lease the land.	the expense of LO, even though removal may cause injury to the land + damages [7]
BPS in BF	(i) LO may appropriate the BPS, including fruits, without need for indemnification; (ii) LO may compel Br/Pr to purchase the land, even if its value is considerably more than the value of the BPS; (iii) LO may compel Sr to lease the land.; (iv) LO may demand demolition of the building, and removal of planting/ sowing at the expense of Br/Pr/Sr + damages [4]	As if they both acted in GF

- Expanded concept LO in GF, BPS in GF. – Br/Pr/Sr acted in BF but LO expressly consented to the BPS. – (i) for this to apply the one who gives consent is not the actual owner of the land, although he believes himself to be, and must not be a total stranger to the Br/Pr/Sr. The LO and BPS usually have close relationship as parent and children; (ii) if the person who consented is a stranger who does not actually own the property, the Br/Pr/Sr cannot claim GF under this expanded concept. They should have inquired into the ownership of the stranger.
- Indemnification consists of. – (i) necessary and useful expenses, in any case; (ii) ornamental expenses. The Br/Pr/Sr has right of retention pending reimbursement.
- If Br/Pr refuses to purchase the land, LO may – (i) opt to appropriate the BPS; (ii) enter a **voluntary** lease; (iii) demand demolition of BPS; (iv) apply with court for public sale of BPS and apply proceeds to the price of land. LO's rights are preclusive, he must first exercise the rights under NCC before he can resort to other remedies, e.g., he cannot seek demotion of the BPS at first instance, only if the Br/Pr refused to purchase the land.
- BPS in BF is entitled to reimbursement of – (i) necessary expenses for preservation of the land, and (ii) cost of production, gathering, preservation of fruits. Without right of retention.
- If occupation is by mere tolerance, BPS will still be considered in BF, even if LO had knowledge of the occupation.
- If the Br in BF is an LGU, the remedy of the LO is limited to demanding payment of JC.
- Same rights as if LO uses materials of MO in BF.
- If the BPS encroached on titled land, he may still be considered GF since registration is not constructive notice for purpose of BPS. But if the BPS' land is titled and he encroached on another's property, he cannot be considered in GF since he is bound to take notice of the limits of his own property.

(c) Br, Pr, Sr (materials of MO) BPS on land of LO

	MO in GF	MO in BF
BPS in GF	(i) If BPS pays materials, LO has same rights against BPS as if BPS used his own materials; (ii) If BPS is insolvent or unable to pay the materials, LO may appropriate the BPS and indemnify Br/Pr/Sr for the cost of labor, and the MO for the cost of material. [1]	(i) If BPS pays materials, LO has same rights against BPS as if BPS used his own materials; (ii) If BPS is insolvent or unable to pay the materials, LO may appropriate the BPS and indemnify Br/Pr/Sr for the cost of labor. MO is not entitled to indemnification, and he is liable for damages.
BPS in BF	(i) If BPS pays materials, LO has same rights against BPS as if BPS used his own materials; (ii) If BPS is	LO may appropriate the BPS, without need to indemnify for either the

	insolvent or unable to pay the materials, LO may appropriate the BPS and indemnify the MO for the cost of material. BPS is not entitled to indemnification, and he is liable for damages.	cost of materials or labor + damages.
1. Br/Pr/Sr is primarily liable for the cost of materials, LO is subsidiarily liable.		

3. Accession Natural

A kind of accession continua with respect to immovable properties, where the owner of the principal thing becomes the owner of anything inseparably attached or incorporated thereto **naturally**.

- Accretion – (i) Alluvium; (ii) Avulsion
- Change in the course of river
- Formation of islands

(a) Accretion is the process by which the soil is deposited on the banks of rivers. It may either be alluvium or avulsion.

Alluvium	Avulsion
Soil gradually and imperceptibly deposited on the estate adjacent to banks of rivers, streams, creeks, lakes due to the current of water	A known portion of an estate is suddenly and abruptly separated and transferred to another estate adjacent to the banks of rivers, creeks, streams, lakes, due to the current of the water
The soil deposited becomes the private property of the riparian owner ipso jure. Acquisition of ownership happens by operation of law.	The estate transferred remains a property of the owner of the estate from where it came from, who must remove the same within 2y; otherwise, the same becomes the private property of the riparian owner (principle of delayed accession).
(i) the deposit of soil or sediments is gradual and imperceptible; (ii) due solely to the acts of water without human intervention; (iii) deposit is made to an estate adjacent to bank of rivers, streams, creeks, lakes.	(i) there is separation and transfer of a known part of an estate to another; (ii) the transfer is abrupt and sudden; (iii) due solely to the acts of water without human intervention; (iv) deposit is made to an estate adjacent to bank of rivers, streams, creeks, lakes.

- The presumption is that the deposit happened gradually through accretion and erosion.
- If the accretion is by human intervention, the deposit becomes part of the banks of RSCL, forming part of the public domain.
- Drying up of river is not accretion.
- Alluvium may be acquired by acquisitive prescription by a person other than the owner, even if the estate adjoining RSCL is registered. The protection of the Torrens title is limited to its stated metes and bounds. Hence, the alluvium must likewise be registered.
- Accretion on banks of rivers is provided for by NCC, Spanish Law on Waters. Accretion on banks of SCL is provided for by Spanish Law on Waters.
- If accretion happens on seashore, the same is property of public dominion per Spanish Law on Waters.

(b) Change in the course of river

- Rivers and natural beds are property of public dominion of the State.
- Abandoned riverbeds due to the change in the course of river, ipso facto belongs to the owner of the estate whose lands were occupied by the new course, in proportion to the area of land lost. – (i) to compensate the landowner for loss of property; (ii) the new riverbed forms part of public domain.
No accession yet at this point.

3. Owner of land adjoining the old riverbed has the option of buying the same at a price not more than the value of the area occupied by the new bed.
Accession happens when the adjoining landowner exercises his right to acquire the old riverbed.
4. The adjoining landowner may not be compelled to purchase the old riverbed, but the owner of the land occupied by the new course of river may be compelled to sell the old riverbed to the adjoining landowner.
5. Requisites – (i) old course of river; (ii) new course of river; (iii) change in the course was a natural occurrence, or the deliberate act of the government, but not when the same was due to intervention of private persons such as the dumping of wastes in the river. These must be proved by clear and convincing evidence.
6. If the requisites were not established, the presumption is that the riverbed was merely abandoned, and it remains part of the public domain.
7. If the river dries up, the bed remains part of public dominion.

(c) Formation of islands

1. Island is formed whenever the current of a river divides itself into branches, leaving a piece of land isolated. The owner of the land retains his ownership.
2. When islands are formed in bodies of water it may be patrimonial property of the state or private property – (i) patrimonial property if formed on territorial sea, lakes, navigable or floatable rivers; (ii) private property if formed on non-navigable or non-floatable rivers. Even if the lake is found inside a subdivision, the island formed therein is still property of public dominion.
3. Island formed in non-navigable or non-floatable rivers is owned by – (i) owner of the bank nearest the island (if only one); (ii) owner of both margins if the island is equidistant; (iii) owner of the nearer margin if the island is not equidistant.

C. Actions to Recover Ownership and Possession of Property

Possession cannot be acquired by force or intimidation for as long as there is a possessor objecting. The remedy of the person believing that he has better right is judicial recourse.

1. Accion Reivindicatoria

An action whereby the plaintiff alleges ownership over a parcel of land and seeks recovery of its full possession.

1. A suit to recover possession of a parcel of land as an element of ownership (real right of possession).
2. Issue to be resolved is the ownership of the property.
3. Requisites – (i) identity of the land claimed by describing the location, area, and boundaries; (ii) title to the land claimed.
4. Real action affecting title to or possession of real property, or interest therein – (i) MTC has jurisdiction if assessed value is ≤400k; (ii) RTC if >400k.
5. The right of a registered owner to recover possession of land registered under the Torrens system is **imprescriptible**. Such registered land cannot be acquired by prescription.

2. Accion Publiciana

Plenary action to recover the right of possession which should be brought in the proper RTC.

1. Ordinary civil action to determine the better right of possession of realty independently of title (possession de jure).
2. Real action affecting title to or possession of real property, or interest therein – (i) MTC has

jurisdiction if assessed value is ≤400k; (ii) RTC if >400k.

3. Available when – (i) the ground for dispossession is not one of the grounds for FE or UD, or (ii) the dispossession lasted for more than 1y. After 1 year, possession de facto is lost.
4. Must be filed within 10 years. Otherwise, accion reivindicatoria may be filed.

3. Accion Interdictal

Accion interdictal is an action for the recovery of physical or material possession (possession de facto). Either Forcible Entry FE or Unlawful Detainer UD.

FE	UD
(i) Prior physical possession of the property; (ii) Unlawful deprivation by the defendant through force , intimidation, strategy, threat, or stealth; (iii) Action filed within 1y from dispossession or discovery thereof (stealth).	(i) Possession by defendant is inceptively lawful by contract or tolerance of plaintiff; (ii) Possession became unlawful upon the plaintiff's notice to the defendant of the termination of the latter's right of possession, or demand to vacate; (iii) Defendant remained in possession and deprived the plaintiff of the latter's enjoyment; (iv) Action filed within 1y from the date of last demand to vacate.
Issue to be resolved is who has prior possession de facto	Issue to be resolved is Who has rightful possession of the property
Cause of action is disturbance of possession of present possessor (plaintiff) not made through judicial recourse (Art. 536)	Cause of action is the expiration of the present possessor's (defendant) right to possess the property.
Jurisdiction is with MTC, regardless of assessed value	Same

PLDT v. Citi Appliance M.C. Corporation

1. If the landowner was dispossessed of the land's subsurface by means of stealth, such that he is no longer able to make excavations of his property, the same may properly be the subject of forcible entry action. The prescriptive period of 1y is to be reckoned from the time the dispossession was discovered.
2. Rights over land are indivisible. The property owner is entitled to make use his right of ownership, and it extends not only the surface but also the subsurface and the airspace, subject to reasonable limitations imposed by aerial navigation.
3. In this case, PLDT placed telephone lines, cables, and manholes such that the landowner is prevented from making an excavation on his land.

Barber v. Chua

1. The property owners may exercise ownership on the surface, subsurface, and other structures.
2. An encroachment on one's firewall may be the subject of an action for ejection. Any dispossession, ejection, or unlawful intrusion, on any part of one's property: surface, subsurface, structure on the property including the firewall may be the subject of ejection case.
3. Erection by neighbor of a clothesline which encroaches upon the owner's airspace may be the subject of ejection.

4. Quieting of Title

An action to declare a title or interest over a property adverse to plaintiff as void to prevent disturbance of property rights.

1. Common-law remedy intended to remove a cloud, doubt, or uncertainty **CDU** on the title to real property or interest therein.
2. Such CDU is caused by an instrument, record, claim, encumbrance or proceeding IRCEP – (i)

that is apparently valid and effective; (ii) but in truth, is invalid, ineffective, voidable, or unenforceable **IVU**; (iii) which may be prejudicial to the title (cloud on title). E.g., forged deed of sale over one's property.

3. Proceeding quasi-in rem – (i) its subject involves the status, ownership, or liability of a particular property, (ii) but the judgment binds only the parties to the proceedings, not the whole world.
4. Real action involving title to RP – (i) MTC has jurisdiction if assessed value is ≤400k; (ii) RTC if >400k.
5. Prescriptive period – (i) 30y if the plaintiff is not in possession of RP; (ii) imprescriptible if he is in possession.

Requisites

1. Legal or equitable title of the plaintiff over the RP – (i) legal title may include registered ownership; (ii) equitable title may be a claim of ownership by acquisitive prescription. But mere tax declaration is insufficient. Mere verbal assertion is also insufficient, unless such has legal basis as a claim based on acquisition prescription.
2. IRCEP casting doubt on plaintiff's title was shown to be in fact **IVU** despite prima facie appearance of validity or legal efficacy.

D. Co-Ownership

1. Distinctions Between Right to Property Owned in Common and Full Ownership Over the Ideal Share

Right to Property Owned in Common	Full Ownership Over the Ideal Share
A co-owner is the owner of the entire property may exercise full dominion thereof, subject to limitations [1]	A co-owner is the owner of a portion of property, which ownership is abstract.
Entirety of the co-owned property or specific property forming part thereof cannot be alienated. [8]	Ideal share over the co-owned property or specific property forming part thereof can be alienated, assigned, mortgaged, disposed. [3]
Co-owner exercises right of common dominion with other owners without right to alienate, assign, mortgage, dispose the property.	Co-owner exercises absolute ownership. XPN: co-ownership established under Art. 147 where co-owner is prohibited from disposing his ideal share during the subsistence of the co-ownership.

1. Limitations – (i) property must be used for the purpose intended; (ii) use of property must not be injurious to other co-owners; (iii) use by one co-owner will not prevent the use by another according to their own right. E.g., If the co-owners agreed to lease out the property but in violation thereof, one co-owner exclusive possessed the same. The latter will be required to pay rent, less his share. But he may not be ejected from the property. Other remedies include partition, occupation of property together with the others.
2. A co-owner cannot point out to a specific property belonging to him as his share. XPN: if there is an effective partial partition through actual possession of one co-owner with consent of other co-owners when the other co-owners allowed co-owner to occupy a specific portion of the property, and the latter enjoyed undisturbed possession thereto, he becomes entitled to the portion occupies.
3. The sale is valid but limited to the proportionate share of the seller co-owner, subject to the results of partition. The buyer steps into the shoes of the seller-co-owner and he himself becomes a co-owner.
4. Sources of co-ownership – (i) law; (ii) contract, which may be acquired onerous or gratuitous; (iii) succession; (iv) occupation; (v) chance. The

registration of property in the name of 3 siblings shows the existence of co-ownership. One cannot be excluded on ground that he did not contribute anything for its acquisition.

5. Industrial accession (BPS) does not give rise to co-ownership.
6. Share on thing owned – (i) Based on agreement; (ii) if none, presumed equal.
7. In condominium – (i) Common areas are co-owned; (ii) partition of project may be demanded under circumstances provided for by the law.
8. If entire or specific co-owned property is sold, other co-owners may – (i) exercise right of legal redemption; (ii) ask for partition of the property. But they may not – (i) ask for the nullification of sale since the sale is not void; (ii) ask for reconveyance since their share is not affected by the sale; (iii) eject the buyer since the latter became a co-owner upon his acquisition of the seller-co-owner's share.

2. Contributions for Expenses

Summary of consent requirements

Action for ejectment	One may file on behalf of all
Expenses for preservation and taxes	Will of one is sufficient, subject to right of reimbursement
Expenses for improvement and embellishments	Will of co-owners representing controlling interest
Acts of administration	Will of co-owners representing controlling interest
Acts of alterations	Unanimous consent required, subject to court recourse in case withholding of consent is UP

(a) Expenses for preservation and taxes

1. May be made at will by any of the co-owners, even without the consent of the other co-owners (will of one is sufficient). The paying co-owner may demand contribution from the others in proportion of their interest.
2. Contribution must be in the same proportion as their ownership over the co-owned property. Contrary stipulation is void.
3. The paying co-owner must notify the other co-owners only when practicable. – (i) Failure to notify will not affect the right of the paying co-owner to demand reimbursement; (ii) it only shifts the burden to the paying co-owner to prove the actual incurrence of the expenses, and its necessity for the preservation of the property.
4. A co-owner may be excused from contribution by **renouncing** so much of his interest in the co-owned property as may be equivalent to his share in the expenses (potestative). XPN: if the renunciation would be prejudicial to the co-ownership. The renunciation does not amount to dacion en pago since the consent of other co-owners is not required while in dacion en pago, such consent is required being contractual in nature.
5. If one co-owner refuses to pay his share in the contribution, and also does not want to renounce portion of his share, the other co-owners may file an ordinary action for collection. Other co-owners may compel payment only but they may not compel renunciation.
6. E.g., cost of redeeming the property during redemption period is necessary expense. The redeeming co-owner did not become the exclusive owner of the co-owned property. N.B.: if redemption is made after redemption period and the consolidation of title in favor of the buyer, the re-acquisition by the co-owner of the property renders him the sole owner.

(b) Expenses for improvement and embellishment

<ol style="list-style-type: none"> 1. Must be decided by the majority of the co-owners representing the controlling interest. 2. Majority pertains to the proportionate ownership in the co-owned property and not the absolute number of co-owners. <p>(c) Action for ejectment</p> <ol style="list-style-type: none"> 1. A co-owner may bring an action for ejectment without joining the other co-owners, which shall be deemed for the benefit of all. The other co-owners are neither necessary nor indispensable parties. 2. Includes all kinds of action for the recovery of possession – e.g., accion interdictal, accion publiciana, reivindicatoria, revival of judgment, replevin. 3. If judgment is favorable, all co-owners will benefit, impleaded or not. If not, co-owners not impleaded will not be affected. 4. The rule applies even if the action for ejectment is filed by one co-owner against another. – (i) judgment of court is limited to declaration of existence of co-ownership to prevent the running of the period of acquisitive prescription in favor of co-owner claiming exclusive ownership; (ii) court cannot eject either co-owner nor order partition of the property. 5. However, if the suit is not for the benefit of all, but one co-owner claims exclusive ownership, the other co-owners are indispensable party. The claim of exclusive ownership constitutes an act of repudiation by one co-owner. <p>(d) Acts of administration</p> <ol style="list-style-type: none"> 1. Acts not affecting the essence, form and substance of the thing. 2. Modifications and changes consistent with the nature of the thing and necessary for its exploitation and enjoyment. 3. Must be decided by the majority of the co-owners representing the controlling interest. <p>(e) Acts of alteration</p> <ol style="list-style-type: none"> 1. Acts affecting the substance of the thing or changes its essence, nature. Includes acts of strict dominion, encumbrance, disposition, allowing stranger to build on co-owned property. 2. The consent of all co-owners is required, even if it would benefit all. 3. If one co-owner unreasonably withholds consent and the same is clearly prejudicial to common interest, other co-owners may go to court for appropriate relief. Mere refusal of other co-owners of the disposition is not ground to seek judicial relief since the same does not prevent the other co-owners from disposing their share. 4. Unauthorized alteration is illegal and invalid. Other co-owners may – (i) compel the erring co-owner to undo what has been done at latter's expense, (ii) demand damages. 	<ol style="list-style-type: none"> 5. the vendee must be reimbursed for the price of sale. <p>Notice requirement</p> <ol style="list-style-type: none"> 1. Mandatory, even if the other co-owners have actual notice of the sale. 2. The notice should be given by the vendor co-owner since he is in the best position to determine who his co-owners are. Notice given by the vendee should not be considered. 3. No required form. May be in the form of copy of Deed of Sale, summons, Sheriff's Certificate of Sale. 4. 30d is reckoned only from receipt of notice by the other co-owners.
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3. Redemption

Remedy available when a co-owner sells his share to a third person or a stranger to the co-ownership.

1. The right to redeem may be invoked only after the sale (not pre-emptive).
2. The right cannot be exercised if the sale was made in favor of another co-owner.

Requisites

1. there is a co-ownership.
2. one of the co-owners sold his share to a stranger or a non-co-owner.
3. the sale was made before partition.
4. the right must be exercised by one or more co-owners within 30d from the date they were notified in writing by the vendor co-owner.

4. Partition

Separation, division, assignment of thing held in common among those to whom it may belong.

1. Every act intended to put an end to indivision is considered partition although denominated as sale, exchange, compromise, or any other transaction.
2. May be written or oral, judicial or EJ.

GR: A co-owner may demand partition of the thing **at any time** insofar as his share is concerned.

1. If an action for partition filed by a co-owner was dismissed due to failure to prosecute (with prejudice), the co-owner/s are not barred from refiling an action for partition.
2. Rules of procedure cannot prevail over the co-owners' substantive right to demand partition.

XPNS **AGLUE**

1. By **agreement**. – (i) ≤10y. If in excess, only excess is void; (ii) extendible by new agreement.
2. By will of **grantor**. – (i) donor or testator may prohibit partition; (ii) ≤20y.
3. By **law**, e.g., Family home for as long a beneficiary resides therein.
4. When partition would render thing **unserviceable** for intended use
5. The thing is essentially indivisible. – (i) parties may agree that the property be allotted to one of them, subject to reimbursement; (ii) if they cannot agree, they may sell the property and divide the proceeds.

Repudiation

1. An action for partition is **imprescriptible** and cannot be barred by laches. However, it may be acquired the same by **acquisitive prescription** by one of the co-owners after a valid repudiation.
2. Repudiation is the non-recognition of the status of co-ownership, and possession of the property adverse to that of the other co-owners for at least 30y (**acquisitive** prescription).
3. Registration of co-owned in favor of 1 co-owner done in bad faith amounts to repudiation and creates an implied trust. An action for reconveyance may be filed within 10y from registration (**extinctive** prescription).
4. E.g., (i) action to quiet title or for the recovery of ownership of the property possessed by him are acts of repudiation; (ii) exclusive possession coupled with acts as preventing other from entering the property or from gathering fruits.
5. Not acts of repudiation – (i) registration of land in the name of a co-owner but he allowed the other to construct on the land (implied recognition); (ii) declaration of property in the name of one co-owner for taxation purposes, payment of land tax; (iii) mere exclusive possession.

Requisites of valid repudiation

1. Performance of **unequivocal** acts of repudiation amounting to an ouster of the other co-owners.
2. The positive acts of repudiation are **made** known to the other co-owners.
3. **Evidence** must be clear and convincing.

Other grounds for extinguishment of co-ownership

1. Merger
2. Prescription
3. Destruction of the thing or loss of right
4. Partition

E. Possession

(a) The holding of a thing or the enjoyment of a right.

1. Only **things and rights** that are capable of being appropriated may be possessed.
2. Requisites – (i) Material occupation, (ii) intent to possess.
3. Possession in one's own name or that of another – (i) in own name: possession anchored on a juridical title, e.g., as owner, lessee, usufructuary; (ii) in name of another: possession by agent. (a) This kind of possession is not adverse to the principal, and cannot ripen into a title as long as the agent recognizes that he is holding the thing for the principal; (b) the period of possession by agent is counted in favor of principal for purposes of acquisitive prescription.
4. Jus possidendi pertains to the right to possess as a consequence of ownership. Jus possessionis is the right to possess independent of ownership.

(b) Disputable presumptions

1. The possessor is presumed the owner.
2. Possession is in GF.
3. Continued possession in the same character in which the property is acquired until contrary is proved.
4. Just title. XPN: **for purposes of prescription, just title must be proved and not presumed.**
5. Possession of the real property includes possession of the movables.
6. Exclusive possession of a part of common property, upon partition.
7. The present possessor, if there is proof of possession at some previous time, is presumed to also possess the property during the intervening period.
8. Possession without interruption upon recovery of possession unjustly lost for purposes beneficial to the possessor.

(c) Effects of possession

1. Respect and protection of every possessor.
2. Entitlement to fruits of possessor in GF.
3. Reimbursement of expenses.
4. Entitlement to improvements by nature or time of lawful possessor.
5. Liability for deterioration or loss by possessor in BF.

(d) Acquisition of possession

Modes of acquisition

1. By material occupation for tangible things
2. By exercise of right
3. By subjecting the thing to or right to the action of our will – e.g., traditio simbolica, traditio longa manu.
4. By proper acts and legal formalities. – juridical acts by which possession is acquired or to which the law gives the force of acts of possession, e.g., donation, succession, execution/registration of public document, inscription of possessory information titles.

Doctrine of Constructive Possession

1. The possession and cultivation of a portion of land under a claim of ownership of all amounts to the possession of all, even if there are portion not actually cultivated. PROVIDED, that the uncultivated portions are not under the adverse possession of a third person.
2. Requisites – (i) person possesses portion of a land; (ii) he claims ownership of the entire land; (iii) the uncultivated portion is not under the adverse possession of another; (iv) the area being claimed is reasonable.

When possession not acquired FTC

1. Acquisition through **force or intimidation** for as long as there is a possessor objecting thereto. – even if the person dispossessing another has better right; recovery must be coured through the courts.
2. Acts which are **merely tolerated**.
3. Acts which are executed **clandestinely** and without the knowledge of the possessor.

Who may acquire possession

1. Person who is to enjoy the property, i.e., the beneficial owner. – (i) Possession by heir is deemed without interruption from the moment of death of the decedent, if he accepts the inheritance; (ii) heir is deemed not to have possessed the property, if he renounces; (iii) the GF possession of decedent benefits the heir from the moment of death; (iv) the BF possession of decedent does not affect the heir, provided, the heir is unaware of the wrongful possession of his predecessor.
2. Legal representative
3. Agent
4. Any person without any power whatever. – Acquisition of possession is delayed until the person in whose name the act of possession was executed **ratifies** the same, without prejudice to judicial consequences of negotiorum gestio.

Conflicts in possession de facto

1. Possession cannot be recognized in two persons at the same time. XPN: in case of co-possession. Upon division, each co-possessor is deemed to have exclusively possessed the part which may be allotted to him for the entire duration of the co-possession.
2. In case of conflict – **PLT** (i) **present** possessor shall be preferred; (ii) if 2/more, the one **longer** in possession shall be preferred; (iii) if periods are equal, the one who can show **title** shall be preferred; (iv) if all are equal, the thing shall be placed in **judicial** deposit pending determination of who is entitled to possession of the thing in proper proceedings.

(d) Loss of possession DAPAR

1. By **abandonment** – (i) spes recuperandi (hope of recovery or recapture) is gone; (ii) animus revertendi (intent to recover) is finally given up.
2. By **assignment**
3. By **destruction** or loss, going out of commerce
4. By **possession** of another (dispossession) – (i) >1y but <10y, possession de facto is lost; (ii) ≥10y, possession de jure is lost. However, if act is merely tolerated or done in clandestine manner, there is no dispossession (acts not affecting possession), regardless of duration.
5. **Recovery** by the lawful possessor or owner

In im/movables

1. In movables. – possession is not lost as long as the possessor has **control** over the thing, even

- though he may not know the whereabouts of the thing for the meantime.
2. In immovables. – possession is not deemed lost or transferred for purposes of prescription to the prejudice of third persons, except in accordance with the provisions of the Mortgage Law and the Land Registration laws.

1. Possession in the Concept of a Holder

One where the possessor recognizes a superior title/right which he believes to be ownership.

1. Whether the belief is right or wrong does not affect the character of possession.
2. Possession is not adverse.
3. Acts of mere possessor does not bind or prejudice the owner, unless: (i) owner authorized the possessor, or (ii) owner subsequently ratifies the possessor's acts.
4. The holder cannot acquire the property subject of possession by way of acquisitive prescription. XPN: if he repudiates the superior right earlier recognized.
5. E.g., possession by lessee, usufructuary.

2. Possession in the Concept of an Owner

The possessor does not recognize in any other person a right superior to his.

1. Possession exercised either (i) by the owner himself, or (ii) by the one claiming to be the owner of the property.
2. Possession is adverse.
3. Possession in the concept of an owner may be in bad faith.
4. Raises the **disputable** presumption of ownership.
5. Raises the disputable presumption that possession is by **just title**.
6. May ripen to ownership by acquisitive **prescription**.

Just title

1. (i) title received by the possessor from someone who he believed to be the owner; (ii) such title must be sufficient to transfer ownership of the property; (iii) however, the transfer cannot be effected because the transferee is not the actual owner of the property.
2. For the purposes of prescription, there is **just title** when the adverse claimant came into possession of the property through one of the modes recognized by law for the acquisition of ownership or other real rights, but the grantor was not the owner or could not transmit any right.
3. GR: the possessor cannot be made to show just title since it is presumed. XPN: for purposes of prescription, just title must be proved.

3. Relevance of Good Faith and Bad Faith

(a) Possessor in GF

1. The possessor is unaware that there exists in his (i) title or (ii) mode of acquisition any flaw which invalidates it.
2. Mistake upon a doubtful or difficult provision of law may be the basis of good faith (treated as mistake of fact).
3. Elements – (i) the possessor has a **title** or mode of acquisition in his favor, only that the same is invalid because there is flaw or defect in it which invalidates it; (ii) the possessor is **unaware** of the flaw or defect invalidating his title or mode of acquisition.
4. Possessors who cannot be possessors in GF – (i) Possessors by mere tolerance; (ii) holder, lessee, agent, usufructuary.
5. GF is presumed. Also presumed to continue unless the contrary is proved. Possession continues to be enjoyed in the same character as it was acquired until the contrary is proven.

6. GF ceases from the time the possessor is made aware that the property he is possessing belongs to somebody else – e.g., service of summons, demand to vacate.

(b) Possessor in BF

1. Either – (i) the possessor has **no title** or mode of acquisition existing in his favor which can be the basis for claiming ownership, OR (ii) the possessor is **aware** of the flaw or defect in that his title or mode of acquisition which invalidates the same.
2. BF is personal and intransmissible. – the BF of the transferor of the property is not passed on to the transferees, e.g., parents to children.

(c) Right to fruits

	Fruits already received Art. 443	Pending fruits Art. 545
In GF	(i) possessor is entitled to fruits before legal interruption of GF possession; (ii) if he voluntarily surrenders, he is entitled to reimbursement for production, gathering, preservation expenses; (iii) has right of retention pending indemnification	(i) possessor and owner shall share net harvest based on period of possession; (ii) they shall also share in expenses for cultivation on the same basis; (iii) owner may opt to indemnify the possessor by way of fruits in lieu of paying the expenses of cultivation. Once exercised, the possessor may not refuse to finish the cultivation; (iv) has right of retention pending indemnification.
In BF	(i) possessor is not entitled to fruits; (ii) if must return the fruits received and could have received, but he is entitled to reimbursement for production, gathering, preservation expenses; (iii) has no right of retention pending indemnification	(i) possessor loses fruits in favor of the owner; (ii) he is not entitled to indemnification only to reimbursement of necessary expenses for preservation of land [fruits received]; (iii) has no right of retention pending indemnification.

(d) Costs and expenses

	In GF	In BF
Necessary [1]	(i) possessor is entitled to reimbursement; (ii) with right of retention; (iii) for the actual amount incurred; (iv) possessor has no option to remove.	(i) possessor is entitled to reimbursement; (ii) without right of retention; (iii) for the actual amount incurred; (iv) possessor has no option to remove.
Useful [2]	(i) possessor is entitled to reimbursement; (ii) with right of retention; (iii) for the actual amount incurred or increase in value of property, at owner's option; (iv) possessor has option to remove if the owner does not appropriate, and if no damage will be caused to the principal thing.	(i) possessor is not entitled to reimbursement; (ii) and he has no option to remove the improvement.
Ornamental [3]	(i) possessor is not entitled to reimbursement, unless the owner opts to appropriate; (ii) for the actual amount incurred; (iii) possessor has option to remove if the owner does not appropriate, and if no damage will be caused to the principal thing.	(i) possessor is not entitled to reimbursement, unless the owner opts to appropriate; (ii) for the value of ornament when owner enters possession, regardless of amount spent; (iii) possessor has option to remove if the owner does not appropriate, and if no damage will be caused to the principal thing.

1. Necessary expenses are those incurred to preserve the thing or to keep it from being useless.
2. Useful expenses are those incurred to increase the utility or productivity of the thing.
3. Ornamental expenses are those incurred for pure luxury.

(e) Improvements and deterioration

1. Improvements by nature or without participation of the possessor, and deterioration of the same nature.
2. Improvements – (i) Existing at time of possession: inures to the benefit of the person who has succeeded in recovering possession; (ii) Not existing at time of possession: one who recovers possession shall not be obliged to pay for improvements which have ceased to exist at the time he takes possession of the thing.
3. Deterioration – (i) if in GF, possessor not liable for loss or deterioration; (ii) if in BF, possessor is always liable for loss or deterioration even in case of fortuitous event. Includes situations when possessor acted with fraudulent intent or negligence after judicial summons.

(c) Abandoned and lost movable

1. There is abandonment if – (i) spes recuperandi (hope of recovery or recapture) is gone; (ii) animus revertendi (intent to recover) is given up. Abandoned movable is deemed res nullius.
2. A movable is lost if the same is placed under the control and possession of another person.
3. If the thing is merely misplaced (whereabouts unknown for the mean time) but still under the control of prior possessor, it is not deemed lost.

To acquire the lost movable by occupation

1. Finder must (i) return the thing to previous owner, if known or (ii) deposit the thing with office of the mayor in the place of finding if owner is unknown. Failure to comply with these make the finder liable for theft.
2. Mayor must make a public announcement for 2 consecutive weeks.
3. If owner does not appear after 6m, the thing is awarded to finder upon reimbursement of publication costs. He then acquires ownership of the thing by occupation.
4. If owner appears on time, he shall pay the finder 1/10 of the value of property as reward.

4. Rules for Movables

(a) Doctrine of irrevindicability

1. Possession in GF of movables is equivalent to title.
2. Requisites – (i) acquisition in GF; (ii) possession in concept of owner.
3. Movable property may not be recovered from the present possessor.

XPNs

1. The item may be recovered from the present possessor if (i) the owner lost the thing; or (ii) he was unlawfully deprived of the same. Upon recovery, possession will be presumed uninterrupted but only for purposes beneficial to such person recovering.
2. Unlawful deprivation – (i) covers **abuse of confidence**, not just robbery or theft [no delivery since the dispossession is made by fraudulent means] – *Aznar v. Yapdiangco*; (ii) does not cover a situation where the buyer alienates the property in favor of a third person despite failure to pay the full price to the original seller. The seller cannot claim that he is “unlawfully deprived” of the thing to recover the thing from 3p. The seller’s remedy is an action for sum of money against the original buyer. [presupposes that seller already delivered the object to the buyer pursuant to the contract of sale without the buyer employing any fraudulent means] – *EDCA Publishing case*.
3. Reimbursement is generally not required. XPN: If the third person acquired the movable **GAMVA** (i) in **GF** and (ii) in a public **auction**, (iii) in a **merchant’s** store, fair or markets, (iv) from one who has voidable title which has not been annulled, (iv) through acquisitive prescription.

(b) Possession over animals

1. Animals may be – (i) Wild; (ii) Domesticated; or (iii) Domestic.
2. Wild animals are deemed possessed once they are under one’s control. Possession is lost once the animal regains freedom.
3. Domesticated animals are deemed possessed for as long as they retain the habit of returning to the premises of the owner or possessor. Possession is lost upon lapse of 20d without the animal being recovered.
4. Domestic animals are considered personal property (see above).

F. Usufruct

The right to enjoy, temporarily, the property of another with the corollary obligation of **preserving the form and substance** of the thing, unless the law or title constituting the usufruct provides otherwise.

1. A **real right** over im/movable property.
2. May be constituted over tangible (corporeal) property or rights. If right – (i) must not be strictly personal; (ii) must not be intransmissible; (iii) must be separable or has independent existence. E.g., servitude cannot be the object of usufructuary for it does not exist independently of the tenement.
3. Jura in re aliena. – right enjoyed over the property of another person.
4. Temporary in character. – it terminates upon the lapse of the agreed period, or the death of the usufructuary.

1. Rights and Obligations of Usufructuary

Generally, the rights and obligations of the usufructuary shall be those provided for in the title creating the same. If default of insufficiency, NCC provisions apply suppletorily.

(a) Rights

1. Jus fruendi
2. Jus utendi
3. Jus abutendi (in abnormal usufruct).
4. To lease/alienate the right (not the object)
5. To make improvements.
6. To set-off improvements against damage.
7. Not to be prejudiced by works of owner.
8. To demand reimbursement of amounts advanced, and to have the right of retention pending reimbursement.
9. To bring the action to recover the property

****Owner retains jus disponendi.**

(1) Jus fruendi

1. Usufructuary is entitled to natural, industrial, civil fruits.
2. Fruits pending at time usufruct begins **belong to usufruct** without obligation to reimburse owner for the costs of cultivation.
3. Fruits pending at time usufruct ends belong to owner but with obligation to reimburse usufructuary for the ordinary expenses of cultivation, cost of seeds, similar expenses.
4. Usufructuary is entitled to the proportionate share in the rent if usufruct expires before the lease. Rent accrues daily.

<p>5. With respect to hidden treasure, usufructuary is considered a stranger.</p> <p>(2) <i>Jus utendi</i></p> <ol style="list-style-type: none"> 1. Extends to accessories, servitudes, increase in the thing by virtue of accretion, and all benefits inherent in the thing. 2. E.g., the usufructuary may lease the subject property, and the owner must respect the lease so long as the usufruct exists. <p>(3) <i>Jus abutendi, if the usufruct includes:</i></p> <ol style="list-style-type: none"> 1. things which, without being consumed, gradually deteriorate through wear and tear (depreciable), or 2. things which cannot be used without being consumed (consumable) <p><i>Depreciable thing</i></p> <ol style="list-style-type: none"> 1. Usufructuary has the right to use the thing for the purpose intended. 2. He is not obliged to return the thing at termination of usufruct, except in the condition they may be found at the time. 3. Obligated to indemnify owner for fraudulent or negligent acts. <p><i>Consumable thing</i></p> <ol style="list-style-type: none"> 1. Usufructuary has the right to consume the thing. 2. He is not obliged to return the same thing. 3. If thing appraised when delivered, he is obliged to pay appraised value upon termination of usufruct. 4. If thing not appraised when delivered, he is obliged to (i) return the same quantity or quality of the thing, or (ii) pay current price at time usufruct ceases. <p>(4) <i>Right to lease/alienate the right</i></p> <ol style="list-style-type: none"> 1. Usufructuary may personally enjoy the thing in usufruct or lease, dispose or encumber the same, even without owner's consent. 2. Conditions – (i) All sub-contracts entered into by the usufructuary is co-terminous with his own right; (ii) he must personally answer to owner for damage to the thing caused by fault or negligence of the transferee or lessee. 3. Alienation of the usufructuary right by the usufructuary does not terminate his relation with the owner. <p>(5) <i>Right to make improvements</i></p> <ol style="list-style-type: none"> 1. Usufructuary may introduce useful improvements or ornaments. BUT he has no right to reimbursement whether useful improvement or for mere pleasure. 2. He may – (i) Remove improvements IF no damage will result to the object; (ii) Set-off improvement against damage he may have caused to the property. The right of remotion is protestative on the part of the usufructuary and the owner may not prevent him from doing so. <p>(8) <i>To demand reimbursement of amounts advanced</i></p> <ol style="list-style-type: none"> 1. For EO repairs – (i) equivalent to the increase in value of property as a result of the repairs [not the cost of improvement or amount incurred]; (ii) if the owner fails to make the repairs despite due notice. 2. For taxes imposed on the capital. 3. **Reimbursement can be demanded upon termination of the usufruct, with right of retention pending. <p>(9) <i>Right to bring the action to recover the property</i></p> <ol style="list-style-type: none"> 1. He may oblige owner – (i) to give him authority for the purpose; (ii) to give him whatever proof the former has. 	<p>1. If the usufructuary recovers the property, he will be entitled only to the fruits; the dominion shall still pertain to the owner.</p> <p><i>Jus disponendi</i></p> <ol style="list-style-type: none"> 1. The owner retains right to dispose, encumber, transform, destroy the property, or impose voluntary easements upon it, without consent of the usufructuary. 2. Owner may also construct works, make improvements or plantings. 3. Provided – (i) he does not alter the substance of the thing; (ii) does not do acts prejudicial to the usufructuary. Hence, the usufructuary may not be made to pay debts for the security of which the mortgage over the property was constituted. <p>(b) Obligations</p> <p><i>At commencement</i></p> <ol style="list-style-type: none"> 1. To make inventory 2. To give security <p><i>During life</i></p> <ol style="list-style-type: none"> 3. To preserve the nature and substance of the thing subject of the usufruct 4. To observe the diligence of GFF in the performance of obligations 5. To make ordinary repairs 6. To give notice of need for EO repairs 7. To notify of prejudicial 3p acts 8. To pay charges and taxes on fruits. 9. To pay costs, expenses, liability for suits involving the usufruct. 10. To pay debts of owner 11. To be liable for damages caused by transferee. <p><i>Upon termination</i></p> <ol style="list-style-type: none"> 12. To return the thing <p>(1) <i>To make inventory</i></p> <ol style="list-style-type: none"> 1. Includes all properties covered by the right. 2. Must contain: (i) appraisal of movables and (ii) description of condition of immovables. 3. Making of inventory gives rise to the presumption that the property was received in good condition. 4. XPN: if no one will be prejudiced, making of inventory may be excused. <p>(2) <i>To give security</i></p> <ol style="list-style-type: none"> 1. Conditioned on his compliance with his obligations. 2. Non-compliance will prevent the usufructuary from exercising his right, without causing the termination of the usufruct. 3. Once complied, the effect retroacts to the day the usufruct was constituted. Has effect on the entitlement to the fruits. 4. Exemption from obligation to give security – (i) In case of usufruct reserved by donor of the property; (ii) In case of usufruct of parents over the property of their minor children under their custody and over which they exercise parental authority. XPN: if the parent contracts a second marriage. 5. Relief from giving security. – (i) May be allowed when no one will be prejudiced or injured; (ii) Usufructuary executes caucion juratoria. <p><i>Caucion juratoria</i></p> <ol style="list-style-type: none"> 1. Promise under oath made in court by the usufructuary who has not given security to fulfill properly the duties of the usufructuary. 2. Should be limited to the purpose of acquiring use of: (i) furniture necessary for his use, (ii) house or dwelling, (iii) tools, implements, other movables necessary for the industry or vocation.
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3. Usufructuary cannot alienate or lease his right as it would mean that there is really no real need for the properties.

(3) *To preserve the nature and substance of the thing subject of the usufruct.* XPNs:

1. The law or title creating the usufruct imposes no such obligation to preserve.
2. When the usufruct includes a thing which, without being consumed, gradually deteriorates by wear and tear (depreciable).
3. When the usufruct includes a thing which cannot be used without being consumed (consumable).

(5) *To make ordinary repairs*

1. (i) is required by wear and tear due to the natural use of the thing, and (ii) indispensable for its preservation.
2. For the account of the **usufructuary**

(6) *To give notice of need for EO repairs*

1. For the account of the **owner** but the usufructuary has legal obligation to **notify** the owner if the need for repair is urgent and indispensable for the preservation of the thing.
2. If owner fails to make the EO repair despite notice, usufructuary is authorized to make the repairs with the following rights: (i) demand **reimbursement** from owner, at the termination of the usufruct, for an amount equal to the increase in the value of immovable by reason of the repair, (ii) **retain** the property pending reimbursement.

(7) *To notify of prejudicial 3p acts*

1. Acts are that of a third person.
2. Usufructuary has knowledge of the prejudicial acts.
3. Acts are prejudicial to the rights of ownership.
4. **** Failure to notify renders the usufructuary liable to the owner as if he himself caused the damage.**

(8) *To pay charges and taxes on fruits*

1. If tax is imposed on the capital, e.g., RPT, owner is liable.
2. If the usufructuary advanced the same he has right to: (i) **reimbursement** of the amount paid at termination of the usufruct, (ii) **retain** the property pending reimbursement.

(10) *To pay debts of owner, if:*

1. Stipulated
2. There is alienation in fraud of creditors.

(11) *To return the thing*

1. XPNs: (i) in abnormal usufruct involving depreciable or consumable things (see above); (ii) when the usufructuary is entitled to right of retention.
2. Usufructuary has right of retention if he advanced – (i) cost of EO repairs, and (ii) tax on capital (see above).

2. Classes of Usufruct

1. As to manner of creation – (a) Legal, (b) Voluntary, (c) Mixed.
2. As to subject matter – (d) Proper or normal, (e) Improper or abnormal.
3. As to extent – (f) Whole of the fruits, (g) Part of the fruits.
4. As to no. of usufructuary – (h) One person, (i) More than one person, simultaneously or successively.
5. As to conditions – (j) Pure usufruct, (k) Conditional usufruct.

(a) Legal

1. Constituted by law.

2. E.g., Usufruct of the parents over the property of their minor children (i) living in their custody, and (ii) under their parental authority.

(b) Voluntary

1. Constituted by will of private persons through acts inter vivos or mortis causa.
2. E.g., contracts, donations, expression in the last will and testament.

(c) Mixed

1. Constituted by law and acts of private persons.
2. E.g., prescription.

(d) Proper or normal – constituted over non-consumable thing.

(e) Improper or abnormal – constituted over (i) a consumable thing or (ii) a non-consumable thing which gradually depreciates.

3. Extinction of the Usufruct

1. Death of usufructuary
2. Expiration of term or happening of the resolutive condition indicated in the title creating the usufruct
3. Merger
4. Renunciation by the usufructuary
5. Total loss of the thing in usufruct
6. Termination of right of the person constituting the usufruct
7. Prescription

****Usufruct is not extinguished by the bad use of the thing.**

Remedy: (i) legal owner may recover possession of property administer the same, with duty to turn over the net proceeds to the usufructuary; (ii) it may be the ground for liability for damages.

(a) *Death of usufructuary*

1. Unless contrary intention appears.
2. Death of naked owner does not extinguish the usufruct. His heirs of are bound by the usufruct until expiration.

(b) *Expiration of term or happening of the resolutive condition indicated in the title creating the usufruct*

1. If the usufruct is constituted for the time that may elapse before a third person attains a certain age, the usufruct subsists even if said third person dies before the period expires. E.g., Owner establishes usufruct in favor of U to last until U's child, who is 5y reaches 18y. If the child dies when he is 10y, the usufruct continues for another 8y.
2. XPN: the usufruct is expressly granted in consideration of the existence of the third person, e.g., for the support of the child in the example above.

(c) *Merger*

1. If the ownership of object and right of usufruct is vested in one person.
2. By definition, usufruct is a jus in re aliena, i.e., a right exercised over the property of another person.

(e) *Total loss of the thing in usufruct*

1. In case of land and building, the total destruction of building will not terminate usufruct over the land.
2. In case of building, the total destruction of the building will also not terminate the usufruct, but the same is limited only to the materials left.

G. Easements

Easement is the real right exercised over a real property. Servitude is the encumbrance on the property created by the easement.

1. Characteristics

1. Real right. – (i) attaches to the tenement itself regardless of the possessor; (ii) inseparable from servient estate. Cannot be mortgaged or transacted with separately; (iii) gives rise to an action in rem against any possessor of the servient estate. Whoever possesses the servient estate can be obliged to respect the easement.
2. Right consists of limited use and enjoyment. – (i) allows someone to do something or exercise some right over his property or (ii) refrain from doing something which he would be entitled to do without the easement; (iii) limits the ownership of servient estate; (iv) does not include possession of the servient estate; (v) does not affect ownership over the servient estate.
3. Always enjoyed over an immovable property. – (i) immovables by nature and incorporation, not those by destination or analogy; (ii) there cannot be an easement over an easement, since the easement itself is merely a real property by analogy.
4. Jura in re aliena. – (i) right enjoyed over the property of another person; (ii) it is impossible to have easement over one's own property; (iii) the merger of ownership over the dominant and servient estates is a mode of extinguishing the easement; (iv) acknowledgement of the easement is an admission of ownership by another of the servient estate; (v) any imposition in one's own property is a mere exercise of ownership.
5. Indivisible. – Even if the dominant and servient estates are divided between two or more persons, the easement or servitude continues to attach to the estate originally affected.
6. May be constituted only by the owner of the servient estate. – an easement created by lessee on leased property is not the easement in legal sense. What is created is not a real right but merely a personal right enforceable against the lessee. The same is also co-terminus with the lease term.
7. Exists only between neighboring tenements.

2. Kinds of Easements

(a) As to beneficiary

1. Real/praedial – established in favor of an immovable belonging to a different owner. (i) Dominant estate is the estate in which favor the easement is constituted; (ii) Servient estate is the estate subjected to the easement.
2. Personal – established in favor of (i) a community; (ii) one or more persons to whom the servient estate does not belong; (iii) persons without the dominant estate.

(b) As to manner of exercise

1. Dis/continuous – (i) continuous if use is incessant without human intervention, e.g., easement of drainage, aqueduct, light and view; (ii) discontinuous if used at intervals or dependent on the acts of men, e.g., ROW.
2. Non-/Apparent and non-apparent – (i) apparent if made known, continually kept in view by external signs which reveal its use and enjoyment, e.g., road (ROW), window (light and view); (ii) non-apparent if it shows no external indication of existence, e.g., easement of not building beyond a certain height (altius non tollendi).
3. Positive and negative – (i) positive if it obliges SE owner to allow something to be done upon his property, e.g., ROW; (ii) negative if it obliges the SE owner to refrain from doing something which he could lawfully do without the easement, e.g., altius non tollendi.

(c) As to source – Legal and Voluntary

Legal easements

1. Compulsory easement of ROW
2. Easements relating to water
3. Of party wall
4. Of light and view
5. Of drainage of buildings
6. Of lateral and subjacent support
7. Intermediate distances for planting
8. Easement against nuisance

(1) Compulsory easement of ROW

1. The owner of SE is required to allow the passage of persons or vehicles through his property, and not make constructions or do acts that will obstruct such free passage.
2. Requisites – SNIP (i) The dominant estate is **surrounded** by other immovables, leaving no adequate outlet to a public highway; (ii) The isolation is **not** due to acts of the proprietor of the dominant estate; (iii) Payment of **indemnity**; (iv) ROW is at a **point** least prejudicial to the SE, and if possible, the shortest path from the DE to highway.
3. The standard is adequacy not convenience. (i) If there is an outlet to the public highway, albeit inconvenient, the owner of DE cannot demand for a ROW; (ii) the opening of an outlet to public highway extinguishes legal but not voluntary easement; (iii) if there is an alternative outlet, although the same the same would require the building of a bridge, it was held that there was adequate outlet and ROW cannot be demanded. The remedy is to build the bridge, not demand ROW.
4. The mere fact that the buyer of a land knew that the land he is buying is surrounded by immovables does not prevent him from later demanding a compulsory ROW.
5. Least prejudicial standard prevails over shortest distance criterion.
6. ROW must be absolutely necessary for the normal enjoyment of the dominant estate by its owner. This goes into the least prejudicial requirement.
7. May be demanded by – (i) Owner of DE; (ii) Any person who by virtue of real right may cultivate or use the DE. **A lessee may not demand ROW.** His right of action is against the lessor who is bound to maintain him in the enjoyment of property.
8. The width of the ROW must be sufficient for the current needs of the DE. It may accordingly be changed from time to time, subject to payment of additional indemnity.
9. Discontinuous and apparent easement. Can be acquired only by title, but not by prescription.
10. Annotation of the easement in the certificate of title is not a proper remedy since it does not involve a claim of ownership or interest over the property (SE).
11. Indemnity may be demanded before grant of ROW but not before filing of complaint. There must first be a prior judicial determination as to whether the grant is proper. Hence, an action for the compulsory grant of ROW shall not be dismissed on ground of non-payment of indemnity.

(2) Easements relating to water

Of drainage of water	Exists when two estates are physically situated such that waters from higher (dominant) estate naturally descends to the lower (servient) estate without human intervention – (i) SE is obliged to receive the water, stone and earth naturally flowing to his estate; (ii) DE is prohibited from constructing works that will increase the burden or natural flow. If the drainage was due to artificial constructions, e.g., fishpond, the owner of higher estate acquires not easement.
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	The easement may be lost by non-use after lapse of 10y from the time the SE owner does an act contrary to the easement.
For public use	Zones in the banks of rivers and streams, or shores of seas and lakes for recreation, navigation, floatage, fishing, salvage. (i) covers the entire length of bank or shore + certain area along the margin: 3m (urban), 20m (agricultural), 40m (forest); (ii) cannot be used for any other purposes. Does not allow the building of structure of any kind; (iii) persons cannot stay for longer than necessary for said purposes. Even if the body of water is located inside a public subdivision it remains property of public dominion.
Of drawing water and watering animals	Imposed in favor of towns or villages to pass on the estate so that they can go to rivers and streams
Of aqueduct	Exists when a person wishes to use upon his estate, water which he can dispose. He has the right to have the water flow through intervening (servient) estates. – (i) it is a continuous and apparent even if: the flow of water is not continuous; the use depends on need of DE; the use is upon a schedule or alternate days or hours; (ii) hence, may be acquired by title or prescription . Requisites – the person who wants to establish the easement must prove (i) that he has the right to dispose the water; (ii) that the water is sufficient for the purpose intended; (iii) that the proposed ROW is the most convenient and least onerous to third persons affected; (iv) he must indemnify the (a) intervening estate owners, and (b) lower estates upon which the water may descend.
Others	Abutment of Dam; Stop lock and sluice gate

(3) Of party wall

1. Walls, fences, hedges, ditches, drains shared by adjoining estates.
2. Every part owner may use it in proportion to his interest in the co-ownership.
3. E.g., windows on a wall dividing a duplex house cannot be opened without the consent of all the owners.

(4) Of light and view

1. Right of DE owner to free access to (i) light, (ii) little air, (iii) view overlooking the SE.
2. Involves the (i) opening of windows [positive] or (ii) prohibiting the adjoining owners from blocking the view from the windows [negative].
3. Components – (i) Easement of light (jus luminum) for the admission of light and little air; (ii) Easement of view (servidumbre prospectus) to afford view to the adjoining SE.
4. Intrinsically intertwined with the easement not to build higher (altius non tollendi).
5. Positive if window is opened on party wall. Negative if window is opened on own wall.
6. Kinds of windows

Restricted	Regular
AKA Oblique/Side View window	AKA Full/Direct View window
Made on wall at an angle to the boundary line	Made on wall parallel or almost parallel to the line dividing the estates
Adjacent estate can be seen only upon thrusting the head and looking right or left	Adjacent estate can be seen without putting out or turning head
At least 60cm – required distance toward the SE	(i) At least 2m – required distance between the wall where the window is located to the border of SE. (ii) At least 3m (if acquired by right or title) – required distance from property line to the building or border in the SE, e.g., Art. 624 (apparent easement)

(5) Of drainage of buildings

1. Right to divert or empty rainwaters from own roof or shed to neighbor's estate, either drop by drop or through conduits.
2. Requirements – (i) Yard of house (DE) is surrounded by other houses (SE) leaving no outlet for the rainwaters through the house itself (DE); (ii) Outlet to the water must be at the point of the contiguous lands or tenements (SE) where egress may be easiest; (iii) Conduit for drainage established in a manner least injurious to the SE; (iv) Payment of indemnity

(6) Of lateral and subjacent support

1. Right to have land supported by (i) adjoining land or (ii) soil beneath.
2. Limits the right of the owner of SE to make use of the sub-surface of his land. (i) He cannot make excavations that will deprive the adjoining land sufficient lateral or subjacent support; (ii) he also cannot provide for any stipulation or testamentary provision allowing such excavation.
3. Lateral support – the supported and supporting lands are divided by a vertical plane.
4. Subjacent support – supported land is above, and the supporting land is beneath.
5. Annotation of the easement is not proper since there is no adverse claim on the SE. The proper remedy is **judicial recognition** of easement which should be sufficient to bind the SE owner and his successors in interest. The easement of lateral or subjacent support exists whether or not annotated or registered in registry of property.

(7) Intermediate distances for planting

1. Distance to be observed must be that required by ordinance. If none, (i) 2m from property line in case of tall trees; (ii) 50 cm in case of small trees, shrubs.
2. If the branch of a tree extends over neighboring estate – (i) The owner of adjacent estate cannot cut the branches himself; (ii) he may demand the tree owner to do the cutting; (iii) if tree owner refuse, LO may go to court to seek authority to cut the branches.
3. The neighbor does not acquire right over fruits on the branches of trees extending to his estate unless the fruit naturally fell to his land.
4. If the roots of neighboring tree penetrated over land of another, the LO may cut the roots found in his land.

(8) Easement against nuisance

1. Prohibition against the proprietor or possessor of land/ building from committing nuisance through noise, jarring, offensive odor, smoke, heat, dust, water, glare, other causes.
2. Nuisance is any act, omission, establishment, condition, property or anything else which: **OISHA** (i) **Injures** or endangers the health and safety of others; (ii) **Annoys** or offends the senses; (iii) **Shocks**, defies, disregards decency or morality; (iv) **Obstructs** or interferes with the free passage of any public highway or street or any body of water; (v) **Hinders** or impairs the use of property.

Kinds of nuisance

1. Public – affects a community or neighborhood or large number of persons, although the damage to be individuals may be unequal.
2. Private – only violates private rights and affects only one or few persons.
3. Mixed – injures many persons or all of the community, but also produces special injury to private rights.
4. Nuisance per se – (i) nuisance under all conditions or circumstances because it constitutes a direct

- menace to public health or safety; (ii) may be summarily abated E.J. E.g., house constructed on public street; building in danger of collapsing [under NBC, local governments also have authority to demolish these buildings]
5. Nuisance per accidens – (i) nuisance only if considered under the circumstances; (ii) requires judicial determination and order for abatement.

Remedies against nuisance

1. Public – (i) Criminal prosecution; (ii) Civil action action for damages; (iii) EJ abatement.
2. Private – (i) Civil action for damages; (ii) EJ abatement.
3. EJ abatement – (i) if nuisance per se; (ii) public or private nuisance especially injurious to a person, subject to observance of conditions.
4. Ordinances ordering the demolition of establishments or structures, or the closure of businesses (e.g., hotels, saunas, massage parlors, karaoke bars) constitute summary abatement. – (i) invalid if the establishments are not nuisance per se; (ii) LGUs are also without power to declare certain establishments as nuisance per se; (iii) however, illegal structures may be summarily abated, demolished, removed or closed, whether nuisance per se or per accidens based on the National Building Code.
5. Who may abate nuisance – (i) City and/or the Municipal Health Officer who is charged with the responsibility of abating public nuisances may also EJ abate the same; (ii) private person (see below).
6. Conditions for EJ abatement – By private person if: (i) It can be done without committing breach of peace or doing unnecessary injury; (ii) Prior demand was made to owner or possessor to abate the nuisance; (iii) Demand was rejected; (iv) Approval of abatement by district **health officer** and executed with assistance of local police; (v) Value of destruction does not exceed 3k.

Doctrine of attractive nuisance

1. Dangerous instrumentalities or appliances of a character likely to attract children in play.
2. Being maintained by a person in his premises, but failing to exercise ordinary care to prevent children from playing therewith or resorting thereto.
3. It renders the person liable to a child of tender years who is injured thereby. N.B.: the liability attaches even if the child is technically a trespasser in the premises.

Voluntary easement

1. Constituted by will or agreement of the parties.
2. Only owner of SE may constitute the easement, even without the consent of usufructuary (if any).
3. The lessee, usufructuary, other possessor not the owner cannot constitute easement over the subject property.
4. If the property is co-owned – (i) Unanimous consent of all co-owners required (act of alteration); (ii) Right of easement is indivisible, so all co-owners are adversely affected.

3. Modes of Acquiring Easements

(a) By title, and (b) By prescription

(a) By title

1. All kinds of easement can be acquired by title.
2. "Title" is the juridical justification for the acquisition of a right, e.g., law, will, donation, contract (modes included).
3. The mode of acquisition of easement by apparent sign or legal presumption under Art. 624 is by title.

Easement by apparent sign or legal presumption (Art. 624)

1. Requisites – **SAOD R** (i) Existence of an **apparent** sign of servitude between two estates; (ii) **Single** ownership of two estates at the time of the establishment of the apparent sign; (iii) Establishment by the sole **owner** of the apparent sign of easement [window/door]; (iv) **Division** of the ownership over the two estates either by division or partition; (v) Title of conveyance does not contain provision contrary to the easement; and the apparent sign was not removed prior to the execution of deed.
2. Title to an easement of light and view arises, even in the absence of any formal act by the DE owner.
3. Before the division, no true easement exists since the estates are owned by only one person.
4. The apparent visible sign of easement exists in the portion alienated.
5. Easement is acquired without need for the DE owner to formally prohibited the SE owner by a notarial act. **The mode of acquisition is by title, not prescription. On the distance of windows affording direct view, the 3m distance is applicable since the easement was acquired by title.**
6. Presence of septic tank was considered an apparent sign of easement.
7. SC applied Art. 624 in a case involving easement of right of way where the sole owner of various estates used a portion of the front properties to give the back properties access to the national highway and had the easement of ROW in favor of the back properties annotated on the title of the front properties. Although the annotation of easement was improper (no easement can exist on one's own property; easement does not involve claim of ownership or interest), the same was considered by the court as an apparent sign of easement.

(b) By prescription

1. Only continuous AND apparent easements may be acquired by prescription. E.g., Easement of light and view, of aqueduct. ROW is discontinuous and cannot be acquired by prescription; that fact that it is cemented made it apparent but not continuous since the latter depends on the easement's use.
2. 10y – (i) if positive easement, from the day the DE owner exercised the right upon the SE; (ii) if negative easement, from the day the DE owner prohibited, through notarial instrument, the SE owner from doing acts which the latter may lawfully do without the easement. The period starts to run **from the day of the furnishing of the notarial instrument to the neighbor.**
3. E.g., easement of light and view – (i) positive if window is built on neighbor's wall. The period starts to run from the opening of the window; (ii) negative if window is built on own wall. The period starts to run from the service of notarial prohibition.

4. Effects of Easement

(a) On the owner of servient estate

1. Ownership of property is not affected.
2. Easement merely limits the exercise of ownership rights by the SE owner. He cannot exercise certain rights if it will impair the use of the easement, e.g., enclosing the property.
3. DE owner only has **incorporeal interest** over the portion of the servient estate where the easement is established, which does not amount to title over the property itself. He does not claim any interest or ownership over SE; hence, it is not property to annotate an easement.

(b) On owner of dominant estate

1. All rights necessary for (i) **use** of easement are considered granted, including the right to (ii) **make any works** necessary for the use and preservation of the servitude, subject to limitations.

Limitations

1. In the use of easement – (i) limited to those necessary for the use of easement; (ii) only for the benefit of the immovable originally contemplated and not for other purpose; (iii) must be in accordance with the manner previously established; (iv) constructing works must be in accordance with limits set forth by law.
2. In the making of works on SE – (i) must be necessary for the use and preservation of the servitude; (ii) at the expense of the DE owner; (iii) must not alter the nature or substance of the servitude or make it more burdensome; (iv) notice to SE owner of intended works before commencement; (v) least inconvenient to the SE owner.

5. Extinguishment of Easements

1. Merger
2. Non-use for at least 10 years – (i) if discontinuous, from the day the easement was not used; (ii) if continuous, from the day on which act contrary to the easement took place, e.g., blockage of easement of drainage.
3. Impossibility of use
4. Expiration of term
5. Fulfillment of (resolutive) condition
6. Renunciation
7. Redemption – (i) release of the SE from servitude upon agreement of D/SE owners; (ii) SE owner pays agreed upon consideration to DE owner.
8. Annulment or rescission of title constituting easement.
9. Termination of right of grantor
10. Abandonment of servient estate
11. Eminent domain

III. Different Modes of Acquiring Ownership

OLDTIPS

1. Occupation*
2. Law*
3. Donation**
4. Tradition**
5. Intellectual creation*
6. Prescription*
7. Succession**

*Original modes – does not depend on ownership by predecessor.

**Derivative modes – depends on ownership by predecessor.

A. Occupation

Mode of acquiring ownership by the seizure or apprehension of things with intent to acquire the same, according to the provisions of law.

1. Hidden treasure is considered res nullius which can be acquired by occupation – see discussion in bundle of rights.
2. Abandoned and lost movable – (i) abandoned movable is also res nullius; (ii) see discussions on possession of movables.
3. Immovable properties cannot be acquired by occupation, but by prescription.

Requisites RAPIC

1. The thing is corporeal and **res nullius** – (i) never had an owner or (ii) was abandoned and without an owner at the time of occupation.
2. **Appropriable** by nature, and corporeal.

3. **Physical** seizure or apprehension of property – possession + control.
4. **Intent** to appropriate.
5. Compliance with **conditions** or prohibitions laid down by law.

Animals

1. Regulated by special laws. Rare, threatened, endangered species cannot be acquired by occupation.
2. Swarm of bees – (i) Owner has right to pursue the swarm in another's land upon indemnification; (ii) presumed abandoned after **two consecutive days** of failing or ceasing to make the pursuit (becomes res nullius).
3. Wild, domestic, domesticated animals – see discussion on possession of movables.

B. Tradition

Tradition as a mode of acquiring and transmitting ownership and other real rights pertains to (i) the transfer of **possession**, coupled with (ii) the **intent** to transfer ownership or other real rights.

1. The delivery of the thing for the purpose of transmitting ownership.
2. Tradition or delivery, as a consequence of contracts, transfers ownership, not the mere execution of the contract. Contract is not a mode of acquiring or transmitting ownership. At best, it merely creates a title.

Mode	Title
The legal means by which ownership is created, transferred, destroyed	The legal basis by which to affect ownership. Every juridical act, right or condition ARC which gives a means to the acquisition of ownership and other real right, but which in itself is insufficient to produce them
The mode of accomplishing the transfer of ownership	Only constitutes title to the transfer or acquisition of ownership
Direct and immediate means which ownership is acquired or transmitted, e.g., tradition	Juridical act which serves as the basis for the acquisition of ownership, e.g., contract.

3. Requisites – **TIPCD** (i) **Pre-existing** right of the grantor (derivative); (ii) **Just title** (causa traditionis); (iii) **Intent** to grant and to acquire; (iv) **Capacity** to transmit and acquire; (v) Material act of **delivery**, physically, legally, symbolically.
4. Material act of delivery without intent to deliver is insufficient to convey ownership. It is the actual intent of the grantor to delivery (most important element), and the acceptance of the grantee which gives legal effect to the act of delivery.

Kinds

1. Real – Physical or actual delivery. (i) in movables, the transfer of the thing from hand to hand; (ii) in immovables, certain material and possessory acts MPA in the presence of and with the consent of the grantor.
2. Constructive – delivery not through actual or material transfer of possession but through signs or other acts indicative of the transfer of possession.
3. Quasi-tradition – (i) Applies to rights or incorporeal property; (ii) transfer of rights by the exercise of the grantee of the same with the acquiescence by the grantor.
4. By operation of law.

Forms of constructive delivery

1. Execution of public instrument. XPNs: (i) express provision in the instrument itself indicating that delivery is not intended; (ii) if by other means, it is shown that the delivery was not effected because

a third person was actually in possession of the thing, and whose possession is adverse. Constructive delivery is a legal fiction which must yield to reality.

2. Traditio simbolica
3. Traditio longa manu
4. Traditio brevi manu
5. Traditio constitutum possessorium

C. Donation

1. Features

Act of liberality whereby one person disposes gratuitously of a thing or right in favor of another, who accepts it.

1. Requisites – (i) Essential **reduction** in the patrimony of the donor; (ii) **Increase** in the patrimony of the donee; (iii) **Donative** intent, i.e., animus donandi.
2. Animus donandi is **presumed** in gratuitous dispositions in favor of another. Having other intentions, motive, purpose which do not negate donative intent will not affect the character of disposition.
3. Donation is a contract that transfers ownership. It is a mode in itself and need not be completed by tradition.

(a) Perfection

1. In general, donation is deemed perfected when the donor knew of the donee's acceptance, after observance of the required formalities.
2. Donation does not require delivery for the transmission of ownership.
3. Acceptance – (i) must be made during the **lifetime** of the donor; (ii) before acceptance the donation simply constitutes an offer; (iii) upon death of either donor or donee before acceptance, the offer becomes ineffective and the donation becomes invalid.
4. Effects of perfection – (i) Donee becomes absolute owner of the property (mode); (ii) Generally considered irrevocable.

(b) Capacity of donor

1. Requisites – (i) capacity to contract; (ii) capacity to dispose of his property; (iii) not specifically prohibited from making a donation. Must exist at the time of making the donation.
2. Donation of future property is prohibited. The donor must be the owner of the property at the time of donation. Otherwise, it is void. XPN: donations by future spouses of future property are valid, provided they comply with the formalities of last wills and testament.
3. Double donation is **not legally possible in this jurisdiction** since donation is a mode of acquiring and transferring ownership. Once donation is perfected, ownership is transferred to the donee and donor loses the capacity to dispose the thing anew.

(c) Capacity of donee

1. Only juridical capacity (civil personality) is required, not capacity to act.
2. Persons not specially disqualified by law may receive donations.
3. Prohibited donations – (i) Those guilty of **adultery** or concubinage at the time of donation; (ii) between people found **guilty** of the same criminal offense, where the donation was made in consideration of the same; (iii) made in favor of **public** officers, their as/descendants by reason of office; (iv) in favor of persons **incapacitated** to succeed by will; (v) between **spouses** during marriage, in/directly, except moderate donations during family rejoicing or distress; (vi) between common laws spouses.

4. Unborn children may be donees, subject to the condition that they be born alive.

2. Classifications

1. Inter vivos – (i) Pure; (ii) Remuneratory; (iii) Modal; (iv) Onerous.
2. Mortis causa

	Formalities	Effect of impossible condition
Pure [1]/ Remuneratory [2]	Arts. 748/749	Donation is valid, condition is deemed not imposed [727]
Modal [3]	Contract law on onerous portion; Arts. 748/749 on excess	Donation void on onerous portion; Art. 727 on excess
Onerous [4]	Contract law. Obligatory in whatever form (Art. 1356).	Donation void [1183]
Mortis causa [5]	Formalities of wills and testament	Succession law

1. Underlying cause is **pure liberality** of the donor. True donation.
2. Intended to reward the donee for past services, which services do not amount to a demandable debt, but the underlying cause is still pure liberality of the donor.
3. (i) Made in consideration of future services or (ii) the donor imposes certain conditions, limitations, or charges upon the donee. N.B.: "condition" pertains to the burdens, charges, impositions upon the donee, not a "future and uncertain event". The value of consideration must be inferior to that of the donation given.
4. Imposes on the donee, reciprocal obligation, i.e., donation made for a valuable consideration equal to or more than that of the donation given.
5. In reality a devise (real property) or legacy (personal property) – (i) ownership is reserved by the donor during his lifetime, with the donation intended to take effect upon his death; (ii) revocable before donor's death; (iii) transfer is invalidated if the transferor **survives** the transferee

3. Distinctions Between Mortis Causa and Inter Vivos Donations

Distinctions	Inter vivos	Mortis causa
When it takes effect	Intended to take effect during the donor's lifetime	Intended to take effect upon donor's death
When title passes to donee	Upon notice to donor of the donee's acceptance	Upon the donor's death
When acceptance must be made	During the lifetime of both the donor and the donee; otherwise, the donation becomes ineffective	Upon donor's death
Governing law	Law on donations (see above)	Law on succession
Determination of the nature (dependent on donor's intent)	Donor intended to transfer ownership upon execution of deed of donation	Donor intended to transfer ownership upon his death
Revocability	Irrevocable once it takes effect during donor's lifetime	Revocable during donor's lifetime
Donation/ legacy of credit	In express condonation, donor-creditor is barred from filing collection suit against debtor-donee	In legacy of credit, grantor-creditor may file collection suit against debtor-grantee during his lifetime (revoked by operation of law)

4. Form

(a) Personal property

<ol style="list-style-type: none"> 1. ≤5k – (i) No required form; (ii) if oral, must be coupled by simultaneous delivery. Otherwise, void. 2. >5k – Donation and acceptance must be in writing not necessarily public instrument. Otherwise, void. <p>(b) Real property</p> <ol style="list-style-type: none"> 1. Donation and acceptance must be in public instrument, regardless of the value. Otherwise, void. 2. Acceptance may be in same or separate instrument. If in separate instrument, there must be compliance with the requirements of notification and notation: (i) the donor must be notified in writing, and (ii) both instruments must state the fact of notification. 3. Non-compliance with notation requirement is cured by donor's actual knowledge of the acceptance. Absent evidence such actual 	<p>knowledge, the formal requirements must be strictly complied with.</p> <ol style="list-style-type: none"> 4. Registration in the Registry of Property is requirement to bind third persons but not for validity.
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5. Limitations

<ol style="list-style-type: none"> 1. Donor cannot give by donation what he cannot give by will – (i) must not impair legitime. Otherwise, inofficious; (ii) inofficious may be reduced to extent of excess; (iii) without prejudice to the donation's taking effect during donor's lifetime or the donee appropriating the fruits of the thing donated. 2. Donor must reserve in usufruct or full ownership sufficient means for the support of himself and all relatives, who at the time of acceptance, are by law entitled to be supported by the donor. – also, a ground for reduction of donation. 3. Must not be prohibited by law (see above).

6. Reduction and Revocation

Distinctions	Appearance of child	Non-compliance with conditions [5]	Ingratitude	Inofficious
Ground	(i) Donor had no child at the time of donation; (ii) after donation, he had a child	Obligations, charges imposed by the donor to the donee are not complied with	(i) commission of offense against the person, honor, property of donor, wife, children under parental authority; (ii) imputation to donor of crime involving moral turpitude, even if proven, unless the donee is the victim; (iii) undue refusal to support the donor when the donee is legally or morally bound to do so	Donations exceeding what the donor may give by will, or impairing the legitime of compulsory heirs, determined at the time of donor's death
Extent of revocation/reduction	Reduction to the extent of impairment of child's provisional legitime at the time of appearance [3][4]	Revocation	Revocation	Reduction to extent of excess over what the donor can give by will or the impairment of legitimes
Effect on fruits received by donee	Donee shall not return the fruits except from the filing of the complaint	Donee shall return the fruits which he may have received after having failed to fulfill the condition	Donee shall not return the fruits except from the filing of the complaint	Donee shall not return the fruits except from the filing of the complaint
Prescriptive period	4y from child's birth, legitimation, recognition, adoption, judicial declaration of filiation, or when the donor received information that his child was alive	10y from time when donee must comply with the conditions [1]	1y from knowledge of the fact of ingratitude and it was possible for donor to bring the action	10y from the death of the donor (Art. 1144: upon an obligation created by law)
Who has right to revoke?	Donor	Donor	Donor	Compulsory heirs of the donor at the time of his death and the latter's heirs.
Transmission of right to revoke	Upon donor's death, the right is transmitted to his il/legitimate children and descendants. N.B.: the right cannot be renounced	May be transmitted to heirs of the donors and may be exercised against donee's heirs	Not transmissible to the donor's heirs, even if he could have filed the same during his lifetime, and even if he died prior to the one-year period; cannot be filed against heirs of the donee unless upon the latter's death a complaint has been filed	Cannot be renounced by the compulsory heirs during the lifetime of the donor by consenting to the donation
Alienations and encumbrance by donee	Valid, subject to the donor's right to recover the value of the property at the time of donation (if sold) or the redemption price (if mortgaged)	Void, subject only to the rights of third persons under Mortgage Law and Land Registration Laws	Valid if made before the notation of the complaint for revocation, subject to the donor's right to recover from the donee the value of the property at the time of donation or the value for which the same is mortgaged; void if made after notation of complaint for revocation	Valid, the right of revocation is without prejudice to the donation taking effect during the donor's lifetime and the donee appropriating the fruits

1. Art. 1144: obligations based upon a written contract. SC held that the 4y prescriptive period under Art. 764 does not apply since onerous donations are governed by the provisions on Contract Law, which provides for a 10y prescriptive period. – (i) If a period is contemplated by donor for the fulfillment of the condition, but none was indicated, Art. 1197²⁴ applies; (ii) But Art. 1197 will no longer apply if more than reasonable period had already been allowed for the donee to comply with the condition.
2. Automatic revocation provision for failure to comply with conditions was held valid – (i) suppletory application on Contract Law; (ii) judicial declaration is not necessary to effect the revocation; (iii) but the other party may judicially challenge the revocation.
3. If after the revocation, the donor's estate grew such that it can now accommodate the revoked donation, the latter is not automatically restored. If the donor may give another donation if he wishes to do so.
4. Conversely, if the child's presumptive legitime was not impaired at the time of his appearance, but later the donor's estate shrunk as to impair such legitime, the donation may still be reduced/revoked on ground of being inofficious.
5. "Condition" pertains to the burdens, obligations, charges imposed upon the donee that he must fulfill to perfect the donation. These "conditions" make the donation onerous, and is not the condition contemplated under Art. 1179 as a future or uncertain event.

D. Prescription

1. Distinctions Between Acquisitive and Extinctive Prescription

Acquisitive	Extinctive
Mode of acquiring ownership and other real rights through the lapse of time, in the manner and under the conditions set forth by law	Extinction of actions, i.e., loss of right to bring an action due to lapse of the period prescribed by law within which the bring the action

(a) Prescription runs against

1. Minors who have parents or guardians
2. Absentees with administrators
3. Persons abroad who have managers or administrators
4. Juridical persons, except the State and its subdivisions

(b) Acquisitive prescription

1. Requisites – (i) Acquirer has capacity; (ii) Person against whom prescription runs also has capacity; (iii) Object is susceptible of **appropriation**; (iv) Possession is in the **concept** of an owner; (v) Possession is **public**, peaceful, and uninterrupted.
2. May be ordinary or EO.

Distinctions	Ordinary	EO
Character of possession	In GF [a] and with just title [b]	GF and just title are not required
Period of possession for movables	4y	8y
For immovables	10y	30y

²⁴ Article 1197. If the obligation does not fix a period, but from its nature and the circumstances it can be inferred that a period was intended, the courts may fix the duration thereof.

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

- a. Good faith – reasonable belief that the person from whom he received the thing was the owner thereof and could transmit his ownership.
- b. Just title – (i) the adverse claimant came into possession of the property through one of the modes recognized by law for the acquisition of ownership or other real rights, but the grantor was not the owner or could not transmit any right; (ii) title for prescription must be true and valid; (iii) **for purposes of prescription, just title must be proved**; it is never presumed.
- c. The possession of the predecessors in interest may be tacked with the period of ownership of the present possessor.
- d. Bad faith is personal and intransmissible. The BF possession of the predecessors in interest may be counted in favor of the present possessor in GF, and only the period required for GF possession will be required.

When prescription does not lie

1. Registered land
2. Property of public dominion
3. Trust
4. With respect to certain relationships
5. Movables acquired by offender through crime

(1) Registered land

1. Title to registered land cannot be acquired by prescription or adverse possession as against the registered owner (P.D. 1529).
2. The TCT is indefeasible and imprescriptible. However, **laches** may prevent the registered owner from recovering his property.
3. Alluvium on registered estate adjoining banks of RSCL may be acquire by acquisitive prescription since it is not covered by the TCT, unless registered a such.

(2) Property of public dominion

1. Outside the commerce of men.
2. But LPD that is patrimonial in character may be acquired by acquisitive prescription.

(3) Trust

1. A trustee cannot acquire by prescription the property entrusted to him since his possession is not adverse.
2. In express/resulting trust, an action to recover property subject of trust is imprescriptible.
3. XPN: if the trustee repudiates the trust – (i) by performing unequivocal acts of repudiation amounting to the ouster of the cestui que trust; (ii) those positive acts of repudiation were made known to the cestui que trust; (iii) evidence of those acts were clear and conclusive.
4. In implied trusts, the beneficial owner has 10y to recover the property.

(4) With respect to certain relationships

1. Between husband and wife, even though CSP governs their property relations.
2. Between parents and children, during the minority or insanity of children.
3. Between guardian and ward, during the continuance of guardianship.

(c) Extinctive prescription

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

Action	Prescriptive period (years)	Reckoning
Recovery of movables	8	From time possession is lost
Recovery (real actions) of immovables	30	Accrual of COAc
Mortgage	10	Accrual of COAc
Upon written contract, obligation created by law, judgment* WOJ	10	*From finality of judgment
Oral contract or quasi-contract	6	Accrual of COAc
Injury to plaintiff ²⁵ or quasi-delict	4	Accrual of COAc
FE/UD, defamation	1	Accrual of COAc
Other actions whose periods are not fixed by Code or other laws	5	Accrual of COAc

Imprescriptible actions RAQ PN

1. Action to demand **ROW**.
2. Action to **abate** nuisance.
3. **Quieting** of title when plaintiff is in possession of property.
4. Action to demand **partition**.
5. Action to declare **nullity** of contract.

Interruption/tolling of actions

1. Interruption means that the period has stopped completely; stoppage of the running of the prescriptive period upon the performance of legal acts or the compliance with legal conditions. – (i) upon filing of action in court; (ii) written EJ demand by creditors; (iii) written acknowledgement of the debt by debtor.
2. Tolling of actions is where the period is merely suspended (e.g., closure of courts); it will run again when the circumstance which brought about the suspension terminates.

2. Distinctions Between Extinctive Prescription and Laches

Prescription	Laches
Concerned with fact of delay	Concerned with effect of delay
Matter of time	Question of inequity
Statutory	Non-statutory
Applies at law	Applies in equity, i.e., w/n to allow the action to prosper based on equity
Based on fixed time	Not based on fixed time

Requisites of laches CDLI

1. Defendant's **conduct** which gives rise to a situation wherein the complaint is made and for which the complainant seeks remedy.
2. **Delay** in asserting complainant's right, having knowledge or notice of defendant's conduct and having afforded an opportunity to file a suit.
3. **Lack** of knowledge or notice on the defendant that the complainant would assert his right.
4. **Injury** or prejudice to the defendant in the event relief is accorded to complainant or the suit is not held barred.

**** Laches does not apply to void ab initio contracts. This equitable doctrine cannot prevail against a positive mandate of the law re: the imprescriptibility of the action against a void contract.**

IV. Land Titles and Deeds

A. Torrens System

1. General Principles

(a) Land registration under the Torrens System

1. (i) Not a mode of acquiring ownership nor a title. Registration will be allowed only if the person already owns the land. Also, not a mode of converting public lands into private lands.
2. It is the operative act to convey or affect the land insofar as 3p are concerned. It serves as constructive notice to the world. Unregistered transaction over registered land is valid as between the parties but does not bind 3p.
3. Purposes – (i) To encourage dealings and transactions in land; (ii) To lend stability and protection to registered ownership.

(b) Mirror principle

1. (i) Every **registered owner** receiving a certificate of title in pursuance of a decree of registration and (ii) every **subsequent purchaser** of registered land taking a certificate of title for value and in GF, shall hold the same free from all encumbrances except those noted in the title. The buyer may rely on the four corners of the title. He is not bound by encumbrances not annotated.
2. Annotation in subdivision lot that buyer is automatically a member of the homeowners' association is binding.
3. A registered levy on execution prevails over a prior unregistered sale. – the provision in the PRD that it is the act of registration which binds the world to the transaction involving registered land prevails over the provision in the ROC that only properties of the judgment debtor may be levied on execution. E.g., if a person sold his land to another, but the same was unregistered, such land may still be the subject of execution to satisfy the seller's debt since the former sale did not bind 3p.
4. Annotation of claim in the real property **tax declaration** does not affect the status of the buyer as IPV. There is no duty to look into the tax declaration when dealing with registered lands.
5. The "as is, where is" clause in the deed of sale refers only to the **physical condition** of the land, not its legal situation. The same does not put buyer in BF.
6. However, the principle does not apply when there is no CoT, only tax declaration.

XPNS to mirror principle

Binding encumbrance, even if not annotated PILAR

1. Public/private highway/way recognized by law.
2. Irrigation, government canal.
3. Legal/statutory liens, e.g., compulsory ROW, liens under NIRC.
4. Agrarian reform liens
5. Real estate taxes, for 2y preceding acquisition only.

Circumstances requiring further inquiry

1. If dealing with a person who is not the registered owner, the buyer must inquire as to the agent's authority and the limits of his power. – if the property is conjugal "husband, married to wife", the buyer must also inquire on the authority of the transacting spouse and endeavor to secure the written consent of the other spouse.
2. Persons dealing with administratively reconstituted titles should also conduct inquiry or investigation.
3. Buyer of a subdivision lot is bound to inquire with the homeowner's association for unpaid association dues as part of due diligence.

Persons required to exercise higher degree of diligence

1. Banks when dealing with clients' deposits
2. Those engaged in the real estate or financing business
3. Government agencies (GSIS)

²⁵ Includes illegal dismissal

B. Regalian Doctrine

All lands of the public domain, waters, minerals, coal, petroleum, and other mineral oils, all forces of potential energy, fisheries, forests or timber, wildlife, flora and fauna, and other natural resources are owned by the State. With the exception of agricultural lands, all other natural resources shall not be alienated. (Const. XII[2])

1. All lands not appearing to be clearly within private ownership are presumed to belong to the State, and forms part of the inalienable public domain.
2. Only exception to Regalian doctrine – **Native title to lands**, i.e., those titles to land acquired even prior to the Spanish conquest are deemed never to have been part of the lands of the public domain.
3. Unclassified lands are considered forest lands, not A&D LPD.

C. Nationality Restrictions on Land Ownership

On matters involving acquisition of property, whether real or personal, the **legal capacity** of contracting parties shall be governed by the law of the place where the property is situated (Lex rei sitae).

1. XPN to the rule that legal capacity of persons shall be governed by their national laws.
2. Hence, Ph law applies with respect to the capacity to acquire lands in the Ph, regardless of the nationality of the purchaser.

Ownership of private lands in Ph

1. No **private lands** shall be transferred except to individuals, corporations, or associations qualified to acquire or hold LPD.
2. Under the Const., foreigners cannot hold LPD, Hence, they are also DQ from holding private lands. The prohibition covers – (i) apparent contracts of lease but deprives the Filipino owner of the attributes of ownership with beneficial ownership vested to the foreigner; (ii) ownership in trust, (iii) conjugal ownership in mixed marriages.
3. If a foreigner furnished the money for the acquisition of land in Ph – (i) he cannot recover the land on the basis of trust; (ii) he cannot also recover the money given. Otherwise, the court will be recognizing the effects of a prohibited transaction. The principle of unjust enrichment does not apply in transactions involving violations of the constitution.
4. The prohibition applies only to lands **but not the other real properties** such as buildings, condominium units, other improvements, which foreigners may own.
5. XPNs: (i) Hereditary succession [legal/compulsory]; (ii) Former natural-born Filipinos; (iii) American citizens who acquired title or ownership by virtue of the parity agreement.
6. If the land is transferred back to a capacitated Filipino citizen, the defect of a transaction transferring land to a foreigner is cured.
7. Remedy – action for reversion: only the government, through SolGen, has the personality to file a case challenging the capacity of an alien to acquire or own land in Ph.
8. N.B.: Compliance with the requirement under Sec. 14(1) PRD ipso facto segregates the land from the LPD and converts it to private land which may be acquired by a corporation, subject to limitations.

Who may acquire/lease	Alienable LPD [a]	Private lands
Filipinos	(i) May lease ≤ 5ha, or acquire ≤ 12ha by purchase,	May be a transferee or grantee

	homestead, or grant	
Foreigners	May not lease or acquire	GR: May not be a transferee or grantee. XPN: ONLY in case of hereditary succession (legal or intestate) They may lease for 50/25y, renewable for 25y. [d]
Foreigner who is a former natural-born	May not lease or acquire	May be a transferee or grantee – (i) ≤ 5,000sqm in urban; (ii) ≤ 3ha. in rural areas.
Private Ph corporations and associations [b]	May not hold, except by lease , for ≤ 25y, renewable for ≤ 25y, and ≤ 1,000ha [e]	May be a transferee or grantee ²⁶
Foreign corporations	May not lease or acquire	May lease for ≤ 25y, renewable for ≤ 25y [c]

- a. Limited to agricultural lands.
- b. Formed and organized in the Ph, at least 60% Filipino-owned (in relation to S2).
- c. Under P.D. No. 471.
- d. If investing in Ph, maximum term of 50y; if not, 25y.
- e. E.g., Compromise agreement between Ph Reclamation Authority and Central Bay Corp. allowing assignment of reclaimed land to the latter is void because private corporation cannot acquire alienable LPD, except by lease.

D. Original Registration (PD 1529)

1. Who May Apply

(a) Those who acquired A&D LPD by government grant §14(1)

1. Those who by themselves or through their predecessors-in-interest have been in OCEN possession and occupation
2. of A&D LPD not covered by existing certificates of title or patents
3. under a bona fide claim of ownership
4. for at least 20y immediately preceding the filing of the application for confirmation of title except when prevented by war or force majeure.
5. **They shall be conclusively presumed to have performed all the conditions essential to a Government grant and shall be entitled to a certificate of title.

Republic v. PRCI

1. Subject land under §14(1) is A&D LPD. LPD declared A&D already considered patrimonial property. The classification of land as A&D is the operative act that converts it to patrimonial property.
2. The land must be classified as A&D **prior to application for registration**, not necessarily throughout the 20y period of possession/occupation.
3. Upon compliance with the requirements, land is converted to private property by operation of law. – (i) DENR/DA loses jurisdiction over the property as it is no longer be part of public domain. Free patent issued over a private property is void because this is beyond the jurisdiction of the DENR/DA; (ii) private corporation may succeed private individuals in the possession of land, and may file for the application since at the time of

²⁶ Those who can acquire or hold lands of the public domain may acquire private lands. Since private corporations and

associations can hold lands by way of lease they can also acquire private lands

application, the land was already converted to private property.

(b) Those who acquired lands by accretion

1. Those who have acquired ownership of private lands or abandoned riverbeds by right of accession or accretion under the provisions of existing laws.

(c) Those who acquired lands by other means

1. Those who have acquired ownership of land in any other manner provided for by law.

(d) Rules

1. If co-owned land, all the co-owners shall file the application jointly.
2. If land sold under pacto de retro – (i) vendor a retro may file the application; (ii) vendee a retro shall substitute him in case the redemption period lapsed during the pendency of the registration proceedings and ownership to the property consolidated in the vendee.
3. If held in trust by trustee, the trustee may file the application on behalf of the principal, unless prohibited by the trust instrument.

Notes

1. §14(2) [acquisition by prescription] is already deleted as it was rendered superfluous by the new §14(1).
2. Proof of alienability. – Approved survey plan with certification of DENR geodetic engineer (see below).
3. R.A. No. 11573 amending PD 1529 may be applied retroactively to cases pending and undetermined at the time of its effectivity considering that it is curative in character and creates new rights.

2. Decree of Registration

Effects of decree of registration

1. Shall bind the land and quiet title thereto, subject only to such exceptions or liens as may be provided by law.
2. It shall be conclusive upon and against all persons, including the government, w/n mentioned by name in the application or notice.
3. The decree of registration and OCT shall be issued by the LRA after finality of the order of the registration court awarding the land to the applicant.
4. In authorizing the issuance of the decree of registration, the registration court does not grant the applicant title over the property but merely recognizes the existing title which had already vested upon his compliance with the conditions.

Res judicata is not applicable in land registration proceedings.

1. New application over the same land may be filed later if there is subsequent compliance.
2. There is no cause of action, since it is only a special proceeding.

3. Review of Decree of Registration; Innocent Purchaser for Value (IPV); Rights of IPV

Review of decree of registration

1. The decree of registration shall not be reopened or revised.
2. XPN: Within 1y after the date of entry when a person was deprived of the land or interest therein by virtue of the adjudication or confirmation of title obtained by actual fraud.
3. XPN to XPN: Petition to reopen or review the decree of registration shall not be entertained if the land or interest therein had already passed in

the hands of an innocent purchaser for value whose rights may be prejudiced.

4. IPV is one who acquires the property (i) by paying a fair price therefore, (ii) without notice of any defect which invalidates the title or mode of acquisition of the grantor, (iii) exercising due diligence, and (iv) has registered the land in his name.
5. IPV includes an innocent lessee, mortgagee, or other encumbrancer for value. It also extends to **purchaser at public auction** even if he was subsequently notified of the adverse claim, provided that at the time of mortgage, the encumbrance was not annotated in the title – e.g., if at the time the property was mortgaged to the mortgagee, there was no annotation of the title, the GF of the mortgagee will be extended to the purchaser in public auction, even if the latter had actual knowledge of the adverse claim.
6. The real owner may cause the cancellation of title in another person of his property acquired by fraud. However, he cannot cause the cancellation of mortgage annotated thereon by IPV. IPV includes mortgagee in GF.

Incontrovertibility of certificate of title

1. Upon the expiration of 1y after the date of entry, the decree of registration and the certificate of title issued shall become incontrovertible.
2. The aggrieved party may pursue file an action for damages against the applicant or any other persons responsible for the fraud.

[E. An Act Improving the Confirmation Process for Imperfect Land Titles \(RA 11573\), amending CA 141 and PD 1529 \[See Republic v. Pasig Rizal Co., Inc., G.R. No. 213207, February 15, 2022\]](#)

(a) Land classification under the 1987 Constitution and the Civil Code

1. All lands which do not clearly appear to be of private ownership are presumed to belong to form part of the public domain belonging to the state (Regalian doctrine).
2. **The only exception to the Regalian doctrine is the native title to land**, i.e., claims of ownership by Filipinos over lands **since** time immemorial and **independent** of any grant of title from Spanish Crown. When as far back as testimony or memory goes, land has been held by individuals under a claim of private ownership, it is presumed to have been held in the same way from before Spanish conquest, and never to have been public land.
3. Classification of LPD under the Const. – (i) Agricultural, (ii) forest or timber, (iii) mineral, (iv) national parks. A&D LPD are limited to agricultural lands.
4. Classification of lands (owned by State) under the NCC: (i) property of public dominion, and (ii) patrimonial property.
5. Clarification: LPD under the Const. is broader than the concept of public dominion under NCC. LPD pertain to all lands owned by the state whether in its public or private capacity; land of public dominion under NCC pertains only to those properties intended for public use, public service or the development of national wealth, to the exclusion of patrimonial property.

(b) Patrimonial property

1. Properties belonging to state of private nature, subject to alienation and disposition, and may be subject to prescription or ordinary contracts, e.g., properties acquired by the government in execution sales and tax sales, friar lands, mangrove lands and mangrove swamps.
2. Two kinds: (a) **patrimonial property by nature**, i.e., properties not imbued by public purpose

based on current or intended use (Art. 421), (b) **converted patrimonial property**, i.e., property which previously assumed the nature of property of public dominion by virtue of prior state-use, which are no longer being used or intended for said purpose (Art. 422).

3. Converted patrimonial property can only come from properties under Art. 420 (property of public dominion) and should not be deemed as a subset of patrimonial property by nature under Art. 421.
4. **Agricultural lands once declared as A&D become converted to patrimonial property. The classification of agricultural land as A&D serves as an unequivocal proof of the withdrawal by the State of the land from public dominion, and its conversion to patrimonial property.** This is still within the concept of LPD under the Const., as A&D LPD.

(c) Prescription as a mode of acquisition of real property

1. Prescription is a mode of acquiring ownership through lapse of time under the conditions laid down by law. Since PRCI's claim for registration is based on prescription.
2. The requirements for original registration of title to land under Art. 14(2) in Malabanan: (i) declaration of land as A&D; (ii) **express manifestation that land constitutes patrimonial property or that it is no longer retained by the state for public service or the development of national wealth**, (iii) proof of possession in the period and character prescribed under the NCC for prescription to set-in, reckoned from that day that land had become patrimonial property of the state.
3. Basis of requirement (ii): all lands owned by state, although declared A&D, remains property of public dominion and ought to be used only by the government. This was not meant to be adopted in absolute terms.
4. **The operative act which converts a property of public dominion to patrimonial property of the state is its classification as A&D land of the public domain as it serves an express manifestation of the state's lack of intent to retain the land for some public purpose or for public service.**
5. As a GR, when land does not clearly appear to be of private ownership, it is presumed to belong to the public domain owned by the state. A person seeking registration over a parcel of land must overcome the presumption of state ownership by showing that the land subject of registration was declared A&D thus susceptible of acquisition and subsequent registration. Once the presumption of state ownership is overturned, the burden is shifted upon the state that property is still intended for public use, public service, or the development of national wealth, notwithstanding its classification as A&D.
6. How to overcome the presumption of state ownership

How	Applicable when	Kind of proof
By establishment of negative fact, i.e., the lack of intent on the part of the state to retain the property and utilize the same for some public purpose	No prior state use, i.e., property was not used by the state, and it has not manifested any intention to use the same (Patrimonial property by nature, Art. 421)	The applicant cannot be made to show proof of this negative fact as there would be no express state declaration of abandonment when the state has never used to intended to use the property for public use or public service in the first place
By establishment of positive fact, i.e.,	With prior state use (Converted	Express government manifestation that the

the **abandonment** by the state of its use and the consequent withdrawal of the property from public dominion

patrimonial property, Art. 422)

land subject of application already constitutes patrimonial property. N.B.: it is in this context that the second requirement in Malabanan was crafted.

7. The abandonment of property under Art. 420 cannot be inferred solely from non-use, there must be an express manifestation confirming that the property subject of application for registration is no longer retained by the state for public service or the development of national wealth. **The determination of whether property has in fact been abandoned by the State is necessary only in cases where there has been prior state-use. There is no abandonment to speak of in the absence of prior state-use.**
8. The application of the second Malabanan requirement in cases where there has been no prior state-use, in addition to the requirement of proof that the property in question had been declared alienable and disposable, is thus improper.

(d) Amendments introduced by R.A. 11573 on original registration (took effect Sep. 21, 2021 during pendency of appeal to SC)

1. Shortened the period of required possession under from "since June 12, 1945" to at least 20y immediately preceding the filing of the application for registration.
2. The final proviso confirms that the classification of land as A&D immediately places it within the commerce of men and renders it susceptible to private acquisition through adverse possession. The final proviso clarifies that for purposes of confirmation of title under PD. 1529, no further express government manifestation that the land constitutes patrimonial property or "no longer retained" by the state for public use, public service of the development of national wealth shall be required.
3. Sec. 14(2) was deleted as the shortened period of 20 years of possession grants the possessor the right to seek registration without having to comply with the longer period for acquisitive prescription of 30 years under the Civil Code.

Those who by themselves or through their predecessors-in-interest have been in (i) open, continuous, exclusive and notorious possession and occupation of **alienable and disposable lands of the public domain** (ii) not covered by existing certificates of title or patents (iii) under a bona fide claim of ownership (iv) for at least twenty (20) years immediately preceding the filing of the application for confirmation of title except when prevented by war or force majeure. **They shall be conclusively presumed to have performed all the conditions essential to a Government grant and shall be entitled to a certificate of title under this section.**

(e) Required proof to establish the status of land as A&D

1. Approved survey plan bearing a DENR certification.
2. Certification – (i) that land is within A&D agricultural LPD, (ii) signed by a duly designated DENR geodetic engineer; (iii) imprinted in the approved survey plan; (iv) stating the applicable AO/EO/Proclamation and Land Classification Project Map Number covering the subject land.
3. In the absence of a copy of the relevant issuance classifying the subject land as alienable and disposable, the certification of the DENR geodetic engineer must state: (i) the **LC Map number**; (ii) the **Project Number**; and (iii) the **date of release** indicated in the LC Map; and (iv) the fact that the LC Map forms part of the records of the National

Mapping and Resource Information Authority (NAMRIA) and is therefore being used by DENR as such.

4. The DENR geodetic engineer must be **presented as witness** to authenticate the certification, which is not considered public document under ROC.

***These supersedes the requirements in T.A.N. Properties and Hanover.*

(f) Retroactive application of R.A. 11573

1. R.A. 11573, specifically Sec. 6 (amending Sec. 14 of P.D. 1529 re: the requirements for original registration) and Sec. 7 (prescribing the required proof of land classification status) may be given retroactive effect with respect to applications for land registration pending as of its effectivity on September 1, 2021.
2. (i) It is **curative or remedial** in nature, and (ii) it **creates new rights**.
3. Its curative effect is stated in the declared purpose of the law which is to simplify, update and harmonize similar related provisions of land laws in order to simplify and remove ambiguity in its interpretation and implementation.
4. It created new rights in favor of persons who have been in adverse possession of A&D lands for the shortened period of 20 years.

To guide the bench and the bar:

1. R.A. 11573 shall apply retroactively to all applications for judicial confirmation of title pending as of September 1, 2021, before the RTC or the CA.
2. Pending applications based on the former Secs. 14(1) and 14(2) shall be resolved following the period and manner of possession required under the new Sec. 14(1)
3. The presentation of additional evidence on land classification status based on the parameters set forth under R.A. 11573 shall be allowed upon motion or motu proprio.

F. Certificate of Title

(a) Indefeasibility

1. The Torrens certificate becomes indefeasible after expiration of 1y from the entry of the decree of registration.
2. Such a decree is incontrovertible and becomes binding on all persons w/n they were notified of, or participated in the in rem registration process.

Chain of title doctrine

1. After the entry of the decree of registration, any subsequent registration procured by the presentation of a forged duplicate CoT or a forged deed or instrument shall be null and void.
2. XPN: **Chain of title doctrine**. – Forged or fraudulently obtained deed may be the root of a valid title if an IPV, relying upon the forger's apparently valid title, had purchased the land covered by the same and the loss or fraud was occasion by the true owner's negligence or act of confidence.
3. **In order for the doctrine to operate, the forger must have a CoT in his name – e.g., if the forger did not have the title transferred in his name, but merely impersonated the owner, the doctrine will not apply.**
4. Requisites – (i) **Negligence** on the part of the owner or act of confidence on the part of the owner which made the fraud possible; (ii) CoT in the name of forger or some other person chosen by forger; (iii) The one who acquires the title from the forger is IPV; (iv) Purchaser must register the Deed in his favor in GF.

Remedies of aggrieved parties

Within 1y from entry of the decree of registration

Petition for review

1. To reopen and review the decree of registration.
2. May be file by a party deprived of his interest in the land by reason of actual/extrinsic fraud.
3. Extrinsic fraud is that employed to deprive a party of his day in court and prevent him from asserting his right to the property.
4. **XPN: Petition for review shall not be entertained if land had already passed to the hands of IPV.**
5. Adjudication of land in a cadastral or land registration proceeding does not become final until after the expiration of 1y from the entry of the final decree of registration. As long as a **final decree has not yet been entered by the LRA and the period of one year has not elapsed from date of entry**, the title is not finally adjudicated and the decision in the registration proceeding continues to be under the control and sound discretion of the court rendering it.
6. If the person seeking annulment or conveyance of title is in possession of the land, the 1y period does not apply since the action partakes of a suit to quiet title, which is imprescriptible.
7. In case of conflicting titles – (i) One with earlier date prevails. XPN: If the inclusion of the land in the earlier title is by reason of mistake, the later registered title will prevail.

In public lands

1. The 1y period also applies to patent issued by the Director of Lands.
2. The 1y period starts to run from the **date of the issuance of the patent** which corresponds to the date of the issuance of the decree in ordinary cases.
3. Just as the decree finally awards the land applied for registration to the party entitled to it, the patent issued by the Director of Lands equally and finally grants and conveys the land applied for to the applicant.

After 1y from entry of the decree of registration

Ordinary action for reconveyance

1. If the land has not yet passed onto the hands of an IPV (see above).
2. This remedy respects the decree as incontrovertible but nonetheless demands its reconveyance.
3. Based on NCC ARTICLE 1456. If property is acquired through **mistake or fraud**, the person obtaining it is, by force of law, considered a trustee of an implied trust for the benefit of the person from whom the property comes.
4. Must be filed within 10y from issuance and registration of CoT being an action upon an obligation created by law (Art. 1144[2] NCC). The act of registration is an act of repudiation of the implied trust.
5. Imprescriptible if – (i) the person seeking reconveyance is in the actual, continuous, and peaceful possession of the property as it partakes the nature of quieting of title. No one can claim to be an IPV since the rightful owner is still in possession of the property; (ii) when the action is based on a void deed or contract.
6. Action in personam to compel the person who registered the land in his name to reconvey the same to the rightful owner.
7. Real action: jurisdiction is with RTC/MTC, depending on assessed value of the property (cut-off: 400k).
8. A person who is qualified under the amended Sec. 14(1), even prior to the issuance of Decree of Registration and OCT may file an action for

reconveyance since ownership is acquired by operation of law from the moment that conditions are complied with.

Action for damages

1. If land had already passed onto the hands of an IPV.

Action for compensation against the assurance fund (see below)

Action for reversion

1. Applies to government grants where the grantee violates certain conditions of the patent, or when private individuals able to obtain title over property of public dominion.
2. Only the State (RPI), through the OSG, can institute an action for reversion, and private claimant does not have standing to file the action.
3. Reversion suit seeking to nullify RTC judgment acting as LRC should be filed as Rule 47 petition (annulment of judgment), which is an action to nullify the RTC decision on ground of lack of jurisdiction, i.e., that the subject land is not part of the public domain.
4. The state must prove that the property was classified as forest land **at the time** it was decreed to the grantee.
5. Jurisdiction is with CA.
6. Does not apply in – (i) administrative issuance of patent since there is no judgment to annul; (ii) where there is, in reality, no RTC judgment as the same was merely spurious or fictitious.

Action for cancellation of CoT or patent

1. Also, under R47.
2. RD is merely a nominal and not an indispensable party.
3. Filed if land was private and the same was obtained by fraud.
4. Even the State may file the action instead of reversion suit which is proper only if land is still public domain.

(b) Certificate of title not subject to collateral attack

1. A certificate of title shall not be subject to collateral attack and cannot be altered, modified, or canceled except in a direct proceeding (P.D. 1529 §48)
2. Direct attack – (i) Petition for review within 1y from entry of the decree of registration on ground of actual or extrinsic fraud; (ii) any action whose object is to nullify the title, challenge and seek to annul or set aside the judgment or proceeding pursuant to which the title was decreed, or prevent its enforcement.
3. Only the certificate (OCT, TCT) is not subject to collateral attack. The ownership/title of the land itself may be attacked collaterally. – e.g., co-owned property registered in the name of 1 co-owner only, registrant is only a trustee may be raised in proper proceedings without violating the rule against collateral attack.

Rules for specific actions

Action for reconveyance [1]	Not collateral attack
Action to annul certificate of title [2]	Direct attack
Ejectment cases [3]	Not collateral attack
Accion publiciana [4]	Not collateral attack
Accion reivindicatoria [5]	Direct attack
Quieting of title [6]	Depends

1. An attack on the title or ownership which is represented by the certificate, not on the certificate of title itself. An action for reconveyance is an action in personam available when property was wrongfully registered in another's name. It

does not seek to set aside the decree but respecting it as incontrovertible and no longer open to review, seeks to transfer, or reconvey the land from the registered owners to the rightful owner. This remedy is always available for as long as the property has not yet passed onto the hands of an IPV.

2. The action challenges the judgment decree of title. It goes to the ownership of the land, and the relief generally sought by plaintiff is to be declared as the land's true owner. May be in an original action or in a counterclaim or 3p complaint, cross-claim, but not as a mere defense.
3. When the ejectment court resolves the issue of ownership based on a certificate of title to determine the issue of possession, there is **no real attack**, whether direct or collateral on the certificate of title because the resolution of the court cannot alter, modify, cancel the certificate of title. The resolution on the issue of ownership is **provisional** only. The question of whether the attack is direct or collateral is immaterial in ejectment cases.
4. The defense of ownership (i.e., that the defendant is the rightful owner) will not trigger a collateral attack on the plaintiff's title because the resolution of the issue of ownership is done only to determine the issue of possession. The determination is likewise provisional.
5. The issue in an accion reivindicatoria is the very ownership of the land. Hence, it is a direct attack on the title.
6. Not a collateral attack if the action seeks to nullify IRCEP other than a CoT. Direct attack on the title itself if the action is **primarily for the purpose** of nullifying a CoT which casts a cloud on the title of the owner.

Collateral attack on title

1. Defense raised in accion publiciana proceeding that the defendant acquired the land by virtue of acquisitive prescription

(c) Imprescriptible

1. No title to registered land in derogation to the title of the registered owner may be **acquired** by prescription or adverse possession.
2. Registered land is not subject to acquisitive prescription.
3. However, the owners may lose their right to bring an action to recover the possession of a real property by lapse of time. N.B.: an action to recover possession of immovables prescribes in 30y.
4. Laches also does not apply to registered land.

G. Subsequent Registration

1. Voluntary Dealings

(a) Requirements for registration

1. Deed should be in public instrument, i.e., acknowledged before NP.
2. Two-witness rule. – the deed must be signed by parties before at least 2 witnesses.
3. Marginal signatures. – each page, including acknowledgement must be signed on left margin by the parties and witnesses, and all pages sealed by NP, and these facts shall appear in the acknowledgement.
4. If it relates to sale, transfer, encumbrance of two or more parcels of land, this fact shall also be stated in the acknowledgement.
5. Payment of fees, CGT, DST.
6. **Owner's duplicate title should be presented.** – (i) The RD shall not register the voluntary transaction without the owner's duplicate; (ii) serves as **proof of authority** of the registered owner to register the TXN and for the RD to

annotate the deed on the owner's duplicate title. SPA is no longer required as presentation of the CoT is already proof of authority.

(b) RD's duty

1. The function of RD to register the document is ministerial.
2. It only passes upon the formal requirements for registrability (Sec. 112).
3. Does not inquire into the intrinsic validity of the underlying contract (judicial function). – e.g., w/n fraud was committed in the document, w/n document was forged. XPN: If on the face of the instrument, it is patently void. e.g., deed of sale of a 4-ha. land to a foreigner.

(c) Deed is registered

1. Upon (i) entry in the **primary entry book**, and (ii) payment of entry fee, whether in/voluntary. "They shall be considered as registered from the time so noted".
2. Failure to annotate the deed in the title has not effect as long as the claim is entered in the primary entry book. This is considered **sufficient registration** that will bind the world. Even if the buyer inspected the OCT in the RD and found no annotations, he cannot be considered IPV.
3. BUT a buyer who relied on the CoT without annotation is considered a builder in GF under NCC.
4. Primary entry book is an official record which is exempted from the hearsay rule. It may be used to prove the **date of execution** of the deed of sale. The person who made the entry, and the parties need not be presented.

(d) Amendment and corrections

1. No amendment of the certificate can be made except upon order of the proper RTC (EOJ).
2. Errors cannot be corrected without court order, even typographical or innocuous errors. There is no administrative correction in certificates of title.
3. LRC may hear both contentious and non-contentious matters.

2. Involuntary Dealings

TXNs affecting land which do not require the consent of the registered owner or that can be effected even against his consent.

1. These **may be registered even without presentation of the owner's duplicate title. c.f.: voluntary dealings.**
2. E.g., Attachment, levy on execution, lis pendens, adverse claim.
3. An involuntary TXN may not appear in the owner's duplicate title but may appear in the OCT on file with the RD. It is the latter which should be examined in dealing with registered lands.

a) Adverse Claims

(a) One made by a claimant who claims an interest in registered land adverse to the owner.

1. The remedy of adverse claim is available only if there is no other provision in the PRD for the registration of the claimant's adverse interest (Sec. 70). e.g., adverse claim is not proper to register a claim based on contract to sell/deed of sale. CTS should be registered under Sec. 54.
2. If the registration of adverse claim was improperly resorted to, it will not vest a better right upon the registrant. XPN: If the seller refuses to deliver the owner's duplicate title to the buyer despite demands to register a voluntary transaction, the buyer is justified in resorting to an adverse claim.
3. E.g., Claim of hereditary rights over land fraudulently registered in the name of another; Claim based on implied/constructive trust.

4. If the claim was void, the adverse claim was also void, e.g., right based on a waiver executed by a sibling over hereditary right when the father was still alive.

(b) Effectivity

1. For a period of 30d after registration, after which it may be cancelled upon the filing of a verified petition with RTC by a party in interest.
2. The adverse claim does not automatically become ineffective upon the lapse of the 30d period. The notice of AC subsists even after the lapse of the 30d period if not yet cancelled. A buyer who purchases land on which there is subsisting adverse claim is in BF (jurisprudence).

(c) Cancellation

1. Requires hearing with notice to adverse claimant, even if the 30-day period has already expired.
2. The party in whose favor the annotation was made is indispensable and must be notified. Notice is jurisdictional.
3. TC may rule on money judgments (e.g., attorney's fees), record and enforce attorney's lien in a petition for cancellation of adverse claim or in a separate action, at the option of claiming counsel.
4. The entry may be cancelled only by – (i) Court; (ii) Claimant himself. A person who buys a property where the AC was cancelled by one who is not the claimant or without order of court is not IPV since the cancellation is without effect, and the AC subsists.

(d) Not registrable

1. Claim based on prescription/adverse possession since registered land is not subject to prescription/adverse possession.
2. Easement is not a proper subject of registration of adverse claim since the grantee claims no right or interest over the SE.

b) Notice of Lis Pendens

(a) Notice that a particular land or building is the subject of a pending action.

1. The pending action must be real action, i.e., one which affects title to or possession of land or building.
2. Cannot apply to a personal action, e.g., action over membership shares in a corporation which is a personal action.
3. Purpose of the annotation is public policy and necessity (not constructive notice), to prevent the parties to the litigation to frustrate the judgment of the court to the prejudice of the other party.

(b) Effect

1. Property may be sold.
2. The annotation of NLP does not affect the disposability of the property BUT the buyer (transferee pendente lite) is **bound by the outcome of the litigation**, even if he is not impleaded, and the judgment may be enforced against him.
3. A buyer who buys a property with **cancelled NLP** is IPV. Otherwise, the cancellation would be rendered meaningless. However, the mortgagee/buyer must **wait for the registration** of the order of cancellation before dealing with the property, otherwise he cannot be considered in GF.

H. Non-Registrable Properties

(a) Under the Constitution

1. Mineral lands
2. Natural parks
3. Timber or forestlands

(b) Properties for public purpose

1. Reservations for public and semi-public purposes
2. Military and naval reservations

(c) Others

1. Mangrove swamps
2. Rivers
3. Lakes
4. Creeks
5. Foreshore – (i) Midpoint between the high and low tides; (ii) May be leased but not alienated.
6. Reclaimed lands – considered property for the development of national wealth.
7. Open spaces in subdivisions – e.g., roads or parks
8. Watershed areas

Effect of registration

1. Certificates of title covering inalienable lands of public domain is void.
2. May be cancelled even in the hands of IPV through an action for reversion.
3. E.g., The Fort Bonifacio Military Association is land of the public domain, its sale to the Navy association is void; LNMB is a land of the public domain devoted for national military cemetery and national military shrine purposes.

I. Dealings With Unregistered Lands

Voluntary and involuntary dealings over unregistered land are entered in the **primary entry book** and the **registration book**.

1. TXN binds 3p upon registration **but without prejudice to a party with a better right**.
2. Party with a better right is one who has already acquired ownership or title.
3. E.g., A sold his land to B and delivered the same, but the sale was not registered. Later, A sold the same land to C which C registered. Here, B is preferred since he has acquired “better right” against C prior to the registration of the sale. But if A did not deliver the land to B, C will be preferred since B has not acquired better right against him. (delivery transfers ownership).
4. The rules on double sale under Art. 1544 presupposes a registered land.

J. Assurance Fund

1. Nature of Assurance Fund

Intended to protect the interest of persons rightfully entitled to interest in land but shut off from obtaining titles thereto because of the indefeasibility of the Torrens certificate.

1. State insurance system for the benefit of an original title holder who was deprived of his land by a usurper, without any negligence on his part.
2. It may be availed when original title holder can no longer recover the property as it had already passed onto the hands of an IPV.
3. The loss of property sought to be recompensed by the fund is not attributable solely to the acts of the usurper but ultimately upon the operation of the Torrens system which, by reasons of public policy, tilts the scales in favor of IPV.

2. Conditions for Compensation from Assurance Fund

When the claimant's property is registered in the name of an IPV.

1. It is only then that it can be said that the former had effectively “sustains loss or damage or is deprived of land or any estate or interest therein in consequence of the bringing of the land under the operation of the Torrens system”, which renders indefeasible the title of IPV.
2. **The registration of the property in the name of an IPV is condition sine qua non for the recovery against the fund.**
3. May also be resorted to if the person who wrongfully deprived the claimant of his property

cannot recover damages as the person who unjustly registers the property in his name is insolvent or cannot be found.

Conditions for compensation

1. No breach of trust (express/implied)
2. Deprivation of interest is due to fraud or the operation of the Torrens system
3. No other remedy (presupposes that the land was registered in the name of IPV)
4. Filed within 6 years from accrual of right of action

Judicial action

1. Personal action: jurisdiction is based on the amount of claim (cut-off: 2M).
2. Defendants: RD and National Treasurer.

Claim is not proper

1. When the loss, damage or deprivation is (i) due to a breach of trust, whether express, implied or constructive or (ii) by any mistake in the resurvey or subdivision of registered land resulting in the expansion of area in the certificate of title (iii) where the title of the property did not pass to an IPV.
2. When a party uses fraud or concealment to obtain a certificate of title of property, a constructive trust is created in favor of the defrauded party. However, the inability to recover from the defrauding party does not make the Assurance Fund liable therefor.

3. Prescriptive Period

6 years from the date the IPV registers his title and upon actual knowledge thereof of the original title holder/claimant.

1. The registration does not constitute a constructive notice to the claimant for purposes of reckoning prescription.
2. The principle of constructive notice is intended to protect the IPV's title, which is not the consideration with respect to claims against the assurance fund.
3. The purpose of Assurance Fund is to compensate the claimant for the loss of his property as a result of the operation of the Torrens system. If the constructive notice rule will be applied, the purpose of the fund would be defeated.

K. Reconstitution of Title

Remedy in case of loss or destruction of OCT on file with RD

1. May be judicial or administrative. Generally, reconstitution should be judicial.
2. Administrative reconstitution may be availed only in case of substantial loss or destruction of land titles due to fire, flood, or other force majeure as determined by LRA administrator. Substantial loss is $\geq 10\%$ of the total number of titles in the RD's possession, not less than 500.
3. Personal notice to actual owners and possessors of land in a petition for reconstitution is indispensable to vest jurisdiction on the court.
4. Requires clear and convincing evidence, not mere preponderance.
5. Reconstituted title shall have the same validity and legal effect as the original.
6. Certificates reconstituted EJ shall be without prejudice to any party whose right or interest in the property was duly noted in the original but was not carried over the reconstituted CoT.
7. After two years from the reconstitution, if no petition for annotation of right was filed, the court shall order the RD to cancel the registration (on ex parte motion by the RO, or other person having registered interest).

c.f.: Reissuance of title

1. Remedy in case of loss or destruction of owner's duplicate title
2. Done by filing an affidavit of loss with RD to serve as protection to registered owner from the transfer of title to IPV. The affiant must be presented in court to testify on the contents of the affidavit. Otherwise, the affidavit is hearsay.
3. The new ODT shall in all respects be entitled to like faith and credit as the original ODT and shall be regarded as such for all purposes of P.D. No. 1529. However, it must contain a memorandum that it is a replacement.
4. Jurisdiction is with RTC (not DARAB) for the issuance of new ODT, even one emanating from a CLOA (not an agrarian dispute or agrarian reform matter). N.B.: DAR Secretary has original jurisdiction over cancellation of emancipation patents, CLOA, certificates of title issued under agrarian reform program.
5. That the ODT was actually lost is a jurisdictional fact. If the ODT is not lost but was in the possession of the person who bought the property, RTC has no jurisdiction.
6. Notice to heirs of registered owner is mandatory. Otherwise, judgment is null and void.
7. RO of land is not barred by res judicata from filing a second petition for issuance of a new owner's duplicate certificate of title (indefeasibility). E.g., if the petition was denied due to lack of evidence, the owner, once he gathers sufficient evidence may file a second petition for the issuance of new title.
8. The validity of the replacement duplicate CoT cannot be subject to compromise (not subject to earnest efforts at compromise requirement among family members).

V. Wills and Succession

A. General Provisions

(a) Succession is a mode of acquiring or transferring ownership by virtue of which property, rights and obligations **PRO** to the extent and value of the inheritance of a person is transmitted through his death to another or others either by his will, or by operation of law (or by both).

Elements **DIPA**

1. Causal – decedent's death, actual or presumptive
2. Objective – **Inheritance** consists of all **PRO** not extinguished by death and all those which have accrued to the estate since the opening of succession.
3. Subjective – decedent; heirs
4. Acceptance

Causal element

1. Decedent's death may be actual or presumptive.
2. Presumptive death. – Judicial declaration of presumptive death under the CC for purposes of succession is prohibited. (i) **10y**: ordinary absence, (ii) **5y**: if >75y. Death is presumed to have taken place at the last day of the period of absence required by law; (iii) **4y.**, if in danger of death. Death is presumed to have taken place at the very day of the occurrence of the event from which the death is presumed; or the middle of the period in which the event could have happened if the exact date cannot be fixed.

Acceptance

1. Generally made upon knowledge of decedent's death.
2. A conceived child who was made an heir may accept only upon birth under conditions specified

under Art. 41. If the child was born but later died, he passes the inheritance to his heirs.

3. A voluntary heir whose institution in the will is subject to a suspensive condition may accept only after the death of decedent and upon the happening of condition. If the heir dies before either, they do not acquire anything and they do not pass anything to their own heirs.
4. ****Successional rights are acquired only upon acceptance.**

(b) The rights to the succession are transmitted from the moment of the death of the decedent.

1. From the moment of death heirs **acquire successional rights**, subject only to their acceptance. The acceptance retroacts to the moment of death.
2. Inheritance vests upon the heirs upon decedent's death, without interruption between the end of the decedent's ownership and the start of the heir/devisee/ legatee's ownership.
3. Successional rights may **be enforced even prior to the declaration of heirship unless** there is already a pending special proceeding for the settlement of estate or for the declaration of heirship, e.g., action for nullification or deed or recovery of property. The decision on the court on such point shall be limited only to the cause of action raised and binding only to the parties thereto.
4. Determined at the moment of death – (i) accrual of inheritance tax accrues which shall be determined based on the value of the estate at such time; (ii) capacity of heirs to succeed (if subject to condition, the heir must also be capacitated at the time of happening of the condition); (iii) computation of legitime; (iv) inofficiousness of donations inter vivos; (v) amount of legacy of credit and remission is limited to that due at the moment of death.

Disposition

1. Before partition, co-heirs are made co-owners, and may dispose their ideal share in the estate.
2. **The devisee or legatee give specific property may dispose the same even before the will was probated** but subject to two resolutive conditions: (i) that if the devise/legacy was found inofficious, the disposition will be invalidated, either in whole or in part; (ii) that if the will was not allowed in probate, the disposition will likewise be invalid.²⁷

Before death

1. Before death of decedent, heirs' interest over his estate is merely inchoate, i.e., not yet existing. Hence, future inheritance cannot be the subject of any contract. XPNs: (i) partition inter vivos; (ii) donations of future property between future spouses.
2. Contract upon future inheritance; elements – (i) the succession has not yet been opened; (ii) the object of the contract forms part of the inheritance; (iii) the promisor has, with respect to the object, an expectancy of a right which is purely hereditary in nature.

(c) Kinds of succession

1. Testamentary
2. Intestate – Takes place if a person dies (i) without a will, or (ii) with a void will, or (iii) one which was subsequently lost its validity
3. Mixed – (i) The testator did not dispose the entire estate by will, (ii) there is preterition which annuls

²⁷ If the will containing devises or legacies is invalidated, it creates a natural obligation on the part of the heir to deliver the legacy or devise to persons named in the void will

the institution of heirs, but there are devises and legacies, (iii) a portion of the estate becomes vacant, and substitution, accretion, or representation cannot take place.

4. Compulsory

B. Testamentary Succession

1. General Provisions

(a) Will is an act by which a person is permitted, with the formalities prescribed by law, to control to a certain extent, the disposition of his estate, to take effect after his death.

1. The making of a will is a purely statutory act, and subject to the limitations provided for by law. It is not an inherent right.
2. **PSRF** A personal, solemn, revocable and free act by which a person disposes of his property and rights, and declares or complies with his duties, to take effect after his death.
3. The essence of a will is the expression of the wishes of the decedent, not necessarily regarding the disposition of his estate. The disposition of estate is not the essence of a will. It is possible for an instrument to be considered a will although it does not contain testamentary disposition, e.g., wishes of a deceased as to the conduct of his funeral, instructions on the designation of executor, disinheritance (must be probated).
4. If the will contains a disposition of property, probate is mandatory. "No will shall pass either real or personal property unless it is proved and allowed in accordance with the Rules of Court."
5. Disinheritance is an act of disposition. A will containing only the disinheritance of a CH results in the disposition of the testator's estate in favor of those who will succeed in the absence of the one disinherited. Hence, said will must be probated.

(b) Important limitations in making will

1. The concept of legitime
2. Compliance with legal formalities – in Ph jurisdiction, wills are necessarily in writing. Other forms are not recognized.

(c) Important rules of interpretation

1. Testacy is preferred over intestacy – (i) discovery of will will result in (a) the revocation of the letters of administration, and (b) the suspension of the intestate proceedings; (ii) interpretation that will render a testamentary provision operative is preferred over the interpretation that will nullify the same.
2. Intent of the testator shall be resorted to in resolving the ambiguity, whether latent or patent – (i) discovered by examining words of the will; (ii) or evidence aliunde EXCEPT oral declaration of the testator as to his intention.
3. Properties acquired post-execution generally excluded – (i) must generally be disposed following rules of intestate succession; (ii) XPN: if it clearly appears from the will itself that the testator intended to dispose the same. e.g., if the will speaks of the "whole estate".
4. The testator conveys to the legatee or devisee the extent of his interest in the property. XPNs: (i) if it clearly appears from the will that the testator intended to convey a lesser interest; (ii) the testator expressly declares that he gives the thing in the entirety even though he owns only a portion of it. Provided, the testator is aware that the property partly belongs to another. It constitutes an order to the executor to acquire the entirety of the thing.

2. Characteristics of a Will

UMPIFAS

1. Act mortis causa – (i) intended to take effect upon the death of the testator; (ii) acceptance can be

made only after such death; (iii) before such death, the heirs do not acquire successional rights (inchoate).

2. Ambulatory – a will is revocable prior to the death of the testator since it does not yet take effect at such time.
3. Individual act – Filipinos are prohibited from executing joint wills, even if valid in the place where executed.
4. Unilateral act – a will does not require consent of other persons, except the testator, for its validity. Acceptance/ renunciation of inheritance only determines whether the testamentary provisions will become operative but not the will's validity.
5. Free act – pertains to absence of vices of consent. Otherwise, the will is void.
6. Solemn act – must comply with legal formalities.
7. Purely statutory right – the right to dispose one's property by way of a will, and its limitations, are provided for by law. It is a not a natural right.
8. Strictly personal act of testator; non-delegable (see below)

3. Non-Delegability of a Testamentary Power

The making of a will, in whole or part (i) cannot be left on the discretion of a third persons or (ii) accomplished through the instrumentality of an agent or attorney.

1. Only the making of testamentary dispositions is strictly personal.
2. The mechanical drafting of the instrument need not be personally executed by the testator.

Non-delegable (*doctrine of non-delegability of testamentary power*)

1. The duration and effectivity of the designation of heirs, legatees, devisees
2. The determination of the portion which they are to take, when referred to by name.
3. The determination w/n a testamentary provision is to be operative.

Delegable

1. The implementation of the details of a testamentary provision where the testator left a specific property or sums of money to specific class or causes.
2. Requirements – (i) the testator himself chose the recipient class or causes; (ii) testator already provided for in the will the specific property or the amount of money to be disposed in their favor.

Disposition captatoria

1. A provision in the will instituting a person as heir, under the condition that the latter should also institute the testator in his own will.
2. This is void since it violates the personal nature of making a will by imposing one's will upon that of the testator's.
3. Reciprocal wills where 2 persons institute each other in their respective separate wills is valid so long as it does not amount to a disposition captatoria.

4. Applicable Law as to Form and Substance of a Will

(a) National law of the decedent:

1. *In force at time of his death re:* (i) The order of succession; (ii) The amount of successional rights; (iii) The intrinsic validity of the provisions of the will; (iv) The capacity of the heirs to succeed, including who are the heirs of the decedent.
2. *In force at time of execution of the will re:* testamentary capacity.
3. Any supervening change in the law will not be considered.
4. A provision in the will of a foreigner decedent indicating that his estate shall be distributed in accordance with Ph law is void.

(b) *Lex rei sitae*

1. Re: Whether a certain property will form part of the estate of the decedent.
2. In the Ph, foreigners cannot acquire lands in the Ph and cannot form part of the estate of foreigners.

(c) *Lex loci celebrationis*

1. *In force at time of the execution of the will re:* forms and solemnities of wills.
2. XPN: Joint wills executed by Filipinos in a foreign country shall not be valid in the Ph, even if authorized by the law of the country where executed. – (i) joint will: one wherein the wills of two testators are embodied in one instrument either for the testators' reciprocal benefit or for the benefit of third person, and jointly signed by them; (ii) the prohibition does not apply to foreigners executing their will in Ph; (iii) if by Filipino and foreigner, only the portion of will pertaining to the Filipino is void; (iv) joint probate of two separate wills is not prohibited.
3. However, a Filipino may opt to follow formalities of Ph law when executing a will abroad.

(e) Wills of foreign nationals

Executed abroad

1. Shall produce effect in the Philippines if executed with the formalities required: (i) in the law of the country where he resides (ii) his national law (iii) under the Ph laws. **RNC** If foreign law was not alleged and proven, the NCC will apply by default.
2. Can be probated in the Ph without the need of prior probate in the foreigner's country of nationality.

Executed in Ph

1. Shall produce effect in the Philippines if: (i) executed in accordance with his national law (ii) which may be proved and allowed by the law of his own country.
2. It may be probated in the Ph, and the proponent has two options: (i) plead and prove the foreigner's national law or (ii) apply NCC by default.
3. Even if not mentioned under Art. 817, Ph NCC may apply in default of proof of the testator's national law.
4. Ph courts cannot be ousted of jurisdiction for the probate of a foreigner's will, whether executed in the Ph or abroad. There is no requirement of prior probate in the foreign country, Ph courts can always assume jurisdiction. If the foreign law was not proven, Ph law can always apply by default.

5. Testamentary Capacity

All natural persons except those declared by law as incapacitated may make a will.

1. Determined by the national law of decedent at the time of the will's execution.
2. Incapacitated to make a will – (i) those expressly prohibited by law; (ii) those below 18y at the time of execution; (iii) those of unsound mind at the time of execution. Juridical persons are not capacitated to make a will.
3. Not disqualified – (i) those suffering from civil interdiction; (ii) those suffering incapacities of the witnesses.
4. A will executed by a person without testamentary capacity at the time of its execution is null and void.

Testamentary Capacity

1. Reckoned at the time of execution of the will.
2. Supervening incapacity will not invalidate an effective will nor will supervening capacity validate a void will.

3. To be of sound mind, it is not necessary that the testator be in full possession of all his reasoning faculties, or that his mind be wholly unbroken, unimpaired, or unshattered by disease, injury, or other cause.
4. The testator is considered to be of sound mind if he is able to know – (i) the nature and extent of the estate to be disposed of; (ii) the proper objects of his bounty, i.e., the heirs; (iii) the character of the testamentary act.
5. The testator is presumed to be of sound mind at the time of making the will. XPN: $\leq 1m$ prior to the execution of the will, the testator is publicly known to be insane. Proponents must prove that the will was executed during a lucid interval.

6. Form of Notarial and Holographic Wills

(a) Forms, in general

1. Notarial – Must be (i) attested by at least three competent witnesses; and (ii) acknowledged before a notary public by the testator and the attesting witnesses.
2. Holographic – Will entirely written, dated and signed **WDS** by the testator himself, and does not require the attestation of witnesses.

(b) Common formalities (will proper/testamentary dispositions)

1. Must be in writing – oral or audiovisual wills are not recognized in the Ph.
2. Must be executed in the language or dialect known to the testator.

(2) *Executed in the language or dialect known to the testator*

1. Need not be in a language known to the witnesses. – (i) The attestation clause may be in language unknown to the witnesses, if the same is interpreted to them; (ii) the requirement applies to the will proper or the testamentary dispositions but not the other parts, e.g., attestation/acknowledgement.
2. Compliance with the requirement need not be stated in the attestation and may be proven by extrinsic evidence.
3. However, it must be proven during probate, and not presumed. XPNs: (i) Statement in the attestation clause indicating compliance with the requirement may be considered by court as proof of compliance; (ii) When presumption can be made based on the records of the case. – e.g., (a) will was executed in a province or locality in the dialect currently used therein in which the testator was a native or a resident, which fact appears in the records; (b) will was written in Spanish by a mestiza espanola married to a Spaniard where some of her letters in her own handwriting were in Spanish as appearing on records.

(c) Additional formalities for ordinary wills **SAMPAA**

1. Subscribed by testator
2. Attested and subscribed by witnesses
3. Signed by testator at every page (marginal signatures)
4. Signed by witnesses at every page
5. Paged
6. Attestation clause
7. Acknowledgement

(1) *Subscribed by testator*

1. (i) by himself; or (ii) by his name written by someone: (a) in his presence and (b) by his express direction.
2. At the logical end, i.e., the end of the will after the last testamentary disposition, and before the attestation clause. – (i) placement of signature is mandatory; (ii) if there are dispositive provisions after the testator's signature, the will is void in the

- entirety (not just the provisions following the signature) for being an unsigned will.
3. Testator may use his signature or customary mark so long as it is intended by the testator as his signature. – may be by (i) thumbprint/mark; (ii) other mark affixed by him like stamps, even if the testator knew how to write.
 4. Use of abbreviated marks, e.g., cross, is generally not sufficient, unless it is proven to be the testator's habitual signature, or there is an explanation why it is used if testator knew how to sign.

Signing by agent

1. Requirements – (i) The testator's name is written by some other person in his presence, and by his express (not necessarily written) direction; (ii) said person signs the will and every page thereof in the presence of the testator and the instrumental witnesses; (iii) said person writes the name of the testator, not his own name; (iv) the attestation clause contains that fact that the testator requested another person to write his name in the will in his presence and by his express direction; and also, in the presence of the instrumental witnesses (omission is fatal since it cannot be proved otherwise).
2. The testator may sign by agent even if he knew how to write.
3. The personality of the agent is immaterial. He may be a subscribing witness, or the lawyer who drafted the will.
4. The agent need not be present at the time the witnesses sign the will since there is no such requirement under the law. But the witnesses and testator must be present when the agent writes the testator's name.

(2) Attested and subscribed by witnesses

1. At least three credible witnesses.
2. Attestation (Act of the senses, a mental act) – Witnessing the testator's execution of the will to see and take mental notes that: (i) the formalities required by law for the execution of the will are observed; (ii) the testator's signature exists as a fact. The witnesses must sign at the end of the attestation clause. If they only signed on the margins in the page where the attestation clause is, the will is void since the attestation clause is unsigned. It amounts to an unattested will.
3. Subscription (Act of the hand, a mechanical act) – (i) Signing the instrument for the purpose of identifying it as the will executed by the testator and identifying the page as part of the will to avoid substitution; (ii) must be in the presence of the testator and of one another.

(3) Signed by testator at every page (marginal signatures)

1. At the left margin, except the last page where the subscription is located which the testator must sign at the end. – (i) all pages containing testamentary dispositions; (ii) placement of signature is directory.
2. In the presence of the witnesses.
3. Purpose of marginal signatures – (i) to identify the page, (ii) prevent substitution.

(4) Signed by witnesses at every page

1. At the left margin.
2. In the presence of the testator and of one another.
3. Placement of signature is directory. If the witnesses signed at the end of the attestation clause, the lack of marginal signature on such page is not fatal since the signature satisfies both the requirements of attestation and subscription.

4. The test is not whether they actually saw each other sign, but whether they might have seen each other sign had they chosen to do so (i) by merely casting their eyes in the proper direction [test of sight], and (ii) without any physical obstruction to prevent his doing so [test of location or position].
5. + Test of knowledge – The witness must know that the purpose of the meeting is for the testator to execute a will.
6. If the witness is in an outer room when the signing took place, the signing is not deemed to have been made in his presence.

(5) Paged

1. Correlatively in letters, e.g., "one, two, etc." in the upper part of each page (directory).
2. Intended to guard against fraud, to prevent substitution or addition, to detect the loss of any page.
3. The requirement pertains only on the part of the will containing testamentary dispositions. If the page containing attestation clause/acknowledgement is not numbered, the same is not fatal.
4. Substantial compliance is acceptable – (i) If authenticity of the page and genuineness of the signatures of the testator and witnesses were not questioned, the will is still valid, even if one page is not numbered; (ii) If there is proof supplied by the will itself that the pages were not substituted, e.g., only the second page of a two-page will was numbered but the first page was signed by the testator and the 3 witnesses, and the document has internal consistency such that the first line of the second page and the last line of the first flows continuously.

(6) Attestation clause PTW

1. Stating – (i) the number of **pages** upon which the will was written; (ii) the fact that the **testator** signed the will and every page thereof or caused someone else to have his name written in his presence and by his express direction; (iii) the fact that the **witnesses** witnessed and signed the will and all the pages thereof in the presence of the testator and of one another.
2. If the testator signed through an agent, the agent need not be present when the witnesses sign the will since this is not a requirement.
3. Need not be in language known to the witnesses, as long as the same is interpreted to them.
4. Only the witnesses must sign the attestation clause, not the testator.
5. Attestation clause made by testator does not constitute an attestation at all since attestation must be an act of the witnesses. XPN: Substantially complies with requirements of the law if: (i) contains all the facts required to be stated therein, and (ii) signed by all witnesses, together with the testator.
6. May be incorporated in the body of the will, and not be in a separate clause as long as signed by the witnesses.
7. A will is void if – (i) it contains no attestation clause; or (ii) the same is unsigned by the witnesses. Marginal signatures will not cure the defect.

Rule on substantial compliance

1. If certain facts required to be recited in the attestation clause was omitted, but such fact can be supplied by the mere examination of the will itself without resorting to extrinsic evidence, the omission can be safely disregarded and the rule on substantial compliance under Art. 809 may be applied **OSE WRE**

2. Rule applicable if there is omission of – (i) total number of pages which was stated elsewhere, e.g., in acknowledgement; (ii) statement that all pages were signed; (iii) the number of witnesses.
3. Rule not applicable if the statement of the manner of signing was omitted since the attestation clause is the only evidence of compliance with the said formality. Evidence aliunde is not admissible to supply the omission. – (i) that the testator signed in the presence of attesting witnesses; (ii) that the witnesses signed in the presence of the testator and of each other; (iii) that the testator did not personally sign the will but caused his name to be written by another person in his presence and by his express direction, and in the presence of the instrumental witnesses.
4. Rule also not applicable if there is variance in the actual number of pages in the will and that indicated in the attestation clause or somewhere else since the ambiguity cannot be resolved without resorting to evidence aliunde.
5. SC also applied the rule, not only in omissions to the attestation clause but also to the additional formalities for blind testator under Art. 808.

(7) Acknowledgement

1. Before a notary public by the testator and his witnesses.
2. The act of the testator and the witnesses of personally appearing before a notary public to avow: (i) the authenticity of their signatures; and (ii) the freeness and voluntariness of their actions in executing the testamentary disposition.
3. Will is void if – (i) the notary public is one of the 3 attesting witnesses; (ii) only the testator, not the witnesses acknowledged the will; (iii) not acknowledgement but mere jurat; (iv) acknowledgement done outside NP's place of commission.
4. Not required – (i) for the notary public to sign and affix his seal in the presence of the testator and the witnesses (no longer part of acknowledgement); (ii) for the will to be acknowledged in the same day or occasion that it was executed. Only the execution is required to be a continuous act.

(d) Special formalities of notarial wills by certain testators

Blind testator

1. The will should be read to him twice: (i) one by one of the witnesses [during execution]; and (ii) by the notary public before whom the will is acknowledged.
2. Applies to testators – (i) with poor, defective, blurred eyesight; (ii) who are illiterate.
3. SC held that rule on substantial compliance is also applicable, e.g., (i) the lawyer who drafted the will read it aloud to the testator only once (ii) in the presence of the testator, 3 witnesses and the NP, and (c) testator affirmed that the contents of the will corresponded with his instructions. – if the purpose of the law, which is to prevent fraud or trickery is satisfied, substantial compliance is acceptable.

Deaf-/mute testator

1. If able, testator must personally read the will.
2. If unable, the testator must designate two persons who would read the will and communicate its contents to him in a practical manner.
3. There is no requirement as to who shall communicate the contents of the will to the testator for as long as the manner of communication can be understood by him.

(e) Additional formalities for holographic wills

1. Requirements – (i) Entirely handwritten by the testator; (ii) Dated by the hand of testator; (iii) Signed by the hand of testator.
2. Presumes that the testator is able to read and write.
3. May be made inside or outside the Ph.
4. Date – generally, must include month/day/year. XPNs: (i) if otherwise certain, e.g., Christmas 2019; (ii) Month/ year are sufficient compliance if: (a) there is no appearance of fraud, BF, undue influence, pressure; (b) the authenticity and genuineness of the will is established, not being questioned. No requirement as to placement.
5. Signature must consist of the actual customary signature of testator, thumbprint/mark is not sufficient compliance.
6. Testamentary Dispositions written below testator's signature must be dated and signed by him to be valid. However, unsigned/undated dispositions are validated if the last disposition was signed and dated regardless of the time of the prior dispositions.
7. In a holographic will, each disposition is separate from each other, and once signed and dated is considered complete.

Effects of insertion, cancellation, erasure, alteration ICEA by 3p

1. After execution – (i) will is valid if not authenticated by full signature of testator, the insertion is void; (ii) will is void if so authenticated since the insertion becomes part of the will [not wholly written by testator's own hand].
2. Contemporaneous to execution – will is void since insertion becomes part of the will.

ICEA by testator

1. Will is valid whether authenticated by full signature of testator or not – (i) if authenticated, the ICEA becomes part of the will and shall be given effect; (ii) if not, the ICEA is disregarded.
2. XPN: Unauthenticated alterations cannot simply be disregarded if it pertains to a substantial portion of the will that will affect its validity, e.g., erasure of date, erasure of signature of testator, crossing out the name of an heir and substituting the name of another (Kalaw v. Relova). – in the last case, the SC held the will inoperative since it only contains one disposition. The substitute was not made an heir, and the original heir is no longer considered as such since the crossing out of his name shows the intention to deprive him of the inheritance.

7. Witnesses to a Notarial Will (Qualification and Disqualifications)

Must be (i) at least 3; (ii) not disqualified.

1. Qualification of witnesses is determined at the time of making the will.

Disqualifications MU B DINC

1. below 18y
2. of unsound mind
3. blind persons
4. deaf-mute
5. illiterates
6. convicted of falsification of a document, perjury or false testimony
7. not domiciled in the Philippines, if the will is executed in the Ph

Witnessing by certain persons

1. By a beneficiary (heir, legatee, devisee), his spouse, parent or child. – not DQ as witness but they become incapacitated to inherit from the testator. XPN: if there are three other competent witnesses to the will.

2. By creditor. – not DQ.
3. By notary public. – cannot be a witness since his two acts of being a witness and a NP cannot both be given effect. He cannot act in two capacities at once. Either the will is not witnessed, or it is not acknowledged.

8. Conflict Rules

9. Modes of Revocation of Wills and Testamentary Dispositions

Ambulatory characteristic of the will renders it revocable during the testator's lifetime.

1. Even after ante-mortem probate.
2. Any waiver, restriction, limitation, or condition on the testator's right to revoke his will is void.

Exclusive modes of revocation

- (a) By implication of law
- (b) By subsequent will, codicil or subsequent instrument
- (c) By physical destruction

(a) By implication of law

1. DQ of guilty spouse to inherit from the innocent spouse revokes by implication of law, testamentary dispositions made in the will of the latter in favor of the former in cases – (i) Under Art. 41 FC; (ii) Upon annulment of marriage; (iii) Declaration of nullity of void marriage; (iv) Upon legal separation.
2. Preterition – annuls the institution of heirs but retains legacies/devisees that are not inofficious.
3. Heir, devisee, legatee becomes unworthy – commission of acts of unworthiness renders the heir/d/l incapacitated by express provision of law.
4. Legacy of credit – if after the execution of will, the testator brings an action for the collection of debt.
5. Transformation of thing – if after the execution of will (i) the testator transforms the devise/legacy such that it does not retain its form or denomination; (ii) the testator alienates the thing or any part thereof; or (iii) the thing is totally lost during testator's lifetime or after his death without the heir's fault.

(b) By subsequent will, codicil or subsequent instrument

1. Revocation may be by – (i) Another will [independent of previous will]; (ii) Codicil [related to previous will]; (iii) Other writing executed as in the case of wills, meaning following its formalities. All must comply with the formalities of wills.
2. Requisites – (i) testator must have testamentary capacity at time of revocation; (ii) there must be animus revocandi, which may be conditional such that if the condition was not fulfilled there will be no effective revocation of the will; (iii) the instrument must comply with the formalities of wills and testaments.
3. Forms – (i) Express: animus revocandi is expressed in the revocatory clause; (ii) implied: animus revocandi is expressed in the inconsistency between the provisions of the old and the subsequent will/instrument where the revocation is only to the extent of the inconsistency.
4. In express revocation – (i) if the subsequent instrument is void or disallowed in probate, the prior will stands. The nullity of the will carries with it the revocatory clause; (ii) if the subsequent instrument is valid but inoperative [e.g., due to incapacity/renunciation of heirs], the prior will is revoked. The will is valid, hence the revocatory clause is also valid; (iii) if the subsequent instrument contains a false cause, see below.

(c) By physical destruction **BTOCO**

1. By (i) burning, (ii) tearing, (iii) cancelling, (iv) obliterating, (v) other forms of physical destruction.
2. Requisites – TAOC (i) testamentary capacity at the time of destroying the will; (ii) animus revocandi; (iii) evidence of overt act of the physical destruction; (iv) revocation must have been a completed act.
3. Animus revocandi and overt act must concur. If the testator intended to revoke the will, but an heir prevented him from doing so, the revocation is not effected but the heir is DQ from inheriting by commission of act preventing the testator from revoking the will.
4. Total destruction was not required for as long as it is a completed act insofar as the testator is concerned. If the testator tore the will in two and threw it away, the act of revocation is completed insofar as he is concerned, even if the will is not totally destroyed and can be pieced back together. But if the testator desisted from further destroying the will after it was torn in half, there is no effective revocation since the act of revocation is not completed.
5. May be performed by – (i) Testator himself; (ii) another person in the testator's presence and by his express direction.
6. Revocation by agent – (i) the instrument destroyed is the will itself; (ii) the overt act of destruction is at the express direction of the testator; (iii) the overt act of destruction is made at testator's presence.
7. Unauthorized destruction by 3p does not give rise to revocation. – (i) if notarial will, it may be probated by proving its contents through evidence aliunde, e.g., testimony of attesting witnesses; (ii) if holographic will, it may no longer be probated since there are no witnesses. XPN: a photostatic or Xerox copy was left.

a) Effect on the Recognition of a Non-Marital Child

If the will containing admission of illegitimate filiation is revoked, the recognition took effect and is not affected.

1. Such recognition need not be in the form of a will.
2. The recognition does not depend upon the validity of the will, it is an act mortis causa and may be made in a private or public instrument.
3. The recognition is not dispositive or testamentary in character.

b) Theory of Dependent Relative Revocation

1. When the act of **destruction** is connected to the **making** of another will such as to fairly raise the **inference** that the testator **meant** the revocation of the prior will to depend on the efficacy of the new disposition intended to be substituted,
2. the revocation of the prior will will be **conditional** and dependent on the efficacy of the testamentary dispositions in the subsequent will.
3. If the subsequent will is inoperative, the revocation fails, and the prior will stands and remains in full force.

Notes

1. Animus revocandi is required, but it may be conditional such that if the condition was not fulfilled the revocation will not be valid.
2. IF the new will fails for any reason, it is presumed that the testator preferred the old will to intestacy.

c) Revocation Based on a False Cause

Revocation is void if:

1. The cause for revocation was stated in the will itself.
2. The cause turned out to be false.
3. The testator intended to make the revocation depend upon a certain set of facts or circumstances which constitutes the cause.

Variation of the doctrine of dependent relative revocation.

1. The revocation of the will is void and the prior will stands if the cause for the revocation turned out to be false if the conditions are present.
2. The falsity of the cause may be proven by extrinsic evidence.
3. The testator intended the revocation to depend upon the existence of certain set of facts or certain condition. If such facts or conditions turned out to be false, he would not have made the revocation.
4. A will which on its face is an absolute revocation cannot be proven to be based on a cause [1]. Parol testimony is not admissible to prove that the revocation was actually conditional or based on a cause. The cause must appear in the will itself, although its falsity may be proved by extrinsic evidence.

10. Heirs

a) Compulsory Heirs

Kind	Definition	Legitimate decedent	Illegitimate decedent
Primary	Those who have preference over, and exclude secondary CH [1]	Legitimate children and/or descendants	His children or their descendants, whether il/legitimate
Secondary	Those who succeed only in the absence of primary CH	Legitimate parents and/or ascendants	Illegitimate parents, excluding the ascendants [3]
Concurring	Those who succeed together with primary and secondary [2]	Surviving spouse (SS) and illegitimate children	SS, and illegitimate children or the latter's descendants

1. They are always entitled to legitime provided – (i) they survive the testator, (ii) capacitated, (iii) not validly disinherited and (iv) willing to accept.
2. They are not excluded by either primary or secondary CH.
3. They are CH only when the decedent does not have descendants, legitimate or not. They are excluded by any kind of descendant.
4. All CH are relatives of the decedent in the direct line, except the SS who is related to him by affinity. Collateral relatives starting from the siblings are not CH.

(a) CH of legitimate decedent

Legitimate children and/or descendants (primary)

1. Legally adopted children are considered legitimate children for all intents and purposes, including succession. Adopter and adoptee have reciprocal rights of succession both in testate (as CH) and intestate (as legal heirs) succession, without distinction from natural legitimate filiation.
2. However, the children of the adopted child are not considered heirs of the adopters. Hence, such children cannot represent the adopted child in the estate of the adopters. The new law on adoption did not extend the legal filiation created by adoption to the descendants of the adopted child.
3. Conceived child is already a CH, entitled to legitime, provided that it be born later under the conditions set forth under Art. 41. His omission in the will results in preterition.
4. Legitimate children and their descendants succeed the parents and other ascendants, without distinction as to sex or age, even if they should come from different marriages.

5. Rule of proximity. – The nearest degree excludes the more remote, save in cases where representation is proper (see below).

Legitimate parents or ascendants (secondary)

1. Rule of proximity. – The nearest in degree excludes the more remote, not qualified by the right of representation as there is no right of representation in the ascending line.
2. If both parents survive, legitime shall be divided equally between them.
3. If only one parent survives, the whole legitime shall pass to the survivor.
4. If none survive – (i) legitime shall be divided equally between both lines, if ascendants of same degree on both paternal and maternal lines survive; (ii) legitime shall pass to the ones nearest in degree of either line, if ascendants of different degree on both paternal and maternal lines survive.

Surviving spouse (concurring)

1. The marriage must be valid or at least voidable. If voidable, it must not have been annulled at the time of decedent's death to entitle the spouse to inheritance.
2. If the marriage is void, the parties are not entitled to any successional right sine they are not spouses at all. The nullity of the marriage may be raised in the proceeding for the settlement of estate of the deceased since it is always open to collateral attack.
3. If decree of legal separation is issued – (i) the guilty spouse is DQ from inheriting from the innocent spouse by way of in/testate succession by operation of law; (ii) the right of the innocent spouse to inherit from the guilty spouse is not affected.

Illegitimate children (concurring)

1. Filiation must be established for the child to be entitled to successional rights. – (i) The action to compel recognition and to claim inheritance may be joined in one action; (ii) the action for compulsory recognition of filiation may be brought after the death of the putative parent only if the proof is the public record of birth, or a public or private instrument. If the proof is based on the continuous possession of status as illegitimate child or other evidence allowed under the Rules, the action for recognition may be brought only during the lifetime of the putative parent.
2. If an illegitimate child predeceased the illegitimate parent, or if he was disinherited or was incapacitated, he can be represented by his descendants (legitimate or illegitimate) in the estate of the illegitimate parents. Upon death of illegitimate child, his right to the legitime is transmitted to his descendants.

(b) CH of illegitimate decedent

1. Primary – LC/ILC
2. Secondary – ILP
3. Concurring – SS

Illegitimate parents (secondary)

1. CH only if they survive alone, or with the surviving spouse of the decedent.
2. If the illegitimate decedent left children/descendants, whether il/legitimate, the ILP are excluded.
3. Other illegitimate ascendants are not CH.
4. The right to succeed in the ascending line terminates with the parents of the deceased illegitimate child.

b) Institution of Heirs

(a) General concepts

1. Institution of Heirs is the act by which the testator designates in his will the person/s who are to succeed him in his property and transmissible rights and obligations, either to an aliquot portion of the estate or to specific properties (devise, legacy).
2. The testator need not institute a CH to the legitime. It may be done, but such will be superfluous since the CH already inherits by operation of law.

The following will not affect the validity of the will

1. Will not containing institution of heir.
2. Institution does not comprise the entire estate.
3. Beneficiaries turn out to be incapacitated or even if they repudiate the inheritance – the will becomes inoperative, but it remains valid.
4. Will not containing any dispositive provision (non-dispositive will) – only effect is that the will need not be probated.

(b) Designation of VH

1. The heir must be designated by name and surname.
2. However, even if designation is not by name and surname, the institution is valid if made in a manner that leaves no doubt as to who was instituted by mentioning circumstances that make the institution certain.
3. If the person instituted cannot be identified, e.g., as among the persons having the same sur/names, there is a similarity of circumstances, the institution is inoperative and no one shall be an heir.
4. Latent ambiguity must be resolved by discovering the intent of testator by: (i) examining the words of the will, and (ii) consideration of extrinsic evidence, except the oral declarations of the testator as to his intention.
5. Error in name, surname, circumstance does not vitiate the institution if it is possible, in any other manner, to know with certainty the person instituted.

(c) Disposition in favor of unknown person

1. GR: Void if the person cannot be identified through any available evidence.

XPNS

1. If the identity can become certain by some event or circumstance, the institution is valid if (i) the event or circumstance appears in the will itself. It cannot be shown by extrinsic evidence; and (ii) the heir is capacitated to succeed because he is already living at the time of testator's death. E.g., if the heir instituted is the first born of testator's brother who was not yet conceived at the time of testator's death, the institution is void, since the child does not have the capacity to succeed yet.
2. Disposition in favor of a definite class or group of persons shall be valid if the testator himself already specifies (i) the class or cause and (ii) the specific property or amount of money to be given to them.
3. Disposition in favor of the poor in general without designation of particular persons or community shall be valid – understood to be in favor of the poor living in the locality designated by testator, or in the domicile of testator at the time of his death if there is no designation of locality.
4. Disposition made in general terms in favor of testator's relatives (not of someone else) in form of legacies and devises is valid – understood to be in favor of his nearest blood relatives, excluding farther relatives.

5. Institution for the benefit of the testator's soul if the institution is only in favor of the testator's soul, not of souls in general, or of the soul of another since that person is necessarily dead and can no longer inherit.

(1) Limitations on the Institution of Heirs

1. The will must be extrinsically valid
2. There must be no impairment of the legitimes
3. The heirs must not predecease, must not be incapacitated and must not repudiate the inheritance.

(2) Collective Institution

1. Institution without designation of shares – heirs shall inherit in equal parts with respect only to the DFP (presumption of equality).
2. If the testator institutes some heirs individually and other collectively, those collectively designated shall be considered as individually instituted, unless it clearly appears that the intention of the testator is otherwise (presumption of individuality). E.g., "I designate as heirs A and B and the children of C." The children of C are deemed individually instituted, each entitled to one portion.
3. Institution of siblings – the inheritance shall be distributed equally, even if some siblings were full blood and other were half-blood, unless a different intention appears.
4. Institution of person and his children – institution is deemed to be simultaneously, not successively (presumption of simultaneous institution). E.g., testator institutes B and his four children as heirs. The DFP shall be divided into 5 equal parts, and each shall be entitled to equal share.

Institution to the whole estate

1. If the aliquot portions do not cover the entire inheritance and the testator intended to institute the heirs to the entire estate, each part shall be increased proportionally.
2. If the aliquot portions exceeded the entire inheritance and the testator intended to institute the heirs to the entire estate, each part shall be reduced proportionally.

(3) Proscription Against Successive Institution

(4) Institution Based on a False Cause

GR: An institution based on false cause is still valid and the false cause considered not written.

XPN: Institution shall be annulled if it appears from the face of the will that the testator would not have made such institution had he known the falsity of cause.

Requisites

1. the cause for institution is stated in the will.
2. cause was shown to be false.
3. it appears from the face of will that the testator would not have made the institution had he known the falsity of the cause.

c) Substitution of Heirs

May be simple or fideicommissary

- (a) Simple substitution
- (b) Fideicommissary substitution (see below)

(a) Simple substitution

1. A special kind of institution such that the testator already provides who will inherit in default of the instituted heir due to predecease, incapacity, repudiation.
2. Substitute is subject to the same charges and conditions imposed on the instituted heir. XPNS: (i) contrary provision in the will; (ii) the charges and

conditions are personally applicable to the person instituted.

Kinds

1. Brief – Two or more substitutes for one heir
2. Compendious – One substitute for two or more heirs. GR: substitution will take place only if all of the instituted heirs defaulted. If only some, accretion will take place. XPN: express provision to the contrary.
3. Reciprocal – two heirs are instituted and they are made substitutes for each other.

(1) Causes of Substitution

Predecease, Incapacity, Repudiation **PRI**. If the will is silent on which cases it refers, the substitution refers to all three **PRI**

(2) Fideicommissary Substitution (Compared With Testamentary Trusts)

(a) Requisites to constitute FS

1. A first heir (fiduciary heir) called primarily to the enjoyment of the estate – inherits usufruct.
2. A second heir (fideicommissary heir) to whom the property is transmitted by the first heir – inherits naked title.
3. An obligation clearly imposed upon the first heir to preserve and transmit to the second heir, whole or part of the estate.

Notes

1. If the testator bequeaths naked ownership of property to one heir, and usufruct to another without imposing any obligation to preserve and transmit the property to a second heir, the institution was valid but not FS.
2. If testator gives the usufruct to various persons, not simultaneously, but successively, the requirement for valid FS applies, i.e., first heir must only be one degree detached from the second heir.
3. Not valid if hereditary property was left to a person in order that the latter may apply the same according to secret instructions of the testator. – mode to circumvent the prohibitions under FS or to benefit those DQ to inherit under the law, e.g., paramour.
4. Prohibition for first heir to dispose the property even for >20y is valid since this is the essence of FS. The prohibition may last through the lifetime of the first heir. The prohibition is implied but it may be expressed.

(b) Requisites for validity of FS

1. The FS must be expressly made either: (i) by giving it such name or (ii) by imposing upon the first heir the clear obligation to preserve and transmit the property to the second heir [two modes of creating FS]
2. The FS must not go beyond one degree from the fiduciary heir, i.e., the fiduciary heir can only be the child or parent of the fideicommissary heir.
3. Both the fiduciary and fideicommissary heirs must be living at the time of the testator's death since both of them inherit from the decedent.
4. The FS must not burden the legitime.

(c) Effects

If valid

1. Fiduciary heir is obliged to preserve and transmit the property to the fideicommissary heir.
2. Fideicommissary heir inherits directly from the testator, not from the fiduciary heir. (i) The second heir need not survive the first heir.; (ii) if the

second heir predeceases the first heir the naked title forms part of his estate, subject to the same conditions.

3. Upon death of testator – (i) fiduciary heir acquires usufruct of the property. He may not dispose the same; (ii) fideicommissary heir acquires naked title. He may dispose (or mortgage)²⁸ the property even during the lifetime of the first heir, provided the usufruct of the latter is not impaired.
4. Ownership is consolidated in the second heir upon the termination of the usufruct either (i) as provided by the testator in the will; or (ii) upon the death of the first heir if no such period was specified.
5. The property cannot be the subject of levy or garnishment with respect to a judgment debt against the fiduciary heir since naked title is with the fideicommissary heir.

If invalid

1. FS clause is deemed not written or imposed.
2. Does not affect the validity of the institution of the fiduciary heir, as if a case of original, simple institution.
3. E.g., if the fiduciary and fideicommissary heir are not one degree apart.

(d) c.f.: Testamentary trust

1. A type of trust created as part of last will and testament where the grantor instructs another (executor) to manage and administer his properties and distribute the same to designated beneficiaries according to his instructions.
2. The beneficiaries need not be related to the grantor.
3. The executor acquires no right over the property as he is limited to managing and distributing the same.

11. Legitime

(a) The part of the testator's hereditary estate which he cannot dispose because the law already reserved it in favor of the testator's compulsory heirs (CH).

1. Future legitime cannot be renounced or compromised. Such does not bar the CH from later claiming his legitime upon the decedent's death but he must bring to collation whatever he may have received by virtue of the waiver.
2. In testamentary succession with CH, two kinds of succession take place – (i) compulsory succession with respect to the legitime of CH, and (ii) voluntary succession with respect to the DFP.
3. The right of accretion cannot take place with respect to the legitime.

GR: The testator cannot do anything that will affect the legitime.

1. He cannot deprive the CH of their legitime.
2. He cannot further impose charge, burden, encumbrance, condition, substitution of any kind upon the legitime. Any such imposition shall be considered as not written.

XPNs:

1. Testator may deprive CH of legitime only by way of a valid **disinheritance**.
2. The only encumbrance that the testator may validly impose upon the legitime is the prohibition against **partition** for a period of not more than 20 years.
3. In case of partition **inter vivos** or mortis causa, if the testator wants to keep a family business intact and hence allot the same to only one heir, he may

²⁸ Right to dispose includes the right to mortgage because the latter requires the mortgagor to be the absolute owner

order that the legitime of the other CH be paid in cash.

(b) Computation of legitime

1. Determine the gross estate – in case of married decedent, it should include his $\frac{1}{2}$ share in ACP/CPG which must be liquidated upon his death.
2. Deduct all taxes, debts and charges which are not imposed in the will. The result is the **net hereditary estate (NHE)**.
3. Add the value of all donations by the testator subject to collation, whether in favor of the CH or strangers, the value of which is determined at the time when the donations were made. The result is the **net distributable estate (NHE)**.
4. Compute the legitime and DFP.
5. Impute and charge donations brought to collation against the corresponding portion of the estate (see below).

(c) DFP

1. Disposable free portion (DFP) is the portion of the estate remaining after satisfying the legitime of CH which the testator may dispose of in favor of any one capacitated to succeed. The concepts of institution of heirs, legacies, devises, conditions, apply only to the DFP.
2. As regards the DFP, the testator may – (i) Institute heirs (voluntary heirs or VH), devisees, legatees; (ii) Impose burden, charge, encumbrance, conditions, substitution.
3. The legitime of CH must be satisfied first before the remaining portion can be distributed according to the will.

a) Collation in Connection With the Computation of Legitime

The process of bringing into the mass of the estate, any property or right which an heir or third persons acquires from the decedent during the latter's lifetime by way of donation inter vivos or any other gratuitous act so that the same may be included in the computation of legitimes the account of partition.

1. Purpose is to attain equality among CH.
2. The presumption is that the testator in giving his heir property during his lifetime intended to advance the heir's share in the estate.
3. Value to be collated is the value of the property at the time of donation, not at the time of decedent's death.
4. Collation donation shall be imputed against the corresponding portion of the estate.
- 5.

Imputation of donations

1. Donations given to CH are imputed to the legitime (advanced legitime). XPN: non-collationable donations **NCD** shall be imputed to the free portion. NCD are those wherein the testator provides in his will that the donation given to the heir shall not be imputed to his legitime.
2. Donations given to strangers are imputed to the DFP – may be reduced if inofficious.

Notes

1. In case of representation, the properties received by the parent shall be collated and imputed to the latter's legitime, had they been alive for purposes of computing the share of the grandchildren who inherits by representation in the estate of the grandparents. The right of the grandchildren inheriting by representation cannot be greater than their parent whom they are representing.
2. If the donation was given directly to the grandchild, the property will not be collated and imputed in the legitime of the parent but will be imputed to the free portion.

3. Devise/legacy in favor of CH shall not be charged against the legitime of the recipient heir. The intent of the testator is inequality or to give advantage to the heir so given the L/D. XPN: If the L/D encroaches on the legitime of other siblings.
4. Collated – Election expenses or donations to child's campaign; payment of child's debt.
5. Not collated – Expenses incurred by the parents for the education, medical attendance of children; Customary gifts; Ordinary equipment for education.

b) Table of Legitime

(a) Legitimate decedent

Situation	LC/D	LP/A	SS	ILC	DFP
Only one class survives	$\frac{1}{2}$				$\frac{1}{2}$
		$\frac{1}{2}$			$\frac{1}{2}$
			$\frac{1}{2}$ or $\frac{1}{3}$ [1]		$\frac{1}{2}$
				$\frac{1}{2}$	$\frac{1}{2}$
LC/D with SS	$\frac{1}{2}$		$\frac{1}{4}$ [2]		$\frac{1}{4}$
	$\frac{1}{2}$		1LC [3]		Remaining
LC/D with ILC	$\frac{1}{2}$			$\frac{1}{2}$ LC [4]	Remaining [5]
LC/D with SS and ILC	$\frac{1}{2}$		1LC	$\frac{1}{2}$ LC	Remaining [6]
LP/A with SS		$\frac{1}{2}$	$\frac{1}{4}$		$\frac{1}{4}$
LP/A with ILC		$\frac{1}{2}$		$\frac{1}{4}$	$\frac{1}{4}$
LP/A with SS and ILC		$\frac{1}{2}$	$\frac{1}{8}$	$\frac{1}{4}$	$\frac{1}{8}$
SS with ILC			$\frac{1}{3}$	$\frac{1}{3}$	$\frac{1}{3}$

1. (i) When only surviving CH is the SS, (ii) marriage was in articulo mortis, and (iii) spouse who is at point of death is the testator and (iv) he died within **3 months** from the celebration of marriage. However, the share reverts to $\frac{1}{2}$ if prior to the articulo mortis marriage, the parties lived as husband and wife for more than 5y.
2. If there is only 1LC.
3. If there is more than 1LC, the share of SS is equivalent to 1LC.
4. The share of ILC is $\frac{1}{2}$ the share of an LC.
5. If the estate is insufficient, the legitimes of LC cannot be impaired. The other $\frac{1}{2}$ of the estate shall be divided equally among ILC. Thus, there is no DFP.
6. If the estate insufficient – (i) the legitime of LC cannot be impaired; (ii) the legitime of SS shall have preference over those of ILC; (iii) the remaining portion after satisfying the legitime of LC and SS shall be divided equally among ILC. The ILC will suffer the reduction.

(b) Illegitimate decedent

Situation	LC/D	ILC/D	ILP**	SS	DFP
Only one class survives	$\frac{1}{2}$				$\frac{1}{2}$
		$\frac{1}{2}$			$\frac{1}{2}$
			$\frac{1}{2}$		$\frac{1}{2}$
				$\frac{1}{2}$ or $\frac{1}{3}$	$\frac{1}{2}$
LC/D with SS	$\frac{1}{2}$			$\frac{1}{4}$	$\frac{1}{4}$
	$\frac{1}{2}$			1LC	Remaining
LC/D with ILC	$\frac{1}{2}$	$\frac{1}{2}$ LC			Remaining
LC/D with SS and ILC	$\frac{1}{2}$	$\frac{1}{2}$ LC		1LC	Remaining
ILP with SS			$\frac{1}{4}$	$\frac{1}{4}$	$\frac{1}{2}$
SS with ILC		$\frac{1}{3}$		$\frac{1}{3}$	$\frac{1}{3}$

**Excluded by any kind of child/descendant, il/legitimate.

c) Impairment of the Legitime

Testamentary dispositions which impair or diminish the legitime of CH are inofficious.

1. They may be reduced **upon the petition** of CH concerned.
2. Inofficious dispositions are not reduced by operation of law on ground that it impairs the legitime of CH, the CH must petition for its reduction.
3. Action for reduction of donation may be filed only by CH within 5 years from the time the cause of action accrues (obligation imposed by law).

If the estate is insufficient to cover the legitime

1. First reduce/annul devises or legacies in the will. Donations shall be respected as long as the legitime can be covered.
2. Devises and legacies shall be reduced pro rata without distinction. XPN: when the testator directed a certain devise or legacy to be paid in preference of others, it shall not be reduced until after all other devises and legacies were applied in full to the payment of the legitime (applies if there is concurrence of legitimes, donations inter vivos, and devises and legacies).
3. If the estate is still insufficient to cover the legitime, donations may be reduced/annulled. More recent donations shall be reduced or annulled first.

If the question of preference is exclusively among the legatees and devisees themselves, the preference in payment under Art. 950 applies:

1. Remuneratory legacies or devises.
2. Legacies or devises declared by the testator to be preferential.
3. Legacies for support.
4. Legacies for education.
5. Legacies or devises of a specific, determinate thing which forms a part of the estate.
6. All others pro rata.

***Happens when there is no CH or the testator already provided in his will sufficient property to cover the legitime.*

d) Presumptive Legitime

1. Portion of the ACP/CPG corresponding to the children's legitime which must be delivered to them in case the property regime is liquidated for causes provided under the law.
2. Considered advance in the legitime of children which must be collated to the estate upon the decedent's death.
3. Required to be given upon annulment of a voidable marriage, or declaration of nullity of a void marriage under Art. 40.
4. Computed as of the date of the final judgment of the trial court annulling the marriage or declaring it void.

12. Preterition

Total or complete omission of the CH in the direct line from the will either because he is not named, or although named, is not instituted as heir nor assigned any part of the estate, or total deprivation of his legitime which is unintentional.

a) Requisites

1. The omitted heir is a CH in the direct line, des/ascending.
2. The omission must be total or complete.
3. The omitted heir must survive the testator, unless the omitted heir can be represented by his descendants.
4. The omission must be by reason of mistake, inadvertence, or through oversight, and not intentional.

There is no preterition

1. If the entire estate was not disposed of.
2. There is only partial deprivation of legitime, e.g., CH was given D/L, advance in legitime. Here, the

institution of heirs is not annulled, but the aggrieved heir may demand for the completion of legitime through a petition.

3. The omission was intentional, which is a case of invalid disinheritance.
4. If the SS was omitted since she is not an heir in the direct line.

Effects of preterition

1. The institution of heirs is annulled
2. D/L remain valid if not inofficious.
3. If there are no D/L, the preterition results in total intestacy.

c.f.: invalid disinheritance

1. Requirements – (i) total omission; (ii) the omission was intentional; (iii) the requirements of valid disinheritance were not complied with.
2. The institution of heirs is not totally annulled but limited only to the portion of the estate of which the disinherited heir has been illegally deprived of. The legacies and devisees shall also remain valid insofar as they are not inofficious.

b) Governing Law

National law of the decedent determines who his heirs are and their capacity to succeed. Hence, the national law of decedent also determines w/n there is preterition.

13. Conditional Dispositions and Dispositions

The testator is free to impose any condition, mode, term CMT on testamentary dispositions, whether in the institution of heirs, a devise or legacy, subject to limits provided by law.

1. The power is limited only to the DFP.
2. CMT cannot be imposed in the legitime. Any such imposition shall be deemed not written. XPNs: (i) prohibition to partition for not more than 20y; (ii) in partition **inter vivos** or mortis causa by the testator, he may allot the family business to one of the children to keep it and pay the other legitime in the form of cash.
3. Testator is allowed by law to prohibit the alienation of inheritance for a period of not more than 20y. Any excess shall be invalid – may be imposed on DFP/ legitime.

(a) Conditional testamentary disposition

1. If the acquisition or extinguishment of successional right is made to depend upon happening or non-happening of a future uncertain event.
2. Conditions – (i) Suspensive; (ii) resolutive; (iii) potestative; (iv) casual; (v) mixed; (vi) impossible

(i) Suspensive

1. Successional rights are transmitted only upon the happening of the condition, although its effects retroact to the moment of death of the testator.
2. The heir, legatee, or devisee must be capacitated and alive both (i) at the time of testator's death; and (ii) upon the happening of the suspensive condition.

(ii) Resolutive

1. Successional rights are transmitted immediately upon the testator's death but is extinguished upon the happening of the condition.
2. Upon the happening of condition, the H/D/L loses right to the inheritance and the same passes to – (i) substitute, (ii) other heirs by way of accretion, or (iii) legal heirs.

(iii) Potestative

1. When the fulfillment of the condition depends exclusively upon the H/D/L and must be performed by him personally.

2. Must be fulfilled after testator's death as soon as the H/D/L learns of the death. XPNs – (i) If condition is already complied with; (ii) Condition is of such nature that it cannot be fulfilled again.
3. In case of negative obligation not to do or give something, the H/D/L is entitled to immediate delivery of the property after testator's death upon giving of caucion muciana (security bond). – (i) if bond is not given, property shall be placed under administration until security is given; (ii) if the condition is violated, H/D/L must return the property with fruits and interest to those entitled (substitute, other heir by way of accretion, legal heirs). Otherwise, caucion muciana shall be made to answer the liability.

(iv) *Casual* – fulfillment depends exclusively upon (i) chance or (ii) the will of a third person.

1. Deemed fulfilled if it already occurs, before or after the testator's death, unless the testator provides otherwise.
2. If testator is aware that condition was already complied with at the time of the execution of will. – condition must be fulfilled again unless it is of such nature that it no longer exists or be complied with again.
3. If testator is unaware, the condition is deemed fulfilled.
4. ****Also applies to mixed conditions.**

(v) *Mixed* – fulfillment depends [i] partly upon the will of the H/D/L, and [ii] partly upon (a) chance or (b) the will of a third person.

(vi) *Impossible*

1. Impossible conditions – (i) those contrary to the law of nature (physical impossibility), and (ii) those contrary to law, morals, good customs, public order and public policy (legal impossibility)
2. Shall not affect the validity of dispositions. They are simply considered as not imposed, even if the testator provides the contrary.
3. E.g., prohibition to marry (see below).

(b) Testamentary dispositions with term

1. Term – either an interval of time, or a future certain event.
2. Term may be suspensive or resolutive.

Suspensive term

1. Successional right is transmitted to the HDL immediately upon the death of the testator but the demandability of the same is suspended until the arrival of the day certain designated by the testator. Only the enjoyment or delivery is suspended but not the acquisition of successional rights.
2. If the HDL dies before the arrival of the day certain, his rights in the inheritance is passed onto his own heirs, which must be delivered to them upon arrival of the term.
3. The HDL need to be capacitated and alive only upon the death of the testator, and not upon arrival of the day certain.

Resolutive term

1. The successional right is transmitted to the HDL upon the death of the testator, and the former may immediately demand its delivery.
2. However, such right terminates upon the arrival of the day certain, upon which the inheritance shall pass to the – (i) substitute, if any; (ii) other heirs by way of accretion or (iii) testator's legal heirs.

a) Condition Not to Marry

Considered an impossible condition.

- (a) If condition not to contract a first marriage
 1. If absolute, not valid and deemed not written.
 2. If relative, valid. – may be as to time, person, etc.
- (b) If condition not to contract a subsequent marriage
 1. If absolute, valid if – (i) imposed on the widow(er); (ii) by the deceased spouse or the latter's descendants or ascendants; (iii) imposed on the DFP only not the legitimate.
 2. If relative, also valid.
- (c) If condition to contract marriage with a specific person – valid.

b) Disposicion Captatoria

Conditional testamentary disposition which imposes upon the heir the condition that he make some provision in his will in favor of the testator or of any other person.

1. The condition is not simply disregarded, but the related disposition is rendered void.
2. The validity of the will, and other provisions in it shall not be affected.
3. If the disposition is merely mutual or reciprocal but not conditional, the same is valid.

c) Modal Institution

An obligation imposed upon the HDL which does not affect the efficacy of his successional rights.

1. c.f.: conditional dispositions which affects the acquisition and extinguishment of successional rights.
2. Any obligation imposed by the testator on the institution of HDL is not treated as a suspensive condition, i.e., the HDL acquires successional rights without the need to first comply with the obligation so imposed. However, he must put up a security for the return of the inheritance in case of non-compliance which is a condition sine qua non for the delivery of the inheritance.
3. If not complied, HDL shall return the inheritance (same effect as the happening of resolutive condition) with fruits and interest; otherwise, the security shall be made to answer for the liability or deficiency.

14. Void Testamentary Dispositions

15. Disinheritance

The testator may not deprive his CH of their **legitime**, except by way of a valid disinheritance.

1. The disinherited heir cannot likewise inherit by way of **intestate** succession.
2. Disinherited parent is prohibited from having usufruct or administration of the property which constitutes the legitime.

(a) Right of representation

1. If LC, can be represented by his LC/D, or his ILC/D (no more barrier rule).
2. If ILC, can be represented by his child or descendant, whether il/legitimate.
3. If adopted child, cannot be represented.
4. If sibling, can be represented by his child. – (i) per stirpes if they inherit with aunt/uncles; (ii) per capita if they inherit by themselves. N.B.: only in intestate succession since the sibling is not a CH.
5. If parent or ascendant, cannot be represented.

(b) Requisites for valid disinheritance **WAC TIU**

1. the disinheritance is effected through a valid **will**
2. the legal **cause** for disinheritance is specified in the will
3. the cause must be one of those **authorized** by law
4. the **truth** of the cause must be proven, if denied

5. the designation of the disinherited heir in the will must be of such manner that leaves no doubt as to his **identity**
6. the disinheritance must be **unconditional** and total

(c) Invalid disinheritance

1. Cause not specified
2. With cause but not one of those specified in the NCC
3. The cause was contradicted by concerned heir, and the same was not proven true by the other heirs
4. When not all the requisites of valid disinheritance were complied with
5. ****the institution of heirs shall be annulled insofar as it impairs the legitime of the disinherited heir; legacies, devises, shall remain valid if not inofficious.**

a) Grounds for Disinheritance

(a) All heirs **CASA**

1. Found guilty of **attempt** against the life of testator, spouse, ascendant or descendant (attempt against life)
2. **Accusing** the testator of a crime where the impossible penalty is imprisonment for six years or more, if found groundless or false
3. **Causing** the testator to make a will, or to change one already made by fraud, violence, intimidation or undue influence **FV IU**
4. Unjustifiable refusal to **support**: (i) parents/ascendants, in case of disinheritance of child/descendant; (ii) child/descendant, in case of disinheritance of parents/ascendants; (iii) children or other spouse, in case of disinheritance of spouse

(b) Additional grounds for descendants **DACMa**

1. Conviction of **adultery** or concubinage with testator's spouse
2. Conviction of crime carrying the penalty of **civil interdiction**
3. **Maltreatment** of testator by word or deed
4. Leading a **dishonorable** or disgraceful life. N.B.: this ground is not a ground for the disinheritance of an ascendant

(c) Additional grounds for ascendants **ACLA**

1. **Abandonment** of the child, inducing the child to live a corrupt or immoral life, attempting against their virtue
2. **Conviction** of adultery or concubinage with testator's spouse
3. **Loss** of parental authority for grounds under FC
4. **Attempt** by one of the parents against the life of another parent, unless there is reconciliation

(d) Additional grounds for spouse

1. Spouse has given cause for legal separation
2. Spouse has given cause for loss of parental authority

b) Requisites for the Various Grounds for Disinheritance

c) Effects of Reconciliation

Subsequent reconciliation between the offending and offended person before death of testator

1. **Deprives** the latter of the right to disinherit the former.
2. **Render ineffectual** the disinheritance that may have been made.
3. If the disinheritance is made on a ground that is also a ground for unworthiness, the disinheritance

is rendered ineffectual, and the heir may no longer be declared incapacitated.

**** Reconciliation is the resumption of the genuine cordial relationship between the testator and the offending heir, reciprocally manifested by their actions.**

16. Legacies and Devises

(a) Gift of specific property to the heir, rather than to an aliquot portion of the estate.

1. Devise – if real property. (i) specific/generic. (ii) If generic, valid only if there is such kind of property existing in the estate at the time of testator's death.
2. Legacy – if personal property. (i) specific/generic; (ii) If generic, valid even if there is no such kind of property existing in the estate at the time of testator's death. The same had to be acquired to be given to the legatee.
3. May be charged against – (i) CH, to the extent of DFP given to him; (ii) L/D, to the extent of the value of the property given to him.
4. May be valid or invalid depending on the existence of property at the estate at the time of execution of the will.

Valid if

1. Property is owned by testator at time of will's execution.
2. Property is owned by another, but testator subsequently acquires in furtherance of the L/D.
3. Property is owned by another, and L/D subsequently acquires by onerous title – L/D may claim value from estate. If by gratuitous title, L/D may not claim value from estate.

Void if

1. Property owned by another, and testator erroneously believed the property to be his.
2. Property owned by D/L at the time of will's execution, even if sold.

(b) Legacy re: debt and credit

1. May be (i) legacy of credit where the testator gives a gift of credit to a legatee who is not the debtor; or (ii) legacy of remission of debt where the testator gives a gift of credit to a legatee who is the debtor (condonation).
2. Valid only up to the amount of credit still existing and uncollected at the time of the testator's death.
3. If the testator files an action for collection during his lifetime, the legacy is revoked by operation of law.

(c) Legacy in favor of creditor

1. The testator is the debtor, and he gives a legacy to his creditor.
2. The legacy will not be applied to the payment of the testator's debt and the creditor-legatee is entitled to collect both the credit and the legacy. XPN: Express provision in the will that the legacy constitutes payment of the debt.
3. The creditor is relieved from his duty of presenting his claim against the estate of the testator.
4. However, mere acknowledgement of the debt in testator's will does not exempt the creditor from his duty of presenting his claim against estate. The application of legacy to the debt must be expressly provided.

(d) Dispositions in favor of unknown persons

1. GR – void.
2. XPN – dispositions made in favor of testator's relative in general is valid and shall be understood to be a disposition in favor of the relative nearest in degree.

(e) Revocation by operation of law

1. If the testator transforms the thing bequeathed or devised such that it does not retain either its form or denomination.
2. If the testator alienates the thing or part thereof by any title or for any cause. XPN: if the testator requires the thing by repurchase (pacto de retro), but not by any other cause – (i) the revocation is to the extent alienated, if only part; (ii) the revocation stands even if the D/L later acquires the thing from such 3p.
3. If the property was totally lost during the testator's lifetime, or after testator's death without the fault of the heir (who is obliged to deliver the legacy or devise). The person obliged to deliver the thing shall be liable for eviction if the thing is not determinate.
4. Filing collection suit with respect to legacy of credit, or legacy of remission of debt.

(f) Rule of preference – if question exclusive among legatees and devisees, and estate not sufficient to cover all

1. Remuneratory legacies and devises
2. Preferential L/D, as declared by testator
3. Legacies for support
4. Legacies for education
5. L/D of specific or determinate property forming part of the estate
6. All others pro rata

c.f.: Art. 911

1. Applies if there is concurrence of legitimes, donations inter vivos, devises and legacies.
2. Officious donations shall be respected, reducing/ annulling D/L pro rata to satisfy the legitimes, unless the testator express a preference.

a) Requisites for Validity

1. Property is owned by testator at time of will's execution, or property is owned by another person, not the L/D, and testator is aware of the same.
2. Must not be inofficious.

b) Property Not Owned by the Testator

(a) Whole of the thing belongs to 3p, who is not the L/D

1. Validity of the disposition depends on whether the testator was aware that the thing belongs to another.

Valid

1. If the testator was **aware** that the thing did not belong to him.
2. He may order that the thing be acquired for it to be given as legacy or devise – such order may be express/ implied.
3. Generally, the executor or administrator is obliged to acquire the thing if there is no designation as to who shall make the acquisition. But the obligation may be imposed on a particular HDL.
4. If thing cannot be acquired, the disposition remains valid, and the estate is obliged to give the value of the thing.
5. If the L/D subsequently acquires the thing by any title, the disposition is validated. – (i) if by onerous title, L/D may demand reimbursement from the heir or estate; (ii) if by gratuitous title, L/D may claim anything from the estate.

Void

1. If the testator **erroneously** believed that he owned the thing, or he was not aware that the thing belonged to a third person.
2. XPN: if the testator acquires the thing after execution of the will by whatever title, the disposition is validated.

3. If the L/D subsequently acquires the thing by any title, the disposition is not validated.

(b) Whole of the thing belongs to L/D

1. Disposition is ineffective if thing already belonged to L/D at time of execution of the will, even if he subsequently alienates the same.
2. Disposition is valid if thing does not belong to the L/D at time of execution of the will, but he subsequently acquires the same from the testator – (i) if by onerous title, L/D may demand reimbursement from the heir or estate; (ii) if by gratuitous title, L/D may claim anything from the estate.

(c) Part of the thing belongs to 3p

c) Ineffective Legacies/Devises

If thing already belonged to L/D at time of execution of the will, even if he subsequently alienates the same.

C. Intestate Succession

1. Relationship

Proximity

1. Determined by the number of generations.
2. One generation = one degree.
3. Series of degrees = line, either direct or collateral.
4. Series of degrees among ascendants and descendants, either ascending or descending.
5. Series of degrees among those who are not ascendants and descendants, but who come from common ancestor.

Preference of lines

1. Descending is preferred over ascending.
2. Direct is preferred over collateral.

****Relationship may be full or half blood.**

2. Causes of Intestacy

(a) Total

1. The person died without a will.
2. The will was declared void.
3. The will subsequently lost its "efficacy".
4. The institution of heirs is annulled due to the preterition of CH in the direct line and there are no legacies and devises.

(b) Partial

1. The institution of heirs is annulled because of preterition, but there are legacies and devisees.
2. The will did not dispose of the entire estate of the decedent.
3. When there is vacancy, there being no substitution, representation, accretion, as proper.
4. When there is vacancy due to non-happening of condition, there being no substitution or accretion, as proper.
5. When there is vacancy due to happening of resolutive condition or arrival of resolutive term, there being no substitution or accretion, as proper.

3. Order of Intestate Succession

(a) Legitimate decedent

1. LC/D
2. LP/A
3. ILC/D – concurring
4. SS – concurring
5. BSNN
6. OCR up to 5th degree (consanguinity)
7. State

(b) Illegitimate decedent

1. LC/D
2. ILP only
3. ILC/D
4. SS
5. BSNN

6. State

Distinctions

1. Only legitimate parents are legal heirs of the illegitimate decedent. Other ascendants are not.
2. The illegitimate parents of the decedent are excluded by all kinds of descendant, even illegitimate descendant. They can inherit only in default of all kinds of descendants.
3. ILP can concur only with SS.
4. OCR5 are not legal heirs of illegitimate decedent.
5. Although the illegitimate grandchild can inherit from the grandparent (either by representation or own right), the illegitimate grandparent was not given the successional right with respect to the estate of the illegitimate grandchild.

4. Rule of Proximity and Rule of Equality

(a) Rule of proximity – relatives nearest in degree exclude the more distant ones.

(b) Rule of equality – relatives in the same degree shall inherit in equal shares.

a) Exceptions to the Rule of Proximity and Rule of Equality

(a) Exceptions to the Rule of Proximity – Right of representation

(b) Exceptions to the Rule of Equality

1. Rule of preference between lines.
2. ILC is entitled to half of share of LC.
3. Rule of division by line in the ascending line.
4. Relatives of the full blood shall inherit double than that of the half-blood.
5. Right of representation.

5. Determination of Heirs

(a) Legitimate decedent

(1) The direct line excludes the collateral line, but SS and ILC concur with direct line (preference of lines)

Exclusion	LC/D or LP/A excludes collaterals
Concurrence	LC/D or LP/A concurs with SS, ILC/D

(2) The direct descending line excludes the direct ascending line (preference of lines)

Exclusion	LC/D excludes LP/A			
Concurrence	LC/D concurs with SS, ILC/D			
	Situation	LC/D	SS	ILC/D
	Surviving alone	1		
	With SS	1	1LC [1]	
	With ILCD	1		1/2LC [2]
	With SS and ILCD	1	1LC	1/2LC

1. Regardless of the number of children.
2. If there will be impairment in the legitime of LC, their share in legitimes shall be their share in the intestate succession.
3. Children of decedent always inherit in their own right, and the inheritance shall be divided among them in equal shares even if: (i) they come from different marriages, (ii) one or some are adopted
4. Descendants nearest in degree excludes the more distant ones, subject to the right of representation (see discussion on representation), except in case of repudiation where there is no representation.
5. If there are no representatives – (i) all predecease or were disinherited, the remaining heirs inherit by their own right; (ii) all were incapacitated, the remaining heirs inherit by way of accretion; (iii) all

repudiated, the heir next in degree shall inherit in their own right, per capita.

(3) Barrier/Iron curtain rule.

1. An illegitimate child has no right to inherit ab intestato from the legitimate children and relatives of his father or mother; nor shall such children or relatives inherit in the same manner from the illegitimate child.
2. Subject to ruling in Aquino v. Aquino. ILC may inherit from the estate of his grandparents, even if his parent is legitimate child.
3. Barrier rule applies only in legal succession.
4. In the collateral line – barrier rule remains. (i) LC and ILC of the same parent is barred from inheriting from each other; (ii) ILC of LC cannot inherit from latter's legitimate brother; (iii) ILC cannot inherit from half-brother who was legitimate.
5. If all children are illegitimate, they have reciprocal rights of succession since they all stand on the same footing. Full blood illegitimate sibling's share is double that of the half-blood illegitimate sibling.

(4) In the absence of LCD, the LPA shall inherit.

Exclusion	LP/A excludes collaterals			
Concurrence	LP/A concurs with SS, ILC/D			
	Situation	LP/A	SS	ILC/D
	Surviving alone	1		
	With SS	1/2	1/2	
	With ILCD	1/2		1/2
	With SS and ILCD	1/2	1/4	1/4

1. The rule of proximity applies absolutely since there is no representation in the ascending line.
2. Both parents survive, they will inherit in equal shares.
3. Only one parent survives, the survivor will inherit the entire inheritance.
4. Both parents did not survive – (i) Ascendants nearest in degree shall inherit; (ii) Grandparent/s in both lines survive: inheritance will be divided equally between maternal and paternal lines; (iii) Grandparent/s in only one line survive: inheritance will be given to line where there is surviving grandparent.

(5) In the absence of LCD, LPA and SS, the ILC shall inherit the entire estate.

Exclusion	ILC/D excludes collaterals
Concurrence	ILC/D concurs with SS – ½ each

(6) In the absence of LCD, LPA and ILCD, the SS shall inherit the entire estate, subject to the right of BSNN.

Exclusion	SS excludes OCR5
Concurrence	SS concurs with BSNN – ½ each

(7) In the absence of LCD, LPA, ILCD and SS, the BSNN shall inherit the entire estate.

Exclusion	BSNN excludes OCR5
Concurrence	N/A

1. Full blood BSNN does not exclude half-blood BSNN, this only affects the share of the heirs.
2. The share of full blood BSNN shall be double that of the half-blood. If all are full/half blood, they shall equally share.
3. Barrier rule applicable.
4. Right of representation applicable – (i) if nephews/niece survive with uncles and aunts, they inherit

by right of representation per stirpes; (ii) if nephews/niece survive alone, they inherit in their own right per capita.

(8) In the absence of LCD, LPA, ILCD, SS, and BSNN, the OCR shall inherit the entire estate.

1. Only up to the 5th degree of consanguinity.
2. They inherit only if they are the only surviving class.
3. Rule of proximity is absolute as there is no right of representation among OCR5. The relatives nearest in degree excludes all the others.
4. There is no rule of preference, only rule on proximity. The heirs of the same degree shall inherit without distinction of (a) lines or (b) whole or half-blood relationship.
5. Barrier rule applicable.

(9) In the absence of all intestate heirs, the State shall inherit the entire estate.

1. In the absence of all foregoing heirs, the state inherits.
2. Before the state can take possession, it must file an escheat proceeding under ROC.
3. Heir may file an action for recovery within 5y from time of the delivery of the property to the State.

(b) Illegitimate decedent

(1) The direct descending line excludes the direct ascending line (preference of lines) – same rules with legitimate decedent.

Exclusion	LC/D excludes ILP			
Concurrence	LC/D concurs with SS, ILC/D			
	Situation	LC/D	SS	ILC/D
	Surviving alone	1		
	With SS	1	1LC [1]	
	With ILCD	1		1/2LC [2]
	With SS and ILCD	1	1LC	1/2LC

(2) In the absence of LCD, the ILCD inherits.

Exclusion	ILC/D excludes ILP
Concurrence	ILC/D concurs with SS – ½ each

(3) In the absence of LCD and ILC/D, ILP inherits.

Exclusion	ILP excludes collaterals
Concurrence	ILP concurs with SS – ½ each

1. Other ascendants are not legal heirs.
2. The successional rights between the ILC and the illegitimate grandparent are not reciprocal. While the ILC can inherit in the estate of the illegitimate grandparent by representing his ILP, the grandparent cannot inherit from the estate of the ILC.

(4) In the absence of LCD, ILCD, and ILP, the SS inherits the entire estate, subject to the right of **illegitimate** BSNN.

Exclusion	N/A
Concurrence	SS concurs with BSNN – ½ each

(5) In the absence of LCD, ILCD, ILP and SS, the **illegitimate** BSNN shall inherit the entire estate.

1. Only illegitimate BSNN are the legal heirs of the illegitimate decedent. NN must be children of illegitimate BS.

2. If all are either full or half-blood, they shall share equally. Otherwise, the share of the whole blood BSNN shall be double that of the half-blood BSNN.
3. OCR5 are no longer legal heirs of the illegitimate decedent.

(6) In the absence of all intestate heirs, the State shall inherit the entire estate. – same rules with legitimate decedent.

6. Successional Barrier (the “Iron Curtain Rule”) (See Aquino v. Aquino, G.R. Nos. 208912 and 209018, December 7, 2021)

1. An illegitimate child has no right to inherit ab intestato from the legitimate children and relatives of his father or mother; nor shall such children or relatives inherit in the same manner from the illegitimate child (Art. 992).
2. Modification by Aquino v. Aquino – the illegitimate child now has right to inherit ab intestato from the legitimate parents of their parents, or their grand parents.
3. However, with respect to other legitimate relations, they still have no such right.

7. Successional Rights of Adopted Children

Without distinction to legitimate filiation.

1. They are legitimately filiated to the (i) adopter; (ii) adopter's legitimate parents; (iii) adopter's legitimate siblings; (iv) adopter's legitimate descendants.
2. Adopted child is a grandchild of the adopter's parents.
3. Adopted child is a nephew/niece of the adopter's siblings.
4. Adopted child is a sibling of the adopter's children.
5. Adopted child is a uncle/aunt of the adopter's grandchildren.

8. Successional Rights of Adopting Parents

**See above – also without distinction to legitimate filiation

9. Successional Rights of Marital and Non-Marital Children

**See above

10. Successional Rights of the Surviving Spouse

**See above

11. Successional Rights of Collateral Relatives

**See above

D. Provisions Common to Testate and Intestate Succession

1. Capacity to Succeed

(a) Qualifications to succeed **CLN**

1. Possession of juridical **capacity**, not necessarily capacity to act. XPNs: (i) dispositions for the benefit of testator's soul; or (ii) if favor of the poor.
2. **Not** specially disqualified by law
3. **Living** at the time the succession opens

(b) Determination of capacity

1. Reckoned at time of testator's death.
2. XPN: Testamentary disposition subject to a **suspensive** condition, where the heir must be capacitated to succeed not only at the time of testator's death, but also upon the happening of the condition.

(c) Effects of incapacity

By Reason of Unworthiness	Incapacitated to inherit both voluntary and compulsory heir. Effect if exclusion from the entire inheritance.
By Reason of Morality	Incapacitated to inherit as voluntary heir but does not affect the legitime.
By Reason of Possible Undue Influence	Incapacitated to inherit as voluntary heir but does not affect the legitime.

In testate succession

1. The unworthy heir may be represented with respect to the legitime.
2. If no representatives, the vacant share in the legitime cannot accrue to the co-heirs since there is no accretion with respect to the legitime. Share shall pass to intestate heirs.
3. There is also no representation if the incapacitated/ unworthy heir is an ascendant or SS.
4. If there is a ground for incapacity, the same must be raised to deprive the CH of his legitime.

In intestate succession

1. The unworthy heir may be represented.
2. If there are no representatives, the vacant share may accrue to the co-heirs.
3. If the unworthy heir is a sibling, he may be represented by his children.

(c) Action to declare incapacity

1. May be filed by an interested person (legal heirs).
2. Within 5y from the time the heir takes possession.

a) Incapacity by Reason of Unworthiness and Effects of Condonation

(a) Reasons for unworthiness

1. parents abandoning their children, or inducing their daughter to live a corrupt or immoral life, or attempting against their virtue
2. **accusing the testator** of a crime for which the law prescribes a penalty of imprisonment of six years or more, if found groundless
3. conviction of **adultery** or concubinage with testator's spouse
4. **conviction of attempt** against the life of testator, his spouse, ascendant, descendant
5. **failure** to report to the officers of law the violent death of the testator by an heir of full age, despite having knowledge of the same, within one month after learning the same, unless: (i) the authorities have already taken action; and (ii) there is no requirement under the law to make the accusation.
6. acts which will cause unworthiness in relation to the testator's will, e.g. (i) **causing the testator** to make a will, or to change an existing one; (ii) **preventing** the testator from making a will or from revoking his will; (iii) **supplanting**, concealing, altering testator's will; (iv) **falsifying** or forging the supposed will of the decedent CPSF.

***Same grounds for disinheritance (2) (4) (6). If the problem mentions a will, use grounds for disinheritance, if no mention of will (intestate), use grounds for unworthiness.*

(b) Effects of condonation

1. Cause of unworthiness shall be without effect, whether the condonation is express or implied.
2. Express – The decedent, having knowledge of the cause, condones it in writing.
3. Implied – The decedent, having knowledge of the cause, institutes the offender as **HDL**.

c.f.: in reconciliation in case of disinheritance

1. Reconciliation after execution of will removes the effect of disinheritance. The right is immediately restored if the reconciliation is proved during probate, without need of express act from testator.
2. Pardon after execution of will requires the execution of written pardon to restore the heir's capacity.

b) Incapacity by Reason of Morality

1. those made in favor of persons with whom the testator is guilty of **adultery** or concubinage at the time of making the will.

2. those made in consideration of a **crime** where both the testator and beneficiary were found guilty.
3. those made in favor of **public** officers or employees, his spouse, ascendants, descendants, by reason of the public office.

c) Incapacity by Reason of Possible Undue Influence

1. the **priest** who heard the confession of testator during his last illness, or the minister who extended spiritual help during said time the **priest** who heard the confession of testator during his last illness, or the minister who extended spiritual help during said time
2. **relatives** of said priest or minister up to the **fourth** degree of consanguinity, and the church, order, chapter, community, organization, institution where the priest or minister belongs
3. **guardian** with respect to the ward before approval of the final accounts of guardianship. N.B.: applies when the testamentary disposition was made prior to such approval, even if the testator dies after the same
4. any **attesting** witness to the execution of a will, or his spouse, parent or children, or anyone claiming under such witness, spouse, parent or children, unless there are three other competent witnesses to the will
5. **physician**, surgeon, nurse, health officer, druggist who took care of the testator during his last illness
6. individuals, associations, and corporations **not** permitted by law to inherit

2. Right of Representation in Testacy and Intestacy

Right created by fiction of law, whereby the representative is raised to the place and degree of the person represented and acquires the rights which the latter would have if he were living or if he could have inherited. **It is a qualification in the rule of proximity.**

1. Descendants that are farther in degree may inherit concurrently with descendants of nearer degree if the former represents heirs of the same degree as the latter who predecease, was disinherited, or incapacitated to receive the inheritance.
2. Applies only in succession by operation of law, i.e., (i) in legal succession; and (ii) in testamentary succession only with respect to the legitime.
3. The representative inherits from the decedent, not from the person being represented. Hence, his capacity is determined with respect to the decedent. A person may represent only if he himself is an heir of the decedent.
4. Even if the representative is incapacitated or unworthy to inherit from the person being represented, he can still represent the latter.
5. Generally, division per stirpes. – The representative/s shall not inherit more than what the person they represent would inherit if he were living or could inherit. Representative/s shall divide the latter's share among themselves, regardless of their number.
6. Division per capita only in the following instances (i) in descending line, if all heirs of the nearest degree repudiate; (ii) in collateral line, if niece/nephews survive alone.

(a) Who may represent

1. The representative must always be a degree lower than the person being represented. There is no representation in the ascending line.

In the descending line (in/testate)

1. Grandchildren may represent their parents in their grandparent's estate. They inherit by right of representation, per stirpes.
2. Grandchildren may inherit in their own right from their grandparent's estate, only if all children repudiate. Division per capita.

In the collateral line (intestate only)

1. Niece/nephew may represent their parents in their aunt/uncle's estate. They inherit by right of representation, per stirpes.
2. Niece/nephew may inherit in their own right from their aunt/uncle's estate, only if they survive alone. Division per capita.
3. Barrier rule still applies in the collateral line. The term "relative" in the barrier rule was construed to mean only collateral relatives of the parents, excluding grandparents (Aquino v. Aquino).

(b) Who may be represented

In testacy (legitime only)

1. Only children or descendants of testator may be represented by his children or descendants, subject to the barrier rule.
2. Adopted children cannot be represented by their child in the estate of the adopters.

In intestacy

1. In direct line – the children and descendants of the decedent may be represented.
2. In the collateral line – siblings of decedent may be represented by their children and descendants. (i) if the latter concurs with other siblings of the decedent, they inherit by representation; (ii) if they survive alone, they shall inherit in their own right and not by way of representation. There is no right of representation as to the other collateral relatives.

(c) Representation based on status

Representation of legitimate child

1. May be represented by legitimate descendants (as expressly provided for by law), and by illegitimate descendants (as provided under jurisprudence).
2. Grandchildren, whether il/legitimate may represent their il/legitimate parents in the estate of their grandparents. Following, Aquino v. Aquino, an illegitimate child may now represent his legitimate parent in the estate of the grandparent.
3. Reinterpreted Art. 992. The term legitimate relatives mean only the collateral relatives of the parent, i.e., the illegitimate child is barred to inherit only from the legitimate collateral relatives of the parent to the exclusion of the direct ascendants of his parent.
4. Reinterpreted Art. 992. Term "grandchildren" does not distinguish whether the filiation is legitimate or illegitimate. Formerly, the term "grandchildren" was interpreted to mean only legitimate grandchildren.

Representation of illegitimate child

1. May be represented by legitimate or illegitimate descendant, either with respect to the legitime (Art. 902), or intestate succession (Art. 990).

Representation of adopted child

1. Adoptee may represent the adopter in the estate of latter's parents since the new law on adoption already extended the legal relationship created to the legitimate parents of the adopter. The term grandchildren under Art. 982 now includes adopted children new adoption acts extends the legitimate filiation created by adoption to the **legitimate parents**, siblings and descendants of the adopters.
2. The children of the adoptee may not represent him in the estate of the adopter since the new law on adoption did not extend the legitimate filiation to the adoptee's children.

(d) Causes for representation PDI

1. Predecease, incapacity, valid disinheritance.

2. Representation does not apply in repudiation. –

- (i) In testate succession (legitime), the repudiated share will be distributed following rules on intestate succession. Co-heirs will succeed in their own right, not by accretion since there is also not accretion re: legitime; (ii) In testate succession, accretion applies if there are remaining relatives of the same degree. If all nearest relatives repudiate, the relatives next in degree shall inherit in their own right.

a) Requisites and Limitations

****See above**

3. Right of Accretion in Testamentary Succession and Intestacy

(a) In testamentary succession

1. The right by virtue of which the share of a defaulting heir/D/L is added or incorporated to the share of his co-heirs, co-devisees, co-legatees.

In DFP

1. Cannot take place with respect to the legitime. It can only take place with respect to the DFP, either by express will of testator or by operation of law.
2. Accretion by will will apply if provided by testator. The testator can only choose either accretion or substitution, not both.
3. Accretion by operation of law will apply only if substitution cannot take place. Substitution is preferred over accretion by operation of law since the former is based on the express will of the testator, while the latter is based on his implied will.
4. If there is no substitute designated, and accretion cannot take place in the DFP, the vacant portion shall pass to the legal heirs subject to the same charges and obligations.
5. Hence, with respect to DFP, what applies in case of PRI of an heir is: (i-a) substitution OR (i-b) accretion by will; (ii) accretion by operation of law; (iii) intestate succession.

In legitime

1. Accretion cannot take place with respect to the legitime.
2. If CH PRI, he may be represented by his children/ descendants.
3. If he has no descendants, his share shall go the intestate heirs.
4. Hence, with respect to legitime, what applies in case of PRI of an heir is: (i) representation; (ii) intestate succession.

DFP	Substitution or accretion, not representation
Legitime	Representation, not substitution or accretion
Intestate share	Representation or accretion, not substitution

(b) In intestate succession

1. In intestate succession, vacancies are filled up either by: (i) representation; (ii) accretion by operation of law; (iii) intestate succession.

Cause of vacancy	With REP	Without REP; With co-heirs
Repudiation	Repudiating heir cannot be represented	Vacant share always accrues to co-heirs [a]
Incapacity	Right of representation can take place [b]	Vacant share accrues to co-heirs
Predecease	"	Co-heirs inherit in their own right
Disinheritance	"	Co-heirs inherit in their own right

- a. When all heirs of the nearest degree repudiate the inheritance the relatives next in degree shall inherit in their own right. **This is the only situation**

in our law where the grandchildren can inherit in their own right, per capita.

- b. (i) Incapacitated heir who is child or descendant of the decedent may be represented by his children or descendants, subject to barrier rule. (ii) Incapacitated heir who is a sibling can be represented by his children or descendants if the latter concurs with other siblings (aunt/uncle).

a) Requisites and Limitations

(a) In testamentary succession (accretion by operation of law)

1. There are two or more voluntary heirs, devisees, legatees called to the same inheritance, same portion, or same property (creates a state of co-ownership).
2. There is vacancy in the inheritance as a result of predecease, incapacity, repudiation **PRI**.
3. There is an HDL remaining who survives, capacitated and willing to accept the inheritance.

4. Acceptance and Repudiation of Inheritance

(a) Common provisions

1. Requisites for validity – (i) person accepting or repudiating must be certain of the death of the person from whom he is to inherit; (ii) he must also be certain of his right to inherit.
2. If the heir dies without having accepted or repudiated the inheritance, his right to accept or repudiate shall be transmitted to his heirs.

Who may accept/repudiate

1. HDL who has capacity and free disposal of his property may personally accept or repudiate inheritance.
2. Deaf-mutes who can read and write may accept or repudiate personally or through an agent.
3. Married woman of age may repudiate inheritance without husband's consent.
4. Minor and incapacitated – (i) May accept through parents/guardian; (ii) Parents/guardian may repudiate the inheritance only by **judicial authorization**.

(b) Forms of acceptance

1. Express – made in public or private document.
2. Implied – (i) One resulting from acts by which the intention to accept is necessarily implied, or which one would have no right to do except in the capacity of an heir, e.g., selling, donating, assigning rights, renunciation gratuitously or for a price; (ii) by failure of HDL to accept/repudiate the inheritance within 30d after the court issued an order for the distribution of the estate.

a) Form of Repudiation

NAP

1. By way of notarial or public instrument
2. By way of authentic document, or one whose genuineness is admitted or clearly proved
3. By way of petition presented to court having jurisdiction over the testamentary proceedings

**** Cannot be implied.**

b) Effects of Repudiation Compared to Predecease and Incapacity

(a) Effect of repudiation

1. Repudiation as testate heir carries repudiation of inheritance as intestate heir.
2. Repudiation in as intestate heir, without knowledge of being testate heir, does not carry repudiation of inheritance as testate heir. The heir may later accept the inheritance as testate heir.
3. **There is no right of representation in repudiation.**

4. If all children repudiates, their share shall go the grandchildren in their own right.

In testate succession

1. As to DFP – the following applies, in order: (i) substitution; (ii) accretion; (iii) intestate succession.
2. As to legitime – The vacant part is inherited by the legal heirs in their own right. (i) the heir who repudiates cannot be represented. However, if all the CH in the first degree (children) repudiates, their children (grandchildren) will become CH in their own right [not by representation].

In intestate succession

1. The vacant share shall always **accrue** to his co-heirs of the same degree.
2. If the inheritance is repudiated by all relatives in the nearest degree, those of the following degree shall inherit in their own right.

(b) Effectiveness of acceptance/repudiation

1. Retroacts to the moment of death of the decedent, even if the institution is subject to suspensive condition.
2. Irrevocable, except: (i) when the consent of the heir in is vitiated by VIMFU; (ii) when an unknown will appears.
3. If the repudiation prejudices the rights of the heirs' creditors, the latter may ask that the repudiation be set aside.

OBLIGATIONS AND CONTRACTS

I. Obligations

A. General Provisions

1. Definition

(a) Juridical necessity (b) to give, to do or (c) not to do.

(a) Juridical necessity

1. It is binding and enforceable.
2. There can be recourse to courts to compel its compliance. In case of non-compliance, there are legal sanctions.

(b) Positive obligation – to give, to do.

(c) Negative obligation – not to do.

2. Essential Elements

(a) Vinculum juris; (b) Object/prestation; (c) Subject

(a) Vinculum juris;

1. Efficient cause established by the sources of obligation (see below)

(b) Object/prestation;

1. Particular conduct to be observed by the obligor.
2. To give, to do, not to do.

(c) Subject

1. Active subject – obligee. The party entitled to demand the fulfillment of the obligation. He is not limited to demanding performance, he may also condone, not accept performance, etc.
2. Passive subject – obligor. The party from whom the obligation is judicially demandable. He is limited to the performance of the obligation.

3. Sources of Obligation

(a) Law

1. Not presumed. The law itself must establish the obligation, and determined the occasion under which it can be demanded.
2. Regulated by precepts of the law establishing them. NCC applies suppletorily.
3. Prescriptive period: 10y from accrual of cause of action.

(b) Contract

1. Meeting of minds between two parties whereby one binds himself with respect to another to give something or render some service.
2. Obligations arising from contract have the force of law between the contracting parties and must be complied with in GF.
3. Prescriptive period: (i) if written, 10y from accrual of cause of action; (ii) if oral, 6y.

(c) Quasi-contract

1. Lawful, unilateral, voluntary acts which creates an obligation on the part of the party benefited in favor of another to the end that no one is unjustly enriched at the expense of another.
2. Negotiorum gesti, solutio indebiti, others.
3. Prescriptive period: 6y from accrual of cause of action.

(d) Delict

1. Civil liability ex-delicto. Damage or injury caused to another as a result of the commission of a crime.
2. Arises when: (i) a felonious A/O caused damage to a **private person** (not in public or victimless crimes); (ii) A/O is the proximate cause of the damage.
3. Purpose: reparation, indemnification.
4. Governed by: (i) Penal laws. Art. 100 – every persons criminally liable is also civilly liable; (ii) Art. 2177 NCC – responsibility from fraud or negligence is independent from the civil liability arising from negligence under the penal code. Limitation: **the plaintiff cannot recover twice for the same act or omission**; (iii) NCC provisions on human relations.
5. In case of conviction, civil liability automatically attaches.
6. In case of acquittal – (i) CLExD not extinguished, if based on reasonable doubt; (ii) CLExD extinguished, if court finds that the A/O from which the civil liability may arise did not exist.
7. If accused dies pending appeal – (i) criminal liability extinguished; (ii) civil liability ex-delicto extinguished; (iii) civil liability from other sources e.g., QD) not extinguished. Prescriptive period interrupted during pendency of criminal action.
8. Prescriptive period: governed by RPC.

(e) Quasi-delict

1. A/O causing damage to another, there being fault or negligence, where there is generally no pre-existing contractual relation between the parties.
2. Requisites: (i) Damage to plaintiff; (ii) A/O characterized for fault or negligence; (iii) proximate causation.
3. May arise even in the presence of contractual relation between the parties when the act that breaks the contract is also a tort.
4. Prescriptive period: 4y from accrual of cause of action.
5. If by payment, the insurer is subrogated to the rights of the insured, it merely inherits the latter's cause of action and remaining period for filing of action. In subrogation, the insurer merely steps into the shoes of the insured. The source of obligation is not one from law but QD, the same source of obligation with respect to the insured.

****Enumeration is exclusive.**

Custom or practice

1. GR: Not a source of obligation.
2. XPN: under Art. 100 LC (non-diminution of benefits), benefits voluntarily granted by ER to EE which has ripened to a custom or practice may be legally demanded.

B. Nature and Effects of Obligations

1. Breaches of Obligations

Performance of obligations, in general

1. According to terms of contract
2. In GF (Art. 19)
3. Exercise due care

Performance of obligation to give determinate thing includes:

1. To take care of the thing with the DGFF. XPN: stipulation requires another standard of care.
2. To deliver fruits from the time the obligation to deliver arises. In pure obligations, from time of perfection. In obligations subject to suspensive condition, upon happening of condition. – (i) before delivery, obligee only has personal right; (ii) upon delivery, obligee acquires real right.
3. To deliver accessories, accessions, even if not mentioned.

Causes for breach may be voluntary or involuntary.

Voluntary causes include: (a) delay/mora; (b) fraud/dolo; (c) negligence/culpa; (d) contravention of tenor.

(a) Delay

1. In general – commences from judicial/EJ demand. No demand, no delay. XPNs (when demand not necessary): (i) **law** provides; (ii) **stipulation** provides – it is not sufficient for the obligation to fix a due date, it must additionally provide that upon lapse of due date, default (or its effects, e.g., interest) shall commence; (iii) when from the nature and circumstances of the obligation, the designation of time when the thing is to be delivered or the service is to be rendered, is a **controlling** motive for the establishment of the contract; (iv) when demand would be **useless**, as when the debtor rendered it beyond his power to perform.
2. In reciprocal obligations – upon performance by one party of what is incumbent upon him, delay begins upon the other.
3. Prior EJ demand is not condition precedent for judicial demand. XPN: when EJ demand is jurisdictional, e.g., in unlawful detainer suit. XPN to XPN: if UD suit is based on expiration of lease term.²⁹
4. No specific form is required for EJ demand.
5. Effects of delay: (i) principal obligation becomes due and demandable; (ii) debtor liable for damages (compensatory interest)

Kinds of delay

1. (i) solvendi (debtor); (ii) accipiedi (creditor); (iii) compensatio morae (mutual)
2. Accipiedi – (i) offer of performance by debtor; (ii) offer in compliance with prestation; (iii) unjustified refusal by creditor to accept performance.
3. Compensatio morae – applies in reciprocal obligations: (i) those arising from the same cause; (ii) parties are mutual debtors and creditors or each other, obligation of one is dependent on another, must be fulfilled simultaneously.
4. In CM: (i) once a party performance what is incumbent upon him, delay on the other begins, without need of demand. (ii) XPN: if different

²⁹ Demand in UD case is jurisdictional only if based on non-payment of rent or violation of contract terms.

	periods were fixed for the performance of obligation.
5.	CM is mutual inaction.
(b) Fraud	
1.	Intentional evasion of the normal fulfillment of the obligation.
2.	Responsibility arising from fraud is demandable in all obligations;
3.	Waiver of action for future fraud is void.
Kinds of fraud	
1.	(i) dolo causante; (ii) dolo incidente
2.	Dolo causante is one perpetrated in securing the consent of a party to the contract. Remedy is annulment of contract.
3.	Dolo incidente is one which attended the performance of an obligation arising from contract. Remedy is action for damages. Art. 1170 pertains to dolo incidente.
4.	Not considered fraudulent: (i) usual exaggerations in trade where the other party had the opportunity to know the facts; (ii) mere express of opinion, unless given by expert and other party relied; (iii) misrepresentation by 3p, unless it created substantial mistake that is mutual; (iv) misrepresentation made in GF.
(c) Negligence	
1.	Culpa contractual. Omission of that diligence required by the nature of the obligation, and which corresponds to the circumstances of the persons, time, place;
2.	Responsibility arising from negligence is demandable in all obligations;
3.	Waiver of future gross negligence amounting to fraud is void;
4.	Liability may be regulated by courts according to circumstances;
5.	Unless otherwise stated, DGFF shall be observed;
6.	The effect of negligence is to increase the liability under the obligation, but it does not itself establish the vinculum juris (c.f.: culpa aquiliana)
Involuntary cause; (a) fortuitous event; (b) fault of 3p other than the debtor, or the creditor	
(a) Fortuitous event	
1.	GR: No person shall be liable for those events which cannot be foreseen, or those which though foreseen were inevitable.
2.	XPN: (i) law; (ii) stipulation; (iii) nature of obligation requires assumption of risk; (iv) obligor delays; (v) he promised to deliver the same thing to 2+ persons who do not have the same interest.
3.	Requisites for exemption: UNIF (i) event is unforeseeable or inevitable; (ii) it is of such nature that it renders it impossible to prevent the performance of the obligation in the normal manner; (iii) event is independent of the debtor's will; (iv) obligor is free from participation or aggravation of injury of the obligee.
4.	Concurrent negligence of obligor humanizes the entire event, and he may no longer claim exemption.
5.	Not fortuitous event: (i) motor vehicle mishap due to mechanical defects; (ii) tire blow up.

2. Remedies for Breach of Obligation

Primary remedies

- Obligation to give determinate thing: Specific performance, i.e., to compel delivery.

2.	Obligation to give generic thing: Substituted performance, i.e., to ask that the obligation be complied with at the obligor's expense.
3.	Obligation to do: (i) Failure to do: substituted performance; (ii) Done in contravention of tenor: (1) substituted performance, (2) to undo what was poorly done.
4.	Obligation not to do: To undo what was done at obligor's expense.
In all cases where there is (a) delay/mora; (b) fraud/dolo; (c) negligence/culpa; (d) contravention of tenor: Action for damages.	
Subsidiary remedy; action for rescission	
1.	In reciprocal obligations – the power to rescind is implied when one of the parties failed to comply with what is incumbent upon him.
2.	In other obligations – must be invoked judicially. XPN: automatic rescission clause. EJ rescission is allowed. Other party may go to court for determination of propriety.
3.	When available: in case of substantial breach. Determined on the basis of the unperformed portion. If the non-performance was due to oversight, and merely slight or technical, rescission not allowed.
4.	Nature: subsidiary. It may be invoked only if the primary remedies can no longer be enforced.
5.	Effect: mutual restitution. (i) XPNs: if law or stipulation provides for forfeiture; (ii) presumption of mutual compensation – if the obligation imposes reciprocal prestation, the fruits are deemed mutually compensated.
6.	Injure party may choose between fulfillment and rescission (not both), with damages in either case. He may also choose rescission should fulfillment later become impossible.
7.	Grant of rescission is discretionary upon court. Court shall decree rescission claimed OR fix a period, if there are just cause.
8.	Mutual breach: (i) liability of first infractor shall be tempered; (ii) if first infractor cannot be determined, obligation shall be extinguished and each shall bear his own damages.
9.	Doctrine of anticipatory breach: allows rescission of the contract even before it is due when the obligor has already manifested an unqualified positive refusal UPR to perform the obligation.

C. Different Kinds of Obligations

Kinds

- Based on object: (a) Real; (b) Personal
- Based on condition/term: (c) Pure; (d) Conditional; (e) With a period
- Based on plurality of object: (f) Simple; (g) Conjunctive; (h) Alternative; (i) Facultative
- Based on plurality of subject: (j) Joint; (k) Solidary
- Based on susceptibility of partial performance: (l) Divisible and Indivisible
- (m) With a penal clause

(a) Real

- Kinds: (i) determinate or specific; (ii) indeterminate or generic.
- Contract of sale is real obligation to give; contract for a piece of work is personal obligation to do.

Distinctions	Specific	Generic
Loss	Generally extinguishes ³⁰	Does not extinguish
Accessory obligations	DGFF, fruits, accessories, accessions	None

³⁰ Must be (i) without fault of obligor; (ii) before he incurs in delay.

Primary remedy	Specific performance	Specific or substituted performance
Performance	Cannot demand or deliver of different thing	Kind and quality stipulated. If none, creditor cannot demand superior; debtor cannot deliver inferior

(b) Personal

1. Kinds: (i) positive; (ii) negative.
2. Specific performance not available since it will amount to involuntary servitude.

Distinctions	Positive	Negative
Prestation	To do	Not to do
Breach	Non-performance; poor performance; contravention	Doing what is forbidden
Remedies	(i) Substituted performance, if not purely personal; (ii) Undoing at obligor's expenses; (iii) Damages	(i) Undoing at obligor's expenses; (ii) Damages
Extinguishment	(i) Impossibility of performance; (ii) Fundamental change in circumstance	N/A

(c) Pure

1. Not subject to condition or period.
2. Obligation (i) already exists (not subject to condition); (ii) demandable at once (not subject to period).

(d) Conditional

1. Condition: (i) future, uncertain event; (ii) past event unknown to parties.
2. Acquisition or extinguishment of rights depend upon the happening of condition.
3. Kinds of conditions: (i) suspensive; (ii) resolutive; (iii) potestative; (iv) casual; (v) mixed; (vi) possible; (vii) impossible or unlawful; (viii) positive; (viii) negative

Suspensive

1. Happening of condition gives rise to the obligation. Non-fulfillment prevents the obligation from arising.
2. Effect of fulfillment: (i) existence and demandability retroacts to time of constitution of obligation; (ii) creditor entitled to fruits from the time of perfection of contract.
3. Presumption of mutual compensation – in obligations imposing reciprocal prestation, fruits are deemed mutually compensated.
4. Prior to fulfillment: (i) obligee's interest is merely inchoate; (i) but obligee may bring action to preserve his right;³¹ (ii) debtor may recover what may have been paid by mistake.

Loss, deterioration, improvement

1. Loss³² without fault, obligation extinguished.
2. Loss with fault, obligation converted to damages.
3. Deterioration without fault, obligee bears impairment.
4. Deterioration with fault, obligee may choose: (i) rescission; (ii) fulfillment; (iii) with damages in both.
5. Improvement by nature, obligee benefits.
6. Improvement by expense, obligor only has usufructuary rights.

Resolutive

1. Obligation already exists and demandable at once, extinguished upon happening of condition.

2. Upon happening, mutual restitution. If obligation performed before happening of condition, it becomes suspensive as the debtor with respect to what the creditor is bound to return upon fulfillment of condition.
3. In reciprocal obligations – tacit resolutive condition consists in the non-performance by one party of what is incumbent upon him.
4. Loss, deterioration, improvement – rules applicable in suspensive conditions. Person bound to return is deemed the obligor.

Potestative

1. Fulfillment depends on sole will of a party.
2. On part of obligor and suspensive – obligation is void if imposed on **perfection** of contract, only condition is void if imposed on **fulfillment** of obligation. E.g., Conditional contract of sale, payable with DP and the balance upon acquisition by vendee of road right of way. The potestative condition is imposed on the fulfillment of the obligation, not its perfection. Vendor's remedy is not annulment of contract but an action for the fixing of period for the fulfillment of the condition.
3. On part of obligor and resolutive, obligation is valid;
4. On part of obligee, valid.

Casual, Mixed

1. Casual – fulfillment depends upon (i) chance or (ii) will of 3p. Valid.
2. Mixed – fulfillment depends (i) partly upon will of a party; (ii) partly upon chance or will of 3p.

Doctrine of constructive fulfillment

1. Kinds: (i) of suspensive condition; (ii) of mixed condition
2. Of suspensive condition – (i) applies in mixed condition partly dependent on debtor's will (suspensive); (ii) condition is deemed fulfilled if obligor voluntarily prevents the fulfillment of condition dependent upon him.
3. Of mixed condition – (i) applies in mixed condition partly dependent on debtor's will, and partly on will of 3p; (ii) condition is deemed fulfilled if obligor does all in his power to comply but the condition is not fulfilled because of 3p over which the debtor has no control.

Possible, Impossible

1. Possible – those not contrary to law of nature, or Imgcopp;
2. Impossible or unlawful – (i) physical or legal impossibility; (ii) annuls the obligation or part thereof which depend upon them. Part unaffected remains valid. c.f.: if imposed on donation, deemed not imposed but donation remains valid.
3. Condition not to do an impossible thing is deemed not agreed upon.

Positive, Negative

1. Positive – condition that some event happen at a determinate time, obligation is extinguished: (i) upon expiration of period without fulfillment; (ii) if it becomes indubitable that the event will not take place.
2. Negative – condition that some event not happen at a determinate time, obligation is effective: (i) upon expiration of period without fulfillment; (ii) if it becomes evident that the event cannot occur; (iii) at the time probably contemplated, bearing in mind the nature of obligation, if no time was fixed.

³¹ E.g., registration of his adverse claim since he may be defeated in his right by purchaser in GF and for value.

³² A thing is lost when it perishes, goes out of commerce, disappears in such a way that its existence is unknown or cannot be recovered.

(e) With a period

1. Period: day certain, or future and certain event. That which must necessarily come, although it may not be known when. Only the exact date is uncertain, not w/n it will happen. If latter, conditional.
2. Effect of imposing period: (i) it suspends the demandability (suspensive), or (ii) extinguishes an obligation (resolatory)
3. Presumption – period is established for the benefit of both debtor and creditor. XPN: (i) if terms and circumstances show otherwise; (ii) when debtor loses right to use the period.
4. For benefit of creditor if he can demand payment at any time but debtor cannot pay prior (usually if interest-bearing). For the benefit of debtor if he can pay on or before a specific period but creditor cannot demand earlier payment (e.g., payable “or or before”).
5. Debtor loses right to use the period: (i) he becomes insolvent, unless he gives guaranties/securities G/S; (ii) he does not furnish the G/S; (iii) G/S impaired through his fault, or G/S disappears due to fortuitous event; (iv) he violates undertaking, in consideration of which the creditor agreed to the period; (v) he attempts to abscond.
6. Acceleration clause – usually applies to obligation to pay in installments; render the entire obligation due and demandable upon debtor's default. Valid stipulation.

Kinds: (i) suspensive; (ii) resolatory; (iii) definite; (iv) indefinite; (v) legal; (vi) voluntary; (vii) judicial

Suspensive

1. Suspends the demandability but not the efficacy of the obligation. The obligation shall be demandable only upon arrival of the period fixed.
2. c.f.: suspensive condition which affects the very existence of the obligation. If with suspensive term, obligation exists already, only demandability is suspended.
3. Loss, deterioration, improvement – rules under suspensive condition applies.
4. Remedy before arrival of period – (i) debtor may recover what was paid by mistake with fruits and interests.

Resolatory

1. Demandable at once, terminated upon arrival of term.
2. c.f.: resolatory condition which affects the very existence of the obligation. Upon fulfillment, all effects of the obligation are wiped-out, it is as if the obligation never existed. If resolatory term arrives, the obligation merely terminates, but its effects are recognized.

Definite, Indefinite

1. Definite – known date or time.
2. Indefinite – unknown date or time; certain event. E.g., death of a person

Legal, Voluntary, Judicial

1. Legal – fixed by law.
2. Voluntary – stipulated by parties.
3. Judicial – fixed by courts. Court's may fix if: (i) the obligation does not fix a period but from the nature and circumstances, it can be inferred that a period was intended; (ii) the duration depends upon the will of the debtor (*when the debtor binds himself when his means permit him to do so is one with a period*); (iii) in reciprocal obligations where the non-performance by one party is with respect to time, and just cause exists for the fixing of period (instead of rescission).

4. The period probably contemplated shall be fixed. The obligation cannot be demanded until the period fixed arrives. Otherwise, premature and dismissible on ground of lack of cause of action.
5. When courts not authorized to fix a period: (i) in pure obligations; (ii) in obligations to be performed within a reasonable time – the period was already fixed, i.e., reasonable time, the court can only determine whether the reasonable time had already lapsed.

(f) Simple – only one prestation due

(g) Conjunctive

1. Two or more prestation due;
2. Performance of all is required to extinguish the obligation;
3. Governed by rules on simple obligation.

(h) Alternative

1. Several prestation, and the performance of one is sufficient to extinguish the obligation.
2. Choice produces effect from the moment it is communicated. Irrevocable, obligation is converted to pure. Applies whether right to choose belongs to debtor or creditor.
3. Cognition theory – creditor must gain knowledge of creditor's choice to be effective.
4. In alternative obligation either to pay in money or deliver finished goods in payment for raw materials, the delivery of PDC to seller amounts to election of payment of price.

If debtor has right to choose

1. Right of choice belongs to debtor. XPNs: (i) contrary stipulation; (ii) only one prestation is practicable.
 2. Limitations: (i) creditor cannot be compelled to accept part of one and part of another undertaking; (ii) obligor cannot choose prestation which is impossible, unlawful, or those which could not have been the object of obligation.
- Before choice
3. If debtor deprived right of choice through creditor's fault, he.
 4. Loss of some without fault, debtor may choose from remaining.
 5. Loss of some with fault, debtor may choose from remaining.
 6. Loss of all without fault, obligation extinguished.
 7. Loss of all with fault, creditor entitled to damages based on value of last prestation which disappeared or became impossible.

If creditor has right to choose; before communication

1. Loss of some without fault of debtor, creditor may choose from remaining.
2. Loss of some with fault of debtor, creditor may choose: (i) remaining; (ii) value of any of the thing lost; (iii) with damages in either.
3. Loss of some with fault of creditor, debtor may choose: (i) remaining without damages; (ii) rescind with damages.
4. Loss of all without fault of debtor, obligation extinguished.
5. Loss of all with fault of debtor, creditor may choose price of any, with damages.

(i) Facultative

1. Only one prestation is due, but the obligor may render another in substitution, which was also agreed upon.
2. There must be express agreement as to substitute prestation. Otherwise, the obligation is pure.
3. Right of choice: always with debtor.
4. Loss or deterioration of original prestation: (i) before substitution, obligation extinguished; (ii) after substitution, no effect.

<p>5. Loss or deterioration of substitute: (i) before substitution, debtor not liable (no effect); (ii) after substitution, debtor liable for delay, negligence, fraud.</p> <p>6. Notice requirement – (i) if original prestation to be performed: no need for notice; (ii) if substitute prestation to be performed: notice required. Otherwise, loss of substitute without debtor's fault will not extinguish the obligation.</p> <p>(j) Joint</p> <ol style="list-style-type: none"> 1. Presumption in obligations with multiple subjects: (i) the credit or debt is divided into as many creditors and debtors there are; (ii) each debt is distinct from each other; (iii) each debtor is liable only for a proportionate part of the debt; (iv) each creditor is entitled to demand a proportionate of the debt. 2. Indivisible object – (i) creditors shall act collectively by proceeding against all debtors; (ii) if one debtor is insolvent, others should not be liable for his share (joint and indivisible obligation). 3. “We promise to pay” – sgd. all debtors is joint. <p>(k) Solidary</p> <ol style="list-style-type: none"> 1. Each debtor is liable for the entire debt, and each creditor is entitled to demand the entire debt. 2. GR: an obligation involving multiple subjects is merely joint. XPNs: solidary if (i) stipulation; (ii) law; or (iii) nature of obligation requires solidarity. 3. Indivisibility does not imply solidarity, and vice versa. Indivisibility pertains to the prestation. Solidarity pertains to the vinculum. 4. Solidarity may exist even if creditors and debtors are differently bound as to manner, period, condition. 5. Solidary creditor – (i) may do whatever is useful to other, but not those prejudicial (mutual representation); (ii) cannot assign his credit without consent of others; (iii) may proceed against one, some, all solidary debtors simultaneously and previous demand does not bar subsequent demand so long as debt is not fully collected. 6. Defenses of solidary debtor: (i) derived from nature of obligation; (ii) personal to him, e.g., minority/insanity; (iii) pertaining to his share, e.g., subject to suspensive condition; (iv) personal to others only with respect to the latter's share. <p>Solidarity by express provision of law</p> <ol style="list-style-type: none"> 1. “I promise to pay” – sgd. all debtors is solidary (NIL). 2. Liability of two or more heirs taking possession of the estate. 3. Liability of partners – (i) for loss or injury due to A/O of a partner in the ordinary course of business OCB; (ii) for money, property of 3p misapplied by a partner in OCB. 4. In agency – (i) liability of principal for acts of agent acting under apparent authority;³³ (ii) liability of 2+ principals for all consequence of agency, if they appoint a common agent for a common transaction. 5. Liability of 2+ bailees for the thing loaned in commodatum under the same contract. 6. In quasi-contract – (i) liability of 2+ officious manager, unless management was assumed to save BP from imminent danger; (ii) liability of 2+ payees in solutio indebiti. 7. Liability of joint tortfeasors in QD. 8. Liability of corporate officers acting in BF with corporation for illegal termination of EEs. 	<p>Kinds</p> <ol style="list-style-type: none"> 1. (i) active; (ii) passive; mixed. 2. Active – (i) on part of creditors; (ii) each one has a right to demand fulfillment of the entire obligation; 3. Passive – (i) on part of creditors; (ii) each one is bound to render fulfillment of the entire obligation; 4. Mixed – on part of both creditors and debtors. <p>Extinguishment</p> <ol style="list-style-type: none"> 1. Loss or impossibility of prestation – (i) without fault of debtors: obligation extinguished; (ii) with fault of one or any: all debtors shall be liable for price, damages, interests with right to proceed against guilty co-debtor; (iii) (ii) applies also if loss or impossibility is due to fortuitous event, after one or any debtor incurred delay. 2. Solidary debtor – (i) may pay to any solidary creditor; (ii) XPN: if demand (J/EJ) made by one, payment shall be made to him. 3. Payment by one solidary debtor extinguishes the obligation. If two offers, creditor may choose. GR: Paying debtor entitled to reimbursement from co-creditors, with interest. Share of insolvent debtor shall be borne proportionately by others. XPN: paying debtor not entitled to reimbursement if payment made after debt prescribed or became illegal. 4. Novation, compensation, remission, confusion by a creditor with any debtor extinguishes the obligation. Concerned creditor shall be liable to others for their share. 5. Remission – (i) of debtor's share does not relieve him of obligation to a co-debtor who paid before remission was effected; (ii) of entire obligation obtained by one debtor of the entire debt does not entitle him to reimbursement. <p>(l) Divisible and indivisible</p> <ol style="list-style-type: none"> 1. Divisible if susceptible of division and partial performance; indivisible if not susceptible of division and partial performance. 2. Division is not only physical but also juridical. What determines the divisibility or indivisibility of the obligation is the intention of the parties, or the requirement of the law where applicable. Even though the obligation may be capable of partial accomplishment, the intention of the parties to treat the obligation as indivisible shall prevail. 3. In obligations to give: (i) if determinate thing, indivisible; (ii) if an object which may be physically divided, divisible, unless the law or stipulation provides. 4. In obligations to do: The contract is indivisible, even though the service may be physically divisible, unless the parties or the law provide for the divisibility. XPNs: (i) object is the execution of certain number of days of work; (ii) object is the accomplishment of work by metric units; (iii) object is analogous things which by their nature is susceptible of partial performance. <p>(n) With a penal clause</p> <ol style="list-style-type: none"> 1. (i) An accessory obligation attached by the parties to a principal obligation, (ii) the purpose of which is to ensure its fulfillment, (iii) by imposing upon the debtor, a special prestation, generally in the payment of sum of money, (iv) in case the principal obligation is not fulfilled or is irregularly or inadequately fulfilled. 2. The penalty takes the place of indemnity for damages and the payment of interest. XPNs: SRF (i) express stipulation to the contrary; (ii) if the debtor refused to fulfill the principal obligation and refuses to pay the penalty; he shall be liable
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³³ Even if agent acted beyond authority, if principal allowed him to act as though he had full powers.

for interest in the penalty under Art. 2209 NCC;
(iii) if the obligor is guilty of **fraud** in the fulfillment of the obligation.

3. The debtor cannot exempt himself from the performance of the principal obligation by simply paying the penalty. XPN: express **stipulation** reserving the right to the debtor.
4. If there is a stipulation for liquidated damages, the creditor is no longer required to prove actual damages.
5. The court may reduce the penalty if: (i) there is partial or irregular performance of the obligations; (ii) the penalty is iniquitous or unconscionable, even though there may be no performance at all.
6. When the breach committed by the defendant is not the one contemplated by the parties in agreeing upon the liquidated damages, the law and not the stipulation of the parties shall determine the measure of the damages.

D. Extinguishment of Obligations

1. Payment

a) Concept of Payment

The delivery of money, and the performance of an obligation.

1. Strict compliance with rules for valid payment is required. Otherwise, the creditor may refuse acceptance.
2. If denied, debtor has the burden of proving that payment was made.

Rules for valid payment

- (a) Complete (**integrity of payment**)
- (b) Made by the proper person, who have capacity to make the payment.
- (c) Made to the proper person, who have capacity to receive the payment.
- (d) Must constitute delivery of the very thing or service due (**identity of payment**)
- (e) In proper place.

(a) Integrity of payment

1. GR: The creditor cannot be compelled to accept an incomplete or irregular payment. XPNs: (i) Express stipulation, (ii) Debt is partially liquidated and partially unliquidated.
2. Obligation is extinguished only when it is completely delivered or rendered. XPNs: (i) Substantial performance in good faith, (ii) Waiver by creditor of the balance of the obligation.

[i] Substantial performance in good faith

1. **Substantial** – the omission or deviation is slight, technical, unimportant **STU**.
2. In **good faith** – incomplete performance is merely due to oversight, misunderstanding, excusable neglect.

[ii] Waiver by creditor of the balance of the obligation

1. The creditor may not be compelled, but he may opt to accept partial performance.
2. The waiver must be clear and unequivocal and cannot be presumed by the mere silence of creditor in accepting partial payment.

(b) Proper payor

1. GR: the creditor cannot be compelled to accept payment not made by proper person.
2. Proper payors: **DRAI** – (i) **debtor** or his authorized **representative**; (ii) 3p agreed upon; (iii) 3PIO.
3. 3PIO is one who will be held liable in case of non-fulfillment of obligation. E.g., guarantors, surety, accommodation mortgagors.
4. Creditor cannot be compelled to receive payment from stranger but he may opt to do so. The

payment is valid even if the debtor did not consent, subject to rules on reimbursement.

5. The payor must have free disposal of the thing due and capacity to alienate the same. Otherwise, the payment is not valid, even if the creditor accepts the same. Hence, may be recovered from the creditor.

Distinctions	3PIO	Stranger
Creditor can be compelled to accept	Yes	No
If creditor accepted, full reimbursement?	Yes, W/N debtor consented	(i) Yes, only if debtor consented; (ii) No, if otherwise; reimbursement of beneficial payment ³⁴ only
Subrogation of creditor	Yes, W/N debtor consented	(i) Yes, only if debtor consented; (ii) No, if otherwise

(c) Proper payee

1. Proper payees – **CSA** (i) original **creditor**, (ii) his **successors-in-interest**, (iii) persons **authorized** to receive payment (i) by the creditor, or (ii) by law.
2. GR: Payment not made to the proper payee is invalid. XPNs: **BGA** (i) payment redounded to the creditor's **benefit**, (ii) payment in **good faith** to the possessor of credit; (iii) payment by debtor to creditor prior to acquiring knowledge of **assignment** of credit.
3. GR: Payment to incapacitated person is invalid. XPNs: (i) if he **kept** the thing; (ii) insofar as payment was **beneficial** to him.

[i] Payment redounded to the creditor's benefit

1. Debtor must prove that payment redounded to the creditor's benefit.
2. XPNs (conclusive presumptions that payment redounded to creditor's benefit): (i) if after payment, a 3p acquires the creditor's rights; (ii) creditor **ratifies**; (iii) when by creditor's conduct, the debtor is led to believe that the third person is authorized to received payment.

[ii] Possessor of credit

1. Assignees.
2. Person to whom negotiable instrument was validly negotiated.
3. Holder of bearer negotiable instrument with delivery
4. Holder of bearer negotiable instrument without delivery. N.B.: this is the person contemplated by the exception, the former are successors-in-interest.

(d) Identity of payment

1. Determinate – the thing agreed upon must be delivered.
2. Indeterminate – the creditor cannot demand a thing of superior quality; the debtor cannot deliver a thing of inferior quality (although he may deliver superior)
3. Personal – act or forbearance by debtor cannot be substituted by another against the creditor's will.

Obligation to pay in money

1. Must be in (i) currency stipulated, or (ii) if none, legal tender. Otherwise, the creditor may refuse payment.
2. Legal tender – (i) all notes, (ii) peso coins up to 1,000.00, (iii) centavo coins up to 100.00.
3. Check payment – (i) not legal tender, and creditor may refuse to accept; (ii) it may constitute proof of

³⁴ i.e. reimbursement is only to the extent that the debtor is benefited or released from his obligation

	the obligation; (iii) produces effect of payment if (a) cashed, (b) impaired through creditor's fault.
4.	In case of extraordinary in/deflation – (i) payment may be made on the basis of the currency stipulated at the time of establishment of the obligation; (ii) requisites: (a) official declaration by BSP or competent authorities, (b) obligation is contractual, (c) parties expressly agreed to consider the effects of extraordinary in/deflation.
5.	These apply in the obligation of buyer to pay in purchase price, and of lessee to pay rent.
6.	Foregoing rules apply only for payment of obligation in money but not for the exercise of a right, e.g., tender of check is sufficient to compel the exercise of the right of redemption/first refusal. The tender of payment by check preserves the right. However, the grantee of the right cannot resort to consignment since there is no obligation to extinguish. He may, instead, file an action for specific performance to compel the redemption.
(e) Proper place	
1.	Creditor cannot be compelled to accept payment not in proper place.
2.	GR: Payment shall be made at debtor's domicile . XPNs: (i) express stipulation to the contrary, (ii) if none, wherever the determinate thing may be at the time of the constitution of the obligation.
3.	Costs of collection shall be for the account of the creditor. XPN: when the debtor changes in bad faith, the additional costs shall be charged to the debtor (payment shall still be made at debtor's domicile).
<u>Special forms of payment</u>	
(a)	Dation in payment (see below)
(b)	Cession (see below)
(c)	Tender of payment and consignment (see below)
(d)	Application of payments
(a) Dation in payment	
1.	The alienation of debtor's specific property to the creditor in full satisfaction of the former's debt in money upon agreement of the parties.
2.	Requisites – (i) Original obligation is one for payment of sum of money ; (ii) the debtor delivers specific property in lieu of payment in money; (iii) parties agree to the immediate extinguishment of the debt.
3.	Governed by the law on sales. – (i) consensual, (ii) gross inadequacy in price [debt] does not affect its validity, except that it may be shown that the parties really intended another contract, (iii) warranties of sale apply, except against hidden defect since the property was not new.
4.	Effectively an objective novation. Substitution of the specific property in lieu of sum of money as object of the obligation. However, the mode of extinguishment remains to be payment, not novation.
5.	This mode of payment is not possible unless the creditor agrees since he may not be compelled to accept payment other than in stipulated currency or legal tender.
(b) Cession	
1.	The abandonment of the totality of debtor's property in favor of creditors so that it may be applied for the satisfaction of their credits (assignment).
2.	If the debtor is already under state of insolvency, he may not effect dation in payment in favor of one/some creditors as it will amount to giving preference to the latter, which is not allowed.
(d) Application of payments	

1.	Designation of the debt to which the payment must be applied under conditions set forth by law.
2.	Requisites – (i) only one debtor and one creditor, (ii) several obligations between them, (iii) various debts are of same kind , (iv) all debts are due . XPNs: (a) express stipulation; (b) the application was made by the party for whose benefit the term was constituted; (v) payment insufficient to cover all obligations.
3.	Who may make application: (i) the debtor is given preference which must be exercised at the time of payment; (ii) the creditor, if the debtor fails to exercise; (iii) by operation of law, if neither made the application.
<u>[i] By debtor</u>	
1.	If exercised, irrevocable. If not exercised at time of payment, deemed waived.
2.	Limitations – debtor cannot: VP ILB (i) make application of payment that will violate the agreement; (ii) make partial payments; (iii) apply payment to the principal without paying the interest first; (iv) apply payment to an unliquidated debt; (v) choose a debt with a period established for creditor's benefit prior to the arrival of said period.
<u>[ii] By creditor</u>	
1.	Creditor expresses the application in the receipt.
2.	Debtor assented the application, as shown by his acceptance of receipt without protest.
<u>[iii] By operation of law</u>	
1.	Applies if the debtor fails to exercise the right at the time of payment (waiver), but at the same time objects to creditor's application.
2.	Rules: (i) payment shall be applied to debt most onerous to debtor; (ii) if the debts due are of the same nature and burden, proportionate application.
3.	Most onerous debt – GIOS (i) guaranteed over not; (ii) interest bearing over not; (iii) older debts; (iv) as sole debtor over as solidary co-debtor.

b) Payment by Cession vs. Dation in Payment OD PIPE

Distinctions	Cession	Dation
Transfer of ownership to creditor?	No. Only possession and administration are transferred.	Yes
Effect of delivery	Obligation not yet extinguished. The delivery merely transfers possession and administration of the properties for purposes of sale from which proceeds the debt will be paid.	Extinguishment of obligation
Plural creditors required?	Yes	No
Debtor insolvent?	Yes	No
Property involved	Totality of debtor's properties	Specific
Extinguishment of obligation	Only to the extent of the net proceeds of the thing assigned, unless there is contrary stipulation.	Yes, unless parties agree otherwise.

c) Tender of Payment and Consignation

Consignation is the mode of extinguishing the obligation, but it must be preceded by a valid tender of payment, unless excused.

(a) Tender of payment

- Offer by creditor to pay the obligation in a proper manner – (i) in **strict compliance** with the rules regulating payment, and (ii) in **good faith**.
- If tender is valid – (i) does not per se produce the legal effects of payment, unless completed by

- consignation; (ii) but debtor is exempt from payment of compensatory interest and/or damage; (iii) if monetary interest is agreed, it continues to accrue until valid consignation is made; (iv) if refused, creditor is in mora accipiendi.
- Judicial/extra.

When excused **AUDIT RL**

- Creditor is **absent**.
- Creditor is **unknown**.
- Creditor **did** not appear in the place of payment.
- Creditor is **incapacitated** to receive payment at the time the obligation is due.
- Creditor unjustly **refuses** to issue receipt.
- Two** or more persons claim the right to collect. – interpleader is alternative remedy.
- Title to the obligation is **lost**.

(b) Consignation

- Placement/deposit of amount due at court's **disposal** after a valid tender of payment, or the same is excused.
- Consignation is always a judicial act. In case of conflict of jurisdiction over court and administrative body, court will have jurisdiction.
- The act which can produce the extinguishment of the obligation.

Requisites of valid TP&C **DANDN**

- There is debt **due**. – (i) consignation is not proper if payment is made as an incident of exercise of a right, e.g., redemption/first refusal. The remedy in the latter is action for specific performance; (ii) but buyer may resort to TP&C re: his obligation to pay purchase price.
- Creditor unjustly refused to **accept**, or any of the exceptions are present **AUDIT RL**.
- Previous **notice** to 3PIO of debtor's intent to resort to consignation. – mandatory requirement.
- Consignation. – by filing an action for consignation and simultaneously depositing the amount due.
- Notice** to 3PIO after consignation was made.

Debt is extinguishment when:

- The creditor **accepts** consignation without objection.
- The court **declares** consignation validly made in accordance with law if the creditor objects.

****Effect of payment retroacts to the day when deposit was made.**

Withdrawal

- Matter of right before extinguishment of debt (by creditor's acceptance or court declaration).
- Afterwards, only upon creditor's consent. If he consents – (i) he loses every preference over the thing, (ii) guarantors, sureties, co-debtors are released.

2. Loss of the Thing Due

a) Concept of Loss

- In obligations to give. – loss is a mode of extinguishment only as to (i) determinate things, (ii) delimited generic things. *Genus nunquam perit*.
- In obligations to do – the object is not lost but it may also be extinguished if: (i) its performance become impossible, or (ii) so difficult as to be manifestly beyond the contemplation of the parties.

(a) In obligations to give

- A thing is lost – (i) when it perishes, (ii) when it goes out of commerce, or (iii) when it disappears in such a way that its existence is unknown or cannot be recovered.

(b) In obligations to do: extinguished if

- The obligation becomes physically or legally impossible, without debtor's fault (Impossibility §1266)
- The performance of the obligation has become so difficult as to be manifestly beyond the contemplation of the parties (Difficulty §1267)

b) Requisites

(a) In obligations to give determinate thing

To extinguish the obligation

- The loss must be **without** the fault of the debtor. – loss either due to: (i) Force Majeure (see below), (ii) fault of 3p, or (iii) fault of creditor. The debtor in possession of the thing disputable presumed at fault, except in cases of calamity.
- The loss happened before the debtor incurred **delay**.
- There is **no** law or stipulation holding the debtor liable even in case of fortuitous events, and the obligation does not require assumption of risk.

Loss due to fault of 3p

- The creditor acquires all the rights of action which the debtor may have against 3p by reason of the loss.
- If the object is lost before delivery, the debtor remains the owner of property, but the law gives the creditor a right of action against 3p causing the loss. Otherwise, he will be placed at the mercy of the debtor who no longer had interest in fulfilling the obligation.
- If third person indemnifies the debtor for the loss, he must deliver what he has received to the creditor.

(b) In obligations to do

Impossibility §1266

- Requisites – (i) performance of the obligation is possible at the time of perfection of the contract; (ii) the impossibility came about only during consummation stage.
- If the obligation is impossible at conception, the contract is void for contemplating the rendition of an impossible service. §1266 only contemplates supervening impossibility.
- Applies only in obligations to do.

Difficulty §1267

- Doctrine of unforeseen events.
- Rebus sic stantibus*. – Legal doctrine allowing for a contract or a treaty to become inapplicable because of a **fundamental change in circumstances FCC**.
- Requisites. – **FUNDE** (i) the event or circumstance is **unforeseen** at the time of perfection of contract; (ii) the event is of such **exceptional** or extraordinary character; (iii) it renders the performance of the obligation extremely **difficult** as to be manifestly beyond the contemplation of the parties, *but not impossible*; (iv) **not** due to the act of any of the parties; (v) contract is for a **future** prestation
- Circumstances not considered EO by courts – (i) The 1997 Asian financial crisis; (ii) The 1983 Ninoy Aquino assassination.
- COVID-19 pandemic may be invoked as an EO circumstance, but it is available only in obligations to do, not to give. E.g., it cannot be invoked to execute payment of rent, which is an obligation to give a generic thing.
- Risks that are: (i) merely ordinary, (ii) already known to parties at the time of perfection, (iii) should have been known to them, will not cause the extinguishment of the obligation.
- The event must always be unforeseen. If unavoidable, though foreseen, it will not cause

extinguishment of the obligation since the parties should have factored in the foreseen risk.

c) Force Majeure

Requisites: UNIF

1. The event must be **unforeseen** at the time of the execution of the contract, or if foreseen, it is unavoidable.
2. The event is of such **nature** that it renders the performance of the obligation impossible in the normal manner.
3. The event must be **independent** of the will debtor.
4. The debtor is **free** from any participation or aggravation of the injury.

Obligation is not extinguished if:

1. The **law** provides.
2. **Stipulation** of the parties provides.
3. The **nature** of obligation requires the assumption of risk.

Instances when debtor remains liable even in case of FM

1. When the obligor **delays** or has promised to deliver the same thing to two or more persons who do not have the same interest.
2. In every case of possession in **bad faith**.
3. When a **borrower** in commodatum: (i) uses the thing other than for the purpose for which it was intended; (ii) delays in returning the thing; (iii) receives the thing under appraisal; (iv) lends the thing to a third person; (v) saves his thing instead of the thing borrowed.
4. When a **depository**: (i) uses the thing without depositor's permission; (ii) delays in returning the thing; (iii) allows another to use the thing.
5. When a negotiorum gestor: (i) undertakes risky operations which the owner is not accustomed to; (ii) prefers his interest over that of the owner; (iii) delays the return of the business or property after demand by owner; and (iv) assumed the management in bad faith.
6. When the obligation to deliver a determinate thing arose from a criminal offense, unless there is mora accipiendi,

3. Condonation

The gratuitous renunciation by the creditor of the debtor's debt and accepted by the latter.

1. May either be: (i) donation inter vivos, or (ii) legacy.
2. Requisites – (i) Must be **gratuitous**, (ii) Obligation must be **demandable**, (iii) Debtor must **accept**; (iv) Must follow the **formalities** depending on its effectivity; (v) Must not be **inofficious**.

Acceptance

1. (i) If donations inter vivos, during creditor's lifetime. (ii) If legacy, after creditor's death.
2. Unilateral cancellation of debt is not a mode of extinguishing obligation. The debtor must accept. If the debtor refuses, he may resort to consignment.
3. Condonation takes effect once the debtor's acceptance was made known to the creditor.
4. If donations inter vivos, and debtor accepts during creditor's lifetime, the creditor may no longer file an action for collection since the condonation already became effective.
5. If legacy, and debtor accepts during creditor's lifetime, the creditor may still file an action for collection since the condonation revocable during his lifetime. Filing an action for collection amounts to revocation of legacy by operation of law.

Formalities

1. If donations inter vivos, Arts. 748 and 749
2. If legacy, formalities of wills and testament.

****Applies only in cases of express condonation.**

Presumption of condonation (implied)

1. If an instrument of credit is found in the possession of the debtor, voluntary delivery of the same by creditor is presumed.
2. The voluntary delivery gives rise to the presumption of condonation.
3. This kind of condonation **need not comply** with the formalities of a donation.
4. It may be disputed by proof that the creditor did not voluntarily deliver the debt instrument.

4. Confusion

The meeting in one person of the qualities of creditor and debtor with respect to the same obligation.

Requisites

1. Merger must occur in the person of the **principal** creditor and principal debtor.
2. Must be **complete** and definite.

E.g., if a debtor re-negotiates a NI after reacquiring the same, a new obligation is created since his former obligation is already extinguished by confusion.

5. Compensation

A mode of extinguishing obligations (i) to the **concurrent** amount of debt; (ii) of persons who are mutual creditors and debtors of each other, in their own right and as principals

MOP

1. Kinds: (i) Legal, (ii) Voluntary, (iii) Judicial, (iv) Facultative.
2. In all kinds of compensation, the parties are mutual debtors and creditors in their own right and as principals (confluence of characters) – minimum requirement.
3. Facultative compensation is one which is set-up by the party who can oppose the same, e.g., (i) in an obligation with a period established for the debtor's benefit (pay or or before), only the debtor may set up compensation who is indebted to the former in his own right.
4. Legal compensation may be waived.

a) Requisites

Legal compensation

1. The parties are mutual debtors and creditors of each other in their own rights and as principals. – applicable to bank-depositor.
2. Identity of debts. – (i) sum of money, (ii) consumable things of the same kind and quality.
3. Debts are due. – debt already matured.
4. Demandable and liquidated. – (i) demandable: enforceable through court action; (ii) liquidated: there is no longer any controversy as to the existence and the amount of the debt (or amount is determined or determinable by mere inspection of the terms of agreement).
5. No lien, retention, suit, controversy initiated by 3p and communicated to debtor in due time. – (i) "due tile" – before legal compensation takes place by operation of law; (ii) may happen if a 3p acquires the credit of one of the mutual creditors. If the debtor is notified of the acquisition of credit before legal compensation takes place, the latter is prevented. Otherwise, the 3p loses right to collect since obligation is already extinguished by legal compensation.

****Legal compensation takes place by operation of law to the extent of concurrent amounts of debt upon concurrence of the elements.**

b) Compensation of Rescissible and Voidable Debts

1. Rescissible and voidable debts are valid and enforceable until rescinded or annulled, hence,

- they may be the subject of compensation before such rescission or annulment.
- However, a natural obligation is not compensable since it is not legally demandable.

c) Non-Compensable Debts

- One of the debts arose from **depositum** (Art. 1287).
- One of the debts arose from the obligations of a depositary, or of a bailee in **commodatum**.
- One of the debts arose from a claim for **support** due by gratuitous title.
- One of the debts consist in civil liability arising from penal offense, **ex-delicto** (Art. 1288).
- One debt consists in the claim of **government** for payment of taxes.

6. Novation

a) Concept of Novation

A mode of extinguishing the obligation by the **substitution or change** of the obligation by a **subsequent** one which extinguishes or modifies the former, either (i) by changing the object or the principal conditions; (ii) by substituting another person in the place of the debtor; (iii) by subrogating another in the rights of the creditor.

Important kinds:

- Objective and Subjective. (i) Objective novation changes the object or principal conditions. Incidental changes do not cause novation, e.g., change in interest rate, period of payment; (ii) Subjective changes either or both parties.
- Subjective novation by changing the debtor's person – (i) expromision, (ii) delegacion.
- Subjective novation by changing the creditor's person – subrogation (i) conventional, (ii) legal.

b) Expressed and Implied Novation

(a) Express novation: the new obligation declares in unequivocal terms that the old obligation is extinguished, and the new obligation is created in substitution thereto.

(b) Implied novation

- There is no express extinguishment of the old obligation, but the new obligation is **incompatible** with the old one on every point.
- Test of incompatibility – (i) Whether the two contracts can stand together, each one having an independent existence; (ii) the incompatibility must take place in any of the **essential elements** of the obligation (object, cause, principal conditions). Otherwise, the change merely modifies the old obligation without extinguishing it.

(1) Requisites

PANE

- Previous** valid obligation – includes (i) voidable [ratified, or at instance of debtor]; (ii) natural obligations [novation converts it to civil obligation]
- Agreement** of the parties to new contract – must not involve the same parties to the old obligation, without the addition of new parties.
- Extinguishment** of old obligation, either expressly or impliedly (see above)
- Validity of **new** contract. If void, the old obligation is not extinguished because the new contract produces no effect. XPN: if the parties intend the old obligation to be extinguished in any event.

c) Expromision and Delegacion Distinguished

Novation by substituting the person of the debtor.
Common requirements

- Old debtor must be **expressly released** from obligation, and the new debtor must assume his place. Otherwise, the new debtor is considered merely as co-debtor or surety.

- Creditor's consent** is required at all times. – (i) may be expressed or implied; (ii) if consent is implied, it must be inferred from facts which show that his acts are already incompatible with the existence of the old obligation.
- Creditor's consent cannot be implied from his act of receiving payments from the 3p without protest.** – (i) the act is not incompatible with the existence of the previous obligation since the creditor may accept payments even from a stranger; (ii) no valid novation; (iii) the original debt exists which may be enforced against the original debtor.

(1) Consent Required

Distinctions	Expromision	Delegacion
Consent required	New debtor and creditor	Old debtor, new debtor, and creditor
Old debtor	Even without his knowledge or against his will. He ceases to be party to the obligation.	With his knowledge and consent. His obligation is extinguished.
Right to reimbursement	(i) If OD consented, for full amount; (ii) if OD did not consent, only to the extent he is benefited.	New debtor is entitled to full reimbursement
Initiated by	New debtor, generally	Old debtor

(2) Effect of Insolvency of New Debtor

Expromision	Delegacion
OD's obligation is not revived in any case.	OD's obligation is revived if the insolvency is existing at time of delegation and: (i) of public knowledge, or (ii) known to old debtor

d) Legal and Conventional Subrogation

Subrogation is the transfer of all the rights of the creditor to a third person who substitutes him in his right.

(a) Legal subrogation

- Takes place by operation of law as a result of certain acts.
- Instances: (i) Creditor pays a preferred creditor, even without debtor's consent; (ii) 3p not interested in the obligation pays with debtor's consent, express or implied; (iii) 3PIO pays, even without debtor's consent.
- The instances are exclusive. There is no legal subrogation, unless provided by law.

(b) Conventional subrogation

- Takes place by agreement of parties.
- Consent of all parties is required: old creditor, new creditor, debtor.
- Constitutes a new contractual relation.
- c.f.: assignment of credit – debtor's consent is not required.

Distinctions	Conventional subrogation	Assignment of credit
Parties	Old creditor, new creditor, debtor	Assignor (old creditor), Assignee (new creditor)
Essence Test: intent	Parties' intent is that agreement is not valid and effective absent debtor's consent	Parties' intent is to transfer creditor's right to 3p without requiring debtor's consent for validity
Debtor's consent	Necessary	Not necessary. He is not a party to the assignment
If debtor did not consent	No conventional subrogation	May not be treated as assignment of credit
Form of novation?	Yes	No
Extinguishment of old obligation?	Yes. Debtor's obligation to the new creditor extinguishes his obligation to the old creditor.	No. The same right just passes to the assignee. The debtor's obligation is not extinguished. No new obligation is created

Nullity of old obligation	May be cured by subrogation; new obligation can be perfectly valid.	Nullity of obligation cannot be cured by assignment.
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II. Contracts

A. General Provisions

1. Definition of a Contract

The meeting of minds between two parties whereby one binds himself with respect to another to give something, or to render some service.

2. Elements of a Contract

a) Essential elements

Elements necessary for the very existence of the contract.

1. Consent
2. Object
3. Cause
4. Delivery (for real contracts)

b) Natural Elements

Elements which are not essential for the perfection of the contract, but are presumed to exist, unless suppressed by stipulation of the parties.

1. E.g., warranties in contract of sale.
2. c.f.: Accidental elements are those not deemed to exist, except when the parties expressly provide for them, e.g., stipulation on interest.

B. Basic Principles of Contracts OMAR

1. Obligatory Force of a Contract

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

1. Applies if contracts are **perfected, valid, enforceable**.
2. Applies only to perfectly valid, rescissible [before rescission], and voidable [before annulment] contracts since these contracts are obligator.
3. However, not the unenforceable or void contracts, which are not obligatory.

2. Freedom to Stipulate (Autonomy of the Will) and its Limitations

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

1. Right to contract is constitutionally protected by (i) due process clause, and (ii) non-impairment clause.
2. Parol evidence rule respects the autonomy of will. When the terms of an agreement was reduced in writing, it is considered as containing all the terms agreed upon and there can be no evidence of such terms other than the contents of the written agreement between the parties, their heirs and assigns.

Limitations

1. Certain types of contracts cannot be the subject of stipulation, e.g., marriage.
2. Certain types of contracts are subject to state regulation, e.g., contracts of employment.

3. Binding Effect of a Contract

Contracts must **bind** both parties, and their **validity** or **compliance** cannot be left on the will of one of them. **BVC**

1. Principle of mutuality. – A contract subject to a condition whose fulfillment is dependent solely on the uncontrolled will of another party (prottestative) is void.
2. E.g., unilateral interest escalation clause is invalid for violating the mutuality of contracts, unless based on objective standard/s.

3. Contracts of adhesion are valid. Ambiguity shall be construed against the drafting party.

4. Privity of Contract

a) Concept

Contracts only bind the parties, their heirs and assigns.

1. Principle of relativity.
2. It cannot favor or prejudice 3p even if the latter is aware of the contract and has acted with its knowledge.
3. However, heirs and assigns are not bound if the rights and obligations arising from the contract are **not transmissible** by: **NSL** (a) **nature**; (b) **stipulation** of parties; (c) provision of **law**, e.g., commodatum: purely personal in character. The death of either party extinguishes the contract.

b) Exceptions to the Rule on Privity of Contracts

STAR

- (a) *Stipulation pour autrui*.
- (b) Contracts creating real rights.
- (c) *Accion pauliana*.
- (d) Tortious interference.

(a) *Stipulation pour autrui*: upon acceptance, a 3p is given the right to proceed against the parties to a contract and demand its fulfillment, even though he is not a party to the said contract. Requisites: **SCARP**

1. A contract contains a **stipulation** conferring favor to a 3p.
2. The favor is **clear** and deliberate, not merely an incidental benefit.
3. The stipulation is **merely part** of the contract, not the whole of it.
4. The 3p benefited communicated **acceptance** of the benefit before its revocation. – (i) revocation may be made before acceptance; (ii) requires consent of both parties since the stipulation is part of their agreement.
5. Neither party acted in legal **representation**, or under authorization or as an agent of the 3p. Otherwise, the 3p is actually a party to the contract.
6. The favorable stipulation was **not** compensated by any obligation.

**May either be gratuitous or onerous.*

***E.g., stipulation in favor of credit card holder, re: contract between a restaurant and cc company.*

(b) Contracts creating real rights

1. Third persons who coming into possession of the object of the contract become bound.
2. E.g., recorded lease, registered mortgage. The buyer of real property which was later foreclosed for the debt of previous owner cannot invoke relativity of contract to resist enforcement against the property bought. He is bound by the REM.

(c) *Accion pauliana*: subsidiary right of a creditor to rescind contracts entered by his debtor with 3p if intended to defraud him. Requisites: **CDLAF**

1. Plaintiff has credit which pre-existed the alienation by debtor although demandable thereafter.
2. Debtor subsequently conveyed his property to 3p.
3. Creditor has no other legal remedy to enforce his claim.
4. The conveyance is fraudulent.
5. 3p transferee by onerous title was an accomplice to the fraud. N.B.: IPV is protected, creditor's remedy is a personal action against the debtor.

(d) Tortious interference: if a 3p induces another to violate his contract, he shall be liable to the other contracting party for damages. Requisites:

1. Existence of a **valid** contract.

2. 3p **knew** of the existence of the contract. – however, he need not know the identity of parties or of the injured party.
3. 3p interfered with the contract without legal cause or justification. – **legitimate business objective** is considered a legal cause for interference, e.g., offering higher salary to competitor's EE, offering products at lower cost (fair competition).

5. Consensuality of Contracts

a) Concept and Coverage

Contracts are perfected by mere consent, i.e., upon the meeting of the minds of the parties as to the object and the consideration.

1. From the moment of perfection, a contract is valid and enforceable, therefore obligatory.

b) Exceptions

(a) Real contracts

1. Require delivery of the object for perfection.
2. Commodatum, mutuum, depositum.
3. E.g., a bank loan (mutuum) is not perfected until the proceeds are deposited to the borrower's account. The deposit/delivery cannot be compelled as it is not an obligation arising from the contract but an essential element of it and the perfection of contracts cannot be compelled. The borrower's remedy is an action for damages but not specific performance.

(b) Solemn contracts: require the execution of proper form for validity. **DPACAS**

1. **Donations** inter vivos of personal property >P5k must be writing, private or public (both offer and acceptance).
2. Donations inter vivos of real property regardless of value must be in public instrument (both offer and acceptance). – (i) Acceptance may be made in the same or separate instrument; (ii) if made in separate instrument, subject to requirement of notification and notation.³⁵
3. Donations propter nuptias of present property must comply with formalities of ordinary donations (see above).
4. Express condonation to take effect during creditor's lifetime must also comply with formalities of ordinary donations (see above).
5. Contract of **partnership** where real property is contributed as capital must be in a public instrument and inventory of the real property/ies contributed, signed by the partners attached thereto.
6. **Authority** of the agent to sell a parcel of land or any interest therein must be in writing. – the contract sale need not be in writing.
7. Stipulation in contracts of **carriage** limiting the liability of the common carrier for loss, destruction, deterioration of goods to a degree less than extraordinary diligence, must be in writing signed by the shipper or owner.
8. In **antichresis**, the amount of principal and the interest must be specified in writing.
9. Contract of **sale** of large cattle must be registered with city/municipal treasurer and a certificate of registration or transfer must be issued.

(b) Forms for enforceability

1. Contracts covered by SOF (see below)

(c) Forms for convenience

1. Requirement not for validity but for convenience of parties.

2. The parties may compel each other to observe the required form, provided the contract is: (i) perfected, (ii) valid, (iii) enforceable. This may be exercised simultaneously with an action on the contract.
3. E.g., (i) oral REM, (ii) oral sale of land that is already partially executed, or (iii) oral sale of land in private instrument.
4. But not applicable in executory oral sale of land since it is not enforceable (covered by SOF).

Must appear in public instrument **OP Cha**

1. Acts or contracts which have for their **object** the **CTME** creation, transmission, modification, extinguishment or right over immovable properties. E.g., REM
2. Cession, repudiation, renunciation of **hereditary** rights or those of conjugal partnership of gains.
3. **Power** to administer property, or any other power which has for its object, an act appearing or should appear in a public instrument, or which should prejudice third persons.
4. Cession of **action** or rights proceeding from an act appearing in public document.

****All other contracts where the amount involved >P500 must be in writing.**

c) Reformation of Instruments

Equitable remedy, whereby a written instrument is made or construed to express or conform with the real intention of the parties, where some **error or mistake** has been committed.

1. Proper in contracts appearing as pacto de retro sale, but in reality, is an equitable mortgage.
2. Also, in relatively simulated of contracts.

Requisites

1. There must be **meeting** of minds.
2. The instrument did not **express** the true intention of the parties.
3. The failure of the instrument to express the true intention of the parties is due to mistake, fraud, inequitable conduct, or accident **MIFA**. – mutual misake of fact proven by clear and convincing evidence.

Instrument may not be reformed if:

1. **MIFA prevented** the meeting of minds of the parties.
2. In **simple** donations inter vivos, where no condition is imposed.
3. In wills.
4. Where the real agreement is **void**.
5. When one of the parties already brought an action to **enforce** the instrument, he may no longer ask for its reformation.
6. Contract is unenforceable due to non-compliance with **SOF**.

C. Essential Requisites of a Contract

1. Consent

Manifested by the meeting of the offer and acceptance upon the thing and the cause which are to constitute the contract.

1. Must be given freely, intelligently, spontaneously. **FIS**
2. An offer must always be express since it has to be definite and certain, but the acceptance may be expressed or implied.

(a) Offer

1. A **unilateral proposition** UP made by one to the other with the intent that it shall be binding as

³⁵ The donor must be notified of the acceptance, and the same must be noted both in the deed of donation and the deed of acceptance.

soon as it is accepted by the person to whom it is addressed.

2. Not offer – (i) business advertisements; (ii) advertisements for bidders; (iii) display of goods with price tag. These are mere invitations to make an offer.

Requisites of valid offer SRC

1. **Serious** intention on the part of offeror to be bound by the offer.
2. **Reasonable** certainty, definiteness, and completeness CDC of the terms of the offer with respect to the object and the cause, so that the parties and the court can ascertain the same. – the object or cause is determined or determinable without the need to enter a new agreement.
3. **Communication** by the offeror of the offer to the offeree, and acquisition of knowledge of the offer by the latter. – an uncommunicated offer may be withdrawn by the offeror at any time. It is not binding even if accepted by the intended offeree.

[1] Serious intention

1. Not based on the offeror's declarations but on an objective standard, i.e., the effect of the offer to the prudent and reasonable mind.
2. E.g., Pepsi Co.'s case where the US court held that the offer of \$30M worth jet in exchange for 700k bottle points was not serious.

Termination of offer

1. Revocation or withdrawal.
2. Rejection by offeree or making of counteroffer which is simultaneously the rejection of the original offer and the making of a new one.
3. Death, insanity, insolvency, civil interdiction of either or both offeror and offeree prior to learning of offeror of the acceptance (cognition theory).
4. Supervening illegality of the proposed contract prior to perfection.
5. Expiration of the term fixed for the acceptance of the offer.
6. Destruction of the subject matter prior to acceptance.

Option contract

1. Contract whereby a party grants to the other, for a fixed period, the power to decide whether or not to enter into a principal contract. Within such period, the grantor binds himself not to contract with another, and to contract with the grantee, should the latter decide.
2. Preparatory contract, distinct from the principal contract.
3. **Must be supported by a separate consideration. – (i) option contract is always onerous; (ii) consideration is not presumed and must always be proven.**
4. The offeror may not withdraw the offer before the expiration of the fixed period, unless the option is not supported by a separate consideration.
5. c.f.: earnest money is proof of perfection of a contract of sale. What controls is the substance of the transaction, not the label given to it by parties.

Distinctions	Option	Earnest
Nature	Distinct consideration for the option contract, not part of the purchase price	Part of purchase price
When given	Applies to sale not yet perfected	When sale is already perfected
Obligation to buy	Buyer is under no obligation to buy; option is a right not an obligation.	Upon payment of earnest money, buyer is bound to pay the balance

(b) Acceptance

1. Mirror doctrine. – the acceptance must be identical in all respects with that of the offer so as to produce a meeting of the minds of the parties, i.e., acceptance **absolute** and unqualified to be effective.
2. A qualified is a counteroffer. It is both a rejection of the original offer, and the simultaneous making of a new offer.
3. Cognition theory. – the acceptance binds offeror from the time he **learns** of the acceptance by the offeree. Before such, the offeror may still withdraw the offer.
4. Acceptance must be made according to the terms prescribed by the offeror. Otherwise, it may be made express or implied.
5. If the agent is authorized to communicate the offer, he is also authorized to receive acceptance of the offer which binds the principal. XPN: if the terms of the offer provide for a different manner of acceptance.

(c) Incapacitated to give consent

1. Minors – but the minor may be estopped from raising the defense of minority if: (i) he entered a contract when he already passed puberty and adolescence, and (ii) he actively misrepresented himself to be of legal age.
2. Insane or demented persons, except during lucid interval
3. Deaf-mutes who do not know how to write.
4. Those under the state of drunkenness or hypnotic spell
5. Those suffering civil interdiction.
6. Incompetents under guardianship.

Conditions not affecting capacity

1. Old age, physical infirmity. – unless the condition impairs his mental faculties.
2. Illiteracy. – unless consent is vitiated by mistake or fraud. (i) the illiterate must only prove his illiteracy, not the mistake or fraud, (ii) the burden shifts to the party enforcing the contract to prove that the terms of the contract were fully explained to the illiterate in the language he understood (presumption of vitiation of consent).

(d) Vices of consent

1. Presence renders the contract voidable.
2. VIMFU

Violence

1. (i) Serious irresistible force or **physical** fear, (ii) which is the determining **cause** of consent.
2. Need not be employed by either of the contracting parties, may be employed by 3p.

Intimidation

1. Reasonable fear of an impending and grave evil or **moral** fear.
2. Such fear is the determining **cause** of consent.
3. The threatened act must be unjust or **unlawful**. E.g., the threat to enforce a claim through competent authority is just and legal and does not vitiate consent.
4. The threatened act must be **real** and serious.
5. The threat must produce a well-grounded **fear**. – the person employing has the necessary means to inflict the threatened injury.
6. Need not be employed by either of the contracting parties, may be employed by 3p.
7. Consent was given freely, albeit reluctantly is not vitiated. E.g., execution of REM to secure release of retirement benefits.

Mistake

1. Must pertain to: (i) the **substance** of the thing which is the object of the contract; (ii) the **principal** conditions which moved either or both parties to enter the contract; (3) the **identity** or qualification of either party when it was the principal cause of the contract.
2. Must be **excusable**, and not: (i) so patent, (ii) could have been avoided by ordinary prudence, (iii) caused by manifest negligence.
3. Must generally be a mistake of **fact**. If mistake of law, it must: (i) pertain to the **legal** effect of the agreement; (ii) be **mutual**; (iii) **frustrate** the real purpose of the parties **LMF**

Fraud

1. Deception, insidious machinations, and manipulations.
2. Employed by **one** of the contracting parties upon the other. XPNs: (i) if 3p acted in connivance with a party, or with his knowledge but without protest; (ii) resulted in **mutual error**.
3. The determining **cause** of consent, i.e., must be *dolo causante*.
4. Must be serious, or sufficient to deceive a prudent person. – Fraud consists of an active misrepresentation and not mere silence or concealment. XPNs: silence may constitute fraud if (i) there is special duty to disclose certain facts, or (ii) according to good faith and usage of commerce, the communication should be made.
5. Must have resulted to damage or injury to the aggrieved party.

Undue influence

1. Consists in the use of improper advantage of power over the will of another.
2. Requisites – (i) there is a person who can be influenced; (ii) the exertion of improper influence; (iii) the submission to the overwhelming effect of the unlawful conduct.

2. Object

Possible objects **TRS**

1. All **things** not outside the commerce of men, including future things.
2. All **rights** not intransmissible.
3. All **services** not contrary to *Imgcopp*.

Future things

1. The object need not exist at the time of the perfection of contract, provided that it has the potential or possibility of existence.
2. Art. 1409(3). Contracts whose object or cause did not exist at the time of the transaction are void contemplates objects which have no potential or possible of existence since Art. 1347 expressly recognizes that future things may be the object of contracts.
3. Does not include future inheritance which cannot be the object of contracts by express provision of NCC. XPN: partition by act *inter vivos*, provided the legitime of CH are not prejudiced.

Future inheritance

1. Succession has not yet opened at the time the contract is entered.
2. The object of the contract forms part of the inheritance.
3. The grantor has a mere expectancy of the right over the thing which is purely hereditary in nature

Requisites:

1. Must be within commerce of men.
2. Must be real and possible – physically, or legally.
3. Must be licit.
4. Must be determinate or determinable as to kind.

3. Cause or Consideration

The **essential reason** which moves the contracting parties to enter into the contract.

1. c.f.: motive which is the particular reason for a party to enter the contract, or the particular use of the object to a party.
2. Motive does not affect the contract. XPN: When motive may be regarded as the cause of the contract because it **predetermines the purpose of the contract**, or when the **realization** of the motive or particular purpose was made a **condition** upon which the **contract** is made to **depend**. In the latter, the illegality of the motive will also render the contract void.

Requisites:

1. Must exist. – Consideration is **presumed** to exist in every contract. XPN: in option contract.
2. Must be true, not simulated. – (i) statements of false cause invalidates a contract, but it may be shown to really have been a donation or other act or contract; (ii) if the consideration is true but not paid, the contract remains valid, it merely gives a right of action to enforce its performance.
3. Must be licit.

Inadequacy of cause

1. Not a ground for invalidating a contract, unless attended by vices of consent.
2. May be a ground for rescission in contract entered by a person on behalf of another where the latter suffers lesion by more than 1/4 of property value.
3. Gross inadequacy of price also does not render the contract void, unless shocking to the conscience of the court.

Absence v. Failure of consideration

1. Absence. – Affects the validity of the contract for lack of one of the essential requisites.
2. Failure. – Does not affect the validity of the contract but merely gives rise to cause of action.

Kinds of contract based on cause:

1. Onerous – founded upon a **valuable** consideration. The cause for each of the parties is the undertaking of the other.
2. Gratuitous – founded on mere liberality of the grantor.
3. Remuneratory – Cause is the **past service** or benefit for which does not constitute a demandable debt.

D. Defective Contracts

Order of defectiveness: Rescissible >> Voidable >> UNF >> Void

1. If the defect of the contract will make it both voidable and unenforceable, the contract shall be considered to have the graver defect, i.e., UNF.
2. E.g., Purely executory oral contract for sale of land by a minor shall be considered unenforceable.

1. Rescissible Contracts **RSBc**

Defect consists in the lesion (injury or damage) to either contracting party, or a third person (e.g., creditor)

1. RSBc are valid and enforceable. Thus, obligatory until rescinded.
2. **The defect cannot be attacked collaterally.** – (i) the defect must be raised as in an independent action for rescission, or as a counterclaim; (ii) it cannot be used as defense without an judgment of the court rescinding the contract.
3. The defect may not be ratified, but the right of action for rescission may be lost by way of extinctive prescription.
4. Rescission unmakes or abrogates the contract, and the parties must be restored to their status before the contract by mutual restitution.

5. c.f.: rescission under Art. 1191

Distinctions	Art. 1191	Art. 1381
Applicability	Exclusively to reciprocal obligations	To all kinds of obligations arising from contracts, reciprocal or not
Basis for rescission	Breach of contract	Lesion or economic prejudice/damage, or fraud
Who can avail	Only a contracting party	Even a 3p, e.g., creditor in accion pauliana
Nature	Principal action. If there is a ground for rescission, it can be immediately resorted to.	Subsidiary remedy. It cannot be instituted unless the injured party has no other legal means to obtain reparation.
Prescriptive period	10y from accrual of cause of action (Iringan v. CA)	4 years. ³⁶ This period does not apply to rescission under Arts. 1191 and 1592 which are principal remedies – SC.
Court's authority to rescind	Discretionary. Court may decline rescission if there is just cause for the fixing of period instead.	Ministerial. The court must order rescission once the ground is proven.
Effect	Mutual restitution	Same under Art. 1385
Nature of contract	Perfectly valid	Defective; rescissible
Use of "rescission"	In the concept of resolution	Applies to rescission as a defective contract

Requisites: GLaMPN

- Ground.** – must be based on any of the causes specified in arts. 1381 to 1382.
- Last resort.** – the injured party has no other legal means to obtain reparation for damage sustained.
- Mutual restitution.** – the parties must be able to return whatever they may have received by virtue of the contract, except a defrauded creditor since he received nothing from the contract.
- Things which are the object of the contract must **not** be legally in the possession of 3p not acting in bad faith. If the object is already in possession of 3PGF, the only remedy of the plaintiff is an action for damages against the defendant.
- Period.** – action for rescission must be filed within 4y from accrual of cause of action. – (i) from termination of his guardianship; (ii) from time the whereabouts of absentee is known; (iii) from time the defrauded creditor learned that he has no other legal remedy but accion pauliana.

Rescissible contracts GAFTIS

- Entered into by **guardians** on behalf of wards, where the latter suffered lesion $> \frac{1}{4}$ of the value of property subject of guardianship.
- Agreed upon for **absentees**, where the latter suffered the same lesion.
- Undertaken in **fraud** of creditors, where the latter has no other means to collect what is due them.
- Contracts referring to **things** under litigations entered into without knowledge and consent or litigants, or of a competent authority, during the pendency of the case.
- Those **specifically** declared by law to be rescissible.
- Payments made under the state of **insolvency** when the debtor cannot be compelled to make the payment at the time of payment – (i) deemed in fraud of creditors; (ii) an insolvent debtor must not give any preference any of his creditors.

(a) Contracts by guardian [1] or representative [2]

- Not approved by court.
- Not involving disposition or encumbrance of real property; otherwise, it is unenforceable (unauthorized contract) if without court approval.

(b) Contracts in fraud of creditors

- Contract entered by debtor with 3p in fraud of his creditor, i.e., conveyance of property without leaving sufficient to cover his debts.
- XPN to relativity of contract. The creditor has right of action to have the contract rescinded even if he is not party thereto (accion pauliana).
- Implies a valid contract, albeit for improper motives, but not an absolutely simulated contract.
- May be brought only once known that the creditor no longer had other available legal remedies: (i) file an action for collection against debtor; (ii) obtain judgment; (iii) execution of judgment obtained by creditor against debtor by exhausting the debtor's properties; (iv) writ of execution was returned unsatisfied. The registration of fraudulent sale does not reckon the running of the prescriptive period (4y) since at the time, the creditor may still have other legal remedies.

Requisites

- Plaintiff has credit which pre-existed the alienation by debtor although demandable thereafter.
- Debtor subsequently conveyed his property to 3p.
- Creditor has no other legal remedy to enforce his claim.
- The conveyance is fraudulent.
- 3p transferee by onerous title was an accomplice to the fraud. N.B.: IPV is protected, creditor's remedy is a personal action against the debtor.

Presumption of fraud

- Alienation of property by gratuitous title by debtor who has not reserved sufficient property to pay his debts contracted before the alienation.
- Alienation by gratuitous title made by debtor against whom some judgment has been rendered in any instance or some writ of attachment has been issued. – the alienated property need not be the same property attached or the subject of the decision.

RFR

- Covers situations in violation of RFR. Where "creditor" is the grantee of the right.
- The grantee may rescind the sale to 3p acting in BF and compel the grantor to sell the subject property to him under similar terms.
- Recorded lease containing RFR provision is constructive notice to the 3p, putting him in BF. If the grant of RFR is oral, notice to 3p cannot be presumed.
- In RFR, as compared to option, there is offer as to the object and the price are not yet definite.

Parties to an action for rescission

By whom:

- Injured parties, namely: (i) ward; (ii) absentee; (iii) defrauded creditors; (iv) plaintiff in litigation whose subject matter was alienated by defendant.
- Heirs of injured parties.
- Creditors of injured parties.

Against whom:

- the author of the injury or his successors in interest.
- 3p acting in BF who acquired the property alienated in fraud of creditors.

2. Voidable Contracts VDBC

Defect consists in:

- The **incapacity** to give consent of one of the parties, or
- the **vitiating** of such consent by VIMFU

³⁶ Art. 1389

Vitiation of consent

1. Plaintiff has burden of proof. XPN: if he is illiterate (see above).
2. Alternative COAc: absolute lack, not mere vitiation of consent.

VDBc

1. VDBc are valid and enforceable. Thus, obligatory until rescinded.
2. **The defect cannot be attacked collaterally.** – (i) the defect must be raised as in an independent action for annulment, or as a counterclaim; (ii) it cannot be used as defense without a judgment of the court annulling the contract.
3. The defect may be ratified, express or implied. Implied ratification may be by way of acceptance of benefits.
4. Requisites for ratification – (i) the contract has all essential requisites but tainted with a vice susceptible of being cured; (ii) effected by the person entitled to do so; (iii) effected with the knowledge of the vice or defect; (iv) the cause of nullity or defect must have already disappeared.
5. The judgment of the court produces the effect of nullity. – (i) the contract is annulled from the very beginning; (ii) gives rise to duty of mutual restitution. XPN: if the incapacitated (a) kept the thing delivered, (b) insofar as he was benefited.
6. The action to declare absolute nullity of the contract is imprescriptible.
7. Prescribes in 4y – (i) from cessation of VIU; (ii) from discovery of MF, or from registration of fraudulent conveyance, if applicable; (iii) from time incapacity or guardianship ceases.

Who may bring an action for annulment

1. The party obliged principally or subsidiarily in the contract which he seeks to annul.
2. A person other than [1] if: (i) he is prejudiced in his rights with respect to one of the contracting parties, and (ii) he can show detriment which would positively result to him from the contract in which he has no intervention.
3. The party who is incapacitated to give consent or whose consent was vitiated – other party cannot invoke the incapacity of the other; neither may person employing VIFU invoke their own unjust acts.

3. Unenforceable Contracts UNFc

Defect consists either in:

1. The contract was entered into without or in excess of **authority**. XPN: the sale of land through an agent whose authority was not in writing is void, not merely UNF.
2. Non-compliance with **SOF**
3. Both parties are **incapacitated** to give consent **ASI** – (i) if one ratifies, it becomes voidable; (ii) if both ratifies, it becomes perfectly valid.

UNFc

1. UNFc are valid contracts but they cannot be enforced through a proper court. Thus, not obligatory unless ratified.
2. **The defect purely a matter of defense.** – (i) there is no action to set aside an unenforceable contract; (ii) the party against whom the contract is sought to be enforced may wait until an action is filed for the enforcement of the contract to raise unenforceability as a defense; (iii) only the contracting parties may raise the defense; (iv) may be raised for as long as there is no ratification.
3. The defect may be ratified. Otherwise, it is permanent.

Statute of Frauds (Art. 1403)

1. Non-compliance does not render the contract void, but it cannot be enforced in court until ratified.
2. SOF applies only to **purely executory contracts** but not those that are partially executed or consummated.
3. Rule of evidence.
4. The coverage is exclusive.

Coverage: **NPC SLRE**

1. Any agreement, which by its terms, is **not** to be performed (on either side) within one year from its making.
2. Special **promise** to answer for the debt, default or miscarriage or another. – (i) guaranty, suretyship; (ii) only the undertaking of the guarantor or surety must be in writing, not necessarily the creditor's acceptance.
3. Any contract in **consideration** of marriage. – e.g., marriage settlement. Donations propter nuptias is not covered by SOF since FC prescribes that it should follow the formalities or ordinary donations or will/ succession.
4. **Sale** of goods, chattel, choses in action ≥P500. – (i) in/tangible; (ii) covers assignment of credit.
5. **Sale** of real property or interest therein, or **lease** thereof for a period of more than 1 year, including agreement for renewal. – covers not just land but all real property.
6. **Representation** as to the credit of a third person. – if the person making the representation turned out to have misrepresented the debtor's credit, he may be held liable. E.g., character references of debtors.
7. **Express** trust involving an **immovable** property or interest therein (Art. 1443)

On transactions involving real property

1. Sale
2. Lease >1y
3. Express trust.

****All other transactions involving RP are not covered by SOF. E.g. oral REM is valid and enforceable.**

Requirements:

1. Written note or memorandum of the agreement.
2. Subscribed by the party charged, or the party against whom enforcement is sought.
3. Containing – (i) name of parties, (ii) sufficient description of property, (iii) T&C. Must establish the essential elements of a contract.
4. E.g., receipts, letters

Non-compliance as defense:

1. Non-compliance with SOF is mere defense in an action to enforce the contract, but there is no action to declare the contract unenforceable.
2. Must be invoked once the other party tries to introduce oral evidence of a contract covered by the SOF. Otherwise, the objection to the defect is waived.
3. It may be invoked in: (i) Actions demanding performance, or (ii) Actions for violation of the contract. But not in actions seeking to recover what was given under the contract.
4. Only the contracting parties may invoke the defense of unenforceability.

Ratification:

1. By **failure** to object to the presentation of oral evidence to prove the existence of a contract covered by the SOF
2. By acceptance of **benefits** under the contract. – also indicates that the contract is already partially executed.

4. Void Contracts

Defect consists in the absence of one or more essential **requisites**, or non-observance of the **form** required for validity

1. Void contracts are UNF and not obligatory. It has no force and effect, and invalid from the very beginning.
2. Void v. Inexistent – (i) Void: has all essential elements of contract but the law expressly declares it void; (ii) inexistent: lacks one/some/all essential elements. *Pari delicto* rule applies only to void contracts which are illegal.
3. **The defect is open to collateral attack.** – (i) it can be used as defense without a judgment of the court declaring the nullity of the contract; (ii) the right to set-up such defense cannot be waived or renounced.
4. The defect cannot be ratified.
5. The judgment of the court is merely confirmatory.
6. The parties may recover from each other what they may have given by reason of the contract. XPNs: (i) if one party is guilty of laches even if the action is imprescriptible; (ii) if the principle of *in pari delicto* applies.
7. The action or defense for the declaration of the absolute nullity of the contract is imprescriptible but may be barred by laches.
8. The inexistence or nullity of the contract may be invoked: (i) by parties, or (ii) 3p directly affected by the contract.

Void contracts **IA COSIE**

1. Illegal contracts.
2. Absolutely simulated or fictitious contracts. – relatively simulated contracts bind the parties to their real agreement, provided it is not contrary to *lmgcpopp*.
3. Contracts with inexistent cause or object.
4. Contracts with objects outside the commerce of men.
5. Contracts involving impossible service.
6. Contracts which intention cannot be ascertained.
7. Contracts expressly prohibited or declared void by law.

[1] *Illegal contracts*

1. Those whose cause, object, purpose is contrary to *lmgcpopp*.
2. Motive, generally does not affect the legality of contract, unless it becomes the cause (see above).
3. *Pari delicto* rule applies only to illegal contracts under this provision.

[2] *Absolutely simulated or fictitious contracts*

1. There is an apparently valid contract, but consent is lacking the parties **do not intend to be bound** by the terms of the contract.
2. The complete absence of attempt in any manner on the part of the ostensible buyer to assert rights of ownership over the subject properties is an important indicium of absolute simulation of the contract of sale.
3. Absence v. failure of consideration (see above).
4. Absolute v. relative simulation (see above).
Remedy in case of relative simulation of reformation of the instrument.

[3] *Contracts with inexistent cause or object*

1. Pertain only to those whose objects do not have the potential or possibility of existence at the time of perfection of the contract since future things are expressly recognized as valid objects of contracts.
2. E.g., a contract of lease where the lessor is not the owner, nor have the authority to enter into the

lease, the contract is void since the object did not exist at the time of transaction.

[4] *Contracts with objects outside the commerce of men*

1. Properties of public dominion
2. Sacred and common things, and *res nullius* objects, as they have not been appropriated, e.g., air, sea.
3. Intransmissible rights – (i) purely personal rights: (a) marital authority, (b) status and capacity of persons, (c) honorary titles and distinctions; (ii) public rights: (a) public office, (b) inherent attributes of public authority, (c) political rights of individuals, e.g., right of suffrage.

[5] *Contracts involving impossible service*

1. Applies in obligations to do.
2. The impossibility must have existed at the time of the perfection of the contract.
3. Impossibility may be: (i) physical or those which are beyond the ordinary power of man; (ii) legal or those which are against *lmgcpopp*.
4. May also be absolute or relative – (i) absolute if nobody can perform the service: contract is void; (ii) relative if the service cannot be performed because of the special conditions or qualifications of the obligor: (a) if permanent: contract is void; (b) if temporary: contract is not void.

[8] *Contracts expressly prohibited or declared void by law*

1. Contracts expressly **prohibited** – e.g., pactum commissorium.
2. Contracts expressly declared **void** – e.g., Contracts which failed to comply with the formalities required by law for validity under Arts. 784, 749, 1773, 1744(1), 1874, 2134, 2140 NCC; Act No. 1147. These contracts are not prohibited but expressly declared void by law. N.B.: The contract is void only if the law expressly so declares or provides for the effect of invalidity.

Pari delicto rule

1. When the two parties are **equally at fault**, the law **leaves** them as they are and denies recovery by either one of them, and no **affirmative** relief of any kind will be given to one against the other. **ELAB**
2. Each must **bear** the consequences of his own actions.
3. A void contract that is already performed may produce effects if the parties are mutually guilty since the court will refuse to accord them any relief and leave them as they are.
4. Applicable to illegal contracts under Art. 1409(1), or those with illegal cause, subject matter, purpose but not to inexistent, fictitious, or simulated contracts.

XPNs: *Recovery on the void contract may be allowed to*

1. The innocent party
2. The debtor who paid usurious interest
3. The party repudiating the void contract before the illegal purpose is accomplished, or before damage is caused to a third person if public interest is subserved by allowing recovery.
4. The incapacitated party if the interest of justice demands.
5. The party for whose protection the prohibition by law is intended if the agreement is not illegal per se but merely prohibited if public policy would be enhanced by permitting recovery.
6. The party for whose benefit the law has been intended, e.g., price ceiling laws and labor laws.
7. Also, when the *pari delicto* rule would violate well-established public policy, e.g., unjust enrichment.³⁷

³⁷ Gonzalo v. Tarnate, Jr.

III. Natural Obligations

Definition

Obligations which do not grant a right of action to enforce their performance, but after voluntary fulfillment by obligor, they authorize the retention of what has been delivered or rendered by reason thereof.

One where a juridical tie exists between the parties and can give cause of action, but because of special circumstances is without means of enforcing compliance or legal sanction for its violation by invoking the intervention of court.

Bases: equity and natural law.

Characteristics:

1. Obligations that are not enforceable though court action but which the law expressly recognizes. Not demandable. Hence, it cannot be the subject of legal compensation.
2. In case of breach, there is no available legal remedy to the obligee.
3. In case of voluntary fulfillment, the obligee is authorized to retain what was received, and the obligor is precluded from recovering what he has voluntarily delivered.
4. Fulfillment of natural obligation that will authorize its retention is one which is: (i) done voluntarily; (ii) with full knowledge that there is no legal obligation to make the payment; (iii) if payment was made by mistake, it may be recovered under solution indebiti.
5. It may be converted to civil obligation if: (i) novated; (ii) made subject of security agreement.
6. The enumeration under the law on natural obligations is exclusive. Courts are without authority to declare an obligation as natural.

Cases of natural obligation **PRIFLD**

1. Voluntary performance by obligor where the right to sue upon a civil action has already **prescribed**;
2. **Reimbursement** by debtor of 3p paying his debt without his knowledge or against his will, when he is not legally bound to do so;
3. Voluntary performance by obligor an obligation after **failure** of an action to enforce civil obligation;
4. Voluntary payment by heir of **decedent's** debt in excess of the value of property received as inheritance;
5. Payment by heir of a **legacy** pursuant to a defective will;
6. Payment by debtor of **interest** where the interest stipulation was not reduced in writing. N.B.: if there is no interest stipulation, even orally, the loan is gratuitous and there is no obligation to pay interests, whether civil or natural.

SPECIAL CONTRACTS

I. Sales

A. Definition and Essential Requisites

Definition

By the contract of sale, one of the contracting parties binds himself to (a) transfer the ownership of and (b) deliver a (c) determinate thing to another, and the other (d) to pay a **price** certain in money or its equivalent PCM/E

(a) the vendor must have the right to transfer ownership at the time the thing is delivered

(b) **delivery**, actual or constructive, transfers ownership of the thing sold, subject to stipulation³⁸

***Ownership of object at time of perfection is not an element for a valid object. The failure of vendor to acquire ownership at the time when the object is to be delivered will not affect the validity of contract but will only give rise to remedies.*

Manner and effect of delivery

1. The delivery must be for the purpose of transferring ownership.
2. What must be delivered: (i) objects; (ii) fruits;³⁹ (iii) accessories and accessions.
1. Whom to deliver: to vendee. BUT delivery of goods to carrier for purpose of transmission to vendee is delivery to latter, if by terms of the contract the vendor is authorized or required to send the goods.⁴⁰
3. When to deliver: GR – simultaneous with payment of price. XPN: period is fixed for payment of price.
4. Vendor not bound to deliver if:⁴¹ (i) vendee becomes insolvent, unless he gives security; (ii) failure to give security; (iii) impairment of security by fault of vendee or loss by fortuitous event; unless he gives new security; (iv) vendee violates undertaking in consideration of which the vendor agreed to the period; (v) vendee attempts to abscond.
5. Effect of delivery: vendor cannot recover object until he rescinds the sale – J or EJ.

Qualifications on transfer of ownership

1. Stipulation reserving ownership.
2. Delivery on "sale or return" – delivery transfers ownership but vendee has right to revert title to vendor
3. Sales on approval, trial, or satisfaction – delivery does not transfer ownership until vendee accepts or retains goods without notice of rejection.

Defects in delivery

1. Delivery by non-owner does not transfer ownership, he only transfers the rights he has over the object (nemo dat quod non habet). XPN: owner is estopped from denying sale. BUT if the vendor subsequently acquires ownership, ownership transfers to the vendee by operation of law⁴²
2. Delivery by one with void/able title may give rise to valid, superior in case of a purchaser in GF and for value⁴³ (in registered properties). N.B.: XPN to nemo dat quod non habet

Acceptance

1. Vendor's obligation to deliver is extinguished upon acceptance by vendee.
2. The vendee must be given reasonable opportunity from time of delivery to examine the goods for the purpose of ascertaining conformity with contract.⁴⁴
3. There is acceptance if: (i) vendee intimates his acceptance to vendor; (ii) after delivery, vendee does any act incompatible to seller's ownership; (iii) retention of goods without notice of rejection after lapse of reasonable time.⁴⁵
4. Acceptance does not relieve vendor of liability for damages or breach of warranty. XPN: if vendee

³⁸ 1503

³⁹ From the time the obligation to deliver arises, which is ordinarily the perfection of the contract, unless there is contrary stipulation

⁴⁰ 1523

⁴¹ 1198 – when debtor loses right to use the period

⁴² Here, the mode of acquisition of ownership is not tradition by virtue of the contract of sale but law

⁴³ 1507

⁴⁴ 1584

⁴⁵ 1585

- fails to notify vendor of the breach within reasonable time from discovery.⁴⁶
- Unjustified refusal to accept the goods passes ownership to the vendee.⁴⁷

Forms of delivery: (a) actual and (b) constructive

(a) Actual – the placement of object in the control and possession of vendee

(b) Constructive

- Execution of public instrument is equivalent to delivery. XPN: (i) contrary stipulation in the deed; (ii) contrary intention can be inferred; (iii) presence of impediment that will prevent transfer of ownership, e.g., property in possession of stranger
- Symbolica – delivery of keys of storage (PP only)
- Longa manu – by pointing object within sight of vendor and vendee
- Brevi manu – vendee already in possession
- Constitutum possessorium – vendor retains possession as holder
- In immovables: (i) execution of public instrument; (ii) placement of titles of ownership in vendee's possession; (iii) exercise of right by vendee with vendor's consent

N.B.: in (3) (4) (5) delivery is made by mere consent

(c) object must be determined or determinable

- determined if particularly designated or physically segregated **PDPS**;
- determinable if capable of being determinate without need for further agreement at the time contract is entered into
- if not either, the contract was not perfected as there was no meeting of the minds as to the object

(d) price is certain if:

- fixed by the parties
- in reference to another thing certain
- determination is left to the judgement of specific person/s
 - 3p unable to fix – inefficacious
 - 3p acted in BF, mistake – courts may fix price
 - 3p prevented by a party – innocent party has remedies
 - fixing of price cannot be left on the discretion of one party

****Price certain in money or equivalent is the distinguishing characteristic of a contract of sale.**

Price partly in money, partly in another thing – contract may either be barter or sale depending on (1) intention of parties; (2) relative values of the price and the thing.

Perfection

At the moment there is meeting of minds upon the thing which is the object of the contract and upon the price. In auctions sales, upon fall of hammer or other customary manner.

- GR: consensual

- XPNs (must be in writing for validity): (i) sale of large cattle;⁴⁸ (ii) authority of agent to sell **piece of land**⁴⁹
- SOF (for enforceability): (i) goods ≥ 500; (ii) sale of **real property** or interest
- For convenience: sale of **real property or interest** must be in public instrument – remedy to compel observance of form under 1358 available if contract is (i) valid and (ii) enforceable (SOF or partial performance)

Essential requisites

(a) Consent, (b) object, (c) cause

(a) Persons with capacity to act CTA may consent to sale

- Reckoning point – time of perfection; supervening in/capacity with not affect in/validity
- Sale to minors, persons w/o CTA of necessities – contract is valid and they must pay reasonable price
- Prohibitions: guardians,⁵⁰ agents,⁵¹ executors,⁵² public officers,⁵³ court officers,⁵⁴ specially disqualified by law **GAPECS** re: property under their administration;⁵⁵
- Specially disqualified by law: (i) H&W. XPN: CSP, JSP; (ii) common law spouses.
- Failure to reduce the contract into writing when it appears to be the manifest intent of the parties is indicative of the failure of meeting of the minds.

****Prohibitions (3) (4) also apply to lease.**

(b) Object

- licit
- in existence or has potential existence (future goods; emptio rei speritae)⁵⁶
- determined or determinable (see above)

Emptio rei speritae – concept under law on sales where future goods or those not existing at the time of the contract's perfection are allowed to be its object if it has potential existence, and subject to the condition that it should exist in the future. Harmonizing this with Art. 1409(3) which declares void those contracts whose object does not exist at the time of perfection, the latter shall be construed to pertain to objects not existing and not having the potential of existence in the future.

Future inheritance cannot be the object of sale.

Objects subject to statutory prohibitions on transfer of ownership cannot be the object of sale – e.g., land acquired through patent during the prohibition period.

(c) Cause is the PCM/E

- Parties must agree as to: (i) amount; (ii) **manner of payment**
- Rules in obligations to pay money applies: (i) must be in currency stipulated, or (ii) legal tender
- Requirements: (i) real, true, not simulated; (ii) in money or equivalent; (iii) certain (see above)

Price not certain renders sale inefficacious. But buyer must pay reasonable price for what has been received.

⁴⁶ 1586

⁴⁷ 1588

⁴⁸ Must be recorded in city/municipal treasurer; certificate of transfer must be issued

⁴⁹ 1874

⁵⁰ So long as guardianship subsists; prior to the final accounting and settlement of accounts

⁵¹ Unless principal consents

⁵² So long as estate is not yet settled

⁵³ In one case, the prohibition was extended to the wife of the public officer; and to a high-ranking public officer even though he does not have direct administration over the property

⁵⁴ Re: property in litigation or levied on execution before the court within whose jurisdiction they exercise their functions

⁵⁵ Applies to (a) sales in public auction; (b) direct sales or by mediation of another

⁵⁶ Sale of hope or expectancy (*emptio spei*) is conditional that it may come into existence. Sale of vain hope is void.

Gross inadequacy does not affect validity of sale. Except: (1) as may indicate defect of consent; (2) parties intended another contract.

Simulated price renders sale void. But may be shown in reality to be a donation or other contract.

Failure of consideration happens when price certain is agreed upon, but the vendee failed to pay. It does not affect the validity of the contract but give the vendor remedies.

Liability for interest:⁵⁷

1. Stipulation
2. Object bears fruit
3. Vendee in default – from J or EJ demand for payment of price

Suspension of payment of price:⁵⁸

1. Disturbance of vendee's possession or ownership; reasonable grounds to fear disturbance by vindicatory action or foreclosure or mortgage.
2. Vendee may suspend payment until vendor cause the cessation of disturbance. XPNs: (i) vendor gives security for return of price; (ii) express stipulation; (iii) mere act of trespass.⁵⁹
3. Obligation to pay resumes once the disturbance terminates. The vendee shall be liable for unpaid price during period of suspension. The suspension does not extinguish the vendee's obligation to pay the price.

B. Contract of Sale

1. Contract to Sell

A bilateral contract whereby the prospective vendor, while expressly reserving ownership of the thing which constitutes the object of the contract notwithstanding delivery to the prospective vendee, binds himself to sell the property exclusively to the latter upon fulfillment agreed upon, ordinarily the full payment of purchase price.

Essential stipulations: Either (a) **reservation of ownership** by vendor until full payment of purchase price, and the execution of DOAS upon such full payment; (b) right of **unilateral cancellation** by vendor for non-payment of price in the period stipulated.

***Upon full payment of purchase price, the obligation arises on part of the vendor to execute a contract of sale.*

Legal effects: (a) rules on double sale not applicable if one contract is CTS; (b) full payment of price is a suspensive condition to the vendor's obligation to execute a contract of sale; (b) in case of non-payment of price, rescission is not necessary, the vendor's obligation to sell the object simply did not arise.

c.f.: Conditional contract of sale CCS

1. Similarity – reservation of ownership by vendor until full payment of purchase price
2. Acquisitions of title upon full payment – (i) in CCS, by operation of law without need for further act; (ii) in CTS, further act is necessary, i.e., the execution of DOAS
3. Applicable law – (i) in CCS, law on sales;⁶⁰ (ii) in CTS, law on conditional obligations

2. Option Contract

(a) An accepted unilateral promise (b) to buy or sell (c) a determinate thing (d) for a price certain (e) supported by a consideration distinct from the price

An option contract give the option holder the right, but not the obligation to enter into a contract with another person for a specified period, with the latter reserving such exclusive right to the option holder

(e) Notes:

1. Consideration is not presumed in option contracts
2. Not part of purchase price; not proof of perfection of contract. c.f.: earnest money

3. Right of First Refusal

A stipulation incidental to a main contract, usually lease, which give the possessor the preferential right to purchase the object of the contract should the owner decide to sell the same.

1. It is not a perfected contract of sale
2. No separate consideration is required; the same is deemed integrated in the consideration for the main contract
3. Remedy in case of breach: (i) accion pauliana, if 3p buyer acted in BF; (ii) damages against seller-grantor, if 3p acted in GF

C. Earnest Money

Shall be considered: (a) part of the price, and (b) proof of perfection of the contract

1. Not applicable in CTS
2. Not applicable when there is in fact no consent to sell and the vendee merely forced upon the payment to the vendor

D. Double Sales

Rules for (a) movables and (b) immovables

- (a) For movables – first possessor in GF
(b) For immovables (registered properties under the Torrens System)
1. First to register in GF
 2. First to possess in GF
 3. One with oldest title

In case of unregistered properties, the registration is without prejudice to a "better right" acquired prior to the registration.

"Better right" includes:

1. Unregistered sale coupled with taking possession and exercise of right by the vendee, which cannot be defeated by a subsequent registration under Act No. 3344.
2. Ownership by acquisitive prescription.
3. BUT mere unrecorded sale without more is not "better right".

Requisites:

1. Two or more sales involving the same object
2. Sales are valid
3. Different vendees who do not represent the same interest, i.e., conflicting interests
4. Vendees bought from the same seller
5. The contracts must be for sale

No double sale if:

1. One is void
2. One is CTS
3. Vendor is no longer the owner at the time of second sale, i.e., there was already effective delivery to first vendee – apply nemo dat quod non habet
4. Different vendors – apply nemo dat quod non habet since one has no authority

⁵⁷ 1589

⁵⁸ 1590

⁵⁹ For mere acts of trespass, the vendee himself may take actions to vindicate his rights (doctrine of self-help).

⁶⁰ Under NCC, a contract of sale can either be absolute or conditional

Warranty against eviction:

1. Affirmation by the vendor that the vendee will enjoy peaceful legal possession of the object to which the vendee relied and has induced him to purchase the object
2. Requisites: **DFR SuWaG** – (i) **deprivation** of object in whole or part; (ii) eviction is by **final** judgment; (iii) eviction is by virtue of **right** prior to the sale;⁶¹ (iv) vendor was **summoned** as defendant in eviction case at the vendee's instance; (v) no **waiver** on part of vendee; (vi) vendee acted in **GF**

E. Risk of Loss

Effect on contract

(a) Loss at time of perfection

1. Total – contract is without any effect; obligation of vendor to deliver is extinguished. XPNs: (i) fault; (ii) delay; (iii) law; (iv) stipulation;⁶² (v) nature of obligation requires assumption of risk⁶³
2. Partial – vendee may choose to (i) withdraw, (ii) demand remaining part and pay proportionate price

(b) Material deterioration at time of perfection without knowledge/fault of vendor – buyer may choose to treat the sale as: (i) avoided; (ii) valid as to remaining goods, with obligation to pay proportionate price, if sale is divisible

Risk of loss (1504)

Res perit domino⁶⁴

1. Before delivery – vendor bears. XPN: (a) vendee bears risk if reservation of ownership is solely for purpose of securing payment of price;⁶⁵ (b) vendee in default
2. After delivery – vendee bears. XPN: vendor in default
3. Common XPN: party in default bears risk, regardless of transfer of ownership

Rules on loss, improvement, deterioration before delivery (1189 in relation to 1538)

1. Loss without vendor's fault – obligation extinguished
2. Loss with vendor's fault – liable for damages
3. Deterioration without vendor's fault – vendee bears
4. Deterioration with vendor's fault – vendee may choose (i) rescission, or (ii) fulfillment, (iii) with damages in either
5. Improvement by nature – benefits vendee
6. Improvement by vendor – vendor has usufructuary rights only

F. Breach of Contract of Sale

1. Recto Law

Applicability:

1. Contract of sale of personal property payable in installments; finance lease.
2. Vendee fails to pay installment/s in the period stipulated.
3. Existence of vendor-vendee relationship.

Unpaid vendor's alternative remedies: **ECF** (a) exact fulfillment; (b) cancellation; (c) foreclosure of security interest

(a) Exact fulfillment

1. Elected by filing of action for collection.

2. Effect: release of collateral; waiver of lien. Vendor is deemed to have renounced his right to cancel the sale or foreclose the mortgage.
3. Available even if default is only on 1 installment.

(b) Cancellation

1. Available in case of failure to pay 2+ installments.
2. Without stipulation, cancellation requires mutual restitution. Forfeiture provision is valid if not unconscionable.

(c) Foreclosure

1. Available in case of failure to pay 2+ installments.
2. Available if the security is the same as the object sold.
3. Effect: vendor is barred from recovering deficiency.
4. Requires existence of vendor-vendee relationship between the mortgagee-mortgagor. E.g., payment through bank loan proceeds where property is used to secure the bank loan. The relationship between vendee and bank is debtor-creditor. If bank opts to foreclose, it is not barred to recover deficiency.

Doctrine of election of remedies applies and contrary stipulation is void. XPNs: (i) first remedy did not prosper without fault of vendor;⁶⁶ (ii) vendor may recover costs of suit (replevin) to recover property from vendee.

2. Maceda Law

Applicability:

1. Sale or financing of real property in installments.
2. For residential purposes, including condominium and subdivision lots.
3. Without regard to when ownership is transferred. It applies to CTS, CCS, etc.

Not applicable to:

1. Sale of commercial buildings;
2. Sale of industrial lots;
3. Sale to tenants;
4. Sale to property developer, even if for a condominium or subdivision project;
5. Rescission due to vendors fault. Art. 1191 applies (mutual restitution);
6. Failure of vendor to pay a house financing loan extended by bank.

Purpose of the law: to protect buyers who defaults in the installment payments.

Vendee paid less than 2 years of installment

1. Vendee entitled to grace period of at least 60 days from the date installment became due to update payments without interest and penalty.
2. Vendor may cancel: (i) upon expiration of grace period; (ii) via notarial act; (iii) to take effect after 30 days from receipt of vendee of the notice of cancellation or demand for rescission.

Vendee paid at least 2 years of installment

1. Vendee entitled to grace period of one month for every year paid from the date installment became due to update payments without interest and penalty.
2. Vendor may cancel: (i) upon expiration of grace period; **(ii) via notarial act and refund of CSV**; (iii) to take effect after 30 days from receipt of vendee

⁶¹ A right prior to sale may be in the form of a prior sale

⁶² Law or stipulation holds vendor liable even in case of fortuitous event

⁶³ 1262

⁶⁴ Presumption is that delivery transfers ownership; follow rule: **owner** bears the risk of loss.

⁶⁵ If terms of bill of lading is that it should be delivered to seller or his order, there is reservation of vendor of ownership but the same is deemed only for securing the payment of price – 1503

⁶⁶ E.g., failure to realize foreclosure on ground that property was in the hands of 3p in GF.

<p>of the notice of cancellation or demand for rescission.</p> <ol style="list-style-type: none"> CSV is 50% of total payments + 5% for every year in excess of 5 years. Limit: 90% of total payments. Right may be exercised only 1x every 5 years. <p>2 years installment</p> <ol style="list-style-type: none"> Considers both: (i) number of installment payments made, and (ii) passage of time. Includes down payments, deposits, options paid. <p>Notarial act means acknowledgement, not mere jurat. Demand for rescission raised in a counterclaim is not the notice of cancellation or demand for rescission contemplated by law.</p> <p><u>Vendee's failure to pay price</u></p> <p>Remedy in CTS not covered by Maceda Law</p> <ol style="list-style-type: none"> Notice to vendee that vendor is treating the contract as cancelled. No form required. Rescission not required since failure of vendee to pay the price merely prevents vendor's obligation to execute contract of sale from arising. Vendee may question vendor's act before the courts. Judicial declaration that cancellation is proper is merely declaratory. <p>Remedy in contract of sale not covered by Maceda Law</p> <ol style="list-style-type: none"> Vendee may pay the price even after the expiration of the period to pay, and notwithstanding an automatic rescission clause, as long as no demand for rescission either judicially or by notarial act has been made upon him by the vendor.⁶⁷ Mere offer to pay by vendee defeats the vendors right to rescind the sale. Vendor may judicially rescind if the contract does not provide for automatic rescission clause. Vendor may EJ rescind if the contract provides for automatic rescission clause. Must be by notarial act. 	
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G. Extinguishment of the Sale

**Sales are extinguished by the same causes as other obligations*

1. Conventional Redemption

Takes place when (a) the vendor reserves the right to repurchase the thing sold, (b) with the obligation to **PENO** (i) return the price of sale; (ii) pay expenses of contract; (iii) necessary and useful expenses on the thing sold;⁶⁸ (iv) other stipulations agreed upon.

****Pacto de retro sale**

(a) Right to repurchase

- Must be granted simultaneously with perfection of sale, although the grant need not be in the same instrument.
- No form required. Not covered by SOF.
- Period: (i) period agreed upon, not exceeding 10 years; (ii) if none, 4 years; (iii) within 30 days from time final judgment was rendered declaring the sale to be a true pacto de retro (vendor-a-retro questions nature of sale in **good faith**).⁶⁹
- Vendor may exercise right as against possessors deriving their title from vendee.⁷⁰
- Creditor of vendor may exercise right, only after exhaustion of vendor's properties.

⁶⁷ 1592

⁶⁸ 1616

⁶⁹ Contemplates a situation where vendor claims that the contract is equitable mortgage, but court declares it to be true pacto de retro sale.

⁷⁰ 1608

<ol style="list-style-type: none"> Tender of check is sufficient for exercise of the right. However, the check itself does not produce the effect of payment.⁷¹ <p>Vendee's right</p> <ol style="list-style-type: none"> Ownership is transferred to vendee upon delivery, subject to resolutive condition, i.e., exercise by vendor of right to repurchase. Failure to redeem, ownership is consolidated in the vendee. BUT recording in RD requires court order issued after hearing. <p>Improvements</p> <ol style="list-style-type: none"> Vendee-a-retro is not builder in GF. Vendor-a-retro required to pay useful and necessary expenses on the thing sold.⁷² <p>Sale of co-owned property</p> <ol style="list-style-type: none"> Each co-owner may redeem only proportionate share Vendee cannot be compelled to partial redemption. BUT the vendee cannot also compel one co-owner to redeem entire property. Remedy of vendee: demand all vendors to agree on the redemption. <p>Redemption of co-owned property⁷³</p> <ol style="list-style-type: none"> Before division, action for redemption may be brought for each heir (of vendee) only with respect to his share. After division, action for redemption of whole property may be brought against heir to whom it is assigned. 	
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2. Legal Redemption

The right to be subrogated in the place of vendee upon the same terms and conditions stipulated in the contract. Vendee includes those who acquires property by purchase, dation in payment, other transactions where ownership is transferred by onerous title.

Available in case of: (a) co-owners; (b) owners of adjoining rural lands; (c) owners of adjoining urban lands (right of pre-emption and redemption).

(a) Co-owners

- In case of sale of ideal share of one or some co-owners to a stranger.
- They can only redeem proportionate to their share.

(b) Owners of adjoining rural lands

- In case of sale of rural land $\leq 1\text{ha}$. XPN: if grantee does not own any rural land.
- If 2+ wants to redeem: (i) owner of smaller land is preferred; (ii) if equal, first to request redemption is preferred.
- Not applicable to lands separated by apparent servitudes.

(c) Owners of adjoining urban lands

- If the urban land about to be resold is so small, and so situated that its major portion cannot be used for practical purpose and bought merely for speculation.
- Right is both pre-emption and redemption, i.e., before or after consummation of the sale.
- If 2+ wants to redeem: owner whose intended use is best justified is preferred.

⁷¹ Legal tender rule applies only in obligations to pay money, not in exercise of right. Check produces payment if (i) cashed; (ii) impaired due to vendee's fault.

⁷² 1616

⁷³ Contemplates situation where the original vendee had died and the property was inherited by his several heirs

- Period: 30 days from written notice by (prospective) vendor
1. Notice must be given to all possible redemptioner.
 2. Notice must come from the vendor, not the vendee.
 3. To record sale in RD, there must be affidavit by vendor that he gave written notice to all possible redemptioner.

H. Equitable Mortgage

One wherein the contract between the parties is apparently a pacto de retro⁷⁴ or absolute sale,⁷⁵ but which reveals the intention of the parties to charge the property as security for a debt, although it lacks some legal formalities.

Presumption of equitable mortgage **UPERTO**

1. Unusual inadequacy of price;⁷⁶
2. Possession retained by vendor;
3. Extension of redemption period, or grant of new one upon expiration of original;
4. Retention by vendee of part of purchase price
5. Vendor binds himself to pay taxes;
6. Other cases showing intent to charge property as security for debt;

The presence of any one is sufficient.

Purpose: to prevent circumvention of the prohibition against pactum commissorium.⁷⁷

Effects if equitable mortgage

1. Fruits received by vendee considered interest;
2. Stipulation vesting ownership to vendee in case of failure of vendor to redeem is void (pactum commissorium)

Remedies

1. Reformation of instrument;
2. Foreclosure, if vendor-mortgagor fails to pay;
3. Reconveyance, if vendor-mortgagor was able to pay.

I. Pacto de Retro Sales

*See Conventional Redemption

II. Lease

A. Kinds of Lease

(a) Lease of things; (b) Lease of work; (c) Lease of service
TWS

(a) Lease of things (contract of lease proper)

1. One of the parties binds himself to give to the other the enjoyment or use of a thing for a **price certain (rent)**, and for a period, whether definite or indefinite. **GEU PP**
2. *Obligation to give.*
3. Object is generally non-consumable. XPN: may be consumable but only for purposes of exhibition.
4. Consensual. Covered by SOF if object is immovable and period exceeds 1 year.
5. No transfer of ownership. Lessor need not be the owner, but he must have some right or authority.
6. Lessee acquires exclusive right to material possession, superior to that of owner.
7. In lease of land, recoding is required to bind 3p. If unrecorded, vendee may terminate. XPN: (i) contrary stipulation, (ii) vendee knows existence of lease; (iii) sale is fictitious and resorted to extinguish lease.⁷⁸
8. E.g., lease of parking space. BUT lease of parking space in hotels is governed by law on deposit.

⁷⁴ 1602

⁷⁵ 1604

⁷⁶ But if the contract purports to be absolute sale, gross inadequacy in purchase price does not affect validity of sale.

Period

1. In all cases, period shall not exceed 99 years.
2. Lease "shall continue for an indefinite period provided the lessee is up-to-date in the payment of his monthly rental" – not lease with a period but one subject to resolutory condition.
3. Lease month-to-month is one with a period.

Limitations

1. Foreigner lessees – (i) if investing in Ph: ≤50y, renewable once for 25y; (ii) if not: ≤25y, renewable once for 25y.
2. Option to buy: (i) allowed if Filipino lessee; (ii) conditional if foreigner lessee, on acquisition of Filipino citizenship.

SPA requirement

1. Recoding in RD: (i) by husband re: wife's separate property; (ii) by guardian re: ward's property; (iii) by property manager
2. Lease ≥1y.
3. Without SPA, contract of lease is void.

****Essence of the contract is the grant of temporary enjoyment or use of the thing to another in exchange for a price certain in money.**

(b) Lease of work (contract for a piece of work)

1. One of the parties binds himself to execute a piece of work for a price certain.
2. *Obligation to do.*
3. The object of the contract is the output produced, but the same is with regard to the skills employed and manner of creation.
4. Requirement: no principal-agent relationship.

(c) Lease of service (contract of employment)

1. One of the parties binds himself to render some other service for a price certain.
2. The object is the service or labor rendered, without any specific output.

B. Rights and Obligations of Lessor

Obligations

1. To deliver the thing in a condition fit for intended use;
2. To make necessary repairs;
3. To maintain lessee in peaceful and adequate enjoyment PAE (legal trespass; perturbacion de mero derecho)
4. Not to alter the thing such as to impair lessee's use as stipulated.
5. To warrant the thing against hidden defects

Remedies in case of breach obligations (1) (2) (3)

1. Rescission + damages
2. Damages only, contract remains in force.

Rights

1. To engage in the same business to which the lessee devotes the property. XPN: contrary stipulation
2. To judicially eject lessee: (i) upon expiration of term (including TR); (ii) failure to pay rent; (iii) violation of terms; (iv) devoting thing to use not stipulated causing deterioration, not using with DGFF, use not stipulated or not consistent with nature of thing.

⁷⁷ Automatic appropriation of property charged as security for debt upon default of debtor. (a) this is prohibited; (b) creditor must resort to foreclosure.

⁷⁸ 1676. Presumption: sale is fictitious if at the time vendee demands termination of lease, the sale is unrecorded.

3. To EJ repossess the property if stipulated.⁷⁹

Destruction of thing

1. Total – extinguishes lessor's obligation.
2. Partial – lessee may choose: (i) rescission or (ii) proportionate rent reduction

C. Rights and Obligations of Lessee

Obligations

1. Not to assign lease. XPN: (i) lessor consents or (ii) contrary stipulation.
2. To pay stipulated rent. Right to suspend: (i) lessor fails to make necessary repairs; (ii) lessor fails to maintain lessee in PAE.
3. To use the thing with DGFF according to: (i) use stipulated, or (ii) that which can be inferred from its nature or (iii) according to custom of the place.
4. To preserve the thing with DGFF.⁸⁰
5. To pay expenses for deed of lease.

Urgent repairs

6. To tolerate urgent repairs though (i) annoying, or (ii) may deprive him of portion of the property, subject to proportionate reduction of rent if repairs >40d.
7. To make urgent repairs at lessor's cost.

Duty to notify

8. To notify lessor ASAP of usurpation or untoward act of 3p.
9. To notify lessor ASAP of necessary repairs.

Loss or deterioration

10. To answer for loss or deterioration unless he proves absence of fault. XPN: no burden of proof in case of natural calamity.
11. To answer for deterioration caused by members of his household, guests, visitors.

Upon expiration

12. To return the thing upon termination of lease in the condition received, subject to ordinary wear and tear and inevitable causes.
13. To be liable as possessor in BF if he continues in possession despite lessor's objection.

Repairs

1. Necessary repairs – (i) lessee must notify lessor; (ii) if lessor fails to make, less may suspend payment of rent.
2. Urgent repairs – (i) less must make; (ii) apply cost to future rentals or demand reimbursement.

Remedies in case of breach obligations (2) (3) (4)

1. Rescission + damages
2. Damages only, contract remains in force

Rights

1. To sublet. XPN: express prohibition. Effects: (i) lessee remains bound to lessor; (ii) sublessee directly bound to lessor for acts pertaining to use and preservation of thing;⁸¹ (iii) sublessee subsidiarily liable for rent to the extent provided in sublease contract.
2. To have direct action against intruders for mere acts of trespass (perturbacion de mero hecho)⁸² – lessor not liable.
3. To continue enjoying the thing lease despite expiration of term. Tacita recondución.
4. To remove useful improvements (see below)

Tacita recondución TR

1. Implied new lease. Right of the lessee to continue enjoying material possession of the object within the period fixed by law during which the lessee can prevent the lessor from evicting him from the premises.
2. Requisites – (i) expiration of original term; (ii) lessee continued enjoying the leased object; (iii) lessor acquiesced; (iv) no prior notice to vacate was given; **(v) lessee paid rent.**
3. Period: (i) if rural land: for the crop year; (ii) in urban land: daily, monthly, annually, depending on terms of rent payment.
4. Terms revived: only those necessary for continued enjoyment of thing. RFR not revived.

Useful improvements

1. Lessor has primary right to appropriate upon payment of ½ its value upon termination of lease.
2. Lessee has subsidiary right of remotion, even though the principal thing may suffer damage (concept of legal damage).
3. Waiver of right to remove – if lessee fails to remove improvement within the reasonable term given by lessor. Lessor not liable to pay since he already exercised his right to choose.

Ornamental expenses

1. Lessor has primary right to appropriate upon payment of its value upon termination of lease.
2. Lessee has subsidiary right of remotion, only if no damage will result to the principal thing.

****The lessee does not have right to reimbursement or retention pending reimbursement of the cost of improvements – useful or ornamental.**

Right to rescind

1. Non-compliance with obligations (also applies to lessor);
2. Property leased for human habitation is in condition which brings imminent and serious danger to life or health;
3. Property mainly for dwelling requires repair works which renders the portion need for dwelling inhabitable.

III. Agency

Definition

By the contract of agency, one person binds himself (a) to render some service or to do something (b) in representation or on behalf of another, (c) with the consent or authority of the latter. **RSDS RB CA**

****The essence of agency is representation of the principal.**

Elements: (a) consent; (b) object; (c) cause

(a) Consent – (i) both principal and agent; (ii) express or implied (see below).

(b) Object – performance by agent of juridical acts in representation of principal in relation to 3p. XPNs: cannot be delegated (i) strictly persona acts; (ii) illegal, unlawful acts.

(c) Cause – agency is presumed to be for compensation. XPN: contrary proof.

Kinds:

1. As to constitution: (a) actual agency; (b) agency by estoppel.
2. As to scope: (c) general; (d) special.

⁷⁹ Stipulation allowing EJ repossession is valid.

⁸⁰ Implied from the obligation to return the thing in the condition received.

⁸¹ In accordance with agreement between lessor and lessee.

⁸² Intruder claims no right whatsoever.

3.	As to nature of acts authorized: (e) couched in general terms; (f) couched in specific terms
4.	As to notification: (h) by special information; (i) by public advertisement
5.	(j) Agency by operation of law
(a) Actual agency – consent was given by both parties.	
1.	Conferment of authority may be express or implied. <ul style="list-style-type: none"> Implied: (i) By acts of principal; (ii) By his silence; (iii) By his failure to repudiate the agency knowing a person was acting on his behalf without authority.
2.	Acceptance by agent may also be express or implied. <ul style="list-style-type: none"> Implied: (i) By agent's acts which carry out the agency; (ii) By his silence or inaction according to the circumstance; (iii) As to persons present, by receipt of agent of power of attorney from principal without objection; (iv) As to persons absent – GR: acceptance cannot be implied from agent's silence. XPN: (1) receipt by agent of the power of attorney transmitted by principal without objection; (2) agent did not reply to letter/TG by principal entrusting to him a business which the agent is habitually engaged in as such.
(b) Agency by estoppel/doctrine of apparent authority	
1.	One who clothes another with apparent authority to act as his agent and holds himself out to the public as such cannot deny the authority of the apparent agent to the prejudice of 3ps dealing with the agent in GF.
2.	Requisites: (i) manifestation by principal; (ii) reliance in GF by 3p of the representation; (iii) detriment to 3p as a result of change in position MRD
3.	If an attorney appears for a cause before the court, he is presumed to be properly authorized to represent the same, and no power of attorney is required to authorize appearance. ⁸³
(c) General – comprises all the business of principal.	
(d) Special – comprises one or more specific transactions.	
(e) Couched in general terms	
1.	Only acts of administration.
2.	Notwithstanding stipulation that: (i) principal withholds no power; (ii) agent may execute acts deemed appropriate; (c) agent is authorized general and unlimited management.
(f) Couched in specific terms	
1.	Indicate particular function/s which the agent is authorized to exercise.
2.	Whether acts of administration or strict dominion.
(h) By special information	
1.	The agent becomes duly authorized as to the person specially informed.
2.	Revocation must also be done by special information.
(i) By public advertisement	
1.	The agent becomes duly authorized as to any person.
2.	Revocation must also be done by public advertisement.
(j) Agency by operation of law	

⁸³ Rule 138, sec. 21.

⁸⁴ 1874

⁸⁵ SPA to compromise excludes to submit to arbitration.

1.	When a person declines agency, and no new agent was appointed;
2.	Immediately after withdrawal;
3.	Extinguishment of agency without agent's knowledge;
4.	Death of agent – heirs will temporarily take over.
<u>Power of attorney</u>	
1.	Written instrument whereby the principal appoints another as agent, and confers upon him, the authority to perform certain acts in behalf of the principal
2.	Kinds: (i) general; (ii) special
3.	GPA sufficient to: (i) management of partnership (mutual agency); (ii) joint administration by H&W.
<u>Form</u>	
4.	GR: no form required
5.	XPNS: (i) authority of agent to sell land must be in writing, annotated in the property in public instrument; ⁸⁴ (ii) power to administer property must be in public instrument; (iii) authority to appear in pre-trial must be in writing (SPA); (iv) authority for EJ foreclosure must be writing;
<u>SPA</u>	
6.	SPA does not pertain to the form but the nature of authorization. SPA need not be in writing but may be established by evidence.
7.	Covers acts of strict dominion.
8.	Strict construction.
9.	Grant of special power includes those incidental thereto, i.e., the performance of acts necessary to accomplish the objectives of the agency.
<u>Acts requiring SPA</u> <u>PaNC WELL CPARRGO</u>	
1.	To make payments not usually considered as act of administration;
2.	To effect novation which put an end to obligations existing at the time the agency was constituted;
3.	To compromise, submit questions to arbitration, renounce right to appeal, waive objections as to venue, and abandon right of prescription already acquired; ⁸⁵
4.	To waive obligations gratuitously;
5.	To enter into contracts by which ownership of immovable is transmitted or acquired either gratuitously or for a valuable consideration;
6.	To lease any real property for more than 1 year;
7.	To loan or borrow money. XPN: if urgent and indispensable for the preservation of property under administration; ⁸⁶
8.	To create or convey real rights over immovable property; ⁸⁷
9.	To bind the principal in a contract of partnership;
10.	To accept or repudiate inheritance;
11.	To bind the principal to render service without compensation;
12.	To ratify or recognize obligation contracted before agency;
13.	To make gifts. XPNS: (i) customary ones for charity; (ii) to EEs in the business managed by agent;
14.	To bind the principal as guarantor or surety;
15.	Any other acts of strict dominion.
<u>Limits of agent's authority</u>	
1.	Agent must act within the scope of express or apparent authority;
2.	He may do acts conducive to accomplishment of purpose of agency;

⁸⁶ SPA to mortgaged excludes contracting a debt.

⁸⁷ SPA to sell does excludes to mortgage, and vv.

3. He may do acts more advantageous to principal, though not specified;
4. Generally, discretionary.

Persons dealing with assumed agent

1. Bound to inquire as to: (i) fact of agency; (ii) nature and extent of agent's authority;
2. He may require agent to present power of attorney or instructions.
3. As regards 3p, the agent acted within his authority, if the act is within the terms of the power of attorney as written, even though he in fact exceeded his authority in accordance with an understanding with the principal. Secret orders and instructions do not prejudice 3p relying on power of attorney.

Obligations of agent

1. To **carry** out agency; be liable for damage to principal through non-performance. XPN: if execution would manifestly result in loss or damage to principal.
2. To act according to principal's **instructions**. If none, to act as GFF as required by nature of the business. XPNs: (i) if agent acted in a manner more advantageous to principal; (ii) in emergency cases not due to agent's fault.
3. If stipulated, to **advance** necessary funds. XPN: if principal is insolvent.
4. To **account** and deliver everything received by virtue of the agency though not owing to principal. N.B.: (i) stipulation exempting agent from accounting is void; (ii) he may be liable for estafa.

Under specific situations (agency by operation of law)

1. If principal dies, to finish the business already begun, if delay would entail danger.
2. If he declines, to observe DGFF in the custody and preservation of goods until (i) agent is appointed, (ii) principal takes charge.

Borrowing and lending

1. If authorized to borrow – agent may lend at current interest rate.
2. If authorized to lend – agent cannot borrow. XPN: principal consents.
3. If authorized to sell – agent cannot buy. XPN: principal consents.

Appointment of substitute

1. Agent may appoint substitute. XPN: if prohibited.
2. If appointment prohibited, acts of substitute void, does not bind principal.
3. If no prohibition or authority to appoint, acts of substitute valid, binds principal, subject to liabilities.
4. Agent liable for substitute if: (i) no power to appoint; (ii) with power to appoint without designation and substitute was notoriously incompetent or insolvent.
5. Agent not liable for substitute if: (i) with power to appoint designating subagent; (ii) with power to appoint without designation and substitute was not notoriously incompetent or insolvent.
6. Principal has direct cause of action against substitute for obligations contracted under the subagency.

Two or more agents

1. Joint liability. XPN: express stipulation.
2. If solidarity stipulated, agent liable for his own acts and acts of co-agents. XPN: if co-agents acted beyond scope of authority

Liability for contracts

1. GR: agent not personally liable to the party with whom he contracts as an agent

2. XPNs: (i) he expressly binds himself; (ii) he exceeds his authority without notifying 3p of the limits of his power.
3. If agent exceeds authority: (i) contract void if 3p aware of limits of agent's power; (ii) contract valid and agent liable if he undertook to secure principal ratification.
4. If agent exceeds authority but principal ratifies, 3p cannot set up agent's excess of authority.

Doctrine of imputed knowledge

1. Notice to agent is notice to principal. 3p is not liable to principal if he suffered damage due to agent's failure to inform.
2. Knowledge of the principal is imputable to the agent. He cannot set-up agent's ignorance.

Agent acting in own name

1. Principal-3p: no right of action against each other. Agent directly bound. XPN: thing belongs to principal.
2. Principal-agent: has right of action against each other.

Liability for interest and damages

1. If there is conflict of interest and he prefers his own, to be liable for damage.
2. To be liable for interest on sums applied to his own use on those owing after extinguishment of agency.
3. If fraudulent or negligent, to be liable for damages to principal. Compensation considered in determining damages. BUT the principal remains liable to 3p if the agent acted within authority, though fraudulently or negligently.

Commission agent

1. To be liable for **goods** in the condition stated in consignment. XPN: agent makes written statement of damage upon receipt of goods.
2. If handling goods of same kind bellowing to different principals, to **distinguish** goods by countermarks, and designate principal-owner.
3. Not to sell on **credit**. XPN: express or implied consent of principal. Effect: (i) principal may demand cash payment; (ii) agent entitled to interest on credit sale.
4. If he sells on credit without authority, to **inform** principal with a statement of names of buyers. Failure: sale deemed made for cash insofar as principal is concerned.
5. If receiving guarantee commission, in addition to ordinary commission (del credere agent), to **bear** the risk of collection and pay proceeds of sale according to terms agreed with purchaser. N.B.: principal still has direct recourse with purchaser.
6. If he fails to collect principal's credit when due, to be liable for **damages**. XPN: proof of exercise of diligence in collection.

Right of retention/Agent's lien

1. Agent may retain in pledge objects of agency until reimbursement by principal.
2. Covered: (i) necessary sums advanced; (ii) indemnification for damages caused by execution of agency without fault or negligence.
3. Enforcement: same as security interest; public auction.

Obligations of the principal

1. To pay agent's compensation – (i) agency is presumed for compensation; (ii) doctrine of procuring cause: agent shall be entitled to commission if his efforts is the proximate cause for the sale, even if consummated after termination of agency.

2. To **comply** with obligation contracted by agent within the scope of his authority.
3. If requested by agent, **advance** necessary sums.
4. If agent advanced necessary sums, to **reimburse** with interest.
5. To **indemnify** agent for damages which the execution of agency may have caused him without his fault or negligence.

If agent acted beyond authority, principal liable if:

6. He ratifies, express or implied.
7. He allowed agent to act as though he had full powers (apparent authority). Solidary liability.

Two or more principals

1. Solidary liability for consequences of agency
2. If agent appointed for common transaction

Two or more transactions involving same object

1. One with agent, one with principal, and the two contracts are incompatible.
2. Rules: prior date is preferred, subject to rules on double sales.
3. Liability to person evicted: (i) principal liable if agent acted in GF; (ii) agent liable alone if he acted in BF.

When principal not liable

1. Agent acted contrary to instructions. XPN: if principal want to avail benefits of contract;
2. Agent incurred with knowledge that unfavorable result would ensue. XPN: if principal aware;
3. Express stipulation: (i) agent to bear; (ii) to be allowed only a certain sum.

Extinguishment of agency

Modes: (a) revocation by P; (b) withdrawal by A; (c) death, civil interdiction, insanity, insolvency of either; (d) dissolution of corporate agent; (e) accomplishment of object; (f) expiration of term; (g) other modes of extinguishing obligations, if applicable **RWDDAE**

(a) Revocation by P

1. May be done at will, express or implied, and require return of the power of attorney.
2. XPNs (cannot be revoked at will): **BMP** (i) bilateral contract depends upon the agency;⁸⁸ (ii) agency is means of fulfilling an obligation already contracted; (iii) managing partner is appointed as such in the contract of partnership, and his removal is unjustified.
3. If to P appointed agent for common transaction, one may revoke without consent of others.

Express revocation:

1. P must notify A for revocation to be effective.
2. Agency must be revoked in the same manner as the notice was given – (i) by special information; (ii) by public advertisement, NPGC.
3. Revocation will not prejudice 3p if: (i) agent had general powers; (ii) 3p acted in GF; (iii) 3p had no knowledge of revocation.

Implied revocation:

1. Appointment of new agent for same business or transaction. Takes effect from notice to former agent.
2. Direct management by principal of business entrusted to agent, direct dealing with 3p.
3. Grant of SPA revokes GPA re: special matter in SPA.

(b) Withdrawal by A

1. Done by giving due notice to principal, w or w/o cause.
2. A liable for damages on account of withdrawal. XPN: if due to impossibility of performance of agency without grave detriment to himself.
3. Duty of agent: to continue to act for P until he had reasonable opportunity to take steps to meet the situation.

(c) Death

1. Of principal. GR: extinguishes agency. XPNs: (i) agency constituted for the common interest of P&A; (ii) in the interest of 3p who accepted stipulation in his favor (pour autrui)
2. Of agent. (i) heirs must notify P; (ii) heirs must adopt measures in the interest of P.

Agent's act after termination valid if:

1. Done without knowledge of cause of extinguishment;
2. With respect to 3p contracting with A in GF.

IV. Credit Transactions

A. Loans

1. Kinds

Kinds: (a) commodatum; (b) mutuum

(a) Commodatum

1. One person delivers to another a non-consummable object for the latter's temporary use, with the obligation to return the same object. Creates obligation to deliver a determinate thing.
2. Object is movable or immovable. If movable – GR: non-consumable; XPN (commodatum ad ostentationem): consumable if for exhibition only. E.g., loan of money deposited in bank account only for use as show money (for paid-up capital) with agreement that the money will remain intact and will not be used.
3. Excludes right to fruits but may be allowed by stipulation. Provided right to fruits is merely incidental.

Characteristics

1. Essentially gratuitous. If not, lease of things (in money), or innominate contract (not money).

****Q: Is obligation to preserve and maintain the thing "consideration" that will remove the contract from the classification of commodatum? A: In one case, SC held yes. But, consider that obligation to return the thing is obligation to deliver determinate thing with duty to take care with DGFF.**

2. **Ownership not transferred.** Bailor need not be the owner but he must (i) be authorized by owner or (ii) have possessory interest.
3. Purely personal: (i) extinguished upon death of bailor/lee; (ii) bailee cannot lend the object;⁸⁹ (iii) members of household may make use. XPNs: (a) contrary stipulation; (b) nature of object forbids.

Kinds

1. (i) simple commodatum; (ii) precarium.
2. Simple commodatum – bailor may not demand return of thing prior to expiration of term or accomplishment of purpose.
3. Precarium – bailor may demand return at will. (i) no stipulation as to term and use; (ii) use is merely tolerated.

Obligations of bailee

1. To take care of the thing with DGFF,⁹⁰ unless otherwise stipulated.

⁸⁸ E.g., SPA for EJ foreclosure of REM.

⁸⁹ Bailee liable even in case of FE.

⁹⁰ Implied in the obligation to return the very same thing.

2. To pay for ordinary expenses for the use and preservation, and ½ of EO expenses occasioned on actual use, even without fault.
3. To pay EO expenses if: (i) he did not notify bailor before incurring, and (ii) expenses is not shown to be urgent.
4. Liability for loss due to fortuitous event – GR: not liable. XPNs: **DeKALS** (i) he **devotes** object to different use; (ii) he **keeps** object longer than stipulated period or after accomplishment of purpose; (iii) object received with **appraisal of value**; (iv) he **lends** object to 3p not member of household; (v) he prefers to **save** his own thing having opportunity to save both loaned object and his own thing.
5. Liability for deterioration: (i) not liable if due only to use without fault; (ii) liable if due to fault.
6. To return the thing upon (i) expiration of term, (ii) accomplishment of purpose, (iii) demand, if precarium. Nature: obligation to deliver determinate thing.
7. Two bailees: solidary liability.

Obligations of bailor

1. To not demand return of thing prior to expiration of term or accomplishment of purpose. XPNs: (i) in case of urgent need, he may demand temporary use (suspends commodatum); (ii) precarium (see above); (ii) bailee commits acts of ingratitude⁹¹
2. To refund EO expenses for preservation: (i) if bailee notifies bailor before incurring; (ii) even without notice, if so urgent that reply cannot awaited without danger. Sharing – GR: bailor bears; XPN: EO expense arose on occasion of actual use, even without fault of bailee.
3. To be liable for damages suffered by bailee due to flaws of thing known to bailor but failed to advise bailee.

Bailee's right of retention:

1. No RR for expenses, including EO expenses;
2. With RR for damages suffered due to flaws of thing known to bailor but failed to advise bailee.

****Bailor cannot exempt himself from payment of expenses (2) and damages (3) by abandoning the thing to bailee.**

(b) Mutuum (simple loan)

1. A person delivers to another money or consumable goods, for the latter's consumption with the obligation to pay in the same amount, kind, and quality. Creates obligation to deliver a generic thing.
2. If in money, provisions for payment of debt in money applicable (Arts. 1249, 1250)⁹²
3. May be gratuitous or with obligation to pay interest.
4. **Ownership transferred.**
5. Object is always movable and consumable or fungible. If non-fungible, contract is barter.

Examples

1. Bank deposits, whether fixed, savings, current, are governed by the law on mutuum.
2. Cash advance to EE. Not liable for estafa since the very same money need not be returned.
3. Money market transactions.
4. Bank financing transactions for purchase of property. N.B.: bank is not liable for hidden defects. The bank loan is distinct from the contract of sale.

⁹¹ 765. (i) commission of offense against person, honor, property of bailor, wife, children under his parental authority; (ii) imputation to bailor of criminal offense or act involving moral turpitude even if proven, unless against bailee, wife, children

Compensation: bank may encash certificate of deposit delivered to it to secure a debt, in case the debtor fails to pay. The certificate of deposit qualifies as medium of exchange.

Real contracts

1. Both commodatum and mutuum are real contracts.
2. Delivery to borrower is required for perfection.
3. Delivery of check does not perfect mutuum until payment is effected. (i) check is cashed; (ii) impaired due to creditor's fault.
4. c.f.: accepted promise to lend or deliver a thing by way of loan, e.g., approved loan application with bank. (i) this is a consensual contract distinct from the contract of loan; (ii) it does not give rise to an obligation to deliver since delivery is an essential element for the perfection of the contract, and the parties cannot be compelled to enter into a contract; (iii) remedy is for damages only not specific performance.

2. Interest

Kinds: (a) monetary/conventional, (b) compensatory

(a) Monetary interest

1. Interest for use or forbearance of money agreed upon by the parties.
2. Requirement: No interest shall be due unless it has been (i) expressly stipulated (ii) in writing.
3. If expressly stipulated but not in writing, there is natural obligation only.
4. If expressly stipulated but (i) rate not specified, or (ii) rate is unconscionable or excessive: legal rate applies.
5. If no stipulation of interest: (i) mutuum is gratuitous; (ii) if debtor paid, he may recover on account of solutio indebiti.
6. Rate: (i) parties may freely agree; (ii) courts may strike down unconscionable or excessive U/E interest. N.B.: That debtor agreed is not a defense.
7. Interest rate nullified U/E – (i) principal obligation and interest stipulation not invalid; (ii) as if parties failed to agree on interest rate; (iii) legal rate applies; foreclosure if any, is void, since debt is not yet demadable.

****If interest rate nullified for being U/E, interest is not yet due and demandable, and principal is not yet due and demandable. Principal shall not be deemed to have been made until interest is covered. Debtor not yet in default. If there was foreclosure, the same is void. But debtor is not entitled to recover property since the nullity of interest does not nullify the principal and the interest stipulation. Only effect: substitution of legal rate for the U/E rate.**

Rules on payment

1. Payment of principal shall not be deemed to have been made until interest was covered – (i) obligatory for debtor; (ii) discretionary for creditor; he may agree to apply payment to principal instead of interest.
2. Receipt of principal payment without reservation as to interest. Interest is presumed paid.

Interest on interest

1. GR: interest due and unpaid shall not earn interest.
2. XPN: (i) contrary stipulation; (ii) interest due which was judicially demanded shall earn interest from date of finality of judgment awarding sum of money until payment.

under parental authority; (ii) undue refusal to support bailor despite legal or moral duty.

⁹² (i) In currency stipulated; (ii) In legal tender.

****Interest rate to be applied from the time of finality of judgment awarding sum of money up to payment is the rate agreed upon if any, not the legal rate. Basis: Art. 2209 (see below) – Lara's Gifts and Decors v. Midtown.**

(b) Compensatory interest

1. Interest in the concept of damages.
2. Imposed by law (Arts. 1170, 2209) without need of express stipulation in writing.
3. Art. 1170 – those who are guilty of fraud, negligence, delay, or in any manner contravene the tenor of obligation are liable for damages.
4. Art. 2209 – in obligations to pay money and the debtor incurs in delay, the indemnity for damages shall be the payment of stipulated interest, or legal interest if there is no stipulation.
5. When due: from time of default/delay. GR: no demand, no delay, no interest.

In monetary obligations

1. With stipulated interest – indemnity for default is stipulated interest, or legal rate (if U/E). N.B.: stipulated rate applies even in the supervening period, i.e., from finality of judgment up to payment.
2. Without stipulation – indemnity for default is legal rate.

In non-monetary obligations

1. If liquidated – legal rate may be imposed from date of demand
2. If unliquidated – legal rate may be imposed from date of judgment

Legal rate:

1. 12% - up to June 30, 2013
2. 6% - starting July 1, 2013, prospective.

B. Deposit

Definition

Deposit is constituted from the moment (a) a person receives a thing belonging to another, (b) with the obligation of safely keeping it and returning the same.

(a) Real contract – delivery is required for perfection.

(b) Principal purpose is safekeeping.

Nature

1. Real contract: requires delivery for perfection.
2. c.f.: obligation to constitute a deposit is distinct from the contract of deposit. It is consensual. In case of breach, delivery of object cannot be compelled. Only remedy is action for damages.
3. No transfer of ownership. Depositor need not be the owner.

Kinds:

1. As to constitution: (a) EJ; (b) Judicial
2. Kinds of EJ deposit: (c) voluntary; (d) necessary
3. As to compensation: (e) onerous; (f) gratuitous

(a) EJ

1. Object is movable only.
2. Voluntary and necessary.

(b) Judicial (sequestration)

1. Done by attachment or seizure of property in litigation upon court order. Auxiliary to a case pending in court.
2. Object may be movable or immovable.

3. Purpose: to maintain status quo and prevent defeating the rights of prevailing party by disposing the property.
4. Depositary must act with DGFF.
5. Responsibility of depositary remains: (i) until controversy is terminate; or (ii) until court orders.
6. Subsidiarily governed by ROC.

(c) Voluntary deposit

1. One wherein the delivery is made by the depositor's will.
2. May be entered orally or in writing.
3. Deposit made by incapacitated depositor binds depositary. Return of thing may be demanded by guardian, administrator, depositor once he regains capacity.
4. Deposit made by depositor to incapacitated depositary. (i) depositor may recover object while still in possession of depositary; (ii) depositor may compel depositary to pay him the amount that the latter is enriched or benefited; (iii) depositor may bring action to recover thing against 3p acting in BF.

Obligations of depositary

1. To safekeep the thing with DGFF, unless different standard is provided.⁹³
2. To return the thing when required.
3. Not to deposit the thing with 3p. XPN: contrary stipulation.
4. To be liable for deposit with 3p if: (i) no stipulation allowing; or (ii) with stipulation allowing but 3p is manifestly careless or unfit.
5. To be liable for negligence of his EEs.
6. Not to change the way of deposit: XPN (i) if consent of depositor can be reasonably presumed under the circumstances; and (ii) he notifies depositor and waits for his decision, unless delay would entail danger.
7. To collect interest on certificates, bonds, securities; take steps to preserve their value. Not applicable to safety deposit boxes.
8. Not to use the thing. XPNs: (i) express permission of depositor;⁹⁴ (ii) use solely for preservation.
9. To be liable for damages if he uses of thing, unless XPNs apply.
10. To be liable for loss due to his fault.
11. Liability for loss due to FE: SUDA (i) stipulated; (ii) use without permission; (iii) delay in return; (iv) allows 3p to use, even though he himself is authorized.
12. Not to demand depositor to prove ownership of thing deposited.
13. To advise true owner of deposit, upon discovery that the thing was stolen.

Duty to return

1. What: (i) the thing itself, including all products, accessories, and accessions; (ii) the sum or thing received in place of the thing deposited, in case it was lost due to force majeure or government order; (iii) in deposit of money – GR: not liable for interest. XPN: depositary converts it to own use or as to those still owing after extinguishment of deposit.
2. To whom: only to the (i) depositor, (ii) depositor designated if there are two or more, (iii) depositor's administrator should he become incapacitated.
3. Where: (i) with stipulation, in the place designated;⁹⁵ (ii) without stipulation, where it is deposited.

⁹³ Whether the deposit is gratuitous or onerous may be considered in determining whether the standard of care.

⁹⁴ (i) Contract becomes commodatum (if gratuitous) or lease of things (if onerous), unless safekeeping remains the principal purpose of the contract. (ii) Permission is not presumed.

⁹⁵ Depositor shall be liable for cost of transportation.

- When: upon demand, even if a period was fixed. XPN: (i) thing was judicially attached; (ii) notice to depositary of opposition by 3p on the return of thing or its removal from deposit. N.B.: depositary may also return earlier if justified (see below).

Locked or sealed objects

- Depositary shall not open. It shall be returned in the same condition.
- Depositary is liable for damages if seal is broken through his fault. Fault is presumed.
- If seal is broken with or without depositary's fault, he must keep the secret of the deposit.
- Presumption of authority to open: (i) it becomes necessary to open the object and the keys were delivered to depositary; (ii) instructions of depositor cannot be executed without opening box.

Rights of depositary

- To commingle grains, articles of same kind and quality belonging to different depositors. XPN: contrary stipulation. Effect: depositors become co-owners.
- To relieve himself of obligations by returning the thing to depositor: (i) if true owner fails to claim despite notice, upon knowledge that the thing was stolen; (ii) if he has reasonable grounds to believe that the thing was not lawfully acquired by depositor.
- To return the thing if justified. XPN: if deposit is for valuable consideration.
- To consign the thing with court if depositor refuse to receive a justified return.
- To retain the thing in pledge until reimbursed of what may be due him by reason of deposit (depositary lien).

Obligations of depositor

- To pay compensation if onerous. N.B.: expenses of preservation are for the account of depositary.
- To reimburse expenses of preservation if gratuitous deposit.
- To reimburse for loss arising from the dangerous character of the thing. XPNs: (i) depositor unaware or not expected to know at the time of making deposit; (ii) he notifies depositary; (iii) depositary was aware, with or without advice from depositor.

Rights of depositor

- To demand his share only in the thing deposited if: (i) there are two or more depositors; (ii) not solidary; (iii) thing is divisible.

Safety deposit boxes: neither an ordinary contract of lease, nor an ordinary contract of deposit. It is a special contract of deposit whose principal purpose is still safekeeping.

Extinguishment

- Loss or destruction of object
- In gratuitous deposit, death of either party

(d) Necessary deposit

- One made in compliance with a legal obligation – governed by law and rules on voluntary deposit.
- One which takes place on occasion of calamity – governed by rules on voluntary deposit and quasi-contract.
- Deposit of effects by travelers in common carriers, hotels/inns.

Deposit in hotels/inns

- Liable as depositary if: (i) they are notified of effects brought; (ii) travelers take precautions advised on the care and vigilance of their effects.

- Liability extends to annexes of hotel – vehicles, animals, articles. (i) Valet parking is contract of deposit; (ii) Ordinary car parking is lease of things.
- Liability for loss or injury on effects: (i) if caused by servants/EEs; (ii) caused by strangers.
- Act of thief or robber. GR: not force majeure but act of stranger. XPN: done with the use of arms or through irresistible force.
- Not liable if: (i) due to force majeure; (ii) acts of guest, his family, servants, visitors, provided there is no concurrent negligence; (iii) due to character of the thing.
- Suppression, diminution, waiver of liability is void. The hotel/inn cannot exempt itself from liability by posting of notices.
- Right of retention. Things deposited may be retained as security for lodging, supplies (innkeeper's lien).
- Liability for safety of guests. (i) no specific provision; (ii) in one case, SC applied the provisions on necessary deposits holding the hotel/inn liable for injury to guests due to acts of its EEs or of strangers; (iii) justification: if hotels/inns are bound to keep the safety of the guests' effects, the same liability should apply with more force as regards the safety of the persons of the guests.

(e) Onerous deposit

- (i) If there is agreement to pay compensation; (ii) depositary is engaged in the business of storing goods; (iii) property is saved from destruction without knowledge of owner under 2168 where owner is bound to pay just compensation; (iv) judicial deposit.
- Otherwise, gratuitous.

C. Guaranty and Suretyship

Nature

Guaranty and surety are personal security agreements whereby the faithful performance by the principal debtor of his obligation is secured by the personal commitment of another.

(a) Guaranty

- One where the guarantor binds himself to the creditor to fulfill the obligation of the principal debtor, in case the latter fails to do so.
- May be made in favor of (i) principal debtor or (ii) guarantor (subguaranty).
- In actions against debtor, guarantor must be notified. Guarantor may appear and set up defenses available to him.

Kinds:

- Conventional – created by agreement of parties.
- Legal – created in compliance with provision of law.
- Judicial – required by court to secure the eventual right of a party; judicial bondsman. Right of excussion is not available.
- Gratuitous
- Onerous
- Simple or indefinite – covers: (i) principal obligation; (ii) accessories; (iii) judicial costs. N.B.: guarantor shall be liable for judicial costs only upon judicial demand.

Benefit of excussion

- Guarantor's liability is subsidiary.
- He cannot be compelled to pay unless: (i) creditor has exhausted all property of principal debtor; (ii) he has resorted to all legal remedies against debtor.
- When not available: **EBIPA** (i) **express** renunciation; (ii) **G binds** himself solidarily; (iii) debtor **insolvent**; (iv) it can be **presumed** that

execution against debtor's property will not satisfy the debt; (v) G **absconds** or cannot be sued in Ph, unless he left a manager or representative.

4. To avail: (i) G must set it up against creditor upon demand for payment; (ii) point out debtor's properties in Ph sufficient to cover the debt. If creditor is negligent in exhausting debtor's property pointed out, he shall suffer the loss.
5. Available even if judgment was rendered against principal debtor and guarantor (even against G alone). G may move to defer execution of judgment against him until (i) judgment was rendered against debtor, and (ii) his properties were exhausted by way of execution.
6. Benefit is personal to the G: (i) debtor cannot invoke; (ii) G may waive. N.B.: debtor cannot refuse to reimburse G on ground of his waiver of the benefit of excussion.
7. Subguarantor has benefit of excussion as against debtor and guarantor.
8. E.g., if the debt was secured by REM, the creditor may not enforce the guarantee without force enforcing the REM.

Benefit of division (available to surety)

1. The right of co-guarantors to have the debt divided such that the creditor may demand from each, only their proportionate share in the debt.
2. Multiple guarantors, same debt/or – obligation is joint.
3. XPNs: (i) solidarity is stipulated; (ii) **EBIPA** (same causes for loss of benefit of excussion)
4. G who pays may demand proportionate contribution from his co-guarantors.
5. If 1 insolvent, his share shall be borne by all proportionately, including G who paid.
6. Defenses by co-guarantors: (i) those pertaining to debtor against creditor; (ii) those personal to debtor.

Right to indemnity (available to surety)

1. Amount of debt
2. Interest from time of notice of payment to debtor
3. Expenses of notice
4. Damages, if due
5. N.B.: may be demanded from (i) debtor; (ii) person requesting when debtor was absent.

Right to subrogation (available to surety)

1. Guarantor **who pays** is subrogated to all the rights which the creditor may have against the debtor.
2. When G may proceed against debtor even before payment: **SIIB DTR** (i) G is sued for payment; (ii) debtor is insolvent; (iii) or in imminent danger of insolvency; (iv) debtor bound himself to relieve G with a specific period which has expired; (v) debt has become demandable due to expiration of term; (vi) lapse of 10y, if debt is without term;⁹⁶ (vii) reasonable grounds to believe that debtor intends to abscond. **Remedies before payment:** (i) demand release; (ii) demand security.
3. This is available only once the debt was fully extinguished, not if only partial.

Defenses of debtor against guarantor (available to surety)

1. Lack of notice before payment. (i) Debtor may enforce against guarantor all defenses which he could have raised against debtor at the time payment was made; (ii) if debtor repeats payment, G has no recourse against debtor but he may go after the creditor. XPN: (a) gratuitous guaranty; (b) G was prevented from informing debtor by fortuitous event; (c) creditor becomes insolvent; (d) debtor shall reimburse G of the amount paid,

2. Debt not yet due. G cannot claim reimbursement until expiration of period. XPN: if debtor ratifies.

Defenses of guarantor against creditor

1. Those pertaining to principal debtor. XPN: if purely personal
2. Those inherent in the debt (available to surety)

Effect of compromise

1. Creditor-debtor – benefits guarantor but does not prejudice him.
2. Creditor-guarantor – benefits debtor but does not prejudice him. G cannot demand more than what he actually paid.

(b) Suretyship

1. One where the surety binds himself solidarily with the principal debtor to the creditor to fulfill the former's obligation, in case he fails to do so.
2. Surety's liability is direct, primary, absolute PDA. (i) he is bound by judgment against debtor even if not impleaded; (ii) he may be sued alone or together with principal debtor and neglect to sue the debtor will not exonerate S; (iii) prior demand or notice of default not required to fix his liability; (iv) S may be sued even if debtor is not insolvent.
3. But accessory. (i) it depends on valid principal obligation; (ii) surety is liable once obligation of the debtor is established; (iii) limited to the terms of the surety agreement.
4. Consideration: deemed integrated in the consideration for principal obligation and need not pass to the surety. S cannot deny liability on ground that he did not benefit.
5. Defenses of surety: only those arising from contract. No benefit of excussion.

Guarantor	Surety
Secondary/subsidiary liability	Solidary liability. Primary, direct, absolute
Has benefit of excussion	No benefit of excussion
Insures solvency	Insures debt

Common characteristics

1. Generally (but not essentially) gratuitous, as parties may provide otherwise.
2. Accessory contract. Cannot exist without a valid obligation – includes: (i) voidable, (ii) unenforceable; (iii) natural; (iv) past, present, future debts (continuing guaranty);⁹⁷ (v) conditional obligations.
3. A natural obligation secured by guaranty or surety is novated to a civil obligation.
4. Covered by SOF: special promise to answer for the debt, default, or miscarriage of another. It must be evidenced by some note or memorandum subscribed by the party charged. Only the undertaking, not necessarily the acceptance of creditor.
5. Extent: may be for less but not for more than the principal obligation.
6. Debtor is not a party. G/S may be entered into even without the knowledge or consent, or even over the objection of debtor. But if done without knowledge or consent of debtor, the debtor is liable only insofar as he was benefited.
7. Not presumed.
8. Qualifications: (i) integrity; (ii) capacity to bind himself; (iii) sufficient property; (iv) subject to jurisdiction of court where his obligation is to be complied with; (v) person other than the principal debtor.
9. Intervening incapacity: (i) will not terminate the contract; (ii) creditor may demand replacement of

⁹⁶ Unless debt is of nature that it cannot be extinguished except with a period longer than 10y.

⁹⁷ There can be no claim against guarantor until the debt is liquidated.

	G/S. XPN: if the creditor himself designated the G/S.
10.	Right to indemnification and subrogation applies to both.
Extinguishment; Release of G/S	
1.	Upon extinguishment of principal debt.
2.	For causes as the extinguishment of other obligations.
3.	Voluntary acceptance by creditor of property in payment of debt (dacion en pago), even if he should lose it through eviction.
4.	Grant of extension by creditor to debtor without G/S's consent. N.B.: mere failure to demand payment on due date does not automatically constitutes extension.
5.	When by acts of creditor, G cannot be subrogated to former's rights, mortgages, preferences.
6.	When creditor consents to the withdrawal of consigned object despite (i) approval by court; (ii) his acceptance of object as full satisfaction of obligation.
7.	Material alteration of the obligation which makes it more burdensome as to be beyond the contemplation of the parties. E.g., increase in credit line. N.B.: G/S can bind themselves for less but not more than the principal obligation.
8.	Partial release – release of 1 co-guarantor without the consent of others, releases the others proportionately.

D. Real Estate Mortgage

Essential requisites SAFD

- Constituted to **secure** the fulfillment of an obligation;
 - Absolute** ownership by mortgagor;
 - Free** disposal of their property, or legal authority for the purpose by the person constituting the mortgage;
 - In case of **default**, the property may be alienated for the payment of creditor.
- (a) Security agreement
- Accommodation mortgagor – (i) a stranger to the obligation may mortgage his property to secure a principal obligation; (ii) Liability is limited to the property; (iii) not solidarily liable with debtor; (iv) not personally liable in case of deficiency.
 - May secure all kinds of obligation: pure, conditional, voidable, unenforceable, natural obligations, future debts including those incurred after registration (blanket mortgage or dragnet clause).
 - REM to secure bank loan (mutuum). REM constituted prior to release of loan proceeds is valid but conditional on the perfection of the principal loan contract (recall: mutuum is real contract requiring deliver for perfection). Contracts may have for their object future property having the potential of existence.
- (b) Absolute ownership
- Stipulation prohibiting owner from disposing collateral is void. Also, stipulation requiring mortgagee's consent for alienation (indirect circumvention).⁹⁸ Valid stipulation: (i) prohibition against subsequent mortgage; (ii) requiring consent of mortgagee for subsequent mortgage.
 - GR: if mortgagor is not the absolute owner, the mortgage is void.
 - XPN: **mortgagee in GF** with respect to registered properties if the registered owners who

⁹⁸ Since REM creates real rights, there is really no need to prohibit the disposition of property. The lien attaches to the property regardless of ownership or possessor.

	mortgaged the property later appeared not to be its absolute owner.
4.	XPN to XPN: (i) there are circumstances which ought to put the mortgagee on guard and make further inquiry; (ii) mortgagee is bank. ⁹⁹ financing institution, investment institution/houses, those engaged in real estate business; (iii) mortgagee is GIS. ¹⁰⁰
(d) Alienation of property in payment of debt	
1.	In case of default, creditor cannot: (i) appropriate the collateral; (ii) dispose the collateral (pactum commissorium)
2.	Pactum commissorium is a stipulation providing for automatic appropriation or vesting of title to the creditor of the collateral upon default of debtor without foreclosure. This is prohibited.
3.	Indirect pactum commissorium: (i) equitable mortgage purporting to be pacto de retro or absolute sale; (ii) deed of assignment with provision that it shall become void upon payment of a certain amount within a specific period; (iii) dacion en pago where debt subsisted despite transfer of property to creditor. In these, the intent is to charge property as security for debt, but was made to appear as absolute transfer of ownership.
4.	Not pactum commissorium: provision that property will be sold to creditor in case the debtor defaults.
Characteristics:	
1.	Consensual.
2.	Possession may or may not be with creditor.
3.	Indivisible, even though the debt is divisible. Partial extinguishment of debt cannot result to partial release of mortgage. XPN: if several things were mortgaged, and each secures a determination portion of the debt. Does not apply if: (i) debt is already extinguished by foreclosure; (ii) redemption by accommodation mortgagor.
4.	Object: (i) immovables; (ii) alienable real rights.
5.	Ownership not transferred.
6.	Creates real right over immovables. It immediately subjects the property to the fulfillment of the obligation for whose security it was constitute, regardless of who the possessor is. The REM is inseparable from the immovable. XPN to relativity of contracts.
7.	Merely creates lien/encumbrance but does not involve cession or conveyance of property.
8.	Scope of mortgage: (i) accessions, (ii) improvements; (iii) fruits not yet received when obligation becomes due; (iv) indemnities received from insurers/ government (expropriation)
Form	
1.	None required for validity. Oral REM is valid and enforceable.
2.	For convenience and to bind 3p, must be in public instrument recorded in RD.
3.	Not covered by SOF.
Alternative remedies: (a) Action for collection; (b) Foreclosure	
(a) Action for collection	
1.	Doctrine of election of remedies. Filing an action for collection (i) releases the collateral; (ii) waiver of lien. Otherwise, splitting of causes of action. Except that deficiency may be recovered after foreclosure.

⁹⁹ With respect to the deposits of customers, banks are required to exercise the highest degree of diligence. Amounts loaned to borrowers come from customers' deposits.

¹⁰⁰ In dealing with members' funds.

(b) Foreclosure

1. Kinds: Judicial, EJ
2. Judicial foreclosure JDF – (i) governed by ROC; (ii) available for both REM and antichresis; (iii) available to REM even if there is SPA; (iv) antichresis can only be foreclosed judicially.
3. EJ foreclosure – (i) one which expressly authorizes the creditor via an SPA to sell the mortgaged property in public auction should the debtor default without need of resorting to court; (ii) the SPA may be in the Deed itself or in an instrument annexed thereto; (iii) the agency is not extinguished by the death of either party; (iv) not appealable and immediately executory, the remedy of the aggrieved party is to set aside sale and petition for the cancellation of writ of possession.
4. Prescriptive period: 10 years from debtor's default.
5. Recovery of deficiency: (i) in judicial, by filing motion to recover deficiency (deficiency judgment); (ii) in EJ, by filing an ordinary collection suit.
6. Inadequacy of price. GR: does not affect validity of sale since redemption is available. XPN: if shocking to the conscience of the court. Stipulation of minimum bid price is null and void.

Right of redemption

1. c.f.: Equity of redemption – (i) right of the mortgagor to extinguish the mortgage debt and retain ownership of the property by paying the amount of debt and related costs; (ii) 90-120 days from entry of judgment, or even beyond prior to confirmation of sale.
2. Right of redemption is the right of the mortgagor to reacquire the foreclosed property after its sale, by paying the purchaser/court the bid price and costs of sale, including interest; or to divest the property of the lien which the mortgage may have created.
3. Who may exercise – mortgagor, junior mortgagee, judgement creditor of mortgagor, other person having lien.
4. When available – (i) in EJF, generally available, (ii) in JDF, generally not available. XPN: under GBL, when mortgagee is PNB, or banking institution, there is right of redemption whether EJF or JDF.

Under GBL

1. Mortgagee-bank (GBL) – (i) individual mortgagor, 1 year issuance of certificate of sale; (ii) 3 months from issuance of certificate of sale, upon registration of the sale, whichever comes earlier.
2. The difference in redemption period is justified by the substantial distinction between the mortgagors and the nature of property, (i) individual-owned property is general for residential purpose; (ii) corporate-owned property is usually for commercial or industrial purpose, shorter period is intended to minimize uncertainty in ownership.
3. May be exercised even if the bank has already transferred its interest over the foreclosed property to a non-bank. The latter merely steps into the shoes of the bank.

Under Act No. 3135

1. Available only in EJF
2. 1 year from registration of certificate of sale – natural or juridical person.

Jurisprudence

1. If interest on loan was declared U/E, foreclosure invalid. Payment of interest shall not be deemed to have been made until the principal was covered. If the interest was due, it follows that the principal was not due. At the time of foreclosure, the debt is not yet due and demandable. Hence, foreclosure

is void. But collateral will not be released since the principal obligation remains valid.

2. Lands awarded under CARP has 10-year retention period. It cannot be foreclosed, except by LBP.

E. Antichresis

Definition

By the contract of antichresis, the creditor acquires the right to receive the fruits of an immovable of his debtor, with the obligation to apply them to the interest, and then the principal.

Essential requisites

- (a) Constituted to **secure** the fulfillment of an obligation;
- (b) **Absolute** ownership by mortgagor;
- (c) **Free** disposal of their property, or legal authority for the purpose by the person constituting the mortgage;
- (d) In case of **default**, the property may be alienated for the payment of creditor.
- (e) Stipulation that creditor will have possession of the property;
- (f) **Express agreement authorizing creditor to receive the fruits, with obligation to apply the same to interest owing and then principal;**
- (g) Creditor to retain enjoyment of thing until the debt is fully extinguished;

(a) to (d) – same with REM (see above).

Form: For validity, the amount of principal and interest must be in writing. The contract of antichresis itself need not be in writing.

Characteristics

1. Creditor always in possession of property.
2. Other characteristics same with REM (see above)

Obligations of creditor

1. To gather fruits and apply to interest owing and then the principal.
2. To pay taxes, charges, preservation expenses. Deductible from fruits.
3. To exempt himself from obligation, creditor may compel debtor to enter enjoyment of the property (protestative to the creditor). XPN: contrary stipulation.

Obligations of debtor

1. To allow enjoyment of property by creditor until his debt is totally paid.
2. To enter enjoyment of property for the benefit of creditor if latter requires.

Remedies (same with REM; see above)

V. Compromise

Definition

A contract whereby the parties put an avoid litigation or put an end to existing one by reciprocal concessions.

Execution

1. GR: no execution
2. XPNs: (i) if judicially confirmed; (ii) under Katarungang Pambarangay Law; (iii) under ADR Law (voluntary compliance)

Effect

1. Res judicata upon the parties.
2. If judicially confirmed: (i) res judicata; (ii) immediately final and executory, not appealable.
3. Courts cannot set aside a compromise agreement validly entered into since this is part of the parties' right of freedom to contract. XPN: if contrary to Imgcopp.
4. Grounds to set aside: (i) vice of consent; (ii) forgery.

Remedies for breach

1. Specific performance
2. Regard agreement as rescinded and insist on original demand.

When required

1. Between family members – earnest efforts towards compromise
2. Between persons in the same barangay
3. Pursuant to contractual stipulation

Matters which cannot be compromised

1. Civil status of persons
2. Validity of marriage or legal separation
3. Any ground for legal separation
4. Future inheritance
5. Future support
6. Jurisdiction of courts

Evidentiary value

1. In civil cases – (i) not admission of liability; (ii) not admissible as evidence against offeror.
2. In criminal cases – may be considered as implied admission of guilt. XPNs: (i) crimes involving quasi-offenses, (ii) those allowed to be compromised, e.g., B.P. No. 22, Estafa, Malicious Mischief.
3. But following are not admissible in criminal cases – (i) plea of guilt later withdrawn; (ii) unaccepted offer of plea of guilt to a lesser offense.
4. In both – offer to pay medical expenses for injury is not admissible as proof of liability.

VI. Quasi-Contracts

Quasi-contracts are certain lawful, unilateral, voluntary **LUV** acts which gives rise to a juridical relation between the parties to the end that no one shall be unjustly enriched at the expense of another.

Prescriptive period to enforce: 6 years from accrual of cause of action.

A. Negotiorum Gestio

Definition

Juridical relation created when one person voluntarily takes charge of the agency or management of the business or property of another without any power from the latter. AM BP

Does not apply if:

1. BP is not abandoned (unauthorized contract)
2. Owner tacitly authorized the gestor (rules on agency)

Requisites

1. Voluntary AM of another persons BP;
2. BP is abandoned or neglected;
3. Owner did not authorize, express or implied;
4. Done in GF;
5. Manager did not act under the impression that he has rightful possession or ownership of the BP (not adverse).

Obligations of gestor:

1. To continue the AM until the termination of the affair and its incidents;
2. To require the persons concerned to substitute him, if in a position to do so;
3. Perform his duties with DGFF;
4. Pay damages due to his fault or negligence (courts may temper the award);
5. To be liable for the acts of the delegate (owner also has direct recourse against delegate);
6. To be personally liable for contracts entered with 3p, even if he acted in the name of owner. No right

of action between owner and 3p. XPNs: (i) owner expressly ratifies; (ii) contract refers to things pertaining to owner.

7. Two managers – solidary liability. XPN: joint only if AM assumed to save the BP from imminent danger;
8. Liability for FE. GR: not liable. XPNs: **UPDA-MI** (i) **undertakes** risky operations which the owner is not accustomed; (ii) **preferred** his interest over that of the owner; (iii) **delay** the return of the BP upon demand; (iv) **assumed** management in BF; (v) if gestor is **manifestly** unfit; (vi) if by his **intervention**, he prevented a more competent person from taking up management. XPN to XPN: in (v) (vi), he is not liable if the AM was done o save the PB from imminent danger.

Liability for obligations; Owner liable if:

1. He ratified the acts of gestor (produces the effects of express agency), even if the business may not have been successful;
2. He enjoys the advantages of the officious management;
3. Even without benefit, if the management is for the purpose of preventing an imminent danger or manifest loss;
4. Even without benefit or imminent danger if: (i) gestor acted in GF; and (ii) PB is intact, ready to be returned to the owner;
5. Owner liable for: (i) obligations incurred in his interest; (ii) he shall reimburse gestor for necessary and useful expenses, damages incurred in performance of duties. Applies to (2) (3) (4). As to (1) law on agency applies.

Prescriptive period: 6 years from the time of demand to render accounting and liquidation of expenses.

Extinguishment **RWD**

1. Repudiation by owner
2. Withdrawal of gestor – subject to obligation to continue management until termination of the affair and its incidents, or to require the owner to take charge.
3. Death, insanity, insolvency, civil interdiction of either party.

B. Solutio Indebiti

If something was received when there is no right to demand it, and it was unduly delivered through mistake, the obligation to return it arises to prevent unjust enrichment at the expense of another.

Requisites:

1. No pre-existing relations between payor and payee
2. Payment made by mistake

Mistake

1. Generally, mistake of fact
2. But may also include mistake in the construction or application of a doubtful or difficult question of law

Liability to return

1. Two or more payees – solidary
2. Liability if acceptance of undue payment was done in BF – (i) for fruits or interest; (ii) for loss or impairment for any cause; (iii) for damages to person who delivered the thing until the thing is recovered;
3. Liability if acceptance of undue payment was done in GF – (i) impairment or loss insofar only as he was benefited; (ii) to return the price or assign the action to collect the sum, if the thing was alienated.

Prescriptive period: 6 years from the time the erroneous payment was made.

VII. Torts and Damages

A. Principles

1. Abuse of Rights

Cardinal principles

Every person must, in the exercise of rights and the performance of duties, must (a) act of justice; (b) give everyone his due; (c) observe honesty and good faith (Art. 19)

The right ends when it disappears, and it disappears when it is abused.

Requisites:

1. Existence of legal right or duty
2. Exercise in BF, or not in accordance with Art. 19
3. For the sole purpose of prejudicing or injuring another

***Generally, not applicable to contractual right or duty since the latter is governed by Arts. 1159, 2220. For Arts. 19 to 21 to apply, there must generally be no pre-existing contract between the parties.*

Remedies:

1. Art. 20 (see below)
2. Art. 21 (see below)

Relate with *damnum absque injuria* (see below)

2. Unjust Enrichment

(a) Every person who by the act or performance of another, or by other means (b) comes into possession of something (c) at the expenses of the latter (d) without just or legal cause, (d) shall return the same to him (Art. 22).

Even if though the act or event causing damage to another's property was not due to the fault or negligence of the defendant, the latter shall be liable for damages if though the act or event, he was benefited (Art. 23).

The institution of quasi-contracts also creates a juridical relation between persons to the end of preventing unjust enrichment.

***In every case of unjust enrichment, the law creates an obligation upon the undue recipient to the return what he has received without just or legal ground.*

Requisites:

1. Plaintiff suffered loss;
2. Defendant was correspondingly enriched;
3. The enrichment was without just or legal cause;
4. Plaintiff has no other remedies under c,qc,d,qd.

Accion in rem verso (Art. 22)

1. Obligation created by law for the undue recipient to return what was received.
2. Available only when the plaintiff has no other legal remedy under contract, quasi-contract, delict, quasi-delict.

c.f.: *solutio indebiti*

1. The essence of SI is mistake in making the payment. (i) mistake of fact; (ii) mistake in the construction or application of a doubtful or difficult question of law.
2. Under Art. 22, mistake is not the essence. It may be by acts of another person or other means. It may be by mistake not of the character described above, e.g., mistake in construction of law that is not doubtful or difficult.
3. SI is an obligation based on QC, Art. 22 is an obligation created by law.

Not available: when its application will result to the circumvention of constitutional provision. E.g., foreigner is not entitled to recover money given to Filipino for acquisition of land in Ph to be placed in the Filipino's name as the foreigner's dummy.

3. Liability Without Fault

***Also, strict liability.*

Specific provisions of law which fixes the liability of persons under certain circumstances or having some relation to property causing injury, and being in the position to prevent the injury, regardless of their fault, negligence or intent.

Art. 2183

1. Possessors of animals are liable for injuries caused by latter, even if they escaped or was lost.
2. XPN: (i) fortuitous event; (ii) fault of injured person.
3. Ownership is not important.

Art. 2187

1. Manufacturers or processors of consumable goods are liable for death or injury caused by harmful or noxious substance used by them.
2. Causal connection is essential between (i) death or injury, and (ii) ingestion of harmful or noxious substance.

Art. 2189

1. LGUs are liable for death or injury caused by the defective condition of public works under their control or supervision.
2. LGU need not own the project, it may be the project of national government (DPWH). They are still liable. Control and supervision is determinative.

Art. 2190

1. Proprietor of building or structure is liable for damage caused by its collapse due to lack of necessary repairs.
2. Under the law, if a building is in danger of falling, the owner has the positive duty to either (i) demolish it or (ii) make necessary repairs.
3. Liability cannot be passed onto the adjacent property owner who failed to vacate.
4. Doctrine of last clear chance not applicable in strict liability cases. It applies only in negligence cases.

Art. 2192, in relation to 1723

1. Engineer/architect or contractor is liable if a building collapses within 15y from completion;
2. E/A is liable if due to defect in plans/specifications, or defects in the ground;
3. Contractor is liable if due to defects in construction, use of inferior materials furnished by him, violation of T&C of contract. E/A also solidarily liable if he supervised the construction.
4. Prescriptive period: 10y from collapse.

Art. 2193

1. Head of family liable for damage caused by things thrown or falling from the building where they live in.

4. Acts Contrary to Law

Basis:

Art. 20 (willful/negligent acts contrary to law) – Those who by willful or negligent acts contrary to law, causes damage to another, shall be liable to the latter for damages.

****Not a ground for recovery of damages.**

Requisites:

1. Defendant caused injury to plaintiff through acts whether willful or negligent;
2. He breaches a specific provision of law;
3. Plaintiff has no other remedies under c,qc,d,qd.

E.g., MERALCO immediately cut-off the electricity of a consumer found pilfering electricity in flagrante delicto. MERALCO was liable for damages under Art. 20 for its willful act contrary to law. While it has the right to make the disconnection, it was done in a manner contrary to R.A. No. 7832, which requires: (i) the presence of ERB representatives in making inspection; (ii) prior notice of disconnection to consumer.

5. Acts Contrary to Morals

Basis:

Art. 21 (willful acts contra bonos mores) – Those who by **willful** acts contrary morals, good customs, or public policy, causes damage to another, shall be liable to the latter for damages.

****Ground for recovery of damages.¹⁰¹**

Requisites:

1. An act done which was not illegal;
2. But contrary to morals, gc, pp;
3. Done with intent to injure.

E.g., Breach of promise to marry, while not an actionable wrong and not contrary to public policy may be contrary to morals and good customs that may give rise to an action for damages under Art. 21. (i) Contrary to morals, if the promise to marry constituted moral seduction which was the proximate cause for the woman to agree to sexual congress; (ii) Contrary to good customs, when the groom walked out on the marriage few days before the marriage despite all the expenses and preparations (Wassmer v. Velez).

Imposition of U/E interest was also declared contrary to pp.

Malicious prosecution. However, the mere act of filing a criminal action which was eventually dismissed does not automatically amount to malicious prosecution. It must be shown that the prosecutor was impelled by legal malice.

B. Classification of Torts

1. Intentional

Voluntary and intentional acts or omissions which are criminal in character, *whether committed intentionally/deliberately or negligently*, are also covered by quasi-delict/torts.

Basis: Arts. 19, 20, 21, RPC. Under RPC, every person criminally liable is also civilly liable (civil liability ex-delicto).

Whenever a crime is committed and there is a private offended party, the same act or omission causing damage produces two distinct sources of civil obligation are. (1) From delict (ex delicto), and (2) from quasi-delict. *Subject only to the rule on against double recovery.*

****The offended party cannot recover twice for the same act or omission.**

QD is an independent source of obligation:

1. Acquittal of accused, regardless of ground, does not extinguish civil liability based on QD.
2. Prescription of criminal action will not bar recovery of civil liability based on QD, either from the wrongdoer or his ER;
3. Death of accused pending appeal on judgment of conviction extinguishes only civil liability ex-delicto but not that based on QD, which may be enforced against his estate.

Distinctions	Delict	QD
Civil liability	Arising from criminal acts	Arising from negligent, but not criminal acts
ER's liability	Subsidiary. ER's liability will attach only if EE was (i) convicted, (ii) insolvent.	Solidary. ER's liability is from its own negligence of failing to exercise DGFF in selection and supervision of EEs.

Prescriptive period: 4 years from commission of the crime. Interrupted during the pendency of the criminal action.

2. Negligent

One arising from fault or negligence resulting in damage to another, there being no pre-existing contractual relation between the parties.

Basis: Art. 2176

Fault or negligence not punishable by law.

1. Fault – voluntary act or omission causing damage to another; intentional/deliberate acts (intentional torts; see above).
2. Negligence – omission to observe the proper degree of diligence under the circumstances for the protection of another person's rights.

Requisites:

1. Fault or negligence of defendant (actual or imputed)
2. Damage to plaintiff
3. Proximate causation
4. No pre-existing contractual relation. XPN: if the act which breaks the contract is also a tort

Burden of proof: plaintiff must prove defendant's fault or negligence.

3. Strict Liability

****See Liability Without Fault**

C. The Tortfeasor

1. Joint

Two or more persons whose concurrent or successive acts or omissions, though acting independently, in combination constitute the proximate cause of a single injury caused to another, and it is not possible to apportion their respective liabilities. Each of them is liable for the whole injury.

Nature of liability: **solidary**¹⁰² since the very nature of the obligation requires it.

It also applies to persons vicariously liable for the acts of another. Both the principal tortfeasor and the person responsible for him (e.g., ER, teachers, parents) are joint tortfeasors. The negligence of the latter consists in their failure to exercise DGFF in the supervision of the person under their charge.

Not defense: (i) the failure to join other tortfeasors; (ii) the his participation is only insignificant.

¹⁰¹ 2219(10).

¹⁰² 2194.

2. Direct

The persons whose act/omission directly and principally caused injury to another.

D. Quasi-Delict vs. Culpa Contractual vs. Culpa Criminal

1. Nature of Liability

QD	Culpa contractual	Culpa criminal
Art. 2176	Art. 1170	Art. 100
Generally, pre-existing contractual relation. XPN: if the act which broke the contract is also a tort. Plaintiff has option to enforce civil liability based on QD or breach of contract	There is pre-existing contractual relation between the parties, and negligence intervened in its performance	With or without pre-existing contract
Negligence is direct, substantial, and independent. It creates the vinculum juris.	Negligence is merely incidental to the performance of obligation under the contract.	Negligence is relevant only if considered element of the crime
DGFF in selection and supervision of EEs is proper and complete defense	DGFF in selection and supervision of EEs is only partial defense	DGFF not a defense to exempt the ER from its subsidiary liability. Obligation is one imposed by law. Only defense is no ER-EE relationship.
Negligence not presumed	Negligence presumed in breach of contract	Negligence not presumed
Plaintiff burdened to prove negligence	Plaintiff burdened to prove (i) contract, (ii) breach; defendant burdened to prove diligence	Plaintiff burdened to prove negligence
Source of obligation is QD	Source of obligation is contract	Source of obligation is law
Proximate cause doctrine applicable	Proximate cause doctrine not applicable	Proximate cause doctrine applicable
ER-EE solidarily liable, ¹⁰³ ER's liability is primary, direct, principal	ER only is liable since EE is not party to contract	EE's liability is primary; ER's is subsidiary; (i) conviction; (ii) insolvency
Negligence of EE gives rise to presumption of negligence of ER	Negligence of EE is always imputable to ER	Criminal acts of EE are not imputable to ER, but latter is subsidiarily liable the civil liability
ER-EE may be proceeded simultaneously	Cause of action is against ER only, not EE who is not party to contract	Must proceed against perpetrator first, only if found insolvent may ER be proceeded against
Moral damages also recoverable in case death results	Moral damages generally not recoverable. XPN: (i) death results; (ii) breach attended by BF	Moral damages also recoverable in case death results

E. Proximate Cause

1. Concept

Proximate cause is that which in the natural and continuous sequence, unbroken by an efficient intervening cause, produces the event, without which the event would not have occurred.

Test

Not proximity in time to the injury but whether its happening set other foreseeable events in motion, ultimately resulting damage.

Efficient intervening cause

That which interrupts the chain of events originating from the defendant's act as to constitute the ultimate cause of the damage. The EIC is the proximate cause.

Applies to:

1. Tortfeasors;
2. Persons vicariously liable for the negligence of another. E.g., the negligence of ER is the selection and supervision of its EE is also considered the proximate cause of an accident caused by the EE.

Not applicable: (i) in cases involving contractual breach

Contributory negligence CN

1. If CN of plaintiff is the PC of damage, he cannot recover and defendant is exonerated.
2. If CN of plaintiff is not the PC of damage, he may still recover and defendant is not exonerated but his liability may be mitigated.

2. Doctrine of Last Clear Chance

Applies when both parties are negligent, but the defendant had the last clear chance of preventing the accident by exercise of due diligence. Although by plaintiff own acts, he is placed in a situation of danger where injury results, he is not barred from recovering from the defendant if the latter by exercise of reasonable care and prudence could have prevented the accident.

Effect

The whole event is attributed the defendant who shall be solely responsible for it.

May be invoked in an action between two colliding vehicles.

Cannot be invoked in:

1. Action by passenger against common carrier. The latter cannot pass on the liability to the other colliding vehicle. Its liability is based on breach of contract not negligence.
2. Emergency cases where emergency rule applies.

F. Vicarious Liability

Concept

1. One is liable not only for one's own QD, but for the A/O of those for whom he is responsible for.
2. Mechanism to impute liability to persons having special relationship with the actor.
3. Presumption: if a person under one's care commits QD, the latter is also negligent in the former's supervision.
4. The basis of liability of the person vicariously liable is his own negligence, which is likewise

¹⁰³ Only situation when ER-EE may be held solidarily liable.

considered the proximate cause of the damage.
He and the actor are considered joint tortfeasors.

Persons vicariously liable are: (a) parents or guardian; (b) ordinary ERs; (c) state; (d) teachers, heads of establishment of arts and trade.

(a) Parents or guardian

1. For A/O of minors, incapacitated living in their company and under their authority. N.B.: "minor" under 2180 was already modified by FC. Under 2180, minor means 18y but below 21y.
2. With respect to parents, the father is primarily liable. Mother is liable in case of father's death or incapacity. Liability of parents is alternative.
3. Basis: Substitute/Parental authority
4. c.f.: Art. 221 FC – parents and persons exercising parental authority shall be civilly liable for A/O of unemancipated children living in their company and under their parental authority. Hence, (i) child is below 18y; (ii) A/O happened when child is not under special parental authority of school. N.B.: Liability of parents is simultaneous, not alternative.
5. c.f.: Art. 129 FC – those exercising special parental authority shall be principally and solidarily liable for damages caused by A/O of the minor under their custody. Hence, (i) child is below 18y; (ii) A/O happened when child is under custody of the school.
6. Art. 2180 applies if: (i) child is 18y but below 21y; (ii) living in the parents' company.
7. Defense: (i) exercise of DGFF, whether liability is primary or solidary; (ii) child not living in their company at the time A/O happened. E.g., A/O by minor prior to the time that he is placed in the custody of adoptive parents.

(b) Ordinary ERs

1. For A/O of EEs on the occasion of their functions, acting within the scope of their assigned tasks.
2. Presumption: ER is negligent in the selection and supervision of EEs. Also considered proximate cause of injury.
3. Nature of ER's liability: **solidary** with ER; direct, primary. Plaintiff may proceed against either ER or EE or both. If both, their liability is necessarily solidary as joint tortfeasors.
4. Action against ER is accessory but not subsidiary. (i) accessory because it is an imputed liability not arising directly from his A/O; (ii) not subsidiary since it is a primary action.
5. Requisites: (i) ER-EE relationship; (ii) EE acted on occasion of his functions or within the scope of assigned tasks.
6. Presumption of ER-EE relationship: registered owner of a vehicle is conclusively presumed the ER of the driver. The real ER is considered merely an agent of the registered owner (registered owner and ER are different).
7. "With the scope of assigned task" – any act done by EE in the furtherance of ER's interest. If EE acted beyond his authority or contrary to ER's instructions, the EE is personally liable, and his acts cannot be imputed to the ER.
8. Defense: exercise of DGFF in selection and supervision of EEs. (i) ER needs to invoke only if two elements under 2180 were established by plaintiff; (ii) selection: choice of qualified and competent personnel; (iii) supervision: formulation of rules, providing instructions, actual implementation, monitoring compliance; (iv) not complete defense obligation based on culpa contractual; exercise of DGFF may be considered by court in mitigating award.

9. If EE was sued based on negligence and ER was sued based on breach of contract, one case held that they may be held solidarily liable, even if the sources of obligation were different. If the act that breaks the contract is also a tort, the presence of contractual relations between the parties will not prevent the application of the laws on QD. But if no ER-EE relationship exists, they cannot be held solidarily liable. E.g., security guard (agency) sued with LRTA where it is assigned.
10. But if the plaintiff sued solely on the basis of breach of contract, EE shall be exonerated since he is stranger to the contract.

Registered owner rule

1. The registered owner of the vehicle is directly and primarily liable for death or injury arising from the operation of the vehicle.
2. If registered owner is also the ER – Both Arts. 2180 and Registered Owner Rules apply:¹⁰⁴ (i) plaintiff has preliminary burden to prove that ER is the registered owner; (ii) once proven, disputable presumption that requirements under Art. 2180 are present arises, i.e., ER-EE relationship, EE acted within the scope of assigned tasks; (iii) ER has defenses: (a) no ER-EE relationship; (b) EE acted beyond scope of assigned tasks; (c) exercise of DGFF in selection and supervision.

(c) State

1. For A/O of its special agents
2. No vicarious liability if the damage was caused by one to whom the task done properly pertains. The official is the tortfeasor and he is personally liable for his A/O.
3. Nature of liability – (i) if acting in governmental character, as state ER; (ii) if acting in proprietary character, as ordinary ER.
4. As state ER – liable only for A/O of its special agents.
5. Special agent – (i) if public official: (a) specially commissioned for the performance of some government task; (b) the task is foreign to his official functions; (c) otherwise, he is merely an ordinary agent; (ii) if private person: (a) special agent if performing a special government task; (b) ordinary agent if performing proprietary task, state is liable as ordinary ER.
6. Ordinary agent is personally liable for his A/O.
7. E.g., BPI v. Central Bank. SC held CB not liable. (i) CB is performing governmental functions in the conduct of clearing operations; (ii) officials are not special agents since the forgery was perpetrated in the performance of the EEs assigned tasks; (iii) assuming CB exercises proprietary functions, still not liable since EEs acted beyond scope of authority.

Liability of LGUs

1. (i) under LGC, LGUs may sue and be sued; (ii) but suability is not the same as liability; (iii) if performing governmental functions, LGU not liable; (iv) if performing proprietary functions, LGU may be held liable if proven to be at fault.
2. They are also liable for death or injury due to defective public works within their supervision or control (strict liability).

(d) Teachers, heads of establishment of arts and trade

1. For A/O of pupils, students, apprentice under their custody.
2. Basis: Special parental authority.
3. Who are liable: school, school's administrators, teachers, persons/entities/institutions engaged in childcare having minors under their supervision,

¹⁰⁴ Caravan Travel and Tours v. Abejar (2016).

instruction, custody. Under 2180 – (i) if academic school, teacher in charge is liable; (ii) if arts and trade school, head of institution is liable.
4. Custody: (i) presence in school premises is (a) in pursuance of legitimate student objective; (b) exercise of legitimate student right; (c) enjoyment of legitimate student privilege, even if only relaxing; (ii) outside school premises, if pursuing an authorized activity.
5. Applies when A/O causing injury was committed by a student (not stranger) against another student. If committed by stranger, school may still be liable not under QD but under enrolment contract.
6. Applicable provisions – (i) minor child, Art. 129 FC; (ii) child 18y but below 21y, Art. 2180. Effect is the same.
7. Liability of schools/personnel: primary and direct. Persons exercising (substitute) parental authority are subsidiarily liable.
8. Defenses: (i) student not under their custody; (ii) exercise of DGFF under the circumstance to prevent the damage.
9. Parental authority (including substitute, special) cannot be waived. Waiver from liability obtained by schools is void.
Enrolment contract rule
1. Learning institutions have an implied obligation under enrolment contract with students to provide an atmosphere conducive to learning. Hence, the maintenance of peace and order within school premises. They are bound to ensure the safety of their students.
2. Applies where injury was caused to a student by an outsider (not another student)
3. E.g., shooting incident committed by school guard; burning of medical clinic where students are undertaking internship (considered extension of school premises since students are undertaking an authorized activity).
4. Nature of obligation: from contractual breach.
5. Defense: exercise of due diligence in preventing the damage. The school is not an insurer of all risks.

G. Res Ipsa Loquitur

*see *Presumption of Negligence*

H. Damnum Absque Injuria

Damage without injury. Lawful acts causing damage to another. (i) damage means the loss, harm or hurt caused to a person; (ii) injury is the illegal invasion of a legal right; (iii) damages is the compensation for the injury suffered.

When in the ER PD the cardinal principles of human conduct are observed, even though damage may be caused to another, no legal injury results. There is no actionable wrong.

Consequences: (i) the injured person shall bear his own loss since he is not given a right of action by law; (ii) the person ER PD shall not be liable for damages.

Relate with: abuse or rights (see above)

I. Defenses

(a) Exercise of due diligence

(b) Prescription

1. 4 years from the commission of the act/omission
2. Demand is not necessary for accrual of cause of action; lack of demand will not toll the running of the prescriptive period.

(c) Fortuitous event

1. GR: No one shall be liable for events which are unforeseen, or those which are though foreseen are inevitable
2. XPN; (i) express stipulation; (ii) provision of law; (iii) nature of obligation requires assumption of risk; (iv) contributory negligence of defendant (humanizes the entire event)
(d) Assumption of risk
1. Requirements: (i) plaintiff knows the risk; (ii) he understands the risk; (iii) he freely and voluntarily chose to assume the risk; (iv) risk is one naturally associated with the act
(e) Contributory negligence
1. There must be an overt act which will point out to the negligence of plaintiff.
2. Standard of care for plaintiff is same for defendant: reasonable care by a man of ordinary prudence and intelligence under the same circumstances.
3. Merely mitigating circumstance. XPN: if the contributory negligence of plaintiff is the proximate cause of the injury, the defendant is exonerated.
4. Every person has the duty to take ordinary care of his own affairs.
Other defenses
1. Doctrine of last clear change
2. Emergency rule
3. Involuntariness
4. Accident

J. Negligence

1. Standard of Care

Negligence is the failure to observe the degree of care, precaution or vigilance demanded by the nature of the obligation and the corresponds to the circumstances of the person, time, place for the protection of other persons, thereby causing damage injury to the latter.

Test

Reasonable care and caution which a man of ordinary prudence and intelligence would have used in the same situation. The standard of conduct is that of a discreditable pater familias in Roman Law.

Emergency rule

A person who suddenly finds himself in a situation of danger SSD and is required to act without much time to consider the best means to avoid the impending danger RTA WMC BMAID, is not negligent if he fails to undertake what upon reflection may appear to be a better solution

2. Presumptions of Negligence

GR: there is no presumption of negligence in QD cases. Plaintiff must establish defendant's negligence.

XPNs: (a) express provision of law; (b) res ipsa loquitur

(a) Express provision of law establishing a presumption of negligence **GV BPC**

1. In motor vehicle mishaps, where the driver was found **guilty** of reckless driving or violation of traffic rules, at least 2x in the last two preceding months.
2. In motor vehicle mishaps, where the driver was **violating** a traffic rule at the time of mishap.
3. In motor vehicle mishaps, vehicle who **bumped** the rear of another is presumed at fault.
4. **Possessors** of dangerous weapons or substances re: death or injury resulting from it.
5. **Common carriers** re: (i) death or injury to passengers; (ii) loss, destruction, damage to goods or cargo. In (ii) the owner need only to prove that the goods were in good condition when placed in carrier's possession. XPN: damage due to (i) calamity; (ii) acts of public enemy; (iii) acts of

shipper/owner; (iv) character of goods, defective packaging; (v) order of competent authority.
CAACO

(b) Res ipsa loquitur

1. Elements: (i) the instrument causing the injury is shown to be within the management and control of defendant; (ii) the accident is of such nature that in the ordinary course of events, it would not happen had those in the management and control of the instrumentality exercised due care.
2. Method of establishing negligence not by direct proof, but by the presence of its elements. If elements are present, defendant is presumed negligent.
3. It is merely an evidentiary rule which shifts the burden to prove the exercise of proper diligence to the defendant.
4. E.g., - (i) finding of scissors inside patient's body after surgery; (ii) explosion of gasoline station.

K. Damages

1. Kinds of Damages

MANTEL: Moral, Actual, Nominal, Temperate, Exemplary, Liquidated

a) Actual and Compensatory Damages

Definition

Adequate compensation for pecuniary loss suffered by plaintiff as he duly proved. Purpose is reparation and indemnification.

Components:

1. Actual damages – value of loss suffered.
2. Compensatory damages – profits which obligee failed to obtain. (i) loss or impairment of earning capacity due to permanent or temporary personal injury; (ii) injury to business standing or commercial credit.¹⁰⁵

When may be recovered:

1. Fact of injury or loss proven
2. Actual amount of loss can be determined with reasonable certainty – based on best evidence obtainable

Measure of damages:

1. Contract/QC; Obligor in GF – (i) all damages which are natural, probable consequence **NPC** of the breach of obligation; (ii) those which parties have foreseen or could have reasonably foreseen at the time the obligation was constituted.
2. Contract/QC; Obligor in BF – all damages reasonably attributable to the non-performance of the obligation **DRANO**
3. Delict/QD – (i) all damages which are NPC of A/O; (ii) need not be foreseen or reasonably foreseen by defendant; (iii) subject to application of aggravating, mitigating circumstances.

Effect of insurance recovery

1. After payment, insurer is subrogated to the rights of plaintiff as against defendant;
2. If insurance coverage is insufficient, plaintiff may proceed against defendant for the deficiency.

Attorney's fees:

1. GR: cannot be recovered; no premium should be placed on litigation.
2. XPNs: **MUSE CARDISO** (i) **malicious** prosecution in criminal cases; (ii) **unfounded** civil action; (iii) **separate** civil action to recover civil liability arising from crime; (iv) when **exemplary** damages

awarded; (v) when plaintiff was **compelled** to litigate with 3p or incur expense to protect his interest due to A/O of defendant; (vi) defendant **acted** in gross and evident BF in refusing to satisfy plaintiff's plainly valid, just, demandable claim; (vii) in cases for **recovery** of wages of household helpers, laborers, skilled workers; (viii) when at least **double** the judicial costs are awarded; (ix) in case of **indemnification** under workmen's compensation and ER's liability laws; (x) in actions for legal **support**; (xi) in **other** cases where the court finds the award to be just and equitable.

3. When may be recovered: (i) must be specifically pleaded, prayed for (not considered included in general prayer for other equitable relief); (ii) amount for claim is proven.
4. Nature: in the concept of actual damages. Indemnity for damages payable to the winning party and not the lawyer, unless there is contrary agreement between the parties.
5. Award of attorney's fees must indicate factual, legal, equitable claims in the text of the decision, not just in the dispositive.

Interests:

1. In monetary obligations – indemnity for damages due to delay shall be the stipulated interest or legal rate (if none stipulated, or stipulated rates is U/E)
2. In non-monetary obligations; delict/QD – imposition of interest is discretionary to court.
3. Interest due shall earn legal interest from the time of judicial demand.
4. No interest can be recovered on unliquidated claims. XPN: if demand can be established with reasonable certainty.

Mitigation:

1. QD – contributory negligence of plaintiff
2. Contract/QC/QD – **CBALS**: (i) plaintiff himself **contravened** the contract; (ii) plaintiff **benefited** from the contract; (iii) defendant acted on **advise** of counsel, in case of exemplary damages; (iv) that **loss** would have resulted in any case; (v) **since** the filing of action, defendant has done his best to lessen plaintiff's injury.

Cannot co-exist with:

1. Nominal damages – where there is no pecuniary loss but awarded to vindicate or recognize violation of plaintiff's right.
2. Temperate damages – where pecuniary loss is proven, but its amount cannot be established with reasonable certainty due to its nature.

Award in excess of amount prayed:

1. GR: allowed in exercise of court's discretion, and pursuant to a general prayer of other just and equitable relief. Filing fees constitute lien.
2. XPN: if the non-inclusion in the prayers of amount claimed is motivated by ill-will to evade the payment or reduce amount of filing fees.

b) Moral Damages

Moral damages include physical suffering, mental anguish, **PsMa** fright, serious anxiety, besmirched reputation, **FABr** wounded feelings, moral shock, social humiliation, and similar injury. **WMS**

Proof: none required; discretionary on the court.

¹⁰⁵ Temperate damages in lieu of actual damages may be awarded if the amount cannot be established with reasonable certainty.

When may be recovered: if the moral damages are a proximate result of the defendant's A/O in the following cases:

D SAIL MDA PC

1. Crimes resulting to death/physical injury;
2. QD resulting to death/physical injury;
3. Seduction, abduction, rape, other acts of lasciviousness;
4. Adultery, concubinage;
5. Illegal or arbitrary detention or arrest;
6. Illegal search;
7. Libel, slander, other defamation;
8. Malicious prosecution;
9. Disrespect of dead under Art. 309;
10. Acts contemplated under Arts. 21,¹⁰⁶ 26-30, 32, 34, 35;
11. Willful damage to property where court finds that damages are justly due;
12. Breach of contract where the defendant acted fraudulently or in BF.

(9) Disrespect of dead

1. Contemplates acts committed during period of mourning or funeral;
2. May be recovered by spouse, descendants, ascendants, siblings;
3. The act of a person impersonating the deceased to have the title of deceased's property transferred to his name is not the disrespect contemplated. No moral damages may be awarded.

In breach of contract:

1. GR: no moral damages may be awarded.
2. XPN: (i) in contract of carriage, where breach results in death; (ii) if breach is attended by fraud or BF, includes contract of carriage; (iii) when the act that breaks the contract is also a tort resulting in death or physical injury.

c) Nominal Damages

Damages awarded to vindicate or recognize the violation or invasion of plaintiff's right, where no substantial injury or actual damages can be shown. Not intended to indemnify him for any loss suffered.

Proof: none required; discretionary on the court.

When may be recovered:

1. In case of violations obligations arising from law, contract, QC, delict, QD;
2. In case of invasion of property rights.

Mutually exclusive with:

1. Actual/compensatory, and exemplary damages. These are already recognition of violation of plaintiff's rights.
2. Temperate damages – which is intended to indemnify.

May be awarded with moral damages.

d) Temperate or Moderate Damages

Awarded when the court finds that (a) the plaintiff suffered pecuniary loss, (b) but its amount cannot be proved with certainty due to the nature of the case.

***Not substitute for presentation of proof to claim actual damages when by nature of the case, such proof is available.*

Amount: more than nominal but less than compensatory but must be reasonable under the circumstances.

Proof: none required; discretionary on the court.

Examples when awarded:

1. In lieu of compensatory damages for loss of earning capacity where the earning capacity was established, but no evidence was presented to support the allegation as to the insured's actual income;
2. When actual proven damages were less than the sum allowed by court as temperate damages – now at 50k.
3. *Disini v. Republic*. – Disini was adjudged liable for temperate damages when the amount of actual commissions (ill-gotten wealth) received was not proven. SC held that its reliance on the document included in the testimony of the witness to determine actual amount of commissions is improper as the document was not authenticated. Temperate damages were awarded instead.

Mutually exclusive with nominal damages.

e) Liquidated Damages

Damages agreed upon by the parties to be paid in case of breach.

1. May be imposed either as (i) indemnity or (ii) penalty.
2. GR: Intended to be in lieu of all other damages.
3. XPNs: (i) if defendant repudiates the contract; (ii) the cause of action is independent from the ground stipulated.
4. Proof: none required; based on stipulation of parties. BUT court may reduce if iniquitous or unconscionable.
5. When may be recovered: if the ground for recovery is proven.

f) Exemplary or Corrective Damages

Damage awarded by way of example or correction for the public good. As deterrent for commission of similar acts in the future. In addition to MATL damages.

When may be recovered:

1. In delict: if committed with aggravating circumstance/s. Part of civil liability, distinct from fine.
2. In QD: if defendant acted with gross negligence.
3. In contracts/QC: if defendant acted in wanton, fraudulent, reckless, oppressive, malevolent manner **WFROM**.

Proof: none required; discretionary on the court. But plaintiff must prove entitlement to moral, temperate, compensatory **MTC** damages.

Need not be pleaded since discretionary on the court, and dependent on award of compensatory damages.

***Advance renunciation of exemplary damages is null and void.*

2. When Damages May be Recovered

**see individual discussions.*

L. Damages in Case of Death

(a) Death indemnity

1. Currently fixed at 50k; 75k or 100k may be awarded with respect to commission of certain crimes;
2. Proof needed; (i) fact of death; (ii) accused's responsibility for the death.
3. Nature: derivative action. The right pertains to the deceased, passing only to his heirs. Hence, the deceased must have juridical capacity/civil personality at the time of death. E.g., death indemnity cannot be claimed for unborn child who

¹⁰⁶ Breach of promise to marry: contrary to morals, good customs.

died since he failed to acquire civil personality under circumstances set forth under Art. 41.

(b) Loss of earning capacity

1. To be paid to heirs;
2. GR: to be awarded in every case where death results. XPN: if the deceased has no earning capacity on time of death on account of permanent physical disability not caused by defendant.
3. Formula: $\{[2/3 \times (80 - \text{age upon death})] \times [\text{Gross annual income} \times 50\%]\}$
4. The formula is intended to be uniformly applied to all industry, sector, including the government (even if mandatory retirement age is 65y). The fact that a person could have worked after retirement cannot be discounted.
5. GR: Must be established by documentary evidence, being in the nature of actual damages. XPNs: (i) self-employed earning less than minimum wage, court can take judicial notice that no documentary evidence is available in the line of work; (ii) employed as daily worker earning less than minimum wage; (iii) when testimonial evidence is sufficient for the court to make a reasonable estimate of deceased's income (e.g., testimony of widow, co-EEs, ER).

(c) Support

1. Applies if deceased is obliged to give support under FC.
2. May be demanded by a person entitled to receive support who is not testate or intestate heir;
3. Period $\leq 5y$, to be fixed by the court.

(d) Moral damages

1. For moral anguish as a result of the death.
2. May be demanded only by: (i) spouse; (ii) descendants or ascendants – legitimate or illegitimate. N.B.: collateral blood relative exercising substitute parental authority shall be considered an ascendant.

(e) Exemplary damages – if the crime is attended by aggravating circumstance/s

(f) Attorney's fees, costs of suit

1. If separate civil action was filed, or
2. Exemplary damages was awarded

(g) Interests, if proper

M. Duty of Injured Party

To exercise DGFF to minimize the damages resulting from the A/O in question.¹⁰⁷

¹⁰⁷ 2203.

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I. Fundamental Principles and Concepts

A. Legal Basis

1. 1987 Constitution

(a) State policies on labor (Art. II)

1. The State shall promote a just and dynamic social order that will ensure the prosperity and independence of the nation and free the people from poverty through policies that... promote full employment (9).
2. The State affirms labor as a primary social economic force PSEF. It shall (i) **protect** the rights of workers and (ii) **promote** their welfare [twin rights] (18).
3. The State recognizes the indispensable role of the private sector, encourages private enterprise, and provides incentives to needed investments (20). They have the right to **RRIEG**
4. Workers' rights are human rights c.f.: ER's rights are property rights. The former is higher in the hierarchy of rights.

(b) Bill of rights (Art. III)

1. Employment is a property right within the purview of the due process clause.
2. Freedom of speech and assembly covers the right of workers to peaceful concerted activities. – picketing.
3. No involuntary servitude in any form shall exist except as a punishment for a crime whereof the party shall have been duly convicted. – EE has right to voluntarily terminate ER-EE relations upon giving of 1m notice.

Free trade unionism

1. Right to self-organization includes workers right to form unions, associations, or societies for purposes not contrary to law, which shall not be abridged.
2. **Free trade unionism** is a protected right, subject to valid union security clauses.
3. In the exercise of right to self-organization, the EE is free from interference from the (a) management, and (b) government, subject only to reasonable state regulation.
4. Includes right to associate with other unions (federations/NU) in relation with the policy of fostering the free and voluntary organization of a strong and **united labor movement**.

(c) National economy and patrimony (Art. XII)

1. Filipino-first policy. – The State shall promote the preferential use of Filipino labor... adopt measures that help make them competitive.

(d) Labor (Art. XIII)

(i) State policies

1. Congress was imposed the duty to prioritize enactment of social legislations, which includes labor laws. – (i) often constitutes restriction on property rights of ERs.
2. The State shall afford full protection to labor, local and overseas, organized, and unorganized,
3. It shall promote full employment and equality of employment opportunities for all.
4. The State shall regulate the relations between workers and employers, recognizing the right of labor to its just share in the fruits of production JSFP and the right of enterprises to reasonable returns on investments, and to expansion and growth RRIEG.

Principle of shared responsibility or co-determination

1. The State shall promote the **principle of shared responsibility PSR** between workers and employers.

2. It shall promote the preferential use of voluntary modes in settling disputes, including conciliation, and shall enforce their mutual compliance therewith to foster industrial peace.
3. The **principle of co-determination** empowers ER-EE (i) to determine the term of their relations and (ii) to resolve disputes arising therefrom with minimal government intervention, subject to government regulation to ensure the right of labor to JSFP and of the enterprise to RRIEG.
4. ERs and EEs shall self-regulate through collective bargaining as the primary regulating mechanism. No court or administrative agency or official shall have the power to set/fix wages, rates of pay, hours of work, other T&CE, except as otherwise provided by law.

(ii) Rights of workers

1. Collective rights – (i) To self-organization; (ii) Collective bargaining and negotiations; (iii) Peaceful concerted activities, including the right to strike in accordance with law.
2. Individual rights – (iv) Security of tenure; (v) Humane conditions of work; (vi) Living wage.
3. (vii) Participate in policy and decision-making processes affecting their rights and benefits as may be provided by law. – including at the (a) enterprise level, and (b) the state level. At the state-level, tripartism is observed, i.e., the interests of the government, ER and EE shall be represented at all times.

(e) Rights of special workers

1. The State shall establish a special agency for **disabled persons** for rehabilitation, self-development and self-reliance, and their integration into the mainstream of society.
2. The State recognizes the role of **women** in nation-building and shall ensure the fundamental equality before the law of women and men. – the state shall protect the working women by providing (i) safe and healthful working conditions, and (ii) facilities and opportunities that will (a) enhance their welfare and (b) enable them to realize their full potential in the service of the nation.

Notes

1. Constitutional provisions on labor are not self-executing.
2. Labor contracts are subject to police power of the State – (i) not ordinary contracts but impressed with public interest; (ii) subject to labor laws a to T&CE, etc.
3. Example of police power exercise under LC – (i) Visitorial powers of the SOLE to enforce labor standards; (ii) power of SOLE to assume jurisdiction over labor disputes causing or likely to cause strike/ lockout affecting industries indispensable to national interest.
4. The protection of labor shall not lead to the oppression of capital.

2. Civil Code

1. The relations between capital and labor are **not merely contractual**. – (i) They are so impressed with public interest that labor contracts must yield to the common good; (ii) subject to the special laws on labor unions, collective bargaining, strikes and lockouts, closed shop, wages, working conditions, hours of labor and similar subjects.
2. In case of **doubt**, all labor legislation and all labor contracts shall be construed in favor of the safety and decent living for the laborer. **SDL**

3. Labor Code

1. All doubts in the **implementation and interpretation** of LC and IRR shall be resolved in favor of labor. – (i) applies only in case of doubt; (ii) the provision does not cover resolution of labor disputes. There is no preference for labor in such case, which must be resolved based on evidence. (iii) the policy is to extend benefits under the law/rules to the greatest number of workers.
2. Liberal interpretation covers – (i) Labor laws; (ii) IRRs; (iii) Employment contracts; (iv) **Conflicting sets of evidence (equipoise)**.

B. State Policy Towards Labor

1. Security of Tenure

1. Employment is a property right under the bill of rights.
2. Implemented by requiring that no EE shall be dismissed except for just/authorized cause, and upon observance of due process.

2. Social Justice

1. The humanization of laws and the equalization of social and economic forces by the State to at least approximate justice in its rational and objectively secular sense.
2. **Social justice means the promotion of the welfare of all the people, the adoption by the Government of measures intended to insure economic stability** by maintaining a proper economic and social equilibrium in the interrelations of the members of the community.
3. Limitation: the policy in favor of labor shall not result in the self-destruction or oppression of capital. E.g., separation pay shall not be paid to EEs terminated for just cause.

3. Equal Work Opportunities

***See above: rights of special workers*

4. Right to Self-Organization and Collective Bargaining

***See above*

5. Construction in Favor of Labor

1. The Liberal Interpretation Rule may only be invoked by labor, to the exclusion of his employer. E.g., the ER cannot invoke liberal interpretation of NLRC Rules to be able to submit evidence on appeal.
2. It is only when the strict application of procedural rules will violate the latter's substantive rights that strict application may be tempered.

6. Burden of Proof and Quantum of Evidence

(a) Burden of proof

1. On existence of ER-EE relationship – (i) the party who asserts has the burden of proof; (ii) usually the EE; (iii) not presumed.
2. On kinds of employment – (i) presumed regular, unless proven otherwise; (ii) but the presumption requires that ER-EE relationship be established first; (iii) the party asserting that the employment is not regular must prove the elements of other kinds of employment, e.g., project, seasonal, etc.
3. On labor-only contracting – (i) subcontracting arrangement is presumed labor-only, unless proven otherwise; (ii) registration merely removes the presumption of labor only contracting, but the contrary may still be proved by contrary evidence.
4. On payment of wages – (i) ER has the burden to prove payment, since he is in control of the documents involving payment; (ii) in OT work, the EE has the preliminary burden of proving that work in the character of OT was performed during the period alleged. Once established, the burden shifts to the ER to show payment in the proper rate (regular + OT premium).

5. **W/N there is termination – (i) The party who asserts the fact of termination has the burden of proving the same;** (ii) in an action for illegal termination, the fact of termination must be proven, after which, the burden shifts of the ER to prove its legality.
6. On legality of termination – presumed illegal unless proven otherwise.

(b) Quantum of evidence

1. **Substantial evidence:** such relevant evidence as a reasonable mind might accept as sufficient to support a conclusion.
2. E.g., in case of dismissal due to commission of a crime, proof beyond reasonable doubt is not necessary.
3. Equipoise – if the evidence between on a particular matter is equally balanced, the same must be taken in favor of labor.

II. Pre-Employment

A. Recruitment and Placement of Local and Migrant Workers

1. Definition of Recruitment and Placement

1. Canvassing, enlisting, contracting, transporting, utilizing, hiring, procuring workers **CETCHUP**
2. Includes **referring**, contract services, **promising**, advertising for employment locally or abroad.
3. Whether for profit or not.

Referral – the act of passing along or forwarding an applicant or introducing the applicant to the recruitment agency.

Presumption

1. Any **non**-licensee or non-holder who offers or promises for a **fee**, employment abroad to two or more persons shall be deemed so engaged (in recruitment).
2. However, the number of persons dealt with is not an element of R&P. It is a mere rule of evidence which establishes a presumption.

2. Regulation of Recruitment and Placement Activities

GR: R&P of workers shall be done only through public employment offices (Art. 16)

XPN: Private sector participation as allowed and regulated by LC and relevant laws and rules.

1. Engage in R&P activities require license or authority duly issued by the appropriate government agency. – (i) If local, DOLE; if overseas, DMW; (ii) otherwise, the recruitment is illegal.
2. The entity must comply with the Filipino equity and capital requirements under relevant laws – (i) Filipino corporations **at least 75%** owned and controlled by Filipinos; (ii) minimum capital requirement is P5M.
3. Additional requirements – (i) Posting of bond; (ii) Payment of fees.

License/Authority L/A

1. Authority – (i) Document issued by SOLE authorizing a person to engage in R&PA as a private recruitment entity **PRE**; (ii) does **not entitle a PRE to collect fees**. Applies only to local employment since for overseas employment, license is required.
2. License – (i) Document issued by SOLE/SMW authorizing a person or entity to operate as a private employment agency **PEA**; (ii) entitles licensee to **collect fees**.
3. Non-licensee or non-holder of authority – (i) a person without valid license or authority; (ii) persons whose authority is revoked, cancelled, terminated expired or otherwise delisted from the

roll of licensed recruitment/ manning agencies registered with DMW/DOLE.

4. L/A is personal and non-transferable and may not be used at any other place than that stated in the license.

a) Regulatory Authorities

(1) Philippine Overseas Employment Administration

****Already replaced by DMW**

1. Regulates overseas employment

(2) Regulatory and Visitorial Powers of the Department of Labor and Employment Secretary

(a) Regulatory

1. Restriction and regulation of R&PA.
2. Issuance of orders, promulgation of RR to implement LC provisions on R&P.

(b) Visitorial

1. Inspection of premises, books of accounts, records of covered entities (engaged in R&PA).
2. Require the submission of regular reports in prescribed forms.
3. Act on any violation of relevant LC provisions on R&P.

****May be exercised by SOLE or his duly authorized representative.**

b) Ban on Direct Hiring

(a) GR: No ER may hire a Filipino worker for overseas employment, except through the Boards and entities authorized by the DMW (Art. 18).

(b) XPNs: DIHO PERN

1. Members of the **diplomatic** corps.
2. **International** organizations.
3. **Heads** of state and government officials with the rank of at least deputy minister.
4. **Other** employers as may be allowed by the DMW (i) those provided in 1, 2 and 3 above who bear a lesser rank, if endorsed by the DMW; (ii) professionals/skilled workers with authenticated contracts with T&C above those set by the DMW; (iii) workers hired by relatives who is a permanent resident of the host country; (iv) name hires: a worker who is able to secure an overseas employment opportunity without the assistance or participation of a recruitment agency. **PERN**

**** The regulation applies w/n the ER is Filipino or foreign national, so long as located outside Ph.**

(c) OFWs shall be deployed in States where their rights are protected. Guarantees:

1. Existing **labor and social laws** protecting the rights of workers, including migrant workers.
2. Signatory to and/or ratifier of **multilateral conventions**, on the protection of workers, including migrant workers.
3. Concluded a **bilateral agreement** with the government on the protection of rights of migrant workers.
4. Taking positive, concrete measures to protect the rights of migrant workers in furtherance of any of the above guarantees.

****These guarantees are certified by the DFA.**

c) Entities Prohibited from Recruiting

(a) Travel agencies, sales agencies of airline companies

1. Including their officers, BOD, members **OBM**
2. Corporations whose OBM are also OBM of travel agencies.

(b) Insurance companies providing compulsory insurance coverage for OFWs

1. Including their individuals, partners, officers, directors.

(c) Persons with derogatory records

1. Convicted or against whom probable cause or prima facie finding of guilt is determined by competent authority for (i) **illegal recruitment**; (ii) related crimes; (iii) crimes involving moral turpitude.
2. Agencies with revoked licenses in for **violation of MWA, RA 9208**.
3. Agencies with cancelled licenses pursuant to order of administrator or were included in the list of persons with derogatory records.

(d) Government officials and EEs

1. Official, EE of DOLE, POEA, OWWA, DFA, DMW other government agencies directly involved with the implementation of MWA.
2. Their relatives within the 4th degree of consanguinity or affinity.

d) Suspension or Cancellation of License or Authority

1. SOLE/DMW has authority.
2. For violation of RR, LC and other applicable laws, General Orders and Letters of Instructions.

e) Prohibited Practices [Article 34, Labor Code]

1. Charging fees in excess of that prescribed by SOLE/ SMW.
2. Requiring payment from worker in excess of the amount actually received by him as loan/advance.
3. Publication of false notice in relation to recruitment or employment.
4. Making any misrepresentation for the purpose of securing a license or authority.
5. Inducing a worker to quit his employment by offering another work unless done to liberate the worker from oppressive T&CE.
6. Influencing any person not to employ any worker who has not applied through his agency.
7. R&P of workers in harmful, immoral jobs.
8. Obstruction of inspection by the SOLE/DMW/DAR.
9. Fail to file reports as may be required by SOLE/DMW.
10. **Substitution or alteration employment contracts** approved and verified by DOLE/DMW from the time of actual signing up to its expiration without the approval of SOLE/SMW, to the prejudice of EE.
11. Membership in a travel agency.
12. Withholding travel documents from applicant workers before departure for monetary considerations other than those authorized.

Additional for OFWs

1. Failure to actually deploy a contracted worker without valid reason as determined by DMW.
2. **Failure to reimburse expenses** incurred by the worker for documentation and processing where the deployment does not actually take place without the worker's fault. – may be with or without reason, so long as the same is not due to the fault of the EE concerned
3. Allow a non-Ph citizen to head or manage a licensed recruitment/manning agency.
4. Charging interest >8% p.a. on amounts loaned as placement fees, making the OFW issue PDCs in relation to such loan.
5. Requiring OFW to avail loans/undertake health examinations/trainings only from specific institutions/clinics.
6. Refuse to condone or renegotiate a OFW loan in case he is pre-terminated without his fault.
7. Engaging R&P activities while suspended.
8. Passing on the cost of compulsory insurance and related charges to the OFW.

3. Illegal Recruitment [Labor Code and the Migrant Workers and Overseas Employment Act of 1995 (RA 8042), as amended by RA 10022]

a) Types

- (a) Modes of commission
 1. Commission of recruitment and placement activities by a non-licensee or non-holder of authority.
 2. Commission of prohibited acts by any person, w/n licensee or holder of authority.
- (b) Simple illegal recruitment
 1. Involves less than 3 victims or recruiters.
 2. Prescribes in 5y.
- (c) Illegal recruitment involving economic sabotage
 1. Large scale – (i) Committed against 3 or more persons, individually or as a group; (ii) there must be at least 3 complainants, not several informations filed by only one complainant. In the latter, there is only simple IR.
 2. Syndicated – Committed by a group of three or more persons **conspiring** or confederating with one another.
 3. If at least 3 victims and at least 3 recruiters. – The recruiters may be convicted either as a syndicate or in large-scale, depending on the evidence presented. Imposable penalty is the same for both.
 4. Prescribes in 20y.

b) Elements

- (a) Simple illegal recruitment
 1. First mode – (i) offender has no valid license or authority to engage in the R&P of workers; (ii) offender undertook R&P activities or any of the prohibited practices [mere promise is sufficient]; (iii) the act was committed by 1 or 2 persons conspiring or confederating, or 1 or 2 persons, individually or as a group.
 2. Second mode – (i) offender is any person, whether non-licensee or non-holder of authority, licensee, or holder of authority; (ii) offender committed any of the prohibited practices; (iii) the act was committed by 1 or 2 persons conspiring or confederating, or 1 or 2 persons, individually or as a group.
- (b) Illegal recruitment involving economic sabotage
 1. Third element is replaced with: (iii) the act was committed by at least 3 persons conspiring or confederating with each other (syndicate), or against at least 3 persons, individually or as a group (large-scale).

Not elements

1. No. of persons involved. Illegal recruitment may be committed even against only one individual.
2. Receipt of fee is generally an element of illegal recruitment, except in the commission of a prohibited act involving the receipt of a fee.

c) Illegal Recruitment vs. Estafa

Illegal recruitment	Estafa
Coverage is limited to that defined in the LC or relevant laws	Wider coverage
Deceit is related to R&P of workers	Deceit involved may pertain to R&P or not
Damage is not an element	Damage is an element
Malum prohibitum	Malum in se
Intent is irrelevant for conviction	Intent is imperative

**(i) Conviction for one is not bar to prosecution of the other. (ii) conviction, acquittal, pendency of the criminal action is not bar to institution of an administrative action.*

4. Liability of Local Recruitment Agency and Foreign Employer

a) Solidary Liability

1. The liability of the principal/ER and the recruitment and placement agency for any and **all money claims** by OFWs shall be joint and several.
2. Money claims include those arising from violations of employment contracts.
3. The undertaking shall form part of the OFW's employment contract and shall be a condition precedent for its approval. The R&PA, upon application, is also required to submit notarized undertaking (i) to assume full and complete responsibility for all claims and liabilities which may arise in connection with the use of the license and (ii) to assume joint and several liability with the foreign ER or principal for all claims and liabilities which may arise in connection with the implementation of the contract, as pre-qualification requirement.
4. The liability shall continue during the **entire period of the employment contract**. Termination of agency agreement between the principal and recruitment agent before the end of the employment contract does not negate the solidary liability, which may include OFW's money claims for unpaid salaries for the unexpired portion of the pre-terminated contract.
5. The liability shall not be affected by any substitution, alteration, modification of the contract.
6. If the R&P agency is a juridical person, the officers, directors, partners shall be solidarily liable with the agency.
7. The compulsory insurance coverage of OFWs which covers money claims does not affect the solidary liability of the foreign ER and the local recruitment agency.

b) Theory of Imputed Knowledge

1. The relationship between the foreign principal and the local recruitment agency is principal-agent, respectively.
2. Ascribes knowledge of the local recruitment agency (agent) to the foreign ER (principal).
3. However, the knowledge of the principal is not ascribed to the agent. E.g. if the ER extended the contract of the worker without the knowledge of the agent, the latter may not be held solidarily liability for claims of the EE that may arise out of such extended contract – (i) agent is not privy to the extended contract; (ii) there is implied termination of the principal-agent relationship upon the termination of the original employment contract; (iii) the solidary liability of the principal-agent under the POEA-SEC extends only up to the expiration of the contract.

5. Termination of Contract of Migrant Worker

(a) OFW

1. A Filipino who is to be engaged, is engaged, or has been engaged in remunerated activity.
2. **in a country of which he or she is not an immigrant, citizen, or permanent resident or is not awaiting naturalization, recognition, or admission**, whether land-based or sea-based regardless of status.
3. excluding a Filipino engaged under a government-recognized exchange visitor program for cultural and educational purposes.
4. Covers a person contracted for overseas employment but has yet to leave the Philippines, regardless of status.
5. E.g., employee of an airline who rents an apartment abroad for work. An OFW is one engaged in a remunerative activity in a state where he or she is not a citizen.

(b) Nature of OFW employment

1. They cannot attain regular status since their employment contracts are fixed term.
2. They are entitled to security of tenure and other constitutional rights for the full duration of their employment contracts.

(c) Applicable laws

1. Ph laws, primarily the LC and relevant laws on overseas employment.
2. They cannot be terminated except for just/authorized cause and only upon observance of due process.
3. A stipulation in the employment contract authorizing the ER to terminate the employment contract upon payment of one-month salary in lieu of one month's written notice was void for being violative of the due process requirements.

(d) Non-deployment

1. A person contracted for overseas work is already considered an OFW. In case of non-deployment without fault on the part of the OFW gives rise to a right of action (one of the prohibited acts).
2. Remedies available – (i) administrative complaint for recruitment violation; (ii) action for illegal recruitment under the MWA; (iii) action for breach of contract and claim for damages before the NLRC.

(e) Termination of employment of seafarers

Grounds

1. Completion of the period of contractual service, signing-off from the ship, and arrival at point of hire.
2. Arrival at point of hire for any of the following reasons – (i) Signing-off, disembarkation for medical reasons; (ii) Signing-off due to shipwreck, ship sale, lay-up or ship, discontinuance of voyage or change of ship principal, in accordance with POEA-SEC; (iii) Voluntary resignation and sign-off; (iv) Discharge for just cause.

Disciplinary procedure

1. Master must give the seafarer written notice.
2. Master to conduct investigation and hearing, giving the seafarer the opportunity to be heard, which procedures must be documented and entered in the ship's logbook.
3. Written notice of penalty, indicating reasons therefor, with copies furnished to the Ph agent.
4. Notice may be dispensed if the dismissal for just cause causes clear and existing danger to the safety of the crew or the ship.

(f) Illegal dismissal

1. Reliefs under Art. 294 LC are not available, e.g., reinstatement, or separation pay in lieu of reinstatement.
2. The OFW may only file an action for money claims.

OFW money claims

1. May be based on – (i) ER-EE relationship; (ii) Law; (iii) Contract.
2. Jurisdiction lies with NLRC. NLRC may exercise jurisdiction despite absence of ER-EE relationship if the source of the money claim is breach of law or contract.
3. Execution of waiver and quitclaim does not preclude the OFW from subsequently filing a money claim arising from illegal dismissal.

Components of money claim

1. Full reimbursement of placement fee, with 12% interest p.a.

2. Salaries for the unexpired portion of his employment contract, exclusive of OT and leave pay (basic wage only).
3. Refund of unauthorized deductions from salary, with 12% interest p.a.
4. Cost of repatriation and transport of personal belongings. – employment contract must provide for primary responsibility of the principal/ER and agency to advance the cost of plane fare, and the obligation of the worker to refund such cost in case his fault was determined by LA.
5. Moral and exemplary damages and attorney's fees, in case there if bad faith, fraud or ill motive.

****The interest is not affected by the reduction of legal rate to 6%.**

B. Employment of Non-Resident Aliens

The NRA must secure an Alien Employment Permit AEP from DOLE before working in Ph.

1. AEP – (i) Document issued by DOLE authorizing he foreign national to work in the Ph; (ii) upon recommendation of the government agency for enterprises registered in preferred areas of investment, if applicable.
2. Covers all foreign nationals who intend to engage in gainful employment in the Ph. Gainful employment is one which establishes an ER-EE relationship between the alien and the Ph-based ER.
3. Must be secured by – (i) alien seeking employment; (ii) domestic or foreign ER.
4. AEP shall be issued only after a determination of the **non-availability of a person in the Ph** who is competent, able, and willing **CAW** at the time of application to perform the services for which the alien is desired.
5. An alien issued an AEP is prohibited from transferring to another job or changing his ER without prior approval of the SOLE. If violated – (i) ER shall be punished; (ii) the alien shall be deported after service of his sentence.
6. The alien who works without employment permit cannot claim protection under Ph labor laws.

(a) Exemptions

1. Members of diplomatic service
2. Accredited foreign government officials with reciprocity agreement with Ph.
3. Officers/staff of international organizations where Ph is member, and their legitimate spouse desiring to work in Ph.
4. Owners, representatives of foreign principals whose companies are accredited by DMW who come to Ph for a limited period and solely for the purpose of interviewing Ph applicants for overseas employment.
5. Foreign nationals who come to Ph to teach, present, research in universities and colleges as visiting, exchange, adjunct professors under formal agreement between universities, or between governments, where the exemption is on a reciprocal basis.
6. Permanent resident foreign nationals and probationary or temporary resident visa holders.
7. Recognized refugees or stateless persons.
8. Foreign nationals granted exemption by law.

(b) Exclusions

1. Members of governing board who do not intervene in corporate operations.
2. President, Treasurer who are part-owners of the company.
3. Providers of consultancy services without ERs in the Ph.
4. Intra-corporate transferee.
5. Contractual service supplier.

6. Representative of foreign principal assigned in the Office of Licensed Manning Agency.

***They shall secure certificate of exclusion.*

C. Discriminatory Practices

1. Age (RA 10911 or the Anti-Age Discrimination in Employment Act)

Covers – (a) Employers; (b) Labor contractor; (c) Labor organization; (d) Publisher.

(a) Employers are prohibited to:

1. Advertise relating to employment suggesting preferences, limitations, specifications, and discrimination based on age.
2. Require declaration of age/birthday in the application process.
3. Decline employment application due to individual's age.
4. Discriminate against individual in terms of compensation, T&C, privileges of employment on account of age.
5. Deny EE promotion or training opportunity from training because of age.
6. Forcibly lay-off and EE because of old age.
7. Impose early retirement based on EE's age.

(b) Labor contractor are prohibited to refuse or refer employment, or otherwise discriminate against any individual on account of age.

(c) Labor organizations are prohibited to:

1. Deny membership to any individual on account of age.
2. Exclude from its membership any individual on account of age.
3. Cause ER to discriminate against an individual on account of age.

(d) Publishers are prohibited to print/publish any notice of advertisement relating to employment suggesting preferences, limitations, specifications, and discrimination based on age.

(e) XPNs **ORSC**

1. (i) Age is BFOQ reasonably necessary in the normal operation of a particular business **RNOB**, or (ii) differentiation is based on reasonable factors other than age.
2. Observance of **bona fide seniority system** not intended to evade the law.
3. Observance of the terms of **bona fide EE retirement** or voluntary early retirement plan in accordance with LC and related laws.
4. Action is duly **certified** by SOLE.

2. Gender and/or Marital Status (RA 9710 or the Magna Carta of Women)

"Discrimination Against Women" means any **gender-based distinction** which impairs the exercise by women of human rights and fundamental freedoms in the political, economic, social, cultural, civil, or any other field based on equality of men and women.

Equal Access and Elimination of Discrimination in Education, Scholarships, and Training

1. Expulsion and non-readmission of women faculty due to **pregnancy outside of marriage** shall be outlawed.
2. No school shall turn out or refuse admission to a female student solely on the account of her having contracted **pregnancy outside of marriage** during her term in school.

3. Health Condition (RA 7277 or the Magna Carta for Disabled Persons)

No entity shall discriminate against a qualified disabled person by reason of disability in regard to:

1. job application procedures,
2. hiring, promotion, or discharge of employees,
3. employee compensation,
4. job training,
5. other terms, conditions, and privileges of employment.

Discriminatory acts

1. Classifying disabled job applicant which adversely affects his work opportunities.
2. Using selection criteria that screen out a disabled person, unless shown to be job-related and are consistent with business necessity.
3. Using criteria which discriminates based on disability or perpetuate the discrimination.
4. Providing less compensation to a qualified disabled employee, by reason of his disability, as compared to a non-disabled person performing the same work.
5. Discriminating disabled employee with respect to promotion, training opportunities, study, and scholarship grants, solely on account of the latter's disability.
6. Transferring a disabled employee to a job or position he cannot perform by reason of his disability.
7. Dismissing a disabled employee by reason of his disability, unless shown that the disability impairs the performance of the work involved to the prejudice of ER. Provided that the ER must provide reasonable accommodations for disabled persons.
8. Failing to use employment tests which accurately reflect the skills, aptitude or other factor of the disabled applicant or employee rather than his impairments.
9. Excluding disabled persons from membership in labor unions or similar organizations.

4. Solo Parents (Sec. 7, RA 8972, as amended by RA 11861)

No employer shall discriminate against any solo parent employee with respect to terms and conditions of employment on account of his or her status. Employers may enter into agreements with their solo parent employees for a telecommuting program, Provided, that said solo parent employees shall be given priority by their employer.

III. Employment Proper

A. Management Prerogative

1. The right and prerogative of ERs to regulate every aspect of their business, generally without restraint, in accordance with their own discretion and judgment.
2. Inherent right to control and manage effectively their enterprise.
3. Includes aspects of employment as hiring, firing, demotion and promotion of EEs, work assignments, working methods, time, place, manner of work, work supervision, transfer of EEs, discipline, and recall.

Limitations

1. Law, police power exercise
2. Contract, including CBA, employment contracts
3. Company policy or practice
4. Principles of equity and substantial justice – (i) must be done without abuse of discretion, (ii) in good faith, and (iii) with due regard to the rights of labor.

1. Discipline

1. Power to impose sanctions to erring EEs.
2. Must be commensurate with the offense.

2. Transfer of Employees

1. Power to assign workers to different places of work.
2. Must be done in good faith, and must not amount to constructive dismissal.

3. Productivity Standard

1. Power to fix the level of output or service, and their quality.
2. Relevant to homeworkers, or to those paid by the output.
3. Must be reasonable. Time and motion studies may be conducted to ensure fair compensation.

4. Bonus

Generally discretionary but may become demandable if the grant already constitutes company practice.

5. Change of Working Hours

Subject to rules on normal working hours, payment of OT pays or other premiums, as applicable.

6. Bona Fide Occupational Qualifications

Exception to non-discrimination

7. Marriage Between Employees of Competitor-Employers

Prohibition or regulation is an allowable employment contract provision since intended for the protection of the interest of ER, and to prevent conflict of interests.

8. Post-Employment Restrictions

Non-compete clauses are valid so long as it does not amount to restraint of trade and must be limited as to time, place, scope.

B. Labor Standards

1. Conditions of Employment

a) Coverage

Covers all EEs in all establishments or undertakings, whether for profit or not.

Not covered GoMa FiFa DoRP

1. Government EEs
2. Managerial EEs – (i) EEs whose primary duties include the management of the establishment or of a department or subdivision thereof; (ii) **other officers or members of the managerial staff.**
3. Field personnel – (i) Non-agricultural EEs who regularly performs duties away from the principal place of business, and (ii) whose actual hours of work in the field cannot be determined with reasonable certainty (unsupervised).
4. Members of the family of ER dependent on him for support
5. Domestic helpers (Kasambahay Law)
6. Persons in personal service of another
7. Workers paid by results as determined by SOLE in proper regulations

b) Hours of Work

(1) Normal Hours of Work and Hours Worked

Normal Hours – not exceeding 8 hours a day.

Hours worked (compensable)

1. All time which EE is required to be on duty or to be at a prescribed workplace.
2. All time during which EE is suffered or permitted to work.
3. Rest periods of short duration during working hours, not exceeding 20 minutes, e.g., coffee breaks.
4. Meal period less than 60 minutes where EE is required to be on-call during the break or is required to wait for work.

(2) Compressed Work Week

One where the normal work week is reduced to less than 6 days but the total number of work hours of 48 hours per week remains.

1. Limit: the normal work hours per day shall not exceed 12 hours, **without OT premium.**
2. Valid if – (i) used by ER to prevent serious losses due to causes beyond its control; (ii) does not exceed 6 months; (iii) requirements of a valid retrenchment exists.

Other flexible work arrangements

1. Compressed work week (see above).
2. Gliding or flexi-time schedule – EEs are given flexibility as to the starting and ending time of their eight-hour workday so long as the required number of hours are rendered.
3. Flexi-holiday schedule – holidays can be availed of by EE at some other days, provided there is no diminution of existing benefits.
4. Reduction of workdays – scheme where the normal workdays per week are reduced but should not last for more than 6 months.
5. Rotation of workers – where EEs who are rotated or alternatively provided work within the workweek.
6. Forced leave – scheme where the EEs are required to go on leave for several days using their leave credits if they have any.
7. Broken time schedule – scheme where the work schedule is not continuous but the work hours within the day of week remain.

(3) Meal Periods

1. ER is required to give EEs not less than 1hr time-off for regular meals – (i) not part of hours worked; (ii) **not compensable**; (iii) worker is free to use such time according to his discretion; (iv) the EE need not take their meals on company premises. They may leave, provided that they return to their posts on time.
2. Meal periods are **compensable** if – (i) reduced to less than 1hr, but not less than 20 minutes; (ii) EE is required to be on-call during the break or is required to wait for work.

Reduction of meal period to not less than 20 minutes is allowed only if:

1. Work is non-manual in nature or does not involve strenuous physical exertion.
2. Establishment regularly operates not less than 16 hrs/day (shifting).
3. In case of actual/impending emergencies, or there is urgent work to be performed on machineries, equipment or installations to avoid serious loss which the ER would otherwise suffer.
4. Where work is necessary to prevent serious loss of perishable goods.

(4) Night-Shift Differential

1. Not less than **10%** of the regular wage for each hour or work performed. – (i) if on OT, NSD rate is computed on top of the OT premium.
2. For work rendered between 10pm and 6am.
3. Regular night shift duty is not required to be entitled to NSD pay. Even temporary assignment to night shift for as short one day entitles the EE to NSD pay.
4. XPN: EEs of retail and service establishments regularly employing not more than 5 workers are not entitled to NSD pay.

(5) Overtime Work

1. Not less than **25%** of the regular wage for each hour or work performed, or

- Not less than **30%** of the holiday or rest day rate for each hour or work performed on holiday or rest day.
- Regular wage means cash wage only, without deduction on account of facilities provided by ER.
- OT work is work performed beyond 8 hours/day, subject to payment of additional compensation, subject to exception re: compressed work week arrangements.
- Uvertime work on any particular day shall not be offset by OT work **on any other day**. The worker shall not be deprived of OT pay.

GR: OT work may not be required. It is VOLUNTARY.

XPNs:

- In case of war or other national or local emergencies, declared by Congress or President.
- When necessary to prevent loss of life or property in case of imminent danger to public safety due to actual or impending emergency in the locality caused by serious accidents, fire, flood, typhoon, earthquake, epidemic, other disaster, or calamity.
- When there is urgent work to be performed on machines, installation, equipment to avoid serious loss or damage to the ER or some other cause of similar nature.
- When work is necessary to prevent loss or damage to perishable goods.
- Where the completion or continuation of work started before the 8th hour is necessary to prevent serious obstruction or prejudice to the business or operations of ER.

(6) Computation of Additional Compensation (Rates only)

NSD	10% of regular wage
OT	25% of regular wage
OT, in holiday or rest day	30% of holiday/rest day rate
Work on SD	30%
Work on rest day	30%
Work on SD, in rest day	50%
Subject to CBA	If higher premiums are provided for in CBA, the latter shall prevail

c) Rest Periods

(a) ERs are required to provide each EE a rest period of not less than 24 consecutive hours after every 6 consecutive normal workdays.

Rest day schedule

- GR: determined by ER as part of management prerogative.
- XPN: preference of EE as to the schedule of rest day based on religious grounds shall be respected.
- XPN to XPN: ER and EE may each choose 2 days per month as rest day, if EEs choice based on religious ground will result in serious prejudice or obstruction to the operation of the undertaking, and ER cannot normally be expected to resort to other remedial measures.

(b) Work on rest day

- Premium is not less than **30%** of the regular wage for each hour of work performed, or
- Not less than **50%** of the special day rate for each hour of work performed on special day, which is also the rest day.
- Work on Sundays shall be considered WRD only if Sunday was the scheduled rest day.
- If the nature of EE is that no regular workdays/rest days can be scheduled, EE shall be paid for work performed on Sundays or holidays.

GR: Workers may not be compelled to work on their rest days.

XPNs:

- In case of actual/impending emergencies caused by serious accidents, fire, flood, typhoon, earthquake, epidemic, other disaster, or calamity to prevent loss of life and property or imminent danger to public safety.
- In case of urgent work to be performed on the machinery, equipment, or installation to avoid serious loss which the ER would otherwise suffer.
- In the event of abnormal pressure of work due to special circumstances, where the ER cannot ordinarily be expected to resort to other measures.
- To prevent loss or damage to perishable goods.
- Where the nature of the work requires continuous operations, and the stoppage of work may result in irreparable injury or loss to the ER.
- Analogous circumstances, as determined by SOLE.

d) Holidays

(a) Regular Holiday or Special Day

Distinctions	Holiday	Special day
No work	100% pay	No pay
With work	Double pay 200%	Extra pay – (i) 30% premium; or (ii) 50%, if also rest day. 130/150%
Days	New Year's M. Th/G. Fr Araw ng Kagitingan Labor Day Independence Day National Heroes Day Bonifacio Day Christmas Day Rizal Day Eid'l Fitr Eid'l Adha	Chinese New Year EDSA Revolution Anniversary Ninoy Aquino Day All Saint's Day Last Day of the Year Feast of the Immaculate Conception of Mary CENALF

Regular holiday

- (i) Every worker shall be paid his regular daily wage during regular holidays even if unworked; (iii) XPN: retail and service establishments regularly employing less than 10 workers.
- If worked – (i) worker shall be paid double; (ii) OT premium is 30% of the holiday rate. ER may require an EE to work on any holiday, subject to payment of holiday pay.
- Entitlement to holiday pay

Day immediately preceding	Holidays		Entitlement to holiday pay
Worked/On paid leave of absence	Regular HD (u)		Entitled
Absent	Regular HD (u)		Not entitled
Absent	Regular HD (w)		Entitled
Worked	Non-working day or rest day	Regular HD	Entitled
Absent	Non-working day or rest day	Regular HD	Not entitled
Worked/On paid leave of absence	Regular HD (u)	Regular HD (u)	Entitled
Absent	Regular HD (u)	Regular HD (u)	Not entitled
Absent	Regular HD (w)	Regular HD (u)	Entitled

Special day

- No work, no pay.

2. If worked – (i) with extra pay of at least 30% of the regular wage; or (ii) at least 50%, if also rest day.

e) Service Charge [Article 96 of the Labor Code, as amended by RA 11360]

1. Integral part of the bill charged to the customers/clients collected by hotels, restaurants, similar establishments.
2. SC must be distributed completely and equally to all EEs, except managerial EEs. Such share shall not be considered in determining compliance with minimum wage requirements.
3. If SC is abolished, the share of covered EEs shall be integrated in their wages.

f) Occupational Safety and Health Standards Law (RA 11058)

(1) Covered Workplaces [Sec. 3(c)]

Establishments, projects, sites, other places where work is being undertaken wherein the number of EEs, nature of operations, and risk or hazard involved in the business, as determined by SOLE, required compliance with the provisions of the law.

(2) Duties of Employers Workers and Other Persons [Sec. 4]

1. Furnish workers place of employment free from hazardous conditions, i.e., likely to cause death, illness, injury.
2. Give complete job safety instruction or orientations, including familiarization with work environment.
3. Inform workers of work-associated hazards, health risks, preventive measures, emergency measures.
4. Use only approved devices and equipment for workplace.
5. Comply with OSH standards on training, examination, PPE, machine guards.
6. Allow active participation in safety and health programs to improve safety and health in the workplace.
7. Provide emergency/accident measures including first-aid arrangements.

(3) Workers' Right to Know [Sec. 5]

Workers have the right:

1. To be appropriately informed by ER about all types of hazards in the workplace.
2. To be provided access to training and education on chemical safety.
3. To orientation on the data sheet of chemical safety, electrical safety, mechanical safety, and ergonomic safety.

(4) Workers' Right to Refuse Unsafe Work [Sec. 6]

Workers may refuse to work without threat or reprisal from the ER if:

1. An imminent danger situation IDS exists in the workplace that may result in illness, injury, death, as determined by DOLE.
2. ER has not undertaken corrective measures to eliminate the danger.

(5) Workers' Right to Personal Protective Equipment (PPE) [Sec. 8]

ER's duty

1. To provide workers PPEs free of charge.
2. When necessary, by reason of the hazardous work process environment or other irritants capable of causing injury, impairment through absorption, inhalation, physical contact.

****Cost of PPE shall be part of the safety and health program of the ER, and integral part of the operations cost.**

Standards

1. PPE shall be the appropriate type.
2. Must be approved by DOLE based on its standards.

****Its usage must be based on evaluation or recommendation of the safety officer.**

2. Wages

a) Definitions

(1) Wage vs. Salary

Wage

1. Paid to any EE constituting remuneration or earnings, however designated.
2. Capable of being expressed in terms of money.
3. Whether fixed or ascertained on a time, task, piece, or commission basis, or other method of calculation.
4. Payable by an ER to an EE under a written or unwritten contract of employment for work done or to be done or services rendered or to be rendered.
5. Includes fair and reasonable value of board, lodging, other **facilities** customarily furnished by the ER to EE.

****Manner of payment of wage is not material in determining ER-EE relationship.**

(2) Facilities vs. Supplements

Distinctions	Facilities	Supplement
Nature	Given to EE his/family's benefit	Given to EE for the benefit of ER
Treatment	Part of wage	Not part of wage
Example	Free shuttle service for the convenience of EEs	Free shuttle service to transport the EE to the factory located in a far-flung area

1. Distinction is necessary in determining compliance with minimum wage requirements.
2. Requirements for deductibility of facilities – (i) proof that such facilities are **customarily** furnished by the trade; (ii) the provision of deductible facilities is voluntarily **accepted** in writing by the employee; and (iii) the facilities are charged at **fair** and reasonable value CAF

b) Principles

(1) No Work, No Pay

Applies to special day, but for regular holiday, EE is paid even if he did not work.

(2) Equal Pay for Equal Work

If an employer accords employees the same position and rank, the presumption is that these employees perform equal work.

1. Non-discrimination against disabled workers – they shall not be paid less than their able-bodied counterparts for the same work.

(3) Fair Wage for Fair Work

1. Minimum wage laws.
2. OT premium.
3. Payment by results shall be regulated by SOLE to ensure payment of fair and reasonable wage rate.

(4) Non-Diminution of Benefits

There is diminution of benefits when: (i) the **grant** or benefit is founded on a policy or has ripened into a practice over a long period of time; (ii) the practice is **consistent** and deliberate; (iii) the practice is **not** due to error in the construction or application of a doubtful or difficult question of law; and (iv) the diminution or discontinuance is done **unilaterally** by the employer. GCNU

c) Payment of Wages

(a) Manner

1. Must be in **legal tender**. XPN: Payment by check or money order may be allowed if customary, or

<p>necessary due to special circumstances, as specified in SOLE regulations or CBA.</p> <ol style="list-style-type: none"> 2. Payment with PNs, vouchers, coupons, tokens, tickets, chits, any object are prohibited even when expressly requested by EE. 3. Payment by results or based on the output produced shall be regulated by SOLE to ensure payment of fair and reasonable wage rate, preferably through time and motion studies, in consultation with representatives of ER's and EE' s organizations. <p>(b) To whom paid. GR: directly to the workers. XPNs:</p> <ol style="list-style-type: none"> 1. Where ER is authorized in writing by EE to pay his wages to a member of his family. 2. When required/authorized by law/rr. 3. Force majeure rendering the payment impossible, or under special circumstances specified in SOLE regulations. The payment may be made through another person under written authority given by the EE for the purpose. 4. In case of death of EE. The payment may be made to the heirs without the need for intestate proceedings, provided the heirs (of age) execute an affidavit attesting to their relationship with the EE and the fact that they are his heirs, to the exclusion of other persons. <p><i>Instances when required/authorized by law/rr</i></p> <ol style="list-style-type: none"> 1. Specifically required by law, even with EE's consent, e.g., withholding tax, SSS, PHIC. 2. Authorized by law, with EE's consent, e.g., insurance premiums, union check-off, payment to cooperative, deductions for facilities. 3. Authorized by law, even without EE's consent, e.g., deposits for loss or breakage. <p>(c) When paid</p> <ol style="list-style-type: none"> 1. GR: Once every two weeks or 2x a month at intervals not exceeding 16 days. 2. XPN: If due to force majeure, circumstances beyond the ER's control, payment cannot be made within the time prescribed. The payment shall be made immediately after the cessation of the FM or the circumstance. 3. Limitation: No ER shall make payment with less frequency than 1x a month. 4. If work cannot be completed in 2 weeks, payment shall still be at 16-day intervals, proportionate to work done with final settlement to be done upon work completion. <p>(e) Where paid. GR: At or near the place of undertaking. XPNs:</p> <ol style="list-style-type: none"> 1. When due to the deterioration of peace and order conditions, or by reason of actual or impending emergencies caused by calamity. 2. When ER provides free transportation to the EEs back and forth. 3. Analogous circumstances provided the time spent by EEs in collecting their wages shall be considered as hours worked. 4. As provided in SOLE regulations. <p>Prohibitions</p> <ol style="list-style-type: none"> 1. Payment in bars, night/day clubs, drinking establishments, massage clinics, dance halls, similar places, places where games are played with stakes of money or things representing money. 2. XPN: if the person is employed in said establishments. 	<p>d) Prohibitions Regarding Wages</p> <p>(a) Non-interference in disposal of wages (112)</p> <ol style="list-style-type: none"> 1. ERs are prohibited from interfering with the freedom of its employees to dispose of their wages. <p>(b) Wage deduction (113)</p> <ol style="list-style-type: none"> 1. No ER may make any deductions from the wages of his EEs. 2. XPNs – when required or authorized by law/rr (see above). 3. Amount of facilities may be deducted if – (i) The provision is customary to the trade or business of the ER; (ii) EE voluntarily accepted the provision in writing; (iii) amount of deduction for the facilities provided is fair and reasonable. <p>(c) Deposits for loss or damage (114)</p> <ol style="list-style-type: none"> 1. ERs cannot require workers to make deposits from which deduction shall be made for reimbursement of loss or damage to tools, materials, equipment. 2. XPNs: (i) When the ER is engaged in such trade/occupation or business where making deductions or requiring deposits is a recognized practice; (ii) when the deposit is necessary or desirable as determined in appropriate rules and regulations. 3. Deduction on deposits made shall only be: (i) for actual amount of loss or damage; (ii) after hearing; (iii) responsibility of EE was clearly shown. 4. E.g., in hotels and restaurants on account of possible breakage; security agencies for possible liabilities on use of firearms. <p>(d) Withholding of wages/kickbacks (116)</p> <ol style="list-style-type: none"> 1. Withholding of wage or inducement for worker to give up part of his wage by force, intimidation, threat, stealth FITS or other means without worker's consent, e.g., pending investigation. 2. Clearance requirements with respect to the of EE is valid ground for withholding of final pay. <p>(e) Deduction to ensure employment (117). – Deduction from EE for the benefit of ER as consideration of promise or retention of employment.</p> <p>(f) Retaliatory measures (118). – Withholding or reduction of salaries or benefits of EEs who (i) filed or initiated complaint or proceedings pursuant to LC; (ii) has or about to testify in such proceedings.</p> <p>(g) False reporting (119). – Making of reports under LC which ER knows contains false statements.</p>
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e) Wage Distortion

(1) Concept

A situation where the increase in the minimum wage results in the elimination or sever contraction in the intentional qualitative differences in the salary or wage rates between or among groups or EEs in an establishment, effectively obliterating the distinctions embodied in the wage structure based on skills, length of service or other logical bases of differentiation.

1. Does not apply in case of unilateral adjustment made by the ER.
2. Any dispute involving wage distortion shall not suspend the effectivity of any increase in wage rates.

Remedy in organized establishments

1. ER-union negotiations.
2. Grievable issue to be resolve through the GM/GC.
3. Unresolve grievance cognizable by PVA to be resolved within 10 calendar days from referral.

Remedy in unorganized establishments

1. ER-EE negotiations.
2. If unresolved, referral to NCMB to be resolved within 10 days from referral.
3. If still unresolved, refer to LAs of NLRC.

f) Minimum Wage Law

(a) National Wages and Productivity Commission NWPC

1. Key policy-making body on wages, income, productivity.
2. Does not set wage rates, but merely reviews the wage rates set by regional wage boards.
3. It acts as an advisory/consultative body to the Congress/President on matters involving wage, income, productivity.
4. Formulates policies for wage fixing.
5. Exercises oversight over RTWPBs.
6. Composition (Tripartism) – (i) SOLE; (ii) NEDA Director General; (iii) 2 EE representatives; (iv) 2 ER representatives; (v) Executive Director.

(b) Regional Tripartite Wages and Productivity Boards RTWPB

1. Determines/fixes the minimum wage rates applicable in their regions, provinces, industries.
2. Issues wage orders, which fixes the minimum wage per region.
3. Composition – (i) RD DOLE; (ii) RD NEDA; (iii) RD DTI; (iv) 2 EE representatives; (v) 2 ER representatives.

Wage orders

1. Order issued prescribing the minimum wage.
2. Region-based, and not national. There may be different rates applicable to different areas in the region. N.B.: only the Congress may prescribe a national minimum wage rates.
3. The RTWPB merely fixes the minimum amount. Wage boards **cannot prescribe an across-the-board** increase. – the increase will apply only to those earning below the minimum but not to other wage levels.
4. Only one wage order per year can be issued.
5. Includes wage rates for Kasambahays. –expressed on a monthly, not daily basis.

(c) Two-tiered wage system

1. Approach to minimum wage setting which aims to improve the coverage of minimum wages, promote worker efficiency and enterprise productivity, and address the negative effects of minimum wage policies.
2. Consists of: (i) Minimum wage; (ii) Incentive pay based on productivity improvement and gainsharing, subject to negotiations/ voluntary agreement.

(d) Exemptions

1. Household or domestic helpers and persons employed in the personal service of another, including family drivers. N.B.; minimum wages of Kasambahay are now also fixed by the RTWPB.
2. Retail/service establishments regularly employing not more than 10 workers. – (i) upon application with and as determined by the appropriate RTWPB pursuant to the NWPC rules; (ii) exemption is good for 1 year.
3. Under LC, apprentices, learners, handicapped EEs may be paid lower than minimum wage, which must be at least 75%.
4. Under R.A. No. 9178, qualified barangay micro business enterprise BMBEs with maximum capitalization of 3M.

g) Holiday Pay

****See Holidays**

h) 13th Month Pay

All ERs are required to pay R&FE 13th month pay, regardless of the nature of employment, and irrespective of the methods by which their wages are paid.

1. Provided the worker has worked for at least 1 month during a calendar year.
2. Amount: 1/12 of the total basic salary earned by EE in a calendar year.
3. Basic salary – (i) Includes all remunerations paid for services rendered, (ii) excludes allowances, monetary benefits which are not considered integrated or part of the regular/basic salary, e.g., cash equivalent of unused VL, SL credits, OT, premium, night shift differential, holiday pay, COLA.

Not entitled to 13th month pay (DOLE Rules)

1. EEs of exempted ERs
2. EEs who are paid on purely commission, boundary, or task basis CBT. E.g., Grab driver on a boundary basis is not entitled to 13th month pay.
3. Those who are paid a fixed amount for performing a specific work, irrespective of the time consumed in its performance. But EEs paid on piece-rate basis are entitled.

3. Leaves

SIL	5 days for every year of service
Maternity leave	105 days for every delivery
Paternity leave	7 days for every delivery, not exceeding 4
Solo parents leave	7 days for every year of service
Leaves under VAWC	10 days
Gynecological/compassionate leave	2 months

a) Service Incentive Leave

Every EE who has rendered at least one year of service shall be entitled to a yearly SIL of **5 days** with pay.

1. Only leave provided for under the LC.
2. Excess grant shall not be made a subject of arbitration or any court/administrative action.
3. SIL shall be commutable to its money equivalent if not used or exhausted at the end of the year. However, it is not cumulative.
4. Kasambahays are also entitled to SIL.

Not entitled:

1. EEs who are already enjoying the benefit
2. **EES enjoying VL with pay at least 5 days**
3. EEs of establishments regularly employing less than 10 EEs
4. EEs in establishments exempted from granting the benefit by SOLE, considering their viability and financial condition.

b) Maternity Leave

R.A. No. 11210 grants **105 days** maternity leave with pay.

1. If solo parent, with additional 15 days. Extendible for 30 days without pay (optional).
2. May be availed by pregnant women EE, married or unmarried.
3. May be used for a combination of pre-natal and post-natal. Provided that post-natal shall be at least 60 days.
4. Workers must receive their full pay. ERs shall be responsible for the salary differential between the actual cash benefits received from SSS and their regular wage of the worker.
5. Not limited by the number of births.

Not entitled

1. EEs of distressed establishments.

2. EEs of retail/service establishments and other enterprises employing not more than 10 workers.
3. EEs of micro-business enterprises whose total assets are not more than P3M.
4. EEs of ERs who are already providing similar or more than the benefits provided by law.

Other leaves granted

1. 60d for miscarriage/ emergency termination of pregnancy
2. 7d of the maternity leave may be assigned to the child's father or caretaker (different from paternity leave)

c) *Paternity Leave*

R.A. No. 8187 grants **7 days** paternity leave with pay.

1. To a husband – (i) **legally** married, and (ii) cohabiting with his wife, (iii) whose wife has given birth.
2. Limited to **4 deliveries** only.
3. This is in addition to the 7d leave which may be assigned by the mother to the father under the EMLA (see above).

d) *Solo Parent Leave (RA 8972, as amended by RA 11861)*

R.A. No. 8972 grants **7 days** leave with pay for every year of service rendered, provided that the EE has rendered at least 1 year of service.

Solo parents

1. Those who are alone due to – (i) Death of spouse; (ii) Detention or service of sentence of spouse for $\geq 1y$; (iii) Physical/mental incapacity of spouse; (iv) Legal or de facto separation from spouse for $\geq 1y$; (v) Abandonment of spouse for $\geq 1y$.
2. Unmarried mother/father who preferred to keep and rear her/his child/ren.
3. Any other person who solely provides parental care and support to a child/ren.
4. Any family member who assumes the responsibility of head of family due to death, abandonment, disappearance or prolonged absence of the parents or solo parent.
5. Woman who gives birth as a result of rape and other crimes against chastity even without final conviction of the offender, provided that the mother keeps and raises the child.

****The solo parent must register herself as such with the LGU.**

e) *Leave Benefits for Women Workers Under Magna Carta of Women (RA 9710) and Anti-Violence Against Women and their Children of 2004 (RA 9262)*

(a) R.A. No. 9710 grants **2 months** leave with pay.

1. AKA compassionate leave.
2. For gynecological disorders requiring surgical procedure.
3. The EE must have rendered continuous aggregate service of at least 6 months in the last 12 months.

(b) R.A. No. 9262 grants **10 days** leave with pay.

1. To allow victims of VAWC to attend to legal and medical concerns.
2. EE must qualify as VAWC victim as defined under the law.
3. May be availed as the need arises, at the option of the EE.

f) *Compassionate Leaves*

****See above.**

4. Special Groups of Employees

a) *Women*

Women working in night club, cocktail lounge, massage clinic, bar, similar establishments, with or without compensation, are considered EEs of the establishment for purpose of labor and social legislation, if conditions are present.

Conditions

1. They are under effective control/supervision of the ER.
2. For a substantial period of time, as determined by SOLE.

(1) *Discrimination*

Discrimination against women

1. Any gender-based distinction which impairs the exercise by women of human rights and fundamental freedoms in the political, economic, social, cultural, civil, or any other field based on equality of men and women.
2. Regardless of marital status.
3. Any act/omission, including by law, policy, administrative measure or practice, that excludes or restricts women's **rights** and their **access** opportunities, benefits, privileges. OBP
4. It is unlawful for ERs to discriminate against any woman EE with respect to T&CE **solely on account of sex** – e.g., Payment of lesser compensation to female EEs as against male EEs, for work of equal value; favoring male EE over female EE with respect to promotion, training opportunities, study, scholarship grants solely on account of their sexes.

(2) *Stipulation Against Marriage*

Prohibited stipulations in employment contracts

1. To require as condition for employment or continued employment that a woman EE shall not get married.
2. Deemed resignation or separation upon getting married, express, or implied.

****However, stipulation providing for termination of service in case of marriage with a person connected to the competitor is valid exercise of management prerogative to prevent conflict of interest and protect the corporation,**

It is also prohibited to actually dismiss, discharge, discriminate or otherwise prejudice a woman EE merely by reason of marriage.

(3) *Prohibited Acts*

1. To deny any woman EE the benefits under LC, or to discharge any woman employed by him for purposes of preventing her from enjoying any of the benefits under LC.
2. To discharge the woman on account of pregnancy, or while on leave or in confinement due to her pregnancy.
3. To discharge or refuse the admission of such woman upon returning to her work for fear that she may again be pregnant.

(a) *Under the Magna Carta for Women*

1. Provides for the protection and promotion of the rights and welfare of migrant women.
2. Expulsion and non-readmission of women faculty due to pregnancy outside of marriage was outlawed.
3. Refusal to admit a female student solely on account of pregnancy outside wedlock was also prohibited.

(b) *Under Anti-Sexual Harassment Law*

1. Any act involving the demanding, requesting, otherwise requiring any sexual favor from the

<p>other by a person having authority, influence, moral ascendancy over the EE, whether accepted or not.</p> <ol style="list-style-type: none"> 2. E.g., (i) Sexual favor is made as a condition in the hiring, continued employment, or other favorable T&CE; or refusal to grant the sexual favor results in unfavorable consequences; (ii) Acts would impair the EE's rights or privileges under existing labor laws; (iii) Acts would result in intimidating, hostile, offensive environment for the EE. <p><i>In education or training environment</i></p> <ol style="list-style-type: none"> 1. Against one who is under the care, custody, supervision of the offender. 2. Against one whose education, training, apprenticeship or tutorship is entrusted to the offender. 3. When the sexual favor is made a condition to the giving of a passing grade or the granting of honors and scholarships, or the payment of stipend, allowance or other benefits, privileges, considerations. 4. When the sexual advances result in an intimidating, hostile, offensive environment for the student, trainee, apprentice. <p><i>Liability of ER</i></p> <ol style="list-style-type: none"> 1. ER or head of office, educational or training institution shall be solidarily liable for damages arising from the acts of sexual harassment committed in their establishments if – (i) he is informed of the act by the offended party and (ii) no immediate action was taken. 2. ER may be held liable for constructive dismissal. <p>(c) Under Safe Spaces Act</p> <ol style="list-style-type: none"> 1. Redefined gender-based sexual harassment in the workplace by including those committed between peers, and those committed to a superior officer by a subordinate, or to a teacher by a student, or to a trainer by a trainee. 2. The offender need not have authority, moral ascendancy or influence over the offended party. 	<ol style="list-style-type: none"> 5. Institution of measures to prevent the child's exploitation or discrimination [2]. <p>Hours of work</p> <ol style="list-style-type: none"> 1. Child below 15y – (i) 20h/wk, ≤4h/dy; (ii) Not allowed to work between 8pm and 6am. 2. Child 15y or over but below 18y – (i) 40h/wk, ≤8h/dy; (ii) Not allowed to work between 10pm and 6am. <p>Worst forms of child labor</p> <ol style="list-style-type: none"> 1. Slavery and similar forms – trafficking of children, debt bondage, compulsory labor, recruitment for use in armed conflict. 2. Prostitution or use of child for pornography. 3. Use of child for illegal activities as drug trafficking. 4. Hazardous works
<p><i>b) Minors</i></p> <p>R.A. No. 7610</p> <p>GR: Children below 15y shall not be employed.</p> <p>XPNS:</p> <ol style="list-style-type: none"> 1. When the child works directly under the sole responsibility of his parents or legal guardian and where only members of the ER's family are employed. 2. When the employment or participation of child in public entertainment or information through cinema, theater, radio, TV is essential. 3. XPN to XPN: it is prohibited to employ children in advertisements which in/directly promote alcoholic beverages, intoxicating drinks, tobacco, gambling or any for or violence or pornography. <p>Conditions</p> <ol style="list-style-type: none"> 1. The employment shall not endanger the child's life, safety, health, morals, or impair his normal development. 2. ER shall secure a work permit from DOLE prior to engaging the minor where allowed. 3. The parent or guardian shall provide the minor with prescribed primary and secondary education [1] or formulation of continuing program for training and skills acquisition of the child [2] 4. The employment contract is concluded by the child's parents or legal guardian, with the express agreement of the child concerned, if possible and the approval of DOLE [2] 	<p><i>c) Kasambahays</i></p> <p>Under LC, household services is service in the ER's home which is UND for the maintenance and enjoyment of the home, and the personal comfort and convenience of the members of its household. It includes the services of family drivers (LC).</p> <p>Under Kasambahay Law</p> <ol style="list-style-type: none"> 1. Domestic worker are persons engaged in domestic work within an employment relationship as general househelp, nursemaid "yaya", cook, gardener, laundry person (Kasambahay Law). 2. Child <15y shall not be employed as Kasambahay. 3. Kasambahay shall not be assigned to work in a commercial, industrial, agricultural enterprise at a wage below minimum. Temporary assignment to different household may be allowed subject to certain requirements. 4. RTWP shall fix the minimum wage for Kasambahay. 5. They are also entitled to 5d SIL for every year of service. <p><i>Not domestic workers under Kasambahay Law</i></p> <ol style="list-style-type: none"> 1. Family drivers (SC). 2. Persons performing domestic work only occasionally or sporadically and not on an occupational basis. 3. Children under foster family arrangement and are provided access to education and given allowance. <p><i>Termination of service</i></p> <ol style="list-style-type: none"> 1. Only for just/authorized cause, or upon termination of the contract. 2. Upon 5 days' notice if the duration of service is not fixed by contract or nature of service. 3. Pre-termination may be allowed upon agreement. 4. In case of unjust dismissal, ER shall be liable for – (i) payment of compensation already earned; (ii) indemnity equivalent to 15d work. 5. If SH leaves without justifiable reasons within 6 months from employment – (i) unpaid salaries not exceeding 15d shall be forfeited (excess may be recovered); (ii) ER may recover deployment expenses. 6. Money claims of Kasambahays are within the jurisdiction of the DOLE RD, even if their minimum wage was now fixed at P6k/month. <p><i>d) Homeworkers</i></p> <p>Homework is an arrangement whereby the ER delivers goods, articles to the homemaker for processing. Afterwards, the outputs are picked up by the ER.</p> <p>ER is any person who:</p> <ol style="list-style-type: none"> 1. Delivers any goods, articles, or materials to be processed or fabricated in a home and thereafter

- to be returned, disposed, or distributed in accordance with his directions, or
- Sells any goods, articles, or materials to be processed or fabricated in a home and then rebuys them after processing or fabrication.

e) Night Workers

R.A. No. 10151

- EEs permitted, suffered to work at night – (i) for not less than 7 consecutive hours, (ii) including the interval from 12mn to 5am.
- Except EEs in the agriculture, stock raising, fishing, maritime transport, inland navigation.
- Former prohibition against women nightworkers was already removed. Women may be engaged as night workers subject to certain safeguards.

Safeguards for women nightworkers

- Alternative to night work shall be provided – (i) in case of childbirth, for 16w to be divided before and after; (ii) for health reason stated in a medical certificate due to childbirth or thereafter, in addition to the 16w.
- Pregnant or nursing mothers shall be allowed to render night work only upon certification of her fitness to work by a physician other than the company doctor.

Rights of nightworkers

- Right to health assessment – (i) upon request of EE, free of charge; (ii) they shall receive advice on how to avoid health problems related to nightwork; (iii) may be availed before taking up an assignment, at regular interval thereafter, and if they experience health problems during such an assignment on account of the same; (iv) findings shall be confidential, except that a finding of unfitness may be communicated to the ER.
- Mandatory facilities – (i) first-aid facilities; (ii) safe and healthful working conditions; (iii) sleeping and resting quarters; (iv) transportation facilities.
- Transfer – (i) if found unfit for nightwork due to health reasons, EE shall be transferred to a similar job for which they are fit, if practicable; (ii) if not, they shall be benefits similar to EEs unable to work during such period; (iii) if certified as temporarily unfit for night work, the EE shall be entitled the same protection against dismissal or notice of dismissal as other workers prevented from working for health reasons.
- Consultation. – Consultation the workers' representatives/labor organizations (i) before introducing nightwork schedules; (ii) forms of organization of the nightwork; (iii) occupational health measures and social services.

f) Apprentices and Learners

Apprentices	Learners
Apprenticeship is practical OJT supplemented by theoretical instruction	Practical OJT in a relatively short period of time
Highly technical jobs	Semi-skilled and other industrial occupations which are non-apprenticeable
Apprentices are not EE since objective is to train, not employ	Learners are also not EEs since objective is to train, not employ
Must be covered by written apprenticeship agreement	Must be covered by written learnership agreement
Requires >3m of training	Training does not exceed 3m
Must not exceed 6m	Must not exceed 3m
May be paid less the minimum wage, at least 75%; or without compensation is the training is a school requirement	May be paid less the minimum wage, at least 75%. XPN: they shall be paid in full if employed in piece or incentive-rate works

(a) Apprentices

- Under LC, must be at least 14y, but under R.A. No. 7610, no child below 15y shall be employed.
- Organization of apprenticeship program is primarily a voluntary undertaking by EE. XPN: (i) Compulsory training of apprentices in certain trade as required by President in the interest of national security or particular requirements of economic development; (ii) When the services of foreign technicians are utilized by private companies in apprenticeable trades.
- Deductibility of training cost – (i) ERs with apprenticeship programs may claim additional deduction of ½ of training costs from taxable income; (ii) provided: (a) the program was duly recognized by DOLE; (b) deduction does not exceed 10% of direct labor costs; (c) apprentices are paid minimum wage.
- If the apprenticeship is being used to circumvent labor laws, then the apprentice will be considered EE of the ER. – e.g., (i) apprentice renders services UDN in the UTB of ER even before execution of agreement; (ii) retention of apprentice after expiration of agreement; (iii) execution of second apprenticeship agreement for a second skill not mentioned in the first agreement.

(b) Learners

- Employment of learners is allowed when – (i) no experienced workers are available; (ii) if necessary to prevent curtailment of employment opportunities; (iii) if employment will not create unfair competition in labor costs or impair working standards.
- A learner is deemed a regular EE if – (i) he was allowed or suffered to work during the first 2 months of the agreement, and (ii) the training is terminated by ER (a) before end of the stipulated period, (b) without learner's fault.

g) Persons With Disabilities

Under LC

- Handicapped workers are those whose earning capacity is impaired by age, physical or mental deficiency or injury.
- They may be employed (i) when their employment is necessary to prevent curtailment of employment opportunities and (ii) when it does not create unfair labor competition in labor costs or impair or lower working standards.
- They may be paid less than the minimum wage, but not less than 75%.

Under Magna Carta for Disabled Persons

- Disabled persons are those suffering from restrictions of different abilities, as a result of mental, physical, sensory impairment to perform an activity in the manner or within the range considered normal for human being.
- His capacity to earn is not considered.
- A disabled person (MC) is not necessarily a handicapped worker (LC). A disabled person shall be paid the **full wage**. *Equal pay for equal work*.

(1) Discrimination

(a) Magna Carta for Disabled Persons (RA 7277)

(a) Qualified individual with disability

- Disabled person who can perform the essential functions of the employment position held or desired, with or without reasonable accommodations.
- Written job description before advertising or interviewing shall be considered evidence of essential functions of the job.
- They shall be entitled to equal opportunity for employment – (i) they shall be subject to same T&CE as other workers; (ii) 5% of all causal, emergency, contractual positions in DSWD, DOH,

DECS, other government agencies, GOCCs engaged in social development shall be reserved for disabled persons.

(b) Discriminatory acts

1. Classifying disabled job applicant which adversely affects his work opportunities.
2. Using selection criteria that screen out a disabled person, unless shown to be job-related and are consistent with business necessity.
3. Using criteria which discriminates based on disability or perpetuate the discrimination.
4. Providing less compensation to a qualified disabled employee, by reason of his disability, as compared to a non-disabled person performing the same work.
5. Discriminating disabled employee with respect to promotion, training opportunities, study, and scholarship grants, solely on account of the latter's disability.
6. Transferring a disabled employee to a job or position he cannot perform by reason of his disability.
7. Dismissing a disabled employee by reason of his disability, unless shown that the disability impairs the performance of the work involved to the prejudice of ER. Provided that the ER must provide reasonable accommodations for disabled persons.
8. Failing to use employment tests which accurately reflect the skills, aptitude or other factor of the disabled applicant or employee rather than his impairments.
9. Excluding disabled persons from membership in labor unions or similar organizations.

(b) Mental Health Act (RA 11036)

Discrimination is defined as any distinction which impairs the enjoyment or exercise, on an equal basis with others, of all human rights and fundamental freedoms in the political, economic, social cultural, civil or any other field.

1. Includes denial of reasonable accommodation.
2. However, special measure solely to protect or advance the rights of persons with decision-making impairment capacity shall not be deemed to be discriminatory.

Duty of ERs

1. To develop policies and programs on mental health issues.
2. To correct the stigma and discrimination associated with mental conditions.
3. To identify and provide support for individuals with mental health conditions to treatment and psychosocial support.

(2) Incentives for Employers

1. Additional deduction from gross income of 25% of the total **salaries** paid to disabled persons, subject to requirements.
2. Additional deduction from net taxable income of 50% of the direct costs of **improvements** or modification of physical facilities to better accommodate disabled persons.

Requirements [1]

1. Presentation of proof, as certified by DOLE of such employment.
2. The disabled person is accredited by DOLE and DOH as to his disability, skills, and qualifications.

h) Migrant workers¹

(a) Relevant Laws

1. R.A. No. 8042, as amended by R.A. No. 1022 (Migrant Worker's Act).

2. R.A. No. 11641 created the DMW, but did not amend MWA.

(b) State policy

1. The state **does not promote** overseas employment as a means to economic growth and national development and shall continuously aim to make it a choice and not a necessity.
2. The state shall institute measures that will strengthen the domestic labor market for the effective reintegration of OFWs.

(c) DMW

1. POEA and all entities or agencies and units involved in migrant workers as stated in RA 11641 are consolidated and merged into the DMW which shall absorb their powers, functions, and mandate.
2. Primary agency under the executive branch of the government tasked to protect and promote the welfare of OFWs.
3. POEA functions absorbed – (i) Regulation of recruitment, employment, deployment of OFWs; (ii) investigation, initiation of illegal recruitment, human trafficking cases.

(d) OFW

1. A Filipino who is to be engaged, is engaged, or has been engaged in remunerated activity. – covers acts of recruitment.
2. **In a country of which he or she is not an immigrant, citizen, or permanent resident or is not awaiting naturalization, recognition, or admission**, whether land-based or sea-based regardless of status. – (i) Filipinos who are already immigrants, etc. in the State of employment are no longer considered OFWs; (ii) "Regardless of legal status" means without discrimination as to whether the EE is documented/ undocumented, and whether the stay in the host country is legally sanctioned or not.
3. Excluding a Filipino engaged under a government-recognized exchange visitor program for cultural and educational purposes.
4. Covers a person contracted for overseas employment but has yet to leave the Philippines, regardless of status.
5. E.g., employee of an airline who rents an apartment abroad for work. An OFW is one engaged in a remunerative activity in a state where he or she is not a citizen.

OFW in distress

1. Those who has medical, psycho-social, legal problem, or is experiencing abuse or exploitation, or whose human rights are being violated, or is in a country in actual or potential war, civil unrest, pandemic or other analogous circumstances and situations, and requires treatment, hospitalization, counselling, legal representation, rescue, repatriation, or any other kind of analogous repatriation including the repatriation of remains.

(e) Deployment of OFWs: OFWs shall be deployed in States where their rights are protected. Guarantees:

1. Existing **labor and social laws** protecting the rights of workers, including migrant workers.
2. Signatory to and/or ratifier of **multilateral conventions**, on the protection of workers, including migrant workers.
3. Concluded a **bilateral agreement** with the government on the protection of rights of migrant workers.
4. Taking positive, concrete measures to protect the rights of migrant workers in furtherance of any of the above guarantees.

¹ Not in Bar Syllabus.

****These guarantees are certified by the DFA.** Government offices who voted to allow deployment or issued permits without such certification shall be dismissed and DQ to hold appointive public office for 5y.

Deployment termination or ban

1. In the pursuit of national interest or when public requires, DMW may terminate or impose a ban on the deployment of migrant workers.
2. **DMW Secretary** may terminate, suspend, impose total ban on the deployment of MW when the conditions in the receiving country or region are inimical and not protective of the best interest, welfare, safety of the migrant workers.

(f) Money claims

1. Claims arising out of ER-EE relationship by virtue of any law or contract involving Filipino workers for overseas deployment, including claims for actual, moral exemplary and other forms of damage.
2. LAs has EOJ.
3. Principal/ER and the recruitment/placement agency are solidarily liable for all OFW money claims, which shall be incorporated in the overseas employment contract as pre-condition for its approval. – (i) may be enforced against agency's performance bond; (ii) officers, directors, partners of agency are solidarily liable with the agency; (iii) subsists during the entire duration of employment contract and shall not be affected by any contract substitution.
4. In case of illegal termination/ unauthorized deductions, OFW shall be entitled to (i) full reimbursement of his placement fee and deductions made; (ii) Interest at 12%, p.a.; (iii) Salaries for the unexpired portion of his employment contract (without limitation).
5. In case of deployment of minor, he shall be immediately repatriated.

****OFWs shall be covered by a mandatory insurance coverage.**

5. Sexual Harassment in the Work Environment

a) Sexual Harassment Act (RA 7877)

1. The sexual favor is made as a condition in the hiring or in the employment, re-employment or continued employment of said individual, or in granting favorable compensation, T&C, promotions, or privileges; or the refusal to grant the sexual favor results in limiting, segregating or classifying the employee which in any way would discriminate, deprive or diminish employment opportunities or otherwise adversely affect said employee;
2. The above acts would impair the employee's rights or privileges under existing labor laws; or
3. The above acts would result in an intimidating, hostile, or offensive environment for the employee.

b) Safe Spaces Act (Article IV of RA 11313 only; Exclude: Liability of Employers)

(a) Gender-based SH GBSH in the workplace

1. Any act/series involving any unwelcome sexual advances, requests or demand for sexual favors that has or could have a detrimental effect on the conditions of an individual's employment or education, job performance or opportunities.
2. A conduct of sexual nature affecting the dignity of a person, which is unwelcome, unreasonable, and offensive to the recipient.
3. A conduct that is unwelcome and pervasive and creates an intimidating, hostile or humiliating

environment for the recipient. – provided that the crime of gender-based sexual harassment may also be committed (i) between peers and (ii) those committed to a superior officer by a subordinate, or (iii) to a teacher by a student, or (iv) to a trainer by a trainee.

(b) Duties of ERs

1. To prevent, deter, or punish the performance of acts of GBSH in the workplace.
2. To disseminate copy of Safe Spaces Act in the workplace.
3. To provide measures to prevent GBSH such as seminars.
4. To create an independent internal mechanism or a committee on decorum and investigation to investigate and address complaints of gender-based sexual harassment.
5. Provide and disseminate a code of conduct or workplace policy, after consultation with workers. – (i) reiterating the prohibition on GBSH; (ii) describing the procedures of the internal mechanism; (iii) setting administrative penalties.

(b) Duties of EEs

1. Refrain from committing acts of GBSH.
2. Discourage the conduct of GBSH in the workplace.
3. Provide emotional or social support to fellow colleagues who are victims of GBSH.
4. Report acts of GBSH witnessed in the workplace.

C. Social Welfare Legislation

1. SSS Law (RA 8282, as amended by RA 11199)

a) Coverage

(a) Compulsory coverage

Employees

1. All employees including kasambahays or domestic workers ≤60y and their employers.
2. Without prejudice for ER-EE to agree and adopt benefits over and above those provided under this Act.
3. Private benefit plans existing at the time of the approval of this Act – (i) shall not be discontinued, reduced, or impaired; (ii) shall be integrated with the SSS plan; (iii) adjustments due to the integration shall be agreed to by ERs and EEs; (iv) shall remain under the ER's management and control, unless there is an existing agreement to the contrary.

Self-employed persons

1. All self-employed professionals.
2. Partners and single proprietors.
3. Actors and actresses, directors, scriptwriters and news correspondents who do not fall within the definition of the term "employee" in the Act.
4. Professional athletes, coaches, trainers and jockeys.
5. Individual farmers and fishermen.

****As determined by SSC.**

OFWs

1. Sea-based and land-based OFWs as defined in MWA ≤60y.
2. Land-based OFWs are considered in the same manner as self-employed persons. However, they shall be considered as compulsorily covered employees with ER and EE shares in contributions if the State (through DFA/DMW) is able to conclude a bilateral labor agreement with host countries ensuring that the principals pay the required SSS contributions.
3. Manning agencies are agents of their principals and are considered as ERs of sea-based OFWs.

- Liabilities for violation of the Act – (i) civil liabilities shall be solidary liability of the manning agencies and principals; (ii) criminal liabilities shall be imposed on persons having direct control, management or direction of the manning agencies.

(b) Voluntary coverage

- Spouses who devote full time to managing the household and family affairs, unless they are also engaged in other vocation or employment which is subject to mandatory coverage.
- OFWs whose overseas employment was terminated and opts to continue to pay contributions on a voluntary basis.
- Filipino permanent migrants, immigrants, permanent residents, and naturalized citizens of host countries.

b) Dependents and Beneficiaries

(a) Dependents

- The legal spouse entitled by law to receive support from the member.
- The il/legitimate child – (i) unmarried, (ii) not gainfully employed, (iii) <21y or ≥21y who is congenitally or while still a minor has been permanently incapacitated and incapable of self-support.
- The parent who is receiving regular support from the member.

(b) Beneficiaries

Primary

- The dependent spouse until he or she remarries.
- The dependent il/legitimate children. – (i) ILC shall be entitled to ½ share of LC; (ii) if there is no LC, the ILC shall be entitled to 100% of the benefits.

Secondary

- Dependent parents shall be entitled to benefits in the absence of primary beneficiaries.
- Any other person designated by the member as his/her secondary beneficiary, in the absence primary beneficiary and parents.

c) Benefits

- Monthly pension (member)
- Dependent's pension (in case of death of member)
- Retirement benefits
- Death benefits
- Permanent disability benefits
- Funeral benefit
- Sickness benefit
- Maternity leave benefit

**** Benefits are non-transferrable.**

2. GSIS Law (RA 8291)

a) Coverage

(a) Compulsory Membership

- All EEs receiving compensation while in government service who have not reached the compulsory retirement age.
- ER includes national government, its political subdivisions, branches, agencies or instrumentalities, including GOCCs, and financial institutions with original charters, the constitutional commissions and the judiciary.
- A member separated from government service shall continue to be a member, and shall be entitled to whatever benefits he has qualified to in the event of any compensable contingency.

(b) XPNs

- AFP and PNP members, subject to the condition that they must settle first their financial obligation with the GSIS.
- Contractuals who have no ER and EE relationship with the agencies they serve.

b) Dependents and Beneficiaries

(a) Dependents

- Legitimate spouse dependent for support upon the member or pensioner. – (i) the status of dependency arise from the fact of marriage; (ii) if the member abandoned his legal spouse without justifiable cause, the latter shall still be considered a dependent.
- Il/legitimate child – (i) unmarried, (ii) not gainfully employed, (iii) <18y or ≥18y but incapacitated and incapable of self-support due to a mental or physical defect acquired prior to age of majority.
- Parents dependent upon the member for support.

(a) Beneficiaries

- Primary – (i) Legal dependent spouse until he/she remarries; (ii) the dependent child/ren.
- Secondary – (i) Dependent parents and (ii) subject to the restrictions on dependent children, the legitimate descendants.

c) Benefits

All members of the GSIS shall have life insurance, retirement, and all other social security protection such as disability, survivorship, separation, and unemployment benefits.

- Monthly pension
- Separation benefits
- Unemployment benefits
- Retirement benefits – (i) At least 15y of government service; (ii) At least 60y; (iii) Not receiving a monthly pension benefit from permanent total disability.
- Disability benefits – (i) Permanent total; (ii) Permanent partial; (iii) Temporary total; (iv) Non-scheduled.
- Survivorship benefits
- Funeral benefits
- Life insurance benefits

XPN: members of the judiciary and constitutional commissions shall have life insurance only.

Presumption of compensability

- Although the Employee's Compensation Act has already abandoned the principle of presumption of compensability, the Employees Compensation Commission ECC has revived the **presumptive compensability in favor of members of the AFP and PNP**.
- The policy provides that a police officer or member of the armed forces who suffers a contingency due to the nature of his work will be compensated provided that the evidentiary details of his injury or death are clearly established.

3. Disability and Death Benefits

a) Labor Code

State policy. – establishment of a tax-exempt employees' compensation program whereby EEs and their dependents may promptly secure adequate income benefit and medical related benefits in the event of **work-connected** disability or death.

- Disability benefits – (i) Temporary Total; (ii) Permanent Total; (iii) Permanent Partial.
- Death benefits.
- Funeral benefits.

b) POEA-Standard Employment Contract

Requirements for recovery

1. The seafarer suffered **work-related** illness or injury during the term of his contract.
2. He submitted himself to a mandatory post-employment medical examination, within 3 working days upon his arrival – (i) with company-designated physician; (ii) XPN: only if the EE is physically incapacitated to do so.

Disability

1. May be – (i) Permanent and total; (ii) Temporary and total; (iii) Permanent and partial; (iv) Temporary and partial.
2. The company-designated physician CDP shall determine the disability grading, subject to period provided for by law.
3. Mere inability of the seafarer to work for 120 days does not automatically entitle a seafarer to P&T disability benefits. The same must be determined by CDP.
4. Clear Nexus Rule. – EE must fully establish the conditions of compensability despite the disputable presumption of work-connection provision of the POEA-SEC. The twin conditions of compensability are (i) work-connection; and (ii) effectivity of contract. Only the first is affected by the disputable presumption provision.
5. EE must prove the second condition by complying with the four conditions set by the POEA-SEC, viz.: (i) the seafarer's work involves the risk factors of the unlisted disease; (ii) his work actually exposes him to said risk factors; (iii) his period of exposure to said risk factors is sufficient for him to contract it; and (iv) he contracted the disease not by reason of his notorious negligence.

Period

1. CDP has initial 120d to determine the fitness or disability of the seafarer and issue disability grading.
2. Extension may be allowed up to 240d (additional 120) if a sufficient justification exists. – ER has burden to prove the sufficient justification.

Disability is considered permanent and total if:

1. Determined as such by CDP.
2. CDP fails to give his assessment within 120d without sufficient justification.
3. CDP fails to give his assessment within 240d regardless of the reason or justification.

Conflict resolution

1. Seafarer may seek second opinion from seafarer-designated physician SDP
2. If CDP and SDP disagree, they shall jointly designate a third physician
3. The decision of the jointly-designated physician shall be final and binding.

D. Labor Relations

1. Right to Self-Organization

a) Coverage

The right of people to form unions, associations, societies for purposes **not contrary to law** shall not be abridged (Const.)

(a) Labor organization for collective bargaining

1. All persons employed (i) in commercial, industrial, agricultural enterprises, and (ii) in religious, charitable, medical, educational institutions, w/n operating for profit shall have the right (iii) to self-organization and (iv) to form, join, assist JFA labor organizations of their choosing in collective bargaining.

(b) Labor organization for mutual aid and protection and other legitimate purposes (workers' associations)

1. Ambulant, intermittent, itinerant workers
2. Self-employed people
3. Rural workers
4. Those without any definite ERs

b) Eligibility for Membership

(a) EEs in private enterprises

Managerial EEs [1]	Not eligible to JFA any labor organization
Supervisory EEs [2]	Not eligible to join CBU of R&FE but may JFA separate CBU and/or labor organization of their own
R&FE [3]	Eligible to JFA any labor organization
Confidential EEs [5]	Not eligible to JFA any labor organization
EEs of a cooperative who are also members [6]	Not eligible to JFA any labor organization
Alien EEs	Eligible to JFA any labor organization, provided conditions are met [7]

1. (i) Those vested with powers and prerogatives to: (a) lay down and execute management policies and/or (b) hire, transfer, suspend, lay-off, recall, discharge, assign, discipline EEs or their recommendations in such matters are given particular weight. (ii) (a) primary duty consists of management of the establishment in which they are employed, or of a department/subdivision of the same; (b) customarily, regularly directs the work of two or more EEs. E.g., Dean of Student Affairs.
2. They effectively recommend managerial actions, provided that its exercise requires independent judgment and not merely routine or clerical **(effective recommendatory powers)**. N.B.: under labor standards, supervisors are considered as managers since they are part of "other managerial staff".
3. An EE who is not a managerial EE or supervisory EE.
4. The SPV union and R&FE's union may join the same federation or NU.
5. Ineligible by reason of their functions. Under the doctrine of necessary implication, what is implied in a statute is as much a part thereof as that which is expressed. Confidential EEs are similarly placed as managerial EEs since they represent the interest of the ER. Thus, the ineligibility shall also apply to them. Requisites – (i) They must assist or act in confidential capacity, not merely perform clerical works; (ii) To persons who formulate, determine, effectuate management policies in the field of labor relations. Mere exposure to internal business is not ground for ineligibility.
6. The member is a part owner of the cooperative cannot JFA a labor organization for collective bargaining regardless of their degree of participation in the actual management of the cooperative. XPN: if they withdraw their membership in the cooperative which is an expression of preference of union membership.
7. Alien EEs may JFA unions provided (i) they are in Ph under an AEP; (ii) subject to reciprocity that their home countries also give the same right to associate to Filipinos who are there. N.B.: as GR, alien persons are strictly prohibited from engaging in/directly in all forms of trade union activities. They are also prohibited from giving donations to labor organizations, worker groups, and their auxiliaries, unless permitted by SOLE.
8. **An EE, whether employed for definite period or not, beginning the first day of service, shall be considered an EE for purposes of membership in any labor union.** – hence, EEs under fixed term contracts, probationary EEs are eligible to JFA unions.

(b) EEs in government

1. They have the right to self-organization, subject to XPNs, but without the right to bargain or to strike.
2. The right to unionize, which is a constitutional right, does not carry with it the right to strike, which is merely statutory in character. Under E.O. 180, s. 1987, government EEs, including EEs of **GOCCs with original charters shall not strike** for the purpose of securing changes in their T&CE. Otherwise, they may be subject to administrative action.
3. EEs employed by service contractors has right to JFA labor organizations for collective bargaining in relation to their direct ER, who is the service contractor, and not the government agency where they are assigned.

Government EEs ineligible to JFA unions

1. High level government EEs. – those whose functions are (i) policy-making or managerial, or (ii) highly confidential.
2. Members of AFP, PNP, firemen, jail guards
3. EEs of international organizations recognized by Ph government and granted immunity from suits and over whom Ph courts have no jurisdiction. – (i) usually created by agreement of two or more states to conduct international organizational business which the member states have an interest; (ii) EEs of International Catholic Migration Commission are ineligible to JFA labor organizations, even if it is not a international organization but a mere international NGO since it was granted immunity from suit.

(c) Summary of EEs ineligible to JFA labor organization

1. Managerial EEs
2. Confidential EEs
3. EEs of a cooperative who are also members.
4. Alien EEs who do not comply with conditions
5. High level government EEs
6. Members of AFP, PNP, firemen, jail guards
7. EEs of international organizations

c) Doctrine of Necessary Implication

Doctrine which is the basis for ineligibility of confidential EEs to JFA labor organization (see above).

d) Commingling or Mixed Membership

****See below**

e) Effect of Inclusion as Members of Employees Outside of the Bargaining Unit

1. Not a ground for cancellation of union registration, unless due to misrepresentation, false statement, fraud under circumstances mentioned in LC.
2. EEs outside bargaining unit are deemed removed from the list of union membership and shall not be entitled to the benefits obtained by the BU.
3. E.g., supervisory EEs joining R&FE union.

2. Bargaining Unit

Group of EEs sharing mutual interests within a given ER unit comprised of all or less than all the entire body of EEs in the ER unit, or any specific occupational, geographical grouping within the ER unit.

1. The group of EEs sought to be represented by the petitioning union.
2. The EEs, however, need not be members of the union seeking the conduct of certification election.
3. One Company, One Union Policy. – intended to enhance their bargaining strength through unity and solidarity.

Tests in determining appropriate BU

1. Will of EEs (Globe doctrine)
2. Community and affinity of EE's interest

3. Prior collective bargaining history. – neither decisive nor conclusive.
4. Employment status

[1] Will of EEs

1. **Express will or desire of the EEs shall be considered.** They should be allowed to determine for themselves what union to JFA, subject to limits provided by law.
2. The best way to determine the EEs preference is through a **referendum** to determine the composition of the CBU.

[2] Community and affinity of EE's interest

1. Substantial community or affinity of EEs interest is the determining factor w/n the EEs belong to one BU.
2. May be in terms of work/duties, compensation, working conditions.

3. Bargaining Representative

Labor organization designated/selected by majority EEs in the CBU who shall be their exclusive representative for collective bargaining.

1. Without prejudice to the right of individual EE or group to present grievance to the ER at any time.
2. Modes of determining EBR – (a) SEBA Certification; (b) Certification election; (c) Consent election.

(a) SEBA Certification

1. If there is only one union existing and operating in the industry/BU, it may file a request with the Regional Director to be certified as the exclusive bargaining agent. The **Request for Certification** must be supported by at least majority of the members of the BU.
2. SEBA Certification issued by the DOLE RO is proof of the non-existence of other labor organizations. The certified SEBA may go the ER for bargaining.
3. This substituted the former voluntary recognition of LLO by ER which was already repealed.

(b) Certification election

1. Process of determining through secret ballot the sole and exclusive representative of EEs in an appropriate BU for purposes of CB or negotiation.
2. Upon petition filed with RO and conduct of election ordered by DOLE.
3. Held to be the best method of determining the will of the workers as to who shall represent them in their negotiations with the management for a CBA who will protect and promote their interests.

(c) Consent election

1. Also, a mode of determining the EBR of a CBU through secret ballot.
2. Voluntarily agreed upon by the parties or without intervention by the DOLE.
3. Outcome of consent election is valid and binding as to those who voted for another union and those who did not vote. They are deemed to have assented to the will of the majority.

Petition for certification election PCE

1. Petition filed by a LLO to determine the CEBA of a particular BU.

(a) In organized establishments

1. Organized establishments are those where there is a union operating, which has a CBA with the management.
2. Any LLO may file verified petition questioning the majority status of the incumbent bargaining agent with the DOLE.

3. Petition – (i) petitioner must be **LLO**; (ii) must be supported by the written **consent** of at least 25% of all EEs in the BU; (iii) must be filed within the **period** allowed by the bar rules.
4. If petition is sufficient, med-Arbitrator shall automatically order and election by secret ballot.

[i] Petitioner must be LLO

1. As proven by its certificate of registration or chapter certificate.
2. A local chapter of a federation or national union acquires personality from the time of issuance of its chapter certificate, but for the limited purpose only of filing PCE. To acquire full personality, it must submit the documentary requirements.

[ii] Supported by at least 25% of EEs in BU

1. All EEs in the BU, regardless of status, may vote. – whether permanent, probationary, or hired for a fixed period. An EE from the first day of his service in the company for purposes of joining a union.
2. Dismissed EE before his dismissal is declared valid and final at the time of the conduct of PCE may vote.
3. Members of religious groups whose religions do not allow them to join labor unions may also vote. Option “no union” is always available in recognition of people’s right to freedom of association which includes the right not to associate.
4. Shall exclude Supervisory EEs. Supervening promotion to supervisory position prior to the conduct of the certification election renders the promoted EEs ineligible to vote. Their votes shall be excluded.
5. Withdrawal of signature – (i) Before filing of PCE, presumed voluntary; (ii) After filing of PCE, presumed involuntary and does not affect PCE.

Challenging eligibility of voters

1. Challenged ballots shall be placed inside an envelope sealed by DOLE election officer in the presence of the voter and representatives of the contending union, signed by EO and representatives.
2. EO shall indicate on the envelope: voter’s name, union challenging the voter, ground for the challenge.
3. EO shall note all challenges in the minutes of the election proceedings and shall have custody of all envelopes containing the challenged votes.
4. The envelopes shall be opened and the question of eligibility shall be passed upon by the Med-Arbitrator **only if the number of segregated votes will material alter the results of the election.**
5. If the number of contested votes is immaterial – (i) it will not be decided; (ii) conduct a runoff election shall ensue.

[iii] Period for filing PCE (bar rules) ON DeCA

1. One-year bar Rule. – no PCE shall be filed within 1y from the certification of a CEBA. After 1y, PCE may be filed, unless a CBA was registered with DOLE during the 1y in which case, the contract bar rule will apply.
2. Negotiation bar rule. – no PCE shall be entertained once negotiation for new CBA was commenced.
3. Deadlock bar rule. – no PCE shall be entertained during a pending bargaining deadlock that was (i) submitted to conciliation or arbitration or (ii) had become the subject of a valid notice of strike or lockout.
4. Contract bar rule. – no PCE shall be entertained when a CBA was registered with DOLE by the existing CEBA, except within 60d immediately preceding the expiration of the CBA or the Freedom period.

5. Appeal bar rule. – holding of PCE shall be stayed upon the filing of memorandum of appeal from the order of the Med-Arbitrator.

Freedom period (60d immediately preceding end of 5y term)

1. Petition questioning majority status of incumbent bargaining agent (PCE) may be entertained, and certification election shall be conducted by BLR.
2. LU may disaffiliate from mother union to form a local or independent union.
3. LU may file demand/notice to bargain for the modification/termination of existing CBA (see below).

(b) In unorganized establishments

1. Unorganized establishments are those where there is no certified bargaining agent.
2. Certification election shall automatically be conducted by Med-Arbitrator upon filing of petition.
3. Consent of at least 25% of EEs in BU is not required.
4. Any LLO may file a petition – including (i) NU, federation which has issued chapter certificate to a local chapter participating in the election; (ii) the local chapter which was issued chapter certificate. A federation or NU filing the petition is not required to disclose the names of the local chapter’s officers/ members.

(c) When ER may file

1. If ER is requested to bargain collectively and there is no existing CEBA in the unit, it may file a PCE.
2. Bystander rule. – ER mere bystander/stranger to PCE. It shall not be considered a party, even if it is the one who filed the same.
3. Participation of ER is limited to – (i) being notified of the petitions filed; (ii) submission of list of EEs during pre-election conference; (iii) filing of manifestation of facts that would aid the expeditious resolution of the PCE. If the ER failed to provide the EE list, it is deemed to have waived such submission and the list provided by the union will be used.
4. ER cannot – (i) oppose PCE; (ii) in any way, affect, stay the holding of certification election by merely filing an appeal with labor secretary; (iii) influence, hamper the EE’s rights under the law. Such are considered ULP.

(d) Double majority rule

1. First majority – majority of the eligible EEs in the BU must have casted their vote for the election to be valid. Otherwise, there will be a failure of elections. A declaration of failure of election shall not bar the filing of a motion for the immediate holding of another certification/consent election within 6m from such declaration.
2. Second majority – winning union must have garnered majority of the valid votes cast. – (i) if no union (including “no union”) obtained plurality of votes, runoff elections shall ensue; (ii) runoff election is one between the two unions who garnered the highest votes in the certification election.

Runoff election

1. There is a valid election (first majority)
2. There are three or more choices in a certification/consent election, i.e., at least 2 unions + “no union”.
3. The contending unions obtained majority of the votes cast (combined vote).
4. None of the three choices received the majority of the votes cast.
5. No objections or challenges which if sustained can materially alter the results.

6. The LLOs receiving the two highest number of votes shall compete in a runoff election. – “no union” is no longer a choice since the EEs already decided that they want to be represented by CEBA, the only issue remaining is the determination of such CEBA.
7. The LLO receiving the greater (plurality, not majority) number of votes of valid votes cast shall be certified as the winner. – those who did not vote during the consent/certification election may be allowed to vote in the runoff election.

Ru-run election

1. If there is a tie in a runoff election between two choices.
2. Notice of tied result shall be posted by election officer and re-run election shall be conducted within 10d from posting of notice.

(e) Appeal from certification election orders

1. Order issued by the Med-Arbiter or election officer – (i) granting the conduct of certification election in organized establishment, or (ii) denying or dismissing the petition whether in un/organized establishment, may be appealed.
2. Appeal to SOLE within 10d from notice of order on ground of violation of the RR established by the SOLE for the conduct of election. (i) SOLE must decide within 15d; (ii) SOLE decision is final and unappealable.
3. If SOLE denies, file MR.
4. If MR denied, Petition for Certiorari to CA R65.
5. If Petition denied, Appeal to SC R45.

4. Rights of Labor Organizations

(a) Rights of union members

1. Political rights
2. Right to participate in policy and decision making
3. Right over union funds
4. Right to information

(1) Political rights

1. Union members have right to vote and be voted, subject to qualifications mandated by law.
2. Members shall directly elect their officers by secret ballot.
3. Officer election may be made every 5y.
4. Qualifications – (i) membership in good standing in the subject labor organization; (ii) EE of the company where the union is in operation; (iii) must not have been convicted of a crime involving moral turpitude, unless given absolute pardon.

(3) Right over union funds

1. Right against imposition of excessive fees
2. Right against unauthorized collection and disbursements
3. Right to demand accounting and auditing of union funds
4. Right to access financial records
5. Right to vote on compensation of officers
6. Right to vote on special assessments and issue special authorizations on special assessments

****Subject to limitation of union's right to check-off, collect assessments (see below).**

(4) Right to information

1. Right to be informed and participate in the adoption/ ratification of constitution and bylaws, including amendments.
2. Right to participate in the adoption/ratification of CBA.

(b) Rights of LLOs

1. Act as representative for its members in the BU for purposes of collective bargaining. With respect to

EE disputes, e.g., illegal dismissal, the EE is the RPI and the LLO must secure authorization from EE for representation.

2. Be the certified exclusive representative of all EEs in the appropriate BU, w/n members of the union. The CEBA represents not only the members of the union but also other EEs who are not union members,
3. Be furnished by ER with AFR – (i) Upon **written request**; (ii) within 30d from receipt of written request, or 60d before expiration of the existing CBA, or during bargaining negotiation.
4. Own property, real/personal.
5. Sue and be sued in its registered name.
6. Undertake other activities for the benefit of its members, provided not contrary to law.
7. Collect reasonable membership fees, union dues, assessments, fines, other contributions, and check off the same (see below).
8. If certified as CEBA, to collectively bargain with ER (see below).

Duties of LLO (reportorial requirement)

1. Union establishment documents – (i) Constitution, bylaws, amendments; (ii) Minutes of ratification; (iii) List of members who took part in the ratification of constitution and bylaws. Within 30d from adoption/ ratification.
2. Election documents – (i) List of officers; (ii) Minutes of election of officers; (iii) List of voters. Within 30d from election.
3. AFR. – Within 30d from close of every fiscal year.
4. Member list. – at least 1x a year, or whenever required by BLR.
5. ****To be submitted to BLR. Non-compliance renders erring officer of administrative penalty, but not a ground for cancellation of union registration.**

a) Check Off, Assessment, and Agency Fees

(a) Check-off

1. Method of deducting from an EE's pay at prescribed period, the amounts due to the union for fees, fines, assessments for the purpose of raising funds for the union.
2. Included in the CBA.
3. **Individual written authorization duly signed by the EE is required before check-off.** XPN: with respect to mandatory activities under the Code.
4. The authorization shall specifically state the (i) amount, (ii) purpose, (iii) beneficiary of the deduction.
5. Under LC, unions are authorized to collect reasonable membership fees, union dues, assessments, fines, other contributions for labor education and research, mutual death and hospitalization benefits, welfare fund, strike fund, credit and cooperative undertakings.

(b) Assessment

1. Amounts which the union may collect from its members for specific purposes, e.g., payment of legal fees, other EO fees. N.B.: No deduction can be made from salaries of the concerned EEs other than those mandated by law.
2. May also be checked off.
3. Requisites for validity – (i) Authorization by written resolution of the majority of all union members at the general membership meeting called for the purpose; (ii) Secretary's record of the minutes of the meeting; (iii) Individual written authorization for check off duly signed by the EEs concerned.

(c) Agency fees

Union dues	Agency fees
Monthly contributions members make to the union based on their working status	Amount equivalent to the union dues paid by the non-union members

Pooling of resources to aid in achieving legitimate objectives of the union	This is in consideration of the benefits received by the non-members from the CBA by virtue of being member of the bargaining unit. [1]
Based on union membership	Bases: (i) quasi-contract; (ii) agency where the union acts as agent for all the members of the CBU, w/n they are members of the union. [2]
Individual written authorization duly signed by the EE is required before check-off	Written authorization from the non-union member is not required.

- Members of the CBU cannot be compelled to join a union.
- Under the NCC, agency is presumed to be for compensation unless there is contrary proof.

b) Collective Bargaining

(a) Collective Bargaining Agreement

- A contract executed upon the request of either ER or exclusive bargaining representative incorporating the agreement reached after negotiations re: T&CE, proposals for adjusting any grievances, etc.
- Parties – (i) ER; (ii) Exclusive bargaining representative CEBA.
- Liberally, rather than narrowly or technically construed. But only those made part of the CBA may be implemented and interpreted, not provisions not found therein.
- Not an ordinary contract but one impressed with public interest.
- May be (i) Single enterprise bargaining or (ii) Multi-ER bargaining.
- Two terms – (i) 3y for economic provisions; (ii) 5y for non-economic provisions, subject to automatic renewal.

(1) Economic Terms and Conditions

Has 3y term

- May be renegotiated after 3y.
- The renegotiated terms shall be effective only up to the expiration of original 5y term.

Effectivity of renegotiated terms

- If agreed within 6m after the 3y period, shall automatically retroact to the day immediately following the end of 3y term (automatic retroaction clause).
- If agreed beyond said 6m, parties shall agree on the duration and retroactivity.
- If arrived after arbitration, effectivity shall be based on the arbitral award. SOLE may provide for retroactivity w/n decided within 6m after the end of the 3y period.

(2) Non-Economic Terms and Conditions

AKA political aspect of the CBA

- Has 5y term.
- In one case the SC upheld the extension of the CBA for up to 10y, citing the principle of inviolability of contracts. However, the same shall yield to the term of the union's exclusive bargaining status which is effective only for 5y. Despite an agreement for CBA with life of more than 5y, it must necessarily coincide with the termination of the union's exclusive bargaining status.
- Pertains to the representation issue or the status of the union who entered the CBA.
- Substitutionary doctrine.** – a new bargaining agent is prohibited from repudiating an existing CBA. It is bound by the CBA entered by the prior union. The CBA continues to bind the EEs of the CBU. The new bargaining agent may only bargain for the shortening of the term of the previous CBA.

This prevents the EEs from reneging on the CBA by the simple expedient of changing their bargaining agent.

- A new bargaining representative may substitute if, among others (i) the incumbent bargaining agent lost its majority status within 1y after execution of the CBA. A new bargaining agent may be elected through consent election; (ii) if the registration of the incumbent bargaining agent was cancelled via petition during the subsistence of the CBA, and a certification election was held electing another union as the bargaining agent.

(3) Duty to Bargain Collectively

It shall be the duty of the ER and representative of EEs to bargain collectively in good faith in accordance with the provisions of the Code.

- Refusal to bargain collectively is ULP.
- Parties must meet and convene promptly and expeditiously in GF, but they are not compelled to agree to a proposal or to make any concession.

(a) Jurisdictional preconditions in CB

- Union must possess majority status.
- Union must show proof of majority representation. – certification issued by Med-Arbiter that the union won the certification election, or certification issued in case of Request for Certification must be shown to ER.
- Demand to bargain through notice given by the union to initiate the bargaining process.

(b) Procedure

- Demand/notice to bargain. – in writing, stating proposals.
- Reply to notice. – (i) within 10d from receipt of notice to bargain; (ii) also in writing, stating counter-proposals.
- Conference. – in case of difference, either party may request a conference to begin no later than 10d from date of request.
- Conciliation meetings. – if parties cannot agree, NCMB shall intervene at the request of either or both parties, or at its own initiative.

When to file notice to bargain

- Only within the Freedom Period. Contract bar rule also applies in CBA negotiations.
- CBA must be respected and cannot be terminated or modified during its lifetime, including the FP.
- Economic provisions may be renegotiated after 3y from effectivity.

(c) Stages

- Preliminary process (notice)
- Negotiation (counter-/proposals)
- Execution (signing)
- Publication. – (i) Posting of two signed copies of the CBA for at least 5d prior to ratification, in two conspicuous areas in each workplace of the ER units concerned; (ii) duty of ER who owns the premises.
- Ratification. – (i) The CBA must be ratified by a majority of all the workers in the CBU, w/n union member; (ii) CBA shall affect only those EEs in the BU who have ratified the same; (iii) if not approved, the remedy is to renegotiate.
- Registration. – (i) with DOLE RO/BLR (if multi-ER); (ii) required for contract bar rule to apply; (iii) non-registration does not affect the CBA's validity as between the parties, but any LLO may challenge the majority status of the union who negotiated the CBA; (iv) must be filed within 30d from execution.
- Administration. – joint administration by the management and the bargaining agent for 5y.
- Interpretation/application.

(d) Automatic renewal of CBA

1. AKA Evergreen clause – provides for automatic renewal of the length of the agreement after a predetermined period, unless notice for termination is given.
2. CBA remains in effect even after the expiration of the period fixed by the parties as long as (i) no new agreement is reached by them and (ii) no PCE is filed.
3. The majority status of the incumbent bargaining agent shall be continued to be recognized if there is no PCE filed at the expiration of the FP.
4. All T&C are deemed renewed since the law did not provide for any exception.
5. If no PCE is filed during the Freedom Period, the CBA is deemed automatically renewed.

(4) Mandatory Provisions in the Collective Bargaining Agreement (CBA)

1. Preamble/introduction
2. Recognition
3. Management prerogative (discipline of EEs)
4. Union prerogative (discipline of members)
5. Scale of wages
6. Promotion of EEs
7. Leave of absence
8. Union Security Clause USC
9. Grievance Machinery
10. Voluntary Arbitration
11. Check-off
12. Family planning
13. Labor education
14. Effectivity clause
15. Interpretation clause

(2) Recognition

1. of majority status of the contracting union and
2. its right to exclusively represent the members of the CBU.

(9) Grievance Machinery

1. Mechanism for resolving grievances.
2. Grievances – disputes arising from (i) implementation/ interpretation of **CBA**, and (ii) interpretation/ enforcement of **company personnel policies**.
3. If no GM is provided, a grievance committee must be established.

(10) Voluntary Arbitration

1. Method of settling dispute/s by submitting the controversy before an arbitrator or PVA chosen by both parties.
2. VA shall render decision after proper hearing, which decision is final and binding on the parties.

5. Unfair Labor Practices

a) Nature and Aspect

(a) Nature

1. It shall be unlawful for any person unduly interfere, restrain, coerce, discriminate EEs in their exercise of right to self-organization, including: (i) the right to JFA labor organizations for collective bargaining through representatives of their own choosing; (ii) to engage in lawful concerted activities for CB, or for their mutual aid and protection, subject to relevant provisions of law.
2. ULP violates the constitutional rights of workers/EEs to self-organization.
3. May be committed by ERs or labor organizations.
4. Includes acts which affects (i) **EE's right to self-organization** and (ii) **the observance of CBA**.

(b) Aspects – Civil and Criminal

Civil	Criminal
Can be committed by officers, agents of ERs, and agents of labor organization	Can be committed by the officers, agents of ERs who participated, authorized, ratified the act
Jurisdiction lies with LA	Jurisdiction lies with regular TCs
Quantum of proof is substantial evidence	Proof beyond reasonable doubt is required
Prescribes in 1y from commission of ULP	Prescribes in 1y from judgment of LA finding ULP
Must be resolved within 30d from submission for decision	Finding of ULP by LA is condition sine qua non for the filing of the criminal case [1]

1. The period to institute criminal action is suspended once the administrative aspect was filed. The period will continue once the former attains finality.
2. An administrative action for ULP is prejudicial Q to a criminal action for ULP.
3. Penalties may include fine, imprisonment, deportation (in case of aliens) – Art. 303

b) By Employers

- (a) Interfering, restraining, coercing IRC EEs in their right to self-organization.
- (b) Contracting out services
- (c) Company union
- (d) Discrimination on T&CE to discourage union membership.
- (e) Retrenchment
- (f) Paid negotiation
- (g) Refusal to bargain with the union.
- (h) Gross violation of economic provisions of CBA.

(a) IRC EEs in their right to self-organization

1. Discouraging EEs from JFA labor unions; interfering in their exercise of peaceful concerted activities.
2. Yellow dog contract. – One where, as condition for employment, the ER requires that a person (i) shall not join a labor organization or (ii) shall withdraw from one to which he belongs. **This is void undertaking** amounting to surrender of constitutional rights.

(b) Contracting out services, ULP if:

1. The services contracted out are being performed by union members.
2. The contracting IRC EEs in the exercise of their right to self-organization.

(c) Company union

1. Committed when – (i) ER or its agents initiate, dominate, assist with the formation, administration of any labor organization; (ii) Financially (or other) supports a union, its organizers, or supporters; (iii) Assists, encourages the union; (iv) Gives supervisory assistance and passivity of the union.
2. Yellow union. – Worker organization dominated or influenced by ER, thus not an independent trade union.

(e) Retrenchment, ULP if:

1. Related to EE's union non-/membership, and no other reason.
2. Related EE's having given or being about to give testimony under LC.

(f) Paid negotiation

1. Payment of negotiation or attorney's fees to the union or its officers/agents as part of the settlement of any issue in collective bargaining or other disputes.
2. Will tend to impair the objectivity of union officers in dealing and in bargaining with ER.

(g) Refusal to bargain with the union

1. Violation of ER's duty to bargain collectively, provided the union demanding to bargain is LLO and the CEBA.
2. Run-away shop. – (i) The movement of industrial plant from one location to another to escape union, labor regulations, state laws; or to discriminate against EEs at the old plant because of their union activities. (ii) Relocation motivated by anti-union animus rather than for business reasons.
3. Boulwarism. – An offer/counter-offer that is not meant to be negotiated but given on a "take it or leave it" basis.
4. Surface bargaining. – (i) Merely going through the motions of bargaining but without any legal intent to reach an agreement; (ii) Involves the question of whether the ER's conduct demonstrates an unwillingness to bargain in GF or is merely hard bargaining.
5. BF in bargaining is a question of fact and is evidentiary in character.

(h) Gross violation of economic provisions of CBA

1. If the violation of economic provision is not gross, or the violation involves non-economic provision, the issue is grievable.
2. Grievable issue shall be referred to GM. If unresolved, to P/VA.

c) By Organizations

- (a) Restraint/coercion of EE's right to self-organization, subject to reasonable rules on acquisition and retention of membership.
- (b) Cause ER discrimination against EE
- (c) Refusal to bargain
- (d) Cause ER to pay for services not rendered.
- (e) Demand or accept negotiation fees.

(b) Cause ER discrimination against EE, including:

1. Discrimination against EE to whom membership in the organization has been denied.
2. Termination of EE on ground other than usual T&C under which membership or its continuation is made available to other members.

(c) Refusal to bargain

1. Provided that it is the exclusive bargaining representative of the EEs.
2. Includes the act of making unreasonable or exaggerated demands/proposals (blue-sky bargaining).

(d) Cause ER to pay for services not rendered

1. Featherbedding. – where through coercive means, the union obtains payment from ER for services performed or which are not to be performed – e.g., by demanding for ER to maintain personnel in excess of latter's requirements.
2. There is no featherbedding if the work is performed for the money paid, regardless of how unnecessary or useless it may seem to the ER.

(e) Demand or accept negotiation fees

1. To ask or accept negotiation or attorney's fees as part of the settlement of any issue in CB or other dispute.
2. Sweetheart's contract/deal. – CBA which does not substantially improve EEs wages and benefits, or even provide for benefits far below those provided by law.

Union Security Clauses

1. Valid limitation to EE's right to self-organization being in favor of unionism.
2. Integral part of CBA requiring EEs to join a particular union as requisite for continued/employment. ER undertakes to

recognize the right of the union who negotiated the CBA to maintain and protect its membership by imposing certain T&C in hiring EEs and retention of employment.

3. Right to self-preservation of the union to maintain its majority status.
4. Violation of the USC is a just cause for dismissal under the LC.
5. Kinds of USC – (i) Closed shop; (ii) Union shop; (iii) Maintenance of membership shop; (iv) Agency shop; (v) Preferential shop. All are valid.
6. As exception to application of USC – (i) members of religious groups whose religions prohibit them from joining labor unions may not be compelled to do so, (ii) majority union cannot compel the members of minority unions to join their union [ULP].
7. Violation of USC is a just cause for dismissal of EE if the conditions are present. – (i) USC is applicable [covered EE]; (ii) Union sought the enforcement of the USC in the CBA; (iii) Sufficient evidence to support the union's decision to expel the EE from the union; (iv) Must not apply to members of rival unions.

(i) Closed shop

1. Membership in good standing of a union whose membership consist of the EEs of a particular department is made a condition for employment is such department. Continued membership is also required for the duration of the agreement.
2. For the duration of the CBA, everyone who will be hired by the ER must become members of the union and remain as such, as condition for employment or continued employment, during the term of the agreement.

(ii) Union shop

1. AKA modified closed shop.
2. New regular EEs are required to join the union **within a certain period** as a condition for their continued employment.

(iii) Maintenance of membership shop

1. Maintenance of union membership is made a condition for continued employment.
2. Covers EEs who are unions members as of the effective date of agreement, or who thereafter becomes members.
3. Effective until they are promoted, transferred out of the BU, or the agreement is terminated.
4. However, new hires of the ER are not required to join the union as condition for employment.

(iv) Agency shop

1. AKA anti-free rider or hitchhiker
2. One which does not require the EEs or new EEs to be a member of the union but as part of the BU who obtains benefits from the CBA, they are required to pay agency fee.
3. XPNs: (i) Valid waiver, where EE will not be required to pay agency fee and in turn, it will not receive any benefits from the CBA; (ii) Religious objector, who cannot be compelled to pay agency fee [also a valid ground for refusal to join union].

(v) Preferential shop agreement

1. Gives the ER the right to select his EEs but requires him to give preference to the qualified members of the contracting union.
2. ER must ask first whether the union has qualified members for the needed position before hiring an outsider.

6. Peaceful Concerted Activities

Strike*	Right of LLO
Picketing	Right of LLO

Lockout*	Right of ER
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* Inter- and intra-union disputes are not grounds (i) for LLO to strike, (ii) for ERs to lockout.

a) Strikes (Valid vs. Illegal)

Temporary work stoppage by concerted action of EEs as a result of industrial or **labor dispute**.

1. Labor dispute is any controversy/matter concerning (i) the T&CE or (ii) the association or representation of EEs in negotiating their T&CE, w/n the disputants stand in the proximate relation of ER-EE.
2. EEs of the government, including those of GOCCs with original charter are prohibited by law to strike (E.O. No. 180).
3. May be legal or illegal.

Legal	Illegal
Staged for a valid ground [1]	Not stage for a valid ground
Compliant with procedural requirements**	Not compliant with procedural requirements
Conducted through lawful means	Conducted through unlawful means [5]
Not in violation of agreements providing for arbitration	Staged in violation of agreements providing for arbitration

1. Valid grounds for strike – (i) Bargaining deadlock; (ii) ULP; (iii) Union busting.
2. Bargaining deadlock means failure in collective bargaining negotiations where the labor and management are unable to arrive at an amicable resolution of their differences.
3. ULP includes gross violation of the economic provisions of the CBA.
4. Union busting is the worst form of ULP involving the dismissal of a duly elected union officer/s which threatens the union.
5. Conduct of strike must be peaceful. Commission of any act of violence, coercion, intimidation, obstruction of free ingress/egress from the ER's premises for lawful purposes, or obstruct public thoroughfares renders the strike illegal even though for a valid ground and in compliance with the procedural requirements.

Procedural requirements for valid strike**

1. Notice of strike – (i) must be filed with NCMB with notice to ER; (ii) within the cooling-off period requirement.
2. Observance of cooling-off period – (i) 30d for bargaining deadlock; (ii) 15d for ULP; (iii) none for union busting. Notice must be filed at least 15/30d before the intended strike date.
3. Notice of strike vote. – (i) NCMB must be notified at least 24h prior to the holding of strike vote meeting; (ii) during the 24h, NCMB is given opportunity to determine if there is need to supervise the conduct of the strike vote.
4. Strike vote balloting (Approval). – Strike must be approved (i) by a majority of the total **union membership** in the BU concerned; (ii) obtained by secret ballot; (iii) in a meeting called for the purpose. The strike vote may be held during the cooling-off period. Only union members may vote, and not all EEs in the CBU. Non-union members who are part of the CBU are also not required to participate in the strike.
5. Strike vote report (Notice of approval). – (i) Notice to NCMB of the strike vote result to be filed at least 7d before date of intended strike; (ii) 7-day strike ban: union is barred from conducting the strike within 7d after notice to NCMB favorable strike vote report; (iii) If the result of the strike vote is filed within the cooling-off period, the 7-day ban shall be counted from the day **following the expiration of the cooling-off period** (not from the day of filing of the report). Strike based on

union busting is not exempt from the 7-day strike ban requirement, only from the cooling-off period. Thus, strike may be held within 7d from filing of strike vote report.

Illegal strike

Forms

1. Slow down strike – willful reduction of the rate of work by concerted action of workers to restrict the output of the ER in relation to a labor dispute, without complete stoppage of work.
2. Quickie strike – brief, unannounced temporary work stoppage closely related to the slow down strike.
3. Wildcat strike – (i) staged without approval of majority of the union members; (ii) not authorized by LLO where EE belongs; (iii) violation of the CBA and strikers are **not protected** unless ratified by the whole union by likewise joining the protest.
4. Sit down strike – workers stop working but do not leave their place of work.
5. Sympathetic – work stoppage to make common cause with strikers in another establishment/business without demands or grievances of their own against their ER.

Consequences

1. Union officers – willful participation to illegal strike is a valid ground for dismissal, after observance of due process.
2. Union members – mere participation to illegal strike is not a valid ground for dismissal. XPN: (i) if they participated or committed any illegal activity during the conduct of the illegal strike, and (ii) there is substantial evidence of their participation.

Prohibited acts

1. Declaration of strike/lockout without complying with conditions precedent. – (i) Prior collective bargaining; (ii) procedural requirements (see above); (iii) Non-referral to GM/GC (then VA) in case of grievance: gross violation of the economic provisions of CBA.
2. Declaration of strike/lockout pending resolution of dispute. – (i) Upon assumption of jurisdiction by SOLE/President; (ii) Certification/submission of dispute to compulsory or voluntary arbitration; (iii) During pendency of cases involving same grounds for strike/lockout.
3. Illegal means of conducting strike. – (i) Use of violence, coercion, intimidation during strike; (ii) Obstruction of free passage to and from the ER's premises.
4. Arrest/detention of union members or organizers. XPNs: (i) On grounds of national security; (ii) In case of commission of crime; (iii) With previous consultation with the SOLE.

Modes of terminating dispute

1. Improved offer balloting (in case of strike). – Conduct of referendum by NCMB by secret ballot on the improved offer of the ER on or before the 30th day of strike. If approved by majority of union members – (i) Striking workers shall immediately RTW; (ii) ER shall readmit them upon signing of agreement.
2. Reduced offer balloting (in case of lockout). – Conduct of referendum by NCMB by secret ballot on the reduced offer of the Union on or before the 30th day of lockout. If approved by majority of the BOD/T, or partners holding the controlling interest – (i) Striking workers shall immediately RTW; (ii) ER shall readmit them upon signing of agreement.

**Not mandatory.

b) Picketing

The act of members of the labor union of peacefully marching to and fro the premises of the ER's premises, usually accompanied by the display of placards and other signs to express or make known the facts involved in a labor dispute. Exercise of freedom of expression.

c) Lockouts

Temporary refusal by the ER to furnish work to the EEs on account of a labor dispute.

1. Grounds – (i) Bargaining deadlock; (ii) ULP of labor organization.
2. Subject to the same procedural requirements for a valid strike (see above). As to lockout vote, the decision to declare lockout must be approved by at least a majority of the BOD/T of the corporation/association, or of the partners in a partnership via secret balloting in a meeting called for the purpose.

d) Assumption of Jurisdiction by the DOLE Secretary

Art. 278(g)

1. Generally, the determination of the legality of strike or lockout falls within the jurisdiction of LA.
2. Assumption of jurisdiction may be exercised in case of (i) existence of labor dispute (ii) causing or likely to cause strike/lockout (iii) in an industry indispensable to the national interest, as determined by the SOLE (when in his opinion).
3. SOLE may assume jurisdiction over the dispute and (i) decide it or (ii) certify the same to the NLRC (not with the branch/LA) for compulsory arbitration.
4. In hospitals, clinics, medical institutions, SOLE must immediately assume jurisdiction within 24 hours from knowledge of the occurrence of S/L.
5. Exercise of police power.
6. Prior notice and hearing to any of the parties is not required. This is justified on the SOLE's consideration of the exigency of the situation in relation to national interest.
7. Decision of SOLE >> MR >> CA R65.
8. President may also exercise the power to – (i) Determine industries which are indispensable to national interest; (ii) Intervene/assume jurisdiction over such labor disputes to settle or terminate the same.
9. There is no hard and fast rule in determining which industries are indispensable to national interest. The same lies on the discretion of the SOLE/President.

Effect of assumption

1. Automatically enjoins the intended or impending S/L as specified in the assumption/ certification order.
2. If S/L is already executed – (i) all EEs shall immediately RTW, (b) all ERs shall immediately resume operations and readmit all workers under the same terms and conditions prevailing before the S/L (**automatic return-to-work order**)
3. RTW Order – (i) immediately executory even pending appeal; (ii) but merely interlocutory and meant only to maintain status quo while the main issue is being threshed out in the proper forum.
4. In RTW Order is violated – (i) the strike becomes illegal; (ii) ER shall pay EEs for the period that they were not able to render work.

E. Telecommuting Act (RA 11165)

1. Definition [Sec. 3]

Telecommuting is work from an alternative workplace with the use of telecommunications and/or computer technologies.

2. Telecommuting Program [Sec. 4]

1. Covers ERs in private sector.

2. They are granted right to offer a telecommuting program to its employees – (i) on a voluntary basis, and (ii) upon such T&C as they may mutually agree upon.
3. T&C shall not be less than the minimum labor standards set by law. Shall include compensable work hours, minimum number of work hours, overtime, rest days, and entitlement to leave benefits.
4. Employer shall provide the telecommuting employee with relevant written information to adequately apprise the individual of the T&C of the telecommuting program, and the responsibilities of employee.
5. Under the Telecommuting Act, telecommuting employees are not considered field personnel except when their actual hours of work cannot be determined with reasonable certainty.
6. If the actual hours of work of the telecommuting employees can be determined with reasonable certainty, they cannot be considered field EEs, e.g., if they are expected to render work on an actual output basis, beginning from their receipt from the supervisor of the email containing the lists of daily deliverables and ending in their actual submission to said supervisor of work output/report. Telecommuting employees cannot be categorized as field personnel and ER cannot withhold payment of holiday pay, compensation for rest day, and night shift differential, among others.

3. Fair Treatment [Sec. 5]

Employer shall ensure that the telecommuting employee are given the same treatment as that of comparable employees working at the time employer's premises.

Telecommuting EEs shall:

1. Receive a rate of pay not lower than statutory minimum, and those provided by CBAs.
2. Have the right to rest periods, regular holidays, and special nonworking days.
3. Have the same or equivalent workload and performance standards as those of comparable non-telecommuting worker.
4. Have the same access to training and career development opportunities as those of comparable non-telecommuting worker and be subject to the same appraisal policies covering these workers.
5. Receive appropriate training on the technical equipment at their disposal, and the characteristics and conditions of telecommuting.
6. Have the same collectible rights as non-telecommuting workers and shall not be barred from communicating with workers' representatives.

ER shall prevent isolation of the telecommuting employee by giving the telecommuting employee the (i) opportunity to meet with colleagues on a regular basis, and (ii) allowing access to company information.

IV. Post-Employment

A. Employer-Employee Relationship

1. Tests to Determine Employer-Employee Relationship

ER-EE relationship is factual question, determined by operation of law.

1. Not based on agreement of parties.
2. The manner of compensation is not determinative.

(a) Employer

1. Includes any person acting in the interest of an employer.
2. Excludes labor organization, its officers/agents except when acting as employer.
3. Under labor standards, includes the government, its branches, subdivisions and instrumentalities,

BSI GOCCs, and non-profit private institutions or organizations. – immunity from suit cannot be invoked on labor issues.

(b) Employee

1. Any person in the employ of an employer.
2. Includes individual whose work has ceased due to a labor dispute or ULP if he has not obtained any other substantially equivalent and regular employment *SeaRE*.
3. In IRR, includes those dismissed from work but the legality of the dismissal is being contested before a proper forum.

***Dismissed EEs who are considered EEs may participate in PCE.*

(c) Tests

Four-fold test

1. Selection and engagement – (i) may be express or implied; (ii) formal hiring process is not indispensable as long as there is engagement of EE to perform services.
2. Payment of wages
3. Power of dismissal – merely requires existence of power, not its actual exercise.
4. Control test

Control Test

1. Most crucial, determinative test.
2. Means labor law control, that is, control not only over the **end or output** achieved but also the **manner and means, methods, process** used in reaching the end.
3. Merely requires existence of power, not its actual exercise.
4. Insurance-agent relationship does not preclude the applicable to labor laws if there is transformation of the relationship from principal-agent to ER-EE.
5. Indicia of ER-EE relationship: (i) the fact that EE works wholly within the premises of the ER may give rise to the inference that the ER may interfere and dictate the manner of EE's work; (ii) promotion which is subject to approval of officers; (iii) sales quota which must be met; otherwise, the EE may be dismissed.

Not labor law control

1. The power of the insurance company to approve insurance applications as regards the person to be insured, the amount of premium, etc. is not labor law control. These regulations are established to comply with laws regulating the insurance business.
2. Power of publisher to require the columnist to submit the article at a particular time, to edit the same to fit in the paper. These are mere incidents of running the business and the columnist is still given full creative freedom.

Economic Dependency Test

1. Supplemental to 4-fold test.
2. The fact that the EE is economically dependent on the job provided for by the ER for his continued livelihood militates in favor of ER-EE relationship.

Two-tier test: combines control test and economic dependency test.

(d) Examples

1. There is ER-EE relationship between church and pastor. Its determination is not a purely ecclesiastical matter.
2. Jeepney owner/operator and jeepney driver operating under the boundary system has ER-EE relationship; not merely lessor-lessee. Owner

exercises spv/control over the driver as to time of release and return, the amount of boundary, cleaning, gasoline, manner of driving.

3. In "boundary-hulog" system, two contracts co-exist between the parties: (i) ER-EE; (ii) vendor-vendee.
4. Insurance agents who are pure contractors may become EEs if given managerial/administrative functions.

(e) Talents/Independent contractors

1. Talents are not EEs. They carry out a distinct and independent business on their own account, following his own manner and methods or work without control of the principal, except as the end-result of the work.
2. TV show hosts where the TV Networks do not have control over the manner of the work performed. Jay Sonza and Mel Tiangco were held to be talents on account of their skills and/or unique celebrity status. – (i) selection and engagement is not present since Sonza initiated the engagement; (ii) payment of wages is not present since Sonza negotiated for his pay; (iii) power of dismissal is not present since all ABS-CBN could do is not air his program but he cannot be removed; (iv) no control since ABS-CBN is concerned only on the end result, i.e., the rating of Sonza's program but not the deliver of his lines or performance of his works.
3. The rule shall be applied only in exceptional cases, not to ordinary EEs like production assistants, drivers, camera men, security guards, who are considered EEs.
4. In *Dumpit-Murillo*, a news caster/co-anchor, she was found to be an EE – (i) she is required to report to work when not acting as news anchor; (ii) she was engaged as an ordinary newscaster and not because of her special talent/skills; (c) she was receiving a moderate compensation 28k (c.f.: Sonza's 300k); (d) she can be terminated as if fact did by the ER by the non-renewal of her contract; (e) she was subject to the control of ABC 5 since the contract show that the latter can dictate the manner of her work.
5. In *Fuji TV, Espiritu*, a news producer, was also found to be an EE given the successive renewal of his fixed term contract. It was found that the fixed-term employment was being as a scheme to prevent her regularization.
6. Independent contractors – (i) maciadores and centenciadores engaged by a cockpits; (ii) basketball referees; (iii) Orozco, a columnist hired due to her stance in feminine issues.

***Contracts with them are bilateral contracts, and regular courts have jurisdiction.*

2. Kinds of Employment

1. The classification is relevant in security of tenure.
2. Security of tenure is enjoyed not just by regular EEs but also by other EEs. However, as to other EEs, there may be valid cause for dismissal in addition to just/ authorized causes.

a) Regular

(a) Those who perform activities that are **usually necessary or desirable** **UND** in the usual trade or business **UTB** of the ER

1. Usual – necessity or desirability on a usual, ongoing, or regular basis **OUR**
2. Usual necessity – requirement for the business.
3. Usual desirability – not necessarily required or needed by the business, but the business will benefit from its performance.
4. Indicate a reasonable connection between the work performed by EE, and the UTB of ER – e.g.,

- Professors/ instructors are regular EEs, not independent contractors of universities.
- The nature of their work, not the length of service determines their regular status.

****This is not a test for determining ER-EE relationship, but for determining regular employment status. The provision presupposes that ER-EE relationship was already established.**

(b) Regularizes casual EEs

- EE who has rendered **at least one year** of service shall be considered regular RR with respect to the activity in which he is employed. His employment shall continue to exist while such activity exists.
- 1y – (i) may be continuous or broken; (ii) pertains to the cumulative period of actual service, not the date of anniversary.
- Applies when the work performed by EE is not UND for the UTB of the ER.
- Their regular status pertains only to the work performed by them, and they are secured only as long as function exists.
- E.g., School administrators or teachers appointed to serve as administrative officials as they are rotated.
- Not applicable to project/seasonal EEs.

b) *Casual*

- EEs who are not RPS.
- They perform activities that are (i) not UND in the UTB of the ER, but are merely **incidental**, (ii) for a definite period of time (iii) made known to the EE at the time of engagement. e.g., Carpenters in a school.
- Usually limited to the performance of a single task not linked to a particular undertaking, and for a very short period of time (days).
- They may be regularized with respect to the work done if they have rendered actual service for at least 1y.

c) *Probationary*

Regular employment does not automatically mean permanent employment since it is subject to a probationary period.

Probationary period

- The period when the EE's qualifications are assessed based on the reasonable standards made known to him at the time of engagement.
- GR: probationary period must not exceed 6m from the date the EE started working.
- XPNS: (i) if covered by apprenticeship agreement, up to 1y; (ii) If 6m is insufficient to assess qualifications due to the nature of work; (iii) extension by ER if the EE failed to qualify during the first 6m. If the extension is without any qualification or notice, the probationary EE becomes regular.
- A probationary EE allowed to work after the probationary period is considered a permanent regular EE by operation of law.

Security of tenure

- Probationary employee enjoys security of tenure and may be terminated only (i) for a just cause or (ii) if he fails to qualify as a regular EE in accordance with reasonable standard made known by the ER to the EE at the time of engagement.
- Written notice given within a reasonable time from the effective date of termination is sufficient to effect the termination.
- If they were made to leave their workstation due to a dispute with the supervisor, they may file an action for illegal dismissal.

- Double probationary period is generally not allowed as it circumvents the rule on probationary periods. The EE becomes regular.

For School Teachers

- Under 2010 Manual of Regulations for Private School.
- Elementary/secondary – 3 years of satisfactory service.
- Tertiary – 6 consecutive regular semesters of satisfactory service.
- Tertiary (trimester) – 9 consecutive regular semesters of satisfactory service.
- Requirements – (i) Teacher is full time; (ii) Length of service complied; (iii) Service must be satisfactory.
- E.g., a teacher made to teach for 11 years despite failing to pass the LET was regular. If her services were unacceptable, it should have been made known to her prior to the end of probationary period.

Reasonable standards

- Must be communicated to EE at the time of engagement.
- There is substantial compliance with the requirement if the EE was informed that his performance will be appraised on a particular date after his hiring, even if the standards were not specified in the probationary employment contract.

d) *Project*

Those whose employment were fixed for a specific project/undertaking, which completion or termination has been determined and communicated to EE at the time of engagement.

- Repeated rehiring of project EEs to different projects does not ipso facto make them regular EEs for as long as each engagement is covered by a different contract fixing a project with a determined completion at the time of engagement.
- The rule on casual EEs who become regular when they rendered service of at least 1y does not apply to project EEs.
- The termination of the project will not result to the dismissal of the EE – (i) he is placed at temporary lay-off without pay or floating status; (ii) once work becomes available, the EE shall be given work. Otherwise, there may be illegal dismissal.
- The dismissal of EE upon termination of project is not violation of right to due process since the EE was informed at the outset of the period of employment.

Project

- Particular job/undertaking within the regular/usual business of ER but which is **distinct, separate, identifiable DIS** as such, from its other undertakings.
- Particular job/undertaking not within the regular/usual business of the ER and is also **DIS** from the latter.

****The completion or termination of the project must be determined or determinable at the time of engagement, although a day certain need not be indicated.**

Regularization

Marguinot Formula CTVR

- If there is continuous rehiring after the cessation of every project.
- For the same tasks, or nature of tasks, although under different projects.
- Which tasks are **vital, necessary, indispensable** to the UTB of ER.

4. The EE who was initially hired as a project EE may eventually acquire regular status.

Also:

1. If the EE was hired **after** the termination/completion of the project.
2. If the EE was tasked to perform activities **other than the undertaking** specified in the contract, regardless of how brief the assignment was.

e) Seasonal

Those who performs services which are seasonal or periodic in nature and whose employment lasts during the duration of the season.

1. E.g., Farm workers
2. Regular seasonal EEs – (i) those called to work from time to time to perform tasks UND for the UTB of ER; (ii) during off-season, they are temporarily laid-off (floating status).
3. End of the season does not terminate the employment. The EE is merely put on temporary lay-off without pay.
4. Workpool concept: (i) workers are available when called to report for a project; (ii) they do not receive salaries during the interim; (iii) they are free to seek other employment in during the temporary break. Usually applied for seasonal workers but SC also applied the concept to project EEs.
5. The fact that workers are continuously and repeatedly hired to perform the same tasks or activities for the several seasons or even after the cessation of the season is a badge of regular employment.

f) Fixed-Term

Those hired only for a definite period of time with a day certain fixed at the time of engagement and made known to the EE.

1. Kind of EE added by the SC.
2. Kind of employment contract based on the parties' freedom to contract.
3. The EE's power to bargain justifies a lesser protection as compared to the ordinary EE.
4. The determining factor is not the nature of the activity but the day certain as to when the contract commences and terminates.
5. EEs with a fixed term cannot be at the same time independent contractors. In FTE, there is ER-EE relationship.
6. Regular EEs may have fixed terms, if preferred by EE.
7. In addition to just and authorized causes, expiration of period is a ground for the termination of employment. It may be effected by giving reasonable notice to EE prior to the expiration of the fixed period. This does not violate due process since the EE was notified at the time of engagement of the fixed term.

Criteria:

1. Parties knowingly and voluntarily entered the contract, without force, duress, improper pressure or other vices of consent brought upon the EE
2. It satisfactorily appears that the ER and EE **more or less dealt on equal terms**.
3. It does not appear that the FTE is being resorted to circumvent labor laws, or to prevent EEs from attaining regular status or tenurial security.

FTE as essential and natural appurtenance

1. OFWs/Seafarers.
2. School administrators.

g) Floating Status

1. AKA temporary off-detail. An arrangement whereby EEs are temporarily laid off without pay

during periods where no work or project is available.

2. May be implemented through the workpool concept (see above).
3. Valid management prerogative, subject to certain conditions.
4. Must not exceed 6m. Otherwise, the EE may already claim constructive dismissal. N.B.: a D.O. extended the allowable floating status to additional 6m due to COVID-19, provide that the same must be based on mutual consent.
5. Within 6m – (i) the ER must find a new assignment for EE, or (ii) terminate his employment for authorized cause, either for redundancy or retrenchment, in which case, ER must pay separation pay.

3. Legitimate Subcontracting vs. Labor-Only Contracting

a) Elements

Contracting, in general, is an arrangement whereby (i) a principal (ii) agrees to put out or farm out (iii) with/to a contractor, (iv) the performance or completion of a specific job, work, service (v) within a definite or predetermined period, regardless of whether such JWS is to be performed or completed within or outside the premises of the principal.

1. Two kinds: (i) Labor-only contracting LOC, (ii) Job contracting JC.
2. LOC is absolutely prohibited. JC is merely regulated.

(a) Job Contracting

Elements of JC ISFC

1. Contractor is engaged in a distinct and **independent business** and undertakes to perform the JWS on its own responsibility, according to its own manner and method.
2. Contractor has **substantial** capital to carry out the job farmed out by principal on his account, manner and method, investment in the form for TEMPS.
3. Contractor is **free from control** and/or direction of the principal in all matters connected with the performance of the work, except its results.
4. Service agreement ensures **compliance** with all the rights and benefits for all the EEs of the contractor under labor laws.

Mandatory registration

1. Job contractors must register with the RO of DOLE where it principally operates.
2. The registration removes the presumption of LOC but does not preclude such finding if shown by evidence.
3. Non-registration gives rise to a (rebuttable) presumption that the contractor is engaged in LOC.

DOLE Rules on Contracting specifically excludes

1. IT-enabled services involving an entire or specific business process.
2. Construction industry, covered by different DOLE rules.
3. Other industries covered by separate regulation

(b) Labor-only Contracting

Elements of LOC SIDC

1. (i) Contractor does not have **substantial capital** OR (ii) **investments** in the form of TEMPS, etc., AND (iii) EEs are perform activities **directly related** to the main business operation of the principal/ER, OR
2. Contractor does not exercise the right to control over the performance of the work of the EE.

****Substantial capital is at least P5M of paid-up capital or net worth.**

b) Trilateral Relationship

- Parties include the (i) principal, (ii) contractor, (iii) EEs
1. ER-EE relationship: between contractor and its EEs, governed by labor laws.
 2. Service agreement SA: between the principal and contractor for the performance of specific JWS, governed by NCC.
 3. Principal-EE: no direct contractual relationship.

If SA is terminated

1. The employment of EE is not terminated since he is a regular EE of contractor.
2. But if EE is hired for a particular SA, the employment is fixed-term and the termination of SA will concurrently terminate the employment of the EE.
3. The term of employment must be co-terminous with the SA. Fixing employment term to a period less than the term of the SA is considered an illicit arrangement.

Remedies of EE

1. Wait 3m to resign and transfer to a new contractor-ER.
2. Demand separation benefits if ER fails to provide new employment (as provided by law or SA, whichever is higher).
3. Demand completion bonus, other emoluments, including retirement benefits, if applicable.

c) Solidary Liability

(a) In Job Contracting: contractor is primarily liable for the payment of wages.

XPNS: ER is held solidarily liable with contractor

(i) If contractor fails to pay wages of EEs

1. (i) To the extent of the work already performed under the contract, and (ii) in the same manner and extent as if they are directly employed by him (coverage).
2. ER is not exonerated from liability despite payment in full to the contractor which is supposed to cover the EE's wages.
3. Remedies of principal – (i) go after contractor's bond, if any; or (ii) enforce contractor's liability through other means.
4. The liability covers only unpaid wages, but not all valid claims by the EEs, e.g., those arising from illegal termination, backwages, damages.
5. ER acts as **indirect** ER.

(ii) If there is violation of any provision of LC

1. Applies only in situations where the ER **connived** with the contractor or participated in the commission of the violation.
2. The liability covers not only unpaid wages, but also all valid claims by the EEs, e.g., those arising from illegal termination, backwages, damages.
3. ER acts as **direct** ER.

(b) In Labor-Only Contracting

1. The contractor is considered merely an agent of ER.
2. The ER shall be responsible for EEs in the same manner and extent as if they are directly employed by him.
3. ER is liable not only unpaid wages, but also all valid claims by the EEs, e.g., those arising from illegal termination, backwages, damages.

B. Termination of Employment by Employer

Two elements must concur:

1. Just/authorized cause.
2. Observance of due process.

Termination without due process does not constitute illegal dismissal.

1. The dismissal is valid, but ER may be required to pay nominal damages to vindicate the violation of EE's right.
2. Under jurisprudence – (i) 30k for just cause; (ii) 50k for authorized cause.

1. Just Causes

Implies commission by the EE of some violation against the ER. The dismissal is initiated by EE.

Grounds CFAGS

- (a) **Serious** misconduct, willful disobedience SM WD by the EE of the lawful order of ER or representative, in connection with his work. SLC
- (b) **Gross** and habitual neglect GHN by EE of his duties.
- (c) **Fraud** or willful breach by EE of the trust F/WBT reposed in him by the ER of duly authorized representative.
- (d) **Commission** of a crime/offense by EE against the person of ER, his immediate family member/s or his duly authorized representative/s PFR
- (e) Other **analogous** causes

(a) Serious misconduct, willful disobedience

[i] Serious misconduct

1. Must be serious. E.g., sexual harassment by superior of his subordinate.
2. Must be in connection with the work of the EE.

[ii] Willful disobedience

1. The disobedience must be willful, i.e., characterized by wrongful, perverse attitude.
2. The order violated must be (i) reasonable, (ii) lawful, (iii) made known to EE, and (iv) must pertain to the duties which he had been engaged to discharge RLKP

(b) Gross and habitual neglect of duties

1. Must be gross – (i) want of even the slightest care; (ii) shows thoughtless disregard of the consequences of one's acts.
2. Must be habitual – characterized by regularity. XPN: if the negligence was so gross, habituality can be dispensed with (LBC v. Mateo 2009)

(c) Fraud or willful breach of trust

1. The position of the EE must be one which involves trust and confidence. – not ordinary R&FE.
2. The loss of trust must be substantial.
3. Must be supported by substantial evidence, clearly established fact. – mere allegation of loss of confidence is not sufficient.

(d) Commission of crime

1. Conviction is not necessary.
2. Dropping of criminal charges by the prosecutor does not bar the ER from exercising its right.
3. Only substantial evidence is required in labor cases, not PBRD.

(e) Other analogous causes

1. Abandonment is analogous to neglect of duty.
2. Elements – (i) Failure to report to work without valid and justifiable reason; (ii) Existence of overt acts which show that the EE has no intention to return to work (more determinative).

***Airing grievances in public forum is not a just cause for dismissal. This is mere exercise of freedom of expression.*

2. Authorized Causes

The ER gave cause for termination. Hence, the need to pay separation pay.

Grounds

- (a) Installation of labor-saving devices.

- (b) Redundancy. – (i) when the services of an EE are in excess actual requirements of the enterprise; (ii) management prerogative
- (c) Retrenchment to prevent losses.
- (d) Closing or cessation of operation of the establishment or undertaking. – (i) may be due to serious business losses SBL or not; (ii) if due to SBL, the ER is not required to pay separation pay (see below)

(b) Redundancy

1. When the services of EE are in excess actual requirements of the enterprise.
2. Exercise of management prerogative.

Requirements

1. Written notice (see below).
2. Payment of separation pay (see below).
3. Good faith in abolishing the redundant positions.
4. Fair and reasonable criteria in ascertaining what positions are to be declared redundant and accordingly abolished. – the retrenchment of union members on the mere ground of their membership in the union may constitute ULP (union busting).

(c) Retrenchment to prevent losses

1. Actual losses need not be proven.
2. What needs to be proven is (i) projected losses; (ii) these losses are substantial.

Disease as ground for dismissal

1. ER may terminate the services of EE (i) found to be suffering from any disease (ii) whose continued employment (a) is prohibited by law, (b) is prejudicial to his health, as well as to the health of his co-EEs.
2. Additional requirements – (iii) a competent public health authority certifies that the disease is of such nature or at such stage that it cannot be cured within a period of 6m, even with proper medical treatment; (iv) payment of separation pay of at least 1/2m for every year of service, or one month pay, whichever is higher.

Employment not deemed terminated in case of

1. Bona fide suspension of the operation of a business or undertaking for a period not exceeding 6m
2. Fulfilment by the EE of a military or civic duty shall not terminate employment.
3. Temporary off-detail or floating status (see above).

3. Due Process

a) Twin Notice Requirement

(a) Termination for just cause

Twin notice

1. Notice 1 – Written notice **informing** EE of his acts/ omissions constituting ground for dismissal and requiring him to submit his written **explanation** within a reasonable period of time from receipt of the notice, not less than 5cd – (i) allegations of acts/omission must be sufficient to apprise EE of the specific acts he is being made to account for; (ii) he must be given ample opportunity to respond.
2. Notice 2 – Written notice informing EE of the decision of ER to terminate his employment – intention to sever the ER-EE relationship must be clear.

(b) Termination for authorized cause

1. Written notice (i) served to EEs and DOLE; (ii) at least one month prior to the intended date of retrenchment.
2. Payment of separation pay

Installment of LSD	At least 1m pay for every year** of service, or one month pay, whichever is higher
Redundancy	“
Retrenchment to prevent losses	At least 1/2m pay for every year** of service, or one month pay, whichever is higher
Closure not due to SBL	“
Closure due to SBL	Not required, provided ER proves SBL

** Fraction of at least 6 months shall be counted as a year.

b) Hearing

1. Complied as long as there was an opportunity to be heard, i.e., chance to adduce evidence in his favor, which evidence should be considered.
2. Actual trial-type hearing or conference is not indispensable.

XPNS: REP

1. If EE requests formal conference in writing.
2. The matter involves evidentiary dispute.
3. If provided under company practice/rules.

4. Termination of Contract of Migrant Workers Under RA 8042 as amended by RA 10022

C. Termination of Employment by Employee

EE may termination ER-EE relationship without just cause upon serving written notice on the ER at least 1m in advance. The ER may hold EE liable for damages.

1. EE who resigned is not entitled to separation pay. XPN: (i) if provided by contract, either employment or CBA, or (ii) there exists a company practice.
2. Once accepted, resignation cannot be withdrawn without consent of the ER.
3. Certificate of employment must be given within 3 days from request by EE.
4. Final pay must be paid within 30d from separation or resignation, subject to compliance with clearance requirements. N.B.: clearance requirement is valid ground for withholding the final pay.

XPNS: Notice is not required in cases of SIC

1. **Serious insult** by ER or his representative on the honor and person of EE.
2. **Inhuman** and unbearable treatment accorded by ER or his representative to the EE.
3. Commission of a **crime**/offense by the ER or his representative against the person of EE, or any of his immediate family members.

1. Resignation vs. Constructive Dismissal

1. Resignation is the voluntary termination by ER of the ER-EE relationship by serving a written notice to the EE at least 1m from effectivity.

Constructive dismissal

1. CD when is the involuntary **cessation** of work because of continued employment is rendered impossible, unreasonable, or unlikely IUUrl.
2. Acts of clear discrimination, insensibility or disdain by ER which became so unbearable on the part of the EE that it could left him no choice but to forego his continued employment.
3. In an illegal dismissal case where the ER raises the defense of resignation, it is the ER which has the burden of proving the voluntariness of the resignation. The filing illegal dismissal case, to the court, negates the claim of voluntariness of the resignation.
4. ER is liable to EE for: (i) reinstatement or separation pay, (ii) full backwages, (iii) other benefits and allowances.

D. Preventive Suspension

Temporary relief of EE from employment if continued employment **poses a serious and imminent threat** to the life or property of the ER of his co-workers.

1. Should not exceed 30d.
2. In excess of 30d, the suspension may already constitute constructive dismissal, or illegal termination.
3. E.g., the utterance of defamatory remarks against another co-worker cannot be considered a SITLEC

Upon expiration of period

1. ER shall reinstate the worker in his former or substantially equivalent position.
2. ER may also extend the period of suspension, provided that he pays the wages and other benefits due to the worker.

E. Reliefs from Illegal Dismissal

1. Reinstatement without loss of seniority, other rights and privileges, or separation pay in lieu of reinstatement.
2. Full backwages and allowances – (i) based on rate prior to termination; (ii) from the time the compensation was withheld up to the time of (a) actual reinstatement, (b) finality of judgment, or (c) reversal of illegal dismissal ruling by a higher court; (iii) without deduction for income earned elsewhere; (iv) increase awarded to co-EEs while EE was not in payroll shall not be considered.
3. Other benefits or their monetary equivalent

Separation pay in lieu of reinstatement

1. Strained relations between the ER-EE – an EE illegally dismissed shall be entitled to separation pay in lieu of reinstatement if under the circumstances the relationship of ER-EE is so ruptured as to preclude a harmonious working relationship. It spares the EE from having to work under an atmosphere of antipathy and antagonism, and the ER from enduring the continued services of the EE in whom it has lost confidence.
2. Old age.
3. The position no longer exists.
4. The establishment is taken over by another company.
5. Insolvency of ER.

****Under LC separation pay must be paid in case of (i) authorized causes, (ii) death as ground for dismissal. Under jurisprudence, separation pay in lieu of reinstatement may also be paid.**

Notes:

1. ER has the burden of proving by substantial evidence the just/authorized cause for the dismissal.
2. However, when it appears that there is no dismissal at all, as when the EE was retained in the payroll despite her continued absence after the period of per approved leave, the illegal dismissal case will not prosper.

F. Retirement

(a) Age

1. As established in CBA, or applicable retirement contract.
2. Under LC – (i) 60y, voluntary retirement; (ii) 65y, compulsory retirement; (iii) 50-60y for underground and surface miners.

(b) Pay

Minimum under LC

1. Amount – (i) At least ½m salary for every year of service. A fraction of at least 6m shall be

considered 1y. (ii) ½ month salary means – (a) 15 days + (b) 1/12 of the 13th month pay (2.5 days) + (c) cash equivalent of not more than 5d service incentive leaves = **22.5 days**. Salary must be based on the EE's latest salary rate and must include all other benefits that the ER-EE may agree upon.

2. Provided – (i) the EE reached retirement age (see above); (ii) must have served with the establishment for at least **5y**.

**** If the ER has a superior retirement plan in place, the same shall be followed.**

1. If the ER's retirement plan provides for lower retirement age, but retirement pay equivalent only to 15d, the 22.5d under LC shall be used in the computation since it is more superior.

(c) Rules

1. Optional retirement must be explicit, voluntary, free, and uncompelled.
2. ER may impose a retirement age earlier than the statutory, provided it is consensual.
3. May be compelled to retire only upon reaching the compulsory age.
4. Retirement plan must be fair. – Differentiating the compulsory retirement age based on sex was declared by SC as unfair in *Halagueña v. PAL* where female flight attendants are mandated to retire at the age of 55 and male FAs at 60 years.
5. Must be liberally construed in favor of the retiree-beneficiary. Retirement pay laws are social legislation intended to provide for the retiree's sustenance, comfort when he is no longer able to continue the earning of his livelihood.
6. In case of contributory plans, the amounts contributed by the EE via salary deduction shall not be included. The result shall be compared with the statutory minimum, whichever is higher shall be paid the EE.
7. The computation of the retirement pay shall be based on the actual services rendered.
8. Even part-time EEs are entitled to retirement pay – (i) covers all EEs in the private sector, regardless of their position, designation, status, PDS and irrespective of the method by which their wages are paid; (ii) private school teachers are also covered, even though they are governed by 2010 Manual of Regulations.

V. Jurisdiction and Remedies

GR: ER-EE relationship is condition sine qua non for the exercise of jurisdiction of LAs.

XPN:

1. LA has jurisdiction even in the absence of ER-EE relationship re: OFWs money claims. Under MWA, LAs has EOJ over (i) **claims** arising out of ER-EE relationship, or (ii) by **virtue** of any law or contract involving OFWs, (iii) including actual, moral, exemplary, and other forms of **damage**.
2. Heirs of OFWs have personality to file a claim before the LA involving the deceased OFW. XPN: If the CBA provides for GM, the same controls. If unresolved, VAs have jurisdiction, not LAs.
3. E.g., issue of non-deployment of OFW with a perfected employment contract may be resolved by LA.

ER-EE relationship

1. Many be determined by – (i) LAs/NLRC; (ii) SOLE/RD, in the exercise of visitorial/enforcement powers; (iii) Med-Arbitr, in the conduct of PCE/resolution of labor-management dispute; (iv) Social Security Commission, to determine issue of coverage with SSLaw.

2. No ER-EE relation – (i) corporation and corporate officer; (ii) cooperative and cooperative officers; (iii) ministers of religious organizations, unless the privilege to teach is an incident of the mission; (iv) independent contractors/talents.
3. Tests – (i) Reasonable causal connection rule RCCR; (ii) Sole reference to labor law rule; (iii) Dispute intrinsically civil; (iv) ER-EE relationship merely incidental to main cause of action.

RCC

1. If the claim **arose** out of, or has **reasonable** connection with the **ER relationship**, or an incident or some aspect of such relationship, labor tribunals have jurisdiction **ARCERIA**.
2. No RCC with ER-EE relationship was found in a case where the ER withheld amounts from the retirement package of an EE on behalf of the cooperative pursuant to their agreement. EE questioned the withholding and said that it no longer had any loan with the cooperative.

Dispute intrinsically civil

1. If the principal relief can be resolved by applying civil law principles, then the same is within the jurisdiction of regular courts.
2. Violation of non-compete clauses is a **post-employment civil law matter** which is within the jurisdiction of regular courts. Damages arising from the violation cannot be set up as counterclaim in the money claim file by EE against ER before labor tribunals since the latter has no jurisdiction.
3. Failure by EE to render service after availing ER's training was considered by the court as intrinsically civil (torts/damages case)

ER-EE relationship merely incidental to main cause of action

1. If the ER-EE relationship is **merely incidental**, but there is a distinct cause of action, there is a need to determine such cause of action to determine jurisdiction.

****Labor disputes are not subject to barangay conciliation under P.D. No. 1508.**

A. Labor Arbiter

EOJ of LAs

(a) Unfair labor practice ULP

1. Complaints for violation of EE's right to self-organization whether against ER or the union.
2. If CBA violation, LA has jurisdiction only if gross violation of economic provisions. Otherwise, issue is grievable to be submitted to GM/VA.
3. Regular courts have jurisdiction over the criminal aspect.

(b) Termination disputes

1. Involves a claim for reinstatement.
2. In case of conflict between LA/VA jurisdiction, LA prevails since it is based on law, whereas VA is based on agreement.

(c) Money claims accompanied by claim for reinstatement

(d) Claims for damages arising from ER-RR relationship

1. Pertains to damages under NCC (XPN to rule).
2. It must arise in relation or has reasonable connection with any of the matters where the LA has jurisdiction provided that the matter.
3. E.g., Damages sustained by the ER as a result of failure to tender 1m notice of resigning EE; dismissal of EE for just cause by ER in humiliating manner (abuse of rights).

(e) Cases of strikes and lockouts

1. Questions of legality.

2. Commission of prohibited activities.
3. XPN: if SOLE assumed jurisdiction or certified the case to NLRC in cases involving industries indispensable to national interest. All cases between the parties are considered subsumed by the assumed/certified case. The President may also exercise the power.
4. Despite pendency of the assumed/certified case, the parties may agree to submit any raised therein to VA.
5. NCMB does not have authority to declare the legality of strike/lockout – (i) it is not a QJ agency; (ii) notice of strike filed with it is for purposes of preventive conciliation and mediation only.
6. Injunction – (i) **Parties** may seek TRO/injunction from NLRC in case of commission of illegal acts; (ii) **Non-parties** (not union/ER) may seek TRO/injunction from regular courts, e.g., other persons working in the same establishment who are prevented entry or otherwise adversely affected.

(f) All other claims arising from ER-EE relationship exceeding 5k w/n accompanied with claim for reinstatement. XPNs:

1. Employees compensation (ECC)
2. Social security (SSS)
3. Medicare (ER/PHIC)
4. Maternity benefits (ER/SSS/GSIS)
5. Those arising from CBA (GM/VA)
6. Money claims of Kasambahays, under Batas Kasambahay, is within DOLE RD jurisdiction, even if the monthly wage of is now 6k. If the case is filed with LA, it should not dismiss the case, but rather conduct mandatory conciliation (SEnA).
7. ****c.f.: DOLE RD jurisdiction (see below)**

(g) Wage distortion in unorganized establishments

1. ER-EE negotiations >> NCMB >> LA
2. c.f.: if organized: ER-EE negotiations >> GM/GC >> VA >> CA
3. ****Wage distortions cannot be the subject of strike/lockout.**

(h) Compromise agreements

1. Only if – (i) there is non-compliance; (ii) there is prima facie showing that the settlement was obtained through fraud, misrepresentation, coercion.
2. Otherwise, the compromise agreement is final and binding.

(i) OFW money claims

1. (i) arising out of ER-EE relationship; (ii) by virtue of breach of any law or contract [even if no ER-EE relationship]; (iii) including damages.
2. XPN: if there is CBA and the dispute pertains to CBA provision, VA has jurisdiction (after GM/GC).
3. DMW has jurisdiction over administrative cases involving R&PA, disciplinary actions and other special cases.

(j) Contested cases

1. Exception clause under Art. 128(b) on visitation and enforcement power.
2. If the ER contests the findings of DOLE RD in the exercise of its power, and the issues raised require the presentation of evidence, DOLE RD must refer the case to LA.

(k) Other cases

1. Issuance of writ of execution over VA awards, in the absence or incapacity of latter.
2. EEs in GOCCs without original charters.
3. Alien parties
4. Priests/ministers
5. EEs of cooperatives

6. Counter-claims of ERs against EEs		
Cases where LAs have no jurisdiction		
<ol style="list-style-type: none"> 1. Claims from breach of non-compete clause and other post-employment prohibitions (regular courts) 2. Claims for payment of cash advance, car, appliance and other loans to EE (regular courts). – (i) the matter can be resolved by reference to general civil laws, not LC or CBA; (ii) does not involve ER-EE but debtor-creditor relationship. 3. Dismissal of corporate officers, and money claims. 4. Cases involving entities immune from suit. XPN: if the employment contract is entered into in proprietary capacity. 5. Issuance of injunctive writs, only NLRC. 6. Disputes submitted to PVA by agreement of parties, even if the same falls within the jurisdiction of LA. However, there must be clear showing of mutual agreement. 7. QD/tort cases – e.g., claims arising from death of a seafarer due to the negligence of his shipmates. 8. Criminal and civil liabilities from violation of other provisions of LC. 9. Constitutionality of CBA provisions, e.g., violation of equal protection by providing different retirement ages for females (55) and males (60) since its resolution will require reference not only to labor laws but also to Constitution, contracts law, CEDAW (Halagueña v. PAL). 10. Cases falling under the doctrine of forum non-conveniens. – (i) direct hire by foreign ER; (ii) hiring without intervention of then POEA; (iii) ERs are foreign nationals; (iv) employment contracts are also concluded abroad; (v) jurisdiction was not acquired over the foreign ER. 		
<p><i>**If the LA has no jurisdiction, the proper remedy is not MTD since the same is a prohibited pleading in NLRC. Rather, the person must file a position paper stating grounds for the dismissal of the case.</i></p>		
Disposition by referral		
<ol style="list-style-type: none"> 1. Cases arising from the interpretation/implementation of collective bargaining agreements. 2. Cases arising from the interpretation/enforcement of company personnel policies. 3. <i>**to be disposed of by LA be referring to (i) grievance machinery and (ii) voluntary arbitration as may be provided in the agreements GM VA.</i> 		
Notes		
<ol style="list-style-type: none"> 1. Technical rules of procedure are not binding. – (i) as long as the documents are relevant, it cannot be objected to for not non-compliance with formalities; (ii) XPNs: (a) period of submissions shall be complied with and may be dispensed only under exceptional circumstances, (b) manner of proving affirmative allegations is entirely dispensed with. 2. Preference towards amicable settlement. 3. Parties may be represented by legal counsel. 4. Non-lawyers may also appear – (i) as party; (ii) in representation of their organization upon proper written authorization; (iii) if duly accredited member of legal aid office recognized by the DOJ/IBP in cases referred to by the latter. 		

1. Jurisdiction of Labor Arbiter vs. Jurisdiction of Regional Director

Cases	LA	RD
Small money claims (5k or less)	(i) claim arising from ER-EE relationship >5k, OR (ii) even if not exceeding 5k, but coupled with demand for reinstatement	(i) claim arose out of ER-EE relationship; (ii) ER-EE relationship already terminated but no claim for

		reinstatement; (ii) claim ≤5k, including interest
Visitorial and enforcement powers VEP	If complaint was already filed with LA, DOLE RD may no longer exercise jurisdiction thereafter, and it can no longer exercise VEP in relation thereto	Power to inspect establishment to determine compliance with labor laws, RR – (i) ER-EE relationship; (ii) findings in question made in the course of inspection; (iii) EEs has not yet initiated claim or complained with RD/LA
Contested cases 128(b) exception clause	DOLE RD is divested of jurisdiction to issue compliance orders/writ of execution in relation to the exercise of VEP if – (i) ER contests the findings of labor inspector and raises issues; (ii) resolution of issue requires examination of evidentiary matters; (iii) matters are not verifiable in the ordinary course of inspection. N.B.: DOLE RD must endorse the case to LAs	If uncontested, the DOLE RD may issue compliance orders to give effect to the labor standards provision of the labor laws based on the findings of the labor employment and enforcement officers or industrial safety engineers made in the course of inspection. SOLE/rep shall issue writ of execution to enforce the orders.

2. Requisites to Perfect an Appeal With the National Labor Relations Commission

Procedure

(a) Single entry approach SEnA – 30-day mandatory administrative conciliation-mediation process for all issues/complaints arising from ER/EE relations to prevent it from ripening into full blown dispute.

(b) LA

1. Must decide within 30d when case was submitted for decision.
2. Decisions, orders, awards DAO of LA are appealable to NLRC within 10d.
3. MR/Petition for relief from LA decision are not availing and shall be treated as appeal to NLRC.

Perfection of appeal to NLRC

1. Grounds AFQE – (i) Prima facie evidence of abuse of discretion by LA; (ii) DAO secured through fraud, coercion, including graft and corruption; (iii) Pure questions of law; (iv) Serious errors of fact which if not corrected would cause grave/irreparable injury to appellant.
2. Reglementary period – (i) 10d for appeals from DAO of LAs; (ii) 5d for appeal in contempt cases decided by LAs and decisions of DOLE RD under Art. 129 (small money claims).
3. Payment of fees – (i) appeal fee; (ii) legal research fee.
4. Filing of verified Memorandum of Appeal stating – (i) the grounds relied upon; (ii) material dates showing compliance with reglementary period; (iii) proof of payment of fees; (iv) proof of posting of bond; (v) proof of service to other party. CNFS not required. Proof of service is not jurisdictional and may be dispensed with or waived.
5. Filing of appeal bond within the reglementary period for appeal – (i) for appeals of ER on **monetary awards by LA or DOLE RD in favor of EE for unpaid wages, backwages, benefits etc.;** (ii) in cash, property, surety bond; (iii) equivalent to monetary award, exclusive of damages and attorney's fees; (iv) the filing of bond is mandatory and jurisdictional. Appeal will be perfected only upon filing of such bond.
6. Appeal bond is not required if – (i) No monetary award; (ii) the same is not specified in the decision (fallo).
7. Perfection of appeal stays the execution of LA's DAO. XPN: **Order for reinstatement, which is executory even pending appeal.**

(c) NLRC

1. Must decide within 30d when case was submitted for decision.
2. Reinstatement of orders of NLRC are not self-executory. The prevailing party must move for the issuance of writ of execution.
3. There is no appeal in NLRC decisions. Subject to review by CA via R65 within 60d from receipt of the DAO on ground of GAD. But its filing does not toll the running of prescriptive period.
4. DAO shall become final and executory after 10d from receipt by the parties unless – (i) R65 petition was filed with CA; (ii) CA issues TRO pursuant to R58.

(d) CA via R65 – appealable to SC via R45 within 15d from receipt of decision.

(e) SC via R 45 – SC has 24m to decide.

3. Reinstatement and/or Execution Pending Appeal

GR: perfection of appeal stays the execution of DAO

XPN: Order of reinstatement

1. Immediately executory even pending appeal. ER must reinstate the EE within 10d from notice of order until reversal by higher court.
2. Also self-executory – (i) writ of execution not required. LA is mandated to issue the writ motu proprio; (ii) c.f.: reinstatement orders by NLRC/CA/SC are not self-executory, only those issued by LA.

ER options

1. Actual reinstatement – (i) to the same position and under the same T&C prevailing prior to the dismissal; or (ii) to substantially equivalent position, if no longer available.
2. Payroll reinstatement – without requiring the EE to report back to work.
3. If not complied, ER is liable for (i) Accrued salaries (reinstatement wages) from time of dismissal up to actual reinstatement or reversal or order of reinstatement; (ii) contempt upon complaint filed by concerned EE.
4. **ER may ask for TRO from CA/SC, but the posting of bond will not suspend the implementation of the enforcement order.**

Reversal of order of reinstatement

1. If EE was reinstated whether actual or in payroll only, he is not required to refund the salaries received during pendency of the appeal. – (i) Social justice principles protecting labor outweigh civil law doctrine of unjust enrichment; (ii) ER took the risk in reinstating EE in payroll only.
2. If EE was not reinstated, the ER shall be liable for reinstatement wages from the time reinstatement was ordered by LA up to the reversal of the order. XPN: failure to reinstate was **justified**, e.g., undergoing corporate rehabilitation. Suspension of claims partakes the nature of a restraining order which justifies the non-reinstatement of EEs despite order of LA.

B. National Labor Relations Commission

(a) Administrative matters

1. Attached to DOLE **solely for program and policy coordination only.**
2. Composition – (i) 1 Chairman; (ii) 23 members = 24.
3. Structure – (i) 8 divisions with 3 members each; (ii) 1-6 (NCR); 7 (Vis); 8 (Min). They may sit en banc or in division.

4. Each division shall consist of (i) public sector representative [presiding]; (ii) ER representative; (iii) EE representative.
5. They shall be assisted by **commission attorneys** (≤3 per member) in appellate and adjudicatory functions.
6. Labor arbiters shall be as many as necessary for the effective and efficient operation of the Commission.
7. Chairman, Members have the same rank, salary, allowances, retirement benefits of Presiding Justice and Associate Justices of the CA, respectively.
8. LAs have the same rank, salary, allowances, retirement benefits of RTC judges.
9. However, NLRC Chairman, members, LAs are not members of the judiciary, but of the executive. Hence, they are subject OMB disciplinary jurisdiction.
10. Appointment of NLRC Chairman and Commissioners is **not subject to the confirmation by the Commission on Appointment**. They are part of the third group of presidential appointees, i.e., “those whom the President may be authorized by law to appoint”. Provision in law requiring such confirmation is void.

NLRC en banc

1. to promulgate rr on hearing and disposition of cases before of its divisions, regional branches (**rule-making**)
2. to formulate administrative policies (**policy-formulation**)
3. to recommend to the President the extension of term of office of the Chairman, Commissioner, or labor arbiters
4. to allow cases within the jurisdiction of any division to be heard and decided by any other division whose docket allows the additional workload, without exposing the litigants to unnecessary additional expenses on temporary and emergency basis
5. ****NLRC en banc does not decide labor disputes.**

NLRC in division

1. Exercises adjudicatory and all other powers, functions not mentioned above.
2. Exclusive appellate jurisdiction over cases within their respective territorial jurisdictions (DAO of LAs/RD).

(b) Jurisdiction

EOJ

1. Issuance of injunctive writs – (i) in ordinary labor disputes; (ii) in strikes/lockouts. LAs have no injunctive powers, only NLRC. TROs issued shall be for a period of 20d which shall automatically expire after 20d.
2. Certified cases in labor disputes involving industries indispensable to national interest causing or likely to cause strikes/lockouts, certified to it by SOLE.
3. Petitions for EO remedies from the orders/resolutions of LAs

EAJ

1. All cases decided by LAs Art. 224
2. Cases decided by DOLE Regional Director or authorized hearing officers under Art. 129 – (i) small money claims; (ii) appeal period is 5d from notice of DAO.
3. Contempt cases decided by LAs.

(c) Other powers

Contempt powers

1. **Direct or indirect.** By express provision of the LC, NLRC/LAs are given the power to hold and punish both **direct and indirect contempt**, without distinction.
2. Indirect contempt shall be dealt with in the manner provided for under R71.
3. Decisions of LA in contempt cases appealable to NLRC within 5d from notice. Perfection of appeal suspends the execution of judgement.
4. NLRC decision is immediately executory and unappealable.

Prohibition and mandamus

1. To enjoin or restrain actual/threatened commission of any or all prohibited or unlawful acts, or
2. To require the performance of a particular act in any labor dispute.
3. ****If the continuance or non-performance may cause grave, irreparable damage to any party, or render ineffectual any decision in favor of such party.**

Ocular inspection

1. In relation to a pending investigation.
2. May be exercised by Chairman, Commissioner, LAs, duly authorized representatives.
3. (i) To conduct ocular inspection of any work establishment, including work, material, implement, machinery, during work hours and (ii) To ask any worker or any person for any information "concerning any matter or question relative to the object of the investigation".

C. Court of Appeals

(a) R65

1. Over DAO of: (i) SOLE; (ii) NLRC; (iii) BLR Director acting in appellate jurisdiction.
2. There is no appeal in above cases. LC provides that the DAO shall become final and executory upon the lapse of 10d from notice.
3. Remedy is MR (mandatory and jurisdictional) >> Petition for Certiorari R65 which must be filed within 60d from notice of DAO, subject to fresh period rule.
4. Filing of petition – (i) does not stay the execution of DAO, unless SC/CA issues TRO/injunction under R58; (ii) may be filed even if the DAO have become final and executory since the effect of its grant is to nullify the DAO issue in GADALEJ.
5. Filing of bond is not required (only on appeals by ER on monetary award by LA to NLRC).

(b) R43

1. DAO of VAs/PVAs (QJ function).
2. MR within 10d [under LC] from notice of DAO (mandatory and jurisdictional) >> Appeal to CA R 43 within 15d [under ROC] from notice of order denying MR.

D. Supreme Court

(b) R45

1. From decisions of CA rendered by it for petitions elevated to it via Rule 65/43.
2. Must be file within 15d from notice of judgment, subject to fresh period rule.
3. Factual findings of LA/NLRC are binding and conclusive to the SC if: (i) supported by substantial evidence (ii) affirmed by CA, and (ii) there is no cogent reason to disturb the same.

(b) R65 may be availed if there is GADALEJ, and there is no other PSA remedy in the ordinary course of law

(c) Execution

1. Writ of execution – May be issue motu proprio or on motion of interested party.

2. R39 applicable – (i) Execution by way of motion may be filed within **5y** when the DAO becomes final and executory; (ii) Execution by independent action (Revival of judgment) may be filed after the said 5y period had lapsed, but before the same is barred by prescriptions, i.e., within 10y from finality.
3. WOE is suspended is corporate ER is placed under rehabilitation or receivership. "all actions for claims against corporations...under management or receivership pending before any court, tribunal, board or body shall be suspended..." – this includes labor claims since the law did not make any distinction.

E. Bureau of Labor Relations

(a) Concerned officials

Med-Arbitrator	Officer in the DOLE RO or BLR authorized to hear (i) representation cases, (ii) inter/ intra-union disputes, and (iii) other related labor disputes
DOLE RD	Duly authorized representatives of SOLE in the regional offices. Generally concerned with labor standards issues.
BLR Director	Exercises either original or appellate jurisdiction over cases as provided by law. Generally concerned with labor relations issues.

(b) Cases covered

Inter-union disputes	Dispute between/among two or more unions, usually involving representation disputes – (i) PCE, consent election, run-off election, re-run election; (ii) Request for SEBA certification
Intra-union disputes	Dispute between/among a union and its officers/ members (internal union disputes)– (i) election contests; (ii) disputes over any provision of its constitution and by-laws, rights and conditions of union membership; (iii) excluding ULP.
Other related labor relations disputes	(i) Dispute between labor union and EE (labor-management relations dispute), e.g., dispute existence of ER-EE relationship between the ER and union members participating in the certification election; (ii) Dispute between LU and other organization; (iii) Dispute between LU and non-member individual; (iv) Cancellation of union registration; (v) Interpleader involving labor relations; (vi) excluding grievable issues.

(c) Jurisdiction

Dispute	Original	Appellate
Inter-union disputes [1]	Med-Arbitrator	SOLE
Intra-union disputes [5]	Med-Arbitrator BLRD	BLRD SOLE
Other related labor relations dispute	Med-Arbitrator	BLRD
Injunction cases	Med-Arbitrator	BLRD
Contempt cases	Med-Arbitrator	BLRD
Visitorial cases [2]	DOLE RD BLRD	BLRD SOLE
Union registration-related cases [3]	DOLE RD BLRD	BLRD SOLE
CBA registration [4]	DOLE RD BLRD	BLRD SOLE
Request for SEBA certification [1]	DOLE RD	BLRD
Contempt cases	BLRD	SOLE

[1] Request for SEBA certification

1. May be within the original jurisdiction of Med-Arbitrator or of DOLE RD.
2. With DOLE RD – (i) Request is initially filed with DOLE RD; (ii) in unorganized establishments with only 1 LLO, RD shall hold validation conference to determine if the union complies if the requirements. If it complies, it shall immediately certify the union, without need for certification election. If not, it shall refer the Request to the Med-Arbitrator for conduct of certification election; (iii) RD shall also refer the Request to Med-Arbitrator for conduct of certification election if: (a) made in organized establishment, or (b) made in unorganized establishment with >1 LLO.
3. With Med-Arbitrator if – (i) in organized establishments; (ii) in unorganized establishments

with >1 LLO; (iii) in unorganized establishments with only 1 LLO, but the requesting party failed to comply with requirements during the validation conference held by DOLE RD.

[2] Visitorial cases

1. Examination of books of accounts.
2. DOLE RD has jurisdiction if concerned are **independent unions, local chapters/chartered locals, and workers' associations.**
3. BLRD has jurisdiction if concerned are **federations, NU, industry unions, trade union centers, and their local chapter/chartered locals, affiliates, member organizations.**

[3] Union registration related cases

1. Includes – (i) Application for union registration; (ii) Denial of application; (iii) Petitions for cancellation of registration; (iv) Notice of merger, consolidation, affiliation, change of name of said unions, or petition for denial thereof.
2. DOLE RD has jurisdiction if concerned are **independent unions, local chapters/chartered locals, and workers' associations.**
3. BLRD has jurisdiction if concerned are **federations, NU, industry unions, trade union centers, and their local chapter/chartered locals, affiliates, member organizations.**

Application for union registration

1. For independent unions, they must submit the names of all members comprising at least 20% of all the EEs in the bargaining unit where it seeks to operate. – (i) 20% requirement is reckoned at the time of registration, not at the time of organizational meeting [adoption of bylaws, election of officers]; (ii) reduction of union membership below 20% of CBU after registration will not affect its legal personality.
2. Independent unions acquire legal personality from the time of issuance of Certificate of Registration.
3. For federations/NU, they must submit proof of affiliation of 10 local chapters each of which must be a duly recognized collective bargaining agent in the establishment or industry in which it operates.
4. Kinds of union – (i) National union or federation; (ii) Independent union; (iii) Affiliate; (iv) Chartered local; (v) CEBA/SEBA

(i) National union or federation

1. Group of LLO in a private establishment organized: (i) for collective bargaining or (ii) for dealing with employers concerning T&CE for their member unions or (iii) for participating in the formulation of social and employment policies, standards and programs registered with the Bureau.
2. They operate in more than one region in the country.
3. The issuance of chapter certificate is not bar to registration as independent/local union.
4. 20% membership requirement is also required.
5. c.f.: trade union centers cannot create chapters.

Chartering

1. The creation of local chapter by a national union directly by issuing it a charter certificate with notice to BLR. No minimum membership requirement.
2. **Local chapter acquires legal personality but only for purposes of filing PCE.** It is not yet LLO.
3. The local chapter must still submit the charter certificate and other registration requirements to be considered and included in the roster of LLO.
4. Full personality is acquired upon submission of documents without need for issuance of certificate

of registration. However, the union remains a chapter and was not converted to an independent union.

(ii) Independent union

1. Labor organization operating at the enterprise level that acquired legal personality through independent registration.
2. It does not owe its existence to a federation but to the will of its members.
3. It operates only in one region, i.e., in the place where its members are employed.
4. It must register with DOLE RD where they operate.

(iii) Affiliate

1. Independent union affiliated with a federation, national union or a chartered local which was subsequently granted independent registration but did not disaffiliate from its federation (union which starts as a chapter).
2. Affiliation – (i) independent/local union may also join a national union/federation; (ii) the independent/local is not divested of its legal personality; (iii) the affiliation does not authorize the federation to act independently of the local union; (iv) it merely gives rise to a contract of agency with the mother federation acts as an agent, in representation of the local union.
3. Disaffiliation – (i) The act of a union of disengaging from the federation to form a local/independent union; (ii) **allowed only during the Freedom Period** (chapters); (iii) Must be effected by a majority of the members in the bargaining unit; (iv) if independent union, it retains its juridical personality. If local chapter, it loses its juridical personality having derived the same only from the chapter certificate issued by the federation or national union.
4. Equity of the incumbent. – Upon effectivity of LC imposing additional requirements for federations/NU, all existing federations and NU which (i) meet the qualifications of LLO, and (ii) none of the grounds for cancellation shall continue to maintain their existing affiliates regardless of the nature and industry and the location of the affiliates.

(iv) Chartered local

1. Labor organization in the private sector operating at the enterprise level that acquired legal personality through registration with the Regional Office.

(v) CEBA/SEBA

1. The union which has been constituted as the representative of all employees within a particular bargaining unit.

Cancellation of union registration

1. The personality LLO **cannot be attacked collaterally.** It can only be assailed through an independent attack via a **petition for cancellation.**
2. The filing of petition – (i) does not automatically deprive the LLO of its juridical personality (only upon finality of order cancelling its COR); (ii) shall not prevent the filing of PCE; (iii) shall not suspend the proceedings for certification election; (iv) a union subject of petition may participate in the election.
3. Exclusive grounds – (i) Misrepresentation, false statement, fraud in connection with MFF the adoption, ratification of the constitution, by-laws, amendments thereto, minutes of ratification, list of members who took part in the ratification; (ii) MFF in the election of officers, minutes of election of officers, and list of voters; (iii) Voluntary dissolution

- by members approve by at least 2/3s of the general membership votes in a meeting duly called to dissolve the organization.
4. **Defects in certification election is not a ground for cancellation** of COR. Certification election affects the authority of the labor union to represent the CBU but not its personality as LLO.
 5. Inclusion of disqualified EEs, or those outside the bargaining unit is also not ground for cancellation of COR. – The DQ EEs are simply deemed automatically removed from union membership.

Remedies: denial of application/cancellation of registration

1. DOLE RD >> BLR >> CA R65 >> SC R45
2. BLR >> SOLE >> CA R65 >> SC R45

[4] CBA registration

1. Includes – (i) Registration of CBAs; (ii) Denial of registration; (iii) Petitions for deregistration.
2. DOLE RD has jurisdiction if CBA is single enterprise.
3. BLRD has jurisdiction if CBA is multi-employer.

[5] Intra-union disputes

1. Med-Arbiter has jurisdiction if concerned are **independent unions, local chapters/chartered locals, and workers' associations.**
2. BLRD has jurisdiction if concerned are **federations, NU, industry unions, trade union centers, and their local chapter/chartered locals, affiliates, member organizations.**

[6] Notes

1. Decisions of DOLE RD in labor standards cases are appealable to SOLE – (i) Visitations cases under Art. 37; (ii) Visitation and enforcement cases; (iii) OSH violations; (iv) Cases re: private R&PA.
2. Decisions of DOLE RD small money claims are appealable to NLRC.
3. Decisions of Med-Arbiter is generally appealable to BLRD, except inter-union disputes which is appealable to SOLE.
4. Appeal on decisions of BLRD – (i) in original jurisdiction, to SOLE; (ii) in appellate jurisdiction, to CA via R 65 then to SC via R45.

(d) Compromise agreements

1. Those attained voluntarily by parties with the assistance of BLR or LRD of DOLE regional office.
2. **Final and binding upon the parties**, and NLRC or any court shall not assume jurisdiction. XPNs – (i) In case of non-compliance; (ii) If there is prima facie evidence that the settlement was obtained through fraud, misrepresentation, coercion.

Waiver and quitclaims

1. Waiver and quitclaims are presumed valid. XPNs: (i) If there is showing that the waiver was obtained from an unsuspecting or gullible person; (ii) If the terms are unconscionable on their face.
3. Quitclaim – (i) Must be voluntarily entered into without duress and with full consent; (ii) The T&C must be conscionable.
4. **Quitclaims do not bar EEs from filing labor complaints and demanding benefits to which they are legally entitled.** They do not amount to estoppel.

F. National Conciliation and Mediation Board

1. Conciliation, mediation, VA functions of the BLR are transferred to NCMB by E.O. No. 126, s. 1987, as amended by E.O. No. 251, s. 1987.
2. Attached agency under the administrative supervision of the SOLE.

3. Not a QJ agency. Its decisions are not appealable to CA R43. It also has not authority to issue injunctive writs.
4. Composition – (i) Administrator; (ii) 2 Deputy Administrators = 3

Powers and functions

1. Jurisdiction over conciliation, mediation, VA cases
2. Perform preventive mediation and conciliation functions to prevent strikes, lockouts. – (i) notice of strike/lockout are filed with the NCMB; (ii) but it has no authority to determine the validity of strike/lockout, which is within the jurisdiction of LA.
3. Administer VA programs; maintain/update list of VA; compile arbitration awards and decision; provide counseling and preventive mediation assistance in the administration of collective agreements.

1. Conciliation vs. Mediation

Process whereby a neutral third person intervenes in a dispute involving two or more conflicting parties to reconcile their differences or persuade them to adjust or settle their dispute. The conciliator/mediator does not usually render a decision.

Conciliation	Mediation
Mild intervention by a neutral third party, taking an active role in assisting parties by trying to keep the disputants talking, facilitating other procedural niceties, carrying messages back and forth between the parties, and generally being a good fellow who tries to keep things calm and forward-looking in tense situation.	Mild intervention by a neutral third party, whereby he starts advising the parties or offering solutions or alternatives to the problems with the end in view of assisting them towards voluntarily reaching their own mutually acceptable settlement of dispute
May or may not render an opinion depending on whether his function is facilitative or evaluative	May make binding opinion, provided the parties agree in advance to this effect

Preventive mediation

1. Remedy to avoid occurrence of actual labor disputes through amicable settlement.
2. May be initiated by – (i) either party by filing of notice of request (CEBA only in case of union); (ii) by NCMB motu proprio; (iii) by conversion of notice of strike/lockout into a preventive mediation case.
3. Conversion of notice of s/l to a PMC if – (i) Issues raised are non-strikeable; (ii) a party voluntarily asks for conversion; (iii) parties mutually agree. Once converted, the notice of strike/lockout is deemed dropped from the dockets. Any strike staged after the conversion is illegal for failure to comply with the procedural requirements.
4. Parties may submit to mediation both strikeable and non-strikeable issues.

Mandatory conciliation – Art. 234

1. All issues arising from labor and employment shall be subject to mandatory conciliation-mediation.
2. LA/DOLE agency/office having jurisdiction shall entertain only those cases duly endorsed or referred after ConMed.
3. XPNs: (i) As provide in title VII-A, Book V; (ii) As may be excepted by SOLE.
4. Pre-termination may be requested by any or both parties, and may request endorsement to proper DOLE agency/office or to VA.
5. SENa – (i) instituted by DOLE Dept. Order No. 107, s. 2010; (ii) 30-day mandatory administrative conciliation-mediation process for all issues/complaints arising from ER/EE relations to prevent it from ripening into full blown dispute. If a labor case was filed with an agency/office without jurisdiction, the latter shall not dismiss the same

on ground of lack of jurisdiction but shall conduct a mandatory conciliation proceeding pursuant to the SEnA.

Privileged communication

1. Information/statements made at conciliation proceedings are treated as **privileged communication**.
2. They shall **not be used and are inadmissible as evidence** in the NLRC or in any other proceedings.
3. Conciliators, similar officials shall **not testify** in any court, body regarding matters taken up at conciliation proceedings conducted by them.
4. Offers from compromise are not deemed admission against the interest of the offeror.

G. DOLE Regional Directors

****See BLR**

(a) Role

1. Duly authorized representatives of SOLE in the regional offices.
2. In charge of administration and enforcement of labor standards provisions in their respective regions.

(b) Labor standards jurisdiction

1. Visitorial cases for inspection of premises, books of accounts, records of R&PA – Art. 37
2. Visitorial and enforcement powers – Art. 128. – inquiry into ER's compliance with labor standards provisions of LC, other labor laws and social legislation.
3. Occupational safety and health violations
4. Small money claims – Art. 129
5. Cases related to private recruitment and placement agencies.
6. ****Appealable to SOLE, except small money claims which is appealable to NLRC.**

(c) Labor relations jurisdiction

1. Visitorial cases involving examination of books of accounts of independent unions, local chapters/ chartered locals, and workers' associations. – (i) to prosecute violations of law, union constitution and bylaws; (ii) upon complaint of at least 20% of union membership.
2. Union registration-related cases involving independent unions, local chapters/ chartered locals, and workers' associations – (i) registration, (ii) denial, (iii) cancellation.
3. Single enterprise CBA-related cases – (i) registration. (ii) denial.
4. Request for SEBA certification in unorganized establishments with only 1 LLO who has complied with requirements after the validation conference.
5. Cases submitted to it for voluntary arbitration in his capacity as ex-officio voluntary arbitrators (EVAs).

H. DOLE Secretary

DOLE (assumption) or NLRC (certification by DOLE) shall have jurisdiction over strike/lockout disputes involving **industries indispensable to national interest** IINI in exercise of its powers under LC – all cases between the parties are considered subsumed or absorbed by the assumed/certified case, unless the order specifies otherwise

1. Jurisdiction

(a) Original

1. Petition to assume jurisdiction over national interest cases

2. Petition to certify national interest case to NLRC for compulsory arbitration
3. Petition to suspend effects of termination
4. Administrative Intervention for Dispute Avoidance (AIDA) cases
5. Voluntary arbitration cases
6. Contempt cases

(b) Appellate

From DOLE RD

1. Visitorial and inspection re: recruitment and employment agencies – Art. 37
2. Visitorial and enforcement powers – Art. 128
3. OSH violations
4. Cases related to private recruitment and employment agencies

From Med-Arbiters

1. Inter-union disputes only

From BLRD

1. Complaints and petitions involving application for registration, revocation or cancellation of registration of federations, NU, industrial unions, trade union centers
2. Request for examination of books of accounts of said labor organizations
3. Intra-union disputes involving said labor organizations
4. Notice of merger, consolidation, affiliation, change of name of said unions, or petitions for denial
5. Registration of multi-ER CBAs, petition for deregistration
6. Contempt cases

From POEA, now DMW

1. Administrative cases involving or arising out of violations of recruitment rules and regulations, including refund of fees, any violation of conditions for the issuance of license to recruit OFWs.
2. Disciplinary actions that are administrative in character, excluding money claims (NLRC).

(c) Not appealable to SOLE

1. LA decisions >> NLRC
2. NLRC decisions >> CA R65
3. BLRD in appellate >> CA R65
4. DOLE RD in small money claims >> NLRC
5. DOLE RD as EVA >> CA R43
6. DOLE RD labor relations cases other than inter-union² >> BLRD
7. VA DAO >> CA R43

2. Visitorial and Enforcement Powers

(a) Art. 128 provides for 3 powers

1. Visitorial power
2. Enforcement power
3. Appellate power

(1) Visitorial power

1. Access to ER's records and premises at any time of day or night whenever work is being undertaken.
2. Right to – (i) copy from the records; (ii) question any EE; (iii) investigate any fact, condition, matter which may be necessary to determine violations, or which may aid in the enforcement of LC and any labor law, wage order, rules.

(2) Enforcement power

1. Issue **compliance orders** to give effect to the labor standards provision of the LC and other labor legislations.

² Includes visitorial cases for examination of books of independent unions, local chapters/chartered locals, workers' associations; union-registration cases; notice of merger,

consolidation, affiliation, change of name of unions; CBA-related cases

2. Issue **writs of execution** to the appropriate authority for the enforcement of their orders, *except in contested cases (see Jurisdiction of Labor Arbiter vs. Jurisdiction of Regional Director)*
3. To order the **stoppage of work or suspension of operations** – (i) In a unit or department of the establishment if the non-compliance with law or IRR poses grave or imminent danger to the health and safety **GIDHS** of the workers in the workplace; (ii) Hearing shall be conducted within 24 hours to determine whether the order shall be extended or lifted; (iii) If ER found at fault, he shall pay the salaries of EEs during the period of work stoppage.
4. To require EEs to keep and maintain employment records as may be necessary in the aid of his visitatorial and enforcement powers.
5. **** No inferior court or entity shall issue injunction or restraining order or assume jurisdiction over any case involving enforcement of orders issued under this provision.**

(b) Exercise

1. DOLE RD exercise visitatorial and enforcement powers are duly authorized representative of SOLE. Quasi-judicial in nature.
2. SOLE exercises appellate power. Appeal by ER involving monetary award is subject to cash or surety bond requirement.
3. Exercised over employer establishments, not the EEs. In case of award, all EEs will benefit, not just those who signed the complaint inspection.

(c) Requisites for exercise of jurisdiction

1. ER-EE relationship subsists at the time of initiation of action. – (i) DOLE RD has authority to determine ER-EE relationship; (ii) if relationship was already terminated, LAs have jurisdiction.
2. Findings in question were made in the course of inspection.
3. EEs have not yet initiated any claim or complaint with DOLE RD (small money claims) or LA.
4. ****Not subject to the 5k limit under Art. 129 (small money claims.**

Enforcement powers Art. 128	Small money claims Art. 129
ER-EE subsists	ER-EE already terminated but EE is not claiming reinstatement
For enforcement of labor standards provisions under LC, relevant laws	For recovery of money claims arising from ER-EE relationship
Exercised by SOLE/RD	Exercised by RD/duly authorized hearing officer
No limit as to money claim	Must not exceed 5k, except in case of Kasambahays
Appealable to SOLE	Appealable to NLRC

3. Power to Suspend Effects of Termination SET

EO power of SOLE to suspend effects of termination of employment, which may be exercised even pending resolution of its legality/validity.

1. Grounds – Prima facie finding by the DOLE official (LA/VA/PVA) before whom the dispute was pending that: (i) The termination may cause serious labor dispute; (ii) The termination in is implementation of mass lay-off.
2. Results in immediate reinstatement of terminated EEs.
3. Intended to restore parties to status quo ad litem so that workers can litigate their claims on more or less equal footing with ER.
4. c.f.: national interest cases

National interest cases	SET
Applies to all labor disputes (not limited to termination) which will	Applies to employment termination issues which

cause or likely to cause strikes/lockouts in industries indispensable to national interest	may cause serious labor dispute or is in implementation of mass lay-off
Does not require prima facie determination; assumption/certification order may even be issued without prior notice or hearing	Requires prima facie determination by concerned labor official
Will cause or likely to cause strike/lockout	May or may not involve strike/lockout
Involves industries indispensable to national interest	Business of ER is immaterial
Automatic return to work of strikers or locked-out EEs; or enjoining the conduct of strike/lockout	Immediate reinstatement pending resolution of the termination case

4. Remedies

****See above**

I. Voluntary Arbitrator

(a) Arbitration in LC may be compulsory or voluntary.

1. Compulsory arbitration is the process of settlement of a labor dispute by a government agency, which has the authority to investigate and make an award which is binding on the parties. The parties are compelled to accept the resolution of their dispute through arbitration by third party. – RD of DOLE, BLR, SOLE, LA, NLRC.
2. Voluntary arbitration is the mode of settling labor-management dispute wherein parties select a competent, trained, impartial third person who shall decide on the merits of the case, and whose decision is **final and executory**.

(b) Voluntary arbitration

1. Requires consent of both parties in form of arbitration clause pre-existing the dispute or a subsequent submission agreement.
2. Issues/disputes that may be subject to VA – (i) Disputes on implementation/interpretation of CBA, (ii) Disputes on interpretation/enforcement of company personnel policies; (iii) Other labor disputes, provided that the parties expressly agree that they will submit the resolution of the dispute so specified to the jurisdiction of the VA; (iv) Wage distortion in organized establishments

(c) Voluntary arbitrators

1. May be (i) any person accredited by the NCMB; (ii) any person named in the CBA by agreement of parties; (iii) one chosen with or without the assistance of NCMB.
2. Parties to CBA shall name/designate in advance a VA or PVA or provide for a procedure for the selection.
3. VA is not part of the governmental unit or labor department's personnel.
4. He renders arbitration services provided for under labor laws upon payment of fee by parties.

Jurisdiction in labor cases

1. **Unresolved grievances**
2. Simple violation of the economic provisions of the CBA
3. Wage distortion issues in organized establishments
4. Unresolved grievances under R.A. 6971
5. National interest cases
6. Other labor disputes

[1] Unresolved grievances

1. Grievance is any question by ER or union regarding: (i) implementation/interpretation of the provisions of **CBA**, or (ii) interpretation/enforcement of **company personnel policies**.

2. Provision for Grievance Machinery GM is a mandatory provision in the CBA. If none, parties must establish a Grievance Committee GC – (i) within 10d from signing of the CBA; (ii) composed of at least 2 representatives each from the members of BU (designated by union) and the ER.
3. All grievances shall be submitted to the GM/GC. **If not resolved within 7 calendar days from submission, the grievance must be automatically referred to the VA prescribed in the CBA.**
4. The party who brought the grievable issue to the GM/GC is bound by whatever disposition the latter may render thereon.
5. Individual EEs are given the right to directly bring their grievances to the management, despite presence of CEBA. But in case the grievance was unresolved, they cannot submit the same to VA without participation of the CEBA.

[2] Simple violation of the economic provisions of the CBA

1. c.f.: if gross violation of economic provisions, LAs have jurisdiction, e.g., gross and flagrant violation of the seniority rule under the CBA; failure by ER to comply with the wage increase provisions for several years.
2. Violation of political aspects of CBA are grievable, unless it constitutes ULP.
3. If these matters are brought before the LA, the LA must refer the case to the proper GM.

[3] Wage distortion issues in organized establishments

1. Not a strikable issue.
2. Organized establishments: ER-EE negotiations >> GM/GC >> **VA** >> CA R43 >> SC R45
3. c.f.: Unorganized establishments: ER-EE negotiations >> NCMB >> NLRC >> CA R65 >> SC R45

[4] Unresolved grievances under R.A. 6971

1. Unresolved grievances arising from the interpretation/implementation of the productivity incentive programs under R.A. 6971.
2. Dispute shall be submitted to labor-management committee. If unresolved within 20 calendar days from submission, the dispute may be submitted to VA.

[5] National interest cases

1. **Before or at any stage of compulsory arbitration, the parties may opt to submit their dispute (within the jurisdiction of LA or other compulsory arbitrators) to VA.**

[6] Other labor disputes

1. As agreed upon by the parties, including ULP, bargaining deadlocks, termination disputes.
2. **Before or at any stage of compulsory arbitration, the parties may opt to submit their dispute (within the jurisdiction of LA or other compulsory arbitrators) to VA.**
3. Parties must expressly and unequivocally indicate in their CBA that they agree to submit the specific labor dispute to the jurisdiction of the VA. If they merely indicated “other labor disputes”, it shall be construed to mean only those disputes traditionally falling within the jurisdiction of the VA or PVA, i.e., grievances.

****Disputes falling within the jurisdiction of the VA cannot be submitted to compulsory arbitration. The jurisdiction of NLRC is provided for by law and cannot be expanded by the agreement of parties.**

(d) Procedure/Remedies

1. Grievance must be referred to GM/GC. – (i) mandatory procedure; (ii) if not complied, the case

is dismissible for failure to exhaust administrative remedies, lack of jurisdiction.

2. If unresolved after 7d from submission, grievance shall be referred to VA.
3. VA/PVA must render an arbitral award within 20 calendar days from date of submission, unless extended by agreement of the parties.
4. **Losing party must file MR within 10d from notice of adverse award by VA/PVA.**
5. **If MR denied, appeal to CA via R43 within 15d from notice of denial of MR.** – Guagua National College v. CA.
6. CA decision is appealable to SC via R45.

J. Prescription of Actions

1. Money Claims

3 years from accrual of cause of action

1. XPN: Promissory estoppel – when the ER led the EE to believe that it will pay the amounts being claimed, and in reliance thereof, the EE failed to file the money claim within 3y. ER shall be held liable, otherwise, it will be unjust.
2. Coverage – All money claims arising from ER-EE relations (OT pay, holiday pay, service incentive leave pay, bonuses, salary differentials, illegal deductions by ER, claims arising from seafarer contracts), **excluding claims arising from illegal dismissal (backwages, damages)**, which are only incident to the claim for illegal dismissal.
3. In case of service incentive leave, the right accrues upon refusal of ER to pay its monetary equivalent after demand of commutation, or upon termination of EE's services. Not at the end of the year when the EE becomes entitled to the commutation.
4. Sources – (i) Law; (ii) CBA; (iii) Incremental proceeds from tuition increases; (iv) Overseas Employment Contracts. The 1-year prescriptive period under the POEA SEC was declared null and void.

2. Illegal Dismissal

4y from the effectivity of dismissal

1. Based on Art. 1146 NCC: actions based upon an injury to the **rights** of the plaintiff. Illegal dismissal amounts to arbitrary and unjust deprivation of the worker's job or means of livelihood.
2. One's employment, profession, trade or calling is “**property right**” within the purview of the constitutional protection.
3. Backwages, damages, other incidental awards included (not part of money claims).

3. Unfair Labor Practices

(i) Civil aspect – 1y from commission of ULP; (ii) criminal aspect – 1y from finality of judgment finding ULP in administrative case

1. The filing of a ULP labor case, the finding of commission of ULP, and finality of such decision are conditions precedent before the filing of criminal case for ULP.
2. During the time when the labor case was pending, the period for filing the criminal case is suspended.
3. The finding of guilt in the administrative case of ULP cannot be presented as proof in the criminal case – (i) quantum of proof is only substantial evidence vis-à-vis PBRD; (ii) it can only be used to prove compliance with the condition precedent.

4. Offenses Under the Labor Code

3y from commission of offense

1. Covers criminal offenses penalized under LC and its IRR.

2. Excludes illegal dismissal, which does not constitute an “offense” under this category, although it is a violation of the LC and its IRR.

5. Illegal Recruitment

1. Simple illegal recruitment– 5y from commission of offense.
2. Illegal recruitment involving economic sabotage – 20y from commission of offense.