PROPERTY AND LAND LAWS 2A
1st Semester, A.Y. 2025-2026
Consolidated codal, case law, and commentary

Codal | Commentary | Case law

TITLE VI
Usufruct

Chapter 1
Usufruct in General

Art. 562 ⭐

Usufruct gives a right to enjoy the property of another with the obligation of preserving its form and substance, unless the title constituting it or the law otherwise provides.

A usufruct may be constituted on a *movable*.

Art. 563

Usufruct is constituted by law, by the will of private persons expressed in acts *inter vivos* or in a last will and testament, and by prescription.

Usufruct is made by:
1. Law
2. Contracts
3. Last will and testament
4. Prescription (acquisitive)

Art. 564

Usufruct may be constituted on the whole or a part of the fruits of the thing, in favor of one or more persons, simultaneously or successively, and in every case from or to a day, purely or conditionally. It may also be constituted on a right, provided it is not strictly personal or intransmissible.

Types of usufruct:
1. Whole or part of the fruits
2. For one person or multiple persons–
    a. Simultaneously or successively
3. *From* a day or *to* a day
4. Purely or conditional

Usufruct may also be constituted on a *right*, provided the right is not:
1. Strictly personal
2. Intransmissible

Gaboya v. Cui, G.R. No. L-19614, March 27, 1971

The deed of sale clearly shows that the reserved usufruct in favor of the vendor was limited to the rentals of the land alone. Had it been designed to include the rents of the buildings intended to be raised on the land, an express provision would have been included to that effect.

Art. 565

The rights and obligations of the usufructuary shall be those provided in the title constituting the usufruct; in default of such title, or in case it is deficient, the provisions contained in the two following Chapters shall be observed.

Law governing usufruct:
1. Title or contract
2. The Civil Code

Chapter 2
Rights of the Usufructuary

Art. 566

The usufructuary shall be entitled to all the natural, industrial and civil fruits of the property in usufruct. With respect to hidden treasure which may be found on the land or tenement, he shall be considered a stranger.

Fruits covered:
1. Natural

2. Industrial
3. Civil

Rule on hidden treasure – The usufructuary is a stranger, entitled to only *one-half of the treasure* (art. 438).

Art. 567

Natural or industrial fruits growing at the time the usufruct begins, belong to the usufructuary.

Those growing at the time the usufruct terminates, belong to the owner.

In the preceding cases, the usufructuary, at the beginning of the usufruct, has no obligation to refund to the owner any expenses incurred; but the owner shall be obliged to reimburse at the termination of the usufruct, from the proceeds of the growing fruits, the ordinary expenses of cultivation, for seed, and other similar expenses incurred by the usufructuary.

The provisions of this article shall not prejudice the rights of third persons, acquired either at the beginning or at the termination of the usufruct.

Fruits growing	Owner
At the time the usufruct begins	Usufructuary
At the time the usufruct termination	Owner • But owner must reimburse the usufructuary for ordinary expenses

Art. 568

If the usufructuary has leased the lands or tenements given in usufruct, and the usufruct should expire before the termination of the lease, he or his heirs and successors shall receive only the proportionate share of the rent that must be paid by the lessee.

If owner is *leased* ***and* usufruct expires *before* termination of lease** → The usufructuary shall receive only the proportionate share of the rent due the lessee

Rule on civil fruits

Art. 569

Civil fruits are deemed to accrue daily, and belong to the usufructuary in proportion to the time the usufruct may last.

Art. 570

Whenever a usufruct is constituted on the right to receive a rent or periodical pension, whether in money or in fruits, or in the interest on bonds or securities payable to bearer, each payment due shall be considered as the proceeds or fruits of such right.

Whenever it consists in the enjoyment of benefits accruing from a participation in any industrial or commercial enterprise, the date of the distribution of which is not fixed, such benefits shall have the same character.

In either case they shall be distributed as civil fruits, and shall be applied in the manner prescribed in the preceding article.

Rule	Situation	Effect
Civil fruits accrue daily	Civil fruits (e.g., rents, interest, income) are legally considered to accumulate every day, regardless of when they are actually paid.	The usufructuary receives fruits only in proportion to the time the usufruct existed.
Pro-rata distribution	Because fruits accrue daily, they must be divided between the owner and usufructuary if the usufruct begins or ends during a payment period.	Payment is shared based on days covered by the usufruct.
Usufruct over periodic payments	If the usufruct is over fixed periodic income—like rent, pensions, or interest—each regular payment is treated as civil fruits.	These payments are subject to proportional sharing under Art. 569.

Usufruct over irregular business profits	If the usufruct covers profits from a business enterprise where distribution dates are not fixed, the profits are still considered civil fruits.	Profits are also apportioned using Art. 569's daily accrual rule.

Art. 571

The usufructuary shall have the right to enjoy any increase which the thing in usufruct may acquire through accession, the servitudes established in its favor, and, in general, all the benefits inherent therein.

Art. 572

The usufructuary may personally enjoy the thing in usufruct, lease it to another, or alienate his right of usufruct, even by a gratuitous title; but all the contracts he may enter into as such usufructuary shall terminate upon expiration of the usufruct, saving leases of rural lands, which shall be considered as subsisting during the agricultural year.

Benefits of the usufructuary:

1. Any increase in the property through accession
2. The servitudes or easements in favor of the property
3. Personally enjoy the property in usufruct
4. Lease the thing to another
5. Alienate the usufruct

In cases of nos. 4 and 5, the contract shall terminate upon the expiration of the usufruct, except for rural lands.

Abnormal usufruct

Art. 573

Whenever the usufruct includes things which, without being consumed, generally deteriorate through wear and tear, the usufructuary shall have the right to make use thereof in accordance with the purpose for which they are intended, and shall not be obliged to return them at the termination of the usufruct except in their condition at that time; but he shall be obliged to indemnify the owner for any deterioration they may have suffered by reason of his fraud or negligence.

Quasi-usufruct

Art. 574

Whenever the usufruct includes things which cannot be used without being consumed, the usufructuary shall have the right to make use of them under the obligation of paying their appraised value at the termination of the usufruct, if they were appraised when delivered. In case they were not appraised, he shall have the right to return the same quantity and quality, or pay the current price at the time the usufruct ceases.

Distinguish quasi-usufruct from special usufruct.

	Quasi-usufruct	**Abnormal usufruct**
Nature of the thing	Involves things that cannot be used without being consumed, such as money, grain, fuel, etc.	Involves things that are not consumed by use but generally deteriorate through wear and tear, such as machinery, vehicles, tools, or livestock.
Right of the usufructuary	The usufructuary may **consume**, **dispose** of, or **use** the property **completely**.	The usufructuary may use the property according to its purpose, but must **preserve** it *except for normal wear and tear*.
Obligations of the usufructuary	Reimburse to the owner: 1. the appraised value if appraised at delivery, or 2. equivalent quantity and quality if not appraised, or 3. current market value at the end of the usufruct	Must return the same thing in the condition it is at the end of the usufruct, subject only to normal deterioration.
Damages?	Liability arises mainly from failure to return the equivalent value or amount	Liable for damage caused by fraud or negligence beyond normal wear and tear

Special usufruct

Art. 575

The usufructuary of fruit-bearing trees and shrubs may make use of the dead trunks, and even of those cut off or uprooted by accident, under obligation to replace them with new plants.

Rights of the usufructuary of fruit-bearing trees:
1. Use of dead trunks
2. Use dead trunks, though cut-off or uprooted by accident

Obligation of the usufructuary:
1. Replace them with new plants

Art. 576

If in consequence of a calamity or extraordinary event, the trees or shrubs shall have disappeared in such considerable number that it would not be possible or it would be too burdensome to replace them, the usufructuary may leave the dead, fallen or uprooted trunks at the disposal of the owner, and demand that the latter remove them and clear the land.

Case: A calamity or extraordinary event falls trees or shrubs

Obligations of the owner:
1. To remove the dead, fallen or uprooted trunks
2. Clear the land

Woodland

Art. 577

The usufructuary of woodland may enjoy all the benefits which it may produce according to its nature.

If the woodland is a copse or consists of timber for building, the usufructuary may do such ordinary cutting or felling as the owner was in the habit of doing, and in default of this, he may do so in accordance with the custom of the place, as to the manner, amount and season.

In any case the felling or cutting of trees shall be made in such manner as not to prejudice the preservation of the land.

In nurseries, the usufructuary may make the necessary thinnings in order that the remaining trees may properly grow.

With the exception of the provisions of the preceding paragraphs, the usufructuary cannot cut down trees unless it be to restore or improve some of the things in usufruct, and in such case he shall first inform the owner of the necessity for the work.

Rules if usufruct is over a woodland:
1. The usufructuary may enjoy all natural benefits that the woodland produces.
2. If the woodland is a copse or intended for building timber:
    a. The usufructuary may perform ordinary cutting or felling.
    b. Cutting must follow the owner's previous practice; if none, follow local custom.
    c. Cutting must respect the usual manner, amount, and season.
3. All cutting or felling must be done without harming the preservation of the land.
4. In nurseries, the usufructuary may perform necessary thinning so remaining trees can grow properly.
5. Outside these specific cases:
    a. The usufructuary may not cut trees except when needed for restoration or improvement of property under usufruct.
    b. The usufructuary must inform the owner first before doing so.

Art. 578

The usufructuary of an action to recover real property or a real right, or movable property, has the right to bring the action and to oblige the owner thereof to give him the authority for this purpose and to furnish him whatever proof he may have. If in consequence of the enforcement of the action he acquires the thing claimed, the usufruct shall be limited to the fruits, the dominion remaining with the owner.

The usufructuary can institute an action to recover real property/real right or the movable.
- If the usufructuary wins, he is only entitled to the fruits (still a usufructuary and *not* an owner!)

Art. 579

The usufructuary may make on the property held in usufruct such useful improvements or expenses for mere pleasure as he may deem proper, provided he does not alter its form or substance; but he shall have no right to be indemnified therefor. He may, however, remove such improvements, should it be possible to do so without damage to the property.

Usufruct has a **right to build improvements**, but:

a. He cannot be indemnified therefor
b. He may *remove* the improvements *if it will not cause damage to the thing*.

NHA v. Manila Seedling Bank Foundation Inc., G.R. No. 183543, June 20, 2016

MSBFI had no right to act (usufruct) beyond the 7 ha. allotted to it. Since it was fully aware of this fact, its encroachment of 9 ha. rendered it a possessor in bad faith as to the excess.

- MSBFI, however, is entitled to a refund of the necessary expenses it incurred for the preservation of the excess.

Art. 580

The usufructuary may set off the improvements he may have made on the property against any damage to the same.

Thus:

- Improvements made *less* the damages

Art. 581

The owner of property the usufruct of which is held by another, may alienate it, but he cannot alter its form or substance or do anything thereon which may be prejudicial to the usufructuary.

Rights of the owner:

1. To alienate the property

Limits to owner's rights:

1. Owner cannot alter the form and substance
2. Owner cannot do anything which prejudices the usufructuary

Art. 582

The usufructuary of a part of a thing held in common shall exercise all the rights pertaining to the owner thereof with respect to the administration and the collection of fruits or interest. Should the co-ownership cease by reason of the division of the thing held in common, the usufruct of the part allotted to the co-owner shall belong to the usufructuary.

The property is co-owned:

a. If the usufruct is over a share of property held in common, the usufructuary may exercise all rights that the owner of that share would have, *e.g.*:
    i. Administering the property
    ii. Collecting the fruits or interest corresponding to that share
b. If the **property is partitioned**, the usufruct *continues*, but only to the share of the specific (former) co-owner.

Chapter 3
Obligations of the Usufructuary

Art. 583

The usufructuary, before entering upon the enjoyment of the property, is obliged:

(1) To make, after notice to the owner or his legitimate representative, an inventory of all the property, which shall contain an appraisal of the movables and a description of the condition of the immovables;
(2) To give security, binding himself to fulfill the obligations imposed upon him in accordance with this Chapter.

Duties of the usufructuary *before* entering the property:

1. Give notice to the owner/legitimate representative
2. Make an inventory of all the property, with the appraisal of the movables and the description of the condition of the immovables
3. Give security

Art. 584

The provisions of No. 2 of the preceding article shall not apply to the donor

who has reserved the usufruct of the property donated, or to the parents who are usufructuaries of their children's property, except when the parents contract a second marriage.

No security required:
1. To the donor who has reserved the usufruct
2. The parents who are usufructuaries of their children's property
    a. Except: When the parents contract a second marriage

Art. 585

The usufructuary, whatever may be the title of the usufruct, may be excused from the obligation of making an inventory or of giving security, when no one will be injured thereby.

No inventory required:
1. When no one will be injured.

Failure to give security

Art. 586

Should the usufructuary fail to give security in the cases in which he is bound to give it, the owner may demand that the immovables be placed under administration, that the movables be sold, that the public bonds, instruments of credit payable to order or to bearer be converted into registered certificates or deposited in a bank or public institution, and that the capital or sums in cash and the proceeds of the sale of the movable property be invested in safe securities.

The interest on the proceeds of the sale of the movables and that on public securities and bonds, and the proceeds of the property placed under administration, shall belong to the usufructuary.

Furthermore, if the owner may, if he so prefers, until the usufructuary gives security or is excused from so doing, retain in his possession the property in usufruct as administrator, subject to the obligation to deliver to the usufructuary the net proceeds thereof, after deducting the sums which may be agreed upon or judicially allowed him from such administration.

Effects when the usufructuary fails to give security:
1. Owner may demand protective measures over the property:
    a. Immovable property may be placed under administration.
    b. Movables may be sold.
    c. Negotiable instruments or public bonds may be converted or deposited
2. Usufructuary still receives the fruits:
    a. Proceeds of sale of movables,
    b. Public securities and bonds, and
    c. Property under administration shall belong to the usufructuary.
3. Owner may retain in his possession the property as administration, but the owner must:
    a. Deliver the net proceeds to the usufructuary
    b. May deduct expenses either:
        i. Agreed upon by the parties
        ii. Judicially approved

Caucion juratoria = promise under oath

Art. 587

If the usufructuary who has not given security claims, by virtue of a promise under oath, the delivery of the furniture necessary for his use, and that he and his family be allowed to live in a house included in the usufruct, the court may grant his petition, after due consideration of the facts of the case.

The same rule shall be observed with respect to implements, tools and other movable property necessary for an industry or vocation in which he is engaged.

If the owner does not wish that certain articles be sold because of their artistic worth or because they have a sentimental value, he may demand their delivery to him upon his giving security for the payment of the legal interest on their appraised value.

Caución Juratoria (promise under oath)
- If the usufructuary has not posted security, he may request from the court:
    - Delivery of necessary furniture for his use, and
    - Permission for him and his family to live in the house included in the usufruct
- The court may grant this request after considering the facts.

The **same rule** applies to tools, equipment, and other movable property necessary for the usufructuary's profession, industry, or livelihood.

If the owner does not want certain items sold due to:
a. Artistic value, or
b. Sentimental value,
→ The owner may require their return, provided he gives security to pay legal interest based on their appraised value.

Commencement of usufruct

Art. 588

After the security has been given by the usufructuary, he shall have a right to all the proceeds and benefits from the day on which, in accordance with the title constituting the usufruct, he should have commenced to receive them.

Ordinary diligence

Art. 589

The usufructuary shall take care of the things given in usufruct as a good father of a family.

Art. 590

A usufructuary who alienates or leases his right of usufruct shall answer for any damage which the thing in usufruct may suffer through the fault or negligence of the person who substitutes him.

The usufructuary is liable for the damages suffered through the fault or negligence of the lessee (or other substitute).

Art. 591

If the usufruct be constituted on a flock or herd of livestock, the usufructuary shall be obliged to replace with the young thereof the animals that die each year from natural causes, or are lost due to the rapacity of beasts of prey.

If the animals on which the usufruct is constituted should all perish, without the fault of the usufructuary, on account of some contagious disease or any other uncommon event, the usufructuary shall fulfill his obligation by delivering to the owner the remains which may have been saved from the misfortune.

Should the herd or flock perish in part, also by accident and without the fault of the usufructuary, the usufruct shall continue on the part saved.

Should the usufruct be on sterile animals, it shall be considered, with respect to its effects, as though constituted on fungible things.

Case	Effects
Usufruct constituted on a flock or herd of livestock	Usufructuary must replace animals that die from natural causes or are lost to predators with their young
All animals perish without fault of usufructuary (e.g., disease or uncommon event)	Usufructuary fulfills obligation by delivering any remains saved to the owner
Herd or flock perish in part without fault of usufructuary	Usufruct continues over the part that was saved
Usufruct on sterile animals	Treated as a usufruct on fungible things

Repairs

Art. 592

The usufructuary is obliged to make the ordinary repairs needed by the thing given in usufruct.

By ordinary repairs are understood such as are required by the wear and tear due to the natural use of the thing and are indispensable for its preservation. Should the usufructuary fail to make them after demand by the owner, the latter may make them at the expense of the usufructuary.

Art. 593

Extraordinary repairs shall be at the expense of the owner. The usufructuary is obliged to notify the owner when the need for such repairs is urgent.

Art. 594

If the owner should make the extraordinary repairs, he shall have a right to demand of the usufructuary the legal interest on the amount expended for the time that the usufruct lasts.

Should he not make them when they are indispensable for the preservation of the thing, the usufructuary may make them; but shall have a right to demand of the owner, at the termination of the usufruct, the increase in value which the immovable may have acquired by reason of the repairs.

Repair	Effects
Ordinary repairs	Usufructuary must make ordinary repairs needed due to wear and tear for preservation. • If he fails after demand, the owner may make them at the usufructuary's expense.
Extraordinary repairs	Cost borne by the owner. Usufructuary must notify owner if urgent repairs are needed
Owner makes extraordinary repairs	Owner may demand legal interest on the expenditure for the duration of the usufruct
Owner fails to make indispensable extraordinary repairs	Usufructuary may make them and later demand from owner the increase in value of the property at the termination of the usufruct

Art. 595

The owner may construct any works and make any improvements of which the immovable in usufruct is susceptible, or make new plantings thereon if it be rural, provided that such acts to not cause a diminution in the value of the usufruct or prejudice the right of the usufructuary.

Rights of the owner:
1. Construct any works
2. Make improvements
3. Make new plantings

Limitations:
1. The acts should *not* cause a diminution in the value of the usufruct
2. They should *not* prejudice the rights of the usufructuary

Taxes and charges

Art. 596

The payment of annual charges and taxes and of those considered as lien on the fruits, shall be at the expense of the usufructuary for all the time that the usufruct lasts.

Art. 597

The taxes which, during the usufruct, may be imposed directly on the capital, shall be at the expense of the owner.

If the latter has paid them, the usufructuary shall pay him the proper interest on the sums which may have been paid in that character; and, if the said sums have been advanced by the usufructuary, he shall recover the amount thereof at the termination of the usufruct.

Taxes and charges	Who pays
Annual charges and taxes, or taxes considered a lien on fruits	Usufructuary
Taxes imposed directly on the capital	Owner, but the usufructuary must reimburse with proper interest • If usufruct paid it, he may recover it at the termination of the usufruct

Debts

Art. 598

If the usufruct be constituted on the whole of a patrimony, and if at the time of its constitution the owner has debts, the provisions of Articles 758 and 759 relating to donations shall be applied, both with respect to the maintenance of the usufruct and to the obligation of the usufructuary to pay such debts.

The same rule shall be applied in case the owner is obliged, at the time the usufruct is constituted, to make periodical payments, even if there should be no known capital.

Credits

Art. 599

The usufructuary may claim any matured credits which form a part of the usufruct if the has given or gives the proper security. If he has been excused from giving security or has not been able to give it, or if that given is not sufficient, he shall need the authorization of the owner, or of the court in default thereof, to collect such credits.

The usufructuary who has given security may use the capital he has collected in any manner he may deem proper. The usufructuary who has not given security shall invest the said capital at interest upon agreement with the owner; in default of such agreement, with judicial authorization; and, in every case, with security sufficient to preserve the integrity of the capital in usufruct.

	Effects
Debts of the owner at time of usufruct on whole patrimony	Arts. 758 and 759 apply: the usufructuary is obliged to maintain the usufruct and pay the debts. This also applies to periodical payments owed by the owner, even without a known capital
Credits forming part of the usufruct	• If usufructuary has given proper security, he may freely claim and use matured credits. • If excused from giving security, unable to give it, or security is insufficient, collection requires owner's authorization or court approval. • Usufructuary without security must invest collected capital at interest with owner's agreement or court authorization, and must preserve capital with sufficient security.

Art. 600

The usufructuary of a mortgaged immovable shall not be obliged to pay the debt for the security of which the mortgage was constituted.

Should the immovable be attached or sold judicially for the payment of the debt, the owner shall be liable to the usufructuary for whatever the latter may lose by reason thereof.

Case	**Effects**
Usufruct on a mortgaged immovable	Usufructuary is **not obliged to pay the debt** secured by the mortgage
Immovable is attached or judicially sold for debt payment	**Owner is liable to compensate** the usufructuary for any loss

Art. 601

The usufructuary shall be obliged to notify the owner of any act of a third person, of which he may have knowledge, that may be prejudicial to the rights of ownership, and he shall be liable should he not do so, for damages, as if they had been caused through his own fault.

Usufructuary must inform the owner of any prejudicial acts by a third person.

- Else, the usufructuary will be liable for damages, as he is in fault

Costs of suit

Art. 602

The expenses, costs and liabilities in suits brought with regard to the usufruct shall be borne by the usufructuary.

Usufructuary pays costs for litigation regarding the usufruct.

Chapter 4
Extinguishment of Usufruct

Art. 603

Usufruct is extinguished:

(1) By the death of the usufructuary, unless a contrary intention clearly appears;
(2) By the expiration of the period for which it was constituted or by the fulfillment of any resolutory condition provided in the title creating the usufruct;

(3) By merger of the usufruct and ownership in the same person;
(4) By renunciation of the usufructuary;
(5) By the total loss of the thing in usufruct;
(6) By the termination of the right of the person constituting the usufruct;
(7) By prescription.

Resolutory condition

Baluran v. Navarro, G.R. No. L-44428, September 30, 1977

With the material possession being the only one transferred, all that the parties acquired was the right of usufruct. Thus, the mutual agreement was subject to a resolutory condition the happening of which would terminate the right of possession and use.

- With the happening of the resolutory condition, each is entitled to a return of his property.

Moralidad v. Sps. Pernes, G.R. No. 152809, August 3, 2009

The usufruct was subject to a resolutory condition that has happened. Consequently, the usufruct was already extinguished.

- The condition has already happened, because the parties' relationship has deteriorated to almost an irretrievable level.
- Thus, there are enough factual bases to consider the usufruct as terminated.

Art. 604

If the thing given in usufruct should be lost only in part, the right shall continue on the remaining part.

Destruction of a building

Vda. de Albar v. Carangdang, G.R. No. L-13361, December 29, 1959

Since only the building was destroyed and the usufruct is constituted on both the building and the land, then the usufruct is not deemed extinguished by the destruction of the building for usufruct is only extinguished by the *total loss* of the thing.

Art. 605

Usufruct cannot be constituted in favor of a town, corporation, or association for more than fifty years. If it has been constituted, and before the expiration of such period the town is abandoned, or the corporation or association is dissolved, the usufruct shall be extinguished by reason thereof.

A town, corporation or association as a usufructuary may only be for 50 years.

- If the town is abandoned or the corporation/association dissolved, the usufruct shall be extinguished.

Art. 606

A usufruct granted for the time that may elapse before a third person attains a certain age, shall subsist for the number of years specified, even if the third person should die before the period expires, unless such usufruct has been expressly granted only in consideration of the existence of such person.

Example: A grants B the usufruct of a house until C turns 30. If C dies at age 25, B's usufruct still lasts until the originally specified age of 30, unless the usufruct was expressly granted only because C would be alive.

- In that case, B's usufruct would end upon C's death.

Art. 607

If the usufruct is constituted on immovable property of which a building forms part, and the latter should be destroyed in any manner whatsoever, the usufructuary shall have a right to make use of the land and the materials.

The same rule shall be applied if the usufruct is constituted on a building only and the same should be destroyed. But in such a case, if the owner should wish to construct another building, he shall have a right to occupy the land and to make use of the materials, being obliged to pay to the usufructuary, during the continuance of the usufruct, the interest upon the sum equivalent to the value of the land and of the materials.

Case	Effect
Usufruct on immovable property including a building, and the building is destroyed	Usufructuary has the right to use the land and the materials of the destroyed building (ruins)

Usufruct on a building only, and the building is destroyed	Same rule. *If the owner wishes to construct another building*, he may occupy the land and use the materials, but must pay the usufructuary interest on the value of the land and materials during the usufruct

Art. 608

If the usufructuary shares with the owner the insurance of the tenement given in usufruct, the former shall, in case of loss, continue in the enjoyment of the new building, should one be constructed, or shall receive the interest on the insurance indemnity if the owner does not wish to rebuild.

Should the usufructuary have refused to contribute to the insurance, the owner insuring the tenement alone, the latter shall receive the full amount of the insurance indemnity in case of loss, saving always the right granted to the usufructuary in the preceding article.

Case	Effect
Usufructuary **shares in insuring** the property and there is a loss	a. Usufructuary **continues enjoying the new building** if reconstructed, or b. **Receives interest** on the insurance indemnity if the owner does not rebuild
Usufructuary **refuses to contribute** to insurance and the **owner** insures **alone**	Owner receives the **full insurance indemnity**, but the usufructuary may use the land and materials (ruins)

Expropriation; effects thereof

Art. 609

Should the thing in usufruct be expropriated for public use, the owner shall be obliged either to replace it with another thing of the same value and of similar conditions, or to pay the usufructuary the legal interest on the amount of the indemnity for the whole period of the usufruct. If the owner chooses the latter alternative, he shall give security for the payment of the interest.

Options of the owner if the property is expropriated:

1. Replace it with another thing of the same value and similar condition
2. Pay the usufructuary the legal interest on the amount of the indemnity for the whole period of usufruct
    a. The owner must give security.

Art. 610

A usufruct is not extinguished by bad use of the thing in usufruct; but if the abuse should cause considerable injury to the owner, the latter may demand that the thing be delivered to him, binding himself to pay annually to the usufructuary the need proceeds of the same, after deducting the expenses and the compensation which may be allowed him for its administration.

General rule: A usufruct is *not* extinguished by the bad use of the thing in usufruct.

Exception: If the abuse causes *considerable injury* to the owner, the owner may demand delivery of the thing.

Art. 611

A usufruct constituted in favor of several persons living at the time of its constitution shall not be extinguished until the death of the last survivor.

If there are several usufructuaries, the usufruct is extinguished upon the death of the *last* usufructuary.

Art. 612

Upon the termination of the usufruct, the thing in usufruct shall be delivered to the owner, without prejudice to the right of retention pertaining to the usufructuary or his heirs for taxes and extraordinary expenses which should be reimbursed. After the delivery has been made, the security or mortgage shall be cancelled.

Effects of termination

General rule: Upon termination of the usufruct, the thing in usufruct must be delivered to the owner.

Exception: The usufructuary or his heirs may retain the property until reimbursed for taxes and extraordinary expenses they paid.

Effect on security: After delivery, any security or mortgage given by the usufructuary is cancelled.

Usufructuary in bad faith

NHA v. Manila Seedling Bank Foundation Inc., G.R. No. 183543, June 20, 2016

MSBFI had no right to act (usufruct) beyond the 7 ha. allotted to it. Since it was fully aware of this fact, its encroachment of 9 ha. rendered it a possessor in bad faith as to the excess.

- MSBFI, however, is entitled to a refund of the necessary expenses it incurred for the preservation of the excess.

TITLE VII
Easements or Servitudes

Chapter 1
Easements in General

Different kinds of easements

Real easement

Art. 613 ⭐

An easement or servitude is an encumbrance imposed upon an immovable for the benefit of another immovable belonging to a different owner.

The immovable in favor of which the easement is established is called the dominant estate; that which is subject thereto, the servient estate.

Definition: It is a real right, constituted on another's property, corporeal and immovable, whereby the owner of the latter must refrain from doing or allowing somebody else to do something on his property, for the benefit of another person or tenement (*Sanchez Roman*).

Personal easement

Art. 614

Servitudes may also be established for the benefit of a community, or of one or more persons to whom the encumbered estate does not belong.

Characteristics of easement

1. A real right – therefore, an action *in rem* is possible against the possessor of the servient estate.
2. Imposable only on another's property
3. A *jus in re aliena* (a real right that may be alienated, although the naked ownership is maintained)
4. A limitation or encumbrance on the servient estate for another's benefit
5. There is inherence or inseparability from the estate to which it belongs
6. It is indivisible
7. It is intransmissible
8. It is perpetual

⚠️ *There can be no easement on personal property.*

Examples of easements:

1. A dam supplying water confers a benefit, and if there is an easement, the dam cannot be destroyed
2. There is an easement when someone is granted the right to maintain wires across a parcel of land belonging to another

Art. 615

Easements may be continuous or discontinuous, apparent, or non-apparent.

Continuous easements are those the use of which is or may be incessant, without the intervention of any act of man.

Discontinuous easements are those which are used at intervals and depend upon the acts of man.

Apparent easements are those which are made known and are continually kept in view by external signs that reveal the use and enjoyment of the same.

Non-apparent easements are those which show no external indication of their existence.

Art. 616

Easements are also positive or negative.

A positive easement is one which imposes upon the owner of the servient estate the obligation of allowing something to be done or of doing it himself, and a negative easement, that which prohibits the owner of the servient estate from doing something which he could lawfully do if the easement did not exist.

Classification of easements

1. According to party given the benefit
    a. Real/predial
    b. Personal
2. According to the manner they are exercised
    a. Continuous
    b. Discontinuous
3. According to whether their existence is indicated
    a. Apparent
    b. Non-apparent
4. According to the purpose of the easement/nature of limitation
    a. Positive
    b. Negative
5. According to right given
    a. Right to partially use the servient estate
    b. Right to get specific materials or objects from the servient estate
    c. Right to participate in ownership
    d. Right to impede or prevent the neighboring estate from performing a specific act of ownership
6. According to source or origin and establishment of the easement
    a. Voluntary
    b. Mixed
    c. Legal
7.

Art. 617

Easements are inseparable from the estate to which they actively or passively belong.

Inseparable – Independently of the immovable to which they are attached, easements do not exist. Thus:

a. Easements cannot be sold, donated, or mortgaged independently of the real property to which they may be attached (i.e., when an easement is granted, such easement refers to a particular parcel of land).
b. Registration of the dominant estate under the Torrens system *without* the registration of the voluntary easements in its favor does *not* extinguish the easements.
    i. Contra: The registration of the servient estate without the registration of the easements burdening it extinguishes said voluntary easements.

Solid Manila Corp. v. Bio Hong Trading Co. Inc., G.R. No. 90596, April 8, 1991

Servitudes are merely accessories to the tenements of which they form part. Although they are possessed of a separate juridical existence, as mere accessories, they cannot, however, be alienated.

Art. 618

Easements are indivisible. If the servient estate is divided between two or more persons, the easement is not modified, and each of them must bear it on the part which corresponds to him.

If it is the dominant estate that is divided between two or more persons, each of them may use the easement in its entirety, without changing the place of its use or making it more burdensome in any other way.

Partition or division of an estate does not divide the easement, which continues to be complete in that *each* of the dominant estates can exercise the whole easement over *each* of the servient estates, but only on the part corresponding to each of them.

Art. 619

Easements are established either by law or by the will of the owners. The former are called legal and the latter voluntary easements.

On judicial declaration

- When the court says that an easement exists, it is *not* creating one; it merely declares the existence of an easement created either by law or

by the parties or testator.

Modes of acquiring easements

Art. 620

Continuous and apparent easements are acquired either by virtue of a title or by prescription of ten years.

How easements are acquired

1. If *continuous and apparent* – By title and prescription (10 years)
    a. Thus, easement of aqueduct is considered continuous and apparent, and may therefore be acquired by prescription.
2. If discontinuous and apparent – By title
3. If continuous and non-apparent – By title
4. If discontinuous and non-apparent – By title

What is a title?

- It is not necessarily a document.
- It means a juridical act or law sufficient to create the encumbrance.
- Examples: law, donation, testamentary succession, contract

What is prescription?

- 10 years, regardless of good/bad faith, with/without just title.
- The general rules on prescription *do not apply*.

Art. 621

In order to acquire by prescription the easements referred to in the preceding article, the time of possession shall be computed thus: in positive easements, from the day on which the owner of the dominant estate, or the person who may have made use of the easement, commenced to exercise it upon the servient estate; and in negative easements, from the day on which the owner of the dominant estate forbade, by an instrument acknowledged before a notary public, the owner of the servient estate, from executing an act which would be lawful without easement.

⚠️ *Art. 621 applies only to easements that may be acquired by prescription (i.e., continuous and apparent easements).*

Rules:

1. If the easement is positive, begin counting the period from the day the dominant estate began to exercise it.
2. If the easement is negative, begin counting from the time notarial prohibition was made on the servient estate.

Notarial prohibition

Cid v. Javier, G.R. No. L-14116, June 30, 1960

"Formal act" requires not merely any writing, but one executed in due form and/or with solemnity.

- Negative easements cannot be acquired by less formal means. Hence, the requirement that the prohibition should be by a formal act, i.e., a notarial prohibition.

Art. 622

Continuous non-apparent easements, and discontinuous ones, whether apparent or not, may be acquired only by virtue of a title.

The following may *only* be acquired by title:

1. Continuous non-apparent easements (because they are not public)
2. Discontinuous apparent easements (because the possession is not uninterrupted)
3. Discontinuous non-apparent easements (because the possession is neither public nor uninterrupted)

Acquisition by prescription

Cortes v. Yu-Tibo, G.R. No. 911, March 12, 1903

A negative easement (e.g., an easement of light and view), it *cannot* be acquired by prescription, except by counting the time of possession from the date on which the owner of the dominant estate may, by a formal act, have prohibited the owner of the servient estate from doing something which it would be lawful for him to do were it not for the easement.

Ronquillo v. Roco, G.R. No. L-10619, February 28, 1959

Discontinuous easements are exercised by an act of man, and precisely because of that, they are and must be discontinuous, since it is physically impossible for their use to be incessant.

- Thus, the easement of way is discontinuous because it is not possible for a person to be constantly passing along the road, path, or trail in

question.
- Therefore, an easement of right of way cannot be acquired by prescription.

Art. 623

The absence of a document or proof showing the origin of an easement which cannot be acquired by prescription may be cured by a deed of recognition by the owner of the servient estate or by a final judgment.

Art. 623 applies in:
1. Continuous non-apparent
2. Discontinuous apparent
3. Discontinuous non-apparent

They may be proven by:
1. Deed of recognition by the *servient* owner
2. Final judgment of a court

Art. 624 ⭐

The existence of an apparent sign of easement between two estates, established or maintained by the owner of both, shall be considered, should either of them be alienated, as a title in order that the easement may continue actively and passively, unless, at the time the ownership of the two estates is divided, the contrary should be provided in the title of conveyance of either of them, or the sign aforesaid should be removed before the execution of the deed. This provision shall also apply in case of the division of a thing owned in common by two or more persons.

Rules:
1. Before the alienation → no true easement
2. After alienation:
    a. There *is* an easement if the sign continues to remain, unless there is a contrary agreement.
    b. There is *no* easement, if the sign is removed or if there is an agreement to this effect.

Art. 624 applies:
1. Whether one or both estates are alienated
2. Even if there be only one estate, but there are two portions
3. Even in the case of division of common property

Art. 624 does *not* apply → in case both estates or portions are alienated to the *same* owner.

Amor v. Florentino, G.R. No. 48384, October 11, 1943

Under art. 541 the existence of the apparent sign in the instant case, to wit, the four windows under consideration, had for all legal purposes the same character and effect as a title of acquisition of the easement of light and view by the respondents upon the death of the original owner, Maria Florentino.

Gargantos v. Tan-Yanon, G.R. No. L-14652, June 30, 1960

While the law declares that the easement is to "continue," the easement actually arises for the first time only upon alienation of either estate, inasmuch as before that time there is no easement to speak of, there being but one owner of both estates.

Sps. Garcia v. Santos, G.R. No. 228334, June 17, 2019 ♥

Thus, from *Amor* and *Gargantos*, read with *Cortes*, in a situation wherein Art. 624 applies, there arises an easement if an apparent sign of the existence of an easement (e.g., existence of windows and openings on the dominant estate) continues to remain even after the transfer of the property to the new owner, unless such apparent sign is removed or if there is an agreement to the contrary.

The existence of an easement of light and view under art. 624 is established as long as:
1. there exists an apparent sign of servitude between two estates
2. the sign of the easement must be established by the owner of both tenements
3. either or both of the estates are alienated by the owner
4. at the time of the alienation nothing is stated in the document of alienation contrary to the easement nor is the sign of the easement removed before the execution of the document

Art. 625

Upon the establishment of an easement, all the rights necessary for its use are considered granted.

Necessary rights include:

1. Repair
2. Maintenance
3. Accessory easements (such as right of way, if the easement is for the drawing of water)

Art. 626

The owner of the dominant estate cannot use the easement except for the benefit of the immovable originally contemplated. Neither can he exercise the easement in any other manner than that previously established.

Art. 626 presupposes the existence of a *dominant estate*.

- Easement appurtenant – Easements with a dominant estate.
- Easement in gross – Easements without the dominant estate and purely personal.

Rights and obligations of the owners of the dominant and servient estate

Art. 627

The owner of the dominant estate may make, at his own expense, on the servient estate any works necessary for the use and preservation of the servitude, but without altering it or rendering it more burdensome.

For this purpose he shall notify the owner of the servient estate, and shall choose the most convenient time and manner so as to cause the lease inconvenience to the owner of the servient estate.

Art. 628

Should there be several dominant estates, the owner of all of them shall be obliged to contribute to the expenses referred to in the preceding article, in proportion to the benefits which each may derive from the work. Anyone who does not wish to contribute may exempt himself by renouncing the easement for the benefit of the others.

If the owner of the servient estate should make use of the easement in any manner whatsoever, he shall also be obliged to contribute to the expenses in proportion stated, saving an agreement to the contrary.

Art. 629

The owner of the servient estate cannot impair, in any manner whatsoever, the use of the servitude.

Nevertheless, if by reason of the place originally assigned, or of the manner established for the use of the easement, the same should become very inconvenient to the owner of the servient estate, or should prevent him from making any important works, repairs, or improvements thereon, it may be changed at his expense, provided that he offers another place or manner equally convenient and in such a way that no injury is caused thereby to the owner of the dominant estate or to those who may have a right to the use of the easement.

Art. 630

The owner of the servient estate retains the ownership of the portion on which the easement is established, and may use the same in such a manner as not to affect the exercise of the easement.

Rights of the dominant estate	Obligations of the dominant estate
1. Exercise the easement and all necessary rights for its use, including accessory easement (art. 625) 2. Make on the servient estate all works necessary for the use and preservation of the servitude, but: a. This must be at his own expense b. Must notify the servient owner c. Select convenient time and manner d. He must not alter the easement nor render it more burdensome 3. Ask for a mandatory injunction to prevent impairment or obstruction in the exercise of the easement 4. Renounce totally the easement (art. 628)	1. Cannot alter the easement (art. 627) 2. Cannot make it more burdensome (*id.*) a. He cannot use the easement except for manner originally contemplated b. In the easement of right of way, he cannot increase the agreed width nor deposit soil outside the boundaries, but he may allow others to use the path

Rights of the servient estate	Obligations of the servient estate

1. Retain ownership and possession of the portion of his land affected (art. 630) 2. Use the easement, unless deprived by stipulation, provided that the exercise of the easement is *not* adversely affected (Art. 630), and that he contributes to the expenses in proportion to the benefits received (art. 628) 3. Change the location of a very inconvenient easement, provided that an equally convenient substitute is made without injury to the dominant estate (art. 629)	1. Cannot impair the use of the easement (art. 629) 2. Contribute to the expenses in case he uses the easement (art. 628) 3. In case of impairment, to restore conditions to the status quo at his expense plus damages 4. Pay for the expenses incurred for the change of location or form of the easement (art. 629)

Javellana v. IAC, G.R. No. 72837, April 17, 1989

The owner of the servient estate violated art. 629 when they closed the entrance of the canal and demolished portions of the main dike thus impairing the use of the servitude by the dominant estates.

Relova v. Lavarez, G.R. No. 3623, November 6, 1907

The servient estate cannot destroy or interfere with the easement so as to deprive the dominant estate of the water necessary for cultivation.

Modes of extinguishment of easements

Art. 631

Easements are extinguished:

(1) By merger in the same person of the ownership of the dominant and servient estates;
(2) By non-user for ten years; with respect to discontinuous easements, this period shall be computed from the day on which they ceased to be used; and, with respect to continuous easements, from the day on which an act contrary to the same took place;
(3) When either or both of the estates fall in such condition that the easement cannot be used; but it shall revive if the subsequent condition of the estates or either of them should again permit its use, unless when the use becomes possible, sufficient time for prescription has elapsed, in accordance with the provisions of the preceding number;
(4) By the expiration of the term or the fulfillment of the condition, if the easement is temporary or conditional;
(5) By the renunciation of the owner of the dominant estate;
(6) By the redemption agreed upon between the owners of the dominant and servient estates.

How easements are extinguished:

1. Merger – It must be absolute and complete, not temporary.
    a. *Example:* The owner of the servient estate buys the whole portion affected.
2. Non-user for 10 years – This refers to an easement that has once been used because one cannot discontinue using what one has never used.
    a. Discontinuous → from the time it ceased to be used
    b. Continuous → from the day on which an act contrary to the same took place
3. Bad condition of the tenement (e.g., flooded) or impossibility of use – Merely a suspension of the easement, since possibility of use revives the easement.
4. Expiration of the term or fulfillment of the condition
5. Renunciation – *a.k.a.* Waiver by the owner of the dominant estate
    a. The renunciation must be express, clear and specific.
6. Redemption agreed upon – This is voluntary redemption, existing because of an express stipulation
7. Other causes for extinguishment:
    a. Expropriation of the servient estate
    b. Permanent impossibility to make use of the easement
    c. Annulment, rescission or cancellation of the title that constituted the easement
    d. Abandonment of the servient estate
    e. Resolution of the right of the grantor to create the easement
    f. Registration of the servient estate was free
    g. In case of the legal easement of right of way, the opening of an adequate outlet to the highway

Tañedo v. Bernad, G.R. No. 66520, August 30, 1988

The alienation of the dominant and servient estates to different persons is *not* one of the grounds for the extinguishment of an easement. On the contrary, use of the easement is continued by operation of law, under art. 624.

Art. 632

The form or manner of using the easement may prescribe as the easement itself, and in the same way.

Prescription of voluntary easements
1. The easement may *itself* prescribe
2. The form or manner of using may also prescribe

Prescription of legal easements
1. Some legal easements do not prescribe, but the manner and form of using them may
2. Some legal easements prescribe, e.g., servitude of natural drainage

Art. 633

If the dominant estate belongs to several persons in common, the use of the easement by any one of them prevents prescription with respect to the others.

The use benefits the other co-owners. Thus, there is *no* prescription even with respect to their own shares.

Chapter 2
Legal Easements

General provisions

Art. 634

Easements imposed by law have for their object either public use or the interest of private persons.

The different legal easements ♥
1. Easements relating to waters
2. Right of way
3. Party wall
4. Light and view
5. Drainage
6. Intermediate distances
7. Easement against nuisance
8. Lateral and subadjacent support

Art. 635

All matters concerning easements established for public or communal use shall be governed by the special laws and regulations relating thereto, and, in the absence thereof, by the provisions of this Title.

The Civil Code only has suppletory effect.

Art. 636

Easements established by law in the interest of private persons or for private use shall be governed by the provisions of this Title, without prejudice to the provisions of general or local laws and ordinances for the general welfare.

These easements may be modified by the agreement of the interested parties, whenever the law does not prohibit it or no injury is suffered by a third person.

How legal easements for private interests are governed
1. Agreement of interested parties provided not prohibited by law nor prejudicial to a third person
2. General or local laws and ordinances for general welfare
3. Civil Code

Easements relating to waters

Art. 637

Lower estates are obliged to receive the waters which naturally and without the intervention of man descend from the higher estates, as well as the stones or earth which they carry with them.

The owner of the lower estate cannot construct works which will impede this easement; neither can the owner of the higher estate make works which will increase the burden.

Legal easements relating to water:

1. Natural drainage of lands (art. 673)
2. Natural drainage of buildings (art. 674)
3. Easement on riparian banks for navigation, floatage, fishing, salvage (art. 678)
4. Easement of a dam (arts. 639, 647)
5. Easement for drawing water or for watering animals (arts. 640-641)
6. Easement of aqueduct (arts. 643-646)
7. Easement for the construction of a stop lock or sluice gate (art. 647)

Duties of servient estate	Duties of dominant estate
1. Cannot construct works that would impede the easement 2. Nor enclose his land by ditches/fences that would impede the flow 3. He may regulate or control the descent of water	1. Cannot works which will increase the burden 2. May construct works preventing erosion

Sps. Vergara v. Sonkin, G.R. No. 193659, June 15, 2015

This provision (art. 637) refers to the legal easement pertaining to the natural drainage of lands, which obliges lower estates to receive from the higher estates water which naturally and without the intervention of man descends from the latter.

- It is undisputed that the Sonkin property is lower in elevation than the Vergara property, and thus, it is legally obliged to receive the waters that flow from the latter, pursuant to art. 637.

Art. 638

The banks of rivers and streams, even in case they are of private ownership, are subject throughout their entire length and within a zone of three meters along their margins, to the easement of public use in the general interest of navigation, floatage, fishing and salvage.

Estates adjoining the banks of navigable or floatable rivers are furthermore, subject to the easement of tow path for the exclusive service of river navigation and floatage.

If it be necessary for such purpose to occupy lands of private ownership, the proper indemnity shall first be paid.

What is a river bank?

- A lateral strip of shore washed by the water during high tides, but which cannot be said to be flooded or inundated.
- They are of public ownership.

Easements allowed

1. On banks of rivers, a public easement for:
    a. Navigation
    b. Floatage
    c. Fishing
    d. Salvage
2. On banks of navigable or floatable river, also the easement of *tow path* (for the exclusive service of river navigation and floatage)

Indemnity:

1. Required → if land is private
2. Not required → if land is public

Art. 639

Whenever for the diversion or taking of water from a river or brook, or for the use of any other continuous or discontinuous stream, it should be necessary to build a dam, and the person who is to construct it is not the owner of the banks, or lands which must support it, he may establish the easement of abutment of a dam, after payment of the proper indemnity.

Payment of indemnity is required to the riparian owner whose property will be burdened (i.e., where the easement/dam will be built).

Art. 640

Compulsory easements for drawing water or for watering animals can be imposed only for reasons of public use in favor of a town or village, after payment of the proper indemnity.

Easements for drawing water/watering animals:

1. Can be imposed only for public use
2. Must be in favor of a town/village
3. Proper indemnity must be paid

Art. 641

Easements for drawing water and for watering animals carry with them the obligation of the owners of the servient estates to allow passage to persons and animals to the place where such easements are to be used, and the indemnity shall include this service.

This implies the existence of an *accessory easement* of right of way, because the passage of animals and persons to the place where the easement for drawing water/watering animals is also required.

Easement of aqueduct

Art. 642

Any person who may wish to use upon his own estate any water which he can dispose shall have the right to make it flow through the intervening estates, with the obligation to indemnify their owners, as well as the owners of the lower estates upon which the waters may filter or descend.

Art. 643

One desiring to make use of the right granted in the preceding article is obliged:

(1) To prove that he can dispose of the water and that it is sufficient for the use for which it is intended;
(2) To show that the proposed right of way is the most convenient and the least onerous to third persons;
(3) To identify the owner of the servient estate in the manner determined by the laws and regulations.

Art. 644

The easement of aqueduct for private interest cannot be imposed on buildings, courtyards, annexes, or outhouses, or on orchards or gardens already existing.

Art. 645

The easement of aqueduct does not prevent the owner of the servient estate from closing or fencing it, or from building over the aqueduct in such manner as not to cause the latter any damage, or render necessary repairs and cleanings impossible.

Art. 646

For legal purposes, the easement for aqueduct shall be considered as continuous and apparent, even though the flow of water may not be continuous, or its use depends upon the needs of the dominant estate, or upon a schedule of alternate days or hours.

Easement of aqueduct

- The right to make water flow through intervening estate so that one may make use of said water.

Requisites to acquire the easement:

1. Indemnity must be paid to owners of intervening estates and owners of lower estates
2. Easement cannot be imposed on existing buildings
3. There must be proof:
    a. That he can dispose the water
    b. The water is sufficient
    c. The proposed course is the most convenient and least onerous to third persons
    d. Proper administrative permissions be obtained

Obligations of the dominant owner

1. Keep the aqueduct in proper use/care
2. Keep on hand necessary materials for its use

Right of servient estate – He can still enclose/fence the servient estate or even build over the aqueduct, provided:

1. No damage is caused
2. Repairs and cleanings no repairs and cleanings become impossible

Valisno v. Adriano, G.R. No. L-37409, May 23, 1988

The existence of the irrigation canal on Adriano's land for water to Honorata's land prior to and at the time of the sale of Honorata's land to the plaintiff was equivalent to a title for the vendee of the land to continue using it (art. 624).

- **The doctrine of apparent signs applies to easement of aqueducts.**

Art. 647

One who for the purpose of irrigating or improving his estate, has to construct a stop lock or sluice gate in the bed of the stream from which the water is to be taken, may demand that the owners of the banks permit its construction, after payment of damages, including those caused by the new

easement to such owners and to the other irrigators.

Requisites for the construction of a stop lock or sluice gate

1. Purpose must be for irrigation/improvement
2. The construction must be on the estate of another
3. Damages must be paid
4. Third persons must not be prejudiced

Art. 648

The establishment, extent, form and conditions of the servitudes of waters, to which this section refers, shall be governed by the special laws relating thereto insofar as no provision therefor is made in this Code.

Easement of right of way

Art. 649

The owner, or any person who by virtue of a real right may cultivate or use any immovable, which is surrounded by other immovables pertaining to other persons and without adequate outlet to a public highway, is entitled to demand a right of way through the neighboring estates, after payment of the proper indemnity.

Should this easement be establishes in such a manner that its use may be continuous for all the needs of the dominant estate, establishing a permanent passage, the indemnity shall consist of the value of the land occupied and the amount of damage caused to the servient estate.

In case the right of way is limited to the necessary passage for the cultivation of the estate surrounded by others and for the gathering of its crops through the servient estate without a permanent way, the indemnity shall consist in the payment of damage caused by such encumbrance.

This easement is not compulsory if the isolation of the immovable is due to the proprietor's own acts.

Easement of right of way

- This is the easement/privilege by which one person or a particular class of persons is allowed to pass over another's land, usually through one particular path or line.
- "Right of way" can refer to either the *easement itself* or the strip of land over which passage can be done.

Requisites:

1. The property is surrounded by estates of others
2. There is no adequate outlet to a public highway
3. There must be payment of the proper indemnity
4. Established at the point least prejudicial to the servient estate
5. Isolation must not be due to the proprietor's own acts
6. Demandable only by the owner or one with a real right (e.g., a usufructuary, but *not* a lessee)

Kinds of right of way:

1. Private
2. Public (i.e., available to the general public)

The proper indemnity

1. If the passage is permanent → value of land + damages
2. If passage is temporary → damages *only*

Ramos v. Gatchalian Realty Inc., G.R. No. 75905, October 12, 1987

Requisites for a right of way ♥

1. That it is surrounded by other immovables and has not adequate outlet to a public highway
2. After payment of proper indemnity
3. The isolation was not due to the owner's own acts
4. The right of way claimed is at the point least prejudicial to the servient estate; and insofar as consistent with this rule, where the distance from the dominant estate to a public highway may be the shortest

Sps. Valdez v. Sps. Tabisula, G.R. No. 175510, July 28, 2008

The onus of proving the existence of these prerequisites lies on the owner of the dominant estate.

Dionisio v. Ortiz, G.R. No. 95738, December 10, 1991

Mere convenience is not enough to serve as basis for the assertion of a right of way.

Francisco v. IAC, G.R. No. 63996, September 15, 1989

The law makes it clear that an owner cannot, by his own act, isolate his property from a public highway and then claim an easement of right of way he himself has not procured.

Floro v. Llenado, G.R. No. 75723, June 2, 1995

In order to justify the imposition of the servitude of right of way, there must be a real, not a fictitious or artificial necessity for it. Mere convenience for the dominant estate is not what is required by law as the basis for setting up a compulsory easement.

- Thus, when a person has already established an easement of this nature in favor of his tenement, he cannot demand another, even if those first passage has defects which make passage impossible, if those defects can be eliminated by proper repairs.

Indemnity: The action of the dominant estate against the servient estate should include a prayer for the fixing of the amount which may be due from the former to the latter.

Costabella Corp. v. CA, G.R. No. 80511, January 25, 1991

The true standard for the grant of the legal right is "adequacy." Hence, when there is already an existing adequate outlet from the dominant estate to a public highway, even if the said outlet, for one reason or another, be inconvenient, the need to open up another servitude is entirely unjustified.

Reyes v. Sps. Valentin, G.R. No. 194488, February 11, 2015

The criterion of least prejudice to the servient estate must prevail over the criterion of shortest distance although this is a matter of judicial appreciation.

- Least prejudice is about the suffering of the servient estate.
- Its value is not determined solely by the price of the property, but also by the value of the owner's foregone opportunity for use, resulting from the limitations imposed by the easement.

Cristobal v. CA, G.R. No. 125339, June 22, 1998

It is not enough that the easement be where the way is shortest. It is more important that it be where it will cause the least prejudice to the servient estate.

Dichoso v. Marcos, G.R. No. 180282, April 11, 2011

Mere convenience for the dominant estate is not what is required by law as the basis of setting up a compulsory easement. Even in the face of necessity, if it can be satisfied without imposing the easement, the same should not be imposed.

- Hence, when there is already an existing adequate outlet from the dominant estate to a public highway even when the said outlet, for one reason or another, be inconvenient, the need to open up another servitude is entirely unjustified.

Quimen v. CA, G.R. No. 112331, May 29, 1996

While shortest distance may ordinarily imply least prejudice, it is not always so as when there are permanent structures obstructing the shortest distance; while on the other hand, the longest distance may be free of obstructions and the easiest or most convenient to pass through.

- Hence, between a right of way that would demolish a store of strong materials to provide egress to a public highway, and another right of way which although longer will only require an avocado tree to be cut down, the second alternative should be preferred.

Almendras v. CA, G.R. No. 110067, March 13, 1997

The way may be longer and not the most direct way to the provincial road, but if the establishment of the easement will cause the least prejudice, then the easement should be constituted there.

ROW is discontinuous

Bicol Agro-Industrial v. Obias, G.R. No. 172077, October 9, 2009

The easement of right of way is considered discontinuous because it is exercised only if a person passes or sets foot on somebody else's land.

- The very exercise of the servitude depends upon the act or intervention of man which is the very essence of discontinuous easements.

Not acquirable by prescription

Abellana v. CA, G.R. No. 97039, April 24, 1992

An easement of right of way cannot be acquired by prescription, because it is not continuous. Hence, a right of way is not acquirable by prescription.

- The use of a footpath or road is discontinuous because its use is at intervals and depends upon the acts of man.

Doctrine of apparent signs

Sps. Fernandez v. Sps. Delfin, G.R. No. 227917, March 17, 2021 ♥

The doctrine of apparent signs applies to easements of right of way. The easement is constituted when the property is divided–when the ownership of either the dominant or servient estate is transferred to another.

Art. 650

The easement of right of way shall be established at the point least prejudicial to the servient estate, and insofar as consistent with this rule, where the distance from the dominant estate to a public highway may be the shortest.

Art. 651

The width of the easement of right of way shall be that which is sufficient for the needs of the dominant estate, and may accordingly be changed from time to time.

Encarnacion v. CA, G.R. No. 77628, March 11, 1991

Under art. 651, the needs of the dominant property ultimately determine the width of the easement of right of way.

Art. 652

Whenever a piece of land acquired by sale, exchange or partition, is surrounded by other estates of the vendor, exchanger, or co-owner, he shall be obliged to grant a right of way without indemnity.

In case of a simple donation, the donor shall be indemnified by the donee for the establishment of the right of way.

Art. 653

In the case of the preceding article, if it is the land of the grantor that becomes isolated, he may demand a right of way after paying an indemnity. However, the donor shall not be liable for indemnity.

Rules if grantor/grantee's land is enclosed

1. Enclosing estate is the grantor → grantee does not pay for indemnity
2. Enclosed estate is the grantor → grantor must pay indemnity

The easements in arts. 652-653 are in a sense, voluntary easements.

Art. 654

If the right of way is permanent, the necessary repairs shall be made by the owner of the dominant estate. A proportionate share of the taxes shall be reimbursed by said owner to the proprietor of the servient estate.

General rule: Servient estate pays *all* the taxes, because he owns the path.
Exceptions: Owner of dominant estate pays for:

1. Repairs
2. Proportionate share of taxes to the servient estate

Art. 655

If the right of way granted to a surrounded estate ceases to be necessary because its owner has joined it to another abutting public road, the owner of the servient estate may demand that the easement be extinguished, returning what he may have received by way of indemnity. The interest on the indemnity shall be deemed to be in payment of rent for the use of the easement.

The same rule shall be applied in case a new road is opened giving access to the isolated estate.

In both cases, the public highway must substantially meet the needs of the dominant estate in order that the easement may be extinguished.

What are the causes for extinction of the ROW?

- Opening of a new road
- Joining the dominant estate to another which abuts, and therefor has access to the public highway.
    - But the new access must be convenient and adequate.

Is the extinction automatic?

- No, because the servient owner merely has the option to demand.
- If the servient owner did not demand, he has no duty to refund the indemnity.
- *But if the easement is temporary,* the indemnity does not have to be returned since the damage had already been caused.

Does this apply to a voluntary easement?

- No.

Art. 656

If it be indispensable for the construction, repair, improvement, alteration or beautification of a building, to carry materials through the estate of another, or to raise thereon scaffolding or other objects necessary for the work, the owner of such estate shall be obliged to permit the act, after receiving payment of the proper indemnity for the damage caused him.

The easement here is necessarily only temporary.
- Nonetheless, proper indemnity must be given.

Art. 657

Easements of the right of way for the passage of livestock known as animal path, animal trail or any other, and those for watering places, resting places and animal folds, shall be governed by the ordinances and regulations relating thereto, and, in the absence thereof, by the usages and customs of the place.

Without prejudice to rights legally acquired, the animal path shall not exceed in any case the width of 75 meters, and the animal trail that of 37 meters and 50 centimeters.

Whenever it is necessary to establish a compulsory easement of the right of way or for a watering place for animals, the provisions of this section and those of Articles 640 and 641 shall be observed. In this case the width shall not exceed 10 meters.

Easement of right of way for the passage of livestock (servidumbres pecuarias)
1. Animal path – 75 meters
2. Animal trail – 37.5 meters
3. Cattle – 10 meters (unless prior to the OCC, vested rights had been acquired to a greater width)

With reference to:
a. Indemnity payment (art. 640)
b. The easement for drawing water or for watering animals can be imposed only for reasons of public use in favor of a town/village

Easement of party wall

Art. 658

The easement of party wall shall be governed by the provisions of this Title, by the local ordinances and customs insofar as they do not conflict with the same, and by the rules of co-ownership.

Easement of party wall (*servidumbre de madianera*)
- **Party wall** – This is a wall at the dividing line of estates. Co-ownership governs the wall, hence the party wall is necessarily a common wall.
- It is a compulsory kind of co-ownership (forced indivision).

Art. 659

The existence of an easement of party wall is presumed, unless there is a title, or exterior sign, or proof to the contrary:
(1) In dividing walls of adjoining buildings up to the point of common elevation;
(2) In dividing walls of gardens or yards situated in cities, towns, or in rural communities;
(3) In fences, walls and live hedges dividing rural lands.

How presumption that a wall is a party wall may be rebutted:
1. Title to the contrary
2. Exterior signs to the contrary
3. Proof to the contrary

A title conferring ownership in one owner prevails over a mere exterior sign.

Art. 660

It is understood that there is an exterior sign, contrary to the easement of party wall:

(1) Whenever in the dividing wall of buildings there is a window or opening;
(2) Whenever the dividing wall is, on one side, straight and plumb on all its facement, and on the other, it has similar conditions on the upper part, but the lower part slants or projects outward;
(3) Whenever the entire wall is built within the boundaries of one of the estates;
(4) Whenever the dividing wall bears the burden of the binding beams, floors and roof frame of one of the buildings, but not those of the

others;
(5) Whenever the dividing wall between courtyards, gardens, and tenements is constructed in such a way that the coping sheds the water upon only one of the estates;
(6) Whenever the dividing wall, being built of masonry, has stepping stones, which at certain intervals project from the surface on one side only, but not on the other;
(7) Whenever lands inclosed by fences or live hedges adjoin others which are not inclosed.

In all these cases, the ownership of the walls, fences or hedges shall be deemed to belong exclusively to the owner of the property or tenement which has in its favor the presumption based on any one of these signs.

This article enumerates exterior signs *rebutting* the presumption of there being an easement of party wall.

- If one owner has signs in his favor, and some against him, they generally cancel each other, *unless it can be shown from the purpose of the wall that it had been made for the exclusive benefit of one*.

Art. 661

Ditches or drains opened between two estates are also presumed as common to both, if there is no title or sign showing the contrary.

There is a sign contrary to the part-ownership whenever the earth or dirt removed to open the ditch or to clean it is only on one side thereof, in which case the ownership of the ditch shall belong exclusively to the owner of the land having this exterior sign in its favor.

Party ditches or drains

- This presumption applies to ditches and drains opened between 2 estates.
- This presumption is also rebuttable.

Art. 662

The cost of repairs and construction of party walls and the maintenance of fences, live hedges, ditches, and drains owned in common shall be borne by all the owners of the lands or tenements having the party wall in their favor, in proportion to the right of each.

Nevertheless, any owner may exempt himself from contributing to this charge by renouncing his party-ownership, except when the party wall supports a building belonging to him.

Art. 663

If the owner of a building supported by a party wall desires to demolish the building, he may also renounce his part-ownership of the wall, but the cost of all repairs and work necessary to prevent any damage which the demolition may cause to the party wall, on this occasion only, shall be borne by him.

Repairs and construction – Must be a proportionate contribution.

General rule: An owner can be exempt from contributing by *fully* renouncing his share.
Except:
1. When the repair had already been made
2. He still uses the wall as when it supports his building

Art. 664

Every owner may increase the height of the party wall, doing so at his own expense and paying for any damage which may be caused by the work, even though such damage be temporary.

The expenses of maintaining the wall in the part newly raised or deepened at its foundation shall also be paid for by him; and, in addition, the indemnity for the increased expenses which may be necessary for the preservation of the party wall by reason of greater height or depth which has been given it.

If the party wall cannot bear the increased height, the owner desiring to raise it shall be obliged to reconstruct it at his own expense; and, if for this purpose it be necessary to make it thicker, he shall give the space required from his own land.

Obligations of the party seeking to increase the height of the party wall:
1. Must do so at his own expense
2. Must pay the necessary damages caused, even if the damage be temporary
3. Must bear the costs of maintenance of the portion *added*
4. Must pay for the increased cost of preservation
5. Must construct if original wall cannot bear the increased height

6. Must give the additional space (land) if necessary, if wall is to be thickened

He will be the exclusive owner of the addition, *unless art. 665 is availed of.*

Art. 665

The other owners who have not contributed in giving increased height, depth or thickness to the wall may, nevertheless, acquire the right of part-ownership therein, by paying proportionally the value of the work at the time of the acquisition of the land used for its increased thickness.

The value of the additions at the time of *acquisition by the others* should be paid, if he wants to acquire part-ownership.

Art. 666

Every part-owner of a party wall may use it in proportion to the right he may have in the co-ownership, without interfering with the common and respective uses by the other co-owners.

Easement of light and view

Art. 667

No part-owner may, without the consent of the others, open through the party wall any window or aperture of any kind.

1. Easement of light (*jus luminum*) – To admit light and a little air
2. Easement of view (*servidumbre prospectus*) – The principal purpose is view, but the easement of light is necessarily included, as well as the easement of *altius non tollendi* (not to build higher).

Example: A and B are co-owners of a party wall. *A* cannot make an opening on the wall sans *B's* permission. If *A* does so, there is a possibility that *A* will later claim the whole wall as his in view of the exterior sign (art. 660[1]).

- Thus, *B* can order that the opening be closed, unless a sufficient time for prescription has elapsed.

Art. 668

The period of prescription for the acquisition of an easement of light and view shall be counted:

(1) From the time of the opening of the window, if it is through a party wall; or
(2) From the time of the formal prohibition upon the proprietor of the adjoining land or tenement, if the window is through a wall on the dominant estate.

Easement of light and view is either positive or negative

1. Positive – if the window is through a party wall, or is on a balcony or projection extending over into the adjacent land
    a. Thus, it may be acquired by prescription of 10 years from the time the window is opened.
2. Negative – if the window is through one's own wall, that is, through a wall of the dominant estate
    a. Thus, it may be acquired by prescription *from the time of notarial prohibition*.

Restricted windows

Art. 669

When the distances in Article 670 are not observed, the owner of a wall which is not a party wall, adjoining a tenement or piece of land belonging to another, can make in it openings to admit light at the height of the ceiling joists or immediately under the ceiling, and of the size of thirty centimeters square, and, in every case, with an iron grating imbedded in the wall and with a wire screen.

Nevertheless, the owner of the tenement or property adjoining the wall in which the openings are made can close them should he acquire part-ownership thereof, if there be no stipulation to the contrary.

He can also obstruct them by constructing a building on his land or by raising a wall thereon contiguous to that having such openings, unless an easement of light has been acquired.

Restricted windows – The openings or windows referred to in this article are for light, *not* view.

- Thus, unless the easement of light has been acquired, the light of such restricted windows may still be obstructed.

Restrictions:

1. Maximum size – 30 cm. square
2. There must be an iron grating imbedded in the wall
3. There must be a wire screen
4. The opening must be at the height of the ceiling joists (beams) or immediately under the ceiling.

Regular windows

Art. 670

No windows, apertures, balconies, or other similar projections which afford a direct view upon or towards an adjoining land or tenement can be made, without leaving a distance of two meters between the wall in which they are made and such contiguous property.

Neither can side or oblique views upon or towards such coterminous property be had, unless there be a distance of sixty centimeters.

The non-observance of these distances does not give rise to prescription.

Art. 671

The distances referred to in the preceding article shall be measured in cases of direct views from the outer line of the wall when the openings do not project, from the outer line of the latter when they do, and in cases of oblique views from the dividing line between the two properties.

Rules for regular windows – They can be opened, provided that the proper distances are followed:

1. For windows having direct views → 2 meters between the window and the boundary line
2. For windows having side or oblique views → 60 cm. Between the window and boundary line

This implies that only restricted windows are allowed at the boundary line.

Art. 672

The provisions of Article 670 are applicable to buildings separated by a public way or alley, which is not less than three meters wide, subject to special regulations and local ordinances.

Art. 673

Whenever by any title a right has been acquired to have direct views, balconies or belvederes overlooking an adjoining property, the owner of the servient estate cannot build thereon at less than a distance of three meters to be measured in the manner provided in Article 671. Any stipulation permitting distances less than those prescribed in Article 670 is void.

Thus, if an estate has easement of light and view under art. 624, the neighbor cannot build on his lot unless he observes the 3-meter rule.

Drainage of buildings

Art. 674

The owner of a building shall be obliged to construct its roof or covering in such manner that the rain water shall fall on his own land or on a street or public place, and not on the land of his neighbor, even though the adjacent land may belong to two or more persons, one of whom is the owner of the roof. Even if it should fall on his own land, the owner shall be obliged to collect the water in such a way as not to cause damage to the adjacent land or tenement.

What are the restrictions?

- A person should let rainwater fall on his own land
- But the rainwater must be collected (last sentence)

The article merely regulates the use of a person's property insofar as rainwater is concerned.

Art. 675

The owner of a tenement or a piece of land, subject to the easement of receiving water falling from roofs, may build in such manner as to receive water upon his own roof or give it another outlet in accordance with local ordinances or customs, and in such a way as not to cause any nuisance or damage whatever to the dominant estate.

The owner must either allow the rain to fall upon his own roof or collect it (i.e., an outlet). The goal is to avoid the water from causing nuisance or damage to the dominant estate.

Art. 676

Whenever the yard or court of a house is surrounded by other houses, and it is not possible to give an outlet through the house itself to the rain water collected thereon, the establishment of an easement of drainage can be demanded, giving an outlet to the water at the point of the contiguous lands or tenements where its egress may be easiest, and establishing a conduit for the drainage in such manner as to cause the least damage to the servient estate, after payment of the proper indemnity.

Outlet of rainwater through surrounding houses – This is similar to the compulsory easement of right of way.

Conditions:

1. Because of enclosure, there is *no* adequate outlet for the rainwater
2. The outlet must be at the point of easiest egress
3. Least possible damage
4. Payment of proper indemnity

Intermediate distances and works for certain constructions and plantings

Art. 677

No constructions can be built or plantings made near fortified places or fortresses without compliance with the conditions required in special laws, ordinances, and regulations relating thereto.

Art. 678

No person shall build any aqueduct, well, sewer, furnace, forge, chimney, stable, depository of corrosive substances, machinery, or factory which by reason of its nature or products is dangerous or noxious, without observing the distances prescribed by the regulations and customs of the place, and without making the necessary protective works, subject, in regard to the manner thereof, to the conditions prescribed by such regulations. These prohibitions cannot be altered or renounced by stipulation on the part of the adjoining proprietors.

In the absence of regulations, such precautions shall be taken as may be considered necessary, in order to avoid any damage to the neighboring lands or tenements.

The constructions mentioned must follow the distances prescribed by regulations *and* customs, if any.

- No waiver allowed, for reasons of public safety.
- Violators will be liable for damages.

Art. 679

No trees shall be planted near a tenement or piece of land belonging to another except at a distance authorized by the ordinances or customs of the place, and, in the absence thereof, at a distance of at least two meters from the dividing line of the estates if tall trees are planted and at a meter of at least fifty centimeters if shrubs or small trees are planted.

Every landowner shall have the right to demand that trees hereafter planted at a shorter distance from his land or tenement be uprooted.

The provisions of this article also apply to trees which have grown spontaneously.

Distances (from boundary line to center of tree):

1. 2 meters → tall trees
2. 50 cm. → small trees or shrubs

If violated → demand uprooting of the tree or shrub

Art. 680

If the branches of any tree should extend over a neighboring estate, tenement, garden or yard, the owner of the latter shall have the right to demand that they be cut off insofar as they may spread over his property, and, if it be the roots of a neighboring tree which should penetrate into the land of another, the latter may cut them off himself within his property.

Rules regarding intrusions of trees:

1. Branches – adjacent owner has the right to *demand* that they be cut off
2. Roots – adjacent owner may cut them off himself

This also implies that the owner of the three can cut down the tree himself, if the tree invades the adjacent owner.

Art. 681

Fruits naturally falling upon adjacent land belong to the owner of said land.

Rules as to fruits:
1. Hanging fruits → owned by the tree owner
2. Naturally fallen fruits → owned by the owner of the invaded land

Reason: To avoid disputes and arguments between the neighbors.

Easements against nuisance

Art. 682

Every building or piece of land is subject to the easement which prohibits the proprietor or possessor from committing nuisance through noise, jarring, offensive odor, smoke, heat, dust, water, glare and other causes.

Art. 683

Subject to zoning, health, police and other laws and regulations, factories and shops may be maintained provided the least possible annoyance is caused to the neighborhood.

Nuisance – That which annoys or offends the senses and it should therefore be prohibited.

Who is servient in an easement against nuisance?
- The proprietor or possessor of the building who commits the nuisance.

Who is the dominant?
- The general public, or anybody injured by the nuisance.

Alolino v. Flores, G.R. No. 198774, April 4, 2016

Every building is subject to the easement which prohibits the proprietor or possessor from committing nuisance.
- A *barrio* road is designated for the use of the general public who are entitled to free and unobstructed passage thereon. Permanent obstructions on these roads, such as the respondents' illegally constructed house, are injurious to public welfare and convenience.
- The occupation and use of private individuals of public places devoted to public use constitute public and private nuisances and nuisance per se.

Lateral and subjacent support

Art. 684

No proprietor shall make such excavations upon his land as to deprive any adjacent land or building of lateral or subjacent support.

Lateral vs. subjacent
- Lateral – A person cannot dig on his own land if it will cause adjacent buildings to collapse.
  - Supported land is on the same plane.
- Subjacent – A person cannot dig a tunnel that would undermine an adjacent property.
  - Supported land is above.

Remedies: Injunction, or damages.

Castro v. Monsod, G.R. No. 183719, February 2, 2011

An owner, by virtue of his surface right, may make excavations on his land, but his right is subject to the limitation that he shall not deprive any adjacent land or building of sufficient lateral or subjacent support.
- Between two adjacent landowners, each has an absolute property right to have his land laterally supported by the soil of his neighbor, and if either, in excavating on his own premises, he so disturbs the lateral support of his neighbor's land as to cause it, or, in its natural state, by the pressure of its own weight, to fall away or slide from its position, the one so excavating is liable.

Art. 685

Any stipulation or testamentary provision allowing excavations that cause danger to an adjacent land or building shall be void.

Because a person is protected even against his own folly, in the interest of public safety.

Art. 686

The legal easement of lateral and subjacent support is not only for buildings standing at the time the excavations are made but also for constructions that may be erected.

One is expected under this article to be prophetic since support must also be for future constructions.

Art. 687

Any proprietor intending to make any excavation contemplated in the three preceding articles shall notify all owners of adjacent lands.

Notification requirements:

- Notice is not required *if there is actual knowledge of the excavation*.
- Even if there be notice, the excavation should not deprive the other owners of lateral or subjacent support.
- Notice is required to enable adjoining owners to take proper precautions.

Chapter 3
Voluntary Easements

Art. 688

Every owner of a tenement or piece of land may establish thereon easements which he may deem suitable, and in the manner and form which he may deem best, provided he does not contravene the laws, public policy or public order.

Kinds of voluntary easements:

1. Predial (for the benefit of an estate)
2. Personal

Who may establish?

- The owner only.

In re Trias v. Araneta, G.R. No. L-20786, October 30, 1965

The limitation (a voluntary easement) is essentially a contractual obligation which the seller imposed, and the buyer agreed to accept.

- Under art. 688, the owner of a piece of land may establish thereon the easements which he may deem suitable, provided he does not contravene the law, public policy or public order.

Unisource v. Chung, G.R. No. 173252, July 17, 2009

The opening of an adequate outlet to a highway can extinguish only legal or compulsory easements, not voluntary easements.

- A voluntary easement of right of way, like any other contract, could be extinguished only by mutual agreement or by renunciation of the owner of the dominant estate.

La Vista Association Inc. v. CA, G.R. No. 95252, September 5, 1997

A voluntary easement of right-of-way is like any other contract, which could be extinguished only by mutual agreement or by renunciation of the owner of the dominant estate.

- Resultantly, when the court says that an easement exists, it is not creating one.

Sps. Salimbangon v. Sps. Tan, G.R. No. 185240, January 20, 2010

A voluntary easement of right of way is extinguished when the owners of the dominant and servient estate are merged.

Usufruct

Art. 689

The owner of a tenement or piece of land, the usufruct of which belongs to another, may impose thereon, without the consent of the usufructuary, any servitudes which will not injure the right of the usufruct.

Right of naked owner (NO)

- In any case, the NO must respect the rights of the usufructuary.

Trust relation

Art. 690

Whenever the naked ownership of a tenement or piece of land belongs to one

person and the beneficial ownership to another, no perpetual voluntary easement may be established thereon without the consent of both owners.

Rules when usufruct exists

1. The BO may create a temporary easement compatible with the extent of his beneficial dominion
2. If the easement is perpetual (e.g., ROW), both the NO and BO must consent.

Co-ownership

Art. 691

In order to impose an easement of an undivided tenement, or piece of land,the consent of all the co-owners shall be required.

The consent given by some only, must be held in abeyance until the last one of all the co-owners shall have expressed his conformity.

But the consent given by one of the co-owners separately from the others shall bind the grantor and his successors not to prevent the exercise of the right granted.

Easements created by a co-owner

- Unanimous consent required (because it is an act of ownership)

Art. 692

The title and, in a proper case, the possession of an easement acquired by prescription shall determine the rights of the dominant estate and the obligations of the servient estate. In default thereof, the easement shall be governed by such provisions of this Title as are applicable thereto.

Rules to govern voluntary easements:

1. If by title → Title governs
2. If by prescription → The form and manner in which it had been acquired
3. If by prescription *in a proper case* → The manner and form of possession

Sps. Mercader v. Sps. Bardilas, G.R. No. 163157, June 27, 2016

The owners of the servient estate retain ownership of the voluntary road right of way, even though it is for the benefit of another.

- Thus, as the owners of the road in dispute, the servient estate owner may rightfully compel the owner of the dominant estate to pay them the value of the land.

Art. 693

If the owner of the servient estate should have bound himself, upon the establishment of the easement, to bear the cost of the work required for the use and preservation thereof, he may free himself from this obligation by renouncing his property to the owner of the dominant estate.

Situation: Servient estate bound himself to pay for the maintenance of the easement

What if he no longer wants to pay?

- He must renounce his property to the dominant estate owner.
  - If the servitude is upon the whole estate → whole property must be renounced
  - If the servitude affects only a part of the estate → only that affected may be renounced

TITLE VIII
Nuisance

Art. 694

A nuisance is any act, omission, establishment, business, condition of property, or anything else which:

(1) Injures or endangers the health or safety of others; or
(2) Annoys or offends the senses; or
(3) Shocks, defies or disregards decency or morality; or
(4) Obstructs or interferes with the free passage of any public highway or street, or any body of water; or
(5) Hinders or impairs the use of property.

Aspects of nuisance:

1. Harm cause
2. That which causes the harm
3. Both

Some examples:

1. Injures or endangers the health of safety of others
    a. Buildings in danger of falling
    b. Fireworks/explosives factory
2. Annoys or offends the senses
    a. Too much horn blowing
3. Shocks, defies or disregards decency/morality
    a. Burlesque performance
    b. Public exhibition of a naked person
    c. A house of prostitution
4. Obstructs or interferes with the free passage of any public highway or street or any body of water
    a. Houses constructed on public streets
    b. Market stalls constructed on a plaza
5. Hinders of impairs the use of property
    a. Illegal constructions on another's land

Velasco v. MERALCO, G.R. No. L-18390, August 6, 1971

The general rule is that everyone is bound to bear the habitual or customary inconveniences that result from the proximity of others, and so long as this level is not surpassed, he may not complain against them. But if the prejudice exceeds the inconveniences that such proximity habitually brings, the neighbor who causes such disturbance is held responsible for the resulting damage, being guilty of causing nuisance.

- In the absence of statute, noise becomes actionable only when it passes the limits of reasonable adjustment to the conditions of the locality and of the needs of the maker to the needs of the listener.

Art. 695

Nuisance is either public or private. A public nuisance affects a community or neighborhood or any considerable number of persons, although the extent of the annoyance, danger or damage upon individuals may be unequal. A private nuisance is one that is not included in the foregoing definition.

Classifications of nuisances

1. Old classification
    a. Nuisance *per se* – Always a nuisance
    b. Nuisance *per accidens* – A nuisance only because of the location or other circumstances
2. According to relief
    a. Actionable
    b. Non-actionable
3. According to manner of relief
    a. Abatable by criminal *and* civil actions
    b. Abatable by civil actions *only*
    c. Abatable judicially
    d. Abatable extrajudicially
4. According to the Civil Code
    a. Public (common) (*see* definition above [art. 695])
    b. Private

North Greenhills Assn. Inc. v. Morales, G.R. No. 222821, August 9, 2017

Nuisance *per accidens* – One which depends upon certain conditions and circumstances, and its existence being a question of fact, it cannot be abated without due hearing thereon in a tribunal authorized to decide whether such a thing does in law constitute a nuisance.

- It requires a proper appreciation of evidence before a court or tribunal rules that the property being maintained is a nuisance *per accidens*.

Doctrine of attractive nuisance

- It is a dangerous instrumentality or appliance which is likely to attract children at play.
- Thus, one who maintains on his estate or premises an attractive nuisance without exercising due care to prevent children from playing therewith or resorting thereto, is LIABLE to a child of tender years who is injured thereby, even if the child is technically a trespasser in the premises.

Doctrine of attractive nuisance

Hidalgo Enterprises v. Balandan, G.R. No. L-3422, June 13, 1952

Doctrine of attractive nuisance – One who maintains on his premises dangerous instrumentalities or appliances of a character likely to attract children in play, and who fails to exercise ordinary care to prevent children from playing therewith or resorting thereto, is liable to a child of tender years who is injured thereby, even if the child is technically a trespasser in the premises.

The attractive nuisance doctrine generally is *not applicable* to bodies of water, artificial as well as natural, in the absence of some unusual condition or artificial feature other than the mere water and its location.

Art. 696

Every successive owner or possessor of property who fails or refuses to abate a nuisance in that property started by a former owner or possessor is liable therefor in the same manner as the one who created it.

Successors-in-interest are liable

- The successor, to be held liable, must *knowingly fail or refuse to abate the nuisance*.
  - Owner *or* possessor

Art. 697

The abatement of a nuisance does not preclude the right of any person injured to recover damages for its past existence.

The plaintiff may recover *both* damages and abatement.

Art. 698

Lapse of time cannot legalize any nuisance, whether public or private.

Extinctive prescription

- An action to abate a public or private nuisance is imprescriptible.

Art. 699

The remedies against a public nuisance are:

(1) A prosecution under the Penal Code or any local ordinance; or
(2) A civil action; or
(3) Abatement, without judicial proceedings.

Art. 700

The district health officer shall take care that one or all of the remedies against a public nuisance are availed of.

What if there is no consultation?

- The person doing the abating is not necessarily liable. They would be liable for damages (*see* art. 707) only if the abatement is carried out with unnecessary injury, or if the alleged nuisance is later declared by the courts to be not a real nuisance.

Art. 701

If a civil action is brought by reason of the maintenance of a public nuisance, such action shall be commenced by the city or municipal mayor.

The mayor is the plaintiff.

Art. 702

The district health officer shall determine whether or not abatement, without judicial proceedings, is the best remedy against a public nuisance.

Cruz v. Pandacan Hiker's Club, G.R. No. 188213, January 11, 2016

Article 702 does not mention that the chief executive of the local government, like the Punong Barangay, is authorized as the official who can determine the propriety of a summary abatement.

- Hence, a Punong Barangay who destroys a basketball ring (a nuisance *per accidens*) summarily may be held administratively liable.

Art. 703

A private person may file an action on account of a public nuisance, if it is specially injurious to himself.

Private person suing

1. Ordinarily, the mayor must sue to abate.
2. But if the nuisance is specially injurious to a private person, then he may sue.

Remedy
- Injunction
- Abatement
- Damages

Art. 704

Any private person may abate a public nuisance which is specially injurious to him by removing, or if necessary, by destroying the thing which constitutes the same, without committing a breach of the peace, or doing unnecessary injury. But it is necessary:

(1) That demand be first made upon the owner or possessor of the property to abate the nuisance;
(2) That such demand has been rejected;
(3) That the abatement be approved by the district health officer and executed with the assistance of the local police; and
(4) That the value of the destruction does not exceed three thousand pesos.

Art. 705

The remedies against a private nuisance are:

(1) A civil action; or
(2) Abatement, without judicial proceedings.

While criminal prosecution is not mentioned, it goes without saying that if indeed a crime has been committed, criminal prosecution can proceed.

Art. 706

Any person injured by a private nuisance may abate it by removing, or if necessary by destroying the thing which constitutes the nuisance, without committing a breach of the peace or doing unnecessary injury. However, it is indispensable that the procedure for extrajudicial abatement of a public nuisance by a private person be followed.

Art. 707

A private person or a public official extrajudicially abating a nuisance shall be liable for damages:

(1) If he causes unnecessary injury; or
(2) If an alleged nuisance is later declared by the courts to be not a real nuisance.

The person liable may be:
1. Private person
2. Public official

TITLE IX
Registry of Property

Art. 708

The Registry of Property has for its object the inscription or annotation of acts and contracts relating to the ownership and other rights over immovable property.

Register – May refer to:
a. Act of recording/annotating
b. Book of registry
c. Office concerned
d. Official concerned

Three systems of registration:
1. Land Registration Act (Torrens system)
    a. Acts concerning lands covered by a Torrens title
2. Spanish Mortgage Law
    a. Those concerning lands covered by the said law
3. Under § 194, RAC, as amended by Act No. 3344
    a. Those concerning lands *not* covered by a Torrens title nor registered under the Spanish Mortgage Law

Purposes of registration and publicity
a. Give true notice of the true status of real property and real rights thereto;
b. Prejudice third persons (unless they have actual knowledge of the transaction concerned)

c. Record acts/contracts
d. Prevent commission of frauds

Art. 709

The titles of ownership, or other rights over immovable property, which are not duly inscribed or annotated in the Registry of Property shall not prejudice third persons.

Who are third persons?
- Those who did not participate in the act, contract or deed registered
- Those who not having participated in said act, contract or deed base their right on the title that has been registered
- Those who have *no* actual knowledge of the act, contract or deed, for the purpose of registration is served when there is actual knowledge or notice

Art. 710

The books in the Registry of Property shall be public for those who have a known interest in ascertaining the status of the immovables or real rights annotated or inscribed therein.

"Public" – A comprehensive, all-inclusive term, and properly construed, may embrace every person as long as it is clear that the purpose of the examination is *not* unlawful or arises from sheer, idle curiosity.

Art. 711

For determining what titles are subject to inscription or annotation, as well as the form, effects, and cancellation of inscriptions and annotations, the manner of keeping the books in the Registry, and the value of the entries contained in said books, the provisions of the Mortgage Law, the Land Registration Act, and other special laws shall govern.

Special laws include § 194, RAC, as amended by Act No. 3344.

BOOK III

Different Modes of Acquiring Ownership

Art. 712

Ownership is acquired by occupation and by intellectual creation.

Ownership and other real rights over property are acquired and transmitted by law, by donation, by testate and intestate succession, and in consequence of certain contracts, by tradition.

They may also be acquired by means of prescription.

Modes of acquiring ownership:

Original
1. Occupation
2. (Intellectual) creation or work

Derivative
1. Succession
2. Donation
3. Prescription
4. Law
5. Tradition *as a consequence of certain contracts*

Mode – The process of acquiring or transferring ownership.
Title – That which is not ordinarily sufficient to convey ownership, but which gives it a juridical justification for a mode.

TITLE I
Occupation

Art. 713

Things appropriable by nature which are without an owner, such as animals that are the object of hunting and fishing, hidden treasure and abandoned movables, are acquired by prescription.

Occupation – The seizure of corporeal things that have no owner, made with the intention of acquiring them, and accomplished according to legal rules.

Essential requisites for occupation ♥

1. There must be a seizure or apprehension
2. The property seized must be corporeal personal property
3. The property seized must be susceptible of appropriation (either abandoned property or unowned property)
4. There must be intent to appropriate
5. The requisites/conditions of the law must be complied with

Art. 714

The ownership of a piece of land cannot be acquired by occupation.

Rationale: When the land is without an owner, it pertains to the State.

Occupation	Prescription
1. Original mode – no owner 2. Shorter period of possession	1. Derivative mode – somebody else was owner 2. Generally, longer period of possession

Art. 715

The right to hunt and to fish is regulated by special laws.

Art. 716

The owner of a swarm of bees shall have a right to pursue them to another's land, indemnifying the possessor of the latter for the damage. If the owner has not pursued the swarm, or ceases to do so within two consecutive days, the possessor of the land may occupy or retain the same. The owner of domesticated animals may also claim them within twenty days to be counted from their occupation by another person. This period having expired, they shall pertain to him who has caught and kept them.

Kinds of animals:

1. Wild
2. Domesticated or tamed – Once they were wild (art. 716)
    a. Can be acquired by occupation (20 days), unless a claim has been made for them.
3. Domestic or tame – Reared under man's control
    a. Cannot be acquired by occupation, unless there is abandonment.

Art. 717

Pigeons and fish which from their respective breeding places pass to another pertaining to a different owner shall belong to the latter, provided they have not been enticed by some artifice or fraud.

Art. 718

He who by chance discovers hidden treasure in another's property shall have the right granted him in Article 438 of this Code.

Art. 719

Whoever finds a movable, which is not treasure, must return it to its previous possessor. If the latter is unknown, the finder shall immediately deposit it with the mayor of the city or municipality where the finding has taken place.

The finding shall be publicly announced by the mayor for two consecutive weeks in the way he deems best.

If the movable cannot be kept without deterioration, or without expense which considerably diminish its value, it shall be sold at public auction eight days after the publication.

Six months from the publication having elapsed without the owner having appeared, the thing found, or its value, shall be awarded to the finder. The finder and the owner shall be obliged, as the case may be, to reimburse the expenses.

Thus, one who finds lost property is *guilty of theft* if he does not give it to the owner/authorities concerned, whether he knows who the owner is.

Rationale: Lost property is not abandoned property. In loss, there is *no* renunciation of ownership, while in abandonment, there is renunciation and the object becomes *res nullius*.

Art. 720

If the owner should appear, in time, he shall be obliged to pay, as a reward to the finder, one-tenth of the sum or price of the thing found.

TITLE III
Donation

Chapter 1
Nature of Donations

Art. 725 ⭐

Donation is an act of liberality whereby a person disposes of a thing or right in favor of another, who accepts it.

Donation is both an *act* and a *contract*.
- It is a contract because its cause is liberality (gratuitous contract).

Essential characteristics of true donations (inter vivos)
1. Consent, subject matter and cause [contract]
2. Necessary form
3. Consent or acceptance by donee during donor's lifetime
4. Irrevocability
5. Intent to benefit the donee (*animus donandi*)
6. Resultant decrease in the assets of the donor

Acceptance by the donee is required because no one can be compelled to accept the generosity of another.

Cardinez v. Sps. Cardinez, G.R. No. 213001, August 4, 2021

An agreement between the donor and the donee is essential like in any other contract.

Consent, to be valid, must have the following requisites:
1. Intelligent or with an exact notion of the matter to which it refers;
2. Free; and
3. Spontaneous.

Lacking consent, the donation is an absolute nullity. Thus, the action to declare its nullity is imprescriptible (art. 1410).

Aldaba v. CA, G.R. No. L-21676, February 28, 1969

Mere intention to donate (*animus donendi*) is insufficient to dispose of a property.

Jutic v. CA, G.R. No. L-44628, August 27, 1987

Hence, a mere intention or desire on the part of the purported donee that in the event of his death his properties should go to the purported donors do not have any effect.

Art. 726

When a person gives to another a thing or right on account of the latter's merits or of the services rendered by him to the donor, provided they do not constitute a demandable debt, or when the gift imposes upon the donee a burden which is less than the value of the thing given, there is also a donation.

Classification of donations

From the viewpoint of motive:
1. Simple – The cause is pure liberality
2. Remuneratory of the *first kind* – To reward past services
3. Remuneratory of the *second kind* – To reward future services or because of certain future charges or burdens, when the value of said services is *less* than the value of the donation
4. Onerous – There are burdens, charges or future service equal in value to that of the thing donated

From the viewpoint of time of taking effect
1. Inter vivos
2. In praesenti to be delivered in futuro
3. Mortis causa

From the viewpoint of occasion:
1. Ordinary
2. Donation propter nuptias

From the viewpoint of object donated:
1. Corporeal property
2. Incorporeal property

Gestopa v. CA, G.R. No. 111904, October 5, 2000

Marks of a donation *inter vivos:*

1. The property was donated out of love and affection for the donee
2. The reservation of the lifetime usufruct by the donor (this shows that the naked title has been donated to the donee)
3. The donor reserve sufficient properties for his maintenance
4. The donee accepted the donation

Del Rosario v. Ferrer, G.R. No. 187056, September 20, 2010

In case of doubt, the conveyance should be deemed a donation inter vivos rather than mortis causa, in order to avoid uncertainty as to the ownership of the property subject of the deed.

Features of a donation *inter vivos:*

1. Irrevocability of the donation (because a donation *mortis causa* is revocable at will during the donor's lifetime)
2. A reservation or *reddendum* by the donor of the "right, ownership, possessio, and administration of the property." This simply means that the donors parted with their naked title, maintaining only beneficial ownership of the donated property while they lived.
3. An acceptance clause, and acceptance thereof by the donee.

Villanueva v. Branoco, G.R. No. 172804, January 24, 2011

A mark of a donation *inter vivos* is irrevocability, such as a nonreversion clause (*e.g.,* if therein Donee predeceases me, the Property will not be reverted to the Donor).

Art. 727

Illegal or impossible conditions in simple and remuneratory donations shall be considered as not imposed.

Only the illegal/impossible conditions are disregarded. The donation itself remains valid.

This is different from art. 1183, whereby illegal or impossible conditions render the obligation void.

- Onerous donations are, of course, governed by art. 1183.

Calanasan v. Sps. Dolorito, G.R. No. 171937, November 25, 2013

Donations with an onerous cause are governed not by the law on donations but by the rules on contracts. As an endowment for a valuable consideration, it partakes of the nature of an ordinary contract.

Classification of donations:

1. Pure or simple donation – Truest form of donation as it is based on pure gratuity.
2. Remuneratory or compensatory – Has for its purpose the rewarding of the donee for past services, which services do not amount to a demandable debt
3. Conditional or modal – A consideration for future services. It also occurs where the donor imposes certain conditions, limitations or charges upon the donee, whose value is inferior to the donation given.
4. Onerous – Imposes upon the donee a reciprocal obligation; this is made for a valuable consideration whose cost is equal to or more than the thing donated.

Lagazo v. CA, G.R. No. 112796, March 5, 1998

A *simple or pure donation* is one whose cause is pure liberality (no strings attached), while an *onerous donation* is one which is subject to burdens, charges or future services equal to or more in value than the thing donated.

- Donations with an onerous cause shall be governed by the rules on contracts; hence, the formalities required for a valid simple donation are *not* applicable.

Donations mortis causa

Art. 728

Donations which are to take effect upon the death of the donor partake of the nature of testamentary provisions, and shall be governed by the rules established in the Title on Succession.

Art. 729

When the donor intends that the donation shall take effect during the lifetime of the donor, though the property shall not be delivered till after the donor's death, this shall be a donation *inter vivos*. The fruits of the property from the time of the acceptance of the donation, shall pertain to the donee, unless the donor provides otherwise.

Distinctions as to form and effect:

1. Inter vivos
    a. Takes effect during the lifetime of the donor

   b. Must follow the formalities of donations
   c. Cannot be revoked, except for grounds provided for by law
   d. In case of impairment of the legitime, donations inter vivos are preferred to donations mortis causa
   e. The right of disposition is completely transferred to the donee
   f. Acceptance by donee must be during lifetime of donor
2. Mortis causa
   a. Takes effect after the death of donor
   b. Must follow the formalities of wills or codicils (holographic or notarial)
   c. Can be revoked at any time and for any reason while the donor is still alive
   d. In case the legitime is impaired, donations mortis causa are reduced ahead of donations inter vivos
   e. The right of disposition is *not* transferred to the donee while the donor is still alive
   f. Acceptance by donee mortis causa can only be done after the donor's death. Any prior acceptance is immaterial/void.

Donation in praesenti to be delivered in futuro – The one referred to in art. 729, and treated as a donation inter vivos.

- Example: A donated a parcel of land to B on Dec. 18, 2003, which B accepted on even date. The donation however provided that: I hereby donate to you now my land. But while I am still alive, I will remain in its possession. The property will be delivered to you only upon my death.

Features of a donation mortis causa/inter vivos

Heirs of Bonsato v. CA, G.R. No. L-6600, July 30, 1954

Donations *mortis causa* are preserved in the Code as a fossilized body is preserved in a museum display case. The assimilation between donations causa mortis and transfers by will is complete (*Scaevola*).

Puig v. Peñaflorida, G.R. No. L-15939, January 31, 1966

A clause that the donor reserved her right to mortgage/sell the property is *incompatible* with the grantor's freedom to revoke a donation *mortis causa*.

- Hence, it is a feature of a donation *inter vivos*.

Sicad v. CA, G.R. No. 125888, August 13, 1998

A donation which purports to be one *inter vivos* but withholds from the donee the right to dispose of the donated property during the donor's lifetime is in truth one *mortis causa*.

- In a donation *mortis causa*, the right of disposition is not transferred to the donee while the donor is still alive.

Maglasang v. Heirs of Cabatingan, G.R. No. 131953, June 5, 2002 ♥

In determining whether a donation is one of mortis causa, the following characteristics must be taken into account:

1. It conveys no title or ownership to the transferee before the death of the transferor; or what amounts to the same thing, that the transferor should retain the ownership (full or naked) and control of the property while alive;
2. That before his death, the transfer should be revocable by the transferor at will, *ad nutum*; but revocability may be provided for indirectly by means of a reserved power in the donor to dispose of the properties conveyed;
3. That the transfer should be void if the transferor should survive the transferee.

Art. 730

The fixing of an event or the imposition of a suspensive condition, which may take place beyond the natural expectation of life of the donor, does not destroy the nature of the act as a donation *inter vivos*, unless a contrary intention appears.

Suspensive condition which may be fulfilled beyond the lifetime of the donor

- Example: A donated to B a piece of land, on condition that X, A's son, would become a lawyer. This condition may take place beyond the lifetime of A, although A may have desired to see the condition fulfilled while he is still alive.
  - But the donation is nevertheless a donation inter vivos, unless a contrary intention appears.
  - Hence, a public instrument, not a will, would be needed.

Art. 731

When a person donates something, subject to the resolutory condition of the donor's survival, there is a donation *inter vivos*.

Donation subject to the resolutory condition of the donor's survival

- Example: A was about to undergo an operation. He donated to B a

parcel of land, subject to the condition that if A survives the operation, B's ownership over the land would terminate, and the same would revert to A.
    - This is a donation inter vivos.

Art. 732

Donations which are to take effect *inter vivos* shall be governed by the general provisions on contracts and obligations in all that is not determined in this Title.

Suppletory effect of rules on contract
- Oblicon has suppletory effect to the provisions of this title on ordinary donations.
- After all, a donations is really a gratuitous contract.

Art. 733

Donations with an onerous cause shall be governed by the rules on contracts and remuneratory donations by the provisions of the present Title as regards that portion which exceeds the value of the burden imposed.

See art. 726.

Art. 734

The donation is perfected from the moment the donor knows of the acceptance by the donee.

Perfection of donation – The donation is perfected, not from the time of acceptance but from the time of knowledge by the donor that the donee has acceptance. The knowledge can be actual or constructive.
- Thus, prior to learning of the acceptance, there is as yet no perfected donation (*no* donation at all), hence, the donor may give the property to somebody else, for he has not really parted with the disposition of the property.

Acceptance – Must be made during the lifetime of the donor and of the donee.

Chapter 2
Persons Who May Give or Receive a Donation

Art. 735

All persons who may contract and dispose of their property may make a donation.

It is not enough that a person be capacitated to contract–he must also have capacity to dispose.

Status of a donation made by an incapacitated person – voidable (as in contract law).

Donation by a corporation – A corporation, by virtue of its implied powers, may grant gratuities/donations.

Art. 736

Guardians and trustees cannot donate the property entrusted to them.

Because the guardians and trustees are not the owners of those properties.

Same case for guardian-ward, unless the ward consents and with the court's permission.

Art. 737

The donor's capacity shall be determined as of the time of the making of the donation.

"Making" – Perfection of the donation.
- In other words: At the time the donation is perfected, both the donor and donee must be capacitated.

Art. 738

All those who are not specially disqualified by law therefor may accept donations.

Specially disqualified by law – Such as art. 739, or between spouses with respect to immoderate donations from each other.

Natural and juridical persons can become a donee!

Art. 739

The following donations shall be void:

(1) Those made between persons who were guilty of adultery or concubinage at the time of the donation;
(2) Those made between persons found guilty of the same criminal offense, in consideration thereof;
(3) Those made to a public officer or his wife, descendants and ascendants, by reason of his office.

In the case referred to in No. 1, the action for declaration of nullity may be brought by the spouse of the donor or donee; and the guilt of the donor and donee may be proved by preponderance of evidence in the same action.

Rationale: These donations are void because of moral considerations.

First: Between persons guilty of adultery or concubinage – The adultery/concubinage need not be proved in a criminal action.

- It may be proved in the action to nullify the donation and the guilt be proved by preponderance of evidence.
- If the donation took place after the commission of adultery or concubinage, the donation is considered valid except if the consideration thereof is the commission of the act.

Second: Those made between persons found guilty of the same criminal offense – It is imperative here that the parties be convicted, criminally.

- It doesn't matter whether the donation was made before or after the commission of the offense. The fact remains that the consideration is void.

Third: Those made to a public officer or his SAD by reason of his office – Basically, to prevent bribery.

- This provision does *not* prevent the public officer from becoming a donor.

Art. 740

Incapacity to succeed by will shall be applicable to donations *inter vivos*.

Who are incapacitated to inherit

1. Absolute incapacity – Where in *no* case can there be a transmission of inheritance
2. Relative incapacity – Where under certain conditions, a particular person cannot inherit from a particular decedent

Art. 740 speaks of donations void by reason of the unworthiness of the donee. The incapacity applies to those mentioned under arts. 1032 and 1027.

See arts. 1027, 1028 in relation to 739 and 1032.

Art. 741

Minors and others who cannot enter into a contract may become donees but acceptance shall be done through their parents or legal representatives.

Minors may be donees.

Can they accept by themselves?

- It depends:
  a. If the donation is simple – yes, except when a written acceptance is required.
  b. If the donation is onerous/conditional – no, because a burden is imposed on the child. But if the child accepts, it's voidable.

Art. 742

Donations made to conceived and unborn children may be accepted by those persons who would legally represent them if they were already born.

Applicable to both simple and onerous donations.

Requisites for application:

1. The child be born alive later, if it had a normal intrauterine life; or

2. The child, after being born alive, should live for at least 24 hours , if it had an intrauterine life of less than 7 months.

Art. 743

Donations made to incapacitated persons shall be void, though simulated under the guise of another contract or through a person who is interposed.

Example: A and B were paramours convicted of adultery. A donated to X, a mutual friend. Then, through a previous understanding, X donated to B. The donations are void because the purpose of the law is frustrated.

Double donations

Art. 744

Donations of the same thing to two or more different donees shall be governed by the provisions concerning the sale of the same thing to two or more different persons.

Cross-reference to art. 1544:

If the same thing should have been sold to different vendees, the ownership shall be transferred to the person who may have first taken possession thereof in good faith, if it should be movable property.

Should it be immovable property, the ownership shall belong to the person acquiring it who in good faith first recorded it in the Registry of Property.

Should there be no inscription, the ownership shall pertain to the person who in good faith was first in the possession; and, in the absence thereof, to the person who presents the oldest title, provided there is good faith.

Cagaoan v. Cagaoan, G.R. No. 17900, June 21, 1922

1. Under art. 1544, the property goes to the vendee who first records his title in the registry or property.
2. If the sale is not recorded by either vendee, the property goes to the one who first takes possession of it in good faith.
3. In the absence of both record and possession, to the one who presents the oldest title, provided there is good faith.

Art. 745

The donee must accept the donation personally, or through an authorized person with a special power for the purpose, or with a general and sufficient power; otherwise, the donation shall be void.

The formalities for acceptance–if any–must also be present for the donation to be valid.

Two authorized persons:
1. One with a special power
2. One with a general and sufficient power

Of course, the donee may accept personally.

In any case, the authorization should be in a public instrument (art. 1358). An SPA is required when an inheritance is to be accepted (art. 1878 [13]).

Paras: art. 745 may also be applicable to the giving.

Art. 746

Acceptance must be made during the lifetime of the donor and the donee.

Reason: The donation is personal between the donor and the donee.

Knowledge of acceptance must reach the donor while he's still alive.

As compared to donations mortis causa – The acceptance of the donee must be made only after the donor's death.

Art. 747

Persons who accept donations in representation of others who may not do so by themselves, shall be obliged to make the representation of others who may not do so by themselves, shall be obliged to make the notification and notation of which Article 749 speaks.

Art. 748 ⭐

The donation of a movable may be made orally or in writing.

An oral donation requires the simultaneous delivery of the thing or the document representing the right donated.

If the value of the personal property exceeds five thousand pesos, the donation and the acceptance shall be made in writing. Otherwise, the donation shall be void.

Lopez v. Saludo, G.R. No. 233775, September 15, 2021

The donation of money as well as its acceptance should be in writing. Otherwise, the donation is invalid for noncompliance with the formal requisites prescribed by law.

- This is because the money involved in this case exceeds P5,000.

Art. 749 ⭐

In order that the donation of an immovable may be valid, it must be made in a public document, specifying therein the property donated and the value of the charges which the donee must satisfy.

The acceptance may be made in the same deed of donation or in a separate public document, but it shall not take effect unless it is done during the lifetime of the donor.

If the acceptance is made in a separate instrument, the donor shall be notified thereof in an authentic form, and this step shall be noted in both instruments.

Formalities for donations of real property

If the deed of donation and acceptance are in the same instrument:

1. The instrument must be a public document
2. The document must specify the property donated and the charges (if any)

If the deed of donation and acceptance are in different instruments:

1. The donation must be in a public instrument or document
2. The document must specify the property donated and the charges (if any)
3. The acceptance in a separate instrument must be in a public instrument
4. The donor shall be notified in authentic form of the fact that acceptance is being made or has been made in a separate public instrument
5. The fact that there has been a notification must be noted in both instruments

What are charges?

- Conditions or burdens imposed, if any (but must not be equal in value to the realty donated)
- Encumbrances on the property, such as lease, usufruct or mortgage

Abellana v. Ponce, G.R. No. 160488, September 3, 2004

An oral donation of an immovable property is void. Hence, an action to declare its nullity is imprescriptible.

Sy v. Sps. Antonio, G.R. No. 230120, July 5, 2021

Elements of a valid donation of an immovable property:

1. The essential reduction of the patrimony of the donor
2. The increase in the patrimony of the donee
3. The intent to do an act of liberality or *animus donandi*
4. The donation must be contained in a public document
5. The acceptance thereof be made in the same deed or in a separate public instrument
    a. If acceptance is made in a separate instrument, the donor must be notified thereof in an authentic form, to be noted in both instruments.

The lack of acceptance by the donee makes the donation void.

Chapter 3
Effects of Donations and Limitations Thereon

Inofficious donation

Art. 750

The donation may comprehend all the present property of the donor, or part thereof, provided he reserves, in full ownership or in usufruct, sufficient means for the support of himself, and of all relatives who, at the time of the acceptance of the donations, are by law entitled to be supported by the donor. Without such reservation, the donation shall be reduced on petition of any person affected.

Rationale: The claims of the donor's own family should not be disregarded.

What is the status of the donation?
- Valid, but reducible to the extent support of the relatives is impaired. The party prejudiced can ask the court for reduction.

Donations *not* covered:
1. Onerous donations
2. Donations mortis causa
3. Donations propter nuptias

What is "present property?"
- Something that the donor can dispose of at the time of the donation.

Art. 751

Donations cannot comprehend future property.

By future property is understood anything which the donor cannot dispose of at the time of the donation.

Future property – Anything which the donor *cannot* dispose of at the time of the donation.
- Future inheritance – *cannot* be donated. Thus, **void**.
- Present/accrued inheritance – can be donated, even if the properties have not yet been delivered

Rationale: Nemo dat quod non habet.

Art. 752

The provisions of Article 750 notwithstanding, no person may give or receive, by way of donation, more than he may give or receive by will.

The donation shall be inofficious in all that it may exceed this limitation.

Who has the limitation?
- The donor/giver.

Meaning–
1. A person cannot give by donation *more* than what he can give by will
2. A person may not *receive* by way of donation more than what the *giver may give by will.*

To whom does the limitation apply?
- The limitation applies only to persons who have compulsory heirs at the time of the former's death.

In relation to art. 771; cause of action; prescriptive period; reckoning period

Heirs of Estella v. Estella, G.R. No. 245469, December 9, 2020

Definition: A donation is inofficious if it impairs the legitime of compulsory heirs.
- Legitime is that part of the testator's property which he cannot dispose of because the law has reserved it for certain heirs who are, therefore, called compulsory heirs.

Santos v. Santos-Alana, G.R. No. 154942, August 16, 2005

By donating **the entire lot** to Santos, Gregorio's donation is inofficious as it deprives respondent of her legitime, which, under Article 888 of the Civil Code, consists of one-half (1/2) of the hereditary estate of the father and the mother.

In any case, the action under art. 771 prescribes in 10 years, pursuant to art. 1144. The cause of action to enforce a legitime accrues upon the death of the donor-decedent. Thus, the 10-year period begins upon the decedent's death.
- In this case, Gregorio died in 1986, and the complaint was filed in 1992.

Imperial v. CA, G.R. No. 112483, October 8, 1999

The ten-year prescriptive period applies to the obligation to reduce inofficious donations, required under art. 771, to the extent that they impair the legitime of compulsory heirs. The cause of action to enforce a legitime accrues upon the death of the donor-decedent.

Art. 753

When a donation is made to several persons jointly, it is understood to be in equal shares, and there shall be no right of accretion among them, unless the donor has otherwise provided.

The preceding paragraph shall not be applicable to donations made to the husband and wife jointly, between whom there shall be a right of accretion, if the contrary has not been provided by the donor.

Right of accretion – A right by virtue of which, when two or more persons are called to the same inheritance, devise or legacy, the part assigned to the one who renounces or cannot receive his share, or who died before the testator is added or incorporated to that of his co-heirs, co-devisees, or co-legatees (art. 1015).

- Example: X donated to A and B. If A refuses to accept, B will *not* get A's share, unless the donor has provided otherwise.

General rule: No right of accretion
Exceptions:

1. Donor has provided otherwise
2. Donees are spouses

Art. 754

The donee is subrogated to all the rights and actions which in case of eviction would pertain to the donor. The latter, on the other hand, is not obliged to warrant the things donated, save when the donation is onerous, in which case the donor shall be liable for eviction to the concurrence of the burden.

The donor shall also be liable for eviction or hidden defects in case of bad faith on his part.

Subrogation of donee – The donee steps into the shoes of the donor, for actions and rights pertaining to the thing donated (e.g., warranty and eviction).

Donor not required to warrant

- **Exception:** When the donation is onerous.
  - In this case, the donor is liable for eviction to the concurrence of the burden (i.e., up to the burden).

What is eviction?

- Whenever by final judgment based on a right prior to the donation or an act imputable to the donor, the donee is deprived of the whole or part of the thing donated (art. 1548, *mutatis mutandi*).

Hidden defects – Those which are not patent upon a physical examination of the object donated.

When warranty exists:

1. If the donor is in bad faith (art. 754, 2nd par.)
2. If the donation is onerous (up to the amount of the burden)
3. If warranty is expressly made
4. If donation is propter nuptias (art. 85, FC)

Art. 755

The right to dispose of some of the things donated, or of some amount which shall be a charge thereon, may be reserved by the donor; but if he should die without having made use of this right, the property or amount reserved shall belong to the donee.

Donation with a reservation to dispose of part of the object donated
Example: A donated to B a parcel of land, but A may dispose of the first and second harvests. But if A dies without having exercised that reservation, it will now pertain to B.

Art. 756

The ownership of property may also be donated to one person and the usufruct to another or others, provided all the donees are living at the time of the donation.

Thus, the donees only received the naked, not the full ownership.

This applies to both **successive** and **simultaneous** usufruct.

Art. 757

Reversion may be validly established in favor of only the donor for any case and circumstances, but not in favor of other persons unless they are all living at the time of the donation.

Any reversion stipulated by the donor in favor of a third person in violation of what is provided in the preceding paragraph shall be void, but shall not nullify the donation.

Example of par. 1: A donated to B a piece of land with the stipulation that upon B's death, it goes back to A or to A's estate.

Example of par:. 2: A donated to B a parcel of land, with the stipulation that after three years, the land would go to X, an unborn and still unconceived

child of Y. The reversion in favor of a third person (who is still not living) is void, but the donation to B is valid.

There is a stipulation as to debts

Art. 758

When the donation imposes upon the donee the obligation to pay the debts of the donor, if the clause does not contain any declaration to the contrary, the former is understood to be liable to pay only the debts which appear to have been previously contracted. In no case shall the donee be responsible for debts exceeding the value of the property donated, unless a contrary intention appears.

This articles deals with a donation where it is stipulated that the *donee must pay the donor's debts*.

Rules:
1. Pay only for prior debts (those contracted *before* the donation)
2. Pay only for debts up to the value of the property donated

There is <u>no</u> stipulation as to debts

Art. 759

There being no stipulation regarding the payment of debts, the donee shall be responsible therefor only when the donation has been made in fraud of creditors.

The donation is always presumed to be in fraud of creditors, when at the time thereof the donor did not reserve sufficient property to pay his debts prior to the donation.

Rules when there is *no* stipulation
- General rule: Donee is *not* required to pay
- Exception: When the donation is made in fraud of donor's creditors

Presumption of fraud: When at the time of the donation, the donor did not reserve sufficient property to pay his debts prior to the donation.

Remedy: Creditor may order rescission (*accion pauliana*).

Chapter 4
Revocation and Reduction of Donations

Art. 760

Every donation *inter vivos*, made by a person having no children or descendants, legitimate or legitimated by subsequent marriage, or illegitimate, may be revoked or reduced as provided in the next article, by the happening of any of these events:

(1) If the donor, after the donation, should have legitimate or legitimated or illegitimate children, even though they be posthumous;
(2) If the child of the donor, whom the latter believed to be dead when he made the donation should turn out to be living;
(3) If the donor should subsequently adopt a minor child.

Inofficious donations – Those that impair or prejudice the legitime or successional rights of compulsory heirs.

Two kinds of inofficious donations:
1. Those referred to in art. 760 and 761 (no child at time of donation)
2. Those referred to in arts. 752 and 771 (at least one child)

Applicability – *Only to donations inter vivos* and *not* to:
1. Donations propter nuptias
2. Onerous donations
3. Donations mortis causa

Cruz v. CA, G.R. L-58671, November 22, 1985

In the case of the subsequent adoption of a minor by one who had previously donated some or all of his properties to another, the donor may sue for the annulment or reduction of the donation within four years from the date of adoption, if the donation impairs the legitime of the adopted, taking into account the whole estate of the donor at the time of the adoption of the child.

However, the plaintiff-donor must allege that the subject donation impairs the legitime of the adopted child.
- Thus, if the donor has other properties sufficient for support, the complaint for reduction or annulment will be dismissed.

Art. 761

In the cases referred to in the preceding article, the donations shall be revoked or reduced insofar as it exceeds the portion that may be freely disposed of by will, taking into account the whole estate of the donor at the time of the birth, appearance or adoption of a child.

Value of the estate: The value at the birth, appearance or adoption *plus* the value of the donation.

Art. 762

Upon the revocation or reduction of the donation by the birth, appearance or adoption of a child, the property affected shall be returned, or its value if the donee has sold the same.

If the property is mortgaged, the donor may redeem the mortgage, by paying the amount guaranteed, with a right to recover the same from the donee.

When the property cannot be returned, it shall be estimated at what it was worth at the time of the donation.

Donee's obligations:

1. Return the property, if it's still with him
2. Give the value of the property, if he has sold it
3. Pay off the debt, if the property has been mortgaged, but he can recover reimbursement from donee
4. Return its value, if the property cannot be returned
    a. Value at the perfection, according to the concept of *res perit domino* (donee bears the loss/depreciation)

Art. 763

The action for revocation or reduction on the grounds set forth in Article 760 shall prescribe after four years from the birth of the first child, or from his legitimation, recognition or adoption, or from the judicial declaration of filiation, or from the time information was received regarding the existence of the child believed dead.

This action cannot be renounced, and is transmitted, upon the death of the donor, to his legitimate and illegitimate children and descendants.

Prescriptive period for art. 760 – 4 years from:

a. Birth of the first child
b. Legitimation, recognition or adoption
c. Judicial declaration of filiation
d. The time information was received regarding the existence of the child believed dead

Non-waiver and transmissibility – The action cannot be renounced, and is transmitted (if the donor dies within 4 years) on his death to his *legitimate and illegitimate children and descendants*.

Art. 764

The donation shall be revoked at the instance of the donor, when the donee fails to comply with any of the conditions which the former imposed upon the latter.

In this case, the property donated shall be returned to the donor, the alienations made by the donee and the mortgages imposed thereon by him being void, with the limitations established, with regard to third persons, by the Mortgage Law and the Land Registration Laws.

This action shall prescribe after four years from the noncompliance with the condition, may be transmitted to the heirs of the donor, and may be exercised against the donee's heirs.

Conditions – The charges/burdens imposed; resolutory conditions; suspensive conditions.

- However, immoral, illegal or physically impossible conditions must be disregarded.

Is court action required? Yes. No, if the donee voluntarily returns the thing.

Effect on property donated:

1. If still with the donee, he must return it to the donor
2. If sold, donated, or mortgaged, the alienation or encumbrance will be considered void, unless the grantee is an innocent third party.

Prescriptive period: 4 years from noncompliance of the condition.

Waivable? Yes. No prohibition.

De Luna v. Abrigo, G.R. No. 57455, January 18, 1990

Donations with an onerous cause are governed by the rules on contracts, and the general rules on prescriptions apply. Thus, the donor has 10 years from the breach of the condition (or nonhappening) to enforce the written contract (i.e., enforce the automatic revocation clause).

Upon the happening of the resolutory condition of non-compliance with the conditions of the contract, the donation is automatically revoked without need of a judicial declaration to that effect.

RCAM v. CA, G.R. No. 77425, June 19, 1991

When a deed of donation expressly provides for automatic revocation and reversion of the property donated, the rules on contract and the general rules on prescription should apply, and *not* art. 764.

- Thus, the four-year period under art. 764 is *not* applicable.
- A judicial action is proper only when there is absence of a special provision granting the power of cancellation.

Nonetheless, the 100-year ban on disposition constitutes an undue restriction on the rights arising from ownership of petitioners and is, therefore, contrary to public policy. The condition imposed in the deed of donation is patently unreasonable and an undue restriction on the rights of the donee (RCAM).

Vda. de Delgado v. CA, G.R. No. 125728, August 28, 2001

Under art. 1144(1), the donors should have instituted the action for reconveyance within 10 years from the time the condition in the Deed of Donation was violated.

- Thus, the action to enforce the condition in the donation–that the land shall be used for military purposes–has prescribed because it was filed 24 years and 43 years late.

CPU v. CA, G.R. No. 112127, July 17, 1995

When a person donates land to another on the condition that the latter would build upon the land a school, the condition imposed was not a condition precedent or a suspensive condition but a resolutory one.

- If there was noncompliance the donation may now be revoked and all rights which the donee may have acquired under it shall be deemed lost and extinguished.
- *Davide, J., dissenting:* When the law and the deed speaks of "conditions" of a donation, what are referred to are actually the obligations, charges or burdens imposed by the donor upon the donee and which would characterize the donation as onerous.

Clemente v. Republic, G.R. No. 220008, February 20, 2019

Upon nonfulfillment of the condition, the donation may be revoked and all the rights already acquired by the donee shall be deemed lost and extinguished.

- This is a resolutory condition because it is demandable at once by the donee, but the nonfulfillment of the condition gives the donor the right to revoke it.
- The failure to comply gives the donor the right to revoke, per art. 764.

CASTEA v. Province of Camarines Sur, G.R. No. 199666, October 7, 2019

While the legality of automatic revocation or rescission clauses in deeds of donation has been upheld, the courts are not precluded from determining whether their application or enforcement by the donors concerned are proper if the donees contest the revocation or rescission.

- The general rule is that rescission will not be permitted for a slight or casual breach of the contract, but only for such breaches as are so substantial and fundamental as to defeat the object of the parties in making the agreement.

Austria-Magat v. CA, G.R. No. 106755, February 1, 2002

The act of selling the subject property cannot be considered as a valid act of revocation of the deed of donation because a formal case to revoke the donation must be filed pursuant to art. 764.

- The rule that there can be automatic revocation without benefit of a court action does not apply to the case at bar for the reason that the subject deed of donation is devoid of any provision providing for automatic revocation.
- The action prescribes in 10 years because the donees' property is registered in another's name (implied trusts; art. 1144).

Ingratitude

Art. 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;
(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.

Rationale: One who has been the object of generosity must not turn ungrateful. Gratitude here is a moral as well as a legal duty.

Acts of ingratitude covered:
1. Purely personal (committed by the donee)
2. Exclusive (those not enumerated are *not included*)

Par. 1 – Offense against the person, honor or property of the donor, spouse or children
- Offense – Includes both crimes and non-crimes; no criminal conviction is required.
- "Under parental authority" – Those children who are still minors.

Par. 2 – Imputation of any criminal offense or act involving moral turpitude
- General rule: Donee accusing the donor of murdering X, a stranger.
- Exception: Donee accused the donor of murdering X, the donor's minor child.

Par. 3 – Donee unduly refusing to support the donor
- The donee must be legally **or** morally bound
- The refusal to support must be undue or unjustified.
  - Hence, no revocation if the non-support is justified.
- The support given should *not exceed* the value of the thing donated.
- Once the donor calls upon him for support, the donee must give the support he is able to.
  - Otherwise, there would indeed be ingratitude.

Sps. Eduarte v. CA, G.R. No. 105944, February 9, 1996

Manresa: Offenses Against Donor – All crimes which offend the donor show ingratitude and are causes for revocation. ... The crimes against the person of the donor would include not only homicide and physical injuries, but also illegal detention, threats, and coercion; those against honor include offenses against chastity; and those against the property, include robbery, theft, usurpation, swindling, arson, damages.

Art. 766

Although the donation is revoked on account of ingratitude, nevertheless, the alienations and mortgages effected before the notation of the complaint for revocation in the Registry of Property shall subsist.

Later ones shall be void.

Effect of revocation due to ingratitude:
1. Alienations and mortgages effected *before* the notation of the complaint for revocation in the Registry of Property shall subsist
2. Alienations and mortgages *after* the notation is void.

Art. 767

In the case referred to in the first paragraph of the preceding article, the donor shall have a right to demand from the donee the value of property alienated which he cannot recover from third persons, or the sum for which the same has been mortgaged.

The value of said property shall be fixed as of the time of the donation.

Art. 767 applies when:
1. Recovery cannot be had from innocent third persons
   a. Here, donee must return the value of the property
2. When the property has been mortgaged
   a. Here, donee must return the sum for which the thing has been mortgaged

Value – At the time of donation/perfection.

Ramirez v. Ramirez, G.R. No. 165088, March 17, 2006

Pari delicto – Neither one may expect positive relief from the courts from their illegal acts and transactions.

Donations inter vivos are additionally governed by the general provisions on obligations and contracts in all that is not determined by the title governing donations. Hence, the rule on *pari delicto* under art. 1411 is applicable.

Requisites for art. 1411:
1. The nullity of the contract proceeds from an illegal cause or object
2. The act of executing said contract constitutes a criminal offense

Rule on fruits

Art. 768

When the donation is revoked for any of the causes stated in Article 760, or by reason of ingratitude, or when it is reduced because it is inofficious, the donee shall not return the fruits except from the filing of the complaint.

If the revocation is based upon noncompliance with any of the conditions imposed in the donation, the donee shall return not only the property but also the fruits thereof which he may have received after having failed to fulfill the condition.

Fruits accruing from the time the action is filed:

1. B-A-R (art. 760)
2. Inofficiousness of the donation because the legitime has been impaired (art. 771)
3. Ingratitude (art. 765)

Fruits after failure to fulfill the donation's condition:

1. Non-compliance with the condition

Art. 769

The action granted to the donor by reason of ingratitude cannot be renounced in advance. This action prescribes within one year, to be counted from the time the donor had knowledge of the fact and it was possible for him to bring the action.

Prescriptive period to revoke a donation due to ingratitude: 1 year from the knowledge of the ingratitude and it was possible for him to bring such action.

- No renunciation in advance, but the donor may forgive.

Art. 770

This action shall not be transmitted to the heirs of the donor, if the latter did not institute the same, although he could have done so, and even if he should die before the expiration of one year.

Neither can this action be brought against the heir of the donee, unless upon the latter's death the complaint has been filed.

General rule: No transmissibility of the right to revoke due to ingratitude (rationale: the right is *purely personal*).

Three exceptions:

1. Substitution of parties (plaintiff)
2. Donor died without knowing the act of ingratitude
3. Donee kills the donor

Art. 771

Donations which in accordance of the provisions of Article 752, are inofficious, bearing in mind the estimated net value of the donor's property at the time of his death, shall be reduced with regard to the excess; but this reduction shall not prevent the donations from taking effect during the life of the donor, nor shall it bar the donee from appropriating the fruits.

For the reduction of donations the provisions of this Chapter and of Articles 911 and 912 of this Code shall govern.

Value of the estate – At the time of the donor's death (the property left *less* the debts and charges *plus* the value of the donation = net hereditary estate).

- Inofficious donations cannot just be reduced, they may be canceled altogether when, for example, the donor had *no free portion left*.
- The inofficiousness of the donation cannot be determined until the donor's death.
    - Thus, the donation remains valid and ownership is transmitted to the donee during the donor's lifetime.

Implications

1. Donee gets the fruits while the donor is still alive
2. Donee can take advantage of the natural/artificial incorporations or attachments
3. Donee bears the loss in case of destruction or deterioration (*res perit domino*)

Art. 772

Only those who at the time of the donor's death have a right to the legitime and their heirs and successors in interest may ask for the reduction of inofficious donations.

Those referred to in the preceding paragraph cannot renounce their right during the lifetime of the donor, either by express declaration, or by

consenting to the donation.

The donees, devisees and legatees, who are not entitled to the legitime and the creditors of the deceased can neither ask for the reduction nor avail themselves thereof.

Who can ask for the reduction of inofficious donation?

1. Compulsory heirs of the donor
2. The heirs and successors-in-interest of the mentioned compulsory heirs

Who cannot ask for reduction?

1. Voluntary heirs
2. Devisees (recipients of gifts of real property)
3. Legatees (recipients of gifts of personal property)
4. Creditors of the deceased

Prescriptive period: The action to reduce or revoke must be brought within 5 years from the time of the donor's death.

Art. 773

If, there being two or more donations, the disposable portion is not sufficient to cover all of them, those of the more recent date shall be suppressed or reduced with regard to the excess.

Preference – Earlier donations.

- If simultaneous, the reduction must be proportionate.

Summary

Revocation – This is total, regardless of whether the legitime has been impaired or not.

- This is for the benefit of the donor, and the donor's heirs.

Reduction – This only partial, and applies only when the legitime has been impaired. Thus, the legitime must always be preserved.

- This is for the benefit of the heirs of the donor, since their legitimes are supposed to be preserved.

Grounds for revocation	Grounds for reduction
1. Fulfillment of resolutory conditions or charges (art. 764) 2. Ingratitude (art. 765)	1. BAR (art. 760) 2. Inofficiousness (art. 771) 3. Insufficient property is left for the support of the donor and his relatives (art. 750) 4. Made in fraud of creditors at the time of the donation (art. 1387)

Void, ineffective or unperfected donations:

1. Those not perfected in accordance with the forms and solemnities
2. Those made with property outside the commerce of man
3. Those made with future property, except for DPN
4. Those made to persons especially disqualified:
    a. Public policy (art. 739)
    b. Unworthiness (art. 740)
    c. Possible undue influence (between spouses)

End of Property.

Land Laws

Phil. Const. art. XII, § 2

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. The exploration, development, and utilization of natural resources shall be under the full control and supervision of the State. The State may directly undertake such activities, or it may enter into co-production, joint venture, or production-sharing agreements with Filipino citizens, or corporations or associations at least sixty per centum of whose capital is owned by such citizens. Such agreements may be for a period not exceeding twenty-five years, renewable for not more than twenty-five years, and under such terms and conditions as may be provided by law. In cases of water rights for irrigation, water supply, fisheries, or industrial uses other than the development of water power, beneficial use may be the measure and limit of the grant.

The State shall protect the nation's marine wealth in its archipelagic waters, territorial sea, and exclusive economic zone, and reserve its use and

enjoyment exclusively to Filipino citizens.

The Congress may, by law, allow small-scale utilization of natural resources by Filipino citizens, as well as cooperative fish farming, with priority to subsistence fishermen and fishworkers in rivers, lakes, bays, and lagoons.

The President may enter into agreements with foreign-owned corporations involving either technical or financial assistance for large-scale exploration, development, and utilization of minerals, petroleum, and other mineral oils according to the general terms and conditions provided by law, based on real contributions to the economic growth and general welfare of the country. In such agreements, the State shall promote the development and use of local scientific and technical resources.

The President shall notify the Congress of every contract entered into in accordance with this provision, within thirty days from its execution.

Regalian doctrine

The state owns:

1. All the lands of the public domain
2. Waters
3. Minerals, coal, petroleum, and other mineral oils
4. All forces of potential energy
5. Fisheries
6. Forests of timber
7. Wildlife
8. Flora and fauna
9. Other natural resources

General rule: All natural resources shall not be alienated.

- **Exception:** Agricultural lands of the public domain may be alienated.

§ 2

Lands of the public domain are classified into agricultural, forest or timber, mineral lands, and national parks. Agricultural lands of the public domain may be further classified by law according to the uses which they may be devoted. Alienable lands of the public domain shall be limited to agricultural lands. Private corporations or associations may not hold such alienable lands of the public domain except by lease, for a period not exceeding twenty-five years, renewable for not more than twenty-five years, and not to exceed one thousand hectares in area. Citizens of the Philippines may lease not more than five hundred hectares, or acquire not more than twelve hectares thereof by purchase, homestead, or grant.

Taking into account the requirements of conservation, ecology, and development, and subject to the requirements of agrarian reform, the Congress shall determine, by law, the size of lands of the public domain which may be acquired, developed, held, or leased and the conditions therefor.

Lands of the public domain are:

1. Agricultural
    a. Can be further classified by law
    b. Can be alienated
2. Forest or timber
3. Mineral lands
4. Natural parks

Rules for leasing/owning alienable lands of the public domain (agricultural):

- Private corporations:
    - Can only lease (not own!)
    - For 25 years (and renew for another 25 years)
    - Lease should not exceed 1,000 ha.
- Filipinos, either:
    - Lease not more than 500 ha., *or*
    - Acquire/own not more than 12 ha. by purchase, homestead, or grant

CA 141, §6: The president, upon recommendation of the secretary of agriculture, shall from time to time classify the lands of the public domain, and may at any time and in a like manner transfer such lands from one class to another, for the purposes of their administration and disposition.

§ 7

Save in cases of hereditary succession, no private lands shall be transferred or conveyed except to individuals, corporations, or associations qualified to acquire or hold lands of the public domain.

§ 8

Notwithstanding the provisions of Section 7 of this Article, a natural-born citizen of the Philippines who has lost his Philippine citizenship may be a transferee of private lands, subject to limitations provided by law.

Who may acquire private lands?

1. Filipino citizens
2. Filipino corporations
3. Aliens, but only though intestate succession
4. Natural-born citizens who lost their citizenship

General rule: Non-Filipinos cannot acquire or hold title to private lands or to lands of the public domain.

- **Exception:** Legal succession

PRESIDENTIAL DECREE NO. 1529

AMENDING AND CODIFYING THE LAWS RELATIVE TO REGISTRATION OF PROPERTY AND FOR OTHER PURPOSES

SEC. 1. *Title of Decree.* This Decree shall be known as the PROPERTY REGISTRATION DECREE.

SEC. 2. *Nature of Registration Proceedings; Jurisdiction of Courts.* Judicial proceedings for the registration of lands throughout the Philippines shall be in rem and shall be based on the generally accepted principles underlying the Torrens system.

Courts of First Instance shall have exclusive jurisdiction over all applications for original registration of title to lands, including improvements and interests therein, and over all petitions filed after original registration of title, with power to hear and determine all questions arising upon such applications or petitions. The court through its clerk of court shall furnish the Land Registration Commission with two certified copies of all pleadings, exhibits, orders, and decisions filed or issued in applications or petitions for land registration, with the exception of stenographic notes, within five days from the filing or issuance thereof.

Where to file land registration proceedings?

- Regional Trial Court (exclusive original jurisdiction).

Duty of court

- Furnish the Land Registration Authority (LRA) with two certified copies of all pleadings exhibits, orders, and decisions, and stereographic notes.

Mirror doctrine

Cabuhat v. CA, G.R. No. 122425, September 28, 2001

Even if the procurement of a certificate of title was tainted with fraud and misrepresentation, such defective title may be the source of a completely legal and valid title in the hands of an innocent purchaser for value.

Innocent mortgagee for value. Precedents say that when a mortgagee relies upon what appears on the face of a Torrens title and loans money in all good faith on the basis of the title in the name of the mortgagor, only thereafter to learn that the latter's title was defective, being thus an innocent mortgagee for value, his or her right or lien upon the land mortgaged must be respected and protected, even if the mortgagor obtained her title thereto through fraud.

Heirs of Sarili v. Lagrosa, G.R. No. 193517, January 15, 2014

General rule: Every person dealing with registered land may safely rely on the correctness of the certificate of title issued therefor and the law will in no way oblige him to go beyond the certificate to determine the condition of the property.

Exception: A higher degree of prudence is required from one who buys from a person who is not the registered owner, although the land object of the transaction is registered.

- Here, the buyer is expected to examine not only the certificate of title but all factual circumstances necessary for him to determine if there are any flaws in the title of the transferor.
- The buyer also has the duty to ascertain the identity of the person with whom he is dealing with and the latter's legal authority to convey the property.

SEC. 4. *Land Registration Commission.* In order to have a more efficient execution of the laws relative to the registration of lands, geared to the massive and accelerated land reform and social justice program of the government, there is created a commission to be known as the Land Registration Commission under the executive supervision of the Department of Justice.

SEC. 7. *Office of the Register of Deeds.* There shall be at least one Register of Deeds for each province and one for each city. Every Registry with a yearly average collection of more than sixty thousand pesos during the last three years shall have one Deputy Register of Deeds, and every Registry with a yearly average collection of more than three hundred thousand pesos during the last three years, shall have one Deputy Register of Deeds and one second Deputy Register of Deeds.

The Secretary of Justice shall define the official station and territorial jurisdiction of each Registry upon the recommendation of the Commissioner of Land Registration, with the end in view of making every registry easily accessible to the people of the neighboring municipalities.

The province or city shall furnish a suitable space or building for the office of the Register of Deeds until such time as the same could be furnished out of national funds.

SEC. 10. *General functions of Registers of Deeds.* The office of the Register of Deeds constitutes a public repository of records of instruments affecting registered or unregistered lands and chattel mortgages in the province or city wherein such office is situated.

It shall be the duty of the Register of Deeds to immediately register an instrument presented for registration dealing with real or personal property which complies with all the requisites for registration. He shall see to it that said instrument bears the proper documentary and science stamps and that the same are properly canceled. If the instrument is not registerable, he shall forthwith deny registration thereof and inform the presentor of such denial in writing, stating the ground or reason therefor, and advising him of his right to appeal by consulta in accordance with Section 117 of this Decree.

One RD for every province and city.

- Hence, a municipality may not have an RD.

What is recorded in the RD?

- Instruments affecting registered or unregistered lands and chattel mortgages.

SEC. 14. *Who may apply.* The following persons may file at any time, in the proper Regional Trial Court in the province where the land is located, an application for registration of title to land, not exceeding twelve (12) hectares, whether personally or through their duly authorized representatives:

(1) Those who by themselves or through their predecessors-in-interest have been in open, continuous, exclusive and notorious possession and occupation of alienable and disposable lands of the public domain not covered by existing certificates of title or patents under a bona fide claim of ownership 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.

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

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

Where the land is owned in common, all the co-owners shall file the application jointly.

Where the land has been sold under pacto de retro, the vendor a retro may file an application for the original registration of the land: Provided, however, That should the period for redemption expire during the pendency of the registration proceedings and ownership to the property consolidated in the vendee a retro, the latter shall be substituted for the applicant and may continue the proceedings.

A trustee on behalf of the principal may apply for original registration of any land held in trust by the trustee, unless prohibited by the instrument creating the trust.

Republic v. Hanover Worldwide, G.R. No. 172102, July 2, 2010

Under Sec. 14 (1) of PD 1529, applicants for registration of title must prove:

1. that the subject land forms part of the disposable and alienable lands of the public domain
2. that they have been in open, continuous, exclusive and notorious possession and occupation of the same under a bona fide claim of ownership since June 12, 1945, or earlier.

AFPRSBS v. Republic, G.R. No. 180086, July 2, 2014

Sec. 14 (1) of P.D. 1529 should be interpreted to include possession before the declaration of the land's alienability as long as at the time of the application for registration, the land has already been declared part of the alienable and disposable agricultural public lands.

- In other words, it is fine that the land has not yet been declared alienable and disposable on June 12, 1945.

Superiora Locale v. Republic, G.R. No. 242781, June 21, 2022 ♥

Under the amended Sec. 14, the applicant must establish the following:

1. that the subject land, which does not exceed 12 hectares, forms part of disposable and alienable lands of the public domain
2. that the applicants, by themselves or through their predecessors-in-interest, have been in open, continuous, exclusive,

and notorious possession and occupation thereof

3. that the possession is under a bona fide claim of ownership for at least twenty (20) years immediately preceding the filing of the application for confirmation of title

Republic v. Cortez, G.R. No. 186639, February 5, 2014

On § 14 (2). Before acquisitive prescription could commence, the property sought to be registered must not only be classified as alienable and disposable; it must also be declared by the State that it is no longer intended for public use, public service or the development of the national wealth. Thus, absent an express declaration by the State, the land remains to be property of public dominion.

SEC. 29. *Judgment confirming title*. All conflicting claims of ownership and interest in the land subject of the application shall be determined by the court. If the court, after considering the evidence and the reports of the Commissioner of Land Registration and the Director of Lands, finds that the applicant or the oppositor has sufficient title proper for registration, judgment shall be rendered confirming the title of the applicant, or the oppositor, to the land or portions thereof.

SEC. 30. *When judgment becomes final; duty to cause issuance of decree*. The judgment rendered in a land registration proceedings becomes final upon the expiration of thirty days to be counted from the data of receipt of notice of the judgment. An appeal may be taken from the judgment of the court as in ordinary civil cases.

After judgment has become final and executory, it shall devolve upon the court to forthwith issue an order in accordance with Section 39 of this Decree to the Commissioner for the issuance of the decree of registration and the corresponding certificate of title in favor of the person adjudged entitled to registration.

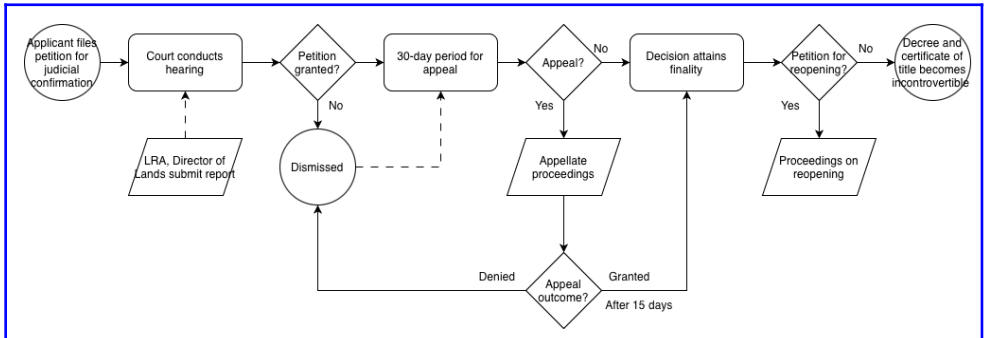
SEC. 31. *Decree of registration*. Every decree of registration issued by the Commissioner shall bear the date, hour and minute of its entry, and shall be signed by him. It shall state whether the owner is married or unmarried, and if married, the name of the husband or wife: Provided, however, that if the land adjudicated by the court is conjugal property, the decree shall be issued in the name of both spouses. If the owner is under disability, it shall state the nature of disability, and if a minor, his age. It shall contain a description of the land as finally determined by the court, and shall set forth the estate of the owner, and also, in such manner as to show their relative priorities, all particular estates, mortgages, easements, liens, attachments, and other encumbrances, including rights of tenant-farmers, if any, to which the land or owner's estate is subject, as well as any other matters properly to be determined in pursuance of this Decree.

The decree of registration shall bind the land and quiet title thereto, subject only to such exceptions or liens as may be provided by law. It shall be conclusive upon and against all persons, including the National Government and all branches thereof, whether mentioned by name in the application or notice, the same being included in the general description "To all whom it may concern".

SEC. 32. *Review of decree of registration; Innocent purchaser for value*. The decree of registration shall not be reopened or revised by reason of absence, minority, or other disability of any person adversely affected thereby, nor by any proceeding in any court for reversing judgments, subject, however, to the right of any person, including the government and the branches thereof, deprived of land or of any estate or interest therein by such adjudication or confirmation of title obtained by actual fraud, to file in the proper Court of First Instance a petition for reopening and review of the decree of registration not later than one year from and after the date of the entry of such decree of registration, but in no case shall such petition be entertained by the court where an innocent purchaser for value has acquired the land or an interest therein, whose rights may be prejudiced. Whenever the phrase "innocent purchaser for value" or an equivalent phrase occurs in this Decree, it shall be deemed to include an innocent lessee, mortgagee, or other encumbrancer for value.

Upon the expiration of said period of one year, the decree of registration and the certificate of title issued shall become incontrovertible. Any person aggrieved by such decree of registration in any case may pursue his remedy by action for damages against the applicant or any other persons responsible for the fraud.

Procedure for application for judicial confirmation of imperfect titles



Section 39. *Preparation of decree and Certificate of Title*. After the judgment directing the registration of title to land has become final, the court shall, within fifteen days from entry of judgment, issue an order directing the Commissioner to issue the corresponding decree of registration and certificate of title. The clerk of court shall send, within fifteen days from entry of judgment, certified copies of the judgment and of the order of the court directing the Commissioner to issue the corresponding decree of registration and certificate of title, and a certificate stating that the decision has not been amended, reconsidered, nor appealed, and has become final. Thereupon, the Commissioner shall cause to be prepared the decree of registration as well as the original and duplicate of the corresponding original certificate of title. The original certificate of title shall be a true copy of the decree of registration. The decree of registration shall be signed by the Commissioner, entered and filed in the Land Registration Commission. The original of the original certificate of title shall also be signed by the Commissioner and shall be sent, together with the owner's duplicate certificate, to the Register of Deeds of the city or province where the property is situated for entry in his registration book.

Section 40. Entry of Original Certificate of Title. Upon receipt by the Register of Deeds of the original and duplicate copies of the original certificate of title the same shall be entered in his record book and shall be numbered, dated, signed and sealed by the Register of Deeds with the seal of his office. Said certificate of title shall take effect upon the date of entry thereof. The Register of Deeds shall forthwith send notice by mail to the registered owner that his owner's duplicate is ready for delivery to him upon payment of legal fees.

Section 41. Owner's duplicate certificate of title. The owner's duplicate certificate of title shall be delivered to the registered owner or to his duly authorized representative. If two or more persons are registered owners, one owner's duplicate certificate may be issued for the whole land, or if the co-owners so desire, a separate duplicate may be issued to each of them in like form, but all outstanding certificates of title so issued shall be surrendered whenever the Register of Deeds shall register any subsequent voluntary transaction affecting the whole land or part thereof or any interest therein. The Register of Deeds shall note on each certificate of title a statement as to whom a copy thereof was issued.

Section 42. Registration Books. The original copy of the original certificate of title shall be filed in the Registry of Deeds. The same shall be bound in consecutive order together with similar certificates of title and shall constitute the registration book for titled properties.

Section 43. Transfer Certificate of Title. The subsequent certificate of title that may be issued by the Register of Deeds pursuant to any voluntary or involuntary instrument relating to the same land shall be in like form, entitled "Transfer Certificate of Title", and likewise issued in duplicate. The certificate shall show the number of the next previous certificate covering the same land and also the fact that it was originally registered, giving the record number, the number of the original certificate of title, and the volume and page of the registration book in which the latter is found.

Section 44. Statutory liens affecting title. Every registered owner receiving a certificate of title in pursuance of a decree of registration, and every subsequent purchaser of registered land taking a certificate of title for value and in good faith, shall hold the same free from all encumbrances except those noted in said certificate and any of the following encumbrances which may be subsisting, namely:

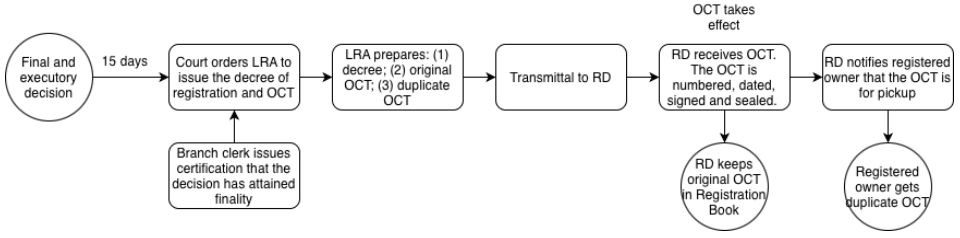
First. Liens, claims or rights arising or existing under the laws and Constitution of the Philippines which are not by law required to appear of record in the Registry of Deeds in order to be valid against subsequent purchasers or encumbrancers of record.

Second. Unpaid real estate taxes levied and assessed within two years immediately preceding the acquisition of any right over the land by an innocent purchaser for value, without prejudice to the right of the government to collect taxes payable before that period from the delinquent taxpayer alone.

Third. Any public highway or private way established or recognized by law, or any government irrigation canal or lateral thereof, if the certificate of title does not state that the boundaries of such highway or irrigation canal or lateral thereof have been determined.

Fourth. Any disposition of the property or limitation on the use thereof by virtue of, or pursuant to, Presidential Decree No. 27 or any other law or regulations on agrarian reform.

Procedure for issuance of OCT



Section 47. Registered land not subject to prescriptions. No title to

registered land in derogation of the title of the registered owner shall be acquired by prescription or adverse possession.

Section 48. Certificate not subject to collateral attack. A certificate of title shall not be subject to collateral attack. It cannot be altered, modified, or canceled except in a direct proceeding in accordance with law.

Corpuz v. Sps. Agustin, G.R. No. 183822, January 18, 2012

A Torrens certificate of title cannot be the subject of collateral attack. It is a well-established doctrine that the title represented by the certificate cannot be changed, altered, modified, enlarged, or diminished in a collateral proceeding (e.g., an unlawful detainer case).

Filipinas Eslon v. Heirs of Llanes, G.R. No. 194114, March 27, 2019

An action is deemed an attack on a title when its objective is to nullify the title, thereby challenging the judgment pursuant to which the title was decreed.

Hence, raising the invalidity of a certificate of title in an action for quieting of title is *not* a collateral attack because it is central, imperative, and essential in such an action that the complainant shows the invalidity of the deed which casts cloud on his title.

Splitting and consolidation

Section 49. Splitting, or consolidation of titles. A registered owner of several distinct parcels of land embraced in and covered by a certificate of title desiring in lieu thereof separate certificates, each containing one or more parcels, may file a written request for that purpose with the Register of Deeds concerned, and the latter, upon the surrender of the owner's duplicate, shall cancel it together with its original and issue in lieu thereof separate certificates as desired. A registered owner of several distinct parcels of land covered by separate certificates of title desiring to have in lieu thereof a single certificate for the whole land, or several certificates for the different parcels thereof, may also file a written request with the Register of Deeds concerned, and the latter, upon the surrender of the owner's duplicates, shall cancel them together with their originals, and issue in lieu thereof one or separate certificates as desired.

Section 50. Subdivision and consolidation plans. Any owner subdividing a tract of registered land into lots which do not constitute a subdivision project has defined and provided for under P.D. No. 957, shall file with the Commissioner of Land Registration or with the Bureau of Lands a subdivision plan of such land on which all boundaries, streets, passageways and waterways, if any, shall be distinctly and accurately delineated.

If a subdivision plan, be it simple or complex, duly approved by the Commissioner of Land Registration or the Bureau of Lands together with the approved technical descriptions and the corresponding owner's duplicate certificate of title is presented for registration, the Register of Deeds shall, without requiring further court approval of said plan, register the same in accordance with the provisions of the Land Registration Act, as amended: Provided, however, that the Register of Deeds shall annotate on the new certificate of title covering the street, passageway or open space, a memorandum to the effect that except by way of donation in favor of the national government, province, city or municipality, no portion of any street, passageway, waterway or open space so delineated on the plan shall be closed or otherwise disposed of by the registered owner without the approval of the Court of First Instance of the province or city in which the land is situated.

A registered owner desiring to consolidate several lots into one or more, requiring new technical descriptions, shall file with the Land Registration Commission, a consolidation plan on which shall be shown the lots to be affected, as they were before, and as they will appear after the consolidation. Upon the surrender of the owner's duplicate certificates and the receipt of consolidation plan duty approved by the Commission, the Register of Deeds concerned shall cancel the corresponding certificates of title and issue a new one for the consolidated lots.

The Commission may not order or cause any change, modification, or amendment in the contents of any certificate of title, or of any decree or plan, including the technical description therein, covering any real property registered under the Torrens system, nor order the cancellation of the said certificate of title and the issuance of a new one which would result in the enlargement of the area covered by the certificate of title.

Conveyance; voluntary dealings

Section 51. *Conveyance and other dealings by registered owner.* An owner of registered land may convey, mortgage, lease, charge or otherwise deal with the same in accordance with existing laws. He may use such forms of deeds, mortgages, leases or other voluntary instruments as are sufficient in law. But no deed, mortgage, lease, or other voluntary instrument, except a will purporting to convey or affect registered land shall take effect as a conveyance or bind the land, but shall operate only as a contract between the parties and as evidence of authority to the Register of Deeds to make registration.

The act of registration shall be the operative act to convey or affect the land insofar as third persons are concerned, and in all cases under this Decree, the registration shall be made in the office of the Register of Deeds for the province or city where the land lies.

Section 52. *Constructive notice upon registration.* Every conveyance, mortgage, lease, lien, attachment, order, judgment, instrument or entry affecting registered land shall, if registered, filed or entered in the office of the Register of Deeds for the province or city where the land to which it relates lies, be constructive notice to all persons from the time of such registering, filing or entering.

Section 53. *Presentation of owner's duplicate upon entry of new certificate.* No voluntary instrument shall be registered by the Register of Deeds, unless the owner's duplicate certificate is presented with such instrument, except in cases expressly provided for in this Decree or upon order of the court, for cause shown.

The production of the owner's duplicate certificate, whenever any voluntary instrument is presented for registration, shall be conclusive authority from the registered owner to the Register of Deeds to enter a new certificate or to make a memorandum of registration in accordance with such instrument, and the new certificate or memorandum shall be binding upon the registered owner and upon all persons claiming under him, in favor of every purchaser for value and in good faith.

In all cases of registration procured by fraud, the owner may pursue all his legal and equitable remedies against the parties to such fraud without prejudice, however, to the rights of any innocent holder for value of a certificate of title. After the entry of the decree of registration on the original petition or application, any subsequent registration procured by the presentation of a forged duplicate certificate of title, or a forged deed or other instrument, shall be null and void.

Section 54. *Dealings less than ownership, how registered.* No new certificate shall be entered or issued pursuant to any instrument which does not divest the ownership or title from the owner or from the transferee of the registered owners. All interests in registered land less than ownership shall be registered by filing with the Register of Deeds the instrument which creates or transfers or claims such interests and by a brief memorandum thereof made by the Register of Deeds upon the certificate of title, and signed by him. A similar memorandum shall also be made on the owner's duplicate. The cancellation or extinguishment of such interests shall be registered in the same manner.

Section 56. *Primary Entry Book; fees; certified copies.* Each Register of Deeds shall keep a primary entry book in which, upon payment of the entry fee, he shall enter, in the order of their reception, all instruments including copies of writs and processes filed with him relating to registered land. He shall, as a preliminary process in registration, note in such book the date, hour and minute of reception of all instruments, in the order in which they were received. They shall be regarded as registered from the time so noted, and the memorandum of each instrument, when made on the certificate of title to which it refers, shall bear the same date: Provided, that the national government as well as the provincial and city governments shall be exempt from the payment of such fees in advance in order to be entitled to entry and registration.

Every deed or other instrument, whether voluntary or involuntary, so filed with the Register of Deeds shall be numbered and indexed and endorsed with a reference to the proper certificate of title. All records and papers relative to registered land in the office of the Register of Deeds shall be open to the public in the same manner as court records, subject to such reasonable regulations as the Register of Deeds, under the direction of the Commissioner of Land Registration, may prescribe.

All deeds and voluntary instruments shall be presented with their respective copies and shall be attested and sealed by the Register of Deeds, endorsed with the file number, and copies may be delivered to the person presenting them.

Certified copies of all instruments filed and registered may also be obtained from the Register of Deeds upon payment of the prescribed fees.

Subido v. Ozaeta, G.R. No. L-1631, February 27, 1948

All records relating to registered lands in the office of the Register of Deeds shall be open to the public subject to such reasonable regulations as may be prescribed by the Chief of the General Land Registration Office with the approval of the Secretary of Justice.

- The power to make regulations does not carry with it the power to prohibit.
- “Public” is a comprehensive, all-inclusive term. It embraces every person.

Section 57. Procedure in registration of conveyances. An owner desiring to convey his registered land in fee simple shall execute and register a deed of conveyance in a form sufficient in law. The Register of Deeds shall thereafter make out in the registration book a new certificate of title to the grantee and shall prepare and deliver to him an owner's duplicate certificate. The Register of Deeds shall note upon the original and duplicate certificate the date of transfer, the volume and page of the registration book in which the

new certificate is registered and a reference by number to the last preceding certificate. The original and the owner's duplicate of the grantor's certificate shall be stamped "canceled". The deed of conveyance shall be filled and indorsed with the number and the place of registration of the certificate of title of the land conveyed.

Section 59. Carry over of encumbrances. If, at the time of any transfer, subsisting encumbrances or annotations appear in the registration book, they shall be carried over and stated in the new certificate or certificates; except so far as they may be simultaneously released or discharged.

Section 60. Mortgage or lease of registered land. Mortgage and leases shall be registered in the manner provided in Section 54 of this Decree. The owner of registered land may mortgage or lease it by executing the deed in a form sufficient in law. Such deed of mortgage or lease and all instruments which assign, extend, discharge or otherwise deal with the mortgage or lease shall be registered, and shall take effect upon the title only from time of registration.

No mortgagee's or lessee's duplicate certificate of title shall hereafter be issued by the Registers of Deeds, and those issued prior to the effectivity of this Decree are hereby deemed canceled and the holders thereof shall immediately surrender the same to the Register of Deeds concerned.

Section 61. Registration. Upon presentation for registration of the deed of mortgage or lease together with the owner's duplicate, the Register of Deeds shall enter upon the original of the certificate of title and also upon the owner's duplicate certificate a memorandum thereof, the date and time of filing and the file number assigned to the deed, and shall sign the said memorandum. He shall also note on the deed the date and time of filing and a reference to the volume and page of the registration book in which it is registered.

Section 62. Discharge or cancellation. A mortgage or lease on registered land may be discharge or canceled by means of an instrument executed by the mortgage or lessee in a form sufficient in law, which shall be filed with the Register of Deeds who shall make the appropriate memorandum upon the certificate of title.

Section 63. Foreclosure of Mortgage. (a) If the mortgage was foreclosed judicially, a certified copy of the final order of the court confirming the sale shall be registered with the Register of Deeds. If no right of redemption exists, the certificate of title of the mortgagor shall be canceled, and a new certificate issued in the name of the purchaser.

Where the right of redemption exists, the certificate of title of the mortgagor shall not be canceled, but the certificate of sale and the order confirming the sale shall be registered by a brief memorandum thereof made by the Register of Deeds upon the certificate of title. In the event the property is redeemed, the certificate or deed of redemption shall be filed with the Register of Deeds, and a brief memorandum thereof shall be made by the Register of Deeds on the certificate of title of the mortgagor.

If the property is not redeemed, the final deed of sale executed by the sheriff in favor of the purchaser at a foreclosure sale shall be registered with the Register of Deeds; whereupon the title of the mortgagor shall be canceled, and a new certificate issued in the name of the purchaser.

(b) If the mortgage was foreclosed extrajudicially, a certificate of sale executed by the officer who conducted the sale shall be filed with the Register of Deeds who shall make a brief memorandum thereof on the certificate of title.

In the event of redemption by the mortgagor, the same rule provided for in the second paragraph of this section shall apply.

In case of non-redemption, the purchaser at foreclosure sale shall file with the Register of Deeds, either a final deed of sale executed by the person authorized by virtue of the power of attorney embodied in the deed of mortgage, or his sworn statement attesting to the fact of non-redemption; whereupon, the Register of Deeds shall issue a new certificate in favor of the purchaser after the owner's duplicate of the certificate has been previously delivered and canceled.

Three requirements for the issuance of a TCT:

1. The deed or instrument of conveyance (e.g., a deed of sale)
2. The owner's duplicate of the OCT
3. The Certificate Authorizing Registration from the BIR

Involuntary dealings

Section 69. Attachments. An attachment, or a copy of any writ, order or process issued by a court of record, intended to create or preserve any lien, status, right, or attachment upon registered land, shall be filed and registered in the Registry of Deeds for the province or city in which the land lies, and, in addition to the particulars required in such papers for registration, shall contain a reference to the number of the certificate of title to be affected and the registered owner or owners thereof, and also if the attachment, order, process or lien is not claimed on all the land in any certificate of title a description sufficiently accurate for identification of the land or interest intended to be affected. A restraining order, injunction or mandamus issued by the court shall be entered and registered on the certificate of title affected, free of charge.

Section 70. Adverse claim. Whoever claims any part or interest in registered land adverse to the registered owner, arising subsequent to the date of the original registration, may, if no other provision is made in this Decree for registering the same, make a statement in writing setting forth fully his alleged right or interest, and how or under whom acquired, a reference to the number of the certificate of title of the registered owner, the name of the registered owner, and a description of the land in which the right or interest is claimed.

The statement shall be signed and sworn to, and shall state the adverse claimant's residence, and a place at which all notices may be served upon him. This statement shall be entitled to registration as an adverse claim on the certificate of title. The adverse claim shall be effective for a period of thirty days from the date of registration. After the lapse of said period, the annotation of adverse claim may be canceled upon filing of a verified petition therefor by the party in interest: Provided, however, that after cancellation, no second adverse claim based on the same ground shall be registered by the same claimant.

Before the lapse of thirty days aforesaid, any party in interest may file a petition in the Court of First Instance where the land is situated for the cancellation of the adverse claim, and the court shall grant a speedy hearing upon the question of the validity of such adverse claim, and shall render judgment as may be just and equitable. If the adverse claim is adjudged to be invalid, the registration thereof shall be ordered canceled. If, in any case, the court, after notice and hearing, shall find that the adverse claim thus registered was frivolous, it may fine the claimant in an amount not less than one thousand pesos nor more than five thousand pesos, in its discretion. Before the lapse of thirty days, the claimant may withdraw his adverse claim by filing with the Register of Deeds a sworn petition to that effect.

Section 71. Surrender of certificate in involuntary dealings. If an attachment or other lien in the nature of involuntary dealing in registered land is registered, and the duplicate certificate is not presented at the time of registration, the Register of Deeds shall, within thirty-six hours thereafter, send notice by mail to the registered owner, stating that such paper has been registered, and requesting him to send or produce his duplicate certificate so that a memorandum of the attachment or other lien may be made thereon. If the owner neglects or refuses to comply within a reasonable time, the Register of Deeds shall report the matter to the court, and it shall, after notice, enter an order to the owner, to produce his certificate at a time and place named therein, and may enforce the order by suitable process.

Section 76. Notice of lis pendens. No action to recover possession of real estate, or to quiet title thereto, or to remove clouds upon the title thereof, or for partition, or other proceedings of any kind in court directly affecting the title to land or the use or occupation thereof or the buildings thereon, and no judgment, and no proceeding to vacate or reverse any judgment, shall have any effect upon registered land as against persons other than the parties thereto, unless a memorandum or notice stating the institution of such action or proceeding and the court wherein the same is pending, as well as the date of the institution thereof, together with a reference to the number of the certificate of title, and an adequate description of the land affected and the registered owner thereof, shall have been filed and registered.

Section 77. Cancellation of *lis pendens*. Before final judgment, a notice of lis pendens may be canceled upon order of the court, after proper showing that the notice is for the purpose of molesting the adverse party, or that it is not necessary to protect the rights of the party who caused it to be registered. It may also be canceled by the Register of Deeds upon verified petition of the party who caused the registration thereof.

At any time after final judgment in favor of the defendant, or other disposition of the action such as to terminate finally all rights of the plaintiff in and to the land and/or buildings involved, in any case in which a memorandum or notice of lis pendens has been registered as provided in the preceding section, the notice of lis pendens shall be deemed canceled upon the registration of a certificate of the clerk of court in which the action or proceeding was pending stating the manner of disposal thereof.

Autocorp Group v. CA, G.R. No. 157553, September 8, 2004

The registrant is under no necessity to present the owner's duplicates of the certificates of title affected, for purposes of primary entry, as the transaction sought to be recorded is an involuntary transaction.

	Voluntary	**Involuntary**
Nature	A willful act of the registered owner of the land to be affected by registration.	Pertains to a transaction affecting land where the registered owner's cooperation is not needed and may even be done against his will.
Registration requirement	Requires not only the entry of the deed, mortgage, lease, or assignment in the entry book, but also a	The law does not require presentation of the owner's duplicate certificate of title; annotation in the entry

	memorandum on both the owner's duplicate and the original certificate of title.	book is sufficient.
Effect of mere entry in Registration Book	Mere entry without presentation of the owner's duplicate certificate does not operate as a conveyance of the property.	Entry in the book alone is already effective to affect the property.
Reason for requirement	The owner is presumed to be interested in registration and is expected to willingly produce the duplicate certificate of title.	Registration is adverse to the owner's interest, so he may refuse or delay producing the certificate; thus the law waives this requirement.

Valderama v. Arguelles, G.R. No. 223660, April 2, 2018

While both notice of lis pendens and adverse claim have their own characteristics and requisites, it cannot be denied that they are both intended to protect the interest of a claimant by posing as notices and caution to those dealing with the property that is subject to a claim.

The annotation of a notice of lis pendens at the back of a certificate of title does not preclude the subsequent registration on the same certificate of title of an adverse claim.

	Adverse claim	**Notice of *lis pendens***
Purpose	Protects the right of a claimant during the pendency of a controversy.	Protects the right of a claimant during the pendency of an action or litigation.
Effect	Constitutes a lien on the property.	A mere incident of the action and does not create any right or lien.
How cancelled	May be cancelled only upon	May be cancelled without a
	filing a petition before the court, which must conduct a hearing on its validity.	court hearing.
Effect if not cancelled	Remains annotated and continues as a lien on the property.	No continuing effect since it does not create a lien.

Assurance fund

Section 93. Contribution to Assurance Fund. Upon the entry of a certificate of title in the name of the registered owner, and also upon the original registration on the certificate of title of a building or other improvements on the land covered by said certificate, as well as upon the entry of a certificate pursuant to any subsequent transfer of registered land, there shall be paid to the Register of Deeds one-fourth of one per cent of the assessed value of the real estate on the basis of the last assessment for taxation purposes, as contribution to the Assurance Fund. Where the land involved has not yet been assessed for taxation, its value for purposes of this decree shall be determined by the sworn declaration of two disinterested persons to the effect that the value fixed by them is to their knowledge, a fair valuation.

Nothing in this section shall in any way preclude the court from increasing the valuation of the property should it appear during the hearing that the value stated is too small.

Section 95. Action for compensation from funds. A person who, without negligence on his part, 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 of arising after original registration of land, through fraud or in consequence of any error, omission, mistake or misdescription in any certificate of title or in any entry or memorandum in the registration book, and who by the provisions of this Decree is barred or otherwise precluded under the provision of any law from bringing an action for the recovery of such land or the estate or interest therein, may bring an action in any court of competent jurisdiction for the recovery of damages to be paid out of the Assurance Fund.

Section 96. Against whom action filed. If such action is brought to recover for loss or damage or for deprivation of land or of any estate or interest therein arising wholly through fraud, negligence, omission, mistake or misfeasance of the court personnel, Register of Deeds, his deputy, or other employees of the Registry in the performance of their respective duties, the action shall be brought against the Register of Deeds of the province or city where the land is situated and the National Treasurer as defendants. But if such action is brought to recover for loss or damage or for deprivation of land or of any interest therein arising through fraud, negligence, omission,

mistake or misfeasance of person other than court personnel, the Register of Deeds, his deputy or other employees of the Registry, such action shall be brought against the Register of Deeds, the National Treasurer and other person or persons, as co-defendants. It shall be the duty of the Solicitor General in person or by representative to appear and to defend all such suits with the aid of the fiscal of the province or city where the land lies: Provided, however, that nothing in this Decree shall be construed to deprive the plaintiff of any right of action which he may have against any person for such loss or damage or deprivation without joining the National Treasurer as party defendant. In every action filed against the Assurance Fund, the court shall consider the report of the Commissioner of Land Registration.

Section 102. Limitation of Action. Any action for compensation against the Assurance Fund by reason of any loss, damage or deprivation of land or any interest therein shall be instituted within a period of six years from the time the right to bring such action first occurred: Provided, That the right of action herein provided shall survive to the legal representative of the person sustaining loss or damage, unless barred in his lifetime; and Provided, further, That if at the time such right of action first accrued the person entitled to bring such action was a minor or insane or imprisoned, or otherwise under legal disability, such person or anyone claiming from, by or under him may bring the proper action at any time within two years after such disability has been removed, notwithstanding the expiration of the original period of six years first above provided.

Re-issuance; reconstitution

Section 109. Notice and replacement of lost duplicate certificate. In case of loss or theft of an owner's duplicate certificate of title, due notice under oath shall be sent by the owner or by someone in his behalf to the Register of Deeds of the province or city where the land lies as soon as the loss or theft is discovered. If a duplicate certificate is lost or destroyed, or cannot be produced by a person applying for the entry of a new certificate to him or for the registration of any instrument, a sworn statement of the fact of such loss or destruction may be filed by the registered owner or other person in interest and registered.

Upon the petition of the registered owner or other person in interest, the court may, after notice and due hearing, direct the issuance of a new duplicate certificate, which shall contain a memorandum of the fact that it is issued in place of the lost duplicate certificate, but shall in all respects be entitled to like faith and credit as the original duplicate, and shall thereafter be regarded as such for all purposes of this decree.

Sec. 110. Reconstitution of Lost or Destroyed Original of Torrens Title. - Original copies of certificates of titles lost or destroyed in the offices of Register of Deeds as well as liens and encumbrances affecting the lands covered by such titles shall be reconstituted judicially in accordance with the procedure prescribed in Republic Act No. 26 insofar as not inconsistent with this Decree. The procedure relative to administrative reconstitution of lost or destroyed certificate prescribed in said Act may be availed of only in case of substantial loss or destruction of land titles due to fire, flood or other force majeure as determined by the Administrator of the Land Registration Authority: Provided, That the number of certificates of titles lost or damaged should be at least ten percent (10%) of the total number in the possession of the Office of the Register of Deeds: Provided, further, That in no case shall the number of certificates of titles lost or damaged be less than five hundred (500).

Notice of all hearings of the petition for judicial reconstitution shall be furnished the Register of Deeds of the place where the land is situated and to the Administrator of the Land Registration Authority. No order or judgment ordering the reconstitution of a certificate of title shall become final until the lapse of fifteen (15) days from receipt by the Register of Deeds and by the Administrator of the Land Registration Authority of a notice of such order or judgment without any appeal having been filed by any such officials.

Billote v. Solis, G.R. No. 181057, June 17, 2015

When the owner's duplicate certificate of title has not been lost, but is in fact in the possession of another person, the reconstituted certificate is void, because the court that rendered the decision had no jurisdiction.

Reconstitution can validly be made only in case of loss of the original certificate.

Gaoiran v. CA, G.R. No. 215925, March 7, 2022

Reconstitution is simply the reissuance of a lost duplicate certificate of title in its original form and condition. It does not determine or resolve the ownership of the land covered by the lost or destroyed title. A reconstituted title, like the original certificate of title, by itself does not vest ownership of the land or estate covered thereby.

- The purpose of the reconstitution of title is to have, after observing the procedures prescribed by law, the title reproduced in exactly the same way it has been when the loss or destruction occurred.
- If a certificate of title has not been lost, but is in fact in the possession of another person, then the reconstituted title is void and the court that rendered the decision had no jurisdiction.

Unregistered land

Section 113. Recording of instruments relating to unregistered lands. No

deed, conveyance, mortgage, lease, or other voluntary instrument affecting land not registered under the Torrens system shall be valid, except as between the parties thereto, unless such instrument shall have been recorded in the manner herein prescribed in the office of the Register of Deeds for the province or city where the land lies.

(a) The Register of Deeds for each province or city shall keep a Primary Entry Book and a Registration Book. The Primary Entry Book shall contain, among other particulars, the entry number, the names of the parties, the nature of the document, the date, hour and minute it was presented and received. The recording of the deed and other instruments relating to unregistered lands shall be effected by any of annotation on the space provided therefor in the Registration Book, after the same shall have been entered in the Primary Entry Book.

(b) If, on the face of the instrument, it appears that it is sufficient in law, the Register of Deeds shall forthwith record the instrument in the manner provided herein. In case the Register of Deeds refuses its administration to record, said official shall advise the party in interest in writing of the ground or grounds for his refusal, and the latter may appeal the matter to the Commissioner of Land Registration in accordance with the provisions of Section 117 of this Decree. It shall be understood that any recording made under this section shall be without prejudice to a third party with a better right.

(c) After recording on the Record Book, the Register of Deeds shall endorse among other things, upon the original of the recorded instruments, the file number and the date as well as the hour and minute when the document was received for recording as shown in the Primary Entry Book, returning to the registrant or person in interest the duplicate of the instrument, with appropriate annotation, certifying that he has recorded the instrument after reserving one copy thereof to be furnished the provincial or city assessor as required by existing law.

(d) Tax sale, attachment and levy, notice of lis pendens, adverse claim and other instruments in the nature of involuntary dealings with respect to unregistered lands, if made in the form sufficient in law, shall likewise be admissible to record under this section.

(e) For the services to be rendered by the Register of Deeds under this section, he shall collect the same amount of fees prescribed for similar services for the registration of deeds or instruments concerning registered lands.

Consulta

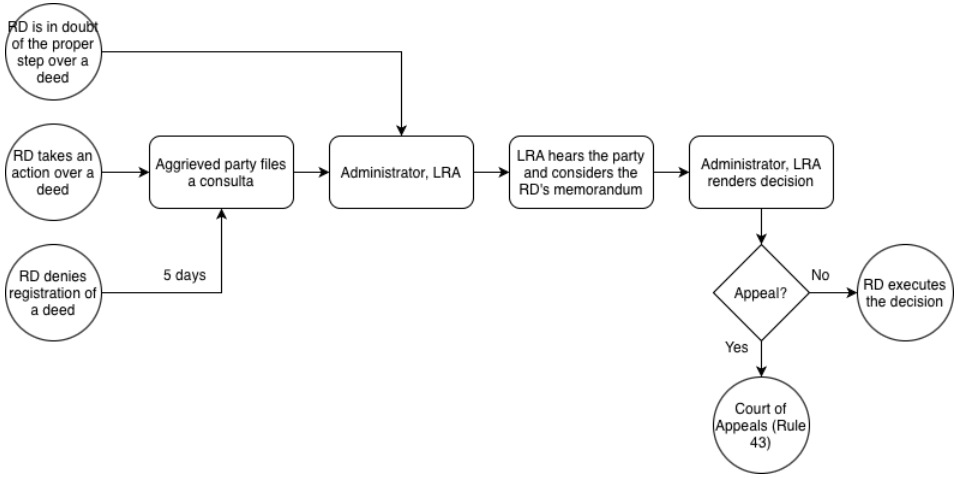
Section 117. Procedure. When the Register of Deeds is in doubt with regard to the proper step to be taken or memorandum to be made in pursuance of any deed, mortgage or other instrument presented to him for registration, or where any party in interest does not agree with the action taken by the Register of Deeds with reference to any such instrument, the question shall be submitted to the Commissioner of Land Registration by the Register of Deeds, or by the party in interest thru the Register of Deeds.

Where the instrument is denied registration, the Register of Deeds shall notify the interested party in writing, setting forth the defects of the instrument or legal grounds relied upon, and advising him that if he is not agreeable to such ruling, he may, without withdrawing the documents from the Registry, elevate the matter by consulta within five days from receipt of notice of the denial of registration to the Commissioner of Land Registration.

The Register of Deeds shall make a memorandum of the pending consulta on the certificate of title which shall be canceled motu proprio by the Register of Deeds after final resolution or decision thereof, or before resolution, if withdrawn by petitioner.

The Commissioner of Land Registration, considering the consulta and the records certified to him after notice to the parties and hearing, shall enter an order prescribing the step to be taken or memorandum to be made. His resolution or ruling in consultas shall be conclusive and binding upon all Registers of Deeds, provided, that the party in interest who disagrees with the final resolution, ruling or order of the Commissioner relative to consultas may appeal to the Court of Appeals within the period and in manner provided in Republic Act No. 5434.

Consulta



ACT NO. 3135

AN ACT TO REGULATE THE SALE OF PROPERTY UNDER SPECIAL POWERS INSERTED IN OR ANNEXED TO REAL-ESTATE MORTGAGES

Section 1. When a sale is made under a special power inserted in or attached to any real-estate mortgage hereafter made as security for the payment of money or the fulfillment of any other obligation, the provisions of the following election shall govern as to the manner in which the sale and redemption shall be effected, whether or not provision for the same is made in the power.

Sec. 2. Said sale cannot be made legally outside of the province in which the property sold is situated; and in case the place within said province in which the sale is to be made is subject to stipulation, such sale shall be made in said place or in the municipal building of the municipality in which the property or part thereof is situated.

Sec. 3. Notice shall be given by posting notices of the sale for not less than twenty days in at least three public places of the municipality or city where the property is situated, and if such property is worth more than four hundred pesos, such notice shall also be published once a week for at least three consecutive weeks in a newspaper of general circulation in the municipality or city.

Sec. 4. The sale shall be made at public auction, between the hours or nine in the morning and four in the afternoon; and shall be under the direction of the sheriff of the province, the justice or auxiliary justice of the peace of the municipality in which such sale has to be made, or a notary public of said municipality, who shall be entitled to collect a fee of five pesos each day of actual work performed, in addition to his expenses.

Sec. 5. At any sale, the creditor, trustee, or other persons authorized to act for the creditor, may participate in the bidding and purchase under the same conditions as any other bidder, unless the contrary has been expressly provided in the mortgage or trust deed under which the sale is made.

Mortgage

Llanto v. Alzona, G.R. No. 150730, January 31, 2005

General rule: The mortgagor should be the absolute owner of the property to be mortgaged. Otherwise, the mortgage is considered null and void.

Exception: The doctrine of mortgagee in good faith – Even if the mortgagor is not the owner of the mortgaged property, the mortgage contract and any foreclosure sale arising therefrom are given effect by reason of public policy.

- This is based on the rule that all persons dealing with property covered by a Torrens title are not required to go beyond what appears on the face of the title.
- For persons, jurisprudence requires that they should take the necessary precaution expected of a prudent man to ascertain the status and condition of the properties offered as collateral and to verify the identity of the persons they transact business with, particularly those who claim to be the registered property owners.

Sps. Miles v. Lao, G.R. No. 209544, November 22, 2017

There is indeed a situation where, despite the fact that the mortgagor is not the owner of the mortgaged property, his title being fraudulent, the mortgage contract and any foreclosure sale arising therefrom are given effect by reason of public policy.

- A mortgagee has a right to rely in good faith on the certificate of title of the mortgagor of the property given as security, and in the absence of any sign that might arouse suspicion, the mortgagee has no obligation to undertake further investigation.

But in cases where the mortgagee does not directly deal with the registered owner of real property, the law requires that a higher degree of prudence be exercised by the mortgagee.

PNB v. Jumamoy, G.R. No. 169901, August 3, 2011

A banking institution is expected to exercise due diligence before entering into a mortgage contract. The ascertainment of the status or condition of a property offered to it as security for a loan must be a standard and indispensable part of its operations.

Venue of foreclosure

Sps. Yu v. PCIB, G.R. No. 147902, March 17, 2006

The venue of extrajudicial foreclosure proceedings is the place where each of the mortgaged property is located.

- Thus, when a mortgage contract consists of properties in Dagupan City and Quezon City, there must be two separate foreclosure proceedings.

Sec. 6. In all cases in which an extrajudicial sale is made under the special

power hereinbefore referred to, the debtor, his successors in interest or any judicial creditor or judgment creditor of said debtor, or any person having a lien on the property subsequent to the mortgage or deed of trust under which the property is sold, may redeem the same at any time within the term of one year from and after the date of the sale and such redemption shall be governed by the provisions of sections four hundred and sixty-six, inclusive, of the Code of Civil Procedure, in so far as these are not inconsistent with the provisions of this Act.

Definition of terms

Cayton v. Zeonmix Trading Corp., G.R. No. 169541, October 9, 2009

Right of redemption – The prerogative to reacquire a mortgaged property after registration of the foreclosure sale.

- Successor-in-interest:
  - One to whom the debtor has transferred his right to redeem
  - One to whom the debtor has conveyed his interest in the property for the purpose of redemption
  - One who succeeds to the interest of the debtor by operation of law
  - One or more joint debtors who were joint owners of the property sold
  - His spouse or heirs

Redemptioner – A creditor with a lien subsequent to the judgment which was the basis of the execution sale.

BDO v. VTL Realty Inc., G.R. No. 193499, April 23, 2018

Foreclosure of mortgage – The termination of all rights of the mortgagor in the property covered by the mortgage.

- The procedure adopted by the mortgagee (bank) to terminate the rights of the mortgagor on the property and includes the sale itself.
- For judicial foreclosures, it is not complete until the Sheriff's Certificate is executed, acknowledged and recorded.
- It is only when the foreclosure proceedings are completed and the mortgaged property sold to the purchaser that all interests of the mortgagor (debtor) are cut off from the property. This principle is applicable to extrajudicial foreclosures.

Act No. 3135 vis-a-vis General Banking Act

GE Money Bank v. Sps. Dizon, G.R. No. 184301, March 23, 2015

The General Banking Act had the effect of amending Section 6 of Act No. 3135 insofar as the redemption price is concerned when the mortgagee is a bank, as in this case, or a banking or credit institution.

Thus, the amount at which the foreclosed property is redeemable is the amount due under the mortgage deed, or the outstanding obligation of the mortgagor plus interest and expenses in accordance with the General Banking Act.

Sec. 47. *Foreclosure of Real Estate Mortgage.* - In the event of foreclosure, whether judicially or extra-judicially, of any mortgage on real estate which is security for any loan or other credit accommodation granted, the mortgagor or debtor whose real property has been sold for the full or partial payment of his obligation shall have the right within one year after the sale of the real estate, to redeem the property by paying the amount due under the mortgage deed, with interest thereon at rate specified in the mortgage, and all the costs and expenses incurred by the bank or institution from the sale and custody of said property less the income derived therefrom. However, the purchaser at the auction sale concerned whether in a judicial or extra-judicial foreclosure shall have the right to enter upon and take possession of such property immediately after the date of the confirmation of the auction sale and administer the same in accordance with law. Any petition in court to enjoin or restrain the conduct of foreclosure proceedings instituted pursuant to this provision shall be given due course only upon the filing by the petitioner of a bond in an amount fixed by the court conditioned that he will pay all the damages which the bank may suffer by the enjoining or the restraint of the foreclosure proceeding.

Notwithstanding Act 3135, juridical persons whose property is being sold pursuant to an extrajudicial foreclosure, shall have the right to redeem the property in accordance with this provision until, but not after, the registration of the certificate of foreclosure sale with the applicable Register of Deeds which in no case shall be more than three (3) months after foreclosure, whichever is earlier. Owners of property that has been sold in a foreclosure sale prior to the effectivity of this Act shall retain their redemption rights until their expiration.

- Under the General Banking Act, the redemption period for juridical persons is <u>not</u> one year, but only:
  - Until the Certificate of Sale is registered with the RD, or
  - Lapse of three months from the public auction, *whichever is earlier*.

Redemption under the Public Land Act

Gueverra v. Commoner Lending Corp., G.R. No. 204672, February 18, 2015

In an extrajudicial foreclosure of registered land acquired under a free patent, the mortgagor may redeem the property within 2 years from the date of foreclosure, if the land is mortgaged to a rural bank. If not, the 1-year period under Act No. 3135 applies. If the mortgagor fails to exercise such right, he may still repurchase the property within 5 years from the expiration of the said redemption period, per § 119, Public Land Act.

- As to the repurchase price, case law has equated a right of repurchase under PLA as a right of redemption and the repurchase price as a redemption price.

SECTION 119. Every conveyance of land acquired under the free patent or homestead provisions, when proper, shall be subject to repurchase by the applicant, his widow, or legal heirs, within a period of five years from the date of the conveyance.

'Inchoate' rights

Ermitaño v. Paglas, G.R. No. 174436, January 23, 2013

During the period of redemption, the right of a purchaser at a foreclosure sale is merely inchoate until after the period of redemption has expired without the right being exercised.

It is only upon the expiration of the redemption period, without the judgment debtor having made use of his right of redemption, that the ownership of the land sold becomes consolidated in the purchaser.

Consolidation; no notice required

Unionbank v. CA, G.R. No. 133366, August 5, 1999

The buyer in a foreclosure sale becomes the absolute owner of the property purchased if it is not redeemed during the period of one year after the registration of the sale.

In case of non-redemption, the purchaser at foreclosure sale shall file with the Register of Deeds, either a final deed of sale executed by the person authorized by virtue of the power of attorney embodied in the deed or mortgage, or his sworn statement attesting to the fact of non-redemption; whereupon, the Register of Deeds shall issue a new certificate of title in favor of the purchaser after the owner's duplicate of the certificate has been previously delivered and cancelled.

- Upon failure to redeem foreclosed realty, consolidation of title becomes a matter of right on the part of the auction buyer, and the issuance of a certificate of title in favor of the purchaser becomes ministerial upon the Register of Deeds.

The Writ of Possession

Sec. 7. In any sale made under the provisions of this Act, the purchaser may petition the Court of First Instance of the province or place where the property or any part thereof is situated, to give him possession thereof during the redemption period, furnishing in amount equivalent to the use of the property for a period of twelve months, to indemnify the debtor in case it be shown that the sale was made without violating the mortgage or without complying with the requirements of this Act. Such petition shall be made under oath and filed in form of an ex parte motion in the registration or cadastral proceedings if the property is registered, or in special proceedings in the case of property registered under the Mortgage Law or under section one hundred and ninety-four of the Administrative Code, or of any other real property encumbered with a mortgage duly registered in of deeds in accordance with any ex case the clerk of the court shall, petition, collect the fees specified in paragraph eleven of section one hundred and fourteen of Act Numbered Four hundred and ninety-six, as amended by Act Numbered Twenty-eight hundred and sixty-six and the court shall, upon approval of the bond, order that a writ of possession issue, addressed to the sheriff of the province in which the property is situated, who shall execute said order immediately.

Sec. 8. The debtor may, in the proceedings in which possession was requested, but not later than thirty days after the purchaser was given possession, petition that the sale be set aside and the writ of possession cancelled, specifying the damages suffered by him, because the mortgage was not violated or the sale was not made in accordance with the provisions hereof, and the court shall take cognizance of this petition in accordance with the summary procedure provided for in section one hundred and twelve of Act Numbered Four hundred and ninety-six; and if it finds the complaint of the debtor justified, it shall dispose in his favor of all or part of the bond furnished by the person who obtained possession. Either of the parties may appeal from the order of the judge in accordance with section fourteen of Act Numbered Four hundred and ninety-six; but the order of possession shall continue in effect during the pendency of the appeal.

Nature of the writ

UCPB v. Lumbo, G.R. No. 162757, December 11, 2013

The application for a writ of possession by the purchaser in a foreclosure sale conducted under Act No. 3135 is ex-parte and summary in nature,

brought for the benefit of one party only and without notice being sent by the court to any person adverse in interest.

- The grant of the writ of possession is but a ministerial act on the part of the issuing court, because its issuance is a matter of right on the part of the purchaser.

The implementation of a writ of possession issued pursuant to Act No. 3135 at the instance of the purchaser at the foreclosure sale of the mortgaged property in whose name the title has been meanwhile consolidated cannot be prevented by the injunctive writ.

Autocorp (*supra*)

To underscore the writ's ministerial character, we have disallowed injunction to prohibit its issuance, just as we have held that issuance of the same may not be stayed by a pending action for annulment of the mortgage or the foreclosure itself.

If applied by third parties

Barrameda v. Gontang, G.R. No. L-24110, February 18, 1967

It is the duty of the competent court to issue a writ so that the purchaser may be placed in the possession of the property which he purchased at the public auction sale and became his by virtue of the final decree confirming the sale.

The same court also has jurisdiction to issue a writ of possession in favor of the purchaser at public auction of the property mortgaged without the necessity of an independent action *when the mortgagor continues in the possession*.

Javate v. Tiotuico, G.R. No. 187606, March 9, 2015

A writ of possession may be issued to enable a third-party purchaser to obtain possession of an extrajudicially foreclosed property.

- In other words, the writ of possession will only issue if the property is still being possessed by the mortgagor-debtor. If not, the ordinary action of ejectment must be used.

When a writ is not *ministerial*

Cahilig v. Terencio, G.R. No. 164470, November 28, 2011

The issuance of an *ex parte* writ of possession in favor of the purchaser in an extrajudicial foreclosure sale ceases to be ministerial once it appears that there is a third party in possession of the property who is claiming a right adverse to that of the debtor/mortgagor.

BPI v. Golden Power Diesel, G.R. No. 176019, January 12, 2011

Third party who is actually holding the property adverse to the judgment debtor – It contemplates a situation in which a third party holds the property by adverse title or right, such as that of a co-owner, tenant or usufructuary.

- The co-owner, agricultural tenant, and usufructuary possess the property in their own right, and they are not merely the successor or transferee of the right of possession of another co-owner or the owner of the property.
- Thus, a *successor-in-interest* is not included.

Petition for cancellation of writ of possession; when available

680 Homes Appliances v. CA, G.R. No. 206599, September 29, 2014

Act No. 3135 applies until the period of redemption. Once redemption lapses and consolidation of the purchaser's title ensures, Act No. 3135 finds no application.

- Thus, Sec. 8 (petition for cancellation) is inapplicable when the redemption period has expired without the debtor having exercised his right, and the purchaser has already consolidated ownership over the property and moved for the issuance of the writ of possession.
- Thus, the debtor should pursue a separate action, *e.g.*, recovery of ownership, for annulment of mortgage and/or annulment of foreclosure.

Sec. 9. When the property is redeemed after the purchaser has been given possession, the redeemer shall be entitled to deduct from the price of redemption any rentals that said purchaser may have collected in case the property or any part thereof was rented; if the purchaser occupied the property as his own dwelling, it being town property or used it gainfully, it being rural property, the redeemer may deduct from the price the interest of one per centum per month provided for in section four hundred and sixty-five of the Code of Civil Procedure