**ATENEO DE MANILA UNIVERSITY**
**Agency**
**Chapter Summaries**

## Chapter 1: Nature, objective and kinds of agency

**Contract of agency** – One whereby a person binds himself to render some service or to do something in representation or on behalf of another, with the consent or authority of the latter (Art. 1868).

- This is from the viewpoint of the *agent* who binds himself to enter to juridical acts in the name of the principal.
- Hence, a contract of agency is *unilateral.*

**Legal framework**

- **General rule:** No one may contract in the name of another without being authorized by the latter, or unless he has by law a right to represent him.
    - Unauthorized or *ultra vires* contracts are *unenforceable*.
    - This is why the creation and acceptance of the *relationship of agency* arose.
- The purpose of every contract of agency is the ability, by legal fiction, to extend the personality of the principal through the facility of the agent—but only with the principal's consent.
- For agency to arise, it is not necessary that the principal personally encounter the third person with whom the agent interacts.
    - Agency contemplates impersonal dealings!
- Once an agency relationship is established, and the agent acts in the name of the principal, the agent is essentially the principal acting in the contract or transaction at hand.

**Doctrine of representation** – The acts of the agent on behalf of the principal, *within* the scope of the authority, have the *same* legal effects as though the principal had been the one so acting.

**Parties to a contract of agency**

1. Principal – The person represented (*mandante*)
2. Agent – The person who acts for and in representation of another (*mandatorio*)

**Elements of the contract of agency**

1. Consent, express or implied
2. Object, which is the execution of a juridical act in relation to third parties
3. Agent, who acts as a *representative*
4. Agent acts *within* the scope of his authority (*Rallos*)

*Nos. 3 and 4 merely talk about the enforceability of the contracts entered by the agent—not the validity of those contracts.*

***Consent***

- This is manifest from the principle that no person may be represented by another without his will; and no person can be compelled against his will to represent another.
- The basis of agency is representation.
    - Thus, the principal must have an *actual intention* to appoint or an *intention naturally inferable* from his actions and words
    - For the agent, there must be an *intention to accept the appointment* and act on it.
- **Exception:** Agency by estoppel.
- **Capacity of the parties:**
    - **Principal:** The principal must have capacity to contract, and the principal may be natural or juridical persons.
    - **Agent**
        - *De Leon view*: Agent need not have full capacity to act.

- *CLV view*: Both parties must have legal capacities to act. If one is incapacitated, the contract is voidable for vitiation in consent.
- In any case, the loss of the legal capacity of the agent extinguishes the agency.

| **Principal** | **Agent** | **Resulting contract** |
|---|---|---|
| Incapacitated | Capacitated | Voidable |
| Capacitated | Incapacitated | • Agency contract: Voidable<br>• Resulting contract: Valid |

***Subject matter***

- The object of every agency contract is service, i.e., the undertaking of the agent to enter to juridical acts with third persons on behalf of the principal.
- A unilateral personal obligation *to do*

***Consideration***

- Agency is presumed to be for a compensation, unless there is proof to the contrary (Art. 1875).
- The consideration is the compensation or commission that the principal agreed or committed to pay the agent for the latter's services.
- They can also be gratuitous contracts—consideration of liberality of the agent.
- **Agent's entitlement to compensation anchored on the rendering of the defined service:**
    - **General rule:** Compensation of the agent is based on the contract.
    - *If rendering of service alone* – the basis for compensation is the proof that the services have been rendered
    - *If the service is based on the results to be achieved* – then, the mere rendering of the services will not entitle the agent to compensation
    - **Prats doctrine** – When there is a close, proximate and casual connection between the agent's effort and the principal's sale of his property, the agent is entitled to his commission.

**Essential characteristics of an agency**

***Nominate and principal***

- It is principal because it can stand on its own
- It is nominate because it is specifically named in the Civil Code

***Consensual***

- The contract of agency is perfected by mere consent, for it is consensual
- Agency may be express, or implied from the acts of the principal, from his silence or lack of action, or his failure to repudiate the agency, knowing that another person is acting on his behalf without authority (Art. 1869).
    - Agency may be oral, unless the law requires a specific form (*Id.*).
- Acceptance by the agent may also be express, or implied from his acts which carry out the agency, or from his silence or inaction according to the circumstances (Art. 1870).

***Unilateral and primarily onerous***

- It is onerous because the agent ordinarily expects compensation. In the absence of express stipulation, an agency is *presumed* to be for compensation.
- It is unilateral because it only creates an obligation on the part of the agent.
    - The principal's obligation to compensate the agent is only a *subordinate obligation*

***Personal, representative, and derivative***

- **General rule:** The agent, acting as an agent, is *not* personally liable to the party with whom he contracts.
    - **Exceptions:**

        - When the agent binds himself so
        - When the agent exceeds his authority, without giving such party sufficient notice of his powers (Art. 1897).
- The authority of the agent to act emanates from the powers granted to him by his principal; his act is the act of the principal if done within the scope of his authority.
- **Principles:**
    - Contract entered into with third persons pertains to the *principal* and not to the agent *who is a stranger to said contract.*
        - Hence, if the agent purchases the property in bad faith, the principal is deemed a purchaser in bad faith.
    - All acts that the principal can do in person, he may do through an agent.
        - *Except:* Those which under public policy are strictly personal to the person of the principal.
    - A suit against the agent in his personal capacity cannot—without compelling reasons—be considered a suit against the principal.
    - Notice to the agent should always be construed as notice binding on the principal, *even when the principal never became aware thereof.*
    - Knowledge of the agent is *equivalent* to knowledge of the principal
        - *Exceptions:*
            1. Agent's interests are adverse to those of the principal
            2. Agent's duty is not to disclose the information, as where he is informed by way of confidential information
            3. The person claiming the benefit of the rule colludes with the agent to defraud the principal.

***Fiduciary and revocable***

- The agent's representation of the principal is *fiduciary* in character.
    - Because an agency relationship is based on trust and confidence.
- As a consequence thereof, it is revocable in character: neither the principal nor the agent can be legally made to remain in the relationship when they choose to have it terminated.
    - The courts have no authority to compel the principal to reinstate a contract of agency it has terminated.
    - Agency may be revoked by the principal at will, because it is a personal contract based on trust and confidence.
- *Consequences:*
    1. The agent is estopped from asserting or acquiring a title adverse to that of the principal (agent must first repudiate the agency)
    2. The agent cannot choose a course that favors himself to the detriment of the principal—he must choose to the best advantage of the principal, in a *conflict-of-interest* situation
    3. The agent *cannot purchase* for himself the property of the principal which has been given to his management for sale or disposition
        a. *Exceptions:*
            i. The principal gives express consent
            ii. The agency has already been terminated

***Preparatory and progressive***

- It is a preparatory contract entered into for the purpose of dealing with the public in a particular manner—for the agent to enter into juridical acts with third parties in the name of the principal
- It is merely a tool or medium
- It is *progressive* because it is pliable—it may be adopted into other relationships, such as a contract of sale, to be able to achieve commercial ends.

**Kinds of agency**

1. As to the business or transaction covered (Art. 1875):

a. General – It encompasses all the businesses of the principal, i.e., a universal agency.
b. Specific – It covers one or more specific transactions, i.e., a particular agency.

2. Whether it covers litigation matters
    a. Attorney-at-law – The appointment of an agent to represent the principal on legal matters.
        i. However, not all attorney-client relationship is a contract of agency.
    b. Attorney-in-fact – This is intended to describe all agents appointed by a principal to act on juridical relations that have nothing to do with legal matters and do not constitute practice of law on the part of the agent.
        i. This is the classification that covers the "contract of agency" governed by the Civil Code
3. Whether is covers acts of administration or acts of ownership
    a. General power of attorney (GPA) – Only covers acts of administration, or to pursue the ordinary or regular course of business of the principal.
    b. Special power of attorney (SPA) – Covers acts of dominion or strict ownership, or represents a situation that is described as extraordinary conditions or those pursued not in the ordinary course of business.
    c. **General rule:** When an agency is constituted, it only covers the powers to execute acts of administration.
        i. **Exception:** Unless so expressly stated (Art. 1877)

**Agency distinguished from similar contracts:**

1. From an employment contract
    a. The relationship between capital and labor are not merely contractual, and they are imbued with public interest.
    b. The employer-employee relationship is for the employee to *render service* for the direct benefit of the employer/his business; while agency is entered into to pursue juridical relationships on behalf of the principal with third parties.
2. From a contract for a piece of work
    a. Here, the contractor is not an agent of the "principal" (the client) and the contractor has no authority to represent the principal.
    b. There is no element of control
3. From a management agreement
    a. Both involve one party binding himself to render some service to the other
    b. In an agency, the basis is representation, while in management agreement, the basis is employment
    c. An agency is a preparatory contract, while a management contract contemplates only material (non-juridical) acts
4. From a contract of sale
    a. If a contract contains provisions characteristic of *both* sale and agency, the essential clauses of the *whole* instrument must be considered (Art. 1466)
        i. For instance, it is sale if there are terms which required the "principal" to supply the beds, while the "agent" must pay.
    b. A true agent does not assume personal responsibility for the payment of the price of the object of the agency.
    c. Appointing one as "agent" or "distributor," when such appointee assumes the responsibilities of a buyer of the goods, does not make the relationship one of agency, but that of sale.
    d. It is agency if the ownership of the merchandise did not transfer to the purported distributor.
        i. The transfer of title or agreement to transfer it for a price paid or promise is the *essence* of sale.
5. From a contract of brokerage
    a. Broker – One who is engaged for others, on a commission, negotiating contracts relative to property with the custody of which he has no concern. He is strictly a middleman.

## Chapter 2: Formalities of agency

**How agency may be constituted** – It is perfected by mere consent on the object (service) and upon the consideration agreed upon, the contract of agency being a consensual contract.

**When are certain formalities required:**

1. When form is required for its validity
2. When form is required to make it binding upon third parties
3. When form is required to prove the existence of the contract (e.g., Statute of Frauds)

**Perfection from the side of the *principal***

- Agency is constituted:
    - From his acts formally adopting it
    - From his silence or inaction, particularly his failure to repudiate the agency knowing someone is acting in his name
- Ideal way: When he issues a written power of attorney
    - Nonetheless, a written contract of agency is *not* required because Art. 1869 provides that it may be oral or may be deduced from the act of the principal.

**Perfection from the side of the *agent***

- Acceptance of the agent:
    - May be express or implied from his acts which carry out the agency
    - From his silence or inaction *according to the circumstances* (Art. 1870).[1]

**Instances when there is deemed to be a meeting of minds between the agent and principal[2]**

1. If the constitution of the agency is made with both the principal and agent physically present at the time of perfection of the contract of agency, the acceptance of the agency may be implied if the principal delivers his power of attorney to the agent and the latter receives it without objection (Art. 1871)
2. If the constitution of the agency is made with both the principal and agent *not* physically present in one place, there can be *no* implied acceptance of agency from the silence or inaction of the agent, *except:*
    a. When the principal transmits his power of attorney to the agent without any objection
    b. When the principal entrusts to the agent, by letter or telegram, a power of attorney with respect to a business in which he is habitually engaged as an agent, and he did *not* reply to the letter or telegram (Art. 1872)
3. In *both* cases, the law contemplates a written instrument—the delivery of a power of attorney.

**Perfection of the contract of agency as it affects third persons**

1. When the principal informs another person that he has given a power of attorney to the agent, the latter becomes a duly authorized agent who received the information.
2. When the principal states by advertisement that he has given a power of attorney to the agent, the latter thereby becomes a duly authorized agent with regard to *any* person.
    a. The power of the agent continues until the notice is rescinded in the *same* manner in which it was given.

***Upon revocation of the power*:**

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[1] CLV's criticism: (1) There seems to be an indication that there is such a thing as implied acceptance on the part of the agent "from acts which carry out the agency"; (2) There is an indication that there is such a thing as implied acceptance of the appointment from his silence according to the circumstances—the proper interpretation of the silence or inaction of the agent is that he has *not* accepted the appointment. The better rule should be that a principal should *never* presume that a designated person has accepted the agency by mere silence.

[2] These provisions are in conflict with Art. 1870—nonetheless, Art. 1871 and 1872 are the better provisions in interpreting the agent's silence or inaction.

1. For a special agency, the revocation of the agency shall not prejudice the third person if they were not given notice of the revocation
2. For a general agency, the revocation of the agency shall not prejudice third persons who acted in good faith and without notice of the revocation.
    a. However, notice of the revocation in a newspaper of general circulation is sufficient warning to third persons.

**Third parties must ascertain the agent's authority**

- While agency is consensual, an agency arrangement must never be presumed.
- Hence, the third person must ascertain two things:
    1. Fact of the agency
    2. Nature and extent of the agent's authority
- In doing so, the third person must act with *ordinary prudence* and *reasonable diligence* to ascertain whether the agent is acting and dealing with him within the scope of his powers.
    - Hence, the declaration of one that he is an agent of another is *never* to be accepted at face value, except in those cases where an agency arises by express provision of law.
    - A co-owner is not an agent of the other co-owners.
    - In the absence of a written power of attorney, the burden of proof to show that an agent acted within the scope of his authority is with the *third party*.
- Two implications from Art. 1873:
    1. When the agent says something, the third party must never take the word or representations at face value—the third party must appraise themselves of the extent of powers of the purported agent.
    2. But when a person purports to be a principal, third parties can take their word, declaration and representation with respect to the appointment and extent of powers of the purported agent.

**Agency by estoppel**

- Even when an agent has exceeded his authority, the principal remains *solidarily* liable with the agent if he allowed the agent to act as though he had full powers (Art. 1911).
- One who clothes another apparent authority as his agent, and holds him out to the public as such, cannot be permitted to deny the authority of such person to act as his agent, to the prejudice of innocent third parties dealing with such person in good faith.
- There is no agency at all—but the one assuming to act as agent has apparent or ostensible, although not real, authority to represent another.

***Requisites of agency by estoppel:***

1. The principal manifested a representation of the agent's authority *or* knowingly allowed the agent to assume such authority
2. The third person, in good faith, relied upon such representation
    a. Hence, there must be proof of reliance
3. Relying upon such representation, such third person has changed his position to his detriment.

**Power of attorney** – An instrument in writing by which one person, as principal, appoints another as his agent and confers upon him the authority to perform certain specified acts or kinds of acts on behalf of the principal.

**Three concepts:**

1. Evidence of the instrument
2. Authority
3. Contract of agency
    a. Every contract of agency and a power of attorney has only one purpose—to enter into juridical acts in behalf of the principal

***(1) General powers of attorney*** – Every agency couched in general terms must be construed as granting the agent the power to execute *acts of administration,* even if the principal:

1. States that he withholds *no* power from the agent
2. States that the agent may execute acts he considers appropriate
3. Authorizes general and unlimited management (Art. 1877)

***Acts of administration*** – It means to act in the ordinary course of business.

- *Test*: If the act, transaction or contract is a matter that from the nature of the business is expected to occur and for which action is expected without much changing the course of the business, it is a mere *act of administration.*
    - If the act is of a nature, considering the business being managed, that is not expected to happen or decided upon in the day-to-day affairs, it would constitute an act of ownership or strict dominion, one which is extraordinary, and not in the ordinary course of business.
        - The power to sue is an act of strict dominion.

***Written powers of attorney***

- The only manner by which any third party may enforce a contract against a principal who denies having given any authority to the agent is the presentation in evidence of a written power of attorney.
    - Even if that denial is a *lie*.
- The clearest manner by which there is a specific grant of power of strict dominion is by writing.
    - Otherwise, the presumption that no agency exists prevails.
- Generally, a power of attorney doesn't need to be notarized to be valid and binding.
- Every contract entered into by the agent on behalf of the principal concerning acts of ownership pursuant to a *verbal* special power of attorney is only *unenforceable*.
    - It only becomes void if the sale concerns land (Art. 1874).
- ***Construction*** – The real intention of the parties is primarily to be determined from the language used. The whole instrument must be construed, and every word or clause be given effect (*see Civil Code provisions on interpretation of contracts*).
- **Current rule:** Whether what is granted is an authority to merely administer or to do an act of ownership is *not determined* from the title given to the instrument, but on the nature of the power given under the operative provisions of such instrument.

***Rule of strict construction***

- The instrument will be held to grant only those powers that are specified, and the agent can neither go beyond nor deviate from the power of attorney
- Courts will not infer or presume broad powers—the act done must be legally identical with that authorized to be done
- A power of attorney must be strictly construed and pursued
- When the authority is couched in general terms, then only acts of administration are deemed conferred.

***(2) Special powers of attorney***

- An agent has special power of attorney only when the act or contract enumerated specifically under Art. 1878 has been literally "named," i.e., the power must literally be written or expressed for the commission to constitute a special power of attorney.
- It is a clear mandate specifically authorizing the performance of a specific power and of express acts subsumed therein.

***Specific instances when the law requires an SPA***

1. To make payments not usually considered as acts of administration
    a. All other forms of payment on behalf of the principal which are not within the ordinary course of business constitute acts of strict dominion.

        i. Hence, the payment of insurance claims was an act of strict dominion and could not be deemed to be within the powers of administration of the area manager.
2. To effect novation which put an end to obligations in existence at the time the agency was constituted
    a. This implies that if the obligation was created only during the agency relationship, the power to create such obligation granted to the agent includes with it the *implied power to novate it.*
3. To do the following matters related to litigation involving the principal:
    a. Compromise
    b. Submit questions to arbitration
    c. Renounce the right to appeal from a judgment
    d. Waive objections to the venue of an action
    e. Abandon a prescription already acquired
        i. These powers are *not* mutually exclusive. However, the power to compromise excludes the power to submit to arbitration, and vice-versa (insofar as [a] and [b] are concerned, they are mutually exclusive).
4. To waive any obligation gratuitously
    a. This is condonation or remission of debt (*see* Art. 1270)
5. To enter into any contract by which ownership of an immovable is transmitted or acquired
    a. There can never be an implied power on the part of the agent to transmit or acquire ownership over immovable property—an SPA is required—whether gratuitously or generously.
    b. When it comes to movable properties, the power to dispose may be an act of administration, such as the sale of merchandise in the ordinary course of business
    c. Compared with Art. 1874 (which is the specific rule for lands):
        i. In the *sale* of a piece of land, it is required that the SPA has to be in writing for the sale to be valid; in the case of the *purchase* of a piece of land, the SPA does not render the purchase void when the agency is not in writing.
        ii. For all other immovables other than land or any interest therein, the fact that the SPA to sell or purchase is *not* in writing would *not* render the sale void, but merely unenforceable as against the principal who denies having granted such authority to the agent.
    d. The SPA to sell does not include the power to mortgage (and vice-versa), because Art. 1879 says so.
        i. Exception: The public sale that happens as part of the foreclosure on the mortgage.
    e. The power to sell for "any amount" includes the power to effect an exchange or barter.
    f. ***Sale of a piece of land through an agent*** – The SPA must be in writing, else the sale is *void* (Art. 1874).
        i. Nonetheless, if the principal *subsequently* enters directly with the same buyer into a formal deed of sale, the sale is valid and is no longer under the ambit of Art. 1874.
        ii. Other than it needs to be in writing, no other formality is required for the SPA under Art. 1874. Hence, a letter authorizing the agent to sell is sufficient.
        iii. The SPA does not even need to contain a specific description of the land to be sold, such that giving the agent the power to sell "any or all tracts, lots, or parcels of land" belonging to the principal was deemed adequate.
        iv. The rule is, the SPA need only contain the specification of the power to sell, rather than a specification of the piece of land.
        v. Hence, the agent has the discretion to sell the land under any term or condition and covenant he may think fit as he has the power to sell the land.
        vi. In one case, the court held that an SPA can be subsumed under a GPA, if the latter includes a *proper description of the title of the land and the clear power to sell it.*
        vii. In any case, the SPA must be in writing and signed by the principal to be enforceable against the principal.

    g. The agent cannot validly buy the property of the principal held for sale.
        i. Else, the sale is void (Art. 1491[2]).
6. To make gifts
    a. *General rule:* For an agent to make gifts or donations, he must be granted the power under an SPA.
    *b. Exceptions:*
        i. Customary ones for charity
        ii. Those made to employees in the business managed by the agent
    c. The rules/formalities on donation will determine if the donation is void, as donation is a solemn contract.
7. To loan or borrow money
    a. *Exception:* No SPA is required when the act be urgent and indispensable for the preservation of the things which are under administration.
    b. An authority to borrow money does not include the power to mortgage real estate.
    c. An authority to execute loan documents does not include the authority to waive an obligation—it requires a separate grant of power through an SPA (*see* Art. 1878[4]).
    d. Nothing prevents the agent, however, from being the lender of the principal.
8. To lease real property for more than one year
    a. Hence, a lease of real property for less than a year is an act of administration and may be delegated through a GPA.
    b. Lease of personal property is not included. Whether an SPA or GPA is needed will depend whether the lease of the personal property is an act of administration, depending on the circumstances involved.
    c. The Statute of Frauds requires that any lease for more than a year be in writing to be enforceable.
9. To bind the principal to render some service without compensation
    a. CLV's position is that this provision *does not* include the power to bind the principal to render service *for compensation* under a GPA.
    b. This is because the service involved is a personal obligation—the principal's refusal makes him liable for damages.
10. To bind the principal in a contract of partnership
    a. Hence, contracts of partnership or JVAs cannot be entered into the name of the principal sans SPA.
11. To obligate the principal as guarantor or surety
    a. This being a separate provision, it prescinds, then, that the power to loan money does not include the power to make the principal a surety for the payment of debt of a third person.
    b. Again, the Statute of Frauds applies to contracts of guaranty—it has to be in writing to be enforceable.
12. To create or convey real rights over immovable
    a. This intends to cover dealings on immovable property outside of the sale of a piece of land or any interest therein.
    b. To bind the principal to a REM executed by an agent, it must upon its face purport to be made, signed, and sealed in the name of the principal—else, only the agent will be bound.
13. To accept or repudiate an inheritance
    a. The acceptance of an inheritance involves an act of gratitude on the part of the heir and cannot be presumed to be a burden that the principal is presumed to accept as a matter of course.
14. To ratify or recognize obligations contracted before the agency
    a. The act of ratifying or cleansing a defective contract that could validly be enforced against the principal is an act of strict ownership.
    b. Meanwhile, recognizing transforms a natural obligation into a civil one—one that can be the subject of civil enforcement.
15. Any other act of strict dominion
    a. The implication under this paragraph is that those acts that may constitute acts of strict ownership not named in the preceding paragraphs would need an SPA.

***Doctrine of implied powers flowing from express powers***

- The grant of express powers of SPA must necessarily include all powers implied or incidental to such express powers, even if they amount to acts of ownership or strict dominion.
    - For instance, an agency granted a power of attorney to deal with property is deemed authorized to engage the services of a lawyer to preserve the ownership and possess of the properties of the principal.
    - Too, an attorney-in-fact empowered to pay the depts of the principal and to employ legal counsel has certainly the implied power to pay on behalf of the principal the attorney's fees charged by the lawyer.

***SPA excludes GPA over the matter covered***

- The grant of specific power of attorney excludes from the agent the power to execute all other acts of administration.
- If the principal decides to detail the powers he grants to the agent, then he means to exclude all other powers of administration other than those that are incidental to those specifically granted.
    - Hence, once granted an express power of attorney, the agent cannot execute any other act outside the language of that power of attorney.

## Chapter 3: Power and authority, duties and obligations of the agent

**Preliminary matters**

- When an agent accepts the appointment of the principal, a contract of agency arises and at that point, the agent is legally bound to carry out the terms of the agency.
- If the accepting agent fails or refuses to carry on the terms of the agency, he shall be liable for damages suffered by the principal by reason of his nonperformance.
    - In other words, the agent is bound to comply with his duties of obedience and of diligence.

**Measure of damage for agent's nonperformance**

- The burden is on the person who seeks to make an agent liable to show that the losses and damage caused were occasion by the *fault or negligence* of the agent; mere allegation without substantiation is not enough to make the agent personally liable.

**Obligation to carry out the agency *extended to third parties***

- The fiduciary duties of the agent to carry out the agency extends to third parties with whom the agent, acting on behalf of the principal, has contracted with.
    - It is the duty of the agent to act in good faith for the advancement of the interests of the principal.

**Obligation of agent who declines agency**

- No contract of agency arises.
    - *Exception:* In spite of the person's refusal to accept the agency, he is bound to observe ordinary diligence in the custody and preservation of the goods forwarded to him by the owner until the latter can appoint an agent (Art. 1885).
        - The same tenor is found in Art. 1929, when the agent withdraws from an agency.
        - These two provisions constitute rare instances where a duty of diligence is owed by a person to another outside of an existing contractual bond.

**General rule on agent's power and authority**

1. Statutory measures of compliance by the agent of his fiduciary duties of obedience and diligence
    a. Agent must act "in accordance with the instructions of the principal" (obedience)

b. In default of guiding instructions, the agent "shall do all that a good father of a family would do, as required by the nature of the business" (diligence) (Art. 1887)
    i. In short: The agent must act within the scope of his authority (Art. 1881)
c. In short: The duty to act in the best interest of the principal.

***Duty of obedience***

- The foremost duty of every agent must be to follow the instructions of the principal.
- This is because the distinguishing factor of agency is **control**.
    - Since the agent acts in representation of the principal, he must enter into juridical relations on behalf of the principal and representing the will or consent of the principal—and not his own will.
        - In fact, one of the clearest examples that the agent has impliedly given the consent of the principal to a contract or a transaction, is when he acts in accordance with the instructions of the principal.
        - In this case, there is no doubt that he is acting within the scope of his authority.
- Consequences of a breach of obedience:
    1. The agent becomes personally liable for damages
    2. The principal is not personally bound by the transaction
    3. It would be the agent who *may* become personally liable for the contract or transaction

***Duty of diligence***

- Why? Because agency relations are often entered into mainly for business or commercial ventures, and it is not expected that the principal can cover all contingencies with specific instructions.
- Hence, the agent is expected to use his business discretion as if the principal would or could.
    - Impliedly, in the absence of explicit instructions, it is expected that the agent uses his best judgment to stay within the scope of the principal's authority granted to him.
    - The agent may do such acts as may be conducive to the accomplishment of the purpose of the agency (Art. 1881)
    - The limits of the agency's authority shall not be considered exceeded should it have been performed in a manner more advantageous to the principal than that specified by him (Art. 1882)
- An agent has implied powers emanating from the express powers granted to him, as well as incidental powers necessary to achieve the purpose for which the agency was constituted.
- On the other hand, the agent is in breach of the fiduciary duty when he acts in fraud or in negligence even when he pursues the business of the principal.
    - This is because the agent should not carry out an agency if its execution would manifestly result in loss or damage to the principal (Art. 1888)
        - "Manifestly" – The agent cannot be a guarantor.
        - The obligation of the agent is to avoid losses which are clearly avoidable from the exercise of due diligence of a good father of a family.
- ***Responsibility for fraud or negligence as to the <u>principal</u>***
    - The law demands the utmost good faith, fidelity, honesty, candor and fairness on the part of the agent, to his principal (*cf.* Art. 1909)
    - The law imposes upon the agent the absolute obligation to make a full disclosure or complete account to his principal of all his transactions and other material facts relevant to the agency, so much so that the law does not countenance any stipulation exempting the agent from such an obligation and considers such stipulation as void.
    - On the other hand, the agent *cannot* be held personally liable for damages caused to the principal where the agent acts in accordance with the orders of the principal (Art. 1899).
- ***Responsibility for fraud or negligence as to <u>third parties</u>***

- Art. 1909 is the legal basis by which an agent becomes *personally* liable to third parties who are injured by his act of fraud or negligence in representing the interests of the principal.

***Duty of loyalty***

- General rule: The agent will be liable for damages if there being a conflict between his interests and those of the principal, he chose his own (Art. 1889)
- In connection thereto, the principal has the right to demand that the agent should turn over to him whatever contract, property or business has been acquired by the agent in breach of his duty of loyalty.
  - A guilty agent is made to forfeit the commission otherwise due to him, as penalty for violation of his duty of loyalty.
  - In criminal law, the agent who refuses or fails to return to the principal the funds or property received may be held liable for estafa.
- If an agent acts in his own name, the principal has no right of action against the person with whom the agent has contracted, and vice-versa (Art. 1883)
  - In such a case, it is the agent who is the one directly bound in favor of the person with whom he has contracted, as if the transaction were his own, except when the contract involves things belonging to the principal.
  - The principal has the right to demand that the agent to turn over to him whatever contract, property, or business has been acquired by the agent in breach of his duty of loyalty.
  - If the agent violates his duty as fiduciary, a *constructive trust* arises (*see* Art. 1455).
  - If the agent had used the funds belonging to the principal, he owes interest on the sums from the day he spent such funds and those still existing at the time of extinction of the agency (Art. 1896)
    - If the contract or business acquired by the agent in breach of his duty of loyalty is demanded by the principal to be turned over to him, then the use of the principal's sum to acquire such business would be deemed to have been *ratified* (Art. 1918)
- Particular rules on **conflict-of-interest** situations
  - Agent is prohibited from buying property entrusted to him for administration *without the principal's consent* (Art. 1491 [2])
    - A violation could make the agent guilty of fraudulent conduct, and forfeiture of commission.
    - *Rationale:* Because the relationship connotes trust and confidence; fiduciary.
  - Rules on borrowing and lending money: When the agent is empowered to borrow or lend money by the principal, then:
    - If empowered to borrow money, he may be the *lender at current interest*
    - If empowered to lend money at interest, he cannot borrow without the principal's consent (Art. 1890)
      - A violation of the rules may subject the agent to:
        - If the agent was the lender and charged a higher interest than the current rate, the difference would have to be returned to the principal
        - If the agent borrows money for himself, he would be liable for the current interest (which a third party would avail) and damages that the principal may have suffered
- Obligation to render account and turn over to principal what is received by virtue of agency
  - General rule: Agent must account his transactions and deliver things he received by virtue of the agency to the principal (Art. 1891)
    - Essentially, to turn over all profits and gains to the principal
    - Consequences: If violated, the agent becomes guilty of breach of loyalty and forfeits his right to collect the commission from his principal, even though the principal does not suffer any injury by reason of such breach of fidelity, or that he obtained better results.

- *Exception*: The rule in Art. 1891 is inapplicable if the agent had informed the principal of the gift or bonus or profit he received from the purchases and the principal did not object thereto.
- This obligation also applies to:
  - Result of the performance of the agency or violation of the agent's duty
  - The agent, notably, has both *physical and juridical possession* of the goods received in agency, and he may not set up his right of possession against that of the principal until the agency is terminated
- *When may the agent legally withhold property from the principal:*
  - Until such time that the principal reimburses the agent and pays the indemnity in Arts. 1212-13 (Art. 1914).

***Specific rules on funds***

- An agent has no common-law obligation to advance his own funds on behalf of the principal
  - Exception: When, by stipulation, the agent agreed to advance personal funds in pursuit of the agency
    - Exception: The stipulation to advance funds becomes inoperable once the principal becomes insolvent (Art. 1919 [3])
- Meanwhile, under Art. 1896, the agent owes interest to the principal on the following items:
  - On sums the agent applied to his own use from the time he used them
  - On sums owing the principal that remaining outstanding at the time of extinguishment of the agency, with interest running from the time of extinguishment (Art. 1896)

***Power of agent to appoint a substitute***

- General rule: An agent may appoint a substitute, if the principal has not prohibited him from doing so.
  - All acts of the substitute against the prohibition of the principal is *void* (or unenforceable? Cf. Art. 1317) (Art. 1892).
- Effects:
  - When there is appointment of a sub-agent in accordance with the principal's instructions, the sub-agent is an agent of the principal as well, and privity exists between the principal and the sub-agent.
    - Thus, the agent does not bear personal responsibility for the fraud or negligence of the sub-agent.
  - The agent is responsible for the acts of the substitute, if:
    - The agent was not given the power to appoint one, or
    - He was given the power to appoint, but the sub-agent is notoriously incompetent or insolvent.
  - If the principal has prohibited the appointment of a sub-agent, and yet the agent appoints one, the agent becomes *personally liable* for the acts of the substitute.
    - By implication, the principal has no cause of action against the substitute (*see* Art. 1893)

***Fiduciary duties of the agent as to <u>third parties</u>***

- General rule: Even when the agent has exceeded his authority, the principal remains solidarily liable with the agent as if the principal allowed the agent to acts as though he had full powers (Art. 1911)
- As to third parties acting in good faith, the written instructions of the principal are the binding powers of the agent, and cannot be overcome by non-written instructions of the principal not made known to them.
  - In case the fact of agency or the extent of the authority of the agent is controverted, the burden of proof is upon the third person to establish it.
- For **contracts entered into <u>within</u> the scope of authority:**
  - General rule: The agent is *not* personally liable on the terms of the contract
    - The agent is a stranger.

- Exceptions:
  - The agent expressly makes himself personally liable (i.e., a voluntary contractual commitment by the agent). This makes the agent and the principal jointly obligated (not solidarily).
  - The agent is guilty of fraud or negligence (Art. 1909)
    - In this case, the agent and the principal are joint tortfeasors from the perspective of the third person

- For **contracts entered into <u>beyond</u> the scope of authority:**
  - General rule: The contract is unenforceable as to the principal (Art. 1317)
  - Consequences of an unauthorized contract:
    - The contract is void as to the principal, if such third party with whom the agent contracted was aware of the limits of the powers granted by the principal
    - The agent is personally liable to the third party if he undertook to secure the principal's ratification
    - If the agent did not undertake to secure the principal's ratification, the agent is not liable (the third party has nothing to blame but himself)
- **Doctrine of apparent authority** – Even though the agent acts without/in excess of his authority, he would not be personally liable for the contracts he entered into in the name of the principal:
  - When the principal ratifies the contract (Arts. 1898, 1910)
  - As to third parties who relied upon the terms of the power of attorney, even if the agent had exceeded the limits of his authority according to an understanding between the principal and the agent
- Consequences when the agent acts in his own name
  - General rule: The principal has no right of action against the third persons with whom the agent has contracted, and vice-versa (Art. 1883)
  - Exceptions: When the property involved in the contract belongs to the principal – in this case, the principal is bound.
    - Remedy of the principal: To recover damages from the agent.
- When two or more agents are appointed by the same principal
  - Joint – when nothing is stipulated
  - Solidary – only when so stipulated
- When is the third party liable to the agent:
  - When the agent contracts in his own name on a matter within the scope of his authority (Art. 1883)
  - Where the agent possesses a beneficial interest in the subject matter of the agency (Art. 1907)
  - Where a third party commits a tort against the agent

**Specific obligation rules for commission agents**

1. Commission agent – One who receives and sells goods for a commission, and who is entrusted by the principal with the possession of the goods to be sold and usually selling in his own name.
   a. Ordinary agent – Need not have possession of the goods.
2. Specific obligations
   a. To take custody of goods (cf. Art. 1903)
   b. Not to commingle similar goods belonging to different principals (cf. Art. 1904, *contra* Art. 1976)
   c. Not sell on credit without principal's authorization (Art. 1905)
   d. To inform the principal of every pre-authorized sale on credit (Art. 1906)
   e. To bear the risk of collection under *del credere* commission setup (Art. 1908)
   f. To collect credits of the principal (Art. 1908)
   g. To return goods unsold (consignment is a form of agency)

## Chapter 4: Obligations of the principal

**Bound by the contracts made by the agent on his behalf**

- **Doctrine of representation** – All contracts and transactions entered into by the agent on behalf of the principal within the scope of his authority are binding on the principal, *as though he himself had entered into them directly*.
    - Hence, the principal must comply with *all* the obligations which the agent may have contracted within the scope of his authority (Art. 1910).
    - Likewise, the *negligence* of the agent, done *within* the scope of his authority, also binds the principal (*cf*. Arts. 1903 & 1910).
- **General rule:** The principal is responsible for the acts of the agent done within the scope of his authority.
    - *Exception:* When the agent exceeds his authority, the agent becomes personally liable for damage.
        - *Exception:* The principal is solidarily liable with the agent's *ultra vires* acts if the principal allowed the agent to act as though he had full powers.
        - In any case, the principal can ratify the acts done by the agent beyond the scope of the latter's powers.

***Principal is not bound by contracts made without authority or outside the scope of authority***

- For any obligation wherein the agent has exceeded his power, even if entered into the name of the principal, will *not* bind the principal, unless it has been ratified.
    - In short, unenforceable (Art. 1409).
- Hence, a third party has a cause of action against the purported principal, if said third person has proven the existence of the agency.
    - If he has not proven so, it will be the agent who will be *personally liable*.
        - Hence, bank officers—acting as agents—will be personally liable if they failed to abide by the bank's rules and regulations.

***When principal is bound by the acts done outside the scope of authority***

- In the following, the agent does acts *ultra vires*, but the principal would still be bound personally when:
    1. The principal ratifies the transaction, expressly or impliedly (Art. 1910)
    2. The *principal* has allowed the purported agent to act as though he had full powers (Art. 1911) **(doctrine of apparent authority or agency by estoppel)**
    3. The principal has revoked the agency, but the third party have acted in good faith without notice of such revocation (Art. 1921)
- Instances when the principal can be held personally liable for his agent's deceitful acts exercised on third parties:
    1. If the representation is authorized
    2. If it is within the implied authority of the agent to make for the principal
    3. If it is apparently authorized, regardless of whether the agent was authorized by him or not to make the representation.
- Nonetheless, a third party dealing with an agent must exercise due diligence in determining the extent of power and authority of the persons representing the principal

**Liability of the principal for agent's tort**

- **General rule:** The principal is liable to injured third parties for the torts committed by the agent at the principal's direction *or* in the course of and within the scope of the agent's authority (*see* Art. 1909).
    - Hence, the agent also becomes civilly liable to the third person/injured party.

**Obligations of the principal to the agent**

1. To pay the agent's compensation – In an onerous or compensated agency, the obligation of the principal to pay the agent shall be in accordance with the terms agreed upon when the agency was constituted.
    a. If there is **no stipulation**, the following rules apply:

i. The principal shall pay the agent's commission only on the legal basis that the agent has complied with his obligations with the principal; and
ii. The principal shall be liable to the agent for the reasonable value of the agent's services.

2. To advance sums requested for execution of the agency – The principal must advance to the agent, should the latter so request, the sums necessary for the execution of the agency (Art. 1912).
    a. Should the *agent* have advanced them, the principal must reimburse the agent, even if the business or undertaking was unsuccessful, *provided that the agent is free from fault.* The reimbursement will be subject to interest, reckoned from the day on which the advance was made.
    b. As a recall, the agent will only be bound to advance the sums if:
        i. He consents to it; or
        ii. There is a stipulation for it.
    c. **Exception:** The principal is not liable to reimburse the agent if:
        i. The agent acted in contravention of the principal's instructions, unless the agent should wish to avail himself of the benefit derived from the contract
            1. But the agent may still be entitled for reimbursement, if he had caused the reduction or extinction of the principal's obligation (i.e., payment of a third party under Art. 1236), which may be justified to avoid unjust enrichment of the principal.
        ii. When the expenses were due to the fault of the agent
        iii. When the agent incurred them with knowledge that an unfavorable result would ensure, if the principal was not aware thereof
        iv. When it was stipulated that the expenses will be borne by the agent, or that he will only be allowed a certain sum (Art. 1918)
3. To indemnify agent for the damages sustained – The principal must indemnify the agent for all the damages which the execution of the agency may have caused the agent, without fault or negligence on the agent's part (Art. 1913).
    a. This is a *counterbalance* to Art. 1884, which makes the agent liable for damages sustained by the principal for agent's regusal to perform his obligations under the agency.
    b. Hence, the agent may retain *in pledge* the things which are the object of the agency until the principal effects the reimbursement and pays the indemnity (Art. 1914)

**Obligation of two or more principals to agent appointed for common transactions**

- If two or more persons have appointed an agent for a common transaction, they shall be *solidarily* liable to the agent for *all* the consequences of the agency.

**Rights of third parties when faced with conflicting contracts**

- When two persons contract with regard to the same thing, one of them with the agent and the other with the principal, and the two contracts are incompatible, that of *prior date* shall be *preferred* (Art. 1916)
    - If the agent acted in *good faith*, the principal shall be *liable* in damages to the third person whose contract has to be negated
    - If the agent acted in *bad faith*, the agent *alone* shall be responsible (Art. 1917)

## Chapter 5: Extinguishment of agency

**Agency is extinguished by:**

1. Principal's express or implied revocation (*see* Arts. 1920 and 1925)
2. Agent's withdrawal
3. Death, civil interdiction, insanity or insolvency of *either* the principal or the agent
4. Dissolution of the juridical entity which entrusted or accepted the agency
5. Accomplishment of the object or purpose of the agency
6. Expiration of the period for which the agency was constituted (Art. 1919)
7. *Mutual withdrawal* from the relationship by the principal and the agent

8. By the happening of a supervening event that makes illegal or impossible the objective or purpose for which the agency was constituted, like the destruction of the subject matter which is the object of the agency

**Preliminary points**

- The power to revoke the agency lies in the principal, in keeping with the truism that agency is a highly personal relationship, and one built upon trust and confidence.
    - Revocation is *literally at the will of the principal* (*see* Orient Air v. American Airlines)
- When there are multiple principals, any one of them may revoke the agency (*see* Art. 1915—the relationship between/among principals are *solidary*)
- *What if the agency was irrevocable for a certain period?* The principal can still revoke anytime, but he will be liable to damages, including the compensation due the agent when the revocation was done *in bad faith*.

**Express revocation**

- Art. 1920: The principal may revoke the agency, expressly or impliedly. He will thereby compel the agent to return the written power of attorney.
    - If the agent fails or refuses to return so, the principal must give the proper notice to the members of the public who may be affected by the revocation (*e.g.,* a notice of the revocation in a newspaper of general circulation; *see* Art. 1873)
- While the principal has the power to revoke, doing so may, in the proper instances, expose him to liability for *breach of contract, e.g.,:*
    - When the agency was one with a period or one with a specific purpose
    - When the revocation was in bad faith—to prevent the agent from being entitled to his compensation

**Implied revocation**

- The Code considers the following as *implied* revocation:
    - Appointment of a new agent for the same business (Art. 1923)
    - When the principal directly manages the business (direct dealing) (Art. 1924)
    - Issuing an SPA in lieu of an existing GPA (Art. 1926)

***Appointment of a new agent for the same business***

- The appointment of a new agent for the same business or transaction revokes the previous agency *from the day that notice was given to the former agent.*
    - This revocation is *without prejudice* to the rights of third parties who were unaware of the fact of revocation.

***When the principal directly manages the business***

- The agency is revoked when the principal directly manages the business entrusted to the agent, dealing directly with third persons.
    - The provision is unclear as to *when* the revocation takes place.
    - CLV: It may be presumed from the moment the principal deals directly with the third person. *But this implies that the revocation is only with respect to the third persons with whom the principal dealt with directly* (what about the other third persons?).
- Nonetheless, the continued involvement of the principal in the management of the business or property does not necessarily mean an intent to revoke.
- Hence, the "direct management" will only mean revocation is the principal acts inconsistently with the terms of the power of attorney previously given to the agent.
- In any case, even when the principal deals with the third parties without the intention to revoke, the agent remains entitled to commission which is tied to rendering the service which the principal has already performed.
- Per jurisprudence, the issue of implied revocation seems to only arise when the acts of the principal goes into the issue of entitlement of the agent to the commission or remuneration agreed upon (*see, e.g., Guardex v. NLRC)*

    - **[Doctrine of efficient procuring cause]** If it is the principal himself who is able to consummate the transaction, the agent would not be entitled to any commission.
- In *Bitte v. Sps. Jonas:* When third parties dealing with the agent are informed directly by the principal of her decision not to proceed with the transaction covered by the SPA, that was sufficient notice of the revocation of the power of attorney insofar as third parties are concerned.

***SPA revokes a GPA granted to another agent* [i.e., the holders of SPA and GPA are *different*]**

- Art. 1926 implies that an SPA granted to one person is not revoked by a GPA subsequently granted.
    - CLV: This is illogical. The proper rule is Art. 1923.
- It also implies that a GPA is *not* revoked by an SPA granted to the same agent.

**Revocation on the basis of breach of trust**

- The agent may hold his position indefinite when:
    - No period has been fixed in his commission; and
    - The confidence reposed in him by the principal exists.
        - By implication, when the confidence disappears, the principal may revoke.
- Some bases for revocation:
    - Malfeasance
    - Misfeasance
    - Fraud
    - Breach of trust

**Effects of revocation on third parties**

***When it affects dealings with specified third parties***

- If the agency has been entrusted for the purpose of contracting with *specified* persons, its revocation shall not prejudice the latter if they were not given notice thereof (Art. 1921).
    - CLV: It seems that notice by publication would not constitute as sufficient notice to bind the *specific* third person (*see* Art. 1873)
    - In such a case, it is the duty of the principal to give timely and due notice thereof to the third party

***Revocation of GPA***

- Revocation of the GPA does not prejudice third persons who acted in good faith and without knowledge of the revocation (Art. 1922)
    - In this case, a notice of the revocation in a newspaper of general circulation is sufficient warning to third persons.

***Revocation of SPA***

- A revocation of an SPA in a private document (i.e., not notarized) is valid and binding only between the parties (*see* Art. 1358)
- In any case, there must be notice to the third person

**Irrevocable agencies**

- The following are irrevocable agencies:
    - A bilateral contract depends upon the agency for its fulfillment
    - It is the means of fulfilling an obligation already contracted
    - A partner is appointed manager of a partnership in the contract of partnership *and* the removal from management is justifiable (Art. 1927)
- **Agency coupled with interest** – The agency having been created for the mutual interest of the agent and the principal.
    - This cannot be revoked at the pleasure of the principal; it is breach of contract, which makes the principal liable for damages (*Sevilla v. CA*)
        - *Sevilla* and its progeny were decided based on the abuse of rights doctrines (Arts. 19-21).

        - Interestingly, the court in *Valenzuela v. CA* reinstated the agent to the revoked agency relationship, which was characterized as irrevocable in character.
    - In contrast, in *Lim v. Saban*, the court *did not deem the agency irrevocable* (i.e., not an agency coupled with interest) though the agreement provided that the agent's commission will be whatever beyond the principal's indicated price.
- The rationale for the irrevocability of a bilateral contract is because the agency becomes part of another obligation or agreement—it is not solely the rights of the principal, but also that of the agent and affected third persons (*Republic v. Evangelista*)
    - This is in conformity with the rule that agency is a mere *preparatory contract*
- On one occasion, the court held that when the parties stipulated that the contract is irrevocable, then, it is an agency coupled with interest (*Philex Mining Corp. v. CIR*).
    - CLV: This is inconsistent with Art. 1927, because it is not the stipulation which should be controlling, but the *fact* that the underlying contract is indeed bilateral.
        - Practical effect: Principal can still revoke—but liable for breach of contract (a stipulation was directly violated).
- Nonetheless, **a power of attorney coupled with interest can be revoked for a just cause** (e.g., bad faith, breach of trust/confidence) (*Coleongo v. Claparols*).
    - The revocation of an agency arrangement by the principal based on the failure of the agent to comply with the instructions of the principal *negates* any recovery of damages suffered by the principal for the breach by the agent of his duty of obedience (*International Exchange Bank v. Briones*)

**Withdrawal of the agent from the agency**

- The agent may withdraw from the agency by giving *due notice* to the principal.
    - If the principal should suffer any damage by reason of the withdrawal, the agent must indemnify him.
        - *Exception:* No liability for damages if the agent's withdrawal is due to the *impossibility* of continuing the performance of the agency without grave detriment to himself (Art. 1928; *see also* Art. 1267 [rebus sic stantibus])
    - Is the withdrawal with immediate effect? *It doesn't seem so.* The agent must continue to act until the principal "had had reasonable opportunity to take the necessary steps to meet the situation." (Art. 1929)
- "Implied withdrawal": The filing of a suit by the agent against the principal for the recovery of the balance in his favor (*Valera v. Velasco*).
- There is no "non-withdrawable agency" because there is a constitutional prohibition against involuntary servitude.

**Death, civil interdiction, incapacity, or insolvency of the <u>principal</u>**

- When the principal dies, there is no more for the agent to "represent" (*Rallos v. Felix Go Chan & Sons Realty Corp.*)
- Should there be notice of the death? *No.* Agency is extinguished *ipso jure* upon the death of either the principal or agent.

***When the agency continues despite the death of the principal***

- The agency continues notwithstanding the principal's death, if the agency has been constituted in the common interest of the (dead) principal and the agent, or in the interest of a third person who has accepted the stipulation in his favor (Art. 1930).
    - Art. 1930 talks about agencies that are "non-extinguishable by the death of the principal," as against agencies "that cannot be revoked at will by the principal" in Art. 1927.
- *Example:* The power of sale in a deed of REM is *not* revoked by the death of the principal-mortgagor, on the ground that it is an ancillary stipulation supported by the same cause that supports the mortgage and forms an essential inseparable part of that bilateral agreement.
    - Hence, the mortgagee can still foreclose notwithstanding the death of the principal-mortgagor.

***Effect of acts done by agent without knowledge of principal's death***

- Anything done by the agent, unaware of the principal's death, is *valid* and shall be fully effective with respect to third persons who may have conracted with him in good faith (Art. 1931).
    - By implication, third parties in bad faith will not be protected, and the contract would be void.
- The lack of knowledge of the death of the principal must exist at the time of contract with both the agent and the third parties (*Rallos, supra*)

**Death, civil interdiction, incapacity, or insolvency of the <u>agent</u>**

- In contrast, the Law on Agency does not provide for the concept of agencies that are "non-extinguishable by the death of the agent"
- ***In case of multiple agents*** – Generally, the death of one or more, *but not all*, of the agent does not extinguish the agency with respect to those living.
    - *Exception*: The agency is revoked, if the common agents were intended to work as a group.
- **Obligations of the heirs of the deceased agent** – The dead agent's heirs must notify the principal of such death, and in the meantime, must adopt such measures as the circumstances may demand in the *interest of the principal* (Art. 1932)
    - This sorts of "transmits" the agency to persons who were not parties to the contractual relationship.

**Dissolution of a corporation**

- When a corporation is dissolved, its juridical personality ceases.
- Nevertheless, the board, within three years from the dissolution, continues to have juridical personality only for purposes of liquidation.
    - Hence, the board continue to have agency powers to represent the corporation for all purposes that seek the liquidation of its assets and the payment of all its liabilities.

**Obligation of the agent when the agency is extinguished**

- The agent must shut up
- An agent cannot legally terminate an agency to take advantage of the principal's condition or to profit by information resulting from his agency (violation of the duty of loyalty)

| | **The power of the principal to revoke is *almighty*** | **Exception** |
|---|---|---|
| Revocation by principal | At will | Art. 1927 – Agency coupled with interest |
| | Upon happening of period, or the accomplishment of the objective | Art. 1930 – Death of the principal |
| Status | Unenforceable | Valid and binding |

- It is important to determine whether the revocation was *at will* or upon the happening of period/objective because it will determine the liability of the principal to the third party.
    - If *at will,* the revocation produces its logical effect (no damages)—it extinguishes the agency.
    - If *upon period/object,* the principal is liable for damages (i.e., the commission that the agent was originally entitled to).

**ATENEO DE MANILA UNIVERSITY**
**Trusts**
**Chapter Summaries**

## Chapter 1: Introduction

### Preliminary points

- The chapter on Trusts has no counterpart in the Old Civil Code.
- The growth of the Philippine Law on Trusts will find its impetus from common law and jurisprudence of the Supreme Court.
    - Thus, Art. 1442 incorporates the principles of the general law of trusts insofar as they are not in conflict with positive law.
    - American precedents are relied on.

### The 'equity' essence of implied trusts

- Express trusts are founded on the intention of the trustor or the intention of the parties to the trust that bring about the application of principles applicable to contractual relationship (consensuality, mutuality and relativity.)
- Implied trusts are created by operation of law based on equity principles.
    - In any case, both types are vested with equitable considerations.
- Most of the principles of trusts are doctrinal-based, rather than codal based. In *Government v. Abadilla*, the court held that the intention of a trustor is the more essential consideration.
- Nevertheless, in *Deluao v. Casteel*, no trust, whether implied or express, can be held valid and enforceable when it is violative of the law, morals, or public policy (*cf.* Clean Hands Doctrine).
- In other words, implied trust principles are mandated not by specific reference to law (codal), but by seeking equitable solutions to render justice to the parties.
    - Thus, in *Salao v. Salao*, the court defined trust as the "right, enforceable solely in equity, to the beneficial enjoyment of property, the legal title to which is vested in another."
    - Adding:
        - **Trustor** – a person who establishes a trust
        - **Trustee** – one in whom confidence is reposed as regards property for the benefit of another person
        - **Beneficiary** – the person for who benefit the trust has been created
    - These implies a *fiduciary relation* between the trustee and the *cestui que trust* as regards certain property, real, personal, money or choses in action.
- The intention of the trustor to create a trust for the benefit of the intended beneficiary should as much as possible be realized (*cf.* Art. 1444).
    - There can never be a trust that would amount to violation of the constitution (i.e., a trust which allows a foreigner to own land) (*Encarnacion v. Johnson*).

### The nature of trusts

1. Trusts do not create separate juridical entity
    a. The title held by the trustee should not be looked upon as being held "in his official capacity as trustee" and cannot be deemed included in his estate to which he has full ownership.
2. Trust divorces naked title of the trust properties from the rest of the trustor's estate
3. Trust anchored on splitting the naked title and the beneficial title
    a. The essence of trusts is that the fiduciary relationship or the enforcement of equity principles is built upon property relations.
    b. In other words, there is no real trust relationship based only on the meeting of the minds and that the trustee does not begin to assume fiduciary duties towards the beneficiary, unless and until title to the *res* is transferred to the trustee in either of three ways:
        i. When only naked title is given to him (i.e., becomes the legal title holder), then an express trust has been constituted

ii. When full title has been registered in his name, but with a clear undertaking to hold it for the benefit of another person, then an express trust at best or a resulting trust at least has been constituted
iii. When full title has been acquired by a person under the circumstances that the law or equity imposes upon him the obligation to convey it to another person who has a better claim to such property, then a constructive trust is deemed constituted by force of law

c. The constitution of valid title in the trustee for the benefit of the *cestui que trust* is so essential that in cases where the title of the purported trustee was found to be void, the principles of trust do not apply.

**Kinds of trust**

1. Express trust – Which is created by the intention of the trustor or of the parties
    a. They are the product of contractual intents.
2. Implied trust – Which comes into being by operation of law
    a. Resulting trusts
    b. Constructive trusts
        i. Implied trusts are creatures of law; they exist in circumstances where the law so mandates it, and in all similar situations where justice or equity is to be achived.

***Trustees bounded to a fiduciary duty***

- In express trust, there is a fiduciary duty. However, a constructive trust does not generate a fiduciary relation.
    - In constructive trust, there is neither a promise nor any fiduciary relation and the so-called trustee neither accepts any trust nor intends holding the property for the beneficiary.
- In express trust, the trustee has the active duties of management, while in a constructive trust, the duty is *merely to surrender the property*.

**Susceptibility to prescription or laches**

- Express trust – Not susceptible to charges of prescription or laches, because the trustee's possession is not adverse to the beneficiary, until and unless the latter is made aware that the trust has been repudiated.
    - There must be an *express repudiation* of the trust arrangement by the trustee, and notice to the beneficiary that he now holds title adverse to the beneficiary for prescription or laches to begin commencing.
- Constructive trust – Susceptible to prescription or laches because the trustee does not recognize any trust and has no intent to hold for the beneficiary.
    - In implied trust, the mere fact that title has been registered in the name of the purported trustee is constituted as repudiation of any trust arrangement.

**Oral evidence to prove trusts**

- Express trusts over an immovable property cannot be enforced by Parol evidence, but must be properly supported by a written instrument.
- Implied trusts, regardless of the nature of the trust property, may always be enforced even when constituted orally.
    - Implied trusts are not within the operative coverage of the statute of frauds, because an implied trust may be proven by oral evidence (Art. 1457)

## Chapter 2: Express trusts

**Definition of terms**

- Trustor – The person who establishes a trust (a.k.a. grantor, settlor, or founder)

- Trustee – The person whom confidence is reposed as regards the property placed in trust ("corpus"; it is the trustee who assumes certain duties relating to the *res* or the trust property with respect to the person for whose benefit the trust is created
- Beneficiary – The person for whose benefit the trust has been created ("*cestui que trust*")

**Essential characteristics:**

1. Legal relationship
2. Legal relationship of fiduciary character
3. Legal fiduciary relationship with respect to property, not one involving merely personal duties
4. It involves the existence of equitable duties imposed upon the holder of the title to the property to deal with it for the benefit of another
5. It arises as a result of a manifestation of intention to create the relationship

**Express trusts essentially contractual in character**

- It is only created through contractual intention on the part of the trustor to dispose of his property by *dividing* its full ownership between the trustee and the beneficiary.
    - It *generally* requires the full acceptance of the naked title and fiduciary obligations on the part of the trustee, and the concomitant obligations that go with it.
- Nonetheless, express trusts are created by the intention of the trustor alone, which negates the mutual consent as a necessary element for a contract.
    - CLV: No person may find himself bound to the fiduciary duties and obligations of a trustee, unless he previously consented thereto, or expresses his consent by voluntarily assuming such relationship.
- This further find basis in Art. 1446 which states that acceptance by the beneficiary is necessary, and that if the trust does not impose any onerous obligation upon the beneficiary, his acceptance is presumed.

**Essential elements of express trusts**

1. Trustee – who holds the trust property and is subject to equitable duties to deal with it for another's benefit
2. Beneficiary –to whom the trustee owes equitable duties
3. Res – the trust property

***Express trusts establish contractual relationships built around property relation***

- One of the essential characteristics of trusts is that it is a relationship with respect to property, not one involving merely personal duties.
- The nexus of the contractual meeting of the minds in an express trust is that between the trustor and the trustee, and the acceptance of the benefits by the beneficiary under the trust arrangement constitutes a stipulation *pour artui*.

**Nominate and prnicpal, yet governed by equity principles**

- It is nominate because it has been given particular name and essentially defined by the Civil Code, and principal, because it does not need another contract to be valid.

**Unilateral, primarily onerous to the trustee and primarily gratuitous as to the beneficiary**

- Unilateral – Only the trustee assumes obligations to carry on the trust for the benefit of the beneficiary.
- Primarily onerous to the trustee – The trustee is expected to be compensated for the fiduciary role he plays relative to the *res* and the beneficiary.
- Primarily gratuitous – It is supported by liberality, because acceptance by the beneficiary is presumed if the trust imposes no onerous condition upon the beneficiary. In other words, the beneficiary has no obligation.

**Preparatory contracts**

- It is preparatory because it is not constituted for its own sake in that the trust relationship is essentially a medium established by the trustor to allow full authority and discretion on the

part of the trustee to enter into various juridical acts on the corpus to earn income or achieve other goals indicated for the benefit of the beneficiary.

**Trust constitutes fiduciary duties on the trustee**

- A trustee is one in whom *confidence is reposed* as regards property for another's benefit (Art. 1440).
- This implies that express trust creates fiduciary obligations in the person of the trustee by virtue of his having assumed naked or legal title to the properties constituting the *corpus*, under express provisions to use, control, administer, and manage them for the benefit of the designated beneficiary.
- As a consequence of this fiduciary relationship, the trustee **cannot invoke the statute of limitations of acquisitive prescription against the beneficiary**.
    - Even the Torrens system was never calculated to foment betrayal in the performance of a trust.

**Rules of enforceability of express trusts**

1. Express trust is essentially a real, not consensual, contract
    a. It is perfected not merely by meeting of the minds, because by its definition, trust is a relationship with respect to property, not one involving merely personal duties and involves the existence of equitable duties imposed upon the holder of the title to the property to deal with it for the benefit of another.
    b. Trusteeship is essentially a proprietary relationship, not merely from acceptance of the duties and responsibilities of a trustee.
    c. No fiduciary obligation arises without the properties being transferred to the name of the trustee.
    d. Ideal form: Deed of Trust as a public document.
2. Express trust must nevertheless be clearly shown to have been intended
    a. While no words are required for the creation of an express trust, it must still be clearly intended (Art. 1444).
    b. Hence, an express trust is *never presumed*—the party who claims any right under a trust arrangement must prove the existence thereof.
    c. A trust must be proven by *clear, satisfactory and convincing evidence*.
        i. It cannot rest on vague and uncertain evidence or on loose, equivocal, or indefinite declarations. *It cannot be proven by Parol evidence*.
    d. The burden of proof lies on the person asserting the trust's existence.
    e. Too, the fact that the words "trust" or "trustee" does not necessarily indicate an intention to create a trust.
    f. In *De Leon v. Molo-Peckson,* the court considered a "declaration of trust," there was an existing trust. It merely affirmed that the person executing said document acknowledges that he merely holds the legal ownership for the benefit of another.
3. Essence of the relationship between trustor and trustee prior to the conveyance of the *res*
    a. No trust relations arise until the property that constitutes the corpus is conveyed to the trustee.
    b. *What is the status of a private Deed of Trust, duly executed by the trustor and the trustee and accepted in the same instrument by the beneficiary, before title to the designated trust property is placed in the name of the trustee?* Only a nominate contract of *do ut facia* (I give in order that you may do), that is, that the trustor has contractually bound himself to delivery and transfer title over the trust property to the trustee, and the trustee has bound himself to accept delivery and to manage the properties to be delivered for the interests of the beneficiary ("to do").
        i. The only enforceable obligation in this "contract of trust" is that of the trustor to deliver legal title to the trust property to the trustee and beneficial title to the beneficiary.
4. Express trusts over immovables must be in writing
    a. No express trust covering an immovable or any interest therein may be proved by Parol evidence (Art. 1443).
    b. An express trust concerning *movables* may be proved by Parol evidence.

i. This implies that mere consent over the creation of an express trust over movables create a valid and enforceable contract of trust once the movable is delivered to the trustee.

c. CLV: Art. 1443 is lame.
   i. It does not render express trusts over immovables void when it is not effected in writing—only unenforceable. Since it is only the grantor or the accepting beneficiary who have rights to enforce under the terms of the contractual relationship, it is he who is unfavorably affected by Art. 1443: he cannot adduce Parol evidence to enforce the fiduciary duties and obligations of the trustee through a court action.
   ii. Being a real contract, ineluctably, no express trust over immovables can be constituted by mere consent. An express trust over immovable requires delivery to have taken place.
   iii. When an express trust over an immovable is not in writing, it may be proven by *clear and convincing Parol evidence* to be a *resulting trust*, under Art. 1457.
   iv. *Legal significance:* An oral agreement between the trustor and the trustee to constitute trust over an immovable which is *not* followed up with a conveyance of the covered *res* is not enforceable by Parol evidence.

**Distinguishing express trusts from other similar arrangements**

1. Splitting of full dominion into naked/legal title and beneficial/equitable title
   a. Compared with usufruct – The usufructuary maintains; in trusts, the trustee (legal owner) manages, and the beneficiary is a passive receiver of fruits.
   b. Compared with lease – What is merely contracted to the lessee is the enjoyment and possession for a limited time; in trusts, the full beneficial ownership is for the beneficiary, and usually permanent in nature.
   c. Compare with sale – Sale is consensual; trusts are not (real). In sale, the buyer takes full ownership; in trusts, only naked/legal title is assumed by the trustee, for the benefit of the beneficiary.
2. On being bound to fiduciary duties and obligations
   a. Compare with agency
      i. In trusts, the naked/legal title is held by the trustee for the benefit of another. In agency, the fiduciary relationship is strictly based on a personal level/obligation.
      ii. In trusts, the trustee transacts to third persons in his own name as holder of the legal title. In agency, the agent transacts in the name of the principal.
         1. Hence, the trustee has no duty of obedience to the beneficiary (compare with agency—the agenct has the duty of obedience to the principal).
      iii. Agency is revocable at the will of the principal. A trust is not revocable at will—a trustee cannot generally be stripped of the legal title unless it is shown that he is unfit for the position of trustee, or he has breached his trust obligations.

**Kinds of express trusts**

1. Contractual
   a. For example, the trustor conveys the naked title of a property to a bank (trustee) for the benefit of a mentally challenged child (beneficiary).
2. Inter vivos
   a. These are expressed trust pursued in the form of donations, which therefore are solemn contracts and must comply with the solemnities of the Law on Donations.
   b. For example, a father donating a property to his son by constituting himself as the trustee during the infancy of the son. The father is the trustee-turned-trustor and the beneficiary (child).
3. Testamentary
   a. It is an express trust created under the terms of the last will and testament of the testator, it is a testamentary trust and is governed by the Law on Succession.

4. Eleemosynary or charitable
    a. For example, a person in his notarial will appointed a trustee (spouse) to administer property, where the fruits thereof will be used for a scholarship fund.
5. Publicly regulated
    a. For example, pension and benefits funds administered by the SSS, GSIS and Pag-IBIG Fund.

**Capacities, rights, duties, and obligations of the parties to the express trust**

***The trustor***

a. The trustor as the creator of the trust
b. The trustor must have capacity to convey the corpus

***The trustee***

a. Trustee is the party primarily bound – It is the trustee who has legal title to the property, and he is bound by the fiduciary duties of diligence and loyalty to the beneficiary.
b. The trustee must have legal capacity to accept the trust
c. When the trustee declines:
    a. General rule: If the trustee declines, dies, becomes legally incapacitated, the trust will not fail. The court will appoint a new trustee.
    b. Exception: The trust will be dissolved if the trustor willed it that the trust will only continue so long as the trustee should continue as such. This must be so provided by the terms of the trust.
d. Obligations of the trustee – Violation of these duties may constitute a "breach of trust," which may be the legal basis for the trustee to be removed or for the trust to be revoked entirely.
    a. Those provided in the trust agreement (contractual obligations)
        i. Hence, these obligations are followed because of the *obligatory* force of contracts.
    b. Common law duties
        i. Duty of diligence
            1. Diligence of a good father of a family.
            2. Hence, the trustee is *personally liable* for any gross negligence he commits which causes damage to another person.
        ii. Duty of loyalty
            1. He *cannot appropriate for himself* any opportunity which in the course of his functions as trustee should pertain to the beneficiary.
            2. He has the duty to account to the beneficiary the affairs of the trust.
            3. He cannot convert the use of the trust properties, the incomes, fruits and proceeds for his own benefit.
            4. It is also the duty of the trustee to reconvey the trust properties to the beneficiaries at the end of the trust relations, free of all liens and encumbrances.
    c. Trustee cannot donate trust property (Art. 736; duty of loyalty)
    d. Trustee cannot use funds of the trust to acquire property for himself
        i. If he does, Art. 1455 applies (implied trust). The property bought is owned by the the beneficiary.
        ii. Art. 1455 also implies that duty of loyalty—that the trustee is obliged to use the funds of the trust estate only for the sole benefit of the beneficiary.
    e. Duties and responsibilities of the trustees under the Rules of Court (Rule 98)
    f. Proper proceedings for sale or encumbrance of trust estate
        i. It requires court approval.
    g. Trustee does not assume personal liability on the trust
        i. Liabilities assumed by the trustee is in his official capacity as a trustee, and can only be enforced to the extent of the trust properties.
        ii. A trustee who acts within the scope of the trust has a right to charge the trust estate the expenses incurred by reason thereof.

iii. Still, the trustee must do so with the duty of diligence in mind, because gross negligence or fraud will make him personally liable.

h. Trustee is entitled to compensation for management of the trust estate
   i. A trustee is entitled to receive a fair or reasonable compensation.
   ii. His compensation must be in the trust agreement. Else, the court will fix.

i. Removal or resignation of trustee
   i. The trustee may be removed via a court action if the removal appears essential in the interests of the beneficiaries.
   ii. The court may also remove a trustee who is insane or incapable of discharging his trust or evidently unsuitable.
   iii. The trustee may also resign if it appears to the court that it is proper to allow such resignation.

***The beneficiary***

a. Beneficiary is the passive receipient of benefits flowing from the trust
   a. For example, estate planning – The trustor creates a trust and designates a trustee to hold the trust benefits for the benefit of the trustor, too.
   b. Acceptance by the beneficiary is necessary. But if the trust has no onerous conditions to the beneficiary, acceptance is presumed (Art. 1446).
   c. Acceptance by the beneficiary of gratuitous express trust is not subject to the rules for the formalities of donations (*Cristobal v. Gomez*).
b. Beneficiary need not have legal capacity (especially when it is out of pure liberality).

**Termination or extinction of express trust**

1. Destruction of the corupus or trust estate
2. Revocation by the trustor
   a. In the absence of any reservation of the power to revoke, a voluntary trust is irrevocable without the consent of the beneficiary (*De Leon v. Molo-Peckson*).
3. Achievement of the objective or the happening of the condition provided for in the trust instrument
4. Death of legal incapacity of the trustee
   a. Following the death of a trustee in an express trust, a *constructive trust* would be created over the property (former trust estate) by operation of law. The trust would be between the heirs of the deceased trustee, and the beneficiary (*Cañezo v. Rojas*).
5. Confusion or merger of legal and beneficial titles in the same person
   a. The trustee and beneficiary merge into one.
6. Breach of trust
   a. When a trustee breaches his duty of loyalty, it constitutes legal basis to terminate the trust.
   b. When a person administering the property as a trustee inconsistently assumes to be holding it in his own right, this operates as a *renunciation* of the trust and the beneficiaries are entitled to maintain an action to declare their right and remove the unfaithful trustee (*Martinez v. Graño*).

## Chapter 3: Implied trusts

**Preliminary points**

- The doctrine of implied trust is founded on equity.
- It applies in situations where the property that ought to be owned and enjoyed by one party has ended up in the hands of or registered with another party, and equity demands that the latter ought to reconvey said property.
- They come into by operation of law.

**Two types**

1. Resulting
2. Constructive

| | Express | Resulting (implied) | Constructive (implied) |
|---|---|---|---|
| Source | Arises from express or direct intention of the trustor to create a trust | Presumed by law from the nature of the transaction and the implied intentions of the parties | Imposed by law regardless of the parties' intention, to prevent unjust enrichment or inequity |
| Intent | Clear and direct intention to create a trust (manifested by transfer of legal title to trustee) | No express intention; inferred or presumed by law from circumstances | No intention at all; purely a legal fiction for equity |
| Parol evidence? | Immovables – No<br>Movables – Yes<br><br>Only written or oral admission by the trustee will establish the trust | May be proved and enforced by parol evidence.<br><br>Only written or oral admission by the trustee will establish the trust | May be proved by parol evidence, since the law imposes the trust |
| Fiduciary? | Yes | Yes | No |
| Prescription? | Runs only after clear repudiation made known to beneficiary | Runs only after clear repudiation made known to beneficiary | Prescription runs without need of prior repudiation, since no fiduciary duty is recognized |
| Purpose | To carry out the trustor's express intent to benefit the beneficiary | To give effect to presumed intent of the parties from the transaction | To achieve equity and prevent unjust enrichment or fraud |

**Nature of evidence required to prove implied trusts**

- An implied trust, whether resulting or constructive, may be proved by oral evidence, without distinction on whether it involves a real or personal property.
- A trust must be proven by clear, satisfactory and convincing evidence (*Salao v. Salao*).
- The burden of proof rests on the party asserting its existence.
- Hence, if there is a Torrens title that shows no trust relationship assumed by the registered owner and there is no other written evidence to show an intention to prove a trust, *oral evidence is unavailing* to overcome the registered title of the purported trustee who denies the trust.
    - The reliable evidence to indicate a resulting trust against a clean title registered in the purported trustee *can only be a written document signed by the purported trustee acknowledging that he holds title for the benefit of another party*.

**Resulting trusts**

- A trust which is raised or created by the act or construction of law, but in its more restricted sense it is a trust raised by *implication of law and presumed always to have been contemplated by the parties,* the intention as to which is to be found in the nature of their transaction, but not expressed in the deed or instrument of conveyance.
- It is based on the principle that valuable consideration and not legal title determines the equitable interest and is presumed to have been contemplated by the parties.

***Burden of proof in resulting trusts***

- There is a disputable presumption of trust, and evidence may thus be adduced to show that no trust was intended nor contemplated by the parties.
- The beneficiary need only prove the facts that would constitute the covered transaction and the legal presumption that there exists a resulting trust would arise from the transaction.
    - Thereafter, the burden of proof would be on the part of the purported trustee to rebut the presumption.

***Blurring of distinctions between express and resulting trusts***

- In resulting trusts, the parties' presumed intention bounded by the trust relationship is drawn from the nature of the transaction, and not from the words, acts, or omissions of the parties.

    - Because if they are derived from the words, acts, or omissions of the parties, the relationship is one of express trusts!
- It seems that when the intention of the parties bound by the trust relationship is found expressed in a deed or instrument, it covers an express trust. Whereas, when the same intention is merely verbal or can be proved by parol evidence, it may be considered as a resulting trust.
- A written undertaking by the registered land owner to hold the property for the benefit of another constitutes an *express trust* even when title registered in the name of the purported trustee is *full title*.
- In express trusts and resulting trusts, a trustee cannot acquire by prescription a property entrusted to him unless he repudiates the trust.
- The best evidence of an express trust, apart from registration of the land in the name of the trustee, would be a Deed of Trust.
- Outside of a formal Deed of Trust, written or sworn statements narrating the purported trust relationship must contain the signature of the party sought to be bound (trustee). This is akin to the requisite memorandum under the Statute of Frauds.

***Rule of prescriptibility of resulting trusts***

- Imprescriptible, as long as there is no repudiation by the trustee.
- When it comes to acquisitive prescription, both express trusts and resulting trusts have the same rules.

**Constructive trusts**

- It is one which is imposed by law and there is *neither a promise nor fiduciary relations*; the so-called trustee does not recognized any trust and has no intent to hold the property for the beneficiary.
- It is a trust raised by construction of law or arising by operation of law.
    - In a more restricted sense and as *contra* distinguished from a resulting trust, a constructive trust is "a trust not created by any words, either expressly or impliedly evincing a direct intention to create a trust, but by *the construction of equity in order to satisfy the demands of justice.* It does not arise by agreement or intention but by operation of law."
    - If a person obtains legal title to property by fraud or concealment, courts of equity will impress upon the title a so-called constructive trust in favor of the defrauded party.
    - A constructive trust is not a trust in the technical sense.
- Because there is neither a promise nor a fiduciary relation, a writ of attachment cannot be enforced against the purported trustee in a constructive trust.
    - The Rules of Court requires that the writ only issue against any person in a fiduciary capacity or for a willful violation of duty.

***Distinguished from resulting trusts***

- Constructive trusts draw their essence from the need to impose an obligation on a person who takes title to a property to *achieve justice or equity* on behalf of another person who would otherwise be adversely affected by the fact that such title remains with, or has been conveyed to, another person.
    - A resulting trust draws its essence from the perceived intention of the parties as taken from the structure of the transactions covered.

| | **Resulting trusts** | **Constructive trusts** |
|---|---|---|
| Source | Based on the equitable doctrine that valuable consideration, not legal title, determines equitable ownership. | Based on the equitable principle of preventing unjust enrichment and satisfying the demands of justice. |
| Nature | Presumed trust | Imposed trust |
| Intention | Presumed to have been contemplated by the parties, even if not expressed in the deed. | Contrary to intention; arises regardless of parties' intent when equity requires it. |

| | | |
|---|---|---|
| Creation | Arises from the nature or circumstances of the transaction, especially where one party provides the consideration but another holds legal title. | Created by operation of law, often due to fraud, duress, abuse of confidence, or other inequitable conduct. |
| Function | To give effect to the presumed or implied intention of the parties regarding ownership. | To prevent fraud, inequity, or unjust enrichment of the legal title holder. |
| Examples | Arts. 1448, 1449, 1451, 1452, 1453 | Arts. 1450, 1454, 1455, 1456 |
| Illustration | A buys land with his own money but title is placed in B's name → B holds the property in resulting trust for A. | A acquires land through fraud or abuse of confidence → A holds the property in constructive trust for the rightful owner. |

***Constructive trusts similar in purpose to the quasi-contracts of solutio indebiti***

| | **Constructive trust** | **Solutio indebiti** |
|---|---|---|
| Legal basis | Arts. 1456, etc. | Arts. 2154-2155 |
| Nature | Equitable remedy imposed by law to prevent unjust enrichment when property is acquired through fraud, mistake, abuse of confidence, or similar inequitable means | A quasi-contractual obligation arising when a person receives something by mistake and is obliged to return it |
| Subject matter | Involves specific property wrongfully held by a person who in equity ought not retain it | Involves money or property unduly delivered through mistake or without legal obligation |
| Relationship | No fiduciary relation; the so-called trustee has only a duty to surrender the property, not to manage it | No fiduciary relation; the obligation is simply to return what was unduly received |
| Remedy | Equitable proceeding to compel the return of specific property | Personal action for recovery of what was unduly given |
| Intention | Arises regardless of intent; created by operation of law to satisfy justice | Arises regardless of intent; created by operation of law due to mistaken delivery or payment |
| Characterization | Not a trust in the strict sense | Not a true contract, but a quasi-contract |

**Implied trusts particularly constituted by law**

***Purchase of property where title placed in one person, but price paid by another person (Art. 1448)***

- The person in whose name the property is registered is the trustee, while the person who paid for the price is the beneficiary.
- This is called the **purchase money resulting trust**.
- It is implied trust because the trustee does not expressly bound himself to hold or administer the same for the benefit of any person.
    - The presumption of a resulting trust arises from the fact of a sale transaction where evidence shows that title is placed in the name of one person, while the price was paid by another.

*Exceptions to Art. 1448 (no trust):*

1. *When title is placed in the name of a child*
    - There is no presumption of an implied trust, if the person to whom the title is conveyed is a child, it being disputably presumed that there is a gift in favor of the child.
    - This is because it cannot be expected that a child would administer property for the benefit of the parents.
    - A donation is disputably presumed in favor of the child (*Ty v. CA*).
2. *When it is the child who supplies the purchase price*
    - Art. 1448 cannot apply in a situation where property is bought by the parent in his own name, using the money of the child.
3. *When a contrary intention is proved*
    - The burden of proving the existence of a trust is on the party asserting its existence.

4. *When purchase price extended as a loan*
5. *When the purchase is made in violation of an existing statute (no trust to countenance fraud)*

***Purchase of property where title is placed in the name of person who loaned the purchase price (Art. 1450)***

- If the price of a property bought is loaned or paid by one person for the benefit of another and the conveyance is made to the lender or payor to secure the payment of the debt, an implied trust arises by operation of law in favor of the person whom the money is loaned or for whom it is paid.
- The trustee is the lender or payor, while the beneficiary is the borrower or the real buyer.
- It is **akin to an equitable mortgage agreement** since the title to the property intended for the borrower is placed in the name of the lender to secure payment of the debt.
    - Equitable mortgage – To charge real property as security for a debt and contains nothing impossible or contrary to law.
- The borrower can redeem the property by paying his loan to, or advances from, the lender-trustee.

***When absolute conveyance of property effected to secure performance of obligation (Art. 1454)***

- If an absolute conveyance of property ("deed of absolute sale") is made to secure the performance of an obligation of the grantor toward the grantee, a trust is established.
- If the fulfillment of the obligation is offered by the grantor when it becomes due, he may demand the reconveyance of the property to him.

***Two or more persons purchase property jointly, but place title in one of them (Art. 1452)***

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

***Property conveyed to a person merely as holder thereof (Art. 1453)***

- When property is conveyed to a person based upon his declared intention to hold it for, or transfer it to another or the grantor, there is an implied trust in favor of the person whose benefit is contemplated.
- This is an express trust, because title to property is taken by the trustee under a clear agreement to hold it for another person.

***Donation of property to a done who shall have no beneficial title (Art. 1449)***

- There is an implied trust when a donation is made to a person, but it appears that although the legal estate is transmitted to the done, he nevertheless is either to have *no* beneficial interest or only a part thereof.
- In such a situation, the donor is the beneficiary.

***Land passes by succession but heir places title in the trustee (Art. 1451)***

- When land passes by succession to any person and he causes the legal title to be placed in *another's name* (not an heir), a trust is established for the benefit of the true owner.
- Under Art. 1451, the placing of title in the name of another (trustee) is done purportedly with the knowledge and consent of the beneficiary (true owner).
    - What makes this an implied trust is the lack of clear purpose or intention on why the heir caused legal title to be put in another person's name (like, allowing a foreigner to own land).

***When trust fund used to purchase property which is registered in trustee's name (Art. 1455)***

- When any trustee, guardian, or other person holding a fiduciary relationship uses trust funds for the purchase of property *and* causes conveyance to be made to him or to a third person, a trust is established in favor of the person to whom the funds belong.
- This is also the basis for the *fiduciary duty of loyalty.*
- In this case, no fraud in fact need not be shown, and no excuse will be heard from the trustee.

***When property is acquired through mistake or fraud (constructive, art. 1456)***

- If property is acquired through mistake or fraud, the person obtaining it is, by force of law, considered a trustee under an implied trust arrangement for the benefit of the person from whom the property comes.
- It covers all types of property, whether movable or immovable.
    - *Note:* Under Art. 559, possession of movable property acquired in good faith is equivalent to a title.
- Under Art. 1456, the aggrieved party may seek reconveyance against the party who has employed fraud.
    - Nevertheless, the action can only be directed against the one who caused fraud, and not for the innocent purchaser for value (IPV). In any case, only an *action for damages* may be sought, because the IPV is protected.

## Chapter 4: Rules of prescription for trusts

***Express trusts***

**General rule: Express trusts not susceptible to acquisitive prescription**

- As long as the trustee has not made a clear and express repudiation of the trust, the rights of the beneficiary are not subject to prescription to favor the trustee.
- In *Ramos v. Ramos,* the court summarized the rules as follows:
    - A trustee cannot acquire by prescription the ownership of property entrusted to him
    - An action to compel a trustee to convey property registered in his name in trust for the benefit of the beneficiary does not prescribe
    - The defense of prescription cannot be set up in an action to recover property in held by a person in trust for the benefit of another
    - The property held in trust can be recovered by the beneficiary regardless of the lapse of time

**Exception: When acquisitive prescription may arise in express trusts**

The trustee who is in *adverse possession* may claim title by prescription where it appears that:

1. Trustee has performed unequivocal acts of repudiation amounting to an ouster of the *cestui que trust*
2. Such positive acts of repudiation have been made known to the *cestui que trust*
3. The evidence thereon is clear and conclusive

*In an express trust, the registration of full ownership does not amount to an act of repudiation.* This is because both parties have an expectation that the trustee will hold the legal/naked title over the trust estate.

- In any case, express trusts prescribe in 10 years from repudiation.

***Implied trusts***

**Continuing relevant jurisprudence under the Old Civil Code regime**

1. The defense of prescription or laches by the trustee cannot be accepted when the beneficiary is a minor.
2. Prescription cannot arise in favor of a trustee who acknowledges the rights of the beneficiary.
    a. Hence, continuing recognition of a resulting trust precludes any defense of laches in a suit to declare and enforce the trust.

**Jurisprudence under the New Civil Code**

- The prescriptive period for the reconveyance of fraudulently registered real property is 10 years reckoned from the date of the issuance of the certificate of title.

- This 10-year prescriptive period begins to run from the date the adverse party repudiates the implied trust, which repudiation takes place when the adverse party registers the land.
- **Exception:** When the party seeking reconveyance based on implied or constructive trust is in actual, continuous and peaceful possession of the property involved. In such a case, the action is akin to *quieting of title, which is imprescriptible*.
- Whether an action for reconveyance prescribes or not is therefore determined by the nature of the action, that is, whether it is founded on a claim of the existence of an **implied or constructive trust**, or one based on the existence of a **void or inexistent contract**.
    - An action based on a void contract is imprescriptible.

***What is the period applicable when prescription is allowed?***

- The cause of action, and the 10-year prescriptive period begin to run from the discovery of the bad faith or mistake.
- The rpescriptibility of an action for reconveyance based on implied or constructive trust prescribes in 10 years. Express trusts prescribe in 10 years from the repudiation of the trust.
- Summarizing in *Ramos:*
    - The rule of imprescriptibility of the action to recover property held in trust may possibly apply to resulting trusts as long as the trustee has not repudiated the trust.
    - The rule of imprescriptibility was *misapplied* to constructive trusts.
    - With respect to constructive trusts, the rule is different: The prescriptibility of an action for reconveyance based on constructive trust is now settled
    - Prescription may supervene in an implied trust
    - Whether the trust is resulting or constructive, its enforcement may be barred by laches

***When does the 10-year prescriptive period begin to run?***

- The beneficiary's cause of action for reconveyance arises when the trustee *repudiates* the trust.
- While majority of the court's decision point to the registration of title for registered lands as the reckoning time, some decisions use the actual date of discovery of fraud as the reckoning time.

***When registration in the name of the trustee was integral part of the trust agreement***

- If such is the case, then the registration (as constructive notice) cannot be the reckoning point.
- In *Tongoy v. CA*, the period should be counted from the date of recording of the release of mortgage.

***When cestui que trust is in possession of the res***

- The period is imprescriptible. The action will be akin to quieting of title, because the fraudulent registration constituted a cloud.

***When circumstances did not grant the cestui que trust sufficient time to discover the fraud***

- There was a *sub rosa* effort to get hold of the property exclusively for himself (*Adille v. CA*)
- Close-filial relationship, because the doctrine of laches is not to be applied mechanically as between near relatives (*Adaza v. CA*)
- There is no clear repudiation by a co-owner of the co-ownership (*Figuracion v. Figuracion-Gerilla*)

**For land: without registration the 10-year period does not even begin to run**

- An action for reconveyance of a parcel of land based on implied or constructive trust prescribes in 10 years, the point of reference being the date of registration of the deed, or the date of issuance of the certificate of title

**When registration covers a void title**

- The 10-year period does not commence to run when the title issued is void.
- As such, the action will not prescribe (Art. 1410).
- It implies that implied trust doctrines apply only when the title of the purported trustee is valid.

**Rules on prescription on resulting trusts follow those of express trusts**

| | Express | Resulting (implied) | Constructive (implied) |
|---|---|---|---|
| Fiduciary? | Yes | Yes, presumed by law | No, trustee does not accept the trust |
| Effect of repudiation | Repudiation is necessary before prescription can begin to run | Repudiation is necessary before prescription can begin to run | Repudiation is **not** required; relationship is adversarial from the start |
| Prescription rules | Trustee cannot acquire ownership by prescription unless and until repudiation occurs | Trustee cannot acquire ownership by prescription unless and until repudiation occurs | Prescription may run even without repudiation, since holding is adverse at all times |

*Cañezo v. Rojas, G.R. No. 148788, November 23, 2007*

**When *res* has passed on to a buyer in good faith and for value**

- An action for reconveyance—though filed within the prescriptive period—will not prosper when the property has been acquired by an innocent purchaser for value.