PARTNERSHIP

I. CONTRACT OF PARTNERSHIP

A. DEFINITION

Q: What is partnership?

A: A contract whereby two or more persons bind themselves to contribute money, property, or industry to a common fund, with the intention of dividing the profits among themselves.

Note: Two or more persons may also form a partnership for the exercise of a profession. *(Art. 1767, NCC)*

B. ELEMENTS

Q: What are the essential elements of a partnership?

A:

1. Agreement to contribute money, property or industry to a common fund (mutual contribution to a common stock); and
2. Intention to divide the profits among the contracting parties (joint interest in the profits). *(Evangelista v. Collector of Internal Revenue, G.R. No. L-9996, Oct. 15, 1987).*

Q: What are the requisites of a partnership?

A: ICJ

1. **I**ntention to create a partnership
2. **C**ommon fund obtained from contributions
3. **J**oint interest in dividing the profits (and losses)

Q: What are the characteristics of a partnership?

A: BON-CC-PP

1. ***B****ilateral* – it is entered into by two or more persons and the rights and obligations arising therefrom are reciprocal
2. ***O****nerous* – each of the parties aspires to procure for himself a benefit through the giving of something
3. ***N****ominate* – it has a special name or designation in our law
4. ***C****onsensual* – perfected by mere consent
5. ***C****ommutative* – the undertaking of each of the partners is considered as the equivalent of that of the others
6. ***P****rincipal* – its life does not depend on the existence of another contract
7. ***P****reparatory* – because it is entered into as a means to an end, *i.e.* to engage in business
8. ***F****iduciary* – it is based on trust and confidence

Q: Jose entered into a verbal agreement with Francisco to form a partnership for the purchase of cascoes for a proposed boat rental business. It was agreed that Francisco would buy the cascoes and each partner is to furnish such amount of money as he could, and that the profits will be divided proportionately. After Francisco purchased a casco with the money advanced by Jose, they undertook to draft the articles of partnership and embody the same in an authentic document. However, they did not come to an agreement. So, Francisco returned the money advanced by Jose, which the latter received with an express reservation of all his rights as a partner.

1. **Was there a partnership formed between Jose and Francisco?**
2. **If such partnership existed, was it terminated by the receipt of Jose of the money he advanced?**

A:

1. Yes. Both elements in a contract of partnership exist: a) mutual contribution to a common stock, and b) a joint interest in the profits. If the contract contains these two elements, a partnership relation results, and the law itself fixes the incidents of this relation if the parties fail to do so. In this case, there was money furnished by Jose and received by Francisco for the purchase of the cascoes and there was also an intention to divide the profits proportionately between them. Thus, there is a partnership by virtue of the verbal agreement between Jose and Francisco.

2. No. There was no clear intent on the part of Jose, in accepting the money, to relinquish his rights as a partner. *(Fernandez v. Dela Rosa, G.R. No. 413, Feb. 2, 1903)*

Q: Chim was the owner and manager of a lumber yard. Vicente and Ting participated in the profits and losses. A contract of sawing lumber was entered into by Chim, acting in his own name, with Frank. At the time the contract was

made, they were the joint proprietors and operators of the said lumber yard engaged in the purchase and sale of lumber under the name and style of Chim. In an action to recover the balance under the contract filed by Frank against Chim, Vicente and Ting, the latter two alleged that they are not Chim's partners. Did Chim, Vicente and Ting form a partnership?

A: No. A simple business was formed by Chim exclusively in his own name and under his personal management and he effected every transaction in his name and in the names of other persons interested in the profits and losses of the business. What has been formed is an accidental partnership of *cuentas en participacion*.

Note: Under the Code of Commerce, *cuentas en participacion* means a sort of an accidental partnership constituted in such a manner that its existence was only known to those who had an interest in the same, there being no mutual agreement between the partners, and without a corporate name indicating to the public in some way that there were other people besides the one who ostensibly managed and conducted the business, governed under article 239 of the Code of Commerce. *(Bourns v. Carman, G.R. No. L-2880, Dec. 4, 1906)*

INTENT TO CREATE A PARTNERSHIP

Q: Henry and Lyons are engaged in real estate business and are co-owners of a parcel of land. Henry, with the consent of Lyons, mortgaged the property to raise the funds sufficient to buy and develop the San Juan Estate. Lyons expressed his desire not to be part of the development project, but Henry, nevertheless, pursued the business alone. When the business prospered, Lyons demanded for a share in the business. Is Lyons entitled to the shares in San Juan Estate?

A: No. Lyons himself manifested his desire not to be part of the development project. Thus, no partnership was formed. The mortgage of the land was immaterial to the existence of the partnership. It is clear that Henry, in buying the San Juan Estate, was not acting for any partnership composed of himself and Lyons, and the law cannot be distorted into a proposition which would make Lyons a participant in this deal contrary to his express determination. *(Lyons v. Rosenstock, G.R. No. 35469, Mar. 17, 1932)*

Q: Catalino and Ceferino acquired a joint tenancy over a parcel of land under a verbal contract of partnership. It was stipulated that each of the said purchasers should pay one-half of the price and that an equal division should be made between them of the land thus purchased. Despite Catalino's demand for an equal division between them, Ceferino refused to do so and even profited from the fruits of the land. Are they partners or co-owners?

A: They are co-owners because it does not appear that they entered into any contract of partnership but only for the sole transaction of acquiring jointly or by mutual agreement of the land under the condition that they would pay ½ of the price of the land and that it be divided equally between them. *(Gallemit v. Tabiliran, G.R. No. 5837, Sept. 15, 1911)*

COMMON FUND

Q: May a partnership be formed even if the common fund is comprised entirely of borrowed or loaned money? What would be the liability of the partners in such a case?

A: Yes. A partnership may be deemed to exist among parties who agree to borrow money to pursue a business and to divide the profits or losses that may arise therefrom, even if it is shown that they have not contributed any capital of their own to a "common fund." Their contribution may be in the form of credit or industry, not necessarily cash or fixed assets. Being partners, they are all liable for debts incurred by or on behalf of the partnership. *(Lim Tong Lim v. Philippine Fishing Gear Industries, Inc., G.R. No. 136448, Nov. 3, 1999)*

SHARE IN PROFITS AND LOSSES

Q: Mariano and Isabelo entered into a partnership agreement wherein they are to contribute P15,000 each for the purpose of printing 95,000 posters. Isabelo was unable to print enough posters pursuant to the agreement, thus he executed in favor of Mariano a promissory note in an amount equivalent to the unrealized profit due to insufficient printing. The whole amount became due but Isabelo defaulted payment. Is Mariano entitled to file a case for the recovery of the unrealized profit of the partnership?

A: No. The essence of a partnership is to share in the profits and losses, thus, Mariano should shoulder the losses with Isabelo. *(Moran Jr., v. CA, G.R. No. L-59956, Oct. 31, 1984)*

Q: To form a lending business, it was verbally agreed that Noynoy would act as financier while Cory and Kris would take charge of solicitation of

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members and collection of loan payments. They agreed that Noynoy would receive 70% of the profits while Cory and Kris would earn 15% each. The parties executed the 'Articles of Agreement' which formalized their earlier verbal agreement. Later, Noynoy filed a complaint against Cory and Kris for misappropriation of funds allegedly in their capacities as Noynoy's employees. In their answer, Cory and Kris asserted that they were partners and not mere employees of Noynoy. What kind of relationship existed between the parties?

A: A partnership was formed among the parties. The "Articles of Agreement" stipulated that the signatories shall share the profits of the business in a 70-15-15 manner, with Noynoy getting the lion's share. This stipulation clearly proved the establishment of a partnership. *(Santos v. Spouses Reyes, G.R. No.135813, Oct. 25, 2001)*

Q: Jose conveyed his lots in favor of his four sons in order for them to build their residences. His sons sold the lots since they found the lots impractical for residential purposes because of high costs of construction. They derived profits from the sale and paid income tax. The sons were required to pay corporate income tax and income tax deficiency, on the theory that they formed an unregistered partnership or joint venture taxable as a corporation. Did the siblings form a partnership?

A: No. The original purpose was to divide the lots for residential purposes. If later, they found out that it is not feasible to build their residences on the lots, they can dissolve the co-ownership by reselling said lots. The *division on the profit was merely incidental to the dissolution of the co-ownership* which was in the nature of things a temporary state. *(Obillos, Jr. v. CIR, G.R. No. L-68118, Oct. 29, 1985)*

C. RULES TO DETERMINE EXISTENCE

Q: What are the rules to determine the existence of partnership?

A:

1. Persons who are not partners as to each other are not partners as to third persons.
2. Co-ownership/co-possession does not of itself establish a partnership.
3. Sharing of gross returns does not of itself establish a partnership.
4. Receipt of a person of a share in the profits is a prima facie evidence that he is a partner, *but not when received as payment for :*
    a. Debt as installment
    b. Wages
    c. Annuity
    d. Interest in a loan
    e. Consideration for the sale of a goodwill

Note: in sub-paragraphs a – e, the profits in the business are not shared as profits of a partner as a partner, but in some other respects or for some other purpose.

Q: Distinguish partnership from co-ownership/co-possession.

A:

PARTNERSHIP	CO-OWNERSHIP/ CO-POSSESSION
Intent to derive profits	
The profits must be derived from the operation of the business or undertaking by the members of the association and not merely from property ownership.	**The co-owners share in the profits derived incident to the joint ownership.**
Existence of fiduciary relationship	
There is a well defined fiduciary relationship between them as partners.	**There is no fiduciary relationship between the parties.**
Remedy for dispute	
The remedy for a dispute or difference between them would be an action for dissolution, termination, and accounting.	**The remedy would be an action, as for instance, for non-performance of a contract.**
Intent	
There must be an unmistakable intention to form a partnership.	**There is no intent to form a partnership.**

Q: A and B are co-owners of an inherited properties. They agreed to use the said common properties and the income derived therefrom as a common fund with the intention to produce profits for them in proportion to their respective shares in the inheritance as determined in a project of partition. What is the effect of such agreement on the existing co-ownership?

A: The co-ownership is automatically converted into a partnership. From the moment of partition, A and B, as heirs, are entitled already to their respective definite shares of the estate and the income thereof, for each of them to manage and

dispose of as exclusively his own without the intervention of the other heirs, and, accordingly, he becomes liable individually for all the taxes in connection therewith.

If, after such partition, an heir allows his shares to be held in common with his co-heirs under a single management to be used with the intent of making profit thereby in proportion to his share, there can be no doubt that, even if no document or instrument were executed for the purpose, for tax purposes, at least, an unregistered partnership is formed. *(Ona v. Commissioner of Internal revenue, 45 SCRA 74 [1972])*

Q: What are the typical incidents of partnership?

A:

1. The partners share in profits and losses. *(Arts. 1767,1797-98)*
2. They have equal rights in the management and conduct of the partnership business. *(Art. 1803)*
3. Every partner is an agent of partnership, and entitled to bind the other partners by his acts, for the purpose of its business. *(Art. 1818)*
4. All partners are personally liable for the debts of the partnership with their separate property *(Arts. 1816, 1822-24)* except limited partners.
5. A fiduciary relationship exists between the partners. *(Art. 1807)*
6. On dissolution, the partnership is not terminated, but continues until the winding up of partnership is completed. *(Art 1828)*

Q: What are the rules regarding distribution of profits and losses?

A:

1. *Distribution of profits*
   a. The partners share in the profits according to their agreement
   b. In the absence of such:
      i. Capitalist partner – in proportion to his contribution
      ii. Industrial partner – what is just and equitable under the circumstances

2. *Distribution of losses*
   a. The partners share in the losses according to their agreement
   b. In the absence of such, according to their agreement as to profits
   c. In the absence of profit agreement, in proportion to his capital contribution

Q: What is the rule regarding a stipulation which excludes a partner in the sharing of profits and losses?

A:

GR: Stipulation is *void*.

XPN: Industrial partner is not liable for losses *[Art. 1797(2), NCC]*. *However,* he is not exempted from liability insofar as third persons are concerned.

Note: Loss is different from liability
If, besides his services the industrial partner has contributed capital, he shall also receive a share in the profits in proportion to his capital.

D. HOW PARTNERSHIP IS FORMED

Q: How are partnerships formed?

A: It is created by agreement of the parties (consensual).

Note: There is no such thing as a partnership created by law or by operation or implication of law alone. *(De Leon, Comments and cases on Partnership, Agency and Trust, p. 13, 2005 ed.*

Q: What are the formalities needed for the creation of a partnership?

A:

GR: No special form is required for its validity or existence. *(Art. 1771, NCC)*

XPN: If property or real rights have been contributed to the partnership:

1. *Personal property*
   a. Less than P3,000 – *may be* oral
   b. P 3,000 or more – *must be:*
      i. in a public instrument; and
      ii. registered with SEC *(Art. 1772, NCC)*

      Note: Even if the partnership is not registered with SEC, the partnership is still valid and possesses a distinct personality *(Paras, Civil Code of the Philippines Annotated, Volume 5, p. 412, 1969 6th ed)*
2. *Real property or real rights – must be:*

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a. in a public instrument *(Art. 1771, NCC)*
b. with an inventory of said property
   i. signed by the parties
   ii. attached to the public instrument *(Art. 1773, NCC)*

   Note: Everything must be complied with; otherwise, partnership is void and has no juridical personality even as between the parties *(Art. 1773, NCC)*
   iii. registered in the Registry of Property of the province, where the real property is found to bind third persons *(Paras, p. 412)*

3. *Limited partnership* – must be registered as such with SEC, otherwise, it is not valid as a limited partnership but may still be considered a general partnership with juridical personality *(Paras, Civil Code of the Philippines Annotated, Volume 5, p. 412, 1969 6th ed)*

Q: If the requirements under Art. 1773, as regards contribution of real property to a partnership, has not been complied with, what is the status of the partnership?

A: It is void. Nonetheless, a void partnership under Art. 1773, in relation to Art. 1771 NCC, may still be considered by the courts as an ordinary contract as regards the parties thereto from which rights and obligations to each other may be inferred and enforced. *(Torres v. CA, G.R. No. 134559, Dec. 9 1999)*

Note: *Torres v. CA* does not involve third persons.

Q: What must be done in order that the partnership may be effective as against third persons whenever immovable property is contributed?

A: To be effective against 3rd parties, partnership must be registered in the Registry of Property of the province where the real property contributed is located. (*Art. 1771, NCC*)

Q: Can there be a partnership based on a verbal agreement, and without such agreement being registered with SEC?

A: Yes. *Article 1772 NCC* requires that partnerships with a capital of P3,000 or more must register with SEC. However, this registration requirement is not mandatory. *Article 1768 NCC* explicitly provides that the partnership retains its juridical personality even if it fails to register. The failure to register the contract of partnership does not invalidate the same as among the partners, so long as the contract has the essential requisites, because the main purpose of registration is to give notice to third parties, and it can be assumed that the members themselves knew of the contents of their contract. Non-compliance with this directory provision of the law will not invalidate the partnership.

A partnership may be constituted in any form, except where immovable property of real rights are contributed thereto, in which case a public instrument shall be necessary. Hence, based on the intention of the parties, a verbal contract of partnership may arise. *(Sunga-Chan v. Chua, G.R. No. 143340, Aug. 15, 2001)*

Note: Registration is merely for administration and licensing purposes; hence, it shall not affect the liability of the partnership and the members thereof to third persons. *[Art. 1772, (2), NCC]*

Q: A partnership was entered into between Mauricio and Severino to operate a fishpond. Neither partner contributed a fishpond or a real right over any fish pond. Their capital contributions were in cash in the amount of P1,000 each. While the partnership contract was done in a public instrument, no inventory of the fishpond to be operated was attached in the said instrument. Is there a valid contract of partnership?

A: Yes. There is a valid contract of partnership despite the lack of inventory. The purpose of the partnership was not to engage in the fishpond business but to operate a fishpond. Neither said fishpond nor a real right to any fish pond was contributed to the partnership or become part of the capital thereof. *(Agad v. Mabato, G.R. No. L-24193, June 28, 1968)*

E. PARTNERSHIP TERM

Q: What is a partnership with a fixed term?

A: It is one in which the term of its existence has been agreed upon by the partners either:
1. *Expressly* – there is a definite period
2. *Impliedly* – a particular enterprise or transaction is undertaken

Note: The mere expectation that the business would be successful and that the partners would be able to

recoup their investment is not sufficient to create a partnership for a term.

Q: Can the partners fix any term in the partnership contract?

A: Yes. The partners shall be bound to remain under such relation for the duration of the term.

Q: What is the effect when the fixed term has expired?

A: The expiration of the term fixed or the accomplishment of the particular undertaking specified will cause the automatic dissolution of the partnership.

Q: When does a partnership commence to exist?

A: A partnership commences from the time of execution of the contract if there is no contrary stipulation as to the date of effectivity of the same.

NOTE: Registration to SEC is not essential to give it juridical personality.

There is no time limit prescribed by law for the life of a partnership.

Q: What is a future partnership?

A: It is a kind of partnership where the partners may stipulate some other date for the commencement of the partnership. Persons who enter into a future partnership do not become partners until or unless the agreed time has arrived or the contingency has happened.

NOTE: It is a partnership created by implied agreement, the continued existence of which will depend upon the mutual desire and consent of the partners.

Q: When is a partnership at will terminate?

A: It may be lawfully terminated at any time by the express will of all the partners or any of them.

Q: How is a partnership at will dissolved?

A: Any one of the partners may dictate a dissolution of a partnership at will.

Note: The partner who wants the partnership dissolved must do so in good faith, not that the attendance of bad faith can prevent the dissolution of the partnership, but to avoid the liability for damages to other partners.

CLASSIFICATIONS OF PARTNERSHIP

Q: State the classifications of partnership.
A: As to:

1. *Object*
   a. Universal partnership
      i. of all present property *(Art. 1778, NCC)* – comprises the following:
         - property which belonged to each of the partners at the time of the constitution of the partnership
         - profits which they may acquire from all property contributed
      ii. of all profits *(Art. 1780, NCC)* – comprises all that the partners may acquire by their industry or work during the existence of the partnership
   b. Particular partnership – It is one which has for its object, determinate things, their use and fruits, or a specific undertaking or the exercise of a profession or a vocation. *(Art. 1783, NCC)*

2. *Liability of partners*
   a. General partnership – One where all partners are general partners who are liable even with respect to their individual properties, after the assets of the partnership have been exhausted *(Paras,p. 411)*
   b. Limited partnership – One formed by 2 or more persons having as members one or more general partners and one or more limited partners, the latter not being personally liable for the obligations of the partnership.

3. *Duration*
   a. Partnership at will – Partnership for a particular undertaking or venture which may be terminated anytime by mutual agreement.
   b. Partnership with a fixed period – The term for which the partnership is to exist is fixed or agreed upon or one formed for a particular undertaking.

4. *Legality of existence*
   a. De jure partnership
   b. De facto partnership

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5. *Representation to others*
   a. Ordinary or real partnership
   b. Ostensible or partnership by estoppel – When two or more persons attempt to create a partnership but fail to comply with the legal personalities essential for juridical personality, the law considers them as partners, and the association is a partnership insofar as it is favorable to third persons, by reason of the equitable principle of estoppel *(MacDonald et. al. v. Nat'l. City Bank of New York, G.R. No. L-7991, May 21, 1956)*

6. *Publicity*
   a. Secret partnership – Partnership that is not known to many but only as to its partners.
   b. Notorious or open partnership – It is known not only to the partners, but to the public as well.

7. *Purpose*
   a. Commercial or trading – One formed for the transaction of business.

   b. Professional or non-trading – One formed for the exercise of a profession

Q: What are the different kinds of partnership under the Spanish Civil Code?

A:

1. *Sociedad Anonima* – similar to anonymous partnership
2. *Sociedad Colectiva* – which is general or collective partnership
3. *Sociedad de Cuentas en Participacion* – joint account partnership
4. *Sociedad Mercantile Regular Colectiva* – mercantile partnership company
5. *Sociedad Leonila* – partnership by which the entire profits should belong to some of the partners in exclusion of the rest

Q: Who may be partners?

A:

GR: Any person capacitated to contract may enter into a contract of partnership.

XPNs:

1. Persons who are prohibited from giving each other any donation or advantage cannot enter into a universal partnership. *(Art. 1782, NCC)*
2. Persons suffering from civil interdiction
3. Persons who cannot give consent to a contract:
   a. Minors
   b. Insane persons
   c. Deaf-mutes who do not know how to write

Q: What is the principle of *delectus personae*?

A: This refers to the rule that is inherent in every partnership, that no one can become a member of the partnership association without the consent of all the partners.

Note: Even if a partner will associate another person in his share in the partnership, the associate shall not be admitted into the partnership without the consent of all the partners, even if the partner having an associate should be a manager *(Art. 1804, NCC)*.

Q: May a corporation enter into a partnership with another corporation?

A: As a rule, it is illegal for two corporations to enter into a partnership. Nevertheless, a corporation may enter into a *joint venture* with another if the nature of the venture is in line with the business authorized by its charter. *(Tuason v. Bolaños, G.R. No. L-4935, May 28, 1954)*

Q: What are the different kinds of partners?

A:

1. Capitalist – *Contributes money or property to the common fund*
2. *Industrial* – Contributes only his industry or personal service
3. *General* – One whose liability to 3rd persons extends to his separate or personal property
4. *Limited* – One whose liability to 3rd persons is limited to his capital contribution
5. *Managing* – Manages the affairs or business of the partnership
6. *Liquidating* – Takes charge of the winding up of partnership affairs upon dissolution
7. *Partner by estoppel* – Is not really a partner but is liable as a partner for the protection of innocent 3rd persons
8. *Continuing partner* – Continues the business of a partnership after it has been dissolved by reason of the admission of a new partner, retirement,

death or expulsion of one of the partners

9. *Surviving partner* – Remains after a partnership has been dissolved by death of any partner
10. *Sub-partner* – Is not a member of the partnership; contracts with a partner with reference to the latter's share in the partnership
11. *Ostensible* – Takes active part and known to the public as partner in the business
12. *Secret* – Takes active part in the business but is not known to be a partner by outside parties
13. *Silent* – Does not take any active part in the business although he may be known to be a partner
14. *Dormant* – Does not take active part in the business and is not known or held out as a partner

Q: What are the relations created by a contract of partnership?

A:

1. Partners-Partners
2. Partners-Partnership
3. Partnership-3rd persons with whom it contracts
4. Partners-3rd persons with whom partnership contracts.

F. UNIVERSAL VS. PARTICULAR; GENERAL VS. LIMITED

UNIVERSAL PARTNERSHIP

Q: Distinguish the classes of universal partnership.

A:

ALL PROFITS	ALL PRESENT PROPERTY
What constitutes common property	
Only *usufruct* of the properties of the partners become *common property*	***All properties* actually belonging to the partners are *contributed* – they become common property (owned by all of the partners and the partnership)**
As to profits as common property	
All profits acquired by the *industry* of the partners become *common property* (whether or not they were obtained through the usufruct contributed)	*As to profits from other sources:*
	GR: **Aside from the contributed properties, the *profits* of said property become *common property***
	XPN: **Profits from other sources may become *common* if there is a stipulation to such effect**
	As to properties subsequently acquired:
	GR: Properties subsequently acquired by inheritance, legacy or donation, *cannot* be included in the stipulation
	XPN: **Only fruits thereof can be included in the stipulation *(Art. 1779, NCC)***

Q: If the Articles of Universal Partnership fail to specify whether it is one of all present property or of profits, what shall be the nature of such?

A: Articles of Universal Partnership entered into without specification of its nature only constitutes a universal partnership of profits *(Art. 1781, NCC)*, because it imposes lesser obligations on the partners, since they preserve the ownership of their separate property.

PARTICULAR PARTNERSHIP

Q: What is particular partnership?

A: It is one which has for its object, determinate things, their use and fruits, or a specific undertaking or the exercise of a profession or a vocation. *(Art. 1783, NCC)*

Q: J, P and B formed a limited partnership called Suter Co., with P as the general partner and J and B as limited partners. J and B contributed P18,000 and P20,000 respectively. Later, J and B got married and P sold his share of the partnership to the spouses which was recorded in the SEC. Has the limited partnership been dissolved by reason of the marriage between the limited partners?

A: No. The partnership is not a universal but a particular one. As provided by law, a universal partnership requires either that the object of the association must be all present property of the partners as contributed by them to a common fund, or all else that the partners may acquire by their industry or work. Here, the contributions were fixed sums of money and neither one of them were industrial partners. Thus, the firm is not a partnership which the spouses are forbidden to enter into. The subsequent marriage cannot operate to dissolve it because it is not one of the causes provided by law. The capital contributions were owned separately by them before their marriage and shall remain to be separate under the Spanish Civil Code. Their

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individual interest did not become common property after their marriage. *(Commissioner of Internal Revenue v. Suter, G.R. No. L-25532, Feb. 28, 1969)*

Q: When does a partner bind the partnership?

A:

1. When he is expressly or impliedly authorized
2. When he acts in behalf and in the name of the partnership

GENERAL PARTNERSHIP

Q: What is general partnership?

A: One where all partners are general partners who are liable even with respect to their individual properties, after the assets of the partnership have been exhausted *(Paras, Civil Code of the Philippines Annotated, Volume 5, p. 411, 1969 6th ed)*

Q: Who is a general partner?

A: One whose liability to third persons extends to his separate property; he may be either a capitalist or an industrial partner. (*De Leon, Comments and Cases on Partnership, Agency, and Trust, p. 77, 2005 ed)*

Q: What are the obligations of a partner?

A:

1. Obligations among themselves
2. Obligations to third persons

Q: What is the basis for such obligations?

A: These obligations are based on trust and confidence of the partners since partnership is grounded on the fiduciary relationship of the partners and as well to third persons.

Q: What are the distinctions between a general and a limited partner/partnership?

A:

GENERAL	LIMITED
Extent of Liability	
Personally liable for partnership obligations	Liability *extends only* to his capital contributions
Right in Management	
When manner of management is not agreed upon, all general partners have an equal right in the management of the business	No participation in management
Contribution	
Contribute cash, property or industry	Contribute cash or property only, not industry
If Proper Party to Proceedings By or Against Partnership	
Proper party to proceedings by/against partnership	Not proper party to proceedings by/against partnership, *unless:* **1.** He is also a general partner; or **2.** Where the object of the proceeding is to enforce a limited partner's right or liability to the partnership
Assignment of Interest	
Interest is *not assignable* without consent of other partners	Interest is *freely assignable*
Firm Name	
Name *may* appear in firm name	**GR:** Name *must not* appear in firm name **XPNs:** 1. It is also the surname of a general partner; 2. Prior to the time when the limited partner became such, the business had been carried on under a name in which his surname appeared.
Prohibition to Engage in Other Business	
Prohibited in engaging in business	*No prohibition* against engaging in business
Effect of Death, Insolvency, Retirement, Insanity	
Retirement, death, insolvency, insanity of general partner dissolves partnership	Does not have same effect; rights are transferred to legal representative
Creation	
As a rule, it maybe constituted in any form, by	Created by the members after substantial compliance in

contract or conduct of the partnership	good faith of the requirements set forth by law
Composition / Membership	
Composed only of general partners	Composed of one or more general partners and one or more limited partners

G. PARTNERSHIP BY ESTOPPEL

Q: Who is a partner by estoppel?

A: One who, by words or conduct does any of the following:

1. Directly represents himself to anyone as a partner in an existing partnership or in a non-existing partnership
2. Indirectly represents himself by consenting to another representing him as a partner in an existing partnership or in a non-existing partnership

Q: What are the elements before a partner can be held liable on the ground of estoppel?

A:

1. Defendant represented himself as partner or is represented by others as such, and did not deny/refute such representation.
2. Plaintiff relied on such representation.
3. Statement of defendant is not refuted.

Q: What are the liabilities in case of estoppel?

A:

When Partnership is Liable
If all actual partners consented to the representation, then the liability of the person who represented himself to be a partner or who consented to such representation and the actual partner is considered a partnership liability
When Liability is PRO RATA
When there is no existing partnership and all those represented as partners consented to the representation, then the liability of the person who represented himself to be a partner and all who made and consented to such representation, is *joint* or *pro-rata*
When Liability is SEPARATE
When there is no existing partnership and not all but only some of those represented as partners consented to the representation, or none of the partnership in an existing partnership consented to such representation, then the liability will be *separate*

H. PARTNERSHIP V. JOINT VENTURE

Q: What is a joint venture?

A: An association of persons or companies jointly undertaking some commercial enterprise; generally, all contributes assets and share risks. It requires a community of interest in the performance of the subject matter, a right to direct and govern the policy in connection therewith, and a duty which may be altered by agreement to share both in profits and losses.

Partnership	Joint Venture
Transactions entered into	
The duration of a partnership generally relates to a continuing business of various transactions of a certain kind.	Limited to the period in which the goods are sold or the project is carried on or a single transaction.
Nature	
Permanent, partners are interested in carrying on together of a general and continuing business of a particular kind. **Note:** A *particular partnership* has a limited and temporary or ad hoc nature, being confined to a single undertaking.	Temporary, although it may continue for a number of years.
Firm Name and Liablities	
There must be a partnership or firm name under which the partnership shall operate. The names of the partners may appear in the firm name and the act of the partners will make the partnership liable.	A firm name is not necessary, thus the participating persons can transact business under their own name and can be individually liable therefore.
Corporation as partner	
Corporation cannot enter into a partnership contract, thus it cannot be a partner by reason of public policy; otherwise people other than its officers may be able to bind it *(Albano, Civil Law*	Corporations can engage in a joint venture with others through a contract of agreement if the nature of the venture in line with the business of the corporation and it is

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Reviewer, 1998, p.570)	authorized in its charter.
Legal Personality	
A partnership acquires personality after following the requisites required by law. e.g. *Art. 1771-1773, NCC* **Note:** SEC registration is not required before a partnership acquires legal personality. *(Art. 1768, NCC)*	A joint venture has no legal personality.

I. PROFESSIONAL PARTNERSHIP

Q: What is a professional partnership?

A: It is a partnership formed by persons for the sole purpose of exercising their common profession, no part of the income of which is derived from engaging in any trade or business.

Q: In a professional partnership, who is deemed engaged in the practice of profession?

A: It is the individual partners and not the partnership. Thus, they are responsible for their own acts.

Q: What is prohibited in the formation of a professional partnership?

A: Partnership between lawyers and members of other profession or non-professional persons should not be formed or permitted where any part of the partnership's employment consists of the practice of law. *(Canons of Professional Ethics)*

Q: What are the characteristics of a partnership for the practice of law?

A:

a. A duty of public service, of which the emolument is a by-product
b. A relation as an "officer of court" to the administration of justice
c. A relation to clients in the highest fiduciary degree
d. A relationship to colleagues at the bar characterized by candor, fairness, and unwillingness to resort to current business methods of advertising and encroachment on their practice, or dealing with their clients. *(In the Matter of Petition for Authority to Continue Use of Firm Name "Sycip, Salazar, etc." / "Ozeata Romulo, etc.," 92 SCRA 1 [1979], citing H.S. Drinker, Legal Ethics [1953], pp4-5.)*

Q: What is prohibited in the firm name of a partnership for the practice of law?

A: In the selection and use of firm name, no false, misleading, assumed, or trade names should be used. *(Canons of Professional Ethics)*

J. MANAGEMENT OF THE PARTNERSHIP

Q: What are the modes of appointment of a manager?

A:

Appointment through the Articles of Partnership	***Appointment Other Than in the Articles***
Power is *irrevocable* without just or lawful cause **Note:** *Vote required for removal of manager* 1. For just cause – Vote of the *controlling* partners (controlling financial interest) 2. Without cause or for unjust cause – Unanimous vote	Power to act is *revocable anytime*, with or without cause (should be done by the controlling interest)
Extent of Power	
1. If he acts in good faith, he may do *all acts of administration* (despite opposition of his partners) 2. If he acts in bad faith, he cannot	As long as he is a manager, he can perform all acts of administration (if others oppose, he can be removed)

Q: What is the rule where there are two or more managers?

A:

Without specification of their respective duties and without stipulation requiring unanimity of action
GR: Each may separately execute all acts of administration (unlimited power to administer) **XPN:** If any of the managers opposes, decision of the majority prevails **Note:** *In case of tie* – Decision of the *controlling* interest (who are also managers) *shall prevail*
Nature
GR: Unanimous consent of all the managing partners shall be necessary for the validity of the acts and absence or inability of any managing partner cannot be alleged. *XPN: Where there is an imminent danger of grave or irreparable injury to the partnership.*

Q: What is the rule when the manner of management has not been agreed upon?

A:

1. All partners shall be considered managers and agents
2. Unanimous consent is required for alteration of immovable property

Q: Azucena and Pedro acquired a parcel of land and a building. Azucena obtained a loan from Tai Tong Co., secured by a mortgage which was executed over the land and building. Arsenio, representative of Tai Tong, insured it with Travellers Multi Indemnity Corporation. The building and the contents thereof were razed by fire. Travellers failed to pay the insurance. Hence, Azucena and Pedro filed a case against Travellers wherein Tai Tong intervened claiming entitlement to the proceeds from Travellers. Who is entitled to the proceeds of the policy?

A: Tai Toing is entitled to the insurance proceeds. Arsenio contracted the insurance policy on behalf of Tai Tong. As the managing partner of the partnership, he may execute all acts of administration including the right to sue debtors of the partnership in case of their failure to pay their obligations when it became due and demandable. Or at the very least, Arsenio is an agent of the partnership. Being an agent, it is understood that he acted for and in behalf of the firm. *(Tai Tong Chuache & Co. v. Insurance Commissioner, G.R. No. L-55397, Feb. 29, 1988)*

Note: If refusal of partner is manifestly prejudicial to the interest of partnership, court's intervention may be sought.

Q: What are the remedies available to the creditors of a partner?

A:

1. Separate or individual creditors should first *secure* a judgment on their credit; and
2. *Apply* to the proper court for a *charging order* subjecting the interest of the debtor-partner in the partnership for the payment of the unsatisfied amount of the judgment debt with interest thereon.

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Q: What are the effects of the acts of partners?

A:

ACTS OF A PARTNER	EFFECT
Acts for apparently carrying on in the usual way the business of the partnership	With binding effect *except*: 1. When the partner so acting has in fact no authority to act for the partnership in the particular matter, and 2. The person with whom he is dealing has knowledge of the fact that he has no such authority
Acts not in the ordinary course of business	*Do not bind* partnership *unless* authorized by other partners *(par. 2, Art. 1818, NCC)*
Acts of strict dominion or ownership: 1. Assigning partnership property in trust for creditors; 2. Disposing of goodwill of business; 3. Doing an act which would make it impossible to carry on the ordinary business of partnership; 4. Confessing a judgment; 5. Entering into a compromise concerning a partnership claim or liability; 6. Submitting partnership claim or liability to arbitration; 7. Renouncing claim of partnership	**GR:** One or more but *less than all* the partners have no authority **XPNs:** 1. authorized by the other partners; or 2. p 3. artners have abandoned the business *(par. 2, Art. 1818, NCC)*
Acts in contravention of a restriction on authority	Partnership is *not liable* to 3rd persons having actual or presumptive knowledge of the restriction

Q: What is the effect of conveyance of a real property?

A:

TYPE OF CONVEYANCE	EFFECT
Title in the partnership's name; Conveyance in partnership name	Conveyance passes title but partnership can recover *unless:* 1. a. Conveyance was done in the usual way of business, and b. The partner so acting has the authority to act for the partnership; or 2. The property which has been conveyed by the grantee or a person claiming through such grantee to a holder for value without knowledge that the partner, in making the conveyance, has exceeded his authority
Title in the partnership's name; Conveyance in partner's name	Conveyance does not pass title but only equitable interest, provided*:* 1. Conveyance was done in the usual way of business, or 2. The partner so acting has the authority to act for the partnership
Title in the name of 1 or more partners, and the record does not disclose the right of the partnership; Conveyance in name of partner/s in whose name title stands	Conveyance passes title but the partnership may recover such property if the partners' act *does not* bind the partnership: 1. The partner so acting has *no* authority to act for the partnership, and 2. The person with whom he is dealing has knowledge of the fact *unless* the purchaser of his assignee, is a holder for value, without knowledge
Title in name of 1 or more or all partners or 3rd person in trust for partnership; Conveyance executed in partnership name or in name of partners	Conveyance will *only* pass equitable interest, *provided*: 1. The act is one within the authority of the partner, and 2. Conveyance was done in the usual way of the business
Title in the names of all the partners; Conveyance executed by all the partners	Conveyance *will pass* all the rights in such property

II. RIGHTS AND OBLIGATIONS OF PARTNERSHIP

Q: What are the responsibilities of a partnership to partners?

A:

1. *Refund* the amounts disbursed by partner in behalf of the partnership plus corresponding interest from the time the expenses are made (*e.g.* loans and advances made by a partner to the partnership aside from capital contribution)
2. *Answer for obligations* a partner may have contracted in good faith in the interest of the partnership business
3. *Answer for risks* in consequence of its management *(Art. 1796)*

III. RIGHTS AND OBLIGATIONS OF PARTNERS AMONG THEMSELVES

Q: What are the obligations of partners among themselves?

A:

1. Contribution of property *(Art. 1786)*
2. Contribution of money and money converted to personal use *(Art. 1788)*
3. Prohibition in engaging in business for himself *(Art. 1789)*
4. Contribute additional capital *(Art. 1791)*
5. Managing partner who collects debt *(Art. 1792)*
6. Partner who receives share of partnership credit *(Art. 1793)*
7. Damages to partnership *(Art. 1794)*
8. Render information *(Art. 1806)*
9. Accountable as fiduciary *(Art. 1807)*

CONTRIBUTION OF PROPERTY

Q: What are the obligations of partners with respect to contribution of property?

A: To **CAFPI**

1. **C**ontribute at the beginning of the partnership, or at the stipulated time, the money, property or industry which he may have promised to contribute

2. **A**nswer for eviction in case the partnership is deprived of the determinate property contributed

3. Answer to the partnership for the **F**ruits of the property the contribution of which he delayed, from the date they should have been contributed up to the time of actual delivery

4. **P**reserve said property with the diligence of a good father of a family, pending delivery to the partnership

5. **I**ndemnify the partnership for any damage caused to it by the retention of the same or by the delay in its contribution

Q: Who bears the risk of loss of things contributed?

A:

KIND OF PROPERTY / THING	WHO BEARS THE RISK?
Specific and determinate things which are not fungible where only the use is contributed	partners
Specific and determinate things the ownership of which is transferred to the partnership	partnership
Fungible things (Consumable)	
Things contributed to be sold	
Things brought and appraised in the inventory	

Q: What is the effect if a partner fails to contribute the property which he promised to deliver to the partnership?

A:

1. Partners become *ipso jure* a debtor of the partnership even in the absence of any demand *(Art. 1786, NCC)*
2. Remedy of the other partner is not rescission but specific performance with damages from defaulting partner

CONTRIBUTION OF MONEY AND MONEY CONVERTED TO PERSONAL USE

Q: What are the rules regarding contribution of money to the partnership?

A: CRIP

1. To ***C****ontribute* on the date fixed the amount the partner has undertaken to contribute to the partnership
2. To ***R****eimburse* any amount the partner may have taken from the partnership coffers and converted to his own use
3. To ***I****ndemnify* the partnership for the damages caused to it by delay in the

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contribution or conversion of any sum for the partner's personal benefits
4. To ***P**ay* for the agreed or legal interest, if the partner fails to pay his contribution on time or in case he takes any amount from the common fund and converts it to his own use

CONTRIBUTE ADDITIONAL CAPITAL

Q: What are the rules regarding obligations to contribute to partnership capital?

A:
1. Partners must *contribute* equal shares to the capital of the partnership *unless* there is stipulation to contrary
2. Capitalist partners must *contribute* additional capital in case of imminent loss to the business of the partnership when there is no stipulation to the contrary; Refusal to do so shall create an obligation on the refusing partner to sell his interest to the other partners

Q: What are the requisites before capitalist partners are compelled to contribute additional capital?

A:
1. Imminent loss of the business of the partnership
2. Majority of the capitalist partners are of the opinion that an additional contribution to the common fund would save the business
3. Capitalist partner refuses deliberately to contribute (not due to financial inability)
4. There is no agreement to the contrary

MANAGING PARTNER WHO COLLECTS DEBT

Q: What are the obligations of managing partners who collect his personal receivable from a person who also owes the partnership?

A:
1. Apply sum collected to 2 credits in proportion to their amounts
2. If he received it for the account of partnership, the whole sum shall be applied to partnership credit

Note: *Requisites:*
1. At least 2 debts, one where the collecting partner is creditor and the other, where the partnership is the creditor
2. Both debts are demandable
3. Partner who collects is authorized to manage and actually manages the partnership

PARTNER WHO RECEIVES SHARE OF PARTNERSHIP CREDIT

Q: What is the obligation of a partner who receives share of partnership credit?

A: To bring to the partnership capital what he has received even though he may have given receipt for his share only.

Note: *Requisites:*
1. A partner has received in whole or in part, his share of the partnership credit
2. Other partners have not collected their shares
3. Partnership debtor has become insolvent

Q: May a person who has not directly transacted in behalf of an unincorporated association be held liable for a contract entered into by such association?

A: Yes. The liability for a contract entered into on behalf of an unincorporated association or ostensible corporation may lie in a person who may not have directly transacted on its behalf, but reaped benefits from that contract. *(Lim Tong Lim v. Philippine Fishing Gear Industries Inc., G.R. No. 136448, Nov. 3, 1999)*

PROHIBITION IN ENGAGING IN BUSINESS

Q: What are the rules regarding the prohibition to engage in another business?

A:

INDUSTRIAL PARTNER	CAPITALIST PARTNER
Prohibition	
Cannot engage in business for himself unless the partnership expressly permits him to do so	Cannot engage in business (with same kind of business with the partnership) for his own account, unless there is a stipulation to the contrary
Remedy	
Capitalist partners may: 1. Exclude him from the firm 2. Avail themselves of the benefits which he may have obtained 3. Damages, in either case *(Art. 1789, NCC)*	Capitalist partner, who violated shall: 1. Bring to the common fund any profits accruing to him from said transaction; and 2. Bears all losses *(Art. 1808, NCC)*

Q: Joe and Rudy formed a partnership to operate a car repair shop in Quezon City. Joe provided the capital while Rudy contributed his labor and industry. On one side of their shop, Joe opened and operated a coffee shop, while on the other side, Rudy put up a car accessories store. May they engage in such separate businesses? Why?

A: Joe, the capitalist partner, may engage in the restaurant business because it is not the same kind of business the partnership is engaged in. On the other hand, Rudy may not engage in any other business unless their partnership expressly permits him to do so because as an industrial partner he has to devote his full time to the business of the partnership *(Art. 1789, NCC)*. **(2001 Bar Question)**

DAMAGES TO PARTNERSHIP

Q: What is the rule with regard to the obligation of a partner as to damages suffered by the partnership through his fault?

A:

GR: Every partner is responsible to the partnership for damages suffered by it through his own fault. These damages cannot be offset by the profits or benefits which he may have earned for the partnership by his industry.

XPN: If unusual profits are realized through extraordinary efforts of the guilty partner, the courts may equitably mitigate or lessen his liability for damages. *(Art. 1794, NCC)*

DUTY TO RENDER INFORMATION

Q: What is the duty of the partners with respect to information affecting the partnership?

A: They shall render on demand true and full information of all things affecting the partnership to:

1. the partner; or
2. legal representative of any deceased or legally disabled partner. *(Art. 1806, NCC)*

ACCOUNTABLE AS FIDUCIARY

Q: How are partners accountable to each other as fiduciary?

A: Every partner must account to the partnership for any benefit, and hold as trustee for it any profits derived by him without the consent of the other partners from any transaction connected with the formation, conduct, or liquidation of the partnership or from any use by him of its property. *(Art. 1807, NCC)*

RIGHTS OF GENERAL PARTNERS

Q: What are the property rights of a partner?

A: SIM

1. Right in **S**pecific partnership property
2. **I**nterest in the partnership (share in the profits and surplus)
3. Right to participate in the **M**anagement

Q: What is the nature of a partner's right in specific partnership property?

A:

1. Equal right to possession for partnership purposes
2. Right is not assignable, except in connection with assignment of rights of all partners in the same property
3. Right is limited to his share of what remains after partnership debts have been paid
4. Right is not subject to attachment or execution except on a claim against the partnership
5. Right is not subject to legal support

Q: What are the effects of assignment of partner's whole interest in the partnership?

A:

1. *Rights withheld from the assignee:*
   Such assignment *does not* grant the assignee the right to:
   a. To *interfere* in the management
   b. To *require* any information or account
   c. To *inspect* partnership books

2. *Rights of assignee on partner's interest:*
   a. To *receive* in accordance with his contract the profits accruing to the assigning partner
   b. To *avail* himself of the usual remedies provided by law in the event of fraud in the management
   c. To *receive* the assignor's interest in case of dissolution
   d. To *require* an account of partnership affairs, but only in case the partnership is dissolved, and such account shall cover the period from the date only of the last

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account agreed to by all the partners

Q: What are the effects of conveyance of a partner of his interest in the partnership?

A:

1. Conveyance of his whole interest – partnership may either remain or be dissolved
2. Assignee does not necessarily become a partner; he cannot:
   a. interfere in the management or administration; or
   b. demand information, accounting and inspection of the partnership books.

Note: But the assignee has the following rights:

1. receive in accordance with his contract the profits which the assigning partner would otherwise be entitled
2. avail himself of the usual remedies provided by law in event of fraud in management
3. receive assignor's interest in case of dissolution
4. require and account of partnership affairs but only in case the partnership is dissolved, and such account shall cover the period from the date only of the last account agreed to by all the parties

CRIMINAL LIABILITY FOR MISAPPROPRIATION: ESTAFA

Q: Rosa received from Jois money, with the express obligation to act as Jois' agent in purchasing local cigarettes, to resell them to several stores, and to give Jois the commission corresponding to the profits received. However, Rosa misappropriated and converted the said amount due to Jois to her personal use and benefit. Jois filed a case of estafa against Rosa. Can Rosa deny liability on the ground that a partnership was formed between her and Rosa?

A: No. Even assuming that a contract of partnership was indeed entered into by and between the parties, when a partner receives any money or property for a specific purpose (such as that obtaining in the instant case) and he later misappropriates the same, is guilty of estafa. *(Liwanag v. CA, G.R. No. 114398, Oct. 24, 1997)*

IV. OBLIGATIONS OF PARTNERSHIP/PARTNERS TO THIRD PERSONS

Q: What are the obligations of partners with regard to 3rd persons?

A:

1. Every partnership shall operate under a *firm name*. Persons who include their names in the partnership name even if they are not members shall be liable as a partner
2. All partners shall be liable for *contractual obligations* of the partnership with their property, after all partnership assets have been exhausted:
   a. Pro rata
   b. Subsidiary
3. *Admission or representation made by any partner* concerning partnership affairs within the scope of his authority is evidence against the partnership
4. *Notice to partner* of any matter relating to partnership affairs operates as notice to partnership *except* in case of fraud:
   a. Knowledge of partner acting in the particular matter acquired while a partner
   b. Knowledge of the partner acting in the particular matter then present to his mind
   c. Knowledge of any other partner who reasonably could and should have communicated it to the acting partner
5. Partners and the partnership are solidarily liable to 3rd persons for the *partner's tort or breach of trust*
6. *Liability of incoming partner* is limited to:
   a. His share in the partnership property for existing obligations
   b. His separate property for subsequent obligations
7. *Creditors of partnership are preferred* in partnership property & may attach partner's share in partnership assets

Note: On solidary liability. Art. 1816 should be construed together with Art. 1824 *(in connection with Arts. 1822 and 1823)*. While the liability of the partners is merely joint in transactions entered into by the partnership, a third person who transacted with said partnership may hold the partners solidarily liable for the whole obligation if the case of the third person falls under Articles 1822 and 1823. *(Munasque v. CA, G.R. No. L-39780, Nov. 11, 1985)*

V. DISSOLUTION

Q: Distinguish dissolution, winding up and termination.

Dissolution	Winding up	Termination
A change in the relation of the partners caused by any partner ceasing to be associated in carrying on the business.	Settling the partnership business or affairs after dissolution	Point in time when all partnership affairs are wound up or completed; the end of the partnership life

Q: What are the causes of dissolution?

A:

1. Without violating the agreement:
   a. Termination of the definite term or specific undertaking
   b. Express will of *any* partner in good faith, when there is *no* definite term and *no* specified undertaking
   c. Express will of *all* partners (except those who have assigned their interests or suffered them to be charged for their separate debts) either before or after the termination of any specified term or particular undertaking
   d. Expulsion of any partner in good faith of a member
2. Violating the agreement
3. Unlawfulness of the business
4. Loss
   a. *Specific thing* promised as contribution is lost or perished *before* delivery
   b. Loss of a specific thing contributed *before* or *after delivery*, if only the *use* of such is contributed

   Note: The partnership shall not be dissolved by the loss of the thing when it occurs after the partnership has acquired the ownership thereof.

5. Death of any of the partners
6. Insolvency of any partner or of the partnership
7. Civil interdiction of any partner
8. By decree of court under Art. 1831, NCC
   a. a partner has been declared insane or of unsound mind
   b. a partner becomes in any other way incapable of performing his part of the partnership contract
   c. a partner has been guilty of such conduct as tends to affect prejudicially the carrying on of the business
   d. a partner willfully or persistently commits a breach of the partnership agreement
   e. the business of the partnership can only be carried on at a loss
   f. other circumstances render a dissolution equitable

Q: What are the effects of dissolution?

A:

1. Partnership is not terminated
2. Partnership continues for a limited purpose
3. Transaction of new business is prohibited *(De Leon, Comments and Cases on Partnership, Agency, and Trust, p. 229, 2005 ed)*

Note: The dissolution of a partnership must not be understood in the absolute and strict sense so that at the termination of the object for which it was created the partnership is extinguished, pending the winding up of some incidents and obligations of the partnership, but in such case, the partnership will be reputed as existing until the juridical relations arising out of the contract are dissolved. *(Testate of Motta v. Serra, G.R. No. L-22825, Feb. 14, 1925)*

Dissolution does not automatically result in the termination of the legal personality of the partnership, nor the relations of the partners among themselves who remain as co-partners until the partnership is terminated. (*De Leon, Comments and Cases on Partnership, Agency, and Trust, p. 29, 2005 ed)*

Q: What is the effect of dissolution on the authority of a partner?

A:

GR: The partnership ceases to be a going concern

XPN: The partner's power of representation is confined only to acts incident to winding up or completing transactions begun but not then finished. *(Art. 1832, NCC)*

Note: Subject to the qualifications set forth in Articles 1833 and 1834 in relation to Article 1832, NCC:

1. *In so far as the partners themselves are concerned* – The authority of any partner to bind the partnership by a new contract is immediately terminated when the

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dissolution is *not* by the **A**ct, **I**nsolvency, or **D**eath of a partner **(AID)**.

2. When the dissolution is by the act, insolvency, or death, the termination of authority depends upon whether or not the partner had knowledge or notice of dissolution *(Art. 1833, NCC)*.

Q: The articles of co-partnership provide that in case of death of one partner, the partnership shall not be dissolved but shall be continued by the deceased partner's heirs. When H, a partner, died, his wife, W, took over the management of some of the real properties with permission of the surviving partner, X, but her name was not included in the partnership name. She eventually sold these real properties after a few years. X now claims that W did not have the authority to manage and sell those properties as she was not a partner. Is the sale valid?

A: Yes. The widow was not a mere agent, because she had become a partner upon her husband's death, as expressly provided by the articles of co-partnership, and by authorizing the widow to manage partnership property X recognized her as a general partner with authority to administer and alienate partnership property. It is immaterial that W's name was not included in the firm name, since no conversion of status is involved, and the articles of co-partnership expressly contemplated the admission of the partner's heirs into the partnership. *(Goquiolay v. Sycip, G.R. No. L-11840, Dec. 16, 1963)*

Q: What is the liability of a partner where the dissolution is caused by the act, death or insolvency of a partner?

A:

GR: Each partner is liable to his co-partners for his share, of any liability created by any partner for the partnership, as if the partnership had not been dissolved.

XPNs: Partners shall not be liable when:

1. the dissolution, being by act of any partner, the partner acting for the partnership had knowledge of the dissolution; or
2. the dissolution, being by the death or insolvency of a partner, the partner acting for the partnership had knowledge or notice of the death or insolvency *(Art. 1833, NCC)*

Q: After the dissolution of a partnership, can a partner still bind the partnership?

A:

GR: Yes. A partner continues to bind partnership *even after* dissolution in the following cases:

1. Transactions to wind up partnership affairs/complete transactions unfinished at dissolution;
2. Transactions which would bind partnership if not dissolved dissolution had not taken place, provided the other party/obligee:
   a.
      i. Had *extended* credit to partnership prior to dissolution; and
      ii. Had *no knowledge/notice* of dissolution; or
   b.
      i. *Did not extend* credit to partnership;
      ii. *Had known* partnership prior to dissolution; and
      iii. *Had no knowledge/notice* of dissolution/fact of dissolution not advertised in a newspaper of general circulation in the place where partnership is regularly carried on.

XPNs: Partner cannot bind the partnership anymore after dissolution where dissolution is due to unlawfulness to carry on business

XPN to XPN: Winding up of partnership affairs

1. Partner has become insolvent
2. Act is not appropriate for winding up or for completing unfinished transactions
3. Completely new transactions which would bind the partnership if dissolution had not taken place with third persons in bad faith.
4. Partner is unauthorized to wind up partnership affairs, *except* by transaction with one who:
   a.
      i. *Had extended* credit to partnership prior to dissolution;
      ii. *Had no knowledge or notice* of dissolution; or
   b.
      i. *Did not extend* credit to partnership prior to dissolution;
      ii. *Had known* partnership prior to dissolution; and
      iii. *Had no knowledge/notice* of dissolution/fact of dissolution not advertised in a newspaper of general circulation in the place where partnership is regularly carried on.

Q: Does the dissolution of a partnership discharge existing liability of a partner?

A:

GR: No.

XPN: Said liability is discharged when there is an agreement between:

1. Partner himself;
2. Person/s continuing the business; and
3. Partnership creditors

Q: What is the order of priority in the distribution of assets during the dissolution of a limited partnership?

A: In setting accounts after dissolution, the liabilities of the partnership shall be entitled to payment in the following order:

1. Those to creditors, in the order of priority as provided by law, except those to limited partners on account of their contributions, and to general partners
2. Those to limited partners in respect to their share of the profits and other compensation by way of income on their contributions
3. Those to limited partners in respect to the capital of their contributions
4. Those to general partners other than for capital and profits
5. Those to general partners in respect to profits
6. Those to general partners in respect to capital *(Art. 1863, NCC)*

Note: Subject to any statement in the certificate or to subsequent agreement, limited partners share in the partnership assets in respect to their claims for capital, and in respect to their claims for profits or for compensation by way of income on their contribution respectively, in proportion to the respective amounts of such claims.

WINDING UP

Q: What takes place during the winding up of the partnership?

A: It is during this time after dissolution that partnership business or affairs are being settled. (*De Leon, Comments and Cases on Partnership, Agency, and Trust, p. 229, 2005 ed)*

Note: Examples of winding up:

1. Paying previous obligations
2. Collecting assets previously demandable

Engaging in new business necessary for winding up such as contracting with a demolition company for the demolition of the garage used in a "used car" partnership *(Paras, Civil Code of the Philippines Annotated, Volume 5, p. 485, 1969 6th ed)*

Q: Who are the persons authorized to wind up?

A:

1. Partners designated by the agreement
2. In the absence of such, all partners who have not wrongfully dissolved the partnership
3. Legal representative of last surviving partner who is not insolvent

Q: What are partnership assets?

A:

1. Partnership property
2. Contributions of the partners necessary for the payment of all liabilities *[Art. 1839 (2), NCC]*

Q: What is the order of payment in winding up?

A:

1. Those owing to creditors other than partners
2. Those owing to partners other than for capital or profits
3. Those owing to partners in respect of capital
4. Those owing to partners in respect to profits *[Art. 1839 (2), NCC]*

Q: What is the doctrine of marshalling of assets?

A:

1. Partnership creditors have preference in partnership assets
2. Separate or individual creditors have preference in separate or individual properties
3. Anything left from either goes to the other.

Q: What are the rights of a partner where dissolution is not in contravention of the agreement?

A: *Unless otherwise agreed*, the rights of each partner are as follows:

1. To have the *partnership property* applied to discharge the liabilities of partnership; and
2. To have the *surplus*, if any, applied, to pay in cash the net amount owing to the respective partners.

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Q: What are the rights of a partner where dissolution is in contravention of the agreement?

A: The rights of a partner vary *depending upon whether he is the innocent or guilty partner*.

1. Rights of partner who *has not caused* the dissolution wrongfully:
   a. To have *partnership property applied* for the payment of its liabilities and to receive in cash his share of the surplus
   b. To *be indemnified* for the damages caused by the partner guilty of wrongful dissolution
   c. To *continue the business* in the same name during the agreed term of the partnership, by themselves or jointly with others
   d. To *possess partnership property* should they decide to continue the business

2. Rights of partner who *has wrongfully caused* the dissolution:
   a. *If the business is not continued* by the other partners, to have the partnership property applied to discharge its liabilities and to receive in cash his share of the surplus less damages caused by his wrongful dissolution
   b. *If the business is continued:*
      i. To have the value of his interest in the partnership at the time of the dissolution, less any damage caused by the dissolution to his co-partners, ascertained and paid in cash, or secured by bond approved by the court; and
      ii. To be released from all existing and future liabilities of the partnership

Q: What are the rights of injured partner where partnership contract is rescinded?

A:

1. Right of a *lien on, or retention of*, the surplus of partnership property after satisfying partnership liabilities for any sum of money paid or contributed by him;
2. Right of *subrogation* in place of partnership creditors after payment of partnership liabilities; and
3. Right of *indemnification* by the guilty partner against all debts and liabilities of the partnership.

Q: How are the accounts settled between partners?

A:

1. Assets of the partnership include:
   a. Partnership property (including goodwill)
   b. Contributions of the partners
2. Order of application of the assets:
   a. *First,* those owing to partnership creditors
   b. *Second,* those owing to partners other than for capital and profits such as loans given by the partners or advances for business expenses
   c. *Third,* those owing for the return of the capital contributed by the partners
   d. *Fourth,* the share of the profits, if any, due to each partner

Q: A partnership was formed with Magdusa as the manager. During the existence of the partnership, two partners expressed their desire to withdraw from the firm. Magdusa determined the value of the partners share which were embodied in the document drawn in the handwriting of Magdusa but was not signed by all of the partners. Later, the withdrawing partners demanded for payment but were refused. Considering that not all partners intervened in the distribution of all or part of the partnership assets, should the action prosper?

A: No. A partner's share cannot be returned without first dissolving and liquidating the partnership, for the return is dependent on the discharge of creditors, whose claims enjoy preference over those of the partner, and it is self-evident that all members of the partnership are interested in its assets and business, and are entitled to be heard in the matter of the firm's liquidation and distribution of its property. The liquidation prepared by Magdusa not signed by the other partners is not binding on them. *(Magdusa v. Albaran, G.R. No. L-17526, June 30, 1962)*

Q: What is partner's lien?

A: The right of every partner to have the partnership property applied, to discharge partnership liabilities and surplus assets, if any, distributed in cash to the respective partners,

after deducting what may be due to the partnership from them as partners.

Q: Can a partner demand for his share during the existence of a partnership?

A: No. A share in a partnership can be returned only after the completion of the latter's dissolution, liquidation and winding up of the business.

Since the capital was contributed to the partnership, not to partners, it is the partnership that must refund the equity of the retiring partners. Since it is the partnership, as a separate and distinct entity that must refund the shares of the partners, the amount to be refunded is necessarily limited to its total resources. In other words, it can only pay out what it has in its coffers, which consists of all its assets. *(Villareal v. Ramirez, G.R. No. 144214, July 14, 2003)*

Q: What are the effects when the business of a dissolved partnership is continued?

A:

1. Creditors of old partnership are also creditors of the new partnership who continues the business of the old one without liquidation of the partnership affairs.
2. Creditors have an equitable lien on the consideration paid to the retiring/deceased partner by the purchaser when retiring/deceased partner sold his interest without final settlement with creditors.
3. Rights of retiring/estate of deceased partner:
   a. To have the value of his interest ascertained as of the date of dissolution; and
   b. To receive as ordinary creditor the value of his share in the dissolved partnership with interest or profits attributable to use of his right, at his option.

Note: The right to demand on accounting of the value of his interest accrues to any partner or his legal representative after dissolution in the absence of an agreement to the contrary.

Prescription begins to run only upon the dissolution of the partnership, when the final accounting is done.

Q: Who are the persons required to render an account?

A:

1. Winding up partner;
2. Surviving partner; and
3. Person or partnership continuing the business

Q: Emnace and Tabanao decided to dissolve their partnership in 1986. Emnace failed to submit the statement of assets and liabilities of the partnership, and to render an accounting of the partnership's finances. Tabanao's heirs filed against Emnace an action for accounting, etc. Emnace counters, contending that prescription has set in. Decide.

A: Prescription has not yet set in. Prescription of the said right starts to run only upon the dissolution of the partnership when the final accounting is done. Contrary to Emnace's protestations, prescription had not even begun to run in the absence of a final accounting. The right to demand an accounting accrues at the date of dissolution in the absence of any agreement to the contrary. When a final accounting is made, it is only then that prescription begins to run. *(Emnace v. CA, G.R. No. 126334, Nov. 23, 2001)*

Q: Pauline, Patricia and Priscilla formed a business partnership for the purpose of engaging in neon advertising for a term of five (5) years. Pauline subsequently assigned to Philip her interest in the partnership. When Patricia and Priscilla learned of the assignment, they decided to dissolve the partnership before the expiration of its term as they had an unproductive business relationship with Philip in the past. On the other hand, unaware of the move of Patricia and Priscilla but sensing their negative reaction to his acquisition of Pauline's interest, Philip simultaneously petitioned for the dissolution of the partnership.
Is the dissolution done by Patricia and Priscilla without the consent of Pauline or Philip valid? Explain.

A: Under Art 1830(1)(c), NCC, the dissolution by Patricia and Priscilla is valid and did not violate the contract of partnership even though Pauline and Philip did not consent thereto. The consent of Pauline is not necessary because she had already assigned her interest to Philip. The consent of Philip is also not necessary because the assignment to him of Pauline's interest did not make him a partner, under Art. 1813, NCC.

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Does Philip have any right to petition for the dissolution of the partnership before the expiration of its specified term? Explain.

A: No, Philip has no right to petition for dissolution because he does not have the standing of a partner. *(Art. 1813, NCC)* **(1995 Bar Question)**

VI. LIMITED PARTNERSHIP

A. DEFINITION

Q: What is limited partnership?

A: One formed by two or more persons having as members one or more general partners and one or more limited partners, the latter not being personally liable for partnership debts *(Art. 1843)*

Q: What are the characteristics of limited partnership?

A:

1. It is formed by compliance with the statutory requirements
2. One or more general partners control the business and are personally liable to creditors
3. One or more limited partners contribute to the capital and share in the profits *but do not* participate in the management of the business and are not personally liable for partnership obligations beyond their capital contributions
4. The limited partners may ask for the return of their capital contributions under conditions prescribed by law
5. Partnership debts are paid out of common fund and the individual properties of general partners

B. HOW LIMITED PARTNERSHIP IS FORMED/AMENDED

Q: What are the essential requirements for the formation of limited partnership?

A:

1. Certificate of articles of limited partnership which states the matters enumerated in Art. 1844, NCC, must be signed and sworn; and
2. Certificate must be filed for record in the office of the SEC.

Note: Strict compliance with legal requirements is not necessary. It is sufficient that there is substantial compliance in good faith *(Jo Chun v. Pacific Commercial Co., G.R. No. 19892, Sept. 6, 1923).*

Q: Does a limited partnership have a personality separate and distinct from that of the partners? What are the consequences of such?

A: Yes. The personality of a limited partnership being different from that of its members, it must, on general principle, answer for, and suffer, the consequence of its acts as such an entity capable of being the subject of rights and obligations. If the limited partnership failed to pay its obligations, this partnership must suffer the consequences of such a failure, and must be adjudged insolvent. *(Campos Rueda & Co. v. Pacific Commercial Co., et. al, G.R. No. L- 18703, Aug. 28, 1922)*

Q: When is the certificate or articles of limited partnership cancelled?

A:

1. When the partnership is dissolved
2. When all the limited partners ceased to be such

Q: When may a certificate or articles of limited partnership be amended?

A:

1. It must fall under the following changes and conditions:
   a. There is a change in the name of the partnership or in the amount or character of the contribution of any limited partner
   b. A person is substituted as a limited partner
   c. An additional limited partner is admitted
   d. A person is admitted as a general partner
   e. A general partner retires, dies, becomes insolvent or insane, or is sentenced to civil interdiction and the business is continued under Article 1860
   f. There is a change in the character of the business of the partnership
   g. There is a false or erroneous statement in the certificate
   h. There is a change in the time as stated in the certificate for the dissolution of the partnership or for the return of a contribution
   i. A time is fixed for the dissolution of the partnership, or the return of

a contribution, no time having been specified in the certificate

j. The members desire to make a change in any other statement in the certificate in order that it shall accurately represent the agreement among them *(Art. 1864, NCC)*

2. Must be signed and sworn to by all of the members including the new members if some added; in case of substitution, the assigning limited partner must also sign

3. Must be recorded in the SEC

LIMITED PARTNER

Q: What are the liabilities of a limited partner?

A:

AS CREDITOR	AS TRUSTEE
Deficiency in contribution	Specific property stated as contributed but not yet contributed/ wrongfully returned
Unpaid contribution	Money/other property wrongfully paid/ conveyed to him on account of his contribution

Q: What transactions are allowed or prohibited in a limited partnership?

A:

1. *Allowed*
   a. *Granting* loans to partnership
   b. *Transacting* business with partnership
   c. *Receiving* pro rata share of partnership assets with general creditors if he is not also a general partner

2. *Prohibited*
   a. *Receiving/holding* partnership property as collateral security
   b. *Receiving* any payment, conveyance, release from liability if it will prejudice right of 3rd persons

Note: Violation of the prohibition will give rise to the presumption that it has been made to defraud partnership creditors.

The prohibition is not absolute because there is no prohibition if the partnership assets are sufficient to discharge partnership liabilities to persons not claiming as general or limited partners.

Q: When does a general partner need consent or ratification of all the limited partners?

A: When he:

1. does any act in contravention of the certificate;
2. does any act which would make it impossible to carry on the ordinary business of the partnership;
3. confesses judgment against partnership;
4. possesses partnership property / assigns rights in specific partnership property other than for partnership purposes;
5. admits person as general partner;
6. admits person as limited partner – unless authorized in certificate; or
7. continues business with partnership property on death, retirement, civil interdiction, insanity or insolvency of general partner *unless* authorized in the certificate.

PARTNERSHIP TORT

Q: When is there a partnership tort?

A: Where:

1. by any wrongful act or omission of any partner, acting in the ordinary course of business of the partnership or with authority of his co-partners, *loss or injury* is caused to any person, not being a partner in the partnership;
2. one partner, acting within the scope of his apparent authority, receives money or property from a third person, and *misapplies* it; or
3. the partnership, in the course of its business, receives money or property, and it is *misapplied* by any partner while it is in the custody of the partnership.

Note: Partners are *solidarily liable* with the partnership for any penalty or damage arising from a partnership tort.

C. RIGHTS AND OBLIGATIONS OF A LIMITED PARTNER

Q: What are the specific rights of a limited partner?

A: To:

1. have partnership books kept at principal place of business;
2. inspect/copy books at reasonable hours;

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3. have on demand true and full information of all things affecting partnership;
4. have formal account of partnership affairs whenever circumstances render it just and reasonable;
5. ask for dissolution and winding up by decree of court;
6. receive share of profits/other compensation by way of income; and
7. receive return of contributions, provided the partnership assets are in excess of all its liabilities.

Q: Who is a substituted limited partner?

A: A person admitted to all the rights of a limited partner who has died or assigned his interest in the partnership

Q: What are the rights and liabilities of a substituted limited partner?

A:

GR: He has all the rights and powers and is subject to all the restrictions and liabilities of his assignor.

XPN: Those liabilities which he was ignorant of at the time that he became a limited partner and which could not be ascertained from the certificate

Q: What are the requirements for the admission of a substituted limited partner?

A:

1. All the members must consent to the assignee becoming a substituted limited partner or the limited partner, being empowered by the certificate must give the assignee the right to become a limited partner;
2. The certificate must be amended in accordance with Art. 1865, NCC; and
3. The certificate as amended must be registered in the SEC.

Q: What is the basis of preference given to limited partners over other limited partners?

A: Priority or preference may be given to some limited partners over other limited partners as to the:

1. return of their contributions;
2. their compensation by way of income; or
3. any other matter.

Note: In the absence of such statement in the certificate, *even if* there is an agreement, all limited partners shall stand on equal footing in respect of these matters.

Q: What are the requisites for return of contribution of a limited partner?

A:

1. All liabilities of the partnership have been paid or if they have not yet been paid, the assets of the partnership are sufficient to pay such liabilities;
2. The consent of all the members (general and limited partners) has been obtained *except* when the return may be rightfully demanded; and
3. The certificate of limited partnership is cancelled or amended

Q: When is the return of contribution of a limited partner a matter of right?

A: When all liabilities of the partnership, *except* liabilities to general partners and to limited partners on account of their contributions, have been paid or there remains property of the partnership sufficient to pay them and the certificate is cancelled or so amended as to set forth the withdrawal or reduction:

1. on the dissolution of the partnership;
2. upon the arrival of the date specified in the certificate for the return; or
3. after the expiration of 6 month notice in writing given by him to the other partners if no time is fixed in the certificate for the return of the contribution or for the dissolution of the partnership.

Note: Even if a limited partner has contributed property, he has only the right to demand and receive cash for his contribution. The *exceptions* are:

1. When there is stipulation to the contrary in the certificate; or
2. When all the partners (general and limited partners) consent to the return other than in the form of cash

Q: What are the liabilities of a limited partner?

1. To the partnership

A: Since limited partners are not principals in the transaction of a partnership, their liability as a rule, is to the partnership, not to the creditors of the partnership. The general partners *cannot*,

however waive any liability of the limited partners to the prejudice of such creditors.

2. To the partnership creditors and other partners

2. A limited partner is liable for partnership obligations when he contributed services instead of only money or property to the partnership
3. When he allows his surname to appear in the firm name
4. When he fails to have a false statement in the certificate corrected, knowing it to be false
5. When he takes part in the control of the business
6. When he receives partnership property as collateral security, payment, conveyance, or release in fraud of partnership creditors
7. When there is failure to substantially comply with the legal requirements governing the formation of limited partnerships

3. To separate creditors

A: As in a general partnership, the creditor of a limited partner may, in addition to other remedies allowed under existing laws, apply to the proper court for a charging order subjecting the interest in the partnership of the debtor partner for the payment of his obligation. *(De Leon, Comments and cases on Partnership, Agency and Trust, p. 13, 2005 ed)*

Q: What are the requisites for waiver or compromise of liabilities?

A: The waiver or compromise:

1. is made with the consent of all partners; and
2. does not prejudice partnership creditors who extended credit or whose claims arose before the cancellation or amendment of the certificate.

Q: When may a limited partner have the partnership dissolved?

A:

1. When his demand for the return of his contribution is denied although he has a right to such return; or
2. When his contribution is not paid although he is entitled to its return because the other liabilities of the partnership have not been paid or the partnership property is insufficient for their payment.

SUMMARY OF RIGHTS AND OBLIGATIONS OF PARTNERS

GENERAL PARTNER	LIMITED PARTNER
Rights	
1. Right in specific partnership property 2. Interest in the partnership (share in the profits and surplus) 3. Right to participate in the management 4. Right to associate another person with him in his share without the consent of other partners (sub-partnership) 5. Right to inspect and copy partnership books at any reasonable hour. 6. Right to a formal account as to partnership affairs (even during existence of partnership) a. if he is wrongfully excluded from partnership business or possession of its property by his co-partners. b. if right exists under the terms of any agreement. c. as provided in Art. 1807, NCC d. whenever the circumstances render it just and reasonable.	1. To have partnership books kept at principal place of business 2. To inspect/copy books at reasonable hours 3. To have on demand true and full information of all things affecting partnership 4. To have formal account of partnership affairs whenever circumstances render it just and reasonable 5. To ask for dissolution and winding up by decree of court 6. To receive share of profits/other compensation by way of income 7. To receive return of contributions, provided the partnership assets are in excess of all its liabilities
Obligations	
Obligations of partners among themselves	**To the partnership**
1. Contribution of property 2. Contribution of money and money converted to personal use 3. Prohibition in engaging in business for himself 4. Contribute additional capital	Since limited partners are not principals in the transaction of a partnership, their liability as a rule, is to the partnership, not to the creditors of the partnership. The

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5. Managing partner who collects debt 6. Partner who receives share of partnership credit 7. Damages to partnership 8. Render information 9. Accountable as fiduciary	general partners *cannot*, however waive any liability of the limited partners to the prejudice of such creditors.
Obligations of partners to 3rd persons 1. Every partnership shall operate under a *firm name*. Persons who include their names in the partnership name even if they are not members shall be liable as a partner 2. All partners shall be liable for *contractual obligations* of the partnership with their property, after all partnership assets have been exhausted: a. Pro rata b. Subsidiary 3. *Admission or representation made by any partner* concerning partnership affairs within the scope of his authority is evidence against the partnership 4. *Notice to partner* of any matter relating to partnership affairs operates as notice to partnership *except* in case of fraud: a. Knowledge of partner acting in the particular matter acquired while a partner b. Knowledge of the partner acting in the particular matter then present to his mind c. Knowledge of any other partner who reasonably could and should have communicated it to the acting partner 5. Partners and the partnership are solidarily liable to 3rd persons for the *partner's tort or breach of trust* 6. *Liability of incoming partner is limited* to: a. His share in the partnership property for existing obligations b. His separate property for subsequent obligations 7. *Creditors of partnership are preferred* in partnership property & may attach partner's share in partnership assets	**To the partnership creditors and other partners** 1. A limited partner is liable for partnership obligations when he contributed services instead of only money or property to the partnership 2. When he allows his surname to appear in the firm name 3. When he fails to have a false statement in the certificate corrected, knowing it to be false 4. When he takes part in the control of the business 5. When he receives partnership property as collateral security, payment, conveyance, or release in fraud of partnership creditors 6. When there is failure to substantially comply with the legal requirements governing the formation of limited partnerships
Other obligations 5. Duty to render on demand true and full information affecting partnership to any partner or legal representative of any deceased partner or of any partner under legal disability. 6. Duty to account to the partnership as fiduciary.	**To separate creditors** As in a general partnership, the creditor of a limited partner may, in addition to other remedies allowed under existing laws, apply to the proper court for a charging order subjecting the interest in the partnership of the debtor partner for the payment of his obligation.

AGENCY

Q: What is contract of agency?

A: By contract of agency 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 NCC)*

Q: What are the characteristics of a contract of agency?

A: BUNC-PP

1. **B**ilateral – If it is for compensation because it gives rise to reciprocal rights and obligations
2. **U**nilateral – If gratuitous, because it creates obligations for only one of the parties
3. **N**ominate
4. **C**onsensual – It is perfected by mere consent
5. **P**rincipal
6. **P**reparatory – It is entered into as a means to an end

Q: What are the classifications of agency?

A:

1. *As to manner of creation*
   a. *Express* – agent has been actually authorized by the principal, either orally or in writing
   b. *Implied* – agency is 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

2. *As to character*
   a. *Gratuitous* – agent receives no compensation for his services
   b. *Onerous* – agent receives compensation for his services

3. *As to extent of business of the principal*
   a. *General* – agency comprises all the business of the principal
   b. *Special* – agency comprises one or more specific transactions

4. *As to authority conferred*
   a. *Couched in general terms* – agency is created in general terms and is deemed to comprise only acts in the name and representation of the principal
   b. *Simple or commission* – agent acts in his own name but for the account of the principal

Q: What are the essential elements of an agency?

A: CORS

1. **C**onsent (express or implied) of the parties to establish the relationship;
2. The **O**bject is the execution of a juridical act in relation to third persons;
3. The agent acts as a **R**epresentative and not for himself; and
4. The agent acts within the **S**cope of his authority.

Q: Are there any formal requirements in the appointment of an agent?

A:

GR: There are no formal requirements governing the appointment of an agent.

XPN: When the law requires a specific form.

i.e. – when sale of land or any interest therein is through an agent, the authority of the latter must be in writing; otherwise, the sale shall be void *(Art. 1874, NCC)*

Q: Who are the parties to a contract of agency? Distinguish.

A:

1. *Principal* – One whom the agent represents and from whom he derives authority; he is the one primarily concerned in the contract.
2. *Agent* – One who represents the principal in a transaction or business.

Note: From the time the agent acts or transacts the business for which he has been employed in representation of another, a third party is added to the agency relationship – the party with whom the business is transacted. *(De Leon, Comments and Cases on Partnership, Agency, and Trust, p. 352, 2005 ed)*

Q: What is the nature of the relationship between principal and agent?

A: It is fiduciary in nature that is based on trust and confidence.

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Q: What are the qualifications of a principal?

A:

1. Natural or juridical person
2. He must have capacity to act

Note: If a person is capacitated to act for himself or his own right, he can act through an agent.

Insofar as third persons are concerned, it is enough that the principal is capacitated. *But* insofar as his obligations to his principal are concerned, the agent must be able to bind himself.

Q: What is the term "joint principals"?

A: Two or more persons appoint an agent for a common transaction or undertaking. *(Art. 1915, NCC)*

Q: What are the requisites for solidary liability of joint principals?

A:

1. There are two or more principals;
2. They have all concurred in the appointment of the same agent; and
3. Agent is appointed for a common transaction or undertaking. *(De Leon, p. 604, 2005 ed)*

Q: What are the kinds of agents?

A:

1. *Universal agent* – one employed to do all acts which the principal may personally do, and which he can lawfully delegate to another the power of doing
2. *General agent* – one employed to transact all business of the principal, or all the business of a particular kind or in a particular place, do all acts connected with a particular trade, business or employment
3. *Special or particular agent* – one authorized to do act in one or more specific transactions or to do one or more specific acts or to act upon a particular occasion

Q: Can agency be created by necessity?

A: No. What is created is additional authority in an agent appointed and authorized before the emergency arose.

Q: What are the requisites for the existence of agency by necessity?

A:

1. Real existence of emergency
2. Inability of the agent to communicate with the principal
3. Exercise of additional authority is for the principal's protection
4. Adoption of fairly reasonable means, premises duly considered

Q: What is the rule regarding double agency?

A:

GR: It is disapproved by law for being against public policy and sound morality.

XPN: Where the agent acted with full knowledge and consent of the principals.

Q: A granted B the exclusive right to sell his brand of Maong pants in Isabela, the price for his merchandise payable within 60 days from delivery, and promising B a commission of 20% on all sales. After the delivery of the merchandise to B but before he could sell any of them, B's store in Isabela was completely burned without his fault, together with all of A's pants. Must B pay A for the lost pants? Why?

A: The contract between A and B is a sale not an agency to sell because the price is payable by B upon 60 days from delivery even if B is unable to resell it. If B were an agent, he is not bound to pay the price if he is unable to resell it. As a buyer, ownership passed to B upon delivery and, under Art. 1504, NCC, the thing perishes for the owner. Hence, B must still pay the price. **(1999 Bar Question)**

Q: Is mere representation of an alleged agent sufficient to prove the existence of a principal-agent relationship?

A: No. The declarations of the agent alone are generally insufficient to establish the fact or extent of agency. It is a settled rule that the persons dealing with the assumed agent are bound at their peril, if they would hold the principals liable, to ascertain not only the fact of agency but also the nature and extent of authority, and in case either is controverted, the burden of proof is upon them to establish it. *(Spouses Yu v. Pan American World Airways, Inc., G.R. No. 123560, Mar. 27, 2000)*

Q: A foreign manufacturer of computers and a Philippine distributor entered into a contract whereby the distributor agreed to order 1,000 units of the manufacturer's computers every month and to resell them in the Philippines at the manufacturer's suggested prices plus 10%. All unsold units at the end of the year shall be bought back by the manufacturer at the same price they were ordered. The manufacturer shall hold the distributor free and harmless from any claim for defects in the units. Is the agreement one for sale or agency?

A: The contract is one of agency not sale. The notion of sale is negated by the following indicia: (1) the price is fixed by the manufacturer with the 10% mark-up constituting the commission; (2) the manufacturer reacquires the unsold units at exactly the same price; and (3) warranty for the units was borne by the manufacturer. The foregoing indicia negate sale because they indicate that ownership over the units was never intended to transfer to the distributor. **(2000 Bar Question)**

II. POWERS

Q: What are the kinds of agency as to extent of powers conferred?

A: *An agency may be couched in general terms or couched in specific terms.*

Q: What is an agency couched in general terms?

A: One which is created in general terms and is deemed to comprise only acts of administration *(Art. 1877, NCC).*

Q: When is an express power necessary?

A: It is necessary to perform any act of strict ownership**.**

Q: What is meant by acts of administration?

A: Those which do not imply the authority to alienate for the exercise of which an express power is necessary.

Q: When is payment an act of administration?

A: *When payment is made in the ordinary course of management.*

Q: When are making gifts an act of administration?

A: The making of customary gifts for charity, or those made to employees in the business managed by the agent are considered acts of administration.

Q: P granted to A a special power to mortgage the former's real estate. By virtue of said power, A secured a loan from C secured by a mortgage on said real estate. Is P personally liable for said loan?

A: No. A special power to mortgage property is limited to such authority to mortgage and does not bind the grantor personally to other obligations contracted by the grantee in the absence of any ratification or other similar act that would estop the grantor from questioning or disowning such other obligations contracted by the grantee.

A. TO BIND PRINCIPAL

Q: When is the act of an agent binding to the principal?

A:

1. When the agent acts as such without expressly binding himself or does not exceed the limits of his authority. *(Art. 1897)*
2. If principal ratifies the act of the agent which exceeded his authority. *(Art. 1898)*
3. Circumstances where the principal himself was, or ought to have been aware. *(Art. 1899)*
4. If such act is within the terms of the power of attorney, as written. *(Art.1900 & 1902)*
5. Principal has ratified, or has signified his willingness to ratify the agent's act. *(Art 1901)*

Q: Does knowledge of a fact by an agent bind the principal?

A:

GR: Knowledge of agent is knowledge of principal.

XPNs:

1. Agent's interests are adverse to those of the principal;
2. Agent's duty is not to disclose the information *(confidential information)*; or
3. Where the person claiming the benefit of the rule colludes with the agent to

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defraud the principal. *(De Leon, Comments and Cases on Partnership, Agency, and Trust, p. 367, 2005 ed)*

Q: What are the effects of the acts of an agent?

A:

1. *With* authority
   a. In principal's name – valid
   b. In his own name – not binding on the principal; agent and stranger are the only parties, *except* regarding *things belonging to the principal* or when the principal *ratifies* the contract or *derives benefit* therefrom

2. *Without* authority
   a. In principal's name – unauthorized and unenforceable but may be ratified, in which case, may be validated retroactively from the beginning
   b. In his own name – valid on the agent, *but* not on the principal

Q: What are the distinctions between authority and the principal's instructions?

A:

AUTHORITY	INSTRUCTIONS
Sum total of the powers committed to the agent by the principal	Contemplates only a private rule of guidance to the agent; independent and distinct in character
Relates to the subject/business with which the agent is empowered to deal or act	Refers to the manner or mode of agent's action
Limitations of authority are operative as against those who have/charged with knowledge of them	Without significance as against those with neither knowledge nor notice of them
Contemplated to be made known to third persons dealing with the agent	Not expected to be made known to those with whom the agent deals

Q: When is the principal bound by the actual or apparent authority of the agent?

A: The principal is bound by the acts of the agent on his behalf, whether or not the third person dealing with the agent believes that the agent has actual authority, so long as the agent has actual authority, express or implied.

Q: What is doctrine of apparent authority?

A: The principal is liable only as to third persons who have been led reasonably to believe by the conduct of the principal that such actual authority exists, although none has been given.

Q: What are the distinctions between apparent authority and authority by estoppel?

A:

Apparent Authority	Authority by Estoppel
That which is though not actually granted, the principal knowingly permits the agent to exercise or holds him out as possessing	Arises when the principal, by his culpable negligence, permits his agent to exercise powers not granted to him, even though the principal may have no notice or knowledge of the agent's conduct
Founded in conscious permission of acts beyond the powers granted	Founded on the principal's negligence in failing properly to supervise the affairs of the agent

Q: Can an agent maintain an action against persons with whom they contracted on behalf of his principal?

A: No. Agents are not a party with respect to that contract between his principal and third persons. As agents, they only render some service or do something in representation or on behalf of their principals. The rendering of such service did not make them parties to the contracts of sale executed in behalf of the latter.

The fact that an agent who makes a contract for his principal will gain or suffer loss by the performance or nonperformance of the contract by the principal or by the other party thereto does not entitle him to maintain an action on his own behalf against the other party for its breach. An agent entitled to receive a commission from his principal upon the performance of a contract which he has made on his principal's account does not, from this fact alone, have any claim against the other party for breach of the contract, either in an action on the contract or otherwise. An agent who is not a promisee cannot maintain an action at law against a purchaser merely because he is entitled to have his compensation or advances paid out of the purchase price before payment to the principal. *(Uy v. CA, G.R. No. 120465, Sept. 9, 1999)*

SUMMARY OF RULES; ACTS OF AN AGENT

In behalf of the principal, within the scope of authority
1. Binds principal; 2. Agent not personally liable
Without or beyond scope of authority
Contract is *unenforceable* as against the principal *but* binds the agent to the third person Binding on the principal when: 1. Ratified or 2. The principal allowed the agent to act as though he had full powers
Within the scope of authority but in the agent's name
1. Not binding on the principal; 2. Principal has no cause of action against the 3rd parties and vice versa Note: When the transaction involves things belonging to the principal: Remedy of the principal – damages for agent's failure to comply with the agency
Within the scope of the written power of attorney but agent has* actually *exceeded his authority according to an understanding between him and the principal
1. Insofar as 3rd persons are concerned (not required to inquire further than the terms of the written power, agent acted within scope of his authority; 2. Principal estopped
With improper motives
Motive is immaterial; as long as within the scope of authority, valid
With misrepresentations by the agent
1. Authorized – principal still liable 2. Beyond the scope of the agent's authority **GR:** Principal not liable **XPN:** Principal takes advantage of a contract or receives benefits made under false representation of his agent
Mismanagement of the business by the agent
1. Principal still responsible for the acts contracted by the agent with respect to 3rd persons; 2. Principal, however, may seek recourse from the agent
Tort committed by the agent
Principal civilly liable so long as the tort is committed by the agent while performing his duties in furtherance of the principal's business
Agent in good faith but prejudices 3rd parties
Principal is liable for damages

B. EXCEPTION

Q: When is the act of an agent not binding to the principal?

A: If an agent acts in his own name. In such case, the agent is the one directly bound in favor of the person with whom he has contracted, as if the transaction were his own. *(Art. 1883, NCC)*

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III. EXPRESS VS. IMPLIED AGENCY

Q: Distinguish express and implied agency.

A:

EXPRESS AGENCY	IMPLIED AGENCY
As to definition	
One where the agent has been actually authorized by the principal, either orally or in writing	One which is implied from the acts of the principal,
As to authority	
When it is directly conferred by words	When it is incidental to the transaction or reasonably necessary to accomplish the purpose of the agency, and therefore, the principal is deemed to have actually intended the agent to possess

Q: Distinguish agency from guardianship.

A:

AGENCY	GUARDIANSHIP
Agent represents a capacitated person	Guardian represents an incapacitated person
Agent derives authority from the principal	Guardian derives authority from the court
Agent is appointed by the principal and can be removed by the latter	Guardian is appointed by the court, and stands in loco parentis
Agent is subject to directions of the principal	**Guardian is *not* subject to the directions of the ward, but must act for the ward's benefit**
Agent can make the principal personally liable	**Guardian has no power to impose personal liability on the ward**

Q: Distinguish agency from judicial administration.

A:

AGENCY	JUDICIAL ADMINISTRATION
Agent is appointed by the principal	Judicial Administrator is appointed by the court
Represents the principal	Represents not only the court but also the heirs and creditors of the estate
Agent does not file a bond	Judicial Administrator files a bond
Agent is controlled by the principal thru the agreement	His acts are subject to specific orders from the court

Q: Distinguish agency from lease of services.

A:

AGENCY	LEASE OF SERVICES
Agent represents the principal	Worker or lessor of services does not represent his employer
Relationship can be terminated at the will of either principal or agent	Generally, relationship can be terminated only at the will of both
Agent exercises discretionary powers	Employee has ministerial functions

Q: Distinguish agency from trust.

A:

AGENCY	TRUST
Agent usually holds no title at all	Trustee may hold legal title to the property
Agent usually acts in the name of the principal	Trustee may act in his own name
Agency usually may be terminated or revoked any time	Trust usually ends by the accomplishment of the purposes for which it was formed
Agency may not be connected at all with property	Trust involves control over property
Agent has authority to make contracts which will be binding on his principal	Trustee does not necessarily or even possess such authority to bind the trustor or the cestui que trust
Agency is really a contractual relation	Trust may be the result of a contract, it may also be created by law

IV. AGENCY BY ESTOPPEL

Q: When is there an agency by estoppel?

A: When one leads another to believe that a certain person is his agent, when as a matter of fact such is not true, and the latter acts on such misrepresentation, the former cannot disclaim liability, for he has created an agency by *estoppel*. *(Paras, Civil Code of the Philippines Annotated, Vol. V, p. 558, 6th ed)*

Q: What are the rules regarding estoppel in agency?

A:

1. Estoppel of agent – *One professing to act as agent for another may be*

estopped to deny his agency both as against his asserted principal and the third persons interested in the transaction in which he engaged.

2. *Estoppel of principal*
   a. As to agent – *One who knows that another is acting as his agent and fails to repudiate his acts, or accepts the benefits, will be estopped to deny the agency as against the other.*
   b. As to sub-agent – *To estop the principal from denying his liability to a third person, he must have known or be charged with knowledge of the fact of the transaction and the terms of the agreement between the agent and sub-agent.*
   c. As to third persons – *One who knows that another is acting as his agent or permitted another to appear as his agent, to the injury of third persons who have dealt with the apparent agent as such in good faith and in the exercise of reasonable prudence, is estopped to deny the agency.*

3. *Estoppel of third persons – A third person, having dealt with one as agent may be estopped to deny the agency as against the principal, agent, or third persons in interest.*

4. *Estoppel of the government – The government is neither estopped by the mistake or error on the part of its agents.*

Q: Distinguish implied agency from agency by estoppel.

A:

IMPLIED AGENCY	AGENCY BY ESTOPPEL
As to liability between principal and agent	
Agent is a true agent, with rights and duties of an agent	If caused by the "agent", he is not considered a true agent, hence, he has no rights as such
As to liability to third persons	
1. The principal is always liable 2. The agent is never personally liable	1. *If caused by the principal*, he is liable, but only if the 3rd person acted on the misrepresentation; 2. *If caused by the agent alone*, only the agent is liable

V. GENERAL vs. SPECIAL AGENCY

Q: Distinguish a general agent from a special agent?

A:

General Agent	Special Agent
Scope of Authority	
All acts connected with the business or employment in which he is engaged	Specific acts in pursuance of particular instructions or with restrictions necessarily implied from the act to be done
Nature of Service Authorized	
Involves continuity of service	No continuity of service
Extent to which the Agent may Bind the Principal	
May bind his principal by an act within the scope of his authority although it may be contrary to the latter's special instructions	Cannot bind his principal in a manner beyond or outside the specific acts which he is authorized to perform
Termination of Authority	
Apparent authority does not terminate by mere revocation of his authority without notice to the third party	Duty imposed upon the third party to inquire makes termination of the relationship effective upon revocation
Construction of Principal's Instruction	
Merely advisory in nature	Strictly construed as they limit the agent's authority

Q: Who is a factor/commission agent?

A: It is one *engaged* in the purchase and sale of personal property for a principal, which, for this purpose, has to be placed in his possession and at his disposal.

Q: Who is a broker?

A: He is a middleman or intermediary who in behalf of others and for a commission or fee *negotiates* contracts/transactions relating to real or personal property.

Q: What is factorage?

A: It is the compensation of a factor or commission agent.

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Q: What is ordinary commission?

A: It is the compensation for the sale of goods which are placed in the agent's possession or at his disposal

Q: What is guaranty commission?

A: It is the fee which is given in return for the risk that the agent has to bear in the collection of credits.

VI. AGENCY COUCHED IN GENERAL TERMS

Q: What is an agency couched in general terms?

A: One which is created in general terms and is deemed to comprise only acts of administration *(Art. 1877, NCC).*

VII. AGENCY REQUIRING SPECIAL POWER OF ATTORNEY

Q: What is special power of attorney (SPA)?

A: It is 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; primary purpose is to evidence agent's authority to third parties within whom the agent deals.

Q: Should SPA be in writing and notarized in order to be valid?

A: No. SPA is not required to be in writing and need not be notarized in order to be valid. (*De Leon, Comments and Cases on Partnership, Agency, and Trust, p. 443, 2005 ed)*

Q: Is the intervention of a notary public required for the validity of an SPA?

A:

GR: A power of attorney is valid although no notary public intervened in its execution. *(Barretto v. Tuason, G.R. Nos. L-36811, 36827, 36840, 36872, Mar. 31, 1934) (De Leon, p. 443, 2005 ed)*

XPN: When SPA is executed in a foreign country, it must be certified and authenticated according to the Rules of Court, particularly Sec. 25, Rule 132.

Note: When the special power of attorney is executed and acknowledged before a notary public or other competent official in a foreign country, it cannot be admitted in evidence unless it is certified as such in accordance with the foregoing provision of the rules by a secretary of embassy or legation, consul general, consul, vice consul, or consular agent or by any officer in the foreign service of the Philippines stationed in the foreign country in which the record is kept of said public document and authenticated by the seal of his office. *(Medina v. Natividad, G.R. No. 177505, Nov. 27, 2008)*

The failure to have the special power of attorney (executed in a foreign country) authenticated is not merely a technicality – it is a question of jurisdiction. Jurisdiction over the person of the real party-in-interest was never acquired by the courts. *(Ibid.)*

Q: When is a special power necessary?

A: CALL MO SPRING COW

1. to **C**reate or convey real rights over immovable property;
2. Convey or **A**cquire immovable
3. to **L**oan or borrow money, unless the latter act be urgent and indispensable for the preservation of the things which are under administration;
4. to **L**ease any real property to another person for more than one year;
5. to **M**ake such **P**ayments as are not usually considered as acts of administration;
6. to **O**bligate principal as guarantor or surety
7. to bind the principal to render some **S**ervice without compensation;
8. to bind the principal in a contract of **P**artnership;
9. to **R**atify obligations contracted before the agency
10. to Accept or repudiate an **I**nheritance
11. Effect **N**ovation
12. to make **G**ifts, except customary ones for charity or those made to employees in the business managed by the agent
13. **C**ompromise, Arbitration and Confession of Judgment
14. any **O**ther act of strict dominion
15. **W**aive an obligation gratuitously

Q: What are the limitations to a special power of attorney?

A:

1. A special power to sell excludes the power to mortgage
2. A special power to mortgage does *not* include the power to sell *(Art. 1879, NCC)*

3. A special power to compromise does *not* authorize submission to arbitration *(Art. 1880, NCC)*

VIII. AGENCY BY OPERATION OF LAW

Q: When is an agency created by operation of law?

A: When the agent withdraws from the agency for a valid reason, he must continue to act until the principal has had a reasonable opportunity to take the necessary steps like the appointment of a new agent to remedy the situation caused by the withdrawal. *(Art. 1929, NCC)*

IX. RIGHTS AND OBLIGATIONS OF PRINCIPAL

Q: What are the obligations of the principal to the agent?

A: To:

1. comply with all obligations which the agent may have contracted within the scope of his authority *(Art. 1910, NCC)*;
2. advance to the agent, should the latter so request, the sums necessary for the execution of the agency *(Art. 1912, NCC)*;
3. reimburse the agent for all advance made by him, provided the agent is free from fault *(Ibid.)*;
4. indemnify the agent for all damages which the execution of the agency may have caused the latter without fault or negligence on his part *(Art. 1913, NCC)*; and
5. pay the agent the compensation agreed upon, or if no compensation was specified, the reasonable value of the agent's services. *(De Leon, Comments and Cases on Partnership, Agency, and Trust, pp. 545-555, 2005 ed)*

Q: Is the principal liable for the expenses incurred by the agent?

A:

GR: Yes.

XPNs:

1. If the agent acted in contravention of the principal's instructions, *unless* principal derives benefits from the contract;
2. When the expenses were due to the fault of the agent;
3. When the agent incurred them with knowledge that an unfavorable result would ensue, if the principal was not aware thereof; or
4. When it was stipulated that the expenses would be borne by the agent, or that the latter would be allowed only a certain sum.

Q: What is the liability of the principal regarding contracts entered into by the agent?

A:

GR: The principal must comply with all the obligations which the agent may have contracted within the scope of his authority.

XPN: Where the agent exceeded his authority.

XPN to the XPN: When the principal ratifies it.

Note: Even if the agent has exceeded his authority, the principal is solidarily liable with the agent if the former allowed the latter to act as though he had full powers *(Art. 1911, NCC)*

Q: CX executed a special power of attorney authorizing DY to secure a loan from any bank and to mortgage his property covered by the owner's certificate of title. In securing a loan from M Bank, DY did not specify that he was acting for CX in the transaction with the bank. Is CX liable for the bank loan?

A: While as a general rule the principal is not liable for the contract entered into by his agent in case the agent acted in his own name without disclosing his principal, such rule does not apply if the contract involves a thing belonging to the principal. In such case, the principal is liable under Art. 1883, NCC. The contract is deemed made in his behalf. *(Sy-Juco v. Sy-Juco, G.R. No. L-13471, Jan. 12, 1920)* **(2004 Bar Question)**

Q: What is the liability of the principal for tort committed by the agent?

A:

GR: Where the fault or crime committed by the agent is not in the performance of an obligation of the principal, the latter is not bound by the illicit acts of the agent, even if it is done in connection with the agency.

XPNs:

1. Where the tort was committed by the agent because of defective instructions from the principal or due to lack of

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necessary vigilance or supervision on his part; or

2. When the tort consists in the performance of an act which is within the powers of an agent but becomes criminal only because of the manner in which the agent has performed it; the principal is civilly liable to 3rd persons who acted in good faith.

Q: When is the principal not bound by the act of the agent?

A:

1. **GR:** When the act is without or beyond the scope of his authority in the principal's name.

   XPNs:
   a. Where the acts of the principal have contributed to deceive a 3rd person in good faith
   b. Where the limitation upon the power created by the principal could not have been known by the 3rd person
   c. Where the principal has placed in the hands of the agent instruments signed by him in blank
   d. Where the principal has ratified the acts of the agent

2. When the act is within the scope of the agent's authority but in his own name, except when the transaction involves things belonging to the principal.

Note: The limits of the agent'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.

RESPONSIBILITIES AND OBLIGATIONS OF AN AGENT

Q: What are the specific obligations of an agent to the principal?

A: CAFO-FAN-ALAD-RIP-BIR

1. **C**arry out the agency which he has accepted
2. **A**nswer for damages which through his non-performance the principal may suffer
3. **F**inish the business already begun on the death of the principal should delay entail any danger
4. **O**bserve the diligence of a good father of a family in the custody and preservation of the goods forwarded to him by the owner in case he declines an agency, until an agent is appointed *(Art. 1885, NCC)*
5. advance the necessary **F**unds should there be a stipulation to do so *(Art. 1886, NCC)*
6. **A**ct in accordance with the instructions of the principal, and in default thereof, to do all that a good father of a family would do *(Art. 1887, NCC)*
7. **N**ot to carry out the agency of its execution would manifestly result in loss or damage to the principal *(Art. 1888, NCC)*
8. **A**nswer for damages if there being a conflict between his interests and those of the principal, he should prefer his own *(Art. 1889, NCC)*
9. not to **L**oan to himself if he has been authorized to lend money at interest *(Art. 1890, NCC)*
10. render an **A**ccount of his transactions and to deliver to the principal whatever he may have received by virtue of the agency *(Art. 1891, NCC)*
11. **D**istinguish goods by countermarks and designate the merchandise respectively belonging to each principal, in the case of a commission agent who handles goods of the same kind and mark, which belong to different owners *(Art. 1904, NCC)*
12. be **R**esponsible in certain cases for the acts of the substitute appointed by him *(Art. 1890, NCC)*
13. **P**ay interest on funds he has applied to his own use *(Art. 1896, NCC)*
14. **I**nform the principal, where an authorized sale of credit has been made, of such sale *(Art. 1906, NCC)*
15. **B**ear the risk of collection and pay the principal the proceeds of the sale on the same terms agreed upon with the purchaser, should he receive also on sale, a guarantee commission *(Art. 1907, NCC)*
16. **I**ndemnify the principal for damages for his failure to collect the credits of his principal at the time that they become due *(Art. 1908, NCC)*
17. be **R**esponsible for fraud or negligence *(Art. 1909, NCC; De Leon, Comments and Cases on Partnership, Agency, and Trust, pp. 478-479, 2005 ed)*

Note: Every stipulation exempting the agent from the obligation to render an account shall be void *(par. 2, Art. 1891, NCC)*

Q: In case of breach of loyalty, is the agent still entitled to commission?

A: No, The forfeiture of the commission will take place regardless of whether the principal suffers any injury by reason of such breach of loyalty. It does not even matter if the agency is for a gratuitous one, or that the principal obtained better results, or that usage and customs allow a receipt of such a bonus.

Note: An agent has an absolute duty to make a full disclosure or accounting to his principal of all transactions and material facts that may have some relevance with the agency. *(Domingo v. Domingo, G.R. No. L-30573, Oct. 29, 1971)*

Q: When is the obligation to account not applicable?

A:

1. If the agent acted only as a middleman with the task of merely bringing together the vendor and vendees;
2. If the agent informed the principal of the gift/bonus/profit he received from the purchaser and his principal did not object thereto; or
3. Where a right of lien exists in favor of the agent.

Q: What is the responsibility of two or more agents appointed simultaneously?

A:

GR: Jointly liable.

XPN: Solidarity has been expressly stipulated. Each of the agents becomes solidarily liable for:

1. the non-fulfillment of the agency; or
2. fault or negligence of his fellow agent.

XPN to the XPN: When one of the other agents acts beyond the scope of his authority – innocent agent is *not* liable.

Note: An innocent agent has a right later on to recover from the guilty or negligent agent.

Q: What is the rule with regard to the execution of the agency?

A:

GR: The agent is bound by his acceptance to carry out the agency, and is liable for damages which, through his non-performance, the principal may suffer.

XPN: If its execution could manifestly result in loss or damage to the principal

Q: What are the instances when the agent may incur personal liability?

A:

1. Agent expressly bound himself;
2. Agent exceeds his authority;
3. Acts of the agent prevent the performance on the part of the principal;
4. When a person acts as agent without authority or without a principal; or
5. A person who acts as an agent of an incapacitated principal unless the third person was aware of the incapacity at the time of the making of the contract.

Q: What is the scope of the agent's authority as to third persons?

A: It includes not only the actual authorization conferred upon the agent by his principal but also that which is apparent or impliedly delegated to him.

Q: Is the third person required to inquire into the authority of the agent?

A:

1. *Where authority is not in writing* – Every person dealing with an assumed agent must discover upon his peril, if he would hold the principal liable, not only the fact of the agency but the nature and extent of the authority of the agent.
2. *Where authority is in writing* – 3rd person is not required to inquire further than the terms of the written power of attorney.

Note: A third person with whom the agent wishes to contract on behalf of the principal may require the presentation of the power of attorney or the instructions as regards the agency.

Q: What is the rule with regard to the advancement of funds by the agent?

A:

GR: There must be a stipulation in the contract that the agent shall advance the necessary funds

XPN: When the principal is insolvent.

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RIGHTS OF AGENTS

Q: What are the instances when the agent may retain in pledge the object of the agency?

A:

1. If principal fails to reimburse the agent the necessary sums, including interest, which the latter advanced for the execution of the agency *(Art. 1912, NCC)*; or
2. If principal fails to indemnify the agent for all damages which the execution of the agency may have caused the latter, without fault or negligence on his part. *(Art. 1913, NCC)*

Q: What is the rule where two persons deal separately with the agent and the principal?

A: If the two contracts are incompatible with each other, the one of prior date shall be preferred. This is subject however to the rule on double sale under Art. 1544, NCC.

Note: Rules of preference in double sale

1. Personal property – possessor in good faith
2. Real property
   a. Registrant in good faith
   b. Possessor in good faith
   c. Person with the oldest title in good faith *(Art. 1544, NCC)*

If agent acted in good faith, the principal shall be liable for damages to the third person whose contract must be rejected. If agent is in bad faith, he alone shall be liable. *(Art. 1917, NCC)*

PROHIBITED ACTS OF AN AGENT

Q: What are the prohibited acts of an agent?

A:

1. Personal acts
2. Criminal or illegal acts

Note: e.g.:

1. Right to vote
2. Making of a will
3. Under oath statements
4. Attending board meetings of corporations. *(De Leon, p. 358, 2005 ed)*

Q: Can a person acting as an agent escape criminal liability by virtue of the contract of agency?

A: No. The law on agency has no application in criminal cases. When a person participates in the commission of a crime, he cannot escape punishment on the ground that he simply acted as an agent of another party. *(Ong v. CA, G.R. No. 119858, Apr. 29, 2003)*

X. IRREVOCABLE AGENCY

Q: When is agency irrevocable?

A:

1. If a bilateral contract depends upon it
2. if it is the means of fulfilling an obligation already contracted
3. if partner is appointed manager and his removal from the management is unjustifiable. *(Art 1927)*
4. if it has been constituted in the common interest of the principal and the agent *(Art. 1930)*
5. Stipulation pour atrui

Q: How may the agent withdraw from the agency?

A: The agent may withdraw from the agency by giving due notice to the principal. If the latter should suffer any damage by reason of the withdrawal, the agent must indemnify him therefor, unless the agent should base his withdrawal upon the impossibility of continuing the performance of the agency without grave detriment to himself. (1736a)

NOTE: The agent, even if he should withdraw from the agency for a valid reason, must continue to act until the principal has had reasonable opportunity to take the necessary steps to meet the situation.

XI. MODES OF EXTINGUISHMENT

Q: What is "presumption of continuance of agency"?

A: It means that when once shown to have existed, an agency relation will be presumed to have continued, in the absence of anything which shows its termination.

Q: What are the essential elements for continuance of agency?

A: Both principal and agent must be:
1. Present
2. Capacitated
3. Solvent *(De Leon, Comments and Cases on Partnership, Agency, and Trust, p. 610, 2005 ed)*

Q: Can the heirs continue the agency?

A:

GR: No.

Ratio: The agency calls for personal services on the part of the agent since it is founded on a fiduciary relationship; rights and obligations intransmissible.

XPNs:
1. Agency by operation of law, or a presumed or tacit agency
2. Agency is coupled with an interest in the subject matter of the agency (*e.g.* power of sale in a mortgage)

Q: What are the modes of extinguishing an agency?

A: EDWARD
1. **E**xpiration of the period
2. **D**eath, civil interdiction, insanity or insolvency of principal or of the agent
3. **W**ithdrawa**l** by the agent
4. **A**ccomplishment of the object or the purpose of the agency
5. **R**evocation
6. **D**issolution of the firm or corporation which entrusted or accepted the agency.

Note: The list is *not exclusive*; May also be extinguished by the modes of extinguishment of obligations in general whenever they are applicable, like *loss of the thing* and *novation*.

REVOCATION

Q: Is a contract of agency revocable?

A:

GR: Yes. Agency is *revocable* at will by the principal.

XPNs: It cannot be revoked if:
1. a bilateral contract depends upon it
2. it is the means of fulfilling an obligation already contracted
3. a partner is appointed manager of a partnership and his termination is unjustifiable
4. it is created not only for the interest of the principal but also for the interest of third persons

XPN to the XPN: When the agent acts to defraud the principal.

Q: What are the kinds of revocation?

A: Revocation may either be express or implied. (*De Leon, Comments and Cases on Partnership, Agency, and Trust, p. 625, 2005 ed)*

Q: How is agency impliedly revoked?

A: Principal:
1. appoints a new agent for the same business or transaction *(Art. 1923, NCC)*;
2. directly manages the business entrusted to the agent *(Art. 1924, NCC)*; or
3. after granting general power of attorney, grants a special one to another agent which results in the revocation of the former as regards the special matter involved in the latter. *(Art. 1926, NCC)*

Q: How is agency revoked when the agent has been appointed by two or more principals?

A: Any one of the principals is granted the right to revoke the power of attorney without the consent of the others.

Q: Is notice of revocation necessary?

A:
1. *As to the agent* – Express notice is not necessary; sufficient notice if the party to be notified actually knows, or has reason to know, a fact indicating that his authority has been terminated/suspended; revocation without notice to the agent will not render invalid an act done in pursuance of the authority
2. *As to 3rd persons* – Express notice is necessary
   a. *As to former customers* – Actual notice must be given to them because they always assume the continuance of the agency relationship

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b. *As to other persons* – Notice by publication is enough

Note: There is *implied revocation* of the previous agency *when* the principal appoints a new agent for the same business or transaction, provided there is incompatibility. *But* the revocation does not become effective as between the principal and the agent until it is in some way communicated to the latter.

Q: What is the effect of the direct management by the principal?

A:

GR: The agency is revoked for there would no longer be any basis for the representation previously conferred. *But* the principal must act in good faith and not merely to avoid his obligation to the agent.

XPN: The only desire of the principal is for him and the agent to manage the business together.

Q: Richard sold a large parcel of land in Cebu to Leo for P100 million payable in annual installments over a period of ten years, but title will remain with Richard until the purchase price is fully paid. To enable Leo to pay the price, Richard gave him a power-of-attorney authorizing him to subdivide the land, sell the individual lots, and deliver the proceeds to Richard, to be applied to the purchase price. Five years later, Richard revoked the power of attorney and took over the sale of the subdivision lots himself. Is the revocation valid or not? Why?

A: The revocation is not valid. The power of attorney given to the buyer is irrevocable because it is coupled with an interest – the agency is the means of fulfilling the obligation of the buyer to pay the price of the land *(Art. 1927, NCC)*. In other words, a bilateral contract (contract to buy and sell the land) is dependent on the agency. **(2001 Bar Question)**

Q: Eduardo executed a SPA authorizing Zenaida to participate in the pre-qualification and bidding of a NIA project and to represent him in all transactions related thereto. It was granted to them. Zenaida leased Manuel's heavy equipment to be used for the NIA project. Manuel interposed no objection to Zenaida's actuations. Eduardo later revoked the SPA alleging that Zenaida acted beyond her authority in contracting with Manuel under the SPA. Decide.

A: No. Eduardo and Zenaida entered into a partnership with regard to the NIA project. Also, Eduardo was present when Zenaida contracted with Manuel. Under Art. 1818, NCC, every partner is an agent of the partnership for the purpose of its business and each one may separately execute all acts of administration, unless, under Art. 1801, NCC, a specification of their respective duties has been agreed upon, or else it is stipulated that any one of them shall not act without the consent of all the others. *(Mendoza v. Paule, G.R. No. 175885, Feb. 13, 2009)*

DEATH

Q: What is the effect of death of a party to the contract of agency?

A:

GR: The agency is terminated by the death of the principal even if the agency is for a definite period.

XPNs:

1. If it has been constituted in common interest of the principal and the agent or in the interest of the third person who accepted the stipulation in his favor; or
2. Anything done by the agent without the knowledge of the death of the principal or on any other cause which extinguishes the agency is valid and shall be effective on third persons who may have contracted with him in good faith.

Q: Is the sale of the land by the agent after the death of the principal valid?

A: Article 1931, NCC provides that an act done by the agent after the death of the principal is valid and effective if these two requisites concur:

1. that the agent acted without the knowledge of the death of the principal; and
2. that the third person who contracted with the agent himself acted in good faith.

Good faith here means that the third person was not aware of the death of the principal at the time that he contracted with said agent. *(Rallos v. Felix Go Chan, G.R. No. L-24332, Jan. 31, 1978)*

CHANGE OF CIRCUMSTANCES SURROUNDING TRANSACTION

Q: What is the effect of a change of circumstance surrounding the transaction?

A:

GR: The *authority* of the agent is *terminated*.

XPNs:

1. If the original circumstances are restored within a reasonable period of time, the agent's authority may be revived;
2. Where the agent has reasonable doubts as to whether the principal would desire him to act, his authority will not be terminated if he acts reasonably; or
3. Where the principal and agent are in close daily contact, the agent's authority to act will not terminate upon a change of circumstances if the agent knows the principal is aware of the change and does not give him new instructions. *(De Leon, pp. 616-617, 2005 ed)*

WITHDRAWAL BY THE AGENT

Q: Can the agent withdraw from the agency?

A: Yes. The agent may renounce or withdraw from the agency at any time, without the consent of the principal, even in violation of the latter's contractual rights; subject to liability for breach of contract or for tort.

Q: What are the kinds of withdrawal by the agent?

A:

3. *Without just cause* – The law imposes upon the agent the duty to give due notice to the principal and to indemnify the principal should the latter suffer damage by reason of such withdrawal.
4. *With just cause* – The agent cannot be held liable.

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COMPROMISE

I. DEFINITION

Q: What is a compromise?

A: A compromise is a contract whereby the parties, by making reciprocal concessions, avoid litigation or put an end to one already commenced. *(Art. 2028, NCC)*

Q: What are the characteristics of a compromise?

A:

1. **C**onsensual
2. **R**eciprocal
3. **N**ominate
4. **O**nerous
5. **A**ccessory (in the sense that a prior conflict is pre supposed)
6. Once accepted, it is **B**inding on the parties, provided there is no vitiated consent *(McCarthy v. Barber Steamship Lines, 45 Phil. 488)*.
7. It is the **S**ettlement of a *controversy principally,* and is but merely incidentally, the settlement of a claim. *(Ibid)*

Q: What are the kinds of compromise?

A:

1. Judicial – to end a pending litigation
2. Extrajudicial – to prevent a litigation from arising

Q: What is the basic duty of a court whenever a suit is filed?

A: The court shall endeavor to persuade the litigants in a civil case to agree upon some fair compromise. *(Art. 2029, NCC)*

Q: What circumstances may a proceeding in a civil action be suspended?

A:

1. If willingness to discuss a possible compromise is expressed by one or both parties; or
2. if it appears that one of the parties, before the commencement of the action or proceeding, offered to discuss a possible compromise but the other party refused the offer.

Q: X is indebted to Y in the amount of P50, 000 with the stipulation that the same shall earn interest at 40% per *annum.* When X failed to pay, Y sued him. In an effort to settle the case, X offered to pay the principal but begged for the reduction of the interest. Y refused, hence, trial was conducted. Can the judge reduce the rate of interest?

A: Yes. The courts may mitigate the damage to be paid by the losing party who has shown a sincere desire for a compromise. *(Art. 2031, NCC)*

Q: Can there be a compromise on the criminal aspect of a crime?

A: None. There may be a compromise upon the civil liability arising from an offense; but such compromise shall not extinguish the public action for the imposition of the legal penalty. *(Art. 2034, NCC)*

II. VOID COMPROMISE

Q: When is a compromise void?

A:

1. **C**ivil status
2. **V**alidity of a marrieage or a legal separation
3. **A**ny ground for legal separation
4. **F**uture support
5. **J**urisdiction of courts
6. **F**uture legitime

III. EFFECT

Q: What is the effect if two parties enter into a compromise?

A: It has the effect of *res judicata.* A compromise has upon the parties the effect and authority of *res judicata. (Art. 2037, NCC)*

Q: What requirement is necessary in order that a compromise be executed?

A: In order that a compromise may be executed, there must be approval of the court. *(Art 2037, NCC)*

Q: A and B entered into a compromise agreement. A week thereafter, B filed an action in court seeking to annul the compromise agreement contending that it is one-sided. Is the action proper?

A: No, because where the compromise is instituted and carried through in good faith, the fact that there was a mistake as to the law or as to the facts, except in certain cases where the mistake was mutual and correctible as such in equity, cannot afford a basis for setting aside a compromise. Compromises are favored without regard to the nature of the controversial compromise, and they cannot be set aside because the event shows all the gains have been on one side. *(Asong v. Intermediate Appellate Court, May 12, 1989)*

Q: X and Y entered into a compromise agreement whereby X respected the ownership of Y over a part of a creek (now a fishpond). Is the agreement valid?

A: No, because that is contrary to public policy and the law. The creek is a property belonging to the State; hence, it is part of public domain which is not susceptible to private appropriation and acquisition. *(Maneclang v Intermediate Appellate Court, 161 SCRA 469)*

Q: X and Y entered into a compromise agreement, terminating a suit between them. X failed to comply with the terms and conditions of the same. What are the remedies of the aggrieved party?

A: If one of the parties fails or refuses to abide by the compromise, the other party may either enforce the compromise, or regard it as rescinded and insist upon his original demand. *(Art 2041, NCC).*

Q: What is the effect of a contract or a compromise even if it is disadvantageous to one of the parties?

A: It is still a valid one. It is a long established doctrine that the law does not relieve a party from the effects of an unwise, foolish, or disastrous contract, entered into with all the required formalities and with full awareness of what he is doing. Courts have no power to relieve parties from obligations voluntarily assumed, simply because their contracts turned out to be disastrous deals or unwise investments. *(Tanda v. Aldaya, 89 Phil. 497; Villacorte v. Mariano, 89 Phil. 341)*

It is a truism that "a compromise agreement entered into by party-litigants, when not contrary to law, public order, public policy, morals, or good customs is a valid contract which is the law between the parties themselves. It follows, therefore, that a compromise agreement, not tainted with infirmity, irregularity, fraud or illegality is the between the parties who are duty bound to abide by it and observe strictly its terms and conditions". *(Esguerra v. CA, GR 119310, February 3, 1997)*

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