

LOAN	COMMODATUM
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GENERAL PROVISIONS

Art. 1933.

CONTRACT OF LOAN; defined

one of the parties delivers to another, either

- something not consumable so that the latter may use the same for a certain time and return it, in which case the contract is called a **commodatum**; or
- money or other consumable thing, upon the condition that the same amount of the same kind and quality shall be paid, in which case the contract is simply called a **loan** or **mutuum**.

COMMODATUM	MUTUUM
one of the parties delivers to another, something not consumable so that the latter may use the same for a certain time and return it	one of the parties delivers to another, money or other consumable thing, upon the condition that the same amount of the same kind and quality shall be paid.
essentially gratuitous	gratuitous or with stipulation to pay interest
bailor retains ownership	ownership passes to the borrower
after the expiration, bailee is obliged to return the thing loaned	borrower is obliged to pay the creditor an equal amount of the same kind and quality
non- consumable. EXE: consumable if the purpose is not for consumption. ie. exhibition	

NOTE: BOTH ARE REAL CONTRACTS

Art. 1934.

An accepted promise to deliver something by way of **commodatum** or simple loan is binding upon parties,

but the **commodatum** or simple loan itself shall not be perfected

- until the delivery of the object of the contract.

NATURE:

*Art. 1935. The bailee in **commodatum** acquires the used of the thing loaned but not its fruits; if any compensation is to be paid by him who acquires the use, the contract ceases to be a **commodatum**.*

Art. 1940. A stipulation that the bailee may make use of the fruits of the thing loaned is valid.

*Art. 1936. Consumable goods may be the subject of **commodatum** if the purpose of the contract is not the consumption of the object, as when it is merely for exhibition.*

RIGHTS OF THE BAILEE

1. acquires the use of the thing loaned
2. does not cover the fruits; exe: if stipulated by the parties (art. 1491)

IN RE: SUBJECT MATTER IN COMMODATUM

1. only non-consumable as a general rule.
EXE: consumable may be a proper object of **commodatum** if the purpose of which is not for consumption, as when it is merely for exhibition
2. movable or immovable

NOTE: ART. 1938

The bailor in **commodatum need not be the owner of the thing loaned.**

ART. 1939

COMMODATUM AS PURELY PERSONAL CONTRACT; as a consequence:

1. The death of either the bailor or the bailee extinguishes the contract;
2. The bailee can neither lend nor lease the object of the contract to a third person.

EXE:

the members of the bailee's household may make use of the thing loaned,

EXE TO EXE

- there is a stipulation to the contrary, or
- the nature of the thing forbids such use.

OBLIGATION OF THE BAILEE

ART. 1941 to 1945

IN GENERAL:

- The bailee is obliged to pay for the ordinary expenses for the use and preservation of the thing loaned. (art. 1941)

EXE:

not liable for the deterioration of the thing loaned due only to the use thereof and without his fault.

- When there are two or more bailees to whom a thing is loaned in the same contract, they are liable solidarily

IN RE: RIGHT OF RETENTION

GEN RULE:

bailee has no right of retention over the thing loaned

EVEN on the ground that the bailor owes him something, even though it may be by reason of expenses.

EXE:

However, the bailee has a right of retention for damages mentioned in Article 1951.

The bailor who, knowing the flaws of the thing loaned, does not advise the bailee of the same,
shall be liable to the latter for the damages which he may suffer by reason thereof.

IN RE: LIABILITY OF THE BAILEE FOR LOSS OF THE THING LOANED; even if caused by fortuitous event

1. If he devotes the thing to any purpose different from that for which it has been loaned;
2. If he keeps it longer than the period stipulated, or after the accomplishment of the use for which the commodatum has been constituted;
3. If the thing loaned has been delivered with appraisal of its value, unless there is a stipulation exemption the bailee from responsibility in case of a fortuitous event;
4. If he lends or leases the thing to a third person, who is not a member of his household;
5. If, being able to save either the thing borrowed or his own thing, he chose to save the latter.

OBLIGATIONS OF THE BAILOR

ART. 1946 to 1952

IN GENERAL

- to reimburse the bailee for ordinary expenses it incurred for the preservation and use of the thing loaned.

IF EXTRAORDINARY EXPENSE; obliged to reimburse the bailee if:
art. 1949

~ the bailee brings the same to the knowledge of the bailor before incurring them,

EXE

when they are so urgent
- that the reply to the notification cannot be awaited without danger.

HOW THE EXPENSE SHALL BE SHOULDERED

If the extraordinary expenses arise on the occasion of the actual use of the thing by the bailee,
even though he acted without fault,

they shall be borne equally by both the bailor and the bailee,

UNLESS there is a stipulation to the contrary.

AKIN NA TO:

so it can be said that the expense shall be borne by the bailee if he acted with fault, and by the bailor alone if the damage was caused while not being use and the bailee has no fault?

- The bailor who, knowing the flaws of the thing loaned, does not advise the bailee of the same, shall be liable to the latter for the damages which he may suffer by reason thereof.

The bailor cannot exempt himself from the payment of expenses or damages
- by abandoning the thing to the bailee.

- the bailor cannot demand the return of the thing loaned till after the expiration of the period stipulated or after the accomplishment of the use for which the commodatum has been constituted.

THE AWESOME NOTES CREDIT TRANSACTION

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GEN RULE: bailor can demand for the return of the thing loaned only after:

1. the expiration of the period stipulated; or
2. the accomplishment of the use for which the commodatum has been constituted

EXE: WHEN DESPITE OF THE GEN. RULE, BAILOR CAN DEMAND FOR THE IMMEDIATE RETURN

- if in the meantime, he should have urgent need of the thing, he may demand its return or temporary use. (art. 1946)

EFFECT:

the contract of commodatum is suspended while the thing is in the possession of the bailor.

- The bailor may demand the thing at will, and the contractual relation is called a precarium, in the following cases: (art. 1947)

1. If neither the duration of the contract nor the use to which the thing loaned should be devoted, has been stipulated; or
2. If the use of the thing is merely tolerated by the owner.

- The bailor may demand the immediate return of the thing if the bailee commits any act of ingratitude specified in Article 765.
 1. if the donee should commit some offense against the person, the honor or the property of the donor, or of his wife or children under his parental authority
 2. if the donee imputes to the donor any criminal offense, or any act involving moral turpitude, even though he should prove it. unless, the crime or the act has been committed against the donee himself, his wife or children under his authority
 3. if he unduly refuses him support when the donee is legally or morally bound to give support to the donor.

SIMPLE LOAN OR MUTUUM

DISTINCTION FROM BARTER

the contract shall be considered as a barter if:
- one person transfers the ownership of non-fungible things to another with the obligation on the part of the latter to give things of the same kind, quantity, and quality

OBLIGATIONS OF THE BORROWER

- the payment of debts in money shall be made in the currency stipulated
if it is not possible to deliver such currency, then in the currency which is the legal tender in the Philippines

NOTE:

the delivery of PN payable to order, or bills of exchange or other mercantile documents shall produce the effect of payment only; when
1. they have been cashed; or
2. when through the fault of the creditor they have been impaired

NOTE: IN CASE OF EXTRAORDINARY INFLATION OR DEFLATION OF THE CURRENCY STIPULATED

- the value of the currency at the time of the establishment of the obligation shall be the basis of the payment

EXE:

there is an agreement to the contrary

- If what was loaned is a fungible thing other than money,
the debtor owes another thing of the same kind, quantity and quality,
even if it should change in value.

In case it is impossible to deliver the same kind,

its value at the time of the perfection of the loan shall be paid. (*not the value at the time of the return*)

IN RE: INTEREST

NOTE: No interest shall be due unless it has been expressly stipulated in writing.

Art. 1960. If the borrower pays interest when there has been no stipulation therefor, the provisions of this Code concerning *solutio indebiti*, or natural obligations, shall be applied, as the case may be.

RULES IN DETERMINING THE VALUE OF THE INTEREST

if it is payable in kind,
its value shall be appraised at the current price of the products or goods
- at the time and place of payment.

DOES INTEREST DUE AND UNPAID EARN INTEREST

GEN RULE: NO

EXE:

1. art. 2212; interest due shall earn legal interest from the time it is judicially demanded
2. by stipulation of the parties; capitalize the interest due and unpaid

Art. 1957. Contracts and stipulations, under any cloak or device whatever, intended to circumvent the laws against usury shall be void. The borrower may recover in accordance with the laws on usury.

Art. 1961. Usurious contracts shall be governed by the Usury Law and other special laws, so far as they are not inconsistent with this Code. (n)

DEPOSIT	VOLUNTARY DEPOSIT
IN GENERAL	HOW VOLUNTARY DEPOSIT IS CONSTITUTED:
<p>AS A REAL CONTRACT</p> <ol style="list-style-type: none"> 1. A deposit is constituted from the moment a person receives a thing belonging to another, 2. An agreement to constitute a deposit is binding, but the deposit itself is not perfected until the delivery of the thing. <p>OBLIGATION CREATED AS A RESULT OF DEPOSIT</p> <ol style="list-style-type: none"> 1. obligation of safely keeping it and 2. of returning the same. <p>If the safekeeping of the thing delivered is not the principal purpose of the contract, - there is no deposit but some other contract.</p> <p>OTHER CHARACTERISTIC</p> <p>A deposit is a gratuitous contract,</p> <p>EXE</p> <ol style="list-style-type: none"> 1. when there is an agreement to the contrary, or 2. the depositary is engaged in the business of storing goods. <p>NOTE:</p> <ul style="list-style-type: none"> • Only movable things may be the object of a deposit • not a formal contract • may be a personal contract; gratuitous voluntary deposit <p>TYPES OF DEPOSIT</p> <p>A deposit may be constituted</p> <ol style="list-style-type: none"> 1. judicially or 2. extrajudicially. <ul style="list-style-type: none"> • voluntary; or • necessary 	<p>IN GENERAL</p> <p>HOW VOLUNTARY DEPOSIT IS CONSTITUTED:</p> <ol style="list-style-type: none"> 1. A voluntary deposit is that wherein the delivery is made by the will of the depositor; or 2. A deposit may also be made by two or more persons each of whom believes himself entitled to the thing deposited with a third person, who shall deliver it in a proper case to the one to whom it belongs. <p>NOTE: A contract of deposit may be entered into orally or in writing.</p> <p>EFFECTS IF THE DEPOSITOR IS AN INCAPACITATED PERSON</p> <ol style="list-style-type: none"> 1. If a person having capacity to contract accepts a deposit made by one who is incapacitated, the former shall be subject to all the obligations of a depositary, and 2. may be compelled to return the thing by the <ul style="list-style-type: none"> • guardian, • administrator, • of the person who made the deposit, or • by the latter himself if he should acquire capacity. <p>EXE FOR THE LAST:</p> <p><i>If the deposit has been made by a capacitated person with another who is not,</i></p> <p>the depositor shall only have an action to recover the thing deposited - while it is still in the possession of the depositary</p> <p>EXE:</p> <p>if a third person who acquired the thing acted in bad faith, - the depositor may bring an action against him for its recovery.</p> <p>(if it is no longer in the possession of the depositary)</p> <p>- to compel the latter to pay him the amount by which he may have enriched or benefited himself with the thing or its price.</p> <p>DEPOSIT IS EXTINGUISHED</p> <ol style="list-style-type: none"> 1. Upon the loss or destruction of the thing deposited; 2. In case of a gratuitous deposit, upon the death of either the depositor or the depositary.

OBLIGATIONS OF THE DEPOSITORY

- The depositary is obliged to keep the thing safely and to return it, when required

TO WHOM THE THING SHALL BE RETURNED

1. to the depositor,
2. to his heirs and successors, or
3. to the person who may have been designated in the contract.

His responsibility, with regard to the safekeeping and the loss of the thing, shall be governed by the provisions of Title I of this Book.

If the deposit is gratuitous, this fact shall be taken into account in determining the degree of care that the depositary must observe.

- the depositary cannot deposit the thing with a third person.

UNLESS: there is stipulation to the contrary

If deposit with a third person is allowed,
the depositary is liable for the loss if he deposited the thing with a person
- who is manifestly careless or unfit.

NOTE: The depositary is responsible for the negligence of his employees.

- depositary cannot change the way of the deposit

EXE:

The depositary may change the way of the deposit

IF under the circumstances he may reasonably presume that

- the depositor would consent to the change if he knew of the facts of the situation.

REQ:

shall notify the depositor thereof and wait for his decision

EXE: NOTICE IS DISPENSED WITH IF
delay would cause danger.

- The depositary holding certificates, bonds, securities or instruments which earn interest shall be bound to collect the latter when it becomes due, and to take such steps as may be necessary in order that the securities may preserve their value and the rights corresponding to them according to law.

The above provision shall not apply to contracts for the rent of safety deposit boxes.

- the depositary may commingle grain or other articles of the same kind and quality, in which case the various depositors shall own or have a proportionate interest in the mass.

EXE:

Unless there is a stipulation to the contrary,

- The depositary cannot make use of the thing deposited without the express permission of the depositor.

Otherwise, he shall be liable for damages.

EXE: WHEN DEPOSITORY MAY USE THE THING

1. consent of the depositor; or
2. when the preservation of the thing deposited requires its use, it must be used but only for that purpose.

NOTE:

When the depositary has permission to use the thing deposited,
- the contract loses the concept of a deposit and becomes a loan or commodatum,

EXE: where safekeeping is still the principal purpose of the contract.

NOTE:

The permission shall not be presumed, and its existence must be proved.

- The depositary is liable for the loss of the thing through a fortuitous event:

1. If it is so stipulated;
2. If he uses the thing without the depositor's permission;
3. If he delays its return;
4. If he allows others to use it, even though he himself may have been authorized to use the same.

- Fixed, savings, and current deposits of money in banks and similar institutions shall be governed by the provisions concerning simple loan.
- When the thing deposited is delivered closed and sealed, the depositary must return it in the same condition, and he shall be liable for damages should the seal or lock be broken through his fault.

Fault on the part of the depositary is presumed,
UNLESS
there is proof to the contrary.

VALUATION OF DAMAGE RECOVERABLE FOR UNAUTHORIZED OR FORCIBLE OPENING

As regards the value of the thing deposited,
the statement of the depositor shall be accepted,
- should there be no proof to the contrary.

However, the courts may pass upon the credibility of the depositor
- with respect to the value claimed by him.

FURTHER OBLIGATION OF THE DEPOSITARY

When the seal or lock is broken, with or without the depositary's fault,
- he shall keep the secret of the deposit.

PRESUMPTION WHEN DEPOSITARY IS PRESUMED TO HAVE BEEN AUTHORIZED TO OPEN A LOCKED BOX OR RECEPTACLE

1. if the key has been delivered to him; or
2. when the instructions of the depositor as regards the deposit cannot be executed without opening the box or receptacle.

PROVIDED: it become necessary to open the locked box or receptacle

- The thing deposited shall be returned with all its products, accessories and accessions.

Should the deposit consist of money, the provisions relative to agents in article 1896 shall be applied to the depositary.
the agent owes interest on the sums he has applied to his own use from the

day on which he did so, and on those which he still owes after the extinguishment of the agency

- The depositary cannot demand that the depositor prove his ownership of the thing deposited.

Nevertheless, should he discover that the thing has been stolen and who its true owner is,
- he must advise the latter of the deposit.

If the owner, in spite of such information, does not claim it within the period of one month,
- the depositary shall be relieved of all responsibility by returning the thing deposited to the depositor.

If the depositary has reasonable grounds to believe that the thing has not been lawfully acquired by the depositor,
- the former may return the same.

- When there are two or more depositors, if they are not solidary, and the thing admits of division, each one cannot demand more than his share.

When there is solidarity or the thing does not admit of division, the provisions of Articles 1212 and 1214 shall govern.

ART. 1212
each one of the solidary creditors may do whatever may be useful to the other, but not anything which may be prejudicial to the latter

ART. 1214
the debtor may pay any one of the solidary creditors; but if any demand, judicial or extrajudicial, has been made by one of them, payment should be made to him.

However, if there is a stipulation that the thing should be returned to one of the depositors,
- the depositary shall return it only to the person designated.

- If the depositor should lose his capacity to contract after having made the deposit, the thing cannot be returned
except to the persons who may have the administration of his property and rights.

THE AWESOME NOTES CREDIT TRANSACTION

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- If at the time the deposit was made a place was designated for the return of the thing, the depositary must take the thing deposited to such place;

but the expenses for transportation shall be borne by the depositor.

If no place has been designated for the return, it shall be made

- where the thing deposited may be, even if it should not be the same place where the deposit was made,

provided

that there was no malice on the part of the depositary.

The thing deposited must be returned to the depositor upon demand,
even though a specified period or time for such return may have been fixed.

EXE:

1. when the thing is judicially attached while in the depositary's possession, or
2. should he have been notified of the opposition of a third person to the return or the removal of the thing deposited.

In these cases, the depositary must immediately inform the depositor of the attachment or opposition.

- the depositary who may have justifiable reasons for not keeping the thing deposited may, even before the time designated, return it to the depositor;

and if the latter should refuse to receive it,

- the depositary may secure its consignation from the court.

EXE:

Unless the deposit is for a valuable consideration

- If the depositary by force majeure or government order loses the thing and receives money or another thing in its place, he shall deliver the sum or other thing to the depositor.

- The depositor's heir who in good faith may have sold the thing which he did not know was deposited,

a. shall only be bound to return the price he may have received or

b. to assign his right of action against the buyer in case the price has not been paid him.

OBLIGATIONS OF THE DEPOSITOR

IN RE: OBLIGATION TO REIMBURSE THE DEPOSITOR

- If the deposit is gratuitous, the depositor is obliged to reimburse the depositary for the expenses he may have incurred for the preservation of the thing deposited.

- The depositor shall reimburse the depositary for any loss arising from the character of the thing deposited,

unless at the time of the constitution of the deposit the former was

1. not aware of,
2. not expected to know the dangerous character of the thing,
3. unless he notified the depositary of the same, or the latter was aware of it without advice from the depositor.

IF NOT PAID

The depositary may retain the thing in pledge
UNTIL the full payment of what may be due him by reason of the deposit.

NECESSARY DEPOSIT

WHEN IS DEPOSIT A NECESSARY DEPOSIT

1. When it is made in compliance with a legal obligation;
2. When it takes place on the occasion of any calamity, such as fire, storm, flood, pillage, shipwreck, or other similar events.

WHEN MADE IN COMPLIANCE WITH A LEGAL OBLIGATION

it shall be governed by

1. the provisions of the law establishing it, and
2. in case of its deficiency, by the rules on voluntary deposit.

WHEN MADE ON OCCASION OF FSFPSOe

it article shall be regulated by

- the provisions concerning voluntary deposit and
- by Article 2168.

ART. 2168

*when during fire, flood, storm or other calamity, property is saved from destruction by another person without the knowledge of the owner,
- the latter is bound to pay the former just compensation*

IN RE: HOTELS AND INNS

NECESSARIES; defined

The deposit of effects made by the travellers in hotels or inns shall also be regarded as necessary.

NATURE OF OBLIGATION OF HOTEL OR INN KEEPERS OVER THE NECESSARIES

- as depositaries

PROVIDED

1. that notice was given to them, or to their employees, of the effects brought by the guests and
2. that, on the part of the latter, they take the precautions which said hotel-keepers or their substitutes advised relative to the care and vigilance of their effects.

SAME OBLIGATION OVER

vehicles, animals and articles

- which have been introduced or placed in the annexes of the hotel.

RESPONSIBILITY OF THE HOTEL OR INN
KEEPERS EXTENDS TO
the loss of, or injury to the personal property
of the guests caused by

- ~ the servants or employees of the
keepers of hotels or inns as well as
strangers;
- but not that which may
proceed from any force
majeure.

ie.

The act of a thief or robber,
who has entered the hotel is
not deemed force majeure,

UNLESS

it is done with the use
of arms or through an
irresistible force.

The fact that travellers are constrained
to rely on the vigilance of the keeper of
the hotels or inns

- shall be considered in determining
the degree of care required of him.

WHEN HOTEL-KEEPERS ARE EXCUSED FROM LIABILITY

if the loss is due to the acts of the

1. guest,
2. his family, servants or visitors, or
3. if the loss arises from the character of the
things brought into the hotel.

QUERY; kasama ba dito force majeure?

HOTEL-KEEPER CANNOT FREE HIMSELF FROM RESPONSIBILITY BY

posting notices to the effect that he is not liable
for the articles brought by the guest.

Any stipulation between the hotel-
keeper and the guest whereby the
responsibility of the former is
suppressed or diminished
~ shall be void.

HOTEL-KEEPER'S RIGHT OF RETENTION

The hotel-keeper has a right to retain the
things brought into the hotel by the guest,

~ as a security for

1. credits on account of lodging, and
2. supplies usually furnished to hotel
guests.

SEQUESTRATION OR JUDICIAL DEPOSIT

Art. 2005. A judicial deposit or sequestration takes place when an attachment or seizure of property in litigation is ordered.

Art. 2006. Movable as well as immovable property may be the object of sequestration.

Art. 2007. The depositary of property or objects sequestered cannot be relieved of his responsibility until the controversy which gave rise thereto has come to an end, unless the court so orders.

Art. 2008. The depositary of property sequestered is bound to comply, with respect to the same, with all the obligations of a good father of a family.

Art. 2009. As to matters not provided for in this Code, judicial sequestration shall be governed by the Rules of Court.

GUARANTY AND SURETYSHIP

<http://www.batasnatin.com/law-library/civil-law/obligations-and-contracts/760-guaranty-and-suretyship.html>

NATURE AND EXTENT OF GUARANTY

Article 2047. By guaranty, a person, called the guarantor, binds himself to the creditor to fulfill the obligation of the principal debtor in case the latter should fail to do so.

If a person binds himself solidarily with the principal debtor, the provisions of Section 4, Chapter 3, Title I of this Book shall be observed. In such case, the contract is called a suretyship.

GUARANTY

> Contract between the guarantor and creditor
> In a broad sense, it includes pledge and mortgage because the purpose of guaranty may be accomplished not only by securing the fulfillment of an obligation contracted by the principal debtor through the personal guaranty of a third person but also by furnishing to the creditor for his security, property with authority to collect the debt from the proceeds of the same in case of default.

CHARACTERISTICS OF A GUARANTY

1. Accessory—because it is dependent for its existence upon the principal obligation guaranteed by it
2. Subsidiary and conditional—it takes effect only when the principal debtor fails in his obligation subject to limitation
3. Unilateral—
 - a. Gives rise only to the duty on the part of the guarantor in relation to the creditor and not vice versa
 - b. It may be entered into even without the intervention of the principal debtor
4. Contract, which requires that the guarantor be a distinct person from the principal debtor because a person cannot be the personal guarantor of himself

CLASSIFICATION OF GUARANTY

1. Guaranty in the broad sense—
 - a. Personal—guaranty properly so-called or guaranty in the strict sense. The guarantee given is the credit given by the person who guarantees the fulfillment of the principal obligation.
 - b. Real—the guaranty is property, movable or immovable
2. As to its origin
 - a. Conventional
 - b. Legal
 - c. Judicial
3. As to consideration
 - a. Gratuitous
 - b. Onerous
4. As to persons guaranteed
 - a. Single
 - b. Double or sub-guaranty—one constituted to secure the fulfillment of a guarantee in another guaranty
5. As to its scope and extent
 - a. Definite—one where the guaranty is limited to the principal obligation only, or to a specific portion thereof
 - b. Indefinite or simple—one where the guaranty includes not only the principal obligation but also all its accessories

SURETYSHIP

> A relation which exists where one person has undertaken an obligation and another person is also under a direct and primary obligation or other duty to a third person, who is entitled to but one performance, and as between the two who are bound, the one rather than the other should perform
> Contractual relation resulting from an agreement whereby one person, the surety, engages to be answerable for a debt, default, miscarriage of another known as the principal

LAW APPLICABLE TO SURETYSHIP

Second paragraph

It covers OBLIGATIONS, DIFFERENT KINDS OF OBLIGATIONS, JOINT AND SOLIDARY OBLIGATIONS, OBLIGATIONS AND CONTRACTS

> If a person binds himself solidarily with the principal debtor, the contract is called suretyship and the guarantor is called the SURETY

NATURE AND EXTENT OF GUARANTY

CONTACT OF GUARANTEE; defined

By guaranty a person, called the guarantor, binds himself to the creditor to fulfill the obligation of the principal debtor in case the latter should fail to do so.

SURETYSHIP; defined

If a person binds himself solidarily with the principal debtor, the provisions of Section 4, Chapter 3, Title I of this Book shall be observed. In such case the contract is called a suretyship.

NOTES:

- A guaranty is gratuitous, unless there is a stipulation to the contrary.
- A guaranty may be conventional, legal or judicial, gratuitous, or by onerous title.
- Consent of the debtor, is not material. *guarantee may be constituted even though it is against the will of the debtor. what is material is consent of the creditor.*

GUARANTEE MAY BE CONSTITUTED ON

A guaranty cannot exist without a valid obligation.

Nevertheless, a guaranty may be constituted to guarantee

1. the performance of a voidable or an unenforceable contract.
2. It may also guarantee a natural obligation.
3. as security for future debts, the amount of which is not yet known; there can be no claim against the guarantor until the debt is liquidated.
4. A conditional obligation may also be secured.

It may also be constituted, not only in favor of the principal debtor, but also in favor of the other guarantor, with the latter's consent, or without his knowledge, or even over his objection.

A MARRIED WOMAN MAY GUARANTEE AN OBLIGATION

EVEN WITHOUT the consent of the husband

PROVIDED:

but shall not thereby bind the conjugal partnership, except in cases provided by law.

EFFECT WHEN GUARANTEE IS CONSTITUTED WITHOUT THE KNOWLEDGE OR CONSENT, OR AGAINST THE WILL OF THE DEBTOR

SHOULD THE GUARANTOR PAYS THE OBLIGATION OF THE DEBTOR; rights acquired:

1. can recover only insofar as the payment has been beneficial to the debtor (not the whole amount paid)
2. cannot compel the creditor to subrogate him in his rights, such as those arising from a mortgage, guaranty or penalty

EXTENT OF THE GUARANTEE

RULE: A guaranty is not presumed; it must be express and cannot extend to more than what is stipulated therein.

If it be simple or indefinite, it shall compromise

1. the principal obligation,
2. all its accessories,
3. including the judicial costs, provided with respect to the latter, that the guarantor shall only be liable for those costs

- incurred after he has been judicially required to pay.

NOTE:

Art. 2054. A guarantor may bind himself for less, but not for more than the principal debtor, both as regards the amount and the onerous nature of the conditions.

Should he have bound himself for more, his obligations shall be reduced to the limits of that of the debtor.

QUALIFICATIONS OF GUARANTOR

1. integrity,
2. capacity to bind himself, and
3. sufficient property to answer for the obligation which he guarantees.

GROUND FOR DISQUALIFICATION

1. convicted in first instance of a crime involving moral turpitude; or
2. has become insolvent

NOTE:

but not automatically disqualified and be replaced by a new guarantor possessing the same qualifications

- kasi; this is only upon the request of the creditor

WHEN THE CREDITOR CANNOT REQUEST

- when the creditor has required and stipulated that a specified person should be the guarantor.

NOTE:

The guarantor shall be subject to the jurisdiction of the court of the place where this obligation is to be complied with.

EFFECTS OF GUARANTY

SECTION 1. - Effects of Guaranty Between the Guarantor and the Creditor

GUARANTOR'S LIABILITY IS ONLY SUBSIDIARY

BENEFIT OF EXCUSION

The guarantor cannot be compelled to pay the creditor

UNLESS the latter has

1. exhausted all the property of the debtor, and
2. resorted to all the legal remedies against the debtor.

In order that the guarantor may make use of the benefit of exclusion.

1. he must set it up against the creditor upon the latter's demand for payment from him, and
2. point out to the creditor available property of the debtor within Philippine territory, sufficient to cover the amount of the debt.

The guarantor having fulfilled all the conditions required in the preceding article,

the creditor who is negligent in exhausting the property pointed out shall suffer the loss, to the extent of said property,
- for the insolvency of the debtor resulting from such negligence.

NOTE:

- The benefit of excusion shall always be unimpaired, even if judgment should be rendered against the principal debtor and the guarantor in case of appearance by the latter.
- The guarantor of a guarantor shall enjoy the benefit of excusion, both with respect to the guarantor and to the principal debtor.

ART. 2059:
EXCUSION SHALL NOT TAKE PLACE; when

1. If the guarantor has expressly renounced it;
2. If he has bound himself solidarily with the debtor;
3. In case of insolvency of the debtor;
4. When the debtor has absconded, or cannot be sued within the Philippines unless he has left a manager or representative;
5. If it may be presumed that an execution on the property of the principal debtor would not result in the satisfaction of the obligation.

EFFECT OF EXCUSION

In every action by the creditor,

- which must be against the principal debtor alone,
EXE: in the cases mentioned in Article 2059,

[IN SUCH ACTION]

- the former shall ask the court to notify the guarantor of the action.
- The guarantor may appear so that he may, if he so desire, set up such defenses as are granted him by law.

EFFECT OF COMPROMISE ENTERED WITH THE CREDITOR

IF ENTERED BY THE PRINCIPAL DEBTOR
A compromise between the creditor and the principal debtor

- benefits the guarantor
- but does not prejudice him.

IF ENTERED BY THE GUARANTOR

- benefits the principal debtor
- but does not prejudice the principal debtor.

RULE IN CASE THERE ARE SEVERAL GUARANTORS IN FAVOR OF ONE AND SAME DEBT

the obligation to answer for the same is divided among all. The creditor cannot claim from the guarantors except the shares which they are respectively bound to pay, unless solidarity has been expressly stipulated.

The benefit of division against the co-guarantors ceases in the same cases and for the same reasons as the benefit of excusion against the principal debtor.

GIST; parang presumption of joint liability, except of solidarity has been expressly stipulated.

**SECTION 2. - Effects of Guaranty
Between the Debtor and the Guarantor**

**RIGHTS OF THE GUARANTOR WHO PAYS
FOR THE DEBTOR**

1. must be indemnified by the debtor
2. subrogated with all the rights of the creditor

IN RE: RIGHT TO BE INDEMNIFIED

THE INDEMNITY COMPRISSES

1. The total amount of the debt;
2. The legal interests thereon from the time the payment was made known to the debtor, even though it did not earn interest for the creditor;
3. The expenses incurred by the guarantor after having notified the debtor that payment had been demanded of him;
4. Damages, if they are due.

**WHEN DESPITE OF PAYMENT,
GUARANTOR CANNOT DEMAND FOR
REIMBURSEMENT**

If the debt was for a period and the guarantor paid it before it became due,
he cannot demand reimbursement of the debtor
UNTIL the expiration of the period
EXE: the payment has been ratified by the debtor.

**AMOUNT RECOVERABLE AGAINST THE
DEBTOR**

GEN RULE: the amount paid to the creditor

EXE:

1. the amount actually paid to the creditor, if the guarantor was able to compromise with the creditor

IN RE: SUBROGATION

The guarantor who pays is subrogated by virtue thereof to all the rights which the creditor had against the debtor.

**IN RE: IMPORTANCE OF NOTIFYING THE
DEBTOR BEFORE GUARANTOR PAYS THE
CREDITOR**

ABSENCE OF NOTICE

the debtor may enforce against the guarantor all the defenses which he could have set up against the creditor at the time the payment was made.

HENCE:

If the guarantor has paid without notifying the debtor, and the latter not being aware of the payment, repeats the payment,
- the former has no remedy whatever against the debtor, but only against the creditor (unjust enrichment)

**EXE: WHEN DESPITE OF
PRIOR PAYMENT MADE BY
THE DEBTOR; guarantor may
still recover when he did not
notify the debtor at the time he
made the payment**

1. guaranty is gratuitous
2. if the guarantor was prevented by a fortuitous event from advising the debtor of the payment, and
3. the creditor becomes insolvent,

the debtor shall reimburse the guarantor for the amount paid.

Art. 2071

**INSTANCES WHEN THE GUARANTOR MAY
PROCEED DIRECTLY AGAINST THE
DEBTOR; even if no payment has been
made yet by the guarantor**

1. When he is sued for the payment;
2. In case of insolvency of the principal debtor;
3. When the debtor has bound himself to relieve him from the guaranty within a specified period, and this period has expired;
4. When the debt has become demandable, by reason of the expiration of the period for payment;
5. After the lapse of ten years, when the principal obligation has no fixed period for its maturity, unless it be of such nature that it cannot be extinguished except within a period longer than ten years;
6. If there are reasonable grounds to fear that the principal debtor intends to abscond;
7. If the principal debtor is in imminent danger of becoming insolvent.

In all these cases, the action of the guarantor is to:

1. obtain release from the guaranty, or
2. to demand a security that shall protect him from any proceedings by the creditor and from the danger of insolvency of the debtor.

Art. 2072. If one, at the request of another, becomes a guarantor for the debt of a third person who is not present, the guarantor who satisfies the debt may sue either the person so requesting or the debtor for reimbursement.

SECTION 3. - Effects of Guaranty as Between Co-Guarantors

EFFECT OF PAYMENT OF DEBT BY A GUARANTOR; if there are several guarantors

When there are two or more guarantors of the same debtor and for the same debt,

1. the one among them who has paid may demand of each of the others the share which is proportionally owing from him.
2. If any of the guarantors should be insolvent, his share shall be borne by the others, including the payer, in the same proportion.

BUT ABOVE MENTION SHALL ONLY APPLY IF; the payment was made

1. by virtue of a judicial demand or
2. the principal debtor is insolvent.

Art. 2074. In the case of the preceding article, the co-guarantors may set up against the one who paid, the same defenses which would have pertained to the principal debtor against the creditor, and which are not purely personal to the debtor.

Art. 2075. A sub-guarantor, in case of the insolvency of the guarantor for whom he bound himself,

is responsible to the co-guarantors in the same terms as the guarantor.

EXTINGUISHMENT OF GUARANTY

The obligation of the guarantor is extinguished at the same time as that of the debtor, and for the same causes as all other obligations.

- If the creditor voluntarily accepts immovable or other property in payment of the debt, even if he should afterwards lose the same through eviction,
 - the guarantor is released.
- A release made by the creditor in favor of one of the guarantors, without the consent of the others,
 - benefits all to the extent of the share of the guarantor to whom it has been granted.

ano to:

- An extension granted to the debtor by the creditor without the consent of the guarantor extinguishes the guaranty.

NOTE HOWEVER THAT

The mere failure on the part of the creditor to demand payment after the debt has become due

- does not of itself constitute any extension of time referred to herein.

- guarantors, even though they be solidary, are released from their obligation whenever by some act of the creditor they cannot be subrogated to the rights, mortgages, and preference of the latter.

NOTE:

The guarantor may set up against the creditor all the defenses which pertain to the principal debtor and are inherent in the debt; but not those that are personal to the debtor.

CHAPTER 4
LEGAL AND JUDICIAL BONDS

Art. 2082. The bondsman who is to be offered in virtue of a provision of law or of a judicial order shall have the qualifications prescribed in Article 2056 and in special laws.

Art. 2083. If the person bound to give a bond in the cases of the preceding article, should not be able to do so, a pledge or mortgage considered sufficient to cover his obligation shall be admitted in lieu thereof. (1855)

Art. 2084. A judicial bondsman cannot demand the exhaustion of the property of the principal debtor.

A sub-surety in the same case, cannot demand the exhaustion of the property of the debtor of the surety.

**THE AWESOME NOTES
CREDIT TRANSACTION**

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	PLEDGE	ANTICHRESIS	CHATTEL MORTGAGE	REAL ESTATE MORTGAGE
AS TO SUBJECT MATTER	movables	immovables	movables immovables - but shall bind only the parties EXE: (a) immovables nga, kaso yung immovables is subject to demolition, hence, intention of the parties is only as to the materials. treated as movable; or (b) treated by law as mere personality 1. large cattle 2. growing crops	immovables
AS TO THE CAUSE	<p>all are accessory contracts; as security transaction. note: walang sinabi about sa antichresis, pero lahat at indivisible note: pwere lang sa antichresis: applicable ang pactum commissorium</p>			
OWNERSHIP	the pledgor must be 1. the <u>owner</u> of the thing pledged AND 2. must have <u>free disposal</u> of the same at the time of the constitution of the pledge. - pag acquisition of the req is only after the pledge, void pledge.		same	same
WHEN PERFECTED	R E A L CONTRACT upon delivery of the thing pledged. EXE: when constructive delivery is available.	A SOLEMN CONTRACT - the agreement as to the principal and the interest must be in writing - otherwise; void.	NOT FORMAL AND SOLEMN CONTRACT - kasi, although not registered and in the form required by law, a mere promise to constitute a mortgage already gives rise to a personal action between the contracting parties, as long as the contract has been perfected. - upon perfection of the contract.	

**THE AWESOME NOTES
CREDIT TRANSACTION**

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AS TO RIGHT OF USE OF THE THING	GEN RULE: pledgee has no right to use the thing pledged EXE: 1. authorized by the pledgor; or 2. use is necessary for its preservation	anticretic creditor has no right to use. - only to apply the fruits to the interest, and if in excess, to the principal	mortgagee has no right of use - kasi in the first place, wala namang delivery	
FOR DEFICIENCY	barred na to claim. stipulation to the contrary is void	there is right to recover deficiency from the debtor, and not the mortgagor in case they are diff persons	meron EXE: pag pumasok sa recto law.	meron
AS TO THE EXCESS	pertains to the pledgee; unless there is contrary stipulation.	goes to the anticretic debtor	goes to the mortgagor, which is not necessarily the debtor	same

PLEDGE, MORTGAGE AND ANTICHRESIS

PROVISIONS COMMON TO PLEDGE AND MORTGAGE

REQUISITES OF CONTRACT OF PLEDGE AND MORTGAGE

1. That they be constituted to secure the fulfillment of a principal obligation;
2. That the pledgor or mortgagor be the absolute owner of the thing pledged or mortgaged;
3. That the persons constituting the pledge or mortgage have the free disposal of their property, and in the absence thereof, that they be legally authorized for the purpose.

ADDED REQUIREMENT

IN RE: PLEDGE:

FOR VALIDITY

- the thing pledged be placed in the possession of the creditor, or of a third person by common agreement.

FOR CONVENIENCE

ff must appear in a public instrument:

1. a description of the thing pledged and
2. the date of the pledge

otherwise; A pledge shall not take effect against third persons if

IN RE: ANTICHRESIS

FOR VALIDITY

The amount of the principal and of the interest shall be specified in writing;

otherwise, the contract of antichresis shall be void.

IN RE: MORTGAGE

NOTES:

- Third persons who are not parties to the principal obligation may secure the latter by pledging or mortgaging their own property.
- The provisions of Article 2052 are applicable to a pledge or mortgage.
 - *it cannot exist without a valid obligation*
 - *but it may be constituted to guarantee a voidable or unenforceable contract, and also a natural obligation*

• It is also of the essence of these contracts that when the principal obligation becomes due, the things in which the pledge or mortgage consists may be alienated for the payment to the creditor.

- The creditor cannot appropriate the things given by way of pledge or mortgage, or dispose of them.

Any stipulation to the contrary is null and void.
(yung proceeds lang ng sale.)

- A pledge or mortgage is indivisible, even though the debt may be divided among the successors in interest of the debtor or of the creditor.

Therefore,

- the debtor's heir who has paid a part of the debt cannot ask for the proportionate extinguishment of the pledge or mortgage as long as the debt is not completely satisfied.

- Neither can the creditor's heir who received his share of the debt return the pledge or cancel the mortgage, to the prejudice of the other heirs who have not been paid.

EXE:

there being several things given in mortgage or pledge,

- each one of them guarantees only a determinate portion of the credit.

The debtor, in this case, shall have a right to the extinguishment of the pledge or mortgage

- as the portion of the debt for which each thing is specially answerable is satisfied.

The indivisibility of a pledge or mortgage is not affected by the fact that the debtors are not solidarily liable.

- The contract of pledge or mortgage may secure all kinds of obligations, be they pure or subject to a suspensive or resolutory condition.

- A promise to constitute a pledge or mortgage gives rise only to a personal action between the contracting parties, without prejudice to the criminal responsibility incurred by him who defrauds another, by offering in pledge or mortgage as unencumbered, things which he knew were subject to some burden, or by misrepresenting himself to be the owner of the same.

PLEDGE

PROPER OBJECT OF PLEDGE

- All movables which are within commerce may be pledged,
provided they are susceptible of possession
- Incorporeal rights,
evidenced by
 1. negotiable instruments,
 2. bills of lading,
 3. shares of stock,
 4. bonds,
 5. warehouse receipts and
 6. similar documents
 7. may also be pledged.

HOW THIS IS TRANSFERRED (DELIVERED)

The instrument proving the right pledged shall be
 1. delivered to the creditor, and
 2. if negotiable, must be indorsed.

ALIENATION OF THE THING PLEDGED BY THE PLEDGOR OR OWNER

GEN RULE:

ownership shall not be transferred to the vendee

EXE:

if it is done with the consent of the pledgee

NOTE: regardless of whether the pledgee consent to the alienation or not, the same shall continue with the possession of the thing pledged.

Art. 2103.

Unless the thing pledged is expropriated, the debtor continues to be the owner thereof.

Nevertheless, the creditor may bring the actions which pertain to the owner of the thing pledged in order to recover it from, or defend it against a third person.

RIGHTS OF THE CREDITOR / PLEDGEE

- to retain the thing in his possession or in that of a third person to whom it has been delivered, until the debt is paid.

The debtor cannot ask for the return of the thing pledged against the will of the creditor,

unless and until

- he has paid the debt and its interest, with expenses in a proper case.

- can use the thing pledged,

USE BY THE PLEDGEE OF THE THING PLEDGED IS VALID IF:

1. with the authority of the owner; or
2. even without authority, if the preservation of the thing pledged requires its use, it must be used by the creditor but only for that purpose

OTHERWISE

- the owner may ask that it be judicially or extrajudicially deposited..

- right to the reimbursement of the expenses made for its preservation
- If a credit which has been pledged becomes due before it is redeemed, the pledgee may collect and receive the amount due.

He shall apply the same

1. to the payment of his claim, and
2. deliver the surplus, should there be any, to the pledgor.

If two or more things are pledged, the pledgee may choose which he will cause to be sold,

He may demand the sale of only as many of the things as are necessary for the payment of the debt.

EXE

there is a stipulation to the contrary (as to who will have the right choice)

DUTIES OF THE PLEDGEE

- take care of the thing pledged with the diligence of a good father of a family;
- liable for its loss or deterioration, in conformity with the provisions of this Code.
- The pledgee cannot deposit the thing pledged with a third person,
UNLESS
there is a stipulation authorizing him to do so.

- The pledgee is responsible for the acts of his agents or employees with respect to the thing pledged.

IN RE: FRUITS OF THING AND OFFSPRING OF THE ANIMAL PLEDGED

If the pledge earns or produces fruits, income, dividends, or interests,

- the creditor shall compensate what he receives with those which are owing him;
- but if none are owing him, or insofar as the amount may exceed that which is due,
 - he shall apply it to the principal.

UNLESS there is a stipulation to the contrary,
- the pledge shall extend to the interest and earnings of the right pledged.

In case of a pledge of animals, their offspring shall pertain to

the pledgor or owner of animals pledged,
but shall be subject to the pledge, if there is no stipulation to the contrary.

RESPONSIBILITY OF THE PLEDGOR

- The pledgor has the same responsibility as a bailor in commodatum in the case under Article 1951.

the bailor who, knowing the flaws of the thing loaned, does not advise the bailee of the same, shall be liable to the latter for the damages which he may suffer by reason thereof.

- The pledgee is bound to advise the pledgor, without delay, of any danger to the thing pledged

RIGHTS OF THE PLEDGOR

- may require that it be deposited with a third person.

IF:through the negligence or willful act of the pledgee,
- the thing pledged is in danger of being lost or impaired

- may demand for the return of the thing

[as an instance where pledgor has not yet paid in full all his debts]

REQUISITES

1. If there are reasonable grounds to fear the destruction or impairment of the thing pledged, without the fault of the pledgee,
2. upon offering another thing in pledge, of the same kind as the former and not of inferior quality, and
3. without prejudice to the right of the pledgee under the provisions of the following article.

- may cause the same to be sold at a public sale.

GROUND

If, without the fault of the pledgee,
- there is danger of destruction, impairment, or diminution in value of the thing pledged

HOW THE PROCEEDS OF THE AUCTION SHALL BE HANDLED
be a security for the principal obligation in the same
- manner as the thing originally pledged.

- The creditor to whom the credit has not been satisfied in due time, may proceed before a Notary Public to the sale of the thing pledged.
- creditor may appropriate the thing pledged.

THIS IS AS AN EXE TO THE RULE.

WHEN ALLOWED:

if at the second auction there is no sale

REQ:

1. second auction still there is no sale
2. obliged to give an acquittance for his entire claim.

THE AWESOME NOTES CREDIT TRANSACTION

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IN RE: AUCTION SALE

REQUISITES FOR SALE OF THE THING PLEDGED

1. This sale shall be made at a public auction, and
2. with notification to the debtor and the owner of the thing pledged in a proper case,
3. stating the amount for which the public sale is to be held.

If at the first auction the thing is not sold, a second one with the same formalities shall be held

WHO MAY BID AT THE PUBLIC AUCTION

1. stranger, 3rd person
2. the pledgor or owner may bid. He shall, have a better right if he should offer the same terms as the highest bidder.
3. The pledgee may also bid, but his offer shall not be valid if he is the only bidder.

NOTE:

- All bids at the public auction shall offer to pay the purchase price at once.
- If any other bid is accepted, the pledgee is deemed to have been received the purchase price, as far as the pledgor or owner is concerned.
- After the public auction, the pledgee shall promptly advise the pledgor or owner of the result thereof.

EFFECT OF SALE ON THE PLEDGE

The sale of the thing pledged shall extinguish the principal obligation,

IF THE PROCEEDS IS LESS THAN THE AMOUNT OF THE PRINCIPAL OBLIGATION, INTEREST AND EXPENSES

- pledge remains extinguished

whether or not the proceeds of the sale are equal to the amount of the principal obligation, interest and expenses in a proper case.

creditor is not entitled to recover the deficiency,
- notwithstanding any stipulation to the contrary

IF THE PRICE OF THE SALE IS
MORE THAN THE SAID AMOUNT
the debtor shall not be entitled to the excess,

EXE: it is otherwise agreed.

EXTINGUISHMENT OF PLEDGE

- If the thing pledged is returned by the pledgee to the pledgor or owner, the pledge is extinguished.

Any stipulation to the contrary shall be void.

If subsequent to the perfection of the pledge, the thing is in the possession of the pledgor or owner, there is a *prima facie* presumption that - the same has been returned by the pledgee.

This same presumption exists

- if the thing pledged is in the possession of a third person who has received it from the pledgor or owner after the constitution of the pledge.

- A statement in writing by the pledgee that he renounces or abandons the pledge is sufficient to extinguish the pledge.

For this purpose, neither

1. the acceptance by the pledgor or owner, nor
2. the return of the thing pledged - is necessary,

the pledgee becoming a depositary.

IN RE: THIRD PERSONS

Any third person who has any right in or to the thing pledged may satisfy the principal obligation as soon as the latter becomes due and demandable.(n)

If a third party secures an obligation by pledging his own movable property under the provisions of Article 2085

he shall have the same rights as a guarantor under

1. Articles 2066 to 2070, (pg. 14) and
2. Articles 2077 to 2081. (pg. 15; extinguishment)

He is not prejudiced by any waiver of defense by the principal obligor.

THE AWESOME NOTES CREDIT TRANSACTION

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PLEDGE CREATED BY OPERATION OF LAW

FF PLEDGES ARE CREATED BY OPERATION OF LAW

1. Art. 546; Necessary Expenses shall be refunded to every possessor; but only the possessor in gf may retain the thing until he has been reimbursed therefor.
2. Art. 546; Useful expenses shall be refunded only to the possessor in gf with the same right of retention...
3. Art. 1731; he who has executed work upon a movable has a right to retain it by way of pledge, until he is paid. (in re: contract of piece of work)
4. Art. 1994; the depositary may retain the thing in pledge until the full payment of what may be due him by reason of the deposit.

THE FF ARE GOVERNED
by the foregoing articles on the

1. possession,
2. care
3. sale of the thing as well as
4. on the termination of the pledge.

However, after payment of the debt and expenses, the remainder of the price of the sale shall be delivered to the obligor.

WHEN THING UNDER PLEDGE BY OPERATION OF LAW MAY BE SOLD

only after

- demand of the amount for which the thing is retained.

The public auction shall take place
within one month after such demand.

WHEN DEBTOR MAY DEMAND FOR THE RETURN OF THE THING

If, without just grounds, the creditor does not cause the public sale to be held within 1 month from the demand

IN RE: PAWNSHOPS

With regard to pawnshops and other establishments, which are engaged in making loans secured by pledges,

- the special laws and regulations concerning them shall be observed, and
- subsidiarily, the provisions of this Title.

ANTICHRESIS

CONTRACT OF ANTICHRESIS; defined

By the contract of antichresis, the creditor

1. acquires the right to receive the fruits of an immovable of his debtor,
2. with the obligation to apply them to the
 - payment of the interest, if owing, and
 - thereafter to the principal of his credit.

Art. 2138. The contracting parties may stipulate that the interest upon the debt be compensated with the fruits of the property which is the object of the antichresis, provided that if the value of the fruits should exceed the amount of interest allowed by the laws against usury, the excess shall be applied to the principal.

VALUATION

The actual market value of the fruits

AT THE TIME of the application thereof to the interest and principal
- shall be the measure of such application.

CREDITOR IS OBLIGED TO PAY FOR THE EXPENSES:

1. to pay the taxes and charges upon the estate, unless there is a stipulation to the contrary
2. to bear the expenses necessary for its preservation and repair.

NOTE:

The sums spent for the purposes stated in this article

- shall be deducted from the fruits.

HOW CAN THE CREDITOR AVOID THE MENTIONED OBLIGATION

1. by stipulation, but relieves him only to taxes and charges upon the estate
2. compel the debtor to enter again upon the enjoyment of the property; relieves the debtor not only from obligation to pay taxes and charges, but as well as expenses necessary for its preservation and repair.

IN RE #2:

- serves as an exception to the rule that the debtor cannot re-possess the immovable until he pays what he owes to the creditor
- AS AN EXE; when the creditor may still be held liable for necessary expenses, is should the parties so stipulate to such effect.

WHEN CAN DEBTOR RE-ACQUIRE POSSESSION OF THE IMMOVABLE

- by having totally paid what he owes the creditor.

AUTOMATIC APPROPRIATION OF THE IMMOVABLE BY THE CREDITOR IS NOT ALLOWD

Art. 2137.

The creditor does not acquire the ownership of the real estate for non-payment of the debt within the period agreed upon.

Every stipulation to the contrary shall be void.

WHAT THE CREDITOR SHOULD DO IS

petition the court for

1. the payment of the debt or
2. the sale of the real property.

In this case, the Rules of Court on the foreclosure of mortgages shall apply.

Art. 2139. The last paragraph of Article 2085, and Articles 2089 to 2091 are applicable to this contract.

LAST PART OF Art 2085;

3rd person who are not parties to the principal obligation may secure the latter by pledging or mortgaging their own property

ART. 2089

A pledge or mortgage is indivisible, even though the debt may be divided among the successors in interest of the debtor or of the creditor.

Therefore, the debtor's heir who has paid a part of the debt cannot ask for the proportionate extinguishment of the pledge or mortgage as long as the debt is not completely satisfied.

Neither can the creditor's heir who received his share of the debt return the pledge or cancel the mortgage, to the prejudice of the other heirs who have not been paid.

From these provisions is expected the case in which, there being several things given in mortgage or pledge, each one of them guarantees only a determinate portion of the credit.

The debtor, in this case, shall have a right to the extinguishment of the pledge or mortgage as the portion of the debt for which each thing is specially answerable is satisfied.

THE AWESOME NOTES CREDIT TRANSACTION

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ART. 2090

The indivisibility of a pledge or mortgage is not affected by the fact that the debtors are not solidarily liable.

ART. 2091

The contract of pledge or mortgage may secure all kinds of obligations, be they pure or subject to a suspensive or resolutory condition.

REAL MORTGAGE

PROPER OBJECT OF MORTGAGE

Only the following property may be the object of a contract of mortgage:

1. Immovables;
2. Alienable real rights in accordance with the laws, imposed upon immovables.

Nevertheless, movables may be the object of a chattel mortgage.

FORMALITY

in order that a mortgage may be validly constituted,

- that the document in which it appears be recorded in the Registry of Property.

If the instrument is not recorded,

- the mortgage is nevertheless binding between the parties.

RIGHT OF THE MORTGAGEE IF UNREGISTERED

no other right than to

- demand the execution and the recording of the document in which the mortgage is formalized.

EFFECT OF MORTGAGE

- directly and immediately subjects the property upon which it is imposed, whoever the possessor may be, = to the fulfillment of the obligation for whose security it was constituted.

• extends to the

1. natural accessions,
2. to the improvements,
3. growing fruits, and
4. the rents or income not yet received when the obligation becomes due, and
5. to the amount of the indemnity granted or owing to the proprietor
 - from the insurers of the property mortgaged, or
 - in virtue of expropriation for public use, with the declarations, amplifications and limitations established by law,

whether the estate

- remains in the possession of the mortgagor, or
- it passes into the hands of a third person.

ALIENATION OR ASSIGNMENT OF MORTGAGE CREDIT

The mortgage credit may be alienated or assigned to a third person, in whole or in part, with the formalities required by law.

NOTE:

Art. 2130. A stipulation forbidding the owner from alienating the immovable mortgaged shall be void

EFFECT IF THE MORTGAGED PROPERTY IS IN POSSESSION OF 3RD PERSON

The creditor may claim from a third person in possession of the mortgaged property, the payment of the part of the credit secured by the property which said third person possesses,

- in the terms and with the formalities which the law establishes.

Art. 2131. The form, extent and consequences of a mortgage, both as to its constitution, modification and extinguishment, and as to other matters not included in this Chapter, shall be governed by the provisions of the Mortgage Law and of the Land Registration Law.

CHATTEL MORTGAGE

Art. 2140. By a chattel mortgage, personal property is recorded in the Chattel Mortgage Register as a security for the performance of an obligation. If the movable, instead of being recorded, is delivered to the creditor or a third person, the contract is a pledge and not a chattel mortgage.

Art. 2141. The provisions of this Code on pledge, insofar as they are not in conflict with the Chattel Mortgage Law shall be applicable to chattel mortgages.

FROM: BATASINNATIN.COM

REAL MORTGAGE

REAL ESTATE MORTGAGE (ARTICLES 2124-2131)

Details

Category: Obligations and Contracts

MORTGAGE

> Contract whereby the debtor secures to the creditor the fulfillment of a principal obligation, specially substituting to such security immovable property or real rights over immovable property which obligation shall be satisfied with the proceeds of sale of said property or rights in case the said obligation is not complied with at the time stipulated
> Real, accessory, unilateral and subsidiary contract

POSSESSION OF PROPERTY MORTGAGED

RULE:

it is retained by the mortgagor

The mortgaged property is only subjected to a lien by the mortgagee but ownership is retained by the mortgagor

PAYMENT OF INTEREST ON MORTGAGE CREDIT

> With regard to fruits or interest, the mortgagee shall be subject to the obligation of an antichresis creditor

SUBJECT MATTER OF MORTGAGE

> Immovables and alienable real rights over immovables

FUTURE PROPERTY CANNOT BE OBJECT OF MORTGAGE

> Future property cannot be the object of a contract of mortgage

EXE: by stipulation

A stipulation subjecting the mortgage lien, properties which the mortgagor may subsequently acquire, install, or use in connection with real property already mortgaged belonging to the mortgagor is valid

Art. 2125. In addition to the requisites stated in Article 2085, it is indispensable, in order that a mortgage may be validly constituted, that the document in which it appears be recorded in the Registry of Property. If the instrument is not recorded, the mortgage is nevertheless binding between the parties.

The persons in whose favor the law establishes a mortgage have no other right

than to demand the execution and the recording of the document in which the mortgage is formalized. (1875a)

ESSENTIAL REQUISITES OF A MORTGAGE

1. To secure the fulfillment of a principal obligation
2. The mortgagor should be the absolute owner of thing mortgaged
3. The mortgagor should have free disposal of the thing
4. When the principal obligation becomes due, the thing mortgaged may be alienated to secure payment
5. For a mortgage to be validly constituted and to prejudice third persons, the mortgage should be recorded with the Registry of Property

NOTE:

NO VALIDLY CONSTITUTED MORTGAGE IF THE DEED OF MORTGAGE IS A MERE PRIVATE DOCUMENT

MORTGAGE IS NEVERTHELESS BINDING BETWEEN THE PARTIES EVEN IF UNREGISTERED

- Actual knowledge on the part of the buyer
- Actual knowledge=registration

PROCEDURE: WHAT HAPPENS WHEN YOU ENTER INTO A CONTRACT OF MORTGAGE?

1. Execute the document of mortgage
2. Go to a notary public, who will notarize the document.
3. Pay the documentary stamp tax within the first five days of the succeeding month. The doc stamp tax is a percentage of the value of the property mortgaged.
4. Go to the Office of the Register of Deeds and pay the registration fees. Before you pay the registration fees, the government will require you to update payment of realty taxes on the property. After payment of the registration fees, the mortgage will be annotated on the title.

EFFECT OF INVALIDITY OF MORTGAGE ON PRINCIPAL OBLIGATION

1. The principal obligation remains valid
2. Mortgage deed remains as evidence of principal obligation

Art. 2126. The mortgage directly and immediately subjects the property upon which it is imposed, whoever the possessor may be, to the fulfillment of the obligation for whose security it was constituted. (1876)

EFFECTS OF MORTGAGE

1. Creates a real right
 - If the mortgagor sells the encumbered property, the property remains subject to the fulfillment of the principal obligation secured by it
 - The mortgagee has a right to rely in good faith on what appears on the certificate of title of the mortgagor of the property given as security and in the absence of anything to excite suspicion, he is under no obligation to look beyond the certificate
 - Until the action for expropriation has been completed, ownership over the property remains with the registered owner
 - Banking institution must exercise due diligence before entering contract of mortgage
 - If a person is the first mortgagee over a property which was sold in an auction by the second mortgagee, the only right left to him is to collect his mortgage credit from the purchaser thereof during the sale conducted
 - In a suit to nullify a certificate of title, the mortgagee is an indispensable party
2. Creates merely an encumbrance

Art. 2127. The mortgage extends to the natural accessions, to the improvements, growing fruits, and the rents or income not yet received when the obligation becomes due, and to the amount of the indemnity granted or owing to the proprietor from the insurers of the property mortgaged, or in virtue of expropriation for public use, with the declarations, amplifications and limitations established by law, whether the estate remains in the possession of the mortgagor, or it passes into the hands of a third person. (1877)

EXTENT OF MORTGAGE

> A REM constituted on an immovable property is not limited to the property itself but also extends to all its accessions, improvements, growing fruits, and rents

> To exclude them,
- it is necessary that there be an express stipulation to that effect

Art. 2128. The mortgage credit may be alienated or assigned to a third person, in whole or in part, with the formalities required by law.

Art. 2129. The creditor may claim from a third person in possession of the mortgaged property, the payment of the part of the credit secured by the property which said third person possesses, in the terms and with the formalities which the law establishes. (1879)

RIGHT OF CREDITOR AGAINST TRANSFEREE OF MORTGAGED PROPERTY

- > The fact that the mortgagor has transferred the mortgaged property to a third person doesn't relieve him from his obligation to pay the debt to the mortgage creditor in the absence of Novation
- > A recorded REM is merely an accessory contract
- > The creditor may only demand from any possessor the payment only of the part of the credit secured by said property
- > Necessary that there be prior demand for payment be made on the debtor and the latter failed to pay
- > Does not really apply to all third persons in possession of the property
- > It only applies to those in possession of the mortgaged property in the concept of owner. If the possession by a third person is only as lessee, the creditor may not collect the credit from that third person.

Art. 2130. A stipulation forbidding the owner from alienating the immovable mortgaged shall be void.

STIPULATION FORBIDDING ALIENATION OF MORTGAGED PROPERTY

- > Such stipulation would be contrary to public good inasmuch as the transmission of property should not be unduly impeded

CAN MORTGAGEE PROHIBIT ENCUMBERANCES WITHOUT PRIOR CONSENT?

- > Yes, regulation is not the same as prohibition
- > The mortgagee may even add a standard. This is for good measure on the part of the mortgagee which is allowed by law.

IN THE FIRST PLACE, WHY WOULD YOU BE CONCERNED WITH THE DISPOSITION OF THE PROPERTY IF YOU ARE THE MORTGAGEE?

- > You don't want the property to be in the hands of someone who is litigious
- > As a means of monitoring the financial condition of the mortgagor

Art. 2131. The form, extent and consequences of a mortgage, both as to its constitution, modification and extinguishment, and as to other matters not included in this Chapter, shall be governed by the provisions of the Mortgage Law and of the Land Registration Law. (1880a)

(ARTICLES 2140-2141, CHATTEL MORTGAGE LAW)

Art. 2140. By a chattel mortgage, personal property is recorded in the Chattel Mortgage Register as a security for the performance of an obligation. If the movable, instead of being recorded, is delivered to the creditor or a third person, the contract is a pledge and not a chattel mortgage. (n)

CHATTEL MORTGAGE

> Contract by virtue of which personal property is recorded in the Chattel Mortgage Register as security for the performance of an obligation

CHARACTERISTICS

1. Accessory contract
2. Formal contract

WHAT MAKES IT DIFFERENT FROM A PLEDGE?

1. Delivery of the personal property to the mortgagee is not necessary
2. The registration in the Register is required by law
3. Procedure for the sale of the thing is different
4. If the property is foreclosed and there is excess, the amount goes to the debtor
5. If there is deficiency, the creditor may recover the deficiency

TRUE TEST

> When property needs to be retained by the debtor, then opt for a chattel mortgage

Art. 2141. The provisions of this Code on pledge, insofar as they are not in conflict with the Chattel Mortgage Law shall be applicable to chattel mortgages. (n)

LAWS GOVERNING CHATTEL MORTGAGE

1. Chattel mortgage law, Act 1508
2. Civil Code provisions
3. Revised Administrative Code
4. Revised Penal Code

OFFENSES INVOLVING CHATTEL MORTGAGE

1. Knowingly removing personal property mortgaged to any province or city other than the one in which it was located at the time of the execution of the mortgage without the written consent
2. Selling or pledging personal property already mortgaged or any part thereof, under the terms of the Chattel Mortgage Law without the consent of the mortgage written on the back of the mortgage and duly recorded in the CM Register

REGISTRATION

> Registration shall be done in the Register of Deeds where the mortgagor resides
> And when the property is situated somewhere else, it needs to be registered also in the Register of Deeds of the area where the property is situated
> Chattel mortgage would not be valid and binding as against third persons absent any registration
> If what is mortgaged is a car, registration with the LTO is also needed. Absent this, again, it would not be binding and invalid as against third persons

FORM OF CONTRACT AS STATED IN THE LAW.

> Theoretically, the mortgagor may sign the contract alone but practically, the mortgagee must sign also given that they both need to sign the affidavit of good faith

AFFIDAVIT OF GOOD FAITH

> Part of the chattel mortgage contract wherein it is stated that the chattel mortgage has been constituted to secure a principal obligation and not meant for fraud or any ill purpose
> It is possible to defraud using mortgage. You can take away property through mortgage from an unsecured creditor.

FORMAL REQUIREMENT OF DESCRIPTION OF PROPERTY

> Attach a description or schedule of the properties mortgaged
> There is also the requirement of payment of registration fees and documentary stamp taxes

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FORECLOSURE (SIMILAR BUT NOT IDENTICAL WITH REM) SECTION 14, CHATTEL MORTGAGE LAW

1. There is a 30-day cooling off period before the public auction, from the time the condition is broken
2. Notice—at least 10 days notice of the time, day, place, and purpose of such sale has been posted at 2 or more public places in such municipality. Personal notice or mail shall also be given to the mortgagor or person holding under him and the persons holding subsequent mortgages of the time and place of sale.
3. Sheriff should possess the property as he needs to deliver the same to the winning bidder. If the mortgagor refuses to do so, the mortgagee can seek the help of the court. There could also be a stipulation in the contract as well. But if the debtor is not willing and able, the loss is with the creditor.
4. There is a 30-day equity of redemption period (payment of obligation)
5. After foreclosure, there could be recovery of deficiency, but there is Recto Law (1484) pertaining to sale of personal property in installments and there is a Chattel Mortgage to secure payment of price.

AN ACTION FOR SPECIFIC PERFORMANCE IS TANTAMOUNT TO THE ABANDONMENT OF RIGHTS OF MORTGAGEE

APPLICATION OF PROCEEDS OF FORECLOSURE

1. Costs
2. Obligation itself. Pay first the interest and then the principal. If there is penalty, then pay it first.
3. Junior encumbrances
4. Owner

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ACT. 1508: CHATTEL MORTGAGE LAW

Section 1. The short title of this Act shall be "The Chattel Mortgage Law."

Sec. 2. All personal property shall be subject to mortgage, agreeably to the provisions of this Act, and a mortgage executed in pursuance thereof shall be termed chattel mortgage.

Sec. 3. Chattel mortgage defined. — A chattel mortgage is a conditional sale of personal property as security for the payment of a debt, or the performance of some other obligation specified therein, the condition being that the sale shall be void upon the seller paying to the purchaser a sum of money or doing some other act named. If the condition is performed according to its terms the mortgage and sale immediately become void, and the mortgagee is thereby divested of his title.

Sec. 4. Validity. — A chattel mortgage shall not be valid against any person except the mortgagor, his executors or administrators, unless the possession of the property is delivered to and retained by the mortgagee or unless the mortgage is recorded in the office of the register of deeds of the province in which the mortgagor resides at the time of making the same, or, if he resides without the Philippine Islands, in the province in which the property is situated: Provided, however, That if the property is situated in a different province from that in which the mortgagor resides, the mortgage shall be recorded in the office of the register of deeds of both the province in which the mortgagor resides and that in which the property is situated, and for the purposes of this Act the city of Manila shall be deemed to be a province.

Sec. 5. Form. — A chattel mortgage shall be deemed to be sufficient when made substantially in accordance with the following form, and shall be signed by the person or persons executing the same, in the presence of two witnesses, who shall sign the mortgage as witnesses to the execution thereof, and each mortgagor and mortgagee, or, in the absence of the mortgagee, his agent or attorney, shall make and subscribe an affidavit in substance as hereinafter set forth, which affidavit, signed by the parties to the mortgage as above stated, and the certificate of the oath signed by the authority administering the same, shall be appended to such mortgage and recorded therewith.

**FORM OF CHATTEL MORTGAGE AND
AFFIDAVIT.**

"This mortgage made this _____ day of
19____ by _____, a
resident of the municipality of
_____, Province of _____,
Philippine Islands mortgagor, to
_____, a resident of the municipality
of _____, Province of _____, Philippine Islands,
mortgagee, witnesseth:

"That the said mortgagor hereby conveys and
mortgages to the said mortgagee all of the
following-described personal property situated
in the municipality of _____,
Province of _____ and now in the
possession of said mortgagor, to wit:

(Here insert specific description of the property
mortgaged.)

"This mortgage is given as security for the
payment to the said _____, mortgagee, of
promissory notes for the sum of
_____ pesos, with (or without, as the
case may be) interest thereon at the rate of
_____ per centum per annum,
according to the terms of _____, certain
promissory notes, dated _____, and in
the words and figures following (here insert
copy of the note or notes secured).

"(If the mortgage is given for the performance
of some other obligation aside from the
payment of promissory notes, describe
correctly but concisely the obligation to be
performed.)

"The conditions of this obligation are such that
if the mortgagor, his heirs, executors, or
administrators shall well and truly perform the
full obligation (or obligations) above stated
according to the terms thereof, then this
obligation shall be null and void.

"Executed at the municipality of _____, in
the Province of _____, this _____ day of
19_____

(Signature of mortgagor.)

"In the presence of

"
"

(Two witnesses sign here.)

FORM OF OATH.

"We severally swear that the foregoing
mortgage is made for the purpose of securing
the obligation specified in the conditions
thereof, and for no other purpose, and that the

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same is a just and valid obligation, and one not entered into for the purpose of fraud."

FORM OF CERTIFICATE OF OATH.
"At _____, in the Province of _____, personally appeared _____, the parties who signed the foregoing affidavit and made oath to the truth thereof before me.

"
(Notary public, justice of the peace, 1 or other officer, as the case may be.)

Sec. 6. Corporations. — When a corporation is a party to such mortgage the affidavit required may be made and subscribed by a director, trustee, cashier, treasurer, or manager thereof, or by a person authorized on the part of such corporation to make or to receive such mortgage. When a partnership is a party to the mortgage the affidavit may be made and subscribed by one member thereof.

Sec. 7. Descriptions of property. — The description of the mortgaged property shall be such as to enable the parties to the mortgage, or any other person, after reasonable inquiry and investigation, to identify the same.

If the property mortgaged be large cattle," as defined by section one of Act Numbered Eleven and forty-seven, 2 and the amendments thereof, the description of said property in the mortgage shall contain the brands, class, sex, age, knots of radiated hair commonly known as remolinos, or cowlicks, and other marks of ownership as described and set forth in the certificate of ownership of said animal or animals, together with the number and place of issue of such certificates of ownership.

If growing crops be mortgaged the mortgage may contain an agreement stipulating that the mortgagor binds himself properly to tend, care for and protect the crop while growing, and faithfully and without delay to harvest the same, and that in default of the performance of such duties the mortgage may enter upon the premises, take all the necessary measures for the protection of said crop, and retain possession thereof and sell the same, and from the proceeds of such sale pay all expenses incurred in caring for, harvesting, and selling the crop and the amount of the indebtedness or obligation secured by the mortgage, and the surplus thereof, if any shall be paid to the mortgagor or those entitled to the same.

A chattel mortgage shall be deemed to cover only the property described therein and not like

or substituted property thereafter acquired by the mortgagor and placed in the same depository as the property originally mortgaged, anything in the mortgage to the contrary notwithstanding.

Sec. 8. Failure of mortgagee to discharge the mortgage. — If the mortgagee, assign, administrator, executor, or either of them, after performance of the condition before or after the breach thereof, or after tender of the performance of the condition, at or after the time fixed for the performance, does not within ten days after being requested thereto by any person entitled to redeem, discharge the mortgage in the manner provided by law, the person entitled to redeem may recover of the person whose duty it is to discharge the same twenty pesos for his neglect and all damages occasioned thereby in an action in any court having jurisdiction of the subject-matter thereof.

Sec. 9-12. (inclusive) 3

Sec. 13. When the condition of a chattel mortgage is broken, a mortgagor or person holding a subsequent mortgage, or a subsequent attaching creditor may redeem the same by paying or delivering to the mortgagee the amount due on such mortgage and the reasonable costs and expenses incurred by such breach of condition before the sale thereof. An attaching creditor who so redeems shall be subrogated to the rights of the mortgagee and entitled to foreclose the mortgage in the same manner that the mortgagee could foreclose it by the terms of this Act.

Sec. 14. Sale of property at public auction; Officer's return; Fees; Disposition of proceeds.

— The mortgagee, his executor, administrator, or assign, may, after thirty days from the time of condition broken, cause the mortgaged property, or any part thereof, to be sold at public auction by a public officer at a public place in the municipality where the mortgagor resides, or where the property is situated, provided at least ten days' notice of the time, place, and purpose of such sale has been posted at two or more public places in such municipality, and the mortgagee, his executor, administrator, or assign, shall notify the mortgagor or person holding under him and the persons holding subsequent mortgages of the time and place of sale, either by notice in writing directed to him or left at his abode, if within the municipality, or sent by mail if he does not reside in such municipality, at least ten days previous to the sale.

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The officer making the sale shall, within thirty days thereafter, make in writing a return of his doings and file the same in the office of the register of deeds where the mortgage is recorded, and the register of deeds shall record the same. The fees of the officer for selling the property shall be the same as in the case of sale on execution as provided in Act Numbered One hundred and ninety, 4 and the amendments thereto, and the fees of the register of deeds for registering the officer's return shall be taxed as a part of the costs of sale, which the officer shall pay to the register of deeds. The return shall particularly describe the articles sold, and state the amount received for each article, and shall operate as a discharge of the lien thereon created by the mortgage. The proceeds of such sale shall be applied to the payment, first, of the costs and expenses of keeping and sale, and then to the payment of the demand or obligation secured by such mortgage, and the residue shall be paid to persons holding subsequent mortgages in their order, and the balance, after paying the mortgages, shall be paid to the mortgagor or person holding under him on demand.

If the sale includes any "large cattle," a certificate of transfer as required by section sixteen of Act Numbered Eleven hundred and forty-seven 5 shall be issued by the treasurer of the municipality where the sale was held to the purchaser thereof.

Sec. 15. 6, 6a

Sec. 16. This Act shall take effect on August first, nineteen hundred and six.

REPUBLIC ACT No. 4118

AN ACT CONVERTING CERTAIN PARCELS OF LAND IN THE CITY OF MANILA, WHICH IS RESERVED AS COMMUNAL PROPERTY, INTO DISPOSABLE OR ALIENABLE LAND OF THE STATE AND PROVIDING FOR ITS SUBDIVISION AND SALE.

Section 1. Lot 1-B-2B of Block 557 of the cadastral survey of the City of Manila, situated in the District of Malate, City of Manila, which is reserved as communal property, is hereby converted into disposable or alienable land of the State, to be placed under the disposal of the Land Tenure Administration. The Land Tenure Administration shall subdivide the property into small lots, none of which shall exceed one hundred and twenty square meters in area and sell the same on installment basis to the tenants or bona fide occupants thereof and to individuals, in the order mentioned: Provided, That no down payment shall be required of tenants or bona fide occupants who cannot afford to pay such down payment: Provided, further, That no person can purchase more than one lot: Provided, furthermore, That if the tenant or bona fide occupant of any given lot is not able to purchase the same, he shall be given a lease from month to month until such time that he is able to purchase the lot: Provided, still further, That in the event of lease, the rentals which may be charged shall exceed eight per cent per annum of the assessed value of the property leased: And provided, finally, That in fixing the price of each lot, which shall not exceed twenty pesos per square meter, the cost of subdivision and survey shall not be included.

Section 2. Upon approval of this Act, no ejectment proceedings against any tenant or bona fide occupant of the above lots shall be instituted and any ejectment proceedings pending in court against any such tenant or bona fide occupant shall be dismissed upon motion of the defendant: Provided, That any demolition order directed against any tenant or bona fide occupant thereof shall be lifted.

Section 3. Upon approval of this Act, if the tenant or bona fide occupant is in arrears in the payment of any rentals, the amount legally due shall be liquidated and shall be payable in twenty-four equal monthly installments from the date of liquidation.

Section 4. No property acquired by virtue of this Act shall be transferred, sold, mortgaged, or otherwise disposed of within a period of five years from the date full ownership thereof has

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been vested in the purchaser without the consent of the Land Tenure Administration.

Section 5. In the event of the death of the purchaser prior to the complete payment of the price of the lot purchased by him, his widow and children shall succeed in all his rights and obligations with respect to his lot.

Section 6. The Chairman of the Land Tenure Administration, shall implement and issue such rules and regulations as may be necessary to carry out the provisions of this Act.

Section 7. The sum of one hundred fifty thousand pesos is appropriated out of any funds in the National Treasury not otherwise appropriated, to carry out the purposes of this Act.

Section 8. All laws or parts of laws inconsistent with this Act are repealed or modified accordingly.

Section 9. This Act shall take effect upon its approval.

Approved: June 20, 1964

The Lawphil Project - Arellano Law Foundation

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ACT NO. 3135 - AN ACT TO REGULATE THE SALE OF PROPERTY UNDER SPECIAL POWERS INSERTED IN OR ANNEXED TO REAL-ESTATE MORTGAGES

Section 1. When a sale is made under a special power inserted in or attached to any real-estate mortgage hereafter made as security for the payment of money or the fulfillment of any other obligation, the provisions of the following election shall govern as to the manner in which the sale and redemption shall be effected, whether or not provision for the same is made in the power.

Sec. 2. Said sale cannot be made legally outside of the province in which the property sold is situated; and in case the place within said province in which the sale is to be made is subject to stipulation, such sale shall be made in said place or in the municipal building of the municipality in which the property or part thereof is situated.

Sec. 3. Notice shall be given by posting notices of the sale for not less than twenty days in at least three public places of the municipality or city where the property is situated, and if such property is worth more than four hundred pesos, such notice shall also be published once a week for at least three consecutive weeks in a newspaper of general circulation in the municipality or city.

Sec. 4. The sale shall be made at public auction, between the hours of nine in the morning and four in the afternoon; and shall be under the direction of the sheriff of the province, the justice or auxiliary justice of the peace of the municipality in which such sale has to be made, or a notary public of said municipality, who shall be entitled to collect a fee of five pesos each day of actual work performed, in addition to his expenses.

Sec. 5. At any sale, the creditor, trustee, or other persons authorized to act for the creditor, may participate in the bidding and purchase under the same conditions as any other bidder, unless the contrary has been expressly provided in the mortgage or trust deed under which the sale is made.

Sec. 6. In all cases in which an extrajudicial sale is made under the special power hereinbefore referred to, the debtor, his successors in interest or any judicial creditor or judgment creditor of said debtor, or any person having a lien on the property subsequent to the mortgage or deed of trust under which the property is sold, may redeem the same at any time within the term of one year from and after the date of the sale; and such redemption shall

be governed by the provisions of sections four hundred and sixty-four to four hundred and sixty-six, inclusive, of the Code of Civil Procedure, in so far as these are not inconsistent with the provisions of this Act.

Sec. 7. In any sale made under the provisions of this Act, the purchaser may petition the Court of First Instance of the province or place where the property or any part thereof is situated, to give him possession thereof during the redemption period, furnishing bond in an amount equivalent to the use of the property for a period of twelve months, to indemnify the debtor in case it be shown that the sale was made without violating the mortgage or without complying with the requirements of this Act. Such petition shall be made under oath and filed in form of an ex parte motion in the registration or cadastral proceedings if the property is registered, or in special proceedings in the case of property registered under the Mortgage Law or under section one hundred and ninety-four of the Administrative Code, or of any other real property encumbered with a mortgage duly registered in the office of any register of deeds in accordance with any existing law, and in each case the clerk of the court shall, upon the filing of such petition, collect the fees specified in paragraph eleven of section one hundred and fourteen of Act Numbered Four hundred and ninety-six, as amended by Act Numbered Twenty-eight hundred and sixty-six, and the court shall, upon approval of the bond, order that a writ of possession issue, addressed to the sheriff of the province in which the property is situated, who shall execute said order immediately.

Sec. 8. The debtor may, in the proceedings in which possession was requested, but not later than thirty days after the purchaser was given possession, petition that the sale be set aside and the writ of possession cancelled, specifying the damages suffered by him, because the mortgage was not violated or the sale was not made in accordance with the provisions hereof, and the court shall take cognizance of this petition in accordance with the summary procedure provided for in section one hundred and twelve of Act Numbered Four hundred and ninety-six; and if it finds the complaint of the debtor justified, it shall dispose in his favor of all or part of the bond furnished by the person who obtained possession. Either of the parties may appeal from the order of the judge in accordance with section fourteen of Act Numbered Four hundred and ninety-six; but the order of possession shall continue in effect during the pendency of the appeal.

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Sec. 9. When the property is redeemed after the purchaser has been given possession, the redeemer shall be entitled to deduct from the price of redemption any rentals that said purchaser may have collected in case the property or any part thereof was rented; if the purchaser occupied the property as his own dwelling, it being town property, or used it gainfully, it being rural property, the redeemer may deduct from the price the interest of one per centum per month provided for in section four hundred and sixty-five of the Code of Civil Procedure.

Sec. 10. This Act shall take effect on its approval.

Approved: March 6, 1924