CHAPTER 1: INTRODUCTION

CONTRACT OF SALE – One of the contracting parties obligates himself to transfer the ownership of and to deliver a determinate thing, and the other to pay therefor a price certain money or its equivalent. A contract of sale may be absolute or conditional.

SALES
1. Contract of sale (absolute)
   - real obligation – obligation to give
   - remedies available:
     a. specific performance
     b. rescission
     c. damages

2. Contract to sell (conditional)
   - personal obligation – obligation to do
   - remedies available:
     a. resolution
     b. damages

ESSENTIAL REQUISITES OF A CONTRACT OF SALE
1. consent
2. subject matter
3. price

CHARACTERISTICS OF CONTRACT OF SALE:
1. Nominate - law gave it a name
2. Principal - can stand on its own; unlike accessory contract
3. Bilateral - imposes obligation on both parties
   a. obligation of seller – transfer ownership & deliver
   b. obligation of buyer – pay for price
   Consequence: power to rescind is implied in bilateral contracts
4. Onerous – with valuable consideration
   • Consequence: all doubts in construing contract to be resolved in greater reciprocity of interest
5. Commutative – equal value is exchanged for equal value
   • Test: subjective – as long as parties in all honesty that he is receiving equal value then it complies with test & would not be deemed a donation; but must not be absurd.
   • Inadequacy of price or aleatory character not sufficient ground to cancel contract of sale; inadequacy can show vitiation of consent & sale may be annulled based on vice but not on inadequacy
6. Consensual – meeting of minds makes a perfect contract of sale but needs delivery to consummate.
7. Title & not a mode – gives rise to an obligation to transfer; it is delivery w/c actually transfer ownership; mode which actually transfer ownership.

STAGES IN LIFE OF CONTRACT OF SALE:
1. negotiation
2. perfection – by mere consent; performance may be demanded (specific performance)
3. consummation

DISTINGUISHED FROM OTHER CONTRACTS:
1. Donation
   • donation is gratuitous; sale is onerous
   • donation is formal contract; sale is consensual
   • donation is governed by law on donation; sale is governed by law on sales
2. Barter
- in barter, the consideration is the giving of a thing; in sale, it is giving of money as payment
- both are governed by law on sales; both are species of the genus sales
- if consideration consists party in money & partly by thing – look at manifest intention; if intention is not clear (1468);
  a. value of thing is equal or less than amount of money – sale
  b. value of thing is more than amount of money – barter

3. Contract for piece of work
- test in article 1467:
  a. contract for delivery of an article which the vendor in the ordinary course of business manufactures or procures for general market (whether on hand or not) – sale
  b. goods are to be manufactured specially for a customer and upon special order and not for the general market – contract for piece of work.
- jurisprudence:
  a. Timing test – under art 1467; Inchausti; whether the thing transferred would have never existed but for the order – contract for piece of work (abandoned)
  b. Habitude test – enunciated in Celestino v CIR; contract of sale if manufacturer engages in activity without need to employ extraordinary skills and equipment; contract for piece of work is sale of service; contract of sale is sale of things.
  c. Nature of the object test – enunciated in EEI v CIR; each product’s nature of execution differs from the others; products are not ordinary products of manufacturer.
- main factor in decision of the SC: essence of why parties enter into it:
  a. essence is object – contract of sale
  b. essence is service – contract for piece of work

4. Agency to sell
- in sale, buyer pays for price of object; in agency to sell, agent not obliged to pay for price, merely obliged to deliver price received from buyer.
- in sale, buyer becomes owner of thing; in agency; principal remains owner even if object delivered to him
- in sale, seller warrants; in agency, agent assumes no risk/liability as long as within authority given
- in sale, not unilaterally revocable; in agency, may be revoked unilaterally because fiduciary & even w/o ground
- in sale, seller receives profit; in agency, agent not allowed to profit
- TEST: essential clauses of whole instrument (art 1466 – motherhood statement, not good law)
- Agency is a personal contract; sale is real contract (to give) – rescission not available in agency

5. Dacion en pago
- dacion: contract where property is alienated to satisfy/extinguish obligation to pay debt
- in dacion: novates creditor-debtor relationship into seller-buyer
- in dacion: delivery is required (real contract)

6. Lease
- in sale: obligation to absolutely transfer ownership of thing; in lease: use of thing is for specified period only with obligation to return
- in sale: consideration is price; in lease: consideration is rent
- in sale: seller needs to be owner of thing to transfer ownership; in lease: lessor need not be owner
- lease with option to by: really a contract of sale but designated as lease in name only; it is a safe by installments
CHAPTER 2: PARTIES TO A CONTRACT OF SALE

GENERAL RULE: All parties with capacity to contract can enter into a valid contract of sale
1. Natural
2. Judicial - corporation/partnership/associations/Cooperatives
   • Status of contract valid
   • Remedies available therefore are:
     a. specific performance
     b. rescission
     c. damages

EXCEPTION TO GENERAL RULE:
1. Minors
   • status of contract: voidable only, therefore ratifiable
   • remedy is action for annulment (with partial restitution in so far as the minor is benefited)
2. SALE BY & BETWEEN SPOUSES
   a. Contract with 3rd parties
      • status of contract is valid
   b. Sale between parties
      • Status not provided for by law but VOID according to case law
      • Reason:
        i. prevent defrauding of creditors
        ii. avoid situation where dominant spouse take advantage of others
        iii. avoid circumvention on prohibition of donation between spouses
      • Exception
        i. separation of property agreed (marriage settlement)
        ii. judicial separation of property
   c. Common Law Spouses (Paramours)
      • Status of contract: VOID (per case law)
      • Rationale: evil sought to be avoided is present
3. OTHERS PER SPECIFIC PROVISIONS OF LAW
   a. Guardian with regards to property of ward during period of guardianship
   b. Agent with regards to property of principal
   c. Executor/administrator with regards to the estate of the deceased
   d. Public officers with regards to the property of the estate
   e. Officer of court & employee – with regards to property in litigation

LEGAL STATUS OF CONTRACT:
1. VOID (PER CASE LAW) – guardian/executor/public officers / officers of the court
2. VOIDABLE (PER CIVIL CODE) – agent; and if with consent, VALID

TWO GROUPS OF PROHIBITED PARTIES FROM ENGAGING IN CONTRACT OF SALE:
1. Guardian / Agent / Executors – ratifiable in the sense that only private wrong is involved
2. Public Officials / Officers of Court – not ratifiable in the sense that public wrong is concerned

GUARDIAN/AGENT/ADMINISTRATOR
1. Legal status of contract: VOID (case law)
2. Direct or indirect
3. If mediator – no need to prove collusion; inutile
4. Even if court approved sale
5. Reason: fiduciary relationship is based on trust
ATTORNEYS
REQUISITES:
1. Lawyer-client relationship exists
2. Subject matter – property in litigation (all types)
3. Duration – while in litigation (from filing of complaint to final judgment); may be future litigation
   - Reason: due to public policy; ground for mal practice
     a. Client is at the mercy of the lawyer
     b. Law is a noble profession
     c. 2 Masters – 2 interest; one cannot serve 2 masters at the same time
   - Exception: CONTINGENT FEE ARRANGEMENT
     a. Amount of legal fees is based on a value of property
     b. Property itself is involved
        - Not a sale but service contract
        - I give that you may do (innominate contract) so has to be governed by law on sales but because of public policy, considered VALID
        - Reason why contingent fee is followed:
          i. constitutional prohibition v impairment of contract
          ii. subject to control of courts (may be reduced if unconscionable or nullified)
          iii. canons of legal ethics
          iv. higher public policy litigants

CHAPTER 3: SUBJECT MATTER OF SALE

TO BE A VALID & BINDING SUBJECT MATTER, THE FOLLOWING MUST CONCUR:
1. Existing, Future & Contingent
2. Licit
3. Determinate or determinable

EXISTING, FUTURE, CONTINGENT
   - Refers to subject matter that are existing & not existing but capable of existence (pursuant to present, technology)
1. if this is present, status of contract: VALID
2. if absent : NO CONTRACT SITUATION, THEREFORE NO CAUSE OF ACTION
3. if mere pipe dream : VOID
   a. SALE OF THINGS HAVING POTENTIAL EXISTENCE (Emptio Rei Speratae)
      - Sale of future things; no physical existence yet
      - A resolutory condition that thing will come into existence
      - Non happening of condition: RESULUTORY: EXTINGUISH THE CONTRACT
      - Remedy: can recover what has been paid
   b. SALE OF HOPE (Empitio Spei)
      - Every sale of future thing is subject to condition that they will come into existence
      - If hope does not come true – NO RECOVERY OF PAYMENT/NO RESCISSION
      - Aleatory character but valid

LICIT & VENDOR MUST HAVE A RIGHT TO TRANSFER SUBJECT MATTER
1. LICIT – must be within the commerce of men
   - VOID SUBJECT MATTER:
     a. Contrary to law
     b. Simulated/fictitious
     c. Did not exist at a time of transaction
     d. Outside commerce of men
     e. Impossible service
     f. Intention can not be ascertained
     g. By provision of law
2. SELLER MUST BE OWNER – only at a time of consummation since tradition transfers ownership but to have a perfected contract of sale, Vendor need not be owner of thing; can be validated/ratified by subsequent acquisition of title by seller

DETERMINATE & DETERMINABLE
- Absence: VOID; there is subject matter but Intention regarding subject matter can not be ascertained – VOID
- Kinds of subject matter:
  1. Specific - Determinate
     - Particularly designated or segregated from all others of the same class
  2. Generic - Determinable
     - Test: reach a point of description where both minds concur
     - At the time the contract is entered into the thing is capable of being made determinate without the necessity of a new or further agreement between parties
     - Exact quantity not essential
     - Sale of generic things – VALID; still executory
     - There can only be contract of sale when subject is finally chosen for delivery – already segregated or designated; but before designation, valid K of sale already exists

3. Undivided interest (BUYER becomes co-owner)
4. Undivided share in mass of fungible goods (BUYER becomes co-owner)

CHAPTER 4: PRICE – signifies the sum stipulated as equivalent of the thing sold

CHARACTERISTICS OF VALID PRICE
1. Must be real
2. Must be in money or its equivalent
3. Must be certain or ascertainable at the time of the perfection of the contract
4. Manner of payment provided for

REAL
1. When price stated is one intended by parties
   - If fictitious: no intention with respect to price - VOID
   - If False/simulated: what appears in contract is not the true price
     a. VALID if there is true consideration
     b. VOID but if none (because it is fictitious)
2. Valuable
   - When not valuable – VOID
   - When contract is onerous, presumed to have valuable consideration
   - Nominal consideration w/c is common law concept does not apply (P1.00)
   - Gross inadequacy of price in ordinary sale does not render contract void unless it is shocking to conscience of man.
     Except:
     a. Judicial sale
        - Shocking to conscience of man
        - Higher price can be obtained at re-sale
     b. Rescissible contracts due to lesion
     c. Sales with right to repurchase (raises presumption of equitable mortgage) – Remedy is reformation

CERTAIN OR ASCERTAINABLE
CERTAIN
1. Sufficient that it is fixed with reference to another thing certain
   - That thing will have on a definite day, or in a particular exchange or market, or when an amount is fixed above or below the price on such day, or in such exchange or market provided said amount be certain
2. Determination be left to judgment of specified person/s
   - If contract states that price is to be determined by 3rd party, contract is already perfected (there is just a suspensive condition – actual fixing of price)
   - 3rd party fixes price in bad faith or mistake – court remedy can be made
   - 3rd party is unable or unwilling to fix price – parties have no cause of action
   - Reason:
     a. suspensive condition does not happen yet – courts have no jurisdiction
     b. enforceable contract have not yet arisen – court with no jurisdiction to create contract between parties
   - Result: INEFFICACIOUS
   - When price can not be determined in accordance with any of the preceding rules, contract of sale in INEFFICACIOUS
   - However, when SM delivered, BUYER must pay reasonable price therefore – court can fix price

MANNER OF PAYMENT MUST BE AGREED UPON
   - Deemed to be an essential requisite because it is part of the presentation of the contract
   - Integral part of concept of price
   - If there is failure to meet minds as regards term of payment: CASH BASIS
   - Must be certain or at least ascertainable
   - Effect is absent: NO CONTRACT SITUATION

CHAPTER 5: FORMATION OF CONTRACT OF SALE

3 STAGES IN LIFE OF A CONTRACT OF SALE
1. Politicacion/negotiation Stage – offer is floated, acceptance is floated but they do not meet; time parties indicate their interest but no concurrence of offer & acceptance
2. Perfection – concurrence of all requisites; meeting of the minds
3. Consummation – parties perform their respective undertakings

POLITACION
1. offer is floated but not absolute
2. acceptance is likewise floated but conditional

RULES:
1. offer is floated – prior to acceptance, may be withdrawn at will by offeror
2. offer floated with a period – without acceptance, extinguished when period has ended & maybe withdrawn at will by offeror; right to withdrawn must not be arbitrary otherwise, liable to damage under Art 19, 20, 21 of civil code
3. offer floated with a condition – extinguished by happening/non-happening of condition
4. offer floated without period/without condition – continues to be valid depending upon circumstances of time, place & person
5. offer is floated & there is counter-offer – original offer is destroyed, there is a new offer; can not go back to original offer
6. offer is floated – no authority of offeror to modify offer
7. offer is accepted absolutely – proceed to perfected stage

OPTION CONTRACT
- floats in the policitacion stage
- offer with a period but founded upon a separate consideration distinct from the price
- no presumption of consideration, needs to be proven
- Characteristics:
  a. not the contract of sale by itself, distinct
  b. nominate
  c. principal; but can be attached to other principal contracts
  d. onerous
  e. commutative
f. unilateral – vs contract of sale which is bilateral
   • to be perfected & give rise to action, the following must concur
     a. subject matter of sale must be agreed upon
     b. price of sale & manner of payment must be agreed upon
     c. consideration separate & distinct from price
     d. period – as per contract; if period not provided – prescribes in 10 years (written contract)
     e. how exercised: notice of acceptance should be communicative to offeror without actual payment as long as there is delivery of payment in consummation stage

2 SITUATIONS IN AN OPTION CONTRACT:
1. with separate consideration
   • Legal consequence:
     a. option contract is valid
     b. offeror can not withdrawn offer until after expiry period
     c. subject to rescission, damages but not to specific performance because this is not an obligation to give
2. without separate consideration
   • Legal consequence:
     ➢ OLD RULE:
       a. offer is still valid, but
       b. option contract is void
     ➢ NEW RULE: Right if first refusal recognized

RIGHT OF FIRST REFUSAL:
• creates a promise to enter into a contract of sale and it has no separate consideration, not subject to specific performance because there is no contractual relationship here & it is not an obligation to give (not a real contract)
• New doctrine: may be subject to specific performance
• Effect of new doctrine: turned the world of policitacion upside down because while valid option contract is not subject to specific performance, right of first refusal which does not even have a separate consideration may be subject to specific performance

OPTION CONTRACT & RIGHT OF FIRST REFUSAL DISTINGUISHED

<table>
<thead>
<tr>
<th>OPTION CONTRACT</th>
<th>RIGHT OF FIRST REFUSAL</th>
</tr>
</thead>
<tbody>
<tr>
<td>Principal contract; stands on its own</td>
<td>Accessory; can not stand on its own</td>
</tr>
<tr>
<td>Needs separate consideration</td>
<td>Does not need separate consideration</td>
</tr>
<tr>
<td>Subject matter &amp; price must be valid</td>
<td>There must be subject matter but price not important</td>
</tr>
<tr>
<td>Not conditional</td>
<td>Conditional</td>
</tr>
<tr>
<td>Not subject to specific performance</td>
<td>Subject to specific performance</td>
</tr>
</tbody>
</table>

• Recognizes recovery of damage based on abuse of rights doctrine

PERFECTION: OFFER & ACCEPTANCE
PERFECTION
• Sale is a consensual contract, perfected by meeting of minds regarding subject matter & price
• Meeting of Minds:
  1. Offer – certain
  2. Acceptance – absolute
    • Qualified acceptance – merely a counter-offer which needs to be absolutely accepted to give rise to perfected contract of sale
    • Business ads are mere invitations to make an offer except when it appears to be otherwise
    • Acceptance by letter/telegram – binds only at time it came to knowledge of SELLER; prior thereto – offer may still be withdrawn
    • Must be exact terms to be considered absolute
• When deviations allowed:
  a. anything that refers to price is material
  b. small items are insignificant, does not make acceptable unconditional
• when sale is subject to suspensive condition, no perfected contract of sale yet; becomes perfected only upon happening of condition
• In sales at auction, perfected when auctioneer announces its perfection by the fall of the hammer or in other customary manner may impose terms under bidder may retract his bid; owner of property sold at auction may impose terms under w/c the auction will proceed & it shall be binding w/n the bidders are aware
• Place of perfection: where the meeting of minds happen; when acceptance sent by mail, perfection is deemed where the offer is made
• Performance has nothing to do with perfection stage

EARNEST MONEY
1. money given as part of purchase price
2. its acceptance is proof that contract of sale exists
   • nothing in law prevents parties from treating earnest money differently
   • old concept: subject to forfeiture when BUYER backs out
   • new concept: can not be forfeited – part of purchase price; must be restored
   • qualification: if old concept is stipulated – VALID
   • presumption of perfection of contract of sale and such earnest money as art of purchase price is disputable

FORM OF SALES
1. Form not important in validity of sale
   • Sale being consensual, may be oral or written, perfected by mere consent as to price & subject matter
   • If particular form is required under the statute of frauds:
     a. valid & binding between parties
     b. not binding to 3rd persons only
   • Reason: purposes of convenience only & not for validity & enforceability; cause of action is granted to sue & compel other party to execute the document
2. When form is important for validity; exception by specific provision of law;
   a. power to sell a piece of land granted to an agent – otherwise VOID
   b. sale of large cattle; must also be registered with Municipal treasurer – otherwise VOID
   c. sale of land by non-Christian if not approved by Governor – VOID
3. When form is important for enforceability (STATUTE OF FRAUDS)
   a. sale to be performed 1 year after
   b. Agreement to sell things with value of 500 and up
   c. Sale of real property or interest therein
   • Exception:
     i. When there is a note or memorandum in writing & subscribe by party or his agent (contains essential terms of the contract)
     ii. When there has been partial performance/execution (seller delivers with intent to transfer title/receives price)
     iii. when there has been failure to object to presentation of evidence (oral) (constitute waiver)

CHAPTER 6: CONCUMMATION STAGE/PERFORMANCE STAGE
• Stage where parties both comply with their obligation
• Nature of diligence required: diligence of good father of family unless other requirement is stipulated
• Consequence: Seller will guilty of breach if thing is lost through his fault
DELIVERY OF THE THING
• Transfer ownership (tradicion) – twin obligation:
  1. transfer title(ownership) – SELLER must be owner of thing at the time of
     consummation to validly transfer title
  2. delivery of the thing
• Different kinds of delivery:
  1. Actual
     • when thing sold is placed in the control & possession of the buyer
  2. Constructive

DIFFERENT FORMS OF CONSTRUCTIVE DELIVERY:
1. Traditio Longa Manu
   • Delivery of thing by mere agreement; when SELLER points to the property
     without need of actually delivering
2. Traditio Brevi Manu
   • Before contract of sale, the would be buyer was already in possession of the
     would be subject matter of sale (ex: as lessee)
3. Symbolic delivery
   • As to movables – ex: delivery of the keys to a car
4. Constitutum possessarium
   • at the time of perfection of contract, seller continues to holds possession merely
     as a holder
5. Execution:
   • Exception:
     a. when there is stipulation to contrary, execution does not produce effect of
        delivery
     b. when at the time of execution of instrument, subject matter was not subject to
        control of the seller
        • subject matter should be within control of seller; he should have capacity
          to deliver at the time of execution of public instrument when he wants to
          effect actual delivery
        • such capacity should subsist for reasonable time after execution of
          instrument (reason time depends on circumstances of persons, places &
          things)
   • Effect when 2 requisites do not concur: no constructive delivery; no compliance
     on part of SELLER to deliver
     Even when thing is mortgaged, seller can still deliver because naked title still
     belongs to him & can still do acts of ownership including conveyance
6. Negotiable documents of title & non negotiable instruments
   • transferee acquires title of transferor
   • when delivered without negotiation, it is a mere assignment
7. Intangibles/ incorporeal property
   • through public instrument
   • execution is equivalent to delivery if from the deed, contrary does not appear

DELIVERY OF FRUITS & ACCESSIONS/ ACCESSORIES
• Right to fruits & accessions/accessories accrue from time sale is perfected
  but no real right over it until it is delivered

DELIVERY THROUGH CARRIER
1. FAS – FREE ALONG SIDE
   • When goods delivered alongside the ship, there is already delivery to the buyer
     (twin effects deemed fulfilled)
2. FOB-FREE ON BOARD
   a. Shipment – when goods are delivered at ship at point of shipment; delivery to
      carrier by placing goods on vessel is delivery to buyer
   b. Destination – when goods reach the port even if not disembarked yet from the
      vessel, there is delivery to the buyer
3. CIF – COST, INSURANCE, FREIGHT
   a. when buyer pays for services of carrier – delivery to carrier is delivery to buyer; carrier is agent of the buyer
   b. when buyer pays seller the price – from moment the vessel is at port of destination, there is already delivery to buyer.

Completeness of Delivery
1. MOVABLES – delivery of thing plus accessories & accessions in the condition in which they were upon the perfection of the contract including the fruits
   a. LESS – buyer has 2 options:
      i. reject
      ii. accept
         (1) when accepts with knowledge that seller is not going to perform contract in full, he must pay at price stipulated
         (2) when accepts & consumes before knowledge that buyer will both perform contract in full, liable only for fair value of goods delivered
   b. LARGER – buyer has 2 options:
      i. accepts per contract & reject the rest
      ii. accept the whole – pay price stipulated
      iii. reject whole if subject matter is indivisible
   c. MIXED WITH GOODS OF DIFFERENT DESCRIPTION – buyer has 2 options:
      i. accepts good w/c are in accordance with contract & reject the rest
      ii. reject goods entirely – if indivisible

2. IMMOVABLES
   a. sold per unit or number
      • with statement of its area, rate at certain price
      • deliver all that may have been stated in the contract
      • if impossible, remedies of buyer:
         ➢ LESS IN AREA
            i. rescission
            ii. proportional reduction of price – LACK IN AREA SHLD NOT BE LESS THAN 1/10 OF AREA AGREED UPON
         ➢ GREATER IN AREA
            i. accept per stipulation & reject the rest
            ii. accept whole area – pay at contract rate
      • Not applicable to judicial sales
   b. sold for lump sum
      • When price per unit not indicated
      • Is area delivered is either greater or lesser – price will not be adjusted accordingly

Time & Place of Delivery
1. follow stipulation in contract, or
2. follow usage of trade, or
3. seller’s place of business or his residence
4. specific goods – place where the thing is
5. at reasonable hour

Effects of Delivery: Title to thing is transferred/ownership is transferred
Except: contrary is stipulated as in the case of:
1. contract to sell
2. sale on acceptance/approval
3. sale or return
4. there is implied reservation of ownership
WHO BEARS EXPENSES OF DELIVERY – Seller
Sale by description/sample
1. Sample – goods must correspond with sample shown
2. Description – goods must correspond with description or sample
   • Effect if there is no compliance: RESCISSION may be availed of by the buyer

OBLIGATION OF BUYER
1. Pay the price
   • Buyer is obligated to pay price according to terms agreed upon – regarding time, place & amount
   • If payment of interest is stipulated – must pay; if amount of interest not mentioned – apply legal rate
   • When buyer defaults – constitutes breach: subject to specific performance/rescission & damages; interest to be paid also from date of default
2. Accept delivery of thing sold
   • Where to accept: at time & place stipulated in the contract; if none specified – at time & place of delivery
   • Goods; there is acceptance when:
     a. He intimates to seller that he has accepted
     b. When delivered & does any act inconsistent with ownership of seller
     c. Retains without intimating to seller that he has rejected
   • Sale of Goods on installment:
     a. Goods must be delivered in full, except when stipulated
     b. When not examined by buyer – not accepted until examined or at least had reasonable time to examine
   • Acceptance of goods in general, absent contrary express stipulation, does not discharge seller from liability in case of breach of warranties (unless no notice or failure to give it within reasonable time)
   • When buyer has a right to refuse goods, no need to return; shall be considered as depositary; unless there is stipulation to contrary

DOUBLE SALE
General Rule: FIRST IN TIME, PRIORITY IN RIGHT
When does it apply: when not all requisites embodied in 1544 concur

SPECIAL RULE: 1544
• Requisites;
  1. exactly same subject matter
  2. exactly same immediate seller
  3. they buyers represent conflicting interest
  4. both sales are valid

RULES ACCORDING TO 1544:
1. MOVABLE
   • owner is first to possess in good faith
2. IMMOVABLE
   • First to register in good faith
   • No inscription, first to possess in good faith
   • No inscription & no possession in good faith – Person who presents oldest title in good faith

GOOD FAITH
1. one who buys property without notice that another person has a right or interest in such property
2. one who has paid price before notice that another has claim or interest
   • lis pendens – notice that subject matter is in litigation
   • adverse claim – notice that somebody is claiming better right
POSSESSION
• Both actual or constructive

REGISTRATION
1. registered under Torrens system
   • 1544 applies
2. not registered under the Torrens system
   • 1544 still applies
   • decided case which excluded unregistered land dealt with judicial sale whereby buyer acquires right of transferor; outside of such situation – must apply to conflicting sale over same unregistered parcel of land
3. when situation is sale 1 deals with land when not yet registered & sale 2 is done when land already registered – apply FIRST IN TIME, PRIORITY IN RIGHT

CHAPTER 7: DOCUMENTS OF TITLE
DOCUMENTS OF TITLE
• not creations of law but by merchants to allow them to deal with merchandise without having to physically carry them around
• pertains to specific type of movables only: GOODS

FUNCTIONS
1. evidence of existence & possession of goods described therein
2. medium by which seller is able to transfer possession of goods

FORMS
1. negotiable
   a. deliver to bearer (negotiation by mere delivery)
   b. deliver to specific person or his order (negotiation by endorsement + delivery)
      • even if face of instrument says NON-NEGOTIABLE it is still NEGOTIABLE; limiting words not to destroy negotiability
      • if order instrument & no endorsement was made – equivalent to assignment

IMPORTANT CONSIDERATIONS
1. Negotiation gives better right than assignment

<table>
<thead>
<tr>
<th>NEgotiation</th>
<th>ASSIGNment</th>
</tr>
</thead>
<tbody>
<tr>
<td>transferor/holder acquires title to goods</td>
<td>acquires title to goods against transferor</td>
</tr>
<tr>
<td>bailee has direct obligation to holder as if directly dealt with him</td>
<td>acquires right to notify bailee so that he acquires obligation of bailee to hold goods for him</td>
</tr>
</tbody>
</table>

2. Assignee takes document with defects of the assignor
3. Obligation of bailee – bailee is immediately bound to the document

WARRANTIES ON NEGOTIATION/ASSIGNMENT – THE SAME
1. the document is genuine
2. he has legal right to negotiate or transfer it
3. he has knowledge of no fact which would impair the validity or worth of the document
4. he has right to transfer title to goods and goods are merchantable/fit

RULES OF LEVY/GARNISHMENT OF GOODS COVERED BY DOCUMENTS OF TITLE
1. Non negotiable
   • Notification is operative act to transfer title/possession of goods in favor assignee
   • Before notification – can be garnished but not when there is notification already
2. Negotiable
   • Can not be levied or garnished when docs already with purchaser in good faith, unless:
     a. Document is first surrendered
     b. Document is pounded by court
     c. Negotiation is enjoined
CHAPTER 8: SALE BY NON-OWNER OR BY ONE HAVING VOIDABLE TITLE

1. SALE BY NON-OWNER
   Perfection Stage
   a. sale by owner – valid
   b. sale by non-owner – valid;
      • because ownership is necessary only transfer title to goods; at perfection stage, no obligation on part of seller to transfer ownership
      • law on estoppel further bolster it: title passes by operation of law to grantee when person who is not owner of goods sold delivers it and later on acquires title thereto
      • since valid, action to annul is improper; there is perfected contract
   Consummation Stage
   • Contract of sale is valid because it has passed perfected stage, despite:
      a. seller is not owner
      b. seller has no authority to sell
   • What is void is the transfer of title/ ownership did not pass
   • Effect: buyer acquired no better right than transferor
   • Legal effect: CAVEAT EMPTOR – BUYER BEWARE
      a. co-owner sells whole property prior to partition – sale is void as to his spiritual share
      b. co-owner sells definite portion to partition – sale is void as to other co-owner but valid as to his spiritual share
   • Exception:
      a. owner by his conduct is precluded from denying seller’s authority (ESTOPPEL)
      b. contrary is provided for in recording laws (pd 1529)
      c. sale is made under statutory power of sale or under a court of competent jurisdiction
      d. sale is made under merchant’s store in accordance with code of commerce & special laws

2. SALE BY SELLER WITH VOIDABLE TITLE
   Perfection Stage
   Valid sale – buyer acquires title of goods
   Consummation Stage
   • Valid sale – if title has not yet been avoided buyer buys goods under following condition:
      a. in good faith
      b. for value
      c. without notice of seller’s defect of title

TITLE AS TO MOBILE PROPERTIES
Rule: POSSESSION IS EQUIVALENT TO TITLE
• Requisites:
   a. Possession of a movable
   b. In good faith
• Exception:
   a. Owner lost movable – owner can recover w/o reimbursing price
   b. Owner is unlawfully deprived – owner can recover w/o reimbursing price
• Exception to Exception:
   a. movable is bought at public sale – owner can only recover after reimbursing price
   b. in good faith & for value
CHAPTER 9: LOSS, DETERIORATION, FRUITS & OTHER BENEFITS

<table>
<thead>
<tr>
<th>CIVIL LAW</th>
<th>COMMON LAW</th>
</tr>
</thead>
<tbody>
<tr>
<td>No valid contract involving generic subject matter;</td>
<td>Perfection of K of sale which is not conditional covers good that are determinable</td>
</tr>
<tr>
<td>To have a valid contract of sale, subject matter must be determinate (law on loss, deterioration, fruits, applies only to determine subject matter)</td>
<td>Perfection is the mode which transfers ownership to buyer;</td>
</tr>
<tr>
<td>Not a title but a mode</td>
<td>Tradition is merely a means to perform obligation</td>
</tr>
<tr>
<td>Perfection of contract of sale which is not</td>
<td>Res perit domino; owner bears risk of loss</td>
</tr>
<tr>
<td>Conditional include goods which are not deliverable; transfers risk to buyer</td>
<td></td>
</tr>
</tbody>
</table>

WHO BEARS RISK OF LOSS/DETERIORATION/FRUITS
1. Before perfection
   - *Res perit domino*
   - Owner is seller so seller bears risk of loss
2. At Perfection
   - *Res perit domino*
   - Contract is merely ineffectual because loss of the subject matter does not affect the validity of the sale
   - Seller cannot anymore comply with obligation so buyer cannot anymore be compelled
3. After Perfection but before delivery
   a. Loss – confused state
      2 views:
      Paras: BUYER
      Tolentino: SELLER
   b. Deterioration & fruits - Buyer bears loss
4. After delivery
   - *Res perit domino*
   - Owner is buyer so buyer bears risk of loss
   - Delivery extinguish ownership *vis-a-vis* the seller & creates a new one in favor of the buyer

CHAPTER 10: REMEDIES OF PARTIES FOR BREACH OF CONTRACT OF SALE
SUBJECT MATTER: MOVABLES (IN GENERAL)
REMEDIIES OF UNPAID SELLER
- Any man may not take law in his own hands, must seek remedy through courts
- Exception:
  1. DOCTRINE OF SELF HELP
  2. SPECIAL REMEDIES
- Requisites:
  1. Subject matter – goods
  2. Seller is unpaid – not completely paid or received negotiable instrument under a condition & condition has been breached by reason of dishonor
  3. Physical possession is with seller

1. possessory lien
2. stoppage *in transitu*
3. special right of re-sale 
   Can only be exercised when 2 prior rights have been exercised
4. special right to rescind
Possessory Lien
- Seller not bound to deliver if buyer has no paid him the price
- Right to retain; cannot be availed when seller does not have custody
- Exercisable only in following circumstances:
  a. goods sold without stipulation as to credit
  b. goods sold on credit but term of credit has expired
  c. buyer becomes insolvent
- When part of goods delivered, may still exercise right on goods undelivered
- Instances when possessory lien lost:
  a. seller delivers goods to carrier for transmission to buyer without reserving ownership in goods or right to possess them
  b. buyer or agent lawfully obtains possession of goods
  c. waiver
- loses lien when he parts with goods (still has stoppage in transitu)
- notice by seller to buyer not essential

Stoppage in Transitu
- Requisites:
  1. Goods are in transit
     - When goods are in transit
       - From the time goods are delivered to carrier for purpose of transmission to buyer
       - Goods rejected by buyer & carrier continues to possess them
     - When goods no longer in transit
       - Reached point of destination
       - Before reaching destination, buyer met seller along the way
       - Goods are supposed to have been delivered to buyer but carrier refused
  2. Shown by seller that buyer is insolvent (failure to pay when debts come due)
     - How is right exercised:
       a. Obtain actual possession of goods
       b. Give notice of claim to carrier / bailee in possession thereof
       - Notice by seller to buyer is not required; notice to carrier is essential

Special Right to Resell the Goods
- Requisites:
  1. goods are perishable
  2. stipulated the right of resale in case buyer defaults in payment
  3. buyer in default for unreasonable time
  - notice by seller to buyer not essential
  - why special – there are things which seller cannot do in ordinary sale:
    1. ownership is with buyer but seller can sell goods
    2. title accorded to buyer is destroyed even without court intervention

Special Right to Rescind
- why special – ownership of goods already with buyer but seller may still rescind; ownership is destroyed even without court intervention but in ordinary sale, need to go to court to destroy transfer of ownership
- Requisites:
  1. Expressly stipulated
  2. Buyer is in default for unreasonable time
  - Notice needed to be given by seller to buyer

Remedies of Buyer
- When Seller fails to deliver, buyer may seek SPECIFIC PERFORMANCE WITHOUT GIVING SELLER OPTION TO RETAIN GOODS ON PAYMENT OF DAMAGES
SALE OF MOVABLES ON INSTALLMENT

REMEDIES OF UNPAID SELLER (1484)
1. Exact fulfillment should the buyer fail to pay
2. Cancel the sale if buyer fails to pay 2 or more installments
3. Foreclose on chattel mortgage if buyer fails to pay 2 or more installments
   - If buyer chooses foreclosure, no further action against buyer to recover any unpaid balance of the price
   - When law is applicable: Sale on moveables by installment
   - Sale on installment: payment by several partial payments in small amount
   - Rationale of the law: Buyer is lulled into thinking that he could afford because of small amounts per installment & at the same time remedy abuse of commercial houses
   - Nature of remedies: alternative & not cumulative
   - Coverage: sale & financing transaction & contracts of lease with option to purchase
   - Action: Judicial & Extrajudicial

SPECIFIC PERFORMANCE
- If already chose specific performance, cannot anymore choose other remedies
- Except: after choosing, it has become impossible, rescission may be pursued

RESCISSON
- When chosen, there is correlative obligation to restitute
- But stipulation that installments paid are forfeited are valid if not unconscionable
- Deemed chosen when:
  a. Notice of rescission is sent
  b. Takes possession of subject matter of sale
  c. Files action for rescission
- Barring effect on recovery of balance

FORECLOSURE
- Barring effect on recover of balance
- Extent of barring effect: purchase price
- Exception: mortgagor refuses to deliver property to effect foreclosure; expenses incurred in attorneys fees, etc.

IMMOVABLES (IN GENERAL)
REMEDIES OF SELLER
1. Anticipatory breach
   - Seller has reasonable grounds to fear loss of immovable sold & its price – sue for RESCISSION
2. Non-payment of price
   - RESCISSION

REMEDIES OF BUYER
1. Disturbed in possession or with reasonable grounds to fear disturbance
   - SUSPEND PAYMENT
2. In case of subdivision or condo projects
   - If real estate developer fails to comply with obligation according to approved plan:
     a) RESCIND
     b) SUSPEND PAYMENT UNTIL SELLER COMPLIES
IMMOVABLES (BY INSTALLMENT)
- 1592 – Applies only to contract of sale
- Maceda Law – applies to COS & CTS & Financing

Maceda Law
- Coverage: REAL ESTATE – defines space v CONDO – not defined space (w/ common areas)
  1. contract of sale
  2. contract to sell
  3. financing transactions
- Excluded:
  1. industrial
  2. commercial
  3. sale to tenants under agrarian laws
- Rights Granted to Buyers:
  1. Buyer paid at least 2 years installment
    a. Pay without interest the balance within grace period of 1 month for every year of installment payment
      - Grace to be exercised once every 5 years
    b. When no payment - cancelled; buyer entitled to 50% of what he has paid + 5% for every year exceeding 90% of payments made
      - Cancellation to be effected 30 days from notice & upon payment of cash surrender value
  2. Buyer paid less than 2 years installment
    a. Grace period is 60 days
    b. Cancellation if failure to pay within 60 days grace
    c. 30 days notice before final cancellation
      - buyer can still pay within the 30 days period
      - with interest
- Purpose of law: Protect buyers in installment against oppressive conditions
- Notice needed – waiver thereof id oppressive
- Apply to contracts even before law was enacted
- Stipulation to contrary is void
- Other rights:
  a. Sell rights to another
  b. Reinstate contract by updating within 30 days before cancellation
  c. Deed of Sale to be done by notarial act
  d. To pay full installment in advance the balance of price anytime without interest
  e. Have full payment annotated in certificate of title

CHAPTER 11: REMEDY OF RESCISSION IN CONTRACTS COVERING IMMOVABLES

<table>
<thead>
<tr>
<th>Rescission (Resolution) 1191</th>
<th>Rescission – 1385</th>
</tr>
</thead>
<tbody>
<tr>
<td>Legal basis is substantial breach</td>
<td>Legal basis is lesion (rescissible contract)</td>
</tr>
<tr>
<td>Principal remedy, retaliatory vs. unjust party</td>
<td>Subsidiary remedy – cannot be instituted except when other remedies exhausted</td>
</tr>
<tr>
<td>Mutual restitution</td>
<td>Mutual restitution</td>
</tr>
</tbody>
</table>

- Nature: Judicial
- Extra judicial Rescission
  - allowed if stipulated; burden to sue shifts to party who do not like rescission
  - court still has final say as to propriety of rescission
- Forfeiture of amounts valid being in nature of penal clause
CONTRACT OF SALE – RESCISSION IS APPLICABLE
CONTRACT TO SELL – RESCISSION NOT APPLICABLE
• Non-payment of purchase price would automatically cancel even without further action for rescission
• Except: If subject matter is residential lots, law on rescission applies when there is substantial breach

CHAPTER 12: CONDITION & WARRANTIES
A. CONDITION
• When a contract contains a condition, the non-happening of which would not constitute a breach but extinguishes the obligation
• However, if party to the sales contract has promised that the condition should happen or be performed, the non-performance of which may be treated by parties as breach

<table>
<thead>
<tr>
<th>CONDITION</th>
<th>WARRANTY</th>
</tr>
</thead>
<tbody>
<tr>
<td>Purports to existence of obligation</td>
<td>Purports to performance of obligation</td>
</tr>
<tr>
<td>Obligation must be stipulated to form part of the obligation</td>
<td>Need not be stipulated; may form part of obligation by provision of law</td>
</tr>
<tr>
<td>May attach itself to obligation of seller to deliver possession &amp; transfer</td>
<td>Relates to the subject matter itself or to obligation of the seller as to the subject matter of the sale</td>
</tr>
</tbody>
</table>

B. EXPRESS WARRANTIES (REQUISITES)
1. it must be an affirmation of fact or any promise by seller relating to the subject matter of sale
2. natural tendency of affirmation or promise is to induce buyer to purchase subject matter
3. buyer purchases the subject matter relying thereon
   • when breached, seller is liable for damages

C. IMPLIED WARRANTIES – deemed included in all contracts of sale whether parties are actually aware or not aware or whether they were intended or not; by operation of law
1. warranty that seller has a right to sell
   • refers to consummation stage since in consummation stage, it is where ownership is transferred by tradition
   • not applicable to sheriff, auctioneer, mortgagee, pledgee
2. warranty against eviction
   • unless contrary provision appears in contract
   • when ownership is transferred, buyer shall enjoy the legal and peaceful possession of the thing

REQUISITES OF BREACH OF WARRANTY AGAINST EVICTION:
1. buyer is evicted in whole or in part from the subject matter of sale
2. there is a final judgement
3. basis of eviction is a right prior to sale or an act imputable to vendor
4. seller has been summoned in he suit for eviction at the instance of buyer; or made 3rd party defendant through 3rd party complaint brought by buyer
   • no appeal needed nor a need to resist eviction for right to accrue; enough that aforementioned requisites are complied with
warranty cannot be enforced until aforementioned requisites concur
applies to judicial sale; judgement debtor responsible for eviction unless otherwise decreed in judgement
vendor not liable for eviction if adverse possession had been commenced before sale but prescriptive period is completed after transfer

LIABILITY OF SELLER: (eviction w/c caused buyer to lose whole subject matter)
1. value of thing at time of eviction (whether or not -/+ of price of sale)
2. value of income of fruits
3. cost of suit which caused the eviction
4. expenses of contract if buyer paid for them
5. damages & interests and ornamental expenses if sale was made in bad faith

RIGHTS OF BUYER WHEN DEPRIVED OF ONLY PART OF THE SUBJECT MATTER BUT WOULD NOT HAVE BOUGHT SUCH PART IF NOT IN RELATION FOR THE WHOLE:
1. rescission
2. mutual restitution

3. WARRANTY AGAINST ENCUMBRANCES (non-apparent) requisites:
   a. immovable sold is encumbered with non-apparent burden or servitude not
      mentioned in the agreement
   b. nature of non-apparent servitude or burden is such that it must be
      presumed that the buyer would not have acquired it had he been aware thereof
   - when breach of warranty exist: buyer may ask for rescission or indemnity
   - warranty not applicable when non-apparent burden or servitude is recorded
     in the Registry of Property – unless there is expressed warranty that the thing
     is free from all burdens & encumbrances

4. WARRANTY AGAINST HIDDEN DEFECTS
   SELLER does not warrant patent defect; caveat emptor
   Except when hidden
   a. subject matter may be movable or immovable
   b. nature of hidden defect is such that it should render the subject matter
      unfit for the use of which it was intended or should diminish its fitness
   c. had the buyer been aware, he would not have acquired it or would have
      given a lower price
   - when defect is visible or even if visible if the buyer is an expert by reason of
     his trade or profession, seller is not liable
   obligation of seller for breach depends on whether he has knowledge of such
   defect or not
   a. seller is aware – seller should return price & refund expenses of contract
      with damages
   b. seller is not aware - seller should return price and interest & refund
      expenses (no damages)
   - buyer may elect between withdrawing from contract or demanding
     proportionate reduction of price with damages in either case
   - applicable to judicial sale except judgement debtor not liable for damages
   - action to prescribe 6 months from delivery of subject matter

5. DEFECTS ON ANIMALS
   even in the case of professional inspection but hidden defect is of such nature
   that expert knowledge is not sufficient - defect shall be considered as
   REDHIBITORY
   - if vet fails to discover through ignorance or bad faith he is liable for damages
     a. sale of animals on teams (2 or more)
     - when only one is defective, only one is redhibited & not the others
     exception: when it appears that purchase of team will not be done
        without the defective one
apply to sale of other things
b. sale of animals at fair or public auction
   • no warranty against hidden defects
c. sale of animals with contagious disease is void
d. sale of unit of animal
   • void if use / service for which they are acquired has been stated in the contract and they are found to be unfit thereof
   • prescription of action: 40 days from date of delivery to buyer
   • if sale is rescinded, animals to be returned in same condition when they are acquired; buyer shall answer for injury / loss due to his fault
   • buyer may elect between withdrawing from sale or demanding proportionate reduction of price with damages in either case

D. SPECIFIC IMPLIED WARRANTIES IN THE SALE OF GOODS
1. Warranty as to fitness & quality; requisites:
   a. buyer makes known to seller the particular purpose for which goods are acquired and it appears that the buyer relied on the seller’s skill or judgement
   b. goods are bought by description from seller who deals in goods of that description
      • no warranty unless there is stipulation in case of sale of specified article under its patent or trade name
      • measure of damage: difference between value of goods at time of delivery and value they would have had if they had answered to the warranty

2. Sale of Goods by sample
   • If seller is a dealer in goods of that kind, there is an implied warranty that the goods shall be free from defect rendering them unmerchantable which would not be apparent on reasonable examination of the sample

E. EFFECTS OF WAIVER
   • Parties may increase or diminish implied warranty against eviction; but effect depends on good faith or bad faith on the part of the seller.
     1. seller in bad faith & there is waiver against eviction – null & void
     2. buyer without knowledge of a particular risk made general renunciation of warranty – not waiver but merely limits liability of seller in case of eviction (pay value of subject matter at time of eviction)
     3. buyer with knowledge of risk of eviction assumed its consequences & made a waiver – vendor not liable (applicable only to waiver of warranty against eviction)
   • when goods delivered to buyer he cannot rescind sale
   • if he knew of the breach of warranty when he accepted goods without protest
   • if he fails to return or offer to return goods to seller in substantially as good condition as they were at time ownership was transferred
   • when goods deteriorated, buyer can still return them in that condition if such is due to breach or warranty

F. BUYER’S OPTION IN CASE OF BREACH OF WARRANTY
1. Accept goods & set up breach of warranty by way of recoupment in diminution or extinction or the price.
2. Accept goods & maintain action against seller for damages
3. Refuse to Accept goods & maintain action against seller for damages
4. Rescind contract of sale & refuse to receive goods/return them when already received.
CHAPTER 13: EXTINGUISHMENT

GROUNDS:
1. same grounds whereby obligations in general are extinguished:
   a. payment or performance
   b. loss of the subject matter
   c. condonation or remission
   d. confusion or merger of rights or creditor and debtor
   e. compensation
   f. novation
   g. annulment
   h. rescission
   i. fulfillment of a resolutor y condition
   j. prescription
2. conventional redemption – only applies to contract of sale
3. legal redemption – only applies to contract of sale

CONVENTIONAL REDEMPTION
- seller reserved the right to repurchase thing sold
- coupled with obligation to return price of the sale, expensed of contract & other legitimate payments and the necessary & useful expenses made on the thing sold
- right must be recognized in the deed of sale; must be the same contract

OPTION TO PURCHASE
- right to repurchase the thing sold granted to the vendor in a separate instrument from the deed of sale

EQUITABLE MORTGAGE
- a contract with right to repurchase is equitable mortgage if the following requisites concur:
  1. price of sale with right to repurchase is unusually inadequate
  2. seller remains in possession as a lessee or otherwise
  3. upon / after expiration of right to repurchase, another instrument extending the period of redemption is executed
  4. buyer retains for himself a part of the purchase price
  5. seller binds himself to pay taxes on thing sold
  6. real intention of parties is to secure the payment of a debt or performance of other obligation

IN CASE OF DOUBT – IN DETERMINING WHETHER IT IS EQUITABLE MORTGAGE OR SALE A RETRO (WITH RIGHT OF REPURCHASE – IT SHALL BE CONSTRUED AS EQUITABLE MORTGAGE)

WHAT TO LOOK FOR IN DETERMINING NATURE OF CONTRACT
1. language of the contract
2. conduct of parties – to reveal real intent

REMEDY AVAILABLE TO VENDOR: ask for reformation of contract

RATIONALE BEHIND PROVISION ON EQUITABLE MORTGAGE:
1. Circumvention of usury law
2. Circumvention of prohibition against pactum commissorium – creditor cannot appropriate the things given by way of pledge or mortgage; remedy here is foreclosure
- real intention of parties is that the pretended purchase price is money loaned & to secure payment of the loan, sale with pacto de retro is drawn up
PERIOD OF REDEMPTION
1. No period agreed upon – 4 years from date of contract
2. When there is agreement – should not exceed 10 years; if it exceeded, valid only for the first 10 years.
3. When period to redeem has expired & there has been a previous suit on the nature of the contract – seller shall have 30 days from final judgement on the basis that contract was a sale with pacto de retro: rationale: no redemption due to erroneous belief that it is equitable mortgage which can be extinguished by paying the loan.
4. When period has expired & seller allowed the period of redemption to expire – seller is at fault for not having exercised his rights so should not be granted a new period

EFFECT WHEN THERE IS NO REDEMPTION MADE:
1. jurisprudence before the NCC: buyer a retro automatically acquires full ownership
2. under present art 1607: there must be 3 judicial order before ownership of real property is consolidate in the buyer a retro

HOW IS REDEMPTION EFFECTED:
1. Seller a retro must return first pay the following:
   a. the price of the thing sold
   b. expenses of the contract and other legitimate payments made by reason of the sale
   c. necessary and useful expenses made on the thing sold
2. Valid tender of payment is sufficient
3. Mere sending of notice without valid tender is insufficient
4. Failure to pay useful & unnecessary expenses entitled vendee to retain land unless actual reimbursement is made

IN CASE OF MULTI-PARTIES
1. When an undivided thing is old because co-owners cannot agree that it be allotted to on of them – vendee a retro my compel the vendor to redeem the whole thing
2. When an undivided thing is sold by co-owners / co-heirs, vendors a retro may only exercise his right over his respective share; vendee a retro may demand that they must come to an agreement first and may not be compelled to consent to a partial redemption
3. When rights for co-owners over an undivided thin is sold as regards to their own share – vendee retro cannot compel one to redeem the whole property
4. Should one of the co-heirs/co-owners succeed in redeeming the property – such vendor a retro shall be considered as trustee with respect to the share of the other co-owners/co-heirs.

FRUITS
1. what controls is the stipulation between parties as regards the fruits; if none –
2. at time of execution of the sale a retro there should be visible or growing fruits – there shall be no pro-rating at time of redemption of no indemnity was paid by the vendee a retro
3. at time of execution sale a retro there should be no fruits but there are fruits at time of redemption – pro-rated between vendor a retro & vendee a retro giving the vendee a retro a part corresponding to the time he possessed the land.

LEGAL REDEMPTION
- right to be subrogated upon the same terms and conditions stipulated in the contract, in the place of one who acquires the thing by purchase or by dation in payment or by other transaction whereby ownership is transmitted by onerous title.
- among co-heirs
  - any of heirs sells hereditary right to stranger before partition
  - any of the co-heirs may be subrogated to the rights of the purchaser by redeeming said hereditary right: reimburse buyer of the price of the sale
  - co-heirs has 1 month from receipt of notice in writing
2. among co-owners
   - any or all of co-owners sells their shared to 3rd person
   - any co-owner may exercise right of redemption by paying reasonable price of property to the buyer
   - if 2 or more co-owners desire to exercise right of redemption, they may only do so in proportion to the share they may respectively have in the thing owned in common

**DISTINCTION BETWEEN RIGHT OF REDEMPTION OF CO-HEIRS FROM CO-OWNERS**

<table>
<thead>
<tr>
<th>CO-HEIRS</th>
<th>CO-OWNERS</th>
</tr>
</thead>
<tbody>
<tr>
<td>Heir may redeem for himself alone the hereditary right sold by a co-heir</td>
<td>Co-owner may redeem property but even if uses his own funds, redemption inures to the benefit of other co-owners</td>
</tr>
<tr>
<td>Sale of hereditary right (1088) over no particular object</td>
<td>Sale of interest in particular property</td>
</tr>
</tbody>
</table>

3. among adjoining owners
   a. rural land
      - where piece of rural land has an area not exceeding 1 hectare, adjoining owner has right to redeem unless grantee does not own a rural land
      - if 2 or more adjacent lot owners desire to exercise right to redeem, owner of adjoining lot with smaller area shall be preferred
      - if 2 or more adjacent lot owners desire to exercise right to redeem & both have same lot area, one who first requested shall be granted
   b. urban land
      - when piece of land is small & cannot be used for any practical purpose & brought merely for speculation, owner of adjoining land can redeem
      - 2 or more owners of adjoining lot desire to exercise right to redeem, owner whose intention towards use of land shall be preferred.
   c. sale of credit litigation
      - when a credit or other incorporeal right in litigation is sold, debtor shall have a right to extinguish it by reimbursing the assignee for the price the latter paid therefor plus judicial costs, interest
      - debtor may exercise right within 30 days from assignee demands payment from him

**WHEN PERIOD OF REDEMPTION BEGINS TO RUN**
1. right of legal pre-emption of redemption shall be exercised within 30 days from notice by the buyer
2. deed of sale not to be recorded in RD unless accompanied by affidavit that buyer has given notice to redemptioners
3. when there is actual knowledge, no need to give written notice; period of redemption begins to run from actual knowledge

**OTHER INSTANCES WHEN RIGHT OF LEGAL REDEMPTION IS GRANTED**
1. Redemption of homesteads
   - Public Land Act
   - Land acquired under free patent homestead
   - Subject to repurchase by wife, legal heirs within 5 years from date of conveyance
   - Granted by law, need not be stipulated
2. Redemption in tax sales
   - in case of tax delinquency/failure to pay tax assessments, property is foreclosed
   - delinquent payer has 1 year to redeem by paying to the revenue District Officer the amount of tax delinquencies, & interest or purchase price.
3. Redemption by judgement debtor
   - 1 year to redeem by paying purchaser at public auction with interest
4. Redemption in extrajudicial foreclosure
   - 1 year from date of sale and registration

5. Redemption in judicial foreclosure of mortgage
   - no right to redeem is granted to debtor mortgagor
   - except when mortgagee is bank of a banking institution
   - 90 days after finality of judgement

CHAPTER 14: ASSIGNMENT
- Sale of credits & other incorporeal things
- Technical term but basically a sale

WHAT MAKES ASSIGNMENT DIFFERENT FROM SPECIES SALE:

<table>
<thead>
<tr>
<th>Subject matter</th>
<th>ASSIGNMENT</th>
<th>SALE</th>
</tr>
</thead>
<tbody>
<tr>
<td>Form</td>
<td>Consensual</td>
<td>Consensual</td>
</tr>
<tr>
<td>Binding effect to 3rd persons</td>
<td>Recorded in registry of property</td>
<td>No recording needed to such effect</td>
</tr>
</tbody>
</table>

EFFECT OF ASSIGNMENT
1. lack of knowledge or consent of debtor not essential for validity but has legal effect
2. assignment of rights made w/o knowledge of debtor – debtor may set up against assignee the compensation w/c would pertain to him against assignor of all credits prior to assignment and later ones until he had knowledge of the assignment
3. debtor has consented to assignment – cannot set up compensation unless assignor was notified that he reserved his right to the compensation
4. debtor has knowledge but no consent - compensation may still be set up

TRANSFER OF OWNERSHIP
- by tradition & not by perfection
- execution of public instrument because intangibles cannot be physically transferred

ACCESSORIES & ACESSIONS
- includes all accessory rights such as guaranty, mortgage, pledge or preference

WARRANTIES
1. against hidden defect - N/A because intangibles has no physical existence
2. existence & legality of credit - there is warranty except when what is sold is doubtful account
3. solvency of debtor - no warranty, unless
   a. there is stipulation
   b. insolvency was prior to assignment & of common knowledge
      - shall only last for 1 year
4. one who assigns inheritance right w/o enumerating rights shall be answerable for his character as an heir
5. one who sells certain rights for a lump sum, shall be answerable for legitimacy of the whole in general but not for each of the various parts

BREACH OF WARRANTY
1. if in good faith - expenses of the contract & other legitimate payments made by reason of the assessment
2. if in bad faith - expenses of contract & other legitimate payments plus useful & necessary expenses

ASSIGNMENT OF CREDIT OR INCORPOREAL RIGHT IN LITIGATION
- speculative
- law would rather benefit the debtor of such credits rather than the one who merely speculates for profit
• when credit or incorporeal right in litigation is assigned or sold, debtor has a right to extinguish it by reimbursing the assignee for the price the buyer paid plus interest
• right to redeem to be exercised within 30 days from demand by assignee for payment

RIGHT TO REDEEM BY DEBTOR NOT AVAILABLE IN THE FOLLOWING INSTANCES (NOT CONSIDERED SPECULATIVE)
1. assignment of credit / incorporeal right to co-heir or co-worker
2. assignment to creditor in payment for his credit
3. assignment to possessor of tenement or piece of land which is subject to the right in litigation assigned

CHAPTER 15: BULK SALES LAW
• Protect creditor of merchant stored
• 3 types of transactions:
  1. Sale of goods other than in ordinary course of business
  2. Sale of business
  3. Sale of fixtures & equipments
• Should cover only merchants because creditors cannot get adequate security because goods are sold ordinarily in course of business
• Not covered:
  1. with waiver of creditor of seller
  2. receiver, assignee in insolvency proceeding
• Duty of seller to perform the following when transaction is within the coverage of the law
  1. make sworn statement of listing of creditors
  2. delivery of sworn statement to buyer
  3. apply the proceeds pro-rata to claims of creditors shown in verified statement
  4. written advance disclosure to creditors

EFFECTS OF NON-COMPLIANCE

<table>
<thead>
<tr>
<th>FAILURE TO:</th>
<th>ON TRANSACTION</th>
<th>ON SELLER</th>
</tr>
</thead>
<tbody>
<tr>
<td>Prepare &amp; deliver sworn listing of creditors</td>
<td>Fraudulent &amp; void</td>
<td>Criminal Liability</td>
</tr>
<tr>
<td>Apply proceeds pro-rata to listed creditors</td>
<td>Fraudulent &amp; void</td>
<td>Criminal Liability</td>
</tr>
<tr>
<td>Make advance written disclosure of transactions to creditors</td>
<td>Not void</td>
<td>No Criminal Liability</td>
</tr>
<tr>
<td>Register sworn statement with DTI</td>
<td>Not void</td>
<td>No Criminal Liability</td>
</tr>
<tr>
<td>Include or omit names of creditors &amp; correct amount due in the statement</td>
<td>Void</td>
<td>Criminal Liability</td>
</tr>
<tr>
<td>Sale for no consideration</td>
<td>Void</td>
<td>Criminal Liability</td>
</tr>
</tbody>
</table>

ANTI-DUMMY LAW
• Penalizes Filipinos who permit aliens to use them as nominees or dummies to enjoy privileges reserved only for Filipinos
• Management, operation as officers, employees or laborers
• Control or non-control position