

MODULE/DAY 12

REAL & CHATTEL MORTGAGE

What I Know

What I Know (Activity 1)	Questions:	What I Learned (Activity 4)
<p>Contract of mortgage is a contract between a borrower (mortgagor) and the lender (mortgagee) where a lien is created on the property in order to secure repayment of the loan.</p>	<p>1. What is a contract of mortgage?</p>	<p>It is a contract whereby the debtor secures to the creditor the fulfillment of a principal obligation, especially subjecting to such security,immovable property or real rights over immovable property in case the principal obligation is not complied with at the time stipulated.</p>
<p>The requisite that I know is that the mortgagor is the absolute owner of the mortgaged property.</p>	<p>2. What are the essential requisites of contract of mortgage?</p>	<p>1. Constituted to secure the fulfillment of a principal obligation. 2. The mortgagor be the absolute owner of the thing mortgaged. 3.That the persons constituting the mortgage have the free disposal of their property and in the absence thereof, that they be legally authorized for the purpose. 4. It is indispensable in order that a mortgage may be validly constituted that it appears in a public document duly recorded in the Registry of Property. If the instrument is not recorded the mortgage is nevertheless binding between the parties.</p>
<p>Yes, the owner has the right to sell his property.</p>	<p>3. Can the owner sell the mortgaged property? Explain briefly.</p>	<p>Yes, the owner has the right to sell his property. The law considers void any stipulation forbidding the owner from alienating the mortgaged immovable.</p>

Activity 3: Skill-Building Activities

1. What is the legal effect if the parties failed to record the mortgage in the Registry of Property?

If the mortgage or instrument is not recorded in Registry of Property, it is not effective against innocent third parties. However, the mortgage is nevertheless binding between the parties.

2. Can the mortgagor sell the mortgaged property? Explain.

One of the requisites of real mortgage is that the mortgagor be the absolute owner of the thing mortgaged. The mortgagor remains to be the owner and still has the right to sell his property.

3. Can the parties stipulate in the contract that the mortgagor is not allowed to sell or dispose the mortgaged property? Explain.

The stipulation in the real estate mortgage which prohibits the mortgagor from selling the mortgaged property without consent of the mortgagee contravenes the law, Article 2130 of the New Civil Code holds that a stipulation forbidding the owner from alienating the immovable mortgaged shall be void.

4. If the property is foreclosed by means of a judicial foreclosure and the proceeds of the sale is not enough to pay the loan, is the mortgagee entitled to recover deficiency?

Yes, if there be a balance due to the mortgagee after applying the proceeds of the sale ordered by the court, the mortgagee is entitled to recover the deficiency.

5. Marcial mortgaged his land to Rodrigo to obtain a debt of P 100,000. Marcial then sold the land to Alfredo. When the debt falls due, Rodrigo demand payment from Marcial however Marcial fails to pay. What is the remedy of Rodrigo?

The remedy of Rodrigo is foreclosure. The mortgage note lacks of power of sale clause. The property will be sold at the auction to satisfy the principal obligation which Marcial failed to fulfill. Marcial is indebted to Rodrigo with P 100,000, the whole proceeds of the auction sale will be used to pay the obligation of Marcial to Rodrigo. If the proceeds are not enough to satisfy the debt, the mortgagee is entitled to a personal judgment for the deficiency.

6. What is the effect if the Chattel Mortgage is not recorded in Chattel Mortgage Register? Explain.

Registration in Chattel Mortgage Register is a requirement of Chattel Mortgage. 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.

7. Where the proceeds from the sale of mortgaged property do not fully satisfy the secured debt, is the mortgagee entitled to recover the deficiency from the mortgagor? Explain.

In Chattel mortgage, if the proceeds from the sale of mortgaged property do not fully satisfy the secured debt, the mortgagor must pay the deficiency while contract of pledge, the creditor is not entitled to recover deficiency from the debtor.

8. Can the mortgagee appropriate to himself the personal property subject to the chattel mortgage if the mortgagor defaults in the payment of the principal obligation? Explain.

The mortgagee has no right to appropriate to himself the personal property because he is permitted only to recover his credit from the proceeds of the sale of the property at a public auction.

Activity 5: Check for Understanding

Exercise I. TRUE or FALSE

TRUE 1. The objects of a contract of mortgage are immovables and alienable real rights imposed upon immovables.

FALSE 2. To be valid, it is not indispensable that the mortgage appears in public document and duly recorded in the Registry of Property.

TRUE 3. Contract of mortgage creates real right.

TRUE 4. Contract of mortgage merely creates an encumbrance.

FALSE 5. A mortgage is constituted o immovable property is limited only to the property itself.

FALSE 6. The mortgaged property may not be alienated by its owner.

TRUE 7. A stipulation forbidding the owner from alienating the immovable mortgaged shall be void.

FALSE 8. Redemption is the remedy available to the mortgagee by which he subjects the mortgaged property to the satisfaction of the obligation through the sale of the property at the public auction.

TRUE 9. A mortgage may be foreclosed judicially or extrajudicially.

TRUE 10. Being an accessory contract, the validity of a mortgage would depend on validity of the loan secured by it.

Exercise 2. TRUE or FALSE

FALSE 1. A chattel mortgage is a formal contract because it depends on other contract for its existence.

FALSE 2. In chattel mortgage, the delivery of the personal property is necessary.

TRUE 3 Chattel mortgage and contract of pledge is similar in the sense that both of them are executed to secure performance of a principal obligation.

FALSE 4. When the debtor defaults in payment of the principal obligation, the mortgagee may appropriate the thing subject to chattel mortgage for himself.

TRUE 5.The chattel mortgage is extinguished upon the fulfillment of the principal obligation.

FALSE 6.The chattel mortgage is constituted in both movable and immovable property.

TRUE 7.If the property is situated in a province different from the residence of the mortgagor, the registration must be in both places.

TRUE 8.In chattel mortgage, the creditor is entitled to the deficiency in case the proceeds from sale is less than the amount owing to him.

FALSE 9.In contract of pledge, the creditor is entitled to the deficiency in case the proceeds from sale is less than the amount owing to him.

TRUE 10.In the chattel mortgage, if the property is foreclosed, the excess over the amount due goes to the debtor.

Activity 6: Thinking about Learning

Did you have challenges learning the concepts in this module? If none, which parts of the module helped you learn the concepts?

The activities are a bit challenging.The concepts in this module helped me learn the topic.

Some question/s I want to ask my teacher about this module is/are:

Nothing to ask Ma'am.

Date	Learning Target/Topic	Scores	Action Plan
What's the day today?	What module# did you do? What were the learning targets? What activities did you do?	What were your scores in the activities?	What contributed to the quality of your performance today? What will you do next session to maintain your performance or improve it?
March 10, 2021	Module 12	Hoping for passing scores	The activities are quite challenging but it made me focused to understand the topic.