

QUESTIONS¹ AND ANSWERS²
IN
SALES AGENCY AND
CREDIT TRANSACTIONS
(For Business Law Students)

BY:

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¹ Questions came from the Book of Atty. Fidelito Soriano on Sales Agency and Credit Transactions.

² Initial Answers were prepared by the following students of the undersigned namely: Paolo Miguel Villaceran, Roby Cundangan, Cecille Pajenago, Mark Hatulan, and PUPSRC BSA 3-1 -2012-2013 students. As such, special gratitude is hereby being made upon them.

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LAW ON SALES

1. A contract whereby one of the contracting parties obligates himself to transfer the ownership of and to deliver a determinate thing and the other to pay therefore a price certain in money or its equivalent is a contract of:
 - a. barter
 - b. sale
 - c. dacion en pago
 - d. mortgage

Answer: B. sale

It is expressly stated in Article 1458 of the Civil Code that by the contract of sale one of the contracting party obligates himself to transfer the ownership of to deliver a determinate thing, and other to pay therefor a price certain in money or its equivalent.

2. The following are the essential elements of a contract of sale, except:
 - a. consent of the contracting parties
 - b. subject matter which should be determinate
 - c. price which is certain money or its equivalent
 - d. warranty against eviction and against hidden defects

Answer: D. warranty against eviction and against hidden defects

Also, it is expressly stated in the article 1458 of the Civil Code of the Philippines wherein the three are to be found within the first paragraph. Warranty against eviction and hidden defects is not an essential element of a Contract of Sale but merely a natural elements of a contract of sale.

3. The following are the characteristics of a contract of sale, except:
 - a. principal, which means a contract of sale can stand by itself
 - b. real, which requires the delivery of the object of the contract of sale for its perfection
 - c. onerous, where rights are acquired in exchange of a valuable consideration
 - d. bilateral, which means that both parties are bound reciprocally to each other

Answer: B. real, which requires the delivery of the object of the contract of sale for its perfection

It is because a contract of sale can be perfected even though without the delivery of the object. It is a CONSENSUAL CONTRACT.

4. One of the following characteristics of dacion en pago is also a characteristic of a contract of sale. Which is it?
 - a. There is a pre-existing credit.
 - b. Obligations are extinguished.
 - c. There is less freedom in fixing price.
 - d. Ownership of the object is transferred to the other party.

Answer: D. Ownership of the object is transferred to the other party

It is because dacion en pago is also known as dation of payment wherein the property of the debtor is alienated by the creditor for the satisfaction of the credit.

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And from there we can conclude that there is also a transfer of ownership in dacion en pago.

5. The following are characteristics of a contract of sale except for one which refers to payment by cession. Which characteristic refers to payment by cession?
 - a. There is no pre-existing credit.
 - b. The cause or consideration is the price.
 - c. There is more freedom in fixing the price.
 - d. Assignee of the property acquires the right to sell the thing but not the owner thereof.

Answer: D. Assignee of the property acquires the right to sell the thing but not the owner thereof.

In payment of cession, the creditors do not become the owners of the property assigned to them but are merely given the right to sell such property and apply the proceeds to their claims.

6. The following items pertain to either a contract of sale or contract to sell.
 - I. Ownership of the thing sold is transferred upon delivery.
 - II. Ownership of the thing is transferred to the buyer at some future time.
 - III. The risk of loss is on the buyer.
 - IV. The risk of loss is on the seller.

Based on the above data, which of the following is correct?

- a. Items I and III pertain to a contract to sell.
- b. Items II and III pertain to a contract to sell.
- c. Items II and IV pertain to a contract of sale.
- d. Items I and III pertain to a contract of sale.

Answer: D. Items I and III pertain to a contract of sale.

It is due to the reason that generally speaking the seller bears the loss and the ownership of the object of the contract transfers upon delivery.

Statement I pertains to a contract of sale because it is stated in Article 1477 that ownership of thing sold is transferred upon the actual or constructive delivery thereof.

7. One of the following is not a requisite of the object of a contract of sale. Which is it?
 - a. It must be within the commerce of men.
 - b. It must be licit.
 - c. It must be determinate or determinable.
 - d. Vendor must have the right to transfer the ownership of the thing at the time of sale.

Answer: D. Vendor must have the right to transfer the ownership of the thing at the time of sale.

Because it is not mentioned within the articles concerning the object of a contract of sale which are articles 1459 – 1465. Even if the Vendor is not the owner of the property at the time of the perfection, the sale is still valid as long as he is the owner at the time of the delivery.

8. The following items pertain to either emptioresperati or emptiospei.
 - I. The sale of future thing.

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- II. The sale of hope or expectancy.
- III. The sale of a present thing.
- IV. The thing sold must come into existence

Based on the above information, which of the following is correct?

- a. Items I and II pertain to emptioreisperati.
- b. Items II and III pertain to emptiospei.
- c. Items II and III pertain to emptioreisperati.
- d. Items III and IV pertain to emptiospei.

Answer: B. Items II and III pertain to emptiospei.

Emptiospei is a sale of present thing, or the hope itself or expectancy.

9. Santiago sells Bermejo 500 sacks of rice at P1,000 per sack from the stock then stored in the warehouse of Santiago. Unknown to the parties, the warehouse contains only 480 sacks of rice. What is the status of the contract between Santiago and Bermejo?
- a. The sale is void since the quantity available is less than the quantity sold.
 - b. The sale is valid up to 480 sacks of rice but void as to the deficiency of 20 sacks of rice.
 - c. The entire sale is valid up to 500 sacks of rice. Bermejo becomes the owner of the whole stock available and Santiago must deliver the deficiency of 20 sacks of rice.
 - d. The sale is valid up to 480 sacks of rice but rescissible as to the deficiency of 20 sacks of rice by reason of damage suffered by Bermejo.

Answer: C. The entire sale is valid up to 500 sacks of rice. Bermejo becomes the owner of the whole stock available and Santiago must deliver the deficiency of 20 sacks of rice.

It is expressly stated in Article 1464 of the Civil Code of the Philippines. In a sale wherein the seller delivers insufficient amount than contracted, the buyer may either reject or accept the sale up to the amount available upon delivery. If accepted, the seller is bound to deliver the deficiency of same kind and quality.

10. Somera sells to Buenviaje at P50 per gallon 300 gallons of gasoline stored in his truck's tank which unknown to the parties, contains 500 gallons gasoline. What is the status of the contract of sale between Somera and Buenviaje?
- a. The sale is void because the quantity available is more than the quantity sold.
 - b. The sale is valid up to 500 gallons of gasoline. Buenviaje must pay for the additional 200 gallons of gasoline.
 - c. The sale is valid up to 300 gallons of gasoline. Buenviaje becomes the owner of 3/5 of the whole stock, while Somera becomes the owner of 2/5 of the whole stock.
 - d. The sale is rescissible because Somera will suffer lesion of more than 1/4 of the value of the whole stock.

Answer: C. The sale is valid up to 300 gallons of gasoline. Buenviaje becomes the owner of 3/5 of the whole stock, while Somera becomes the owner of 2/5 of the whole stock.

It is discussed in Article 1464 that there may be sale of undivided share of fungible goods even though the seller sold, or the buyer bought, a definite number weight or measure. In the said case, the buyer becomes a co-owner of the such as share in the mass. As such, Buenviaje becomes the co-owner of 3/5 of the stocks which is equivalent to 300 gallons.

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The co-ownership of the parties will end once they have actually partitioned the stocks.

11. San Miguel Corporation, which maintains a professional basketball team entered into a contract with Armstrong Rubber Company for the latter to provide a pair of rubber shoes to the former's two imported basketball players, Charles Jordan and Michael Barkley. Armstrong Rubber Company was instructed to make a pair for either both players in case the company did not manufacture shoes of their size. No pair was, however, immediately available for both the players. Charles Jordan, who is 6'5" tall and wears size 12 rubber shoes, was given the following day from the 300 pairs that Armstrong was in the process of manufacturing for its customers at the time the orders were received. Michael Barkley, who is 7' tall wears a size 16 shoes, was provided was provided three days later, with a pair that was specially made for him since Armstrong does not make shoes of his size. What kinds of contracts were entered into for the shoes provided to the two basketball players?
- The contract for the pair of shoes provided to Charles Jordan is a contract for a piece of work, while that for Michael Barkley is a contract of sale.
 - The contract for the pair of shoes provided to Charles Jordan is a contract of sale, while that for Michael Barkley is a contract for a piece of work.
 - Both contracts are contracts of sale.
 - Both contracts are contracts for a piece of work.

Answer: B. The contract for the pair of shoes provided to Charles Jordan is a contract of sale, while that for Michael Barkley is a contract for a piece of work.

A contract for the delivery at a certain price of an article which the vendor in the ordinary course of the business manufactures or procures for the general market, whether the same is on hand at the time or not, is a contract of sale, but if the goods are to be manufactured specially for the customer and upon his special order, and not for the general market, it is a contract for a piece of work.

Since the pair of shoes provided to Barkley is not being usually manufactured in the normal course of business and was specifically made for him, the said transaction is a contract of a piece of work.

On the other hand, since the product given to Jordan is being manufactures in the normal course of business, the same is a contract of sale.

12. S and B entered into a contract whereby S transferred to B a specific car for the price of P200,000.00 while B gave to S P90,000.00 in cash and a diamond ring worth P110,000.00. The heading of the written contract signed by the parties reads "Contract of Sale".
- The contract is void because the intention of the parties is void since the value of the diamond ring is more than the monetary consideration.
 - The contract is a valid contract of sale as intended by the parties regardless of whether the monetary consideration is more or less than the value of the property consideration.
 - The contract is a valid contract of barter since the value of the property given is more than the monetary consideration. The intention of the parties is immaterial.
 - The contract is partly a contract of barter and partly a contract of sale.

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Answer: B. The contract is a valid contract of sale as intended by the parties regardless of whether the monetary consideration is more or less than the value of the property consideration.

It is stated in Article 1468 of the civil Code of the Philippines that if the consideration of the contract consists partly in money, and partly in another thing, the transaction shall be characterized by the manifest intention of the parties. If such intention does not clearly appear, it shall be considered a barter if the value exceeds the amount of money or its equivalent; otherwise, it is a sale.

If the value of money is equivalent to the value of the property, the contract is a SALE.

However, take note that it is important first to determine the INTENTION of the parties. If the intention of the parties is clear, there is no need to refer to the value of the money nor to the value of the property.

13. The price in a contract of sale is certain, except:
- a. when the parties have fixed or agreed upon a definite amount.
 - b. if the price is certain with reference to another thing.
 - c. if the fixing of the price is left to the discretion of one of the contracting parties and the price fixed is not accepted by the other party.
 - d. if the price fixed is that which the thing sold would have on a definite day or in a particular exchange or market.

Answer: C. if the fixing of the price is left to the discretion of one of the contracting parties and the price fixed is not accepted by the other party.

The requisites for a price in a contract of sale to be certain is duly stated in article 1469 of the civil code of the Philippines which states *that in order that the price may be considered certain, it shall be sufficient that it be so with reference to another thing certain, or that the determination thereof be left to the judgment of a special person or persons.*

Should such person or persons be unable or unwilling to fix it, the contract shall be inefficacious, unless the parties subsequently agree upon the price.

If the third person or persons acted in bad faith or by mistake, the courts may fix the price.

Where such third person or persons are prevented from fixing the price or terms by fault of the seller or the buyer, the party not in fault may have such remedies against the party in fault as are allowed the seller or the buyer, as the case may be.

Even if the fixing of the price is left to the discretion of the parties, the sale is still valid IF the other party agreed or accepted the said price fixed.

14. On January 1, S orally sold to B a specific ring for P450.00. The parties agreed upon that S shall deliver the ring to B on January 5, while B shall pay the price on January 7.
- a. The contract is perfected on January 5, when the ring is delivered by S to B.
 - b. The contract is perfected on January 1, when the parties had a meeting of the minds on the object and the price.

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- c. The contract is perfected on January 7, when the price is paid, since both parties would by then have performed their obligations in the contract.
- d. There is no perfected contract because the sale was made orally.

Answer: B. The contract is perfected on January 1, when the parties had a meeting of the minds on the object and the price.

As stated in article 1475 of the civil code of the Philippines, *the contract of sale is perfected at the moment there is a meeting of minds upon the thing which is the object of the contract and upon the price.*

From that moment, the parties may reciprocally demand performance, subject to the provisions of the law governing the form of contracts.

Article 1475 is applicable in the question because it states the time of the perfection of the contract which is thing asked. The provision follows the general rule that contracts are perfected by mere consent. The contract of sale being consensual, it is perfected without the necessity of any other circumstances. From the moment there is meeting of minds upon the thing which is the object of the contract and upon the price. The reciprocal obligations of the parties arise.

15. A sum of money paid, or a thing delivered upon the making of a contract for the sale of goods, to bind the bargain, the delivery and acceptance of which makes the final assent of both parties to the contract:
- a. Option money
 - b. Earnest money
 - c. Reservation money
 - d. Down payment

Answer: B. Earnest money

Art. 1482 tackles about the question asked. It states that whenever earnest money is given in a contract of sale, it shall be considered as part of the price and as proof of the perfection of the contract.

Earnest money is the money given as part of the purchase price and as proof of the perfection of the contract. Earnest money is given only where there is already a sale.

16. S orally offered to sell a certain diamond ring to B for P50,000.00. B accepted the offer and to prove that he was in earnest, he gave S P1,000.00. The parties agreed that the delivery of the ring and the payment of the price would be made 30 days later. On due date:
- a. S may collect from B P50,000.00.
 - b. S may collect from B P49,000.00.
 - c. S cannot enforce payment because the contract was not reduced to writing.
 - d. S cannot enforce payment because there was no contract of sale yet.

Answer: B. S may collect from B P49,000.00.

Art. 1482 tackles about the question asked. It states that whenever earnest money is given in a contract of sale, it shall be considered as part of the price and as proof of the perfection of the contract.

Earnest money is the money given as part of the purchase price and as proof of the perfection of the contract. Earnest money is given only where there is already a sale. The said contract even if a sale of personal property more than P500.00 is already

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enforceable and not anymore subject to the Statute of Frauds because of the earnest money that signifies the partial fulfillment of the contract. Statute of Frauds are only applicable to executory contracts and not to fully consummated or partially fulfilled contracts.

17. On June 1, 2010, S sold to B 50 units of machines which were scheduled to arrive from Japan the following day on board the vessel "MT Nippon Maru". The sale was evidenced by an invoice identifying each machine by serial number. Each machine was priced at P10,000.00. Unknown to the parties, 30 units were damaged beyond repair by seawater on May 31, 2010. Based on the foregoing, which of the following statements is incorrect?
- B may rescind the whole contract.
 - B may demand delivery of the remaining 20 units and pay the price therefor.
 - S may require payment of the whole shipment from B since S was not aware at the time of sale.
 - S has no option to rescind the whole contract or require payment of the remaining 20 units.

Answer: C. S may require payment of the whole shipment from B since S was not aware at the time of sale.

Art. 1493. *If at the time the contract of sale is perfected, the thing which is the object of the contract has been entirely lost, the contract shall be without any effect.*

But if the thing should have been lost in part only, the vendee may choose between withdrawing from the contract and demanding the remaining part, paying its price in proportion to the total sum agreed upon.

Article 1493 is applicable to loss prior to the perfection of the contract of sale like the situation stated. There is no stated option in the provision for the vendor to require the payment for the whole object that is subject of the contract.

18. It refers to the delivery of the thing sold from hand to hand in case of movables, or the taking of possession with respect to immovables, in the presence and with the consent of the vendor.
- Actual or real delivery
 - Tradition constitutumpossessorium*
 - Traditiolongamanu*
 - Tradiiobrevimanu*

Answer: A. Actual or real delivery - it is defined by article 1497 of the civil code of the Philippines.

Art. 1497. *The thing sold shall be understood as delivered, when it is placed in the control and possession of the vendee.*

Actual or physical delivery is a delivery by physically placing the thing sold in the hands of a vendee (in case of movables) or physically placing it in his possession and controls (in case of immovables).

19. On May 1, 2010, S sold to B through a private instrument 20 sacks of corn stored in the only warehouse of S. On May 10, 2010, S delivered the keys to the warehouse to B. The delivery made by S to B is known as:
- constructive delivery by legal formalities
 - symbolic delivery by *traditio clavium*
 - traditiolongamanu*

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d. *traditiobrevimanu*

Answer: B. symbolic delivery by *traditioclavium* as defined by article 1498 of the civil code of the Philippines.

Art. 1498. *When the sale is made through a public instrument, the execution thereof shall be equivalent to the delivery of the thing which is the object of the contract, if from the deed the contrary does not appear or cannot clearly be inferred.*

With regard to movable property, its delivery may also be made by the delivery of the keys of the place or depository where it is stored or kept.

Symbolic delivery is the delivery made in the situation because of the delivery of the keys to B where the sacks of corn is stored or kept.

20. Delivery of incorporeal property may be made through any of the following means, except:
- execution of a public document.
 - placing the titles of ownership in the possession of the vendee.
 - use by the vendee of his rights, with the debtor's consent.
 - execution of private instrument.

Answer: D. execution of private instrument - the deliveries available for incorporeal properties are those stated in article 1498 of the civil code of the Philippines.

Art. 1498. *When the sale is made through a public instrument, the execution thereof shall be equivalent to the delivery of the thing which is the object of the contract, if from the deed the contrary does not appear or cannot clearly be inferred.*

With regard to movable property, its delivery may also be made by the delivery of the keys of the place or depository where it is stored or kept.

Letters A-C in the choices given are the ways of delivery of an incorporeal property.

21. One of the following statements on the transfer of ownership of the thing in "sale on trial" is incorrect. What is it?
- Ownership of the thing is transferred to the vendee when he signifies his approval or acceptance to the vendor.
 - Ownership of the thing is transferred to the vendee when he does an act adopting the transaction.
 - Ownership of the thing is transferred to the vendee if the time fixed for the return of the thing has expired and the vendee retains the thing without giving notice of rejection or acceptance to the vendor.
 - Ownership of the thing is transferred to the vendee upon delivery.

Answer: D. Ownership of the thing is transferred to the vendee upon delivery because according to article 1502 of the civil code of the Philippines that a delivery on a sale on trial does not vest the ownership to the vendee.

Art. 1502. *When goods are delivered to the buyer "on sale or return" to give the buyer an option to return the goods instead of paying the price, the ownership passes to the buyer of delivery, but he may re-vest the ownership in the seller by returning or tendering the goods within the time fixed in the contract, or, if no time has been fixed, within a reasonable time.*

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When goods are delivered to the buyer on approval or on trial or on satisfaction, or other similar terms, the ownership therein passes to the buyer:

(1) When he signifies his approval or acceptance to the seller or does any other act adopting the transaction;

(2) If he does not signify his approval or acceptance to the seller, but retains the goods without giving notice of rejection, then if a time has been fixed for the return of the goods, on the expiration of such time, and, if no time has been fixed, on the expiration of a reasonable time. What is a reasonable time is a question of fact.

Letter D. is applicable to sale or return as stated in the article mentioned.

22. On March 1, 2010, S sold and delivered to B a television set for P10,000.00 “on sale or return” giving B up to March 16, 2010 within which to return the television set. On March 10, 2010, the television set was burned through no fault of B. Based on the foregoing, which of the following statements is incorrect?
- B must pay the price of the television set.
 - S must bear the loss since the time for the return of the television set had not yet expired.
 - The ownership of the television set was transferred to B upon delivery to him.
 - B must bear the loss of the television set.

Answer: B. S must bear the loss since the time for the return of the television set had not yet expired. - as discussed on article 1502, the ownership does not still vest to B not until the expiration of the time that has been fixed.

Art. 1502. When goods are delivered to the buyer "on sale or return" to give the buyer an option to return the goods instead of paying the price, the ownership passes to the buyer of delivery, but he may re-vest the ownership in the seller by returning or tendering the goods within the time fixed in the contract, or, if no time has been fixed, within a reasonable time.

When goods are delivered to the buyer on approval or on trial or on satisfaction, or other similar terms, the ownership therein passes to the buyer:

(1) When he signifies his approval or acceptance to the seller or does any other act adopting the transaction;

(2) If he does not signify his approval or acceptance to the seller, but retains the goods without giving notice of rejection, then if a time has been fixed for the return of the goods, on the expiration of such time, and, if no time has been fixed, on the expiration of a reasonable time. What is a reasonable time is a question of fact.

Since the situation given is a “sale or return”, the ownership at the time of the burning of the television is on the seller, He must bear the loss since the time for the return of the television set had not yet expired. Under the principle of ‘res perit domino’, the loss of the property falls upon the owner.

23. In one of the following cases, delivery of the goods to a carrier for the purpose of transmission to the buyer transfers ownership to the latter. Which one is it?
- When by the terms of the bill of lading, the goods are to be delivered to the seller or his agent.
 - When by the terms of the bill of lading the goods are to be delivered to the order of the buyer or his agent but the seller retains the bill of lading.
 - When the seller draws a bill of exchange on the buyer for the price of the goods and transmits such bill of exchange and the bill of lading to the buyer to secure acceptance or payment of the bill of exchange and the buyer dishonors the bill of exchange.

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- d. When the owner does not reserve the right of possession or ownership of the thing sold upon delivery to the carrier.

Answer: D. When the owner does not reserve the right of possession or ownership of the thing sold upon delivery to the carrier. - Article 1503 is applied in this question.

Art. 1503. *When there is a contract of sale of specific goods, the seller may, by the terms of the contract, **reserve the right of possession or ownership in the goods until certain conditions have been fulfilled.** The right of possession or ownership may be thus reserved notwithstanding the delivery of the goods to the buyer or to a carrier or other bailee for the purpose of transmission to the buyer.*

Where goods are shipped, and by the bill of lading the goods are deliverable to the seller or his agent, or to the order of the seller or of his agent, the seller thereby reserves the ownership in the goods. But, if except for the form of the bill of lading, the ownership would have passed to the buyer on shipment of the goods, the seller's property in the goods shall be deemed to be only for the purpose of securing performance by the buyer of his obligations under the contract.

Where goods are shipped, and by the bill of lading the goods are deliverable to order of the buyer or of his agent, but possession of the bill of lading is retained by the seller or his agent, the seller thereby reserves a right to the possession of the goods as against the buyer.

Where the seller of goods draws on the buyer for the price and transmits the bill of exchange and bill of lading together to the buyer to secure acceptance or payment of the bill of exchange, the buyer is bound to return the bill of lading if he does not honor the bill of exchange, and if he wrongfully retains the bill of lading he acquires no added right thereby. If, however, the bill of lading provides that the goods are deliverable to the buyer or to the order of the buyer, or is indorsed in blank, or to the buyer by the consignee named therein, one who purchases in good faith, for value, the bill of lading, or goods from the buyer will obtain the ownership in the goods, although the bill of exchange has not been honored, provided that such purchaser has received delivery of the bill of lading indorsed by the consignee named therein, or of the goods, without notice of the facts making the transfer wrongful.

Since the seller reserved his right of possession or ownership of the thing sold upon delivery of the carrier, the delivery of the goods to the buyer transfers the ownership to the latter.

24. In a contract of sale of personal property the price which is payable in installments, the vendor may exercise any of the following remedies, except to:
- exact fulfillment of the obligation, should the vendee fail to pay any number of installments.
 - cancel the sale, should the vendee's failure to pay cover two or more installments.
 - foreclose the chattel mortgage on the property if the vendee's failure to pay cover two or more installments and recover any deficiency after the foreclosure sale if they have stipulated it.
 - foreclose the chattel mortgage on the property if the vendee's failure to pay cover two or more installments but he may no longer recover any deficiency after the foreclosure sale.

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Answer: C. foreclose the chattel mortgage on the property if the vendee's failure to pay covers two or more installments and recover any deficiency after the foreclosure sale if they have stipulated it. Article 1484 is applied.

Art. 1484. *In a contract of sale of personal property the price of which is payable in installments, the vendor may exercise any of the following remedies:*

- (1) Exact fulfillment of the obligation, should the vendee fail to pay;*
- (2) Cancel the sale, should the vendee's failure to pay cover two or more installments;*
- (3) Foreclose the chattel mortgage on the thing sold, if one has been constituted, should the vendee's failure to pay cover two or more installments. In this case, he shall have no further action against the purchaser to recover any unpaid balance of the price. Any agreement to the contrary shall be void.*

When the seller elects to foreclose the chattel mortgage on the property, he may not go after the buyer to recover any unpaid balance as provided by the stated article.

Note: *Article 1484 or the Recto Law is only applicable in case the property subject of the chattel mortgage is the SAME PROPERTY which was sold on installment. If the subject of the chattel mortgage is personal property OTHER THAN the personal property sold in installment, the Recto Law is not applicable and the seller can still exercise the 2 other options even if there was already foreclosure of the property.*

25. Baldomero bought a residential house and lot from Sta. Ana Realty for P250,000.00 giving a down payment of P10,000.00 and promising to pay the balance of P240,000.00 in 20 years in monthly installments of P1,000.00. After paying 72 installments, Baldomero defaulted in the payment of the 73rd installment and subsequent ones. Despite the grace period he had earned, he was not able to make any further payments. Accordingly, Sta. Ana Realty cancelled the sale. How much cash surrender value is Baldomero entitled to receive?
- a. P45,100.00
 - b. P39,600.00
 - c. P36,000.00
 - d. P41,000.00

Answer: A. P45,100.00

It is stated in the Maceda Law that upon the cancellation of the contract, the seller must give the buyer a cash surrender value equivalent to 50% of the total payments.

The 50% shall increase by 5 percent every 5 years of installment payment but in no case shall the cash surrender value exceed 90%.

26. S stole a ring belonging to O. Subsequently, the ring was offered for sale at a public auction where X, who was not aware that the ring was stolen, bought it. A few weeks later, O saw the ring and recognized it as his. Based on the foregoing information, which of the following statements is correct?
- a. O may recover the ring from X without reimbursing X since O was unlawfully deprived of the ring.
 - b. O may recover the ring from X but he has to reimburse X since X acquired title to the ring.
 - c. O may no longer recover the ring even if he is willing to reimburse X.
 - d. X did not acquire title to the ring since the auctioneer had no valid title thereto.

Answer: B. O may recover the ring from X but he has to reimburse X since X acquired title to the ring.

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Art. 1505. *Subject to the provisions of this Title, where goods are sold by a person who is not the owner thereof, and who does not sell them under authority or with consent of the owner, the buyer acquires no title to the goods than the seller had, unless the owner of the goods is by his conduct precluded from denying the seller's authority to sell.*

Nothing on this Title, however, shall affect:

(1).....

(2).....

(3) *Purchases made in merchant's store, or in fairs, or markets, in accordance with the Code of Commerce and special laws.*

The ownership of the thing transfers to the vendee only if the thing is sold in a public market or merchant store. If the thing was sold in merchant store or public market, the owner CAN NO LONGER RECOVER THE THING.

If the thing was sold in a public auction, the owner of thing CAN RECOVER THE THING ONLY IF HE WILL PAY WHATEVER AMOUNT WHICH THE BUYER PAID DURING THE AUCTION SALE.

27. When the seller of goods has a voidable title thereto, but his title has not been avoided at the time of the sale, the buyer acquires title to the goods. Such acquisition of title has the following requisites, except the:
- a. buyer must have bought the goods in good faith.
 - b. buyer must have bought them for value.
 - c. buyer bought them without notice of the seller's defect of title.
 - d. party from whom the seller obtained the goods must ratify the sale

Answer: D. party from whom the seller obtained the goods must ratify the sale

Art. 1506. *Where the seller of goods has a voidable title thereto, but his title has not been avoided at the time of sale, the buyer acquires a good title to the goods, provided he buys them in good faith, for value, and without notice of the seller's defect of title.*

28. An unpaid seller has the following rights, except:
- a. a lien on the goods or the right to retain them for the price while he is in possession of them.
 - b. in case of insolvency of the buyer, a right of stopping the goods in *transitu* after he has parted with the possession of them.
 - c. a right of repurchase.
 - d. a right to rescind.

Answer: C. a right of repurchase.

Art. 1526. *Subject to the provisions of this Title, notwithstanding that the ownership in the goods may have passed to the buyer, the unpaid seller of the goods, as such, has:*

(1).....

(2).....

(3) *A right of resale as limited by this Title;*

(4).....

29. An unpaid seller loses his lien on the goods in the following cases, except:
- a. when he delivers the goods to a carrier or other bailee for the purpose of transmission to the buyer without reserving the right of ownership in the goods.

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- b. when the buyer or his agent lawfully obtains possession of the goods.
- c. when the seller waives his possessory lien.
- d. when he has obtained judgment for the price of the goods.

Answer: D. when he has obtained judgment for the price of the goods.

Art. 1529. *The unpaid seller of goods loses his lien thereon:*

- (1) *When he delivers the goods to a carrier or other bailee for the purpose of transmission to the buyer without reserving the ownership in the goods or the right to the possession thereof;*
- (2) *When the buyer or his agent lawfully obtains possession of the goods:*
- (3) *By waiver thereof.*

- Furthermore, a judgment does not remove the seller's lien on the goods.

30. Three of the following are the requisites in order that an unpaid seller may exercise his right of stoppage in *transitu*. Which one is not?
- a. The seller is unpaid.
 - b. The seller has not parted with the possession of the goods.
 - c. The goods are in transit.
 - d. The buyer is or becomes insolvent.

Answer: B. The seller has not parted with the possession of the goods.

Art. 1530. *Subject to the provisions of this Title, when the buyer of the goods is or becomes insolvent, the unpaid seller who has parted with the possession of the goods has the right of stopping them in transitu, that is to say, he may resume possession of the goods at any time while they are in transit, and he will then become entitled to the same rights in regard to the goods as he would have had if he had never parted with the possession.*

Note: To be able to exercise the right to stop the goods in transit, the goods must already be in transit. If the seller still has possession of the goods, what he shall exercise is the possessory lien and NOT the right to stop the goods in transit.

31. Goods are still in transit:
- a. if the buyer or his agent obtains delivery of the goods before their arrival at the appointed destination.
 - b. when the carrier acknowledges possession of the goods as bailee for the buyer after the arrival of the goods at the place of destination.
 - c. if the carrier or other bailee wrongfully refuses to deliver the goods to the buyer or his agent.
 - d. if the goods are rejected by the buyer, and the carrier or other bailee continues in possession of them, even if the seller has refused to received them back.

Answer: D. if the goods are rejected by the buyer, and the carrier or other bailee continues in possession of them, even if the seller has refused to received them back.

Art. 1531. *Goods are in transit within the meaning of the preceding article:*

- (1).....
- (2) *If the goods are rejected by the buyer, and the carrier or other bailee continues in possession of them, even if the seller has refused to receive them back.*

Note: The seller can only exercise the right to stop the goods in transit WHILE THE GOODS ARE IN TRANSIT. If the goods are no longer in transit, this right will no longer be available to the seller.

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32. An unpaid seller's right to resell the goods is available in the following cases, except:
- if the goods are of a perishable nature.
 - when the seller reserved the right to resell the goods.
 - when the buyer has defaulted in the payment of the price for an unreasonable time.
 - when the seller has lost his lien on the goods.

Answer: D. when the seller has lost his lien on the goods.

Art. 1533. Where the goods are of perishable nature, or where the seller expressly reserves the right of resale in case the buyer should make default, or where the buyer has been in default in the payment of the price for an unreasonable time, an unpaid seller having a right of lien or having stopped the goods in transitu may resell the goods.....

- The seller must retain his lien on the goods or must have stopped the goods in transit in order for him to avail the right to resell. This means that all the requisites for the exercise of possessory lien or the requisites for stopping the goods in transit must be present.

Note: Once the goods already left the possession of the seller or are already in transit, the right of resale can only be exercised if the buyer becomes insolvent. This is considering that one of the requirement to be able to stop the goods in transit is that the buyer must be insolvent.

33. Barameda bought a piece of land from Sarmiento for a lump sum of P120,000.00. Aside from mentioning the boundaries in the contract which is required in the sale of real estate, the contract also states that the piece of land consists of 1,000 square meters. before delivery, Sarmiento discovered that the piece of land actually contains 1,200 square meters.
- Sarmiento must deliver all the 1,200 square meters; Barameda must pay P120,000.00 plus an additional amount for the excess of 200 square meters.
 - Sarmiento is required to deliver only 1,000 square meters; Barameda must pay the contract price of P120,000.00.
 - Sarmiento must deliver all the 1,200 square meters; Barameda has to pay only P120,000.00.
 - Neither party is required to perform the obligation because of mistake.

Answer: C. Sarmiento must deliver all the 1,200 square meters; Barameda has to pay only P120,000.00.

Art. 1542. In the sale of real estate, made for a lump sum and not at the rate of a certain sum of measure or number, there shall be no increase or decrease of the price, although there be a greater or less area or number than that stated in the contract.

.....

- Since, the contract does not have a pricing of per unit then the seller is obliged to deliver the whole area and maintain the monetary consideration as is.

34. Sison sold a registered piece of land to Bautista on May 1, 2010 in a public instrument. On May 3, 2010, Sison sold in a private instrument the same piece of land to Cruz, who took physical possession of the land. Neither of the buyers were aware of the sale made to the other.
- The land belongs to Bautista.

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- b. The land belongs to Cruz.
- c. The land still belongs to Sison, because both sales are void.
- d. The land should be divided equally between Bautista and Cruz to give effect to both sides.

Answer: A. The land belongs to Bautista

Art. 1498. *When the sale is made through a public instrument, the execution thereof shall be equivalent to the delivery of the thing which is the object of the contract, if from the deed the contrary does not appear or cannot clearly be inferred.*

.....

- Therefore, a sale in public instrument is also equivalent to the delivery of the thing which is the object of the contract. The only exception to this is if the parties agreed that the execution of the public instrument will not work as delivery of the thing.

35. Refer to No. 34. Assume that on May 5, 2010, Sison sold the land in a public instrument to Domingo who was not aware of the two previous sales. Domingo then registered the sale with the Register of Deeds.
- a. The land belongs to Bautista.
 - b. The land belongs to Cruz.
 - c. The land belongs to Domingo.
 - d. The land will be equally divided among the three buyers.

Answer: C. The land belongs to Domingo.

Art. 1544. *If the same thing should have been sold to different vendees, the ownership shall be transferred to the person who may have first taken possession thereof in good faith, if it should be movable property.*

Should it be immovable property, the ownership shall belong to the person acquiring it who in good faith first recorded it in the Registry of Property.

.....

- The given case is a double sale of an immovable property, so the ownership shall belong to the person who in good faith first registered the sale in the Registry of Property.

36. On June 1, 2010, Sanchez sold to Borlaza in a private instrument a certain computer. Two days later, Sanchez orally sold the same computer to Contreras who immediately took possession of the computer. Neither party was aware of the sale made to the other.
- a. The computer belongs to Borlaza.
 - b. The computer belongs to Contreras.
 - c. The computer will be co-owned by Borlaza and Contreras to give effect to both sides.
 - d. Both sales are void. Accordingly, Sison will still be the owner.

Answer: B. The computer belongs to Contreras.

Art. 1544. *If the same thing should have been sold to different vendees, the ownership shall be transferred to the person who may have first taken possession thereof in good faith, if it should be movable property.*

.....

- The said case is a double sale of a movable property, so the rule that the ownership shall pass to whomever first took physical possession of the thing must apply.

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Note: The rule on double sale is applicable only if the thing was sold by the SAME owner to two different parties. IF the thing was sold to two different persons by the owner AND by a person who does not have authority from the owner, respectively, the above-mentioned rule is not applicable. IN that case, the sale made by the owner should be upheld even if the other party must have taken possession of the same first.

However, in case of a sale of real property covered by a Certificate of Title to a buyer in good faith, the defect of the title of the previous owner will not affect the title of the buyer in good faith. The said buyer will acquire the property free from any defects of the previous title.

37. This refers to the implied warranty on the part of the seller that he has the right to sell the thing at the time when ownership is to pass, and that the buyer from that time shall have and enjoy legal and peaceful possession of the thing.
- Warranty against hidden defects
 - Warranty against eviction
 - Warranty of ownership
 - Warranty of possession

Answer: B. Warranty against eviction

As defined by article 1547 of the civil code of the Philippines, warranty against eviction refers to the implied warranty on the part of the seller that he has the right to sell the thing at the time when ownership is to pass, and that the buyer shall from that time have and enjoy the legal and peaceful possession of the thing.

38. Three of the following are the requisites in order that the vendee may enforce the vendor's liability in case of eviction. Which one is not?
- There must be a final judgment depriving the vendee of a part or whole of the thing sold.
 - The vendee must have appealed from such judgment rendered against him.
 - The deprivation of the vendee is based on a right prior to the sale or an act imputable to the vendor.
 - The vendor is notified of the suit at the instance of the vendee.

Answer: B. The vendee must have appealed from such judgment rendered against him

The requisites in order that the vendee may enforce the vendor's liability in one eviction includes:

- a. The purchaser has been deprived of the whole or part of the thing sold
- b. The deprivation is by final judgment
- c. The deprivation is based on a right prior to the sale or an act imputable to the vendor
- d. The vendor must have been notified of the suit for eviction and made a co-defendant at the instance of the vendee

Furthermore, article 1549 discussed that the appeal of the vendee is not required in order that the vendor may become liable for eviction. As long as the decision of the court has become final, the liability of the vendor already arises. The vendor cannot escape from his liability for eviction by asserting that the vendee should have appealed by the judgment of the lower court on the theory that the lower court decision could have been reserved on appeal.

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39. This refers to an encumbrance imposed upon an immovable for the benefit of another immovable belonging to a different owner.
- Easement or servitude
 - Real estate mortgage
 - Pledge
 - Chattel mortgage

Answer: A. Easement or servitude

Easement or servitude as an encumbrance imposed upon immovable for the benefit of another immovable belonging to a different owner.

40. Three of the following are the requisites in order that the buyer may enforce the seller's liability for hidden defects.
- The defects of the thing sold must not be patent or visible.
 - The defects render the thing unfit for the use which it is intended, or which diminish its fitness for such use to such an extent that had the buyer been aware thereof he would not bought it.
 - The defects must be existing at the time of sale.
 - The defects must be capable of determination by an expert.

Answer: D.the defects must be capable of determination by an expert.

Requisites in order that the buyer may enforce the seller's liability for hidden defects enumerated in the article 1561 are the following:

- a. the defect must exist at the time of sale
 - b. the defect must be hidden
 - c. the defect must render the thing until for the use for which it is intended or diminishes its fitness for such use to such an extent, that had the vendee been aware thereof, would have given a lower price for it
 - d. the action to enforce must be made within the period provided by law.
41. Alessandra purchased from Rose Tan's Department Store two pieces of imported identical bathrobe, one of which was embroidered with "HIS" and the other with "HERS", which she planned to give to his friends Jules and Assunta as a wedding present. She inspected the items very carefully with the assistance of the store clerk before paying for them. While she was wrapping them shortly after she arrived home, she noticed that the hem of the "HERS" bathrobe had disintegrated because it was loosely sewn, which damage was not apparent because of the many colors of the apparel.
- Alessandra can rescind the sale of both pieces of bathrobe.
 - Alessandra can rescind only the sale of the bathrobe marked "HERS".
 - Alessandra cannot rescind because she should have inspected the item well when she bought it.
 - Alessandra must pay for both pieces of bathrobe.

Answer: A. Alessandra can rescind the sale of both pieces of bathrobe.

Article 1567 explains the remedies of the vendee in warranty against hidden defects, which can be either rescission of the contract, with damages or proportionate reduction of the price, with damages. Alessandra cannot avail the second remedy which is the proportionate reduction of the price since she intended the bathrobes as wedding gift and she would not have bought "HIM" bathrobe if there were no "HER" bathrobe. Hence, Alessandra can rescind the sale of both pieces of bathrobe with rights to damages, if any.

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42. The vendor shall be liable for the death of the animal sold when the following requisites are present, except:
- The disease existed at the time of sale.
 - The disease is the cause of the death of the animal.
 - The disease must be redhibitory.
 - The animal dies within 3 days from the time of purchase.

Answer: C. The disease must be redhibitory.

According to article 1578, the disease must not necessarily be redhibitory for the vendor be liable for the death of the animal sold. The vendor's liability attaches for as long as the disease caused the death of the animal sold. The vendor can only be liable for the death of the animal sold when the following are present:

- The disease existed at the time of sale
- The disease is the cause of death of the animal
- The animal dies within 3 days from the time of sale

43. The justified refusal of the buyer to accept the goods produces the following effects, except:
- buyer has no duty to return the goods unless otherwise stipulated.
 - title to the goods does not pass on to him.
 - buyer shall not be obliged to pay the price.
 - buyer is obliged to constitute himself as depositary until he returns the goods.

Answer: D. buyer is obliged to constitute himself as depositary until he returns the goods.

Article 1587 discussed the effects produced by the justified refusal of the buyer to accept delivery. It includes:

- a. the buyer has no duty to return the goods to the seller unless otherwise agreed
- b. title to the goods does not pass on to him
- c. he shall not be obliged to pay the price
- d. if he constitutes himself as depositary then he ha be liable as such

Thus, the buyer is not obliged to constitute himself as depositary until he return the goods. However if he does, he shall be liable as explained by the provision.

44. In three of the following cases, the buyer is not entitled to suspend the payment of the price. Which one will give him the right to suspend?
- Disturbance in the possession or ownership of the thing purchased.
 - The seller gives him security for the return of the price.
 - It has been stipulated that the buyer shall pay the price notwithstanding any disturbance.
 - The disturbance is a mere act of trespass.

Answer: A. Disturbance in the possession or ownership of the thing purchased.

As discussed by article 1590 of the civil code of the Philippine, disturbance in the possession or ownership of the thing purchased is a ground for suspension of the payment of the price by the vendee. Furthermore the right to suspend is not available to the vendee in the following cases:

- a. when the vendor gives security for the payment of the price

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- 2 b. if it has been stipulated that the vendee shall pay the price notwithstanding the existence of any disturbance or danger in his possession of the thing
 - 3 c. if the disturbance is a mere act of trespass (meaning the disturbance is NOT based on a right against the vendor or the vendee)
45. A contract of sale with a right to repurchase and other contracts including a contract purporting to be an absolute sale shall be presumed to be an equitable mortgage in the following cases, except when the:
- a. price of sale with right to repurchase is unusually inadequate
 - b. vendor remains in possession of the thing sold
 - c. period to repurchase the property is extended
 - d. grantee owns an urban land

Answer: D. grantee owns an urban land

As enumerated by article 1602, a contract of sale with a right to repurchase and other contracts including a contract purporting to be an absolute sale shall be presumed to be an equitable mortgage in any of the following cases:

- 1 a. when the price of the sale with right to repurchase is usually inadequate
- 2 b. when the vendor remains in possession as lessee or otherwise
- 3 c. when upon or after expiration of the right to repurchase another instrument extending the period of redemption or granting a new period is executed
- 4 d. when the purchaser retains for himself a part of the purchase price
- 5 e. when the vendor binds himself to pay the taxes on the thing sold
- 6 f. when the real intention of the parties is that the transaction shall secure the g. payment of a debt or the performance of any other obligations.

Note: In these cases, the seller cannot just rescind the contract and re-take possession and ownership of the thing subject of the sale in case of the buyer's failure to pay his obligations. The seller will need to foreclose first the equitable mortgage. The rule prohibiting pactum commissorium is applicable.

46. An owner of a rural land has the right to legal redemption of an adjoining rural land sold if the following requisites are present, except when the:
- a. adjoining rural land is not separated by any apparent servitudes for the benefit of other estates
 - b. land sold does not exceed one hectare
 - c. grantee owns another rural land
 - d. grantee owns another urban land

Answer: D. grantee owns another urban land

As enumerated by the first paragraph of article 1621 of the civil code of the Philippines, an owner of adjoining land shall also have the right of redemption when a piece of rural land, the area of which does not exceed one hectare is alienated, unless the grantee does not own any rural land.

Thus, when the grantee owns another urban land he does not have the right for legal redemption of an adjoining land sold.

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47. This refers to the right of an adjoining owner of an urban land to be given preference to the purchase of a small piece of urban land which is held for speculation before it is offered for sale to others.
- Right of subrogation
 - Right of redemption
 - Right of pre-emption
 - Right of repurchase

Answer: C. Right of pre-emption

As defined by article 1622 of the civil code of the Philippines, pre-emption is a right given to the owner of the adjoining land to be given preference to the purchase of a small piece of land, having been bought for redemption.

48. A, B, and C are co-owners of an undivided parcel of land. On May 1, A sold his share to X, on June 1, B sold his share to X; and on July 1, C sold his share to X. Each sale was with a right to repurchase.
- X may compel A, B, and C to come to an agreement to repurchase the whole land.
 - Each co-owner may exercise his right of redemption on the whole property including the share of the other two co-owners.
 - Each co-owner may exercise his right of redemption only with respect to his share.
 - Any two of the three co-owners may redeem the property proportionately.

Answer: C. Each co-owner may exercise his right of redemption only with respect to his share

A co-owner may NOT exercise legal redemption if he also sold his share over the property.

Note: Article 1620 of the civil code of the Philippines provides that should two or more co-owners desire to exercise the right of redemption, they may only do so in proportion to the share they may respectively have in the thing owned in common. Thus, in case only A alienated his share and B and C desires to redeem A's share from the buyer, B and C can exercise their right of redemption according to their proportionate share over the property.

49. R, S, and T are co-owners of an undivided parcel of land. R sold his 1/3 interest to T in a deed of absolute sale. Which is correct?
- S may exercise his right of redemption on the interest sold by R to T.
 - S cannot exercise the right of redemption.
 - The sale made by R to T is voidable.
 - S may redeem only 1/2 of the interest sold by R to T.

Answer: B. S cannot exercise the right of redemption.

Legal redemption can only be exercised by a co-owner if the buyer of the property is a third person. If the buyer is also a co-owner, legal redemption cannot be made by the other co-owner.

Note: The right to legal redemption by a co-owner was given since the law frown upon the admission into a co-ownership of a person to whom the other co-owners are not comfortable with. IF the buyer is also a co-owner, the said reason is will not lie.

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50. T steals goods of O and deposits them in the warehouse of W. W issues to T a warehouse receipt which by its terms indicates, negotiates the receipt to H who purchases the document in good faith and for value.
- H may obtain delivery of the goods from W because H was an innocent purchaser for value.
 - H can obtain delivery of goods from W because the issuance of the warehouse receipt to T conferred a valid title to him over the goods.
 - H can obtain delivery of the goods from W because the acquisition by H of the warehouse receipt in good faith cured the defect in T's title.
 - H cannot obtain delivery of the goods because he acquired whatever title T had over such goods, which is title of a thief.

Answer: D. H cannot obtain delivery of the goods because he acquired whatever title T had over such goods, which is title of a thief.

According to Article 1505, paragraph 1, "Subject to the provision of this Title, where goods are sold by a person who is not the owner thereof, and who does not sell them under authority or with the consent of the owner, *the buyer acquires no better title to the goods than the seller had*, unless the owner of the goods is by his conduct precluded from denying the seller's authority to sell.

Even though the warehouse receipt and its negotiation are valid, the object of the instrument is invalid. The title of T is that of a thief and that is the title that would pass to or acquire by H.

51. O delivered certain goods to C, a common carrier, which issued to O a bill of lading stating that the goods are to be delivered to bearer. Without O's fault, the bill of lading was stolen by T who thereafter negotiated the document by delivery to H, a purchaser for value and without notice of the defect in the title of T.
- The negotiation of the bill of lading by T to H is not valid because of T's defective title.
 - The negotiation of the bill of lading by T to H is valid. T's defective title does not have any effect on the validity of the negotiation.
 - H may not obtain delivery of the goods from C because H acquired whatever title T had over the document.
 - H acquired title to the document but not the goods.

Answer: B. The negotiation of the bill of lading by T to H is valid. T's defective title does not have any effect on the validity of the negotiation.

According to Article 1518, "The validity of the negotiation of a negotiable document of title is not impaired by the fact that the negotiation was a breach of duty on the part of the person making the negotiation, or by the fact that the owner of the document was deprived of the possession of the same by loss, theft, fraud, accident, mistake, duress, or conversion, if the person to whom the document was negotiated or a person to whom the document was subsequently negotiated paid value therefore in good faith without notice of the breach of duty, or loss, theft, fraud, accident, mistake, duress or conversion."

It is true that the negotiation is valid because the negotiation only requires the delivery of the instrument and thus the defect of the instrument does not render its negotiation void.

52. D obtained from C a loan amounting to P50, 000.00, the same being secured by a mortgage on D's lot. Thereafter, C assigned his credit right to T with notice to D. Based on the foregoing facts, which of the following statements is incorrect?

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- a. T cannot collect from D if D does not give his consent to the assignment.
- b. T can collect from D. D's consent to the assignment is not required.
- c. T can collect from D and if D cannot pay, T can foreclose the mortgage on the lot.
- d. The notice to D of the assignment is sufficient. D must make his payment to T and no longer to C.

Answer: A. T cannot collect from D if D does not give his consent to the assignment

An assignment does not require the consent of the debtor. However, actual notice must be given to him of the assignment so that he could make his payment to the assignee.

As per understanding of Articles 1626, D's consent is not a requisite for the assignment to be valid. The statement "T cannot collect from D" makes it incorrect.

53. A kind of mortgage which, although lacking some formality, form of words, or requisites prescribed by law, shows the intention of the parties to charge real property as security for debt and contains nothing impossible or contrary to law is known as:
- a. legal mortgage
 - b. equitable mortgage
 - c. conventional mortgage
 - d. voluntary mortgage

Answer: B. equitable mortgage

Article 1602, *"The contract shall be presumed to be an equitable mortgage, in any of the following cases:*

- (1) *When the price of a sale with right to repurchase is unusually inadequate;*
- (2) *When the vendor remains in possession as lessee or otherwise;*
- (3) *When upon or after the expiration of the right to repurchase another instrument extending the period of redemption or granting a new period is executed;*
- (4) *When the purchaser retains for himself a part of the purchase price;*
- (5) *When the vendor binds himself to pay the taxes on the thing sold;*
- (6) *In any other case where it may be fairly inferred that the real intention of the parties is that the transaction shall secure the payment of a debt or the performance of any other obligation."*

In any of the foregoing cases, any money, fruits, or other benefit to be received by the vendee as rent or otherwise shall be considered as interest which shall be subject to the usury laws.

Article 1603, *"In case of doubt, a contract purporting to be a sale with right to repurchase shall be construed as an equitable mortgage."*

Article 1604, *"The provisions of [article 1602](#) shall also apply to a contract purporting to be an absolute sale."*

As per understanding of articles 1602 to 1604 of the Civil Code of the Philippines.

54. If a movable property is sold separately to two or more different vendees, ownership shall belong to the person:
- a. who in good faith first paid the purchase price in full

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- b. who in good faith first recorded the sale in the Registry of Property
- c. who in good faith presents the oldest title
- d. who in good faith first took possession of the property

Answer: D. who in good faith first took possession of the property

According to Article 1544, paragraph 1, "If the same thing should have been sold to different vendees, *the ownership shall be transferred to the person who may have first taken possession thereof in good faith*, if it should be movable property."

As mentioned by Article 1544 of the Civil Code of the Philippines.

55. A contract of sale is perfected upon:

- a. compliance with the requirements of the law as to form
- b. delivery of the object of the contract
- c. the meeting of the minds on the thing which is the object of the contract and upon the price
- d. demand

Answer: C. the meeting of the minds on the thing which is the object of the contract and upon the price

According to Article 1544, paragraph 1, "The contract of sale is perfected at the moment there is a meeting of minds upon the thing which is the object of the contract and upon the price."

As defined by article 1475 of the Civil Code of the Philippines.

56. It is a contract by virtue of the terms of which the parties thereto promise and obligate themselves to enter into another contract at a future time, upon the happening of certain events, or the fulfillment of certain conditions.

- a. Contract of adhesion
- b. Contract of option
- c. Contract of sale
- d. Auto-contract

Answer: B. Contract of option

It is also known as option contract.

57. A contract of sale is not a:

- a. principal contract
- b. nominate contract
- c. consensual contract
- d. impossible service

Answer: D. impossible service

A contract of sale is a possible one.

58. The following may not be valid objects of a contract of sale, except:

- a. objects outside the commerce of men
- b. illicit things
- c. future goods
- d. impossible service

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Answer: C. future goods

According to Article 1462, paragraph 1, "The goods which form the subject of a contract of sale may be either existing goods, owned or possessed by the seller, or goods to be manufactured, raised, or acquired by the seller after the perfection of the contract of sale, in this Title called *"future goods"*."

A future good is a valid object of a contract of sale as mentioned in Article 1462, paragraph 1.

59. This is a kind of constructive delivery where the vendor remains in possession of the property sold, such as by virtue of a lease agreement with the vendee.
- traditiolongamanu*
 - tradiobrevimanu*
 - tradioconstitutumpossessorium*
 - delivery to common carrier

Answer: C. tradioconstitutumpossessorium

Article 1500, "There may also be tradition *constitutumpossessorium*."

As mentioned by article 1500 of the Civil Code of the Philippines.

60. When the goods are delivered to the buyer, the ownership thereof passes to the buyer in:
- sale on approval
 - sale or return
 - sale on trial
 - contract to sell

Answer: B. sale or return

According to Article 1502, paragraph 1, "When goods are delivered to the buyer *"on sale or return"* to give the buyer an option to return the goods instead of paying the price, *the ownership passes to the buyer on delivery*, but he may revert the ownership in the seller by returning or tendering the goods within the time fixed in the contract, or, if no time has been fixed, within a reasonable time."

In sale or return, the object is transferred to the buyer upon delivery but he may elect to return the ownership back to the seller within the time fixed.

61. S promised to sell his car to B for P200,000.00 giving B 30 days to decide. B accepted the promise of S and informed S that he (B) would make known his decision before the lapse of 30 days. He also gave S P2,000.00 as consideration so that S would hold on to his promise. The contract entered between S and B and the consideration given by B to S are known as:
- Option contract and option money, respectively.
 - Contract of sale and earnest money, respectively.
 - Contract of sale and down payment, respectively.
 - Contract to sell and reservation money, respectively.

Answer: A. Option contract and option money, respectively.

Article 1479 states about a promise to buy and sell a determinate thing.

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This article is applicable to this question since S promised to sell his car and it was accepted by B. It actually creates an accepted unilateral promise.

The consideration given by B to S is for the latter to hold on to his promise to sell the car for a certain period of time. This is merely an option money since it will not become part of the purchase price. The contract entered by the two is only an option contract since there is still no meeting of minds just an option money for a sale that is yet to be perfected.

62. Refer to No. 61.
- a. S may withdraw his offer to sell before the lapse of 30 days by informing B.
 - b. S may not withdraw his offer before the lapse of 30 days.
 - c. S may withdraw the offer by returning the amount of P2,000.00 that was paid to him by B.
 - d. S may withdraw the offer even before the lapse of 30 days if a favorable price, i.e., more than P2,000.00, is offered to him by another prospective buyer.

Answer: B. S may not withdraw his offer before the lapse of 30 days.

It is stated in the Article 1479 that an accepted unilateral promise to buy or sell a determinate thing for a price certain is binding upon the promisor if the promise is supported by a consideration distinct from the price.

This article is applicable to this question since the two of them entered into an accepted unilateral promise which is supported by a consideration thus, it binds the seller to his promise and he cannot withdraw to his offer.

63. The Recto Law applies to which of the following sale?
- a. Sale of a care on straight term
 - b. Sale of house and lot on installment
 - c. Sale of car on installment where the buyer constituted a mortgage on his truck
 - d. Sale of a piano on installments where the buyer constituted a chattel mortgage on the piano

Answer: D. Sale of a piano on installments where the buyer constituted a chattel mortgage on the piano.

It is stated in the Article 1484 about a contract of sale of personal property in which the price is payable in instalment having a chattel mortgage attached to the thing sold.

This kind of contract of sale is covered by the Recto Law. This article is applicable to this question since the thing being sold, which is piano, is a personal property having a chattel mortgage and it is under an instalment basis of payment. The Recto Law does not apply to a straight term of sale.

64. S sold to B a lot through a deed of absolute sale duly acknowledged before a notary public. Three days later, S sold the same lot to X, also through a deed of sale duly acknowledged before a notary public. X had the sale registered with the Register of Deeds. Neither B nor X was aware of the sale made by S to the other and neither took physical possession of the lot. Who is the present owner of the lot?
- a. B, because he was the first purchaser in good faith
 - b. X, because he registered the sale in good faith
 - c. Neither B nor X
 - d. S, as long as he does not surrender physical possession of the lot

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Answer: B. X, because he registered the sale in good faith.

Article 1505 states the provision about any factor's acts, recording law, or any other provision of law enabling the apparent owner of goods to dispose of them as if he were the true owner.

This provision is applicable in this question because even though S is no longer the owner of the land at the time he sold it to X, still S was the apparent owner in the records of the Registry of Deeds. This enabled him to dispose the property as if he were the true owner. Also, in the case of sale of immovable property to different vendees, ownership will be passed to the person who in good faith first registered the sale in the Registry of Property. (Article 1544)

65. B purchased from S a laptop computer worth P100,000.00. the terms of sale provide for a down payment of P20,000.00 with the balance payable in 8 equal monthly installments. To secure the balance, S required B to execute a chattel mortgage on the laptop computer and a real mortgage on B's lot. B complied with all the requirements but defaulted in the payment of the third and fourth installments. These remedies are available to S except one. Which is it?
- Cancel the sale.
 - Exact fulfillment of the obligation.
 - Foreclose the real mortgage and thereafter recover any deficiency from B.
 - Foreclose the chattel mortgage and thereafter foreclose the real mortgage in case of deficiency.

Answer: D. Foreclose the chattel mortgage and thereafter foreclose the real mortgage in case of deficiency.

Article 1484 states the remedies of the vendor in case of a contract of sale of personal property in which the price is payable in instalment. The remedies are: (1) Exact fulfillment of the obligation when the vendee fails to pay. (2) Cancel the when two the vendee fail to pay two or more instalments. (3) Foreclose the chattel mortgage on the thing sold if one has been constituted when the vendee fail to pay two or more instalments. In this case, he shall have no further action against the purchaser to recover the unpaid balance. Any agreement to the contrary shall be void.

This article is applicable to this question since the sale involves a personal property with payments in instalment. It is clearly stated that when the vendor chose to foreclose the chattel mortgage, he cannot recover any remaining balance even if there is a stipulation.

66. S and B entered into a contract whereby S transferred to B a specific piano for the price of P80,000.00, while B gave to S cash of P30,000.00 and a diamond ring worth P50,000.00. what kind of contract was entered into between S and B?
- A contract of barter
 - A contract of sale
 - The contract is partly a contract of barter and partly a contract of sale
 - The contract is an innominate contract because the intention of the parties cannot be determined.

Answer: A. A contract of barter

Article 1468 states that if the intention of the parties is not clearly appear or stated it shall be considered a barter if the value of the thing given as a part of the consideration exceeds the amount of money or its equivalent, otherwise it is a sale.

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This article is applicable to this question since the intention of the parties is not clearly stated and the value of the diamond ring (which is P50,000) exceeds the money given (which is P30,000).

67. One of the distinctions between option money and earnest money is that earnest money is:
- the consideration paid for the purpose of holding one to his promise to buy or sell a determinate thing for a certain period of time
 - not part of the purchase price
 - proof of the perfection of the contract of sale
 - paid before the perfection of the contract of sale

Answer: C. proof of the perfection of the contract of sale

Article 1482 states that whenever earnest money is given in a contract of sale, it shall be considered as part of the price and as proof of the perfection of the contract.

All the other choices (a, b, and d) refers to an option money.

68. This refers to the warranty of the seller that he has the right to sell the thing at the time when ownership is to pass, and which can be enforced if the buyer is deprived of the property sold by a final judgment in court.
- Warranty against hidden defects
 - Warranty of merchantable quality
 - Warranty against eviction
 - Warranty of possession

Answer: C. Warranty against eviction

Article 1547 states that a contract of sale has an implied warranty. An implied warranty on the part of the seller that he has the right to sell the thing at the time the ownership is to pass, and that the buyer shall from that time have and enjoy the legal and peaceful possession of the thing is referred to as warranty against eviction.

69. P, who was in Hong Kong, made an overseas call to A, his friend, to sell P's lot in Quezon City immediately as P needed cash. Accordingly, A sold the lot to B. the deed of sale was in a public document. The sale of P's lot is:
- valid
 - rescissible
 - unenforceable
 - void

Answer: D. void

Article 1874 states that when a sale of a piece of land or any interest therein is through an agent, the authority of the latter shall be in writing; otherwise the sale would be void.

This article is applicable to the question since A becomes the agent of P because the latter appointed A to sell his lot.

70. One of the distinctions between a contract of sale and a contract for a piece of work is that a contract for a piece of work:
- is not governed by the Statute of Frauds.
 - refers to a contract for the delivery of goods which are manufactured in the ordinary course of business although the same are not available.

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- c. has for its parties the vendor and the vendee.
- d. has for its consideration the price of the thing.

Answer: A. is not governed by the Statute of Frauds.

As stated in the civil code, it is important to know the distinction of the two contracts because a contract of sale is governed by the Statute of Frauds if the thing sold is movable whose price is P500.00 or more. Hence, if the sale is not in writing, it is unenforceable to the party sought to be held liable. A contract for a piece of work, on the other hand, is enforceable although not in writing and regardless of the amount involved.

71. A and B are co-owners of a rural lot not exceeding 1 hectare. The lot is surrounded on its four sides as follows: on the North, by the road; on the East, by the lot of X consisting of 2 hectares; on the South, by the lot of Y consisting of 2 ½ hectares; and on the West, by Z's lot consisting of 2 ¾ hectares. A sells his undivided interest in the agricultural lot to T, who owns several hectares of rural land in the area. Who has the right of legal redemption over the undivided interest in the lot sold by A to T?
- a. B
 - b. X
 - c. Y
 - d. Z

Answer: a. B

And as stated in the Article 1623 the right of redemption of co-owners excluded that of adjoining owners. So I prefer letter A (which is B, the co-owner) as the answer. It is clearly stated that the co-owners has the first right in terms redemption.

72. It is an affirmation of fact or any promise by the seller relating to the thing which has a natural tendency to induce the buyer to purchase the same, relying on such promise or affirmation.
- a. Condition
 - b. False representation
 - c. Warranty
 - d. Seller's talk

Answer: C. Warranty

Article 1546 defines and states an express warranty. It says that any affirmation or any promise by the seller relating to the thing is an express warranty if the natural tendency of such affirmation or promise is to induce the buyer to purchase the same and if the buyer purchases the thing relying thereon.

73. In one of the following cases, the ownership of the object of the contract is transferred to the other party upon delivery.
- a. Contract to sell
 - b. Agency to sell
 - c. Sale or return
 - d. Sale on approval

Answer: C. Sale or return

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As defined by Article 1502 that when goods are delivered to the buyer “on sale or return”, the buyer has an option to return the goods instead of paying the price, the ownership of the thing, however, passes to the buyer upon delivery.

74. Under the “Realty Installment Buyer Act”, the buyer of real estate on installment payments may pay an installment defaulted without additional interest if he has paid at least two years of installments. The law is applicable to sales/transactions involving:
- industrial lots
 - commercial buildings
 - residential lots
 - sales to tenants under the Land Reform Law

Answer: C. residential lots

As defined by Republic Act 6552 Section 3 that in all transactions or contracts involving the sale or financing of real estate on installment payments, including residential condominium apartments but excluding industrial lots, commercial buildings and sales to tenants, where the buyer has paid at least two years of installments.

75. S, the owner of a rent-a-car business, leased one of his cars to B for one month. On the day of the expiration of the lease and while B was still in physical possession of the car, B offered to buy the car from S for P200,000.00. Believing the price to be a good one, S readily accepted B’s offer and then and there executed a deed of absolute sale in favor of B who immediately paid the price in cash. Thereafter, B drove away from the place of S.
- The delivery of the car by S to B is by *constitutumpossessorium*.
 - The delivery of the car by S to B is by *traditilongamanu*.
 - The delivery of the car by S to B is by *traditiobrevimanu*.
 - There was no delivery because B should have turned over the physical possession of the car to S upon the expiration of the lease so that S could make the proper delivery to him upon the execution of the contract of sale.

Answer: C. The delivery of the car by S to B is by *traditiobrevimanu*.

The delivery is a traditiobrevimanu which is defined as a model of legal delivery happens when the vendee has already the possession of the thing sold by virtue of another title as when the lessor sells the thing leased to the lessee. Instead of the vendee turning over the thing to the vendor so that the latter may, in turn, deliver it back to him.

76. B called on S at the shoe factory of S for the latter to make a pair of shoes which B would be needing in the play “Romeo and Juliet”. B provided S with the description of the pair of shoes that he wanted since S did not manufacture the kind of shoes that B needed. S quoted a price of P1,000.00 which B agreed to pay upon delivery to him of the pair of shoes. Since S and B had been neighbors for a long time, their agreement was sealed with a handshake.
- The contract between S and B becomes enforceable if S had already completed making the pair of shoes.
 - The contract between S and B becomes enforceable if B had already paid the amount agreed upon for the work.
 - The contract between S and B is enforceable even if it is still executory.
 - The contract cannot be enforced by either party because it was not in writing.

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Answer: C. The contract between S and B is enforceable even if it is still executory.

The contract between S and B is enforceable even if it is still executor since the contract is not a contract of sale but rather contract for a piece of work as defined by Article 1467 that if the goods are to be manufactured specially for the customer and upon his special order, and not for the general market, it is a contract for a piece of work.

77. Which of the following contracts of sale is void?
- Oral sale of a piece of land made through an agent whose authority is in a public document.
 - Sale of a piece land in a public instrument made through and agent whose authority was given orally by the principal.
 - Sale of a piece of land in a private instrument made through an agent whose authority is in a public instrument.
 - Sale of a piece of land in a public instrument made through an agent whose authority is in a private instrument.

Answer: B. Sale of a piece land in a public instrument made through and agent whose authority was given orally by the principal.

Public Instrument is defined as one which is acknowledged before a notary public or any official authorized to administer oath, by the person who executed the same.

78. D deposited his goods in the warehouse of W who issued to D a warehouse receipt stating that the goods are to be delivered to bearer. Thereafter, A obtained possession of the warehouse receipt from D in exchange for what A claimed to be a bar of gold, which, however, was discovered by D to be fake. D demanded the return of the warehouse receipt from A but the same had already been negotiated by A to H who purchased the document for value, in good faith and without notice that D was deprived possession thereof by fraud. The negotiation by A to H is:
- voidable
 - valid
 - void
 - rescissible

Answer: B. valid

Because the there is a consideration in exchange of the instrument as well as valid delivery and indorsement of the instrument.

79. B purchased a pair of leather shoes from the store of S. shortly after leaving the store, B decided to return and requested S, the owner, to place a protective rubber covering on the sole of each shoe. Since the job required at least 30 minutes to complete, B left the store of S to shop at the neighboring stores. When he returned to the store of S after 30 minutes, the pair of shoes was nowhere to be found. It turned out that C, a sales clerk, had sold the pair of shoes that B bought to X, another customer.
- X acquired ownership of the pair of shoes earlier bought by B.
 - X did not acquire the ownership of the pair of shoes earlier bought by B.
 - B remained the owner of the pair of shoes that he had bought despite its sale to X.
 - S reacquired ownership of the pair of shoes when it was brought to him for additional work.

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Answer: A. X acquired ownership of the pair of shoes earlier bought by B.

Because X bought the shoes in a merchant store in good faith, the ownership was already transferred to him.

80. S sold 500 shares of stock of San Manuel Corporation to B at P50.00 per share. The transfer of the ownership of the shares of stock may be made through any of the following means, except:
- execution of the sale in a public instrument
 - the giving by S to B of the power to vote in the stockholder's meeting of San Manuel Corporation and its actual exercise thereof by B
 - the endorsement by S of the stock certificate covering the 500 shares of stock and its placing it in the possession of B
 - the issuance by S of the official receipt for the full payment of the purchase price of the shares by B

Answer: D. the issuance by S of the official receipt for the full payment of the purchase price of the shares by B

Incorporeal rights is also governed by article 1498 wherein the mere execution of the sale in a public document is equivalent to delivery. Also, the delivery of the evidence of ownership and the exercise by the buyer of the right over the incorporeal property are also considered delivery of the said incorporeal property.

81. Which of the following documents of title requires endorsement and delivery for its negotiation?
- A warehouse receipt which states that the goods are to be delivered to bearer.
 - A bill of lading which states that the goods are to be delivered to the order of a specified person but such person indorsed it in blank.
 - A warehouse receipt which states that the goods are to be delivered to bearer but the bearer indorsed it to a specified person.
 - A bill of lading which states that the goods are to be delivered to a specified person.

Answer: C. A warehouse receipt which states that the goods are to be delivered to bearer but the bearer indorsed it to a specified person.

A bill of lading, even if deliverable to the bearer, if negotiated to a specific person, needs indorsement and delivery for the negotiation to be valid.

82. S and B executed a deed of absolute sale involving a parcel of land supposedly containing 2,000 square meters. B paid a lump sum of P2,200,000.00 for the purchase. Based on the foregoing facts, which of the following statements is correct?
- If the parcel of land is actually 2,200 square meters in area, S has to deliver only 2,000 square meters thereof and B must pay P2,200,000.00 as agreed upon.
 - If the parcel of land is actually 1,800 square meters in area, S must deliver only 1,800 square meters and B has to pay only the price equivalent to 1,800 square meters.
 - If the parcel of land actually contains 2,200 square meters, S must deliver all 2,200 square meters with B still paying the amount of P2,200,000.00.
 - If the parcel of land actually contains 2,200 square meters, S must deliver all of 2,200 square meters but B must pay a proportionate amount for the additional 200 square meters in addition to the price of P2,200,000.00.

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Answer: C. If the parcel of land actually contains 2,200 square meters, S must deliver all 2,200 square meters with B still paying the amount of P2,200,000.00.

Article 1542 provides that in the sale of real estate, made for a lump sum and not at the rate of a certain sum for a unit measure or number, there shall be no increase or decrease of the price, although there be a greater or less area or number than that stated in the contract.

83. S sold a specific parcel of land separately to the following persons: on July 1, 2010, to X, in a public document; on July 5, 2010 in a private instrument to Y, who took physical possession of the land; and on July 9, 2010 to Z, who registered the sale with the Register of Deeds. Neither X, Y, nor Z was aware of the sale made to the other two buyers. Who is the owner of the parcel of land?
- X, because he was the first purchaser
 - Y, because he took physical possession
 - Z, because he registered the sale
 - S, because the multiple sales he made rendered each sale a void contract

Answer: A. X, because he was the first purchaser

As defined by Article 1498 that when the sale is made through a public instrument, the execution thereof shall be equivalent to the delivery of the thing which is the object of the contract, if from the deed the contrary does not appear or cannot clearly be inferred.

84. In which of the following cases is the seller not obliged to make any payment to the buyer for breach of warranty against eviction?
- When such warranty has not been agreed upon.
 - When there was no stipulation exempting the seller from liability.
 - When there was a stipulation exempting the seller (who was in good faith) from breach of warranty and the waiver was made by the buyer without the knowledge of the risks of eviction.
 - When there was a stipulation exempting the seller (who was in good faith) from breach of warranty and the waiver was made by the buyer with knowledge of the risks of eviction.

Answer: D. When there was a stipulation exempting the seller (who was in good faith) from breach of warranty and the waiver was made by the buyer with knowledge of the risks of eviction.

Articles 1553 and 1554 states that a stipulation exempting the seller from being liable in case of eviction of the buyer is void unless the seller acted in good faith. And the buyer must have the knowledge of the risk of eviction upon the making of the waiver.

85. Mother Lily purchased from Santiago Farms four horses with different looks: a white, a gray, a black, and a brown, which Mother Lily intended to use in a movie to be starred in by four movie actors each one of whom represents one of the colors. Each horse was certified to be fit by the veterinarian who was hired by the parties to examine them. Mother Lily paid a separate price for each of the horses. During the filming of the movie, the brown horse was always sick and could not function as the three others. It was subsequently discovered that it was suffering from an incurable heart ailment.

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- a. Mother Lily may ask for the rescission of the sale of the brown horse only since she paid a separate price for each of the horses.
- b. Mother Lily may ask for the rescission of the sale of all the horses.
- c. Mother Lily may not ask for rescission of the sale of any horse because she freely entered into the contract of sale.
- d. Mother Lily is bound by the sale of all the four horses and must honor such contract because the veterinarian certified that all the horses were fit.

Answer: B. Mother Lily may ask for the rescission of the sale of all the horses.

ART. 1472 *If two or more animals are sold together, whether for a lump sum or for a separate price for each of them, the redhibitory defect of one shall only give rise to its redhibition, and not that of the others; **unless it should appear that the vendee would not have purchased the sound animal or animals without the defective one.***

The general rule is that only redhibitory of one shall give rise to its redhibition and not that of the others but exception is the redhibitory defect of one shall give rise to the redhibition of all animals sold, including the sounds ones, if the vendee would not have bought the sound animals without the defective one. In the case above, it was clearly manifested that the intention of the buyer is to buy the horses as a whole or as a team, then the sale of all the horses can be rescinded.

86. The buyer is obliged to pay interest for the period between the delivery of the thing sold and the payment of the price of the following cases, except if:
- a. there is a stipulation to pay interest
 - b. there is no such stipulation but the thing sold produces fruits of income
 - c. the buyer is in default, from the time of judicial or extrajudicial demand for the payment of the price
 - d. none of the foregoing

Answer: D. none of the foregoing

ART. 1589 *The vendee shall owe interest for the period between the delivery of the thing and the payment of the price, in the following three cases:*

(1) Should it have been so stipulated;

(2) Should the thing sold and delivered produce fruits or income;

(3) Should he be in default, from the time of judicial or extrajudicial demand for the payment of the price.

87. Earnest money possesses three of the following characteristics. Which is the exception?
- a. It is a part of the purchase price
 - b. It is proof of the perfection of the contract of sale
 - c. It is paid at the time of the perfection of the contract of sale
 - d. It is paid as a consideration for the purpose of holding one to his promise to buy or sell a determinate thing for a certain period.

Answer: D. It is paid as a consideration for the purpose of holding one to his promise to buy or sell a determinate thing for a certain period.

This particular characteristic (d) pertains to option money.

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88. S sold his farm lot to B with S reserving his right to repurchase the property within five years from the date of sale. Based on the foregoing facts, which of the following statements is incorrect?
- The sale is subject to a suspensive condition.
 - B may validly sell the lot to a third person against whom S may exercise the right to repurchase provided the right is registered.
 - B is subrogated to the rights and actions of S.
 - B's ownership of the lot becomes irrevocable if S fails to exercise his right to repurchase within the period stated.

Answer: A. The sale is subject to a suspensive condition.

Art. 1465. *Things subject to a resolutive condition may be the object of the contract of sale.*

This is because a suspensive action is where the obligation may not be enforced until certain event occurs. In this case, it is a resolutive condition.

89. D borrowed P50,000.00 from C. the obligation is secured by a mortgage of D's house and lot. Thereafter, C assigned his credit right to T. based on the foregoing facts, which of the following statements is incorrect?
- The consent of D to the assignment is not required in order that T may collect from D.
 - The assignment of the credit right did not carry with it the assignment of the mortgage.
 - If D pays C before D was notified of the assignment, D is released from the liability.
 - The assignment, to bind third persons, must be in a public instrument and recorded with the Registry of Property

Answer: B. The assignment of the credit right did not carry with it the assignment of the mortgage.

Art. 1627. *The assignment of a credit includes all the accessory rights, such as a guaranty, mortgage, pledge or preference.*

That's why in this case, the assignment of C's credit rights also assign accessories to the assignee.

90. A contract of sale possesses three of the following characteristics. Which is the exception?
- Bilateral, since the parties are bound by reciprocal prestations.
 - Commutative, because the parties give almost equivalent values.
 - Onerous, since there is an exchange of valuable consideration.
 - Real, because the object of sale must be delivered for the perfection of the contract.

Answer: D. Real, because the object of sale must be delivered for the perfection of the contract.

Characteristics of a contract of sale are the first three above (a,b,c). Delivery is not required for the perfection of a contract of sale since the perfection of the contract of sale happens upon the meeting of the minds on the object as well as the price certain.

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91. S sold his lot to B reserving his right to repurchase the same within 5 years from the date of the execution of their agreement. The sale together with the right to repurchase was registered with the Register of Deeds. Two years after the execution of the sale, B sold the same lot to X who was not aware that S reserved his right to repurchase the lot.

- a. The sale by S to B is subject to a suspensive condition.
- b. The sale by S to B is subject to a resolutive condition.
- c. The sale by S to B is subject to a condition which is neither suspensive or resolutive.
- d. The sale by S to B is absolute without any condition.

Answer: B. The sale by S to B is subject to a resolutive condition.

Art. 1465. *Things subject to a resolutive condition may be the object of the contract of sale.*

It is resolutive because the right to repurchase need to happen within time fixed.

92. Refer to item 91.

- a. S may repurchase the lot from x within the five-year period although X was not aware of the reservation of the right to repurchase.
- b. S may not repurchase the lot because X was not aware of the reservation of the right.
- c. S may repurchase the lot from X if X was aware of such reservation
- d. The sale by B to X is void because the acquisition of the lot by B from S is subject to a contingency.

Answer: A. S may repurchase the lot from x within the five-year period although X was not aware of the reservation of the right to repurchase.

Art. 1465. *Things subject to a resolutive condition may be the object of the contract of sale.*

It is due to the reason that the right is also registered together with the sale. In the given case above, sale between S and B was subject to a resolutive condition and so the sale between B and X inherited the same condition since the fixed time has not yet lapsed.

93. B wanted to buy the car of S for P100,000.00 and to show that he was in earnest, he gave to S P2,000.00 which S accepted. There was no written instrument signed by S and B to incorporate their agreement. Based on the foregoing, which of the following statements does not pertain to the contract?

- a. B, thereafter, needs to pay P98,000.00
- b. The giving of earnest money binds S and B to a contract of sale.
- c. B, thereafter, must pay C the amount of P100,000.00
- d. The contract between S and B is enforceable although there was no written agreement between them.

Answer: C. B, thereafter, must pay C the amount of P100,000.00

Art. 1482. *Whenever earnest money is given in a contract of sale, it shall be considered as part of the price and as proof of the perfection of the contract.*

And since B gave P2000.00 to S to show that the former was in earnest, it should be considered part of purchase price, so it follows as deduction to the original price of P100,000.00. As a result, thereafter B must pay only the remaining P98,000 (P100000-P2000) not P100,000.

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94. When the buyer is justified in refusing to accept the goods being delivered to him and has relayed such refusal to the seller, such refusal produces the following effects, except:

- a. buyer has no duty to return the goods unless stipulated
- b. title to the goods does not pass to the buyer
- c. buyer is not obliged to pay the price
- d. buyer automatically becomes a depositary of the goods.

Answer: D. buyer automatically becomes a depositary of the goods.

Art. 1587. Unless otherwise agreed, where goods are delivered to the buyer, and he refuses to accept them, having the right so to do, he is not bound to return them to the seller, but it is sufficient if he notifies the seller that he refuses to accept them. If he voluntarily constitutes himself a depositary thereof, he shall be liable as such.

In this provision, the buyer who is justified in refusing to accept goods delivered to him only becomes a depositary of the goods if he constitutes himself to be such **not** automatically.

95. The unpaid seller, in addition to his right to retain the goods while he is in possession of them, has the following rights, except the right:

- a. of stoppage in *transitu*
- b. to resell the goods
- c. to rescind the sale
- d. to bid when the goods are resold

Answer: D. To bid when goods are resold.

Art. 1526. Subject to the provisions of this Title, notwithstanding that the ownership in the goods may have passed to the buyer, the unpaid seller of goods, as such, has:

- (1) A lien on the goods or right to retain them for the price while he is in possession of them;
- (2) In case of the insolvency of the buyer, a right of stopping the goods in *transitu* after he has parted with the possession of them;
- (3) A right of resale as limited by this Title;
- (4) A right to rescind the sale as likewise limited by this Title.

Rights of the unpaid seller are enumerated in article 1526 of the Civil Code of the Philippines which include the first three choices, right of stoppage in *transitu*, resale and to rescind the sale.

96. One of the following is a natural element of a contract of sale.

- a. The price of the goods.
- b. The goods sold.
- c. The stipulation to pay interest on the purchase price of the goods.
- d. The seller's warranty against hidden defects.

Answer: D. The seller's warranty against hidden defects.

Art. 1458. By the contract of sale one of the contracting parties obligates himself to transfer the ownership and to deliver a determinate thing, and the other to pay therefor a price certain in money or its equivalent.

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In the discussion under Article 1458, natural elements of a contract of sale warranty against eviction and warranty against hidden defects. Warranty against hidden defects is a natural element for it is always given unless otherwise stated.

97. On January 1, 2010, Santos offered to sell his only diamond ring for P50,000.00 cash to Bersola who was interested in buying the same. Santos told Bersola that he was giving the latter up to January 31, 2010 to decide whether to buy the ring or not. Bersola agreed to the option and gave Santos option money of P500.00. On January 18, 2010, Santos found another buyer who was willing to pay P70,000.00 cash. Santos personally visited Bersola to inform him that he was withdrawing his offer unless Bersola agreed to buy the ring for P70,000.00.
- Santos may validly withdraw the offer without being held liable for breach of contract since it would be unfair to him if he would receive only P50,000.00 as the price of his ring when another person is willing to buy it at a higher amount.
 - Bersola is bound to pay P70,000.00 if he were to avail himself of his option to buy the ring.
 - Santos cannot withdraw the offer because the option is founded upon a consideration of P500.00
 - Bersola needs to pay only P49,500.00 if he decides to buy the ring since the option money of P500.00 that he paid forms part of the purchase price.

Answer: C. Santos cannot withdraw the offer because the option is founded upon a consideration of P500.00

A unilateral promise to buy or sell a determinate thing for a price certain is binding upon the promisor if the promise is supported by a consideration distinct from price.

Santos cannot dispose the property within the period that he gave to Bersola for the exercise of his option.

98. S and B executed a deed of absolute sale duly acknowledged before a notary public whereby S conveyed his car to B for P100, 000.00. B, however, informed S that he would be going away on a business trip and that he would be taking the car from the place of S when he returned after two weeks. Three days after the sale of the car to B, S sold the same car to X through a deed of absolute sale which was also acknowledged before a notary public. X then drove the car away from the place of S and had the sale recorded with the Land Transportation Office which issued to him a certificate of registration of the car in his name. Neither B nor X was aware of the sale made to the other until B returned from his business trip.
- Preference shall be given to B since the car was first sold to him.
 - X did not acquired title to the car because S was no longer the owner when the sale was made to him.
 - X acquired title to the car because S appeared to be the owner in the record of the Land Transportation Office.
 - S remained the owner of the car because the sale made to one buyer nullified the sale to the other.

Answer: C. X acquired title to the car because S appeared to be the owner in the record of the Land Transportation Office.

X has a better right to the car since he was the one first registered the same before the Land Registration Office. A sale of motor vehicle is not valid to a third person if not registered before the Land Registration Office.

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99. D gives his ring worth P25,000.00 to C in consideration of C's giving of P10,000.00 and a bracelet worth P15,000.00 to D. Based on the foregoing facts; which of the following statements is incorrect?
- The transaction between D and C is a sale if they intended it to be a contract of sale.
 - The transaction between D and C is a barter if they intended it to be a contract of barter.
 - The transaction is barter regardless of the intention of the parties because the bracelet is of more value than P10,000.00
 - The transaction is barter if the intention of the parties cannot be determined

Answer: C. The transaction is barter regardless of the intention of the parties because the bracelet is of more value than P10,000.00

In accordance to the stipulations of Article 1468, if the intention does not clearly appear, it shall be considered a barter if the value of the thing given as part of the consideration exceeds the amount of money given off. Thus, if the intention is clear, said intention shall prevail.

100. S, the proprietor of a rent-a-car enterprise, sold his business and his fleet of 10 cars to B for lump sum of P3, 000,000.00. S physically delivered the permits and other papers for the operation of the business and the vehicles to B at the latter's office except for one car which the parties agreed shall be leased by S for one month while he was winding up his affairs in the Philippines as he was then leaving for abroad. In the meantime, the contract of sale and contract of lease, though already signed by the parties, have not been acknowledged before a notary public, and hence, were still private instruments.
- The ownership of the car leased by S remained with S.
 - The ownership of the car leased by S has been transferred to B although there was no physical delivery thereof to B.
 - The execution of the private instrument for the sale of the business and the cars likewise transferred the ownership to B of the car leased by S.
 - Both the contract of sale and the contract of lease must be acknowledged before a notary public by the parties before the ownership of the car lease by S is transferred to B.

Answer: B. The ownership of the car leased by S has been transferred to B although there was no physical delivery thereof to B.

In accordance to Article 1499, the delivery of movable property may likewise be made by the mere consent or agreement of the contracting parties, if the thing sold cannot be transferred to the possession of the vendee at the time of the sale, or if the latter already had it in his possession for any other reason.

101. King Gems Company, a jewelry manufacturer, shipped five dozen necklaces to Queen Jewelry Store. The shipment was made under a written agreement allowing Queen Jewelry Store to return the necklaces within a period of one month from delivery. Based on the foregoing facts, which of the following statements is incorrect?
- Title to the necklaces passed to Queen upon delivery.
 - If Queen does not return the necklaces within one month, the sale to it becomes absolute.
 - If the necklaces are destroyed by fire without the fault of Queen, Queen need not pay the price thereof.
 - If the necklaces are destroyed through the fault of Queen, Queen must pay the price thereof to King Gems Company.

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Answer: C. If the necklaces are destroyed by fire without the fault of Queen, Queen need not pay the price thereof.

As stated in Article 1480, the Seller shall bear the loss or any injury on the thing occurring before the delivery.

- 102.** On January 3, 2010, D deposited his goods with W, warehouseman, who issued a warehouse receipt which states that the goods are to be delivered “to the order of D”. On January 5, 2010 D indorsed the receipt to A. On January 8, 2010, however, D sold the goods represented by the receipt to X who informed W immediately of the sale to him of the goods by D. at that time, W was not aware that D had indorsed the receipt to A.
- A acquired the title to the goods as represented by the receipt at the time such receipt was indorsed to him.
 - X acquired title to the goods because at the time of the sale to him, W, warehouseman was not yet aware that D had indorsed the receipt to A.
 - D retained ownership of the goods because he cannot indorse the receipt to one person and sell the goods to another.
 - W will be bound to deliver the goods to X

Answer: A. A acquired the title to the goods as represented by the receipt at the time such receipt was indorsed to him

Since A is a holder in good faith of the document of title, he acquired the right on the goods covered by the document of title against any other person claiming rights over it.

- 103.** One of the following statements pertaining to a sale by auction is incorrect. Which is it?
- A sale by public auction is perfected when the auctioneer announces its perfection by the fall of the hammer, or in any other manner.
 - Before perfection, any bidder may retract his bid.
 - Before perfection, the auctioneer may withdraw the goods unless the auction was announced to be without reserve.
 - The seller may validly participate in the bidding without prior notice to the bidders.

Answer: D. The seller may validly participate in the bidding without prior notice to the bidders.

As stated in Article 1476, the seller may validly participate in the bidding ONLY if the right to bid is expressly reserved by the seller.

- 104.** S sold a laptop computer to B for P120,000.00 with B giving a down payment of P10,000.00 and promising to pay the balance in 11 equal monthly installments. B likewise executed a chattel mortgage on the computer and a real mortgage on his lot to secure the payment of the balance of the purchase price. After paying the first two installments, B defaulted in the payment of next three installments. S may avail himself of any of the following remedies except to:
- exact fulfillment of the obligation
 - cancel the sale
 - foreclose the chattel mortgage and recover any deficiency during the foreclosure sale if there is an agreement to that effect.
 - foreclose the real mortgage and recover the deficiency during the foreclosure sale even if there is no agreement to that effect.

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Answer: C. foreclose the chattel mortgage and recover any deficiency during the foreclosure sale if there is an agreement to that effect.

As stated in article 1484, if the seller chooses to foreclose the mortgage, he shall not have any further action against the buyer.

- 105.** B bought from Century Properties, Inc. a 1,000 square meter lot located beside the Manila International Airport on which he intended to construct a warehouse condominium. The terms of the sale provided for the payment of the contract price of P300,000.00 in 60 equal monthly installments of P5,000.00 each. After having paid 36 installments, B defaulted in the payment of the succeeding installments. As a consequence, Century cancelled the sale. B now wants to claim the return of the cash surrender of the payments he had made pursuant to the "Realty Installment Buyer Act", otherwise known as the Maceda Law.
- B is entitled to a cash surrender value of 50% of P180,000.00 or P90,000.00 under the Maceda Law.
 - B is entitled to a cash surrender value of 55% of P180,000.00 or P99,000.00 under the Maceda Law.
 - B is entitled to a cash surrender value of 90% of P180,000.00 or P162,000.00 under the Maceda Law.
 - B cannot invoke the Maceda Law for the return of any of the payments he had made for the lot he purchased.

Answer: A. B is entitled to a cash surrender value of 50% of P180,000.00 or P90,000.00 under the Maceda Law.

- 106.** S shipped FOB Manila, perishable goods worth P50,000.00 to B who is based in Cebu. B remitted a check amounting to P50,000.00 for the price of the goods. While the carrier was on its way to Cebu, S was informed by his bank that the check issued by B was dishonored for insufficient funds. On further inquiry, he learned that B had become insolvent. Accordingly, S obtained physical possession of the goods from the carrier. After notifying B, S resold the goods.
- Case A – if the goods are resold for P52,000.00, the profit of P2,000.00 belongs to B since title had already passed to him
- Case B – if the proceeds of sale, net of incidental expenses, amounted to P47,000.00, S can recover the loss of P3,000.00 from B.
- Both cases are true
 - Both cases are false
 - Case A is true; Case B is false
 - Case A is false; Case B is true

Answer: D. Case A is false; Case B is true

Since the goods are perishable, the seller can exercise his right of resale after stopping the goods in transit. Since the seller already stopped the goods in transit, the resale is valid and the proceeds of resale will pertain to the seller in order to satisfy the purchase price.

- 107.** B visited a store selling lamps, light bulbs and similar items. He informed the seller that he was buying 2 units of a 50-watt "Phillips" bulb. Though he intended to use the 2 bulbs for the headlight of his car, he did not inform the seller of his purpose. Thereafter, he installed the 2 units of "Phillips" bulb on his car but they did not function. Based on the foregoing, which of the following statements is incorrect?
- The seller is liable for breach of warranty of fitness for a particular purpose.

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- b. The seller is not liable for breach of warranty of fitness for a particular purpose because the buyer did not rely on the seller's skill or judgment.
- c. The seller is not liable to B since the seller's warranty is only for merchantability, or that the bulb is fit for the general purpose for which it was intended.
- d. There is no warranty of fitness for a particular purpose since the bulb was sold to B under its trade name.

Answer: A. The seller is liable for breach of warranty of fitness for a particular purpose.

The breach of warranty is not applicable since the seller is not aware of the intention of the buyer in buying the goods.

- 108.** It refers to the right which the vendor reserves to himself to repurchase the thing sold, with the obligation to reimburse the vendee of the price, the expenses of the contract, any other legitimate payments made therefore and the necessary and useful expenses made on the thing sold.
- a. Conventional redemption
 - b. Legal redemption
 - c. Equity of redemption
 - d. Right of pre-emption

Answer: A. Conventional redemption - as defined by article 1601 of the civil code of the Philippines

109. Palmares ordered from Superstar Sportswear Company, a sportswear manufacturer, 2 dozens of jackets and jogging pants styled and designed by Palmares for the use of his basketball team. This was not the type of sportswear normally manufactured by Superstar. The price agreed upon by the parties was P72,000.00. After the articles were manufactured, Palmares refused to accept them and claimed that he was not liable since the contract did not comply with the Statute of Frauds.
- a. Palmares is liable although the contract was not in writing.
 - b. The contract is a contract of sale.
 - c. The contract is a contract to sell.
 - d. There was no contract at all because no writing was executed by the parties

Answer: A, Palmares is liable although the contract was not in writing.

Under **Article 1467**, a contract for the delivery at a certain price of an article which the vendor in the ordinary course of his business manufactures or procures for the general market, whether the same is on hand at the time or not, is a contract of sale, but if the goods are to be manufactured specially for the customer and upon his special order, and not for the general market, it is a contract for a piece of work.

Palmares is liable because the contract entered into is a contract for a piece work not contract of sale so it is not governed by the Statute of fraud. It is a contract for a piece of work because the designed jackets and jogging pants was not normally manufactured by superstar.

110. B received at his office a brand-new computer printer. The printer was delivered to B after the latter filled up a coupon which he cut out from a magazine where Superstar Machines Company placed an advertisement allowing a "Free Trial for 7 days" of the printer to prospective customers. After trying the printer shortly after its

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delivery to him, B placed it on a table located just beside a glass window. B forgot all about the printer until two weeks later. By that time, the plastic parts of the printer had been deformed because of its long exposure to sunlight such that the printer would no longer function.

- a. The ownership of the printer was transferred to B upon its delivery to him.
- b. B must pay for the price of the computer.
- c. B is not liable for the damage because it was caused by a fortuitous event.
- d. Supreme Machines Company must shoulder the damage because it retained the ownership of the printer despite the delivery.

Answer: B, B must pay for the price of the computer.

Under Article 1502, When goods are delivered to the buyer "on sale or return" to give the buyer an option to return the goods instead of paying the price, the ownership passes to the buyer on delivery, but he may revert the ownership in the seller by returning or tendering the goods within the time fixed in the contract, or, if no time has been fixed, within a reasonable time. (n)

When goods are delivered to the buyer on approval or on trial or on satisfaction, or other similar terms, the ownership therein passes to the buyer:

(1) When he signifies his approval or acceptance to the seller or does any other act adopting the transaction;

(2) If he does not signify his approval or acceptance to the seller, but retains the goods without giving notice of rejection, then if a time has been fixed for the return of the goods, on the expiration of such time, and, if no time has been fixed, on the expiration of a reasonable time. What is a reasonable time is a question of fact.

The second paragraph of this article governs this situation. The transaction is sale on approval or trial since it was stated in the advertisement is "FREE TRIAL FOR 7 DAYS". B must pay because the 7-day trial lapsed and expiration of the time for trial means of accepting the goods. Further, the damage of the printer was due to the fault of the buyer.

111. Salvosa shipped FOB Manila goods worth P20,000.00 to Bordelo who is based in Davao City. While the carrier was on a stopover in Cebu City, Salvosa was informed by his bank that the check issued by Bordelo was dishonored by reason of insufficiency of funds. He also learned from the Credit Bureau that Bordelo had become insolvent. Accordingly, Salvosa notified the carrier that he was taking possession of the goods.

The right availed by Salvosa in the situation is known as the right of:

- a. stoppage in transitu
- b. subrogation
- c. attachment
- d. garnishment

Answer: A, stoppage in transit

Article 1532, Subject to the provisions of this Title, when the buyer of goods is or becomes insolvent, the unpaid seller who has parted with the possession of the goods has the right of stopping them in transitu, that is to say, he may resume possession of the goods at any time while they are in transit, and he will then become entitled to the same rights in regard to the goods as he would have had if he had never parted with the possession.

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It is under this provision because Borledo, the buyer become insolvent. Salvosa has the right of stopping the goods in transit.

112. Refer to No. 111. After obtaining actual possession of the goods, Salvosa offered them for sale at public auction. Based on the foregoing facts, which of the following statements is incorrect pertaining to the sale of the goods?
- Salvosa may bid at the public auction provided there is notice of his participation
 - The buyer of the goods at the public auction acquires title to the goods as against Bordelo.
 - If the goods are sold at P19,000.00 net of cost of selling and other expenses, Salvosa may recover the amount of P1,000.00 from Bordelo.
 - If the goods are sold at P22,000.00 net of cost of selling and other expenses, the profit of P2,000.00 belongs to Salvosa.

Answer: A, Salvosa may bid at the public auction provided there is notice of his participation.

Article 1533, (Last paragraph) *Where the goods are of perishable nature, or where the seller expressly reserves the right of resale in case the buyer should make default, or where the buyer has been in default in the payment of the price for an unreasonable time, an unpaid seller having a right of lien or having stopped the goods in transitu may resell the goods. He shall not thereafter be liable to the original buyer upon the contract of sale or for any profit made by such resale, but may recover from the buyer damages for any loss occasioned by the breach of the contract of sale.*

Where a resale is made, as authorized in this article, the buyer acquires a good title as against the original buyer.

It is not essential to the validity of resale that notice of an intention to resell the goods be given by the seller to the original buyer. But where the right to resell is not based on the perishable nature of the goods or upon an express provision of the contract of sale, the giving or failure to give such notice shall be relevant in any issue involving the question whether the buyer had been in default for an unreasonable time before the resale was made.

It is not essential to the validity of a resale that notice of the time and place of such resale should be given by the seller to the original buyer.

The seller is bound to exercise reasonable care and judgment in making a resale, and subject to this requirement may make a resale either by public or private sale. He cannot, however, directly or indirectly buy the goods.

Under provision, Salvosa may not bid at the public auction directly or not because the essence of resell is being violated. The three other choices are stated in this article.

113. Brothers Antonio, Benito, Carmelo and Donato are co-owners of an agricultural lot which they inherited from their parents. Antonio sold his undivided share in the property to Teodulfo. Either Benito, Carmelo and Donato may purchase Antonio's share in the property from Teodulfo by virtue of their right of:
- legal redemption
 - pre-emption
 - conventional redemption
 - consolidation

Answer: A, Legal Redemption

Article 1619, Legal redemption is the right to be subrogated, upon the same terms and conditions stipulated in the contract, in the place of one who acquires a thing by purchase or dation in payment, or by any other transaction whereby ownership is transmitted by onerous title.

Legal Redemption is applicable even if there was no stipulation of the existence of the right of redemption/

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This situation is a legal redemption since Either Benito, Carmelo and Donato may purchase Antonio's share in the property from Teodulfo.

114. D, owner of certain goods, deposited the goods with W, a warehouseman, who issued to D a warehouse receipt which states that "The goods are to be delivered to the order of D." D may negotiate the warehouse receipt by any of the following means, except by:
- mere delivery
 - special indorsement completed by delivery
 - blank indorsement completed by delivery
 - indorsement to bearer completed by delivery

Answer: A, Mere delivery

Article 1508, (2) *Where by the terms of the document the carrier, warehouseman or other bailee issuing the same undertakes to deliver the goods to the order of a specified person, and such person or a subsequent indorsee of the document has indorsed it in blank or to the bearer.*

This provision is about order document of title wherein it is negotiated by indorsement as well as delivery not mere delivery only.

115. S delivered a diamond ring to B for B's necklace worth P10,000.00 and cash of P15,000.00 which B is scheduled to deliver one week after their agreement. The contract between S and B was not in writing. The contract between S and B is:
- an enforceable contract of barter
 - an enforceable contract of sale
 - an enforceable contract that is partly a sale and partly a barter
 - a sale but it is unenforceable not being in writing and the cash to be paid by B is at least P500.00

Answer: B, an enforceable contract of sale.

Under Article 1468, *If the consideration of the contract consists partly in money, and partly in another thing, the transaction shall be characterized by the manifest intention of the parties. If such intention does not clearly appear, it shall be considered a barter if the value of the thing given as a part of the consideration exceeds the amount of the money or its equivalent; otherwise, it is a sale.*

The contract between S and B is a contract of sale, since the intention of the parties do not clearly state, the monetary value is greater than the value of the necklace. It is enforceable because there was already a partial execution of the contract by virtue of the delivery of the diamond ring.

116. These contracts are presented to you for evaluation
- A contract for the delivery of an article which is manufactured in the ordinary course of the business, but the article was not available at the time of the contract was executed.
 - A contract for the delivery of an article to be manufactured specially for the customer and upon his special order.
- In your evaluation of the said contracts,
- Both contracts refer to a contract of sale
 - Both contracts refer to a contract for a piece of work
 - I refers to a contract of sale; II refers to a contract for a piece of work
 - I refers to a contract for a piece of work; II refers to a contract of sale

Answer: C, I refers to a contract of sale; II refers to a contract for a piece of work.

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Under Article 1467, A contract for the delivery at a certain price of an article which the vendor in the ordinary course of his business manufactures or procures for the general market, whether the same is on hand at the time or not, is a contract of sale, but if the goods are to be manufactured specially for the customer and upon his special order, and not for the general market, it is a contract for a piece of work.

The first statement is a contract of sale since the article to be delivered is being manufactured in the ordinary course of the business. The second statement is a contract for a piece of work since the articles to be manufactured is especially for the customer and upon his special order.

117. These statements are presented to you for evaluation
- I. The sale of a thing having a potential existence is not effective if the thing does not come into existence.
 - II. The sale of hope or expectancy produces effect even if the thing hoped for does not come into existence
- In your evaluation of the foregoing statements
- a. Both are true
 - b. Both are false
 - c. Only Statement I is true
 - d. Only Statement II is true

Answer: A, Both are true.

Under Article 1461, Things having a potential existence may be the object of the contract of sale.

The efficacy of the sale of a mere hope or expectancy is deemed subject to the condition that the thing will come into existence.

The sale of a vain hope or expectancy is void.

Both statements are true since it was stated in this provision (Art. 1461). First statement is emptioresperatae which is subject to the condition that the thing must come into existence, if it does not, the sale will not be effective for not having an object. The second statement is emptiospei that is effective even if the thing hoped does not come into existence.

118. The following terms are presented to you:
- I. Contract to sell
 - II. Sale or return
 - III. Sale on trial
 - IV. Agency to sell

Upon the delivery of the goods by the owner thereof to the other party, ownership is not transferred in:

- a. I, II and III
- b. I, III and IV
- c. I, II and IV
- d. II, III and IV

Answer: B, I,III and IV

Under Article 1502(First paragraph), When goods are delivered to the buyer “on sale or return” to give the buyer an option to return the goods instead of paying the price, the ownership passes to the buyer on delivery, but he may revert the ownership in the seller by returning or tendering the goods within the time fixed in the contract, or, if no time has been fixed, within a reasonable time.

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When goods are delivered to the buyer on approval or on trial or on satisfaction, or other similar terms, the ownership therein passes to the buyer:

(1) When he signifies his approval or acceptance to the seller or does any other act adopting the transaction;

(2) If he does not signify his approval or acceptance to the seller, but retains the goods without giving notice of rejection, then if a time has been fixed for the return of the goods, on the expiration of such time, and, if no time has been fixed, on the expiration of a reasonable time. What is a reasonable time is a question of fact.

There is a transfer of ownership upon delivery if it is "sale or return". The other three contracts: contract to sell, sale on trial, and agency to sell, do not transfer ownership upon delivery. The contract to sell transfers the ownership upon the full payment of the agreed price. In sale on trial, the ownership transfers when he signifies his approval or acceptance to the seller or does any other act adopting the transaction or if he does not signify his approval or acceptance to the seller, but retains the goods without giving notice of rejection, then if a time has been fixed for the return of the goods, on the expiration of such time, and, if no time has been fixed, on the expiration of a reasonable time. On the other hand, the agency to sell does not transfer the ownership upon delivery because the delivery of the thing is not for the purpose of transferring the title over the property.

119. The following terms are presented to you:

- I. Nominate
- II. Real
- III. Aleatory
- IV. Commulative

A contract for the sale of a sweepstakes ticket is considered as:

- a. I and II
- b. I and IV
- c. I and III
- d. III and IV

Answer: C, I and III

Nominate contracts are those which have a particular name to distinguish them. Aleatory contract is a mutual agreement between two parties in which the performance of the contractual obligations of one or both parties depends upon a fortuitous event.

The sale of a sweepstakes ticket is considered as nominate and aleatory. It is a nominate contract since it has a special name given by the law that distinguish to other contracts. It is aleatory contract because the performance of the other party is depends upon the future events

120. These statements are presented to you for evaluation

- I. Option money is part of the purchase price.
- II. Earnest money is proof of the perfection of the contract of sale.

In your evaluation of the foregoing statements

- a. Both are true
- b. Both are false
- c. Only I is true
- d. Only II is true

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Answer: D, Only II is true.

Under **Article 1482**, Whenever earnest money is given in a contract of sale, it shall be considered as part of the price and as proof of the perfection of the contract.

The second statement is supported by this provision (1482), wherein the definition of the earnest money is stated. The first statement is false because Option money is distinct of the purchase price.

121. S sold a computer to B for P120,000.00 under the following terms: P20,000.00 down, balance payable in 10 equal monthly installments with an acceleration clause. To secure payment of the balance, B executed a chattel mortgage on the computer and a real mortgage on his lot. After paying the first two installments, B defaulted in the payment of the third, fourth and fifth installments. S wants to recover in full the balance of P80,000.00 even in case of deficiency so he consults you on which of the following courses of action to take to achieve that purpose.
- I. Exact fulfillment of the balance by suing B and have the computer sold for the execution of the judgment against B.
 - II. Foreclose the chattel mortgage on the computer
 - III. Foreclose the real mortgage on the lot

Based on your evaluation of the foregoing data, the course of action that you will likely recommend to S to achieve his purpose is:

- a. Either I or II
- b. Either II or III
- c. Either I or III
- d. Any of I, II or III

Answer: C. Either I or III

Art. 1484. In a contract of sale of personal property the price of which is payable in installments, the vendor may exercise any of the following remedies:

- (1) Exact fulfillment of the obligation, should the vendee fail to pay;*
- (2) Cancel the sale, should the vendee's failure to pay cover two or more installments;*
- (3) Foreclose the chattel mortgage on the thing sold, if one has been constituted, should the vendee's failure to pay cover two or more installments. In this case, he shall have no further action against the purchaser to recover any unpaid balance of the price. Any agreement to the contrary shall be void. (1454-A-a)*

Because by foreclosing the chattel mortgage on the computer; that might result to a smaller profit as compared to the mortgage on lot. And also the amount that can be collected from foreclosing the chattel mortgage may not be enough to cover up the obligation of B.

Further, should the seller first foreclose the chattel mortgage, he can no longer recover deficiencies nor foreclose the Real Estate Mortgage. On the other hand, if the seller will first foreclose the chattel mortgage, he can later on recover deficiencies or foreclose the chattel mortgage.

122. On January 5, Samonte, who was going abroad as an immigrant, offered to sell his car for P150,000.00 to Baldriga. He informed Baldriga, however, that he wanted to rent the car for P1,000.00 per day up to January 15 as soon as the sale is executed since his flight was not scheduled until the 16th. Baldriga accepted

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both offers, and accordingly, he and Samonte executed a contract of sale and a contract of lease simultaneously on the same day, January 5. All the while, Samonte remained in physical possession of the car until January 10 when the car was stolen without his fault. The car was never recovered.

- a. Samontemus bear the loss by returning the sum of P150,000.00 since Baldriga did not become the owner not having obtained physical possession thereof
- b. Baldriga must bear the loss because he acquired ownership of the car despite its lack of physical delivery to him.
- c. Both Samonte and Baldriga must share equally in the loss.
- d. Samonte must bear the loss by returning P150,000.00 less P5,000.00, the rental of the car for 5 days, in partial compensation.

Answer: B. Baldriga must bear the loss because he acquired ownership of the car despite its lack of physical delivery to him.

Art. 1499. The delivery of movable property may likewise be made by the mere consent or agreement of the contracting parties, if the thing sold cannot be transferred to the possession of the vendee at the time of the sale, or if the latter already had it in his possession for any other reason. (1463a)

The ownership is transferred to Baldriga through the tradition brevimanu in which Baldriga is already the owner. Therefore, he shall bear the loss.

123. S, who is based in Manila, shipped FOB Cebu goods worth P50,000.00 to B. While the goods were on their way to Cebu, S was informed by his bank that the check remitted by B was dishonored for insufficient funds. Accordingly, S notified the carrier not to proceed with the delivery and that he was taking possession of the goods. Based on the foregoing facts, which remedy is available to S?
- a. Resale of the goods
 - b. Rescission of the sale
 - c. Either resale or rescission of the goods, at the option of S
 - d. Neither resale nor rescission

Answer: D. Neither Resale or Rescission

Although the seller can still exercise possessory lien since he reserved ownership of the goods, the seller CANNOT exercise the right of resale nor rescission because there was no statement that the goods are perishable. Neither was there a stipulation that resale or rescission can be had. Further, no circumstance is existing which will show that the buyer failed to pay for an unreasonable period of time.

124. Before the perfection in a sale by auction
- I. Any bidder may withdraw his bid.
 - II. The auctioneer may withdraw the goods from the sale unless the auction has been announced to be without reserve

The statement is true for:

- a. Both I and II
- b. Neither I nor II
- c. I only
- d. II only

Answer: A. Both I and II

As described by article 1476 of the civil code of the Philippines.

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Art. 1476. *In the case of a sale by auction:*

(1) *Where goods are put up for sale by auction in lots, each lot is the subject of a separate contract of sale.*

(2) *A sale by auction is perfected when the auctioneer announces its perfection by the fall of the hammer, or in other customary manner. Until such announcement is made, any bidder may retract his bid; and the auctioneer may withdraw the goods from the sale unless the auction has been announced to be without reserve.*

(3) *A right to bid may be reserved expressly by or on behalf of the seller, unless otherwise provided by law or by stipulation.*

(4) *Where notice has not been given that a sale by auction is subject to a right to bid on behalf of the seller, it shall not be lawful for the seller to bid himself or to employ or induce any person to bid at such sale on his behalf or for the auctioneer, to employ or induce any person to bid at such sale on behalf of the seller or knowingly to take any bid from the seller or any person employed by him. Any sale contravening this rule may be treated as fraudulent by the buyer. (n)*

125. The following contracts of sale are presented to you:

- I. S sold a certain ring to B. It turned out that the ring was stolen from O, its true owner.
- II. S, a jewelry store, sold a certain ring to B. The ring, however, belongs to O who had lost it a few days earlier.
- III. S, a pawnshop, sold at a public auction a certain ring with B as the winning bidder. O, however, is the true owner of the ring but the pawnshop thought it was owned by X, a defaulting borrower of the pawnshop

In your evaluation of the above sales, B acquired title to the ring in:

- a. I and II
- b. II and III
- c. I and III
- d. None of the three contracts

Answer: B. II and III

It is because in cases II and III B bought such ring in a public market (merchant store) that gave him the absolute ownership of the ring.

126. Refer to No. 125. O may recover the ring from B without the need for reimbursement in:

- a. I only
- b. II only
- c. III only
- d. All three contracts

Answer: A. I only

Art. 1505. *Subject to the provisions of this Title, where goods are sold by a person who is not the owner thereof, and who does not sell them under authority or with the consent of the owner, the buyer acquires no better title to the goods than the seller had, unless the owner of the goods is by his conduct precluded from denying the seller's authority to sell. Nothing in this Title, however, shall affect:*

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- (1) *The provisions of any factors' act, recording laws, or any other provision of law enabling the apparent owner of goods to dispose of them as if he were the true owner thereof;*
- (2) *The validity of any contract of sale under statutory power of sale or under the order of a court of competent jurisdiction*
- (3) *Purchases made in a merchant's store, or in fairs, or markets, in accordance with the Code of Commerce and special laws. (n)*

It is due to the reason that B bought it outside the public market. Since the ring was bought from a thief who do not have the title of ownership over the ring S did not acquire a good title.

Further, as a general rule, a personal property which was acquired illegally can be recovered by the owner without the need for reimbursement. The only exception is when the thing was acquired in a public sale or merchant store. In case of public sale, the thing can be recovered but the owner shall reimburse the buyer of the amount which he paid. In case the thing was acquired in a merchant store, the owner CANNOT recover the personal property.

127. S sold a brand-new electric typewriter to B for P20,000.00 on a credit term of 30 days. The agreement between the parties provides that B may return the typewriter within the same period. Ten days after delivery to B, burglars entered in the office of B and carried away various valuables including the typewriter he bought from S.
- B must pay the price of the typewriter to S.
 - B is not obliged to pay the price of the typewriter because the loss thereof was without his fault
 - S must shoulder the loss because B's ownership of the typewriter was not absolute since he had the option to return it within 30 days.
 - The loss must be shared equally by S and B in fairness to both.

Answer: A. B must pay the price of the typewriter to S.

Art. 1502. When goods are delivered to the buyer "on sale or return" to give the buyer an option to return the goods instead of paying the price, the ownership passes to the buyer of delivery, but he may revert the ownership in the seller by returning or tendering the goods within the time fixed in the contract, or, if no time has been fixed, within a reasonable time. (n)

When goods are delivered to the buyer on approval or on trial or on satisfaction, or other similar terms, the ownership therein passes to the buyer:

- (1) *When he signifies his approval or acceptance to the seller or does any other act adopting the transaction;*
- (2) *If he does not signify his approval or acceptance to the seller, but retains the goods without giving notice of rejection, then if a time has been fixed for the return of the goods, on the expiration of such time, and, if no time has been fixed, on the expiration of a reasonable time. What is a reasonable time is a question of fact. (n)*

The ownership vested upon B on delivery of said typewriter. Therefore he must bear the loss.

128. The following statements are presented to you:
- A bearer document of title if it is specially indorsed can be negotiated thereafter only by endorsement completed by delivery

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- II. A bearer negotiable instrument if it is specially indorsed can be negotiated thereafter only by endorsement completed by delivery

In your evaluation of the foregoing statements

- a. Both statements are true.
- b. Both statements are false.
- c. Only I is true
- d. Only II is true

Answer: C. Only I is true

As described by the civil code of the Philippines.

Art. 1507. A document of title in which it is stated that the goods referred to therein will be delivered to the bearer, or to the order of any person named in such document is a negotiable document of title. (n)

Art. 1509. A negotiable document of title may be negotiated by the endorsement of the person to whose order the goods are by the terms of the document deliverable. Such endorsement may be in blank, to bearer or to a specified person. If indorsed to a specified person, it may be again negotiated by the endorsement of such person in blank, to bearer or to another specified person. Subsequent negotiations may be made in like manner. (n)

This is the difference between a bearer document of title and a bearer negotiable instrument. A bearer negotiable instrument will remain to be a bearer instrument until discharged.

129. S sold to B a specific car for P200,000.00. The terms of the sale provide the following: P40,000.00 down, balance payable in 8 equal monthly installments of P20,000.00 each, with a real estate mortgage to be executed by B on his lot to secure the said balance. After paying 3 installments, B defaulted in the payment of 3 more installments. Based on the foregoing facts, the following remedies were presented to B:

- I. Exact fulfillment of the obligation.
- II. Cancel the sale.
- III. Foreclose the real mortgage on the lot and recover any deficiency in the foreclosure sale.

If you were B, the remedy that you may avail yourself of is:

- a. Either I or II
- b. Either II or III
- c. Either I or III
- d. Any of the three remedies presented.

Answer: D. Any of the three remedies presented.

As defined by the civil code of the Philippines.

Art. 1484. In a contract of sale of personal property the price of which is payable in installments, the vendor may exercise any of the following remedies:

- (1) *Exact fulfillment of the obligation, should the vendee fail to pay;*
- (2) *Cancel the sale, should the vendee's failure to pay cover two or more installments;*
- (3) *Foreclose the chattel mortgage on the thing sold, if one has been constituted, should the vendee's failure to pay cover two or more installments. In this case,*

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he shall have no further action against the purchaser to recover any unpaid balance of the price. Any agreement to the contrary shall be void. (1454-A-a)

130. An unpaid seller may avail himself of the following remedies, except right to:
- retain the goods while he is in possession of them.
 - resume possession of the goods at any time while they are in transit
 - buy the goods at any public sale if he decides to resell them
 - rescind the sale

Answer: C. buy the goods at any public sale if he decides to resell them

Art. 1526. Subject to the provisions of this Title, notwithstanding that the ownership in the goods may have passed to the buyer, the unpaid seller of goods, as such, has:

(1) A lien on the goods or right to retain them for the price while he is in possession of them;

(2) In case of the insolvency of the buyer, a right of stopping the goods in transitu after he has parted with the possession of them;

(3) A right of resale as limited by this Title;

(4) A right to rescind the sale as likewise limited by this Title.

Where the ownership in the goods has not passed to the buyer, the unpaid seller has, in addition to his other remedies a right of withholding delivery similar to and coextensive with his rights of lien and stoppage in transitu where the ownership has passed to the buyer. (n)

It is not in article 1526 of the civil code of the Philippines.

131. S sold his lot to X on April 1, 2010. The deed of sale was duly acknowledged by the parties before a notary public. However, X did not take physical possession of the lot. On April 10, 2010, S sold the same lot to Y under a deed of sale which was still to be notarized. Y immediately took physical possession of the lot. Y was not aware of the previous sale to X. when X visited the property, he found Y already building a structure thereon. It was also then that he discovered that S had sold the same lot to Y.
- The lot belongs to X
 - The lot belongs to Y.
 - The lot will be co-owned by X and Y in fairness to both of them since they were in good faith.
 - The lot still belongs to S until it can be determined who between X and Y is the owner of the lot.

Answer: A. The lot belongs to X

Art. 1499. The delivery of movable property may likewise be made by the mere consent or agreement of the contracting parties, if the thing sold cannot be transferred to the possession of the vendee at the time of the sale, or if the latter already had it in his possession for any other reason. (1463a)

It is due to the reason that X had the title to it first.

132. A contract of sale is perfected upon the:
- full payment of the purchase price by the buyer.
 - delivery of the object of the contract to the buyer.
 - meeting of minds between seller and the buyer on the object and the price.

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- d. acknowledgement of the deed of sale by the seller and the buyer before a notary public.

Answer: C. meeting of minds between seller and the buyer on the object and the price.

As defined by article 1475 of the civil code of the Philippines.

Art. 1475. The contract of sale is perfected at the moment there is a meeting of minds upon the thing which is the object of the contract and upon the price. From that moment, the parties may reciprocally demand performance, subject to the provisions of the law governing the form of contracts. (1450a)

133. These statements are presented to you:
- I. It is part of the purchase price.
 - II. It is paid before the contract of sale is perfected.
 - III. When given, it entitles the party making the payment to hold the recipient from offering the object of the contract to other persons within the period agreed upon.
 - IV. It is proof the perfection of the contract of sale.

Based on your evaluation of the foregoing statements, which of the following is true?

- a. I and III refer to option money.
- b. II and III refer to option money.
- c. II and IV refer to earnest money.
- d. III and IV refer to option money.

Answer: B. II and III refer to option money.

Article 1482 states "When earnest money is given in a contract of sale, it shall be considered as part of the price as a proof of the perfection of the contract."

Considering the statements given as well as article 1482, statement I and statement IV refer to an earnest money. On the other hand, statement II and statement III refer to option money.

The main difference between an earnest money and option money is that earnest money is given as a sign of perfection of contract and part of the purchase price. On the other hand, option money is given to hold the recipient from offering the object of the contract to other persons within the period agreed upon.

134. Orlando is the owner of an agricultural lot consisting of 9,000 square meters (or .9 hectares). The lot is surrounded on the North by Nonato's lot consisting of 7,000 square meters; on the East, by Espino's lot consisting of 6,500 square meters; on the South, by Serrano's lot consisting of 8,500 square meters; and on the West, by the road, across which was Wagan's lot consisting of 6,300 square meters. Orlando donates the lot to Benito, his brother, who is the owner of several rural lots in the area. Of the adjoining owners, only Serrano expressed to Benito his desire to redeem the lot. The right of legal redemption is available to:
- a. Serrano because it was only he who offered to redeem the lot.
 - b. Wagan because he is the owner of the smallest adjoining lot.
 - c. Espino because he is the of the smallest lot that is nearest to the lot of Benito.
 - d. None of the adjoining owners may avail himself of the right of legal redemption including Nonato.

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Answer: D. None of the adjoining owners may avail himself of the right of legal redemption including Nonato.

It is because the subjects of the problem are NOT rural lot.

Article 1621 states *“The owners of adjoining lands shall also have the right of redemption when a piece of rural land, the area of which does not exceed one hectare, is alienated, unless the grantee does not own any rural land.*

This right is not applicable to adjacent lands which are separated by brooks, drains, ravines, roads and other apparent servitudes for the benefit of other estates.

If two or more adjoining owners desire to exercise the right of redemption at the same time, the owner of the adjoining land of smaller area shall be preferred; and should both lands have the same area, the one who first requested the redemption. (1523a)”

None of the adjoining owners may avail the legal redemption. It is because the land being alienated exceeded one hectare. Article 1621 states that legal redemption will only take place if the land alienated will not exceeding one hectare. Since the land alienated in the given situation is 9 hectares, therefore legal redemption cannot be exercised.

135. Barrameda visited the furniture store of Farrales to buy window frames for his house which was undergoing construction. Not finding any window frame of his liking, he made a sketch of the design he wanted and asked Farrales if he could make four pieces of the specification for delivery after one week. Farrales answered that he could at the price of P2,000.00 per frame. The window frames ordered by Barrameda was of such odd shape and design that when completed and installed, Barrameda’s house would be the only one in the community that had windows of such type. Barrameda left the sketch with Farrales who did not ask any down payment since he had previously transacted with Barrameda and knew him. During all the time that Barrameda and Farrales were dealing with each other, Arnulfo, the assistant of Farrales, was present. When the window frames were finished, Farrales proceeded to the house of Barrameda to deliver them but Barrameda refused to accept them saying that he had changed his mind, and that at any rate, the contract was unenforceable, not being in writing.

- a. The contract is enforceable because the sketch made by Barrameda was sufficient to bind him.
- b. The contract is enforceable because Arnulfo can testify in court to prove its existence.
- c. The contract is enforceable even if no writing was executed by the parties.
- d. The contract is unenforceable because no writing was subscribed by the parties.

Answer: C. The contract is enforceable even if no writing was executed by the parties.

A promise to buy or sell is demandable therefore it is enforceable.

Article 1467 states *“A contract for the delivery at a certain price of an article which the vendor in the ordinary course of the business manufactures or procures for the general market, whether the same is on the hand at the time or not, is a contract of sale, but if the goods are to be manufactured specially for the*

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customer and upon his special order, and not for the general market, it is a contract for a piece of work.”

Article 1403 states *“The following contracts are unenforceable, unless they are ratified:*

- (1) Those entered into in the name of another person by one who has been given no authority or legal representation, or who has acted beyond his powers;*
- (2) Those that do not comply with the Statute of Frauds as set forth in this number. In the following cases an agreement hereafter made shall be unenforceable by action, unless the same, or some note or memorandum, thereof, be in writing, and subscribed by the party charged, or by his agent; evidence, therefore, of the agreement cannot be received without the writing, or a secondary evidence of its contents:*
 - (a) An agreement that by its terms is not to be performed within a year from the making thereof;*
 - (b) A special promise to answer for the debt, default, or miscarriage of another;*
 - (c) An agreement made in consideration of marriage, other than a mutual promise to marry;*
 - (d) An agreement for the sale of goods, chattels or things in action, at a price not less than five hundred pesos, unless the buyer accept and receive part of such goods and chattels, or the evidences, or some of them, of such things in action or pay at the time some part of the purchase money; but when a sale is made by auction and entry is made by the auctioneer in his sales book, at the time of the sale, of the amount and kind of property sold, terms of sale, price, names of the purchasers and person on whose account the sale is made, it is a sufficient memorandum;*
 - (e) An agreement of the leasing for a longer period than one year, or for the sale of real property or of an interest therein;*
 - (f) A representation as to the credit of a third person.*
- (3) Those where both parties are incapable of giving consent to a contract.”*

Referring to Article 1467 which states the difference between a contract of sale and contract for a piece of work, we can say or determine that the problem given is a contract for a piece of work. It is because even though Farrales manufactures furniture for the general market, the window frames he will be making for Barrameda will be the only window frames with that design and only Barrameda will have the window frames with that distinct design.

Referring now to Article 1403(2), an agreement of sale or we can say a contract of sale will be unenforceable if it will not comply with the Statute of Frauds. Contract of sale is governed by the Statute of Frauds and not the contract for a piece of work. Therefore, the contract between Barrameda and Farrales is still enforceable even if no writing is executed by the parties.

136. Refer to the preceding number. What contract was entered into between Barrameda and Farrales?
- a. Contract of sale
 - b. Contract for a piece of work
 - c. Contract to sell
 - d. An innominate contract

Answer: B. Contract for a piece of work

Still, this is governed by Article 1467 stated in the preceding number because Farrales does not make such kind of windows in the ordinary course of his business.

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137. A contract for a piece of work is different from a contract of sale in that a contract for a piece of work:
- The Statute of Fraud does not apply
 - The article object of the contract is manufactured or procured in the ordinary course of the business.
 - There is usually a stock which is kept on hand and made available to everyone.
 - If the article is not available, there is no change or modification of it when it is ordered by the customer.

Answer: A. The Statute of Fraud does not apply.

This can be answered by referring to Article 1403 which is already given in number 135.

138. Which of the following statements is common to both sale or return and sale on trial?
- Ownership of the thing is transferred upon delivery to the buyer.
 - Ownership of the thing is transferred to the buyer at some future time.
 - Ownership of the thing may be reverted to the seller should the buyer return it within the time agreed upon.
 - In case of the thing is lost through a fortuitous event after the lapse of the time to keep or return it and the buyer was still in possession of it, the risk of loss is with the buyer.

Answer: D. In case of the thing is lost through a fortuitous event after the lapse of the time to keep or return it and the buyer was still in possession of it, the risk of loss is with the buyer.

Article 1502 states *“When goods are delivered to the buyer “on sale or return” to give the buyer an option to return the goods instead of paying the price, the ownership passes to the buyer of delivery, but he may revert the ownership in the seller by returning or tendering the goods within the time fixed in the contract, or, if no time has been fixed, within a reasonable time. (n)*

When goods are delivered to the buyer on approval or on trial or on satisfaction, or other similar terms, the ownership therein passes to the buyer:

(1) When he signifies his approval or acceptance to the seller or does any other act adopting the transaction;

(2) If he does not signify his approval or acceptance to the seller, but retains the goods without giving notice of rejection, then if a time has been fixed for the return of the goods, on the expiration of such time, and, if no time has been fixed, on the expiration of a reasonable time. What is a reasonable time is a question of fact. (n)”

Based on Article 1502, because the ownership vest upon the buyer on the expiration of the time fixed in sale on trial while ownership vest upon delivery on sale or return. Given the case of a fortuitous event, whoever owns the thing will bear the loss.

139. The full payment of the price is a positive suspensive condition in:
- Contract to sell
 - Contract of sale
 - Sale or return
 - Sale on trial

Answer: A. Contract to sell

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In a positive suspensive condition, once the condition is fulfilled, the obligation arises.

In a contract to sell, the delivery of the thing will only be demandable once full payment is made.

Combining the two concepts, full payment of the price is a positive suspensive condition because the obligation, which is to deliver the thing, will only arise after the full payment of the price.

140. The non-payment of the price is a negative resolutive condition in:
- a. Contract to sell
 - b. Contract of sale
 - c. Contract of agency to sell
 - d. Sale on approval

Answer: B. Contract of sale

In a resolutive condition, once the condition is met, the obligation is extinguished. Therefore, in a negative resolutive condition, if the condition is not met, the obligation will not be extinguished.

141. When there is a stipulation exempting the vendor from the obligation to answer for eviction and the vendee made the waiver with the knowledge of the risks of eviction and assumed the consequences, such waiver is known as:
- a. *Waiver intencionada*
 - b. *Waiver consciente*
 - c. Forfeiture of rights
 - d. Surrender of rights

Answer: A. Waiver intencionada

Article 1554 states “*If the vendee has renounced the right to warranty in case of eviction, and eviction should take place, the vendor shall only pay the value which the thing sold had at the time of the eviction. Should the vendee have made the waiver with knowledge of the risks of eviction and assumed its consequences, the vendor shall not be liable. (1477)*”

Vendor’s liability in case of eviction if the vendor acted in good faith shall be as follows:

- i. Waiver consciente – If vendee made the waiver without knowledge of the risks of eviction, the vendor shall pay only the value of the thing sold at the time of eviction.*
 - ii. Waiver intencionada – If vendee made the waiver with knowledge of the risks of eviction, the vendor shall not be liable.*
142. In case of eviction, the vendor shall be liable to the vendee only for the value of the thing sold at the time of eviction in which of the following cases?
- a. When there is *waiver intencionada*.
 - b. When there is *waiver consciente*.
 - c. When the vendor was in bad faith and there was no stipulation exempting the vendor from liability in case of eviction.
 - d. When the vendor was in bad faith and there was stipulation exempting the vendor from liability in case of eviction.

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Answer: B. When there is waiver conscientie.

Explanation of such is the same with the preceding number.

143. S and B entered into a contract for the sale of the car of S to B for P100,000.00. In reality, however, B did not give any amount to S because the latter intended to donate the car to B. In this case:
- The contract between S and B is void because the price is simulated.
 - The contract between S and B is a valid contract of donation.
 - The contract between S and B is a void contract of donation.
 - The contract between S and B is a valid contract of sale.

Answer: B. The contract between S and B is a valid contract of donation.

Article 1409 states *“The following contracts are inexistent and void from the beginning:*

- Those whose cause, object or purpose is contrary to law, morals, good customs, public order or public policy;*
- Those which are absolutely simulated or fictitious;*
- Those whose cause or object did not exist at the time of the transaction;*
- Those whose object is outside the commerce of men;*
- Those which contemplate an impossible service;*
- Those where the intention of the parties relative to the principal object of the contract cannot be ascertained;*
- Those expressly prohibited or declared void by law.*

These contracts cannot be ratified. Neither can the right to set up the defense of illegality be waived.”

Enumerated in Article 1409 the contracts that are considered void and one of those is the contract being simulated. In the problem given, it is clear that the contract of sale is simulated and therefore, considered as void. Nevertheless, since the parties still intended to be bounded by some other contract, the contract is considered to be a valid contract of donation.

144. On July 1, Serena sold to Berbola through a private instrument a specific piano for P20,000.00. Simultaneous with the sale, the parties agreed that Serena would lease the piano for one week in preparation for a concert after which Berbola could physically get the piano. Before the week was over, Serena sold the same piano, also in a private instrument and for P25,000.00 to Jezebel who immediately loaded the piano in her van. Neither Berbola or Jezebel was aware of the sale made to the other. Who is the owner of the piano?
- Berbola
 - Jezebel
 - Berbola and Jezebel, as co-owners
 - Serena who retained ownership because Berbola and Jezebel’s conflicting rights.

Answer: A. Berbola

Article 1500 states *“There may also be tradition constitutumpossessorium.”*

Article 1505 states *“Subject to the provisions of this Title, where goods are sold by a person who is not the owner thereof, and who does not sell them under authority or with the consent of the owner, the buyer acquires no better title to the goods than the seller had, unless the owner of the goods is by his conduct precluded from denying the seller’s authority to sell.*

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Nothing in this Title, however, shall affect:

- (1) The provisions of any factors' act, recording laws, or any other provision of law enabling the apparent owner of goods to dispose of them as if he were the true owner thereof;*
- (2) The validity of any contract of sale under statutory power of sale or under the order of a court of competent jurisdiction;*
- (3) Purchases made in a merchant's store, or in fairs, or markets, in accordance with the Code of Commerce and special laws. (n)"*

Traditioconstitutumpossessorium is delivery that takes place when the vendor continues in possession of the thing sold after the sale but another capacity such as that of a lessee or depositary. In the case of Serena and Berbola, traditioconstitutumpossessorium take place. Therefore, Berbola is the new owner of the piano and Serena doesn't have any right to still sell the piano.

Even though Jezebel purchased the piano in good faith, following the first paragraph of Article 1505, therefore, Berbola still have the ownership of the piano.

145. B bought two carabaos, one male and one female, from S. He paid P2,000.00 and P3,000.00, respectively, for the animals which he intended to use for breeding. Later, the female carabao was found unfit for breeding because of a redhibitory defect.
- a. B can rescind the sale of the female carabao only because he paid a separate price for it.
 - b. B can rescind the sale of both animals because he would not have bought the male carabao without the female carabao.
 - c. B cannot rescind the sale of either animal under the "let the buyer beware" rule.
 - d. B can rescind the sale of both animals only if he had paid a single price for both of them.

Answer: B. B can rescind the sale of both animals because he would not have bought the male carabao without the female carabao.

Sale of animals wherein one is found to have a redhibitory defect, the buyer may rescind the whole sale if he does not intend to use the animals separately or if he would have not bought one without the presence of the other.

146. What may the consideration consist of in an option contract in order to bind the offerer?
- a. Monetary
 - b. Other things or undertakings
 - c. Either (a) or (b)
 - d. May not be a valuable consideration, i.e., may be gratuitous.

Answer: C. Either (a) or (b)

As cited in *Eulogio vs. Sps. Apeles, supra*; Option money is the consideration paid for the purpose of holding one to his promise to buy or sell a determinate thing for a certain period of time, which consideration is separate and distinct from the purchase price. However, the consideration for an option contract is not always monetary but could consist of other things or undertakings.

147. The following statements pertaining to sale by auction are presented to you:

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- I. The auctioneer may not withdraw the goods from the auction sale if the sale was announced to be without reserve.
- II. The auctioneer may withdraw the goods from the auction sale if the sale was announced to be with reserve.

In your evaluation of the foregoing statements:

- a. Both statements are true.
- b. Both statements are false.
- c. Only Statement I is true.
- d. Only Statement II is true.

Answer: A. Both statements are true.

As stated in Article 1476: (2) A sale by auction is perfected when the auctioneer announces its perfection by the fall of the hammer, or in other customary manner. Until such announcement is made, any bidder may retract his bid; and the auctioneer may withdraw the goods from the sale unless the auction has been announced to be without reserve.

148. Under the Maceda Law, in determining the number of installments paid by the buyer, the following payments are included, except:
- a. Down payments
 - b. Deposits
 - c. Option money
 - d. None of the foregoing

Answer: D. NONE OF THE FOREGOING

Downpayments, Deposits and option money are included in determining the cash surrender value that the seller will return.

148. Necessaries include everything indispensable for sustenance, clothing, and medical attendance, and which of the following?
- a. Dwelling
 - b. Education
 - c. Transportation
 - d. All of the foregoing

Answer: D. All of the foregoing

As laid down by article 290 of the civil code of the Philippines, Necessaries include everything that is indispensable for sustenance, dwelling, medical attendance, education and transportation.

149. While her parents were away on a visit to the province, M, 17 years old, entered into a contract for the purchase of textbooks prescribed in his course and an evening gown. Which sale is/are considered valid and binding, i.e., not voidable?
- a. The sale of the textbooks.
 - b. The sale of the evening gown
 - c. Both (a) and (b)
 - d. Neither (a) nor (b) because a minor is incapable of giving consent.

Answer: A. The sale of the textbooks.

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The sale of textbooks that is indispensable particularly to education, which is included as necessities under Article 290. Thus, sale to a minor shall be binding only upon the purchase of necessities.

150. B bought a refrigerator from S for P20,000.00 which is payable in 20 installments at P1,000.00 per month. After paying 6 installments, B defaulted in the payment of the seventh and eight installments. Should S decide to exact fulfillment of the obligation, how much, as a rule, may S collect from B?
- The total amount of installments defaulted, i.e., P2,000.00
 - The remaining balance of P14,000.00
 - Either (a) or (b) at the option of S.
 - Neither (a) nor (b) because S has to wait for the resale of the property to third persons.

Answer: A. The total amount of installments defaulted, i.e., P2,000.00

Since there is no escalation/acceleration clause, only the exact fulfillment of one obligation which is the failure to pay two (2) installments.

151. A, B, and C were the co-owners of a lot in the ratio 1:2:1. A died. He was succeeded to the property by S, his son and heir. Who may redeem the lot of A from S?
- B, because as the owner of a bigger portion, he enjoys preference in the exercise of the right of legal redemption.
 - C, so that he and B will have an equal share in the lot.
 - B and C, in proportion to the share of each in the lot.
 - Neither B nor C may exercise the right of legal redemption.

Answer: D. Neither B nor C may exercise the right of legal redemption.

Succession does not grant other parties the right of redemption.

152. When is the vendor bound to deliver the thing sold?
- If the vendee has not paid him the price.
 - If no period for the payment of the price has been fixed.
 - If the buyer has been given the benefit of the period.
 - None of the foregoing.

Answer: C. If the buyer has been given the benefit of the period.

As to Article 1524, The vendor shall not be bound to deliver the thing sold, if the vendee has not paid him the price, or if no period for the payment has been fixed in the contract.

153. These statements concerning the double sale of an immovable are presented to you:
- The first buyer who was in good faith at the time the sale was made to him, remains in good faith notwithstanding that he subsequently obtains knowledge of the second sale.
 - In order that the second buyer may be given preference, he must possess good faith from the time of sale in his favor until the registration of the same.

In your evaluation of the foregoing statements

- Both statements are true
- Both statements are false
- Only Statement I is true

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d. Only Statement II is true.

Answer: A. Both statements are true

The buyer's knowledge of subsequent sale will not impair the contract as long as the buyer bought the object in good faith. As to Article 1544, in the case of the sale of immovables to different vendees, ownership therefore belongs to the person who in good faith first registered the sale in registry of property.

155. A credit right is considered to be in litigation:
- As soon as a complaint is filed by the creditor against the debtor.
 - When the debtor has filed his answer to the complaint.
 - When the case is scheduled for pre-trial conference between the parties.
 - When the trial has started.

Answer: B. When the debtor has filed his answer to the complaint.

Cited in Article 1634, second paragraph, A credit or other incorporeal right shall be considered in litigation from the time the complaint concerning the same is answered.

156. D owed C P100,000.00. The debt is evidenced by a promissory note and secured by a mortgage of D's lot. Before due date, C assigned his credit right to T by executing a deed of assignment but without the parties informing D. On due date, T went to D to collect the debt at which time D learned of the assignment.
- T cannot collect from D because the latter was not informed of the assignment at the time it was made.
 - T can collect from D but if D cannot pay, T cannot foreclose the mortgage on the lot.
 - T can collect from D but if D cannot pay, T can foreclose the mortgage which is deemed assigned together with the credit right.
 - T can only go after C, the assignor, since the assignment was without D's knowledge.

Answer: C. T can collect from D but if D cannot pay, T can foreclose the mortgage which is deemed assigned together with the credit right.

According to Article 1627, The assignment of a credit includes all the accessory rights, such as the guaranty, mortgage, pledge or preference.

157. What does the assignor of a credit warrant?
- The legality and existence of the credit
 - The solvency of the debtor
 - Both (a) and (b)
 - Neither (a) nor (b)
 - e.

Answer: A. The legality and existence of the credit

As specified by Article 1628 of the Civil Code of the Philippines, "The vendor in good faith shall be responsible for existence and legality of the credit at the time of sale, unless it should have been sold as doubtful; but not for the solvency of the debtor, unless it has been expressly stipulated or unless the insolvency was prior to the sale and common knowledge." The vendor should be liable for the validity of the credit at the time of sale. Furthermore, he does not warrant the solvency of the debtor except when it is clearly stated or when the debtor's solvency already existed and the public knows about it.

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158. The right of pre-emption differs from the right of redemption that in pre-emption
- The action is directed against the buyer.
 - The action is directed against the seller.
 - The right arises after the sale.
 - There can be a rescission of the original sale.

Answer: B. The action is directed against the seller.

Under the discussion of Article 1619 in Sales, Agency and Credit Transactions by Fidelito R. Soriano, p.179, in pre-emption, the action is against the supposed seller. In addition to that, the right in pre-emption arises before the sale. Moreover, rescission is not possible because no sale exists.

159. The following are certain modes of acquisition of property
- Purchase
 - Dacion en pago*
 - Succession
 - Donation

Legal redemption is available when the transferee acquired the property through:

- I or II
- III or IV
- I or III
- II or IV

Answer: A. I or II (Purchase, Dacion en Pago)

*As stated in Article 1619 of the Civil Code of the Philippines, "Legal redemption is the right to be subrogated, upon the same terms and conditions stipulated in the contract, in the place of one who acquires a thing **by purchase or dation in payment**, or by other transaction whereby ownership is transmitted by onerous title." So, it is clearly stated that legal redemption is obtainable only if the transferee gets hold of the thing through purchase or dation in payment.*

160. A sale between husband and wife is valid in which of the following cases?
- When a separation of property has been agreed upon in the marriage settlements or when there has been a judicial separation of property.
 - When price of the sale is a moderate amount.
 - When the object of the sale is a necessary such as food or clothing.
 - When the spouses are living separately.

Answer: a. When a separation of property has been agreed upon in the marriage settlements or when there has been a judicial separation of property

As explained by Article 1490 of the Civil Code of the Philippines, "The husband and wife cannot sell property to each other, except: (1) when a separation of property was agreed upon in the marriage settlements; or when there has been judicial separation of property under Article 191."

The future spouses should have an agreement about their property relations. If the spouses had agreed that their property will be separated, then the sale between them are valid. This agreement should be recorded in the local civil registry and in the proper registries of properties under Article 77, Family Code. Another case is there should be an order of court declaring legal

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separation of property between the spouses. This is also required to be recorded in the local civil registry and in the proper registry of properties under Article 139, Family Code.

AGENCY

1. A contract whereby a person binds himself to render some service or to do something in representation or in behalf of another, with the consent and authority of the latter.
 - a. Contract for lease of services
 - b. Contract of agency

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- c. Contract for a price of work
- d. Contract to sell

Answer. B. Contract of agency

According to Article 1868, *contract of agency is whereby a person binds himself to render some service or to do something in representation or in behalf of another, with the consent and authority of the latter.*

- 2. One of the following is not a characteristic of the contract of agency.
 - a. Consensual
 - b. Accessory
 - c. Nominate
 - d. Preparatory

Answer. B. Accessory

Characteristics of agency are: Principal, Preparatory, Consensual, Onerous, Nominate, Bilateral and Commutative. Accessory, which means being dependent with other contract/s, should not be included because it opposes the character of being principal which means it can stand by itself.

- 3. P, 25 years old, appointed A, 17 years old, as his agent to sell certain goods for P20, 000. Thereafter, A sold the goods to B for the said amount. P, however, learned that the price of the goods had increased to P22,000 so he sought to disaffirm the sale made by A to B, and brought an action to recover the goods from B on the ground that A's act was voidable, A being a minor and hence, could not be an agent. Decide.
 - a. The sale is valid because the principal is capable.
 - b. The sale is void, because A is a minor and therefore cannot be an agent.
 - c. The sale is voidable, because A is a minor.
 - d. The sale is unenforceable, because A exceeded his authority.

Answer: A. The sale is valid because the principal is capable.

Even the agent is incapacitated because he is a minor and provided that the contract he entered into in behalf of the principal is really that of the principal it is valid as long as the principal is not incapacitated.

- 4. Pantaleon appointed Arturo as the manager of his coconut plantation in Quezon Province. After managing the plantation for 10 years, Arturo informed Pantateon that on account of failing health, he, Arturo, was turning over the administration of the plantation to Bartolome, and experienced coconut plantation administrator. Arturo also informed Pantaleon that he had given a general power of attorney to Bartolome and that if such authority were not sufficient, Pantaleon could send to Bartolome a new power of attorney or appoint a manager of his choice, Pantaleon neither repudiated the designation of Bartolome nor appointed a new agent. Instead, he allowed Bartolome to manage the plantation and continued to receive the reports on the plantation from the latter without any protest. Was Bartolome an agent of Plantation?
 - a. No, because Pantaleon himself, did not give a general power of attorney to Bartolome.
 - b. No, because the designation of Bartolome as manager by Arturo was without Pantaleon's authority.

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- c. Yes, Bartolome became an agent of Pantaleon because of Pantaleon failure to repudiate the agency.
- d. Yes, because Bartolome was highly qualified to administer the plantation.

Answer: C. Yes, Bartolome became an agent of Pantaleon because of Pantaleon failure to repudiate the agency.

As stated in the Article 1869, agency may be express, or implied from the acts of the principal, from his silence or lack of action, or his failure to repudiate the agency, knowing that another person is acting in his behalf without authority. Without any protest by Pantaleon on the turnover of Arturo to Bartolome, it presumed that he agreed on the act of Arturo.

5. One of the following acts may be delegated by a principal to his agent. Which is it?
- a. Vote during the meeting of stockholders of a corporation where the principal is a stockholder.
 - b. Attend meetings of the board of directors of a corporation where he principal is a director.
 - c. Purchase land in the Philippines of which the principal is an alien.
 - d. Represent the principal in a marriage ceremony where the principal is a party to the marriage contract.

Answer: A. Vote during the meeting of stockholders of a corporation where the principal is a stockholder.

The general rule is that what a man may do in person, he may do thru another. He may delegate to another his right if this is an act which he can lawfully do personally. Since voting during the meeting of stockholders of a corporation where the principal is a stockholder is an act which he can lawfully do personally, then he may be delegated by a principal to his agent.

6. One of the following acts requires a special power of attorney granted by the principal to his agent. Which is it?
- a. To make gifts to employees in the business managed by the agent.
 - b. To borrow money this is urgently needed to preserve the property of the principal under the administration of the agent.
 - c. To make payments for purchases in the ordinary course of the business.
 - d. To lease the property of the principal to another person for more than one year.

Answer: D. To lease the property of the principal to another person for more than one year.

Article 1878 states that, *Special powers of attorney are necessary in the following cases:*

(8) To lease any real property to another person for more than one year;
Since the provision includes this case, then it requires a special power of attorney.

7. One of the following acts requires only a general power of attorney, not a special power of attorney, for the agent. Which is it?
- a. To bind the principal in a contract of partnership.
 - b. To loan money of the principal.
 - c. To enter into a contract by which the ownership of an immovable is transmitted or acquired gratuitously or for a valuable consideration.

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d. To make such payments as are usually considered acts of administration.

Answer: D. To make such payments as are usually considered acts of administration.

Article 1877 states that, *An agency couched in general terms compromises only acts of administration.* An agency couched in general terms includes only acts of administration and an express power is necessary to perform any act of strict ownership. Since such payments are considered acts of administration then, no special power of attorney is needed.

8. Pedro, a Filipino who was on a business trip in Timbuktu, learned that Federico, also a Filipino, was interested in buying his lot located in Fairview, Quezon City. To take advantage of the opportunity, he made an overseas call to Almario, his business associate who was in Manila, to sell the lot in his (Pedro's) behalf, to Federico, for P1, 000,000 cash. Almario thus sold the lot promptly to Federico. The contract of sale was in a public instrument which was signed by Almario in behalf of Pedro as seller, and Federico as buyer. The said contract of sale is:
- Valid, because it is in a public instrument and Almario was duly authorized to represent Pedro.
 - Void, because the authority of Almario was not in the form required by law.
 - Unenforceable, because Pedro did not sign the contract of sale and so he had no consent thereto.
 - Rescissible, because the contract was entered into in representation of an absentee.

Answer: B. Void, because the authority of Almario was not in the form required by law.

Article 1874 states that, *when a sale of a piece of land or any interest therein is through an agent, the authority of the latter shall be in writing; otherwise, the sale shall be void.*

Public instrument signed by Almario is not sufficient to make the sale valid. As the provision provides, the authority of Almario shall be in writing.

9. P, the owner of a certain car, wanted to sell the car. A learned that P was selling the car. Without the authority of P, A sold the car in his (A's) name to B. What is the status of the sale of the car?
- Valid between A and B but A must be able to transfer the ownership of the car to B at the time of delivery.
 - Unenforceable against P because he did not authorize A to sell the car.
 - Void because A was not the owner of the car at the time of sale.
 - Voidable because the sale was without the consent of P.

Answer: A. Valid between A and B but A must be able to transfer the ownership of the car to B at the time of delivery.

A contract of sale is valid even if the seller is not the owner of the property at the time of the perfection as long as he is the owner at the time of the delivery.

If A will not be able to acquire the ownership of the car from P prior to delivery, the contract will be considered as unenforceable because it was executed by a person without the proper authority from the owner.

10. Purefine Corporation (Purefine) published in the Manila Bulletin that it was appointing Armando Arcos (Armando) as its duly authorized agent for the sale of

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“Purofino” flour, one of its products. With the authority, Armando sold ‘Purofino’ flour to various bakeshops all over Luzon. After three years, Purefine revoked Armando’s authority by giving a notice of revocation to Armando and publishing a notice of revocation in the Philippine Star. Despite the revocation, Armando still sold 50 bags of “Purofino” flour to Barbie’s Bakeshop, a single proprietorship owned by Barbie Barredo, who did not read the notice of revocation of Armando’s authority in the Philippine Star. Barbie Barredo now wants to have the flour she had ordered delivered to her by Purefine but Purefine seeks to set aside the sale of 50 bags of flour to Barbie’s Bakeshop.

- a. Purefine is not obliged to deliver 50 bags of flour because Barbie Barredo is deemed to have known of the revocation of Armando’s authority.
- b. Purefine is obliged to deliver 50 bags of flour to Barbie Barredo because the latter did not read the publication of the revocation of Armando’s authority.
- c. Purefine is obliged to deliver 50 bags of flour because the revocation was not binding upon Barbie Barredo since it was published in another newspaper.
- d. Purefine is not obliged to deliver 50 bags of flour because the notice of revocation to Armando is sufficient.

Answer: A. Purefine is not obliged to deliver 50 bags of flour because Barbie Barredo is deemed to have known of the revocation of Armando’s authority.

Article 1873 states that, *If a person especially informs another or states by public advertisement that he has given a power of attorney to a third person, the latter thereby becomes a duly authorized agent, in the former case with respect to the person who received the special information, and in the latter case with regard to any person.*

The power shall continue to be in full force until the notice is rescinded in the same manner in which it was given.

11. Purefine has made known to public through public advertisement that Armando as its authorized agent for the sale of Purofino flour. Since revocation of Armando’s authority is also made known through public advertisement then Barbie Barredo is deemed to have known the revocation that made him not obliged to deliver 50 bags of flour.

Precision Appliances Corporation (Precision), which is based in Metro Manila, sent a letter with a special power of attorney, to Alberto Aguado (Alberto), an agent dealing with appliances, in the latter’s office in Cebu, appointing Alberto as the agent of Precision to sell its new appliances. The letter, which was sent through LBC Courier Services, was duly received by Alberto Aguado, who signed in the logbook of LBC. Alberto, however, did not respond to the letter. Based on the foregoing data.

- a. An agency was created between Precision and Alberto by the implied acceptance of Alberto of the agency.
- b. No agency was created between Precision and Alberto because Alberto did not respond to the letter.
- c. An agency was created by the ratification of Alberto when he duly received the letter with a special power of attorney.

Answer: A. An agency was created between Precision and Alberto by the implied acceptance of Alberto of the agency.

Article 1870 states that, *Acceptance by the agent may also be express, or implied from his acts which carry out the agency, or from his silence or inaction according to the circumstances.*

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The acceptance of the letter by Alberto without any response of objection created an agency between Precision and Alberto.

12. The following statements refer either to authority of instruction given by the principal to his agent.
- I relates to the kind of business or transaction upon which the agent is commissioned to act.
 - II Concerns the principal and the agent.
 - III Refers to the mode of action by the agent in carrying out the agency.
 - IV Third persons can require the agent to present it to them since they are chargeable with knowledge thereof.
- You are to determine whether the above statements pertain to authority or instruction.
- a. I and II refer to authority.
 - b. I and IV refer to authority.
 - c. II and IV refer to instruction.
 - d. III and IV refer to instruction.

Answer: B. I and IV refer to authority.

Under Article 1887, *Authority refers to the subject matter upon which the agent is commissioned to act. Third persons are bound to know whether an agent is acting within his authority or not.* Accordingly, they have the right to require the agent to present his authority as written.

On the other hand, instructions refer to the orders given by the principal to his agent relating to the manner by which agency shall be carried out.

13. Pamela, a professional singer based in Cebu, authorized Allona, also a professional singer, to go to Manila to look for a nightclub where Pamela could sing. When Allona arrive in Manila, she presented herself, not Pamela, as the singer, to the Twinkle Night Club which engaged her services to sing nightly for two months at the club. Based on the foregoing information, which of the following statements is correct?
- a. Pamela has a right of action against Twinkle Night Club.
 - b. Twinkle Night Club has a right of action against Pamela.
 - c. The contract between Allona and Twinkle Night Club is a valid contract between them, not between Pamela and Twinkle Night Club.
 - d. The contract between Allona and Twinkle Night Club is void because Pamela was not the part thereto.

Answer: C. The contract between Allona and Twinkle Night Club is a valid contract between them, not between Pamela and Twinkle Night Club.

Article 1883 states that, *If an agent contracted in his name, the principal has no right of action against the persons with whom the agent has contracted, neither have such persons against the principal. In such case, the agent is the one directly bound in favor of the person with whom he has contracted, as if the transaction were his own, except when the contract involves things belonging to the principal.*

Since Allona presented herself as the singer to the Twinkle Night Club, then there is a valid contact between them. As a general rule, the agent is directly liable to the person with whom he had contracted as if the transaction were his own.

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14. Paramount Auto Corporation (Paramount), an authorized dealer of Honda cars, appointed Armando as its agent to sell the cars of the company. The authority of Armando includes the giving of a discount of P20, 000 to customers who pay in cash. One day, Carmina, a customer, went to the company's car center and told Armando that she wanted to buy a car with a sales price of P600, 000. However, as she only had P550, 000, she told Armando that she would take the car if Armando agreed to a discount of P50, 000. Armando agreed and sold the car to Carmina at P550, 000 in behalf of the corporation. What is the status of the sale made by Armando to Carmina.
- Voidable at the instance of Paramount because it did not give its consent to the sale at the discount of P50,000.00.
 - Unenforceable against Paramount, the principal, because Armando acted beyond the scope of his authority.
 - Void, because the additional discount of P30, 000.00 given by Armando was not authorized by Paramount.
 - Rescissible, because Paramount suffered damage of P30, 000.00.

Answer: B. Unenforceable against Paramount, the principal, because Armando acted beyond the scope of his authority.

Article 1882 states, *The limits of the agent's authority shall not be considered exceeded should it have been performed in a manner more advantageous to the principal than that specified by him.*

Since Armando acts in excess or beyond the scope of his authority, such act shall be unenforceable, unless it is ratified by the person on whose behalf it has been executed, before it is revoked by the other contracting party.

15. Perez gave Almendras a special power of attorney wherein it was written that Almendras was being authorized to sell the two cars of Perez. However, Perez and Almendras had an understanding that Almendras should sell only one of the cars. Almendras sold the two cars to Bernarte who was not aware of the instruction given by Perez to Almendras.
- Perez is bound by the sale of only one car in accordance with his understanding with Almendras.
 - Perez is bound by the sale of the two cars because that is what is contained in the special power of attorney as written.
 - Perez is not bound at all by the sale of either one or both of the two cars because Almendras violated the instructions given by Perez.
 - Perez will be bound by the sale of one or more cars at his option.

Answer: B. Perez is bound by the sale of the two cars because that is what is contained in the special power of attorney as written.

A power of attorney is a written authorization to an agent to perform specified acts in behalf of his principal which acts, when performed, shall have binding effect on the principal. What has been written in the special power of attorney will prevail.

16. Ponciano gave a power of attorney to Alfonso for the sale of his 2 cars, a Toyota and a Lancer. Their agreement include, among other provisions, the following; (1) Alfonso shall be entitled to a commission of 10% based on the actual selling price of the cars which Ponciano fixed at a minimum of P400, 000 for the Toyota; and P500,000 for the Lancer; and (2) Alfonso need not render to Ponciano any accounting of his transactions as long as Alfonso turns over the actual selling

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price of the cars net of the commission for 10%. Alfonso was able to sell the Toyota to Teodolfo for P410, 000; and the Lancer for P500, 000 to Leoncio who gave Alfonso a tip of P20, 000.00. After the sale Ponciano demanded from Alfonso an accounting of the transactions that he had made but Alfonso refused claiming that is was enough that he turned over the net selling price of P810,000 (P900,000 less 10% of P900,000 as commission) to Ponciano as agreed to by the two of them. Decide.

- a. Alfonso need not render an accounting to Ponciano because that was their agreement.
- b. Alfonso must account and deliver to Ponciano only the sum of P900, 000.00.
- c. Alfonso must account and deliver to Ponciano P910, 000.00.
- d. Alfonso must account and deliver to Ponciano P930, 0000.

Answer: D. Alfonso must account and deliver to Ponciano P930, 0000.

As stated in Article 1891, *every agent is bound to render an account of his transactions and to deliver to the principal whatever he may have received by virtue of the agency, even though it may not be owing to the principal.* Based on the power of the attorney given to Alfonso, they agreed that Alfonso must turn over the actual selling price of the cars. The actual selling price of the cars is P930,000.00.

17. The following statements pertain to either a commission agent or a broker.
- I He has a relation not only with his principal and the buyers or sellers, but also with the property which is the object of the transaction.
 - II Maintains no relation with the thing he purchases or sells.
 - III The goods are placed in his possession and disposal.
 - IV He is merely an intermediary whose function is to bring the parties to the transaction.
- Determine whether the above statements pertain to commission agent or broker.
- a. I and III pertain to a commission agent.
 - b. I and IV pertain to a commission agent.
 - c. II and III pertain to a broker.
 - d. I and IV pertain to a broker.

Answer: A. I and III pertain to a commission agent.

A commission agent is one who engaged in the purchase or sale for another of personal property which for this purpose is placed in the possesssion and at his disposal. He maintains a relation not only with his principal and the purchaser or vendor but also with the property which is the subject matter of the transaction. On the other hand, II and IV pertains to a broker. A broker has no relation with the thing he buys or sells. He is merely an intermediary between the purchaser and the vendor. He acquires neither the custody nor the possession of the thing he sells.

18. The principal is not liable for the expenses incurred by the agent in the following, except when:
- a. Although the agent acted in contravention of the principal's instructions, and the principal wishes to avail him of the benefits derived from the contract.
 - b. I was stipulated that the agent would be allowed only a certain sum.
 - c. The agent incurred them with the knowledge that an unfavorable result would ensue, if the principal was not aware thereof.

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- d. The expenses were due to the fault of the agent.

Answer: A. although the agent acted in contravention of the principal's instructions, and the principal wishes to avail himself of the benefits derived from the contract.

It is stated in Article 1918 that:

The principal is not liable for the expenses incurred by the agent in the following cases:

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

Although the agent acted in contravention of the principal's instructions, the principal wishes to avail him of the benefits derived from the contract. The acceptance of benefits is implied ratification. Letter b, c, d are cases when the principal not liable for expenses.

19. When two persons contract with regard to the same immovable thing, one of them with the agent, and the other with the principal, and the contracts are incompatible with each other, ownership shall belong to the:
- a. First purchaser in good faith.
 - b. One who first completed the payment of the price in good faith.
 - c. One who first registered in good faith the transaction.
 - d. One who presents the oldest title who must be in good faith.

Answer: C. one who first registered in good faith the transactions.

As stated in ARTICLE 1916, when two persons contract with regard to the same thing, one of them with the agent and the other with the principal, and the two contracts are incompatible with each other, that of prior date shall be preferred, without prejudice to the provisions of article 1544.

In this case, it refers to a immovable property which two persons contract separately with agent and principal. The rule is, the ownership shall belong to the person acquiring it who in good faith and first recorded it in the Registry of Property.

20. An agency is impliedly revoked in three of the following cases. Which is the exception?
- a. When a new agent is appointed for the same business or transaction.
 - b. When the principal directly manages the business entrusted to the agent, dealing directly with third persons.
 - c. When a special power of attorney is granted to another agent pertaining to a special matter involved in a general power of attorney issued to a previous agent.
 - d. When the desire of the principal is help the agent manage the business.

Answer: D. When the desire of the principal is help the agent manage the business.

Letters a, b, c are the implied revocation by the principal stated in Article 1923(a), Article 1924(b), and Article 1926(c). With respect to D, the principal has a desire

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to help the agent manage the business. Thus, it refers to the willingness of a principal to continue and not to extinguish the duty of the agent.

21. Penelope appointed Alicia as her agent to sell a set to bakery equipment for P50, 000 with an ordinary commission of 10% and a guarantee commission of 15%. Alicia is authorized to sell on credit. Alicia was able to sell, in behalf of Penelope, the bakery equipment for P50, 000 to Nicole who issued a check dated ten days after the sale. On the tenth day, however, the check was dishonored by the bank because Nicole did not have sufficient funds for it.
- Alicia is liable to Penelope because she must bear the risk of collecting the price from Nicole.
 - Alicia is not liable to Penelope because the dishonor of the check was without Alicia's fault.
 - Alicia is not liable to Penelope because she is not the purchase but Nicole.
 - Alicia is liable to Penelope because she acted beyond the scope of her authority.

Answer: A. Alicia is liable to Penelope because she must bear the risk of collecting the price from Nicole.

As stated in Article 1907, Should the commission agent receive on a sale, in addition to the ordinary commission, another called a guarantee commission, he shall bear the risk of collection and shall pay the principal the proceeds of the sale on the same terms agreed upon with the purchaser.

If the agent accepts an addition to the ordinary commission called as guarantee commission, the agent bear the risk of collection and to pay the principal the proceeds of the sale on the same terms agreed upon with the purchaser if he receives on a sale. The purpose of guarantee commission is to compensate he agent for the risks be will have to bear in the collection of the credit due to the principal.

22. P appointed A as his agent. The authority of A did not authorize A to appoint a substitute but it did not also prohibit him from appointing one. In this case:
- A may appoint a substitute because he is not prohibited from doing so in his authority but he shall be liable for the acts of the substitute.
 - A may not appoint a substitute because there is no express provision in his appointment from P allowing him to appoint one.
 - A may appoint a substitute but he shall be liable for the acts of the substitute only when the substitute is notoriously incompetent or insolvent.
 - A may appoint a substitute only when the substitute is designated in the authority given by P to A.

Answer: A. A may appoint a substitute because he is not prohibited from doing so in his authority but he shall be liable for the acts of the substitute.

Art.1892 states that :

The agent may appoint a substitute if the principal has not prohibited him from doing so; but he shall be responsible for the acts of the substitute:

(1) When he was not given the power to appoint one;

(2) When he was given such power, but without designating the person, and the person appointed was notoriously incompetent or insolvent.

All acts of the substitute appointed against the prohibition of the principal shall be void.

The agent may appoint a substitute. There's still the validity of the substitution if the same is beneficial to the principal because the agency has been executed in

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fulfillment of its object. However, if the substitution caused damaged to the principal, the agent shall be primary responsible for the acts of the substitute as if he himself executed it.

23. The following cases are presented to you for evaluation.
- I. A bilateral contract depends upon the agency.
 - II. The agency is a means of fulfilling an obligation previously contracted.
 - III. The agency is one where the partner was appointed manager in the contract of partnership and the removal of the partner from the management is unjustifiable.
- In which of the above cases is the principal not allowed to revoke the agency?
- a. I and II
 - b. II and III
 - c. I and III
 - d. I,II and III

Answer: D. I, II and III

As stated in Article 1927, An agency cannot be revoked if a bilateral contract depends upon it, or if it is the means of fulfilling an obligation already contracted, or if a partner is appointed manager of a partnership in the contract of partnership and his removal from the management is unjustifiable.

The general rule is that the principal may revoke an agency at will however, there are exceptions to this rule that is when the agency is created not only for the interest of the principal but also for the interest of the third persons, and when the agency is created for the mutual interest of both principal and agent. In these cases the agency cannot be revoked by sole will of the principal.

24. Which of the following is not a mode of extinguishing an agency?
- a. Death, civil interdiction, insanity or insolvency of the principal or agent.
 - b. Accomplishment of the purpose of the agency.
 - c. Expiration of the period for which the agency was constituted.
 - d. Continued losses on the part of the principal or agent.

Answer: D. Continued losses on the part of the principal or agent.

In Art. 1919 enumerates the modes of extinguishing an agency these are as follows:

- A. *By revocation*
- B. *By withdrawal of the agent*
- C. *By the death, civil interdiction, insanity or insolvency of the principal or the agent*
- D. *By the dissolution of the firm or corporation which entrusted or accepted the agency*
- E. *By the accomplishment of the object or purpose of the agency*
- F. *By the expiration of the period for which the agency was constituted*

An agency may be terminated by agreement; by the subsequent acts of the parties which may be either by the act of both parties or by mutual consent or by unilateral act of one of them; and by operation of law.

25. X, Y and Z, co-owners of a house and lot, appointed A to sell the house and lot at a price of not less P1,500,000 cash with A being entitled to a commission of 10% of the selling price. A was able to sell the house for P1, 800,000 cash. How much commission may A collect from X?

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- a. P150,000.00
- b. P180, 000.00
- c. P60,000.00
- d. P50,000.00

Answer: B. P180, 000.00

As stated in Article 1875, Agency is presumed to be for a compensation, unless there is proof to the contrary.

The principal must pay the agent the compensation agreed upon or the reasonable value of the agents services if no compensation specified. In this case, the commission agent can avail a commission of 180,000 (10% of of the selling price P1,800,000.00).

26. R, S and T, each one owning a separate lot, appointed A in one instrument to sell their respective lots. Under the agreement, A will receive a commission for 10% of the selling price of each lot. A was able to sell the lot of R for P100, 000; the lot of S for P200,000; and the lot of T for P300,000. How much commission may A collect from R?
- a. P60,000.00
 - b. P10,000.00
 - c. P20,000.00
 - d. P30,000.00

Answer: B. P10, 000

As stated in Article 1875, Agency is presumed to be for a compensation, unless there is proof to the contrary.

The principal must pay the agent the compensation agreed upon or the reasonable value of the agents services if no compensation specified. In these case, A can avail a commission on the cost of lot R sold which is 10,000 (10% of P100,000).

27. This is an agency that comprises one or more specific transactions of the principal.
- a. Special agency
 - b. General agency
 - c. Agency couched in general terms.
 - d. Agency couched in specific terms.

Answer: A. Special agency

Art. 1876. An agency is either general or special. The former comprises all the business of the principal. The latter, one more specific transaction.

Under this article, Special agency is defined as one that comprises one or more specific transactions.

28. P, owner of a certain car, authorized A to sell the car or P100, 000 cash. A, however, sold the car in the name of P for P110, 000 but on credit. B, the buyer, knew at the time of the transaction that A's authority was to sell the car of P on cash basis. The contract entered into by A is:
- a. Void because B was aware of A's limit to authority. In this case, A is not liable because he did not undertake to get P's ratification.

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- b. Valid because the transaction, although it was for credit, was more advantageous to P. accordingly, P will be liable.
- c. Unenforceable against P because A acted in excess of his authority. Thus, A alone will be liable.
- d. Rescissible, because P will suffer damage if the sales price is not paid by B.

Answer: A.

According to Article 1898 *If the agent contacts in the name of the principal, exceeding the scope of his authority, and the principal does not ratify the contract, it shall be void if the party with whom the agent contracted is aware of the limits of the powers granted by the principal. In this case, however, the agent is liable if he undertook to secure the principal ratification.* Since the B is aware of the limit of authority of A, the contract is VOID.

29. Pentinio appointed Anzures as commission agent to sell Pentinio's goods for P10, 000.00 cash. Anzures, however, sold the goods on credit for P11, 000 without Pentinio's consent. Based on the foregoing facts, which of the following options are available to Pentinio?
- I. Pentinio may demand immediate payment in P11, 000 cash.
 - II. Pentinio may demand immediate payment of P10, 000 cash. However, Anzures shall be entitled to keep the excess of P1, 000 when he collects the price of P11, 000.
 - III. Pentinio may ratify the sale on credit for P11, 000 and wait for the amount to be collected.
- a. Either I or III.
 - b. Either II or III.
 - c. Either I or II.
 - d. I only.

Answer: B. Either II or III

Article 1905 states, *the commission agent cannot, without the express or implied consent of the principal, sell on credit. Should he do so, the principal may demand from him payment in cash, but the commission agent shall be entitled to any interest or benefit, which may result from such sale.*

As a general rule, commission agent cannot sell on credit. If commission agent sells on credit without principal consent, the principal may demand payment from him in cash while the commission agent shall be entitled to any interest or benefit which may result from such sale.

30. P leads B to believe that A is his (P's) agent. However, A is not really the agent of P. Later, B transacted with A believing that A is the agent of P. What kind of agency was created here?
- a. Agency by ratification.
 - b. Agency by appointment.
 - c. Agency by estoppel
 - d. Agency by necessity.

Answer: C. Agency by estoppel

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Under Article 1868, *the agency is created by estoppels when a person is wilfully, negligently or by his silence leads another to believe that a certain person in his agent when no agency relationship really exist.*

Here, the principal is precluded from denying the existence of an agency. Since P lead B to believe that A is his agent which is really not, agency by estoppels is then created.

31. Consider the following statements:

I. an agency may be constituted in the common interest of the principal and the agent.

II. An agency may be constituted in the interest of a third person who has accepted the stipulation in his favor.

The death of the principal extinguishes the agency, as a rule. However, the death of the principal does not extinguish an agency if the reason why the agency was created is:

- a. Reason I only.
- b. Reason II only.
- c. Either Reason I or Reason II
- d. Neither Reason I nor Reason II.

Answer: C. Either Reason I or Reason II

According to Article 1930, *the agency shall remain in full force and effect even after the death of the principal, if it has been in the common interest of the latter and of the agent, or in the interest of the third person who has accepted the stipulation in his favor.*

As A general rule, the death of the principal extinguishes the agency. However, agency will not be extinguished if the agency has been constituted in the common interest of the principal and the agent and if the agency has been constituted in the interest in the interest of the third person who has accepted the stipulation in his favor.

32. An agent who contracts in the name of the principal is not liable in one of the following cases. Which is it?

- a. If the agent expressly bound himself.
- b. If the agent acted beyond the limits of his authority without giving the party he contracted with sufficient notice of his powers.
- c. If the other party knew that the agent exceeded his authority and the agent undertook to secure the principal's ratification but the principal did not ratify the contract.
- d. If the other party knew that the agent acted in excess of his authority but the agent did not undertake to secure the principal's ratification.

Answer: D. If the other party knew that the agent acted in excess of his authority but the agent did not undertake to secure the principal's ratification.

According to Article 1898 *If the agent contacts in the name of the principal, exceeding the scope of his authority, and the principal does not ratify the contract, it shall be void if the party with whom the agent contracted is aware of the limits of the powers granted by the principal. In this case, however, the agent is liable if he undertook to secure the principal ratification.*

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In addition, Article 1897 further provides that *The agent who acts as such is not personally liable to the party to whom he contracts, unless he expressly binds himself or exceeds to the limits of his authority without giving such party sufficient notice of his power.*

Here, the third person shall be responsible for the consequences of his own act because he still entered into a contact despite the agent's disclosure of the limits of his authority.

- 33.A, a duly authorized agent of P, wrote a letter to X on May 1, 2010 offering to sell P's only Mercedes Benz car for P2, 000,000 cash. On May 3, 2010, X wrote a letter to A stating that he accepted all the terms of the offer, which letter was received by A on May 5, 2010. Before A could relay such acceptance to P, P died in a vehicular accident on May 6, 2010.
- The contract was not perfected because P, the real party to the sale, died before the acceptance came to his knowledge.
 - The contract was perfected on May 1, 2010.
 - The contract was perfected on May 3, 2010.
 - The contract was perfected on May 5, 2010.

Answer: D. The contract was perfected on May 5, 2010.

As Stated in Article 1931, *Anything done by the agent, without the knowledge of the death of the principal or of the death of the principal or of any other cause which extinguishes the agent, is valid and shall be fully effective with respect to the third person who may have contracted in good faith.*

The acts of the agent which are done without knowledge of the death of the principal or of any other cause which extinguishes the agency are valid and shall be fully effective with respect to the third person who may have contracted in good faith. Here the agent must finish the business already begun on the death of the principal.

34. P published the appointment of A as P's agent in the Manila Bulletin. For 5 years, A, as P's agent, dealt with the public including X. On June 1, 2010, P revoked A's authority by giving the latter a notice of revocation. The revocation was published in the Philippine Star. A month later, X, who is ignorant of the revocation, sold goods to A as P's agent.
- P is not obliged to pay for the goods because the publication of the revocation of A's authority is sufficient notice
 - P is obliged to pay for the goods since X was not aware of the revocation of A's authority.
 - P is obliged to pay for the goods because the revocation should have been published in the same newspaper.
 - P is not obliged to pay for the goods because the notice of revocation to A is sufficient.

Answer: A. P is not obliged to pay for the goods because the publication of the revocation of A's authority is sufficient notice.

Article 1922 states, *if the agents has powers, revocation of the agency does not prejudice third persons who acted in good faith and without knowledge of the*

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revocation. Notice of the revocation in a newspaper of general circulation is sufficient warning to third persons.

According to this article notice of revocation in a newspaper of general circulation is sufficient warning to third person.

35. P appointed A as his agent to sell the appliance products of P. The agreement between P and A provided for the payment of A of a 5% ordinary commission and guarantee (or delcredere) commission. A sold several appliances to B for P20,000 the same being payable after 30 days. When A went to B's place to collect the price of the appliances, B, together with the appliances that were sold, was nowhere to be found:
- A is liable to P for the price of the appliances because A must bear the risk of collecting.
 - A is not liable of P for the price of the appliances because it was not his fault that B should disappear.
 - P must bear the risk of collection because he is the owner of the appliances.
 - A is liable to P because A acted beyond the scope of his authority.

Answer: A. A is liable to P for the price of the appliances because A must bear the risk of collecting.

A commission agent, by virtue of the receipt of a guarantee commission, is liable to the principal for the payment of the purchase price since he bears the risk of collecting.

According to Article 1903, the commissioner agent shall be responsible for the goods received by him in the terms and conditions and as described in the consignment, unless upon receiving them he should make a written statement of the damage and deterioration suffered by the same.

Here, the commission agent maintains a relation not only with his principal and the buyer or seller but also with the property subject matter of the transaction which is placed in his possession and his disposal. Therefore A is liable of the property was lost because the agent matter is place in his possession.

36. An agent acting in the name of the principal shall not be liable to the third person with whom he contracts:
- When he expressly binds himself.
 - When he exceeds the limit of his authority without giving the third person sufficient notice of his powers.
 - When the third person knew of the agent's lack of authority and the agent undertook to get the principal's ratification but failed to get the same.
 - When the third person knew of the agent's lack of authority but the agent did not undertake to get the principal's ratification.

Answer: D. When the third person knew of the agent's lack of authority but the agent did not undertake to get the principal's ratification.

Article 1898 state that if the agent contacts in the name of the principal, exceeding the scope of his authority, and the principal does not ratify the contract, it shall be void if the party with whom the agent contracted is aware of

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the limits of the powers granted by the principal. In this case, however, the agent is liable if he undertook to secure the principal ratification.

Moreover, Article 1897. *The agent who acts as such is not personally liable to the party to whom he contracts, unless he expressly binds himself or exceeds to the limits of his authority without giving such party sufficient notice of his power while on Article 1898 B and C is both liable though D is not because the agent acted in good faith by disclosing the limits of his authority.*

As stated, the third person shall be responsible for the consequences of his own act because he still entered into a contact despite the agent's disclosure of the limits of his authority.

37. P appointed A as his agent to sell the goods belonging to P for a commission for 10%. Thereafter, A sold the goods of P to B on 30-days credit term for P20, 000 without authority from P. The goods have a cash price of P19, 000. Which of the following is not an option available to P?
- P may demand immediate payment from A of the amount of P18, 000, (P20,000 less 10%).
 - P may demand immediate payment from A the amount of P17, 100.00 (P19, 000 less 10%).
 - P may demand payment from A of the amount of P18, 000.00 (P20,000.00 less 10%) when collects from B after 30 days.
 - P may choose not to ratify the sale.

Ans. A. P may demand immediate payment from A of the amount of P18, 000, (P20,000 less 10%).

Article 1905 states, *the commission agent cannot, without the express or implied consent of the principal, sell on credit. Should he do so, the principal may demand from him payment in cash, but the commission agent shall be entitled to any interest or benefit, which may result from such sale.*

As a general rule, commission agent cannot sell on credit. If commission agent sells on credit without principal consent, the principal may demand payment from him in cash while the commission agent, shall be entitled to any interest or benefit, which may result from such sale.

38. Which of the following acts does not require a special power of attorney for the agent?
- To effect novations which put, an end to obligations already in existence at the time the agency was constituted.
 - To make gifts to the employees in the business managed by the agent.
 - To bind the principal in a contract of partnership.
 - To lease any real property to another person for more than a year.

Answer: B. To make gifts to the employees in the business managed by the agent.

General power of attorney is sufficient to make gifts to the employees in the business managed by the agent. Letters a, c, and d require a special power of attorney as stated in Article 1878, (2), (9), and (8) respectively.

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39. P gave a general power of attorney to A to sell P's products all over the Philippines. After three years, P revoked A's authority by giving a notice of revocation to A. P also had the revocation published in the Manila Bulletin. Despite the revocation, A still sold P's products to X who had been a regular customer for the past 3 years and who was also known to P. However, X did not read the notice of revocation in the Manila Bulletin.
- P is bound by the sale.
 - The contract is unenforceable against P.
 - A is not liable on the sale.
 - X must be specially informed of the revocation.

Answer: B. The contract is unenforceable against P.

As stated in Article 1922, *notice of the revocation in a newspaper of general circulation is a sufficient warning to a third person.* The notice of revocation to A published in Manila Bulletin is binding to the regular customer whether or not he has read such publication. P is not bound by the sale because A is no longer his agent; therefore A is liable on the sale.

40. P gave a special power of attorney to A to sell P's house and lot. On May 1, 2010, A sold the house and lot to X through a deed of absolute sale which was duly acknowledged before a notary public. On May 5, 2010, P sold the house and lot to Y not knowing that A had already sold the same to X. Although the deed of sale in favor of Y had not yet been acknowledged before a notary public by P and Y, Y immediately took possession of the house and lot not aware of the sale made to the other.
- X is the owner of their house and lot.
 - Y is the owner of the house and lot.
 - X and Y will become co-owners of the house and lot.
 - P remains the owner of the house and lot.

Answer: A. X is the owner of their house and lot.

A, having given a special power of attorney, is authorized to sell P's house to X. Also, the sale of house and lot to X was duly acknowledged before a notary public. Thus, the sale to X is valid and he will have a superior title over the house.

41. The principal may delegate to an agent the performance of one of the following acts:
- The power to attend and vote at the meetings of directors of a corporation of which the principal is director.
 - The power to represent the principal in marriage ceremony where the principal is the groom.
 - The power to vote in the elections of officials for public office while the principal is abroad.
 - The power to vote in the election of directors of a corporation of which the principal is a stockholder.

Answer: D. The power to vote in the election of directors of a corporation of which the principal is a stockholder.

Letters a and c are acts that are prohibited by law to be delegated and letter b is an act which is purely personal in nature. Those acts cannot be delegated.

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On the other hand, a stockholder may appoint a proxy during the stockholder's meeting.

42. Which of the following statements pertaining to a contract of agency is incorrect?
- The death of the principal extinguishes the agency.
 - An agent may be a natural person or an artificial person like a corporation.
 - A guarantee commission agent is not liable to the principal if he cannot collect the price of sale from the buyers.
 - A contract of agency is presumed to be for compensation.

Answer: C. A guarantee commission agent is not liable to the principal if he cannot collect the price of sale from the buyers.

An agent is liable to the principal if he cannot collect the price of sale from the buyer because of the guarantee commission. The receipt by the agent of guarantee commission makes him liable for the payment of the proceeds of the sale. The purpose of receiving the guarantee commission is to insure to the principal not only the solvency of the debtor, but also the punctual discharge of the debt.

Letters a, b, and d pertain to a contract of agency. (a) Article 1919 states that *agency is extinguished: (3) by the death, civil interdiction, insanity or insolvency of the principal or of the agent.* (b) *A person capable acting for himself can be an agent of another, natural and juridical persons may appoint as agents.* (d) Article 1875 states that *agency is presumed to be for compensation.*

43. P gave a general power of attorney to A. During the year, A entered into a lease contract involving two lots of P as follows:
- Lease of a lot located in Manila to X for a period of 5 years with an annual rental of P60, 000.
 - Lease of a lot located in Quezon City to Y on a month-to-month basis at a monthly rental for P5, 000.
- Which of the two leases is valid and binding upon P?
- I only.
 - II only.
 - Both I and II.
 - Neither I nor II.

Answer: B. II only.

Power to lease any real property to another person for more than one year requires a special power of attorney. If the lease of real property is for one year or less, a special power of attorney is not necessary, as the same is merely an act of administration, and is deemed covered by an agency couched in general terms.

44. Which of the following is not a characteristic of the contract of agency?
- Onerous, this means that an agency is presumed to be for compensation.
 - Real, this means that the principal must deliver the object to the agent for the perfection of the contract.
 - Principal, which means that a contract of agency can stand by itself.
 - Preparatory, this means that the contract of agency is a means by which other contracts will be entered into.

Answer: B. Real, this means that the principal must deliver the object to the agent for the perfection of the contract.

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A contract of agency is not real because the agent only acts as a representative of the principal.

45. P delivered to A a power of attorney authorizing A to sell goods for P10, 000 on cash basis. A was able to sell the goods for P10, 500 also on cash basis, to X., who upon learning of A's authority as regards the selling price, sought to annul the sale.
- X may successfully annul the sale because A exceeded his authority.
 - X may not successfully annul the sale because A acted in a manner more advantageous to P.
 - X may successfully annul the sale because there was no instruction given by P to A to sell more than P10, 000.00.
 - X may successfully annul the sale because no mention was made on A's authority that he could sell only at the price of P10, 000.00.

Answer: B. X may not successfully annul the sale because A acted in a manner more advantageous to P.

A have not acted in excess of authority. Under Article 1882, *the limits of the agent's authority shall not be considered exceeded should it have been performed in a manner more advantageous to the principal than that specified by him.*

46. P appointed A as his agent. For more than 5 years, A transacted business with the general public including X. On the sixth year of the agency, P revoked the authority of A as his agent by giving a notice of revocation to A and causing the publication of the revocation in the Manila Bulletin on the same days that P revoked A's authority. Three months thereafter, X, who was not aware of the revocation of A's authority, in the course of his usual business transactions with A as P's agent, sold and delivered goods to A. X now sues P for the price of the goods.
- P is liable to X because X did not read the publication of the revocation of A's power.
 - P is not liable because the revocation as published is binding upon any person including X although X has not read the publication.
 - P is liable to X because P should have specially informed X that A's authority had been revoked.
 - P is liable because A was a customer of long standing and must be given the benefit of the doubt.

Answer: B. P is not liable because the revocation as published is binding upon any person including X although X has not read the publication.

As stated in Article 1922, *notice of the revocation in a newspaper of general circulation is a sufficient warning to a third person.* The notice of revocation to A published in Manila Bulletin is binding to the public including X whether or not he has read such publication. P is not liable to the sale because A is no longer his agent.

47. P gave a general power of attorney to A. During the year, A entered into two lease contracts involving properties belonging to P as follows:
- Lease of drilling equipment located in Manila to X for a period of 2 years with an annual rental of P120, 000.

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II Lease of a lot located in Quezon City to Y on a month-to-month basis at a monthly rental of P5, 000.

Which of the two leases is valid and binding upon P?

- a. I only.
- b. II only.
- c. Both I and II.
- d. Neither I nor II.

Answer: B.

Power to lease any real property to another person for more than one year requires a special power of attorney. If the lease of real property is for one year or less, a special power of attorney is not necessary, as the same is merely an act of administration, and is deemed covered by an agency couched in general terms.

48. P appointed A as his exclusive agent to sell generators on cash basis in Davao City. As A had to leave for Europe for a one-month pleasure trip, he asked P to allow him to appoint a substitute to take his place during his absence, to which P agree. A selected S as his substitute. S sold generators on a term of 60 days. The accounts resulting from these sales later proved to be uncollectible. Based on the foregoing, which of the following statement/s is false?

I A will be liable to P if S is notoriously incompetent or insolvent without prejudice to the right of P to go after S.

II A will not be liable to P if S is not notoriously incompetent or insolvent.

III A will be liable to P whether or not S is notoriously incompetent or insolvent without prejudice to the right of P to go after S.

- a. I and II are false.
- b. I and III are false.
- c. II and III are false.
- d. Only III is false.

Answer: D. Only III is false.

I and II is true as provided in Art. 1892. An agent will only be liable to the principal if he (agent) appointed a substitute without the principal's authorization if the appointed person is notoriously incompetent or insolvent.

49. P gave a special power of attorney to A to sell a piece of land belonging to P. On April 1, P was able to sell the land to X. The sale was in a public instrument with X taking immediate physical possession of the land. A learned of the sale made by P but nonetheless, he sold the same piece of land to Y. The sale was in a public instrument which Y registered in the Register of Deeds. Neither X nor Y knew of the sale made to the other.
- a. The piece of land belongs to X.
 - b. The piece of land belongs to Y.
 - c. The piece of land shall be owned jointly by X and Y since no one was aware of the sale made to the other.
 - d. The ownership of the piece of land remains with P since neither X nor Y is entitled to the land.

Answer: B. The piece of land belongs to Y.

According to Art. 1916, *when two persons contract with regard to the same thing, one of them with the agent and the other with the principal, and the two contracts*

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are incompatible with each other, that of prior date shall be preferred, without prejudice to the provisions of Article 1544.

This case shall follow the following rules:

- a. If the thing is a movable-Ownership shall belong to:
 1. The first possessor in good faith
 2. In the absence thereof, the contract with a prior date shall be preferred
- b. If the thing is an immovable-Ownership shall belong to:
 1. The first registrant in good faith
 2. In the absence thereof, the first possessor in good faith
 3. In the absence of both, the one who presents the oldest title in good faith

Since the piece of land is an immovable property, the first registrant in good faith, who is Y, shall be the owner of the piece of land.

50. S sold a piece of land belonging to his father F, to B. In the deed of absolute sale which was acknowledged before a notary public, S signed as the agent of F. The fact, however, was that no power of attorney was executed in favor of S by his father. Later, in the presence of two witnesses, F told B that he would abide by the sale executed by S.
 - a. The sale was void at the start but was validated upon the ratification by F.
 - b. The sale remained void despite the ratification by F.
 - c. The sale was valid from the start since it was made in a public instrument and F, the owner, agreed to abide by the same.
 - d. The sale was merely unenforceable at the start but was ratified when F agreed to abide by the same.

Answer: B. The sale remained void despite the ratification by F.

As stated in Art. 1874, when a sale of a piece of land or any interest therein is through an agent, the authority of the latter shall be in writing; otherwise, the sale shall be void.

Since there was no writing made between S and his father F, the sale executed between S and B is void despite F's ratification.

51. Almirante was given a general power of attorney by Pamplona to manage Polaris Building which is owned by Pamplona. During the month of November 2010, Almirante made the following payments:
 - I. Purchase price of the adjacent lot which was acquired by Pamplona.
 - II. Salaries and wages of the building employees for November 2010.
 - III. Service fee of Otis Elevators for the maintenance of the building elevator.
 - IV. Cost of electrical and other building supplies.
 Based on the foregoing facts, which of the payments will be binding on Pamplona?
 - a. I, II and III.
 - b. II, III and IV.
 - c. I, II and IV.
 - d. I, III and IV.

Answer: B. II, III and IV.

Art. 1877 states that an agency couched in general terms comprises only acts of administration, even if the principal should state that he withholds no power or that the agent may execute such acts as he may consider appropriate, or even though the agency should authorize a general and unlimited management.

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This pertains to a general power of attorney which comprises only acts of administration. Acts of administration generally include making such contracts as are reasonably necessary for conducting the business or that are customary in the business of the principal. Payments II, III, and IV are all considered as customary in the usual course of the business making it binding on Pamplona. On the other hand, Payment I will only be binding on Pamplona if he will give a special power of attorney to purchase the adjacent lot to Almirante.

52. Alcantara and Adviento were appointed as agents by Precious Rugs and Carpets, Inc. to sell its products. Since Alcantara and Adviento would be working together, the general power of attorney granted to them indicated that their liability to Precious would be solidary. In a trip to Davao, Alcantara, without the knowledge of Adviento, purchased rugs and carpets in behalf of Precious at a discounted price of P20, 000 using the funds that they had collected from their sales. When the company learned of the purchase, it sought to recover the amount of P20, 000 from Alcantara and Adviento.
- Alcantara alone will be liable for P20, 000.00 to Precious.
 - Alcantara and Adviento will be liable jointly at P10, 000.00 each to Precious.
 - Either Alcantara or Adviento may be held liable by Precious for P20, 000.00 since their liability is solidary.
 - The purchase of the carpets and rugs is voidable; hence, the amount of P20, 000.00 may be recovered from the seller of the said items.

Answer: A. Alcantara alone will be liable for P20, 000 to Precious.

It is stated in Art.1895 that *if solidarity has been agreed upon, each of the agents is responsible for the non-fulfillment of agency, and for the fault or negligence of his fellow agents, except in the latter case when the fellow agents acted beyond the scope of their authority.*

Even though the two agents are granted a solidary liability, Adviento is not responsible for the fault of Alcantara since the latter acted beyond the scope of his authority which is just to sell Precious' products. He was not given the authority to purchase the same from other suppliers.

53. P, 30 years old, gave a special power of attorney to A, 17 years old, to sell 2 lots (Lot X and Lot Y) belonging to P. The contract of agency provided for a term of 2 years from the date of execution. Before reaching the age of 18, A was able to sell Lot X. After turning 18 years old and before the expiration of the two-year term, he also sold Lot Y.
- The sale of both Lot X and Lot Y are binding on P.
 - The sale of both Lot X and Lot Y are not binding on P.
 - Only the sale of Lot X is binding on P.
 - Only the sale of Lot Y is binding on P.

Answer: A. The sale of both Lot X and Lot Y are binding on P.

Based on the discussion in Art.1868, *an agent is the one who acts for and represents the principal and from whom he derives his authority. A person capable of acting for him can be an agent of another. Legal capacity is not required for the validity of the agent's acts which are considered those of the principal since the agent is merely an extension of the personality of the principal.*

A, therefore, is an agent of P. Thus, his act of selling Lot X and Lot Y are both binding on P. The contract entered by A, in behalf of P, which is really that of P is valid since P is not incapacitated.

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54. P gave a special power of attorney to A to buy 1,000 shares of stock of EXXO Corporation which was then being traded at the stock exchange at P50 per share. P instructed A to make the purchase within two days and advance the purchase price of P50, 000 plus the stock transaction tax, commission and other expenses which amounted to P3, 000. With the instruction, A made the purchase and received the stock certificate for the shares. However, three days thereafter and before A was able to get his reimbursement from P for the advances he had made, the price of EXXO shares went down to P45 per share. P now is having second thoughts on making the reimbursement to A.
- P is liable to A only for P48, 000.00 [(1,000 share x P45.00) + P3, 000.00.]
 - P is liable to A for P53, 000 [(1,000 shares x P50) + P3, 000].
 - P is not liable at all because the transaction resulted in a loss.
 - A alone will shoulder the loss because the risk of loss is part of his job as an agent.

Ans. B. P is liable to A for P53, 000 [(1,000 shares x P50) + P3, 000].

Art.1912 states that *the principal must advance to the agent, should the latter so request, the sums necessary for the execution of the agency. Should the agent have advanced them, the principal must reimburse him therefore, even if the business or undertaking was not successful, provided the agent is free from all faults.*

The reimbursement shall include interest on the sums advanced, from the day on which the advance was made.

The answer will be based on the second paragraph of the provision. Since there was an agreement that P will advance the funds necessary to buy the shares, then P will be bound by such agreement. Even if the price of EXXO shares went down to P45 per share, A will still be entitled to reimbursement at P50 per share together with the stock transaction tax, commission and other expenses which amounted to P3000 from P even if the transaction resulted in a loss to P since A was free from fault.

55. Refer to No.54.Assuming that the circumstances show that P is liable to A for the amount advanced by A, but P is unwilling to make the reimbursement, A can retain possession of the stock certificate until he receives the reimbursement. Such right of retention is also a security which is in the nature of a:
- chattel mortgage.
 - legal pledge.
 - real mortgage.
 - antichresis.

Answer: B. legal pledge

Art.1914 provides that the agent may retain in pledge the things which are the object of the agency until the principal effects the reimbursement and pays the indemnity set forth in the two preceding articles.

The agent may retain by way of LEGAL PLEDGE the things which are the object of the agency.

56. Which of the following contracts entered into by the agent is binding upon the principal although the agent's authority is a general power of attorney?
- Sale of a piece of land.
 - Lease of a piece of land to a third person for a period of 2 years.

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- c. Gifts made to employees in the business managed by the agent.
- d. Contract of partnership with the principal as partner.

Answer: C. Gifts made to employees in the business managed by the agent.

According to Art.1878, *Special powers of attorney are necessary in the following cases:*

- (1) *To make such payments as are not usually considered as acts of administration;*
- (2) *To effect novations which put an end to obligations already in existence at the time the agency was constituted;*
- (3) *To compromise, to submit questions to arbitration, to renounce the right to appeal from a judgment, to waive objections to the venue of an action or to abandon a prescription already acquired;*
- (4) *To waive any obligation gratuitously;*
- (5) *To enter into any contract by which the ownership of an immovable is transmitted or acquired either gratuitously or for a valuable consideration;*
- (6) *To make gifts, except customary ones for charity or those made to employees in the business managed by the agent;*
- (7) *To loan or borrow money, unless the latter act be urgent and indispensable for the preservation of the things which are under administration;*
- (8) *To lease any real property to another person for more than one year;*
- (9) *To bind the principal to render some service without compensation;*
- (10) *To bind the principal in a contract of partnership;*
- (11) *To obligate the principal as a guarantor or surety;*
- (12) *To create or convey real rights over immovable property;*
- (13) *To accept or repudiate an inheritance;*
- (14) *To ratify or recognize obligations contracted before the agency;*
- (15) *Any other act of strict dominion.*

Contracts A, B, and D require a special power of attorney A, as stated in (5), B in (8), and D in (10). Even though C pertains in giving gifts, Art.1878 provides an exception for this matter. That is, to make gifts, except customary ones for charity or those made to employees in the business managed by the agent

57. P, in Manila, wrote a letter to T, who is based in Cebu, informing the latter that he (P) had given a power of attorney to A to sell P's goods. For more than 5 years, T dealt with A for the purchase of P's goods. On the sixth year, P gave a notice to A that he was revoking the latter's authority. Despite the revocation of his authority, A sold goods to T who was not aware that A's authority had been revoked. The revocation of A's authority was published in the Manila Bulletin but T was not able to read it. Although T had paid the price to A who kept the proceeds to himself, the goods had not yet been delivered to T. So T demanded delivery from P.
- a. P is not obliged to deliver the goods because he had already revoked A's authority.
 - b. P is obliged to deliver the goods because the revocation of A's authority was not binding on T.
 - c. P is not obliged to deliver the goods because P had not yet received the price of the goods.
 - d. P is not obliged to deliver the goods because T is presumed to have read the publication of the revocation of A's authority.

Answer: B. P is obliged to deliver the goods because the revocation of A's authority was not binding on T.

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According to Art.1873, *If a person specially informs another or states by public advertisement that he has given a power of attorney to a third person, the latter thereby becomes a duly authorized agent, in the former case with respect to the person who received the special information, and in the latter case with regard to any person.*

The power shall continue to be in full force until the notice is rescinded in the same manner in which it was given.

Based on the second paragraph, the notice must be rescinded in the same manner in which it was given. P wrote a letter to T informing the latter that he had given a power of attorney to A to sell P's goods. As such, P must also write a letter to T to inform the latter of the revocation of A's appointment. Since P just revoke A's authority through a public advertisement, the revocation is not binding on T and P is still obliged to deliver the goods.

58. Which of the following does not extinguish an agency?
- Dissolution of the corporation that entrusted the agency.
 - Insanity of the agent.
 - Continued business losses of the agent for at least 2 years.
 - Insolvency of the agent.

Answer: C. Continued business losses of the agent for at least 2 years.

According to Art. 1919. *Agency is extinguished:*

- (1) *By its revocation;*
- (2) *By the withdrawal of the agent;*
- (3) *By the death, civil interdiction, insanity or insolvency of the principal or of the agent;*
- (4) *By the dissolution of the firm or corporation which entrusted or accepted the agency;*
- (5) *By the accomplishment of the object or purpose of the agency;*
- (6) *By the expiration of the period for which the agency was constituted.*

Acts A, B and D are all means of extinguishment of agency: Dissolution of the corporation that entrusted the agency (A), since it is equivalent to the death of a natural person; Insanity of the agent (B), since the loss of capacity of the agent (being insane) cannot be expected to carry out the agency; And, insolvency of the agent (D), since it results in his not being able to effectively carry out the agency because the trust originally reposed upon him is affected. This is so because the state of his credit would so affect the interests of his principal that the latter would no longer consent to his being an agent. On the other hand, the continued business losses of the agent for at least 2 years (C) cannot extinguish agency since it is a matter of agent's failure of doing his task.

59. P gave a special power of attorney to A to lease a building at a good location where P could put up an auto supply business. A found a building at a good location that belonged to T at Banaue in Quezon City, but seeing the brisk business in the area, A presented himself as the lessee instead of P. Accordingly, A lease contract was executed between A as lessee, and T as lessor, who was not aware of the agency between P and A. Based on the forgoing facts, the following statements are presented to you for evaluation.
- I P and T shall have no right of action against each other.
 - II The contract of lease is a valid and binding contract between A and T.
 - III P can go after A for damages for preferring his interest over that of P.
- In your evaluation of the foregoing facts and statements:

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- a. I and II are true.
- b. I and II are true.
- c. II and III are true.
- d. All are true.

Answer: D. All are true.

Statements I and II are both included in the provision of Art.1883 which is *If an agent acts in his own name, the principal has no right of action against the persons with whom the agent has contracted; neither have such persons against the principal.*

In such case the agent is the one directly bound in favor of the person with whom he has contracted, as if the transaction were his own, except when the contract involves things belonging to the principal.

The provisions of this article shall be understood to be without prejudice to the actions between the principal and agent.

With respect to Statement III, it is provided in Art.1889 that *The agent shall be liable for damages if, there being a conflict between his interests and those of the principal, he should prefer his own.*

60. P appointed A1 and A2 as his agents to manage P's grocery store. The general power of attorney given by P to the agents indicated that their liability to P shall be solidary. One day, a truck salesman visited the store and offered to sell his delivery truck for a discounted price. A1, who was the only one at the store at that time, purchased the truck in P's behalf since he believe that the store really needed a vehicle in the delivery of goods groom suppliers and to customers. Moreover, he thought that the transaction was a good one since the truck was being sold at a discounted price. A1 paid the price out of his collections from grocery sales. When P learned of the purchase, he sought to disaffirm the sale and recover the amount paid for the purchase.

- a. Both A1 and A2 are liable to P for the amount paid for the delivery truck.
- b. Only A1 can be held liable by P for the return of the amount paid for the delivery truck.
- c. P cannot hold the agents liable because the transaction benefited P.
- d. P and A1 shoulder the purchase price equally in fairness to A1 whose only concern was the benefit to the business of the transaction.

Ans. B. Only A1 can be held liable by P for the return of the amount paid for the delivery truck.

As a general rule, each agent is liable only for his own acts or omissions stated and explained in Title X Agency Chapter 2 Obligations of the Agent under Article 1895. If solidarity has been agreed upon, each of the agents is responsible for the non-fulfillment of the agency, and for the fault or negligence of his fellow agents. However, when a fellow agent acted beyond the scope of the authority, he will be SOLELY liable for damages caused by his acts. So, only A1 is liable to P because he acted in excess of his authority.

61. P, the owner of a condominium, gave a general power of attorney to A manage the building. P and A, however, and a private understanding that A should not lease any unit to a foreigner. For the month of October 2010, A entered into the following leases of two condominium units:

- I. Unit 2, to F, a Filipino, for a period of 2 years

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II. Unit 5, to J, Japanese, who was in a business trip to the Philippines, for 3 months

Based on your review of the foregoing statements:

- a. Both lease contracts are valid and binding on P.
- b. Both lease contracts are not binding on P.
- c. Only I is valid and binding on P.
- d. Only II is valid and binding on P.

Ans. B

The first contract is not binding because a lease for a period of more than 1 year shall be covered by a Special Power of Attorney.

With respect to the second statement, as a rule, the agent should not act in excess of his authority. Since it is given in their private understanding that A, as an agent, should not lease any unit to a foreigner, the said act is considered act beyond the scope of his authority.

62. Which of the following is a valid delegation by the principal to his agent?
- a. The purchase by the agent of a land located in Manila.
The principal is an American.
 - b. The exercise of the voting right in the local elections.
The principal is Filipino who is a qualified voter like the agent.
 - c. The lease of a vehicle for the use of the principal who is a duly licensed driver for two months.
 - d. The attendance at the board meetings of a corporation of which the principal is a director.

Ans. C. The lease of a vehicle for the use of the principal who is a duly licensed driver for two months.

Any act may lawfully do personally may be delegated, and conversely, whatever he cannot legally do himself, he cannot authorize another to do it for him. However, acts which are personal in nature and acts prohibited by law to be delegated may not be delegated. Letters a, b and d requires the principal to be present and is prohibited by the constitution. (See Article 1868)

63. P, the owner of a lot, gave an oral authority to A to sell the lot. A thus sold the lot to B in P's name in a public instrument. Shortly after the sale, P sent B a telegram informing him that he (P) was ratifying the sale. B, however, had already changed his mind and informed P that he (B) was withdrawing from the contract.

- a. P and B became bound by the contract of sale at the time of execution because it was in a public instrument.
- b. P and B became bound by the contract of sale at the time that P ratified the sale.
- c. P and B never became bound by the contract of sale because it was not susceptible of ratification.
- d. B can no longer withdraw from the contract because P had made an earlier ratification of it.

Ans. C. P and B never became bound by the contract of sale because it was not susceptible of ratification.

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At the first place, selling a piece of land entered orally is unenforceable under Article 1403. Therefore, though it was ratified by the principal, P and B will never become bound by the contract of sale because contract of sale is unenforceable.

64. P gave a general power of attorney to A to manage P's business in Manila. While P was in Bacolod City, he made a call to A to sell P's lot located in Sampaloc. A thus sold the lot to X by presenting the general power of attorney given to him by P. The sale to X was in a public instrument. Thinking that A had not yet sold the lot, P sold the same lot to Y with whom he was meeting in Bacolod and who was interested in the lot. Y was not aware of the sale entered into by A with X. The sale to Y was likewise in a public instrument.

- a. The lot belongs to X.
- b. The lot belongs to Y.
- c. Neither X nor Y is entitled to the lot.
- d. The lot will be owned jointly by X and Y.

Ans. B. The lot belongs to Y.

If thing sold is an immovable, ownership shall belong to first registrant in good faith, in the absence thereof, the first possessor in good faith and in the absence of both, the one who presents the oldest title in good faith.

65. Which of the following contracts entered into by the agent is binding upon the principal although the agent's authority is a general power of attorney?

- a. Sale of a building.
- b. Lease of a piece of land to a third person for a period of 2 years.
- c. Customary gifts to charity
- d. Contract of partnership with the principal as partner.

Ans. C. Customary gifts to charity.

Letters a, b and d requires special power of attorney stated in Article 1878. On the other hand, without the special power of an attorney, an agent cannot make gifts except for customary ones to charity or those made to employees in the business managed by the agent where an authority couched in general terms is sufficient.

66. A has been the agent of P for the past 3 years in the purchase of palay in different provinces of Luzon. The authority given by P to A provided that A need not render an accounting of his transactions. One day, A chanced upon a wholesaler of palay who offered to sell them to A at the discounted price of P500 per sack. A purchased all the palay using his own money and stored them at his warehouse. Every time that P needed palay, A would get them from his stock and made it appear that he bought them from a supplier at the regular price of P600 which was the same purchase price of palay in his earlier transactions.

- a. A must account to P all the profits that he obtained from the transaction.
- b. A need not account to P the profits that he obtained because he used his own money.
- c. A need not render an accounting of his transactions because he was not obligated to do so under the power of attorney given to him by P.
- d. A cannot be held liable for damages because he passes on the palay to P at the purchase price of his previous transactions.

Ans. A. A must account to P all the profits that he obtained from the transaction.

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As a rule, every agent is bound to render an accounting of his transactions and to deliver to the principal whatever he may have received by virtue of the agency, even though it may not be owing to the principal. The agents is also to account and deliver to his principal any excess price and interest he collects including those unauthorized credit sales for violating the contract of agency. Another thing is that, every stipulation exempting the agent from the obligation to render an account shall be void.

67. The following statements pertain to the appointment by the agent of a substitute:

I. If the agent was authorized to appoint a substitute but the substitute was not designated; the agent will not be liable to the principal if the substitute appointed was not notoriously incompetent or insolvent.

II. If the agent was authorized to appoint a substitute but the substitute was designated, the agent will not be liable to the principal even if the substitute was notoriously incompetent or insolvent.

In your evaluation of the foregoing statements:

- a. Both statements are true.
- b. Both statements are false.
- c. Only Statement I is true.
- d. Only Statement II is true.

Ans. B. Both statements are true.

The first statement is true because as long as the substitute is not notoriously incompetent or insolvent, the agent will not be liable to the principal for the act of the substitute.

The second statement is also true since the substitute is already designated. IN that case, the agent has no choice as to who he would appoint as substitute. Thus, he should not be made liable for the acts of the substitute.

68. The following statements pertain to the appointment of an agent:

I. If the announcement of the appointment of an agent is by special information, the person appointed will be considered a duly authorized agent with respect to the person who received the special information.

II. If the announcement of the appointment of an agent is made by public advertisement, such as by publication in a newspaper of general circulation, the person appointed will be considered as agent with regard to any person who reads the publication.

In your evaluation of the foregoing statements:

- a. Both statements are true.
- b. Both statements are false.
- c. Only Statement I is true.
- d. Only Statement II is true.

Ans. C. Only statement I is true.

If announcement of appointment of an agent is by public advertisement, the person appointed will be considered as agent with regard to any person and not just only to those who reads the publication.

69. P, 28 years old, gave a power of attorney to A, 17, to sell antique furniture. Pursuant to the authority, A sold an antique table for P30, 0000 to B, who is

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insane and antique desk for P20, 000 to C, 35 years old. Which of the foregoing contracts is valid?

- a. The contract of agency.
- b. The sale of the antique table.
- c. The sale of the antique desk.
- d. None of the forgoing contracts is valid.

Ans. C. The sale of the antique desk.

A, the agent, although minor still has the capacity to act because legal capacity is not required so the contract all in all is valid but since there is a sale to an insane person, that transaction is not valid because as a general rule, every transaction entered into those incapacitated people would always be void.

70. These statements presented to you:

- I. A general agency may be couched in specific terms.
- II. A special agency may be couched in general terms.

In your evaluation of the foregoing statements:

- a. Both statements are true.
- b. Both statements are false.
- c. Only Statement I is true.
- d. Only Statement II is true.

Ans. A. Both statements are true.

Article 1877 and Article 1878 states that an agency whether specific or general may be couched in general terms and in specific terms respectively since it is only according to the authority that is being conferred not to its extent. It comprises only acts of administration (for general) and a clear mandate expressly authorizing the performance of the act (for specific). So whether it is general or specific agency, it may be couched in specific or general terms.

71. P, who owns a lot, gave A, his agent, the authority to sell the lot. In which of the following cases is the sale of the lot unenforceable?

Form of A's Authority Form of Contract of sale

- a. Oral Public Instrument
- b. Private Instrument Public Instrument
- c. Public Instrument Oral
- d. Public Instrument Private Instrument

Answer: C. Form of A's Authority: Public Instrument, Form of Contract of sale: Oral

According to Article 1403, *The following contracts are unenforceable, unless ratified:*

(1) Those entered into in the name of another person by one who has been given no authority or legal representation, or who has acted beyond his powers;

(2) Those that do not comply with the Statute of Frauds as set forth in this number. In the following cases an agreement hereafter made shall be unenforceable by action, unless the same, or some note or memorandum, thereof, be in writing, and subscribed by the party charged, or by his agent; evidence, therefore, of the agreement cannot be received without the writing, or a secondary evidence of its contents:

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(a) *An agreement that by its terms is not to be performed within a year from the making thereof;*

(b) *A special promise to answer for the debt, default, or miscarriage of another;*

(c) *An agreement made in consideration of marriage, other than a mutual promise to marry;*

(d) *An agreement for the sale of goods, chattels or things in action, at a price not less than five hundred pesos, unless the buyer accept and receive part of such goods and chattels, or the evidences, or some of them, of such things in action or pay at the time some part of the purchase money; but when a sale is made by auction and entry is made by the auctioneer in his sales book, at the time of the sale, of the amount and kind of property sold, terms of sale, price, names of the purchasers and person on whose account the sale is made, it is a sufficient memorandum;*

(e) *An agreement for the leasing for a longer period than one year, or for the sale of real property or of an interest therein;*

(f) *A representation as to the credit of a third person.*

(3) *Those where both parties are incapable of giving consent to a contract.*

In cases of a sale of the lot the authority by the agent must be in writing regardless of the form of sale has been entered into i.e., oral, private instrument or public instrument; otherwise the sale is void.(1874)

72. These statements are presented to you:

I. Agency acts for himself and for his principal.

II. A partner acts for himself, for the partnership, and for his partners.

In your evaluation of the foregoing statements:

- a. Only Statement I is true.
- b. Only Statement II is true
- c. Both statements are true.
- d. Both statements are false

Answer: B. Only statement II is true.

Statement I is false because according to Article 1868, *By the contract of agency a person binds himself to render some service or to do something in representation or on behalf of another, with the consent or authority of the latter.*

Agent must always act in behalf of his principal not for his own.

Statement II is true because (1) A partner is an agent of the firm and the other partners for the purpose of the business of the partnership.

(2) The acts of every partner who does any act for carrying on in the usual way business of the kind carried on by the firm of which he or she is a member bind the firm and his or her partners, unless

(a) the partner so acting has in fact no authority to act for the firm in the particular matter, and

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(b) the person with whom he or she is dealing either knows that the partner has no authority, or does not know or believe him or her to be a partner.

73. These statements are presented to you:
- I Agency and partnership are preparatory contracts.
 - II Partnership is a branch of the law on agency.
- In your evaluation of the foregoing statements:
- a. Both statements are true.
 - b. Both statements are false.
 - c. Only Statement I is true.
 - d. Only Statement II is true.

Answer: A. Both statements are true.

Like in a contract of agency in Partnership every partner is an agent of the partnership and with the partners, they can enter into in other contract in behalf of the partnership. They are both preparatory contracts because they are being used to execute subsequent contracts.

74. Agency is different from negotiorumgestio because in agency:
- a. There is a meeting of minds.
 - b. The legal relation is created by law.
 - c. The one who acts follows his own judgment and the presumed will of the owner.
 - d. No representation has been agreed upon.

Answer: A. There is a meeting of minds.

According to Article 1868, By the contract of agency a person binds himself to render some service or to do something in representation or on behalf of another, with the consent or authority of the latter.

Because one of the elements of a contract of agency is consent which is their must be a meeting of minds between principal and agent. b, c, d pertains to negotiorumgestio which refers to the voluntary administration of the property, business or affairs of another without his consent or authority.

75. Sampaca, manufacturer of “Dreamand” beds, and Bergonio entered into a contract with the following terms: Sampaca was to furnish beds to Bergonio who must pay the price within 30 days from the receipt of the shipment, minus a discount of 25%. What contract was entered into between Sampaca and Bergonio?
- a. Contract of sale
 - b. Contract of agency to sell
 - c. Contract to sell
 - d. Contract of consignment

Answer: A. Contract of sale

According to Article 1458, By the contract of sale one of the contracting parties obligates himself to transfer the ownership and to deliver a determinate thing, and the other to pay therefor a price certain in money or its equivalent.

Because Sampaca accepted the order to make beds for Bergonio, who agreed to pay the price within 30 days from the receipt of the shipment minus a 25%

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discount, there is a perfection of contract of sale. Since, the essential requisites of contract of sale are all present even if the price is not yet known but because there is a given period by Bergonio to determine the price but at the lapse of the 30 days period and the price is not yet determined, the contract of sale is void.

76. These statements are presented to you:

- I. If the agent has been empowered to borrow money in behalf of his principal, he may himself be the lender at the current rate of interest.
- II. If the agent has been authorized to lend the money of his principal, he may himself be a borrower even without the principal's consent provided the interest is higher than the current rate.

In your evaluation of the foregoing statements:

- a. Both statements are true.
- b. Both statements are false.
- c. Only Statement I is true.
- d. Only Statement II is true.

Answer: C. Only statement I is true.

Statement I is true because according to Article 1890, *If the agent has been empowered to borrow money, he may himself be the lender at the current rate of interest. If he has been authorized to lend money at interest, he cannot borrow it without the consent of the principal.*

This is allowed because there is no detriment to the principal as the same terms would have been granted had the money been borrowed from other persons.

Statement II is false because if he borrows the principal's money, he may not subject himself to the same strict requirements that he imposes on the other applicants before they are granted credit.

77. Paladino, the owner of a grocery store, gave a general power of attorney to Almiro to manage the business. Almiro was given the authority to borrow money for the business at 1% interest per month. Almiro himself is the one who lends the money at such interest rate. Thus, in the said contract of loan, Almiro enters into the contract in his own behalf as lender and represents Paladino as borrower. The contract of loan in such a case is considered as:

- a. an auto- contract.
- b. an aleatory contract.
- c. a remuneratory contract.
- d. a gratuitous contract.

Answer: A. an auto- contract.

Based on the definition of Auto- contract where only *one person represents the two parties to the contract* (such as when an agent lends money to his principal who he represents as borrower).

78. Principe, the owner of a BMW car, gave a power of attorney to Agerico to sell it. A week Later, Principe gave another power of attorney to Anastacio to sell the same car without giving notice thereof to Agerico. Agerico was able to sell the car to Borsalino. When Borsalino demanded the delivery of the car, Principe refused to do so claiming that Agerico's authority to sell the car was impliedly revoked by the authority given to Anastacio.

- a. Agerico's authority was impliedly revoked by the appointment of Anastacio to sell the car.

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- b. Agerico's authority to sell the car was not revoked despite the new authority given to Anastacio.
- c. Agerico's authority did not co-exist with that given to Anastacio.
- d. The authority given to both agents is considered nullified because of conflict.

Answer: B. Agerico's authority to sell the car was not revoked despite the new authority given to Anastacio.

Agerico's authority to sell the car was not revoked because Principe did not notify him of giving Anastacio authority to sell the same car. The authority given to them can stand together.

79. Statement I- A stipulation exempting the agent from the obligation to render and accounting of his transactions is valid provided the principal does not suffer any damage.
Statement II- A stipulation that the agent will advance the necessary funds to carry out the agency is void.
- a. Both statements are true.
 - b. Both statements are false.
 - c. Only Statement I is true.
 - d. Only Statement II is true.

Answer: B. Both statements are false.

Statement I is false because according to Article 1891, *Every agent is bound to render an account of his transactions and to deliver to the principal whatever he may have received by virtue of the agency, even though it may not be owing to the principal.*

Every stipulation exempting the agent from the obligation to render an account shall be void.

Exempting the agent from such responsibility is in effect inducing him to commit fraud since whatever he wants to account will be fully dependent upon him and not in accordance with the fiduciary nature of his function.

Statement II is false because as a general rule, the principal must advance to the agent, should the latter so request, the sums necessary for the execution of agency. (Art. 1912) However, *the agent shall advance the necessary funds if there is a stipulation to that effect, except when the principal is insolvent.* (Art. 1886)

The insolvency of the principal, in fact, extinguishes the agency, and will no longer bind the agent to advance such funds even if there was a stipulation to that effect. (Art. 1919)

80. Pastofide, an Importer of fire extinguishers, give Angeles the exclusive authority to distribute the product in Laoag City. The authority provided that all sales should be on cash basis, but no mention was made whether or not Angeles could appoint a substitute. Without notifying Pastorfide, Angeles appointed Sulpicio, a reasonably prudent man, as substitute when he went on a one-month Asian cruise. Sulpicio sold the fire extinguishers on a term for 60 days. The sales later proved to be uncollectible.
- a. Pastorfide cannot proceed against Angeles because the latter acted in good faith in appointing a substitute.

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Neither can he proceed against Sulpicio because the latter was a reasonably prudent man.

b. Pastorfidie can only proceed against Angeles for damages since Sulpicio was not notoriously incompetent or insolvent.

c. Pastorfidie can proceed only against Sulpicio because Angeles exercised prudence when he appointed as his substitute one who was not notoriously incompetent or insolvent.

d. Pastorfidie can proceed against Angeles and Sulpicio for the uncollectible account and other damages that he sustained by him.

Answer: D. Pastorfidie can proceed against Angeles and Sulpicio for the uncollectible account and other damages that he sustained by him.

As stated in Art. 1892. *The agent may appoint a substitute if the principal has not prohibited him from doing so; but he shall be responsible for the acts of the substitute:*

(1) *When he was not given the power to appoint one;*

(2) *When he was given such power, but without designating the person, and the person appointed was notoriously incompetent or insolvent.*

All acts of the substitute appointed against the prohibition of the principal shall be void. (1721)

Angeles was given power of attorney by Pastorfidie to distribute the product but he is not prohibited to appoint a substitute. In his appointment of substitute he shall be responsible for the acts of the substitute because it is his responsibility to explain further what actions only could be done by his substitute for its mistake he shall bear the consequences or damages might be done.

81. A was appointed by P to sell the latter's car for a cash price of P100, 000. However, A was able to sell the car for P120, 000 cash.
- A must turn over only the amount of P100,000.00 to P whose only right was to demand the cash price agreed upon. Thus, the A keeps the excess of P20, 000.00.
 - A must turn over the amount of P120, 000 to P since A must account all that he had received in carrying out the agency. Besides, A did not act in excess of his authority because the sale he made was more beneficial to P.
 - A must turn over the amount of P100, 000.00 to P since A acted in excess of authority when he sold the car for more than P100, 000.00.
 - A must turn over the amount of P120, 000.00 to P, but P must eventually give the excess of P20, 000.00 to A.

Answer: B. A must turn over the amount of P120, 000 to P since A must account all that he had received in carrying out the agency. Besides, A did not act in excess of his authority because the sale he made was more beneficial to P.

As stated in Article 1891, *Every agent is bound to render an account of his transactions and to deliver to the principal whatever he may have received by virtue of the agency, even though it may not be owing to the principal.*

Every stipulation exempting the agent from the obligation to render an account shall be void.

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An agent, being one who administers the affairs of another, is duty bound to render an account of his transactions. This duty of the agent to account includes the keeping of an accurate record of his transactions and of delivering to the principal money and property that have come into his possession in the course of his execution of the agency even if they may not be owing to the principal. Thus, an agent must deliver to the principal any incidental benefits received through the agency business such as gifts or rebates from parties with whom the agent dealt in behalf of the principal or even those received by the agent in excess of his authority such as any excess price and interest that collects on an unauthorized credit sales.

A must deliver to P whatever he may have received by virtue of the agency even if it may not be owing to the principal. A may not make any profit out of the agency beyond his stipulated compensation.

82. P, the owner of several properties including a certain car, appointed A to manage them. Later, the car was repossessed by the bank on account of P's default in the payment of a loan obligation for which the car was given as security by way of chattel mortgage. During the auction sale, A, in his personal capacity, was able to buy the car since his bid was the highest among 10 bidders. His purchase of the car was without the knowledge of A. What is the status of the sale?

- a. Valid, because A bought the car fair and square as his bid was the highest among 10 bidders.
- b. Voidable, because an agent cannot acquire by purchase any property of the principal placed under his administration without the principal's consent.
- c. Void, because the purchase of the car by A was a violation of his fiduciary duty to P.
- d. Unenforceable, because the acquisition of the car by A was without P's consent.

ANSWER: B. Voidable, because an agent cannot acquire by purchase any property of the principal placed under his administration without the principal's consent.

83. P gave a power of attorney to A to sell a certain piano. Before A could find a buyer, P was able to sell the piano to X through a private instrument and informed A about it. Nonetheless, A still sold the piano to Y who immediately took possession of the piano. Neither X nor Y knew of the sale made to the other. Whose contract will prevail?

- a. The contract with X.
- b. The contract with Y.
- c. Neither, because of conflict of interest.
- d. Both contracts with X and Y becoming co-owners of the piano.

ANSWER: B. The contract with Y.

ARTICLE 1916. When two persons contract with regard to the same thing, one of them with the agent and the other with the principal, and the two contracts are incompatible with each other, that of prior date shall be preferred, without prejudice to the provisions of article 1544. (n)

ARTICLE 1544. If the same thing should have been sold to different vendees, the ownership shall be transferred to the person who may have first taken possession thereof in good faith, if it should be movable property.

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If the thing is movable, ownership shall belong to:

- The first possessor in good faith.
- In the absence thereof, the contract with a prior date shall be preferred.

The piano is a movable thing and immediately possessed by Y, thus, Y is the first possessor, and ownership will be transferred to Y.

84. Refer to No. 83. Who will be liable for damages to the party whose contract will be rejected?

- a. P, because he disregarded the authority he gave to A when he made the sale to X.
- b. A, because he was in bad faith when he made the sale to Y although he had knowledge of the previous sale made by P.
- c. Both A and P will share equally in the payment of damages.
- d. Neither A nor B, because both contracts will be honored.

ANSWER: B. A, because he was in bad faith when he made the sale to Y although he had knowledge of the previous sale made by P.

ARTICLE 1917. In the case referred to in the preceding article, if the agent has acted in good faith, the principal shall be liable in damages to the third person whose contract must be rejected. If the agent acted in bad faith, he alone shall be responsible.

A had the knowledge of the sale made by P. A shall be responsible for the damages.

85. Principal appointed Agent for a period of two years:

- I Principal may revoke the agency before the end of the two-year period.
- II Agent may withdraw from, the agency before the end of the two-year period.

In your evaluation of the foregoing statements:

- a. Both statements are true.
- b. Both statements are false.
- c. Only Statement I is true.
- d. Only Statement II is true.

ANSWER: A. Both statements are true.

ARTICLE 1920. The principal may revoke the agency at will, and compel the agent to return the document evidencing the agency. Such revocation may be express or implied. (1733a)

ARTICLE 1921. If the agency has been entrusted for the purpose of contracting with specified persons, its revocation shall not prejudice the latter if they were not given notice thereof. (1734)

Principal may revoke the agency through express or implied notice or revocation to his agent and the agent may also withdraw from the agency but he must notify the principal of his withdrawal.

86. These statements are presented to you:

- I A special power to sell includes the power to mortgage.
- II A special power to mortgage excludes the power to sell.

In your evaluation of the foregoing statements:

- a. Both statements are true.
- b. Both statements are false.
- c. Only Statement I is true.

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- d. Only Statement II is true.

ANSWER: D. Only statement II is true.

ARTICLE 1879. A special power to sell excludes the power to mortgage; and a special power to mortgage does not include the power to sell. (n)

Sale involves transfer of ownership, while mortgage allows the mortgagor to retain it. A special power to sell excludes the power to mortgage; and a special power to mortgage does not include the power to sell.

87. Almonte was given general powers of administration by Pampilo who was suffering from financial difficulties. In order to help Pampilo, Almonte sold the former's lot for double its market price, which amount was more than enough to improve Pampilo's financial condition. Is Pampilo bound by the sale made by Almonte?

- a. Yes, because the transaction resulted in saving Pampilo from his financial difficulties.
- b. Yes, because an agent is not considered to have exceeded his authority if he acted in a manner more advantageous to this principal.
- c. No, because Almonte acted in excess of authority.
- d. Yes, because the disposition of any property belonging to Pampilo is embraced in the authority he gave to Almonte.

ANSWER: C. No, because Almonte acted in excess of authority.

ARTICLE 1881. The agent must act within the scope of his authority. He may do such acts as may be conducive to the accomplishment of the purpose of the agency. (1714a)

Almonte must have acted only in the authority given to him by the principal though his intention was for the benefit of Pampilo. There is no reason for him to act in excess of his authority.

88. Primicias gave a special power of attorney to Amper to sell the former's lot for P100, 000. Amper offered to sell the lot to Letada who, however, was willing only to lend P100, 000 and take a mortgage on the lot. Amper thus mortgaged the lot and receives the loan proceeds of P100, 000. Which contract was binding of Primicias?

- a. The loan obligation of P100, 000.00.
- b. The real mortgage on the lot.
- c. Both (a) and (b), because the transactions were advantageous to Primicias. He gets P100, 000.00, while the mortgage allowed him to retain title to the lot.
- d. Neither (a) nor (b) because Amper acted in excess of authority.

ANSWER: D. Neither (a) nor (b) because Amper acted in excess of authority.

ARTICLE 1879. A special power to sell excludes the power to mortgage; and a special power to mortgage does not include the power to sell. (n)

Sale involves transfer of ownership, while mortgage allows the mortgagor to retain it. A special power to sell excludes the power to mortgage; and a special power to mortgage does not include the power to sell. Amper acted in excess of his authority so Primicia's was not binding in the contract.

89. Pomeranz, the owner of three cars, authorized Abrazado to sell Car 1 for P600, 000; Car 2 for P400, 000; and car 3 for P700, 000, all on cash basis. Later, Abrazado gave an account of his transactions to Pomeranz as follows:

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- I Car 1 – sold for P590, 000
- II Car 2 – sold for P450, 000 in three equal monthly installments of P150, 000.
- III Car 3 – sold for P720, 000 cash.

The sale that is binding on Pomeranz is the sale of:

- a. Car 1 and Car 3.
- b. Car 2 and Car 3.
- c. Car 3 only.
- d. None of the three cars, because Abrazado acted in excess of authority in each case.

ANSWER: C. Car 3 only.

ARTICLE 1882. The limits of the agent's authority shall not be considered exceeded should it have been performed in a manner more advantageous to the principal than that specified by him. (1715)\

The sale that is binding on Pomeranz is the sale of Car 3 only. Sale of Car 3 is more advantageous to Pomeranz. Abrazado will be considered to have exceeded his authority on sales of Car 1 & 2 because he sold the Car 1 in lower price and he exposed Pomeranz to the risk of credit not being collected in Car 2.

90. The following acts require a special power of attorney, except:

- a. To loan the money of the principal.
- b. To borrow money in behalf of the principal.
- c. To submit questions to arbitration.
- d. To lease real property for one year or less.

ANSWER: D. To lease real property for one year or less.

ARTICLE 1878. Special powers of attorney are necessary in the following cases:

- (1) To make such payments as are not usually considered as acts of administration;
- (2) To effect novations which put an end to obligations already in existence at the time the agency was constituted;
- (3) To compromise, to submit questions to arbitration, to renounce the right to appeal from a judgment, to waive objections to the venue of an action or to abandon a prescription already acquired;
- (4) To waive any obligation gratuitously;
- (5) To enter into any contract by which the ownership of an immovable is transmitted or acquired either gratuitously or for a valuable consideration;
- (6) To make gifts, except customary ones for charity or those made to employees in the business managed by the agent;
- (7) To loan or borrow money, unless the latter act be urgent and indispensable for the preservation of the things which are under administration;
- (8) To lease any real property to another person for more than one year;
- (9) To bind the principal to render some service without compensation;

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- (10) To bind the principal in a contract of partnership;
- (11) To obligate the principal as a guarantor or surety;
- (12) To create or convey real rights over immovable property;
- (13) To accept or repudiate an inheritance;
- (14) To ratify or recognize obligations contracted before the agency;

- (15) Any other act of strict dominion. (n)

The power to lease real property of the principal requires a special power of attorney. If the lease of real property is for one year or less, a special power of attorney is not necessary, as the same is merely an act of administration , and is deemed covered by an agency in general terms.

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PLEDGE, MORTGAGE AND ANTICHRESIS

1. One of the distinctions between pledge and mortgage is that pledge:
 - a. is constituted to secure the fulfillment of a principal obligation.
 - b. requires absolute ownership on the part of the person constituting the security.
 - c. requires that the one constituting the security must have the free disposal of the thing or be legally authorized for the said purpose.
 - d. requires the actual delivery of the thing given as security to the creditor or a third person by common agreement.

Answer:D. requires the actual delivery of the thing given as security to the creditor or a third person by common agreement

Under **Article 2093**, it states that *“In addition to the requisites prescribed in Article 2085, it is necessary, in order to constitute a contract of pledge, that the thing pledged be placed in the possession of the creditor, or of the third person by common agreement. (1863)”* Thus, it is required that the thing pledged must be delivered to the creditor or a third person by common agreement as a security for the performance of the obligation. Pledge is a REAL Contract perfected by delivery of the thing.

Article 2085 states the requisites essential to the contracts of pledge and mortgage. These are: *“(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.”* Therefore, letters a, b and c are all common requisites of pledge and mortgage.

2. In order to bind third persons, a pledge:
 - a. must be recorded with the Register of Deeds.
 - b. must be in a public instrument showing a description of the thing pledged and the date of the pledge.
 - c. is sufficient that it be in a private instrument showing a description of the thing pledged and the date of the pledge.
 - d. must be accompanied by an affidavit of good faith.

Answer:B.must be in a public instrument showing a description of the thing pledged and the date of the pledge

Stated in **Article 2096**, *“A pledge shall not take effect against third persons if the description of the thing pledged and the date of the pledge do not appear in a public instrument.”* Consequently, the pledge, in order to bind third persons, must be in a public instrument showing a description of the thing pledged and the date of the pledge. With the absence of the said instrument, the contract of pledge is not effective against the third persons.

If the contract is just between the parties, the pledge may be oral or in writing, whether private or public (c). And if it is a chattel mortgage, the contract must be in the Registry of Deeds and accompanied by an affidavit of good faith (a, d), Chattel Mortgage Law, Sec. 4 and 5, respectively.

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3. The following is required in order that a chattel mortgage will bind third persons.
- a. The chattel mortgage must be accompanied by an affidavit of good faith and recorded in the Chattel Mortgage Register.
 - b. The chattel mortgage must be in a public instrument showing a description of the thing mortgaged and the date of the chattel mortgage.
 - c. It is sufficient that the chattel mortgage be in writing, public or private.
 - d. The thing mortgaged must be delivered to the creditor.

Answer: A. the chattel mortgage must be accompanied by an affidavit of good faith and recorded in the Chattel Mortgage Register.

It is because a chattel mortgage must be in accordance with the **Chattel Mortgage Law. Section 4** states that for a chattel mortgage to be valid, “*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 Registry of Deeds of the province in which the mortgagor resides at the time of making the same.*” Accordingly, the chattel mortgage is not binding against any person if it is not recorded in the Registry of Deeds. Moreover, **Section 5** of the said law states that, “*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, or, in the absence of the mortgagee, his agent or attorney, shall make and subscribe an affidavit in substance as hereinafter, 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.*” So, to constitute a good chattel mortgage, it is necessary to file an affidavit of good faith to be appended to the mortgage and recorded therewith.

B, c and d are the requirements of a pledge not a chattel mortgage.

Note: If the chattel mortgage does not have an affidavit of good faith nor registered in the Registry of Deeds, the mortgage is still valid and binding between the parties. In that case, if the mortgagor will sell/mortgage the property to a third person who was in good faith and who registered the sale/mortgage, the third person will have a better right as against the first mortgagor.

4. The following is required in order that a real mortgage will bind third persons.
- a. The real mortgage must be accompanied by an affidavit of good faith and recorded with the Registry of Property.
 - b. The real mortgage must be in a public instrument showing a description of the thing mortgaged and the date of the real mortgage.
 - c. It is sufficient that the real mortgage be in writing, public or private.
 - d. The real mortgage must be recorded in the Registry of Property.

Answer:D. The real mortgage must be recorded in the Registry of Property.

As stated in **Article 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.*”

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Because of this, the real property, in order to bind third persons, must be recorded in the Registry of Property so the mortgagee may demand that the mortgage appear in a public instrument. If the instrument is not recorded, nevertheless, the mortgage is binding between the parties but not for the third party.

5. When is appropriation by the creditor of the thing given as security allowed in pledge, real mortgage and chattel mortgage?
 - a. When the thing given as security in the real mortgage is not sold at two public auctions.
 - b. When the thing given as security in pledge is not sold at two public auctions.
 - c. When the thing given as security in the chattel mortgage is not sold at two public auctions.
 - d. No appropriation is allowed in either pledge, real mortgage or chattel mortgage.

Answer: B. When the thing given as security in pledge is not sold at two public auctions.

As a rule, the pledgee or mortgagee cannot AUTOMATICALLY APPROPRIATE for himself the thing subject of the Pledge, chattel mortgage or real estate mortgage. Any provision in the pledge or mortgage agreement which allows the mortgagor or mortgagee to automatically appropriate the pledged or mortgaged property is called *Pactum Commissorium* and is considered as VOID.

However, Under **Article 2112**, “if at the first auction the thing is not sold, a second one with the same formalities shall be held; and if at the second auction there is no sale either, the creditor may appropriate the thing pledged.” As explained in the article, there should be a first auction where the thing is sold. If at the first auction, the thing is not sold, there should be second auction with same procedure. However, if there is still no sale at the second auction, the creditor shall be obliged to give the appropriation for his full entitlement. But, it should be noted that the appropriation of the creditor is optional on his part.

6. This is a stipulation in pledge or mortgage providing that the ownership of the thing given as security will pass to the pledgee or mortgagee upon default of the debtor.
 - a. *Constitutum possessorium*
 - b. *Pactum commissorium*
 - c. Legal subrogation
 - d. Redemption

Answer: B. *Pactum commissorium*

Under the discussion of **Article 2088** Sales, Agency and Credit Transaction by Fidelito R. Soriano, p. 457, *Pactum commissorium* is a stipulation in a pledge or mortgage which provides for automatic forfeiture, i.e., that ownership of the thing pledged or mortgaged shall pass to the creditor by the mere default of the debtor.

7. D borrowed Php30,000.00 from C. To secure the debt, D pledged his ring, wristwatch and necklace. Before the debt could be paid, C died leaving X, Y and Z as heirs. By agreement among the heirs who inherited the credit, the ring

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would secure the share of X of the credit, the wristwatch the share of Y and the necklace the share of Z. Later, D pays X Php10,000.00.

- a. D can demand the extinguishment of the pledge of the ring.
- b. X may release the pledge of the ring.
- c. The pledge of the ring will remain until the shares of Y and Z are paid by D.
- d. D can demand the extinguishment of the pledge of the ring, wristwatch and necklace because there has been partial payment.

Answer: C. The pledge of the ring will remain until the shares of Y and Z are paid by D.

As stated under **Article 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.”

The pledge of the ring will remain until the shares of Y and Z are paid by D. There is the need of the fulfillment of payment of obligation before all the heirs can demand for the return of the things pledged to the pledgee because a pledge or mortgage is inseparable. Thus, even it is divided among the heirs of C, the payment of P10, 000 will not extinguish the pledge of the ring, wristwatch and necklace.

8. The following maybe the object of pledge, except:
 - a. all movables within the commerce of men which are susceptible of possession.
 - b. bills of lading.
 - c. shares of stock.
 - d. parcels of land.

Answer: D. parcels of land

Because as stated in **Article 2094**, *“all movables which are within the commerce may be pledged, provided they are susceptible of possession.”*In addition to that, in **Article 2095**, *“incorporeal rights, evidenced by negotiable instruments, bills of lading, shares of stock, bond, warehouse receipts and similar documents, may also be pledged.”*

Since parcel of land is neither a movable property nor an example of incorporeal rights but an illustration of an immovable or a real property, it cannot be an object of pledge.

9. A kind of mortgage which lacks the formalities required by law but nevertheless shows the intentions of the parties to secure a debt with real property is known as:
 - a. conventional mortgage.
 - b. voluntary mortgage.
 - c. equitable mortgage.
 - d. legal mortgage.

Answer: C. Equitable mortgage

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Because an equitable mortgage is one which, although it lacks the proper formalities of a mortgage, shows the intention of the parties to make the property as a security for a debt.

10. The debtor or pledgor has the following rights, except to:
- a. ask for the return of the thing pledged after he has paid the debt, its interest and with expenses with a proper case.
 - b. continue to be the owner of the thing pledged unless it is expropriated.
 - c. require the deposit of the thing with a third person if it is in danger of being impaired or loss through the negligence of willful act of the pledgee.
 - d. alienate the thing pledged without the consent of the pledgee.

Answer: D. alienate the thing pledged without the consent of the pledged

Provision: Article 2097

Because stated in the article above, the debtor or pledgor can alienate the thing pledged as long as there is consent of the creditor or pledgee.

11. The creditor/pledgee has the following rights, except to:
- a. retain the thing in his possession until the debt is paid.
 - b. use the thing pledged even without authority if such use is necessary for its preservation.
 - c. demand reimbursement of the expenses made for the preservation of the thing.
 - d. automatically appropriate the thing pledged upon default of the debtor in the payment of his debt.

Answer: D. Automatically appropriate the thing pledged upon the default of the debtor in the payment of his debt

Provision: Article 2112

This article states that, the creditor or pledgee can only automatically appropriate the thing pledged not upon default of the debtor in the payment of his debt but after the second auction of the thing pledged failed.

12. On March 1, 2010, D obtained loan of Php10,000.00 from C. To secure the debt which is payable on May 1, 2010, D pledged a promissory note amounting to Php12,000.00 which was executed in his favor by M. The promissory note is due April 25, 2010 and properly endorsed by D and C.
- a. On April 25, 2010, C can collect the note of Php12,000.00 from M. The entire proceeds will belong to C.
 - b. On April 25, 2010, C can collect the note of Php12,000.00 from M. However, he must give Php2,000.00 to D.
 - c. C cannot collect from M. D is the one entitled to collect the note from M.
 - d. C cannot collect from M. He must sell the note at public auction at maturity if D cannot pay.

Answer: B. On April 25, 2010, C can collect the note of Php12,000.00 from M. However, he must give Php2,000.00 to D.

Provision: Article 2118

Because on the due date of the promissory which is April 25, 2010, C can collect the note of Php12,000.00 from M. However, he must give Php2,000.00 to D because the amount of indebtedness is Php10,000.00 and the excess should be given to the pledgor since the promissory note amounted to Php12,000.00.

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13. A third person who pledges his property to secure another person's debt is released from liability in the following cases except:
- when the creditor voluntarily accepts an immovable property in payment of debt.
 - when the creditor voluntarily accepts a movable property in payment of debt.
 - if an extension of time is granted to the debtor by the creditor with the pledgor's consent.
 - if through some acts of the creditor, the pledgee cannot be subrogated to the rights, mortgages and preferences of the creditor.

Answer: C. If an extension of time is granted to the debtor by the creditor with the pledgor's consent.

Provision: Article 2079 and 2080

Because stated in the above article, a third person is released from liability if an extension of time is granted to the debtor by the creditor WITHOUT the pledgor's consent. Thus, if there is a consent of the pledgor, he is still bound with the liability.

14. A pledge is extinguished through any of the following, except:
- sale of the thing pledged.
 - appropriation of the thing pledged after the thing is not sold at one public auction.
 - written abandonment of the pledge in writing.
 - return of the thing pledge.

Answer: B. Appropriation of the thing pledged after the thing is not sold at one public auction.

Provision: Article 2112

Stated in the above provision, pledge and also the principal obligation is extinguished through appropriation of the thing pledged after the thing is not sold at two public auction not in only one public auction.

15. D pledged his 100 shares of stock of San Miguel Corporation to C to secure his debt of Php5,000.00. On due date, D was not able to pay the debt, so C caused the sale of the share at public auction. The share of stock were sold at Php4,500.00.00.
- To extinguish the obligation, C may recover the deficiency of Php500.00 from D if there is a stipulation to that effect.
 - To extinguish the obligation, C may recover the deficiency even if there is no stipulation to that effect.
 - The obligation is extinguished even if there is a deficiency of Php500.00. Accordingly, C can no longer recover the deficiency.
 - The obligation is extinguished only if the proceeds of sale amount to Php5,000.00 or more.

Answer: C. The obligation is extinguished even if there is a deficiency of Php500.00. Accordingly, C can no longer recover the deficiency

Provision: Article 2115

Based on the provision, as a general rule in the sale of the thing PLEDGED in a public auction wherein the price is less than the amount of the debt, the creditor can no longer recover the deficiency. The same rule still applies even if there is a

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stipulation that the pledgee can recover deficiencies. Such stipulation is considered as void.

Note : The above rule is only applicable in case of pledge. IN case of chattel mortgage or real estate mortgage, the mortgagee has the right to recover deficiency UNLESS the provision of the Recto Law is applicable (meaning there is a sale in installment and the chattel mortgage was constituted on the thing subject of the sale).

16. This refers to the right of a person to retain a thing until he receives payment of his claims in the cases provided by law such as one who has executed work on a movable.

- a. conventional pledge.
- b. voluntary pledge.
- c. legal pledge.
- d. chattel mortgage.

Answer: C. legal pledge.

Provision: Article 1994

Because based on the given article, a legal pledge or pledge by operation of law refers to the right of a person to retain a thing until he receives payment of his claim.

17. One of the following may not be an object of a real mortgage:

- a. Land, buildings, roads and construction of all kinds adhered to the soil.
- b. Fertilizer actually used on a piece of land.
- c. Animal houses, pigeon houses or other breeding places intended by the owner to be permanently attached to the land, including the animals therein.
- d. Growing fruits that have been gathered from trees planted on land.

Answer: D. Growing fruits that have been gathered from trees planted on land.

Provision: Article 2124

The article states that, the object of a real mortgage may be an immovable or alienate real rights in accordance with the laws imposed upon immovable. Based on the above choices, all of them, except letter D, can be a valid object of a real mortgage.

Note: A movable property which became part and parcel of a real property and attached therein can already be considered as an immovable or real property and can be a valid object of real estate mortgage.

18. D borrowed Php100,000.00 from C. To secure the debt, D mortgaged his land and building in favor of C. The mortgage is registered with the Registry of Property. Sometime later, D sold the land and building to X who was not aware of the mortgage of the land and building. Based on the above information, which of the following statements is false?

- a. X must respect the mortgage although he was not a party thereto.
- b. X was not bound by the mortgage because he was not aware of it.
- c. If C forecloses the mortgage and the proceeds of the foreclosure sale are not enough to pay for the debt, C can recover the deficiency from D.
- d. If C forecloses the mortgage and the proceeds of the foreclosure sale exceed the amount of debt, D is entitled to the excess.

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Answer: A.

Since the mortgage was registered before the Registry of Deeds, the same become valid and binding against a third person. And as between a registered mortgage and a subsequent sale, the right of the buyer is INFERIOR to the registered mortgage. The registration before the Registry of Deeds is a sufficient/constructive notice to all third persons who will deal with the said property.

19. It is the right of the mortgagor to redeem the property that was mortgaged after it was sold.

- a. Equity of redemption.
- b. Right of redemption.
- c. Right of subrogation.
- d. Right of pre-emption.

Answer: B. Right of redemption.

Because right of redemption refers to the of the mortgagor to repurchase the property within a certain period after it was sold, EXTRAJUDICIALLY, for the payment of the mortgage debt. The usual period for redemption is ONE YEAR counted from the time of the REGISTRATION OF THE CERTIFICATE OF SALE.

Note: Right of redemption is available only if the foreclosure sale was made Extrajudicially, meaning, without court hearing. If the foreclosure was made Judicially in accordance with the Rules of Court, there is NO right of redemption. What exist is an Equity of Redemption equivalent to 90 days from the time of the registration of the judicial sale before the Registry of Deeds.

20. A chattel mortgage may have the following as object, except:

- a. motor vehicles.
- b. shares of stock.
- c. vessels.
- d. floating docks and structures which are intended by their nature and object to remain at a fixed place on a river, lake or coast.

Answer: D. floating docks and structures which are intended by their nature and object to remain at a fixed place on a river, lake or coast.*Provision: The Chattel Mortgage Law: Section 2*

The provision states that only personal property may be the object of the chattel mortgage. Since floating docks and structures intended to be at a fixed place, they are considered as real properties. As such, they cannot be an object of chattel mortgage.

Note: In case of properties which are naturally considered as personal properties but became real properties because of their attachment to a real property (such as house, machineries attached to the soil, etc.), the parties may agree that the said properties be considered as movable property or chattel for the purpose of chattel mortgage. As such, they can still be a valid object of chattel mortgage. However, the said chattel mortgage will only be valid as between the parties. They will not be valid against a third person who dealt with the owner for the said property.

21.D borrowed Php 50,000.00 from C. the obligation bears interest of 10% per annum. To secure the debt, D agreed with C that the fruits from the agricultural lot of D

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shall answer for the interest and the principal obligation. Assuming the form required by law was complied with, the contract entered into between D and C for the application of the fruits of lot to the interest and principal obligation is known as:

- a. antichresis.
- b. pledge.
- c. real estate mortgage.
- d. chattel mortgage.

Answer: A. Antichresis

As stated in Article 2132, By the contract of antichresis, the creditor acquires the right to receive the fruits of an immovable of his debtor, with the obligation to apply them to the payment of the interest, if owing, and thereafter to the principal of his credit.

22. For its validity, the contract referred to in the preceding number:
- a. must be in writing, whether public or private.
 - b. must be in a public instrument.
 - c. may be in any form, whether oral or written.
 - d. may be inferred from the conduct of the parties.

Answer: A. must be in writing, whether public or private.

It is stated in Article 2134, the amount of the principal and of the interest shall be specified in writing; otherwise, the contract of antichresis shall be **void**. The said article applies to contract of antichresis and the problem no. 21 is so.

23. The measurement of the application of the fruits to the interest and principal obligation in the contract referred to in No. 21 is the actual value of the fruits at the time they are:
- a. gathered.
 - b. applied.
 - c. gathered less reasonable depreciation, if any, of the immovable.
 - d. applied less reasonable depreciation, if any, of the immovable.

Answer: B. applied.

It is stated in Article 2133, 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.

24. Which of the following statements is incorrect with respect to the contract referred to in No.21?
- a. An immovable belonging to a person other than the debtor may secure the obligation of the debtor.
 - b. The contract subsists as long as the obligation of the debtor remains unpaid.
 - c. creditor may appropriate for himself the immovable if the debtor fails to pay his obligation.
 - d. The debtor may be compelled by the creditor to enter the enjoyment of the immovable if the creditor desires to exempt himself from the taxes and charges upon the estate and expenses for its preservation and repair.

Answer: C. creditor may appropriate for himself the immovable if the debtor fails to pay his obligation.

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It is in contrast to Article 2137, (1) *the creditor does not acquire the ownership of the real estate for nonpayment of the debt within the period agreed upon. (2) Every stipulation to the contrary shall be void. But the creditor may petition the court for the payment of the debt or the sale of the real property. In this case, Rules of Court on the foreclosure of mortgage shall apply.*

A and B is correct since *third persons as owners of immovable property, may be the owner of the immovable given as security in a contract of antichresis. Antichresis is an indivisible contract. The contract subsists as long as the principal obligation remains unpaid.*

D is correct under since *the debtor is compelled by the creditor into enjoyment of the property, unless there is stipulation to the contrary and this right is available to the creditor if he desires to exempt himself from the obligation to pay the taxes and charges upon the property the expenses for its preservation and repair.*

25.D pledged his computer to secure a loan which he obtained from C. the debt which amounts to Php10,000.00 is due after 60 days. Before the due date, C executed an instrument abandoning the pledge.

- I. D's debt of Php10,000.00 is extinguished.
- II. The pledge of the computer is extinguished even if D has not yet accepted the renunciation of pledge.
- III. The pledge is not extinguished until C returns the ring to D.
- IV. The pledge is extinguished even if C has not returned the ring to C.

Based on the foregoing, which is false among the four statements?

- a. I and III
- b. II and IV
- c. I and II
- d. II and III

Answer: A. I and III

Statements I and III is in contrast with Article 2111. A statement in writing by the pledge that he renounces or abandons the pledge is sufficient to extinguish the pledge. For this purpose neither the acceptance by the pledgor or owner, nor the return of the thing pledged is necessary, the pledgee becomes a depositary.

In application with the problem, the abandonment of C caused the extinguishment of D's pledge not its debt and the pledge is already extinguish upon the abandonment even if C still doesn't return the ring. Statements II and IV comply with the said article.

26. In a contract of pledge, the pledgee/creditor may do the following, except to:
- a. use the thing pledged for purposes of preservation.
 - b. retain the thing pledged until the principal obligation is satisfied.
 - c. ask for a substitute if he was deceived on the substance or quality of the thing pledged.
 - d. sell the thing pledged without notice to the pledgor/debtor.

Answer: D. Sell the thing pledged without notice to the pledgor/debtor.

It conflicts with the provision (second sentence) under Article 2112, This sale shall be made at a public auction, and with notice to the debtor and the owner of

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the thing pledged in a proper case, stating the amount for which the public sale is to be held.

A complies under Article 2104. As a general rule, the pledgee cannot use the thing pledged. However, he may use the thing pledged when the use of the thing is required for its preservation.

B abides by Article 2098. The contract of pledge gives a right to the creditor 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.

C conforms to Article 2109. If the creditor is deceived on the substance or quality of the thing pledged, he may either claim another thing in its stead, or demand immediate payment of the principal obligation.

27. The following are the characteristics of a chattel mortgage, except:
- a. the mortgagor must be the absolute owner of the property mortgaged.
 - b. it is an accessory contract.
 - c. it involves movable or immovable property.
 - d. the deed of chattel mortgage must be accompanied by an affidavit of good faith to be binding against third persons.

Answer: C.

All are characteristics except C, Under the reason of Article 2140, Real mortgage is constituted on immovables while chattel mortgage is constituted on movables.

Section 4 of Chattel Mortgage Law (Act no. 1508, as amended) provides that the mortgagor must be the absolute owner of the thing mortgaged.

As for B and D, they underlie Article 2140. One of the important characteristics of Chattel Mortgage is it is an accessory and must be registered and accompanied by an affidavit of good faith to take effect against third persons.

28. The following elements are common in both pledge and mortgage, except:
- a. the contract is constituted to secure the fulfillment of a principal obligation.
 - b. the property on which the security is constituted must be delivered to the creditor.
 - c. the debtor must be the absolute owner of the property pledged or mortgaged.
 - d. the debtor must have free disposal of the property pledged or mortgaged.

Answer: B.

Because all of the above statements, except letter B, are elements common in both pledge and mortgage.

In contract of pledge, since the contract is a real contract, the thing pledged should be delivered to the creditor. On the other hand, in chattel mortgage, it is not necessary for the contract to be effective.

In fact, if the movable thing was delivered to the mortgagee, the contract will be considered as a contract of pledge, not a chattel mortgage, even if the contract is labeled as Chattel Mortgage.

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29. In the sale of the thing pledged at public auction, which of the following statements is incorrect?
- The sale extinguishes the principal obligation regardless of the amount of the proceeds of sale.
 - The pledgee can appropriate the thing pledged if it is not sold at the first public auction.
 - The creditor has no right to recover deficiency.
 - The debtor is not entitled to the excess of proceeds unless there is an agreement.

Answer: B

B is incorrect as stated in Article 2112, (3rd sentence) If at the first auction the thing is not sold, a second one with the same formalities shall be held; and if at the second auction there is no sale either, that is the only time that the creditor may appropriate the thing pledged. So the appropriation by creditor is only allowed if the thing given as security in pledge is not sold at two public auctions.

Letters A, C and D conform to Article 2115. The sale of the thing pledged shall extinguish the principal obligation, whether or not the proceeds of the sale are equal to the amount of the principal obligation, interest and expenses in a proper case. If the price of the sale is more than the said amount, the debtor shall not be entitled to excess, unless it is otherwise agreed.

If the price of the sale is less, neither shall the creditor be entitled to recover the deficiency, notwithstanding any stipulation to the contrary.

30. Which of the following is a similarity of chattel mortgage and pledge?
- Deficiency is recoverable in case of sale of the thing pledged/mortgaged.
 - The object of the contract is a movable property.
 - The excess of the proceeds of sale over the amount of the obligation belongs to the pledgor/mortgagor.
 - An affidavit of good faith is required to bind third persons.

Answer: B is the answer.

According to Article 2094, All movables are within commerce may be pledged, provided they are susceptible of possession. Same with Article 2140, under its characteristics, Chattel Mortgage is constituted on movables.

For letter A, In Pledge, if the price of the sale is less, the creditor shall not be entitled to recover the deficiency, notwithstanding any stipulation to the contrary. In chattel mortgage, the deficiency can be recovered, except in the case of personal property sold in installments where Recto Law is applicable.

For letter C and D, Pledge must be in a public instrument showing a description of the thing pledged and the date of the pledge to bind third persons while a chattel mortgage must be registered and accompanied by an Affidavit of good faith to take effect against third persons.

Further, in pledge, the excess of the proceeds of sales is retained by the pledgee unless there is a stipulation that it shall be given to the pledgor as in the case of legal pledge. In chattel mortgage, the excess of the proceeds of sale belongs to the mortgagor even if there is no stipulation to that effect

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- 31.D borrowed Php100,000.00 from C. the loan is secured by a mortgage of T's lot. On due date, D was unable to pay. Accordingly, C foreclosed the mortgaged on the lot and during the public auction, the lot was sold for Php 90,000.00.
- C can recover the deficiency from D.
 - C can recover the deficiency from T.
 - C can recover the deficiency from both D and T.
 - C can no longer recover the deficiency.

Answer: A is the answer.

The reason is under Article 2140, in case of foreclosure of a REAL ESTATE MORTGAGE, any deficiency after the proceeds of the sale was applied on the debt can be recovered.

32. Consider the following cases:
- D owes C Php10,000.00. To secure the debt, D pledged his cell phone. D defaults. The cell phone is sold for Php9,000.00 at the public auction.
 - D bought a car for Php360,000.00 from C. The price, which is payable in 12 equal monthly installments of Php30,000.00, is secured by a chattel mortgage on the car. After paying 2 installments, D defaults in the payment of 3 installments. C forecloses the chattel mortgage and the car is sold at the public auction for Php280,000.00.

The deficiency is recoverable in:

- Both I and II.
- I only.
- II only.
- No deficiency is recoverable in both I and II.

Answer: The answer is D.

No deficiency can be recoverable in both situations. Statement I is unrecoverable because for pledge under Article 2115, (3rd sentence) If the price of the sale is less, the creditor is not entitled to recover the deficiency, notwithstanding any stipulation to the contrary. II is also unrecoverable because in chattel mortgage sold in installments, under reasons for Article 2140, the deficiency can be recovered, except in the case of personal property sold in installments.

33. D pledged his diamond ring and gold watch to C to secure a debt of Php10,000.00.
- If D defaults the ring and watch are sold at public auction, C may recover any deficiency if the proceeds of sale amount to less than Php10,000.00.
 - If D defaults, C may automatically appropriate for himself the ring and the watch.
 - If D pays C Php5,000.00, D may demand either the return of the ring or the watch.
 - If C renounces the pledge in writing, the pledge is extinguished although C continues to possess the ring and the watch.

Answer: D.

A statement in writing by the pledgee that he renounces or abandons the pledge is sufficient to extinguish the pledge. For this purpose, neither the acceptance by the pledgor or owner, nor the return of the thing pledged is necessary, the pledgee becoming a depositary. (Article 2111)

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34. Alpine Corporation obtained a loan amounting to Php1,000,000.00 from Eastern Bank. To secure the obligation, P, the president of Alpine, mortgaged his own building in favor of the bank. The contract of loan and deed of mortgage have been signed by the parties but have not been acknowledged before a notary public.
- Alpine Corporation and P is one and the same person.
 - P may validly mortgage his own property to secure the obligation of Alpine to the bank.
 - The mortgage is not yet binding between the parties since it has not been notarized.
 - The mortgage contract can stand independently from the contract of loan.

Answer: B.

Article 2085 states the common requisites of pledge and mortgage such as:

- That they be constituted to secure the fulfillment of a principal obligation*
- That the pledger or mortgagor be the absolute owner of the thing pledged or mortgaged*
 - Ownership at the time pledge or mortgage is constituted*
 - Third persons may mortgage their property*
- 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.*

35. Pledge and real mortgage are similar in what respect?
- The object of the contract.
 - Binding effect against third persons.
 - Recovery of deficiency.
 - The fact that third persons may pledge or mortgage their property to secure another person's debt.

Answer: D.

As stated in the last paragraph of Article 2085 under Title XVI- Provisions common to pledge and mortgage, third persons who are not parties to the principal obligation may secure the obligation by either pledging or mortgaging their own property.

What is important is that the pledgor is the absolute owner of the thing pledged or mortgage. It is not necessary that he is the borrower in the loan agreement.

36. A, B and C obtained a loan from X in the amount of Php60,000.00. To secure the debt, A pledged his wristwatch; B, his necklace; and C, his diamond ring. A pays his share of the debt amounting to Php20,000.00.
- The obligation of A, B and C is solidary.
 - The obligation of A, B and C is joint.
 - A may demand the return of the wristwatch after payment of his share of the debt.
- I and III are true.
 - II and III are true.
 - I and III are false.
 - II and III are false.

Answer: C.

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In this situation, the liability of A, B and C is considered as a joint obligation since there is no indication that the liability is such of a solidary obligation. If from the law, or the nature or the wording of the obligations is silent or does not clearly state whether it is a solidary or joint, the credit or debt shall be presumed to be divided into as many shares as there are creditors or debtors, the credits or debts being considered distinct from one another. (Article 1208) Therefore, statement I is false and statement II is true.

A pledge agreement is INDIVISIBLE. Article 2090 states that the indivisibility of a pledge or mortgage is not affected by the fact that the debtors are not solidary liable. Therefore, A cannot demand the return of his pledged wristwatch until the full payment of the entire obligation although the debt is considered as joint. Hence, statement III is false.

37. D obtained an interest-bearing loan from ABC Bank amounting to Php100,000.00. To secure the obligation, D mortgaged his building to ABC Bank. As added requirement of the loan, fire insurance on the building was also obtained by D with ABC Bank as beneficiary. Before the due date of the loan, the building was razed by fire.

- a. The loan of D amounting to Php100,000.00 is extinguished but the security remains.
- b. Only the security for the obligation is extinguished.
- c. The proceeds of the insurance policy will be the new security of the loan obligation which will subsist.
- d. Both the loan and the mortgage security are extinguished.

Answer: C.

It is because the object of the contract was destroyed leaving the fire insurance on the said building to become the new object of the contract. Since the primary object has been destroyed, the remaining can be applied as new security for the contract since it already existed before the contract has been executed.

38. D borrowed Php20,000.00 from C. To secure the obligation, D pledged his ring to C. Before the due date, C executed a public instrument stating that he was abandoning the pledge and informed D about it. In the meantime, the ring remained in the possession of C.

- a. D must accept the renunciation in order to extinguish the pledge.
- b. C must return the ring to D to extinguish the pledge.
- c. D's loan obligation is extinguished by reason of the abandonment of the pledge.
- d. The pledge of the ring is extinguished although D does not accept the renunciation or has not yet received the ring from C.

Answer: D.

Article 2111 states, a statement in writing by the pledgee (whether public or private instrument) that he renounces or abandons the pledge is sufficient to extinguish the pledge. For this purpose, neither the acceptance by the pledgor or owner, nor the return of the thing pledged is necessary, the pledgee becoming a depositary. Therefore, whether D accepts or rejects C's abandonment, or whether C return or not the ring to him, will make the pledge extinguished.

39. To bind third persons, the following contracts must comply with certain formalities/requirements:

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- I. A contract of pledge must be in a public instrument showing the date of the pledge and a description of the thing pledged and recorded with the Registry of Property.
- II. A contract of real estate mortgage must be recorded with the Registry of Property.
- III. A contract of chattel mortgage must contain an affidavit of good faith and be recorded in the Chattel Mortgage Register.
 - a. All statements are true.
 - b. I and II are true.
 - c. I and III are true.
 - d. II and III are true.

Answer: A. All statements are true.

To take effect against third persons, the pledge must be in public instrument showing a description of the thing pledged and the date of the pledge. (Article 2096) Hence, statement I is true.

The real mortgage must be recorded in the Registry of Property. (Article 2125) However, the real mortgage is nevertheless binding against third persons who have knowledge of the same. Hence, statement II is true.

Chattel Mortgage to be effective against third persons, an affidavit of good faith must be appended to the Deed of Chattel Mortgage and recorded therewith in the Chattel Mortgage Register. (Section 4, Chattel Mortgage Law) Hence, statement III is true.

40. Mary Montes and MelanyManalo obtained a loan of Php100,000.00 from Patricia Palma. The debtors executed a promissory note which reads as follows:

To secure the loan, Mary Montes pledged her diamond ring, while MelanyManalo executed a mortgage on her lot.

- a. Mary Montes may demand the return of her diamond ring if she pays her share of the debt, while MelanyManalo's share remains outstanding.
- b. MelanyManalo may demand the cancellation of the mortgage on her lot if she pays her share of the debt, while Mary Montes' share remains outstanding.
- c. Both Mary Montes and MelanyManalo must pay the total amount of the debt before Mary Montes could demand the return of the diamond ring, and MelanyManalo the cancellation of the mortgage on her lot.
- d. Patricia Palma may demand payment of the amount of Php100,000.00 from either Mary Montes or MelanyManalo.

Answer: C.

Article 2089 states that a pledge or mortgage is indivisible, even though debt may be divided among the successors in interest of the debtor or of the creditor. This means that the pledge or mortgage remains for as long as the obligation it secures has not been paid in full.

41. As a general rule, any deficiency in the foreclosure sale may be recovered in the following contracts, except in:

- a. chattel mortgage.

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- b. real mortgage.
- c. conventional pledge.
- d. antichresis.

Answer: C.

In case of Pledge, the rule is that the creditor cannot recover the deficiency resulting from a foreclosure sale.

42. As a general rule, in case of excess of the proceeds of the foreclosure sale over the creditor's claim, the excess shall belong to the creditor in:
- a. chattel mortgage.
 - b. real mortgage.
 - c. conventional pledge.
 - d. antichresis.

Answer: C.

Also, in case of pledge, any excess of the proceeds from a foreclosure sale as against the amount of the obligation shall belong to the creditor unless there is an agreement to the contrary.

43. Recording in the Registry of Property in the appropriate book is required for the validity of the contract of:
- a. chattel mortgage.
 - b. real mortgage.
 - c. conventional pledge.
 - d. antichresis.

Answer: A.

A chattel mortgage is a contract whereby personal property is recorded in the Chattel Mortgage Register as a security for the performance of the obligation. (Article 2140)

44. The delivery required in pledge for its perfection and validity is:
- a. actual delivery.
 - b. execution of public instrument.
 - c. execution of private document.
 - d. transfer of title of ownership.

Answer: A.

Article 2093 states that, in order to constitute the contract of pledge, that the thing pledged be placed in the possession of the creditor or of a third person by agreement.

45. D obtained a loan from C. To secure the debt, D pledged his ring to C. Before due date, C executed a private document stating that he was abandoning the pledge. In the meantime, C remain in possession of the ring and D has yet to express his acceptance of the abandonment of the pledge.
- a. The pledge of the ring is extinguished.
 - b. The pledge is not extinguished until C returns the ring.
 - c. The pledge is not extinguished unless D accepts the abandonment since it is an act of generosity.

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- d. The pledge is not extinguished because the abandonment should be in a public instrument.

Answer: A.

The answer is A because, according to Art. 2111, a statement in writing by the pledgee that he renounces or abandons the pledge is sufficient to extinguish it. Neither the acceptance by the owner nor the return is necessary.

46. D contracted the services of T, a tailor, to sew D's pair of pants with D providing the cloth for the purpose. The parties agreed that T's labor shall be Php500.00. The security that T holds for the payment of the labor agreed upon is in the nature of:
- chattel mortgage.
 - legal pledge.
 - conventional pledge.
 - antichresis.

Answer: B.

B because a legal pledge is a pledge which is created by operation of law according to Article 2121. Based on the above transaction, the pledge was created by the mere agreement of T to render his service to D and T retain the thing until he receives payment from D. In reference to Article 1707, the laborer's wages shall be a lien on the goods manufactured or work done.

47. The requirement that the thing on which the security is constituted must be delivered by the debtor to the creditor or a third person by common agreement refers to the characteristic of a pledge being:
- an accessory contract.
 - a real contract.
 - an indivisible contract.
 - a consensual contract.

Answer: B.

A pledge is a real contract which requires delivery for its perfection.

48. The creation of lien on the property upon which it is imposed, whoever may be the possessor of the property, to the fulfillment of the obligation for whose security it was constituted refers to the characteristic of a real mortgage being:
- An accessory contract.
 - An indivisible contract.
 - An inseparable contract.
 - A real property in itself.

Answer: C.

A real mortgage is an inseparable contract when it subjects the property upon which it is imposed, whoever the possessor may be to the fulfillment 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.

49. D obtained a loan of Php5,000.00 from C. The obligation is secured by a pledge of D's ring which he delivered to C. Both the loan and the pledge were in a private instrument. While the loan was outstanding, D sold the ring through a public instrument to X who was not aware of the pledge. Under the deed of sale, D obliged himself to deliver the ring physically to X after a week. Before X could obtain actual delivery of the ring, he learned that D had earlier pledged the same and that C

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was selling the ring in a public sale because of D's default in the payment of his debt.

- a. X is bound by the pledge made by D to C.
- b. X is not bound by the pledge made by D to C.
- c. C can sell the ring to satisfy his claim.
- d. X did not acquire ownership of the ring from D.

Answer: B.

The answer is B because according to Article 2096, a pledge shall not take effect against third persons if the description of the thing pledged and the date of the pledge do not appear in a public instrument. In the situation, X is not aware of the pledge.

50. D borrowed Php10,000.00 from C the debt being payable in 6 months. To secure the debt, D promised to pledge his ring within 2 weeks. Two weeks had already lapsed but D had not yet constituted the pledge.

- I. C may demand the constitution of the pledge.
- II. D loses the benefit of the period given to him to pay the debt, hence, C may demand immediate payment of the debt.
 - a. Both statements are true.
 - b. Both statements are false.
 - c. I is true; II is false.
 - d. I is false; II is true.

Answer: A.

A is the correct answer because in Statement I, according to Article 2085, one of the essential requisites of pledge is that they be constituted to secure the fulfilment of a principal obligation. Since there is no constitution of the pledge, C can demand for the constitution of the pledge.

He can also demand the immediate payment of the debt since when he failed to deliver the security he promised, he loses the benefit of the period. The effect of it is that the debt will immediately become demandable.

51. Carmona, a creditor of Delantes, telephoned the latter to inform him that he (Carmona) was abandoning the pledge of the ring which Delantes had constituted to secure his loan obligation to Carmona amounting to Php20,000.00. Carmona told Delantes that he would personally deliver the ring to Delantes within one week.

- a. Both the loan obligation and the pledge are extinguished by the abandonment.
- b. Neither the loan obligation nor the pledge is extinguished by the abandonment.
- c. Only the loan obligation is extinguished.
- d. Only the pledge is extinguished.

Answer: B is the correct answer.

The pledge is not extinguished because according to Article 2111, a statement in *writing* by the pledgee that he is abandoning the pledge is required in order to extinguish it. Since there was no statement in writing, the pledge is not deemed abandoned nor extinguished.

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52. D applied with C for a loan of Php100,000.00 at 10% interest per annum promising to constitute a mortgage on his condominium unit to secure the loan within one month from the time he received the proceeds. On the strength of D's promise to furnish a security, C granted the loan application and gave D the option to pay the loan on or before the lapse of one year. D, however, failed to constitute the mortgage on his condominium unit within one month as he had promised. A list containing the following possible remedies were presented to you by C for evaluation:

- I. Demand immediate payment of the debt from D.
- II. Demand that D constitute the mortgage as he had promised.
- III. Foreclose the mortgage on the condominium to satisfy the claim.

Which of the foregoing possible remedies may you validly recommend to C?

- a. I or II.
- b. II or III.
- c. I or III.
- d. I, II or III.

Answer: A.

Because it is indicated in Article 2085 (1), since there is no constitution of the mortgage, C can demand for the constitution of the mortgage or he can demand immediate payment of the debt. It is because no mortgage is constituted, no security has been made and there is no condominium to foreclose.

53. D, your client, is applying for a loan of Php200,000.00 with C. He is proposing to C that he will secure the loan with a chattel mortgage on his car. He made a list containing the items below and asks you to check whether they are correct:

- I. D will no longer be liable for deficiency to C in case he defaults in the payment of the loan and the car is sold at the foreclosure sale for less than Php200,000.00.
- II. D and C must record the deed of chattel mortgage in the Chattel Mortgage Register for the validity of the chattel mortgage.
- III. D must execute an affidavit of good faith to be appended to the deed of chattel mortgage to bind third persons.
- IV. D will be entitled to the excess of the proceeds of the foreclosure sale over the loan obligation in case he defaults in the payment of the loan.

Which of the foregoing will you relay to D as correct?

- a. I, II and III.
- b. I, II and IV.
- c. I, III and IV.
- d. II, III and IV.

Answer: D.

D because of the following reasons:

Statement I is false because in chattel mortgage, if the property is foreclosed and there is a deficiency, the creditor is entitled to recover it from the debtor (Ablaze vs., 103 Phil. [Unrep.] 1151.).

In Statement II, according to Article 2140, by a chattel mortgage, personal property is recorded in the Chattel Mortgage Register.

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In Statement III, the Chattel Mortgage Law, in its Section 5, includes the requirement of an affidavit of good faith recorded therewith.

While on Statement IV, according to Sec. 14, Article No. 1508, if the property is foreclosed, the excess over the amount due goes to the debtor.

54. D obtained a loan of Php1,000,000.00 from C. To secure the debt, D execute deed of mortgage covering two of his lots, Lot A and Lot B, each of which is in the name D in the certificate of title. The mortgage of Lot A was recorded within one week in the Office of the Register of Deeds, but that of Lot B could not be processed as other documents were being required by the Register of Deeds. In the meantime, D sold Lot A to X, and Lot B to Y. X knew nothing on the mortgage on the Lot A, but Y was aware of the mortgage of Lot B.

- a. Both X and Y are bound by the mortgage on the lot sold to each of them.
- b. Both X and Y will not be bound in the case of X, he knew nothing of the mortgage. In case of Y, the mortgage was not registered.
- c. X is bound by the mortgage of Lot A. Y is not bound by the mortgage of Lot B.
- d. X is not bound by the mortgage of Lot A. Y is bound by the mortgage of Lot B.

Answer: A.

A, because both X and Y are bound by the mortgage on the lot sold to each of them since both lots are mortgage security of a single loan and on Article 2089, it is indicated that a pledge or mortgage is indivisible.

However, if Y will register the sale in good faith prior to the registration of the mortgage, X will acquire a good title over the property free of any mortgage therein.

55. Chattel mortgage and pledge are similar in what respect?
- a. Right of the creditor to recover the deficiency if the proceeds of the foreclosure sale are less than the obligation.
 - b. Object of the contract.
 - c. Right of the person constituting the security to get excess of the proceeds of the foreclosure sale over the amount of the obligation.
 - d. Formality required to bind third persons.

Answer: B

Because in Article 2094, all movables which are within commerce may be pledged, while in Article 2140, by a chattel mortgage, personal property indicated is equivalent to a movable property.

56. D obtained a loan of Php5,000.00 from C. The loan obligation, which is due at the end of six (6) months, is secured by a pledge of D's ring which D delivered to C. While D executed a promissory note for the loan of Php5,000.00, no written instrument was executed by the parties for the pledge of the ring.

You are presented the following statements for evaluation:

- I. The pledge is not binding between the parties.
- II. The pledge is not binding to third persons.

In your evaluation of the foregoing facts and statements:

- a. Both statements are true.

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- b. Both statements are false.
- c. Only Statement I is true.
- d. Only Statement II is true.

Answer: D

Because according to Article 2096, a pledge shall not take effect against third persons if the description of the thing pledged and date of pledge do not appear in a public instrument. However, if the pledge is not in a public instrument, the pledge is valid BUT only between the parties.

57.D obtained a loan of Php300,000.00 from C payable in 12 months. The debt bears interest at 1% per month and is secured by a chattel mortgage executed by D on his car and a real mortgage executed by T, a friend of D, on T's lot. The contract of loan, deed of chattel mortgage and deed of real mortgage were all in a public document but none is registered.

- a. The loan, chattel mortgage and real mortgage are valid.
- b. Only the chattel mortgage and real mortgage are valid.
- c. Only the loan and chattel mortgage are valid.
- d. Only the loan and real mortgage are valid.

Ans: D. Only the loan and real mortgage are valid.

According to Article 1934, an accepted promise to deliver something by way of commodatum or simple loan is binding upon the parties, but the commodatum or simple loan itself shall not be perfected until the delivery of the object of the contract.

The loan is valid because there is already delivery when D obtained the Php300,000 and the receipt by D of a given sum of money, upon an agreement, express or implied, to repay the sum loaned.

Under Article 2125, the contract is binding between the parties even if not registered in the Registry of Property however, since it creates a real right, it must be in a public instrument for the convenience of the parties. As regards to the third persons it must be in the Registry of Property but the real mortgage is nevertheless binding against third persons who have knowledge of the same.

The real mortgage is valid because it may be in any form since it is a consensual contract and it is binding since T has the knowledge about it.

According to Article 2140, a chattel mortgage is a contract whereby personal property is recorded in the Chattel Mortgage Register as a security for the performance of an obligation.

The chattel mortgage is not valid because the chattel mortgage must be in a public document which must contain a clear and complete description of the movable mortgaged and recorded in the Chattel Mortgage Register for its validity.

58. Pledge is extinguished by any of the following means, except:
- a. Return by the pledgor of the thing pledged.
 - b. Written abandonment of the pledge by the pledgee who remains in possession of the thing pledged.
 - c. Sale of the thing pledged for less than the amount of the debt.
 - d. Appropriation of the thing pledged if not sold at one public auction.

Ans: D. Appropriation of the thing pledged if not sold at one public auction.

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According to Article 2112, if at the first public auction the thing pledge is not sold, a second public auction with the same formalities shall be held and if at the second auction there is no sale either, the creditor may appropriate the thing pledged.

Appropriation in pledge is allowed only if the thing pledge is not sold at two public auctions thus, appropriation in pledge is allowed when it is sold at one public auction, and it is not allowed only when the thing pledge is sold at two public auctions. The pledge is extinguished when there is appropriation of the thing pledge by the pledgee.

59. A, B and C are debtors of X for Php30,000.00. The debt is secured by a pledge of the ring of A, the bracelet of B, and the wristwatch of C. These statements are presented to you based on the foregoing facts for evaluation:

- I. X may demand payment of the amount of Php30,000.00 from either A, B or C.
- II. Payment by A of his share of the debt entitles him to demand the return of the ring from X.

In your evaluation of the foregoing facts and statements:

- a. Both statements are true.
- b. Both statements are false.
- c. Only I is true.
- d. Only II is true.

Ans: B. Both statements are false.

According to Article 2090, the indivisibility of a pledge or mortgage is not affected by the fact that the debtors are not solidarily liable.

In statement I, X cannot demand payment of the amount of Php30,000.00 from either A, B or C because the three of them are jointly liable for the debt.

In statement II, payment by A of his share of the debt does not entitle him to demand the return of the ring from X. Although A, B, and C are jointly liable, the pledge constituted on the ring, bracelet and wristwatch is indivisible. As a general rule, 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. This means that the pledge or mortgage remains for as long as the obligation it secures has not yet been paid in full. This rule applies even if the debtors are not solidarily liable.

60. A contract of antichresis to be valid.

- a. must be in writing.
- b. must be in a public instrument.
- c. must be recorded in the Registry of Property.
- d. may be in any form.

Ans: A. must be in writing.

Under Article 2132, one of the characteristics of antichresis is formal. Thus, the contract of antichresis must be in writing, whether public or private, specifying the amount of principal and of the interest to which the fruit of the immovable shall be applied. Failure to comply with this requirement shall render the contract void, whether between the parties or as regards third persons.

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61. Which of the following is not a common requisite of pledge, real mortgage and chattel mortgage?

- a. That it be constituted to secure the fulfillment of a principal obligation.
- b. That the person constituting the security must be the absolute owner of the property on which the security is being constituted.
- c. That the person constituting the security must have the free disposal of the property, and in the absence thereof, that he be legally authorized for the purpose.
- d. That the security agreement must be recorded in the appropriate book in the Registry of Property.

Ans: D. That the security agreement must be recorded in the appropriate book in the Registry of Property.

The requirement that the security agreement must be recorded in the appropriate book in the Registry of Property applies only with a contract of chattel mortgage, under Article 2140.

The pledge, being a real contract, requires for its perfection the delivery of the thing to the creditor or to a third person by a common agreement thus, without delivery the pledge is void. It is not necessary that it must be recorded in the appropriate book in Registry of Property.

In real mortgage, the contract is binding between the parties even if not registered in the Registry of Property.

The chattel mortgage must be in a public document which must contain a clear and complete description of the movable mortgaged and recorded in the Chattel Mortgage Register for its validity.

62. D obtained two loans: one from ABC Bank amounting to Php400,000.00 which bears interest of 10% per annum and for which he executed a chattel mortgage on his car; and the other from DEF Bank amounting to Php600,000.00 at 11% per annum and for which he executed a real mortgage on his house and lot. The documents evidencing both the chattel mortgage and the real mortgage were acknowledged before a notary public but were not registered in the appropriate books in the Register of Deeds. In case of default in the payment of his obligation on the part of D:

- a. Both ABC bank and DEF Bank may foreclose their corresponding security.
- b. Neither ABC Bank nor DEF Bank may foreclose its corresponding security.
- c. Only ABC Bank may foreclose its security, which is the chattel mortgage.
- d. Only DEF Bank may foreclose its security, which is the real mortgage.

Ans: D. Only DEF Bank may foreclose its security, which is the real mortgage.

Only DEF Bank may foreclose its security because it is a real mortgage that does not need registration on Register of Deeds while ABC Bank cannot foreclose its security because there has no chattel mortgage had been constituted because of the failure on registration. The chattel mortgage must be registered in the appropriate books in the Register of Deeds to be valid while the real mortgage is binding between the parties even if not registered in the Registry of Property.

63. Refer to No. 62. Assuming that both ABC Bank and DEF Bank may validly foreclose their security, and the foreclosure sale resulted in a deficiency:

- a. Both may recover the deficiency.
- b. Neither one may recover the deficiency.

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- c. Only ABC Bank may recover the deficiency.
- d. Only DEF Bank may recover the deficiency.

Ans: A. Both may recover the deficiency.

Under the Chattel Mortgage Law Sec.14, if the proceeds of sale are not sufficient to satisfy the claim of the creditor, and he has foreclosed the mortgage extra-judicially, then he must institute a court action to recover the deficiency. But if he has foreclosed the mortgage judicially, he may ask for the execution of the judgment in the same action as against any other property of the mortgagor for the payment of the deficiency.

However, no deficiency may be recovered in the case of foreclosure of a chattel mortgage constituted on personal property which is sold at a price payable in installments.

Under Article 2131, in real mortgage, the deficiency can be recovered. If it is foreclosed through judicial foreclosure, the court, upon motion, shall render judgment against the debtor, for such balance to satisfy the claim of the creditor. On the other hand, if the foreclosure is through extra-judicial foreclosure, the creditor may recover the same from the principal debtor by filing a court action.

Both banks, the ABC Bank and the DEF Bank, can recover the deficiency from D because it is allowed as to a chattel mortgage and a real mortgage.

64. D pledged his ring to secure his debt to C amounting to Php20,000.00 payable after 30 days. On due date, D defaulted. At public auction, the ring was sold only for Php18,000.00.
- a. Both the debt of Php20,00.00 and the pledge are extinguished.
 - b. Neither the debt of Php20,000.00 nor the pledge is extinguished.
 - c. The pledge is extinguished. The debt will be extinguished when C has recovered the deficit of Php20,00.00.
 - d. The debt is extinguished. However the pledge will subsist.

Ans: A. Both the debt of Php20,00.00 and the pledge are extinguished.

According to Article 2115, the sale of the thing pledged shall extinguish the principal obligation, whether or not the proceeds of the sale are not equal to the amount of the principal obligation, interest and expenses in a proper case. If the price of the sale is more than the said amount, the debtor shall not be entitled to the excess, unless it is otherwise agreed. If the price of the sale is less, neither shall the creditor be entitled to recover the deficiency, notwithstanding any stipulation to the contrary.

The sale of the thing pledged has extinguished the debt and the pledge. Thus, even if there is a deficiency of Php 2,000.00 the debt together with the pledge is extinguished.

65. Pledge, real mortgage, chattel mortgage and antichresis are similar to one another with respect except:
- a. The kind of object of the contract.
 - b. Their binding effect on third persons.
 - c. Their being indivisible.
 - d. The form to make them binding between parties.

Ans (Soriano): C Their being indivisible.

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According to Article 2089, fourth and fifth paragraph, excepted 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.

As to their characteristics, pledge, real mortgage, chattel mortgage and antichresis are indivisible. They creates a lien on the whole or all of the properties pledged, which lien continues until the obligation it secures has been fully paid. By way of exception, the pledge or mortgage is divisible if several things are given in pledge or mortgage and each one of them guarantees only a determinate portion of the credit.

Ans (Atty. Hernandez): A. The kind of object of the contract.

Under Article 2140, real mortgage is constituted on immovables while chattel mortgage is constituted on movables. In addition, Article 2094 states that all movables which are within commerce may be pledged, provided they are susceptible of possession.

Object of pledge and chattel mortgage is personal property while object of real mortgage is real property.

66. D borrowed Php50,000.00 from C. The debt, which is due after 3 months, is secured by a pledge of a painting by a national artist and is worth 5 times more than the amount of debt. D and C had a stipulation that should D default in his payment, C automatically becomes the owner of the painting. D defaulted.

- a. C becomes the owner of the painting upon the default of D pursuant of their agreement.
- b. C must sell the painting in a public sale, and if it is not sold at the first public auction, C already acquires ownership thereof.
- c. C did not become the owner of the painting upon the default of D.
- d. Under no instance may C become the owner of the painting. He must sell it at public auction not only once but several times until it is sold.

Ans: C. C did not become the owner of the painting upon the default of D.

Under Article 2088, *Pactum commissorium* is void for being contrary to morals and public policy. The creditor is allowed only to move for the sale of the thing pledged or mortgaged after the principal obligation becomes due, in order to collect the amount of his claims from the proceeds.

The stipulation, however, that the pledgee or mortgagee may purchase the thing pledged or mortgaged at its current price if the debt is not paid on time is valid. The pledgee or mortgagee may also bid at the public auction of the things pledged or mortgaged.

C will not become the owner of the painting upon the default of D because a stipulation that the pledgee will automatically become the owner of the thing pledged is void.

67. Refer to No. 66. The stipulation between D and C that C automatically becomes the owner of painting upon D's default is known as:

- a. *Constitutum possessorium*.
- b. *Pactum commissorium*.
- c. *Expromision*.

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d. *Delegacion*.

Ans: B. *Pactum commissorium*

Pactum commissorium is a stipulation in a pledge or mortgage which provides for automatic forfeiture, that ownership of the thing pledged or mortgaged shall pass to the creditor by the mere default of the debtor.

The elements of *Pactum commissorium*, which enables the mortgagee (or pledgee) to acquire ownership of the mortgaged (pledge) property without the need of foreclosure proceedings, are (a) there should be a property mortgaged (or pledged) by way of security for the payment of the principal obligation and (b) and there should be a stipulation for automatic appropriation by the creditor of the thing mortgaged in case of non-payment of the principal obligation within the stipulated period.

68. D obtained a loan of Php100,000.00 from C. To secure the debt, D pledge his goods which are currently stored in the warehouse of W. The stipulations of the parties include the following:

- I. The goods will remain in the warehouse of W.
- II. C will automatically become the owner of the goods if D defaults in the payment of the loan.

The stipulation/s binding between D and C is/are:

- a. I only.
- b. II only.
- c. Both I and II.
- d. Neither I nor II.

Ans: A. I only.

According to Article 2093, it is necessary, in order to constitute the contract of pledge, that the thing pledged be placed in the possession of the creditor, or of a third person by common agreement.

Statement I is valid. W who is not one of the parties to the principal obligation may secure the thing pledged because it is agreed upon.

Statement II is void. This stipulation is a *Pactum commissorium*. C will not automatically become the owner of the goods if D defaults in the payment of the loan because this stipulation is void for being contrary to morals and public policy.

69. D borrowed Php30,000.00 from C pledging as security his ring, necklace and bracelet with the ring as the most valuable, and the bracelet as the least valuable. On due date, D paid the amount of Php20,000.00. Accordingly:

- a. D can demand the return of the ring and the necklace, the two most valuable of the three objects of pledge.
- b. D can demand the return of the necklace and the bracelet, the two least valuable of the three objects of pledge.
- c. D can demand the return of any of the two objects of pledge at his choice.
- d. D cannot demand the return of any of the things pledged.

Answer: D. D cannot demand the return of any of the things pledged.

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Art. 2089. (Paragraph 1) *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.*

As a general rule, a pledge or mortgage is indivisible. This means that the pledge or mortgage remains for as long as the obligation it secures has not been paid in full. In this case, D cannot demand the return of any of the things pledged unless he had already paid the whole amount he borrowed.

70. D obtained a 12% interest-bearing loan of Php50,000.00 from C, and to secure the debt, D pledged his diamond pendant. On due date, D wrote a letter to C proposing to relinquish the ownership of the diamond pendant because he did not have enough money to pay the loan and the interest due although the total amount due was less than the value of the pendant. C accepted the proposal.

- a. Ownership of the pendant was acquired by C by reason of *Pactum commissorium*.
- b. Ownership of the pendant was acquired by C by reason of *dacion en pago*.
- c. Ownership of the pendant was not acquired by C because the agreement is void.
- d. Ownership of the pendant was not acquired by C because the value thereof should be of the same amount as the total amount due.

Answer: B. Ownership of the pendant was acquired by C by reason of *dacion en pago*.

Dacion en pago is a special mode of payment whereby the debtor offers another thing to the creditor who accepts it as equivalent of payment of the outstanding obligation.

In this case, C acquired the ownership of the pendant by reason of *dacion en pago* because D, the debtor, offered his diamond pendant for the extinguishment of his obligation in which C, the creditor, accepted the offer. The property of the debtor is alienated by the creditor for the satisfaction of the credit

That agreement does not constitute as *pactum commissorium* since the offer happened after the default. In *pactum commissorium*, the agreement happened at the time of the execution of pledge or mortgage.

71. For binding effect between the parties:

- I. A chattel mortgage must be recorded in the Chattel Mortgage Register.
- II. A real mortgage must be recorded in the Registry of Property.

The foregoing is true with respect to:

- a. Both I and II.
- b. Neither I nor II.
- c. I only.
- d. II only.

Answer: C. I only

Sec. 4 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 detained 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

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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.

The mortgage must be recorded in the Chattel Mortgage Register. The registration is required for the validity of the chattel mortgage between the parties. In the real mortgage, the document in which the mortgage appears is needed, not the real mortgage itself, for the binding effect between the parties.

Note: In case of chattel mortgage of a motor vehicle, the said mortgage must also be registered before the Land Registration Office. If not registered with the LTO, the chattel mortgage is NOT binding as between a third party. As such, between a mortgagee of a motor vehicle whose mortgage was registered before the Registry of Deeds but not registered in the LTO and a buyer in good faith of the said motor vehicle who first registered the sale with the LTO, the latter has a better right even if the sale is later in date.

72. The following are the indirect causes of extinguishment of pledge:
- I. Written abandonment of the thing pledged.
 - II. Appropriation of the thing pledged if not sold in two public auctions.
 - III. Return of the thing pledged.
 - IV. Sale of the thing pledged.

Which of the above modes of extinguishment will extinguish not only the pledge but also the principal obligation it secures?

- a. I and III.
- b. II and IV.
- c. I and II.
- d. III and IV.

Answer: B. II and IV

Art. 2112. 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. This sale shall be made at a public a public auction and with notification to the debtor and the owner of the thing pledged in a proper case, 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 formalities shall be held; and if at the second auction there is no sale either, the creditor may appropriate the thing pledged. In this case he shall be obliged to give an acquittance for his entire claim.

Art. 2115. The sale of the thing pledged shall extinguish the principal obligation, whether or not the proceeds of the sale are equal to the amount of the principal obligation, interest and expenses in a proper case...

If the thing sold is not sold in the first and second public auctions, the creditor may appropriate the thing pledged. The sale of the thing pledged or its appropriation will result in the extinguishment not only of the pledge but also of the principal obligation.

73. When the thing pledged is in danger of deterioration or impairment without the fault of the pledgee, the pledgor has a right to demand the return the thing pledged by offering another thing of the same kind and quality. At the same time, the

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pledgee has a right to cause the sale of the thing pledged. Who between the pledgor and pledgee is given preferential right?

- a. Pledgor.
- b. Pledgee.
- c. Either one whoever asserts first the right.
- d. Neither, because the preferential exercise of the right must be stipulated.

Answer: B. Pledgee

Art. 2107. If there are reasonable grounds to fear the destruction or impairment of the thing pledged, without the fault of the pledgee, the pledgor may demand the return of the thing, upon offering another thing in pledge, provided the latter is of the same kind as the former and not of inferior quality and without prejudice to the right of the pledgee under the provisions of the following article...

Art. 2018. If without the fault of the pledgee, there is danger of destruction, impairment or diminution in value of the thing pledged, he may cause the same to be sold at a public sale. The proceeds of the auction shall be security for the principal obligation in the same manner as the thing originally pledged.

The pledgor may demand the return of the thing, upon offering another thing in pledge, provided the latter is of the same kind as the former and not of inferior quality of the pledgee may cause the sale of the thing pledged in a public sale. The right of the pledgee is superior to the right of the pledgor to demand the return of the thing pledged.

74. The creditor may automatically appropriate for himself the thing on which the security was constituted upon the default of the debtor in:

- a. Pledge.
- b. Mortgage.
- c. Antichresis.
- d. Automatic appropriation is not allowed in any case.

Answer: D. Automatic appropriation is not allowed in any case.

Art. 2088. The creditor cannot appropriate the things given by way of pledge or mortgage, or dispose of them. Any appropriation to the contrary is null and void.

Art. 2112. 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. This sale shall be made at a public a public auction and with notification to the debtor and the owner of the thing pledged in a proper case, 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 formalities shall be held; and if at the second auction there is no sale either, the creditor may appropriate the thing pledged. In this case he shall be obliged to give an acquittance for his entire claim.

Automatic appropriation is not allowed in any case upon the default of the debtor. In case of a pledge, it is only allowed if the thing is not sold after two public auctions.

75. D borrowed Php5,000.00 from C. To secure the debt, D pledged 50 grams of "shabu." On due date, demanded payment but D refused to pay by raising the defense that his debt is void. May C collect from D?

- a. No, because the loan obligation and the pledge are contrary to law.
- b. Yes, but if D cannot pay, C may go after the pledge to satisfy his claim.

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- c. No, because the nullity of the pledge carried with it the nullity of the loan obligation.
- d. Yes, but if D cannot pay, C may have to resort to other remedies to satisfy his claim.

Answer: D. Yes, but if D cannot pay, C may have to resort to other remedies to satisfy his claim.

Art. 2112. 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. This sale shall be made at a public a public auction and with notification to the debtor and the owner of the thing pledged in a proper case, 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 formalities shall be held; and if at the second auction there is no sale either, the creditor may appropriate the thing pledged. In this case he shall be obliged to give an acquittance for his entire claim.

If the credit secured by the pledged is not paid on due date, the creditor may cause the sale of the thing pledged. But in this case, the sale of thing pledged is illegal; therefore C may have to resort to other remedies to satisfy his claim.

76. A written instrument indicates that D received Php20,000.00 from C. Later, the parties executed a written instrument indicating the delivery by D of his laptop computer to C. In case of doubt, what contract was entered into between D and C as regards the laptop computer?

- a. Pledge.
- b. *Dacion en Pago*.
- c. Sale.
- d. None, the contract is void as to delivery of the computer.

Answer: A. Pledge

Art. 2094. All movables which are within commerce may be pledged, provided they are susceptible of possession.

Art. 2095. Incorporeal rights evidenced by negotiable instruments, bills of lading, shares of stock, bonds, warehouse receipts and similar documents may also be pledged. The instrument proving the right pledged shall be delivered to the creditor, and if negotiable must be indorsed.

It is a pledge since the security for the obligation is movable and is delivered and in the possession of D. Since there is the delivery of the thing, it constitutes a pledge between the parties involved.

77. D obtained a loan of Php100,000.00 secured by a pledge of diamond ring, from C. The parties had a stipulation that should D fail to pay the debt on due date. C may purchase the diamond ring at the current purchase price. Is the stipulation valid?

- a. No, such a stipulation is in the nature of *pactumcommissorium*.
- b. Yes, the purchase of the ring by C at the current price does not come within the prohibition on *pactumcommissorium*.
- c. No, C can still purchase the ring if it is not sold at two public auctions.
- d. Yes, but C can only purchase the ring if it is not sold at two public auctions.

Answer: B. Yes, the purchase of the ring by C at the current price does not come within the prohibition on *pactum commissorium*.

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Pactum Commissorium is a stipulation in a pledge or mortgage which provides for automatic forfeiture.

The elements of the *pactum commissorium* which enables the mortgagee or pledgee to acquire the ownership of the mortgaged or pledged property without the need of foreclosure proceedings, are (a) there should be property mortgaged or pledged by way of security for the payment of the principal obligation, and (b) and there should be a stipulation for automatic appropriation by the creditor of the thing mortgaged or pledged in case of non-payment of the principal obligation within the stipulated period.

Note: An agreement for the purchase of the thing pledged or mortgaged at the current price after the default of the debtor is NOT considered as *pactum commissorium* and is, thus, valid. In that case, there is NO automatic appropriation by the creditor of the thing subject of the pledge or mortgage. What is being prohibited is automatic appropriation.

78. D borrowed Php50,000.00 from C. The parties agreed in a private instrument that D's goods which are deposited in the warehouse of W would secure the loan by way of pledge. C never took actual possession of the goods, nor did the parties agree that the goods would remain with W. Was a pledge constituted on the goods?

- a. Yes, because mere agreement that the goods would secure the debt is sufficient.
- b. No, the goods must be delivered to C, or there must be a common agreement that the goods would remain in the possession of W.
- c. Yes, delivery of the goods to the creditor is not required if they are in control and possession of a third person.
- d. No, the pledge should be in a public instrument for the pledge to be constituted.

Answer: B. No, the goods must be delivered to C, or there must be a common agreement that the goods would remain in the possession of W.

Art. 2093. In addition to the requisites prescribed in article 2085, it is necessary, in order to constitute the contract of pledge, that the thing pledged be placed in the possession of the creditor, or of a third person by common agreement.

There has no pledge constituted because there is the need that the goods must be delivered to C, or there must be a common agreement that the goods would remain in the possession of W for the perfection and validity of the pledge.

79. D obtained a 12-month loan of Php100,000.00 from C. D constituted a mortgage on a certain lot which he knew belonged to X. On due date:

- a. C cannot collect from D because the obligation is rendered void, the mortgagor, not being the owner of the mortgaged lot.
- b. C can collect from D because the mortgagor need not be the owner of the property.
- c. C can collect from D because although the mortgage is void, the loan obligation can stand independently from it.
- d. C cannot collect from D because the latter was not authorized by any power of attorney to mortgage the lot.

Answer: C. C can collect from D because although the mortgage is void, the loan obligation can stand independently from it.

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The pledge or mortgage is just an accessory contract. The validity of the Principal Contract will not be affected by the invalidity of the accessory contract.

However, if the principal contract is invalid, the accessory contract, such as pledge or mortgage, will also be considered as invalid.

Art. 2085. The following requisites are essential to the contracts of pledge and mortgage:

(2) That the pledgor or mortgagor be the absolute owner of the thing pledged or mortgaged.

The pledgor or mortgagor must be the absolute owner of the thing pledged or mortgaged at the time it is constituted otherwise the mortgage is void. In this case, only the mortgage is void, the principal obligation is valid, therefore C can still collect from D.

80. A real mortgage:

- a. confers ownership of the mortgage property in the mortgagee upon its constitution.
- b. creates encumbrance on real property.
- c. confers ownership of the mortgage property in the mortgagee if the principal obligation it secures is not paid in due date.
- d. confers ownership of the mortgage property in the mortgagee upon default of the debtor if the parties stipulated about it.

Answer: B. creates encumbrance on real property.

Art. 2089. (Paragraph 1) 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.

As a general rule, a pledge or mortgage is indivisible. This means that the pledge or mortgage remains for as long as the obligation it secures has not been paid in full. A real mortgage creates encumbrance on the real property because there is the need for fulfillment of payment to extinguish the mortgage.

81. These statements are presented to you:

- I. In a real mortgage, the property on which it was constituted is not required to be delivered to the creditor.
- II. Placing a real property mortgage in the possession of the creditor is an authorization to the creditor to make himself the owner if the principal obligation is not paid when due.

In your evaluation of the foregoing statements:

- a. Only statement I is true.
- b. Only statement II is true.
- c. Both statements are true.
- d. Both statements are false.

Answer: A

Applicable Provision: *Article 2125.* Article 2125 provides definition and characteristics of real mortgage. Statement I is true, in real mortgage, thing is not required to be delivered to creditor. Statement II is false, because there is no transfer of ownership in real mortgage.

82. These statements are presented to you:

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- I. A mortgage on real property is a real property by itself.
- II. Movables may be the object of real mortgage by stipulation of the parties.

In your evaluation of the foregoing statements:

- a. Both statements are true.
- b. Both statements are false.
- c. Statement I is true; Statement II is false.
- d. Statement I is false; Statement II is true.

Answer: C

Statement I is true. A Mortgage on a real property is considered as a real property by itself.

Statement II is false, only immovables and alienable real rights in accordance with the law, imposed upon immovables may be the object of real mortgage.

83. A sale with a right to repurchase differs from real mortgage in that in sale with right to repurchase
- a. there is no transfer of ownership of the property.
 - b. a security is constituted on the property.
 - c. the contract is indivisible.
 - d. there is generally a transfer of possession of property.

Answer: D

Sale with right to purchase are not security for an obligation, ownership of the property is transferred upon delivery to the buyer a retro, the property is generally transferred to the buyer a retro.

On the other hand, in real estate mortgage, the same is merely a security for the payment of the obligation. There is NO transfer of ownership from the mortgagor to the mortgagee.

84. D owed C Php10,000.00. The debt is secured by a pledge of D's diamond ring. On due date, C phoned D informing the latter that he was condoning D's debt. D accepted C's condonation of the debt in the same telephone conversation. The condonation of D's debt extinguished:
- a. both the principal obligation and the pledge.
 - b. the principal obligation only.
 - c. the pledge only.
 - d. neither the principal obligation nor the pledge.

Answer: D

Applicable Provision: *Article 2111.* Article 2111 states that in order for renunciation or abandonment to extinguish the pledge and principal obligation, the same must be in writing.

85. The written abandonment of the pledge produces which of the following effect?
- a. The principal obligation is extinguished.
 - b. The pledge remains unless the thing pledged is returned.
 - c. The pledge remains unless the debtor/pledgor has accepted the abandonment in writing.

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- d. The pledgee becomes a depository until he gives back the possession of the thing pledged to the debtor/pledgor.

Answer: D

Applicable Provision: Article 2111. As a rule, the acceptance by the debtor of the renunciation is required for the extinguishment of the obligation. However, this is not so in the case of renunciation of the pledge. The pledge is extinguish although the renunciation has not been accepted by the pledgor or owner as long as that renunciation was made in writing. Neither will the return of the thing pledged be necessary to extinguish the pledge. Until the return of the thing pledged to the pledgor or owner, the pledgee will be liable as a depository.

86. One of the following is not a characteristic of real mortgage.
- Accessory contract.
 - Real contract.
 - Inseparable contract.
 - Indivisible contract.

Answer: B

Real mortgage is accessory, indivisible, inseparable, real right and real property. However, unlike pledge, it is NOT a real contract which requires the delivery of the thing for perfection. It is a consensual contract which is perfected by mere consent.

87. A real mortgage is binding between the parties:
- although it was entered into orally.
 - only if it was entered into in writing, whether public or private.
 - only if it was entered into in a public instrument.
 - only if it was recorded in Registry of Property.

Answer: A

The real mortgage may be in any form since it is a consensual contract. The contact is binding between the parties even if not registered in the Registry of Property and not entered into in public or private writing.

88. In general, for a chattel mortgage to be binding between the parties, the same must be recorded in Chattel Mortgage of the province where the:
- mortgagor resides.
 - mortgaged property is located.
 - mortgagor resides and where the property is located.
 - (c) and where the mortgage resides.

Answer: C

Applicable Provision: Chattel Mortgage Law (Act No. 1508) Section 4. The mortgage must be recorded in the Chattel Mortgage Registry of the province where the mortgagor resides and also the province where the property is located (principal office) only for the validity of the chattel mortgage between parties.

89. For binding effect between third persons, the chattel mortgage of shares of stock of domestic corporation must be recorded in the Chattel Mortgage of the province where the:

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- a. mortgagor resides.
- b. principal office of corporation is located.
- c. mortgagor resides and where the principal office of the corporation is located.
- d. (c) and where the stock certificate covering the shares is located.

Answer: C

Applicable Provision: *Chattel Mortgage Law (Act No. 1508) Section 4.* The mortgage must be recorded in the Chattel Mortgage Registry of the province where the mortgagor resides and also the province where the property is located (principal office) only for the validity of the chattel mortgage between the third persons.

90. A sworn statement attesting to the fact the chattel mortgage is made for purpose of securing the obligation specified in the conditions thereof, and for no other purpose, and that the obligation is a just and valid obligation, and one not entered into for the purpose of fraud.
- a. Affidavit of good moral character.
 - b. Affidavit of merit.
 - c. Affidavit of good faith.
 - d. Affidavit of trust.

Answer: C

Chattel Mortgage Law (Act No. 1508) Section 4 discussed the Affidavit of Good Faith. An affidavit of good faith is a sworn statement attesting to the fact the chattel mortgage is made for purpose of securing the obligation specified in the conditions thereof, and for no other purpose, and that the obligation is a just and valid obligation, and one not entered into for the purpose of fraud.

91. The sworn statement referred to in the preceding number must be appended to the deed of chattel mortgage in order to bind:
- a. the mortgagor.
 - b. the mortgagee.
 - c. principal debtor.
 - d. third persons.

Answer: D

Under Section 4, for the chattel mortgage to be effective against *third persons*, an affidavit of good faith must be appended to the Deed of Chattel Mortgage and recorded therewith in the Chattel Mortgage Registry.

92. The price stipulated by the parties to mortgage contract below which the property shall not be sold at the public auction.
- a. Market price.
 - b. Current price.
 - c. “*Tipo*” or upset price.
 - d. Selling price.

Answer: C

“*Tipo*” or upset price is the price which is set by the parties as the amount at which the property will be sold at public auction. This stipulation is null and void.

93. The stipulation on the price mentioned in preceding number is:

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- a. void between the parties and as regards third persons.
- b. valid between the parties but void as to third persons.
- c. valid between the parties and as regards third persons.
- d. void between the parties but valid as regards third persons.

Answer:A.

This stipulation is null and void between the parties and with third persons because it contravenes Rule 68 of the Rules of Court which provides that the property mortgaged shall be sold to the highest bidder. Accordingly, even if there is such stipulation, the sale of the property shall take place in accordance with the requirements of the law, and property sold to the highest bidder.

94. Davila obtained a loan of Php100,000.00 from Capacio. The contract between the parties provided, among other stipulations, that Davila would constitute a mortgage on his lot located in Angono (Lot A) to secure the amount of Php40,000.00, and another mortgage on his lot located in Binangonan (Lot B) to secure the amount of Php60,000.00, and that the loan shall be paid in two installments: Php40,000.00 due on September 30, and Php60,000.00 due on October 31. Davila defaulted in the payment of the first installment by reason of insolvency. Upon such default, Capacio may foreclose the mortgage constituted on:

- a. Lot A only.
- b. Lot B only.
- c. Both Lot A and Lot B.
- d. Neither Lot A and Lot B because Davila has still up to October 31 to pay the whole amount.

Answer:C.

It is stated in Art. 2087 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. (1858) Capacio may foreclose the mortgage constituted on both lots since both mortgage on lots constitute a single principal obligation that is need to be paid by Davila.

95. Refer to the preceding number. If Davila did not become insolvent and instead paid the two installments on their respective due dates:

- a. Davila may ask for the cancellation of the mortgage constituted on Lot A upon payment of the first installment.
- b. Davila may ask for the cancellation of the mortgage constituted on Lot B upon payment of the second installment.
- c. Both (a) and (b) are correct.
- d. Davila may ask for the cancellation of the mortgage constituted on both lots upon payment of the second installment because the indivisibility of the mortgage remained notwithstanding the stipulation between the parties.

Answer: C.

It is expressly stated in the Article 2089(5th paragraph), that 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. After the payment for each of the mortgage on lots, Davila may ask for the cancellation of the respective mortgage constituted on each lot upon its payment of it.

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96. The following stipulations between the pledgor/mortgagor and the pledgee/mortgagee are presented to you:

- I. That the pledgee/mortgagee may purchase the thing pledged/mortgaged at its current price when the debt is not paid when due.
- II. That the pledgee/mortgagee may bid at the public auction of the thing pledged/mortgaged.

Which of the foregoing stipulation is valid?

- a. Both I and II.
- b. I only.
- c. II only.
- d. Neither I nor II, because they are in the nature of *pactum commissorium*.

Answer: A.

In accordance to Art.2113, the pledgee may also bid, but his offer shall not be valid if he is the only bidder. A Stipulation that “The pledgee/mortgagee can purchase the thing pledged/mortgaged at its current price upon default of the pledgor/mortgagor.” and “The pledgee/mortgagee may bid at the public auction of the thing pledged/mortgaged.” are both valid.

97. It refers to the procedure adopted by the mortgagee to terminate the rights of the mortgagor on the property mortgaged and includes the sale of the property.

- a. Redemption.
- b. Repossession.
- c. Foreclosure.
- d. Repurchase.

Answer: C.

Foreclosure is the remedy available to the mortgagee by which he subjects the property mortgaged to the satisfaction of the obligation secured, i.e., the property mortgaged is sold at public auction so that the proceeds may be applied in payment of the debt secured.It terminates the rights of the mortgagor on the property mortgaged and includes the sale of the property.

98.The following objects are presented to you:

- I. Growing crops which are considered real property under the Civil Code.
- II. Share of a stock of a domestic corporation engaged in the real estate business.

Which of the foregoing may be the object of a chattel mortgage?

- a. I only.
- b. II only.
- c. Both I and II.
- d. Neither I nor II.

Answer: C.

In accordance to Section 2, Act No.1508 of The Chattel Mortgage Law, 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 a chattel mortgage. The object of a chattel mortgage is any movables and real property which by any provision of law is considered as personalty like growing crops and shares of stock of agricultural, commercial and industrial entities, although they may have real estate.

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99. Depante obtained a loan of Php100,000.00 from Colmenares. To secure the debt, Tamondong, a friend of Depante, mortgage his lot. Depante defaulted in the payment of his loan. Accordingly, Colmenares foreclosed the mortgage. However, only the net amount of Php95,000.00 was realized at the foreclosure sale or a deficiency of Php5,000.00. The following are instances on the possible liability of Depante and Tamondong on the deficiency.

- I. Depante, if there was a stipulation on the recovery of the deficiency.
- II. Depante, even if there was no stipulation on the recovery of the deficiency.
- III. Tamondong, if there was a stipulation on the recovery of the deficiency.
- IV. Tamondong, even if there was no stipulation on the recovery of the deficiency.

From whom may Colmenares recover the deficiency of Php5,000.00?

- a. I and III.
- b. II and IV.
- c. I and IV.
- d. II and III.

Answer: D.

If the proceeds of sale are not sufficient to satisfy the claim of the creditor, the court, upon motion, shall render judgment against the debtor, for such balance.

Tamondong, being not the principal borrower, will be liable only if there was a stipulation that he will be liable for the deficiency.

100. DiCarpio obtained a loan of Php50,000.00 from Carillo with Tapales pledging his Nikon camera to secure the debt. Accordingly, Carillo caused the sale of the Nikon camera at public auction. However, the net proceeds of the sale amounted to Php44,000.00 only or a deficiency of Php6,000.00. From whom may Carillo recover the deficiency?

- a. DiCarpio and Tapales, if there was a stipulation on the recovery of the deficiency.
- b. DiCarpio and Tapales, even if there was no stipulation on the recovery of the deficiency.
- c. DiCarpio, even if there was no stipulation to recover the deficiency from him, and Tapales, if there was a stipulation to recover the deficiency from him.
- d. From neither DiCarpio nor Tapales.
- e.

Answer: D.

Clearly stated in Art.2115, that if the price of sale is less, neither shall the creditor be entitled to recover the deficiency, notwithstanding any stipulation to the contrary. Carillo cannot recover the deficiency to DiCarpio or Tapales since the loan is constituted by a contract of pledge. In pledge, the pledgee/creditor cannot recover the deficiency from the pledgor/debtor but he is entitled to the excess of the proceeds over the obligation from the foreclosure sale.

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