

LEGREB

CREDIT SALES

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CREDIT TRANSACTIONS

- **Definition:** Transactions where **goods, services, or money are given now with a promise to pay or deliver in the future.**
- **Purpose:** Allows more exchanges by postponing payment.

Credit Transactions as Contracts of Security

1. **Secured Transactions / Contracts of Real Security**
 - Backed by collateral or property encumbrance.

2. **Unsecured Transactions / Contracts of Personal Security**

- Backed only by a promise to pay or a personal guarantee (e.g., surety or guarantor).

ENCUMBRANCES – Ways to Secure Credit

1. **Pledge – Delivering movable property** to the creditor.
2. **Chattel Mortgage – Executing a deed to encumber movable property.**
3. **Real Estate Mortgage – Using a public instrument to encumber real property.**
4. **Antichresis – Creditor receives the fruits of an immovable property** to pay interest and principal.

BAILMENT (Delivery of Goods)

Parties:

- **Bailor** – the **giver** of the property.
- **Bailee** – the **recipient** of the property.

Obligation of Bailee: Must return the property in the same or altered form, **or** account for it.

Chapter 1 – LOAN

ARTICLE 1933 (CONTRACT OF LOAN)

Definition: A loan is a contract where one party delivers something to another:

- **Non-consumable thing** – to be used and returned in the same condition (Commodatum).
- **Money or consumable thing** – to be used, with the agreement to return the same kind and amount (Simple Loan / Mutuum).

Characteristics

- **Real contract** – delivery of the item is **necessary** to make the contract **valid**.
- **Unilateral contract** – **only the borrower** has obligations after delivery.

Cause / Consideration:

- **Borrower:** gets to **use or consume the thing**.
- **Lender:** has the **right to demand return or equivalent**.

Kinds of Loans

- **Commodatum** – delivery of a **non-consumable thing** for use and eventual return (e.g., a car).
- **Kinds of Commodatum:**
 - **Ordinary:** lender can demand the thing **only in urgent need**.
 - **Precarium:** lender can demand the thing **at any time**.
- **Simple Loan / Mutuum** – delivery of **money or consumable goods**, to be repaid in the same kind and amount.

Consumable things: Things that are **used up when applied for their purpose** (e.g., rice, gasoline, money, fruit).

Notes

- **Commodatum** is **usually gratuitous** (free of charge).
- **Simple loans** may be **gratuitous or with interest**.

ARTICLE 1934 (PERFECTION OF LOAN)

A loan (commodatum or simple loan) is **not complete until** the thing or money is actually delivered.

- **Accepted promise to lend** - Binding as a **consensual contract**, but the loan itself is **not perfected until delivery**.
- **Commodatum and Mutuum** - are **real contracts**. They require delivery to be fully effective.

Example

- **Scenario:** L Corporation approves B's loan application. B executes a mortgage on his land, and it is registered.
- **Result:** The actual loan is **not yet perfected** because money hasn't been delivered, but the **promise to lend is binding** and enforceable.

Chapter 1.1 – COMMODATUM

Section 1 – NATURE OF COMMODATUM

ARTICLE 1935 (RIGHTS OF THE BAILEE IN COMMODATUM)

The **borrower (bailee)** can use the thing loaned **but cannot take its fruits** (like profits, crops, or income from it).

Notes

- **Gratuitous Nature: Commodatum** is **free of charge**. If the borrower must pay, it **ceases to be a commodatum**.
- The **presumption** is that the **loan is for free use only, not for profit**.

Extent of Use

- **General Rule:** Use is limited to the thing itself, not its fruits.
- **Exception:** If the parties agree otherwise (Art. 1940).

Purpose

- The bailee is allowed to use the item for a certain period, not to profit from it.

ARTICLE 1936 (COMMODATUM AND CONSUMABLE GOODS)

Even consumable goods (like food, fuel, or money) can be loaned under commodatum **only if** they are not meant to be consumed.

ARTICLE 1937 (MOVABLE OR IMMOVABLE AS COMMODATUM)

Movable or immovable property may be the object of commodatum.

SUBJECT MATTER

- **General Rule:** Only non-consumable things can be loaned. This includes real property (like land or buildings) and personal property (like cars or equipment).
- **Exception:** Consumable items can be loaned **only for exhibition or display purposes**, not for use or consumption (Ex: A giant bottle of wine used as a sample or advertisement).

ARTICLE 1938 (OWNERSHIP OF LOANED THING)

The bailor (lender) does not have to be the owner of the thing loaned in commodatum.

- **Rationale:** Ownership does not transfer to the borrower; the borrower only gets the right to use the item temporarily.

ARTICLE 1939 (PERSONAL NATURE OF COMMODATUM)

Commodatum is purely personal, meaning the rights and duties **cannot be freely transferred** to others.

- **Death of Parties:**
 - **General Rule:** The death of either the bailor or the bailee ends the contract.
 - **Exception:** If there is a stipulation that the contract continues to the heirs of either party.
- **Use by Third Persons:**
 - **General Rule:** The bailee cannot lend or lease the loaned item to a third person.
 - **Exception:** Members of the bailee's household may use the item,
 - **Exception to Exception:**
 - There is a stipulation prohibiting it.
 - The nature of the item forbids such use (e.g., a dress).

ARTICLE 1940 (USE OF FRUITS IN COMMODATUM)

A bailee may be allowed to use the fruits (profits, products, or benefits) of the thing loaned **if there is a stipulation**.

Rationale

- The right to use the thing is different from the right to its fruits.
- Normally, fruits belong to the owner of the thing.

Notes

- The **use of the fruits must be incidental** to the use of the thing itself.
- **If the fruits are the main reason** for the contract, it may **instead be a contract of usufruct** (Art. 562).

Section 2 – OBLIGATIONS OF THE BAILEE

ARTICLE 1941 (PAYMENT OF ORDINARY EXPENSES)

The **bailee (borrower) must pay for ordinary expenses** related to the **use and upkeep of the thing loaned**.

Reason

- The **bailee is required to take care of the thing with the diligence of a good father of a family** (Art. 1163).

ARTICLE 1942 (LIABILITY OF BAILEE FOR LOSS)

The **bailee (borrower) may be held liable for loss of the thing loaned even if caused by a fortuitous event**, in the following cases:

1. **Uses the thing for a different purpose** from what was agreed.
2. **Keeps the thing longer than allowed or after its intended use**.
3. **Receives the thing with an appraised value, unless** exempted by agreement.
4. **Lends or leases the thing to a third person** not in his household.
5. **Chooses to save his own property over the borrowed thing** when possible.

General Rule: The **bailee is not normally liable** for loss due to fortuitous events, since the **bailor retains ownership**.

ARTICLE 1943 (DETERIORATION DUE TO USE)

The **bailee (borrower) is not responsible** for the **natural wear and tear of the thing loaned**, if it **occurs without fault**.

Reason

- Using the borrowed item **inevitably causes some deterioration**, which is expected by both parties.

Section 3 – OBLIGATIONS OF THE BAILOR

ARTICLE 1946 (RETURN OF THE THING LOANED)

The **bailor (owner) cannot demand the return** of the thing loaned **until**:

- The **agreed period expires**, or
- The **purpose of the commodatum is fulfilled**.

Exception: If the **bailor has urgent need**, he may **request its return or temporary use**.

Effect of Temporary Use

- While the **bailor temporarily uses the thing**, the **commodatum contract is suspended**.

Example: The **bailor can take back the car** he loaned to bring a sick household member to the hospital.

ARTICLE 1947 (PRECARIUM)

The **bailor may demand** the return of the thing **at any time**. This **applies when**:

- **No duration or specific use** of the thing was agreed upon.
- The **use of the thing is merely tolerated** by the owner.

Precarium – A **type of commodatum** where the **owner can take back the thing whenever they want**.

ARTICLE 1948 (ACTS OF INGRATITUDE)

The bailor may demand the immediate return of the thing if the bailee commits any act of ingratitude.

Article 765

Defines acts of ingratitude:

- Bailee offends the person, honor, or property of the bailor, or of the bailor's wife or children under parental authority.
- Bailee accuses the bailor of a crime or immoral act, even if true, unless it concerns an offense against the bailee or their family.
- Bailee refuses support that he is legally or morally bound to give to the bailor.

Rationale

- Like a donation, commodatum is gratuitous, so the law protects the bailor against ungrateful behavior.

ARTICLE 1949 (EXTRAORDINARY EXPENSES FOR THE PRESERVATION OF THE THING LOANED)

The bailor shall refund extraordinary expenses for keeping the loaned thing safe, as long as the bailee informs the bailor before spending, except when the expense is so urgent that waiting for a reply would be dangerous. If the expense happens during the actual use of the thing, even if the bailee is not at fault, it shall be shared equally by the bailor and bailee, unless they agreed otherwise.

EXTRAORDINARY EXPENSES FOR THE PRESERVATION OF THE THING LOANED

General Rule: Bailor pays if bailee gave prior notice. (e.g., repairing a borrowed house damaged by a typhoon)
EXCEPTION: Urgent expenses can be paid without notice.

EXTRAORDINARY EXPENSES ARISING DURING THE ACTUAL USE OF THE THING LOANED

Shared 50-50 by bailor and bailee, even if bailee is not at fault. (e.g., repairing a borrowed jeep damaged in an accident)

ARTICLE 1950 (EXPENSES NOT REIMBURSABLE)

If the bailee spends money to use the thing that is not ordinary (Art. 1941) or extraordinary (Art. 1949) expenses, he cannot ask for reimbursement.

Notes

- Expenses for ostentation (flashy or unnecessary display) must be paid by the bailee because they are not needed to preserve the thing.

ARTICLE 1951 (LIABILITY FOR HIDDEN DEFECTS)

If the bailor knows the loaned thing has a hidden defect and does not inform the bailee, the bailor is responsible for any damage the bailee suffers.

Requisites

1. There is a **flaw or defect in the thing**.
2. The **flaw is hidden**.
3. The **bailor knows** about it.
4. The **bailor does not inform** the bailee.
5. The **bailee suffers damages** because of it.

GENERAL RULE: The **bailee cannot keep the thing as security** for claims against the bailor.

EXCEPTION: The **bailor is liable for damages if he knew** about the hidden defect.

ARTICLE 1952 (LIABILITY CANNOT BE AVOIDED BY ABANDONING THE THING)

The **bailor cannot avoid paying expenses or damages by simply abandoning** the loaned thing to the bailee.

Reason

- The **expenses or damages may be more than the value of the thing** loaned.

Chapter 1.2 – SIMPLE LOAN OR MUTUUM

ARTICLE 1953 (LOAN OF MONEY OR FUNGIBLE THINGS (MUTUUM))

A **person who borrows money or other fungible things acquires ownership** of the thing and **must return an equal amount of the same kind and quality**.

MUTUUM / SIMPLE LOAN

- **Definition:** A **mutuum / simple loan** is a **contract where one party gives money or consumable things** to another, with the understanding that **the same amount and kind will be paid back**.

Notes

- The **borrower returns an equivalent**, not the identical item, because the borrower owns the thing.
- The **obligation is to pay, not return**, which distinguishes mutuum from commodatum (loan for use).

FUNGIBLE THINGS

- **Definition:** **Fungible things** are **things usually measured by number, weight, or measure** (Ex: grain, oil, sugar, etc).

DISTINCTION BETWEEN FUNGIBLE AND CONSUMABLE THINGS

- **Consumable:** depends on the nature of the thing.
- **Fungible:** depends on the intention of the parties.
- *Example:* Wine is naturally consumable, but it can be **non-fungible** if the intention is only for display.

ARTICLE 1954 (BARTER)

Barter is a contract where **one person transfers ownership of non-fungible things** to another, with the **obligation** that the **other gives things of the same kind, quantity, and quality** (Item-to-Item).

ARTICLE 1955 (OBLIGATIONS OF A BORROWER)

The **obligation of a person who borrows money shall be governed by the provisions of Articles 1249 and 1250** of this Code.

- If the **thing borrowed is a fungible item** (not money), the **borrower must give back another item of the same kind, quality, and amount, even if its value has changed.**
- If it's **impossible to return the same kind**, the **borrower must pay its value** when the loan was made.

Loan of Money

- **Payment must be** in the **legal currency of the Philippines.**
- **In case of extraordinary inflation or deflation**, payment is **based on the value of the currency at the time the obligation was created.**

Example

- **B** borrowed ₱5,000 from **L**, payable after 5 years. Due to inflation, the value dropped to ₱2,500.
- **B** must pay the **equivalent value** of the currency at the time of the loan (5,000 x 2 = ₱10,000 today), **unless** agreed otherwise.

Loan of Fungible Things

- The **borrower must return things of the same kind, quality, and quantity.**
- **If it is impossible** to deliver the same thing, the **borrower must pay its value at the time of the loan.**

Example

- **B** borrowed 2 sacks of rice at ₱400 each. At repayment, the price increased to ₱500.
- **B** must still return **2 sacks of the same kind and quality.**
- If the same rice is unavailable, **B** must pay **₱800**, the value at the time of the loan.

Chapter 2 – DEPOSIT

ARTICLE 1962 (DEPOSIT)

A **deposit** is created the moment a **person receives a thing belonging to someone else**, with the **obligation to keep it safe and return it.**

- If **safekeeping is not** the **main purpose** of the contract, it is **not a deposit** but another type of contract.

Notes

- **Deposit** is a **real contract**, meaning it is **perfected by the delivery** of the thing.
 - If **gratuitous**: unilateral
 - If **onerous**: bilateral
- The **main purpose** of a **deposit** is **safekeeping.**

Deposit	Mutuum	Commodatum
Safekeeping	Consumption	Use
Thing is demandable at will	Lender must wait until the expiration of period	Only upon urgent need/ demandable at will (precarium)
Movable/ Immovable except if extrajudicial (only movable)	Money and fungible thing	Movable/ Immovable
May be gratuitous	Onerous	Essentially gratuitous

ARTICLE 1963 (AGREEMENT TO DEPOSIT)

An **agreement to create a deposit** is **binding**, but the **deposit** is **not perfected until the thing is delivered.**

Notes

- Without **delivery**, there is only an **agreement to deposit**, which is **still enforceable**. This is called a **future deposit** and is **consensual**.
- **Similar rules apply to commodatum and mutuum**, where a promise to deliver is binding once accepted.

ARTICLE 1964 (WAYS TO CONSTITUTE A DEPOSIT)

A deposit may be created **judicially or extrajudicially**.

- **Judicial deposit:** governed by **Art. 2005**
- **Extrajudicial deposit:** governed by **Arts. 1968–2004**
 - **Voluntary:** Arts. 1968–1995
 - **Necessary:** Arts. 1996–2004

ARTICLE 1965 (GRATUITOUS NATURE OF DEPOSIT)

A deposit is **generally a gratuitous contract**, **except if:**

- There is an **agreement to the contrary**
- The **depository is in the business of storing goods** (e.g., warehouseman)
- **Involuntary deposit:** If **property is saved from destruction without the owner's knowledge**, the owner must pay just compensation to the saver

GENERAL RULE: A deposit is **gratuitous unless** one of the exceptions applies.

ARTICLE 1966 (EXTRAJUDICIAL DEPOSIT)

Only movable things can be the object of a deposit.

Notes

- Only **tangible or personal movable property** can be deposited **extrajudicially**, whether **voluntary (Art. 1968)** or **necessary (Art. 1996)**.
- In a **judicial deposit**, **both movable and immovable property** may be **deposited**, usually to protect things during a lawsuit.

ARTICLE 1967 (VOLUNTARY AND NECESSARY DEPOSIT)

An **extrajudicial** deposit can be **voluntary or necessary**.

GENERAL RULE: Deposit is normally **voluntary**.

WHEN DOES IT BECOME NECESSARY

1. **To comply with a legal obligation** (Art. 1996)
2. **During a calamity** (Art. 1996)
3. **By travelers in hotels and inns** (Art. 1998)
4. **By travelers with common carriers** (Art. 1734)

Chapter 2.1 – VOLUNTARY DEPOSIT

Section 1 – GENERAL PROVISIONS

ARTICLE 1968 (VOLUNTARY DEPOSIT)

A **voluntary deposit** is when the **delivery of the thing** is **made by the will** of the depositor.

- A deposit may also be made by **two or more persons**, each believing they are entitled to the thing. The **depository (person that holds)** must deliver it to the **rightful owner when necessary**.

VOLUNTARY VS. NECESSARY

Delivery is made by choice of the depositor.	Depositor cannot choose the depositary.
Depositor has full freedom to choose the depositary.	

GENERAL RULE: The depositor must be the owner of the thing deposited.

ARTICLE 1969 (FORM)

A contract of deposit may be entered into orally or in writing.

Section 2 – OBLIGATIONS OF THE DEPOSITARY

ARTICLE 1972 (OBLIGATIONS OF THE DEPOSITARY)

The depositary must keep the thing safe and return it when requested by the depositor, the depositor's heirs, successors, or a person designated in the contract.

- If the deposit is gratuitous, this affects the degree of care required.

Two Primary Obligations

1. Safekeeping the thing
2. Returning the thing when required

Notes

- The thing must be returned whenever claimed, even if the contract sets a specific term.

ARTICLE 1973 (DEPOSIT WITH THIRD PERSON)

Generally, the depositary cannot deposit the thing with a third person, because deposit is based on trust and confidence.

- If allowed by contract, the depositary is liable if the third person is obviously careless or unfit.
- The depositary is also responsible for the negligence of employees.

GENERAL RULE: Deposit is founded on trust; therefore, depositing with a third person is not allowed unless agreed.

ARTICLE 1977 (USE OF THE DEPOSITED THING)

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

- If the depositary uses it without permission, he is liable for damages.

GENERAL RULE: Deposit is for safekeeping, not for use.

EXCEPTION: The depositary may use the thing without permission if it is necessary for its preservation, but the use must be limited to that purpose only.

ARTICLE 1978 (EFFECT OF PERMISSION TO USE)

If the depositary is allowed to use the thing, the contract may cease to be a deposit and become a loan or commodatum, unless safekeeping is still the main purpose.

- Permission must be proven; it cannot be assumed.

ARTICLE 1979 (LIABILITY FOR LOSS)

The depositary is liable for loss caused by a fortuitous event if:

- It is stipulated in the contract;
- He uses the thing without permission;
- He delays returning the thing;
- He allows others to use it, even if he was authorized to use it himself.

ARTICLE 1988 (RETURN OF THE DEPOSITED THING)

The thing deposited must be returned to the depositor **on demand**, even if the contract sets a specific period for its return.

EXCEPTION: This does not apply if:

- The thing is **judicially attached** while in the depositary's possession, or
- The **depositary is notified of a third person's opposition** to its return.
- In these cases, the **depositary must immediately inform the depositor** of the attachment or opposition.

GENERAL RULE: The depositor can demand the return of the deposited thing **at any time**, regardless of any fixed period.

ARTICLE 1989 (EARLY RETURN BY DEPOSITARY)

If the deposit is **gratuitous**, the depositary may return the thing before the agreed time if there are **justifiable reasons**.

- If the depositor refuses to accept, the depositary can secure its consignment through the court.

GENERAL RULE: Gratuitous deposits may be returned early for **valid reasons**.

EXCEPTION: If the deposit is for valuable consideration, this rule does not apply.

Section 3 – OBLIGATIONS OF THE DEPOSITOR

ARTICLE 1992 (REIMBURSEMENT OF EXPENSES)

If the deposit is **gratuitous**, the depositor must reimburse the depositary for any expenses incurred to **preserve the thing deposited**.

Notes

- Applies **only to** gratuitous deposits.
- If the **deposit is for valuable consideration**, **preservation expenses are borne by the depositary**, as they are included in the agreed compensation.

ARTICLE 1993 (REIMBURSEMENT FOR LOSS DUE TO THE THING'S CHARACTER)

The depositor must reimburse the depositary for any loss caused by the nature or character of the thing deposited.

EXCEPTION:

1. The **depositor was not aware of the dangerous nature** of the thing, and could not reasonably know it.
2. The **depositor informed the depositary** of the risk.
3. The **depositary already knew of the risk without being told**.

GENERAL RULE: The depositary must be reimbursed for losses caused by the character of the thing deposited.

ARTICLE 1994 (DEPOSITARY'S RIGHT TO RETAIN)

The depositary may keep the thing as security (pledge) **until** he is fully paid for what is due because of the deposit.

- Unlike in commodatum, the **deposited thing serves as security for payment** due to the depositary.

ARTICLE 1995 (EXTINCTION OF DEPOSIT)

A **deposit ends** (is extinguished) in the following cases:

- When the **thing deposited is lost or destroyed**
- In a **gratuitous deposit, upon the death** of the **depositor or the depositary**

Notes

- These are **not the only causes**. A deposit **may also end by**:
 - **Return of the thing**
 - **Novation**
 - **Merger**
 - **Expiration of the term**
 - **Fulfillment of a resolatory condition, etc.**

Chapter 2.2 – NECESSARY DEPOSIT

ARTICLE 1996 (NECESSARY DEPOSIT)

A **deposit is necessary** in the following cases:

- When it is **made to comply with a legal obligation**
- When it is **made during a calamity** (Ex: fire, storm, flood, pillage, shipwreck, or similar events)

ARTICLE 1997 (RULES GOVERNING NECESSARY DEPOSIT)

Deposits made to comply with a legal obligation are **governed by the law establishing it**. **If the law is silent**, rules on voluntary deposit apply.

Deposits made during calamities are governed by the rules on voluntary deposit and **Article 2168**.

KINDS OF NECESSARY DEPOSIT

- **Legal obligation (1996)**
- **Calamity (1996)**
- **By travelers in hotels or inns (1998)**
- **By passengers with common carriers (1754)**

ARTICLE 1998 (DEPOSIT BY HOTEL OR INN TRAVELERS)

The **deposit of guests' effects** in hotels or inns is considered **necessary**. Hotel or inn keepers are responsible as depositaries, **provided**:

- They or their employees were **informed of the effects brought by guests**
- **Guests followed the precautions** advised for safekeeping

ARTICLE 1999 (LIABILITY OF HOTEL-KEEPERS)

The **hotel-keeper is liable** for **vehicles, animals, and articles placed** in the hotel annexes **if**:

- **They were previously informed** about the items brought by the guests
- **Guests took the precautions** prescribed for safekeeping

ARTICLE 2000 (LIABILITY OF HOTEL-KEEPERS (SERVANTS AND STRANGERS))

Hotel-keepers are **responsible** for the **loss or damage of guests' personal property** caused by:

- **Their servants or employees**
- **Strangers**

EXCEPTION: Loss caused by force majeure (uncontrollable events) is **not the hotel-keeper's responsibility**.

- Since **guests rely on the hotel-keeper's vigilance**, this is considered when **determining the degree of care required**.

ARTICLE 2001 (THEFT OR ROBBERY)

Acts of a thief or robber entering the hotel are **not force majeure, unless:**

- Arms are used, or
- There is **irresistible force**

ARTICLE 2002 (WHEN HOTEL-KEEPER IS OR IS NOT LIABLE)

Hotel-keeper is **liable if:**

1. Loss or injury is **caused by his servants, employees, or strangers**
2. Loss is **caused by a thief or robber without arms or irresistible force**

Hotel-keeper is **not liable if:**

1. Loss is **due to force majeure** (flood, fire, robbery by force/intimidation)
2. Loss is **caused by the guest, their family, servants, or visitors**
3. Loss **arises from the nature or character of the things brought into the hotel**

ARTICLE 2003 (CANNOT EXEMPT LIABILITY BY NOTICE OR AGREEMENT)

Hotel-keepers cannot avoid responsibility by **posting notices or by contract that limits their liability**. Any agreement that **reduces or removes** the hotel-keeper's responsibility under Arts. 1998–2001 is **void**.

Notes

- This is **similar to the rule for common carriers**, who cannot limit their responsibility by notice or agreement. **Such stipulations are against law, morals, and public policy.**

ARTICLE 2004 (RIGHT OF RETENTION OF HOTEL-KEEPER)

The hotel-keeper has the right to retain guests' things **as security for:**

- **Lodging fees**
- **Supplies usually provided to guests**

Notes

- This **right of retention** is like a pledge by law.
- **Taking food or accommodation without paying** is considered **estafa** (fraud).

Chapter 2.3 – SEQUESTRATION OR JUDICIAL DEPOSIT

ARTICLE 2005 (JUDICIAL DEPOSIT / SEQUESTRATION)

- A **judicial deposit or sequestration** occurs when the **court orders attachment or seizure of property involved in a lawsuit**.

ARTICLE 2006 (OBJECTS OF SEQUESTRATION)

- **Both** **movable and immovable property** may be subject to sequestration.

ARTICLE 2007 (LIABILITY OF DEPOSITARY OF SEQUESTERED PROPERTY)

- The depositary cannot be relieved of responsibility **until** the lawsuit or controversy ends, **unless** the court orders otherwise.

ARTICLE 2008 (STANDARD OF CARE FOR SEQUESTERED PROPERTY)

- The depositary of sequestered property **must act as a good father of a family**, meaning **with due care and diligence**.

ARTICLE 2009 (JUDICIAL SEQUESTRATION)

Matters not covered in this Code are governed by the Rules of Court.

Notes

- The deposit is **judicial** because it is linked to a pending court case.

Purpose

- To **maintain the status quo** (state of affairs) during litigation
- To **protect the rights of the parties** in case of a favorable judgment

JUDICIAL VS. EXTRAJUDICIAL DEPOSIT

	Judicial Deposit	Extrajudicial Deposit
Origin	By the court's will	By the parties' will
Purpose	As security to protect a party's right in court	Custody and safekeeping of the thing
Subject Matter	Movable or immovable property	Only movable property
Remuneration	Always remunerated (onerous)	May be compensated or gratuitous , generally gratuitous
Held On Behalf Of	In behalf of the person entitled by court judgment	In behalf of the depositor or a designated third person

Chapter 3 – GUARANTY

Section 1 – NATURE AND EXTENT OF GUARANTY

ARTICLE 2047 (GUARANTY / SURETYSHIP)

By **guaranty**, a person called the **guarantor** promises the creditor that **he will fulfill the principal debtor's obligation if the debtor fails**.

- If a **person binds himself solidarily with the debtor**, it is called a **suretyship**, and the rules in **Sec. 4, Ch. 3, Title I** apply.

GUARANTOR vs. SURETY

	Guarantor	Surety
Liability	Secondary / Subsidiary	Primary / Solidary
Responsibility	Only if debtor fails	Jointly liable with debtor

CHARACTERISTICS OF GUARANTY

- **Accessory** – depends on the principal obligation.
- **Subsidiary** – takes effect **only if** the principal debtor fails.
- **Unilateral** – creates duty **only for** the guarantor toward the creditor.
 - Can be made without the debtor's consent.

GENERAL RULE: The guarantor must be different from the debtor.

EXCEPTION: In real guaranty (e.g., pledge, mortgage), a person may guarantee his own obligation using personal or real property.

CLASSIFICATIONS OF GUARANTY

A) By form / nature:

- **Personal** – guarantee is based on the person of the guarantor.
- **Real** – guarantee is based on property (movable or immovable).

B) By origin:

- **Conventional** – by agreement of the parties.
- **Legal** – imposed by law.
- **Judicial** – ordered by a court to protect a party's rights.

C) By consideration:

- **Gratuitous** – guarantor receives no payment.
- **Onerous** – guarantor receives valuable consideration.

D) By person guaranteed:

- **Single** – guarantees only the principal obligation.
- **Double / Sub-guaranty** – guarantees a prior guaranty.

E) By scope / extent:

- **Definite** – **limited** to the principal obligation or a specific part.
- **Indefinite / Simple** – **includes** principal obligation + all accessories, **including** judicial costs.

EXAMPLES OF REAL GUARANTY:

- **Movable:** Pledge, Chattel Mortgage
- **Immovable:** Real Mortgage, Antichresis

ARTICLE 2048 (GRATUITOUS NATURE OF GUARANTY)

A guaranty is gratuitous **unless** the parties agree otherwise.

- **GENERAL RULE:** Guaranty is normally without payment or compensation.

ARTICLE 2049 (MARRIED WOMAN AS GUARANTOR)

A married woman may act as guarantor **without** her husband's consent, **but** this normally **binds only her separate property**.

EXCEPTIONS:

- She may bind the community or conjugal partnership **with** her husband's consent.
- She may bind it without consent **if** the guaranty benefits the family.

Notes

- There is no law preventing a married woman from guaranteeing her husband's obligations.

ARTICLE 2050 (GUARANTY WITHOUT DEBTOR'S KNOWLEDGE OR CONSENT)

If the guaranty is made without the debtor's knowledge or against their will, Articles 1236 and 1237 apply.

Notes

- Guaranty is **unilateral** – it exists for the creditor's benefit, not the principal debtor's.
- **Article 1236:** Payment made without debtor's knowledge can only be recovered to the extent it benefits the debtor.
- **Article 1237:** The guarantor cannot compel the creditor to subrogate him to the creditor's rights (e.g., from mortgage, guaranty, or penalty).

ARTICLE 2051 (TYPES AND BENEFICIARIES OF GUARANTY)

A guaranty may be conventional, legal, judicial. It may be: **gratuitous** (without payment) or **onerous** (with consideration).

- A guaranty may benefit:
 - The principal debtor
 - Another guarantor, **with or without** their knowledge or consent, or **even against their objection**.

ARTICLE 2052 (ACCESSORY NATURE OF GUARANTY)

A guaranty cannot exist **without a valid** principal obligation.

Exceptions:

- It may guarantee a **voidable or unenforceable** contract
- It may guarantee a **natural** obligation

GENERAL RULE: Guaranty is an **accessory contract** – it depends on the principal obligation for its existence.

ARTICLE 2054 (LIMITS OF GUARANTOR'S LIABILITY)

A guarantor may bind himself for less, **but not for more** than the principal debtor's:

- Amount of the obligation
- Onerous conditions

If the guarantor binds himself for more, his obligation is reduced to match the principal debtor's.

GENERAL RULE: Guarantor's liability cannot exceed the principal obligation.

ARTICLE 2055 (EXPRESS NATURE AND SCOPE OF GUARANTY)

A guaranty is **not presumed** – it must be express and in writing (Statute of Frauds). It cannot extend beyond what is stipulated in the contract.

- **Simple / Indefinite Guaranty:** Covers the principal obligation and all accessories, including judicial costs, **but** liability for costs starts **only after judicial notice** to pay.

GENERAL RULE: Guaranty must be clear, written, and limited to what is agreed.

ARTICLE 2056 (QUALIFICATIONS OF A GUARANTOR)

The person furnishing (providing) a guarantor must choose someone who:

- Has integrity
- Can legally bind himself
- Has enough property to answer for the obligation

The guarantor is subject to the jurisdiction of the court where the obligation is to be fulfilled.

ARTICLE 2057 (REPLACEMENT OF GUARANTOR)

If the guarantor is convicted of a crime involving dishonesty, or becomes insolvent, the creditor may require a new guarantor who meets all the qualifications above.

GENERAL RULE: The guarantor must have the qualifications **at the time** the contract is perfected.

EXCEPTION: If the creditor specifically stipulated a particular person as guarantor, no replacement is allowed.

Section 2 – EFFECTS OF GUARANTY

Subsection 1 – EFFECTS OF GUARANTY BETWEEN THE GUARANTOR AND THE CREDITOR

ARTICLE 2058 (BENEFIT OF EXCUSSION (EXHAUSTION))

The guarantor cannot be forced to pay **unless** the creditor has:

- Exhausted all the property of the debtor
- Used all legal remedies against the debtor

Notes

- This rule distinguishes guaranty from suretyship.
- It exists because guaranty is **accessory and subsidiary** – it depends on the principal debtor first.

ARTICLE 2059 (EXCEPTIONS TO EXCUSSION)

Excussion (benefit of requiring creditor to exhaust debtor's property first) **does NOT** apply if:

1. Guarantor **expressly renounces** it
2. Guarantor has **bound himself solidarily** with the debtor
3. **Debtor is insolvent**
4. **Debtor has absconded** (leave secretly to escape) or **cannot be sued locally** without a manager or representative
5. It is **clear** that **executing against the debtor's property will not satisfy the obligation**

Other Exceptions:

1. Guarantor **fails to comply** with Art. 2060
2. Guarantor is a **judicial bondsman** (2084)
3. A **pledge or mortgage is given as special security**
4. **Guarantor fails to raise excussion** as a defense before judgment

ARTICLE 2060 (HOW TO USE THE BENEFIT OF EXCUSSION)

To claim the benefit of excussion, the guarantor must:

- **Raise it as a defense** when the creditor demands payment
- **Point out** to the creditor the **available property of the debtor in the Philippines that can cover the debt**

ARTICLE 2061 (CREDITOR'S NEGLIGENCE)

If the guarantor fulfills the requirements in Art. 2060, **and** the creditor is negligent in exhausting the debtor's property, the **creditor suffers** the loss to the extent of that property.

Notes

- It is **not** enough for the guarantor to merely claim excussion; he **must** point out debtor's available property **within** the Philippines.

ARTICLE 2064 (SUB-GUARANTOR)

A guarantor of a guarantor (subguarantor) also enjoys the benefit of excussion:

- Against the **guarantor**
- Against the **principal debtor**

Subsection 2 – EFFECTS OF GUARANTY BETWEEN THE DEBTOR AND THE GUARANTOR

ARTICLE 2066 (RIGHT OF THE GUARANTOR TO BE INDEMNIFIED)

If the guarantor pays the debt, the debtor must reimburse him because the guarantor only paid on behalf of the debtor.

WHAT THE INDEMNITY INCLUDES

- Total Amount of the Debt
- Legal Interest
- Expenses Incurred
- Damages, if Due

Exception: If the guaranty was made **without** the debtor's knowledge or **against** his will, the guarantor can recover only to the extent that the payment **benefited** the debtor.

ARTICLE 2067 (SUBROGATION OF THE GUARANTOR)

When the guarantor pays the debt, he is subrogated to all the rights that the creditor had against the debtor. This means he can enforce all claims, rights, and remedies that belonged to the creditor.

LIMITATION

- If the guarantor compromised or settled with the creditor, he **can only demand** from the debtor the **exact amount** he actually paid.
- Subrogation transfers to the guarantor the credit with all rights related to it (e.g., interest, collateral, guarantees) as provided in Article 1303.

ARTICLE 2068 (PAYMENT WITHOUT NOTIFYING THE DEBTOR)

If the guarantor pays without notifying the debtor, the debtor may enforce against the guarantor all defenses he could have used against the creditor at the time of payment.

- **GENERAL RULE:** Before paying the creditor, the guarantor must notify the debtor. Notification ensures that the debtor can exercise his rights and defenses before payment is made.

ARTICLE 2069 (PAYMENT BEFORE THE DEBT BECOMES DUE)

If the debt is for a certain period and the guarantor pays **before it is due**, he cannot demand reimbursement from the debtor **until** the period expires.

- **Exception:** If the debtor ratifies the early payment, the guarantor may demand reimbursement immediately.

- This rule **highlights** the **subsidiary character** of the guarantor's obligation: he **only acts when the debtor has not paid**, and **timing of payment affects his right to reimbursement**.

ARTICLE 2071 (RIGHTS OF THE GUARANTOR BEFORE PAYMENT)

Even before paying the debt, the guarantor may take action **against** the principal debtor under certain circumstances:

1. When he is **sued for payment**
2. **In case of insolvency of the principal debtor**
3. When the **debtor promised to relieve** the guarantor within a **specified period**, and this **period has expired** –
4. When the **debt has become demandable**
5. **After ten years** if the **principal obligation has no fixed maturity** –
6. If there are **reasonable grounds to fear** that the **principal debtor intends to abscond** (escape quietly)
7. If the **principal debtor is in imminent danger of becoming insolvent** –

PURPOSE OF THE ACTION

In all these cases, the **guarantor's action is to obtain either:**

- **Release from the guaranty**, or
- **A security that protects him** from:
 - Any legal proceedings by the creditor, and
 - The risk of the debtor's insolvency.

Notes

- This provision shows **when a guarantor can act before paying**.

- The **guarantor cannot demand reimbursement** or indemnity, because **he has not yet paid the obligation**.
- This **differs from Art. 2066**, which refers to the guarantor's rights after payment, including indemnity and reimbursement.

Section 3 – EXTINGUISHMENT OF GUARANTY

ARTICLE 2076 (EXTINGUISHMENT OF THE GUARANTOR'S OBLIGATION)

The **guarantor's obligation ends** at the **same time** and for the **same reasons as the principal debtor's obligation**. Since **guaranty is accessory and subsidiary**, it is **terminated** when the **principal obligation is extinguished**.

CAUSES OF EXTINGUISHMENT OF OBLIGATIONS

- **Payment or Performance**
- **Loss of the Thing Due**
- **Condonation or Remission of the Debt**
- **Confusion or Merger**
- **Compensation**
- **Novation**

OTHER CAUSES

- **Annulment**
- **Rescission**
- **Fulfillment of a Resolutive Condition**
- **Prescription**

Notes

- The guaranty itself may end **even if** the principal obligation remains, such as through **release of the guarantor** under Articles 2077, 2078, and 2079.

ARTICLE 2079 (EXTINGUISHMENT OF GUARANTY DUE TO EXTENSION OF TIME)

If the creditor grants an extension of time to the debtor **without** the guarantor's consent, the guaranty is extinguished.

- Simply failing to demand payment after the debt is due does **not count** as an extension.
- The guarantor's consent is required to maintain the obligation if the creditor changes the payment terms.

Chapter 4 – PROVISIONS COMMON TO PLEDGE AND MORTGAGE

ARTICLE 2085 (ESSENTIAL REQUISITES OF PLEDGE AND MORTGAGE)

Contracts of pledge and mortgage are special agreements meant to secure the fulfillment of a principal obligation. Certain requirements must be met for them **to be valid**.

ESSENTIAL REQUISITES

- **Secures a Principal Obligation** – The pledge or mortgage must be created to guarantee an existing or future obligation.

- **Ownership of the Property** – The pledgor or mortgagor **must be the absolute owner** of the thing pledged or mortgaged.
 - **Future property** cannot be pledged or mortgaged.
 - If the person is **not the owner**, the contract is **void**.
- **Free Disposal or Legal Authority** – The parties must have full control over the property, or be **legally authorized to pledge or mortgage it**.
 - **Third parties may pledge or mortgage their own property** to secure someone else's obligation.

ARTICLE 2086

The provisions of Article 2052 are applicable to a pledge or mortgage.

ARTICLE 2087 (ALIENATION UPON DEFAULT)

It is essential that, when the principal obligation becomes due, the pledged or mortgaged property may be sold or otherwise alienated to satisfy the creditor.

PLEDGE

- A **pledge** is a contract where the debtor delivers a **movable property** or an **instrument** evidencing **incorporeal rights** to the creditor or a third person to **secure a principal obligation**, with the understanding that the **thing will be returned with all its fruits and accessions once the obligation is fulfilled**.

CHARACTERISTICS

1. **Real Contract** – Perfected by the **delivery** of the thing pledged.
2. **Accessory Contract** – Depends on the principal obligation; **cannot exist independently.**
3. **Unilateral Contract** – Creates an **obligation only on the creditor** to return the thing once the principal obligation is fulfilled.
4. **Subsidiary Contract** – The obligation **only arises in relation to the principal obligation.**

KINDS OF PLEDGE

- **Voluntary or Conventional** – Created by the **agreement of the parties.**
- **Legal** – Created by **operation of law** (e.g., deposit, agency).

NOTES

- **Pledge, mortgage, chattel mortgage, and antichresis all exist to secure a pre-existing principal obligation.**
- Articles 2085–2087 summarize common essential requisites:
 1. **Must secure a principal obligation.**
 2. **The pledgor/mortgagor must be the absolute owner.**
 3. **The pledgor/mortgagor must have free disposal or legal authority.**
 4. **The property must be alienable when the obligation is due.**
 5. **The pledged property must be delivered.**

COMPARISON: PLEDGE, CHATTEL MORTGAGE, AND REAL ESTATE MORTGAGE

Pledge	Chattel Mortgage	Real Estate Mortgage
Movable	Movable	Immovable
Necessary		Not necessary
Registered	Registered	Public Instrument
Can Secure Future Debts	Cannot Secure Future Debts	Can secure Future Debts
Excess cannot be recovered	Excess can be recovered	

ARTICLE 2088 (PROHIBITION OF APPROPRIATION OR PACTO COMISORIO)

The **creditor cannot automatically take ownership** of pledged or mortgaged property, nor dispose of it. **Any agreement** allowing this is **null and void.**

PACTO COMISORIO

- A **pacto comisorio** is a **clause** stating that the **pledged or mortgaged property automatically becomes the creditor's** **if** the **debt is not paid on time.**
- This **stipulation is void**, but the **main pledge or mortgage contract remains valid.**
- **Pacto comisorio** is also prohibited in **antichresis.**

REMEDY FOR NON-PAYMENT

- **If the debtor defaults**, the creditor can **only seek the sale of the pledged property**, not automatic ownership.
- **Exception (Art. 2112):** Applies **if there is no sale after the first and second attempts.**

ARTICLE 2089 (INDIVISIBILITY OF PLEDGE OR MORTGAGE)

A pledge or mortgage is indivisible, even if the debt is shared among multiple heirs or successors.

CONSEQUENCES

- To the debtor's heir – Paying part of the debt does not extinguish the pledge or mortgage **unless** the full debt is paid.
- To the creditor's heir – Receiving part of the debt **cannot return the pledged property or cancel** the mortgage in a way that harms the interests of the other heirs who have not been paid.

SPECIAL CASE

- If **multiple properties are pledged or mortgaged**, and **each property guarantees a specific portion** of the debt, the **debtor can extinguish the pledge or mortgage proportionally** as each portion is paid.

ARTICLE 2090 (EFFECT OF NON-SOLIDARY DEBTORS)

The **indivisibility** of a pledge or mortgage is **not affected even if** the debtors are not solidarily liable.

ARTICLE 2091 (NATURE OF OBLIGATIONS SECURED)

A pledge or mortgage **may secure all kinds of obligations**, whether **pure obligations** (certain and due) or obligations **subject to suspensive or resolutive conditions**

ARTICLE 2092 (NATURE OF OBLIGATIONS SECURED)

A **promise to constitute** a pledge or mortgage **creates only a personal action between the contracting parties.**

CRIMINAL LIABILITY

- If a person **fraudulently offers** property as **unencumbered** or **misrepresents ownership**, they may incur **criminal responsibility.**

Chapter 5 – PLEDGE

ARTICLE 2093 (POSSESSION REQUIRED FOR PLEDGE)

To create a **valid** pledge, in addition to the requisites in Article 2085, the **thing pledged must be placed in the possession** of the creditor, or a **third person by mutual agreement.**

Notes

- A **pledge is a real contract**, meaning it is **perfected only upon actual delivery** of the property.
- An **agreement to pledge without delivery** gives rise **only to a personal action between the parties.**
- The **possession required must be actual**, not symbolic.

ARTICLE 2094 (ELIGIBLE MOVABLES FOR PLEDGE)

Any **movable** property that is **legally tradeable** may be pledged, as long as it can be possessed.

ARTICLE 2095 (INCORPOREAL RIGHTS AS PLEDGES)

Certain intangible or incorporeal rights may also be pledged, including: **Negotiable instruments, Bills of lading, Shares of stock, Bonds, Warehouse receipts, Similar legal documents.**

- The document evidencing the right must be delivered to the creditor, and if negotiable, indorsed properly.

Notes

- **Incorporeal rights** are legal rights arising from intangible property, (Ex: Copyrights, Patents, Easements, Stock certificates)

ARTICLE 2096 (EFFECT AGAINST THIRD PARTIES)

A pledge will **not be effective** against third parties **unless**:

1. The thing pledged is described, and
2. The date of the pledge is recorded in a public instrument.

ARTICLE 2097 (ALIENATION OF THE THING PLEDGED)

The pledgor (owner) may sell or transfer the thing pledged **with** the consent of the pledgee (creditor).

- Ownership is transferred to the buyer or transferee **once the pledgee gives consent**.
- However, the **pledgee remains in possession** of the thing.
- The **buyer acquires the property subject to the existing pledge** (meaning the creditor's right remains).

ARTICLE 2098 (RIGHT OF RETENTION OF THE PLEDGEE)

The contract of pledge gives the creditor the right to retain possession of the thing pledged **until** the debt is fully paid.

- The **possession** of the pledge serves as security. The debtor cannot demand its return until the secured obligation is completely paid.

ARTICLE 2099 (DUTY OF CARE OF THE PLEDGEE)

The creditor must take care of the pledged property with the **diligence of a good father of a family** (ordinary prudent care).

- The pledgee has the right to reimbursement for necessary expenses made to preserve the thing.
- The **pledgee is liable for loss or deterioration** of the thing **if due to his fault or negligence**, according to the Civil Code.

ARTICLE 2100 (DEPOSIT BY THE PLEDGEE)

The pledgee cannot deposit the pledged thing with a third person **unless** there is a stipulation allowing it.

- The **pledgee is responsible for the acts of his agents or employees** regarding the pledged property.

ARTICLE 2101 (RESPONSIBILITY OF THE PLEDGOR)

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

- If the **pledgor knows of defects** in the pledged thing and **fails to inform** the pledgee, he is **liable** for damages.

ARTICLE 2102 (FRUITS, INCOME, AND OFFSPRING OF THE THING PLEDGED)

If the pledged property earns fruits, income, dividends, or interest, the creditor must apply what he receives as follows:

- **To interest owed**, if there is any;
- Then, **to the principal**, **if** there is no interest due or if there is **excess**.

Notes

- **Unless** there is a **contrary stipulation**, the **pledge extends to the interest and earnings** of the right pledged (meaning, **income is also included as part of the pledge**).
- The **pledgee has no right to use** the thing or **appropriate its fruits without** the **owner's authority**.
- However, **he may apply the fruits, income, dividends, or interest to the payment of the debt, following the order above**.

ARTICLE 2103 (OWNERSHIP OF THE THING PLEDGED)

The **debtor remains the owner** of the pledged property, **unless it is expropriated** (property is taken for public use).

RIGHTS OF THE CREDITOR

Even though he is not the owner, the creditor may:

- Bring legal actions to **recover the thing from third persons**, or
- **Defend it against third-party claims**,

ARTICLE 2104 (PROHIBITION ON USE BY THE PLEDGEE)

The **creditor cannot use the thing pledged without** the **owner's authority**.

CONSEQUENCES OF UNAUTHORIZED USE

The **owner may demand** that the thing be **judicially or extrajudicially deposited** if:

- Creditor **uses the thing without authority**;
- Creditor **misuses** it in any way; or
- Creditor **causes it to be in danger of loss or impairment** due to negligence or willful acts (related to Art. 2106),

- **Exception:** If the **preservation of the pledged thing requires its use**, the **creditor may use it only for that purpose**.

Notes

- This rule is **similar to the rule in deposit**, where the depositary cannot use the thing unless authorized.

ARTICLE 2105 (RETURN OF THE THING PLEDGED)

The **debtor cannot demand the return** of the pledged property **unless** he has:

1. Paid the **principal debt**,
 2. Paid the **interest**, and
 3. Paid the **necessary expenses**, when proper.
- **EXCEPTION** (Art. 2107 Reference): If the **pledged property is in danger of destruction or impairment**, the **pledgor may substitute it with another thing of the same kind and quality**.

ARTICLE 2106 (DANGER CAUSED BY PLEDGEE'S FAULT)

If the pledged thing is in danger of being lost or damaged because of the **pledgee's negligence or willful act**, the **pledgor may demand** that it be **deposited with a third person**.

ARTICLE 2107 (DANGER WITHOUT FAULT OF THE PLEDGEE)

If there are **reasonable grounds to fear destruction or impairment**, and the **pledgee is not at fault**, the **pledgor may**:

1. **Demand the return** of the pledged thing,
2. **Offer another thing** in its place, **provided** it is of the same kind and

not inferior quality, **and without prejudice** to the pledgee's rights under Article 2108.

The **pledgee must immediately inform the pledgor** of any danger to the pledged property.

ARTICLE 2108 (SALE DUE TO DANGER)

If, **without the pledgee's fault**, the pledged thing is in danger of destruction, impairment, or decrease in value, the **pledgee may cause it to be sold at public auction**.

- The **proceeds of the sale will replace the pledged thing** and serve as **security** for the debt in the same manner.

TWO REMEDIES IN CASE OF DANGER

1. The **pledgor may substitute** the thing (Art. 2107).
2. The **pledgee may sell it at public auction** (Art. 2108).

Notes

- The pledgee's right to sell under **Art. 2108 is superior** to the pledgor's right to substitute under Art. 2107.

ARTICLE 2109 (DECEPTION AS TO SUBSTANCE OR QUALITY)

If the **creditor is deceived** regarding the substance or quality of the pledged thing, he has two remedies:

1. **Demand another thing in pledge** as replacement; or
2. **Demand immediate payment** of the principal obligation.

ARTICLE 2110 (DECEPTION AS TO SUBSTANCE OR QUALITY)

When the **pledgee returns the pledged thing** to the pledgor or owner, the **pledge is extinguished**. Any agreement attempting to prevent this is **void**.

- If the **pledged thing is in the possession of the pledgor** or owner after the pledge, it is **presumed to have been returned** by the pledgee.
- This **presumption also applies** if a **third person has the thing** after receiving it from the pledgor or owner.

Notes

- The **presumption can be rebutted by evidence** proving otherwise.
- **Only the accessory obligation** (the pledge itself) is **considered extinguished**; the **principal debt remains**.

ARTICLE 2111 (WRITTEN RENUNCIATION OF PLEDGE)

A **written statement by the pledgee renouncing or abandoning** the pledge extinguishes the pledge.

- **Acceptance by the pledgor or return of the pledged thing is not required**.
- The **pledgee becomes a depositary**.

Notes

- The **principal debt is not affected** by the waiver of the pledge.
- **If the principal obligation itself is waived**, it also **cancels the pledge automatically**.

ARTICLE 2112 (SALE OF THE PLEDGED THING)

If the **debt is not satisfied on time**, the **creditor may proceed with a public sale** of the pledged property before a Notary Public.

Procedure

1. **Sale at public auction**
2. **Notice** to the pledgor and owner, stating the amount of the debt
3. If the **first auction fails**, a **second auction is held**
4. If the **second auction fails**, the **creditor may appropriate** pledged thing (keep for himself) and **must issue an acquittance** (a document proving the debt is fully paid).

FORMALITIES REQUIRED

1. The **debt is due and unpaid**
2. The **sale must be at public auction**
3. **Notification** to pledgor and owner with the amount due
4. **Intervention of a Notary Public**

Notes

- The **debtor is not entitled to any excess** **if** the **value** of the pledged property **exceeds the principal obligation**.

ARTICLE 2113 (BIDDING AT PUBLIC AUCTION)

The **pledgor (owner)** may participate in the auction and **has a better right** if they match the highest bid. The **pledgee (creditor)** may also bid, **but:**

- If he is **the only bidder**, his bid is **not valid**.

ARTICLE 2114 (CASH PAYMENT RULE)

All bids at the public auction must be **paid immediately in cash**. If the **pledgee accepts a bid not in cash**, the **pledgor or owner can treat it as if cash has been received**.

Notes

- To avoid fraud, the **pledgee is not allowed to acquire** the thing pledged if he is the only bidder.

ARTICLE 2115 (EFFECT OF SALE ON THE DEBT)

The **sale of the pledged property extinguishes the debt**, **regardless** of whether the sale **proceeds fully cover principal debt, interest, and expenses (if applicable)**.

EXCESS OR DEFICIENCY

- If sale proceeds **> debt**: debtor usually cannot claim the extra, **unless** agreed.
- If sale proceeds **< debt**: creditor cannot claim the difference, **even if there was an agreement**.

Notes

- Under the **Chattel Mortgage Law**, the mortgagor may recover the excess in foreclosure proceedings.

ARTICLE 2116 (NOTICE OF SALE RESULT)

After the auction, the **pledgee must promptly inform the pledgor or owner of the result**.

ARTICLE 2117 (RIGHTS OF THIRD PARTIES)

Any **third person with a right** in the pledged property may pay off the debt **once it becomes due and demandable**, effectively redeeming the pledge.

ARTICLE 2118 (COLLECTION OF PLEDGED CREDIT)

If a credit (money or receivable) pledged becomes due **before** redemption:

- The **pledgee may collect** the amount.
- **Apply it to the debt.**
- **Deliver any surplus to the pledgor.**

ARTICLE 2119 (SALE OF MULTIPLE PLEDGED THINGS)

If **two or more things** are pledged, the **pledgee may choose which item(s) to sell** to satisfy the debt.

- He **may sell only as many items as necessary** to cover the debt, **unless** there is a different agreement.

ARTICLE 2120 (THIRD PARTY PLEDGES)

A **third party may secure someone else's debt** by **pledging his own** movable property.

- In this case, the **third party has the same rights as a guarantor** under **Articles 2066–2070 and 2077–2081.**
- The **third-party pledgor is not affected by any waiver of defenses** by the principal debtor.

ARTICLE 2121 (PLEDGES BY OPERATION OF LAW)

Pledges created by law (automatic legal pledge) are **governed by the same rules** as regular pledges **regarding possession, care, sale, and termination of pledge.**

- Once the **debt and expenses are paid, any remaining proceeds** from the sale **must be returned to the obligor.**

ARTICLE 2122 (SALE OF LEGAL PLEDGES)

A property under a **pledge by operation of law may be sold only after demand** for the amount owed.

- The **public auction must take place within one month after the demand.**
- If the **creditor fails to hold** the auction **without just cause**, the **debtor may demand the return** of the pledged property.

RELATED ARTICLES

- **Art. 1994:** Depositary may retain property as security until payment.
- **Art. 1914:** Agent may retain property until reimbursed and indemnified.
- **Art. 2004:** Hotel-keeper may retain guest's property as security for lodging and services.

Chapter 6 – REAL MORTGAGE

REFERENCE (ART. 2124-2131):

<https://library.legalresource.ph/title-xvi-pledge-mortgage-and-antichresis-book-iv-civil-code/>

ARTICLE 2124 (OBJECT OF MORTGAGE)

REAL ESTATE MORTGAGE

- A **real estate mortgage** is a contract in which the **debtor secures a principal obligation** by **subjecting immovable property or real rights over immovable property as security.**
 - If the **debtor fails to comply with the obligation** at the agreed time, the **creditor may enforce the mortgage.**

CHARACTERISTICS

- **Real Contract** – Creates rights over a specific property.
- **Accessory** – Exists only to secure another obligation (the principal debt).
- **Subsidiary** – Mortgage obligation arises if the principal obligation is not fulfilled.
- **Unilateral** – Obligation exists on the part of the creditor to release the property once the principal obligation is fulfilled.

KINDS

- **Voluntary / Conventional** – Created by agreement of the parties.
- **Legal** – Created by operation of law.
- **Equitable** – Lacks some formalities but shows clear intention to secure a debt.

NOTES

- **Cause / Consideration:** The mortgage derives its existence from the principal contract; it **cannot exist independently**.
- Essentially, the mortgage is a security tool, not an independent obligation.

SUBJECT MATTER

- Applies to immovable property and alienable rights imposed on immovable property

OTHER LAWS GOVERNING MORTGAGE

- Property Registration Decree
- Revised Administrative Code, Section 194 (as amended by Act No. 3344)

FORECLOSURE

- **Definition:** A foreclosure is a remedy allowing the mortgagee to satisfy the debt by selling the mortgaged property at public auction.

- Proceeds from the sale are applied to the mortgage debt.

KINDS OF FORECLOSURE

- **Judicial Foreclosure**
 - Conducted through the courts
 - Mortgagee may recover deficiency if sale proceeds are less than the debt
- **Extrajudicial Foreclosure**
 - Sale done without court intervention
 - Follows legal formalities for extrajudicial sale of the property

REDEMPTION

- **Definition:** Redemption is the act of the mortgagor buying back the property after default or after foreclosure sale.

KINDS OF REDEMPTION

- **Equity of Redemption**
 - Right of the mortgagor to redeem the property after default but before sale.
 - **Judicial Foreclosure:** Can redeem before sale is confirmed by the court, not after.
- **Right of Redemption**
 - Right of the mortgagor to redeem after the property is sold.
 - **Extrajudicial Sale:** Can redeem within one year from registration of sale.
 - **Judicial Foreclosure:** Generally, cannot redeem after sale is confirmed.

ARTICLE 2125 (VALIDITY AND RECORDING)

Besides the requisites in Art. 2085, the **mortgage must be recorded in the Registry of Property to be fully valid** against third parties.

- **If not recorded**, it is still **binding between the parties**.
- **People entitled** to the mortgage by law **can only demand execution and recording** of the mortgage document (no other rights).

Requisites (Art. 2085)

- Must be **constituted to secure the fulfillment of a principal obligation**.
- The **mortgagor must be the absolute owner** of the property.
- **Persons constituting** the mortgage **must have free disposal** of the property or legal authorization.
- **Must appear in a public document recorded in the Registry of Property**, though it is binding between the parties even if not yet recorded (Art. 2125).

ARTICLE 2126 (DIRECT EFFECT OF MORTGAGE)

The **mortgage immediately and directly binds the property** for the fulfillment of the debt, **regardless of who possesses the property**.

EFFECTS OF MORTGAGE

- **Creates a Real Right** – The mortgagee (creditor / lender) can **enforce it against the whole world**.
- **Encumbrance Only** – **Does not extinguish the debtor's ownership**; the **debtor retains the right to dispose** of the property.

ARTICLE 2127 (DIRECT EFFECT OF MORTGAGE)

EXTENT OF MORTGAGE

- **Covers:**
 - **All accessions** (e.g., attached buildings or improvements)
 - **Growing fruits and rents / income**
 - **Insurance proceeds** if the property is destroyed
 - **Expropriation value** if the property is taken by the government

ARTICLE 2128 (ALIENATION OF MORTGAGE CREDIT)

- **Mortgage Credit** – The **mortgagee's right can be assigned or sold to a third party, in whole or in part**.

ARTICLE 2129 (CLAIM AGAINST THIRD PARTIES)

The **creditor may claim payment from a third person** in possession of the mortgaged property **for the part of the debt secured by that property**, following legal procedures.

ARTICLE 2130 (RESTRICTION ON ALIENATION)

- **Restriction on Alienation** – Any **agreement forbidding the owner to sell the property is void**.

ARTICLE 2131 (GOVERNING LAWS)

Matters not specifically covered by these articles, including constitution, modification, and extinction of mortgages, are **governed by the Mortgage Law and the Land Registration Law**.

Chapter 7 – ANTICHRESIS

REFERENCE (ART. 2132-2139):

<https://library.legalresource.ph/title-xvi-pledge-mortgage-and-antichresis-book-iv-civil-code/>

ARTICLE 2132 (ANTICHRESIS)

ANTICHRESIS

- **Definition:** An antichresis is a contract in which the creditor acquires the right to receive the fruits (income, crops, rents) of the antichretic debtor's immovable property.
- The creditor must apply the fruits **first to interest**, then to the principal debt.

KEY ELEMENTS

- **Principal Obligation Secured** – Antichresis is **accessory**; it secures a primary debt.
- **Formal Requirement** – **Must be in writing.**
- **Delivery of Property** – The debtor must deliver the immovable property to the creditor so that he can collect its fruits.

ANTICHRESIS vs. PLEDGE

Real property	Real property
Consensual	Real

ANTICHRESIS vs. REAL ESTATE MORTGAGE

Property is delivered to the creditor	Debtor usually retains possession of the property
Creditor acquires the right to receive the fruits of the property	Creditor does not have any right to receive the fruits
Creditor is obliged to pay the taxes and charges upon the estate	Creditor has no such obligation

ARTICLE 2133 (VALUE OF FRUITS)

- **Measure of application:** The actual market value of the fruits **at the time they are applied** to the debt.

ARTICLE 2134 (FORMALITY)

The principal and interest **must be clearly stated**; otherwise, the contract is **void**.

ARTICLE 2135 (OBLIGATIONS OF THE CREDITOR)

OBLIGATIONS OF THE CREDITOR

- **Taxes and charges must be paid from the fruits** of the property.
- **Preservation and repairs** – Expenses **necessary** for the property's upkeep **must be borne by the creditor** (from the fruits).

ARTICLE 2136 (DEBTOR'S RIGHTS)

RIGHTS AND LIMITATIONS OF THE DEBTOR

- The **debtor cannot regain enjoyment** of the property **until the total debt is paid**.
- **Exception:** The creditor can require the debtor to resume enjoyment to relieve himself of obligations for taxes and upkeep, **unless** otherwise stipulated.

ARTICLE 2137 (OWNERSHIP REMAINS WITH DEBTOR)

The creditor does not acquire ownership of the property for nonpayment. Any clause saying otherwise is **void**.

REMEDIES OF THE CREDITOR IN CASE OF NONPAYMENT

1. **Specific Performance** – Compel the debtor to comply with the debt.
2. **Judicial Foreclosure / Sale** – Petition to sell the property, similar to mortgage foreclosure (Rule 68, Rules of Court).
3. **Extrajudicial Foreclosure** – Sale conducted without judicial intervention, following legal formalities.

ARTICLE 2138 (COMPENSATION OF INTEREST)

Parties may agree that fruits are applied to interest.

- If fruits exceed legal interest limits (usury laws), **excess is applied to principal**.

ARTICLE 2139 (RELEVANT PROVISIONS FROM OTHER ARTICLES)

Applies: **last paragraph of Art. 2085 and Arts. 2089–2091**.

These govern:

- Indivisibility
- Security over property
- Rights in case of multiple creditors or debtors

Chapter 8 – CHATTEL MORTGAGE

REFERENCE (ART. 2139-2141):

<https://library.legalresource.ph/title-xvi-pledge-mortgage-and-antichresis-book-iv-civil-code/>

ARTICLE 2140 (CHATTEL MORTGAGE)

CHATTEL MORTGAGE

- **Definition:** A **chattel mortgage** is a contract where **personal property (movables) is recorded in the Chattel Mortgage Register** as security for the performance of an obligation.
- **Distinction from pledge:** If the **movable is delivered instead of registered, it is a pledge**, not a chattel mortgage.
- **Nature:** Accessory, formal, unilateral.
 - **Accessory:** Secures a principal obligation.
 - **Formal: Registration** in the Chattel Mortgage Register is **required**.
 - **Unilateral:** Only obligates the creditor to free the encumbrance **once the obligation is fulfilled**.

CHATTEL MORTGAGE vs. PLEDGE

Delivery of property is not necessary	Delivery of property is necessary
Registration is required in Chattel Mortgage Register	Registration is not required
Foreclosure procedure is found at Section 14, Act No. 1508	Foreclosure procedure is found at Art. 2112 Civil Code
Excess proceeds Goes to debtor	Debtor is not entitled to the excess
In case of deficiency, creditor is entitled to recover (except for installment purchases)	Creditor cannot recover

SIMILARITIES WITH PLEDGE

- **Secures the performance** of a principal obligation.
- Constituted **only on personal property**.
- **Indivisible** – cannot be partially enforced against multiple debtors.
- **Constitutes a lien** (legal claim) on the property.
- **Creditor cannot appropriate (keep) the property** for payment of debt.
- **In case of default**, the property must be sold at public auction.
- **Extinguished by fulfillment of principal obligation or destruction of the property.**

GOVERNING LAWS

- **Chattel Mortgage Law (Act No. 1508, as amended)**
- **Civil Code**
- **Revised Administrative Code**
- **Revised Penal Code**
- **Ship Mortgage Decree (PD No. 1521)**

OFFENSES UNDER REVISED PENAL CODE (RPC)

1. **Removing mortgaged property to another province or city without mortgagee's written consent.**
2. **Selling or pledging mortgaged property without consent recorded in the Chattel Mortgage Register.**

SUBJECT MATTER

- **Always movable or personal property.**
- **If situated in a different province than the mortgagor, registration must be in both registers; otherwise, the mortgage is void.**

AFFIDAVIT OF GOOD FAITH

- **Parties swear** that the mortgage:
 - **Secures only the obligation specified.**
 - Is **valid and just**, not fraudulent.
- **Absence of affidavit:** Only affects rights against third parties without notice.

RIGHTS AND REMEDIES OF THE CREDITOR

- **Cannot appropriate the property** – may **only recover** credit from sale proceeds at public auction (Section 14, Act No. 1508).
- **May recover deficiency, except:**
 - **If mortgage is for installment purchase of personal property, no deficiency judgment is allowed.**
 - **Any contrary agreement is void.**