CHAPTER 1 GENERAL PROVISIONS

ARTICLE 1767. PARTNERSHIP - a contract wherein **two or more persons** bind themselves to **contribute money, property, or industry to a common fund**, with the intention of **dividing the profits among themselves.**

(General Professional Partnership, Art.1767)
Two or more persons may also form a partnership for the exercise of a profession.

PROFESSION - "group of men pursuing a learned art as a common calling in the spirit of public service"

LIVELIHOOD - less public service

ELEMENTS: (JURIDICAL PERSON)

1. Two or more persons bind themselves to contribute money, property, or industry to a common fund,
2. With the intention of dividing the profits among themselves

ESSENTIAL FEATURES/REQUISITES:

1. There must be a **valid contract;**
2. The parties must have **legal capacity;**
3. There must be a **mutual contribution of money, property, or industry to a common fund;**
4. The **object must be lawful;**
5. The primary purpose must be to **obtain profits and to divide the same among the parties**
6. The partnership has a **juridical personality separate from individual partners**

CHARACTERISTICS OF A CONTRACT PARTNERSHIP

1. **CONSENSUAL** - perfected by mere consent
2. **COMMUTATIVE** - contribution of each partner, as an equivalent of the contribution of the other partners.
3. **PRINCIPAL** - not depend on other contracts for its existence.
4. **BILATERAL -** contract entered by 2 or more persons.
5. **ONEROUS** - each partner must contribute money, property or industry.
6. **NOMINATE** - has a name in law
7. **PREPARATORY** - has preparation for another contract or contracts

MONEY - medium of exchange

PROPERTY - external thing; rights of possession, use and enjoyment are exercised.

INDUSTRY - diligence in the performance of task

PARTNERSHIP vs. JOINT VENTURE
A joint venture - Governed by l**aw of partnership**

DOCTRINE OF DELECTUS PERSONAE - right to choose with whom a person wishes to associate himself; foundation and essence of partnership.
DELECTUS PERSONARUM "choice of persons"
DELECTUS PERSONAE "choice of the person"

PARTNERSHIP AT WILL - no fix term; mutual desire and consent of partners.

ARTICLE 1768. The partnership has a **juridical personality separate and distinct from that of each of the partners,** even in case of failure to comply with the requirements of article 1772, first paragraph. (n)

ARTICLE 1769. RULES TO DETERMINE EXISTENCE, these **rules** shall apply:

1. **Except** as provided by **article 1825, persons who are not partners** as to each other are **not partners** as to **third persons; PARTNERSHIP BY ESTOPPEL -** partners assuming to be partners.
2. **Co-ownership or co-possession** does **not establish a partnership**

	PARTNERSHIP	CO-OWNERSHIP
CREATION	**Contract**	**Contract and law**
JURIDICAL PERSONALITY	**Has legal or juridical personality. Can be sue**	**No juridical personality. Cannot be sue**
PURPOSE	**For profit**	**For common enjoyment**
PROFIT	**May be stipulated**	**Proportionate shares. Stipulation is void**
DISSOLUTION	**Death or incapacity**	**Not death or incapacity**
FORM	**In any form. If real property - public instrument**	**No public instrument even if real property**

3. **Sharing of gross returns** does **not establish a partnership**
4. The **receipt by a person** of a share of the profits of a business is **prima facie evidence** that he is a partner in the business, but **no such** inference shall be drawn if such profits were received in payment:
    a. **Debt** by installments or otherwise;
    b. **Wages of an employee** or rent to a landlord;
    c. **Annuity** to a widow or representative of a deceased partner;
    d. **Interest** on a loan, though the amount of payment vary with the profits of the business;
    e. S**ale of a goodwill** of a business or other property by **installments** or otherwise. (n)

ARTICLE 1770. UNLAWFUL PARTNERSHIP
Lawful object or purpose - **commerce of man**, not impossible, not contrary to law, morals, good customs, public order or republic policy.

Unlawful partnership dissolved - by a judicial decree, the **profits shall be confiscated** in favor of the **State,** (Unlawful Partnership formed for **gambling, houses for prostitution, illegal monopolies, restraint of trade**)

EFFECTS OF UNLAWFUL PARTNERSHIP
1. Contract is **void** from the very beginning
2. **Profits confiscated** in favor of gov't
3. **Instruments/tools and proceeds** of the crime shall be **forfeited** in favor of the gov't
4. Contributions of the partners shall not be confiscated unless they fall under no. 3.

ARTICLE 1771. IMMOVABLE PROPERTY/REAL RIGHTS MUST BE IN A PUBLIC INSTRUMENT.

GENERAL RULE: No form is required. (May be oral or in writing)

EXCEPTIONS: If real properties/rights are contributed, **public instruments** are needed. Otherwise the **CONTRACT** is **VOID.**

REAL RIGHTS - connected with a thing. ownership, habitation, usufruct, predial servitude, pledge, real mortgage

PUBLIC INSTRUMENT - document by a notary public

ARTICLE 1772. CAPITAL of P3,000 or more money or property **-** shall appear in **public instrument** and **recorded in SEC.** (Personal property only)

Failure to comply: not affect the liability of the partnership and the members to third persons. **NOT VOID & still VALID**

ARTICLE 1773. IMMOVABLE PROPERTY without INVENTORY, not signed by the parties and attached to the public instrument makes the contract of partnership void.

ARTICLE 1774. IMMOVABLE PROPERTY IN PARTNERSHIP NAME
Immovable property must be in the name of the partnership and if conveyed title must be in the partnership name. (because the partnership has juridical personality separate and distinct from each of the partners)

Formalities required (Article 1771-1774)
General rule: The contract may be constituted in any form.
Exceptions:
1. Where immovable property or real rights are contributed:
    a. The contract must appear in a public instrument; and
    b. Attached to such instrument must be an inventory, signed by the parties, of the property contributed and
2. Where the capital is at least P3,000, in money or property:
    a. The contract must appear in a public instrument; and
    b. It must be recorded in the Office of the Securities and Exchange Commission (SEC).

Note: As to the second, failure to comply with these requirements, however, does NOT affect the liability of the partnership and the partners to third persons.

ARTICLE 1775. ARTICLES OF PARTNERSHIP (not be secret)
It is also required that the **articles of partnership must NOT be kept SECRET** among the members; otherwise, the association shall have **no juridical personalit**y and shall be governed by the provisions on CO-OWNERSHIP.

"kept secret among the members" = **secrecy** directed not to third persons but to **some of the partners**

	PARTNERSHIP	ASSOCIATION
JURIDICAL PERSONALITY	**Has legal or juridical**	**No juridical personality.**
PURPOSE	**For profit**	**May not be for profit**
CONTRIBUTION OF MEMBERS	**Has contribution of money, property, industry**	**No contributions. Collection of fees from members**
LIABILITY as to debts	**Partnership**	**Members**

ARTICLE 1776. As to Object - universal or particular
As to liability - general or limited

ARTICLE 1777. A universal partnership may refer to all the present property or to all the profits. (

KINDS/CLASSIFICATION OF PARTNERSHIPS

AS TO THE LEGALITY OF ITS EXISTENCE:

1. **Partnership de jure** is one which has complied with all the requisites for its lawful establishment;
2. **Partnership de facto** is one which fails to comply.

AS TO ITS OBJECT:

1. **Universal partnership:**
    a. Of all present property - contribute all the property with intention of dividing profits.
    b. Of profits - partners may acquire by industry or works
2. **Particular partnership** - determinate things, use of fruits, specific undertaking, exercise of profession.

AS TO ITS DURATION:

1. **Fixed term** - agreed upon
2. **At will** - no term
3. **Particular undertaking** - exist until purpose is accomplished.

AS TO THE LIABILITY OF THE PARTNERS:

1. **General partnership -** consisting of **general partners only,** who are personally liable pro rata for partnership obligations after exhaustion of partnership assets;
2. **Limited partnership** - includes, aside from **general partner/s, limited partners**, who are not personally liable for partnership obligations.

AS TO ITS PUBLICITY:

1. **Secret partnership** - where the existence of certain persons as partners is **not made known by the partners;**
2. **Open or notorious partnership** - the existence of which is made **known to the public by the partners.**

AS TO ITS PURPOSE:

1. **Commercial or trading partnership -** transaction of business;
2. **Professional or non-trading partnership** - the exercise of profession.

AS TO REPRESENTATION TO OTHERS

1. **Ordinary partnership** - two or more persons bind themselves
2. **Partnership by estoppel** - not actual partners but assume to be as one with consent.

ARTICLE 1777. A universal partnership may refer to all the present property or to all the profits.

OBJECT OF UNIVERSAL PARTNERSHIP

1. **All present property :**
   ARTICLE 1778. (1) all the property which belongs to them to a common fund, with the intention of dividing the same among themselves. (2) profits they may acquire therewith.

   ARTICLE 1779. The property contributed includes all those belonging to the partners at the time of the constitution of the partnership. Future properties cannot be included (inheritance, legacy, donation) except fruits.

2. All the profits:
   ARTICLE 1780. It comprises all that the partners may acquire by their industry or work during the existence of the partnership. Only the usufruct over the property of the partners passes to the partnership.

ARTICLE 1781. When the articles of universal partnership **do not specify its nature**, the partnership will be considered as one only of all the profits.

ARTICLE 1782
General Rule: Any person capacitated to contract may enter into a contract of partnership.
Exceptions: The capacity of the following persons to enter into a contract of partnership, though capacitated to contract generally, are limited:

1. Those who are p**rohibited from giving each other any donation** or advantage cannot enter into a universal partnership [Article 1782];
2. A **corporation** cannot enter into a partnership in the absence of express authorization by statute or charter.

Examples:

1. Legally married spouses
2. Husband and wife living together without a valid marriage.
3. Persons who are guilty of adultery, concubinage
4. Guilty of criminal offense
5. Public officer

ARTICLE 1783. **A particular partnership** has for its object determinate things, their use or fruits, or a specific undertaking, or the exe

PARTNERSHIP VS CORPORATION:

Partnership	Corporation (RCC)
● Has **juridical personality separate and distinct from its individual members**	
● Can only **act through agents**	
● Composed of an **aggregate of individuals**	
● Distributes its profits to those who contributed capital to the business	
● Can only be **organized** where there is a **law** authorizing its organization	
Created **by agreement**	Created by **operation of law**
Involves **at least two persons**	Requires **at least one incorporator (OPC)**
Personality commences from the **moment of execution of the contract**	Personality commences from the **issuance of certificate of incorporation**
Can **exercise any power** authorized by partners	Can exercise o**nly powers conferred by the Revised Corporation Code** or by its **articles of incorporation,** and such as are necessary or incidental to the exercise of such powers
When management is not agreed upon, **every partner may act for the partnership**	Management is vested in the **board of directors or trustees**
Partners are **generally liable** for partnership debts	Stockholders are **liable only to the extent of** their shares
A partner **cannot dispose of his interest,** so as to make the assignee a partner, without consent of others	A stockholder **has the right to transfer his shares** without consent of others
Duration has **no limitation**	**Perpetual Existence**
May be **dissolved at any time by one** or all of the partners	May only be dissolved with the **consent of the state**

CHAPTER 2 Obligations of the Partners

KINDS OF PARTNERS AS

TO CONTRIBUTION

1. **Capitalist partner -** whose contribution is **money or property;**
2. **Industrial partner** -contribution is only his **industry;**
3. **Capitalist - Industrial partner - both** money, property and industry.

AS TO LIABILITY

1. **General partner** - liability to **third persons** extends to his **separate property;**
2. **Limited partner -** whose liability to third persons is **limited to his capital contribution;**

AS TO MANAGEMENT

1. **Managing partner** - **manage actively** the affairs or business of the partnership
2. **Liquidating partner** - takes charge of the **winding up** of partnership affairs;
3. **Silent partner** - does **not take active part** in the business, but may be **known to be a partner by third persons;**

AS TO THIRD PERSONS

1. **Ostensible partner** - who **takes active part** in the business of the partnership and is **known by the public;**
2. **Secret partner -** who **takes active part** in the business, but is **unknown** to the third persons as a partner;
3. **Dormant partner -** who does **not take active part** in the business and is **not known or held out as a partner;**

AS TO MEMBERSHIP

1. **Real partners -** partners in existing partnership
2. **Partner by estoppel -** who is not really a partner but is liable as such for the protection of innocent third persons;

AS TO CONTINUATION

1. **Continuing partner** - continues the business after dissolution

2. **Discontinuing partner** - does not continue the business after dissolution

AS TO NATURE OF MEMBERSHIP

1. **Original partner** - who has been a partner since the **constitution** of the partnership;
2. **Incoming partner** - who is **about to be taken** as a member into an existing partnership;
3. **Retiring partner** - who is **withdrawing** from the partnership.

AS TO STATE OF SURVIVORSHIP

1. **Surviving partner** - who **remains a partner** after dissolution by death of any partner;
2. **Deceased partner** - who **died** while being a member of the partnership.

AS TO THE EFFECT OF EXPULSION

1. **Expelled partners** - **who are expelled** by the others for a valid cause
2. **Expelling partners** - **who caused the expulsion**

AS TO THE VALUE OF CONTRIBUTION

1. **Majority partners** - whose contribution represents **majority** or the **controlling interest**
2. **Nominal partners** - whose contribution represents **minority interest**

Subpartner, who is not a member of the partnership but contracts with a partner with regard to the share of the latter in the partnership;

SECTION 1. OBLIGATIONS OF PARTNERS AMONG THEMSELVES

ARTICLE 1784
General Rule: . A partnership begins from the moment of the execution of the contract
Exception: Stipulation, can agree on some other date

ARTICLE 1785. The rights and duties of the partners **remain the same** when they **continue the partnersh**ip after termination of such term (fixed term, particular undertaking, or at will).

ARTICLE 1786. Every partner is a debtor of the partnership for whatever he may have promised to contribute thereto.

Obligation of every partner:

1. **Obligation to contribute** what had been promised without demand.
2. **Obligation to warrant** - in case of eviction refers only to specific or determinate things.
3. Obligation to **deliver the fruits**

ARTICLE 1787. When the capital or a part thereof which a partner is bound to contribute **consists of goods,** their **appraisal must be made.**

Manner of appraisal:

1. By stipulation
2. Absence of stipulation: By experts

ARTICLE 1788. PARTNER FAILS TO CONTRIBUTE MONEY is liable for interest and damages.

Cases covered of the liability:

1. **Money** promised by a partner is **not given on time**
2. **Money** of the partnership is **converted to the partner's own use.**

ARTICLE 1789. INDUSTRIAL PARTNER - CAPITALIST PARTNER

Industrial partner	Capitalist partner
Form of contribution	
Industry	Money or property
Share in profits	
Just and equitable share	According to agreement; if none, in proportion to **contribution**
Share in losses	
General rule: Agreement as to losses. **Exception:** No agreement, they should not be liable for losses.	**General rule:** Agreement as to losses. If no agreement as to profits. **Exception:** In the absence of profits and losses, in proportion to contribution.
Engagement in business	
General rule: Cannot engage in **business for himself** **Exception**: if the partnership expressly permits him to do so **Remedy:** the capitalist partners may: 1. **exclude him from the firm**; or 2. **avail themselves of the benefits**	**ARTICLE 1808.** **General rule:** Cannot engage, f**or his own account, in the same kind of business** in which the partnership engaged. **Exception**: unless there is a stipulation **Remedy:** he shall **bring to the common fund any profits** accruing to him from his transactions and shall personally **bear all the losses**

obtained in violation of the prohibition, with right to damages in either case	

ARTICLE 1790.
General rule: the partners shall **contribute equal shares** to the capital of the partnership.
Exception: Stipulation

ARTICLE 1791. CAPITALIST PARTNER - ADD. CAPITAL
General rule: Capitalist partners are n**ot bound to contribute additional capital.**
Exception:

1. Stipulation
2. In case of an **imminent loss of the business** of the partnership to save the venture. If a capitalist partner refuses to contribute, they shall be obliged to sell their interest to other capitalist partners who are willing to contribute.

ARTICLE 1792. MANAGING PARTNER COLLECTION OF DEBT

Requisites:

1. The existence of at least 2 debts. (Managing partner and partnership is a creditor)
2. Both sums are demandable

ARTICLE 1793. PARTNER RECEIVED SHARES AS WHOLE OR IN PART
The partner who receives capital from an **insolvent debtor** and the other partner not collected theirs, shall **bring to the partnership capital** what he received even though he may have given receipt for his share only.

ARTICLE 1794. PARTNER DAMAGED TO PARTNERSHIP
Every partner is **liable for damages** through his fault. He **cannot compensate** them with the **profits and benefits** earned from the partnership. Courts may l**essen the responsibility** if he showed **extraordinary** e**fforts or unusual profits** have been realized.
ARTICLE 1795. RISK OF LOSS OF SPECIFIC AND DETERMINATE THINGS.

ARTICLE 1796. OBLIGATION OF THE PARTNERSHIPS TO EVERY PARTNER

1. **Refund the amounts** a partner may have disbursed on behalf of the partnership **plus the interest** from the time expenses were made. (Nag abunar muna si partner para sa partnership)
2. To answer to each partner for the **obligations he may have contracted in good faith** in the interest of the partnership business, and for risks in consequence of its management.

ARTICLE 1797. DISTRIBUTION OF PROFITS and LOSSES

1. **Distribution of profits**
    a. **Acc. to agreement**
    b. **If no agreement:**
        - Capitalist partner - proportion to contribution
        - Industrial partner - just and equitable
2. **Distribution of losses**
    a. **Acc. to agreement**
    b. **If no agreement:**
        - Capitalist partner - proportion to contribution
        - Industrial partner - Not liable for losses

ARTICLE 1798. DESIGNATION OF PROFITS AND LOSS TO THIRD PERSONS

General rule: It is valid
Exception: It is not valid and may be questioned if it is manifested inequitable.
Exception to the exception:

1. A partner began to execute the decision of the third person
2. A partner has not impugned or questioned the same within a period of three months from the time he had knowledge thereof.

ARTICLE 1799.
General Rule: A **stipulation** which excludes one or more partners from any share in the profits or losses is void. (1691) *The stipulation is void not the contract of partnership.

Exception: Industrial partner not liable for losses unless he waived the right.

ARTICLE 1800. POWERS OF A MANAGING PARTNER
General rule: The partner designated as manager in the articles may **execute all acts of administration** despite opposition by the other partners.
Exception: He cannot do so when **he acts in bad faith.**

ARTICLE 1801. MANAGEMENT BY TWO OR MORE PARTNERS

When there are two or more managing partners appointed, without specification of their duties or without a stipulation on how each one will act:

General rule: Each one may separately execute **all acts** of administration.
Exception:

1. If any of them opposes the acts of the others, the decision of the **majority prevails.**
2. In case of a tie, the partners owning the **controlling interest** will decide

ARTICLE 1802. STIPULATION OF UNANIMITY
General rule: Unanimous consent of all the managing partners shall be necessary for the validity of acts and absence of or disability of any managing partner
Exception: there is **imminent danger of grave** or irreparable injury to the partnership.

ARTICLE 1803: MANAGEMENT WHEN MANNER NOT AGREED UPON
When there is no agreement as to the manner of management, the following rules apply:

1. **All the partners are considered agents** [mutual agency]. Whatever any **one does alone binds the partnership**, unless there is a timely opposition to the act, under Article 1801.
2. Any important **alteration in the immovable property** of the partnership, even if useful to the partnership, requires **unanimity.** If the alteration is necessary for the preservation of the property, however, consent of the others is not required.
3. If the **refusal is manifestly** prejudicial to the partnership, **court intervention** may be sought.

ARTICLE 1804.

- Every partner may **associate** another person with him in his share
- but the associate shall **not be admitted into the partnership** without the consent of all the other partners,
- even if the partner having an associate should be a manager. (1696)

ARTICLE 1805. The **partnership books shall be kept,** subject to any agreement between the partners, at the **principal place of business** of the partnership, and every partner shall at any **reasonable hour (business days)** have access to and may inspect and copy any of them.

ARTICLE 1806. Partners shall render on demand true and full information

Who can demand true and full information?

1. Any partner
2. Legal representative (deceased partner)
3. Legal representative (w/ legal disability)

ARTICLE 1807. Profits derived by a partner without the consent of the other partners.

ARTICLE 1809.
General rule: No formal accounting is demandable until after its dissolution of the partnership
Exception:

1. If he is **wrongfully excluded** from the partnership business or possession of its property by his co-partners;
2. If the **right exists** under the terms of any agreement;
3. As provided by **article 1807;**
4. Whenever **other circumstances** render it just and reasonable.

SECTION 2. PROPERTY RIGHTS OF A PARTNER

ARTICLE 1810. The **property rights of a partner** are:

1. His **rights** in **specific partnership property**;
2. His **interest** in the **partnership;**
3. His **right** to **participate in the management.**

ARTICLE 1811. A **partner is co-owner with his partner**s of **specific partnership property.**

The incidents of this co-ownership are such that:

1. **A partner, has an equal right** with his partners to possess specific partnership property for partnership purposes; but he has no right to possess such property for any other purpose without the consent of his partners;
2. A partner's **right in specific partnership property is not assignable**
3. A partner's right in specific partnership property is **not subject to attachment or execution**, **except:** on a claim against the partnership.
4. A partner's right in specific partnership property is n**ot subject to legal support** under article 291.

ARTICLE 1812. A **partner's interest** in the partnership is his **share of the profits and surplus**.

Profit = excess of revenues/expenditures
Surplus = excess of receipts/disbursements

ARTICLE 1813. A **conveyance by a partner** of his **whole interest** in the partnership does **not of itself dissolve** the partnership

SECTION 3. OBLIGATIONS OF THE PARTNERS WITH REGARDS TO THIRD PERSONS

ARTICLE 1815. FIRM NAME
General rule: Partners may use a**ny firm name desired** and this will become the name of that juridical person.
Exception: Partnership **cannot use identical or confusing names** similar to any existing partnership/corporation.

ARTICLE 1816. All partners, **including industrial ones,** shall be **liable** pro rata with all their property and after all the partnership assets have been exhausted.

Liability as to third persons = Industrial partner
Losses between partners = Industrial partner does not belong, therefore he can reimburse from the partner after they all paid the liabilities to third persons.

Article 1817. STIPULATION AGAINST LIABILITY in 1816 is VOID as to third persons but VALID among partners.

ARTICLE 1818. An **act of a partner** which is not apparently for the **carrying on of business** of the partnership in the usual way **does not bind the partnership** unless authorized by the other partners.

Except when authorized by the other partners or unless they have abandoned the business, one or more but less than all the **partners have no authority to**:

1. **Assign the partnership property** in trust for creditors or on the assignee's promise to pay the debts of the partnership;
2. **Dispose of the goodwill** of the business;
3. **Do any other act** which would make it impossible to carry on the ordinary business of a partnership;
4. **Confess a judgment;**
5. **Enter into a compromise** concerning a partnership claim or liability;
6. **Submit a partnership claim** or liability to arbitration;
7. **Renounce a claim** of the partnership.

No act of a partner in contravention of a restriction on authority shall bind the partnership to persons having knowledge of the restriction.

ARTICLE 1819. REAL PROPERTY TITLE
Real property may be registered owned in the name of:

1. Partnership
2. 1 or more or all of the partners
3. 1 or more or all of the partners or third person
4. All the partners

ARTICLE 1820. An admission or representation made by any partner is evidence against the partnership if:

1. Admission must concern partnership affairs
2. Admission must be within the scope of his authority.

ARTICLE 1821.
General rule: Notice to a partner is notice to the partnership
Exception: In the case of fraud on the partnership, committed by or with the consent of that partner.

ARTICLE 1822. WRONGFUL ACT/OMISSION of any **partne**r in the ordinary course of business, the **partnership is liable** to the same extent as the partner committing the act.

ARTICLE 1823. LIABILITY FOR MISAPPROPRIATION

1. one partner **acting within the scope of his authority** receives money or property of a third person and **misapplies it;**
2. he partnership in the course of its business **receives money or property of a third person** and **misapplied** by any partner while it is in the custody of the partnership

ARTICLE 1824. ALL PARTNERS ARE LIABLE SOLIDARILY with the partnership for everything chargeable to the partnership under articles 1822 and 1823.

ARTICLE 1825. PARTNERSHIP BY ESTOPPEL

1. When a **partnership liability results**, he is **liable as though he were an actual member** of the partnership;
2. When **no partnership liability results,** he is liable pro rata with the other persons, if any, so consenting to the contract or representation as to incur liability, otherwise separately

ARTICLE 1826. PERSON ADMITTED AS A PARTNER Liability:

1. **Obligations of the partnership before his admission.**

ARTICLE 1827. CREDITORS OF PARTNERSHIP shall be preferred to those of each partner as regards the partnership property. Private creditors of each partner may ask for the attachment and public sale of the share .

ADDITIONAL INFO FROM MAM NOTES:
MANAGEMENT
Management of the partnership is primarily governed by the **agreement of the partners in the articles of partnership.** It may be stipulated that the partnership will be managed by:

1. **All the partners; or**
2. **A number of partners appointed as managers, which may be appointed:**

a. In the articles of partnership; or
b. After the constitution of the partnership.

REVOCATION OF POWER OF MANAGING PARTNER
The powers of the managing partner may be **revoked:**

1. If **appointed in the articles of partnership**, when:
    a. There is **just or lawful cause** for revocation; and
    b. The partners representing the controlling interest revoke such power.
2. If **appointed after the constitution of the partnership**, at any time and for any cause.

A **stipulation** which excludes one or more partners from any share in the profits or l**osses is void.**

CHAPTER 3 Dissolution and Winding Up

CONCEPTS - THREE FINAL STAGES OF PARTNERSHIP

ARTICLE 1828. Dissolution – the **change in the relation of the partners** caused by any partner ceasing to be associated in the carrying on of the business. It is different from the winding-up of the business.

ARTICLE 1829. Dissolution does not terminate the partnership, which continues until the winding up of partnership affairs is completed

Winding up – the **actual process of settling the partnership business or affairs** after dissolution. **Collection and distribution of partnership assets,** payment of debts, and determination of the value of the interest of the partners in the partnership.

Termination – the point in time when **all partnership affairs are completely wound up and finally settled**. It signifies the **end of the partnership life.**
ARTICLE 1830. CAUSES OF DISSOLUTION

EXTRAJUDICIAL DISSOLUTION (1-7)

1. **WITHOUT VIOLATION OF THE AGREEMENT**
    a. By the **termination of the definite term** or particular undertaking specified in the agreement;
    b. By the **express will of any partner,** who must **act in good faith**, when **no definite term** or particular is specified.
    c. By the **express will of all the partner**s who have not assigned their interests or suffered them to be charged for their separate debts, either **before or after the termination** of any specified term or particular undertaking;
    d. By the **expulsion of any partner** from the business bona fide in accordance with such a power conferred by the agreement between the partners.
2. In **contravention of the agreement** between the partners, where the circumstances do not permit a dissolution under any other provision of this article, by the **express will** of any partner at any time;

Note: If, after the **expiration of the definite term or particular undertaking**, the partners continue the partnership without making a new agreement, the firm becomes a **partnership at will**

BY OPERATION OF LAW

3. By any event which makes it **unlawful for the business** of the partnership to be carried on or for the members to carry it on in partnership;
4. When a **specific thing** which a partner had promised to contribute, **perishes before delivery, or by the loss of the thing;**
5. By the **death of any partner;**
6. By the i**nsolvency of any partner** or of the partnership;
7. By the **civil interdiction** of any partner;

JUDICIAL DISSOLUTION - COURT INTERVENTION

8. By **decree of court**

ARTICLE 1831. BY DECREE OF COURT
A partner may apply for dissolution in court when:

1. A partner has been declared **insane** in any judicial proceeding or is shown to be of **unsound mind;**
2. A partner becomes in any other way **incapable of performing** his part of the partnership contract;
3. A partner has been **guilty of such conduct** as tends to affect prejudicially the carrying on of the business;
4. A partner **willfully or persistently commits a breach** of the partnership agreement,
5. the business of the partnership can only be **carried on at a loss;**
6. **Other circumstance**s render a dissolution equitable.

ARTICLE 1832.
General rule: When a partnership is dissolved, any of the partners cannot bind the partnership

Exceptions: Provided in article 1833 & 1834

ARTICLE 1833. Dissolution is caused by the act, death or insolvency of a partner he is liable if he has knowledge thereof. If he acts in good faith/no knowledge about the acts he is not liable. (Transactions are valid and binding)

ARTICLE 1834. BINDING OF PARTNERSHIP AFTER DISSOLUTION

I. PARTNERSHIP IS LIABLE

1. Act appropriate for **winding up partnership** affairs

2. Act for **completing transactions** unfinished at dissolution.
3. **Transaction** which **could bind the partnership** if dissolution had not taken place the other party to the transaction:
    a. Had e**xtended credit prior to dissolution without knowledge** or notice of dissolution.
    b. Had not so e**xtended credit even prior to dissolution without knowledge** or notice of dissolution.

II. PARTNERSHIP IS NOT LIABLE

1. Partnership dissolved because it is **unlawful**
   Except: Appropriate for **winding up** transactions
2. Partner become **insolvent**
3. Partner had **no authority to wind up partnership**;
   Except: transaction with a third person who is in good faith.

ARTICLE 1835. DISSOLUTION DOES NOT DISCHARGE EXISTING LIABILITY

General rule: The dissolution of the partnership does not of itself discharge the existing liability of any partner.

In order to discharge liability the following must agree:

1. Partner
2. Other partners
3. Creditors

ARTICLE 1836. MANNER OF WINDING UP

1. **Extrajudicial,** by the partners themselves;
    a. **Liquidating partner** or partners agreed upon.
    b. Partners who have **not wrongfully dissolved the partnership**
    c. **Legal representative** of the last surviving partner
2. **Judicial,** under the control and direction of the proper court.
    a. Person **appointed by the court**

ARTICLE 1837. CONTRAVENTION IN PARTNERSHIP

WITHOUT CONTRAVENTION OR VIOLATION

1. Have the partnership property applied to discharge the liability
2. Have the surplus if any.

IN CONTRAVENTION OR VIOLATION

1. Rights of partner who has **not caused dissolution wrongfully**
    a. Have the partnership property applied to discharge the liability
    b. Have the surplus if any.
    c. Indemnified for damages
    d. Continue the business
2. Rights of partner **who wrongfully caused the dissolution**
    a. If the business is **not continued by other partners**
        - Have the partnership property applied to discharge the liability
        - Have the surplus if any less damages.
    b. If the business is **continued**
        - Have value of interest less damages
        - To be released from all existing liabilities of the partnership

ARTICLE 1838. CONTRACT IS RESCINDED

Three rights of a partner who is entitled to to rescind:

1. **Right of lien or right of retention**
2. **Right of subrogation**
3. **Right of indemnification**

ARTICLE 1839. SETTLING ACCOUNTS

ASSETS OF PARTNERSHIP:

A. Partnership property
B. Contributions of the partners necessary to for the payment of all liabilities

ORDER OF APPLICATION OF ASSETS

The partnership liabilities shall rank, in order of payment, as follows:

A. Those owing to **creditors** other than partners;
B. Those owing to **partners** other than for capital and profits;
C. Those owing to partners in respect of **capital**;
D. Those owing to partners in respect of **profits**

DOCTRINE OF MARSHALING OF ASSETS

When partnership property and the individual properties of the partners are in possession of a court for distribution:

A. **Partnership creditors** have priority on **partnership property;**
B. **Separate creditors** have priority on **individual property,** saving the rights of lien of secured creditors.
C. Anything left from either shall be applied to satisfy the **other.**

ARTICLE 1840. OTHER CAUSES OF DISSOLUTION

A. When a **new partner is admitted into an existing** partnership;
B. When any partner **retires**;
C. When the other partners **assign their rights to the sole remaining partner;**
D. When all the **partners assign their rights in the partnership property to third persons.**
E. When **any partner wrongfully causes a dissolution** and the r**emaining partners continue the business** =
F. When **a partner is expelled and the remaining partners continue the business**

ARTICLE 1841. When any partner retires or dies, and the business is continued under any of the conditions set forth in the preceding article, or in article 1837, second paragraph, No. 2.

ARTICLE 1842. RIGHT TO ACCOUNT INTEREST
Has right:
- Any partner or his **legal representative**

Who has an obligation to render an account:
1. **Winding up partners**
2. **Surviving partners**
3. **Person** or partnership continuing business

When to render:
- At the **date of dissolution**

EFFECTS OF DISSOLUTION
In general, upon dissolution, the **authority of the partners to represent the partnership** is confined only to acts necessary to:
1. **Wind up partnership** affairs; or
2. **Complete transactions** begun but not then finished

Any partner or his legal representative or assignee may obtain winding up by the court, upon cause shown.

CHAPTER 4 Limited Partnership

ARTICLE 1843. Limited partnership
1. **A partnership;**
2. Formed by **two or more persons;**
3. Having as **members:**
    a. **One or more general partners**
    b. **One or more limited partners**

CHARACTERISTICS
1. A limited partnership is formed by **compliance with the statutory requirements.**
2. The business is **controlled or managed by one or more general partners,** who are personally liable to creditors.
3. **One or more limited partners** contribute to the capital and share in the profits but do not manage the business and are not personally liable for partnership obligations beyond their capital contributions.
4. **Obligations or debts are paid out of the partnership assets** and the individual property of the general partners.
5. The **limited partners may have their contributions back** subject to conditions prescribed by law.

ARTICLE 1844. CERTIFICATION

ARTICLE 1845. Contributions: Cash or property only, not industry

ARTICLE 1846. Surname shall not appear in the partnership name.

ARTICLE 1847. If the certificate contains a false statement one who suffers loss by reliance on such statement may hold liable any party to the certificate who knew the statement to be false:
1. At the **time he signed the certificat**e,
2. Subsequently, but within a sufficient time b**efore the statement** was relied upon to enable him to cancel or amend the certificate, or to file a petition for its cancellation or amendment as provided in article 1865.

ARTICLE 1848. **LIABILITY**
General rule: A limited partner shall not become liable as a general partner
Exception: he takes part in the control of the business.

ARTICLE 1849. ADDITIONAL LIMITED PARTNERS may be admitted upon filing an amendment to the original certificate in accordance with the requirements of article 1865.

ARTICLE 1850. GENERAL PARTNER RIGHTS AND POWERS
General rule: A general partner shall have all **the rights and powers** and be subject to all the restrictions and liabilities of a partner in a partnership without limited partners. - *ACTS OF ADMINISTRATION*

Exception: without the written consent or ratification by the limited partners they do not have no authority to: *(ACTS OF MANAGEMENT)*
1. Do any **act in contravention of the certificate;**
2. Do any **act which would make it impossible** to **carry on the ordinary business** o
3. **Confess a judgment** against the partnership;
4. P**ossess partnership property,** or assign their rights in specific partnership property, for other than a partnership purpose;
5. **Admit a person** as a **general partner;**
6. **Admit a person as a limited partner**, unless the right so to do is given in the certificate;
7. **Continue the business with partnership property on the death,** retirement, insanity,
8. **civil interdiction or insolvency of a general partner,** unless the right so to do is given in the certificate

ARTICLE 1851. LIMITED PARTNER RIGHTS
1. Have the **partnership books kept** at the principal place of business of the partnership, and at a reasonable hour to i**nspect and copy** any of them;

2. Have on demand **true and full information** of all things affecting the partnership, and
3. a f**ormal account of partnership affairs** whenever circumstances render it just and reasonable; and
4. Have **dissolution and winding up** by decree of court.
5. right to receive a **share of the profits** or other compensation by way of income
6. right to receive **return of his contribution**

ARTICLE 1852. CONTRIBUTOR ERRONEOUSLY believes he has become a LIMITED PARTNER

Not liable as a general partner:
1. on ascertaining the mistake he promptly renounces his interest in the profits of the business
2. He does not take part in the control of the business

ARTICLE 1853. GENERAL-LIMITED PARTNER

GENERAL-LIMITED PARTNER
A person may be a general partner and a limited partner in the same partnership at the same time, provided that this fact shall be **stated in the certificate provided for in article 1844.**

RIGHTS OF A GENERAL-LIMITED PARTNER
Rights **same those of a general partner**

LIABILITIES OF A GENERAL-LIMITED PARTNER
General rule: Liabilities are the same as those of a general partner.
Exceptions:
1. As **partnership creditors - liable up to the extent of his property.**
2. As regards **his contribution - rights are those of limited partners.**

ARTICLE 1854. BUSINESS TRANSACTION OF A LIMITED PARTNER

ALLOWABLE BUSINESS TRANSACTION
1. To **lend money to the partnership**
2. To **transact business**
3. To **receive on accoun**t resulting claims against the partnership, with gen. Creditors, a pro rata share of assets.

PROHIBITED BUSINESS TRANSACTION
1. **Receive or hold as collateral security** any partnership property
2. **Receive from a general partner** or the partnership a**ny paymen**t, conveyance, or **release from liability,** if at the time the assets of the partnership are not sufficient to discharge partnership liabilities to persons not claiming as general or limited partners.

**these are to prevent illegal competition b/w limited partner and partnership creditors*

ARTICLE 1855. SEVERAL LIMITED PARTNERS
Preference may be given to some limited partners over other limited partners:
1. Return of their contributions
2. Their compensation by way of income
3. Any other matter

ARTICLE 1856. SHARE OF PROFITS
Share of profits by way of income of a limited partner:
Partnership assets in excess of all liabilities of the partnership to third persons after payment of the profits by way of income of a limited partner.

ARTICLE 1857. LIMITED PARTNER

REQUISITES FOR THE RETURN OF CONTRIBUTIONS OF A LIMITED PARTNER:
1. All **liabilities of the partnership**, except liabilities to general partners and to limited partners on account of their contributions, **have been paid or there remains property of the partnership sufficient to pay them;**
2. The c**onsent of all members is ha**d, unless the return of the contribution may be rightfully demanded under the provisions of the second paragraph; and
3. The **certificate is cancelled** or so **amended** as to set forth the w**ithdrawal or reduction.**

LIMITED PARTNER WHEN TO DEMAND THE RETURN OF CONTRIBUTIONS:
1. On the **dissolution of a partnership**, or
2. When the **date specified in the certificate** for its return has arrived, or
3. After he has given **six months' notice in writing** to all other members, if no time is specified in the certificate, either for the return of the contribution or for the dissolution of the partnership.

Exceptions :
1. **Stipulation** contrary to certificate
2. **Consent of partners** to return contribution other than in the form of cash

LIMITED PARTNER MAY HAVE DISSOLVED AND LIQUIDATED WHEN:
1. He r**ightfully but unsuccessfully demands** the return of his contribution, or
2. The **other liabilities of the partnership have not been paid,** or the p**artnership property is insufficien**t for their payment as required by the first paragraph, No. 1, and the **limited partner would otherwise be entitled to the return** of his contribution.

ARTICLE 1858. LIABILITY OF A LIMITED PARTNER

FOR UNPAID CONTRIBUTIONS:

1. For the **difference between his contributio**n as **actually made** and that stated in the **certificate** as having been made, and
2. For any **unpaid contribution** which he agreed in the certificate to **make in the future** at the time and on the conditions **stated in the certificate.**

AS A TRUSTEE TO THE PARTNERSHIP:

1. **Specific property** stated in the certificate as contributed by him, but **which was not contributed or which has been wrongfully** returned,
2. **Money or other property wrongfully paid** or conveyed to him on account of his contribution.

MAY BE WAIVED WHEN:

1. **consent of all members;**
2. but a waiver or compromise shall **not affect the right of a creditor of a partnership**

When a contributor has rightfully received the return:
He is nevertheless liable to the partnership for any sum, not in excess of such return with interest, necessary to discharge its liabilities to all creditors who extended credit or whose claims arose before such return.

ARTICLE 1859. LIMITED PARTNERS INTEREST IS ASSIGNABLE

RIGHTS OF AN ASSIGNEE OF A LIMITED PARTNER:

1. only **entitled to receive the share of the profits** or other compensation by way of income, or the return of his contribution, to which his assignor would otherwise be entitled.
2. **Acquires all rights of the limited partners** only when becomes a substituted limited partner.

Substituted limited partner - person admitted to all the rights of a limited partner who has died or has assigned his interest in a partnership.

ASSIGNEE BECOME A SUBSTITUTED LIMITED PARTNER:

1. if all the **members consent thereto** or if the assignor, being thereunto empowered by the **certificate,** gives the assignee that right
2. **Certificate of limited partnership** is amended
3. Certificate of limited partnership is **registered in the SEC**

RIGHTS AND LIABILITIES OF A SUBSTITUTED LIMITED PARTNER:

1. **A substituted limited partner has all the right**s and powers, and is subject to all the restrictions and liabilities of his assignor. **Exception:** those liabilities of which he was ignorant
2. The substitution of the assignee as a limited partner **does not release the assignor from liability to the partnership** under articles 1847 and 1858

ARTICLE 1860.
General rule: The retirement, death, insolvency, insanity or civil interdiction of a general partner dissolves the partnership
Exception: the **business is continued** by the remaining general partner

1. **Under a right** so to do stated in the certificate
2. With the c**onsent of all members**

ARTICLE 1861. DEATH OF A LIMITED PARTNER

His **executor or administrator shall have all the rights** of a limited partner for the purpose of settling his estate, and such power as the deceased had to constitute his **assigned substituted limited partner.**

The **estate of a deceased** limited partner shall be liable for all his liabilities as a limited partner.

ARTICLE 1862. CHARGING INTEREST OF A LIMITED PARTNER

Limited partner may appoint receiver

ARTICLE 1863. SETTING ACCOUNTS AFTER DISSOLUTION

ORDER OF PAYMENTS:

1. **Those to creditors**, in the order of priority as provided by law, except those to limited partners on account of their contributions, and to general partners.
2. Those to **limited partners** in respect to their **share of the profits and other compensation** by way of income on their contributions;
3. Those to **limited partners** in **respect to the capital of their contributions;**
4. Those to **general partners** other than for capital and profits;
5. Those to **general partners** in respect to **profits;**
6. Those to **general partners** in respect to **capital.**

**Limited partners are given priority over general capital.*
**Profits are given over capital*

ARTICLE 1864. CERTIFICATE

Certificate cancelled when:

1. When the partnership is dissolved
2. All limited partners ceased to be limited partners.

Certificate shall be amended when:

1. There is a **change in the name of the partnership** or in the a**mount or character of the contribution** of any limited partner;
2. A **person is substituted as a limited partner;**

3. An **additional limited partner is admitted**;
4. A person is **admitted as a general partner;**
5. A **general partner retires, dies,** becomes **insolvent or insane, or is sentenced to civil interdiction and the business is continued under article 1860;**
6. There is a **change in the character** of the business of the partnership;
7. There is a **false or erroneous statement** in the certificate;
8. There is a **change in the time** as stated in the certificate for the dissolution of the partnership or for the return of a contribution;
9. A **time is fixed for the dissolution** of the partnership, or the return of a contribution, no time having been specified in the certificate,
10. The members desire to **make a change in any other statement** in the **certificate** in order that it shall accurately represent the agreement among them.

ARTICLE 1865. The writing to amend a certificate shall:

Requirements for amendments and cancellation:
1. Must be in writing
2. Must be signed and sworn by all members
3. Must be filed for record in SEC

A certificate is amended or cancelled when there is filed for record in the Office of the **Securities and Exchange Commission*

ARTICLE 1866.
General rule: A **limited partne**r is **not a proper party to proceedings by or against a partnership** because he does not participate in management.

Exception: where the **object is to enforce a limited partner's right against or liability to the partnership.**

ARTICLE 1867. TRANSITIONAL PROVISION ON LIMITED PARTNERSHIP
A limited partnership formed under the law prior to the effectivity of this Code, may become a limited partnership under this Chapter by complying with the provisions of article 1844, provided the certificate sets forth:

1. The amount of the original contribution of each limited partner, and the time when the contribution was made; and
2. That the property of the partnership exceeds the amount sufficient to discharge its liabilities to persons not claiming as general or limited partners by an amount greater than the sum of the contributions of its limited partners.

ADDITIONAL INFO: MAM LECTURE
ADVANTAGES
A limited partnership has the following advantages:

1. **For general partners, to secure capital** from others while retaining control and supervision for the business;
2. **For limited partners, to have a share** in the profits without risk of personal liability.

MANAGEMENT
Only **general partners have the right to manage the partnership.** If a limited partner takes part in the control of the business, he becomes liable as a general partner.

GENERAL AND LIMITED PARTNERS DISTINGUISHED

General partner	Limited partner
Extent of liability	
Personally, but subsidiarity, liable for obligations of the partnership	**ARTICLE 1848.** Liable only to the extent of his capital contributions
Right to participate in management	
Unless otherwise agreed upon, all general partners have an equal right to manage the partnership	No right to participate in management
Nature of contribution	
Cash, property or industry	**ARTICLE 1845.** Cash or property only, not industry
Proper party in proceedings by or against partnership	
Proper party	Not proper party, unless 1. he is also a general partner; 2. where the object of the proceedings is to enforce his right against or liability to the partnership
Firm name	
Name may appear in the firm name	**ARTICLE 1846.** Name must not appear in the firm name
Prohibition to engage in other business	
Prohibited [subject to qualifications]	Not prohibited
Assignability of interest	
Not assignable	Assignable

GENERAL AND LIMITED PARTNERSHIP DISTINGUISHED

General partnership	Limited partnership
Creation	
May be constituted in any form, subject to exceptions	**ARTICLE 1844.** Partners must: 1. sign and swear to a certificate 2. file the certificate for record in the SEC
Composition	
Only general partners	One or more general, and one or more limited partners
Firm name	
Must contain the word "Company" [SEC Memo Circ. No. 14-00], except for professional partnerships May or may not include the name of one or more of the partners	Must include the word "Limited" [SEC Memo. Circ. No. 14-00] Must not include name of limited partners, unless: 1. it is also the surname of a general partner, 2. prior to the time when the limited partner became such, the business has been carried on under a name in which his surname appeared

REPUBLIC ACT NO. 11232

- An act providing for the revised corporation code of the Philippines

TITLE I – General Provisions

SECTION 1. TITLE OF THE CODE

- "Revised Corporation Code of the Philippines
- Took effect on February 23, 2019

SECTION 2. CORPORATION DEFINED

Corporation – an artificial being created by operation of law, having the right of succession and the powers, attributes, and properties expressly authorized by law or incidental to its existence

- Has a personality separate and distinct from the persons composing it, as well as from any other legal entity to which it may be related.
- Equally well-settled is the principle that the corporate mask may be removed or the corporate veil pierced when the corporation is just an alter ego of a person or of another corporation. U

Characteristics:

1. Artificial being
2. Created by operation of law
3. Has the right of succession
4. Has the powers, attributes and properties expressly authorized by law or incidental to its existence.
- *Refers to private corporation*

Boy Scout of the Philippines

- Public corporation created by law for a public purpose

Government-owned or controlled corporation

- Refers to an agency organized as a stock or non-stock corporation vested with functions relating to public needs whether **government or proprietary in nature** and owned by the Government directly or through its instrumentalities either wholly or where applicable as in the case of stock corporations, to the extent of at least fifty-one (51) percent of its capital stock

Requisites:

(1) Has capital stock dividend into shares

(2) Authorized to distribute dividends and allotments of surplus and profits to its stockholders.
- If only one is present, it cannot be properly classified as a stock corporation.
- Non-stock corporations, they must have members and must not distribute any part of their income to said members.

Note:Corporations are considered a government-owned or –controlled only when the Government directly or indirectly owns or controls at least a majority or 51% share of the capital stock.

Piercing the Veil of Corporation Fiction or Instrumentality or Alter Ego doctrine

- Should not and cannot be pierced unless it is clearly established that the separate and distinct personality of the corporation was used to justify wrong, protect fraud, or perpetrate a deception.

Factors for application:

(1) Stock ownership by one or common ownership of both corporation;
(2) Identity of directors and officers;
(3) The manner of keeping corporate books and records
(4) Methods of conducting the business
- *The burden of proving the presence of any of these probative factors lies with the one alleging it.*

Elements:

1. **Control –** not mere stock control, but complete domination – not only of finances, but of policy and business practice in respect to the transaction attacked, must have been such that the corporate entity as to this transaction had at the same time no separate mind, will or existence of its own;
2. Such control must have been ***used by the defendant to commit a fraud or a wrong*** to perpetuate the violation of a statutory or other positive legal duty, or a dishonest and an unjust act in contravention of plaintiff's legal right, and,
3. The said control and breach of duty must have ***proximately caused the injury or unjust loss*** complained of

Note: Doctrine of piercing the corporate veil should be done with caution

Succession (Artificial Succession)

- The continuation of a corporation's legal status despite changes in ownership or management

Powers of a Corporation

- Corporations have no power except those **expressly** conferred on it by the Corporation Code (or special laws) and those that are **implied** or **incidental** to its existence.
- Exercises said powers through its board of directors and/or its duly authorized officers and agents.

Right of a Corporation to own property

- Property acquired by a corporation is the property of a corporation and not the property of stockholders or members.

SECTION 3. CLASSES OF CORPORATION

Stock Corporation – capital stock divided into shares and is authorized to distribute to the holders of such shares dividends or allotments of the surplus profits on the basis of the shares held are stock corporation

Non-Stock Corporation – no part of its income distributable as dividends to its members, trustees, or officers.

- Any profit which an non-stock corporation may obtain as an incidental to its operations shall, whenever necessary or proper, be used for the furtherance of the purpose or purposes for which the corporation was organizes.

Note: Provisions governing Stock Corporation, when pertinent, shall be applicable to Non-stock Corporation.

OTHER CLASSES OF CORPORATION

As to purpose	
PUBLIC CORPORATION	**PRIVATE CORPORATION**
Organized for the government of a portion of the State for the general good and welfare	Formed for some private purpose, benefit or end.
GOVERNMENT-OWNED OR CONTROLLED CORP	**QUASI-PUBLIC CORPORATION**

Owned by the government directly or through its instrumentalities either wholly, or, where applicable as in the case of stock corporations, to the extent of at least 51% of its capital stock	Private corporation which has accepted from the State the grant of franchise or contract involving the performance of public duties but which is organized for profit (*ex. Electric, water and transpo companies)*
As to legal right to corporate existence	
DE JURE CORPORATION	**DE FACTO CORPORATION**
Created in strict or substantial conformity with the mandatory statutory requirements for incorporation and the right of which to exist as a corporation cannot be successfully attacked or questioned by any party even in a direct proceeding for that purpose by the State.	The due incorporation of any corporation claiming in good faith to be a corporation under this code, and its right to exercise corporate powers shall not be inquired into collaterally in ay private suit to which such corporation may be a party. Such inquiry may be made by the Solicitor General in a quo warranto proceeding.
CORPORATION BY ESTOPPEL	**CORPORATION BY PRESCRIPTION**
All persons assume to act as corporation knowing it to be without authority to do so shall be liable as general partners for all debts, liabilities and damages incurred or arising as a result thereof.	One which has exercised corporate powers for an indefinite period without interference on the part of the government.
As to laws of incorporation	
DOMESTIC CORPORATION	**FOREIGN CORPORATION**
Incorporated under the laws of the Philippines	Formed, organized or existing under any laws other than those of Philippines and whose laws allow Filipino citizens and corporations to do business in its own country or State.
As to whether they are open to the public or not	
OPEN CORPORATION	**CLOSE CORPORATION**

Open to any person who may wish to become a stockholder or member thereto	One whose articles of incorporation provide that: (1)All the corporation's issued stock of all classes, exclusive of treasury shares, shall be held of record by not more than a specified number of persons, not exceeding 20; (2)all the issued stock of all classes shall be subject to one or more specifies restrictions on transfer; and (3)the corporation shall not list in any stock exchange or make any public offering of its stock of any class.
As to relationship of management and control	
PARENT OR HOLDING CORPORATION	**SUBSIDIARY CORPORATION**
Hold stocks in another corporation for purposes of control	More than 50% of the voting stock of which is controlled directly or indirectly by another corporation, which thereby becomes its parent corporation
As to the number of persons who compose them	
CORPORATION AGGREGARE	**CORPORATION SOLE**
Consisting of more than one member	Consisting of only one member for the purpose of administering and managing, as trustee, the affairs, property and temporalities of any religious denomination, sect or church
As to whether they are for religious purposes or not	
ECCLESIASTICAL CORPORATION	**LAY CORPORATION**
Organized for religious purposes	Organized for a purpose other than for religion
As to whether they are for charitable purposes or not	
ELEEMOSYNARY CORP	**CIVIL CORP**
Organized for charitable purposes	Organized for business or profit

SECTION 4. CORPORATIONS CREATED BY SPECIAL LAWS OR CHARTERS

Corporation - created by operation of law; acquires a personality either by special law or a general law

GENERAL LAW	**SPECIAL LAW**

Private corporation	- Government Corporation - Often referred as charter

SECTION 5. CORPORATORS AND INCORPORATORS, STOCKHOLDERS AND MEMBERS Components of Corporation

1. **Corporators -** compose a corporation, whether as stockholders or members
2. **Incorporators –** stockholders or members mentioned in the articles of incorporation as originally forming and composing the corporation and who are ***signatories*** thereof.
3. **Stockholders (shareholders) –** owners of shares of stock in a stock corporation
4. **Members –** corporators of non-stock corporation
5. **Board of Directors –** governing body in a stock corporation
6. **Board of Trustees –** governing body in a non-stock corporation
7. **Corporate Officers**
    a. **President –** director
    b. **Treasurer –** may or may not be a director
    c. **Secretary –** resident and citizen of the Philippines
    d. **Other officers –** may be provided for in the by-laws

- *if the corporation is vested with public interest, the board shall also elect a **compliance officer.***

8. **Subscriber –** persons who agreed to take and pay for original, unissued shares of a corporation formed or to be formed.
9. **Underwriter**
    a. A person who guarantees on a firm commitment and/or declared best effort basis the distribution and sale of securities of any kind by another company
    b. A person or entity, especially an investment banker, who guarantees the sale of newly issued securities by purchasing all or part of the shares for resale to the public
10. **Promoter –** a person who brings about or cause to bring about the formation and organization of a corporation by:
    a. Bringing together the incorporators or the persons interested in the enterprise;
    b. Procuring subscriptions or capital for the corporation; and
    c. Setting in motion the machinery which leads to the incorporation of the corporation itself

- *Founder or organizer of a corporation or business venture – one who takes the entrepreneurial initiative in funding or organizing a business enterprise*.

Sec. 6. Classification of Shares

- Shares in stock may be divided into classes or series of shares, or both.
- No share may be deprived of voting rights, except those classified and issued as “preferred” or “redeemable” shares, unless otherwise provided in this code.
- *Provided, that there shall always be a class or series of shares with complete voting rights.*

Holders of non-voting shares shall nevertheless be entitled to vote on the following matters:

(a) Amendment of the articles of incorporation
(b) Adoption and amendment of bylaws
(c) Sale, lease, exchange, mortgage, pledge or other disposition of all or substantially all of the corporate property;
(d) Incurring, creating or increasing bonded indebtedness
(e) Increase or decrease of authorized capital stock;
(f) Merger or consolidation of the corporation with another corporation or other corporation
(g) Investment of corporate funds in another corporation or business in accordance with this Code; and
(h) Dissolution of the corporation

- *Except, provided that the vote required under this Code to approve a particular corporate act shall be deemed to refer only to stocks with voting rights.*

Shares or series of shares may or may not have a par value.

- Provided that institutions, authorized to obtain or access funds from the public, whether publicly authorized to obtain or access funds from the public, whether publicly listed or not, shall not be permitted to issue no-par value shares of stocks.

Preference shares of stock issued by a corporation may be given preference in the distribution of dividends and in the distribution corporate assets in case of liquidation, or such other preference.

- Provided that preferred shares of stocks may be issued only with stated par value.
- Board of directors - authorized in fixing the terms and conditions of shares. Provided that terms and conditions shall be effective upon filing the certificate thereof the SEC or Commission

Shares of capital stock issued without par value shall be deemed fully paid and nonassessable and

the holder of such shares shall not be liable to the corporation or to its creditors in respect thereto

- Provides that no-par value shares must be issued for a consideration of at least ***five pesos (P5.00) per share***.
- Further, that the entire consideration received by the corporation for its no-par value shares shall be treated as capital and shall not be able for distribution as dividends

Doctrine of Equality of Shares

- each share shall be equal in all respects (rights & liabilities) to every other share
- except, otherwise provided in the articles of incorporation and stated in the certificate of stock.

Who may classify shares?

1. **Incorporators** - it is to be determined by the incorporators by stating it in their articles of incorporation which will be filed with the SEC
2. **Board of directors and stockholders -** the original classification of shares made by the incorporators can be amended by a majority vote of the board of directors and the vote or written assent of the stockholders representing at least ⅔ of the outstanding capital stock

Voting Shares

- Shares with a right to vote.
- There shall always be a class or series of rights which have complete voting rights.

Right to Vote (STOCK CORPORATIONS)

- right to vote is inherent in and incidental to the ownership of corporate stocks.
- Unissued stocks may not be voted or considered in determining whether a quorum is present in a stockholders' meeting
- ***Only stock actually issued and outstanding may be voted.***
- Neither the stockholders nor the corporation can vote or represent shares that have never passed to the ownership of stockholders; or, having so passed, have again been purchased by the corporation.

Right to vote (NON-STOCK CORPORATIONS)

- ***Voting rights attach to membership.***
- Members vote as persons, each shall be entitled to one vote unless so limited, broadened or denied in the articles of incorporation or by-laws
- ***Only those who are actual members with voting rights should be counted.***

Non-Voting Shares

- Shares without a right to vote
- Law provides that shares classified and issued as ***preferred or redeemable*** may be deprived of voting rights.

Common Stock

- class of stock entitling the holder to vote on corporate matters, to receive dividends after other claims and dividends have been paid (esp. preferred shareholders), and to share in assets upon liquidation.
- often called as **capital stock,** if it is the corporation's only class of stock outstanding. *Also termed as* ***ordinary shares.***

Preferred Stock

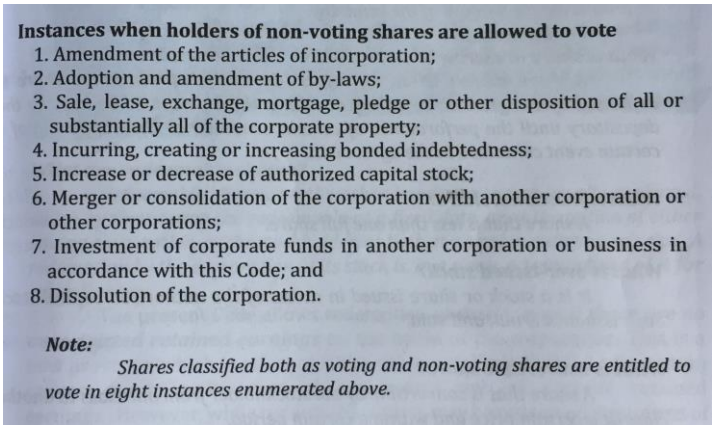
- One which entitles the holder thereof to certain preferences over the holders of common stock.
- Designed to induce persons to subscribe for shares of a corporation
- Preferences granted to preferred stockholder do not give them a lien upon the property of the corporation nor make them creditors of the corporation

Forms

- **Preferred shares as to asset -** share which gives the holder thereof preference in the distribution of the assets of the corporation in case of liquidation
- **Preferred shares as to dividends -** share the holder of which is entirely to receive dividends on said share to the extent agreed upon before any guarantee, however, that the share will receive any dividends.

Redeemable Shares

- May be issued by the corporation when expressly so provided in the articles of incorporation
- May be purchased or taken up by the corporation upon the expiration of a fixed period



Instances when holders of non-voting shares are allowed to vote

1. Amendment of the articles of incorporation;
2. Adoption and amendment of by-laws;
3. Sale, lease, exchange, mortgage, pledge or other disposition of all or substantially all of the corporate property;
4. Incurring, creating or increasing bonded indebtedness;
5. Increase or decrease of authorized capital stock;
6. Merger or consolidation of the corporation with another corporation or other corporations;
7. Investment of corporate funds in another corporation or business in accordance with this Code; and
8. Dissolution of the corporation.

Note:

Shares classified both as voting and non-voting shares are entitled to vote in eight instances enumerated above.

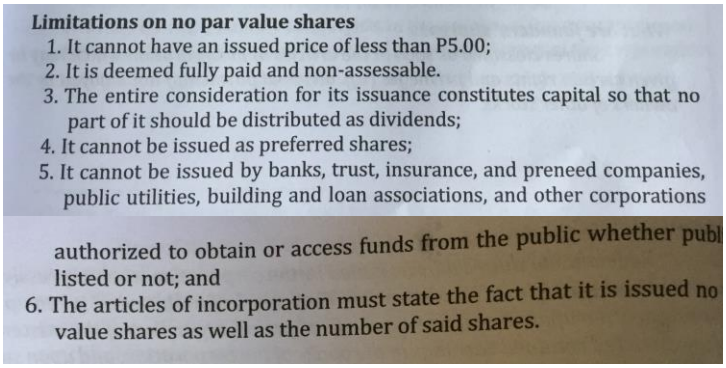
Par Value shares

- Shares with a value fixed in the articles of incorporation and the certificate of stock

No Par Value Shares

- Shares with no par value

Note: stocks shall ***not*** *be issued for a consideration less than the par or issued price thereof.*



Limitations on no par value shares

1. It cannot have an issued price of less than P5.00;
2. It is deemed fully paid and non-assessable.
3. The entire consideration for its issuance constitutes capital so that no part of it should be distributed as dividends;
4. It cannot be issued as preferred shares;
5. It cannot be issued by banks, trust, insurance, and preneed companies, public utilities, building and loan associations, and other corporations authorized to obtain or access funds from the public whether publ listed or not; and
6. The articles of incorporation must state the fact that it is issued no value shares as well as the number of said shares.

Promtion/ Al share

- Shares issued to promoters or those in some way interested in the company, for incorporating the company, or for services rendered in launching or promoting the welfare of the company

Share in Escrow

- Share subject to an agreement by virtue of which the share is deposited by the grantor or his agent with a third person to be kept by the depositary until the performance of certain condition or the happening of the certain event contained in the agreement

Fractional Share

- Share that is less than one full share

Over-issued stock

- Stock or share issued in excess of the authorized capital stock.
- Such issuance is null or void

Convertible Share

- A share that is convertible by the stockholder from one class to another class at a certain price and within a certain period

SECTION 7. FOUNDERS' SHARES

Founders' Shares

- Shares classified as such in the articles of incorporation which may be given certain rights & privileges not enjoyed by the owners of other stocks

Limitation on founders' shares

- Exclusive right to vote and be voted for in the elextion of directors, if granted, it must be for a limited period **not to exceed 5 years from the date of incorporation.**

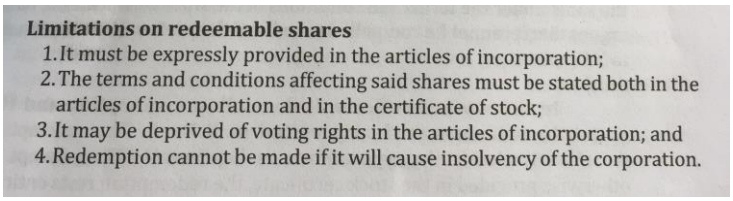
Provided, that such exclusive right shall not be allowed if its exercise will violate:

- *Commonwelath Act No. 108 - "**Anti-Dummy Law"***
- *Republic Act no. 7042 - "**Foreign Investments Act of 1991"***
- *And other pertinent laws*

SECTION 8. REDEEMABLE SHARES

Redeemable Shares

- Shares usually preferred, which by their terms are redeemable at a fixed date, or at the option of either issuing corporation, or the stockholders, or both at a certain redemption price.
- *Redemption by the Corporation by its stock is **a repurchase of it for cancellation.***
- Present code allows redemption of shares ***even if there are no unrestricted retained earnings*** on the books of the corporation.
- Redemption may not be made where the corporation is insolvent or if such redemption will cause insolvency or inability of the corporation to meet its debts as they mature



Limitations on redeemable shares

1. It must be expressly provided in the articles of incorporation;
2. The terms and conditions affecting said shares must be stated both in the articles of incorporation and in the certificate of stock;
3. It may be deprived of voting rights in the articles of incorporation; and
4. Redemption cannot be made if it will cause insolvency of the corporation.

Retained Earnings

- Corporation's accumulated income after dividends have been distributed
- **Earned surplus or undistributed profit**

Kinds of Redeemable Shares

1. **Compulsory -** corporation is required to redeem the shares
2. **Optional -** corporation is not required to redeem the shares

Redeemable Shares - once redeemed are retired or unless reissuance is expressly is allowed in the articles of incorporation

Trust Fund Doctrine

- First enunciated by this Court ith the 1923 case of Philippine Trust Co. vs. Rivera
- Subscriptions to the capital stock of a corporation constitute **a fund to which the creditors have a right to look for the satisfaction of their claims**

Distribution of Capital Assets

(1) amendment of the articles of incorporation to reduce the authorized capital stock
(2) Purchase of redeemable shares by the corporation, regardless of the existence of unrestricted retained earnings
(3) Dissolution and eventual liquidation of the corporation

SECTION 9. TREASURY SHARES

Treasury Shares

- Shares of stock which have been issued and fully paid for, but subsequently reacquired bybthe issuing corporation by purchase redemption, donation or throughbsome other lawful means.

Rights that are denied to the treasury shares

1. Voting rightta
2. Right to dividends

*Note: Treasury shares **sold below par value** are **not watered stock** because watered stock contemplates an orifginal issuance of shares.*

Watered Stocks

- stocks issues for a consideration less than the par or issued price thereof or in any other form other than cash valued in excess of its gair value

Note: Watered stocks referred only to original issue of shares hut not to subsequent transfer to such shares by the corporation.

Thus, treasury shares may be sold for less than their par or issued value for they have already issued and paid for.