

CHAPTER 1 - NATURE AND FORM OF THE CONTRACT

Chapter 1 Nature and form of the contract

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

A contract of sale may be absolute or traditional.

What is a contract of sale?

By the contract of sale, one of the contracting parties obligates himself to transfer the ownership of, and to deliver, a determinate thing, and the other to pay therefor a price certain in money or its equivalent. A contract of sale is a consensual contract and, thus, is perfected by mere consent, which is manifested by the meeting of the offer and the acceptance upon the thing and the cause which are to constitute the contract. Until the contract of sale is perfected, it cannot, as an independent source of obligation, serve as a binding juridical; relation between the parties. The essential elements of a contract of sale are; a) consent or meeting of minds, that is, consent to transfer ownership in exchange for the price; b) determinate subject matter: and c) price certain in money or its equivalent. The absence of any of the essential elements shall negate the existence of a perfected contract of sale.

Stages of a contract of sale

The stages of a contract of sale are;

1. Negotiation

It covers the period from the time the prospective contracting parties indicates interest in the contract to the time the contract is perfected.

2. Perfection

It takes place upon the concurrence of the essential elements of the sale, which is meeting of the minds of the parties as to the object of the contract and upon the price.

3. Consumption

It begins when the parties perform their respective undertakings under the contract of sale, culminating in the extinguishment thereof.

SALE IS A TITLE

The perfection of a contract of sale should not, however, be confused with its consummation. In relation to the acquisition and transfer of ownership, it should be noted that **sale is not a mode, but merely a title**. A **mode** is the legal means by which dominion or ownership is created, transferred or destroyed, but **title** is only the legal basis by which to affect dominion or ownership. Under Article 712 of the Civil Code, " ownership and other real rights over property are acquired and transmitted by law, by donation, by estate and intestate succession, and in consequence of certain contracts, by tradition. "Contracts only constitute titles or rights to the transfer or acquisition of ownership, while the delivery or tradition is the mode of accomplishing the same. Therefore, **sale by itself does not transfer or affect ownership; the most that sale does is to create the obligation to transfer ownership**. It is tradition or delivery, as a consequence of sale that actually transfer ownership.

Two kinds of a contract of sale.

1. Absolute

There are no conditions attached to the contract.

2. Conditional

There are certain conditions attached to the contract.

A contract of sale may be absolute or conditional.

Under Article 1458 of the New Civil Code, in a contract of sale, whether **absolute** or **conditional**, one of the contracting parties obliges himself to transfer the ownership of and deliver a determinate thing, and the other to pay therefor a price certain in money or its equivalent. **A contract of sale is perfected at the moment there is a meeting of the minds upon the thing which is the object of the contract and the price.** From the averment of perfection, the parties are bound, not only to the fulfillment of what has been expressly stipulated, but also to all the consequences which, according to their nature, may be in keeping with good faith, usage and law. On the other hand, when the contract of sale or to sell is not perfected, it cannot, as an independent source of obligation, serve as a binding juridical relation between the parties.

Note:

*A deed of sale is considered **absolute** in nature where there is neither a stipulation in the deed that title to the property sold is reserved in the seller until the full payment of the price, nor one giving the vendor the right to unilaterally resolve the contract the moment the buyer fails to pay within a fixed period.*

Essential elements of a contract of sale.

Sale, by its very nature is a consensual contract because it is perfected by mere consent. The essential elements of a contract of sale are the following:

- a) **Consent** or meeting of the minds, that is, consent to transfer ownership in exchange for the price;
- b) Determinate **subject matter**; and
- c) **Price certain in money** or its equivalent.

Contract to sell not a contract of sale

A **Contract of sell** may not be considered as a **Contract of sale** because the first essential element is lacking. In a **Contract to sell**, the prospective seller explicitly reserves the transfer of title to the prospective buyer, meaning the prospective seller does not as yet agree or consent to transfer ownership of the property subject of the contract to sell until the happening of an event, which for present purposes we shall take as the full payment of the purchase price. What the seller agrees or obliges himself to do is to fulfill his promise to sell the subject property when the entire amount of the purchase price is delivered to him. In other words, the full payment of the purchase price partakes of a suspensive condition, the non-fulfillment of which prevents the obligation to sell from arising and thus, ownership is retained by the prospective seller without further remedies by the prospective buyer.

1. Consent

Consent is manifested by the meeting of the offer and the acceptance upon the thing and the cause which are to constitute the agreement.

Acceptance

As to the matter of acceptance, the same may be evidenced by some acts, or conduct, communicated to the offeror, either in a formal or an informal manner, that clearly manifest the intention or determination to accept the offer to buy or sell.

Example:

In one case, acceptance on the part of the vendee was manifested through a plethora of acts, such as payment of the purchase price, declaration of the property for

taxation purposes, and payment of real estate taxes thereon, and similar acts showing vendee's assent to the contract.

II. OBJECT

The **object** of every contract must be determinate as to its kind. The fact that the quantity is not determinate shall not be an obstacle to the existence of contract, provided it is possible to determine the same, without the need of a new contract between the parties. A thing is determinate when it is particularly designated and/or physically segregated from all others of the same class.

In general, the **cause** is the why of the contract or the essential reason which moves the contracting parties to enter into the contract. For the cause to be valid, it must be lawful such that it is not contrary to law, morals, goal, customs, public order or public policy.

III. PRICE

A detail agreement as to the **price** is an essential element of a binding agreement to sell personal or real property because it seriously affects the rights and obligations of the parties. **Price** is an essential element in the formation of a binding and enforceable contract of sale. The fixing of the price can never be left to the decision of one of the contracting parties. But a price fixed by one of the contracting parties, if accepted by the other gives rise to a perfected sale.

It is not enough for the parties to agree on the price of the property. The parties must also agree on the manner of payment of the price of the property to give rise to a binding and enforceable contract of sale or contract to sell. This is so because the agreement as to the manner of payment goes into the price, such that a **disagreement on the manner of payment is tantamount to a failure to agree on the price.**

Gross inadequacy of price, its effect.

In *Hulst v. PR Builders, Inc.*, we further elaborated on this principles:

Gross inadequacy of price does not nullify an execution sale. In an ordinary sale, for reason of equity, a transaction may be invalidated on the ground of inadequacy of price, or when such inadequacy shocks one's conscience as to justify the courts to interfere; such does not follow when the law gives the owner the right to redeem as when a sale is made at public auction, upon the theory that the lesser the price, the easier it is for the owner to effect redemption. When there is a right to redeem, inadequacy of price should not be material because the judgment debtor may re-acquire the property or else sell his right to redeem and thus recover any loss he claims to have suffered by reason of the price obtained at the execution sale. Thus, respondent stood to gain rather than be harmed by the low sale value of the auctioned properties because it possesses the right of redemption.

Note:

Consideration and consent are essential elements in a contract of sale, Where a party's consent to a contract of sale is vitiated or where there is lack of consideration due to a simulated price, the contract is null and void ab initia.

Characteristics of a contract of sale

1. Consensual

The contract is perfected by mere consent.

2. Bilateral

The seller and the buyer are bound by obligations dependent upon each other.

3. Onerous

It imposes a valuable consideration, which is a price⁴ certain in money or its equivalent.

4. Commutative

The thing of value is exchanged for equal value,

5. Nominate

The Civil Code refers to it by a special name, " contract of sale "

6. Principal

It can stand on its own and does not depend on another contract for its validity.

Contract of sale is consensual

A contract of sale is classified as a consensual contract, which means that the sale is perfected by mere consent. No particular form is required for its validity. Upon perfection of the contract, the parties may reciprocally demand performance, i.e., the vendee may compel transfer of ownership of the object of the sale, and the vendor may require the vendee to pay the thing sold.

Contract of sale is Commutative and Onerous

A contract of sale is normally commutative and onerous; not only does each one of the parties assume a correlative obligation (the seller to deliver and transfer ownership of the thing sold and the buyer to pay the price.) but each party anticipated performance by the other from the very start, while in the sale, the obligation of one party can be lawfully subordinated to an uncertain event, so that the other understands that he assumes the risk of receiving nothing for what he gives (as in the case of sale of hopes or expectations, *emptio spei*) it is not in the usual course of business to do so: hence, the contingent character of the obligation must clearly appear.

Problem:

On January 19, 1985, A, B, and C executed a document entitled Receipt of Down Payment in favor of R which is reproduced hereunder:

RECEIPT OF DOWN PAYMENT
1,240,000.00 - Total amount
50,000.00 - Down payment

1,190,000 - Balance

*Received from Miss R. the sum of Fifty Thousand Pesos **purchase price of our inherited house and lot**, in the total amount pf 1,240,000*

We bind ourselves to effect the transfer in our names from our deceased father, the transfer certificate of title immediately upon receipt of the down payment above-stated.

On our presentation of the TCT already in our name, we will immediately execute the deed of absolute sale of said property and Miss R shall immediately pay the balance of the 1,190,0000

On January 15, 1985, Q mother of R, paid the down payment of 50,000.

On February 6, 1985, the property originally registered in the name of A, B, and C's father was transferred in their names.

On February 18, 1985, A, B, and C sold the property to Y for 1,580,000 after the latter has paid 300,000. For this reason, A, B, and C canceled and rescinded the contract with R by depositing the down payment paid by Q in the banks in trust for R.

On February 22, 1985, Q filed a complaint for a specific performance against A, B, and C.

Is the Receipt form Down Payment a perfected contract of sale?

Answer:

What may be perceived from the respective undertakings of the parties to the contract is that A, B, and C had already agreed to sell the house and lot they inherited from their father, completely willing to transfer ownership of the subject house and lot to the buyer if the documents were then in order. It just so happened, however, that the transfer

certificate of title was then still in the name of their father. It was more expedient to first effect the change in the certificate of title so as to bear their names. That is why they undertook to cause the issuance of a new transfer of the certificate of title in their names upon receipt of the down payment in the amount of 50,000. As soon as the new certificate of title is issued in their names, A, B, and C were committed to immediately execute the deed of an absolute sale. Only then will the obligations of the buyer to pay the remainder of the purchase price arise.

There is no doubt that unlike in a contract to sell which is most commonly entered into so as to protect the seller against a buyer who intends to buy the property in installment by withholding ownership over the property until the buyer effects full payment therefor, in the contract entered into in the case at bar, the sellers were the ones who were unable to enter into a contract of absolute sale by reason of the fact that the certificate of title to the property was still in the name of their father. It was the sellers in this case who, as it were, had the impediment which prevented, so to speak, the execution of a contract of absolute sale.

What is clearly established by the plain language of the subject document is that when the sold Receipt of Down Payment was prepared and signed by A, B, and C the parties had agreed to a conditional contract of sale, consummation of which is subject only to the successful transfer of the certificate of title from the name of A, B, and C's father to their names.

The Court significantly notes that this suspensive condition was, in fact, fulfilled on February 6, 1985. Thus, on said date, the conditional contract between A, B, and C and R became obligatory, the only act required for the consummation thereof being the delivery of the property by means of the execution of the deed of absolute sale in a public instrument, by the Receipt of Down payment.

Article 1475, in correlation with Article 1181, both of the Civil Code, plainly applies to the case at bench. Thus,

Article. 1475. *The contract of sale is perfected at the moment there is a meeting of minds upon the things which is the object of the contract and upon the price.*

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

Article. 1181. *In conditional obligations, the acquisition of rights, as well as the extinguishment or loss of those already acquired, shall depend upon the happening of the event which constitutes the condition.*

Since the condition contemplated by the parties which is the issuance of a certificate of title in A, B, and C's names was fulfilled on the February 6, 1985 the respective obligations of the parties under the contract of sale become mutually demandable, that is A, B, and C, as sellers were obliged to present the transfer certificate of title already in their names to R, the buyer, and to immediately execute the deed of absolute sale, while the buyer on her part, was obliged to forthwith pay the balance of the purchase price amounting to 1,190,000.

The inevitable conclusion is that on January 19, 1985, as evidenced by the document denominated as Receipt of Down Payment, the parties entered into a **Contract of Sale** subject to the suspensive condition that the sellers shall effect the issuance of new certificate of title from that of their fathers' name to their names and that, on February 6, 1985, the condition was fulfilled.

What is option or "unaccepted offer?"

An **option**, as used in the law on sales, is a continuing offer or contract by which the owner stipulates with another that the latter shall have the right to buy the property at a fixed price within a certain time, or under, or in compliance with, certain terms and conditions, or which gives to the owner of the property the right to sell or demand a sale. It

is also sometimes called an **“unaccepted offer.”** An option is not of itself a purchase, but merely secures the privilege to buy. It is not a sale of property but a sale of the right to purchase. *It simply a contract by which the owner of the property agrees with another person that he shall have the right to buy his property at a fixed price within a certain time.* He does not sell his land; he does not then agree to sell it; but he does sell something, that is, the right or privilege to buy at the election or option of the other party. Its distinguishing characteristics is that it imposes no binding obligation on the person holding the option, aside from the consideration for the offer. Until acceptance, It is not, properly speaking a contract, and does not vest, transfer, or agree to transfer, any title to, or nay interest or right in the subject matter, but merely a contract by which the owner of property gives the optionee the right or privilege of accepting the offer and buying on certain items.

OPTION VS. CONTRACT OF SALE

Option	Contract of Sale
An option is an unaccepted offer.	Fixes definitely the relative rights and obligations of both parties at the time of its execution.
It states the terms and conditions on which the owner is willing to sell the land, if the holder elects to accept them within the time limited.	The offer and the acceptance are concurrent, since the minds of the contracting parties meet in the terms of the agreement.
If the holder does so elect, he must give notice to the other party, and the accepted offer thereupon becomes a valid and binding contract.	
If an acceptable is not made within the time fixed, the owner is no longer bound by his offer, and the option is at an end.	

What is the test in determining whether it is a “contract of sale or purchase or mere option?”

The test in determining whether a contract is a “contract of sale or purchase” or a mere “option” ***is whether or not the agreement could be specifically enforced.***

This is not a case where no right is as yet created nor an obligation declared, as where something further remains to be done before the buyer and seller obligate themselves. An agreement is only an **“option”** when no obligations rests on the party to make any payment except such as may be agreed on between the parties as consideration to support the option until he has made up his mind within the time specified. An **option**, and not a contract to purchase, is effected by an agreement to sell real estate for payments to be made within specified time and providing forfeiture of money paid upon failure to make payment, where the purchaser does not agree to purchase, to make payment, or to bind himself in any way other than the forfeiture of the payment made.”

Earnest money.

It is a statutory rules that whenever earnest money is given in a contract of sale, it shall be considered as part of the price and as proof of the perfection of the contract. It constitutes an advance payment and must, therefore, be deducted from the total price. Also, earnest money is given by the buyer to the seller to mind the bargain.

EARNEST MONEY vs OPTION MONEY

Earnest Money	Option Money
Part of the purchase price.	Money given as a d distinct consideration for an option contract.
Is given only where there is already a sale.	Applies to a sale not yet perfected.

When earnest money is given, the buyer is bound to pay the balance.	When the would-be buyer gives option money, he is not required to buy.
---	--

CONTRACT FOR A PIECE OF WORK VS. CONTRACT OF SALE

"A contract for a piece of work, labor and materials may be distinguished from a contract of sale by the inquiry as to whether the thing transferred is one not in existence and which would never have existed but for the order of the person desiring it. In such case, the contract is **one for a piece of work**, not a sale. On the other hand, if the thing subject of the contract would have existed and been the subject of a sale to some other person even if the order had not been given then the contract is one of **sale**.

Example:

X and Y stipulated in their contract that Y would manufacture upon order of X of 20,000 pieces of vinyl frogs and 20,000 pieces of vinyl mooseheads according to the samples specified and approved by X, Y did not ordinarily manufacture these products, but only upon order of X and at the price agreed upon. Clearly, the contract executed by and between X and Y was a contract for a piece of work.

DACION EN PAGO vs. CONTRACT OF SALE

In **dacion en pago**, as a special mode of payment, the debtor offers another thing to the creditor who accepts it as equivalent of payment of an outstanding debt. In order that there be a valid *dation* in payment, the following are the requisites: (1) There must be the performance of the presentation in lieu of payment (*animo solvendi*) which may consist in the delivery of a corporeal thing or a real right or a credit against the third person: (2) There must be some difference between the prestation due and that which is given in substitution (*aliud pro alio*): (3) There must be an agreement between the creditor and debtor that the obligation is immediately extinguished by reason of the performance of a prestation different from that due. The undertaking really partakes in one sense of the nature of **sale**, that is, the creditor is really buying the thing or property of the debtor, payment for which is to be charged against the debtor's debt.

Article. 1459, The things must be licit and the vendor must have a right to transfer the ownership thereof at the time it is delivered.

Note:

Licit means lawful. The thing object of sale should not be contrary to law, morals, good customs, public order or public policy.

Examples of Void Sales (Illicit object)

1. *Sale of animals suffering from contagious diseases.*
2. *Sale of animals if the use or service for which they are acquired has been stated in the contract, and they are found to be unfit therefor:*
3. *Sale of future inheritance; and*
4. *Sale of land in violation of the constitutional prohibition against the transfer of lands to aliens.*

Problem:

Sometime in January 1980, X, YX and Z appointed C as their agent to sell 3 parcels of land adjoining each other. Sometime in April 1980, R learned that the properties were for sale. Accordingly, he approached C and told the latter to offer these parcels of land to his brother, E.

Pursuant thereto, C and R went to E's office to convince the latter to buy the properties. At first, E was reluctant, but upon R's prodding, E was finally convinced to buy them. In that

meeting between C and E at the latter's office. It was agreed that each parcel of land would cost 100,000. Having reached an agreement of sale, E then instructed C to bring the owners of these parcels of land to his ancestral house.

On May 2, 1980, C, together with X, Y and Z went to E's house. At around 5:00 o'clock in the afternoon, the above-named persons and E went to Atty. M's house for the preparation of the appropriate deeds of sale.

At Atty. M's house, it was learned that X failed to bring the tax declarations relating to his property. Also, Y had mortgaged her property. Further, Z did not have a Special Power of Attorney from his sister to evidence her consent to the sale. In view thereof, no deed of sale was prepared on that day.

However, despite the fact that no deed of sale was prepared by Atty. M, X, Y, and Z asked E to pay a 50% down payment for the properties. The latter acceded to the request and gave 50,000 each to the 3 above named persons for a total of 150,000. This was witnessed by C and Atty. M. After giving the down payment, E instructed C and Atty. M to place the name of R as vendee in the deeds of sale to be subsequently prepared. This instruction was given to enable R to mortgage these properties at the PNB, for appropriate funds needed for the development of these parcels of land as fishponds.

Subsequently, the appropriate deeds of sale were finally prepared by Atty. M and signed by X, Y, and Z. In all these deeds of sale, R was named as vendee pursuant to the verbal instruction of E, C, the agent in the sale, signed in these 3 deeds of sale as a witness. Thereafter, C paid X, Y, and Z, the balance due them from E.

On April 29, 1989, R, without the knowledge and consent of E, sold the Spouses H and W 500 square meters of the land previously owned by X. At the time of sale, H and W were aware that the portion of the land they bought was owned by E, not R.

May H and W acquire ownership over the said property?

Answer:

H and W did not acquire absolute ownership over the property since the apparent vendor, R did not have the right to transfer ownership thereof.

Whether or not H and W are in good faith is entirely immaterial, because no valid sale in the first place was made. The fact is R is not the owner of the lands in question, but a mere trustee thereof, and could not have transferred ownership of said lands, by way of sale, to H and W. As a matter of basic principle in the law on sale, **a person cannot transfer ownership, by way of sale, of something over which he has no right to transfer.** Thus, Article 1459 of the Civil Code provides:

Article. 1459. The thing must be licit and the vendor must have a right to transfer the ownership thereof at the time it is delivered.

Since R is not the owner of the lands in question, which are not registered under the Torrens system, he could not by the way of sale have transferred, as he has no right to transfer, ownership of a portion thereof, at the time of delivery.

Note:

The seller need not be the owner at the time of perfection of the contract. It is sufficient that he is the owner at the time the object is delivered; otherwise, he may be held liable for breach of warranty against eviction.

Article. 1460. A thing is determinate when it is particularly designated or physically segregated from all others of the same class.

The requisite that a thing be determinate is satisfied if at the time the contract is entered into, the thing is capable of being made determinate without the necessity of a new or further agreement between the parties.

DETERMINATE THING

A thing is determinate when it is particularly designated or physically segregated from all others of the same class.

Examples: “ My only car”. “The only laptop that I am using at present”, My house located at #123 Brgy. Lagawa, Municipality of La Trinidad.”

Requisites;

1. At the time the contract is entered into. The thing is capable of being made determinate; and
2. There is no necessity of a new or further agreement between the parties.

Problem:

C was the owner of Lot 261. On July 14, 1968, C and Atty. B entered into a contract for legal services denominated as a “Contract of Attorney’s Fee.” The agreement is worded as follows:

“XXX

That I, C is the registered owner of Lot No. 261. Has secured the legal services of Atty. B to perform the following:

1. To negotiate with the Municipal Government of X so that the above-mentioned lot shall be the site of the proposed X Public Market;
2. To sell 1200 sq. m. for the sum of 24,000 right at the Market Site;
3. And to perform all the legal phase incidental to this work.

That for and in consideration of this undertaking. I bind myself to pay Atty. B 5,000 sq. m. of the sold lot, for which in no case I shall not be responsible for payment of income taxes in relation hereto, this area located also at market site.

That I, B, is willing to undertake the above-enumerated undertaking.

XXX”

Is there an object of the contract?

Answer:

The **object of the contract is still certain** despite the parties’ failure to indicate the specific portion of the property to be given as compensation for services.

Article. 1349. And 1460 of the Civil Code provide the guidelines in determining whether or not the object of the contract is certain:

Article 1349. The object of every contract must be determinate as to its kind. The fact that the quantity is not determinate shall not be an obstacle to the existence of the contract, provided it is possible to determine the same, without the need of a new contract between the parties.

X X X X

Article. 1460. A thing is determinate when it is particularly designated and/or physically segregated from all others of the same class.

The requisite that a thing be determinate is satisfied if at the time the contract is entered into, the thing is capable of being made determinate without the necessity of a new or further agreement between the parties.

In this case, the object of the contract is the 5,000-sq-m portion of Lot 261. The failure of the parties to state its exact location in the contract is of no moment; this is a mere error occasioned by the parties; failure to describe with particularity the subject property, which does not indicate the absence of the principal object as to render the contract void. Since C bound herself to deliver a portion of Lot 261 to Atty. B, the description of the property subject of the contract is sufficient to validate the same.

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

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

The sale of a vain hope or expectancy is void.

Things having a potential existence

This is a future thing that can be the object of sale.

Example: ‘ Still ungrown fruits’, “wine that a particular vineyard is expected to produce”, “young of animals not yet in existence”

Sale of a mere hope or expectancy

This is subject to the condition that the thing will come into existence.

Example; Sale of sweepstakes ticket or lotto ticket. The object of sale is the hope or the chance to win.

Note:

The sale of vain hope or expectancy is void, Example is sale of sweepstakes ticket or lotto ticket that was already run.

EMPTIO REI SPERATAE vs. EMPTIO SPEI

Emptio Rei Speratae	Emptio Spei
1. Sale of a thing with potential existence.	Sale of a mere hope or expectancy that the thing will come to existence sale of the hope itself.
2. Sale is subject to the condition that the thing will exist: If it does not, there is no contract.	Sale is effective even if the thing does not come into existence unless it is vain hope.
3. The object is a future thing.	The object is a present thing which is the hope or expectancy.

General Rule:

A person cannot sell or convey what he does not have or own.

Exception:

1. Sale of a thing having potential existence;
2. Sale of future goods; and
3. Contract for delivery at a certain price of an article which the vendor in the ordinary course of business manufactures or procures for the general market, whether the same is on hand at the time or not.

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

There may be a contract of sale of goods, whose acquisition by the seller depends upon a contingency which may or may not happen.

Kinds of goods

1. Existing Goods

Those goods that are owned by the seller.

2. Future Goods

Those goods that are to be manufactured (like a future table, chairs or bicycle to be manufactured.) raised (like the young of animals) or acquired (like a cellular phone, which the seller expects to buy) by the seller after the perfection of the contract of sale.

Note:

There may be a contract of sale of goods whose acquisition by the seller depends upon a contingency which may or may not happen.

Example:

F obliged himself to deliver and transfer ownership of his only car to S if the latter will pass the CPA board exam next month. At present, S can sell the said car to B.

Article. 1463. The sole owner of a thing may sell an undivided interest therein.
(n)

Example:

B owns a parcel of land with an area of 400 sq. m. If B decides to sell 100 sq. m. to C then they will become co-owners of the said land. Thus, B owns 300 sq. m. (3/4) while C owns 100 sq. m. (1/4)

Article. 1464. In the case of fungible goods, there may be a sale of an undivided share of a specific mass, though the seller purports to sell and the buyer to buy a definite number, weight or measure of the goods in the mass, and though the number, weight or measure of the goods in the mass is undetermined. By such a sale the buyer becomes owner in common of such a share of the mass as the number, weight or measure bought bears to the number, weight or measure of the mass. If the mass contains less than the number, weight or measure bought, the buyer becomes the owner of the whole mass and the seller is bound to make good the deficiency from goods of the same kind and quality, unless a contrary intent appears.

Example:

S is engaged in the business of buy and sell of rice and he owns a bodega filled with undetermined sacks of rice. Subsequently B buys 100 sacks of rice if there are 300 sacks of rice stored in the bodega, then S and B will be co-owners where S owns 200 sacks of rice while B owns 100 sacks of rice. However, if there are only 96 sacks of rice stored in the bodega, S is liable for the deficiency of 4 sacks of rice to B because the contract of sale is still valid. The 4 sacks of rice should be of the same kind and quality.

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

Resolutive condition

A condition that upon fulfillment terminates an already enforceable obligation and entitles the parties to be restored to their original position. A condition obligation that may be immediately enforced but will come to an end when an uncertain event that is specified occurs.²⁰

Note:

It is a condition the happening of which will extinguished the obligation.

Example:

S and B entered into a Contract of Sale with a Right to Repurchase within 1 year over the formers' parcel of land. S then delivered said parcel of land to B. In this case, the condition or uncertain event is whether S will repurchased the said parcel of land within 1 year. In the meantime, however, B can sell this parcel of land to C, a third person.

Article. 1466. In construing a contract containing provisions characteristic of both the contract of sale and of the contract of agency to sell the essential clauses of the whole instrument shall be considered.

CONTRACT OF SALE VS. AGENCY TO SELL

Contract of Sale	Agency to Sell
The buyer receives the goods as owner.	The agent receivers the goods as goods of the principal who retains his ownership over them.
The buyer pays the price.	The agent delivers the price, which he got from his buyer, to his principal.

The buyer, as a general rule, cannot return the object sold.	The agent can return the goods in case he is unable to sell the same to a third person.
--	---

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

As can be clearly seen from the wordings of Art. 1467, what determines whether the contract is one of work or of sale is ***whether the thing has been manufactured specially for the customer and upon his special order***. Thus, if the thing is specially done at the order of another, this is a contract for a piece of work. If, on the other hand, the thing is manufactured or procured for the general market in the ordinary course of one's business, it is a contract of sale.

As held by the Court, "the distinction between a ***contract of sale*** and one ***for work***, labor and materials is tested by the inquiry whether the ***thing transferred is one not in existence and which never would have existed but for the order of the party desiring to acquire it***, or a thing which would have existed and has been the subject of sale to some other persons even if the order had not been given."²¹

Problem:

H and W are engaged in the business of manufacturing the selling shirts. S is part owner and general manager of another manufacturing corporation.

H and W and S entered into a contract whereby the latter would manufacture for H and W 20,000 pieces of vinyl frogs and 20,000 pieces of vinyl mooseheads at P7.00 per pieces in accordance with the sample approved by H and W. These frogs and mooseheads were to be attached to the shirts H and W would manufactured and sell.

S delivered in several installment the 40,000 pieces of frogs and mooseheads. H and W fully paid the agreed price. Subsequently, H and W returned to S 29,772 pieces of frogs and mooseheads for failing to comply with the approved sample.

H and W then demanded from S a refund of the purchase price of the returned goods in the amount of P208,404. As S refused to pay, H and W filed an action for collection of a sum of money.

Is the contract executed by and between H and W and S a contract for a piece of work?

Answer:

The following provisions of the New Civil Code are apropos:

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

“Art. 1413. By the contract for a piece of work the contractor binds himself to execute a piece of work for the employer, in consideration of a certain price of compensation. The contractor may either employ only his labor or skill, or also furnish the material.”

As this court ruled in *Engineering & Machinery Corporation v. Court of Appeals, et al.* “a contract for a piece of work, labor and materials may be distinguished from a contract of sale by the inquiry as to whether the thing transferred is one not inexistence and which would never have existed but for the order of the person desiring it. In such case, the **contract is one for a piece of work**, not a sale. On the other hand, if the thing subject of the contract would have existed and been the subject of a sale to some other person even if the order had not been given then the contract is one of **sale**.” The contract between H and W and S stipulated that S would manufacture upon order of H and W 20,000 pieces of vinyl frog and 20,000 pieces of vinyl mooseheads according to the samples specified and approved by H and W. S did not ordinarily manufacture these products, but only upon order of H and W and at the price agreed upon. Clearly, **the contract executed by and between H and W and S was a contract for a piece of work.** ²²

Who is a contractor?

The word “**contractor**” has come to be used with special reference to a person who, in the pursuit of the independent business, undertakes to do a special job or piece of work for other persons, using his own means and methods without submitting himself to control as to the petty details.

Test of a contractor

The true test of contractor would seem to be that he render service in the course of an **independent occupation**, representing the will of his employer only as to the result of his work, and not as to the means by which it is accomplished.²³

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

SALE VS. BARTER

Sale	Barter
A thing is given in exchange of a price certain in money or its equivalent.	A thing is given in exchange of another thing.
If the consideration is partly in money and partly in another thing:	
1. The transaction is characterized by the manifest intention of the parties. 2. If there is not manifest intention: a. Barter if the value of the thing is <u>more</u> valuable than money b. Sale if the value of the thing is <u>equal</u> or <u>less</u> than the amount of money.	

Example:

S and B agreed that S will deliver his only parcel of land to B and B will deliver his only car worth P500,000 and P500,000 cash to S. What is the nature of their agreement?

The nature of their agreement will depend on their intention. If their intention is a contract of sale then it is Sale or if their intention is a contract of barter, then it is Barter.

Assuming that in the case at bar, there is not manifest intention then it is a Sale because the value of the car and case are equal.

What if the car is worth P600,000? Then it is Barter because the value of the car is more than the money.

Art.1469. in order that the price may be considered certain, it shall be sufficient that it be so with the reference to another thing certain, or that the determination thereof be left to the judgment of a special person or persons.

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

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

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

Irrefragably, under Article 1469 of the New Civil Code, the price of the property sold may be considered certain if it be so with reference to another thing certain. It is sufficient if it can be determined by the stipulations of the contract made by the parties thereto or by

reference to an agreement incorporated in the contract of sale or contract to sell or if it is capable of being ascertained with certainty in said contract; or the contract contains express or implied provisions by which it may be rendered certain or if it provides some method or criterion by which it can be definitely ascertained. The price is considered certain if, by its terms the contract furnishes a basis or measure for ascertaining the amount agreed upon.²⁴

Requisites for a valid price

1. Real

The price is not simulated or not fictitious.

2. Certain or Ascertainable

It is certain if it is expressed and agreed in terms of specific amount of money or its equivalent. It is ascertainable if it is sufficient that it be so with reference to another thing certain, or that the determination thereof be left to the judgment of a special person or persons.

3. In money or its Equivalent

4. Manner of payment must be agreed upon

The agreement on the manner of payment goes into the price such that a disagreement on the manner of payment is tantamount to a failure to agree on the price.

Art. 1470. Gross inadequacy of price does not affect a contract of sale, except as it may indicate a defect in the consent, or that the parties really intended a donation or some other act or contract.

The mere inadequacy of the price does not affect its validity when both parties are in a position to form an independent judgment concerning the transaction, unless fraud, mistake or undue influence indicative of a defect in consent is present. A contract may consequently be annulled on the ground of vitiated consent and not due to the inadequacy of the price.²⁵

Furthermore, mere alleged inadequacy of the price does not necessarily void a contract of sale, although the inadequacy may indicate that there was a defect in the consent, or that the parties really intended a donation, mortgage, or some other act or contract. Finally, unless the price is grossly inadequate or shocking to the conscience, a sale is not set aside.

Example:

S sold to B his 5 year old car for P500,000 not knowing that the fair market value of which is P650,000. Is the sale valid? The sale is valid because gross inadequacy of the selling price does not invalidate a contract of sale.

Art. 1471. If the price is simulated, the sale is void but the act may be shown to have been in reality a donation, or some other act or contract.

What is simulated price?

A simulated price is a fictitious price.

A contract of sale is not a real contract, but a consensual contract. As a consensual contract, a **contract of sale becomes a binding and valid contract upon the meeting of the mind as to price.** If there is a meeting of the minds of the parties as to the price, the contract of sale is valid, despite the manner of payment, or even the breach of the manner of payment. If the real price is not stated in the contract, then the contract of sale is

valid but subject to reformation. If there is not meeting of the minds of the parties as to the price, because the price stipulated in the contract is simulated, then the contract is void.

Article 1471 of the Civil Code stated that if the price in a contract of sale is simulated, the sale is void.

It is not the act of payment of the price that determines the validity of a contract of sale. Payment of the price has nothing to do with the perfection of the contract, payment of the price goes into the performance of the contract. Failure to pay the consideration is different from lack of consideration. The former results in a right to demand the fulfillment or cancellation of the obligation under an existing valid contract while the latter prevents the existence of a valid contract.²⁶

Problem

R is the owner of a lot with an area of 448 square meters. In 1981, R sold 185 square meters of the said lot to H and W who built their residential house thereon.

R alleged that on March 1, 1984, she signed a Deed of sale of the lot in favor of M. R, being illiterate, signed by affixing her thumb-mark on the document M promised to pay the agreed P47,000 purchase price within one month from the signing of the Deed of Sale.

R further alleged that M failed to pay the purchase price after the lapse of the one-month period, prompting R to demand from M to return of the Deed of Sale. Since M refuses to return the Deed of Sale. R executed a document unilaterally revoking the sale and gave a copy of the document to M.

Subsequently, on May 23, 1984, R signed a Deed of sale transferring to H and W the entire lot, at the same time confirming the previous sale in 1981 of a 185-square meter portion of the lot.

R and H and W alleged that on June 18, 1984 they received information that the Register of Deeds issued Certificate of Title in the name of M for the Lot.

Is the Deed of Sale void from the beginning or simply rescissible?

Answer:

M's Deed of Sale stated that M paid, and R received, the P47,000 purchase price on March 1, 1984, the date of signing of the Deed of Sale.

On its face, M's Deed of Absolute Sale appears supported by a valuable consideration. However, based on the evidence presented by both R and M, the trial court found that M never paid to R, and R never received from M, the P47,000 purchase price. There was indisputably a total absence of consideration contrary to what is stated M's Deed of Sale.

Where the deed of sale stated that the purchase price has been paid but in fact has never been paid, the deed of sale is null and void *Ab initio* for lack of consideration.

The court reiterated this rule in **Vda. De Catindig v. Heirs of Catalina Roque**, to wit:

"The appellate Court's finding that the price was not paid or that the statement in the supposed contracts of sale as to the payment of the price was simulated fortifies the view that the alleged sales were void. **"If the price is simulated, the sale is void..." (Art. 1471, Civil Code)**

A contract of sale is void and produces no effect whatsoever where the price, which appears thereon as paid, has in fact never been paid by the purchaser to the vendor. Such a sale is non-existent or cannot be considered consummated."

Applying this well-entrenched doctrine to the instant case, we rule that M's Deed of Sale is null and void ab initio for lack of consideration.

M asserts that the only issue in controversy is "the mode and/or manner of payment and /or whether or not payment has been made." M implies that the mode or manner of payment is separate from the consideration and does not affect the validity of the contract. In the recent case of **San Miguel Properties Philippines, Inc v. Huang**, we rules that -

"xxx the manner of payment of the purchase price is an essential element before a valid and binding contract of sale can exist. Although the Civil Code does not expressly stated that the minds of the parties must also meet on the terms or manner of payment of the price, the same is needed, otherwise there is no sale. As held xxx, agreement on the manner of payment goes into the price such that **a disagreement on the manner of payment is tantamount to a failure to agree on the price."**

One of the three essential requisites of a valid contract is consent of the parties on the object and cause of the contract. In a contract of sale, **the parties must agree not only on the price, but also on the manner of payment of the price.** An agreement on the price but a disagreement on the manner of its payment will not result in consent, thus preventing the existence of a valid contract for **lack of consent**. This lack of consent is separated and distinct from **lack of consideration**. Where the contract is stated that the price has been paid when in fact it has never been paid. ²⁷

Art. 1472. The price of securities, grain, liquids, and other things shall also be considered certain, when the price fixed is that which the thing sold would have on a definite day, or in a particular exchange or market, or when an amount is fixed above or below the price on such day, or in such exchange or market, provided said amount be certain.

Art. 143. The fixing of the price can never be left to the discretion of one of the contracting parties. However, if the price fixed by one of the parties is accepted by the other, the sale is perfected.

Rationale:

Reason why price fixing cannot be left to the discretion of one of them: the other could not have consented to the price, for he did not know what it was. ²⁸

Art. 1474. Where the price cannot be determined in accordance with the preceding articles, or in any other manner, the contract is inefficacious. However, if the thing or any part thereof has been delivered to and appropriated by the buyer he must pay the reasonable price therefor. What is a reasonable price is a question of fact dependent on the circumstances of each particular case.

General Rule:

Where the price cannot be determined in accordance with the preceding articles, or in any other manner, the contract is inefficacious. Hence, the sale is void.

Exception:

If the thing or any part thereof has been delivered to and appropriated by the buyer, he must pay a reasonable price therefor.

Art. 1475. The contract of sale is perfected at the moment there is a meeting of minds upon the thing which is the object of the contract and upon the price.

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

Take note that sale is a consensual contract; thus it is perfected by mere consent meaning the moment there is a meeting of the minds.

Problem:

X Corp. is a domestic corporation engaged in the trading and distribution of consumer goods in wholesale and retail bases, while Y Corp. is one engaged in the supply of computer hardware and equipment.

Y Corp. sent a letter-proposal for the delivery and sale of the subject product to be installed at various offices of X Corp.

On October 29, 2001, X Corp. accepted Y's proposal and accordingly issued a Purchase Order for the subject product amounting to P646, 464. Thereafter, Y Corp. delivered the said product to X Corp. The fine print of the invoice stated, *inter alia*, that "title to sold property is reserved in Y Corp. until full compliance of the terms and conditions of above and payment of the price". After delivery, the subject products were then installed and configured in X Corp.'s premises. Y Corp.'s demands against X Corp. to pay the purchase price, however, remained unheeded. Instead of paying the purchase price, X Corp. sent Y Corp. a letter, stating that it "has been returning the subject products to Y Corp. thru its sales representative who has agreed to pull out the said products but had failed to do so up to now."

Should X Corp. pay Y Corp. the purchase price for the subject product?

Answer:

The very essence of a contract of sale is **the transfer of ownership in exchange for a price paid or promised**. This may be gleaned from Article 1458 of the Civil Code which defines a contract of sale as follows:

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

A contract of sale may be absolute or conditional.

In this case, the parties have agreed to a contract of sale and not to a contract to sell. Bearing in mind its consensual nature, a contract of sale had been perfected at the precise moment X Corp., as evinced by its act of sending Y Corp. the Purchase Order, accepted the latter's proposal to the subject product in consideration of the purchase price of P646,464. From that point in time the reciprocal obligation of the parties - i.e., on the one hand, Y Corp. to deliver the said products to X Corp., and, on the other hand, **X Corp. to pay the purchase price** therefor within 30 days from the delivery - already arose and consequently may be demanded. Article 1475 of the Civil Code makes this clear:

Art. 1475. The contract of sale is perfected at the moment there is a meeting of minds upon the thing which is the object of the contract and upon the price.

From that moment, the parties may reciprocally demand performance, subject to the provision of the law governing the form of contracts.²⁹

Note:

In general, a perfected contract of sale cannot be challenged on the ground of the seller's non ownership of the thing sold at the time of the perfection of the contract.

Further, even after the contract of sale has been perfected between the parties, its consummation by delivery is yet another matter. It is through tradition or delivery that the buyer acquires the real right of ownership over the thing sold.³⁰

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

- (1) Where goods are put up for sale by auction in lots, each lot is the subject of a separated contract of sale.**
- (2) A sale by auction is perfected when the auctioneer announces its perfection by the fall of the hammer, or in other customary manner. Until such announcement is made, any bidder may retract his bid; and the auctioneer may withdraw the goods from the sale unless the auction has been announced to be without reserve.**
- (3) A right to bid may be reserved expressly by or on behalf of the seller, unless otherwise provided by law or by stipulation.**
- (4) Where notice has not been given that a sale by auction is subject to a right to bid on behalf of the seller, it shall not be lawful for the seller to bid himself or to employ or induce any person to bid at such sale on his behalf or for the auctioneer, to employ or induce any person to bid at such sale on behalf of the seller or knowingly to take any bid from the seller or any person employed by him. Any sale contravening this rule may be treated as fraudulent by the buyer.**

Sale by auction is perfected

A sale by auction is perfected when the auctioneer announces its perfection by the fall of the hammer, or in other customary manners.

BEFORE the fall of the hammer

1. Any bidder may retract his bid; and
2. The auctioneer may withdraw the goods from the sale unless the auction has been announced to be without reserve.

Art. 1477. The ownership of the thing sold shall be transferred to the vendee upon the actual or constructive delivery thereof.

In a contract of sale, the title to the property passes to the vendee upon the constructive or actual delivery thereof, as provided for in Article 1477 of the New Civil Code. The vendor loses ownership over the property and cannot recover it until and unless the contract is rescinded by the notarial deed or by judicial action as provided for in Article 1592 of the New Civil Code. A contract of sale is absolute, absent any stipulation therein reserving title over the property to the vendee until full payment of the purchase price nor giving the vendor the right to unilaterally rescind the contract in case of non-payment. In a contract of

sale, the non-payment of the price is a resolutive condition which extinguishes the transaction that, for a time existed, and discharged the obligation created thereunder.³¹

In a contract of sale until and unless the contract is resolved or rescinded in accordance with law, the vendor cannot recover the thing sold even if the vendee failed to pay in full the initial payment for the property. **The failure of the buyer to pay the purchase price within the stipulated period does not by itself bar the transfer of the ownership or possession of the property sold,** nor ipso facto rescind the contract. Such Failure will merely give the vendor the option to rescind the contract of sale judicially or by notarial demand as provided for by Article 1592 of the New Civil Code:

Art. 1592. In the sale of immovable property, even though it may have been stipulated that upon failure to pay the price at the time agreed upon the rescission of the contract shall of right take place, the vendee may pay, even after the expiration of the period, as long as no demand for rescission of the contract has been made upon him either judicially or by a notarial act. After the demand, the court may not grant him a new term.³²

Problem:

In her complaint, R averred that she bought the hereditary shares (consisting of 10 lots) of X and the heirs of L; that said vendors executed a contract of sale dated April 10, 1990 in her favor; that X and the heirs of L, received a down payment or earnest money in the amount of P102,169.86 and P450,000, respectively; that it was agreed in the contract of sale that the vendors would secure certificates of title covering their respective hereditary shares that the balance of the purchase price would be paid to each heir upon presentation of their individual certificates of title; that X refuses to receive the other half of the down payment which is P100,000; that X refuses and still refuses to deliver to R the certificates of title covering his share on the two lots; that with respect to the heirs of L, they also refused and still refuse to perform the delivery of the two certificates of title covering their share in the disputed lot; that R was and is ready and willing to pay X and the heirs of L upon presentation of their individual certificates of title, free from whatever lien and encumbrance.

As to C, in spite of her knowledge that the disputed lots have already been sold by X to R, it is alleged that a simulated deed of sale involving said lots was effected by X in her; and that the simulated deed of sale by X to C has raised doubts and clouds over R's title.

X and the heirs of L argue that the contract is a contract to sell, not a contract of sale. The real character of the contract is not the title given, but the intention of the parties. They intended to reserve ownership of the property to X and the heirs of L pending full payment of the purchase price. Further, R failed to faithfully fulfill her part of the obligation. Thus, X had the right to sell his properties to C who exercised due diligence in ascertaining ownership of the properties sold to her.

Is the contract of sale between X and the heir of L and R valid?

Answer:

Indeed, they have entered into a **contract of sale**. Not only has the title to the subject properties passes to R upon delivery of the thing sold, but there is also no stipulation in the contract that stated the ownership is to be reserved in or "retained by the vendor until full payment of the price."

In fact, earnest money has been given by R. "It shall be considered as part of the price and as proof of the perfection of the contract. It constitutes an advance payment to "be deducted from the total price. **"Article 1477 of the same Code also stated that "the ownership of the thing sold shall be transferred to the vendee upon actual or constructive delivery thereof."** In the present case there is **actual delivery** as manifested by acts simultaneous with and subsequent to the contract of sale when R not only took possession of the subject properties but also allowed their use as parting terminal for jeepneys and buses. Moreover, the execution itself of the contract of sale is **constructive delivery**.

Consequently, X could no longer sell the subject properties to C, after having sold them to R. *"In a contract of sale, the vendor loses ownership over the property and cannot recover it until and unless the contract is resolved or rescinded x x x."* The records do not show that X asked for a rescission of the contract. What he adduced was a belated revocation of the special power of attorney he executed. *"in the sale of immovable property, even though it may have been stipulated that upon failure to pay the price at the time agreed upon the rescission of the contract shall of right take place, the vendee may pay, even after the expiration of the period, as long as no demand for rescission of the contract has been made upon him either judicially or by a notarial act."*³³

Two aspect of delivery

The term "delivery" or tradition has two aspects:

1. The de jure delivery or the execution of deeds of conveyance; and
2. The delivery of the material possession.³⁴

Art. 1478. The parties may stipulate that ownership in the thing shall not pass to the purchaser until he has fully paid the price.

Under the Civil Code, ***unless the contract contains a stipulation that ownership of the thing sold shall not pass to the purchaser until he has fully paid the price,*** ownership of the thing sold shall be transferred to the vendee upon the actual or constructive delivery thereof. In other words, payment of the purchase price is not essential to the transfer of ownership as long as the property sold has been delivered. Such delivery (traditio) operated to divest the vendor of title to the property which may not be regained or recovered until and unless the contract is resolved or rescinded in accordance with law.³⁵

Article 1478 of the civil code does not require that such a stipulation be expressly made. Consequently, an implied stipulation to that effect is considered valid and, therefore, binding and enforceable between the parties. It should be noted that under the law and jurisprudence, a contract which contains this kind of stipulation is considered as contract to the sell.³⁶

Art. 1479. A promise to buy and sell a determinate thing for a price certain is reciprocally demandable.

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

What is contract to sell?

A **Contract to sell** may thus be defined as bilateral contract whereby the prospective seller, while expressly reserving the ownership of the subject property despite

delivery thereof to the prospective buyer, binds himself to sell the said property exclusively to the prospective buyer upon fulfillment of the condition agreed upon, that is full payment of the purchase price.

A **Contract to sell** as defined hereinabove, may not even be considered as a conditional contract of sale where the seller may likewise reserve title to the property subject of the sale until the fulfillment of a suspensive condition, because in a conditional contract of sale, the first element of consent is present, although it is conditioned upon the happening of a contingent event which may or may not occur. If the suspensive condition is not fulfilled, the perfection of the contract of sale is completely abated. However, if the suspensive condition is fulfilled, the contract of sale is thereby perfected, such that if there had already been previous delivery of the property subject of the sale to the buyer, ownership thereto automatically transfers to the buyer by operation of law without any further act having to be performed by the seller.

In a **contract to sell**, upon the fulfillment of the suspensive condition which is the full payment of the purchase price, ownership will not automatically transfer to the buyer although the property may have been previously delivered to him. The prospective seller still has to convey title to the prospective buyer by entering into a contract of absolute sale. ³⁷

Contract to sell vs. Conditional contract of sale

Contract to sell	Conditional contract to sale
In a contract to sell, there being no previous sale of the property, a third person buying such property despite the fulfillment of the suspensive condition such as the full payment of the purchase price, for instance, cannot be deemed a buyer in bad faith and the prospective buyer cannot seek the relief of reconveyance of the property. There is no double sale in such case. Title to the property will transfer to the buyer after registration because	In conditional contract of sale, however, upon the fulfillment of the suspensive condition, the sale becomes absolute and this will definitely affect the sellers' title thereto. In fact, if there had been previous delivery of the subject property, the sellers' ownership or title to the property is automatically transferred to the buyer such that, the seller will no longer have any title to transfer any third person.
there is no defect in the owner-seller title per se, but the latter, of course, may be sued for damages by the intending buyer.	Applying Article 1544 of the Civil Code, such second buyer of the property who may have had actual or constructive knowledge of such defect in the sellers' title, or at least was charged with the obligation to discover such defect, cannot be a registrant in good faith. Such second buyer cannot defeat the first buyer title. In case a title is issued to the second buyer, the first buyer may seek reconveyance of the property subject of the sale. ³⁸

What is option contract?

In *Beaumont v Prieto*, the nature of an **option contract** is explained thus:

In his law Dictionary, edition of 1897, Bouvier defines an **option as a contract**, in the following language:

'A contract by virtue of which A, in consideration of the payment of a certain sum to B, acquires the privilege of buying from, or selling to, B certain securities or properties, within a limited time at a specified price. (Story vs. Salamon, 71 N.Y., 420.)'

From Vol, 6 page 5001, of the work "Words and Phrases," citing the case of Ide vs. Leiser (24 Pac., 695; 10 Mont., 5; 24 Am. St. Rep., 17) the following quotation has been taken:

'An agreement in writing to give a person the 'option' to purchase lands within a given time at named price is neither a sale nor an agreement to sell. **It is simply a contract by which the owner of property agrees with another person that he shall have the right to buy his property at a fixed price within a certain time.** He does not sell his land; he does not then agree to sell it; but he does sell something; that is, the right or privilege to buy at the election or option of the other party. The second party gets in praesenti, not lands, nor an agreement that he shall have lands, but he does get something of value; that is, the right to call for and receive lands if he elects. The owner parts with his right to sell his lands, except to the second party, for a limited period. The second party receives this right, or rather, from his point of view, he receives the right to elect to buy.

But the two definitions above cited refer to the **contract of option**, or, what amounts to the same thing, to the case where there was cause or consideration for the obligation x x x.³⁹ The rule so early established in this jurisdiction is that the **deed of option** or the **option clause** in the contract, in order to be valid and enforceable, must, among other things, indicate the definite price at which the person granting the option, is willing to sell.⁴⁰

What is right of first refusal?

On the other hand, in Ang Yu Asuncion v. Court of Appeals,²⁰ an elucidation on the "**right of first refusal**" was made thus:

In the law on sales, the so-called '**right of first refusal**' is an innovative juridical relation. Needless to point out, it cannot be deemed a perfected contract of sale under Article 1458 of the Civil Code. Neither can the right of first refusal, understood in its normal concept, per se be brought within the purview of an option under the second paragraph of Article 1479, aforequoted, or possibly of an offer under Article 1319 of the same Code. An option or an offer would require among other things, a clear certainty on both the object and the cause or consideration of the envisioned contract. **In a right of first refusal, while the object might be made determinate, the exercise of the right, however, would be dependent not only on the grantor's eventual intention to enter into a binding juridical relation with another but also on terms including the price, that obviously are yet to be later firmed up.** Prior thereto, it can at best so described as merely belonging to a class of preparatory juridical relation governed not by contract (since the essential elements to establish the vinculum juris would still be indefinite and inconclusive) but by, among other laws of general application the pertinent scattered provisions of the Civil Code on human conduct.⁴¹

OPTION CONTRACT VS. RIGHT OF FIRST REFUSAL

From the foregoing, it is thus clear that an **option contract** is entirely different and distinct from a **right of first refusal** in that in the former, the option granted to the offeree is not for a fixed period and at a determined price. Lacking these two essential requisites, what is involved is only a **right of first refusal**.⁴²

Problem:

H and W leased a house and lot to X. X used the subject property as his residence and place of business. H and W and X allegedly entered into a Contract of Lease with Option to Purchase involving the subject property. The contract purportedly afforded X, before the expiration of the three-year lease period, the option to purchase the subject property for a price not exceeding P1.5 Million.

Before the expiration of the three-year lease period provided in the lease contract, X exercised his option to purchase the subject property by communicating verbally and in writing to W his willingness to pay the agreed purchase price, but H and W supposedly ignored X's manifestation.

In a letter to X, H and W demanded that he pay his rental arrears and vacate the subject property since it would be needed by H and W themselves.

Without heeding the demand of H and W, X instituted a Complaint for Specific Performance against H and W. X's cause of action is founded on the Contract of Lease with Option to Purchase vesting him with the right to acquire ownership of the subject property after paying the agreed amount of consideration.

Is there an option contract?

Answer:

An **option** is also sometimes called an **"unaccepted offer"** and is sanctioned by Article 1479 of the Civil Code:

Art 1479. A promise to buy and sell a determinate thing for a price certain is reciprocally demandable.

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

The second paragraph of Article 1479 provides for the definition and consequent rights and obligation under an option contract. For an option contract to be valid and enforceable against the promisor, **"there must be a separate and distinct consideration that supports it."**

In the landmark case of Southwestern Sugar and Molasses Company v. Atlantic Gulf and Pacific Co., we declared that for an option contract to bind the promisor, it must be supported by consideration:

There is no question that under Article 1479 of the new Civil Code **"an option to sell," or "a promise to buy or to sell,"** as used in said article, to be valid must be "supported by a consideration distinct from the price." This is clearly inferred from the context of said article that a unilateral promise to buy or to sell even if accepted, is only binding if supported by a consideration. In other words, "an accepted unilateral promise" can only have a binding effect if supported by a consideration. Here it is not disputed that the option is without consideration. It can therefore be withdrawn notwithstanding the accepted made of it by appellee.

The doctrine requiring the payment of consideration in an option contract enunciated in Southwestern Sugar is resonated in the subsequent case and remain controlling to this day. **Without consideration that is separate and distinct from the purchase price, an option contract Cannot be enforced; that hold true even if the unilateral promise is already accepted by the optionee.**

The consideration is “the why of the contracts, the essential reason which moves the contracting parties to enter into the contract.” This definition illustrates that the consideration contemplated to support an option contract need not monetary. Actual cash need not be exchange for the option. However, by the very nature of an option contract, as defined in article 1479, the same is an onerous contract for which **the consideration must be something of value**, although its may vary.

We have painstakingly examined the Contract of Lease with Option to purchase, as well as the pleadings submitted by the parties and their testimonies in open court, for any direct evidence or evidence aliunde to prove the existence of consideration for the option contract, but we have found none. The only consideration agreed upon by the parties in the said Contract is supposed purchased price for the subject property in the amount not exceeding P1.5 Million, which could not be deemed to be the same consideration for the option contract since the law and jurisprudence explicitly dictate that for the option contract to be valid, it **must be supported by a consideration separate and distinct from the price.**

In Bible Baptist Church v. Court of Appeals, we stressed that an option contract needs to be supported by separate consideration. **The consideration need not be monetary but could consist of other thing or undertakings.** However, **if the consideration is not monetary, these must be things or undertakings of value, in view of the onerous nature of the option contract.** Furthermore, when a consideration for an option contract is not monetary, said consideration must be clearly specified as such in the option contract or clause.

In the present case, it is indubitable that no consideration was given by X to H and W for the option contract. The absence of monetary or any material consideration keeps this Court from enforcing the rights of the parties under said option contract.⁴³

Note:

There is no question that under Article 1479 of the new Civil Code “an option to sell,” or “a promise to buy or to sell,” as used in said article to be valid must be “supported by a consideration distinct from the price.” This is clearly inferred from the context of said article that a unilateral promise to buy or to sell, even if accepted, is only binding if supported by consideration. In other words, “an accepted unilateral promise can only have a binding effect if supported by a consideration which means that the option can still be withdrawn, even if accepted, if the same is not supported by any consideration.

In Diamante v. Court of Appeals, this Court further declared that:

A unilateral promise to buy or to sell is a mere offer, which is not converted into a contract expect at the moment it is accepted. **Acceptance is the act that gives life to juridical obligation, because, before the promise is accepted, the promissor may withdraw it at any time.** Upon acceptance, however, a bilateral contract to sell and to buy is created, and the offeree ipso facto assumes the obligation of a purchaser; the offeror, on the other hand, would be liable for damages if he fails to deliver the thing he had offered for sale.⁴⁴

Note:

Observer, however that the option is not the contract of sale itself. The optionee has the right but not the obligation, to buy. Once the option is exercised timely, i.e., the offer is

accepted before a breach of the option, a bilateral promise to sell and to buy ensues and both parties are then reciprocally bound to comply with their respective undertakings.

Let us elucidate a little. A negotiation is formally initiated by an offer. An imperfect promise (**policitacion**) is merely an offer. Public advertisements or solicitations and the like are ordinarily, construed as mere invitation to make offers or only as proposal. These relation until the contract is perfected, were not considered binding commitments. Thus at any time prior to the perfection of the contract, either negotiating party may stop the negotiation. The offer at this stage, may be withdrawn; the withdrawal is effective immediately after its manifestation, such as by its mailing and not necessarily when the offeree learns of the withdrawal. (Laudico vs. Anas, 43 Phil. 270). Where a period is given to the offeree within which to accept the offer, the following rules generally govern.

(1) If the period is not itself founded upon or supported by a consideration, the offeror is still free and has the right to withdraw the offer before its acceptance or, if an acceptance has been made, before the offeror's coming to know of such fact, by communicating that withdrawal to the offeree. The right to withdraw, however, must not be exercised whimsically or arbitrarily; otherwise, it could give rise to a damage claim under Article 19 of the Civil Code which ordains that "Every person must, in the exercise of his rights and in the performance of his duties, act with justice, give everyone his due, and observe honesty and good faith.

(2) If the period has a separate consideration, a contract of "option" is deemed perfected, and it would be a breach of that contract to withdraw the offer during the agreed period. The option, however, is an independent contract by itself, and it is to be distinguished from the projected main agreement (subject matter of the option) which is obviously yet to be concluded. If, in fact, the optioner-offeror withdraws the offer before its acceptance (exercise of the option) by the optionee-offeree, the latter may not sue for the specific performance on the proposed contract ("object" of the option) since it has failed to reach its own stage of perfection. The optioner-offeror, however, renders himself liable for damages for breach of the option.⁴⁵

Art. 1480. Any injury to or benefit from the thing sold, after the contract has been perfected, from the moment of the perfection of the contract to the time of delivery, shall be governed by Article 1163 to 1165, and 1262.

This rule shall apply to the sale of fungible things, made independently and for a single price, or without consideration of their weight, number or measure.

Should fungible things be sold for a price fixed according to weight number, or measure the risk shall not be imputed to the vendee until they have been weighted, counted, or measured and delivered, unless the latter has incurred in delay.

Object is lost before perfection

If the object has been lost before perfection, the seller bears the loss.

Object is lost after delivery to the buyer

If the object was lost after delivery to the buyer, the buyer bears the loss.

Object is lost after perfection but before delivery

If the object was lost after perfection but before delivery, the buyer bears the loss. This is an exception to the principle of *res perit domino*.

What is res perit domino?

Property lost to the owner.⁴⁶

What are fungible goods?

Goods that are interchangeable with one another; goods that, by nature or trade usage, are the equivalent of any other like unit, such as coffee or grain.⁴⁷

Example:

In one case, the sale between the parties is a sale of a specific mass of iron ore because no provision was made in their contract for the measuring or weighing of the ore sold in order to complete or perfect the sale, nor was the price of P75,000 agreed upon by the parties based upon any such measurement.

(see Art. 1480, second par., New Civil Code). The subject matter of the sale is, therefore, a determinate object, the mass and not the actual number of units or tons contained therein, so that all that was required of the seller was to deliver in good faith to his buyer all the ore found in the mass, notwithstanding that the quantity delivered is less than the amount estimated by them.

Art. 1481. In the contract of sale of goods by description or by sample, the contract may be rescinded if the bulk of the goods delivered do not correspond with the description or the sample, and if the contract be by sample as well as description, it is not sufficient that the bulk of goods correspond with the sample if they do not also correspond with the description

The buyer shall have a reasonable opportunity of comparing the bulk with the description or the sample. (n)

What is sale by sample?

There is a **sale by sample** when a small quantity is exhibited by the seller as a fair specimen of the bulk, which is not present and there is no opportunity to inspect or examine the same. To constitute a **sale by sample**, it must appear that the parties treated the sample as the standard of quality and that they contracted with reference to the sample with the understanding that the product to be delivered would correspond with the sample. In a contract of sale by sample, there is an implied warranty that the goods shall be free from any defect which is not apparent on reasonable examination of the sample and which would render the good unmerchantable.⁴⁸

What is sale by description?

There is a **sale of goods by description** where “a seller sells things as being of a particular kind, the buyer not knowing whether the seller’s representation are true or false, but relying on them as true; or as otherwise stated, where the buyer has not seen the article sold and relies on the description given to him by the seller, or has seen the goods, but the want of identity is not apparent on inspection.” A seller’s description of the goods which is made part of the basis of the transaction creates a warranty that the goods will conform to the description. Where the goods are bought by description from a seller who deals in the goods of that description, there is an implied warranty that the goods are of merchantable quality.

Problem:

In her complaint, Y alleged that she ordered three sets of furniture from Z worth P185,650 and paid an initial deposit of P40,650. Y and agreed on the specifications of the dining set, sofa set and tea set including the material and quality. Y paid an additional deposit of P40,000.

When Z delivered the dining set to Y, Y rejected the set because of the inferior material and poor quality. Y likewise rejected the sala set and the tea set for the same reason. When Y requested a refund of her total deposit of P80,650, Z refused. Y then sent Z a letter demanding the refund of her deposit but Z ignored the demand letter. Thus, Y filed a complaint for collection of money.

In her Answer, Z admitted that she and Y agreed on the material and quality of the furniture Y ordered since that was the normal practice for “made to order” furniture. Z stated that she delivered some of the furniture which was received by Y’s father. However, Y could not pay the balance of the price and requested payment on installment which Z rejected. As a result of Y’s non-payment, Z reclaimed the furniture already delivered and informed Y that she could get the furniture upon payment of the balance of P105,000. In the meantime, Z stored the furniture in her warehouse. When Z received Y’s demand letter, she refused to comply with Y’s request for a refund of the deposit since all the here set of furniture Y ordered were already finished and delivered on the agreed date. Z only retrieved the furniture due to non-payment of the balance.

Was the transaction between the parties one of sale by description or sample?

Answer:

The transaction in this case was a “made to order” agreement. There is nothing in the records which would show that the intent of the parties was for a sale by sample or description. Whether a sale is by sample or description depends upon the facts disclosing the intention of the parties. Other than Y’s bare allegation that the transaction was sale by sample or description, y failed to produce evidence to substantiate her claim.

The sale of furniture in this case in not a sale by sample. The term sale by sample does not include an agreement to manufacture goods to correspond with the pattern. In this case, the three sets of furniture were manufactured according to the specification provided by the buyer. Y did not order the exact replica of the furniture displayed in Z’s shop but made her own specification on the measurement, material and quality of the furniture she ordered.

Neither is the transaction a sale by description. Y did not rely on any description made by Z when she ordered the furniture. Y inspected the furniture displayed in Z’s furniture shop and made her own specification on the three sets of furniture she ordered.

It is undisputed that there was a perfected contract of sale of furniture between the parties. The three sets of furniture were delivered or ready for delivery within the agree period.⁴⁹

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

What is earnest money (“arras”)?

A deposit paid (often in escrow) by a prospective buyer (esp. of real estate) to show a good-faith intention to compete the transaction, and ordinarily forfeited if the buyer defaults.⁵⁰

Problem:

H and W, are the registered owners of a specific lot. X offered to buy the lot. H and W agreed to sell it at P1,500 per square meter. X then gave petitioners P100,000 as partial payment. In turn, H and W gave X the corresponding receipt stating that X promised to pay the balance of the purchase price on or before March 23, 1990.

On March 28, 1990, X wrote H and W informing them of his readiness to pay the balance of the contract price and requesting them to prepare the final deed of sale.

On April 4, 1990, H and W, sent a letter to X stating that W is leaving for abroad on or before April 15, 1990 and that they are cancelling the transaction. H and W also informed X that he can recover the earnest of money of 1000,000 anytime.

Again on April 6, 1990, H and W wrote X stating that they delivered to his counsel P Bank Manager's Check in the amount of P100,000 payable to him.

In view of the cancellation of the contract by H and W, X filed a complaint against them for specific performance.

Is the P100,000 an earnest money?

Answer:

Thus, when H and W declared in the said "Receipt for Partial Payment" that they...

RECEIVED FROM X THE AMOUNT OF P100,000 AS **PARTIAL PAYMENT** OF OUR LOT.

X PROMISED TO PAY THE BALANCE OF THE PURCHASE PRICE ON OR BEFORE MARCH 23,1990, AND THAT WE WILL EXECUTE AND SIGN THE FINAL DEED OF SALE ON THIS DATE.

There can be no other interpretation than they agreed to a conditional contract of sale, consummation of which is subject only to the full payment of the purchase price.

In this case, the "Receipt for Partial Payment" shows that the true agreement between the parties is a **contract to sell**.

First, ownership over the property was retained by the petitioner and was not to pass to respondent until full payment of the purchase price.

Second, the agreement between the parties was not embodied in a deed of sale.

Third, H and W retained possession of the certificate of title of the lot. This is an additional indication that the agreement did not transfer to X, either by actual or constructive delivery, ownership of the property.

It is true that **Article 1482** of the Civil Code Provides that "Whenever earnest money is given in a contract of sale, it shall be considered as part of the price and proof of the perfection of the contract." However, this article speaks of earnest money given in a contract of sale. In this case, the earnest money was given in a contract to sell. The earnest money forms part of the consideration only if the sale is consummated upon full payment of the purchase price. Now, **since the earnest money was given in a contract to sell, Article 1482, which speaks of a contract of sale, does not apply.**⁵¹

Problem:

X Corp. is a domestic corporation engaged in the real estate business. It is the registered owner of a determinate land with improvements. Y, Corp., on the other hand, is a domestic corporation with offices located beside the subject property.

Looking to expand its business and add to its existing offices, Y Corp. – through its General Manager, E – sent a letter addressed to X Corp. – through its Executive Vice-President, G – offering to purchase the subject property at P6,000 per square meter. A series of telephone calls ensued, but only between E and G's secretary. E was unable to personally negotiate with G or X Corp's board of directors.

Sometime thereafter, E personally went to X Corp.'s office offering to pay for the subject property in cash, which he already brought with him. However, G declined to accept payment, saying that she still needed to secure her sister's advice on the matter. She likewise informed E that prior approval of X Corp.'s Board of Directors was required for the transaction to which remark E replied that Y Corp. shall instead await such approval.

On February 4, 2005, Y Corp. sent a letter of even date to X Corp. It was accompanied by P Bank Check No. 0001, issued for P100,000 and made payable to X Corp.

Despite the delicate nature of the matter and large amount involved, Y Corp. did not deliver the letter and check directly to G or her office; instead, they were coursed through an ordinary receiving clerk of X Corp., who thus received the same and therefor issued and signed Provisional Receipt No. 1001.

The check was eventually deposited with and credited to X Corp.'s bank account. Thereafter, Y Corp. through counsel demanded in writing that X Corp. proceed with the sale of the property.

Is there a perfected contract of sale by virtue of the check issued and payable to X Corp.?

Answer:

As between them, there is no sale to speak of. "When there is merely an offer by one party without acceptance of the other, there is no contract." In the present case, the parties never got past the negotiation stage.

Since there is no perfected sale between the parties, Y Corp. had no obligation to make payment through the check; nor did it possess the right to deliver earnest money to X Corp. in order to bind the latter to a sale. As contemplated under Art. 1482 of the Civil Code, **"there must first be a perfected contract of sale before we can speak of the earnest money."** "Where the parties merely exchanged offers and counter-offers, no contract is perfected since they did not yet give their consent to such offers. **"Earnest money applies to a perfected sale."**

This Court is inclined to accept X Corp.'s explanation that since the check was mixed up with all other check and correspondence sent to and received by the corporation during the course of its daily operation, G could not have timely discovered Y Corp.'s check payment; X Corp.'s failure to return the purported earnest money cannot mean that it agreed to Y Corp.'s offer.

In a potential sale transaction, the prior payment of earnest money even before the property owner can agree to sell his property is irregular, and cannot be used to bind the owner to the obligation of a seller under an otherwise perfected contract of sale; to cite a well-worn cliché, the carriage cannot be placed before the horse. The property owner-

prospective seller may not be legally obligated to enter into sale with a prospective buyer through the latter's employment of questionable practices which prevent the owner from freely giving his consent to the transaction; this constitute a palpable transgression of the prospective seller's right ownership over his property, an anomaly which the Court will certainly not condone. An agreement where the prior free consent of one party thereto is withheld or suppressed will be struck down, and the Court shall always endeavor to protect a property owner's right against devious practices that put his property in danger of being lost or unduly disposed without his prior knowledge or consent.

Note:

*In Swedish Match, AB v. Court of Appeals, the Court ruled that the **manner of payment of the purchase price was an essential element before a valid and binding contract of sale could exist.** Albeit the Civil Code does not explicitly provide that the minds of the contracting parties must also meet on the terms or manner of payment of the price, the same is needed, otherwise, there is no sale, An agreement anent the manner of payment goes into the price so much so that a disagreement on the manner of payment is tantamount to a failure to agree on the price. Further, in Velasco v. Court of Appeals, where the parties already agreed on the object of sale and on the purchase price, but not on how and when the down payment and the installment payments were to be paid, this Court ruled:*

Such being the situation, it cannot, therefore, be said that a definite and firm sales agreement between the parties had been perfected over the lot in question. Indeed, this Court has already ruled before that a definite agreement on the manner of payment of the purchase price is an essential element in the formation of a binding and enforceable contract of sale. The fact, therefore, that the petitioners delivered to the respondent the sum of P10,000.00 as part of the down-payment that they had to pay cannot be considered as sufficient proof of the perfection of any purchase and sale agreement between the parties herein under Art. 1482 of the new Civil Code, as the petitioners themselves admit that some essential matter - the terms of payment - still had to be mutually covenanted,.

Article. 1483. Subject to the provisions of the Statute of Frauds and of any other applicable statute, a contract of sale may be made in writing, or by word of mouth, or partly in writing and partly by word of mouth, or may be inferred from the conduct of the parties. (n)

General Rule:

A contract of sale may be made in writing, or by word of mouth, or partly in writing and partly by word of mouth, or may be inferred from the conduct of the parties.

Exceptions:

When a sale of a piece of land or any interest therein is through an agent, the authority of the latter shall be in writing; otherwise, the sale shall be void.

Form is required for enforceability

Under the Statute of Frauds, the following contract sale must be in writing to be enforceable:

1. Sale of real property.
2. Sale of personal property at a price not less than 500.
3. Sale of property not to be performed within a year from the date thereof.

Article. 1484 In a contract of sale of personal property the price of which, is payable in installments, the vendor may exercise any of the following remedies:
(1.) Exact fulfillment of the obligation, should the vendee fail to pay:

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

Remedies are alternative

'The remedies provided for in Art. 1484 are **alternative, not cumulative**. The exercise of one bars the exercise of the others. This limitation applies to contracts purporting to be leases of personal property with option to buy by virtue of Art. 1485,

Article 1484 of the new Civil Code prescribes three remedies which a vendor may pursue in a contract of sale of personal property the price of which is payable in installments, to wit: (1) exact fulfillment of the obligation (2) cancel the sale; and (3) foreclose the mortgage on the thing sold. If he chooses the third remedy, the article provides that he shall have no further action against the purchaser to recover any unpaid balance of the purchase price. It even adds that any agreement to the contrary shall be void.

Example:

Sand B entered into a contract of sale whereby the former sold his only car for P400,000 on installments. Their agreement is four equal monthly installments or 100,000 per month. What if B paid the first installment but defaulted on his second installment, can S exercise the first remedy of exact fulfillment? Yes, because the first remedy requires only one default and does not require a number of default.

What if B defaulted on his second and third payment, can S exercise the second remedy? Yes, because the requirement for the second remedy are defaults of at least two installments.

What if B defaulted only on his second, third, and fourth payment (for a total of P300,000), can S exercise the third remedy? No, because it is required that B must execute a chattel mortgage on it. Thus, if B executed a chattel mortgage on it, S can foreclose the chattel mortgage.

What if S foreclose the chattel mortgage and sold the car to the highest bidder for P250,000, can S recover the deficiency against B? No, because the law provides that "no further action against the purchaser to recover any unpaid balance of the price. Any agreement to the contrary shall be void."

Creditor not obliged to foreclose

A creditor is not obliged to foreclose a chattel mortgage even if there is one; precisely the law says that any of the remedies "**may**" be exercised by the seller. He may still sue for fulfillment or for cancellation of the obligation, if he does not want to foreclose. As a matter of fact, he may avail himself of remedy no. 1 (specific performance) and may still ask that a real estate mortgage be executed to secure the payment of the obligation, in which case, and in the event of foreclosure, there can still be recovery of the deficiency.

Problem:

T bought on installment a truck from L Motors, Inc. To answer for his obligation, he executed a promissory note in favor of the latter, for the sum of P29,070.28 payable in 36 equal installments with interest at the rate of 12% per annum payable in the amounts and

dates indicated in said promissory note. To secure payment of the promissory note, T executed in favor of L Motors, Inc. a chattel mortgage on the truck.

Thereafter, L Motors, Inc. indorsed the promissory note and assigned the chattel mortgage to X Finance Corp. As a consequence, T paid 6 installments on the promissory note directly to X Finance Corp.

Subsequently, X Finance Corp.'s counsel wrote T demanding the balance of his account in the amount of P25,249.65 or to surrender the said truck. At the time the foregoing letter was written, T was in arrear in the payment of more than 2 installments. Upon learning that the truck met an accident, X Finance Corp. decided not to get the truck anymore.

Can X Finance Corp. choose exact fulfillment as its remedy?

Answer:

Art. 1484. is clear that "should the vendee or purchaser of a personal property be in default in the payment of two or more of the agreed installments, the vendor or seller has the option to either exact fulfillment by the purchaser of the obligation, or to cancel the sale, or to foreclose the mortgage on the purchased personal property, if one was constituted.

Since the case involves the sale of personal property on installments, Art. 1484 of the Civil Code should apply. The remedies provided for in Art. 1484 are considered alternative, not cumulative such that the exercise of one would bar the exercise by the others. Here, X

Finance Corp. has not cancelled the sale, nor has it exercised the remedy, of foreclosure.

Foreclosure, judicial or extra-judicial, presupposes something more than a mere demand to surrender possession of the object of the mortgage.

Since X Finance Corp. has not availed itself of the remedy of cancelling the sale of the truck in question or of foreclosing the chattel, mortgage on said truck, X Finance Corp. is still free to avail of the remedy of exacting fulfillment of the obligation of T, the vendee of the truck in

question. In *Radiowearth Inc. vs. Lavin*, the facts of which are similar to the present case, the issue was "whether the plaintiff is precluded to press for collection of an account secured by a chattel mortgagee after it shall have informed the defendants of its intention to foreclose said mortgage, and the voluntary acceptance of such step (foreclosure) by defendant mortgagor," the Supreme Court ruled in favor of the plaintiff mortgagee.

Said the Court:

*The contract being a sale of machinery payable in installments, the applicable provision of law is Article 1484 of the Civil Code, which gives the vendor the option to exercise any one of the alternative remedies therein mentioned: **exact fulfillment of the obligation cancel the sale, or foreclose the chattel mortgage.** But the vendor, mortgagor in the present case desisted, on its own initiative, from consummating the auction sale, without gaining any advantage or benefit, and without causing any disadvantage, or harm to the vendees mortgages. The least that could be said is that such desistance of the plaintiff from proceeding with auction sale was a timely disavowal that cancelled and rendered useless its previous choice to foreclose; its acts being extrajudicial, brought no trouble upon any court, and were harmless to the defendants.*

For this reason, **the plaintiff can not be considered as having "exercised" (the Code uses the word "exercise") the remedy of foreclosure because of its incomplete implementation**, and, therefore the plaintiff is not barred from suing on the unpaid account.

Art. 1485. The preceding article shall be applied to contracts purporting to be leases of personal property with option to buy, when the lessor has deprived the lessee of the possession or enjoyment of the thing.

Art. 1486. In the case referred to in two preceding articles, a stipulation that the installments or rents paid shall not be returned to the vendee or lessee shall be valid insofar as the same may not be unconscionable under the circumstances.

Problem:

H and W, were engaged in the sale of gravel produced from crushed rocks and used for construction purposes. In order to increase their production, they look for a rock crusher which they could buy. R Corp. then had for sale one machinery.

B, a brother of H, went to inspect the machine at the R Corp.'s plant site. Apparently satisfied with the machine, H and W signified their intent to purchase the same. They were however confronted with a problem-the rock crusher carried a cash price tag of P 550,000. Bent on acquiring the machinery, H and W applied for financial assistance from the F Credit Corp. which agreed to extend to H and W financial aid on the following conditions: that the machinery be purchased in F Credit Corp.'s name; and that it be leased (with option to purchase upon the termination of the lease period) to H and W. Accordingly, a contract of lease of machinery (with option to purchase) was entered into by the parties whereby H and W agreed to lease from F Credit Corp. the rock crusher for two years payable as follows:

P10,000.00 - first 3 months
23,000.00 - next 6 months
24,800.00 - next 15 months

The contract, likewise, stipulated that at the end of the two-year period, the machine would be owned by H and W. Thus, H and W issued in favor of F Credit Corp. a check for P150,550, as initial rental (or guaranty deposit), and 24 postdated checks corresponding to the 24 monthly rentals. The rock crusher was delivered to H and W. Three months from the date of delivery, or on September 7, 1981, however, H and W, claiming that they had only tested the machine that month, sent a letter-complaint to F Credit Corp., alleging that contrary to the 20 to 40 tons per hour capacity of the machine as stated in the lease contract, the machine could only process 5 tons of rocks and stones per hour. They then demanded that F Credit Corp. make good the stipulation in the lease contract. They followed that up with similar written complaints to F Credit Corp., but the latter did not, however, act on them. Subsequently, H and W stopped payment on the remaining checks they had issued to F Credit Corp.

Can this be considered as a contract of sale by installment?

Answer:

The real intention of the parties should prevail. The nomenclature of the agreement cannot change its true essence, Le., a sale on installments. It is basic that a contract is what the law defines it and the parties intend it to be, not what it is called by the parties. It is apparent here that the intent of the parties to the subject contract is for the so-called rentals to be the installment payments. Upon the completion of the payments, then the rock crusher, subject matter of the contract, would become the property of the private respondents. This form of agreement has been criticized as a lease only in name. Thus, in *Vda. De Jose v. Barrueco*, we stated:

Sellers desirous of making conditional sales of their goods, but who do not wish openly to make a bargain in that form, for one reason or another, have frequently resorted to the device of making contracts in the form of leases either with options to the buyer to purchase for a small consideration at the end of term, provided the so-called rent has been duly paid, or with stipulations that if the rent throughout the term is paid, title shall thereupon vest in

the lessee. It is obvious that such transactions are leases only in name. The so-called rent must necessarily be regarded as payment of the price in installments since the due payment of the agreed amount results, by the terms of bargain, in the transfer of title to the lessee.

The importance of the criticism is heightened in the light of Article 1484 of the new Civil Code which provides for the remedies of an unpaid seller of movables on installment basis.

The seller of movables in installments, in case the buyer fails to pay two or more installments may elect to pursue either of the following remedies: (1) *exact fulfillment* by the purchaser of the obligation; (2) *cancel the sale*; or (3) *foreclose the mortgage on the purchased property* if one was constituted thereon. It is now settled that the said remedies **are alternative and not cumulative** and therefore, the exercise of one bars the exercise of the others.

Indubitably, the device contract of lease with option to buy is at times resorted to as a means to circumvent Article 1484, particularly paragraph (3) thereof. Through the set-up, the vendor, by retaining ownership over the property in the guise of being the lessor, retains, likewise, the right to repossess the same, without going through the process of foreclosure, in the event the vendee-lessee defaults in the payment of the installments. There arises therefore no need to constitute a chattel mortgage over the movable sold. More important, the vendor, after repossessing the property and, in effect, canceling the contract of sale gets to keep all the installments-cum-rentals already paid. It is, thus, for these reasons that Article 1485 of the new Civil Code provides that:

Article. 1485. The proceeding article shall be applied to contracts purporting to be leases of personal property with option to buy, when the lessor has deprived the lessee of possession or enjoyments of the thing.

Unfortunately, even with the foregoing findings, we however fail to find any reason to hold F Credit Corp. liable for the rock crusher's failure to produce in accordance with its described capacity. According to F Credit Corp., it was H and W who chose, inspected, and tested the subject machinery. It was only after they had inspected and tested the machine, and found it to their satisfaction, that H and W sought financial aid from F Credit Corp. These allegations of F Credit Corp. were even admitted by H and W in the contract they signed.

Problem:

X Corp. and Y Corp. entered into a Lease Agreement, whereby the former leased out to the latter 1 set of Silicon High Impact Graphics and accessories worth 23,900,000 and 1 unit of Oxberry Cinescan 6400-10 worth 26,500,000. In connection with this agreement, the parties subsequently signed 2 separate documents, each denominated as Lease Schedule. Thus, for the Silicon High Impact Graphics, Y Corp. agreed to pay 2116,878 monthly, and for Oxberry Cinescan, P181,362 monthly.

By the terms, too, of the Lease Agreement, Y Corp. undertook to remit the amount of P3,120,000 by way of "guaranty deposit," a sort of performance and compliance bond for the two equipment.

A year into the life of the Lease Agreement, Y Corp. defaulted in its monthly rental payment obligations. And following a three-month default, X Corp. addressed a formal demand letter to Y Corp. The demand went unheeded. X Corp. then instituted a case against Y Corp. praying for the recovery of the leased property.

Y Corp., argues that, pursuant to Article 1484 of the Civil Code on installment sales of personal property, X Corp. is barred from further pursuing any claim arising from the lease agreement and the companion contract documents, adding that the agreement between the parties is in reality a lease of movables with option to buy.

Is the agreement a contract of lease with an option to purchase?

Answer:

The lease agreement is in reality a **lease with an option to purchase the equipment**. This has been made manifest by the actions of X Corp. itself, foremost of which is the declarations made in its demand letter to Y Corp. There could be no other explanation than that if Y Corp.

paid the balance, then it could keep the equipment for its own; if not, then it should return them. This is clearly an option to purchase given to Y Corp. Being so, Article 1485 of the Civil Code should apply.

The present case reflects a situation where the financing company can withhold and conceal - up to the last moment - its intention to sell the property subject of the finance lease, in order that the provisions of the **Recto Law** may be circumvented. It may be, as X Corp.

pointed out, that the basic "lease agreement" does not contain a purchase option" clause. The absence, however, does not necessarily argue against the idea that what the parties are into is not a straight lease, but a **lease with option to purchase**. This Court has, to be sure, long been aware of the practice of vendors of personal property of dominating a contract of sale on installment as one of lease to prevent the ownership of the object of the sale from passing to the vendee until and unless the price is fully paid.

In an old but still relevant case of U.S. Commercial v. Halili, a lease agreement was declared to be in fact a sale of personal property by installments. Said the Court:

. There can hardly be any question that the so-called contracts of lease on which the present action is based were veritable leases of personal property with option to purchase, and as such come within the purview of the above article. Xxx

Being leases of personal property with option to purchase as contemplated in the above article, the contracts in question are subject to the provision that when the lessor in such case "has chosen to deprive the lessee of the enjoyment of such personal property," "he shall have no further action" against the lessee "for the recovery of any unpaid balance" owing by the latter, "agreement to the contrary being null and void."

In choosing, through replevin, to deprive Y Corp. of possession of the leased equipment, X Corp. waived its right to bring an action to recover unpaid rentals on the said leased items. Paragraph (3), Article. 1484 in relation to Article 1485 of the Civil Code, which we are hereunder re-reproducing, cannot be any clearer.

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

XXX XXX ROX,

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

ART. 1485. The preceding article shall be applied to contracts purporting to be leases of personal property with option to buy, when a lessor has deprived the lessee of the possession or enjoyment of the thing.

As we articulated in *Elisco Tool Manufacturing Corp. v. Court of Appeals*, the remedies provided for in Article 1484 of the Civil Code are alternative, not cumulative. The exercise of one bars the exercise of the others. **This limitation applies to contracts purporting to be leases of personal property with option to buy by virtue of the same Article 1485.** The condition that the lessor has deprived the lessee of possession or enjoyment of the thing for the purpose of applying Article 1485 was fulfilled in this case by

the filing of X Corp. of the complaint for a sum of money with prayer for replevin to recover possession of the office equipment. By virtue of the writ of seizure issued by the trial court, X Corp. has effectively deprived Y Corp. of their use, a situation which, by force of the Recto Law, in turn precludes the former from maintaining an action for recovery of "accrued rentals" or the recovery of the balance of the purchase price plus interest.*®

Art. 1487. The expenses for the execution and registration of the sale shall be borne by the vendor, unless there is a stipulation to the contrary.

General Rule:

'The expenses for the execution and registration of the sale shall be borne by the vendor.

Exception:

Contrary stipulation.

Problem:

Hand W were the owners of a land. On October 10, 1987, H and Wand T Corp. executed an Agreement to Sell in which the said spouses bound and obliged themselves to sell the properties to T Corp. The latte then applied for a loan with the C Bank to finance its purchase of the said Jots. C Bank agreed to grant the application of T Corp. in the amount of 5,757,827 provided that the Torrens titles over the subject properties would be registered under the name of the latter as the subject lots would, be used as collateral for the payment of the said loan.

On April 13, 1988, H and W, T Corp., X (who acted as broker), and C Bank executed a Memorandum of Agreement (MOA), wherein H and W, as owners, warranted that "the titles of the properties were free and clear from any and all obligations and claims, whether past or present, from any creditors or third persons." X, as broker, undertook to pay any and all the taxes and assessments imposed and/or charged over the lots.

'Although the torrens titles over the lots were still in the custody of Bank, T Corp., as vendor, and V Corp. as vendee, executed a deed of absolute sale on April 14, 1988, in which T Corp. sold the properties to V Corp. for P6,295,224.

'On November 11, 1988, V Corp. as vendor, through its president, S, and G, Inc, as vendee, executed a deed of absolute sale over the parcel of land for the price of P4,000,000. On the same day, G Inc. and V Corp. executed a deed of assignment of rights in which the latter assigned in favor of G inc. for and in consideration of P4,000,000.

In the meantime, G Inc. wrote V Corp. and made demands to pay to the BIR the capital gains tax amounting to 285.000 and deliver the receipts thereof, plus the interests for all registration fees on account of delay in the payment of the capital gains tax the 1% documentary stamp tax for the sale of the property. In a letter to G Inc., V Corp rejected the former's demand.

Is V Corp. obliged to pay for the expenses for transfer of the property?

Answer:

Indeed, under the third deed of absolute sale, V Corp. did not oblige itself to spend for the registration of the said deed; to secure a torrens title over the property to and under the name of G Inc.; or to cause the eviction of the tenants/occupants on the property. Nevertheless, **V Corp. is liable for the said expenses because, under Article 1487 of the New Civil Code, the expenses for the registration of the sale should be shouldered by the vendor unless there is a stipulation to the contrary,**

In the absence of any stipulation of the parties relating to the expenses for the registration of the sale and the transfer of the title to the vendee, Article 1487 shall be applied in a supplementary manner.

Art. 1488. The expropriation of property for public use is governed by special laws.

What is expropriation?

A governmental taking or modification of an individual's property rights, esp. by eminent domain.