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Title I
CLASSIFICATION OF PROPERTY
Preliminary Provisions

Art. 414. All things which are or may be the object of appropriation are considered either:

- (1) Immovable or real property; or
- (2) Movable or personal property.

PROPERTY is derived from the Latin word *proprius*, meaning belonging to one or one's own.

→Traditionally, therefore, the concept of property extends only to those things which are already possessed and found in the possession of man.

→The Civil Code does not define the term *property* but simply implies that the concept refers to things which are susceptible of appropriation.

→Things which cannot, therefore, be subjected to human control by reason of sheer physical impossibility are NOT considered as property.

Examples: stars, moon, ocean

In Article 414, most authors in the subject provide for two additional requisites before considering a thing as property, aside from the more general "susceptibility to appropriation":

- (1) **utility**, or that it can serve as a means to satisfy human needs; and
- (2) **substantivity or individuality**, or that the thing must have an autonomous and separate existence.

Chapter 1
IMMOVABLE PROPERTY

Art. 415. The following are immovable property:

- (1) Land, buildings, roads and constructions of all kinds adhered to the soil;

- (2) Trees, plants, and growing fruits, while they are attached to the land or form an integral part of an immovable;
- (3) Everything attached to an immovable in a fixed manner, in such a way that it cannot be separated therefrom without breaking the material or deterioration of the object;
- (4) Statues, reliefs, paintings or other objects for use or ornamentation, placed in buildings or on lands by the owner of the immovable in such a manner that it reveals the intention to attach them permanently to the tenements;
- (5) Machinery, receptacles, instruments or implements intended by the owner of the tenement for an industry or works which may be carried on in a building or on a piece of land, and which tend directly to meet the needs of the said industry or works;
- (6) Animal houses, pigeon-houses, beehives, fish ponds or breeding places of similar nature, in case their owner has placed them or preserves them with the intention to have them permanently attached to the land, and forming a permanent part of it; the animals in these places are included;
- (7) Fertilizer actually used on a piece of land;
- (8) Mines, quarries and slug dumps, while the matter thereof forms part of the bed, and waters either running or stagnant;
- (9) Docks and structures which, though floating, are intended by their nature and object to remain at a fixed place on a river, lake, or coast;
- (10) Contracts for public works, and servitudes and other real rights over immovable property.

Classification of Immovable Properties

1. **Immovable by nature** —par.1 of Article 415, par. 8 of Article 415;
2. **Immovable by incorporation** — par. 1 of Article 415; par. 2 of Article 415 par. 3 of Article 415;
3. **Immovable by destination** — pars. 4, 5, 6, 7 and 9 of Article 415; and
4. **Immovable by analogy or by law** — par. 10 of Article 415.



Requisites of Property

- (1) **Appropriability** - It is capable of being obtained even if not yet actually appropriated.
- (2) **Utility** - Ability to serve as a means to satisfy human needs
- (3) **Substantivity or Individuality** - It has a separate and autonomous existence

Classification of THINGS

1. **As to nature**
 - a. **Res nullius**
Belonging to no one
-wild animals
 - b. **Res communes**
Belonging to everyone
-wind, sunlight, air
 - c. **Res alicujus**
Belonging to someone
- shares of stock
2. **As to mobility**
 - a. **Movable/ personal**
-television set
 - b. **Immovable/ real**
-land
3. **As to ownership**
 - a. **Public**
-sea
 - b. **Private**
-car
4. **As to alienability**
 - a. **Within the commerce of men**
-residential building
 - b. **Outside the commerce of men**
-public plaza
5. **As to existence**
 - a. **present**
 - b. **future**
6. **As to materiality**
 - a. **Tangible/ corporeal**
-Paper
 - b. **Intangible/ incorporeal**
-Rights or credit
7. **As to dependence**
 - a. **Principal**
 - b. **Accessory**
8. **As to substitution**
 - a. **Fungible**
-Capable of substitution of same kind and quantity
 - b. **Non-fungible**
-Incapable of substitution; Identical thing must be given or returned
9. **As to nature or definiteness**
 - a. **Generic**
-Referring to a group or class

b. Specific

-Referring to single, unique object

10. As to custody of the court

- a. **In custodia legis**
- b. **free**

Importance of Classification

- Based on the nature of the thing itself and is the most important in point of law because of the various legal consequences following therefrom:
 - (1) Applying the rules of acquisitive prescription
 - (2) Determining the propriety of the object of the contracts of pledge, chattel mortgage and real estate mortgage
 - (3) For purposes of determining the formalities of a donation
 - (4) In extrajudicial deposit
 - (5) In crimes of theft, robbery and usurpation
 - (6) For purposes of determining the venue in remedial law

Building Is Immovable By Incorporation

A house (or a building) is immovable by incorporation. A house (or a building) is classified as immovable property by reason of its adherence to the soil on which it is built. Thus, a building which is merely superimposed on the soil is not a real property.

N.B.

- The Supreme Court explained: "A house is classified as immovable property by reason of its adherence to the soil on which it is built (Art. 415, par. 1, Civil Code). This classification holds true regardless of the fact that the house may be situated on land belonging to a different owner. But once the house is demolished, as in this case, it ceases to exist as such and hence its character as an immovable likewise ceases. It should be noted that the complaint here is for recovery of damages." *Biscerra v. Teneza*, 6 SCRA 649 (1962)
- "buildings are always immovable under the Code." The Court further ruled that "the prevalent doctrine is that an action for the annulment or rescission of a sale of real property does not operate to efface the fundamental and prime objective and nature of the case, which is to recover said real property. It is a real action." *Punzalan, Jr. v. Vda. De Lacsamana*, 121 SCRA 331 (1983)

Building treated separately from land

A building treated separately from the land on which it stood is immovable property and the



mere fact that the parties to a contract seem to have dealt with it separate and apart from the land on which it stood in no wise changed its character as immovable property

N.B.

- Possessory rights over said property before title is vested on the grantee, may be validly transmitted or conveyed as in a deed of mortgage. *Prudential Bank v. Panis*, 153 SCRA 390 (1987)
- Publication in a newspaper of general circulation was indispensable (to the subject building as realproperty). Being admitted that no such publication was ever made, the execution sale was void. *Ladera v. C.N. Hodges, et al. (CA)*, 48 Off. Gaz. 5374 (1952)
- Non-acquisition of a preferential lien through the preliminary writ of attachment is futile. The Court of Appeals erred when it opined that the house should have been levied pursuant to the rules governing the levy of personal property. In reversing the decision of the CA, the Supreme Court reiterated the ruling in *Ladera v. Hodges. Evangelista v. Alto Surety & Ins. Co., Inc.*, 103 Phil. 401 (1958)

Instances Where Building Is Treated As Personal Property: Doctrine of Estoppel;

N.B.

- The trial court upheld the validity of the chattel mortgage. In sustaining the decision of the trial court, the Supreme Court applied the principle of *estoppel* because the house in question was treated as personal or movable property by the parties to the contract themselves. *Navarro v. Pineda*, 9 SCRA 631 (1963)
- The Supreme Court, the said Court again applied the principle of *estoppel* since the parties treated the subject house as personalty. The Court explained that "*although there is no specific statement referring to the subject house as personal property, yet by ceding, selling or transferring a property by way of chattel mortgage (Vicencio and Simeon) could only have meant to convey the house as chattel, or at least, intended to treat the same as such, so that they should not now be allowed to make an inconsistent stand by claiming otherwise.*" *Tumalad v. Vicencio*, 41 SCRA 143 (1971)

IMMOVABLE PROPERTY

Art. 415. The following are immovable property:

(1) Land, buildings, roads and constructions of all kinds adhered to the soil;

- New Civil Code does NOT define immovable or real property but enumerates what are considered as such
- Best example is LAND
- Must be adhered to soil (Ex. shovelful of land considered personal property)
- As explained in *Biscerra v. Teneza*, a house (or a building) is classified as immovable property by reason of its adherence to the soil on which it is built. Thus, a building which is merely superimposed on the soil is not a real property.
- In BUILDINGS, considered immovable provided they are more or less of a permanent structure, adhered to the soil
- Rule is not affected by the fact that the building is erected on a land owned by another person
- If the parties so agreed that the building (or house) is a personal property and a proper subject of the contract of chattel mortgage, they are estopped from denying the existence of the chattel mortgage which, as between them, must be upheld.

N.B.

- The duties of a register of deeds in respect to the registration of chattel mortgage are of a purely ministerial character; and no provision of law can be cited which confers upon him any judicial or quasi-judicial power to determine the nature of any document of which registration is sought as a chattel mortgage. *Standard Oil Co. of New York v. Jaramillo*, G.R. No. L-20329, March 16, 1923

(2) Trees, plants, and growing fruits, while they are attached to the land or form an integral part of an immovable;

- **By nature**
 - Spontaneous products of the soil
- **By incorporation**
 - Planted through labor

Growing fruits may exceptionally be treated as personal property pursuant to the provisions of Article 416(2) of the New Civil Code

GENERAL RULE: *Growing crops are considered REAL PROPERTY*



EXCEPTION: *The moment they are detached or uprooted from the land, they become PERSONAL PROPERTY.*

EXCEPTION TO THE EXCEPTION: *In case of UPROOTED TIMBER, although no longer attached, still forms an "integral part" of the timber land thus IMMOVABLE.*

(3) Everything attached to an immovable in a fixed manner, in such a way that it cannot be separated therefrom without breaking the material or deterioration of the object;

N.B.

- Civil Code nowhere requires that the attachment or incorporation be made by the owner of the land or immovable himself.
- If the parties treat the machinery as chattels, they are bound by their agreement under the principle of *estoppel* notwithstanding the fact that the machinery may have been attached to an immovable in a fixed manner and may not be separated therefrom without breaking the material or deterioration of the object to which it is attached.

(4) Statues, reliefs, paintings or other objects for use or ornamentation, placed in buildings or on lands by the owner of the immovable in such a manner that it reveals the intention to attach them permanently to the tenements;

REQUISITES

They must be placed in buildings or on lands by the owner of the immovable or by his agent; and The attachment must be intended to be permanent

Paragraph 3	Paragraph 4
CANNOT be separated from immovable without breaking or deterioration	CAN BE SEPARATED from immovable without breaking or deterioration
Need not be placed by the owner (<i>Ladera vs Hodges, CA, 48 O.G 5374</i>)	Must be placed by the owner, or by his agent, express or implied
Real property by incorporation	Real property by incorporation and destination

(5) Machinery, receptacles, instruments or implements intended by the owner of the tenement for an industry or works which may be carried on in a building or on a piece of land, and which tend directly to meet the needs of the said industry or works;

Requisites:

- (1) They must be machinery, receptacles, instruments or implements;
- (2) They must be placed by the owner of the tenement or by his agent;
- (3) There must be an industry or work carried in such building or on the piece of land; and
- (4) They must tend directly to meet the needs of said industry or work.

N.B.

- Transportation business is not carried on in a building or in the compound.
- Machines, etc., must tend directly to meet needs of said industry or works. Machines must be ESSENTIAL and PRINCIPAL elements in the industry. Ex. Machineries of breweries in liquor factory
- Paragraph 5 refers to real property by DESTINATION or PURPOSE. If the machinery, receptacles, instrument or implements are not placed by the owner of the tenement or by his agent, these properties remain as movables and are not converted into real properties.
- Before movables may be deemed immobilized in contemplation of paragraph 5 of Article 415, it is necessary that they must be "essential" and "principal" elements of the industry or works without which such industry or works would be unable to function or carry on the industrial purpose for which it was established.
- [M]achinery which is movable in its nature only becomes immobilized when placed in a plant by the owner of the property or plant, but not when so placed by a tenant, a usufructuary, or any person having only a temporary right, unless such person acted as the agent of the owner. (*Davao Sawmill v. Castillo, G.R. No. L-40411, August 7, 1935*)

Effect of separation when no longer used:

→reverts to condition of chattel

When separated temporarily but will still serve industry:

→Continues to be immovable

(6) Animal houses, pigeon-houses, beehives, fish ponds or breeding places of similar nature, in case their owner has placed them or preserves them with the intention to have them permanently attached to the land, and forming a permanent part of it; the animals in these places are included;

N.B.

- For animals temporarily outside, still considered REAL PROPERTY as long as the INTENT TO RETURN is present
Ex. Homing pigeon



(7) Fertilizer actually used on a piece of land;

N.B.

→ Fertilizers still in the barn but wrapped are still considered **PERSONAL PROPERTY**, since not yet actually used.

(8) Mines, quarries, and slag dumps, while the matter thereof forms part of the bed, and waters either running or stagnant;

- Extracted minerals are already chattels.
- "Slag Dump" is the dirt and soil taken from a mine and piled upon the surface of the ground
- "Water" itself as distinguished from "waters" is clearly personal property

(9) Docks and structures which, though floating, are intended by their nature and object to remain at a fixed place on a river, lake, or coast;

N.B.

→ Floating houses are considered **REAL PROPERTY** is used as residence, considering that the "waters" are considered immovables

(10) Contracts for public works, and servitudes and other real rights over immovable property.

N.B.

→ The piece of paper on which the contract for public has been written is necessarily **PERSONAL PROPERTY**, but the contract itself / right of the contract is **REAL PROPERTY**.

REAL RIGHT	PERSONAL RIGHT
Definite active subject who has a right against all persons generally as an indefinite passive subject	Definite active subject and a definite passive subject
Object is generally a corporeal thing	Object always an incorporeal thing
Created by 'mode' and 'title'	Created by 'title'
Extinguished by the loss or destruction of the thing which it is exercised	Personal right survives the subject matter
Directed against the whole world (<i>actio in rem, against 3rd persons</i>)	Directed against a particular person (<i>actio in personam</i>)

Classes of Immovable or real property ("NIDA")

1. BY **NATURE**
-cannot be carried from place to place

2. BY **INCORPORATION**
-attached to an immovable in a fixed manner to be an integral part thereof
3. BY **DESTINATION**
-placed in an immovable for the utility it gives
4. BY **ANALOGY**
- regarded as united to the immovable property by express provision of law

**Chapter 2
MOVABLE PROPERTY**

Art. 416. The following things are deemed to be personal property:

(1) Those movables susceptible of appropriation which are not included in the preceding article:

-Ex. cell phone

(2) Real property which by any special provision of law is considered as personal property:

-Ex. Growing crops for purposes of Chattel Mortgage Law (*Sibal vs. Valdez, 50 Phil 512*)

(3) Forces of nature which are brought under control by science; and

-Ex. Electricity, gas, light

(4) In general, all things which can be transported from place to place without impairment of the real property to which they are fixed.

-Ex. Machineries not attached to land

Tests of Movable Character

1. **Test by Exclusion**
-Whether the property was not enumerated in Art. 415 (*expressio unius est exclusio alterius*)
2. **Test by Description**
-Whether the property can be transported or carried from place to place; Whether such change of location can be made without injuring the immovable to which the object may be



attached; unless expressly included in Art. 415

N.B.

→ Test by Exclusion is superior.

Art. 417. The following are also considered as personal property:

- (1) Obligations and actions which have for their object movables or demandable sums; and
- (2) Shares of stock of agricultural, commercial and industrial entities, although they may have real estate.

N.B.

→ Even if the sole property of a corporation consists only of real property, a share of stock in said corporation is considered personal property (*Cedman vs Winslow, 10 Mass 145*)

Is money considered merchandise?

No. In domestic circulation, money is a LEGAL TENDER, and NOT MERCHANDISE. Exception: When attempted to be exported or smuggled, money is considered as merchandise or commodity subject to forfeiture.

Art. 418. Movable property is either consumable or non-consumable. To the first class belong those movables which cannot be used in a manner appropriate to their nature without their being consumed; to the second class belong all the others.

CONSUMABLE	NON-CONSUMABLE
This cannot be used according to its nature without being consumed	Any other kind of movable property
<i>As to the intention of parties</i>	
FUNGIBLE	NON-FUNGIBLE
Capable of substitution of same kind and quantity	Incapable of substitution; Identical thing must be given or returned

**Chapter 3
PROPERTY IN RELATION TO WHOM IT BELONGS**

Art. 419. Property is either of public dominion or of private ownership.

PROPERTY OF **PUBLIC DOMINION**, defined:
It is not owned by the state but pertains to the state, which, as territorial sovereign, exercises

certain juridical prerogatives over such property. The ownership of such properties is in the social group, whether national, provincial or municipal.

N.B.

→ Since the ownership of public dominion belong to the public in general and not to the state, the latter may not make them object of commerce unless they are properly converted into patrimonial property.

Kinds of Public Dominion

- (1) For public use (Art. 420[1])
- (2) For public service (Art. 420[2]), NCC
- (3) For the development of national wealth. (Art. 424[1], NCC)(420)(2), NCC)

N.B.

→ Property is presumed to be State property in the absence of any showing to the contrary. (Regalian Doctrine)

Art. 420. The following things are property of public dominion:

Those intended for public use, such as roads, canals, rivers, torrents, ports and bridges constructed by the State, banks, shores, roadsteads, and others of similar character;

Examples:

Public streams, natural beds of rivers, river channels, waters of rivers, creeks

(2) Those which belong to the State, without being for public use, and are intended for some public service or for the development of the national wealth.

Art. 421. All other property of the State, which is not of the character stated in the preceding article, is patrimonial property.

PATRIMONIAL PROPERTY OF THE STATE

- Are those owned by the state NOT devoted to public use, public service or the development of national wealth.
- It is the property owned by the state in its private or proprietary capacity
- May be acquired by private individuals or corporations thru prescription
- May be an object of ordinary contract

N.B.

→ Patrimonial properties may be acquired by private individuals or corporations



THROUGH PRESCRIPTION (Art. 1113, NCC)

Art. 422. Property of public dominion, when no longer intended for public use or for public service, shall form part of the patrimonial property of the State.

N.B.

- [U]ntil a formal declaration on the part of the Government, through the executive department or the Legislature, to the effect that the land in question is no longer needed for coast guard service, for public use or for special industries, they continue to be part of the public domain, not available for private appropriation or ownership. (*Faustino Ignacio v. Director of Lands, G.R. No. L-12958, May 30, 1960*)
- It is not necessary, therefore, that a plaza be already constructed or laid out as a plaza in order that it be considered property for public use. It is sufficient that it be intended to be such. (*Manila Lodge No. 761 v. CA, G.R. No. L-41012, September 30, 1976*)

Art. 423. The property of provinces, cities, and municipalities is divided into property for public use and patrimonial property.

Art. 424. Property for public use, in the provinces, cities, and municipalities, consist of the provincial roads, city streets, municipal streets, the squares, fountains, public waters, promenades, and public works for public service paid for by said provinces, cities, or municipalities.

All other property possessed by any of them is patrimonial and shall be governed by this Code, without prejudice to the provisions of special laws.

N.B.

- It is evident that the movable and immovable property of a municipality, necessary for governmental purpose, may not be attached and sold for the payment of a judgment against the municipality. The supreme reason for this rule is the character of the public use to which such kind of property is devoted. (*Vda. de Tan Toco v. Municipal Council of Iloilo (GR. No. L-24950, March 25, 1926)*)
- In administering the patrimonial property of municipalities, the municipal council occupies, for most purposes, the position of a board of directors of a private corporation. (*Mendoza v. De Leon, G.R. No. L-9596, February 11, 1916*)

Art. 425. Property of private ownership, besides the patrimonial property of the State, provinces, cities, and municipalities, consists of all property belonging to private persons, either individually or collectively.

N.B.

- Article XII Secs. 7 and 8 of the 1987 Constitution explicitly prohibits non-Filipinos from acquiring or holding title to private lands or to lands of the public domain except only by way of legal succession or if the acquisition was made by a former natural-born citizen. (*Ancheta vs. Guersey-Dalaygon, G.R. No. 139868, June 8, 2006*)

Art. 426. Whenever by provision of the law, or an individual declaration, the expression "immovable things or property," or "movable things or property," is used, it shall be deemed to include, respectively, the things enumerated in Chapter 1 and Chapter 2.

Whenever the word "muebles," or "furniture," is used alone, it shall not be deemed to include money, credits, commercial securities, stocks and bonds, jewelry, scientific or artistic collections, books, medals, arms, clothing, horses or carriages and their accessories, grains, liquids and merchandise, or other things which do not have as their principal object the furnishing or ornamenting of a building, except where from the context of the law, or the individual declaration, the contrary clearly appears.

**Title II
OWNERSHIP
Chapter 1
OWNERSHIP IN GENERAL**

OWNERSHIP – Independent and general right of a person to control a thing particularly in his possession, enjoyment, disposition, and recovery. Subject to no restriction except those imposed by the state of private persons, without prejudice.

TITLE – that which constitutes a just cause of exclusive possession or which is the foundation of ownership of property.

Kinds of Ownership

1. Full - includes all rights of owner



2. Naked – right to use and fruits has been denied
3. Sole – vested in only one person
4. Co-Ownership – vested in two or more owners; concept of co-ownership is unity of the property and plurality of the subjects

Art. 427. Ownership may be exercised over things or rights.

Art. 428. The owner has the right to enjoy and dispose of a thing, without other limitations than those established by law.

The owner has also a right of action against the holder and possessor of the thing in order to recover it.

→The Civil Code does NOT define ownership. Instead, the Code simply *enumerates* the rights which are included therein, as follows:

1. **Right to enjoy** the property (Art. 428, par. 1, NCC); Right to construct any works or make any plantations and excavations on the surface or subsurface of the land (Art. 437, NCC); Right to hidden treasure found in the owner's property (Art. 438, NCC); Right to accessions. (Art. 440, NCC)
2. **Right to exclude** any person from enjoyment and disposal of the property (Art. 429, NCC); Right to enclose or fence the land or tenement (Art. 430, NCC); **(MOST IMPORTANT)**
3. **Right to dispose** the property (Art. 428, par. 1, NCC); Right to recover the property from any holder or possessor (Art. 428, par. 2, NCC); Right to demand indemnity for damages suffered due to lawful interference by a third person to avert an imminent danger (Art. 432, NCC); the right to just compensation in case of eminent domain (Art. 435, NCC);

Rights of Person Over His Property

The right to enjoy, which includes:

Jus utendi
the right to use;

Jus fruendi
the right to enjoy the fruits;

Jus abutendi
the right to consume the thing by its use; and

Jus possidendi
the right to possess.

Jus disponendi
the right to dispose (D-A-T-E)
Destroy, **A**lienate, **T**ransform, **E**ncumber

Jus vindicandi
the right to vindicate
(pursuit and recovery)

Actions to Recover Ownership and Possession: REAL PROPERTY

1. **Accion Interdictal**
Summary action to recover physical possession, and not juridical possession nor ownership.
 - a. **Forcible Entry (*detentacion*)**
Action for recovery of material/physical possession was deprived thereof by force, intimidation, strategy, threat or stealth (F-I-S-T-S).
 - b. **Unlawful Detainer (*desahuico*)**
Possession by a landlord, vendor, vendee or other person of any land or building is being unlawfully withheld after the expiration or termination of the right to hold possession, by virtue of any contract.

FORCIBLE ENTRY	UNLAWFUL ENTRY
When unlawful	
Possession was unlawful from the beginning (<i>ab initio</i>) because of F-I-S-T-S	Possession was lawful from beginning but became unlawful afterwards
As to filing of complaint	
Plaintiff must allege and prove that he was in prior physical possession	Plaintiff need not been in prior physical possession
As to reckoning date of 1-year prescription	
Date of actual entry	Date of last demand

2. **Accion publiciana**
Plenary action to recover the better right of possession or *plenaria de posesion*.

Prescriptive period to bring an action for better right of possession except in



cases of forcible entry and unlawful detainer: 10 years

<i>Accion Interdictal</i>	<i>Accion Publiciana</i>
Possession <i>de facto</i>	Possession <i>de jure</i>

3. **Accion Reivindicatoria**

Action to recover ownership over real property.

Prescriptive period:

10 years (ordinary prescription) – requires good faith and just title.

30 years (extraordinary prescription) – does not require good faith and just title

Requisites:

- Identity of the property
- Plaintiff's title to the property

Actions to Recover Ownership and Possession: PERSONAL PROPERTY

REPLEVIN – recovery of personal property (Rule 60, RoC)

REAL RIGHT – autonomous power to derive directly from an appropriate thing certain economic advantages, independently of whoever should be the possessor of the thing.

PERSONAL RIGHT – power to demand of another as definite passive subject the fulfillment of a prestation to give, to do or not to do.

Modes of Acquiring Ownership

All rights are acquired by virtue of certain facts. They are called Modes of Acquiring Ownership, in a general sense, those juridical facts recognized by law as capable of giving rise to the right of ownership in a person.

The Modes of Acquiring Ownership May Be Classified Into:

1. **Original Modes** – those which produce the acquisition of ownership independent of any pre-existing right of another person and, therefore, necessarily free from any burdens or encumbrances. *Ex. occupation.*
2. **Derivative modes** – those which produce the acquisition of property based on right previously held by another person and, therefore,

subject to the same characteristics, powers, burdens, etc., as when held by the previous owner. *Ex. tradition.*

<i>Mode</i>	<i>Cause</i>
Original Modes	
Occupation	Condition of being without known owner
Work which includes intellectual creation	Creation, discovery or invention
Derivative Modes	
Law	Existence of required conditions
Tradition	Contract of the parties
Donation	Contract of the parties
Prescription	Possession in the concept of the owner.
Succession	Death

Limitations

Imposed by the State (e.g. police power, power of taxation, power of eminent domain)

Police Power – inherent power of the state that may limit property rights. It is based on two legal maxims:

“Sic utere tuo et alienum non laedas” (which means “so as to use your property without injuring others)

“Salus populi est suprema lex” (which means “the welfare of the people is the supreme law”). Its fundamental purpose is securing the general welfare, comfort and convenience of the people.

N.B.

→ **NOT POLICE POWER BUT EMINENT DOMAIN:** There is no reasonable relation between the setting aside of at least six (6) percent of the total area of an private cemeteries for charity burial grounds of deceased paupers and the promotion of health, morals, good order, safety, or the general welfare of the people. The ordinance is actually a taking without compensation of a certain area from a private cemetery to benefit paupers who are charges of the municipal corporation. Instead of building or maintaining a public cemetery for this purpose, the city passes the burden to private cemeteries. *City Government of Quezon v. Judge Ericta, G.R. No. L-34915, June 24, 1983.*

DOCTRINE OF SELF-HELP

Art. 429. The right of the owner or lawful possessor to exclude any person from the enjoyment and disposal of the property by



the use of such force as may be necessary to repel or prevent actual or threatened unlawful physical invasion or usurpation of his property.

Requisites:

1. Person defending must be the owner or the lawful possessor.
2. Force used is reasonably necessary to repel, prevent an invasion or usurpation of his property; otherwise he shall be liable for damages;
3. No delay; and
4. Actual or threatened physical invasion or usurpation

N.B.

- This can only be exercised at the time of actual or threatened dispossession; unavailing when possession has already been lost. Thus, possessor is entitled to remain on the property until the owner or a person having a better right ejects the former thru a judicial process. *German Management Services v. CA, G.R. No. 76217, September 14, 1989*

Art. 430. Every owner may enclose or fence his land or tenements by means of walls, ditches, live or dead hedges, or by any other means without detriment to servitudes constituted thereon.

Art. 431. The owner of a thing cannot make use thereof in such a manner as to injure the rights of a third person.

N.B.

- [T]he continued occupation by petitioners of the two lots belonging to private respondents, despite the expiration of the lease contracts over the same, petitioners had become "undesirable lessees." However, it was improper for private respondents to resort to fencing their properties in order to remove petitioners from the premises in the light of the clear provision of Article 536 of the Civil Code on the matter. *Villafuerte v. Court of Appeals, G.R. No. 134239, May 26, 2005*

EXCEPTION:

State of Necessity Article 432

As a general rule, therefore, there is no cause of action for acts done by one person upon his own property in a lawful and proper manner, although such acts incidentally cause damage or an unavoidable loss to another, as such damage or loss is *damnum absque injuria*. When the owner of property makes use thereof in the general and ordinary manner in which the property is used, such as fencing or enclosing the same as in this case, nobody can complain of having been

injured, because the inconvenience arising from said use can be considered as a mere consequence of community life. (*Spouses Custodio v. CA, G.R. No. 116100, February 9, 1996*)

DOCTRINE OF STATE OF NECESSITY "Doctrine of Incomplete Privilege"

Art. 432. The owner of a thing has no right to prohibit the interference of another with the same, if the interference is necessary to avert an imminent danger and the threatened damage, compared to the damage arising to the owner from the interference, is much greater. The owner may demand from the person benefited indemnity for the damage to him.

Requisites:

1. Interference is necessary; and
2. Damage to another is much greater than damage to property
3. Imposed by the owner (e. g. lease)
4. Imposed by the grantor (e.g. prohibition to the donees from partitioning the property not exceeding 20 years.

N.B.

- The right to enclose or fence in Article 430 is also subject to the limitation that it should not work detriment to the servitudes constituted therein.
- Must be legitimately exercised and must not be attended with bad faith. Thus, if the lot owner fenced his property for the purpose of evicting its occupant whose lease contract had already expired, the lot owner is liable to said occupant for damage.
- The existence of this kind of servitude works as a limitation upon the right of the owner of the lower tenement to enclose his property with walls or other means if the same will prevent the passage of the water which naturally falls from the higher tenement.

Art. 433. Actual possession under claim of ownership raises disputable presumption of ownership. The true owner must resort to judicial process for the recovery of the property.

Art. 434. In an action to recover, the property must be identified, and the plaintiff must rely on the strength of his title and not on the weakness of the defendant's claim.

Art. 435. No person shall be deprived of his property except by competent authority and for public use and always upon payment of just compensation.



Should this requirement be not first complied with, the courts shall protect and, in a proper case, restore the owner in his possession.

Art. 436. When any property is condemned or seized by competent authority in the interest of health, safety or security, the owner thereof shall not be entitled to compensation, unless he can show that such condemnation or seizure is unjustified.

Eminent Domain

The superior right of the State to own certain properties under certain conditions, and is a limitation on the right of ownership, with payment of just compensation.

Requisites of eminent domain:

1. Taking must be done by competent authority
2. Private property for public use
3. Payment of just compensation
4. Observance of due process of law. Imposed by law (e. g. easements, state of necessity)

SURFACE RIGHT

Art. 437. The owner of a parcel of land is the owner of its surface and of everything under it, and he can construct thereon any works or make any plantations and excavations which he may deem proper.

Limitations:

1. Servitudes;
2. Special laws and ordinances;
3. Reasonable requirements of aerial navigation; and
4. Rights of third persons (Art. 431, NCC)

Restriction includes principles on human relations and the prevention of injury to the rights of third persons (Art. 19, 431).

Rights over the land are indivisible, and the land itself cannot be half agricultural and half mineral. The owner of the land is the owner of its surface and subsurface. Thus a party cannot claim ownership by acquisitive prescription of mineral land by showing he was in possession of the land or the surface thereof in the concept of agricultural land. (Republic v. CA)

Art. 438. Hidden treasure belongs to the owner of the land, building, or other property on which it is found.

Nevertheless, when the discovery is made on the property of another, or of the State or any of its subdivisions, and by chance, one-half thereof shall be allowed to the finder. If the finder is a trespasser, he shall not be entitled to any share of the treasure.

If the things found be of interest to science of the arts, the State may acquire them at their just price, which shall be divided in conformity with the rule stated.

Art. 439. By treasure is understood, for legal purposes, any hidden and unknown deposit of money, jewelry, or other precious objects, the lawful ownership of which does not appear.

HIDDEN TREASURE

GENERAL RULE: Hidden treasure belongs to the owner of the land, buildings or other property on which it is found.

EXCEPTION: If finder is not the owner of the land, finder is entitled to ½ of the treasure if:

1. Made in the property of another, or of the state or any of its subdivisions;
2. Made by chance;
3. Finder is not a trespasser/agent of the landowner;
4. Finder is not a co-owner of the property where it is found; and
5. Finder is not married under the absolute community or the conjugal partnership system (otherwise his share belongs to the community).

EXCEPTION TO THE EXCEPTION: If the finder is a trespasser, he shall not be entitled of any share.

N.B.

- If the ownership of the treasure is known, but the owner is already dead, the same will not be considered "hidden treasure" and must therefore go to the owner's rightful heirs.

(Chapter 2: RIGHT OF ACCESSION, skipped)



Chapter 3 QUIETING OF TITLE

Art. 476. Whenever there is a cloud on title to real property or any interest therein, by reason of any instrument, record, claim, encumbrance or proceeding which is apparently valid or effective but is in truth and in fact invalid, ineffective, voidable, or unenforceable, and may be prejudicial to said title, an action may be brought to remove such cloud or to quiet the title.

An action may also be brought to prevent a cloud from being cast upon title to real property or any interest therein.

Art. 477. The plaintiff must have legal or equitable title to, or interest in the real property which is the subject matter of the action. He need not be in possession of said property.

Art. 478. There may also be an action to quiet title or remove a cloud therefrom when the contract, instrument or other obligation has been extinguished or has terminated, or has been barred by extinctive prescription.

Art. 479. The plaintiff must return to the defendant all benefits he may have received from the latter, or reimburse him for expenses that may have redounded to the plaintiff's benefit.

Art. 480. The principles of the general law on the quieting of title are hereby adopted insofar as they are not in conflict with this Code.

Art. 481. The procedure for the quieting of title or the removal of a cloud therefrom shall be governed by such rules of court as the Supreme Court shall promulgate.

CLOUD (ON TITLE) - is a semblance of title which appears in some legal form but which is in fact unfounded.

Requisites of Action to Quiet Title

- (1) The plaintiff or complainant has a legal or an equitable title to or interest in the real property subject of the action;
- (2) There is a cloud on title to real property or any interest therein; and
- (3) The deed, claim, encumbrance or proceeding claimed to be casting cloud on his title must be shown to be in fact invalid or inoperative despite its *prima*

facie appearance of validity or legal efficacy.

N.B.

- In an action to quiet title, the plaintiff need not be in possession of the property.
- If the plaintiff in an action for quieting of title, however, is in possession of the property being litigated, the action is imprescriptible.
- The rule that the Statute of Limitations is not available as a defense to an action to remove a cloud from title can only be invoked by a complainant when he is in possession.

Chapter 3 RUINOUS BUILDINGS AND TREES IN DANGER OF FALLING

Art. 482. If a building, wall, column, or any other construction is in danger of falling, the owner shall be obliged to demolish it or to execute the necessary work in order to prevent it from falling.

If the proprietor does not comply with this obligation, the administrative authorities may order the demolition of the structure at the expense of the owner, or take measures to insure public safety.

Art. 483. Whenever a large tree threatens to fall in such a way as to cause damage to the land or tenement of another or to travellers over a public or private road, the owner of the tree shall be obliged to fell and remove it; and should he not do so, it shall be done at his expense by order of the administrative authorities.

N.B.

- MERELY ASSIGNING TASK TO REMOVE RUINOUS TREES NOT EXCULPATORY: As school principal, petitioner is expected to oversee the safety of the school's premises. The fact that she failed to see the immediate danger posed by the dead and rotting tree shows she failed to exercise the responsibility demanded by her position. *Capili v. Spouses Cardaña*, G.R. No. 157906, November 02, 2006.

Title III CO-OWNERSHIP

Art. 484. There is co-ownership whenever the ownership of an undivided thing or right belongs to different persons.



In default of contracts, or of special provisions, co-ownership shall be governed by the provisions of this Title.

Requisites of Co-Ownership

1. Plurality of subjects
2. Unity of object
3. Recognition of ideal share

Dual Nature of Co-Ownership

1. Ownership over ideal share
2. Joint ownership as a whole

N.B.

- Once partition or division is effected or once the property is subdivided and distributed among co-owners, the co-ownership is terminated.
- A co-owner cannot claim a definite portion of a property owned in common.
- [W]here the transferees of an undivided portion of the land allowed a co-owner of the property to occupy a definite portion thereof and has not disturbed the same, for a period too long to be ignored--the possessor is in a better condition or right (*Potior est conditio possidentis*). Clearly, the plaintiff in this instance is barred from asserting her alleged right over the portion subject matter in the instant case on the ground that their right has been lost by laches. *Vda. de Cabrera v. Court of Appeals, G.R. No. 108547, February 3, 1997*

LACHES – has been defined as the failure or neglect, for an unreasonable and unexplained length of time, to do that which by exercising due diligence could or should have been done earlier; it is negligence or omission to assert a right within a reasonable time, warranting a presumption that the party entitled to assert it either has abandoned it or declined to assert it.

CO-OWNERSHIP	PARTNERSHIP
As to creation	
May exist without the necessity of a contract	Created only by reason of contract
As to personality	
Does not possess a juridical personality distinct from the co-owners	Has the juridical personality distinct from each of the partners
As to purpose	
Common enjoyment of the thing owned in common	Profit from the things or services contributed
As to duration	
Agreement not to divide the property exceeding 10 years is invalid;	No limit as to the time of existence
As to effect of death	
Death of a co-owner does not dissolve the co-ownership	Death of a partner brings about the dissolution of partnership
As to disposal of share	
A co-owner may freely dispose of his ideal share of	A partner has no power of disposal unless agreed

the thing owned in common	upon by all partners
As to 3rd persons	
A co-owner does not represent the co-ownership	A partner usually represents the partnership and binds the same

SOURCES OF CO-OWNERSHIP

1. law
2. contract
3. succession
4. fortuitous event or chance
5. occupancy

Art. 485. The share of the co-owners, in the benefits as well as in the charges, shall be proportional to their respective interests. Any stipulation in a contract to the contrary shall be void.

The portions belonging to the co-owners in the co-ownership shall be presumed equal, unless the contrary is proved.

N.B.

- If A, B, C and D contribute to a property in the respective manner: 45%, 30% 15% 10%. They cannot agree later that they will contribute equally to payment of its taxes nor would they agree to get equal shares from the fruits thereof. Such stipulation is void under Art. 485 of Civil Code.

Art. 486. Each co-owner may use the thing owned in common, provided he does so in accordance with the purpose for which it is intended and in such a way as not to injure the interest of the co-ownership or prevent the other co-owners from using it according to their rights. The purpose of the co-ownership may be changed by agreement, express or implied.

N.B.

- The defendant, therefore, in occupying with her husband the upper floor of the said house, did not injure the interests of her co-owner, her sister, nor did she prevent the latter from living therein, but merely exercised a legitimate right pertaining to her as co-owner of the property. *Pardell v. Bartolome, G.R. No. L-4656, November 18, 1912.*

Limitations on the Right to Use

- (1) such use must be in accordance with the purpose for which the thing is intended;
- (2) such use must be without prejudice to the rights of the other co-owners; and



- (3) such use must not be in a manner as to prevent the other co-owners from using the thing according to their own right.

N.B.

- Each co-owner of property held *pro indiviso* exercises his rights over the whole property and may use and enjoy the same with no other limitation than that he shall not injure the interests of his co-owners, the reason being that until a division is made, the respective share of each cannot be determined and every co-owner exercises, together with his co-participants joint ownership over the *pro indiviso* property, in addition to his use and enjoyment of the same. *Aguilar v. CA, G.R. No. 76351, October 29, 1993.*
- The right of enjoyment by each co-owner is limited by a similar right of the other co-owners. A co-owner cannot devote common property to his exclusive use to the prejudice of the co-ownership. Hence, if the subject is a residential house, all the co-owners may live there with their respective families to the extent possible. However, if one co-owner alone occupies the entire house without opposition from the other co-owners, and there is no lease agreement, the other co-owners cannot demand the payment of rent. Conversely, if there is an agreement to lease the house, the co-owners can demand rent from the co-owner who dwells in the house. *De Guia v. CA, G.R. No. 120864, October 8, 2003*

Art. 487. Any one of the co-owners may bring an action in ejectment.

The term, “*action in ejectment*,” not only includes a suit of forcible entry (*detentacion*) or unlawful detainer (*desahucio*), but all kinds of actions for the recovery of possession, including an *accion publiciana* and a reivindicatory action.

- Action must be instituted for all co-owners
- This action is also available even against a co-owner
- While a co-owner may bring an action in ejectment under Article 487 without the necessity of joining all the other co-owners as co- plaintiffs because the suit is deemed to be instituted for the benefit of all, any adverse judgment cannot prejudice the rights of the unimpleaded co-owners. However, any judgment of the court in favor of the co-owner will benefit the others.

Art. 488. Each co-owner shall have a right to compel the other co-owners to contribute to the expenses of preservation of the thing or

right owned in common and to the taxes. Any one of the latter may exempt himself from this obligation by renouncing so much of his undivided interest as may be equivalent to his share of the expenses and taxes. No such waiver shall be made if it is prejudicial to the co-ownership.

Art. 489. Repairs for preservation may be made at the will of one of the co-owners, but he must, if practicable, first notify his co-owners of the necessity for such repairs. Expenses to improve or embellish the thing shall be decided upon by a majority as determined in Article 492.

- Right to demand contribution from co-owners inherent for preservation expenses
- Prior notice is required prior to execution of repairs or embellishment
- Failure of prior notice for repairs may still be effective,
- But absence of prior notice for embellishment may lose the right to recover proportionate share
- A compelled co-owner to contribute proportionally may opt to exercise renunciation

Art. 490. Whenever the different stories of a house belong to different owners, if the titles of ownership do not specify the terms under which they should contribute to the necessary expenses and there exists no agreement on the subject, the following rules shall be observed:

- (1) The main and party walls, the roof and the other things used in common, shall be preserved at the expense of all the owners in proportion to the value of the story belonging to each;
- (2) Each owner shall bear the cost of maintaining the floor of his story; the floor of the entrance, front door, common yard and sanitary works common to all, shall be maintained at the expense of all the owners *pro rata*;
- (3) The stairs from the entrance to the first story shall be maintained at the expense of all the owners *pro rata*, with the exception of the owner of the ground floor; the stairs from the first to the second story shall be preserved at the expense of all, except the owner of the ground floor and the owner of the first story; and so on successively.



- The provisions are not applicable to Republic Act No. 4276 (The Condominium Act)

CONDOMINIUM – is an interest in real property consisting of a separate interest in a unit in a residential, industrial or commercial building and an undivided interest in common directly or indirectly, in the land on which it is located and in other common areas of the building.

Art. 491. None of the co-owners shall, without the consent of the others, make alterations in the thing owned in common, even though benefits for all would result therefrom. However, if the withholding of the consent by one or more of the co-owners is clearly prejudicial to the common interest, the courts may afford adequate relief.

Art. 492. For the administration and better enjoyment of the thing owned in common, the resolutions of the majority of the co-owners shall be binding.

There shall be no majority unless the resolution is approved by the co-owners who represent the controlling interest in the object of the co-ownership.

Should there be no majority, or should the resolution of the majority be seriously prejudicial to those interested in the property owned in common, the court, at the instance of an interested party, shall order such measures as it may deem proper, including the appointment of an administrator.

Whenever a part of the thing belongs exclusively to one of the co-owners, and the remainder is owned in common, the preceding provisions shall apply only to the part owned in common.

- The law prohibits the making of alterations in the thing owned in common without the consent of all the other co-owners
- The law does not clarify the kind of consent necessary for the making of alterations
- The other co-owners can compel the erring co-owner to undo what has been done at the latter's expense (Art. 1168, NCC)

The following acts of the majority are considered prejudicial to the co-ownership:

- (1) when the resolution calls for a substantial change or alteration of the common property or of the use to which it has been dedicated by agreement or by its nature;
- (2) when the resolution goes beyond the limit of mere administration or invades proprietary rights of the co-owners in violation of Article 491;
- (3) when the majority authorizes lease, loans or other contracts without security, exposing the thing to serious danger to the prejudice of the other co-owners; and
- (4) when the majority refuses to dismiss an administrator who is guilty of fraud or negligence in his management, or he does not have the respectability, aptitude, and solvency required of persons holding such positions.

Art. 493. Each co-owner shall have the full ownership of his part and of the fruits and benefits pertaining thereto, and he may therefore alienate, assign or mortgage it, and even substitute another person in its enjoyment, except when personal rights are involved. But the effect of the alienation or the mortgage, with respect to the co-owners, shall be limited to the portion which may be allotted to him in the division upon the termination of the co-ownership.

- Right to alienate a co-owner's *pro indiviso* share is inherent
- Alienation or mortgage shall be limited to the portion as may be allotted to a co-owner
- The binding force of a contract must be recognized as far as it is legally possible to do so — *quando res non valet ut ago, valeat quantum valere potest* (when a thing is of no effect as I do it, it shall have effect as far as [or in whatever way] it can)
- “no one can give what he does not have — *nemo dat quod non habet.*”
- Doctrine of “buyer in good faith” applies

N.B.

- [The Court is] not unaware of the principle that a co-owner cannot rightfully dispose of a particular portion of a co-owned property prior to partition among all the co-owners. However, this should not



signify that the vendee does not acquire anything at all in case a physically segregated area of the co-owned lot is in fact sold to him. Since the co-owner/vendor's undivided interest could properly be the object of the contract of sale between the parties, what the vendee obtains by virtue of such a sale are the same rights as the vendor had as co-owner, in an ideal share equivalent to the consideration given under their transaction. In other words, the vendee steps into the shoes of the vendor as co-owner and acquires a proportionate abstract share in the property held in common. *Spouses Del Campo v. CA, G.R. No. 108228, February 1, 2001*

- **SALE OF CONJUGAL PROPERTY WITHOUT CONSENT OF SPOUSE IS VOID:** By express provision of Article 124 of the Family Code, in the absence of (court) authority or written consent of the other spouse, any disposition or encumbrance of the conjugal property shall be void.”
- Rules co-ownership under Art.147 of Family Code prohibits any of the parties to dispose by acts *inter vivos* their share in the co-owned property without the consent of the other prior to termination of cohabitation.

RIGHT OF LEGAL REDEMPTION

In the nature of a privilege created by law partly for reasons of public policy and partly for the benefit and convenience of the redemptioner, to afford him a way out of what might be a disagreeable or inconvenient association into which he has been trust. It is intended to minimize co-ownership by reducing the number of the participants until the community is done away with.

Requisites for Exercise of Legal Redemption

- (1) There must be a co-ownership;
- (2) One of the co-owners sold his right to a stranger;
- (3) The sale was made before the partition of the co-owned property;
- (4) The right of redemption must be exercised by one or more co-owners within a period of **30 days** to be counted from the time that he or they were notified in writing by the vendee or by the co-owner vendor; and
- (5) The vendee must be reimbursed for the price of the sale.

Art. 494. No co-owner shall be obliged to remain in the co-ownership. Each co-owner may demand at any time the partition of the thing owned in common, insofar as his share is concerned.

Nevertheless, an agreement to keep the thing undivided for a certain period of time, not exceeding ten years, shall be valid. This term may be extended by a new agreement.

A donor or testator may prohibit partition for a period which shall not exceed twenty years. Neither shall there be any partition when it is prohibited by law.

No prescription shall run in favor of a co-owner or co-heir against his co-owners or co-heirs so long as he expressly or impliedly recognizes the co-ownership.

Causes of Extinguishment of Co-Ownership

- (1) By the merger in one person of all the interest of the co-ownership;
- (2) By prescription of the thing or right in favor of third persons or a co-owner;
- (3) By destruction of the thing or loss of the right which is owned in common; and
- (4) By partition of the property owned in common.

GENERAL RULE: No prescription shall lie in favor of co-owner or co-heirs as long as he expressly or impliedly recognizes the co-ownership.

EXCEPTION: When co-ownership is repudiated.

In order that a title may prescribe in favor of co-owner:

- (1) The co-owner has performed unequivocal acts of repudiation amounting to an ouster of the other co-owners.
- (2) Such positive acts of repudiation have been made known to the other co-owner.
- (3) The evidence thereof is clear and convincing

N.B.

- Prescription, as a mode of terminating a relation of co-ownership, must have been preceded by repudiation (of the co-ownership). The act of repudiation, in turn is subject to certain conditions: (1) a co-owner repudiates the co-ownership; (2) such an act of repudiation is clearly made known to the other co-owners; (3) the evidence thereon is clear and conclusive; and (4) he has been in possession through open, continuous, exclusive; and notorious possession of the property for the period required by law. *Adille v. Court of Appeals, G.R. No. L-44546, January 29, 1988*



ACQUISITIVE PRESCRIPTION

Ordinary acquisitive prescription requires possession of things in good faith and with just title for a period of ten (10) years. Without good faith and just title, acquisitive prescription can only be extraordinary in character which requires uninterrupted adverse possession for thirty (30) years.

EXTINCTIVE PRESCRIPTION

From the moment one of the co-owners claims that he is the absolute and exclusive owner of the properties and denies the others any share therein, the question involved is no longer one of partition but of ownership and the prescriptive period will begin to run and may eventually operate to divest the real owners of their right to the property after the lapse of the applicable statutory period.

Art. 495. Notwithstanding the provisions of the preceding article, the co-owners cannot demand a physical division of the thing owned in common, when to do so would render it unserviceable for the use for which it is intended. But the co-ownership may be terminated in accordance with Article 498.

Art. 496. Partition may be made by agreement between the parties or by judicial proceedings. Partition shall be governed by the Rules of Court insofar as they are consistent with this Code.

Art. 497. The creditors or assignees of the co-owners may take part in the division of the thing owned in common and object to its being effected without their concurrence. But they cannot impugn any partition already executed, unless there has been fraud, or in case it was made notwithstanding a formal opposition presented to prevent it, without prejudice to the right of the debtor or assignor to maintain its validity.

Art. 498. Whenever the thing is essentially indivisible and the co-owners cannot agree that it be allotted to one of them who shall indemnify the others, it shall be sold and its proceeds distributed.

Art. 499. The partition of a thing owned in common shall not prejudice third persons, who shall retain the rights of mortgage, servitude, or any other real rights belonging to them before the division was made.

Personal rights pertaining to third persons against the co-ownership shall also remain in force, notwithstanding the partition.

Art. 500. Upon partition, there shall be a mutual accounting for benefits received and reimbursements for expenses made. Likewise, each co-owner shall pay for damages caused by reason of his negligence or fraud.

Art. 501. Every co-owner shall, after partition, be liable for defects of title and quality of the portion assigned to each of the other co-owners.

- Action for partition is **imprescriptible** and **cannot be barred by laches**

Legal Effects of Partition

- (1) The co-ownership is terminated and each co-owner becomes the absolute and exclusive owner of the share allotted to him. And he shall be deemed to be in exclusive possession of that portion which has been allotted to him even during the entire period that the co-ownership lasted.
- (2) It shall not prejudice the rights of third persons, who shall retain the rights of mortgage, servitude, or any other real rights belonging to them before the division was made.
- (3) Personal rights pertaining to third persons against the ownership shall also remain in force.
- (4) Mutual accounting shall be rendered by the co-owners to each other with regard to benefits and expenses and each co-owner shall pay for damages caused by reason of his negligence or fraud. In the partition among co-heirs, they shall reimburse one another for the income and fruits which each one of them may have received from any property of the estate, for any useful and necessary expenses made upon such property, and for any damage thereto through malice or neglect.
- (5) Every co-owner shall be liable for defects of title and quality of the portion assigned to each of the other co-owners.

End of Topic for Midterm Purposes