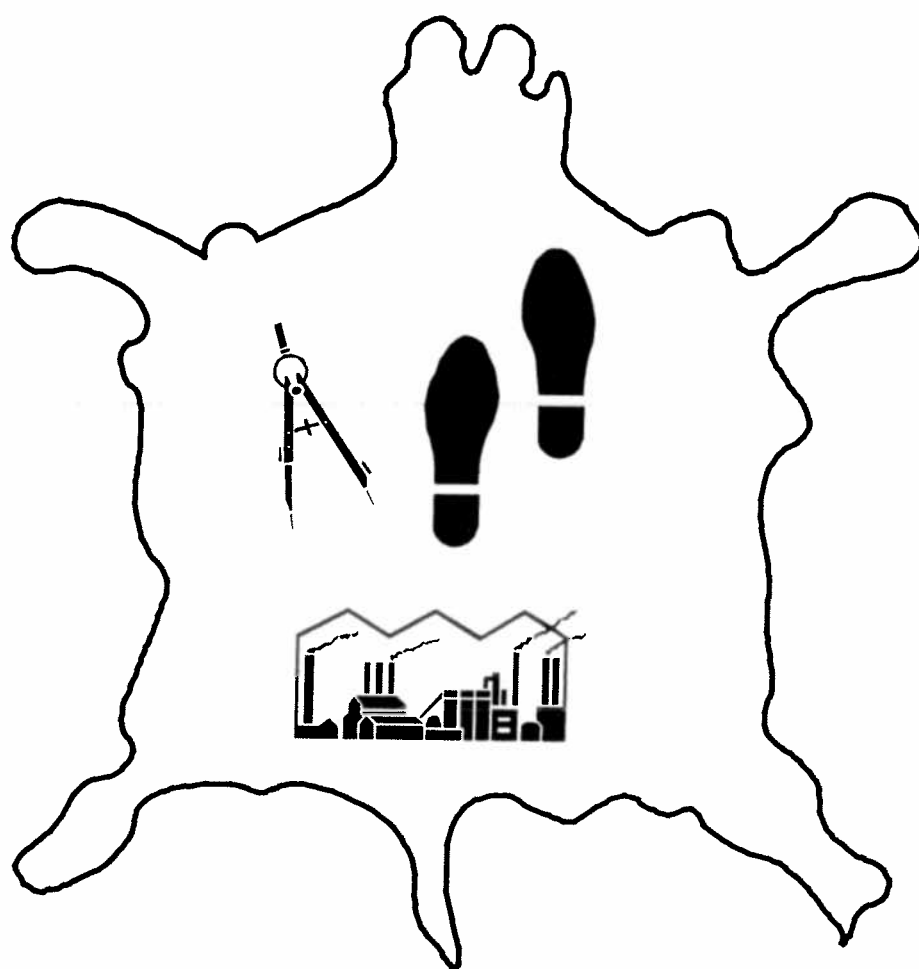


SHOE INDUSTRY CERTIFICATE COURSE



INDUSTRIAL LAW*



* This document has been produced without formal editing



This learning element was developed by the UNIDO Leather Unit's staff, its experts and the consultants of the Clothing and Footwear Institute (UK) for the project US/PHI/85/109 and is a part of a complete Footwear Industry Certificate course. The material is made available to other UNIDO projects and may be used by UNIDO experts as training aid and given, fully or partly, as hand-out for students and trainees.

The complete Certificate Course includes the following learning elements:

Certificate course

- Feet and last
- Basic design
- Pattern cutting
- Upper clicking
- Closing
- Making
- Textiles and synthetic materials
- Elastomers and plastomers
- Purchasing and storing
- Quality determination and control
- Elements of physics
- General management
- Production management
- Industrial Law
- Industrial accountancy
- Electricity and applied mechanics
- Economics
- SI metric system of measurement
- Marketing
- Mathematics
- Elements of chemistry

INDUSTRIAL LAW

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ANNEXES

Application Form for Registration
Application Form for Tax Privilege
Form for Tax Return
BIR Form
Application for Permit to Print, Stamping
and Registration of Invoices
Articles of Incorporation
Obligations and Contracts

Mr. Mario Pantoja

FLIC/DIS
Sept. 1987

II. BUSINESS ORGANIZATION

A. FORM, DEFINITION AND FORMATION :

1. Single or Sole Proprietorship - is one formed and organized by one person by investing money, property and service for profit.

Procedures for its formation are :

- 1.1 Application with the Registration of Business Name with the Bureau of Trade by attaching two pictures - size 2" x 2".
 - 1.2 Registration of Business Name with the Bureau of Internal Revenue in the Revenue District where the business is to be established.
 - 1.3 Filing of Business (Fixed) Tax Return and Payment of Tax.
 - 1.4 Application for Permit to Print Stamping and Registration of Invoices.
 - 1.5 Printing of Invoices and/or Official Receipt.
 - 1.6 Application of Business Permit and License to operate and corresponding issuance of Mayor's Permit in the City or Municipality where the business is to be established.
-
2. Partnership - is a contract of two or more competent persons, to place their money, property or industry to a common fund, with the intention of dividing the profits among themselves.

2.1 Procedures for its formation are :

- 2.1.1 A partnership may be constituted in any form, except where immovable property or real rights are contributed thereto, in which case a public instrument shall be necessary.
- 2.1.2 Every contract of partnership having a capital of three thousand pesos or more, in money or property, shall appear in a public instrument, which must be recorded in the Office of the Securities and Exchange Commission
- 2.1.3 A contract of partnership is void, whenever immovable property is contributed thereto, if an inventory of said property is not made, signed by the parties and attached to the public instrument.

2.2 Reason of Public Instrument - is to prevent the evasion of tax liabilities by a big partnership.

2.3 Kinds of Partnership

- 2.3.1 General Partnership - is one in which all the members are general partners and are liable to the whole extent of their separate property, either subsidiary and pro rata, or solidarity, for partnership debts.
- 2.3.2 Limited Partnership - is one formed by two or more persons having as members one or more general partners and one or more limited partners who, as such, shall not be bound by the obligations of the partnership.

2.4 Kinds of Partner

- 2.4.1 Industrial Partner - is one who contribute only his industry in the partnership.
- 2.4.2 Capitalist Partner - is one who contributes money, property and/or industry in the partnership.

2.5 Management of Partnership

- 2.5.1 Where the manager is appointed in the Articles of Partnership has been.
- 2.5.2 Where the manager is appointed after the partnership has been constituted.
- 2.5.3 Where two or more partners have been entrusted with the management, without specification of their respective duties.
- 2.5.4 Where it is stipulated that none of the managing partners shall act without the consent of the others.
- 2.5.5 When the manner of management has not been agreed upon, then all the partners can act as manager.

2.6 Manner of sharing Profits and Losses

- 2.6.1 The profits and losses shall be distributed in conformity with the agreement.
- 2.6.2 If only the share of each partner in the profits has been agreed, upon, the share of each in the losses shall be in the same proportion.

2.6.3 In the absence of stipulation, the share of each partner in the profits and losses shall be in proportion to ~~what~~ he may have contributed, but the industrial partner shall not be liable for losses.

2.6.4 As for the profits, the industrial partner shall receive such share as may be just and equitable under the circumstances.

3. Corporation - is an artificial being created by operation of law having the right of succession and powers, attributes, and properties expressly authorized by law or incident to its existence.

3.1 Attributes of Corporation

3.1.1 A legal entity, separate and distinct from the shareholder: wh are its owners.

3.1.2 A corporation is created by law and exists only in contemplation of law.

3.1.3 A corporation exercise only those powers vested by law and those either expressed or implied in its charter.

3.2 Types of Corporation

3.2.1 Public Corporations - are those formed or organized for the government of a portion of the state which has for their purpose the general good and welfare of the people.

3.2.2 Private Corporations - are those formed for some private purpose, benefit, aim, or end.

3.3 Kinds

- 3.3.1 Stock Corporations - which have a capital stock divided into shares and are authorized to distribute to the holders of such shares dividends or allotment of the surplus profits on the basis of the shares held.
- 3.3.2 All other private corporations are non-stock corporations.

3.4 Steps on Incorporation

- 3.4.1 Drafting and execution of the Articles of Incorporation by the incorporators (minimum of 5 and maximum of 15) with the following documents attached: -
- a). an affidavit as to the capital subscribed and paid-up
 - b). a sworn statement of the assets and liabilities.
 - c). Bank Certificate for the deposit of the paid-up capital.
 - d). Letter of Authorization addressed to the SEC to examine the bank deposit.
 - e). Letter of Waiver to Change Corporate Name
- 3.4.2 Filing of the Articles of Incorporation with the SEC.
- 3.4.3 Paying the filing fees and the publication fee which is one tenth of one per centum of the authorized capital stock but in no case less than ₱ 25.00 nor more than ₱ 1,000.00.
- 3.4.4 Issuance by the Securities and Exchange Commission (SEC) of Certificate of Incorporation.

3.5 Terminology

- 3.5.1 Corporators - are those who compare the corporation, whether stock-holders or members, or both.
- 3.5.2 Incorporators - are those members or stockholders or both, mentioned in the Articles of Incorporation as originally forming and composing the corporation.
- 3.5.3 Stockholders or shareholders - are owners of shares in a corporation which has a capital.
- 3.5.4 Members - are corporators of a corporation which has no capital stock or those who do not own capital stock.
- 3.5.5 Subscribers - persons who have agreed to take and may pay for original, unissued shares of a corporation formed or to be formed.
- 3.5.6 Capital Stock - is the amount fixed in the Articles of Incorporation to be subscribed and paid in or secured to be paid in by the shareholders of a corporation, either in money or in property, labor or services at the organization of the corporation or afterwards and upon which it is to conduct its operations.
- 3.5.7 Corporate Capital - is the actual money or property of the corporation that will be used for the operation or the conduct of the business of the corporation.
- 3.5.8 Subscribed Capital Stock - or issued and outstanding capital stock - is that portion of the capital stock subscribed by subscribers whether fully paid or not.

- 3.5.9 Paid-in-Capital - is that portion of the subscribed capital which has been paid partially or wholly.
- 3.5.10 Stock - is the shares of the capital stock in the hands of the individual stockholders or the certificate issued by the corporation to them.
- 3.5.11 Shares of Stock - is one of the proportionate integers or units of the capital stock and is the interest or right which the owner or holder thereof has in the management of the corporation and to share in the profits thereof, and in the property and assets thereof on dissolution, after payment of the corporation debts and obligations.
- 3.5.12 Certificate of Stock - is written acknowledgment by the corporation or the stockholders interest in the corporation and its property.
- 3.5.13 Common Stock - is stock which entitles the owners of it to an equal (share) pro rata division of profits, if there be any, but without preference or advantage in that respect over any other stockholders or class of stockholders.
- 3.5.14 Preferred Stock - are those which entitles the holders to some priority as to dividends or principal or both over some other class or classes of shareholders.
- 3.5.15 Par value Share - is one in the certificate of stock of which appears an amount in pesos as to the nominal of the shares.
- 3.5.16 No Value Share - is a stock without any nominal value stated in terms of peso or pesos worth.

B. BY LAWS

By-Laws - are rules of action adopted by the corporation for its own government and for the government of the members or stockholders and those having the direction, management and control of its affairs.

Steps in the Preparation of By-Laws

1. Drafting and execution of the By-Laws
2. Adoption Clause signed by the majority of the stockholders in the general membership meeting.
3. Director's Certificate as to the approval of the adoption of the By-laws by the stockholders.
4. Filing of the By-Laws with the SEC with the following documents attached: -
 - a). Minutes of the Organization Meeting of Stockholders
 - b). General Information Sheet
 - c). Registration Data Sheet
 - d). Letter of Compliance addressed to the SEC
5. Payment of the registration fee and Transfer Book and issuance of the Certificate of By-Laws by the SEC.

NOTE : Once the Certificate of Incorporation and the Certificate of By-Laws are issued by the SEC Secretary's Certificate be made for the designation of the depository bank and the officers authorized to sign checks.

NOTE : The registration of the Business Name with the Bureau of Domestic Trade and the Bureau of Internal Revenue, filing of Business (fixed) Tax Return, Application for Permit to Print Stamping and Registration of Invoices and Printing, and Application for the Business Permit and License for Mayor's Permit are all similar to Single Proprietorship mentioned in last paragraph on page 1 before the Partnership and Corporation can formally operate as business entities.

BDT Form No. 16

NOTE: Fill up all the
blanks accurately to
avoid disapproval.

Republic of the Philippines
MINISTRY OF TRADE
BUREAU OF DOMESTIC TRADE
Quezon City

Date Rec'd.

Date Reg.

Expiry Date

ORIGINAL APPLICATION

Control No.

Certificate No.

80 - N^o 22640

APPLICATION FOR ORIGINAL REGISTRATION OF A FIRM NAME OR BUSINESS NAME OR STYLE
UNDER ACT NO. 3883, AS AMENDED BY ACT NO. 4147 AND REP. ACT 863
(TO BE ACCOMPLISHED IN DUPLICATE)

To the Director of Domestic Trade
Quezon City

_____, 19____

Pursuant to the provisions of Act No. 3883, as amended by Act No. 4147, and Republic Act No. 863, approved June 16, 1953, and Commerce Administrative Order No. 9-1, I hereby apply for the original registration of the following firm name or business name or style:

to be kept exhibited on a signboard, in plain view of the public, in or at the place where my business is conducted. Enclosed herewith is TEN PESOS (P10.00) as registration fee and one P0.30 doc. stamp for the certificate. The following are the facts related to my business and my capacity to engage as such:

1. Name of applicant _____ Age _____ Citizenship _____

2. Residence _____ Civil Status _____ Spouse _____

3. Location of Business _____

Name of Manager _____

4. Capital:

(a) Single Proprietorship P. _____ Partnership P. _____

(b) Corporation:

(1) Authorized P. _____ Subscribed P. _____ Paid up P. _____

(In case of corporation, partnership or association I must attach certified true copy of articles of the same as registered with the SEC and photostat copy of certificate of registration)

5. Nature of Business _____

6. I am a (a) Retailer _____ (b) Wholesaler _____ (c) Manufacturer _____ (d) Processor _____

(If I am an alien retailer or processor, I will submit a photostatic copy of my current Permit to Engage in the Retail Business or authority to operate from the DT under Rep. Act No. 1180 and BOI Report/Authority)

As a retailer or wholesaler, I will attend first a seminar to be conducted by BDT before receiving my certificate.

7. Date business began _____

8. Former owner of business _____ How acquired? _____

If by sale, assignment or transfer, I will comply with the Bulk Sales Law, Act No. 3952 by submitting: (1) Affidavit by vendor that at the time of sale he has no creditors, or if there were creditors, copy of notices to them; (2) Deed of Sale, assignment or transfer, as the case may be; (3) Inventory of properties sold, transferred or assigned)

9. I have been/have not been convicted of any crime involving moral turpitude: I have been/have not been convicted for violation of any law on nationalization, economic control, weights and measures, and labor and other laws relating to trade, commerce and industry. If convicted, the date, place and nature of the offense are: _____

I/We hereby agree for a change and/or cancellation of the aforementioned firm name, business name and/or style in the event that there is already another person, firm or entity lawfully using the same, similar or identical name.

I, _____ hereby declare under oath that the foregoing statements are true and correct to the best of my knowledge and belief and the same have been given voluntarily and without any fraudulent or deceitful purpose whatsoever.

(Affiant)

Owner: Managing Partner/President/Gen. Manager

SUBSCRIBED AND SWORN to before me this _____ day of _____, 19____, affiant exhibiting to me his/her Residence Certificate No. _____ issued on _____, 19____, at _____, Philippines.

Doc. No.

Page No.

Book No.

Series of 19.....

Notary Public

Until December 31, 19 ____

(NOTE: Notary Public's name must be typewritten)

B.I.R. Form No. 19.53
(Revised September, 1977)

Republic of the Philippines
Department of Finance
BUREAU OF INTERNAL REVENUE
Revenue District No. _____

_____, 19____

The COMMISSIONER OF INTERNAL REVENUE
REVENUE DISTRICT OFFICER
REVENUE COLLECTION AGENT

SIR:

I, _____, a person or firm
engaged in a business subject to a privilege tax, hereby apply for registration of the follow-
ing name and/or style:

(Business name)

(Style)

pursuant to the provisions of Section 215 of the National Internal Revenue Code of 1977.

1. Name in full of owner _____
(if the applicant is an alien, state the name appearing on, and the number of, the landing
or alien registration certificate) _____

2. Aliases, if any _____

3. Age on last birthday _____

4. Nationality _____

5. Actual bona fide residence _____

6. Previous residence or place of business _____

7. Other persons having joint or common interest in the business. (State their true
names and aliases, if any, age citizenship and residence.) _____

8. Nature of business _____ State numbers and
date of privilege tax receipts issued and amounts paid _____

9. Location (address) of place of business _____

10. Name or name of former owners of this business, if any, and their present
address _____

11. Manner business was established (original organization, reorganization or by
purchase) _____

12. Names registered with the Bureau of Commerce _____

13. Name of the authorized manager of the business _____

I HEREBY CERTIFY that the foregoing statements are true and correct.

(Name of applicant)

TAN _____

Subscribed and sworn to before me this _____ day of _____, 19____

by the above-named applicant who exhibited to me his Residence Certificate

No. _____ issued at _____ on _____, 19____

(Notary Public or person authorized
to administer oath)

[illegible]

Reg. No. 223-77

REPUBLIC OF THE PHILIPPINES
DEPARTMENT OF FINANCE
BUREAU OF INTERNAL REVENUE
REGIONAL DISTRICT No. 35

Office of the Revenue District Officer

Revenue District Office No. 35
Pasig, Metro-Manila

To ALL TO WHOM THESE PRESENTS SHALL COME, GREETINGS:

THIS IS TO CERTIFY THAT by the records of the Revenue District Office,
(B.I.R., C.R.O. or P.T.)PAN MAR COMPANY did, on the 17th day of February, 1977
(Applicant)register in the RD-35, Pasig, Metro-Manila the following names:
(B.I.R., C.R.O. or P.T.)CHICKEN BENEDICT as his/her BUSINESS NAME OR STYLE under and in
(Business name or style)

accordance with the provisions of Section 203 of Commonwealth Act No. 466,
otherwise known as the National Internal Revenue Code, as amended, and
said Pan Mar Company having complied with the requirements
(Applicant)
of this Bureau the above-mentioned business name or style has been duly entered
in its record this 17th day of February, 1977

Issued at Pasig, Metro-Manila this 17th day of February, 1977

ISABELO R. CLAROS
Regional Director
TAN 1146-190-2

By:


GIL S. FELICIANO
Revenue District Officer
TAN 1639-183-1

APPLICATION FOR PERMIT TO PRINT, STAMPING AND REGISTRATION OF INVOICES

Pursuant to Revenue Regulations No. 2-78, dated February 20, 1978, implementing P.D. No. 1255 in relation to Section 326 and Section 4 of the National Internal Revenue Code of 1977, submitted herewith are four (4) draft copies of invoices, sales or commercial invoices for approval to print, stamping and registration.

NAME OF TAXPAYER LED MIRA G. ALLOS TAN # PSB25-104381
RESIDENCE/POSTAL ADDRESS P.O. Box 12345, Manila
RES. CERT. NO. AH 3599215 Date JUN 14 1980 Issued At Manila
RES. CERT. NO. C/C Date Issued At
ALIEN CERT. REG. No. Date Issued At

Business Name or Style Balayan KITCHENNET
Business Address P.O. Box 12345, Mandaluyong, Metro Manila
Kind of Business Restaurant TAX NUMERIC CODE PUS-01-001
P.T.R. (RTR) No. 3188124 Date 4/25/80 AMOUNT PAID or
B.I.R. Certificate of Registration No. 241245 Date 4/25/80
Books of Accounts Reg'd.: Journal & Ledger Date 4/25/80
Date of Registration with the S.E.C. Barangay Office Date 4/25/80

KIND OF INVOICES and/or TICKETS	NO. OF BKT. PAD OR ROLL	COPY PER SET	SET/BKT PAD or ROLL	SERIAL NUMBER From To
Sales Invoice	50	2	Booklet	001/2500
Sales Invoice	50	2	Booklet	001/2500

FORM OF INVOICES: (X) Bookbound () Loose Leaf Per Permit No. Date
PREVIOUS INVOICE REGISTERED: None (new) SERIAL NUMBER

NAME OF PRINTER TAN #
ADDRESS OF PRINTER Issued on 19
Per Enclosed Job Order No.

ATTESTED: (Signature of Taxpayer)
 (Signature of Printer)

APPROVED FOR PRINTING: Accordingly, Name and Address of Printer, together with PERMIT NO. must be printed on the lower left part of every copy of the aforesaid invoices.

Chief, Assessment Branch

APPROVED FOR STAMPING AND REGISTRATION: The aforesaid invoices must be submitted thru the Registration and Stamping Unit of this Office for STAMPING and REGISTRATION within thirty (30) days from the date of the invoice issued by the printer in equal installment.

For the Regional Director

(Official Rubber Stamp, Initial and Date Registered)

Chief, Assessment Branch

IMPORTANT: Accomplish in Quadruplicate. Original Copy for Printer, Duplicate copy is for Taxpayer's copy for purposes of the Registration of the printed invoices. Triplicate copy is for Taxpayer's file copy, and the Quadruplicate Copy is for BIR File.

ARTICLES OF INCORPORATION
OF

KNOW ALL MEN BY THESE PRESENTS:

That we, all of legal age, citizens and residents of the Republic of the Philippines, have this day voluntarily associated ourselves together for the purpose of forming a corporation under the laws of the Philippines.

AND WE HEREBY CERTIFY

FIRST: That the name of the said corporation shall be

SECOND: That the purposes for which said corporation is formed are:

PRIMARY PURPOSE

To engage in, conduct, and carry on the business of buying, selling, distributing, marketing at wholesale and retail insofar as may be permitted by law, all kinds of goods, commodities, wares and merchandise of every kind and description; to enter into all kinds of contracts for the export, import, purchase, acquisition, sale at wholesale or retail and other disposition for its own account as principal or in representative capacity as manufacturer's representative, merchandise broker, indenter, commission merchant, factors or agents, upon consignment of all kinds of goods, wares, merchandise or products, whether natural or artificial.

SECONDARY PURPOSE

1. To purchase, acquire, own, lease, sell and convey real properties such as lands, buildings, factories and warehouses and machineries, equipment and other personal properties as may be necessary or incidental to the conduct of the corporate business, and to pay in cash, shares of its capital stock, debentures and other evidences of indebtedness, or other securities, as may be deemed expedient, for any business or property acquired by the corporation.

2. To borrow or raise money necessary to meet the financial requirements of its business by the issuance of bonds, promissory notes and other evidences of indebtedness, and to secure the repayment thereof by mortgage, pledge, deed of trust or lieu upon the properties of the corporation or to issue pursuant to law shares of its capital stock, debentures and other evidences of indebtedness in payment for properties acquired by the corporation or for money borrowed in the prosecution of its lawful business;

3. To invest and deal with the moneys and properties of the corporation in such manner as may from time to time be considered wise or expedient for the advancement of its interests and to sell, dispose of or transfer the business, properties and goodwill of the corporation or any part thereof for such consideration and under such terms as it shall see fit to accept;

4. To aid in any manner any corporation, association, or trust estate, domestic or foreign, or any firm or individual, any shares of stock in which or any bonds, debentures, notes, securities, evidences of indebtedness, contracts, or obligations of which are held by or for this corporation, directly or indirectly or through other corporations or otherwise.

5. To enter into any lawful arrangement for sharing profits, union of interest, unitization or farmout agreement, reciprocal concession, or cooperation, with any corporation, association,

partnership, syndicate, entity, person or governmental, municipal or public authority, domestic or foreign, in the carrying on of any business or transaction deemed necessary, convenient or incidental to carrying out any of the purposes of this corporation;

6. To acquire or obtain from any government or authority, national, provincial, municipal or otherwise, or any corporation, company or partnership or person, such charter, contracts, franchise, privileges, exemption, licenses and concessions as may be conducive to any of the objects of the corporation;

7. To establish and operate one or more offices or agencies and to carry on any of all of its operations and business without any restrictions as to place or amount including the right to hold, purchase or otherwise acquire, lease, mortgage, pledge and convey or otherwise deal in and with real and personal property anywhere within the Philippines;

8. To distribute the surplus profits of the corporation to the stockholders thereof in kind, namely, properties of the corporation, particularly any shares of stock, debentures or securities of other companies belonging to this corporation; and

9. To conduct and transact any and all lawful business, and to do or cause to be done any one or more of the acts and things herein set forth as its purposes, within or without the Philippines, and in any and all foreign countries, and to do everything necessary, desirable or incidental to the accomplishment of the purposes or the exercise of any one or more of the powers herein enumerated, or which shall at any time appear conducive to or expedient for the protection or benefit of this corporation.

THIRD: That the place where the principal office of the corporation is to be established or located is at _____,
_____,
Philippines.

FOURTH: That the term for which said corporation is to exist is fifty (50) years from and after the date of incorporation.

FIFTH: That the names, nationalities and residences of the incorporators of said corporation are as follows:

<u>Name</u>	<u>Nationality</u>	<u>Residence</u>
-------------	--------------------	------------------

SIXTH: That the number of directors of said corporation shall be () and that the names, nationalities and residences of the directors who are to serve until their successors are elected and qualified as provided by the by-laws are as follows:

<u>Name</u>	<u>Nationality</u>	<u>Residence</u>
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SEVENTH: That the authorized capital stock of said corporation is _____ Pesos (P _____), Philippine Currency, and said capital stock is divided into _____ shares (_____) with a par value of _____ Pesos (P _____) each.

EIGHT: That the amount of said capital stock which has been actually subscribed is _____ Pesos (P _____), and the following persons have subscribed for the number of shares and the amount of capital stock indicated opposite their respective names:

<u>Name</u>	<u>Citizenship</u>	<u>Residence</u>	<u>No. of shares</u>	<u>Amount subscribed</u>
-------------	--------------------	------------------	--------------------------	------------------------------

NINTH: That the following persons have paid on the shares of capital stock for which they have subscribed, the amount set out after their respective names;

Name

Amount Paid

TENTH: That no issuance or transfer of shares of stock of the corporation which would reduce the stock ownership of Filipino citizens to less than the minimum percentage of the outstanding capital stock required by law to be owned by Filipino citizens, shall be allowed or permitted to be recorded in the books of the corporation. This restriction shall be printed or indicated in all the certificates of stock to be issued by the corporation.

ELEVENTH: That _____ has been elected by the subscribers as Treasurer of the corporation to act as such until his/her successor is duly elected and shall have qualified in accordance with the by-laws; and that, as such Treasurer, he/she has been authorized to receive for the corporation, and to issue in its name receipts for, all subscriptions paid in by the subscribers.

IN WITNESS WHEREOF, we have hereunto set our hands this _____ day of _____, 19____ at _____, Philippines.

Signed in the presence of:

ACKNOWLEDGEMENT

Republic of the Philippines) S.S.
_____)

BEFORE ME, a Notary Public in and for _____ Philippines,
this _____ day of _____, 19 _____ personally appeared:

Name

Res. Cert. No.

Date & Placed Issued

all known to me and to me known to be the same persons who executed the foregoing Articles of Incorporation and they acknowledged to me that the same is their free and voluntary act and deed.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my notarial seal on the date and at the place first above-written.

NOTARY PUBLIC

Doc. No. _____ ;

Page No. _____ ;

Book No. _____ ;

Series of _____ .

TREASURER'S AFFIDAVIT

Republic of the Philippines)
_____) S.S.

_____, being first duly sworn,
depose and states;

That he was duly elected by the subscribers named in the foregoing Articles of Incorporation as Treasurer of the corporation, to act as such until his successor has been duly elected and qualified in accordance with the by-laws of the corporation, and that as such Treasurer, he has been authorized by the subscribers to receive for the corporation all subscriptions paid in by the subscribers for the capital stock; that out of the authorized capital stock, _____ Pesos, (P_____) worth of shares has been actually subscribed and that of the said subscription _____ (P_____) has been paid in cash to him for the benefit and to the credit of the corporation; that at least twenty-five percentum (25%) of the entire number of authorized shares of capital stock has been subscribed and that at least twenty-five percentum (25%) of such subscription has been actually paid up to him for the benefit and to the credit of the corporation.

Treasurer-in-Trust

SUBSCRIBED AND SWORN to before me this
day of _____, 19____ at _____,
Philippines, affiant exhibiting to me his Residence Certificate
No. _____, issued at _____ on _____

NOTARY PUBLIC

Doc. No. _____;
Page No. _____;
Book No. _____;
Series of 19_____.

(Date)

The Chairman
Securities and Exchange Commission
EDSA, Mandaluyong,
Metro Manila

S i r :

In connection with the registration of the Articles
of Incorporation of the _____

I, the undersigned representative and on behalf of the
organizers thereof, hereby manifest our willingness to
change its corporate name in the event another person,
firm or entity has acquired a prior right to the use of
the said name or one deceptively or confusingly similar
to it.

Very truly yours,

(Name)

(Address)

OBLIGATIONS AND CONTRACTS

Art. 1156. An obligation is a juridical necessity to give, to do or not to do.

Juridical necessity means that the rights and duties arising from obligations are legally enforceable and the courts of justice may be called upon to order their performance.

To give is a real obligation because it involved the delivery of a thing.

Example: A binds himself to deliver a bag of cement to E.

To do or not to do is a personal obligation which is positive and negative respectively. It pertains to rendering or not rendering services.

Example: A binds himself to construct the house of B. (or not to construct)

Essential requisites of an obligation:

1. Juridical or legal tie - is the link which binds the parties to an obligation.
2. Prestation - consist of giving, doing or not doing.
3. Active subject - the person who can demand the performance of the obligation known as creditor or obligee.
4. Passive subject - the person from whom the prestation is demandable known as debtor or obligor.

Example: A entered into a contract with B whereby A agreed to construct the building of B. The juridical tie is the contract, the prestation is the construction of the building, the active subject is B and the passive subject is A.

Art. 1157. Obligations arise from: (Sources)

1. Law - is rule and regulations promulgated by competent authorities for its citizens to observe and comply. Example: The obligation of the contractor to secure building permit before starting the construction of the building.
2. Contracts - is the meeting of minds between two persons whereby one binds himself with respect to the other to give something or to render some service for a compensation. (see example above)
3. Quasi-contracts - certain lawful, voluntary and unilateral sets give rise to the juridical relation of quasi-contract to the end that no one shall be unjustly enriched or benefited at the expense of another.
Example: a. Negotiorum gestio - is the taking over the administration or affairs of another without the latter consent. A took over the supervision in the construction of the building of B which is under contract with X since X is in Baguio.
b. Solutio indebiti - payment by mistake - A received P50.00 excess change from the cashier of the store.
4. Acts or omissions punished by law - (or delicts) refers to a crime or penal offense punishable by law. A person criminally liable is also liable.
Example: A kills B. If found guilty A will be imprisoned for criminal liability and pay damages to the heirs of B for civil liability.
5. Quasi-delicts - is a legal wrong, committed through fault or negligence, on a person or property. Example: A, a carpenter, negligently kicked a piece of wood hitting B who suffered injuries. A is then liable for damages to B.

Art. 1158. Obligations derived from law are not presumed. Only those expressly determined in this Code or in special laws are demandable, and shall be regulated by the precepts of the law which establishes them.

Example: General law - civil code. Special law - civil engineering law.

Art. 1159. Obligations arising from contracts have the force of law between the contracting parties and should be complied with in good faith.

Except: 1. Against the law - A agreed to kill B for P1,000.00.

2. Morals & good customs - A agreed to dance naked for P500.00.

3. Public policy - A agreed to hoard silver coins worth ₱1,000.00 in exchange for ₱3,000.00 paper money.
4. Public order - A agreed to march with several others in arms and protest against a city mayor for a consideration.

NATURE AND EFFECT OF OBLIGATIONS

Art. 1163. Every person obliged to give something is also obliged to take care of it with the proper diligence of a good father of a family, unless the law or the stipulation of the parties requires another standard of care.

Example: A, a contractor, after constructing the house of B but before delivery must secured the house. Otherwise anything stolen from the house will be the responsibility of A as he is guilty of negligence.

Art. 1165. When what is to be delivered is a determinate thing, the creditor in addition to the right granted him by Article 1170, may compel the debtor to make the delivery.

where is negligence - If the thing is indeterminate or generic, he may ask that the obligation be complied with at the expense of the debtor.

you omit diligence now If the obligor delays, or has promised to deliver the same thing to two or more persons who do not have the same interest, he shall be responsible for any fortuitous event until he has effected the delivery.

Determinate things - are specific, identified, segregated, particularly designated.

there is only delay if there is demand Indeterminate things - refer to a class of things, indefinite, not designated.

A agreed to deliver the building of B after construction on December 1, 1983. On said date A failed to deliver it despite demand from B. Under the situation A is liable because of delay in the delivery of the building.

Art. 1166. The obligation to give a determinate thing includes that of a deliveries all its accessions and accessories, even though they may not have been mentioned.

Accessories - are things which are joined to another as an ornament or to render it more perfect. Example: The frame of the picture. The keys of the building.

- things poorly done **Art. 1167.** If a person obliged to do something fails to do it, the same shall be executed at his cost.

not be undone This same rule shall be observed if he does it in contravention of the tenor of the obligation. Furthermore, it may be decreed that what has been poorly done be undone.

the expense of the one who made the delay A binds himself to construct the house of B with two bedrooms. If A failed to construct the house, B may ask X to construct the house at the expense of A.

Art. 1168. When the obligation consists in not doing and the obligor does what has been forbidden him, it shall also be undone at his expense.

A and B are owners of adjacent lots. A agreed with B not to construct a house on A's lot for three years as the same will be used by B as his garage. If A later on construct his house within three years then A will be liable for damages.

Art. 1169. Those obliged to deliver or to do something incur in delay from the time the obligee judicially or extrajudicially demands from them the fulfillment of the obligation.

However, the demand by the creditor shall not be necessary in order that delay may exist:

- 1) When the obligation or the laws expressly so declares; or
- 2) When from the nature and the circumstances of the obligation it appears that the designation of the time when the thing to be delivered or the service is to be rendered was a controlling motive for the establishment of the contract; or
- 3) When demand would be useless, as when the obligor has rendered it beyond his power to perform.

In reciprocal obligations, neither party incurs in delay if the other does not comply or is not ready to comply in a proper manner with what is incumbent upon him. From the moment one of the parties fulfills his obligation, delay by the other begins.

Examples: A obliged to deliver to B a building on December 1, 1983. On said date A failed to deliver the building. But B demanded delivery only on December 5. Then A is in delay on December 5 and not on December 1 in case A did not deliver on December 5.

Exception: Obligation so provides - A promise to pay B on December 1, 1983 without need of demand. If no payment on said date there is already delay.

2) When the law provides: Payment of income taxes demand is not necessary if no payment is made on due date.

3) Time is the essence of the contract - A instructed B to finish the building not later than December 1, 1983 since it will be used in the 1983 National convention of the Philippine Institute of Civil Engineering. If the building is not finished on said date there is already delay.

4) When demand will be useless - A obliged to deliver to B a determinate antique jar. Later on the jar was broken due to the negligence of A.

Art. 1170. Those who in the performance of their obligations are guilty of fraud, negligence, or delay, and those who in any manner contravene the tenor thereof, are liable for damages.

Fraud - means the voluntary and deliberate act to evade the fulfillment of the obligation. A delivered to B a bottle of vinegar rather than perfume as promised.

Negligence - is the failure to observe for the protection for the interest of another, that degree of care, precaution and vigilance which the circumstances justly demand, whereby such other person suffers injury.

Example: A while delivery 50 pieces of glass windows just throw it away to the vacant lot which caused the windows to be broken.

Delay - refer to Art. 1169.

Contravention of the tenor of the obligation - means breach of condition of the contract. A agreed to construct the house of B with a garage. But the garage was not constructed.

Art. 1171. Responsibility arising from fraud is demandable in all obligations. Any waiver of an action for future fraud is void.

A promised to deliver to B first class paint. If B waives in advance his right to revoer damages in case fraud is committed by A in the fulfillment of A's obligation, such waiver is void being against the law.

Art. 1172. Responsibility arising from negligence in the performance of every obligation is also demandable, but such liability may be regulated by the courts, according to the circumstances. Refers to contributory negligence.

Art. 1173. The fault or negligence of the obligor consists in the omission of that diligence which is required by the nature of the obligation and corresponding with the circumstances of the persons, of the time and of the place.

If the law or contract does not state the diligence which is to be observed in the performance, that which is expected of a good father of family shall be required.

Art. 1174. Except in cases expressly specified by the law, or when it is otherwise declared by stipulation, or when the nature of the obligation requires the assumption of risk, no person shall be responsible for those event which could not be foreseen, or, which, though foreseen, were inevitable.

Fortuitous events - refers to act of God - natural calamity - flood, typhoon, etc.

Force majeure - refers to act of Man - fire, theft & robbery - superior strength.

Art. 1178. Subject to the laws, all rights acquired in virtue of an obligation are transmissible, if there has been no stipulation to the contrary.

A, a contractor, before being paid by the owner of the house he constructed died. Then the right to receive payment of the contract price is transmitted to the heirs of A.

Transmission prohibited by law - A was contracted by B to construct the latter's building. While the building is half finished A died. X who is the son of A and also a contract cannot take over the contract because A was hired because of A's personal qualifications different from that to X.

DIFFERENT KINDS OF OBLIGATIONS

Period - consists in a space of time which has an influence on obligations as a result of a juridical act, and either suspends their demandability or produces their extinguishment.

Art. 1193. Obligations for whose fulfillment a day certain has been fixed, shall be demandable only when that day comes.

A day certain is understood to be that which must come or not, although it may not be known when.

A promise to finish the construction of B's house on December 1, 1983.

Art. 1194. In case of loss, deterioration or improvement of the thing before the arrival of the day certain the following rules shall be observed in case of the improvement, loss or deterioration of the thing during the pendency or arrival of the day certain:

- 1) If the thing is lost without the fault of the debtor, the obligation shall be extinguished.
- 2) If the thing is lost through the fault of the debtor, he shall be obliged to pay damages; it is understood that the thing is lost when it perishes or goes out of commerce, or disappears in such a way that its existence is unknown or it cannot be recovered;
- 3) When the thing deteriorates without the fault of the debtor, the impairment is to be borne by the creditor;
- 4) If it deteriorates through the fault of the debtor, the creditor may choose between the rescission of the obligation and its fulfillment, with indemnity for damages in either case;
- 5) If the thing is improved by its nature, or by time, the improvement shall insure to the benefit of the creditor;
- 6) If it is improved at the expense of the debtor, he shall have no other right that granted to the usufructuary.

Art. 1196. Whenever in an obligation a period is designated, it is presumed to have been established for the benefit of both the creditor and the debtor, unless from the tenor of the same or other circumstances it should appear that the period has been established in favor of one or of the other.

A agreed to finish the construction of B's building on December 1, 1983 and payment should be made also on said date. The period December 1, 1983 is for the benefit of A and B.

Art. 1197. If the obligation does not fix a period but from its nature and the circumstances it can be inferred that a period was intended, the courts may fix the duration thereof.

The courts shall also fix the duration of the period when it depends upon the will of the debtor.

In every case, the courts shall determine such period as may under the circumstances have been probably contemplated by the parties. Once fixed by the courts, the period cannot be changed by them.

A promise to finish the house of B as soon as possible.

Art. 1198. The debtor shall lose every right to make use of the period;

1) When after the obligation has been contracted, he becomes insolvent, unless he gives a guaranty or security for the debt;

2) When he does not furnish to the creditor the guaranties or securities which he has promised;

3) When by his own acts he has impaired said guaranties or securities after their establishment, and when through a fortuitous event they disappear, unless he immediately gives new ones equally satisfactory;

4) When the debtor violates any undertaking in consideration of which the creditor agreed to the period;

5) When the debtor attempts to abscond.

OBLIGATIONS WITH A PENAL CLAUSE

Penal clause is an accessory undertaking to assume greater liability in case of breach. It is attached to obligation in order to insure their performance.

Kinds: 1) Subsidiary when only the penalty can be demanded.

2) Joint when both the principal contract and the penal clause can be enforced.

A obliged to construct the house of B for ₱1M within one year. They agreed that in case A could not deliver the house within one year, A would suffer a penalty of ₱100.00 per day of delay.

Art. 1226. In obligation with a penal clause, the penalty shall substitute the indemnity for damages and the payment of interests in case of non-compliance, if there is no stipulation to the contrary. Nevertheless, damages shall be paid if the obligor refuses to pay the penalty or is guilty of fraud in the fulfillment of the obligation.

The penalty may be enforced only when it is demandable in accordance with the provisions of this Code.

Art. 1227. The debtor cannot exempt himself from the performance of the obligation by paying the penalty, save in the case where this right has been expressly reserved for him. Neither can the creditor demand the fulfillment of the obligation and the satisfaction of the penalty at the same time, unless this right has been clearly granted him. However, if after the creditor has decided to require the fulfillment of the obligation, the performance thereof should become impossible without his fault, the penalty may be enforced.

A obliges to construct the garage of B for ₱5,000.00 within one month. In case A cannot finish it as agreed he will pay B ₱1,000.00 as penalty. A cannot choose to pay ₱1,000.00 and desist in constructing the garage. Neither can B demand the penalty when A has complied with his obligation. However, where after demand for the fulfillment of the obligation the same becomes impossible without the fault of B, he can still demand the payment of penalty.

Art. 1228. Proof of actual damages suffered by the creditor is not necessary in order that the penalty may be demanded.

Art. 1229. The judge shall equitably reduce the penalty when the principal obliga-

tions has been partly or irregularly complied with by the debtor. Even if there has been no performance, the penalty may also be reduced by the courts if it is iniquitous or unconscionable.

A obliges to construct the 20-storey building of B within two years. If after two years only 19 stores was completed the court can reduce the penalty equitably.

Art. 1230. The nullity of the penal clause does not carry with it that of the principal obligation.

The nullity of the principal obligation carries with it that of the penal clause.

EXTINGUISHMENT OF OBLIGATIONS

PAYMENT OR PERFORMANCE

Art. 1232. Payment means not only the delivery of money but also the performance in any other matter, of an obligation.

Art. 1233. A debt shall not be understood to have been paid unless the thing or service in which the obligation consists has been completely delivered or rendered as the case may be.

Art. 1234. If the obligation has been substantially performed in good faith, the obligor may recover as though there had been a strict and complete fulfillment, less damages suffered by the obligee.

A obliged to construct the 10-storey building of B for P.M. But due to aircall restriction A can construct only 8-story building. In this case, the obligation shall be considered completely performed.

Art. 1235. When the obligee accepts the performance, knowing its incompleteness or irregularity, and without expressing any protest or objection, the obligation is deemed fully complied with.

A obliged to deliver to B 100 bags of cement. However, A delivered only 95 bags of cement and B did not object. In this case the obligation is deemed complied with there being no objection on the part of B.

LOSS OF THE THING DUE

Loss means the impossibility of performance in an obligation to render service.

Art. 1262. An obligation which consists in the delivery of a determinate thing shall be extinguished if it should be lost or destroyed without the fault of the debtor and before he has incurred in delay.

When by law or stipulation, the obligor is liable even for fortuitous events, the loss of the thing does not extinguish the obligation, and he shall be responsible for damages. The same rule applies when the nature of the obligation requires the assumption of risk.

Exception to the rule:

1) The law so provides; 2) By agreement; 3) Debtor's fault or fraud; 4) Debtor was guilty; 5) Debtor defaulted; 6) Law requires assumption of risk.

Art. 1264. The courts shall determine whether, under the circumstances, the partial loss of the object of the obligation is so important as to extinguish the obligation.

Art. 1266. The debtor in obligations to do shall also be released when the prestation becomes legally or physically impossible without the fault of the obligor.

A obliged to construct the house of B. Later on, A met an accident and died. The obligation is extinguished.

Art. 1267. When the service has become so difficult as to be manifestly beyond the contemplation of the parties, the obligor may also be released therefrom, in whole or in part.

Art. 1269. The obligation having been extinguished by the loss of the thing, the creditor shall have all the rights of action which the debtor may have against third persons by reason of the loss.

A obliged to construct the house of B. After completion but before delivery of the house X a third person burned the house. The obligation of A is extinguished. But B can go after X in court to recover the price of the house.

CONTRACTS

Art. 1305. A contract is a meeting of minds between two persons whereby one binds himself, with respect to the other, to give something or to render some service.

Contract to render some service - X agreed to construct the building of Y for ₱1M.

Essential elements:

1. Consent of the parties
2. Object or subject matter
3. Cause or consideration
4. Legal capacity of the parties

Stages of a contract:

1. Preparation or conception
2. Perfection or birth
3. Consumption or termination

Preparation or conception: X offers to sell to Y 100 bags of cement for ₱50.00 per bag. Y asks X to bring his cement to Y to enable him to see the quality of the cement. After examination Y bargain with X as to the price.

Perfection or birth: X agrees to receive ₱45.00 and Y received the cement for this amount.

Consumation or termination: X delivers the cement and Y received and paid the same.

Art. 1306. The contracting parties may establish such stipulation, clauses, to terms and conditions as they may deem convenient, provided they are not contrary to law, morals, good customs, public order or public policy. (See Art. 1159)

Art. 1308. The contract must bind both contracting parties; its validity or compliance cannot be left to the will of one of them.

X and Y entered into a contract where X bound himself to construct the house of Y if Y decides to sell his car.

Art. 1309. The determination of the performance may be left to a third person whose decision shall not be binding until it has been made known to both parties.

X and Y agreed that the price of cement will be determined by A. A decided that the price is ₱40.00 and informed X and Y of his decision which is binding to them.

Art. 1310. The determination shall not be obligatory if it is evidently inequitable. In such case, the courts shall decide what is equitable under the circumstances.

In the preceding example if the price is set at ₱100.00 Y can object and let the court decide because the price is inequitable and unfair.

Art. 1311. Contracts take effect only between the parties, their assigns and heirs, except in cases where the rights and obligations arising from the contract are not transmissible by their nature, or by stipulation or by provision of law. The heir is not liable beyond the value of the property he received from the decedent.

X has collectible against Y the contract price of ₱1M. If X died before payment the credit is transmitted to the son of X.

Not transmissible by nature: X, a contractor, was hired by Y to construct the latter building because of X's personal qualification. If X died before completion A the son of X even if he is also a contractor cannot take over.

Art. 1313. Creditors are protected in cases of contracts intended to defraud them.

Art. 1314. Any third person who induces another to violate his contract shall be liable for damages to the other contracting party.

X entered into a contract with Y to construct the latter house for ₱1M. A third party, knowing the existence of the contract enticed and induced Y to rescind the contract to prejudice X. X then can recover damages.

Art. 1315. Contracts are perfected by mere consent and from that moment 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.

X agreed to construct the house of Y for ₱1M on January 1, 1982 to be completed on December 31, 1982. The contract was perfected on January 1, 1982 although there was no payment and completion of the house.

Art. 1317. No one may contract in the name of another without being authorized by the latter, or unless he has by law a right to represent him.

A contract entered into in the name of another by one who has no authority or legal representation, or who has acted beyond his powers, shall be unenforceable, unless it is ratified, expressly or impliedly, by the person on whose behalf it has been executed, before it is revoked by the other contracting party.

X is a mere employee of the X, Inc. construction firm entered into a contract with Y, without the authority of the Company, to construct the building of Y for ₱5M. The contract is not valid. But later on when the President of the Company found out of the contract ratified the same then the contract is valid.

ESSENTIAL REQUISITES OF CONTRACTS

Art. 1318. There is no contract unless the following requisites concur:

- 1) Consent of the contracting parties.
- 2) Object certain which is the subject matter of the contract.
- 3) Cause of the obligation which is establish.

X agreed to construct the house of Y for ₱1M.

CONSENT

Art. 1319. Consent is manifested by the meeting of the offer and acceptance upon the thing and the cause which are to constitute the contract. The other must be certain and the acceptance absolute. A qualified acceptance constitutes a counter-offer.

Acceptance made by letter or telegram does not bind the offer except from the time it came to his knowledge. The contract, in such a case, is presumed to have been entered into in the place where the offer was made.

X and Y both agreed for X to construct Y's house for ₱1M. Absolute acceptance.

X bargain for ₱300,000.00 - Qualified acceptance no contract.

Art. 1320. An acceptance may be express or implied.

Express - oral or in writing. Implied - when one rendered service without objection of the other party.

Art. 1321. The person making the offer may fix the time, place, and manner of

acceptance, all of which must be complied with. Newspaper advertisement for bidding.

Art. 1322. An offer made through an agent is accepted from the time acceptance is communicated to him.

A construction firm appointed its manager X to construct the house of Y for ₦1M, on January 1, 1982. X offered to construct the house of Y for ₦1M. On January 31, 1982, Y accepted the offer of X verbally. X notified the Company on February 5, 1982. When was the contract perfected? On February 5, 1982, when acceptance of the offer was made known to the Company and not on January 31, 1982 when X informed the Company.

Art. 1323. An offer becomes ineffective upon the death, civil interdiction, insanity or insolvency of either party before acceptance is conveyed.

In the example above if before acceptance on February 5, 1982, any of the grounds stated in Art. 1323 exist the offer becomes ineffective. No contract.

Art. 1324. When the offerer has allowed the offeree a certain period to accept, the offer may be withdrawn at any time before acceptance by communicating such withdrawal, except when the option is founded upon a consideration, as something paid or promised. (earnest money obligates the offerer to the period allowed the offeree to the period until it expired. In other words, the offerer cannot withdraw from the offer until after the expiration of the period allowed.

Art. 1325. Unless it appears otherwise, business advertisement of things for sale are not definite offers, but mere invitations to make an offer. (the offerer is not bound by the advertisement to sell and as to the price).

Art. 1326. Advertisement for bidders are simply invitation to make proposals, and the advertiser is not bound to accept the highest or lowest bidder, unless the contrary appears. (In reality the one making the offer is the bidder, the advertiser merely accepts the offer made.)

Art. 1327. The following cannot give consent to a contract:

- 1) Unemancipated minors;
- 2) Insane or demented persons, and deaf-mute who do not know how to write.

Unemancipated minors - below the age of majority (21), not married and not released from parental authority.

Demented person and deaf-mute - not in full possession of his mental faculty not knowing what is right and wrong.

Art. 1328. Contracts entered into during a lucid interval are valid. Contracts agreed to in a state of drunkenness or under a hypnotic spell are voidable.

Lucid interval is a temporary period of sanity.

Art. 1330. A contract where consent is given through mistake, violence, intimidation, undue influence, or fraud is voidable.

Art. 1331. In order that mistake may invalidate consent, it should refer to the substance of the thing which is the object of the contract, or to those conditions which have principally moved one or both parties to enter into the contract.

X thought that he is selling a bag of cement to Y while in fact it is a bag of sand.

Art. 1335. There is violence when in order to wrest consent, serious or irresistible force is employed.

There is intimidation when one of the contracting parties is compelled by a reasonable and well-grounded fear of an imminent and grave peril upon his person or property or upon the person or property of his spouse, descendants or ascendants, to give his consent. (This Art. applies even if applied by third person)

To determine the degree of the intimidation, the age, sex and condition of the person shall be borne in mind.

A threat to enforce one's claim through competent authority, if the claim is just or legal, does not vitiate consent. Example of violence -

X refused to construct the house of Y. Then Y brought his bodyguards and beat X.

Intimidation - unless X construct the house of Y, Y's bodyguards will kidnap X's beautiful daughter.

Art. 1337. There is undue influence when a person takes improper advantage of his power over the will of another, depriving the latter of a reasonable freedom of choice.

The following circumstances shall be considered: the confidential, family, spiritual and other relations between the parties, or the fact that the person alleged to have been unduly influenced was suffering from mental weakness, or was ignorant or in financial distress.

Art. 1338. There is fraud when, through insidious words or machinations of one of the contracting parties the other is induced to enter into a contract which, without them, he would not have agreed to.

Fraud before or at the time of the perfection of the contract - X offered to sell to Y a bag of cement as represented by X when in fact it is a bag of sand.

Fraud after the perfection of the contract - X sold and Y received 10 bags of cement. Afterwards, X replaced the two bags with sand. Here there is already a consummated contract, hence Y is entitled for damages. Unlike in the example above wherein the contract can still be annulled there being no consent freely given.

Deception as to true boundaries of land can vitiate consent and annul the contract.

Art. 1341. A mere expression of an opinion does not signify fraud, unless made by an expert and the other party has relied on the former's special knowledge.

X is a civil engineer and an expert and licensed appraiser. He told Y after appraisal the building offered by A for sale that it is worth ₱1M, which convinced Y to buy the building. Later on, it turned out to be that the building is only worth ₱.5M. There is fraud.

Art. 1344. In order that fraud may make a contract voidable, it should be serious and should not have been employed by both contracting parties.

Incidental fraud only obliges the person employing it to pay damages.

OBJECT OF CONTRACTS

Art. 1347. All things which are not outside the commerce of men, including future things, may be the object of a contract. All rights which are not intransmissible may also be the object of contracts.

No contract may be entered into upon future inheritance except in cases expressly authorized by law.

All services which are not contract to law, morale, good customs, public order or public policy may likewise be the object of contract.

Art. 1340. Impossible things or services cannot be the object of contracts.

X agreed to construct the building of Y up to the sky.

Art. 1349. The object of the contract must be determinate as to its kind.

CAUSE OF CONTRACTS

Meaning - is the immediate, direct and proximate reason which justifies the creation of an obligation thru the will of the contracting parties.

X agreed to construct the house of Y in accordance with the plans and specifications made by the architect.

Art. 1350. In onerous contracts the cause is understood to be, for each contracting party, the prestation or promise of a thing or service by the other; in remunerated ones, the service or benefit which is remunerated.

Y retains the services of X, a contractor, to construct Y's building.

Art. 1352. Contracts without cause or with unlawful cause, produce no effect. The cause is unlawful if it is contrary to law, morals, good customs, public order or public policy.

Art. 1353. The statement of a false cause in contracts shall render them void.

In a contract entered between X and Y, it appears that X is to construct a swimming pool for Y for P200,000.00. In truth, however, X is to construct a fishpond.

Art. 1354. Although the cause is not stated in the contract, it is presumed that it exists and is lawful, unless the debtor proves the contrary.

FORM OF CONTRACTS

Art. 1356. Contracts shall be obligatory, in whatever form they may have been entered into, provided all the essential requisites for their validity are present. However, when the law requires that a contract be in some form in order that it may be valid or enforceable, or that a contract be proved in a certain way, that requirement is absolute and indispensable. In such cases, the right of the parties stated in the following article cannot be exercised.

Form required for validity - X donated to Y a parcel of land verbally and the latter accepted the donation also verbally. The donation is not valid because the law required that the donation must be in writing and in a public instrument because the object is real property.

Form required that contract be enforceable - X agreed to construct the building of Y for two years for P2M. The contract is merely oral. Later on, X refused to start the construction, may Y in an action filed in court, prove the contract over the objection of X? No. The contract is covered by the Statute of Frauds and in order to prove it, there must be some writing, note or memorandum signed by X.

Note: The form is for evidential purpose only. If the parties permit such contract to be proved, without objection as to the form of the proof, it is then just as binding as if the statute had been complied with.

Art. 1357. If the law requires a document or other special form, as in the acts and contracts enumerated in the following article, the contracting parties may compel each other to observe that form, once the contract has been perfected. This right may be exercised simultaneously with the action upon the contract.

Reasons why the contract must be in writing:

- 1) Each party then knows what he is agreeing to when the agreement is written.
- 2) The writing assures both parties that at a future date there will be less chance of disagreement as to what has been agreed upon.
- 3) It eliminates the possibility that either party to the contract can effectively deny having made the contract.

X sold to Y a house and lot but the contract appears in a private document or writing. Under the law when sale refers to real property, like a house and lot the same must

be in a public document, otherwise, the contract of sale cannot be registered in the registry of property. Since it is not in the proper form the right of Y is to compel X to execute a deed of sale in a public document in order that the same may be registered with the Register of Deeds and thereby be binding against the whole world.

Art. 1358. The following must appear in a public document:

- 1) Acts and contracts which have for their object the creation, transmission, modification or extinguishment of real rights over immovable property; sales of real property or of an interest therein are governed by articles 1403, No. 2 and 1405; x x x x

All other contracts where the amount involved exceeds five hundred pesos must appear in writing, even a private one. But sales of goods, chattels or things in action are governed by Articles 1403, No. 2 and 1405.

Public document defined. In the law of evidence, in all instances where by law or regulation the document is filed in a public office and required to be kept there it is of public nature.

Private document not sufficient to convey title to land - While a private document of sale is valid and binding upon the parties with respect to the subject matter thereof, yet it is not sufficient to convey title or any right therein. Acts and contracts which have for their object the creation, transmission, modification or extinguishment of real rights over immovable property must appear in a public document.

Contracts involving more than ₱500.00. Article 1358 of the Civil Code provides that contracts involving more than ₱500.00 must appear in writing, but nothing is said therein that such requirement is necessary for their validity or enforceability. The writing required under Article 1358 is merely for convenience and so the agreement in the present case can be enforced even if it may not be in writing.

Rule in interpretation of a contract: The cardinal rule in the interpretation of contracts is to the effect that the intention of the contracting parties should always prevail because their will has the force of law between them.

Meaning of unenforceable contracts: A contract is said to be unenforceable when it cannot be sued upon or enforced in court unless it is ratified.

Art. 1402. The following contracts are unenforceable unless they are ratified:

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

Purpose of Statute of Frauds: - is the law designed to prevent the commission of

frauds. To guard against frauds the law requires that in certain agreements specified in the Statute of Frauds the same must be in writing otherwise it is unenforceable by action in court. "The Statute of Frauds is based on equity and operates only under certain specified conditions and when adequate relief at law is unavailable."

Statute of Frauds aid to memory. Since memory is many times unreliable, oral agreement may sometimes result in injustice. To aid human memory, to prevent the commission of injustices due to faulty memory, to discourage intentional misrepresentation of these are the principal aims of the statute of frauds.

Agreement not to be performed within a year - X entered into a contract with Y on January 1, 1982 for the construction of his (Y's) house to begin on February 1, 1985. This contract must be in writing to be enforceable.

Agreement for leasing for longer period than one year or sale of real property: X leased his condominium to Y for two years or sell the same. The contract must be in writing and in public document.

The statute of frauds apply only to executory contracts which is not yet partially or totally performed because there is a wide field for fraud.

QUASI-DELICTS

Art. 2176. Whoever by act or omission causes damage to another, there being fault or negligence, is obliged to pay for the damage done. Such fault or negligence, if there is no pre-existing contractual relation between the parties, is called a quasi-delict and is governed by the provisions of this Chapter.

A case of negligence: - X, a contractor, at about 2:00 p.m. of Sunday received a telephone call that a plank of wood is hanging in the 10th floor of the building under construction which might fall down and might cause injury to passerby. The contractor promised to send a worker to remove the wood. At 4:00 p.m. people coming out of the theatre were hit on the heads by the falling wood which caused injuries to them. Under the circumstances the contractor is liable for damages. The delay in leaving this danger unguarded so long after information of the trouble was received constitute negligence on its part.

Art. 2180. The obligation imposed by article 2176 is demandable not only for one's own acts or omissions, but also for those of persons for whom one is responsible.

Employers shall be liable for the damages caused by their employees and household helpers acting within the scope of their assigned tasks, even though the former are not engaged in any business or industry. x x x

The responsibility treated of in this article shall cease when the persons herein mentioned prove that they observed all the diligence of a good father of a family to prevent damage.

Art. 2181. Whoever pays for the damage caused by his dependents or employees may recover from the latter what he has paid or delivered in satisfaction of the claim.

Art. 2192. If damage referred to in the two preceding articles should be the result of any defect in the construction mentioned in Article 1723, the third person suffering damages may proceed only against the engineer or architect or contractor in accordance with said article.

Art. 2194. The responsibility of two or more persons who are liable for quasi-delict is solidary.

Joint tortfeasors are jointly and severally liable for the tort which they committed. The person injured may sue all of them, or any number less than all. Each is liable for the whole damages.

CONTRACT FOR A PIECE OF WORK

Art. 1713. 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 or compensation. The contractor may either employ only his labor or skill, or also furnish the material.

Contract for a piece of work distinguished from a contract of labor:

- 1) In the former the contractor undertakes to perform a complete work for a price payable upon the delivery of the work. While in the latter the laborers agree to perform work or services for the employer for wages or salaries.
- 2) In the former the object is the result of the work while in the latter the object is the daily services of laborers.
- 3) In the former in case the work is lost the risk is borne by the contractor before delivery, while in the latter the risk is borne by the employer for any loss unless such loss is due to their own fault or negligence.
- 4) In the former the relationship is between independent contractor and the employer while in the latter the relationship is between employer and employees.
- 5) In the former the relationship is covered by the contract they entered in the latter it is covered by the labor code.
- 6) In the former the contractor is not supervised and controlled by the employer except as to the completed work while in the latter the employees are directly under the supervision and control by the employer.

Art. 1714. If the contractor agrees to produce the work from material furnished by him, he shall deliver the thing produced to the employer and transfer dominion over the thing. This contract shall be governed by the following articles as well as by the pertinent provisions on warranty of title and against hidden defect and the payment of price in a contract of sale.

Art. 1715. The contractor shall execute the work in such a manner that it has the qualities agreed upon and has no defects which destroy or lessen its value or fitness for its ordinary or stipulated use. Should the work be not of such quality the employer may require that the contractor remove the defect or execute another work. If the contractor fails or refuses to comply with this obligation, the employer may have the defect removed or another work executed at the contractor's cost.

Art. 1716. An agreement waiving or limiting the contractor's liability for any defect in the work is void if the contractor acted fraudulently.

Art. 1717. If the contractor bound himself to furnish the material, he shall suffer the loss if the work should be destroyed before its delivery, except when there has been delay in receiving it.

Art. 1718. The contractor who has undertaken to put only his work or skill, cannot claim any compensation if the work should be destroyed before its delivery, unless there has been delay in receiving it, or if the destruction was caused by the poor quality of the material, provided this fact was communicated in due time to the owner. If the material is lost through a fortuitous event, the contract is extinguished.

Art. 1719. Acceptance of the work by the employer relieves the contractor of liability for any defect in the work, unless:

- 1) The defect is hidden and the employer is not, by his special knowledge, expected to recognize the same; or
- 2) The employer expressly reserves his rights against the contractor by reason of the defect.

Art. 1720. The price of compensation shall be paid at the time and place of delivery of the work, unless there is a stipulation to the contrary. If the work is

to be delivered partially, the price or compensation for each part having been fixed, the sum shall be paid at the time and place of delivery, in the absence of stipulation.

Art. 1721. If, in the execution of the work, an act of the employer is required and he incurs in delay or fails to perform the act, the contractor is entitled to a reasonable compensation.

The amount of the compensation is computed on the one hand by the duration of the delay and the amount of compensation stipulated, and on the other hand, by what the contractor has saved in expenses by reason of the delay, or is able to earn by a different employment of his time and industry.

Art. 1722. If the work cannot be completed on account of a defect in the material furnished by the employer, or because of orders from the employer, without any fault on the part of the contractor, the latter has a right to an equitable part of the compensation proportionally to the work done, and reimbursement for proper expenses made.

Art. 1723. The engineer or architect who drew up the plans and specifications for building is liable for damages if within fifteen years from the completion of the structure, the same should collapsed by reason of a defect in those plans and specifications, or due to the defects in the ground. The contractor is likewise responsible for the damages if the edifice falls, within the same period, on account of defects in the construction or the use of materials of inferior quality furnished by him, or due to any violation of the terms of the contract. If the engineer or architect supervises the construction, he shall be solidarily liable with the contractor.

Acceptance of the building, after completion, does not imply waiver of any of the causes of action by reason of any defect mentioned in the preceding paragraph.

The action must be brought within ten years following the collapse of the building.

Illustration. - Where the foundation of a building is designed to carry a specified load, the sinking of the floor due to the new additions added by the owner is not the building contractor's fault but that of the owner and the architect who failed to provide the adequate foundation to take care of the new weight caused by the additions, for a building-contractor engagement is merely to build according to plans and specifications. (G.R. Koster vs. Zulueta L 9305 11/28/56)

Art. 1724. The contractor who undertakes to build a structure or any other work for a stipulated price, in conformity with plans and specifications agreed upon with the landowner, can neither withdraw from the contract nor demand an increase in the price on account of the higher costs of labor or materials, save when there has been a change in the plans and specifications, provided:

- 1) Such change has been authorized by the proprietor in writing and
- 2) The additional price to be paid to the contractor has been determined in writing by both parties.

Art. 1725. The owner may withdraw at will from the construction of the work although it may have been commenced, indemnifying the contractor for all the latter's expenses, work, and the usefulness which the owner may obtain therefrom, and damages.

Art. 1726. When a piece of work has been entrusted to a person by reason of his personal qualifications, the contract is rescinded upon his death.

In this case the proprietor shall pay the heirs of the contractor in proportion to the price agreed upon, the value of the part of the work done, and of the materials prepared, provided the latter yield him some benefit.

The same rule shall apply if the contractor cannot finish the work due to circumstances beyond his control.

Note: The work cannot be finished due to circumstances beyond the control of the contractor as when it becomes legally and physically impossible of performance. (Theatres' Supply Corp. vs. Ligangan Malolos, 48 e.g. 1803; Labayan vs. Talisay Silay Milling Co. 52 Phil. 440)

Art. 1727. The contractor is responsible for the work done by persons employed by him.

Art. 1728. The contractor is liable for all the claims of laborers and others employed by him, and of third persons for death or physical injuries during the construction.

Art. 1729. Those who put their labor upon or furnish materials for a piece of work undertaken by the contractor have an action against the owner up to the amount owing from the latter to the contractor at the time the claim is made. However, the following shall not prejudice the laborers, employees and furnishers of materials:

- 1) Payments made by the owner to the contractor before they are due;
- 2) Renunciation by the contractor of any amount due him from the owner.

This article is subject to the provisions of special laws. (Act No. 3959) states:

Sec. 1. Any person, company, firm, or corporation, or any agent or partner thereof, carrying on any construction or other work through a contractor, shall require such contractor a bond for the full amount which he is entitled to receive by virtue of the contract, until he shall have shown that he first paid the wages of the laborers employed in said work, by means of an affidavit made and subscribed by said contractor before a notary public or other officer authorized by law to administer oaths; provided, that the bond heretofore provided for shall be automatically cancelled at the expiration of one year from the completion of the work, unless a claim for the payment of laborer's wages has been filed within said period, in which case said bond shall continue in force and effect until such claim has been paid or otherwise finally settled.

Sec. 2. Any person, company, firm, or corporation or any agent or partner thereof, who shall violate the provisions of the preceding section by paying to the contractor the entire cost of the work before receiving the affidavit mentioned in such section, shall be responsible jointly and severally with the contractor for the payment of the wages of the laborers employed in the work covered by the contract.

Sec. 3. Any contractor making a false statement in the affidavit required to be made by him under Section 1 of the Act, shall be guilty of the crime of perjury defined and penalized in Article 183 of Act No. 3815, known as the Revised Penal Code. (Approved - December 2, 1932)

Art. 1730. If it is agreed that the work shall be accomplished to the satisfaction of the proprietor, it is understood that in case of disagreement the question shall be subject to expert judgment.

If the work is subject to approval of a third person, his decision shall be final, except in cases of fraud or manifest error.

Art. 1731. He who has executed work upon a movable has a right to retain it by way of pledge until he is paid. (Art. 1707. The laborer's wages shall be a lien on the goods manufactured or the work done.)

Additional data for adjustments :

1. Inventories as of December 31, 1986 were :

Finished goods	P 70,000
Goods in Process	25,000
Raw Materials	22,000
Factory Supplies	1,800

2. Annual depreciation rate on Factory Equipment and Office Furniture and Equipment is 10%.
3. Tools on hand P4,000.
4. Patent is to be amortized at 20% per year.
5. Interest on Mortgage Payable is 12%. No entry for interest has been made from July 1, 1986.
6. The allowance for bad debts is to be maintained at 10% of outstanding accounts receivable.
7. Rent, Light and Power and Employees Benefits are to be allocated as follows:

Manufacturing	50%
Selling	20%
General	30%

Required :

1. 10 column Worksheet with columns for: Trial Balance, Adjustments, ?Cost of Goods Manufactured, Income Statement and Balance Sheet.
2. Statement of Cost of Goods Manufactured
3. Income Statement (For one year period)
4. Balance Sheet
5. Adjustment Entries
6. Closing Entries

Requirement No. 2

HILL VIEW FACTORY
Statement of Cost of Goods Manufactured
For the year Ended December 31, 1979

Raw Materials Used

Raw Materials Inventory, January 1		P 16,000
Add Net Cost of Purchases		
Purchases	P151,000	
Less Purchase Returns and Allowances	<u>10,890</u>	
Net Purchases	140,110	
Add Freight In	<u>12,500</u>	152,610
Total Raw Materials Available for Use		168,610
Less Raw Materials Inventory, December 31		<u>22,000</u>
Cost of Raw Materials Used		146,610

Direct Labor

90,400

Manufacturing Expenses

Indirect Labor	13,100	
Rent	12,000	
Repairs and Maintenance	8,600	
Insurance	7,800	
Light and Power	7,300	
Depreciation — Factory Equipment	7,000	
Taxes	6,350	
Tools Used	6,120	
Amortization of Patents	6,000	
Indirect Materials	5,900	
Supplies	3,040	
Employees Benefits	<u>2,005</u>	85,215
Total Manufacturing Costs		<u>322,225</u>
Add Goods in Process, January 1		19,000
Total Cost Placed in Process		<u>341,225</u>
Less Goods in Process, December 31		<u>25,000</u>
Cost of Goods Manufactured		<u><u>P316,225</u></u>

EXHIBIT C

Requirement No. 3

HILL VIEW FACTORY
Income Statement
For the year Ended December 31, 1979

Income from Sales		P545,300
Sales		6,500
Less Sales Returns and Allowances		<u>538,800</u>
Net Sales		
Less Cost of Goods Manufactured and Sold	P 36,000	
Finished Goods Inventory, January 1	<u>316,225</u>	
Add Cost of Goods Manufactured (Exhibit C)	<u>352,225</u>	
Total Good Available for Sale	<u>70,000</u>	<u>282,225</u>
Less Finished Goods Inventory, December 31		<u>256,575</u>
Gross Income from Sales		
Less Selling Expenses	53,880	
Taxes	36,000	
Commissions	19,800	
Salaries	11,000	
Advertising	4,800	
Rent	2,920	
Light and Power	<u>802</u>	<u>129,202</u>
Employees Benefits		<u>127,373</u>
Net Income from Sales		
Less General Expenses	27,090	
Salaries	7,200	
Rent	6,030	
Bad Debts	4,380	
Light and Power	3,000	
Depreciation — Office Furn. & Equipt.	<u>1,203</u>	<u>48,903</u>
Employees Benefits		<u>78,470</u>
Net Operating Income		<u>12,000</u>
Less Interest Expense		<u>P 66,470</u>
Net Income for the Period		

EXHIBIT B

18 ELEMENTARY ACCOUNTING

Requirement No. 4

HILL VIEW FACTORY

Balance Sheet

December 31, 1979

Assets

Current Assets

Cash on Hand and in Banks		P 70,000	
Accounts Receivable	P100,300		
Less Allowance for Bad Debts	<u>10,030</u>	90,270	
Inventories			
Finished Goods	70,000		
Goods in Process	25,000		
Raw Materials	22,000		
Factory Supplies	<u>1,800</u>	<u>118,800</u>	
Total Current Assets			P279,070

Equipment

Factory Equipment	70,000		
Less Accumulated Depreciation	<u>14,000</u>	56,000	
Office Furniture and Equipment	<u>30,000</u>		
Less Accumulated Depreciation	<u>6,000</u>	24,000	
Tools		<u>4,000</u>	
Total Equipment			84,000

Intangible Asset

Patents			24,000
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Total Assets

P387,070

Liabilities and Owner's Equity

Current Liabilities

Accounts Payable	P 86,100		
Interest Payable	6,000		
SSS Payable	2,309		
Withholding Taxes Payable	<u>6,691</u>		
Total Current Liabilities		P101,100	

Long-term Liability

Mortgage Payable	<u>100,000</u>		
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Total Liabilities

P201,100

Owner's Equity

V. Bueno Capital, January 1		130,000	
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Add Net Increase in Capital

Net Income per Exhibit B

66,470

Less V. Bueno, Drawing

10,500

55,970

185,970

Total Liabilities and Owner's Equity

P387,070

EXHIBIT A