



TÍTULO

**NULLITY OF CONTRACTS IN THE SPANISH AND THE
PHILIPPINES CIVIL CODE**

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**I UNIVERSITY EXPERT COURSE ON SPANISH LAW TAUGHT IN ENGLISH: GLOBAL STUDY
(2014/15)**

**NULLITY OF CONTRACTS IN THE
SPANISH AND THE PHILIPPINES CIVIL CODE**

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NULLITY OF CONTRACTS IN THE SPANISH AND THE PHILIPPINES CIVIL CODE

1. INTRODUCTION:

The Philippine Civil Code is strongly influenced by the Spanish Civil Code which was approved by Royal Decree of July 24th, 1889.

There are many similarities between our Civil Codes that can be noted but there are also significant differences.

The purpose of this report is to give a comparative legal view of one common legal category regulated in our Civil Codes which is NULLITY OF CONTRACTS.

2. A SHORT VIEW TO OUR COMMON HISTORY

To understand the existence of such similarities between our legislations, we should look back through the common history shared by our countries. Spanish colonization played an influential role in establishing legislation in The Philippines.

The Spanish Civil code has had a large degree of acceptance not only in The Philippines but throughout all South American countries, even after the independence of these countries from the Spanish Kingdom. These young independent countries, such as our beloved Philippines, felt this right as their own. In fact, since the sixteenth century, the Philippine law, was fully regulated by the Spanish law as was the rest of the Spanish colonies.

Unlike the colonization of other European countries, the intent of Spanish colonization was not solely focused on extraction of natural resources; instead, there was a real implementation of cultural and economic institutions. Spanish law integration led to the establishment of a true miscegenation. This symbiosis grew strong despite the independence of nations and Spanish law persisted both in spirit and technique.

The colonies, then turned into Republics, did not start from a historical vacuum, but all its past, institutions and rules, were impregnated with the Spanish influence, which survived and still survive nowadays as important rules to regulate human relationships, such as the Civil Code does.

There is a fundamental fact to note when trying to understand why a Civil Code exists in the Philippines and in other Latin American countries. To do this, we should remember that the “encoder phenomenon” involves the use of methodology with a systematic and articulated mind-set. Law, with homogeneous content, expressed in precise language, confronting problems of a clearly bounded area. Quoting to Gomez Arboleya (vid Estudios de Teoría de la Sociedad y del Estado», IEP, Madrid 1962): *a code is an authentic treatise on geometry, which once seated the basic axioms and first principles must proceed via deductive you the ultimate consequences "*) As we can see, nothing to do with the old system of compilations or unsystematic compendia of existing laws or royal decrees...

Civil codification in Latin America and in the Philippines aided the consecration of Roman law and aided to update and purge Spanish law without a break with our legal tradition. It also represented a form of rationalization with the legal system previously established.

3. NULLITY AS A CATEGORY OF INEFFICACY:

The regulation of the *nullity of contracts* in the Civil Code of The Philippines and the Spanish civil Code is very similar. Nullity is included in a wide category that we know as Inefficacy of Contracts, which includes: nullity, voidability and rescission.

The Civil Code of the Philippines, as we pointed out, has many Spanish influences. However, one noticeable difference, in favour of the Philippines Civil Code, is the more reasonable and structured manner in which it is organized; most notably within the different categories of inefficacy. Maybe this is because they have learned from some of the mistakes made in the Spanish regulation and they have adapted its rules to avoid such mistakes.

There is only a significant difference between both regulations. It is the figure of the *unenforceable contracts* that the Civil Code of The Philippines regulates a particular category of inefficacy and that does not exist, as such, in the Spanish Civil Code.

As we have said before, nullity is one of the three main categories of ineffectiveness regulated in the Civil Code:

Nullity: null contracts have such a far-reaching defect that it impedes that the contract produces any effect whatsoever. Nullity is the strictest sanction to a contract as the legal act is completely deprived of legal consequences. *Quod nullum est nullum effectum producit.*

Voidability: voidable contracts have a defect, but they are valid as long as they are not challenged due to the existence of such defect. In a voidable contract there is a cause of voidability that can be claimed by only one of the parties to destroy the effects of the contract which was effective up to that moment.

Rescission: rescission is the ineffectiveness stated by law for contracts which, although having all the essential elements and not having any defects therein, entail a prejudice for certain persons to whom the law provide with an action to stop the contract from being effective.

4. THE EFFECTS OF THE NULLITY

A contract is a voluntary, deliberate, and legally binding agreement between two or more competent parties. Each party to a contract acquires rights and duties relative to the rights and duties of the other parties. But a contract can be ineffective. A contract is ineffective when it does not produce the effects wished for and which can be reasonably expected from that contract.

This lack of effects results from the fact that there is a divergence between the contract as foreseen by the legal system and the contract which has been executed by the parties. The contract was not executed in accordance with the provisions of the legal system and therefore it does not produce effects, although depending on the type of inefficacy the contract might start to produce effects and stop having them afterwards.

A null (or null and void) contract does not produce any legal effects, it is a contract without legal efficacy (absolute nullity). A null contract is so from the moment of execution (*ab initio*). A null contract cannot be enforced. Therefore, it can never become effective through confirmation or due to the lapse of time (See art. 1.409 in fine PCC.) . Nullity is definitive.

5. THE CASES OF NULLITY OF CONTRACTS:

The cases of nullity contracts in the Spanish and Philippines regulations are:

1. Contracts contrary to the law are null and void, unless such law provides for a sanction different than nullity (art. 6.3 and 1.258 SCC) SCC). This refers to imperative Laws and not to dispositive Laws, the fulfilment of which is not compulsory. In this regard, see art. 1.409 (1) PCC that refers to contracts “whose cause, object or purpose is contrary to law, morals, good customs, public order or public policy”.
2. Contracts lacking the essential elements thereof. Contracts lacking consent, object or cause shall be null and void (art. 1.261 SCC; see art. 1.318 PCC). Art. 1.409 (3) PCC refers to those “whose cause or object did not exist at the time of the transaction”.
3. Contracts which object is not determined or is unlawful (arts. 1.271, 1.272, 1.273 and 1.305 SCC). This refers to contracts which object is completely undetermined⁹ or is out of commerce (extra commercio). See art. 1.409 (4) and (6) PCC that refer to contracts “whose object is outside of the commerce of men” and those “where the intention of the parties relative to the principal object of the contract cannot be ascertained”. This latter case seems to be more related to the impossibility to interpret the contract (see, art. 1.289 in fine SCC), but in the end it is a problem of non-determination of the object. See also art. 1.409 (1) PCC again for contracts whose object is contrary to Law.

A certain degree of indetermination is admitted as long as it can be determined without the need of a new agreement between the parties. However, nowadays, the courts adopt a flexible view of this requirement and are ready to find an object in a contract when it is “implicitly” agreed on it. A good example we find in services contracts in which is quite common that the performance of the provider of the service is determined throughout the life of the contract depending on the different necessities that arise during its performance.

4. Contracts with an unlawful cause (arts. 1.275, 1.305 and 1.306 SCC). The cause of a contract is unlawful when the contracting parties have a purpose that is contrary to the Law or moral and therefore it does not deserve the protection of the legal system. See arts. 1.409 (1) and 1.352 PCC.
5. Formal contracts lacking the required form for their perfection. That is, contracts that do not comply with the form ad solemnitatem required for them by Law. This case is not expressly provided in art. 1.409 PCC but in

art. 1.356 PCC which provides that when the law requires a contract to be in some form in order to be valid such requirement is absolute and indispensable.

As we can see, the cases of nullity of contracts are the most extreme and serious. This is why the strictest sanction is chosen for them. Nullity is said to protect public interest.

Nullity operates *ipso iure*, which means that there is no need for a judicial declaration thereof or a legal action to be started for the contract to be null and void. Of course, when there are discrepancies between the parties as to the existence of such nullity or when one or both of the parties have undertaken a performance deriving from the null contract (in which case everything has to go back to the situation previous to the contract because such contract would be considered as never executed) they might have to take the case to Court, but the decision of the Judge will only have a declarative nature.

The action to claim for the nullity of a contract at Court can be started at any time; there is not term for it. In fact, it is expressly provided in art. 1.410 PCC: "the action or defence for the declaration of the inexistence of a contract does not prescribe". And it can be done by whoever is interested in the declaration of nullity. Anybody with a rightful interest can invoke the nullity, and it can also be declared *ex officio* by the judge. This derives from its public interest nature. The Supreme Court has decided that even the person responsible for the nullity is entitled to bring the case for the declaration of the nullity to Court.

In principle, and taking into account that anybody with a legitimate interest can start the action asking for the nullity of the contract to be declared, also the person responsible for having caused the nullity shall be able to do so. This is the position that the Spanish Supreme Court historically followed, giving primacy to the possibility to denounce nullity before the principle that nobody can go against his own acts. However, a Supreme Court decision of June 6, 1983 decided otherwise stating that the party that created the nullity cannot claim for its declaration in court as that would go against his own acts and would oppose other legal principles like the prohibition of abusive exercise of rights, good faith, the impossibility to live the validity of the contract to the will of one of the contracting parties, etc. However, the most recent decisions of the Spanish Supreme Court follow the previous line of thinking and understand that any of the contracting parties can ask for the declaration of the nullity of the contract, even the party who provoked it (see, STS March 3, 2009 and December 21, 2009).

6. PARTIAL NULLITY:

Finally, it has to be said that nullity can be partial. It might be that only a part of the contract is void. Our Civil code does not contain a specific rule about this possibility (the Civil Code of The Philippines does in art. 1.420 PCC). Therefore, if the nullity of a stipulation should entail the nullity of the whole contract or only that of such null stipulation while the rest of the contract remains in force shall be decided in a case by case basis. In principle, the Courts will tend to establish a partial nullity in favour of the conservation of the legal act (for example nullity of the unfair clause (but not of the whole contract) in a mortgage loan contract fixing an extremely high yearly default interest).

It is provided, however, in other legal texts. For example, in article 83 of the Spanish Rehashed Consumers Law (recently modified in 2014) for the case of unfair terms in consumers contracts. Article 83 provides that unfair terms shall be null and void and that the Judge shall declare their nullity, but the contract might still oblige the parties if it can subsist without those terms.

7. IN CONCLUSION:

As we have seen the cases of nullity established in the Civil Code of The Philippines are very similar. They have the advantage of being all in the same provision (art. 1.409) whereas Spanish scholars have had to look for them in different provisions of the Code. There are some cases expressly provided by the Civil Code of The Philippines that we do not find as such in the Spanish Codes but whose type of inefficacy is the same in practice. For instance, “those which are absolutely simulated or fictitious” in article 1.409 (2) PCC shall be considered in Spanish Law radically null for lack of cause (arts. 1.275 and 1.276 SCC). Or “those which contemplate an impossible service” in article 1.409 (5) PCC shall be null for lack of object in Spain (art. 1.261 SCC).

This work is just a small demonstration of the common past lived by our two countries and how these shared experiences during more than three centuries have survived and are still alive to the present day. Therefore, it is desirable to strengthen our relationships to maintain our common historical memory that serves to increase our inter-cultural, economic, and legal exchange.

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