

C. Preliminary contract (Art 1721)

- Another type of contract which should be made in writing is preliminary contract. Preliminary contract is a contract which has to be concluded before another contract. It intends to lead to another contract.
- Preliminary contract shall be made in writing if the contract to which it leads is required to be made in writing either by the law or the parties. The best example is agency contract. If the agent's power is to enter into a contract in writing, he should be conferred with such power in writing (Art 2200(1)).

D/ Variation of contract made in writing (Art 1722)

- ❖ As we have seen under Art. 1675, variation of contract is a contract itself. So, if such contract relates to contracts indicated under Art. 1723 (contracts relating to immovables), Art. 1724 (Contracts made with a public administration) and Art. 1725 (Contracts for a long period of time), it should necessarily be made in writing.
- ❖ N.B The law provides form for creation and variation of a contract but it is silent about form for extinguishing a contract. The drafter also expressly states that provisions dealing with form of contract do not include extinction of contract (David.p.28).
- ❖ The writers of the teaching material are of the opinion that when parties intend to extinguish contractual obligation that exists between them, they shall extinguish it in the same special form they made the contract.
- Moreover, they are of the opinion that extinction of the contract should be made in the same form of its formation for the following reasons:
 - I. Extinction of contract is a contract itself- As we have addressed in the **definitional part** too, a contract is not only an agreement to create and vary but also an agreement to extinguish obligations of proprietary nature. So, when the law provides that a contract be made in writing, it includes extinction since **extinction by itself is a contract.**
 - II. Intention to create legal relation can be clear; a person should be presumed to have changed his previous stand only when he uses the same way of declaration of intention as he used earlier. Art. 1726
 - III. Probatory value of written instrument (Art. 2005): A contract formed in written form has to be extinguished only in a written form; otherwise, it is very difficulty to prove that a written contract has been extinguished by a later oral contract.

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