

BOOK IV
OBLIGATIONS and CONTRACTS
TITLE I – OBLIGATIONS

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

Juridical necessity to comply with a prestation-
Sanchez Roman

Legal relation established between one person and another, whereby the latter is bound to the fulfillment of a prestation which the former may demand from him. - *Manresa*

Civil obligation	vs	Natural obligation
Gives to the obligee or creditor the right of enforcing it against the obligor or debtor in a court of justice. (right of action)	effect	Cannot be enforced by court action
Positive law	source	Equity and natural law.

Requisites of Obligation

- juridical or legal tie
 - bilateral
 - unilateral
- active subject
- passive subject
- fact, prestation or service

****As a general rule, the form of the obligation is not an essential element/requisite. Except (the non-compliance of the following formalities would have the effect of rendering the contract agreement void or inexistent):**

- donation of personal property whose value exceeds P5,000.00, contract in writing. (Art. 748, CC)
- sale of a piece of land or any interest therein through an agent, authority of such agent be in writing. (Art. 1874, CC)
- Interests in a contract of simple loan or *mutual*, agreement with respect to such be in writing. (Art. 1956, CC)
- antichresis, principal amount and

interest be specified in writing. (Art. 2134, CC)

---Donation of immovable property be made in a public document and the acceptance be made in the same document or separate public document (Art. 749, CC)

---contribution of immovable property or real rights to common fund (partnership) must be in a public instrument with attached inventory signed by the parties. (Art. 1771, 1773, CC)

---Chattel Mortgage, personal property must be recorded in the Chattel Mortgage Register (Art. 2140, CC)

---sale or transfer of large cattle, such transfer or sale must be registered. (Sec. 22, Act No. 1147, Art. 1581, CC)

Classifications of obligation

Primary	Secondary
<ul style="list-style-type: none"> •pure and conditional •with a period •alternative and facultative •joint and solidary •divisible and indivisible •with a penal clause 	<ul style="list-style-type: none"> •legal, conventional, penal •real and personal •determinate and generic •unilateral and bilateral •individual and collective •accessory and principal

classifications according to Manresa

As to juridical quality	-Natural -civil -mixed
As to parties	-Unilateral and bilateral -individual and collective
As to object	-Determinate and generic -simple and multiple -positive and negative -real and personal -possible and impossible -divisible and indivisible -principal and accessory

As to perfection and extinguishment	-Pure -conditional -with term or period
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Art. 1157. Obligations arise from:
 law
 contracts
 quasi contracts
 acts or omissions punished by law; and
 quasi-delicts

**The addition of lege has been criticized as theoretically erroneous.

**The enumeration is exclusive.

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; and as to what has not been foreseen, by the provisions of this Book. (1090)

**obligations derived from law cannot be presumed. (unlike other obligations)

**requisites to determine whether an obligation arises from law or from other sources.

- law that establishes or recognizes the obligation
- act or condition upon which the obligation is based.

** when the law merely recognizes the existence of an obligation generated by an act which may constitute a contract, quasi-contract, criminal offense, or quasi-delict and its only purpose is to regulate such obligation, then the ACT itself is the source of the obligation and NOT the law.

Pelayo vs Llauron-obligation of support between spouses.

Art. 2014 obligation of the winner in a gambling to return the money to the one who lost.

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

faith. (1091a)

Contract-meeting of minds between two persons whereby one binds himself, with respect to the other, to give something or to render some service.

•**Consensual contracts**- contracts 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 of the consequences which according to their nature may be in keeping with good faith, usage and law.

•**Real Contracts**- perfected upon the delivery of the obligation.

Obligation arises from the moment of perfection of the contract.

•**Reciprocal obligation**- parties are mutually obliged to do or to give something.

•**Unilateral obligation**- only one party (obligor) is obliged to do or to give something.

**Obligations arising from contract are governed primarily by the agreement of the contracting parties.

Compliance in good faith- performance in accordance with the stipulations, clauses, terms and conditions of the contract.

Unjust enrichment

**In default of agreement, the provisions of the Civil Code regulating such obligations are applicable.

General Rule: The contract is the law between the contracting parties.

Ex: Macasaet vs COA

exception to general rule: Agcaoili vs GSIS

Art. 1160. Obligations derived from quasi-contracts shall be subject to the provisions of Chapter 1, Title XVII, of this Book. (n)

Quasi-contracts- juridical relations arising from lawful, voluntary, and unilateral acts, by virtue which the parties become bound to each other, based on the principle that no one shall be unjustly

enriched or benefited at the expense of others.

Case: Traders Union vs NLRC

Negotiorum gestio	Solutio indebiti
Arises whenever a person voluntarily takes charge of the agency or management of the business or property of another without authority from the latter	Arises whenever a person unduly delivers a thing through mistake to another who has no right to demand it.
The gestor or officious manager shall be obliged to continue such agency or management until the termination of the affair and its incidents	The person to whom the delivery has been unduly made shall return the property delivered or the money paid.

Presumptive consent- consent given by law if there is no express consent given by the other party

--gives rise to multiple juridical relations resulting in obligations for delivery of the thing or rendering of service.

Art. 1161. Civil obligations arising from criminal offenses shall be governed by the penal laws, subject to the provisions of article 2177, and of the pertinent provisions of Chapter 2, Preliminary Title, on Human Relations, and of Title XVIII of this Book, regulating damages. (1092a)

Art. 100, RPC

except: treason, rebellion, illegal possession of firearms and gambling.

Enforcement of civil liability

1. institution of criminal and civil actions- civil action impliedly instituted, except:
 - i. express waive of the civil action
 - ii. reservation of right to institute it separately, or
 - iii. institution of the civil action prior to the criminal action.
2. independent civil action
3. other civil actions arising from offense

Effect of Acquittal

Ground for acquittal	effect	Evidence needed
Guilt not proven beyond reasonable doubt	Civil action to recover damages based on the same act or omission <u>MAY</u> still be instituted	Preponderance of evidence
Non-existence of facts for the commission of the offense	Civil action to recover damages is no longer possible.	

Effect of Independent Civil Action

General rule: The civil action to recover from the person criminally liable is not independent from the criminal action.

Separate civil action- the right to file a civil action shall depend upon the result of the criminal action.

Commencing the civil action prior the criminal action- once the criminal action is instituted, the action to recover damages shall be suspended.

Examples of entirely separate and independent civil action:

- the civil action is based on an obligation not arising from the act complained of as offense or felony.
 - Such action may proceed independently of the criminal action and regardless of the result of the latter.
 - *Culpa contractual-* Negligence in the performance of a contract
 - *culpa aquiliana-* Negligence as a source of obligation (quasi-delict)
- Law grants to the injured party the right to institute a civil action separate and distinct from the criminal action.
 - Interferences by public officers or employees or by private individuals with civil rights and liberties
 - defamation
 - fraud

- physical injuries
- refusal or neglect of a city or municipal police to render aid or protection in case of danger to life or property.

Reservation of right to file separate and distinct civil action- is a substantive right;

-procedural requirement under Sec. 2 of Rule 111 of the New Rules of Court is **not** mandatory.

-this was amended by Sec. 3 of Revised Rules of criminal Procedure 2000.

Art. 1162. Obligations derived from quasi-delicts shall be governed by the provisions of Chapter 2, Title XVII of this Book, and by special laws. (1093a)

Quasi-delict- fault or negligence of a person who, by his acts or omission, connected or unconnected with, but independent from, any contractual relation, causes damage to another person.

-covers not only those that are not punished by law but also those acts which are voluntary and negligent

4 reasons: **cited in Barredo vs Gracia**

***A single act can give rise to various obligations
Persons liable- the person directly responsible for the damage incurred and:

- The father, and, in case of his death or incapacity, the mother, are liable for any damages caused by the minor children who live with them.
- Guardians are liable for damages done by minors or incapacitated persons subject to their authority and living with them.
- Owners or directors of an establishment or business are equally liable for any damages caused by their employees while engaged in the branch of the service in which employed, or on occasion of the performance of their duties.
- Employers with respect to 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.
- The State when it acts through a special agent, but not if the damage shall have

been caused by the official upon whom properly devolved the duty of doing the act performed, in which case the provisions of the next preceding article shall be applicable.

- Finally, teachers or directors of arts and trades are liable for any damages caused by their pupils or apprentices while they are under their custody.

The liability shall cease in case the persons mentioned therein prove that they exercised all the diligence of a good father of a family to prevent the damage.

Requisites of liability

- There exist a wrongful act or omission imputable to the defendant by reason of his fault or negligence.
- There exist a damage or injury which must be proved by the person claiming recovery.
- There must be a direct causal connection between the fault or negligence and the damage or injury. (*proximate cause*)

Quasi-delict	vs	Crime
Private right	Nature of right violated	Public right
Compensation or indemnification (reparation of injury suffered by the individual)	Form of redress	Punishment (fine, imprisonment, or both)
It exist in any act or omission wherein fault or negligence intervenes	Legal basis of liability	Exists when there are penal laws clearly penalizing such crime
Civil liability	liability	Criminal and civil liability
Criminal intent not necessary	Condition of the mind	Criminal intent necessary
Preponderance of evidence	evidence	Beyond reasonable doubt
Can be	compromise	Can never be

compromised		compromised.
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Quasi-delict covers not only acts not punishable by laws but it also includes acts which are criminal in character, whether intentional, voluntary or negligent. (**Elcano vs Hill**)

Two distinct faults

(Padua vs Robles, Justice Barredo)

- **culpa criminal**- civil liability arising from crimes
- **culpa-aquiliana**- liability arising from civil negligence.

-recovery of damages twice for the same negligent act is omission is precluded.

-the extinction of the civil liability referred in Par (e) of Sec. 3, Rule 111 refers exclusively to liability founded on Art. 100 of RPC, whereas the civil liability for the same act considered as quasi delict is not extinguished even by a declaration in the criminal case that the criminal act charged has not happened or has not been committed by the accused.(Elcano vs Hill)

Diligence of employers:

Quasi-delict	Crimes
Art. 2180 of CC	Art. 103 of RPC
Primary liability	Subsidiary liability
Employer can avoid liability after proving that he exercised due diligence	Liability is absolute and cannot be avoided by proof of diligence.
Applies to all employers whether they are engaged in enterprise or not.	Applies only to employers engaged in some kind of business or industry.

ubi jus ibi remedium- unvindicated civil wrongs

--The death of the accused after arraignment and during the pendency of the criminal action shall extinguish the civil liability arising from the delict.

**Although the relation between the contracting parties is purely contractual a quasi-delict can still be committed in view of the manner in which the

contract is violated.

“Neglect or malfeasance of the carrier's employees could give ground for an action for damages. Damages here are proper because the stress of respondent's action is placed upon his wrongful expulsion, which is a violation of a public duty by petitioner- air carrier — a case of quasi-delict.” (Air France vs Carrascoso, G.R. No. L-21438. September 28, 1966.)

Chapter 2

NATURE AND EFFECTS OF OBLIGATION

Art. 1163-1166 Obligation to Give

“diligence of a good father of a family”

- standard normal state of diligence
- ordinary diligence
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obligations to give

- **determinate**- the object is particularly designated or physically segregated from all others of the same class (Art. 1163 applies particularly to determinate object)
- **generic**- the object is merely designated by its class or genus without any particular designation or physical segregation from all others of the same class. (e.g. money)

***Art. 1163 is a guaranty that the debtor will comply with the obligation.

Nature of right of the creditor

--The obligee/creditor has the right to the thing which is the object of the obligation as well as the fruits thereof from the time the obligation to deliver it arises. (Art. 1164)

Obligation	When obligation to deliver arises
Those arising from <ul style="list-style-type: none"> • law • quasi-delicts • quasi-contracts 	The specific provisions of law determine when the delivery should be made.

• crimes	
• contracts	Moment of perfection of the contract. (Art. 1537)
• Subject to a suspensive condition	From the moment the condition happens.
• With suspensive term or period	Upon the expiration of the term or period

Personal right- a right pertaining to a person to demand from another the fulfillment of a prestation to give, to do, or not to do.

- (*jus ad rem*) right enforceable only against a definite person or group of persons
- before delivery in obligations to give

Real right- right pertaining to a person over a specific thing, without passive subject individually determined against whom such right may be personally forced. (ownership, possession, easement)

- (*jus in re*) right enforceable against the whole world
- acquired once the thing and the fruits are delivered.

Rights of Creditor	Obligations of Debtor
<u>determinate obligations</u>	
1. to compel specific performance	1. to perform the obligation specifically
2. to recover damages for breach of the obligation.	2. to take care of the things with proper <u>diligence of a good father of a family</u> .
3. Entitlement to fruits and interests of the thing at the time the obligation to deliver it arises.	3. To deliver all accessions and accessories of the things even though they may not have been mentioned.
	4. To be liable for damages in case of breach of obligation by reason of delay, fraud, negligence or

	contravention of the tenor thereof.
<u>Generic obligations</u>	
1. to ask for performance of the obligations	1. To deliver a thing which is neither of superior nor inferior quality.
2. to ask that the obligation be complied with at the expense of the debtor.	2. To be liable for damages in case of breach of obligation
3. To recover damages for the breach of obligation.	

None exemption from liability because of *caso fortuito*:

delay

reason: There would have been no loss if the debtor had complied with the obligation to deliver the object without delay.

promise to two or more different persons

reason: It would be impossible to comply with both obligations therefore the debtor already made himself liable for damages.

Accessions- all of those things which are produced by the object of the obligation as well as all of those which are naturally or artificially attached thereto.

- *Accession discreta*- natural, industrial and civil fruits
- *accession industrial* – building, planting, and sowing
- *accession natural*- alluvion, aluvion, abandoned river beds, and islands formed in navigable rivers.
- Accession with respect to movable property.

Accessories- all of the things which have for their object the establishment, use or preservation of another thing which is more important and to which they are not incorporated or attached.

- embellishments

****The liability of debtor for damages in case of breach of obligation, extends only to breach which**

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is voluntary in character and not to one which is involuntary (fortuitous event)

****Only a determinate thing can be destroyed by a fortuitous event, generic things can never perish. (*genus nunquam perit*)**

Art. 1167.

Obligation to Do

(positive personal obligation)

****If the obligor fails to do what he has obligated himself to do, the obligee can have the obligation performed or executed at the expense of the latter and recover damages .**

****This type of obligation recognizes individual freedom, the obligor cannot be compelled to do what he has obligated himself to do.
Remedy for obligee/creditor: performance of the obligation at the expense of the obligor**

****If the object of the prestation is the personal and special qualification (i.e. artist) of the obligor, the **remedy** for the obligee is to recover damages under Art. 1170 of the Civil Code.**

Rights available to the obligee

(in case there has been a performance of the obligation but in contravention of the tenor thereof)

- to have the obligation performed at the expense of the obligor
- to ask that what has been poorly done be undone
- to recover damages for breach of obligation

Case:

Chavez vs Gonzales

Tanguilig vs Court of Appeals

Article 1168.

Obligation NOT to Do

(negative personal obligation)

-fulfilled or realized so long the obligor does not do what is forbidden

Remedy for obligee in case of breach:

- to have it undone at the expense of the obligor (Art. 1168)
exception (cannot be undone):

Obligations and Contract

- effects of the act are definite in character.
- physical and legal impossibility
- to ask for damages (Art. 1170)
 - mora is not applicable

****In obligation not to do, the obligation is either fulfilled or not fulfilled**

Art. 1169.

Delay in the fulfillment of obligation

Voluntary	Involuntary
Default (<i>mora</i>), deceit/fraud (<i>dolo</i>), negligence (<i>culpa</i>), or in manner that contravenes the tenor thereof	Inability to comply because of an unforeseen event, or which though foreseen is inevitable.
Obligor is liable for damages	Obligor has no liability for damages

General Rule: Unless there is no demand there is no delay.

*****In reciprocal obligation, the moment the other party complied with his obligation failure to comply will cause the other party to be in delay**

Default(*mora*)- signifies delay in the fulfillment of an obligation with respect to time.

*****The mere stipulation of a date when the obligation is due does not by itself dispense with the necessity of a demand, unless there is an express stipulation (either by law or contract) that the debtor will incur delay without need of a demand.**

Kinds of mora

- *mora solvendi*- default on the part of the debtor

kinds of mora solvendi

- *ex re*-refers to obligation to give
- *ex persona*- refers to obligation to do
- *mora accipiendi*- default on the part of the creditor to accept the delivery of the object of the obligation

- *compensatio morae*- default of both parties in reciprocal obligations

Requisites to declare in default

- that the obligation be demandable and already liquidated
- that the debtor delays performance
- that the creditor requires the performance judicially or extra judicially

****In positive obligation, default arises from the moment the creditor demands the performance of the obligation.**

- Judicially- through a complaint
- extra-judicially- oral or written demand

When demand not necessary

- when there is an express stipulation to that effect
- where the law so provides
- when the period is the controlling motive or the principal inducement for the creation of the obligation (when time is of the essence)
- where demand would be useless

****Negative obligations are not subject to delay.**

Reciprocal obligation-created or established at the same time, out of the same cause and which results in the mutual relationship of creditor and debtor between the parties.

- obligations which are conditioned upon each other
- conditional obligation

****In case of delay, the liability of the obligor subsist even if the thing which constitutes the object of obligation may have been destroyed or lost through fortuitous events.**

The moment the other party has complied with his obligation, delay on the other begins.

Exception: If there are different dates for the performance of the obligation, apply the general rule in 1169 (demand is needed).

(Art. 1170-1173)

Fraud (*dolo*)- consist in the conscious and intentional proposition to evade the normal fulfillment of an obligation

-present at the time of birth of an obligations

kinds of fraud

- criminal fraud
- civil fraud

Fraud in the performance of an obligation	vs	Fraud in the constitution or establishment of an obligation
During the performance of an existing obligation	When present	At the time of the birth of an obligation.
Evading normal fulfillment of an obligation	purpose	Securing the consent of the other party to enter into the contract
Non-fulfillment or breach of the obligation	result	Vitiating of the consent of the other party
Recover damages from the debtor/obligor	Remedy for the innocent party	<u>Causal fraud</u> - Annulment of the contract. <u>Incidental fraud</u> - recover damages

*****Malice or dishonesty is implied as a ground for damages.**

*****Fraud or dolo is synonymous with bad faith.**

*****Waiver or renunciation of liability made in anticipation of the fraud is **VOID**. (Art. 1171)**

*****Waiver or renunciation of liability made after the fraud has already been committed is **VALID**.**

*****What is renounced is the effect of fraud or the right of the party to indemnity.**

Extent of recoverable damages:

- all damages which may be attributable to the breach or non-fulfillment of the obligation, regardless of whether such consequences are natural or unnatural, probable or improbable, foreseeable or unforeseeable.
- Moral and exemplary damages

Negligence (*culpa*)- omission of that diligence which is required by the nature of the obligation and corresponds with the circumstances of the person, the time, and of the place.

-absence of due care required by the nature of the obligation

***Diligence of good father of a family (*pater familias*) is the standard diligence required if the contract does not state the diligence which is to be observed in the performance of the obligation.

Kinds of negligence

<i>Culpa contractual</i>	vs	<i>Culpa aquiliana</i>
Negligence in the performance of a contract	definition	Negligence as a source of obligation. (quasi-delict)
Incident of the performance of an obligation	characteristic	Substantive and independent
Pre-existing contractual relation	Party relationship	There may or may not be a pre-existing contractual relationship
Breach of contract	Source of obligation	Defendant's negligent act or omission
Existence of the contract and its breach	What needs to be proven	Negligence of the defendant
Proof of diligence is <u>not</u> a defense	Availability of diligence	Prof of diligence is a <u>valid</u> defense

Negligence vs Fraud

Negligence	vs	Fraud
Culpa		Dolo
Voluntary act or omission	characteristic	Conscious and intentional proposition to evade the fulfillment of an obligation

Art. 1173 (if the negligence shows bad faith)	Governing rule	Art. 1173, par.1
Valid (unless the nature of the waiver is against public policy)	Waiver of action (future)	Void

proximate cause- cause which is a natural and logical consequence uninterrupted by an intervening cause, without which the damage will not have happened.

Negligence

Bad faith	Good faith
If present, the provisions of Art. 1173 and Art 2201, par.2 will apply.	Liability will only be on natural and probable consequences of the breach of obligation

***Damages resulting from negligence is reduced or mitigated if there was contributory negligence of the obligee.

Other circumstances that can mitigate the damages:

- when the plaintiff himself contravenes the terms of the contract;
- where the plaintiff has derived some benefit as a result of the contract;
- in cases where exemplary damages are to be awarded, where the defendant acted upon advice of counsel;
- where the loss would have resulted in any event;
- where upon filing of the action, the defendant has done his best to lessen the plaintiff's loss or injury.

***If the negligent act of the obligee is the proximate cause of the event which led to the damage or injury complained of, he cannot recover.

The phrase "in any manner that contravenes the tenor***" of the obligation includes not only any illicit act which impairs the strict fulfillment of the obligation but also every kind of defective performance.

Test of negligence:

Use the reasonable care and caution which an

ordinary prudent person would have used in the same situation.

(Art. 1174)

Fortuitous event (*caso fortuito*)- event which could have not been foreseen, or though foreseen, were inevitable.

Act of God	Force majeure
Independent of human intervention	events that arise from legitimate or illegitimate acts of persons other than the obligor.
As to foreseeability	
Ordinary	extraordinary

General rule: If the reason for the non-compliance in the obligation is a fortuitous event, the obligor is exempted from liability whatsoever.

EXCEPT:

1. where such liability is expressly specified by law;
2. where it is declared by stipulation of the parties;
3. where the nature of the obligation requires the assumption of risk.
-(volenti non fit injuria) no wrong is done to one who consents

***Art. 1174 applies only to determinate obligations and not to generic ones.

****res ipsa loquitur*

***The *caso fortuito* must be the SOLE and proximate cause of the incident, to avail of it as a defense.

***Co-mingling negligence on the part of the obligor forfeits the defense of *caso fortuito*.

Essential conditions for Art. 1174 to apply:

1. that the event must be independent of the will of the obligor;
2. that the event must be either foreseeable or inevitable;
3. that the event must be of such a character as to render it impossible for the obligor to fulfill his obligation in a normal manner;
4. that the obligor must be free from any participation in the aggravation of the injury to the obligee.

*****expiration of agreement:**

The case of **Bacolod-Murcia vs CA** compared and contrasted with **PhilComSat vs Globe**.

****Southeastern College vs CA*- typhoon is a *caso fortuito*

****Co vs CA*- carnapping of a vehicle is **not** considered a *caso fortuito*.

****Tanguilig vs CA* – windmill case

(Art. 1175)

Usury- contracting for or receiving something in excess of the amount allowed by law for the loan or forbearance of money, goods or chattels.

-taking of more interest for the use of money, goods, or chattels or credits than the law allows.

Usury Law (Act No. 2655) and other laws amending it- special law referred to in Art. 1175.

Central Bank Circular No. 224 (Dec. 1, 1982)- no more ceiling in interest rates on loans.

***Loan or forbearance of money-12% interest in the default of interest stipulated by law or the parties, 6% interest for obligation not involving forbearance or loan.

***12% interest per annum from the time the judgment has become final if t.

(Art. 1176)

***There is a presumption that the interests has been paid if on the face of the receipt that the creditor issued to the obligor that the principal has been paid without reservation with respect to the interest. (in accordance with Art. 1253)

***If the debtor is issued a receipt by the creditor acknowledging payment of a latter installment without reservation to prior installments, there is also a presumption that such prior installments have already been paid.

***For the presumption to arise, the receipt should clearly state that the payment is for the installment for a latter installment or as payment for the

interest. (**Manila Trading vs Medina**)

(Art. 1177)

Remedies of creditor to protect credits:

1. to exhaust the property in possession of the debtor;(Art. 2236, CC)
2. to be subrogated to all of the rights and actions of the debtor to save those which are inherent in hi person. (*accion subrogatoria*)

Conditions:

- that the debtor is indebted to the creditor;
 - the creditor must be prejudiced by the inaction of the debtor to proceed against the third person;
 - the creditor must have first pursued all of the properties of the debtor which are not exempt from execution.
3. to impugn all of the acts which the debtor may have done to defraud him. (*accion pauliana*)

Accion subrogatoria- the right of the creditor to exercise all of the rights of the debtor to bring all of the actions against third persons.

-the creditor merely acts in the name and for the account of the debtor.

EXCEPTION: Rights which are purely personal in the sense that they are inherent n the person of the debtor. (i.e. family rights)

Accion pauliana- impugning or attacking fraud directly by means of a rescissory action at the instance of the creditors who are prejudiced.

-subsidiary in character.

(Art. 1178)

General rule: Rights of obligations or those rights which are acquired by virtue of an obligation are transmissible in character.

Exceptions:

1. where they are not transmissible in their very nature (i. e. purely personal rights);
2. where there are stipulations by the parties that they are not transmissible;
3. where they are not transmissible by operation of law.

CHAPTER THREE

DIFFERENT KINDS OF OBLIGATIONS

Sec. 1. - Pure and Conditional Obligations

(Art. 1179)

Pure Obligation- one whose effectivity or extinguishment does not depend upon the fulfillment or non-fulfillment of a condition or upon the expiration of a term or period;

- characterized by the quality of immediate demandability, but there must be a reasonable period of grace.

Condition- future **and** uncertain fact or event upon which an obligation is subordinated or made to depend.

Term/period- a term will surely pass and may or may not know when exactly; characterized by futurity and certainty

condition- it may or may not happen

Conditional obligations- one whose effectivity is subordinated to the fulfillment or non-fulfillment of a future and uncertain act or event.

Kinds of conditional obligation:

1. Suspensive vs Resolatory

(Art. 1181)

Suspensive	Resolatory
Condition precedent	Condition subsequent
Results in the <u>acquisition</u> of rights arising out of the obligations	Results in the <u>extinguishment</u> of rights arising out of the obligations
The happening of the condition gives birth to the obligation.	The happening of the condition extinguishes obligation
If the condition is not fulfilled, no juridical tie is created.	If the condition is not fulfilled, juridical relation is consolidated.
What is acquired by the obligee in the constitution of the obligation is only mere <u>hope and expectancy</u> , protected by law.	What is acquired by the obligee in the constitution of the obligation are <u>rights</u> that are subject to threat or danger of extinction.

2. Potestative, casual, and mixed
(cause upon which the fulfillment depends)
(Art. 1182)

Potestative	casual	mixed
fulfillment of the obligation depends upon the <u>will of a party</u> to the obligations	fulfillment of the condition depends upon the <u>will of a third person</u>	fulfillment of the obligation depends upon the <u>will of a party</u> to the obligation and partly upon <u>chance and/or will of a third person</u> .
Effects		
dependent on the creditor -condition and obligation, VALID	The obligation and the condition shall take effect. (valid and enforceable)	The obligation and the condition shall take effect. (valid and enforceable)
dependent on the debtor -condition and obligation, VOID		

***The precept in the first sentence of Art. 182 is applicable only to a suspensive condition. Hence, **Resolutive + Potestative = VALID** obligation and condition (explanation at pp.114, Jurado)

***to avoid illusory obligation- Reason for the invalidity of potestative condition dependent on the debtor.

***Payment for previous indebtedness/pre-existing obligation although the condition is purely potestative, affects the validity of the condition but keeps the validity of the obligation because the obligation is not dependent upon the condition.

Simple potestative - valid; presupposes not just the manifestation of the will but also the realization of an external act.

pure potestative – void; envisioned by Art. 1182

3. Possible vs Impossible

(Art. 1183)

Possible	Impossible
when the condition is <u>capable of realization</u> according to nature, law, public policy, or good customs.	when the condition is <u>not capable of realization</u> according to nature, law, public policy, or good customs. (contrary to good customs or public policy, illicit, illegal)
Effects	
The obligation and the condition is valid and enforceable.	Annulment of the obligation that are dependent of such impossible condition **but is there is a pre-existing obligation, therefore not dependent upon the fulfillment of the obligation for its perfection, only the <u>CONDITION is void</u> , not the obligation.

***If the impossible condition is attached to an obligation, the obligation itself is **Void**.

***If the impossible condition is attached to a simple donation or testamentary disposition, the **condition is not imposed**, although the **donation or testamentary disposition** itself is **valid**.

***Total Absence of seriousness- reason why the law invalidate the impossible condition & the dependent obligation.

EXCEPTION: gratuitous disposition/donation; because the moving force here is the generosity of the donor.

***The impossibility of the condition should be determined at the time the obligation is made or constituted.

4. Positive vs Negative
(Art. 1185)

Positive	Negative
condition involves the <u>performance</u> of an act	condition involves the <u>omission</u> of an act.
The event will happen	The event will NOT

or take place.	happen or take place.
E f f e c t s	
The obligation is extinguished as soon as the time expires or if it becomes indubitable that the event will not take place.	The obligation is rendered effective from the moment the time indicated has elapsed, or if it has become evident that the event cannot occur.

***The intention of the parties, taking into consideration the nature of the obligation, shall govern if no time has been fixed for the fulfillment of the condition. The same rule applies to **POSITIVE CONDITION**.

Constructive Fulfillment of Suspensive Condition- The condition shall be deemed fulfilled when the obligor voluntarily prevents *[the obligee from]* its fulfillment *[of the condition]*. (Art. 1186)
-applicable only to **Suspensive conditions** **and not to** Resolutive conditions.

***The prevention must have been done for the precise purpose of preventing the condition.

Effects of Suspensive Condition (Art. 1188)

Before Fulfillment	After Fulfillment
Demandability as well as the acquisition or effectivity of rights arising from the obligation is suspended.	The obligation arises and becomes effective.
The right of the creditor is mere hope & expectancy.	The right of the creditor is perfected. (becomes effective & demandable)
	Effects are retroactive (applicable only to consensual contracts)

Art. 1188, par. 1- Protection for the creditor

- file an injunction to stop the debtor
- does not necessarily always involves court action in spite the wordings of the law.
i.e. registration

Art. 1188, par. 2- protection for the debtor

Obligation subject to suspensive condition	Obligation subject to period/term
There is <u>no certainty</u> if the obligation will be fulfilled	It is certain that the obligation will be fully demandable and enforceable.
Interests and fruits shall also be delivered when the debtor paid/delivered by mistake.	Interests and fruits shall also be delivered when the debtor paid/delivered by mistake.

Reason for retroactivity: The condition is only accidental, not essential element of the obligation.

*** The principle of retroactivity must be tempered by principles of justice and practicability.

- In obligations to give
 - the principal obligation as well as the fruits should be delivered
 - in unilateral obligations, the debtor shall appropriate the fruits and interests received, unless there is a contrary intention on his part
- in obligations to do or not to do
 - Courts shall determine in each case the retroactive effect of the condition that has been complied with.

***In reciprocal obligations the fruits and interest must be equally compensated between the parties.

***In unilateral obligation, the debtor shall appropriate the fruits and interests received unless the intention is different.

***In personal obligations, the courts will have to determine in each case the retroactive effect of the condition that has been complied.

Effect of Loss, Deterioration, or Improvement (Art. 1189)

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 **inure to the benefit of the creditor**;
6. If it is **improved** at the expense of the debtor, he shall have no other right than that granted to the **usufructuary**.

***Rule in Art. 1189 are natural consequences of the principle of retroactivity.

***Predicated on the fulfillment of the condition.

***Refer only to conditional obligations to give a determinate thing

usufruct- right or enjoyment of a thing, the property of which is vested in another and to draw from the same all the profit, utilities, and advantage it may produce without altering the form/substance of the thing.

Loss

a thing is considered lost when it:

1. perishes;
2. goes out of commerce – impossible to legally transfer or re-acquire
3. disappears in such a way that its existence is unknown or it cannot be recovered

Improvements

natural accessions: alluvion, avulsion, abandoned river beds, island formed

***The debtor cannot ask for reimbursement for expenses incurred for useful improvements or improvements for pleasure.

***the debtor may have the right to remove such improvements provided it is possible to do so without damage to the thing or property.

Effect of Resolutive Condition:

Before Fulfillment	After Fulfillment
The obligation is subject to the threat of extinction.	The rights vested in the obligation is extinguished.
Placed in the same position with creditor in obligation with suspensive condition.	Whatever is paid or delivered to any of the parties should be returned (return to status quo)

***There are no exceptions in the retroactive effect of resolutive condition; what was delivered need to be returned.

***The fulfillment of a resolutive condition signifies the nonexistence of the obligation, what is nonexistent must not give rise to any effect whatsoever.

*****There is no provision of mutual compensation of fruits and interests but in connection with the concept of justice, restitution in Art. 1190 carries with it the consequence of reimbursement for all the expenses incurred for the production, gathering, and preservation of the fruits.

***Mutual restitution is absolute in resolutive conditions because the obligation is extinguished, and it ceases to have effect thus does not carry with it fruits and interests.

***In obligations to do or not to do, the retroactive effects shall depend upon the discretion of the courts.

***Art. 1189 is also applicable with regard the effects of loss, deterioration, and improvements of things during the pendency of resolutive condition.

***In **Resolutive condition** the “**debtor**” is the person obliged to return while the “**creditor**” is the person to whom the thing must be returned.

Reciprocal obligations (Art. 1191)

remedy for the injured party: rescission or fulfillment

Reciprocal obligation-created or established at the same time, out of the same cause and which results in the mutual relationship of creditor and debtor between the parties.

- characterized by reciprocity; one obligation is correlative of the other.
- bilateral in character.
- tacit resolutive condition.

*****General rule:** If one of the parties fails to comply with what is incumbent upon him, there is a right on the part of the other to rescind (or resolve) the obligation.

Right of rescission- belongs to the injured party alone.

- must be invoked judicially by filing the proper action of rescission.
 - not absolute; the court is given the discretionary power to fix a period within which the obligor in default may be permitted to comply with what is incumbent upon him.
 - implied in reciprocal obligations (Art. 1191, par. 1)

***If the contract contains a resolutive provision by virtue of which the obligation may be canceled or extinguished by the injured party in case of breach of obligation, judicial permission to cancel or rescind the contract is no longer necessary. But the Court may confirm such extra judicial rescission.

***If there is no express provision of rescission in the contract, rescission should be invoked judicially.

***The termination of a contract must not be contrary to law, morals, good customs, public order, or public policy.

***Notice is always important in rescission so the alleged infractor can question the propriety of the rescission.

***Art. 1191 is not applicable to contracts of partnership. There are special provisions that govern the latter, thus the general provision will not prevail. The same applies to sales of real property (Recto Law) and sales of personal property by installment (Maceda Law).

***Rescission will only be rendered when the breach is **substantial** so as to defeat the object of the parties in entering into the agreement.

Case: ***Song Fo & Co. vs Hawaiian-Philippine Co.***

Alternative remedies to the injured party:

- fulfillment of the obligation with payment for damages (Specific performance with damages)
- rescission of the obligation with payment for damages (resolution with damages)

Case: ***Songcuan vs IAC***

***The injured party can still seek the rescission or resolution of the obligation even if he has opted to choose the fulfillment of such obligation if fulfillment should become impossible.

Case: ***Ayson-Simon vs Adamos***

***In awarding damages...

In case or rescission	only those elements of damages can be admitted that are compatible with the idea of rescission.
In case of specific performance	Only the elements of damages can be admitted which are compatible with the idea of specific performance.

Effects of Rescission:

- it is the duty of the court to require the parties to surrender whatever they may have received from the other (without prejudice to the obligation of the party who was not able to comply with what is incumbent upon him).
- Rescission can no longer be demanded when he who demands is no longer in the position to return whatever he may be obliged to restore; neither can it be demanded when the thing which is the object of the contract is already in the possession of a 3rd party who obtained it in good faith.
 - Remedy for the latter will be an action for the transfer or conveyance for damages.
- If 3rd person obtained the property in bad faith, the injured party can still go after the

property.

- If it can't really be recovered, the remedy is for the injured party to proceed against 3rd person who acted in bad faith for damages.

***There can be partial rescission or fulfillment under Art. 1191.

Case: **Central Bank vs CA**

***Rescission calls for mutual restitution. (**Laperal vs Solid Homes**)

***If there is arbitration in the contract, arbitration should be resorted to before asking for rescission (**Korean Technology vs Lerma**)

Effect of breach by both parties (Art. 1192)

Rules:

1. the liability of the first infractor shall be equitably tempered by the courts.
 - fair to both parties because the second infractor also derived, or thought he would derive, some advantage for his own act or neglect
2. If it cannot be determined which of the parties first violated the contract, the same shall be deemed extinguished, and each shall bear his own damages
 - it is presumed that both at about the same time tried to reap some benefit

Sec. 2. - Obligations with a Period

Term or Period- interval of time, which exerting an influence on an obligation as a consequence of a juridical act, either suspends its demandability or produces its extinguishment.

Obligations with a period- obligations whose demandability or extinguishment is subject to the expiration of a term or a period.

Term/Period		Condition
Interval of time	requisites	Refers to a <u>fact</u>

which is future and <u>certain</u>		or event which is future and <u>uncertain</u>
Interval of time that <u>must necessarily come</u> , although it may not be known when	fulfillment	A future and uncertain fact or event that <u>may or may not happen</u> .
Merely exerts an influence upon the <u>time of the demandability or extinguishment of an obligation</u> .	Influence on obligation	Exerts an influence upon the <u>very existence of the obligation itself</u> .
No retroactive effects unless there is an agreement to the contrary.	Retroactive effects	Has retroactive effects
When a term or a period is left exclusively to the will of the debtor, the existence of the obligation is not affected (potestative term or period)	Effect of will of the debtor	When a condition is left on the exclusive will of the debtor, the existence of the obligation is affected (Void) (potestative condition)

Classification of term or period

1. suspensive or resolutive
 - a) suspensive (ex die) - demandable only upon the arrival of a day certain.
 - b) resolutive (in diem) – demandable at once, although it is terminated upon the arrival of a day certain

*****day certain**- which must necessarily come, although it may not be known when.
2. legal, conventional, or judicial
 - a) legal- term or period granted by law
 - b) conventional- stipulated by the parties
 - c) judicial- fixed by the courts
3. definite or indefinite
 - a) definite- the date or time is known beforehand
 - b) indefinite- can only be determined by an even which must necessarily come to pass, although it may not be known

when

effects of term or period:

suspensive term or period	the demandability of the obligation is extinguished, not the acquisition of right or the effectivity of the obligation.
Resolatory term or period	The fulfillment or performance of the obligation is demandable at once, but it is extinguished or terminated upon the arrival of the day certain or the expiration of the term.

Case: **PNB vs Lopez Vito**

***Acceleration clause is a clause where upon default of the debtor with one or more payment will make the whole obligation demandable. This is a valid provision in contracts.

Effect of fortuitous event- relieve the contracting parties from the fulfillment of their respective obligations during the term or period.

Case: **Victoria's Planters vs Victorias Milling Co.**

effect of advance payment or delivery- obligor can recover what he has paid or delivered with fruits or interests. (Art. 1195)

-applicable only to obligations to give

***There can be no right of recovery if the obligor delivers the thing voluntarily or with knowledge of the period or term or the fact that the obligation has not yet become due and demandable.

(Art. 1196)

General rule: a period designated for the performance or fulfillment of an obligation is presumed to have been established for the benefit of both the creditor and the debtor.

Case: **de Leon vs Syjuco**

***If the tenor of the obligation or from other circumstances that the term or period has been established in favor of the creditor or of the debtor, the general rule will not apply.

Judicial term or period
(Art. 1197)

Judicial term or period- when fixed by a competent court, the period can no longer be judicially changed (Art. 1197, par. 3).

-becomes a law governing the contract between the party

Cases when court can fix term:

- if the obligation does not fix a period, but it can be inferred that a period was intended by the parties
 - cannot be applied to contract for services in which no period was fixed by the parties. In such contracts the period of employment is understood to be implicitly fixed, in default of express stipulation, by the period of the payment of the salary of the employee, in accordance with the custom universally observed throughout the world.
 - cannot be applied to pure obligations
- if the duration of the period depends upon the will of the debtor
 - just and logical, because otherwise, there would always be the possibility that the obligation will never be fulfilled or performed.
- if the debtor binds himself to pay when his means permit him to do so.

Case: **Gonzales vs Jose**

***No other action can prosper unless the court has fixed the duration of the term or period.

***In potestative term or period, in order to prevent the obligation contracted from becoming ineffective by non fulfillment, the courts must fix the duration of the term or period.

***So long as such period has not been fixed by the court, legally there can be no possibility of any breach of contract or of failure to perform the obligation. Such cannot be raised for the first time on appeal.

***Art. 1197 applies to a lease agreement, where a contract of lease clearly exists.

***It is not necessary that the creditor will expressly ask in the complaint for the court to fix the period, such may be granted although the complaint does not ask for such relief.

***Two ultimate facts that need to be alleged in the complaint to describe an obligation with an indefinite period.

1. Facts showing that the contract was entered imposing on one of the parties an obligation in favor of the other
2. facts showing that the performance of the obligation was left to the will of the obligor, or clearly showing, or from which an inference can be reasonably drawn that a period was intended.

***The action recognized by Art. 1197 may also prescribe like any ordinary civil action. (**Gonzales vs Jose**)

Extinguishment of Debtor's right to Period (Art. 1198)

- (1) When after the obligation has been contracted, he becomes insolvent, unless he gives a guaranty or security for the debt;
 - (a) insolvency needs no judicial declaration
 - (b) includes any case in which it would be impossible financially for the debtor to comply with his obligations
 - (c) such insolvency must not be pre-existing; arose after the constitution of the obligation
 - (d) if there is a guaranty or security for the debt, the debtor, in spite of insolvency, does not lose his right to the period.
- (2) When he does not furnish to the creditor the guaranties or securities which he has promised;
 - (a) such failure renders the original obligation pure and without any condition, and consequently, the loan become due and demandable.
- (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;

- (a) there is a difference between effects of impairment and effects of disappearance
 1. if the guaranty or security is impaired through the fault of the debtor, he shall lose his right to the benefit of the period;
 2. if it is impaired without his fault, he shall retain his right;
 3. if the guaranty or security disappears through any cause, even without the fault of the debtor, he shall lose his right to the benefit of the period
 4. in either case of impairment or disappearance, the debtor will not lose his right to period if he gives a new guaranty or security which is 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.
 - (a) Mere attempt of the debtor disappear or run away from his obligation.

Sec. 3. - Alternative and Facultative Obligations

5. Conjunctive vs Alternative

Conjunctive	Alternative
there are several conditions, <u>all</u> of which must be realized	there are several conditions but <u>only one</u> must be realized.

Conjunctive obligation- all of the objects of the obligation are demandable at the same time

distributive obligation- when only one object of the obligation is demandable.

- **Alternative-** comprehends several objects or prestation which are due, but it may be complied with by the delivery or performance of only one of them.
 - Performance of one of the obligation is sufficient

- **Facultative**- comprehends only one object or prestation which is due, but it may be complied with by the delivery of another object or the performance of another prestation in substitution.

Alternative Obligations
(Art. 1200)

General rule: The right of choice belongs or pertains to the debtor.

***Once the debtor has made the choice, and such choice is duly communicated to the creditor, the obligation becomes simple.

Exceptions:

- when the right of choice belongs or pertains to the creditor
- when it has been expressly granted to a third person.

Limitation to the right of choice:

- debtor cannot choose those prestations or undertakings that are impossible, unlawful, or which could not have been the object of the obligation.

“Prestations which could not have been the object of prestation”

- undertakings that are not included among others those from which the obligor may select, or
- those which are not yet due and demandable at the time the selection is made, or
- those by reason of accident or some other cause, have acquired a new character distinct or different from that contemplated by the parties when the obligation was constituted.

***Par. 2 of Art. 1200 contemplates a case in which the right to choose or select is NOT lost or extinguished altogether.

(Art. 1201)

***Applicable to cases in which the choice is dependent on the debtor, creditor, or third person.

***Communication is needed to make the choice effective.

***No special form for the communication or notification of choice, although it is always better to make the notification either in a notarized document or in any other authentic writing.

***Debatable: Can the creditor to whom the selection has been duly communicated impugn such selection?

***Once the choice is made by the debtor (or creditor, or 3rd person) and such selection has been communicated, the obligation ceases to be alternative. The loss of the object of prestation chosen and communicated extinguishes the liability.

(Art. 1202)

***When only one prestation is practicable, the debtor loses his right of choice altogether. The obligation becomes simple.

Art. 1202	Art. 1200, par. 2
Only one prestation which can be performed	There are still two or more prestations that can be performed.
Obligation is converted to a simple one because the debtor loses his right of election	The obligation is still alternative because the debtor can still exercise his right of election.

***When the debtor's right of choice is rendered ineffective through the creditor's fault, the only possible remedy for the debtor is to bring an action for the rescission of the contract with damages. (Art. 1203)

Art. 1204	Art. 1205
Right of choice of debtor	Right of choice of Creditor
General rule	exception

Factors to consider in knowing the effect of loss of the object of prestation

- to whom the right of choice belong?
- What is the cause of the loss of the object of prestation? (fortuitous event or fault of the debtor)

(for Summary of Effects of Loss of Obligation, see Annex "A")

Facultative Obligations (Art. 1206)

Facultative obligation- obligation wherein only one object or prestation has been agreed upon by the parties to the obligation, but which may be complied with by the delivery of another object or the performance of another prestation in substitution.

Facultative	vs	Alternative
Only one object	Object due	Several objects
By the delivery of another object or by the performance of another prestation in substitution	compliance	By the delivery of one of the objects or by the performance of one of the prestations which are alternatively due.
Pertains only to the debtor	choice	May pertain to the debtor, or creditor, or third person
Loss or impossibility of the object extinguishes the obligation	Effect of fortuitous loss	Loss of <u>all</u> the objects of prestation is necessary to extinguish the obligation
Does not give rise to liability on the part of the debtor	Effect of culpable loss	May give rise to a liability on the part of the debtor

***Art. 1201 is applicable by analogy with respect to the time or moment when the substitution will

take effect.

***Communication is needed to make the substitution effective.

***Whatever may be the cause of the loss or deterioration of the thing intended as a substitute, such loss shall not render the debtor liable. - Dean Capistrano

***Once the substitution has been made, the debtor shall be liable for the loss or deterioration of the substitute on account of his delay, negligence, or fraud.

***Once the substitution is made, the obligation is converted into a simple one.

Sec. 4. - Joint and Solidary Obligations

Joint obligation - obligation where there is a concurrence of several creditors, or of several debtors, or of several creditors and debtors, by virtue of which each of the creditors has a right to demand, and each of the debtors is bound to render, compliance with his proportionate part of the prestation which constitutes the obligation
– *obligacion mancomunada*

Solidary obligation – obligation where there is a concurrence of several creditors, or of several debtors, or of several creditors and debtors, by virtue of which each of the creditors has a right to demand, and each of the debtors is bound to render, entire compliance with the prestation which constitutes the obligation
– *obligacion solidaria*

Collective Obligations (Art. 1207)

General rule: If there is a concurrence of several creditors, or of several debtors, or of several creditors and debtors, the presumption is that the obligation is JOINT and not solidary.

Exceptions:

1. when the obligation expressly states that there is solidarity;
 - “jointly and severally”
 - “individually and collectively”

2. when the law requires solidarity; and,
 - Art. 927, 1824, 1911, 1915, 2146, 2157, and 2194 NCC
 - Art. 110, RPC
3. when the nature of the obligation requires solidarity.
 - *Obligations arising from criminal offenses or torts*

Joint Divisible Obligations

(Art. 1208)

***Each creditor can demand only for the payment of his proportionate share of the credit, while the debtors can be held liable only for the payment of his proportionate share of the debt.

***Joint creditor cannot act in representation of the others; neither can debtor be compelled to answer for the liability of the others.

***The payment or acknowledgement by one of the joint debtors will not stop the running of the period of prescription as to the others.

Joint Indivisible Obligations

(Art. 1209)

-midway between joint and solidary obligations characteristics:

- no creditor can act in representation of the other
- no debtor can be compelled to answer for the liability of the others.
- joint with respect of the parties
- indivisible with respect the fulfillment of the obligation

2 or more debtors	2 or more creditors
The fulfillment of or compliance with the obligation requires the concurrence of all the debtors, although each for his own share	The concurrence or collective act of all the creditors, although each for his own share, is necessary for the enforcement of the obligation.
The obligation can be enforced only by proceeding against all	Not susceptible of partial fulfillment.

the debtors	
-------------	--

***If one of the joint debtors fails to comply with his undertaking, the obligation can no longer be fulfilled or performed.

***The debtors who are ready to fulfill what was incumbent upon them shall not contribute to the indemnity beyond the corresponding portion of the price of the thing or of the value of the service in which the obligation consists. (Art. 1224)

***If one of the joint debtors be insolvent, the others shall not be liable for his share.

***Debatable: If there are two or more creditors or debtors, will the claim of a creditor addressed to a single debtor or the acknowledgment made by one of the debtors in favor of one or more creditors be sufficient to interrupt the period of prescription?

***Indivisibility and solidarity are NOT identical.

Indivisibility	vs	Solidarity
Prestation which constitute the object of the obligation.	nature	Legal tie or vinculum, and consequently to the parties of the obligation.
Plurality of subjects not required	requisites	Plurality of subjects is indispensable.
Terminated when the obligation is converted into one of indemnity for damages	Effect of breach	Remains even though there is a liability on the part of the debtors because of breach.

Kinds of solidarity

- active – among creditors
 - tie or vinculum existing among several creditors of one and the same obligations by virtue of which each of them, in relation to his co-creditors, possesses the character of a creditor only with respect to his share of the obligation but in relation to other debtor

- or debtors, represents all other creditors.
- Mutual representation
- passive – among debtors
 - tie or vinculum existing among several debtors of one and the same obligations by virtue of which each of them, in relation to his co-debtors, possesses the character of a debtor only with respect to his share of the obligation, but in relation to other creditor or creditors, represents all other debtors.
 - each solidarity debtors, as far as the creditors are concerned, is the debtor to the entire amount
- mixed – among creditors and debtors

fundamental effect of active solidarity- creation of a **relationship of mutual agency** among solidary creditors by virtue of which the creditor is empowered against the debtor or debtors not only the rights which corresponds to him, but also all the rights which correspond to the other creditors, with the consequent obligation to render an accounting of his acts to such creditors.
(equal mutual representation)

***relationship of mutual agency, basis of the difference of the rules in Art. 1212 and 1215.

fundamental effect of passive solidarity- liability of each debtor for the payment of the entire obligation, with the consequent right to demand reimbursement from the others for their corresponding shares, once payment has been made.

Passive solidary debtor	Surety
Both are solidarily liable to the creditor for the payment of the entire obligations	
Liable for the payment of the debt of another but also for the payment of a debt which is properly his own.	Liable for the debt of another.
If he pays the entire	If the surety pays the

obligation, he has a right to demand reimbursement from his co-debtor of their share in the obligation.	entire obligation, he acquires a right to reimbursement from the principal debtor of the entire amount he has paid.
An extension of time granted by the creditor to one of the solidary debtors without the knowledge of the other solidary debtors would not have the effect of releasing the latter from their obligation.	An extension of time granted by the creditor to the principal debtor would release the surety from the obligation.

***Uniform bond or tie- when the creditors and debtors are bound in the same manner and by the same conditions or periods.

***Varied bond or tie- when the creditors and debtors are not bound in the same manner and by the same conditions or periods.

***In Art. 1211, the right of the creditor is limited to the recovery of the share owed by the debtor whose obligation has become mature leaving in suspense his right to recover the shares corresponding to the debtors whose obligations have not yet matured.

Case: ***Inchausti & Co. vs Yulo***

(Art. 1212)

Effects of Prejudicial acts of a creditor to...

- debtor/debtors – valid and binding because of the principle of mutual representation which exists among the creditors
- solidary creditors – the creditor who performed the act shall incur the obligation of indemnifying the others for damages.

***Art. 1212 refers to effect of prejudicial acts upon the relationship of the creditor among themselves.

***Art. 1215 refers to the effect of prejudicial acts upon the entirely different relationship of the creditors with the debtor or debtors. Shall result in the extinguishment of the obligation

*****Prejudicial acts:**

- novation
- compensation
- confusion
- remission

***The act of extinguishment, which is prejudicial to the co-creditors, will be valid so as to extinguish the claim against the debtors, but not with respect to the co-creditors whose right subsists and can be enforced against the creditor who performed the act alone.

Assignment of right
(Art. 1213)

***Consent of other creditors in the assignment of rights by another solidary creditor is needed.

*****mutual agency**

Effects if assigned without the consent:

1. if assigned to another co-creditor, there is no violation of the precept stated in Art. 1213; Valid assignment
2. if the assignment is made to a third person, there is a violation of the precept in Art. 1213; Invalid assignment

(Art. 1214)

***Any creditor may demand (judicial or extra judicial) the payment or performance of the obligation from one, some, or all of the debtors.

***Payment to be made on the creditor who made the demand and to no other. If there is no demand, payment may be made by the debtor to anyone of the solidary creditors.

***In mixed solidarity, judicial or extra judicial demand prohibits the debtor upon whom the demand is made from making payment to any creditor other than to the one who made the demand; does not extend to other debtors upon whom no demand has been made.

(Art. 1215)

Novation – change or substitution of an obligation by another, resulting in its extinguishment or modification, either by...

- changing its object or principal condition, or
 - if prejudicial – the creditor who effected the novation shall reimburse the others for damages incurred by them
 - if beneficial – the creditor who effected the novation is able to secure performance of the new obligation, such creditor shall be liable to the others for the share which corresponds to them, not only in the obligation, but also in the benefits.
 - substituting another in place of the debtor, or creditor shall be liable to the acts of the new debtor in case there is a deficiency in performance or in case damage is incurred by the other solidary creditors
 - subrogating a third person in the rights of the creditor.
 - The obligation of the debtor and creditor is not in reality extinguished.
 - If effected by subrogating a third person in the rights of all the solidary creditors, the creditor liable for such novation is liable to the creditors for the share which corresponds to them in the obligation.
- extinguishes the obligation but it creates a new one in lieu of the old.
- The co-creditor who does not participate in the novation of the obligation can have a share in the benefits of the modification but not in possible losses.

General rule: Extension of time for the payment of the obligation does not constitute novation.

***needed in order that an obligation may be extinguished by another which substitutes it.

- Express declaration of novation
- incompatibility of the old and new obligation.

***In suretyship, extension of time given to the principal debtor by the creditor without the consent of the surety extinguishes the latter's liability, except when the surety is liable for different payments or upon series of installments.

Compensation – weighing two obligations simultaneously in order to extinguish them to the extent that the amount of one is covered by the amount of the other.

Confusion – refers to the merger of the qualities of creditor and debtor in one and the same person with respect to one and the same obligation.

Partial compensation or confusion:

- there may be some doubt as to the part of the obligation to which the confusion or compensation shall be applied.
- Apply the rules on Application of payment

Total compensation or confusion:

- obligation is extinguished altogether and what is left is the ensuing liability for reimbursement within each group

Remission – act of pure liberality by virtue of which the creditor, without having received any compensation or equivalent, renounces his right to enforce the obligation, thereby extinguishing the same either in its entirety or in the part or aspect thereof to which the remission refers.

Effects:

- **covers entire obligation:**
 - total extinguishment of the obligation.
 - the entire juridical relation is terminated
- for the benefit of one of the debtors and covers his entire share of the obligation.
 - Totally releases the debtor from the creditors.
 - But the debtor is still bound to his co-debtors
- for the benefit of one of the debtors and covers only a part of his share of the obligation.
 - His character as a solidary debtor is not affected
- covers the entire share of a solidary debtor in the obligation or only part thereof.
 - Partial remission is a valid defense if the creditors proceed against any one of the solidary debtors for the payment of the entire obligation.

***Such rules cannot be applied if the debt had already been totally paid by anyone of the solidary debtors before the remission is effected.

***If one of the solidary creditor was able to collect the entire amount from one or some, or all of the solidary debtors, the obligation is totally extinguished and that creditor must render an account to his co-creditors.

(Art. 1216)

***Creditor may proceed against any one, or some, or all of the solidary debtors simultaneously.

***Bringing of an action against the principal debtor to enforce the payment of the obligation is not inconsistent with, and does not preclude the bringing of another to compel the surety to fulfill his obligation under the surety agreement.

***A creditor's right to proceed against the surety exist independently of his right to proceed against the principal.

***if the obligation is joint and several, the surety has the right to proceed even against the surety alone.

***obligation of the surety is the same as that of a principal.

***The surety is not entitled, as a matter of right, to be given notice of the principal's default. Commencement of the suit is a sufficient demand.

(Art. 1217)

***Where payment is made by one of the solidary debtors, the effect is either the total or partial extinguishment depending upon whether the entire amount of the debt is paid or only part thereof.

***Once payment is made by one of the solidary debtors of the entire obligation,, there arises immediately a consequent right of such debtor to

claim from his co-debtors the share which corresponds to them, with interest for the payment already made.

***the right is not available to a debtor who makes the payment after the obligation has prescribed or has become illegal.

***The interest shall be computed not from the time payment was made, but from the time the debt became due.

If one of the solidary debtors become insolvent, his share shall be borne by all his co-debtors, in proportion to the debt of each. (par. 3, Art. 1217)

(Art. 1219 – 1221)

Effect of Loss or Impossibility of Performance

1. NOT due to the fault of the solidary debtors

- Obligation is extinguished

2. Due to the fault of one of the solidary debtors

- the obligation is converted into an obligation of indemnity for damages, but the solidary character of the obligation remains

3. Fortuitous event

- the obligation is converted into an obligation of indemnity for damages, but the solidary character of the obligation remains

unjust enrichment – reason or philosophy behind Art. 1220

***a solidary debtor who paid the entire amount of the obligation does not step into the shoes (subrogation) of the creditors because he does not acquire the same right to collect the entire amount of the obligation from his co-debtors. He is only entitled to the proportionate share of each of the co-debtors.

(Art. 1222)

***The creditor/s may proceed against any of the solidary debtors or all of them simultaneously for the payment of the obligation, but whether only one or all of the solidary debtors are sued jointly, any solidary debtor may interpose against the claim of

the creditor or creditors:

Defenses available to a solidary debtor

- defenses derived from the very nature of the obligation
 - payment or performance; res judicata; prescription; those which invalidate the contract such as mistake, violence, undue influence, fraud, etc...
- defenses personal to him or pertaining to his own share
 - minority; insanity, etc..
- defenses personal to the others, but only as regards that part of the debt for which the latter are responsible.
 - Merely a partial defense

Sec. 5 – Divisible and Indivisible Obligations

6. Divisible vs Indivisible

Divisible	Indivisible
condition is <u>susceptible</u> of partial realization or performance without the obligation in essence being changed.	condition is <u>not susceptible</u> to partial realization or performance because, otherwise, the essence of the obligation will be changed.
If separated into parts, its essence is not changed or its value is not decreased disproportionately, because each of the parts into which it is divided are homogeneous and analogous to each other as well as the thing itself.	If separated into parts, its essence is changed or its value decreased disproportionately.

The divisibility of the [performance] obligation **IS NOT** divisibility of the thing or the prestation which constitutes the object of the obligation.

***The divisibility or indivisibility of the object itself is a very important factor, probably the most important, in determining whether the prestation which constitutes the object of the obligation is susceptible to partial performance, or not.

***For a thing to be considered divisible, it is important that it must be possible for reconstruction into its condition prior the division, by uniting the different parts into which it had been divided.

Three kinds of Division

- Quantitative – when the thing can be materially divided into parts and such parts are homogeneous to each other.
 - Movable- parts are actually separated from each other
 - immovable- the limits of the parts are fixed by metes and bounds
- Qualitative – the thing can be materially divided but the parts are not exactly homogeneous. (i.e inheritance)
- Ideal/Intellectual – the thing can only be separated into ideal or intellectual parts, not material parts. (i.e. co-ownership)

(Art. 1223)

One debtor one creditor- the divisibility is of little significance.

General Rule: the creditor cannot be compelled to partially receive the prestation in which the obligation consists; neither may the debtor may the required to make partial fulfillment.

Exceptions:

- when the obligation expressly stipulates the contrary
- when the different prestations constituting the objects of the obligation are subject to different terms and conditions.
- When the obligation is in part liquidated and in part unliquidated.

Plurality of debtors and creditors- the effect of the divisibility or indivisibility of the obligation shall depend whether the obligation is joint or solidary.

- Joint –
 - Divisible- Art. 1208 shall apply
 - Indivisible- Art. 1209 and 1224
- Solidary – Art. 1211- 1222 shall apply

(Art. 1224)

Breach of joint indivisible obligation

- the obligation can be enforced only by proceeding against **all** of the debtors
- if any of the debtors fails or refuse to

comply with the obligation, it is converted into indemnity for damages

- the debtor who failed or refused to comply with his obligation shall bear the burden of paying all of the damages suffered by the creditors
- the other debtor may also recover for damages from the debtor at fault.

(Art. 1225)

True test of divisibility: **WON the obligation is susceptible of partial compliance.**

***The susceptibility of partial compliance should be understood in the sense of the possibility of realizing the end or purpose which the obligation seeks to attain. (Applies to obligations to give, to do, or not to do)

To give

The divisibility or indivisibility of the obligation is the most important factor.

- definite & indivisible object- not susceptible of partial fulfillment (Absolute rule)
- divisible object- susceptible of partial performance. except:
 - when the law provides for its indivisibility which may be inferred or presumed either;
 - from the fact that although the object of the obligation can be separated in parts, yet each part constitutes a necessary complement of the other parts
 - from the very purpose of the obligation itself
 - it is so intended by the parties
 - express
 - implied

To Do

- indivisible prestation- not susceptible of partial fulfillment (Absolute rule)
 - In order to determine whether the prestation is divisible or not, the object or purpose of the obligation must always be considered
 - it is divisible when it has for its

object...

1. the execution of a certain number or days of work,
 2. the accomplishment of work by metrical units; or
 3. the accomplishment of analogous things which by their nature are susceptible of partial performance.
- Divisible prestation- susceptible of partial fulfillment, with certain qualifications.
 - when the law provides for its indivisibility
 - it is so intended by the parties

Not to Do

- The determination of the character of the obligation will depend upon the sound discretion of the court

Sec. 6 – Obligations with Penal Clause

- one in which an accessory undertaking is attached for the purpose of insuring its performance by virtue of which the obligor bound to pay a stipulated indemnity or perform a stipulated prestation in case of breach.
- Penalty or penal clause is an accessory obligation attached to the principal obligation

Purposes of penalty:

- insure the performance of the obligation (*funcion coercitiva o de garantia*); general purpose
- liquidate the amount of damages to be awarded to the injured party in case of breach of the principal obligation (*funcion liquidatoria*); compensatory; pre-agreed amount for the damages
- to punish the obligor in case of breach of the principal obligation (*funcion estrictamente penal*); punitive

Kinds of penalty

As to origin	
Legal	Conventional
Constituted by law	Constituted by

	agreement of the parties
As to purpose	
Compensatory (for reparation)	Punitive
Established for the purpose of indemnifying the damages suffered by the obligee or creditor in case of breach	Established for the purpose of punishing the the obligor or debtor in case of breach
As to Effect	
Subsidiary/Alternative	Joint/Cumulative
Only the penalty may be demanded in case of breach	both the penalty and the principal obligation may be demanded

(Art. 1226)

***Penalty may be considered as reparation or substitute for damages or as a punishment in case of breach of the obligation.

Reparation – the question of damage is resolved, since the stipulated indemnity or prestation represents a legitimate estimate made by the contracting parties of the damages caused by the breach of the obligation.

- proof of actual damage is not needed
- general rule

Punishment – the question of damage is not yet resolved

- **the right to damages, aside from penalty, still subsists**
- if the injured party desires to recover the damages actually suffered by him in addition to the penalty, he must prove such damages.
- Exception to the general rule

General Rule: the penalty is fixed by the parties as a compensation or substitute for damages in case of breach.

Except:

1. when there is a stipulation to the contrary
2. when the obligor is sued for refusal to pay the agreed penalty
3. when the obligor is guilty of fraud

- (see Art. 1170)

(the purpose of the penalty is to punish the obligor)
 ***The obligee can recover from the obligor not only the penalty, but also the damages or interests resulting from the breach of the principal obligation

where both parties were unable to comply with their obligation (fortuitous event), the penal clause cannot be invoked by anyone of them to the prejudice of the other.

(Art. 1227)

***The debtor cannot exempt himself from the performance of the principal obligation by paying the stipulated penalty. Unless the right has been expressly and clearly granted to him.

****(what happens to the obligation if the right to choose to pay the penalty in substitute of the principal obligation has been granted to the debtor, is the obligation converted to facultative obligation or does it remain an obligation with a penal clause?)*

***The creditor cannot demand the fulfillment of the principal obligation and the satisfaction of the stipulated penalty at the same time. Unless the right must be clearly granted to him.

- if there is fault on the part of the debtor, the creditor can demand not only the satisfaction of the penalty but also the payment for damages.

(Art. 1228)

***Applicable only to the general rule in Art 1226 and not to the exceptions.

(Art. 1229)

the penalty may be reduced:

- if the principal obligation has been partly complied with
 - some but not all the prestation are complied with by the debtor
 - refers to the quantity or quality of the performance
- if the principal obligation has been irregularly complied with
 - all the prestations were complied with but not in accordance with the tenor of the agreement
 - refers to the form

- if the penalty is iniquitous or unconscionable.

***The creditor cannot recover more than the penalty stipulated even if he proves that the damage suffered by him exceed in amount such penalty.(the amount is already agreed upon)

(Art. 1230)

***If the principal obligation is void, the penal clause is also void.

***if the penal clause is void, the principal obligation is not affected.

Chapter 4 EXTINGUISHMENT OF OBLIGATIONS

(Art. 1231)

modes of extinguishing obligations

- payment or performance
- loss of the thing due
- condonation or remission of the debt
- confusion
- compensation
- novation
- annulment
- rescission
- fulfillment of a resolutive condition
- prescription
- --renunciation or waiver by the creditor
- compromise
- expiration of the resolutive term or condition
- death of one of the contracting parties (personal obligations)
- will of one of the contracting parties
- mutual assent or dissent

Section. 1 – Payment or Performance

(Art. 1232)

Payment –

- fulfillment of the obligation either voluntarily or involuntarily, including its extinguishment by any means or modes
- **consists in the normal and voluntary fulfillment of the obligation by the realization of the purpose for which it was constituted.**

- Includes **performance** in any other manner, of an obligation.
- Fulfillment of the obligation by the delivery of a sum of money.

(Art. 1233-1235)

General Rule: there should be **complete** performance. (Art. 1233)

Except:

- substantial performance in good faith
 - the debtor may recover as though there has been a strict and complete fulfillment, less damages suffered by the creditor. (Art. 1234)
 - Case: ***Diesel Construction vs UPSI***
- When the obligee accepts the performance knowing its incompleteness or irregularity, without expressing any objection or protest. (Art. 1235)
 - Based on the principle of estoppel
- when the obligation has been converted into an indemnification (falls under Art. 1233)

(Art. 1236-1238)

General Rule: Creditor is not bound to accept payment or performance by a third person. *This is because the creditor may not have confidence in the honesty of the 3rd person who might deliver a defective thing or pay with a check which may not be honored.*

Except:

- when it is made by a 3rd person who has interest in the fulfillment of the obligation. (joint debtor, guarantor, surety)
- when there is a stipulation to the contrary

persons who may pay obligation:

- the debtor himself or his legal representatives
- any third person who have an interest in the fulfillment of the obligation. (subject to some juridical effects)
- Art.1236-1237 are not applicable to a third person who pays the redemption price in sales with right to repurchase, because a vendor a retro is not a debtor within the meaning of the law.

Rights of a 3rd person

(with the knowledge and consent of the debtor)

- right of reimbursement – recover from the debtor the **entire amount** which he has paid.
- right of subrogation

(without the knowledge and consent of the debtor)

- right of reimbursement – recover only insofar as the payment has been beneficial to the debtor

***If the obligation has been previously extinguished by any mode, the 3rd person may proceed against the creditor based on the principle of unjust enrichment.

Gratuitous payments – payments effected by a third person who does not intend to be reimbursed by the debtor.

- consent of the debtor is necessary. There is no gift if the gift was not accepted by the debtor.
- If the consent is SECURED rules on ordinary donation will apply
- if the consent is NOT SECURED, Art. 1236 and 1237 will apply.
- Such gratuitous payments are valid as far as the creditor is concerned.(Art. 1238) so the 3rd person who offered the gift but was declined by the debtor can compel the debtor to reimburse him (3rd person) the amount accepted by the creditor.

(Art. 1239)

***It is essential that the person who pays the obligation should have the necessary legal capacity to effect such payment.

- free disposal of the thing due
- capacity to alienate the thing

effect of absence of one or another will effect the invalidity of payment

***Even if the creditor has already accepted the payment, it may still be annulled by proper action in court, subject to the exception provided in Art. 1427.(But such provision has already been modified when the age of majority has been

lowered to 18 y.o)

(Art. 1240)

to whom payment must be made

- person in whose favor the obligation has been constituted
- his successor in interest
- any person authorized to receive payment
 - by the creditor himself (conventional authority)
 - by law or legal authority (guardian, executor or administrator of the estate of a deceased person, assignee or liquidator of a partnership or corporation)

General rule: payment to unauthorized person is invalid. Exceptions:

- payment made to a 3rd person, provided that it has redounded to the benefit of the creditor. This can be invoked through the following proofs: (Art. 1241)
 - if after payment, the 3rd person acquires the creditor's rights
 - if the creditor ratifies the payment to the 3rd person
 - if by the creditor's conduct, the debtor has been led to believe that the 3rd person has authority to receive the payment
- Payment made to the possessor of the credit, provided that it was made in good faith. (Art. 1242)
 - Valid payment to the **possessor of the credit** does not refer to possessor of the document evidencing it.
 - the remedy of the creditor would be to proceed against the possessor if credit to whom payment was improperly made.

***Although the payment is not valid because it is not made to a person authorized to receive payment, nevertheless it is clear that the vendee had acted in good faith; he can not therefore be said to have incurred in delay; consequently, the vendor cannot ask for rescission of the contract.

(Art. 1241)

payment to incapacitated person is valid:

- if he has kept the amount or thing paid or delivered

- insofar as the payment has been beneficial to him.

- The payment is beneficial to him (incapacitated) when that which has been paid or delivered is applied or spent for some rational, necessary or useful purpose for his benefit.

***These rules are applicable only to obligations to give.

(Art. 1243)

***Payment by the debtor to the creditor after having been judicially ordered to retain the debt is invalid.

- such payment must be made to the proper officer of the court issuing the writ of attachment or garnishment in conformity with the Rules of Court.

(Art. 1244-1246)

obligation to give specific or determinate thing – the debtor cannot fulfill his obligation by delivering a thing which is different from what is due although such may be of the same value or even more valuable than that which is due.

Obligation to do or not to do – the obligor cannot fulfill his obligation by substituting another act or forbearance.

***if the creditor or obligor accepts the delivery or substitution, such acceptance shall give the same effect as a fulfillment or performance of the obligation.

Dation in payment (*dacion en pago*) – transmission of the ownership of a thing by the debtor to the creditor as an accepted equivalent of the performance of the obligation.

- Property is alienated to the creditor in satisfaction of a debt in money;
- law on sales shall govern (Art. 1245);
- exception in Art. 1244

(Art. 1247)

extra judicial expenses – for the account of the debtor

judicial costs – Rules of Court will govern

***If the debtor changed his domicile in bad faith or after he has incurred in delay, the additional

expenses shall be borne by him.

(Art. 1248)

3 conditions or characteristics of payment:

- identity – only the prestation agreed upon and no other must be complied with
- completeness – the thing or service in which the obligation consists must be completely delivered or rendered
- indivisibility – the payment or performance must be indivisible

General Rule: Art. 1248 is applicable only to obligation where there is one debtor and one creditor. Exceptions:

- when the obligation expressly states the contrary
- when the different prestations which constitutes the objects of the obligation are subject to different terms and conditions
- when the obligation is in part liquidated and in part unliquidated.

(Art. 1249)

***A judgment awarding an amount in US dollar may be made with its equivalent amount in local currency in the conversion rate prevailing at the time of payment. The trial court should determine the the conversion rate if the parties cannot agree on the same. (*Zagala vs Jimenez*)

RA 529 – An Act to assure the uniform value of Philippine Coins and Currency.

- the rule that payment of debts in money shall be made in the currency stipulated was completely abrogated.

RA 4100 – amending RA 529

- the law prohibiting stipulations in domestic monetary obligations purporting to give the obligee the right to require payment in currency other than the Phil. currency does not apply to transactions listed on pp. 246, Obligations and Contracts, *Jurado*.

Legal tender – currency which may be used for the payment of all debts, whether public or private

- in the Phil., legal tender would be notes and coins issued by the Central Bank.
- Promissory notes payable to order or bills of exchange, checks, etc. are not legal tender

Rule: the debtor cannot compel the creditor to accept a check or draft. Except:

- when the document has been cashed
- when it had been impaired through the fault of the creditor.

(Art. 1250)

***In case of extraordinary inflation or deflation, the value of the currency at the time of the establishment of the obligation would be the **basis** of payment.

Extraordinary inflation or deflation\

- unusual or beyond the common fluctuation in the value of the currency which the parties could not have been foreseen when the obligation was established. (Tolentino)
- uncommon decrease or increase in the purchasing power of the currency which could not have been reasonably foreseen. (Dean Capistrano)

***Art. 1250 is applicable only to contractual obligations and not to obligations arising from torts.

***requisites for Ballantyne schedule to apply:

- obligation should have been contracted during the Japanese occupation
- it could have been paid during the Japanese occupation
- it could have been paid with Japanese military notes

(Art. 1251)

Place of payment:

Obligation	Place of payment
deliver a determinate thing	Place where the thing might be at the time the obligation was constituted
Any other case	Domicile of the debtor (unilateral obligations)

Subsection 1. - Application of Payment

(Art. 1252)

application of payment- designation of the debt to which the payment must be applied when the debtor has several obligations of the same kind in favor of the same creditor.

Requisites:

- one debtor, one creditor
- 2 or more debts of the same kind
 - Exception: if at the time the designation or application is made, such obligations had already been converted into obligations to indemnify with damages by reason of breach or nonfulfillment.
- all debts must be due
 - Exception:
 - when there is a stipulation to the contrary
 - the application of payment is made by the party for whose benefit the term or period has been constituted.
- amount paid by the debtor not sufficient to pay the total amount of the debt

right to designate belongs primarily to the debtor, only at the time when payment is made.

Right of creditor to make application of payment is merely a **PROPOSAL** of the application of payment. (*this is done by giving to the debtor a receipt in which the application of payments is made subject to the express or tacit approval of the debtor.*)

mistake, fraud, force, or intimidation- causes that will invalidate or grounds to impugn the application of payments

time of payment made- when the debtor may exercise the right to make an application of payment.

***AP is important so as to know which among the obligations will be extinguished.

(Art. 1253)

payment of interest first before payment of principal.

Manresa: the rule is obligatory because it is more in consonance with justice.

Supreme Court: such rule is only directory and not mandatory. Applies only in the absence of a verbal or written contract.

Prejudicial to the creditor: By applying the payment to the principal, the value of the principal will be decreased and the value of the interest will also be decreased.

(Art. 1254)

applicable only when payment cannot be applied in accordance with the rules.

When the debt due are not of the same burden, the rule that the debt which is **most onerous** to the debtor shall be deemed to have been satisfied.

Rules to know the most onerous:

Types of Debts	Which is more Onerous
Incurred at different dates	Oldest ones
Debts bearing interest against those which are not	Debt which incurs the interest
2 debts both incurring interest	Debt with higher interest
Secured and not secured debts	Secured ones
Principal vs surety	Debt covering that of the principal
Solidary debtor vs sole debtor	Solidary debtor (Jurado) Sole debtor (Tolentino)
Solidary obligation	Share corresponding to the solidary debtor
Indemnity vs penalty obligation	Indemnity
Liquidated vs unliquidated	liquidated

Pro rata- in proportion

- what to apply when the obligations are due of the same nature or burden

***If the debtor makes a proper AP, but the creditor refuses to accept it because he wants to apply it to another debt, such creditor incurs in delay (*mora accipiendi*)- Tolentino

- *pro rata* rule is applied

Case: Paculdo vs Regalado

Subsection 2. - Payment by Cession

(Art. 1255)

Cession or assignment- special form of payment whereby the debtor abandons all of his property for the benefit of the creditor in order that from the proceeds thereof the latter may obtain payment of their credits.

Requisites:

- plurality of debts
- partial or relative insolvency of the debtor
- acceptance of the cession by the creditor
 - insolvency Law- applicable if the creditor did not accept the cession

Kinds of Cession:

- contractual- Art. 1255, NCC
- judicial- Insolvency Law

Cession	vs	Dation in Payment
Plurality of creditors essential	Number of parties	There may be only one creditor
Debtor is in partial or relative insolvency	Financial condition of the parties	Debtor not necessarily in financial difficulty
Universality of debtor's property	Object	Thing equivalent of the performance of the obligation
Release the debtor for the net proceeds of the things ceded or assigned, unless there is a contrary intention.	Effect	Extinguishes the obligation to the extent the value of the thing delivered (as equivalent of the performance of the obligation)

Effects of cession:

- partial extinguishment
- no transfer of ownership to the creditors only transfer of possession including administration

Subsection 3. - Tender of Payment and Consignation

(Art. 1256-1258)

tender of payment – manifestation made by the debtor to the creditor to immediately comply with the obligation

consignation – deposit of the object of the obligation in a competent court in accordance with the rule prescribed by law after refusal or inability of the creditor to accept the tender of payment.

Tender of Payment	Consignation
Preparatory act	Principal act
Extra judicial in character	Judicial in character

Tender of payment does not by itself produce legal payment, unless it is completed by consignation.

General requisites of consignation – relative to payment. (Arts. 1232-1251)

- those which have already taken up in connection with payment in general.
- Person who pays
- person to whom payment must be made
- object of the obligation to be paid
- time when payment or performance becomes demandable.

Special requisites – prescribed by Art. 1256-1258

1. there is a thing due (Art. 1258, par. 1)
2. that the payment or performance was refused or the creditor was incapable of accepting payment
 - *tender of payment must be made before the consignation*
 - *tender of payment must have been unconditional*
 - *that the creditor must have refused to accept the payment.*
(Sy vs Eufemio)
3. previous notice has been given to the persons interested (i.e. surety or

guarantor or a solidary co-debtor...not just to the creditor) in the fulfillment of the obligation – a formal act

- to allow the creditor to reconsider his refusal; to show the debtor's serious desire to extinguish his obligation

4. that the thing or amount due has been placed at the disposal of judicial authority
 - *deposited with the Clerk of Court usually accompanied by the filing of the complaint for action for consignment/action for specific performance/action for cancellation of the obligation.*
5. after consignment has been made, the persons interested in the fulfillment of the obligation had been notified thereof.
 - reason: to enable the creditor to withdraw the goods or money deposited.
 - *Effects: see Art. 1260-1261*

Case: (*Ponce de Leon vs Syjuco, Inc.*)

General Rule: requisites must be strictly complied

Exception: in consideration of justice and equity
(**Case:** *Rural Bank of Caloocan vs CA*)

***Since consignment is a special form of payment, it must conform not only with the special requirements prescribed by law, but also with all the requisites of a valid payment.

Exceptions to the rule that there must be a previous tender of payment: (Art. 1256)

1. when the creditor is absent or unknown
2. when the creditor is incapacitated
3. when the creditor refused to give a receipt
4. when 2 or more person claim the right to collect
5. when the title of the obligation has been lost

Reason for the exceptions:

#2 incapacitated persons do not have the capacity to administer their property; the debtor will be made to pay again because the payment is invalid subject to the exception provided in Art. 1241 (protection to the debtor)

#3 would mean that there has been a previous tender of payment or it was already said by the

creditor that he will not accept any tender of payment.

#4 protection to the debtor, to avoid tender of payment to the wrong individual

***When valid tender of payment is made, the obligation is not extinguished unless it is completed by consignment.

Effect: exemption of the debtor from payment of interest and/or damages

***Consignment is applicable to both movable and immovable objects.

Effect of tender of payment:

- stops the accrual of interest
- release the debtor from liability over the thing due
- ask the judge to order the cancellation of the obligation
- preserve the right of the debtor (*Francisco vs Bautista*)

(Art. 1259)

expenses of consignment shall be charged against the creditor only when consignment have been properly made

1. when the creditor accepts the thing or amount deposited
2. when the court decided that consignment have been properly made or cancels the obligation at the instance of the debtor in accordance with Art. 1260, par. 1.

(Art. 1260-1261)

Effects of consignment:

- if the creditor finally **accepts** the thing or amount deposited, the payment is settled altogether
- if the creditor **refuses** to accept the thing deposited, litigation for the extinguishment or cancellation of the obligation on the ground of a valid and effective consignment will arise.
- *If the creditor neither refuses nor accepts, the debtor may ask the court to cancel the obligation after showing the the requisites of consignment have been complied with (Art. 1260)- tolentino*

Effects of withdrawal by the debtor:

- made before the creditor has accepted the consignation or before judicial declaration, the obligation remains in force
- made with the consent of the creditor, the creditor loses every preference which he may have over the thing. Solidary co-debtors, guarantors and sureties, shall be released.
 - The solidary co-debtors are released only with regard to their solidarity but not with their respective share in the obligation
 - the guarantors and sureties are released from the obligation since the obligation could have been extinguished if not for the consent of the creditor to withdraw the thing from consignation;

Prayer of the creditor that the thing be adjudicated in his favor is already an acceptance on the part of the creditor, the debtor cannot withdraw the thing anymore.

***For immovable objects or other real properties, the court will assign a receiver to consider the object consigned or deposited.

Section 2. – Loss of the Thing Due

Loss of the thing due- impossibility of compliance with the obligation through any cause

- impossibility of performance
- perishes
- goes out of commerce
- disappears

(Art. 1262)

effect of loss in obligation to give a determinate thing: extinguishment of the obligation

requisites:

- thing lost must be determinate
- the thing was lost without the fault of the debtor (*if it is lost through the fault of the debtor, the obligation is converted into an obligation to indemnify the creditor for damages.*)
- the thing lost before the debtor has incurred in delay (*if it is lost after the debtor has incurred in delay, the debtor will be held liable for indemnity for damages*)

effect of fortuitous event: extinguishment of the obligation, Exceptions:

- when by law, the debtor is still liable even for fortuitous events
- when stipulated by the parties
- when the nature of the obligation requires the assumption of risk
- when the loss of the thing is due partly to the fault of the debtor
- when the loss of the thing occurs after the debtor has incurred in delay
- when the debtor promised to deliver the same thing to 2 or more persons who do not have the same interest
- when the obligation arises from a criminal offense
- when the obligation is generic

(Art. 1263)

loss of a generic thing does not extinguish the obligation because generic things do not perish (*genus nunquam perit*)

effect of loss in reciprocal obligation: if one of the reciprocal obligation is extinguished the other must also be extinguished. (Tolentino)

(Art. 1264)

court granted discretion to determine whether a partial loss or destruction of the thing is important as to extinguish the obligation

(Art. 1265)

presumption of fault on the part of the debtor if the thing is lost while in his possession. In such case, the obligation is NOT extinguished.

Such presumption does not apply in case of earthquake, flood, storm, or other calamity.

(Art. 1266)

impossibility of performance in obligations to do extinguishes the obligation.

***Same requisites provided in Art. 1262

***Legal and physical impossibility must have occurred **AFTER** the constitution of the obligation.

2 causes of impossibility

- **legal impossibility-** (direct) when the law prohibits the performance or execution of the work agreed upon (immoral or

dangerous)

- (indirect) the law imposes duties of a superior character upon the obligor which are incompatible with the work agreed upon.

- **Physical impossibility** – arises principally from the death of the obligor, when the act to be performed requires his personal qualifications, or from the death of the obligee, when the act can be of possible benefit only to him.
- it can also arise from mere accident, or from the acts of the debtor himself in which there is no fault, or from the acts of 3rd person affecting the debtor's capacity

***Seldom that impossibility of performance may arise in obligation not to do. in rare exceptional cases, Art. 1266 is also applied.

***Cannot be applied to obligations to give
(Case: *PNCC vs CA*)

(Art. 1267)

relative impossibility- service has become so difficult as to be manifestly beyond the contemplation of the parties, the court should be authorized to release the obligor in **whole** or in **part**.

Service = performance

rebus sic stantibus – the parties stipulate in the light of certain prevailing conditions and once these condition cease to exist, the contract also ceases to exist.

Case: *Naga Telephone Co. et al. vs. CA*

(Art. 1268)

Applicability:

- obligation of restitution of a certain determinate thing on the part of the person criminally liable
- cases where such obligation arises by virtue of reparation or indemnification
- persons who are principally and subsidiarily liable

***the debtor shall not be exempted from the payment of the price of the thing, whatever may be the cause of the loss. except:

- when he offered the thing to the obligee and the latter refused to accept it without

justification.

Offer (Art. 1268)	Consignation (Art. 1256-1261)
Extinguishment of the obligation through loss by a fortuitous event	Payment of the obligation.
Necessary that the creditor refused to accept the offer of the debtor without just cause to release the latter from liability	Offer is just a step to the payment.

Effect of creditor's refusal without just cause:

- debtor may make a consignation of the thing and thereby relieve himself of further liability
- keep the thing in his possession, in which case, the obligation still subsists, but if the thing is lost through fortuitous event, Arts. 1262-1265 shall govern.

Art. 1268 is not applicable to cases where an offer is not possible, since offer by the debtor is an essential requisite.

(Art. 1269)

***All the rights of action which the debtor may have against 3rd persons by reason of the loss of the thing are transmitted by operation of law to the creditor.

Transmission made from the moment the obligation is extinguished.

Example:

- insured object which is lost or destroyed, creditor may collect from the insurer.
- Expropriated land, the creditor may collect the compensation due by reason of the expropriation.

**Section 3. - Condonation or
Remission of the Debt**

Remission- an act of liberality by virtue of which, the obligee without receiving any price or equivalent, renounces the enforcement of the obligation

- as a result, the obligation is extinguished totally or partially
- gratuitous abandonment by the creditor of his rights (Sanchez Roman)

Requisites:

- it must be gratuitous
- must be accepted by the obligor
- the obligation must be demandable

classification of remission:

As to form	<p>Express- made with the formalities prescribed by law for donations</p> <p>Implied- can be deduced from the acts of the obligee or creditor.</p>
As to extent	<p>Total – entire obligation is extinguished</p> <p>partial – refers only to the principal or to accessory obligation or to an aspect thereof which affects the debtor (solidarity)</p>
As to constitution	<p>Inter vivos – constituted by agreement of the obligee and the obligor</p> <p>Mortis causa- constituted by last will and testament</p>

(Art. 1270)

gratuitous – most essential characteristics of remission

***Condonation must necessarily be accepted by the debtor.

***Condonation is a bilateral act because our Code requires its acceptance by the debtor

Applicability of the Rules on Donations

- rules on acceptance of the debtor
- rules on forms of donation in express

condonation

- Art.748, Civil Code-movable property & obligations to do or not to do
 - personal property:
 - verbal remission shall not be required since there is no transfer of property but merely a remission or condonation of an obligation to give a personal property.
 - Debtor is relieved from making conveyance of the property.
 - Express remission: acceptance by the debtor may be implied or tacit, provided that the value of the thing condoned does not exceed P5,000
- Art.749, Civil Code-immovable property
- rules on extent of the amount of donation
 - Art. 750-Art. 752, Civil Code
 - Art. 771, Civil Code
- rules on revocation of the donation

Implied remission may be deduced from the act or acts of the creditor which clearly show the intent to condone the obligation.

- Express or implied acceptance is also necessary

***Will an Express remission which fails to comply with the forms prescribed in Arts. 748 and 749 of the Code be enforced as a Tacit remission?

Ans: Negative, to rule otherwise would defeat the purpose of Art. 1270.

remedy for void donation:

- reduction of the donation; or
- suppression of the donation

(Art. 1271-1272)

Delivery of the private document evidencing debt is a presumption of creditor's renunciation of any right of action for the collection of the debt.

Reason: *private document is the best evidentiary proof to show that the obligation has not been paid.*

Requisites:

- document evidencing the credit has been delivered by the creditor to the debtor
- document must be a private document

- delivery must be voluntary

presumption of voluntary delivery by the creditor unless the contrary is proved

- heirs of the creditor may impugn condonation by establishing that it is inofficious in conformity with Art. 771, Civil Code.
- legitime is part of persons estate reserved by law for his compulsory heirs.
 - ½ of the entire estate reserved for the legitimate child/children
 - other half is free portion, may be distributed to anybody
 - Inofficious donation are those which exceeds the free portion of the estate
- Collation the value of all gratuitous disposition are added to the estate of a person for the benefit of his compulsory heirs.

(Art. 1273-1274)

effect of remission: Extinguishment of the obligation in its entirety or aspect thereof

- in joint obligation, the remission only affect the share of the creditor who makes the remission and the corresponding share of the debtor in whose favor the remission is made.
- In solidary onligation, Arts. 1215, 1219, and 1220 of the Code shall govern.

***Remission of the principal obligation is remission of the accessory obligation but remission of the accessory obligations is not remission of principal obligation.

- accessory obligation is just dependent on the principal obligation for their existence and efficacy.

Presumption of remission of accessory obligation of pledge exist when the thing, after its delivery to the creditor, was found at the possession of the debtor.

Section 4. – Confusion or Merger

(Art. 1275)

Confusion – merger of the characters of the creditor and debtor in one and the same person, by virtue of which, the obligation is extinguished.

- meeting in one and the same person the qualities of a creditor and debtor with respect to one and the same obligation.

Requisites:

- merger of characters of debtor and creditor must be in the same person
- it must take place in the person of either the principal creditor or principal debtor
- there must be complete and definite merger of the qualities

Kinds of Merger or Confusion:

As to cause or constitution	Inter vivos- constituted by agreement of the parties mortis causa- constituted by succession.
As to extent or effect	Total- extinguishes the entire obligation Partial- extinguishes only a part or aspect of the obligation or only the shares in joint obligation.

(Art. 1276)

If the merger will take place in the person of the subsidiary creditor and subsidiary debtor (guarantor), principal obligation is not extinguished, there will only be SUBSTITUTION of creditor or debtor.

In case of:

- Guarantor-creditor – can demand the performance of the obligation from the debtor, in case of default, even from his co-guarantors
- Guarantor-debtor – the creditor can demand the performance of the obligation directly from the guarantor.

(Art. 1277)

there is only a partial extinguishment of obligation in case of confusion between one joint debtor and one joint creditor.

With regard to solidary obligations, the obligation is altogether extinguished without prejudice to the

rights and obligations of the solidary creditors and debtors among themselves.

Confusion may be revoked

- agreement: presence of any of the causes of rescission, annulment, etc.
- inheritance: nullity of the will, subsequent appearance of an heir with better right

Effect: the obligation is recreated in the same form and under the same condition in which it was found before the merger took place.

- period which has elapsed from the moment the merger took place until its revocation cannot be computed in the determination of the period of prescription

Section 5. – Compensation

(Art. 1278)

Compensation- mode of extinguishing in their concurrent amount those obligations of persons who in their own right are creditors and debtors to each other.

- weighing two obligations simultaneously in order to extinguish them to the extent in which the amount of one is covered by the amount of the other.
- Simplified payment (*pago abreviado*)
- **double advantage over payment:**
 - facility of payment- takes effect by operation of law
 - guaranty for the effectivity of the credit- may avoid prejudice to one party by fraud or insolvency of the other.

Payment	Compensation
Takes effect by acts of parties	Takes effect by operation of law
Capacity to give and to acquire are necessary	Capacity to give and to acquire not essential
Complete and indivisible payment	Partial payment

Confusion	Compensation
One person in whom is merged the qualities of creditor and debtor	2 persons who are creditors and debtors of each other
Only one obligation	2 obligations

Counterclaim	Compensation
Similarity of debts is not necessary	2 debts must consists in money or if not, they must be of the same kind and quality
Does not require liquidation of debts	Debts must be liquidated
Need to be pleaded to be effectual	Need not be pleaded

Kinds of Compensation:

As to cause

- **Legal-** takes effect by operation of law when all the requisites are present (Art. 1278-1279, Civil Code)
- **Voluntary-** agreement of the parties who are mutually creditors and debtors to compensate their respective obligations, requisites may not all be present
 - takes effect the moment the parties agree
- **Facultative-** by the will of only one party and the other one cannot choose compensation because of any impediment. (Art. 1287-1288)
- **Judicial-** takes effect by judicial decree
 - takes effect the moment the judicial decree becomes final and executory

As to effect

- **Total** – compensation of 2 equal debts
- **Partial** - compensation of two unequal debts.

(Art. 1279)

requisites of compensation:

1. 2 parties are principal creditors and principal debtors of each other
2. both debts must consist in money, or if the things due are consumables, they must be of the same kind and quality
 - limited to obligations to give
 - consumables- movables which cannot be used in a manner appropriate to their nature without being consumed
 - fungibles- may be exchanged or compensated by another of the same kind and quality

3. both debts must be due
4. both debts must be liquidated and demandable
 - liquidated debts- those that may be determined by simple arithmetical operation
5. no retention or controversy commenced by 3rd persons over either of the debts and communicated in due time to the debtor
 - retention – application of the credits of one of the parties to the satisfaction of the claims of a 3rd person
 - controversy – refers to a case in which 3rd persons claim to be the creditor
6. compensation must not be prohibited by law

#2 compensation cannot be applied to obligations to do because of the differences in the respective capacities of the obligors.

#5 controversy: the effect is provisional suspension of the compensation. If the credit is adjudicated to the party interested in the compensation, compensation may take place, but if the credit was adjudicated to the 3rd person who claims to be the creditor, compensation cannot take place.

(Art. 1280)

right of guarantor to set up compensation, not only for what such creditor owes him, but also for what such creditor owes the principal debtor.

- exception to Art. 1279, No. 1

Basis:

- Bond of the guarantor cannot be resorted to so long as the debtor can pay
- When principal obligation is extinguished, the accessory obligation of the guarantor is also extinguished since it is subordinate thereto.

(Art. 1281-Art. 1282)

Art. 1282, example of voluntary obligation

****agreement to compensate debts which are not yet due**

(Art. 1283)

when the defendant who has an unliquidated claim for damages against the plaintiff sets it off by proving his right to said damages and the amount

thereof, it is converted into a liquidated claim by a court decree, in which case, compensation may take place

(Art. 1284)

exception to rule No.3, Art. 1279

rescissible/voidable obligations (*considered demandable*) may be compensated against each other before they are judicially rescinded or avoided.

(Art. 1285)

Effects of cession:

When the compensation has taken place:

- One or other obligation is extinguished, subsequent assignment of rights by the creditor to a 3rd person **cannot affect** the debtor with respect to the compensation which has already taken place.
 - Assignee can just demand indemnity for damages on the ground of fraud
 - **Except:** when the debtor consented to the assignment, in which case, the assignee can still demand for the payment of the credit

When the compensation has not taken place

-effects depend on whether the assignment was made...

- with the consent of the debtor – the debtor cannot set up against the assignee the compensation
 - except: if he notified the assignor that he reserves his right to the compensation, he can still set up compensation as a defense when the assignee demands the payment of the credit.
- With knowledge but without consent of the debtor – the debtor may set up the defense of compensation of debts prior to the assignment but not subsequent ones.
 - Purpose: to prevent fraud.
- Without knowledge of debtor - the debtor may set up the defense of compensation of **all** credits which he may have against the assignor and which may have become demandable, before he was notified of the assignment.
 - Remedy for the assignee: action for

indemnification against the assignor

(Art. 1286-Art. 1288)

Debts which cannot be compensated:

1. debts arising from contracts of depositum
2. debts arising from contracts of commodatum
3. claims for support for gratuitous title
 - cannot be applied to support in arrears
4. obligations arising from criminal offenses
5. certain obligations in favor of the government, such as taxes, fees, duties, and others of a similar nature.

Based on justice, trust and confidence, and self-preservation.

(Art. 1289-1290)

effect of compensation – extinguishes both debts to the extent that the amount of one is covered by the amount of the other

compensation takes place by operation of law (*ipso jure*)- its effects arise on the very day on which **ALL** requisites are fulfilled.

- applicable only to legal compensation

Section 6. – Novation

Novation – (*extinctive*) substitution or change of an obligation or change of an obligation by another, resulting in its extinguishment or modification, either by

- changing its object or principal conditions, or
- by substituting another in place of the debtor, or
- by subrogating any 3rd person in the rights of the creditor.

- mode of extinguishing obligations through the **creation of a new one** effected by the change or substitution of an obligatory relation by another with the intention of substantially extinguishing or modifying the same.

- two-fold purpose:

- extinguishing the old obligations
- giving birth to a new obligation to take place of the old

requisites:

- previous valid obligation

- agreement of the parties to the new obligation
- extinguishment of the old obligation
- validity of the new obligation

Extinctive	Modificatory
Old obligation is terminated by the creation of a new obligation that takes the place of the former	Old obligation subsists to the extent it remains compatible with the amendatory agreement

Kinds of Novation:

As to essence	<ul style="list-style-type: none"> • objective/real – change either in the cause, object, or principal conditions of the obligation • subjective/personal – substitution of the person of the debtor (<i>passive</i>) or to the subrogation of a 3rd person in the rights of the creditor (<i>active</i>). • Mixed – combination of objective and subjective novation.
As to form or constitution	<ul style="list-style-type: none"> • Express – declared in <u>unequivocal terms</u> that the old obligation is extinguished by a new one which substitutes the same • tacit- old and new obligations are incompatible with each other on every point
As to extent or effect	<ul style="list-style-type: none"> • Total – absolute extinguishment • partial – mere modification

Objective Novation:

- **change in the cause** – e.g. contract of sale or a contract of lease in which the price has not yet been paid to the vendor or lessor. If the parties to the contract subsequently entered into a new

agreement whereby the obligation to pay is converted into a loan made to the vendee or lessee, the result is real or objective novation

- **change in object** – e. g. certain amount is due or any change whereby the obligation to pay is converted into an obligation to render a personal service. Similar with dation in payment.
- **change in principal conditions of the obligation** – only those changes of an essential character can effect a novation of the previous or original obligation.

(Art. 1292)

***refers to forms of novation

novation by presumption has never been favored

animus novandi – intent to substitute a new obligation for the old one; must be clearly established before we can say that there is a novation resulting in the extinguishment of the old obligation and in the creation of a new one.

(*Delegatus debitor est odiosus in lege*)

Express novation- declared in unequivocal terms:

- clearly results from the agreement, or
- shown by full discharge of the original debt otherwise the old contract remains in force and the new one is added to it

Implied novation – test of incompatibility

***WON the 2 obligations can stand together, each having its own independent existence.

No incompatibility = No novation

- reiteration or ratification of the old contract with slight modifications or alterations
- 2nd contract provides for another method of payment
- 2nd contract provides for additional security
- 2nd contract provides for postponement of the date of payment
- creditor receives another guaranty or accepts payment from 3rd person, so long as there is no agreement that the principal debtor shall be released from the obligations
- filing of a surety bond

effect in obligation with a term or period:

- postponement of term or period – there is no novation
 - reason: there is no incompatibility
- reduction of the duration of the term – there is a novation
 - reason: clear case of incompatibility and change of the principal condition of the old obligation.

(Art. 1293)

novation by substitution of the debtor – personal novation

- effected with the consent of the creditor
 - **expromision** – effected with the consent of the creditor at the instance of the new debtor even without the knowledge or against the will of the old debtor
 - substitution with the knowledge and consent of the old debtor
 - substitution without the knowledge and consent of the old debtor
 - **delegacion** - effected with the consent of the creditor at the instance of the old debtor with the concurrence of the new debtor; refers to the substitution of debtors effected when the original debtor offers and the creditor accepts a 3rd person who consents to the substitution
 - requisites: initiative of the substitution must emanate from the original debtor
 - consent of the new debtor
 - acceptance by the creditor

difference according to Manresa

Expromision	Delegacion
Initiative for the change does not emanate from the debtor	Initiative for the change emanates from the debtor
may be made without the consent of the debtor since it consists in a 3 rd person assuming his obligation	Must be made with the concurrence of the original debtor since it is he who offers the substitution
Substitution may be effected even without	consent of the debtor (<i>delegante</i>), creditor

the consent of the original debtor	(<i>delegatorio</i>), and 3 rd person (<i>delegado</i>) to be substituted is necessary
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difference according to the case Quinto vs People:

Expromision	Delegacion
Initiative does not come from the debtor and may be made without his knowledge	The debtor offers, the creditor accepts a 3 rd person who consents to the substitution and assumes the obligation

***In either mode of substitution, the **consent of the creditor is INDISPENSABLE**.

- no time nor form prescribed when such consent must be given and how it must be given.

Effect of payment by new debtor:

- old debtor must reimburse to the new debtor whatever benefits he may have derived therefrom.
- Expromision**- relationship shall be regulated by the rules regarding payment of a debt by a 3rd person
 - with** debtor's consent – new debtor can demand the reimbursement of the entire amount which he has paid, and at the same time be subrogated in all of the rights of the creditor
 - without** the knowledge and consent of the debtor (*payment without knowledge and consent*)– new debtor can demand reimbursement from the old debtor only insofar as the payment has been beneficial to such debtor, no subrogation
 - without** the knowledge and consent of the debtor (*payment with knowledge and consent*) – new debtor can demand the reimbursement of the entire amount which he has paid, and at the same time be subrogated in all of the rights of the creditor
- Delegacion** – relationship between the parties shall be regulated by their agreement; in the absence thereof, the relationship shall be governed by the rules regarding payment of a debt by a 3rd person with the debtor's consent.

- new debtor can demand the reimbursement of the entire amount which he has paid, and at the same time be subrogated in all of the rights of the creditor

(Art. 1294-1295)

Effect of non-payment of the new debtor:

general rule: novation by substitution of the debtor whether by *expromision* or *delegacion* has the effect of releasing the original debtor from his obligation to the creditor, and the same time of substituting the new debtor thereto.

***Art. 1294 is applicable only to *expromision*.

- If the substitution is without the knowledge or against the will of the original debtor, the new debtor's insolvency SHALL NOT REVIVE the original debtor's liability to the creditor
- if the substitution is with the knowledge and consent of the original debtor, the new debtor's insolvency SHALL REVIVE the original debtor's liability to the creditor

***Art. 1295 is applicable only to *delegacion*.

Right of action of the creditor against the original debtor can no longer be revived **EXCEPT** in the ffg. cases:

- when the insolvency of the delegado was already existing and of public knowledge at the time the delegante delegated his debts
- when such insolvency was already existing and known to the original debtor when he delegated his debt.

(Art. 1296)

applicable to:

- objective novation
- novation by substituting the person of the debtor

effect upon accessory obligations:

- it may subsist if there is a stipulation constituted in favor of a 3rd person which may be demanded separately from the principal obligation, although subordinated to the latter
 - pour autrui* – beneficial stipulation; stipulation in a contract, clearly and deliberately conferred by the

contracting parties as a favor upon a 3rd person, who must have accepted it before it could be revoked (Art. 1311)

(Art. 1297-1298)

- requisite of a valid new and old obligation before effecting novation is logical because the purpose of novation is substitution of the new obligation for the old.

Old obligation

- void – there is nothing to novate; new obligation cannot take effect
- voidable – when annulment depends upon the debtor or when a voidable obligation is ratified, novation is valid
 - *expromission* without the consent of the debtor – debtor can still avail himself of the right to invoke the voidable character of the obligation against any claim of the 2nd debtor
 - if the new debtor is aware of the defect of the old obligation at the time when he assumed payment, he cannot avail himself of the right to invoke the voidable character of the obligation against any claim of the creditor.

new obligation

- void – old obligation subsist, unless the parties intended that the former relation should be extinguished in any event

(Art. 1299)

If the original obligation was subject to a suspensive or resolutive condition, the new obligation shall be under the same condition, unless it is otherwise stipulated.

Effect if old and new are subject to a different condition:

- both condition can stand together – both the condition in the original and new obligation must be fulfilled; the new obligation becomes demandable
- only the condition affecting the 1st obligation is fulfilled – previous obligation is revived, new obligation loses its force
- only the condition affecting the 2nd

obligation is fulfilled – there is no novation since the requisite of a valid previous obligation would be lacking

- if conditions of both obligations are incompatible – 1st obligation is extinguished, new obligation remains (as the latest expression of the will or intent of the parties)

(Art. 1300)

novation by subrogation

- conventional subrogation – takes place by agreement of the original creditor, the 3rd person, and the debtor
- legal subrogation – takes place by force of law.

(Art. 1301)

conventional subrogation – must be clearly established in order to take effect.

conventional subrogation	Assignment of rights
Governed by Art. 1300-1304	Governed by Art. 1624-1627
Debtor's consent is required	Debtor's consent is not required
Has the effect of extinguishing the old obligation and gives rise to a new obligation	Has the effect of transmitting the rights of the creditor to another person without modifying or extinguishing the obligation
Defects or vices in the original obligation are cured	Defects or vices in the original obligation are not cured
Effect arises from the moment of novation or subrogation	Arises from the moment the debtor is notified of the cession.

(Art. 1302)

General rule: Legal subrogation is not presumed, **except:**

1. When a creditor pays another creditor who is preferred, even without the debtor's knowledge:
 - the 2 obligations remain distinct and

- separate.
2. When a third person, not interested in the obligation, pays with the express or tacit approval of the debtor;
 - apply Art. 1236-1237
 3. When, even without the knowledge of the debtor, a person interested in the fulfillment of the obligation pays, without prejudice to the effects of confusion as to the latter's share.
 - Payment made by a co-debtor cannot produce the effect of subrogation because he cannot enforce against his co-debtors the payment of the original obligation

(Art. 1303-1304)

Effect of total subrogation:

transfer of all the rights which the original creditor had against the debtor or against 3rd persons

- accessory obligations are not extinguished.
- This rule is absolute in legal subrogation
- in conventional subrogation – such accessory obligation may be increased or reduced depending upon the agreement of the parties.

Effect of partial subrogation:

- both the rights of the 3rd person and that of the creditor shall co-exist.
- In case of conflict, creditor's right shall be preferred.

**TITLE II
CONTRACTS**

CHAPTER 1

(Art. 1305)

Contract (*cum traho*)- meeting of the minds between 2 persons whereby one binds himself, with respect to the other, to give something or to render some service.

- agreement
- limited exclusively to those agreements which produce patrimonial obligations
- specie
- juridical convention manifested in legal

form, by virtue of which one or more persons bind themselves in favor of another or others, or reciprocally to the fulfillment of a prestation to give, to do, or not to do.

convention – includes any kind of agreement which may create, modify, or extinguish patrimonial and even family relations

– genus

Contract distinguished from other terms:

Source of rights and obligations	Contract-agreement of the parties Others - law
Nature of the rights and obligations	Contract- concrete, limited, and transitory others- elastic, absolute, permanent

Contract	Marriage
Parties may be 2 or more persons of the same or different sexes	Necessary that parties must be one man and one woman
Governed primarily by the agreement of the parties	Governed by law
When executed, the result is contract	When celebrated, the result is status
Can be terminated or dissolved by mere agreement	Cannot be dissolved or terminated
In case of breach, remedy is to institute an action for damages	In case of breach, remedy is to institute an action for legal separation, or adultery or concubinage

Elements of contracts:

Essential elements- without which there can be no contracts	Common – present in all contracts (consent of both parties, object of the contract, cause of the obligation, parties)
--------------------------------------------------------------------	------------------------------------------------------------------------------------------------------------------------------

	<p><u>special</u> – present only in certain contracts (delivery in real contracts, form in solemn contracts)</p> <p><u>extraordinary</u> – unique to a specific contract (price in a contract of sale)</p>
<u>Natural elements</u>	<p>derived from the nature of the contract and ordinarily accompany the same</p> <p>presumed by law although can be excluded by the contracting parties</p>
<u>Accidental elements</u>	<p>Exist only when the parties expressly provide for them for the purpose of limiting or modifying the normal effects of the contract.</p>

auto-contract – there is only one party involved but said party merely acts in the name and for the account of two distinct contracting parties.

1. When a representative of another contracts with himself
2. when as representative of 2 persons brings about contract with himself and the principals

characteristics of contracts (OMAR)

1st: **obligatory force or character**

- contracting parties are bound, not only to the fulfillment of what has been expressly stipulated, but also to all of the consequences thereof.

2nd **mutuality of contracts**

- contracts are binding upon both of the parties

3rd **autonomy of contracts**

- parties may establish such agreements as they may deem convenient, provided they

are not contrary to law, morals, good customs, public order, or public policy.

4th **relativity of contracts**

- take effect only between the parties, their assigns and heirs.

3 phases or stages of the life of contract

1st stage: **GENERATION**

- preliminary preparation, conception of generation, period of negotiation, ending at the moment of agreement of the parties

2nd stage: **PERFECTION**

- moment when parties come to agree on the terms of the contracts

3rd stage: **CONSUMMATION**

- fulfillment or performance of the terms agreed upon in the contract

Classification of contracts:

Accdg to their relation to other contracts	<ul style="list-style-type: none"> • Preparatory – necessary as a preliminary step towards the celebration of another subsequent contract • principal – can subsist independently • accessory – can exist only as a consequence of another prior contract.
Accdg. to their perfection	<ul style="list-style-type: none"> • Consensual – perfected by mere agreement of the parties • real – perfected with the consent of the parties and the delivery of the object by one party to the other.
Accdg. To form	<ul style="list-style-type: none"> • Common or informal – no particular form • special or formal – require some particular form
Accdg. To their purpose	<ul style="list-style-type: none"> • Transfer of ownership • conveyance of use • rendition of service
Accdg. To	<ul style="list-style-type: none"> • Things

subject matter	<ul style="list-style-type: none"> • services
Nature of the vinculum which they produce	<ul style="list-style-type: none"> • Unilateral – gives rise to an obligation for only one of the parties • bilateral – gives rise to reciprocal obligation
Accdg. To cause	<ul style="list-style-type: none"> • Onerous – 1 of the parties aspire to procure for himself a benefit through the giving of an equivalent or compensation • gratuitous – 1 of the parties proposes to give to the other a benefit without equivalent or compensation.
Accdg. To risk involved	<ul style="list-style-type: none"> • Commutative – each of the parties acquires an equivalent of his prestation and such equivalent is pecuniarily appreciable and already determined. • aleatory – which each of the parties has to his account the acquisition of an equivalent of his prestation although pecuniarily appreciable and such is not yet determined.
Accdg. to norms	<ul style="list-style-type: none"> • Nominate – have their own individuality, regulated by special provisions of law • innominate – lack individuality, not regulated by special provisions of law

(Art. 1306)

***right of the contracting parties to establish any stipulation, clause, term or condition as they may deem convenient. (constitutional and statutory right)

limitations: stipulation, clause, term or condition

established must not be contrary to:

- **law**
 - mandatory or prohibitive in character
 - expressive of fundamental principles of justice
 - impose essential requisites
- **morals**
 - principles which are incontrovertible and are universally admitted and which have received social and practical recognition
- **good customs**
 - includes even those moral precept not recognized universally but is sanctioned by the practice of a certain community
- **public order**
 - safety, peace and order of the country or of any particular community
- **public policy**
 - no person can lawfully do that which has a tendency to be injurious to the public or against public good.

test: WON restraint is reasonably necessary for the protection of the parties

(Art. 1307)

innominate contracts- lack individuality

- not regulated by special provisions of law
- covered by:
 - provisions of Titles I and II of Book IV of Civil Code, (stipulation of the parties, general provisions or principles)
 - rules governing the most analogous nominate contracts
 - customs of the place

4 kinds of innominate contracts

- *do ut des*
- *do ut facias*
- *facio ut des*
- *facio ut facias*

nominate contracts - have their own distinctive individuality and are regulated by special provisions of law

- sales (Arts. 1458-1637)
- barter (Arts. 1638-1641)

- lease (Arts. 1642-1766)
- partnership (Arts. 1767-1867)
- agency (Arts. 1868-1932)
- loan (Arts. 1933-1961)
- deposit (Arts. 1962-2009)
- insurance, gambling, annuity (Arts. 2010-2027)
- compromise and arbitration (Arts. 2028-2046)
- guaranty (Arts. 2047-2084)
- pledge, mortgage, antichresis (Arts. 2085-2141)

***The contract which is in restraint of trade is **valid** as long as there is a stipulation as to time and place especially if for the protection of the parties. (*Del Castillo vs Richmond*, 45 Phil. 679)

Cases:

- Tiu vs Platinum Plans, 517 SCRA 101
- Avon Cosmetics vs Luna, 511 SCRA 376

(Art. 1308-1310)

mutuality of contracts – equality of the contracting parties

consequences:

1. the fulfillment of a contract cannot be left to the will of one of the contracting parties
 - power to determine the **validity** of the contract
 - power to determine WON the contract **shall be fulfilled**
2. validity or fulfillment may be left to the will of a 3rd person, such decision will only be binding when it has been made known to the contracting parties
3. validity or fulfillment can be left to chance (*sensu contrario* in Art. 1308)

contracts where mutuality is illusory because one of the contracting parties is placed in a position of superiority

- obligor promises to pay certain amount which is not determined (*Liebenow vs Phil. Vegetable Oil*, 39 Phil. 60)
- agreement where the fulfillment of the contract is left to the will of the contracting parties in the negative form of rescission ()

***For an escalation clause to be valid, there must also be a de-escalation clause.

(Art. 1311)

Relativity of contracts – a contract can only bind the parties who had entered into it or their successors who have assumed their personality or their juridical position, and that as a consequence, such contract can neither favor nor prejudice a 3rd person.

exception: if the rights and obligations arising from the contract are **not transmissible**.

- By their nature
 - (e.g. personal or special qualifications of the obligor)
- by stipulation of the parties
 - (e.g. contract provides that the obligor shall perform an act by himself and not through another)
- By provision of law
 - (e.g. those arising from contract of partnership or of agency)

Persons bound by contracts:

- **parties**
 - **their assigns**
 - **their heirs** – by virtue of the right of succession, are subrogated to all the rights and obligations of the deceased and can not be regarded as 3rd parties with respect to a deceased

monetary obligation which the decedent may have incurred during his lifetime cannot be transmitted to his heirs through succession. - such obligation must be liquidated in the testate or intestate proceeding for the settlement of the estate of the decedent.

It is the estate, rather than the heir, which must be considered as the continuation of the decedent's personality.

Obligations not monetary in character, and which will therefore constitute part of the inheritance are chargeable against the heirs, but only to the extent of the value of the property which they may have received from the decedent.

General rule: Contracts cannot produce any effect whatsoever as far as third persons are concerned

Exception:

1. **where the contract contains a stipulation in favor of a 3rd person** (stipulation *pour autrui*)
 - if a contract should contain some stipulation in favor of a 3rd person, he may demand its fulfillment provided he communicated his acceptance to the obligor before its revocation (Art. 1311, par. 2)
 - revocation must be done by mutual agreement or at least by direction of the party purchasing the exchange or who initiated the insertion of the stipulation (**Kauffman vs PNB**)
 - corresponds almost always to the juridical conception of a gift or donation
 - beneficial stipulation (*pour autrui*) – stipulation in a contract, **clearly and deliberately conferred** by the contracting parties as a favor upon a 3rd person who must have accepted it before it could be revoked and not just mere incidental interest
 - **Kinds of *pour autrui***
 - those where the stipulation is intended for the SOLE benefit of the 3rd person (gratuitous in character)
 - those where an obligation is due from the promisee to a 3rd person which the former seeks to discharge by means of such stipulation.

Requisites of *pour autrui*:

- stipulation in favor of the 3rd person
- stipulation must be part, not a whole of the contract
- contracting parties must have clearly and deliberately conferred a favor upon a 3rd person
- the 3rd person must have communicated his acceptance to the obligor before its revocation
- neither of the contracting parties bears the legal representation of authorization from the 3rd party.

Test of beneficial stipulation: the intention of the parties as disclosed by their contract.

- WON the contracting parties desired to tender him such an interest.
- 2. **where the 3rd person comes in possession of the object of a contract creating a real right** (Art. 1312)
- 3. **where the contract is entered into in order to defraud a 3rd person** (Art. 1313)
covered by topic on rescissible contracts
- 4. **where the 3rd person induces a contracting party to violate his contract** (Art. 1314)
- 5. *contracts creating status* (e.g. contract of marriage)
- 6. *group contracts* (e.g. Collective Bargaining Agreement)

The voidable character of the contract cannot be asserted by one who is not a party to the transaction or his representative.

(Art. 1312)

real right – right belonging to a person over a specific thing without a passive subject individually determined against whom such right may be personally enforced

- enforceable against the whole world
- 3rd person who come to be in possession of the object of the contract creating a real right will have to be bound by the right, subject to the provisions of the Mortgage Law and the LR law

(Art. 1313)

creditors are protected in cases of contracts intended to defraud them

- must be read in relation to Arts. 1380 & 1177 of the Civil Code

(Art. 1314)

- any person who induces another to violate the contract shall be liable for damages to the other contracting party
- the right to perform a contract and to reap from such performance, and also the right to performance by the other party are property rights which entitle each party to protection and to seek compensation by an action in tort for any interference therewith.

Requisites:

- existence of a valid contract
- knowledge on the part of the 3rd person of the existence of such contract
- interference of the 3rd person without legal justification or excuse
 - malice is generally implied

(Art. 1315-1316)

perfection of contracts – moment in the life of the contract where the parties come to an agreement with respect to the object or cause of the contract.

- signifies the birth of the contract as obligatory tie, resulting from the concurrence of the wills of the contracting parties.- Manresa

General rule: Perfection of a contract is produced by mere consent.

Exception:

- contracts of commodatum, pledge, and deposit are perfected upon delivery of the object by one of the contracting parties.

consensuality – some submit that this is one of the fundamental characteristic of a contract **But** this does not hold water in those Real contracts which requires delivery before its perfection.

Consensual contracts – perfected by mere consent of the parties

real contracts – perfected after delivery of the object (pledge, *commodatum*, *depositum*, *mutuum*)

It is only when there is a complete manifestation of the meeting of the offer and the acceptance upon the thing and the cause which are to constitute the contract.

(Art. 1317)

- No person may enter into a contract in the name of another without the proper authority from the latter or from law.
- based on the principle of obligatory force and relativity of a contract.
- **Effect** upon the contract when a person acted without the proper authority required: Renders the contract **unenforceable** but the SC in some case held that these contracts are **Void ab initio** (Cases: *Paluwagang Bayan vs King and Heirs of*

William Sevilla vs Sevilla).

In recent cases decided by the SC, the tribunal went back to the doctrine applying the principle that those contracts entered into without being clothed the proper authority are **unenforceable** (Cases: *Escueta vs Lim* and *Gozun vs Mercado*)

Voidable contracts	Unenforceable contracts
Binding unless annulled	Cannot be sued upon unless they are ratified
Farther away from absolute nullity	Intermediate ground between voidable and void contract.

Unenforceable contracts are susceptible of either express or implied ratification by the one in whose behalf it was executed before it is revoked by the other contracting party.

CHAPTER 2 ESSENTIAL REQUISITES OF CONTRACTS

(Art. 1318)

bases of contract:

elements	law	will of the contracting parties
Essential are...	Imposed	Conformed to.
Natural are...	presumed	Accepted or repudiated
Accidental are...	Authorized	established

Sec. 1. – Consent

(Art. 1319)

consent (*cum sentire*) – most important element

- constitutes the very heart and soul of contracts
- agreement of wills.
- Concurrence of the wills of the contracting parties with respect to the object and cause which shall constitute the contract.

Requisites:

1. consent must be manifested by the concurrence of the offer and the acceptance (Art. 1319-1326)

once there is such a manifestation of the concurrence of the wills of the contracting parties, the period or stage of negotiation is terminated.

Offer – proposal to make contract
– must be certain or definite

acceptance – must also be certain and definite
– must also be absolute

counter-offer – qualified acceptance; involves a new proposal; rejection of the original offer

amplified acceptance – there is a perfected contract with regard the original offer; but with regard to the additional, the offeree is now making a counter-offer.

Complex offers – rule depends whether the offers are interrelated or not.

Example:

- offer to sell lot no1, and lease on lot no2...the offeree accepted only the 1st offer, is there a valid contract? YES with regard the 1st offer..
- offer to mortgage the property and loan 1M...the offers are interrelated, they may not be separately accepted.

Public offer – offer made to the public gives rise to a perfected contract the moment it is accepted.

contracts that are consensual in nature are perfected upon mere meeting of the minds
acceptance by letter or telegram:
the contract is perfected the moment....

theories:

- Manifestation theory** – ...the acceptance is declared or made
- Expedition theory** - ... the offeree transmits/sends the notification of acceptance to the offeror.
- Reception theory** –... the notification is in the hand of the offeror or delivered to the offeror, in such a manner that he can procure the knowledge of its content.
- Cognition theory** - ... the acceptance comes to the knowledge of the offeror

par. 2, Art. 1319 said that acceptance made by letter or telegram does not bind the offeror except from the time it came to his **knowledge**.

Actual knowledge – required by law; offeror must have read the contents of the letter or telegram accepting his offer.

- mere receipt of the letter is not sufficient.
- Presumption that once the offeror has received the letter, he already had read the contents thereof, except:
 - when he is absent
 - when he is incapacitated (at the time of the receipt of the letter)

Same rule applies in case where the acceptance is made by a person who is not in the presence of the offeror (*contratacion entre ausentes*)

cognition theory will not apply if the offeror himself refused to open the telegram for some reason or another.

Offeror withdraws offer:

***offeror **may still withdraw the offer** so long as he still has no knowledge of the acceptance by the offeree. (Case: *Laudico vs Arias*)
– effect of withdrawal is immediate

Offeree withdraws acceptance:

*****the acceptance may be revoked** before it comes to the knowledge of the offeror, because in such case there is still no meeting of the minds, since the revocation has canceled or nullified the acceptance which thereby ceased to have any legal effect. (*Tolentino*)

- vs -

***the offeree loses the power to retract the acceptance from the moment that he accepts.
Reason: since the offeree is the first person who knows of the concurrence of wills of the parties, as a consequence, the obligation, as far as he is concerned, must also commence earlier. (*Manresa*)

the view of Tolentino is more logical, the only decisive moment to consider (moment of perfection) is the moment when the offeror has knowledge of the acceptance made by the offeree.

2. the contracting parties must possess the necessary legal capacity (Art. 1327-1329)

3. the consent must be intelligent, free, spontaneous and real (Art. 1330-1346)

(Art. 1320)

Form of acceptance:

- express
- implied

Presumptive consent is the basis of quasi-contracts (**Perez vs Pomar**)

***the form prescribed by law should be followed, otherwise, there will be no valid and binding acceptance

(Art. 1321-1323)

the person who makes the offer has the right to specify the manner, time and place of acceptance

Art. 1322 is not applied when what is referred to is a mere messenger and not an agent who has the capacity to negotiate and represent the principal.

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

Conveyed – moment when the offeror has knowledge of the acceptance by the offeree.

Reasons for Art. 1323:

- **death** extinguishes personality and juridical capacity
- **civil interdiction** (accessory penalty for RT) person is deprived of parental authority, guardian, and also deprived of the right to manage or dispose of his property, he cannot execute acts inter vivos.
- **Insanity** – insane person cannot give a valid consent to a contract. He loses the capacity to do acts with legal effects
- **insolvency** – modifies or limits capacity to act.

(Art. 1324)

if the option is **without consideration**, the offeror may withdraw his offer by communicating such withdrawal to the offeree at any time before acceptance.

If it is **founded upon a consideration**, the offeror cannot withdraw his offer

article contemplates an option contract – a preparatory contract.

(Art. 1325-1325)

Advertisements for bidders are simply invitations to make proposals, and the advertiser is not bound to accept the highest or lowest bidder, unless the contrary appears.

(Art. 1327)

capacity of the contracting parties – essential element of a contract

- indispensable requisite of a consent

Incapacitated to give consent:

1. unemancipated minors

exception:

- when it is entered into by a minor who misrepresents his age
 - based on the principle of estoppel
 - must be active not merely constructive
- when it involves the sale and delivery of necessities to the minor (Art. 1449)
- when it involves a natural obligation and such obligation is fulfilled voluntarily by the minor (18-21 y.o)
- when it is a marriage settlement or *propter nuptias* (20-21 male; 18-21 female)
- when it is a life, health, or accident insurance taken on the life of the minor (18 y.o above) with minor's estate, father, mother, husband, wife, child, brother or sister as beneficiary.

***there are no more emancipated minors since the age of majority has been raised to 18 y.o.

2. insane or demented persons

- contracting parties are unable to understand the nature and consequences of the contract at the time of its execution by reason of any cause affecting his intellectual or sensitive faculties. (includes drunkenness, or under hypnotic spell)
- contracts entered into during lucid interval is valid.
- A question of fact which must be decided by the court

3. **deaf-mutes who do not know how to write** – there is no way that the stipulations in the contract be explained to them to insure that they understand what they are entering into.

4. **other incapacitated persons**

- married woman in cases specified by law

incompetent (Sec. 2 of Rule 92 of the New Rules of Court) includes:

- persons suffering from civil interdiction
- hospitalized lepers
- prodigals
- deaf and dumb who are unable to read
- who are of unsound mind
- those who by reason of age, weak mind or other similar cases, cannot, without aid from other, take care of themselves and manage their property becoming thereby easy prey for deceit and exploitation.

these incapacitated persons can enter into a contract only through a parent or guardian.

Effects:

Defective contract – effect of incapacitated persons entering into a contract not through a parent or agent.

Voidable contracts – only one of the contracting parties is incapacitated to give consent.

Unenforceable contracts – when both parties are incapacitated to give consent..

(Art. 1328-1329)

contracts entered into during a lucid interval are valid.

***Those referred to in Art. 1329 are those who are prohibited from entering into a contract with certain persons with regard to certain property under certain circumstances.

Incapacity to give consent to a contract	Disqualification/prohibition to contract
Restrains the right to contract	Restrains the very thing itself

Based upon subjective circumstances of certain persons which compel the law to suspend the person's right to contract	Based upon public policy and morality
Effect is a Voidable contract (Art. 1390)	Effect is a void contract (Art. 5 & Art. 1409 No. 7 of the Civil Code)

(Art. 1330)

vices which may vitiate consent:

vices of the will (*vicios de la formacion de la voluntad*)

- mistake
- violence
- intimidation
- undue influence
- fraud

vices of declaration (*vicios de la declaracion*)

- simulation of contracts

Accdg. to Manresa, Art. 1330 is a negative enumeration of the requisites of consent.

- Intelligent (mistake)
- free (violence, intimidation & undue influence)
- spontaneous (fraud)
- real (simulation of contracts)

***in the absence of the 1st 3 requisites, the contract is **voidable**.

***in the absence of the 4th requisite, the contract may be either **void ab initio** or **valid as far as the real agreement is concerned**, depending upon whether the simulation is absolute or relative.

(Art. 1331)

mistake – wrong conception of a thing and the lack of knowledge with respect to a thing.

2 kinds:

- **mistake of fact** – when one or both of the contracting parties believe that a fact exist when in fact it does not
 - mistake as to object
 - identity of the thing (*error in corpore*)

- substance of the thing (*error in substantia*)
- conditions of the thing (provided such condition principally moved one or both of the parties to enter into the contract)
- quantity of the thing (*error in quantitate*)
- mistake as to person
 - name of a person.
 - Identity of a person – effect is voidable contract
 - qualification of a person

requisites:

- the mistake must be either with regard to the identity or with regard to the qualification of the person
- such identity or qualification must have been the principal consideration for the celebration of the contract

*Usually, these mistakes occur in obligations to do.

- **mistake of law** – when one or both of the contracting parties arrive at an erroneous conclusion regarding the interpretation of a question of law or the legal effects of a certain act or transaction.

General rule: only mistake of fact which will vitiate consent renders the contract voidable. A mistake of law does not render the contract voidable (*ignorantia legis non excusat*)

Case: Asiain vs Jalandoni

(Art. 1332)

intended for the protection of a party to a contract who is at a disadvantage due to his illiteracy, ignorance, mental weakness, or handicap.

Fraud is present when there is an insidious words or machinations of one of the contracting parties, the other is induced to enter into the contract which without them, he would not have agreed to it.

(Art. 1333-1334)

General rule: mistake of law will not vitiate consent.

Exception: mutual error

requisites:

- mistake must be with respect to the legal effect of the agreement
- mistake must be mutual

- the real purpose of the parties must have been frustrated.

(Art. 1335-1336)

violence – use of irresistible force

requisites:

- force employed to wrest consent must be serious or irresistible
- it must be the determining cause for the party upon whom it is employed in entering into the contract.

intimidation – compelling by reasonable and well grounded fear of an imminent or grave evil upon his person, property, or upon the person or property of his spouse, descendants, or ascendants

violence and intimidation are sometimes called duress.

Requisites:

- one of the contracting parties is compelled to give consent by a reasonable and well grounded fear of an evil
- the evil must be imminent and grave
- the evil must be unjust
- the evil must be the determining cause for the party upon whom it is employed in entering into the contract.

Character of intimidation:

- actual
- serious
- possible of realization
- and that the actor can and still carry out his threat

determination of the degree of intimidation:

- age
- sex
- condition of the person

effect of just or legal threat:

-it does not vitiate consent

the contract would still be perfectly valid and not voidable.

Violence	intimidation
External (physical compulsion -	Internal (moral compulsion-

Castan)	Castan)
Prevents the expression of the will substituting it with a material act dictated by another	Influences the will, inhibiting it in such a way that the expression therefor is apparently that of a person who has freely given his consent.

Case: Martinez vs Hongkong & Shanghai Bank
distinction between vitiated consent and reluctant consent

(Art. 1337)

undue influence – taking improper advantage of one's power over the will of another, depriving the latter of a reasonable freedom of choice.

Test: WON the the influence exerted has overpowered or subjugated the mind of a contracting party as to destroy his free agency, making him express the will of another rather than his own.

Thing to be considered:

- confidential, spiritual, family, and other elations between parties

(Art. 1338)

fraud – insidious words or machinations employed by one of the contracting parties in order to induce the other to enter into a contract, which, without them, he would not have agreed to.

Kinds of fraud:

Art. 1338, Civil Code	Art. 1170-1171, Civil Code
Fraud in the perfection of the contract	Fraud in the performance of the obligation
Employed in securing the consent of the other party	Fraud employed by the obligor in the performance of a pre-existing obligation

Dolo causante – causal fraud; deceptions or misrepresentation of a serious character employed by one party and without it, the other party **would not have** entered into the agreement (Art. 1338)

dolo incidente – incidental fraud; deceptions or misrepresentation NOT of a serious character employed by one party and without it, the other party **would still** have entered into the agreement

Dolo causante	dolo incidente
Fraud Serious in character	Not so serious
Cause which induces the party upon whom it is employed in entering the contract	Not the cause
Effect is a voidable contract	Effect is liability for damages

Requisites:

- insidious words
- insidious words must be serious
- insidious words must have induced the other party to enter into the contract – such fraud must be the principal or causal inducement or consideration for the consent of the other party.
- fraud should not have been employed by the contracting parties or by third persons

test: there must be proof of concrete facts constituting the fraud or insidious words or machinations employed by one of the contracting parties

(Art. 1339)

Failure to disclose facts, when there is a duty to reveal them, as when the parties are bound by confidential relations, constitutes fraud.

(Art. 1340)

The usual exaggerations in trade, when the other party had an opportunity to know the facts, are not in themselves fraudulent.

(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.

Case: Songco vs Sellner

(Art. 1342)

Misrepresentation by a third person does not vitiate

consent, unless such misrepresentation has created substantial mistake and the same is mutual.

Case: Rural Bank of Caloocan vs CA

(Art. 1343-1344)

serious character of fraud – refers to the magnitude and importance of the fraud in securing the consent of the other party.

(Art. 1345-1346)

simulation of contracts

absolute	Relative
Contracting parties do not intend to be bound by the contract at all	Parties conceal their true agreement
Contract is not really desired or intended to produce legal effects or in any way alter the juridical situation of the parties	Still has legal effects
Effect: void contract	Still binds the contracting parties to their real agreement, when it does not prejudice a 3 rd person and is not intended for any purpose contrary to law, morals, good customs, public order, or public policy

Case: Loyola vs CA

Sec. 2. – Object of contract

Object – most fundamental and indispensable requisite of a contract.

- the thing, right or service which is the subject matter of the obligation which is created or established.
- The what of the contract.

(Art. 1347 – 1349)

General rule: All things or services may be the object of contracts

Requisites:

1. the object shall be within the commerce

of men

- appropriability and transmissibility

2. the object should be real or possible

- objects that are inexistent cannot be the object of contracts.

- future things may be the object of contracts

◦ conditional contract – presumption in case of doubt about the nature of contract

◦ aleatory contract

– exception: future inheritance may not be the object of contract (Art. 1347)

– *exception to exception*: Art. 1080 of the Civil Code; partition of estate inter vivos, provided that the legitime of compulsory heirs is not prejudiced

3. the object shall be licit

4. the object should be determinate

- the genus of the object should be expressed although there might be no determination of the individual specie

***The fact that the quantity is not determinate shall not be an obstacle to the existence of the contract, provided it is possible to determine the same, without the need of a new contract between the parties.

cannot be objects of contracts:

- outside the commerce of men
- intransmissible rights
- future inheritance, except in cases expressly authorized by law
 - reason:
 - possibility that one of the contracting parties may be tempted to instigate the death of the other in order that inheritance will become his
 - probability that fraud and prejudice may be committed or occasioned thereby
- services which are contrary to law, morals, good customs, public order, public policy
- impossible things or services
 - *absolute impossibility of service* – arises from the nature or essence of the act or service itself; void contract
 - *relative impossibility of service* – arises

form the circumstances or qualifications of the obligor rendering him incapable of executing the act or service, allows the perfection of the contract, although the fulfillment thereof is hardly probable.

- If impossibility may permanent in character, contract is void
- objects which are not of possible determination as to its kind

Sec. 3. – Cause of Contracts

(Art. 1350-1351)

Cause – the why of the contract

- juridical reason why the parties entered into the contract
- essential reason which moves the contracting parties to enter into a contract.
- Immediate, direct, or most proximate reason which explains & justifies the creation of the obligation through the will of the contracting parties.

Onerous contracts	The prestation or promise of a thing or service by the other
Remunetory contracts	Service or the benefit which is remunerated or compensated
Pure beneficence	Liberality or generosity of the benefactor

In onerous contracts, even a mere promise is a sufficient *causa* or consideration.

Remedy: rescission or specific performance.

***the object of an onerous contracts is the same as to both parties, although the cause is different. - Tolentino

Cause	Motives
Direct, proximate reason of a contract	Indirect and remote reason of a contract
Objective or juridical reason of a contract	Psychological and purely personal reasons
Always the same	Differs for each contracting parties
Its legality or illegality	Its legality or illegality

will affect the validity of the contract	will not affect the existence of the contract
------------------------------------------	-----------------------------------------------

***The motives of the contracting parties are as different or complex and as capable of infinite variety as the individual circumstances which may move men to acquire things or make money.

***The motives may be regarded as the *causa* when the contract is conditioned upon the attainment of the motive of either contracting parties.

Cases: Liguez vs CA, Rodriguez vs Rodriguez, Phil. Banking Corp. vs Lui She

***The cause of the accessory contract is identical with that of the principal contract.

***When a moral obligation arises wholly from ethical considerations, unconnected with any civil obligation and as such, is not demandable in law but only in conscience, it can not constitute a sufficient cause or consideration supporting an onerous contract.

Cases: Fisher vs Robb, Villaroel vs Estrada

Remunetory contracts – one in which one of the contracting parties compensates the service or benefit rendered by the other party, although such service or benefit does not constitute a demandable debt.

(Art. 1352-1355)

essential requisites of cause: (**elt**)

- the cause should be in existence at the time of the celebration of the contract.
- The cause should be licit or lawful
- the cause should be true.

***The cause is presumed to be existing and licit/lawful. (Art. 1354)

***inexistent cause, false, or unlawful/illicit cause produces no effect (*void ab initio*)

Case: Carantes vs CA – inadequate *causa* or consideration

lesion or inadequacy of cause will not invalidate the contract, unless there be fraud, mistake, or undue influence (voidable contract if any of the 3 is present). (Art.

1355)

unlawful cause – contrary to law, morals, good customs, public order, public policy

effect: contract void ab initio

Cases: Veles vs Ramas as compared with Mactal vs Melegrito (incipient criminal liability)

CHAPTER 3 FORMS OF CONTRACTS

(Art. 1356)

spiritual system of the Spanish Code – the law looks more at the spirit/intent rather than at the forms of the contract.

General Rule: contracts shall be obligatory, provided all the essential elements of a contract are present.

Exceptions:

- **when the law requires that the contract must be in a certain form in order to be valid**
 - ***must appear in writing***
 - donation and acceptance of personal property whose value exceeds P5,000.00
 - sale of a piece of land or any interest therein through an agent
 - agreements regarding payment of interest in contract of loan
 - antichresis
 - ***must appear in public document***
 - donations of immovable properties regardless of value
 - partnerships where immovable property or real rights are contributed to the common fund
 - ***must be registered***
 - chattel mortgages
 - sales or transfer of large cattle
- **when the law requires that the contract must be in a certain form in order to be enforceable.**
 - Covered by the Statutes of Frauds

Case: BF Corp vs CA – contract may not be limited in a single document or writing

forms of contracts:

- necessary for the convenience of the contracting parties or for the efficacy of the contract (Arts. 1356-1358)
- necessary for the validity of the contract (scattered provisions of the Code and some special laws)
- necessary for the enforceability of the contract (Statute of Frauds)

(Arts. 1357-1358)

principles deducible from jurisprudence

- Arts. 1357-1358 require the execution of the contract in a private or public document to insure its efficacy.
- Both articles presupposes the existence of a contract which is valid and enforceable.
- Invoking Arts. 1357-1358 place the existence of the contract in issue, which must be resolved by the ordinary rules of evidence
- Art. 1357 does not require that the action to compel the execution of the necessary document must precede the action upon the contract.
- Art. 1358 does not affect the validity or enforceability of the contract. Present for mere convenience

Case: Dauden-Hernaez vs De Los Angeles

CHAPTER 4 REFORMATION OF INSTRUMENTS

(Art. 1359)

REFORMATION – used when the true intention of the parties to a perfected and valid contract are not expressed in the instrument purporting to embody their agreement by reason of mistake, fraud, inequitable conduct or accident

– based on justice and equity

requisites:

- meeting of the minds of the contracting parties
- true intention not expressed in the instrument
- such failure to express their true intention is due to mistake, fraud, inequitable conduct, or accident.

Reformation of contract	Annulment of contract
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Presupposes a valid contract in which there has already been a meeting of the mind	Based on a defective contract in which there has been no meeting of the minds because the consent of one or both of the contracting parties has been vitiated.
Not a remedy when there has been fraud, mistake, inequitable conduct or accident.	Remedy when there has been no meeting of the minds because of mistake, fraud, inequitable conduct, or accident

(Art. 1360-1369)

when can one party ask for the reformation of the contract:

- mutual mistake of the parties (Art. 1361)
- one party was mistaken and the other party acted fraudulently (Art. 1362)
- one party mistaken, the other knew or believed that the instrument does not show their real intent but concealed that fact to the former (Art. 1363)
- through the ignorance, lack of skill, negligence or bad faith on the part of the person drafting the instrument or the clerk or typist. (Art. 1364)
- Parties agree upon the mortgage or pledge of a real or personal property, but the instrument states that the property is sold absolutely or with a right of repurchase (Art. 1365)

when there can be no reformation:

- simple donation *inter vivos* wherein no condition is imposed
- wills
- when the real agreement is void (Art. 1366)
- when one of the parties brought an action to enforce the instrument (Art. 1367)

contract of adhesion – one in which one of the parties imposes a ready made form of contract, which the other party may accept or reject, but which the latter cannot modify

- as binding as a mutually executed transaction (*Ayala Corp. vs Ray Burton Dev't. Corp.*)

- the one who adheres to the contract is in reality free to reject it entirely, if he adheres, he gives his consent. (*Ong Yiu vs CA*)
- its enforceability will have to be determined by the peculiar circumstances obtaining in each case and the situation of the parties concerned
- in case of conflict, the contract will be interpreted against the one who drafted the contract.

2 steps needed to follow (contracts of credit cards) to absolve a card holder from liability for unauthorized purchase made through lost or stolen card

1. the card holder must give a written notice to the credit card company
2. credit company must give notice to all its member establishments of such lost or theft

**CHAPTER 5
INTERPRETATION OF CONTRACTS**

(Art. 1370-1371)

***Intention of the contracting parties always prevail because their will has the force of law between them.

***Literal sense of the stipulations shall be followed.

***Once the intention has been ascertained, it becomes an integral part of the contract as though it had been originally expressed therein in unequivocal terms.

The character of the transaction between the parties is not determined by the language used in the document but by their intention. (*Manila Banking Corp. vs Teodoro, Jr.*)

contemporaneous and subsequent acts of the parties must be considered in order to judge the intention of the contracting parties.

Case: *Tanguilig vs CA*

(Art. 1372-1379)

ARTICLE 1372. However general the terms of a contract may be, they shall not be understood

to comprehend things that are distinct and cases that are different from those upon which the parties intended to agree. (1283)

ARTICLE 1373. If some stipulation of any contract should admit of several meanings, it shall be understood as bearing that import which is most adequate to render it effectual. (1284)

ARTICLE 1374. The various stipulations of a contract shall be interpreted together, attributing to the doubtful ones that sense which may result from all of them taken jointly. (1285)

ARTICLE 1375. Words which may have different significations shall be understood in that which is most in keeping with the nature and object of the contract. (1286)

ARTICLE 1376. The usage or custom of the place shall be borne in mind in the interpretation of the ambiguities of a contract, and shall fill the omission of stipulations which are ordinarily established. (1287)

ARTICLE 1377. The interpretation of obscure words or stipulations in a contract shall not favor the party who caused the obscurity. (1288)

ARTICLE 1378. When it is absolutely impossible to settle doubts by the rules established in the preceding articles, and the doubts refer to incidental circumstances of a gratuitous contract, the least transmission of rights and interests shall prevail. If the contract is onerous, the doubt shall be settled in favor of the greatest reciprocity of interests.

If the doubts are cast upon the principal object of the contract in such a way that it cannot be known what may have been the intention or will of the parties, the contract shall be null and void. (1289)

ARTICLE 1379. The principles of interpretation stated in Rule 123 of the Rules of Court shall likewise be observed in the construction of contracts.

CHAPTER 6 RESCISSIBLE CONTRACTS

Classes of defective contracts:

- rescissible contracts
- voidable contracts
- unenforceable contracts
- void or inexistent contracts

rescissible	voidable	un enforceabl	Void
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		e	
As to Defect			
There is damage or injury either to 1 of the parties or to 3 rd persons	There is vitiation of consent or legal capacity of 1 of the parties	Contract entered into without authority ; does not comply with Statute of Fraud; both parties are legally incapacitated	Lack of one or some of the essential requisites of a valid contract.
As to Effect			
Valid and enforceable until they are rescinded by a competent court	Valid and enforceable until they are annulled by a competent court	Cannot be enforced by a proper action in court	Produce no legal effect
As to prescriptibility of action or defense			
Action of rescission may prescribe	Action for annulment may prescribe	For total or partial performance, the action for recovery may prescribe	Action for declaration of nullity does not prescribe.
As to susceptibility of ratification			
Not susceptible of ratification	susceptible of ratification	susceptible of ratification	Not susceptible of ratification
As to who may assail contracts			
Contracting parties; 3 rd person prejudiced	Contracting party	Contracting party	Contracting parties; 3 rd person whose interest is directly

			affected.
As to how contracts may be assailed			
Directly	Directly or collaterally	Directly or collaterally	Directly or collaterally

(Art. 1380)

rescissible contracts – all of the essential elements of a contract are present; contract is valid, but by reason of injury or damage to either of the contracting parties or to 3rd persons, it may be rescinded.

Characteristics:

- defects consists in injury or damage to either of one of the contracting parties or to 3rd persons.
- Before rescission, they are valid and therefore legally effective
- can only be attacked directly
- can be attacked by 1 of the contracting parties or the 3rd person injured or defrauded.
- Susceptible of convalidation only by prescription and not by ratification

rescission – remedy to secure the reparation of damages caused to the contracting party or 3rd person by a contract; by means of restoration of things to their condition prior to the celebration of the contract.

Rescission of contracts (Art. 1380-1389)	Resolution of reciprocal obligations (Art. 1191)
May be instituted by a party to the contract and/or even 3 rd person	May be instituted only by a party to the contract
Several causes or grounds: lesion, fraud, and other expressly specified by law	Ground: failure of one the contracting parties to comply with what is incumbent upon him.
Court has no power to grant an extension of time for performance of the obligation	The court has discretionary power to grant an extension for performance provided that there is just cause.
May apply to Unilateral and reciprocal contracts	Applies only to reciprocal contracts

Rescission of contracts	Rescission by mutual consent
Causes mentioned in Arts. 1381 and 1382	Agreement of the parties to rescind the contract.
Restoration to the condition of the parties prior to the constitution of the contract	Effects should be determined by the agreement made by the parties, or by the application of other legal provisions except Art. 1385

Case: Aquino vs Tanedo

(Art. 1381-1382)

rescissible contracts are:

1. contracts in behalf of ward

- entered into by guardians whenever their wards suffer lesion or damages by more than ¼ of the value of the thing which are the object thereof.
- Rules of Court: judicial guardian entering into a contract with respect to the property of his ward must ordinarily secure the approval of a competent court.
- Apply Arts 326, CC; Rules 95-96 New Rules of Court

2. contracts in behalf of absentees

- rescissible if the absentee suffer the lesion or damage by more than ¼ of the value of the thing which are the object thereof.
- principles applicable in Art. 1381, par 1 are applicable to this provision since the powers and duties of representatives are the same as that of the guardian.

Requisites for par. 1 & 2 of Arts. 1381

- contract must have been entered into by the guardian in behalf of his ward or a legal representative in behalf of an absentee
- ward or absentee must have suffered lesion of more than ¼ of the value of the property which is the object of the contract.
- Contract must have been entered into without court approval
- there must be no other means for obtaining reparation for the lesion
- the person asking for the rescission must be able to return whatever he may be

- obliged to restore.
- Object of the contract must not be legally in the possession of 3rd person who acted in good faith. (otherwise, remedy is indemnification for damages)
- 3. contracts in fraud of creditors**
- when the creditor cannot in any manner collect the claims due them.
- Requisites:
 - existing credit prior to the celebration of the contract.
 - Fraud or at least an intent to commit fraud to the prejudice of the creditor seeking rescission.
 - No other manner by which the creditor can collect the credit
 - object of the credit is not in legal possession by 3rd person who acted in good faith.(otherwise, remedy is to proceed against the person causing the loss for damages)
- accion pauliana- action to rescind contracts in fraud of the creditors
 - requisites:
 - plaintiff asking for the rescission has a credit prior to the alienation
 - debtor has made a subsequent contract conveying patrimonial benefit to a 3rd person
 - creditor has no other legal remedy
 - act being impugned is fraudulent.
 - 3rd person has been an accomplice in the fraud.
- Purpose is to guarantee an existing debt
- there is personal right that deserves the protection of law
- 4. contracts referring to things in litigation**
- if entered into by the defendant without the knowledge and approval of the litigants or of competent judicial authority.
- Purpose is to secure the possible effectivity of a claim
- there is a real right involved that deserves the protection of law
- 5. contracts by insolvent (Art. 1382)**
- insolvency – refers to the financial situation of the debtor in which it is impossible for him to fulfill his obligations.
- requisites:

- it must have been made in a state of insolvency
- the obligation must have been one which the debtor could not be compelled to pay at the time such payment was effected.
- Basis of the rescissible character is fraud
- contemplates obligations with terms or are subject to suspensive condition; void and natural obligations; and those condoned or have prescribed.
- 6. other contracts declared by law to be rescissible**
- Arts. 1098, 1189, 1526, 1534, 1539, 1542, 1556, 1560, 1567, and 1659 of the Civil Code

(Art. 1383)

***Action for rescission is **subsidiary** it cannot be instituted except when the party suffering damage has no other legal means to obtain reparation for the same.

Who may institute action:

- person prejudiced
 - party suffering the lesion in the rescissory action on the ground of fraud
 - creditor who is defrauded in rescissory actions
 - other persons authorized to exercise the same in their rescissory actions.
- representatives of those prejudiced
- heirs of those prejudiced
- creditors by virtue of the subrogatory action (Art. 1177)

***If the decedent himself does not have the right to institute the action, the heir acting as representative of the decedent also does not have the right to institute the action; however, it will be possible for him to institute the action in his own right (No.3 Art. 1381, Civil Code)

Case: Concepcion vs Sta. Ana

(Art. 1384)

purpose of rescission: reparation of damage or injury suffered by one of the contracting parties or 3rd person.

Extent of rescission shall be only be to that necessary to cover the damage caused.

(Art. 1385)

par. 1 of the provision applies only to rescissory actions on the ground of lesion and not to rescissory action based on fraud.

Effect of rescission:

- return the things which were the object of the contract (Includes fruits or interests)
 - fruits – natural, industrial, civil, and other accessions obtained by the thing
 - interest – legal interest

***rescission cannot apply if the one who demands cannot return what he may be obliged to restore.

The determination of good or bad faith of the contacting parties is important in order to assess the fruits or the value thereof which must be returned as well as the expenses which must be reimbursed.

In transfer of properties through **gratuitous title**, good faith of the transferee is not a defense.

Rescission shall not take effect upon 3rd person, 2 requisites:

- the thing must be legally in the possession of 3rd person (*immovable, property: the thing must be registered in the name of the 3rd person for the requisite to apply*)
Case: Sikatuna vs Guevarra
- such 3rd person must not have acted in bad faith.

Remedy if maintaining an action for the rescission is impossible is to bring an **action for indemnity for damages** against the person who caused the loss.

(Art. 1386-1388)

proof of fraud- needed to be established in order that a contract may be rescinded

presumption of fraud:

1. alienation of property by gratuitous title if the debtor has not reserved sufficient property to pay all of his debts contracted before such alienation/donation
2. Alienations by onerous title when made by persons against whom some judgment has been rendered in any instance (even if not yet final and executory) or some writ of attachment has been issued. The decision

or attachment need not refer to the property alienated, and need not have been obtained by the party seeking the rescission.

3. Any other manner recognized by law of evidence

***Where no judgment or preliminary attachment exists against the debtor, the 2nd presumption is not applicable.

***The presumptions are disputable and may be rebutted by satisfactory and convincing evidence to the contrary. **Case:** Honrado vs Marcayda et al.

Badges of fraud: (conveyance)

1. inadequate cause or consideration
2. transfer made by a debtor after the suit has been begun and while it is pending against him
3. sale on credit by an insolvent debtor
4. evidence of large indebtedness or large insolvency
5. transfer of all of the property of a debtor when he is insolvent
6. transfer made between father and son
7. failure of vendee to take exclusive possession of all property

***If it happens that there are 2 or more alienation, the 1st acquirer shall be liable first, and so on successively.

Par. 2 of Art. 1388 seems to have forgotten the debtor; this is because the debtor is already presumed to be insolvent.

(Art. 1389)

4year-prescriptive period for commencement of action for rescission.

- this period must be counted from the time of the termination of the incapacity of the ward (Art. 1381, par.1)
- this period must be counted from the time the domicile of the absentee is known (Art. 1381, par.2)
- this period must be counted from the time of the discovery of fraud (Art. 1381 par. 3&4; Art. 1382)
- in certain cases of rescissible contracts of ale, the prescriptive period is 6 months or even 40 days from the day of delivery.

CHAPTER 7
VOIDABLE CONTRACTS

Voidable contracts – element of consent of one of the contracting parties is vitiated either by lack of legal capacity of one of the contracting parties, or by mistake, violence, intimidation, undue influence, or fraud.

- binding until annulled by a competent court

Remedies:

- attack the validity of the contract
 - direct – by means of proper action (annulment)
 - indirect – as a defense (annulability or relative nullity)
- convalidate it either by ratification or prescription.

Characteristics:

1. defect consists in the vitiation of consent of one of the contracting parties
2. binding until annulled by a competent court
3. susceptible of convalidation by ratification or by prescription
4. defect or voidable character cannot be invoked by 3rd persons

Voidable contracts	Rescissible contracts
Intrinsic defect (vitiation of consent)	External defect (damage or prejudice either to one of the contracting parties or to a 3 rd person)
Contracts are voidable even if there is no damage or injury	There should be damage or injury caused to consider a contract rescissible.
Annulability is based on the law	Rescissibility is based on equity
Remedy and sanction	Mere remedy
Predominated by public interest	Predominated by private interest
Susceptible of ratification	Not susceptible to ratification
May be invoked only by the contracting party	May be invoked by the contracting party or by a

3 rd person who is prejudiced.

(Art. 1390)

Voidable contracts:

1. Those where one of the parties is incapable of giving consent to a contract;
2. Those where the consent is vitiated by mistake, violence, intimidation, undue influence or fraud.

***if the consent is absolutely lacking or simulated, the contract is inexistent, not voidable.

(Art. 1391)

4 years prescriptive period – shall commence:

- from the time the defect of the consent ceases (intimidation, violence, or undue influence)
- from the time of the discovery of mistake or fraud
- from the time the guardianship ceases (contracts entered into by the minors or other incapacitated persons)
 - 2 conflicting views:
 - prescription applies only to ACTION and NOT defense
 - prescription applies to BOTH action and defense – this one is more logical

Case: **Carantes vs CA**

(Art. 1392-1396)

Ratification – confirmation; act or means by virtue of which efficacy is given to contract which suffers from a vice of curable nullity.

Requisites:

1. contract should be tainted with a vice which is susceptible of being cured
2. the confirmation should be effected by the person who is entitled to do so under the law
3. it should be effected with knowledge of the vice or defect of the contract
4. the cause of the nullity or defect should have already disappeared

***if the person entitled to effect the confirmation

ratifies or confirms the contract with knowledge of the mistake, but not of the fraud, his right to ask for an annulment is not extinguished thereby since the ratification has only purged the contract of mistake, but not the fraud.

Forms of ratification:

(with knowledge of the reason which renders the contract voidable and such reason having ceased...)

- express – declaration of desire to convalidate the contract and express declaration to renounce his right to annul the contract.
- Tacit – executing an act which necessarily implies an intention to waive his right to annul the contract.

Effects of ratification:

- extinguishes the action to annul the contract.
- Cleanses the contract of its defects from the moment it was constituted.

(Art. 1397)

requisites to confer the necessary capacity for the exercise of action to annul:

- plaintiff must have an interest in the contract
- the VICTIM and not the party responsible for the vice or defect must be the person who must assert the same

General rule: a third person who is a stranger to the contract cannot institute an action for annulment.

Exception: when the 3rd person is prejudiced in his rights with respect to one of the contracting parties, and can show detriment which would positively result to him from the contract in which he has no intervention.

Case: *Teves vs People's Homesite & Housing Corp.*

(Art. 1398-1399)

effects of annulment

- contracting parties are released from their obligations (*contract not yet consummated*)
- apply Art. 1398-1402 of the Civil Code (*consummated contract*)

- mutual restitution
 - to give: things subject matter of the contract, its fruits, and the price with interest, except in cases provided by law
 - to do: apportionment of damages based on the value of the prestation with corresponding interests.
- ***when the defect of the contract consists in the incapacity of one of the contracting parties, the incapacitated person is not obliged to make any restitution except insofar as he has been benefited by the thing or price received by him.

***In the obligation of the incapacitated person to make restitution, it is sufficient that there has been a prudent and beneficial use by him of the thing which he has received. (food, clothing, shelter, health, etc.)

- presumption that no benefit has accrued to the incapacitated person
- burden of proof of benefit is casted upon the person who has capacity.
- Art. 1399 is not applicable in cases where the incapacitated person can still return the thing that he received.
- There is IMPLIED ratification when the incapacitated person failed to ask for the annulment of the contract and also squandered that part of the consideration which remained.
- In consonance with the principle enunciated in Art. 1241 (payment made to an incapacitated person)

(Art. 1400-1402)

Effect of failure to make restitution because of loss:

- **due to the fault of the defendant**
 - return the fruits received and the value of the thing at the time of the loss, with interests on the same date
 - action for annulment not extinguished
 - instead of being compelled to restore the thing, the defendant can only be compelled to pay the value thereof at the time of the loss
- **due to the fault of the plaintiff**

- Art. 1401 shall apply; action for annulment shall be extinguished, regardless as to whether the loss occurred during the plaintiff's incapacity or after he had acquired capacity.
- **fortuitous event**
 - contract can be annulled; the defendant/plaintiff can be held liable only for the value of the thing at the time of the loss, but without interest thereon

CHAPTER 8 UNENFORCEABLE CONTRACTS

(Art. 1403-1408)

Unenforceable contracts – cannot be enforced by a proper action, unless ratified;

Classes:

- 1. contracts entered into without or in excess of authority** (Art. 1403, No.1) or;
 - there is absolutely no consent
 - applicable principles:
 - no one may contract in the name of another without being authorized by the latter or unless he has right to represent him. If he is duly authorized, he must act within the scope of his powers
 - such contracts are unenforceable as reiterated in the law on agency
 - such contract may be ratified by the person in whose behalf it has been executed, before it is revoked by the other contracting party

****Confirmation and ratification were not used interchangeably in the old law, but in the new law, the term ratification is now used to designate the act of validating any kind of defective contract.*

Recognition, on the other hand, is merely to cure a defect of proof.

- 2. contracts which do not comply with the statute of frauds** (Art. 1403, No. 2)
 - there is no writing, note, or memorandum by which the contract may be proved
 - Statute of Frauds was enacted for the

purpose of **preventing frauds**

- such statute states that evidence of the agreement cannot be received without the writing or a secondary evidence of its contents
- statute simply provides the method by which the contracts enumerated therein may be proved.
- Effect: no action can be enforced unless the requirement that the contract be in writing be complied with.
- Form required is for evidentiary purpose
- Statute of Frauds is applicable only to those contracts which are purely executory and not to those which have been consummated either totally or partially. (Case: **Carbonnel vs Poncio et al.; Inigo vs Estate of Maloto**)
- 6 contracts covered:
 - An agreement that by its terms is not to be performed within a year from the making thereof;
 - *limit of human memory is 1 year*
 - *if one of the contracting parties has already complied with the obligations imposed upon him by said contract within the year, the other party cannot invoke the Statute of Fraud*
 - A special promise to answer for the debt, default, or miscarriage of another;
 - *such promise must be collateral, not independent or original for Statute of Frauds to apply.*
 - An agreement made in consideration of marriage, other than a mutual promise to marry;
 - *marriage settlements and donations propter nuptias are covered by the statute of fraud*
 - An agreement for the sale of goods, chattels or things in action, at a price not less than five hundred pesos
 - *loan is not covered, provision applies only to SALE of goods,*

chattels, and things in action

- *if the transaction involves inseparable goods, the prices of the items shall be considered as a whole*
- *if the transaction separable goods, the prices of the items shall not be less than P500*
- An agreement for the **leasing** for a longer period than one year, or for the **sale** of real property or of an interest therein;
 - *oral agreement to extend the lease is covered by the Statute*
- A representation as to the credit of a third person.
 - *Quasi-delict*
 - *misrepresentation by a 3rd person will make him liable only if he has signed a document in representing the credit of another person.*
- These contracts are susceptible to ratification
 - by the failure to object to the presentation of oral evidence to prove the same
 - by the acceptance of the benefits under them.

3. contracts where both the contracting parties do not possess the required legal capacity.

- Absolutely vitiated consent
- if only one party is incapacitated, the contract is voidable
- may be ratified by the parents or guardians of the incapacitated persons, in effect, the contract becomes voidable
- if ratified by the parties themselves after gaining the capacity, the contract shall be validated from its inception

Characteristics of unenforceable contracts:

- cannot be enforced by proper action
- susceptible of ratification
- cannot be assailed by 3rd persons

CHAPTER 9

VOID OR INEXISTENT CONTRACTS

Void or Inexistent contract – lacks absolutely either in fact or in law one or some of the elements which are essential for its validity.

Void	Inexistent
all of the requisite of a contract are present , but the cause, object, or purpose is contrary to law, morals, good customs, etc..	one or some or all of the requisites which are essential for the validity of a contract are absolutely lacking , such as those simulated , or those which cause or object did not exist at the time of the transaction
Neither party may be heard to invoke its unlawful character (certain provisions of Civil Code)	Open to attack even by the parties thereto
Principle of <i>in pari delicto</i> is applicable	Principle of <i>in pari delicto</i> is not applicable
May produce legal effects	Cannot produce any effect whatsoever

(Art. 1409)

Inexistent and void from the beginning

- cause, object, purpose are contrary to law, public morals, good customs, public order, public policy
- absolutely simulated or fictitious
- cause or object did not exist at the time of transaction
 - except if the object is possible to come into existence (this is to harmonize Art. 1409 with the provision that future objects may be some future thing)
- object is outside the commerce of man
- contemplates an impossible service
- where the intention of the parties relative to the principal object of the contract cannot be ascertained
- expressly prohibited or declared void by law

***cannot be ratified; defense of illegality cannot be waived

Characteristics of void and inexistent contracts:

- produce no legal effect (*quod nullum est nullum producit effectum*)
 - Except: Art. 1411-1412 – nullity is based on the illegality of the cause; any action by a guilty party to recover whatever he has already given under the contract is barred
- not susceptible of ratification
- right to set up the defense of inexistence or absolute nullity cannot be waived
- action or defense for the declaration of their inexistence or nullity is imprescriptible (Art. 1410)
- inexistence or absolute nullity cannot be invoked by a person whose interests are not directly affected.

(Art. 1410)

action or defense of declaration of nullity is imprescriptible – because the defects are more or less permanent, thus cannot be cured by prescription

Case: **Castillo vs Galvan**

***An action to declare the nullity of a void judgment does not prescribe (**Paluwagan ng Bayan Bank vs King**)

Case: **Aznar Brothers Realty vs Heirs of Augusto – no unreasonable delay in asserting their rights**

- in spite the imprescriptibility, laches may bar the action of a party in asserting the nullity of the contract

(Art. 1411-1422)

in pari delicto – equally at fault

- the law will not aid either party to an illegal agreement, it leaves them where they are.
- Applies only to cases of existing contracts with an illegal cause or object and not to simulated or fictitious contracts nor to those which are inexistent

Case: **Rodriguez vs Rodriguez**

- circumvention of provision on prohibited donation between spouses
- appellant is clearly as guilty as her husband in the attempt to circumvent the

law

- rule of *in pari delicto* is applicable because there is an illegal cause

only 1 party is at fault:

- executed contract
 - guilty party is barred from recovering what he has given to the other party by reason of the contract
 - innocent party may demand the return of what it has given
- executory contract
 - contract cannot produce any legal effect whatsoever
 - parties cannot demand for the fulfillment of any obligation arising from the contract nor be compelled to comply with such obligation

Exceptions in applicability of *in pari delicto*:

- payment in usurious interest (Art. 1413)
 - “*interest paid in excess of the interest allowed by the usury law*” - means the whole usurious interest; with interest thereon from the date of payment
- payment of money or delivery of property for an illegal purpose (Art. 1414)
- payment of money or delivery of property by an incapacitated person (Art. 1415)
- agreement that is not illegal per se but is prohibited by law (Art. 1416)
 - “*in pari delicto* is not applicable to a homestead; the purpose of the law is to give land to a family for home and cultivation, consequently, the law allows the homesteader to reacquire the land even if it has been sold.” (**Angeles vs CA, 102 Phil. 1006**)
 - rule of *in pari delicto* is inapplicable where the same violates a well-established public policy (**Angeles vs CA, 102 Phil. 1006**) and **Phil. Banking vs Lui She**
- payment of any amount in excess of the maximum price of any article or commodity fixed by law (Art. 1417)
- Contract where by a laborer undertakes to work longer than the maximum number of hours fixed by law (Art. 1418)
- contract whereby a laborer accepts a wage

lower than the minimum wage fixed by law
(Art. 1419)

ARTICLE 1421

The defense of illegality of contract is not available to third persons whose interests are not directly affected.

ARTICLE 1422

A contract which is the direct result of a previous illegal contract, is also void and inexistent.

**TITLE III
NATURAL OBLIGATIONS**

(Art. 1423-1430)

Natural obligations – obligations without a sanction; susceptible of voluntary performance

- once there is voluntary performance or fulfillment, one cannot recover what he has delivered.

Natural obligations	Civil obligations
based on equity and natural law	Based on positive law
do not grant a right of action to enforce their performance	enforceable by court action

Natural obligations	Moral obligations
There is a juridical tie between the parties which is not enforceable by court action	No juridical tie whatsoever
Voluntary performance by the obligor produces legal effect which the courts will recognize and protect	Voluntary fulfillment does not produce legal effect which courts will recognize and protect

**TITLE IV
ESTOPPEL**

(Art. 1431-1439)

Estoppel – a condition or state by virtue of which an admission or representation is rendered conclusive upon the person making it and cannot be denied or disproved as against the person relying thereon.

- such principle will afford solution to many questions which are not foreseen in our legislation
- person is not allowed to take inconsistent positions

Kinds of Estoppel

- estoppel in pais (equitable estoppel)
 - arises by acts, representations, or admissions, or by his silence induces another to believe certain acts to exist and such other rightfully relies and acts on such belief, as a consequence of which he will be prejudiced if the former is permitted to deny the existence of such facts
 - estoppel by silence – inaction;
 - estoppel by acceptance of benefits
- estoppel by deed or by record (technical estoppel)
 - estoppel by deed – type of technical estoppel by virtue of which a party to a deed and his privies are precluded from asserting as against the other party or his privies any right or title in derogation of the deed or from denying any material fact therein.
 - Estoppel by record – parties are precluded from denying the truth of matters set forth in a record whether judicial or legislative.
 - Estoppel by judgment – bars the party from raising any question that might have put in issue and decided in the previous litigation
- estoppel by laches
 - failure or neglect, for an unreasonable and unexplained length of time, to do that which, by exercising due diligence, could or should have been done earlier
 - presumption that the party entitled to assert it either has abandoned it or declined to assert it.
 - Stale demands
 - not a mere question of time but is principally a question of the inequity or unfairness of permitting a right or claim to be enforced or asserted

Elements of laches:

- conduct on the part of the defendant, or of

one under whom he claims, giving rise to the situation of which complaint is made and for which the complainant seeks a remedy

- delay in asserting the complainant's right; having knowledge and opportunity to assert his right
- lack of knowledge or notice on the part of the defendant that the complainant would assert the right on which he bases his suit
- injury or prejudice to the defendant in the event relief is accorded to the complainant, or the suit is not held to be barred

***No definite period for laches to take in unlike in prescription.

Case: ***Bucton vs Gabar***

“The action here although one for reconveyance is actually one for quieting of title – when the plaintiff is in possession is actually imprescriptible.”

- Justice J.B.L. Reyes

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