

MEMORY AID IN CIVIL LAW
SAN BEDA COLLEGE OF LAW – 2002 CENTRALIZED BAR OPERATIONS
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OBLIGATIONS AND CONTRACTS

I. OBLIGATIONS

OBLIGATION

□ a juridical necessity to give, to do, or not to do.

□ Requisites:

1. juridical or legal tie
2. active subject (obligee or creditor)
3. passive subject (obligor or debtor)
4. fact, prestation or service constituting the object of the obligation

□ Requisites:

1. it must be licit
2. it must be possible, physically & juridically
3. it must be determinate or determinable
4. it must have a possible equivalent in money

□ Sources:

1. Law
2. Contracts
3. Quasi-contracts
4. Delicts
5. Quasi-delicts

☛ **QUASI-CONTRACTS** – those juridical relations arising from lawful, voluntary and unilateral acts, based on the principle that no one shall be unjustly enriched or benefited at the expense of another.

□ Principal Kinds of Quasi-contracts:

1. Negotiorum gestio – arises whenever a person voluntarily takes charge of the agency or management of the business or property of another without any power or authority from the latter
2. Solutio indebiti – arises whenever a person unduly delivers a thing through mistake to another who has no right to demand it.

NATURE OF OBLIGATIONS

1. Personal Obligations – obligations to do

- a) Positive
- b) Negative

2. Real Obligations – obligations to give

- a) Determinate or specific
- b) Generic

RIGHTS OF A CREDITOR

Determinate	Generic
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<ol style="list-style-type: none"> 1. compel specific performance; 2. damages, exclusive or in addition to specific performance; 3. entitlement to fruits, interests from the time the obligation to deliver arises. 	<ol style="list-style-type: none"> 1. ask for performance of the obligation 2. ask that the obligation be complied with at the expense of the debtor 3. damages in case of breach
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OBLIGATIONS OF THE DEBTOR

Determinate	Generic
<ol style="list-style-type: none"> 1. specific performance; 2. take care of the thing with the proper diligence of a good father of a family; 3. deliver all accessions and accessories of the thing even though they may not have been mentioned; 4. pay damages in case of breach of the obligation by reason of delay, fraud, negligence or contravention of the tenor thereof. 	<ol style="list-style-type: none"> 1. deliver the thing which is neither of superior nor inferior quality; 2. damages in case of breach of the obligation by reason of delay, fraud, negligence or contravention of the tenor thereof.

EFFECTS OF BREACH

Positive Personal Obligations	Negative Personal Obligations
The creditor can: (1) have the obligation performed or executed at the expense of the obligor; (2) ask that what has been poorly done be undone; (2) recover damages because of breach of the obligation (Art. 1167)	The creditor can (1) have the obligation undone at the expense of the obligor; and (2) ask for damages. (Art. 1168)

Cases where the remedy granted under Art. 1168 is not available:

- 1) Where the effects of the act which is forbidden, are definite in character
- 2) Where it would be physically or legally impossible to undo what has been undone because of the very nature of the act itself or because of a provision of law, or because of conflicting rights of 3rd persons

BREACH OF OBLIGATIONS

1. **Voluntary** – debtor, in the performance of the obligation, is guilty of:
 - a. default (*mora*)
 - b. fraud (*dolo*)

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- c. negligence (*culpa*)
- d. contravention of the tenor of the obligation

☐ debtor is liable for damages

2. **Involuntary** – debtor is unable to comply with his obligation because of fortuitous event

☐ debtor is not liable for damages

DEFAULT or DELAY

☐ non-fulfillment of the obligation with respect to time

☐ Requisites:

- 1) Obligation is demandable and already liquidated
- 2) The debtor delays performance
- 3) The creditor requires performance judicially or extra-judicially

☐ 3 Kinds:

- 1) Mora solvendi – delay of the debtor to perform his obligation
- 2) Mora accipiendi – delay of the creditor to accept the delivery of the thing w/c is the object of the obligation
- 3) Compensatio morae – delay of the parties in reciprocal obligation

☐ When incurred:

☑ **GENERAL RULE:** There must be a DEMAND (judicial or extra-judicial) before delay may be incurred.

☑ **EXCEPTIONS:**

1. obligation or law expressly so declares
2. time is of the essence
3. demand is useless as when obligor has rendered beyond his power to perform
4. there is acknowledgment of default

☛ There can be delay only in positive obligations. There can be no delay in negative obligations.

☛ In reciprocal obligations one party incurs in delay from the moment the other party fulfills his obligation, while he himself does not comply or is not ready to comply in a proper manner with what is incumbent upon him.

FRAUD

☐ deliberate and intentional evasion of the fulfillment of an obligation.

Incidental Fraud/dolo incidente (Art. 1170)	Causal Fraud/dolo causante (Art. 1338)
1. Present during the performance of a pre-existing obligation	Present during the time of birth of the obligation
2. Purpose is to evade the normal fulfillment of the obligation	Purpose is to secure the consent of the other to enter into a contract
3. Results in the non-fulfillment or breach of the obligation	Results in the vitiation of consent

4. Gives rise to a right of the creditor to recover damages from the debtor	Gives rise to a right of an innocent party to annul the contract
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NEGLIGENCE

☐ omission of that diligence which is required by the nature of the obligation and corresponds with the circumstances of the persons, of the time and of the place

DILIGENCE REQUIRED

1. That agreed upon by the parties;
2. In the absence of stipulation, that required by law in the particular case;
3. If both the contract and law are silent, diligence of a good father of a family

FORTUITOUS EVENT

☐ an event w/c could not be foreseen or w/c though foreseen was inevitable

☐ Requisites:

1. cause is independent of the will of the debtor
2. the event must be unforeseeable or unavoidable
3. occurrence must be such as to render it impossible for the debtor to fulfill his obligation in a normal manner
4. debtor must be free from any participation in
5. the aggravation of the injury resulting to the creditor

☑ **GENERAL RULE:** No liability in case of fortuitous event.

☑ **EXCEPTIONS:**

1. When expressly declared by law
☛ E.g. Art. 552(2), 1165(3), 1268, 1942, 2147, 2148 and 2159 of the Civil Code.
2. When expressly declared by stipulation or contract
3. When the nature of the obligation requires the assumption of risk
4. When the obligor is in default or has promised to deliver the same thing to 2 or more persons who do not have the same interest (Art. 1165(3)).

EFFECT OF FORTUITOUS EVENT

Determinate Obligation	Generic Obligation
obligation is extinguished	obligation is not extinguished based on the rule that a genus never perishes

REMEDIES OF CREDITOR TO PROTECT CREDIT:

- 1) Exhaustion of debtor's property
- 2) Accion subrogatoria – to be subrogated to all the rights and actions of the debtor save those which are inherent in his person

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- 3) Accion pauliana - impugn all the acts w/c the debtor may have done to defraud them.
↳ 2nd & 3rd remedies are subsidiary to the first

☑ **GENERAL RULE:** Rights acquired by virtue of an obligation are transmissible in character

☑ **EXCEPTIONS:**

- 1) When they are not transmissible by their very nature e.g. purely personal right
- 2) When there is a stipulation of the parties that they are not transmissible
- 3) Not transmissible by operation of law

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

CONDITIONAL OBLIGATION

□ one whose effectivity is subordinated to the fulfillment or non-fulfillment of a future and uncertain fact or event

Kinds of conditions:

1. Suspensive – fulfillment of the condition results in the acquisition of rights arising out of the obligation
2. Resolutive – fulfillment of the condition results in the extinguishment of rights arising out of the obligation
3. Potestative – fulfillment of the condition depends upon the will of a party to the obligation
4. Casual – fulfillment of the condition depends upon chance and/or upon the will of a third person
5. Mixed – fulfillment of the condition depends partly upon chance and/or the will of a third person
6. Impossible – condition is not capable of realization according to nature, law, public policy or good customs
7. Impossible - condition is not capable of realization according to nature, law, public policy or good customs
8. Positive – condition involves the performance of an act
9. Negative - condition involves the omission of an act
10. Divisible – condition is susceptible of partial realization
11. Indivisible - condition is not susceptible of partial realization
12. Conjunctive – where there are several conditions, all of which must be realized
13. Alternative – where there are several conditions but only one must be realized

Rule in Potestative Conditions

- a. If the fulfillment of the potestative, the condition depends upon the will of the debtor, the condition as well as the obligation itself is void.

- b. if the fulfillment depends exclusively upon the will of the creditor, both the condition and obligation is valid.

Rule in Impossible Conditions

☑ **GENERAL RULE:** They shall annul the obligation which depends upon them.

☑ **EXCEPTIONS:**

1. pre-existing obligation
2. if obligation is divisible
3. in simple or remuneratory donations
4. in testamentary dispositions
5. in case of conditions not to do an impossible thing

Effects of Suspensive Condition

1. Before fulfillment of the condition, the demandability as well as the acquisition or effectivity of the rights arising from the obligation.
2. After the fulfillment of the condition, the obligation arises or becomes effective.
3. The effects of a conditional obligation to give once the condition has been fulfilled, shall retroact to the day of the constitution of the obligation but not as to fruits & interest
4. When the obligation imposes reciprocal prestations upon the parties, the fruits & interests shall be deemed to have been mutually compensated
5. If the obligation is unilateral, the debtor shall appropriate the fruits & interests received, unless from the nature & circumstances it should be inferred that the intention of the persons constituting the same was different

↳ **Constructive fulfillment of Suspensive Condition:** the condition shall be deemed fulfilled when the obligor prevents its fulfillment

Effects of Resolutive Condition

1. Before the fulfillment of the of the condition, the right which the creditor has already acquired by virtue of the obligation is subject to a threat of extinction.
2. Upon fulfillment of the condition, the parties shall return to each other what they received

EFFECTS OF LOSS, DETERIORATION AND IMPROVEMENT IN REAL OBLIGATIONS

1. Loss

- a. *without debtor's fault* – obligation is extinguished
- b. *with debtor's fault* – debtor pays damages

2. Deterioration

- a. *without debtor's fault* – impairment to be borne by the creditor
- b. *with debtor's fault* – creditor may choose between the rescission of the obligation and its fulfillment with indemnity for damages in either case

3. Improvement

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- a. *by the thing's nature or by time* – improvement shall inure to the benefit of the creditor
- b. *at the debtor's expense* – debtor shall have no other right than that granted to a usufructuary

RECIPROCAL OBLIGATIONS

☐ Those which are created or established at the same time, out of the same cause, and which result in mutual relationships of creditor & debtor between the parties

TACIT RESOLUTORY CONDITION

☐ 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 the obligation.

RIGHT TO RESCIND

☑ **GENERAL RULE:** The right to rescind needs judicial approval.

☑ **EXCEPTIONS:**

1. If there is an express stipulation of automatic rescission
2. When the debtor voluntarily returned the thing

☐ Rescission will be ordered only where the breach is *substantial* as to defeat the object of the parties in entering into the agreement

☐ The remedy of rescission and fulfillment are alternative, not cumulative

OBLIGATION WITH A PERIOD

☐ those whose demandability or extinguishment is subject to the expiration of a term or period

TERM	CONDITION
1. interval of time w/c is future & certain	1. fact or event w/c is future and uncertain
2. interval of time w/c must necessarily come, although it may not be known when	2. future and uncertain fact or event w/c may or may not happen
3. exerts an influence upon the time of demandability or extinguishment of an obligation	3. exerts an influence upon the very existence of the obligation itself
4. does not have any retroactive effect unless there is an agreement to the contrary	4. has retroactive effect
5. when it is left exclusively to the will of the debtor, the existence of the obligation is not affected	5. when it is left exclusively to the will of the debtor, the very existence of the obligation is affected

☑ **GENERAL RULE:** When a period is designated for the performance or fulfillment of an obligation, it is presumed to have been

established for the benefit of both creditor and debtor

☑ **EXCEPTION:** When it appears from the tenor of the period or other circumstances that it is established in favor of one or the other

When court may fix period:

1. if the obligation does not fix a period, but from its nature and circumstances it can be inferred that a period was intended by the parties;
2. if the duration of the period depends upon the will of the debtor; and
3. if the debtor binds himself when his means permit him to do so.

When debtor loses right to make use of period: (IFOVA)

1. when after the obligation has been contracted, he becomes insolvent, unless he gives guaranties or securities for the debt (the insolvency need not be judicially declared);
2. when he does not furnish to the creditor the guaranties or securities he promised;
3. when by his own act he has impaired said guaranties or securities after their establishment, and when through fortuitous event they disappear, unless he gives new ones equally satisfactory;
4. when debtor violates any undertaking, in consideration of which the creditor agreed to the period; or
5. when debtor attempts to abscond.

FACULTATIVE Obligations	ALTERNATIVE Obligations
1. comprehends several objects or prestations which are due but may be complied with by the delivery or performance of only one of them	1. comprehends only one object or prestation which is due, but it may be complied with by the delivery of another object or performance of another prestation in substitution
2. fortuitous loss extinguishes the obligation	2. fortuitous loss of all prestations will extinguish the obligation
3. culpable loss obliges the debtor to deliver substitute prestation without liability to debtor	3. culpable loss of any object due will give rise to liability to debtor
4. choice pertains only to debtor	4. choice may pertain to creditor or even third person

☑ In alternative obligations, choice takes effect only upon communication of the choice to the other party and from such time the obligation ceases to be alternative.

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✎ The debtor cannot choose those prestations or undertakings which are impossible, unlawful or w/c could not have been the object of the obligation

EFFECT OF LOSS OF OBJECT OF OBLIGATION:

A. If right of choice belongs to debtor:

- 1) If through a fortuitous event – debtor cannot be held liable for damages
- 2) If 1 or more but not all of the things are lost or one or some but not all of the prestations cannot be performed due to the fault of the debtor, creditor cannot hold the debtor liable for damages because the debtor can still comply with his obligation

B. If right of choice belongs to the creditor:

- 1) If 1 of the things is lost through a fortuitous event, the debtor shall perform the obligation by delivering that which the creditor should choose from among the remainder, or that which remains if only 1 subsists
- 2) If the loss of 1 of the things occurs through the fault of the debtor, the creditor may claim any of those subsisting, or the price of that which, through the fault of the former, has disappeared with a right to damages
- 3) If all the things are lost through the fault of the debtor, the choice by the creditor shall fall upon the price of any 1 of them, also with indemnity for damages

Note: These rules shall be applied to obligations to do or not to do.

JOINT AND SOLIDARY OBLIGATIONS

☑ **GENERAL RULE:** Obligation is presumed joint if there is concurrence of two or more debtors and/or creditors.

☑ **EXCEPTIONS:**

1. when expressly stated to be solidary
2. when the law requires solidarity
3. when the nature of the obligation requires solidarity

JOINT DIVISIBLE OBLIGATIONS

☐ each creditor can demand for the payment of his proportionate share of the credit, while each debtor can be held liable only for the payment of his proportionate share of the debt

JOINT INDIVISIBLE OBLIGATIONS

- 1) If there are 2 or more debtors, the fulfillment of or compliance with the obligation requires the concurrence of all the debtors, although each for his own share. Consequently, the obligation can be enforced only by proceeding against all of the debtors
- 2) If there are 2 or more creditors, the concurrence or collective act of all the creditors,

although each for his own share, is also necessary for the enforcement of the obligation

INDIVISIBILITY	SOLIDARITY
1. refers to the prestation which constitutes the object of the obligation	1. refers to the legal tie or vinculum juris & consequently to the subjects or parties of the obligation
2. plurality of subjects is not required	2. plurality of subjects is indispensable
3. in case of breach, obligation is converted into 1 of indemnity for damages because of breach, indivisibility of the obligation is terminated	3. when there is liability on the part of the debtors because of the breach, the solidarity among the debtors remains

KINDS OF SOLIDARITY

1. Active solidarity

☐ solidarity of creditors

☐ each creditor is empowered to exercise against the debtor not only the rights which correspond 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

2. Passive solidarity

☐ solidarity of debtors

☐ 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.

Effect of Novation upon Solidary Obligation

1. If the novation is prejudicial, the solidary creditor who effected the novation shall reimburse the others for damages incurred by them

2. If it is beneficial and the creditor who effected the novation is able to secure performance of the 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

3. If the novation is effected by substituting another person in place of the debtor, the solidary creditor who effected the novation is liable for the acts of the new debtor in case the is deficiency in performance or in case damages are incurred by the other solidary creditors as a result of the substitution.

4. If the novation is effected by subrogating a third person in the rights of the solidary creditor responsible for the novation, the relation between the other creditors not substituted and the debtor or debtors is maintained.

Effect of Compensation and Confusion upon Solidary Obligation

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1. If the confusion or compensation is partial, the rules regarding application of payment shall apply.
2. If the confusion or compensation is total, the obligation is extinguished, what is left is the ensuing liability for reimbursement within each group:
 - a. The creditor causing the confusion or compensation is obliged to reimburse the other creditors
 - b. The debtors benefited by the extinguishments of the obligation is obliged to reimburse the debtor who made the confusion or compensation possible

Effect of Remission upon Solidary Obligation:

1. If the remission covers the entire obligation, the obligation is totally extinguished and the entire juridical relation among the debtors is extinguished all together
2. If the remission is for the benefit of one of the debtors and it covers his entire share in the obligation, he is completely released from the creditors but is still bound to his co-debtors
3. If the remission is for the benefit of one of the debtors and it covers only a part of his share in the obligation, his character as a solidary debtor is not affected.

Defenses available to a Solidary Debtor:

1. Defenses derived from the very nature of the obligation
2. Defenses personal to him or pertaining to his own share
3. Defenses personal to the others, but only as regards that part of the debt for w/c the latter are responsible

DIVISIBLE AND INDIVISIBLE OBLIGATIONS

GENERAL RULE: The creditor cannot be compelled partially to receive the prestation in which the obligation consists; neither may the debtor be required to make partial payments.

EXCEPTIONS:

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

OBLIGATIONS WITH A PENAL CLAUSE

□ one to which an accessory undertaking is attached for the purpose of insuring its performance by virtue of which the obligor is bound to pay a stipulated indemnity or perform a stipulated prestation in case of breach

□ Purpose of Penalty:

- 1) To insure the performance of the obligation

- 2) to liquidate the amount of damages to be awarded to the injured party in case of breach of the principal obligation
- 3) in certain exceptional cases, to punish the obligor in case of breach of the principal obligation

GENERAL RULE: The penalty fixed by the parties is a compensation or substitute for damages in case of breach.

EXCEPTIONS:

1. stipulation to the contrary
1. debtor is sued for refusal to pay the agreed penalty
2. debtor is guilty of fraud

✎ The debtor cannot exempt himself from the performance of the principal obligation by paying the stipulated penalty unless when the right has been expressly reserved for him

✎ The creditor cannot demand the fulfillment of the principal obligation and the satisfaction of the stipulated penalty at the same time unless the right has been clearly granted him

When penalty may be reduced:

1. If the principal obligation has been partly complied with
2. If the principal obligation has been irregularly complied with
3. If the penalty is iniquitous or unconscionable even if there has been no performance

MODES OF EXTINGUISHMENT OF OBLIGATIONS (LFC³NARP²)

1. Loss of the thing due
2. Fulfillment of resolutive condition
3. Compensation
4. Condonation or remission of the debt
5. Confusion or merger of rights of the creditor and debtor
6. Novation
7. Annulment
8. Rescission
9. Prescription
10. Payment or performance

PAYMENT OR PERFORMANCE

□ means not only the delivery of money but also the performance in any other manner of an obligation

Integrity of Payment

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

EXCEPTIONS:

- 1) When the obligation has been substantially performed in good faith

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- 2) When the obligee accepts performance, knowing its incompleteness or irregularity & w/out expressing any protest or objection
- 3) When there is an express stipulation
- 4) When the debt is in part liquidated and in part unliquidated

Identity of Payment - requires that the very thing, service or forbearance, as the object of the prestation, must be performed or observed

Persons who may pay the obligation:

- 1) the debtor himself or his legal representative
- 2) any third person
 - ☑ **GENERAL RULE:** Creditor is not bound to accept payment or performance by a third person.
 - ☑ **EXCEPTIONS:**
 1. when made by a third person who has an interest in the fulfillment of the obligation
 2. stipulation to the contrary

☞ Rights of 3rd person who paid the obligation:

1. If payment was with knowledge and consent of the debtor:
 - a. can recover entire amount paid
 - b. can be subrogated to all the rights of the creditor
2. If payment was without knowledge or against the will of the debtor: can recover only insofar as payment has been beneficial to the debtor

To whom payment must be made:

1. the person in whose favor the obligation has been constituted
2. his successor in interest
3. any person authorized to receive it.

☑ **GENERAL RULE:** If payment is made to a person other than those enumerated, it shall not be valid.

☑ **EXCEPTIONS:**

1. Payment made to a 3rd person, provided that it has redounded to the benefit of the creditor.
2. Payment made to the possessor of the credit, provided that it was made in good faith.

Rules in Monetary Obligations:

1. Payment in cash – must be made in the currency stipulated; if not possible, then in the legal tender in the Philippines.
2. Payment in check or other negotiable instrument – not considered payment; not considered legal tender and may be refused by the creditor. It shall only produce the effect of payment:
 - a. when it has been cashed; or
 - b. when it has been impaired through the fault of the creditor

4 Special Forms of Payment:

- a) Application of payment
- b) Dation in Payment
- c) Payment by Cession
- d) Tender of payment and Consignation

a) 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:

1. there must be only 1 debtor & only 1 creditor
2. there must be 2 or more debts of the same kind
3. all of the debts must be due
4. amount paid by the debtor must not be sufficient to cover the total amount of all the debts

☑ **GENERAL RULE:** The right to designate the debt to which the payment shall be applied primarily belongs to the debtor.

☑ **EXCEPTION:** If the debtor does not avail of such right and he accepts from the creditor a receipt in which the application is made.

☞ If the above rule is not applicable:

1. The debt most onerous to the debtor shall be deemed satisfied.
2. If the debts due are of the same nature and burden, payment shall be applied to all proportionately.

b) Dation in Payment (DACION EN PAGO)

☐ transmission of ownership of a thing by the debtor to the creditor as an accepted equivalent of the performance of the obligation.

☐ Requisites:

1. existence of a money obligation
2. alienation to the creditor of a property by the debtor with the consent of the former
3. satisfaction of the money obligation of the debtor

c) Payment by Cession

☐ debtor abandons all of his property for the benefit of his creditors in order that from the proceeds thereof, the latter may obtain payment of their credits.

☐ Requisites:

1. plurality of debts
2. partial or relative insolvency of the debtor
3. acceptance of the cession by the creditors

DATATION IN PAYMENT	PAYMENT BY CESSION
1. one creditor	1. plurality of creditors
2. not necessarily in state of financial difficulty	2. debtor must be partially or relatively insolvent

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3. thing delivered is considered as equivalent of performance	3. universality of property of debtor is what is ceded
4. payment extinguishes obligation to the extent of the value of the thing delivered as agreed upon, proved or implied from the conduct of the creditor	4. merely releases debtor for net proceeds of things ceded or assigned, unless there is contrary intention

d) Tender of Payment and Consignation

Tender of Payment

☐ manifestation of the debtor to the creditor of his decision to comply immediately with his obligation

Consignation

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

☐ Special Requisites:

1. The debt sought to be paid must be due
2. There must be a valid and unconditional tender of payment or any of the causes stated by law for effective consignation without previous tender of payment exists
3. The consignation of the thing due must first be announced to the persons interested in the fulfillment of the obligation
4. Consignation shall be made by depositing the things due at the disposal of judicial authority
5. The consignation having been made, the interested parties shall also be notified thereof

☐ Effect:

☑ **GENERAL RULE:** Consignation shall produce effects of payment only if there is a valid tender of payment.

☑ **EXCEPTIONS:**

1. creditor is absent or unknown, or does not appear at the place of payment
2. creditor incapacitated to receive payment at the time it is due
3. when two or more persons claim the right to collect
4. when the title of the obligation has been lost
5. when without just cause creditor refuses to give a receipt

✍ It is the consignation which constitutes a form of payment and must follow, supplement or complete the tender of payment in order to discharge the obligation

LOSS OF THE THING DUE

1. *In Determinate Obligations to Give*

☑ **GENERAL RULE:** Obligation is extinguished.

☑ **EXCEPTIONS:**

- a. when by law, obligor is liable even for fortuitous event;
- b. when by stipulation, obligor is liable even for fortuitous event;
- c. when the nature of the obligation requires the assumption of risk;
- d. when the loss of the thing is due partly to the fault of the debtor;
- e. when the loss of the thing occurs after the debtor incurred in delay;
- f. when the debtor promised to deliver the same thing to two or more persons who do not have the same interest; and
- g. when the debt of a certain and determinate thing proceeds from a criminal offense.

2. *In Generic Obligations to Give*

☑ **GENERAL RULE:** Obligation is not extinguished because the genus of a thing cannot perish.

☑ **EXCEPTION:** In case of generic obligations whose object is a particular class or group with specific or determinate qualities (Limited Generic Obligations)

3. *In Obligations to Do*

☑ **GENERAL RULE:** Obligation extinguished when prestation becomes legally or physically impossible.

CONDONATION OR REMISSION OF THE DEBT

☐ an act of pure liberality by virtue of which the obligee, without receiving any price or equivalent, renounces the enforcement of the obligation, as a result of which it is extinguished in its entirety or in that part or aspect of the same to which the remission refers.

☐ Requisites:

1. It must be gratuitous
2. It must be accepted by the debtor
3. The obligation must be demandable

CONFUSION OR MERGER OF RIGHTS

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

☐ Requisites:

1. that the characters of creditor & debtor must be in the same person
2. that it must take place in the person of either the principal creditor or the principal debtor
3. it must be complete & definite

COMPENSATION

☐ extinguishment in the concurrent amount of the obligation of those persons who are reciprocally debtors and creditors of each other.

☐ Requisites:

1. there must be 2 parties, who, in their own right, are principal creditors & principal debtors of each other

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2. both debts must consist in money, or if the things due are fungibles, they must be of the same kind & quality
3. both debts must be due
4. both debts must be liquidated & demandable
5. there must be no retention or controversy commenced by 3rd persons over either of the debts & communicated in due time to the debtor
6. compensation must not be prohibited by law

Compensation	Confusion
1. two persons who are mutual debtors and creditors of each other	1. one person where qualities of debtor and creditor are merged
2. there must be at least two obligations	2. only one obligation

Debts not subject to Compensation:

1. debts arising from contracts of deposit
2. debts arising from contracts of commodatum
3. claims for support due by gratuitous title
4. obligations arising from criminal offenses
5. certain obligations in favor of government

✍ Taxes are not subject to set-off or legal compensation because the government & taxpayers are not mutually creditors & debtors of each other (*Francia vs. IAC*)

NOVATION

□ substitution 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 a third person in the rights of the creditor.

□ Requisites:

1. a previous valid obligation
2. agreement of the parties to the new obligation
3. extinguishment of the old obligation
4. validity of the new obligation

□ Kinds:

1. As to its essence
 - a) Objective/Real – refers to the change either in the cause, object or principal conditions of the obligations
 - b) Subjective/Personal – refers to the substitution of the person of the debtor or to the subrogation of a 3rd person in the rights of the creditor
 - c) Mixed
2. As to its form/constitution
 - a) Express – when it is declared in unequivocal terms that the old obligation is extinguished by a new one w/c substitutes the same
 - b) Implied – when the old & new obligation are incompatible w/ each other on every point

2 Forms of Substitution of Debtors:

1. *Expromision* – effected with the consent of the creditor at the instance of the new debtor even without the consent or even against the will of the old debtor.
2. *Delegacion* – effected with the consent of the creditor at the instance of the old debtor, with the concurrence of the new debtor.

✍ A change in the incidental elements of, or an addition of such elements to an obligation, unless otherwise expressed by the parties, will not result in its extinguishment

Conventional Subrogation	Assignment of Rights
1. governed by Arts. 1300 to 1304	1. governed by Arts. 1624 to 1627
2. debtor's consent is required	2. debtor's consent is not required
3. extinguishes the obligation and gives rise to a new one	3. transmission of right of the creditor to third person without modifying or extinguishing the obligation
4. defects and vices in the old obligation are cured	4. defects and vices in the old obligation are not cured
5. takes effect upon moment of novation or subrogation	5. as far as the debtor is concerned, takes effect upon notification

☑ **GENERAL RULE:** Subrogation cannot be presumed.

☑ **EXCEPTIONS:**

1. Creditor pays another creditor who is preferred, without debtor's knowledge;
2. A third person not interested in the obligation pays with the express or tacit approval of the debtor; or
3. Even without debtor's knowledge, a person interested in the fulfillment of the obligation pays without prejudice to the effects of confusion as to the latter's share.

II. CONTRACTS

CONTRACT

□ Elements: (COC)

1. Consent
2. Object or Subject Matter
3. Cause or Consideration

Nominate contracts

□ those which have their own distinctive individuality and are regulated by special provisions of law.

Innominate contracts

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□ those which lack individuality and are not regulated by special provisions of law.

□ regulated by the stipulations of the parties by the general provisions of the Civil Code on obligations and contracts, by rule governing the most analogous nominate contracts and by the customs of the place

□ 4 Kinds:

1. *Do ut des* – I give that you give
2. *Do ut facias* – I give that you do
3. *Facio ut des* – I do that you give
4. *Facio ut facias* – I do that you do

Characteristics of Contracts: (ROMA)

1. **R**elativity (Art. 1311)
2. **O**bligatoriness and **C**onsensuality (Art. 1315)
3. **M**utuality (Art. 1308)
4. **A**utonomy (Art. 1306)

Relativity

☑ **GENERAL RULE:** Contract is only valid between parties, assigns and heirs.

☑ **EXCEPTIONS:**

1. Stipulation *pour autrui* - stipulation in favor of a third person.

□ Requisites:

- a. the stipulation must be part, not whole of the contract;
- b. the contracting parties must have clearly and deliberately conferred a favor upon a third person;
- c. the third person must have communicated his acceptance; and
- d. neither of the contracting parties bears the legal representation of the third person.

2. When a third person induces a party to violate contract (Art 1314)

□ Requisites:

- a. Existence of a valid contract
- b. knowledge of contract by third person
- c. interference by third person without justification

3. Third persons who come into possession of the object of the contract creating real rights

4. Contracts entered into in fraud of creditors

Mutuality

□ The contract must bind both parties; its validity or compliance must not be left to the will of one of them. (Art. 1308)

Autonomy

□ The parties are free to stipulate anything they deem convenient provided that they are not contrary to law, morals, good customs, public order and public policy.

Consensuality

□ Contracts are perfected by mere consent and from that moment, the parties are bound not only to the fulfillment of what has been expressly stipulated but also to all consequences which, according to their nature may be in keeping with good faith, usage and law.

CONSENT

□ manifested by the meeting of the offer and acceptance upon the thing and the cause which are to constitute the contract.

□ Requisites:

1. Legal capacity of the contracting parties
2. Manifestation of the conformity of the contracting parties
3. The parties' conformity to the object, cause, the terms and conditions of the contract must be intelligent, spontaneous and free from all vices of consent
4. The said conformity must be real and not simulated or fictitious

Offer – a proposal made by one party to another to enter into a contract

Acceptance – manifestation by the offeree of his assent to the terms of the offer

☞ The offer must be certain and the acceptance absolute

☞ *Consensual contracts* are perfected from the moment there is a manifestation of concurrence between the offer and the acceptance regarding the object and the cause.

☞ *Real contracts* like deposit, pledge and commodatum requires delivery of object for perfection.

☞ Contracts under the Civil Code generally adhere to the Cognition Theory, while transactions under the Code of Commerce use the Manifestation Theory.

VICES OF CONSENT (MIVUF)

1. **Mistake** – should refer to the substance of the thing which is the object of the contract, or to those conditions which have principally moved one or both parties to enter into the contract

2. **Intimidation** – when 1 of the contracting parties is compelled by a reasonable & well-grounded fear of an imminent & grave evil upon his person or prop of his spouse, descendants or ascendants, to give his consent

3. **Violence** – when in order to wrest consent, serious or irresistible force is employed

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4. **Undue influence** – when a person takes improper advantage of his power over the will of another, depriving the latter of a reasonable freedom of choice

5. **Fraud** – when, through insidious words or machinations of 1 of the contracting parties, the other is induced to enter into a contract which, without them, he would not have agreed to.

OBJECT

☐ Requisites:

1. It must be w/in the commerce of man
2. It must be licit or not contrary law, morals, good customs, public order or public policy
3. It must be possible
4. It must be determinate as to its kind

CAUSE

☐ the immediate, direct and most proximate reason which explains and justifies the creation of obligation.

☐ Requisites

1. Cause should be in existence at the time of the celebration of the contract
2. Cause should be licit or lawful
3. Cause should be true

☐ Rules:

1. In onerous contracts, the cause is understood to be, for each contracting party, the prestation of promise of a thing or service by the other
2. In remuneratory contracts, the service or benefit w/c is remunerated
3. In contracts of pure beneficence, the mere liberality of the benefactor

1. When the law requires that a contract be in some form in order that it may be valid
2. When the law requires that a contract be in some form in order that it may be enforceable
3. For the convenience of the parties

☞ Parties may compel each other to comply with the form required once the contract has been perfected. (Art 1357)

☞ RA 8792 (E- COMMERCE ACT) provides that the formal requirements to make contracts effective as against third persons and to establish the existence of a contract are deemed complied with provided that the electronic document is unaltered and can be authenticated as to be usable for future reference.

REFORMATION OF INSTRUMENTS

☐ Requisites:

1. meeting of the minds to the contract
2. true intention is not expressed in the instrument by reason of mistake, accident, relative simulation, fraud, or inequitable conduct
3. clear and convincing proof of mistake, accident, relative simulation, fraud, or inequitable conduct

Instances when there can be no reformation:

1. Simple unconditional donations inter vivos;
2. Wills;
3. When the agreement is void;
4. When one of the parties has brought an action to enforce the instrument no subsequent reformation can be asked.

CAUSE	EFFECT
1. Absence of cause	the contract confers no right and produces no legal effect
2. Failure of cause	does not render the contract void
3. Illegality of cause	the contract is null and void
4. Falsity of cause	the contract is void, unless the parties show that there is another cause which is true and lawful
5. Lesion	does not invalidate the contract, unless (1) there is fraud, mistake or undue influence; or (2) when the parties intended a donation or some other contract

FORM OF CONTRACTS

☑ **GENERAL RULE:** Contracts shall be obligatory, in whatever form they may have been entered into, provided all the essential requisites for their validity are present.

☑ **EXCEPTIONS:**

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COMPARATIVE TABLE OF DEFECTIVE CONTRACTS

VOID	VOIDABLE	RESCISSIBLE	UNENFORCEABLE
1. Defect is caused by lack of essential elements or illegality	Defect is caused by vice of consent	Defect is caused by injury/ damage either to one of the parties or to a 3 rd person	Defect is caused by lack of form, authority, or capacity of both parties not cured by prescription
2. Do not, as a general rule produce any legal effect	Valid and enforceable until they are annulled by a competent court	Valid and enforceable until they are rescinded by a competent court	Cannot be enforced by a proper action in court
3. Action for the declaration or nullity or inexistence or defense of nullity or inexistence does not prescribe	Action for annulment or defense of annullability may prescribe	Action for rescission may prescribe	Corresponding action for recovery, if there was total or partial performance of the unenforceable contract under No. 1 or 3 of Art. 1403 may prescribe
4. Not cured by prescription	Cured by prescription	Cured by prescription	Not cured by prescription
5. Cannot be ratified	Can be ratified	Need not be ratified	Can be ratified
6. Assailed not only by a contracting party but even by a third person whose interest is directly affected	Assailed only by a contracting party	Assailed not only by a contracting party but even by a third person who is prejudiced or damaged by the contract	Assailed only by a contracting party
7. Assailed directly or collaterally	Assailed directly or collaterally	Assailed directly only	Assailed directly or collaterally

RESCISSIBLE CONTRACTS

☐ Contracts validly agreed upon but, by reason of lesion or economic prejudice, may be rescinded in cases established by law

☐ What contracts are rescissible:

1. those entered into by guardians where the ward suffers lesion of more than ¼ of the value of the things which are objects thereof;
2. those agreed upon in representation of absentees, if the latter suffer lesion by more than ¼ of the value of the things which are subject thereof;
3. those undertaken in fraud of creditors when the latter cannot in any manner claim what are due them;
4. those which refer to things under litigation if they have been entered into by the defendant without the knowledge and approval of the litigants and the court;
5. all other contracts especially declared by law to be subject to rescission; and
6. payments made in a state of insolvency on account of obligations not yet enforceable

☐ Requisites:

1. the contract must be rescissible

2. the party asking for rescission must have no other legal means to obtain reparation for the damages suffered by him
3. the person demanding rescission must be able to return whatever he may be able to return whatever he may be obliged to restore if rescission is granted
4. the things w/c are the object of the contract must not have passed legally to the possession of a 3rd person acting in good faith
5. the action for rescission must be brought w/in the prescriptive period of 4 years

Badges of Fraud:

1. consideration of the conveyance is inadequate or fictitious;
2. transfer was made by a debtor after a suit has been begun and while it is pending against him;
3. sale upon credit by an insolvent debtor;
4. evidence of indebtedness or complete insolvency
5. transfer of all his property by a debtor when he is financially embarrassed or insolvent;
6. transfer made between father & son, where there is present any of the above circumstances

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7. failure of the vendee to take exclusive possession of all the property

VOIDABLE CONTRACTS

□ What contracts are voidable:

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.

Causes of extinction of action to annul:

1. Prescription

□ the action must be commenced within 4 years from:

- a. the time the incapacity ends;
- b. the time the violence, intimidation or undue influence ends; or
- c. the time the mistake or fraud is discovered.

2. Ratification

□ Requisites:

- a. there must be knowledge of the reason which renders the contract voidable;
- b. such reason must have ceased; and
- c. the injured party must have executed an act which expressly or impliedly conveys an intention to waive his right.

3. By loss of the thing which is the object of the contract through fraud or fault of the person who is entitled to annul the contract.

UNENFORCEABLE CONTRACTS

□ What contracts are unenforceable:

1. those entered into in the name of another by one without or acting in excess of authority;
2. those where both parties are incapable of giving consent; and
3. those which do not comply with the Statute of Frauds.

Agreements within the scope of the Statute of Frauds (exclusive list):

1. Agreements not to be performed within one year from the making thereof;
2. Special promise to answer for the debt, default or miscarriage of another;
3. Agreement in consideration of marriage other than a mutual promise to marry;
4. Agreement for the sale of goods, etc. at a price not less than P500.00;
5. Contracts of lease for a period longer than one year;
6. Agreements for the sale of real property or interest therein; and
7. Representation as to the credit of a third person.

✍ The contracts/agreements under the Statute of Frauds require that the same be evidenced by some note, memorandum or writing, subscribed by the party charged or by his agent, otherwise, the said contracts shall be unenforceable

✍ The statute of frauds applies only to executory contracts, not to those that are already partially or completely fulfilled.

Ratification of contracts in violation of the Statute of Frauds

1. Failure to object to the presentation of oral evidence to prove the same
2. Acceptance of benefits under them

VOID CONTRACTS

□ What contracts are void:

1. Those whose cause, object or purpose is contrary to law, morals good customs, public order or public policy;
2. Those whose object is outside the commerce of men;
3. Those which contemplate an impossible service;
4. Those where the intention of the parties relative to the principal object of the contract cannot be ascertained; and
5. Those expressly prohibited or declared void by law.

INEXISTENT CONTRACTS

□ What contracts are inexistent:

1. Those which are absolutely simulated or fictitious; and
2. Those whose cause or object did not exist at the time of the transaction.

Principle of Pari Delicto

✍ **GENERAL RULE:** When the defect of a void contract consists in the illegality of the cause or object of the contract and both of the parties are at fault or in pari delicto, the law refuses them every remedy and leaves them where they are.

✍ **EXCEPTIONS:**

1. Payment of usurious interest
2. Payment of money or delivery of property for an illegal purpose, where the party who paid or delivered repudiates the contract before the purpose has been accomplished, or before any damage has been caused to a 3rd person.
3. Payment or delivery made by an incapacitated person
4. Agreement or contract which is not illegal per se & the prohibition is designed for the protection of the plaintiff
5. Payment of any amount in excess of the maximum price of any article or commodity fixed by law
6. Contract whereby a laborer undertakes to work longer than the maximum # of hours fixed by law
7. Contract whereby a laborer accepts a wage lower than the minimum wage fixed by law.

Rules when only one of the parties is at fault:

A. Executed Contracts:

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1. Guilty party is barred from recovering what he has given to the other party is barred from recovering what he has given to the other party by reason of the contract.
2. Innocent party may demand for the return for the return of what he has given.

1. 4. applies in equity not based on a fixed time	4. applies at law based on a fixed time
---------------------------------------------------------	--------------------------------------------

B. Executory Contracts: Neither of the contracting parties can demand for the fulfillment of any obligation from the contract nor may be compelled to comply with such obligation

NATURAL OBLIGATIONS

- They are real obligations to which the law denies an action, but which the debtor may perform voluntarily
- It is patrimonial, and presupposes a prestation
- The binding tie of these obligations is in the conscience of man, for under the law, they do not have the necessary efficacy to give rise to an action
- Examples of natural obligations enumerated under the Civil Code:
 1. Performance after the civil obligation has prescribed;
 2. Reimbursement of a third person for a debt that has prescribed;
 3. Restitution by minor after annulment of contract;
 4. Delivery by minor of money or fungible thing in fulfillment of obligation;
 5. Performance after action to enforce civil obligation has failed;
 6. Payment by heir of debt exceeding value of property inherited; and
 7. Payment of legacy after will has been declared void.

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.
- Kinds:
 1. Estoppel in Pais (by conduct)
 - a. Estoppel by silence
 - b. Estoppel by acceptance of benefits
 2. Technical Estoppel
 - a. Estoppel by deed
 - b. Estoppel by record
 3. Estoppel by judgment
 4. Laches

LACHES	PRESCRIPTION
1. concerned with effect of delay	1. concerned with fact of delay
2. question of inequity of permitting the claim to be enforced	2. question or matter of time
3. not statutory	3. statutory