



ATENEO CENTRAL BAR OPERATIONS 2007

Civil Law
SUMMER REVIEWER

OBLIGATIONS AND CONTRACTS

TITLE 1 - OBLIGATION

Art. 1156. *An obligation is a juridical necessity to give, to do or not to do. (n)*

CHAPTER 1. – GENERAL PROVISIONS

See Arts. 1156 - 1162

ELEMENTS OF AN OBLIGATION:

1. **Active subject** (obligee/creditor): one in whose favor the obligation is constituted
2. **Passive subject** (obligor/debtor): one who has the duty of giving, doing or not doing
3. **Object:** prestation; the conduct which has to be observed by the debtor/obligor

REQUISITES

1. it must be licit (otherwise it is void)
2. it must be possible, physically and juridically (otherwise it is void)
3. it must be determinate or determinable (otherwise it is void)
4. it must have pecuniary value
 - a. **Vinculum Juris:** juridical/legal tie; binds the parties to the obligation
 - b. **Causa** (causa debendi/causa obligationes): why obligation exists

SOURCES OF OBLIGATION

Art. 1157. *Obligations arise from:*

- (1) *Law;*
- (2) *Contracts;*
- (3) *Quasi-contracts;*
- (4) *Acts or omissions punished by law; and*
- (5) *Quasi-delicts. (1089a)*

LAW (OBLIGATION EX LEGE)

- Must be expressly or impliedly set forth and cannot be presumed

CONTRACT (OBLIGATION EX CONTRACTU)

- Must be complied with in good faith
- it is the "law" between parties;

- neither party may unilaterally evade his obligation in the contract, unless:
 - a. Contract authorizes it
 - b. Other party assents
- Parties may freely enter into any stipulations provided they are not contrary to law, morals, good customs, public order or public policy

QUASI-CONTRACT (OBLIGATION EX QUASI-CONTRACTU)

- Juridical relation resulting from *lawful, voluntary and unilateral* acts, which has for its purpose, the payment of indemnity to the end that no one shall be unjustly enriched or benefited at the expense of another.
- Distinguished from other Sources
 1. act giving rise to a quasi contract must be **LAWFUL** distinguishing it from delict;
 2. act must be **VOLUNTARY** distinguishing it from quasi-delict which is based on fault or negligence;
 3. act must be **UNILATERAL** distinguishing it from contract which is based on agreement. (*Tolentino, Volume IV, p. 68*)

KINDS OF QUASI-CONTRACT

- **Negotiorum gestio:** unauthorized management; arises whenever a person voluntarily takes charge of the agency or management of another's abandoned business or property without the latter's authority
- **Solutio indebiti:** undue payment. Arises when a person unduly delivers a thing through mistake to another who has no right to demand it (must not be through liberality or some other cause)

DELICTS (OBLIGATION EX MALEFICIO OR EX DELICTO)

RPC: Art. 100 *Every person criminally liable for a felony is also civilly liable.*

GOVERNING RULES

1. Articles 100-113 of the RPC and other penal laws subject to Art 2177 Civil Code (quasi-delict);
2. Chapter 2, Preliminary title, on Human Relations (Civil Code)
3. Title 18 of Book IV of the Civil Code on damages

SCOPE OF CIVIL LIABILITY

1. Restitution

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2. Reparation for damage caused
3. Indemnity for Consequential damages

EFFECT OF ACQUITTAL IN CRIMINAL CASE

1. When due to reasonable doubt – no civil liability
2. When due to exempting circumstances – there is civil liability
3. When there is preponderance of evidence – there is civil liability

CRIMES WITHOUT CIVIL LIABILITY

1. Contempt
2. Insults to persons in authority
3. gambling
4. violations of traffic regulations (*De Leon, 2003 ed., p. 23*)

QUASI-DELICT/TORTS (OBLIGATION EX QUASI-DELICTO Or EX QUASI MALEFICIO)

- It is an act or omission arising from fault or negligence which causes damage to another, there being no pre-existing contractual relations between the parties
- **ELEMENTS:**
 1. There must be an act or omission
 2. There must be fault or negligence attributable to the person charged
 3. There must be damage or injury
 4. There must be a direct relation of cause and effect between the act arising from fault or negligence and the damage or injury (proximate cause);
 5. There is no pre-existing contractual relation between the parties.

NEGLIGENCE

- Failure to observe for the protection of the interests of another person, that degree of care, precaution and vigilance which the circumstances justly demand, whereby such other person suffers injury. (*US v. Barrias, 23 Phil. 434 [1912]*)

CHAPTER 2. – NATURE & EFFECTS OF OBLIGATIONS

See Arts. 1163 - 1178

NATURE OF OBLIGATIONS

1. **Personal Obligations:** obligations to do or not to do; where the subject matter is an act to be done or not to be done
 - a. Positive – obligation to do
 - b. Negative – obligation not to do

2. **Real Obligations:** obligations to give; where the subject matter is a thing which the obligor must deliver to the obligee
 - a. Determinate or specific – object is particularly designated or physically segregated from all other things of the same class
 - b. Generic –object is designated by its class or genus
 - c. Limited Generic – generic objects confined to a particular class

Ex: *An obligation to deliver one of my horses (Tolentino, Volume IV, p. 91; De Leon, 2003 ed., p. 7)*

EFFECT OF OBLIGATIONS

DUTIES OF DEBTOR IN AN OBLIGATION TO GIVE A DETERMINATE THING (See Arts. 1163, 1164, 1166.)

1. To preserve or take care of the thing due with the **diligence of a good father of a family**

DILIGENCE OF A GOOD FATHER OF A FAMILY – ordinary care or that diligence which an average or reasonably prudent person would exercise over his own property

NOTE: Rule on Standard of Care

- That which the law requires; or
 - That stipulated by the parties; or
 - In the absence of the two, diligence of a good father of a family
2. To **deliver the fruits of the thing:** Right to the fruits of the thing from the time the obligation to deliver it arises

WHEN OBLIGATION TO DELIVER ARISES

- **GENERAL RULE:** From the time of the perfection of the contract (i.e. meeting of the minds between the parties)
- **EXCEPTIONS**
 - a. when the parties made a stipulation as regards the right of the creditor to the fruits of the thing
 - b. when the obligation is subject to a suspensive condition or period; arises upon fulfillment of the condition or arrival of the period

PERSONAL V. REAL RIGHT

Personal	Real
<i>Jus ad rem</i> , a right enforceable only	<i>Jus in re</i> , a right enforceable against



against a definite person or group of persons	the whole world
Right pertaining to a person to demand from another , as a definite passive subject, the fulfillment of the prestation to give, to do or not to do.	Right pertaining to a person over a specific thing, without a definite passive subject against whom the right may be personally enforced

3. To **deliver its accessions and accessories**
 - Accessions – additions to or improvements upon a thing. Ex: *air conditioner in a car*.
 - Accessories – things joined to, or included with the principal thing for its better use, embellishment or completion. Ex: *key of a house; frame of a picture (De Leon, 2003 ed., pp. 37-38)*
4. To **deliver the thing itself**
5. To **pay damages** in case of breach of the obligation by reason of delay, fraud, negligence or contravention of the tenor of the obligation.

DUTIES OF DEBTOR IN AN OBLIGATION TO GIVE A GENERIC THING

1. To deliver the thing which is neither of superior nor of inferior quality
2. To pay damages in case of breach of the obligation by reason of delay, fraud, negligence or contravention of the tenor of the obligation.

REMEDIES OF THE CREDITOR IN CASE OF NON-PERFORMANCE (See Arts 1165 – 1168)

1. **Specific Performance:** Performance by the debtor of the prestation itself
2. **Substitute Performance:** someone else performs or something else is performed at the expense of debtor
3. **Equivalent Performance:** damages

Remedies	Real Obligations		Personal Obligations	
	Specific	Generic	To do	Not to do
specific performance	X	X	X	undo the things already done

equivalent performance	X	X	Can only be demanded if obligation is not very personal	X
substitute performance		X	X	Undo the things already done at debtor's expense
rescission/cancellation	X	X	X	

BREACH OF OBLIGATIONS (See Arts. 1170 – 1174)

1. **Voluntary** – debtor in the performance of the obligation is guilty of:
 - fraud (*Dolo*)
 - negligence (*culpa*)
 - delay (*mora*)
 - contravention of the tenor of the obligation
- **NOTE:** debtor is liable for damages
2. **Involuntary** – debtor is unable to comply with his obligation due to fortuitous event/s
 - **NOTE:** debtor is not liable for damages

FRAUD (Dolo)

- It is the deliberate or intentional evasion of the normal fulfillment of an obligation. (8 Manresa 72)

O'leary Macondray & Co., 45 Phil. 812 [1924] – It implies some kind of malice or dishonesty and it cannot cover cases of mistake and errors of judgment made in good faith. It is synonymous to bad faith.

TYPES OF FRAUD

1. **Causal Fraud (Dolo Causante):** fraud employed in the execution of the contract
2. **Incidental Fraud (Dolo Incidente):** fraud in performance of obligation already existing because of a contract

Deleted: Corliss v. Manila Railroad – The law presumes or requires a man to possess ordinary capacity to avoid harming his neighbors unless a clear and manifest incapacity is shown and the law does not hold him liable for unintentional injury unless, possessing such capacity, he might and ought to have foreseen the danger. ¶



- **NOTE:** Negligence can be waived except in cases where the nature of the obligation or public policy requires another standard of care.
- **EXCEPTIONS:** Nature of Obligation of a Common carrier

Fraud in the Performance (Art. 1170)	Causal Fraud (Art. 1338)	Incidental Fraud (Art. 1344)
Present during the performance of a pre-existing obligation	Present during the perfection of a contract	Present during the perfection of a contract
Purpose is to evade the normal fulfillment of the obligation	Purpose is to secure the consent of another to enter into the contract	Purpose is to secure the consent of the other party but the fraud was not the principal inducement in making the contract
Results in the breach of an obligation	Results in vitiation of consent; voidable contract	Does not result in the vitiation of consent
Gives rise to a right in favor of the creditor to recover damages	Gives rise to a right of an innocent party to annul the contract	Gives rise to a right of an innocent party to claim for damages

NOTE: Future fraud cannot be waived. However, the law does not prohibit renunciation of the action for damages on the ground of fraud *already committed*.

REMEDIES OF DEFRAUDED PARTY

- Insist on specific performance (Art 1233)
- Resolve contract (Art 1191)
- Claim damages, in either case

NEGLIGENCE

- Consists in the 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.

KINDS OF NEGLIGENCE

1. **Quasi-Delict (Culpa aquiliana/culpa extra contractual)**- source of obligation
2. **Contractual Negligence (Culpa Contractual)**- negligence in the performance of a contract

FRAUD V. NEGLIGENCE

Fraud	Negligence
There is deliberate intention to cause damage.	There is no deliberate intention to cause damage.
Liability cannot be mitigated.	Liability may be mitigated.
Waiver for future fraud is void.	Waiver for future negligence may be allowed in certain cases

KINDS OF NEGLIGENCE, DISTINGUISHED

Culpa Aquiliana	Culpa Contractual
Negligence is substantive and independent	Negligence merely an incident of performance of an obligation
There may or may not be a pre-existing contractual obligation	There is a pre-existing contractual relation
Source of the obligation is the negligence itself	Source of the obligation is the breach of the contractual obligation
Negligence must be proved	Proof of existing of the contract and its breach is <i>prima facie</i> sufficient to warrant recovery
Diligence in the selection and supervision of the employees is a defense	Diligence in the selection and supervision of the employees is not available as a defense

EFFECTS OF CONTRIBUTORY NEGLIGENCE OF THE CREDITOR

- **GENERAL RULE:** Reduces or mitigates the damages which he can recover
- **EXCEPTION:** If the negligent act or omission of the creditor is the *proximate cause* of the event which led to the damage or injury complained of, he cannot recover.

DELAY (MORA)

1. **Ordinary Delay** – failure to perform an obligation on time
2. **Legal Delay/ Default** – failure to perform an obligation on time which failure constitutes a



breach of the obligation. (*De Leon, 2003 ed., p. 42*)

REQUISITES OF DELAY

1. Obligation must be due, demandable and liquidated;
2. Debtor fails to perform his positive obligation on the date agreed upon;
3. A demand (not merely a reminder or notice), judicial or extra-judicial, made by the creditor upon the debtor to fulfill, perform or comply with his obligation otherwise, he will be in default; and
4. Failure of the debtor to comply with such demand.

KINDS OF DELAY

1. **Mora Solvendi**— default on the part of the debtor:
 - **Mora Solvendi Ex re** – default in real obligations
 - **Mora Solvendi Ex persona** – default in personal obligations
 - **REQUISITES:**
 - a. The obligation must be due, enforceable and already liquidated or determinate in amount;
 - b. There must be non-performance; and
 - c. There must be a demand, unless demand is not required.
 - **GENERAL RULE:** Those obliged to deliver or to do something incur in delay from the time the obligee judicially or extrajudicially demands from them the fulfillment of their obligation.
 - **EXCEPTIONS** (no demand necessary)
 - a. When the obligation or the law expressly so declare; or
 - b. When from the nature and the circumstances of the obligation it appears that the designation of the time when the thing is to be delivered or the service is to be rendered was a controlling motive for the establishment of the contract; or
 - c. When demand would be useless, as when the obligor has rendered it beyond his power to perform
 - **EFFECTS:**
 - a. Debtor is guilty of breach of the obligation
 - b. Liability: If obligation to pay money- must pay interest. If no extra-judicial demand, interest runs from the filing of the complaint. In other obligations, pay damages.

- c. Obligations to deliver a determinate thing, liable for fortuitous events. If debtor can prove that loss would have resulted even if he had not been in default, the court may equitably mitigate the damages (Art. 2215[4])
- d. Resolution (Art 1170, in proper cases)

2. **Mora Accipiendi** – default on part of creditor when he unjustifiably refuses to accept the performance of the obligation.

• REQUISITES:

- a. Offer of performance by the debtor
- b. Offer must be to comply with the prestation as it should be performed
- c. Creditor refuses the performance without just cause

• EFFECTS:

- a. Responsibility of debtor is limited to fraud and gross negligence
- b. Debtor is exempted from risk of loss of thing; creditor bears risk of loss
- c. Expenses by debtor for preservation of thing after delay is chargeable to creditor
- d. If obligation bears interest, debtor does not have to pay from time of delay
- e. Creditor liable for damages
- f. Debtor may relieve himself of obligation by consigning the thing

3. **Compensatio morae** – both parties are in default (in reciprocal obligations); there is no actionable default on the part of both parties

- **Rule in Reciprocal Obligations:** In reciprocal obligations, neither party incurs in delay if the other does not comply or is not ready to comply in a proper manner with what is incumbent upon him. From the moment one of the parties fulfills his obligation, delay by the other begins.
- Performance must be simultaneous *unless* different dates for the performance of the obligation were fixed by the parties

CESSATION OF THE EFFECTS OF MORA:

- renunciation (express or implied)
- prescription
- **NOTE:** There is no delay in negative obligations and natural obligations.

FORTUITOUS EVENT – An event which could not be foreseen, or which though foreseen, was inevitable



REQUIREMENTS: (Nakpil and Sons vs. CA):

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

RULE ON FORTUITOUS EVENT:

- **GENERAL RULE:** No liability for fortuitous event
- **EXCEPTIONS:**
 1. When expressly declared by law (bad faith, subject matter is generic, debtor is in delay)
 2. When expressly declared by stipulation or contract
 3. When nature of obligation requires assumption of risk
 4. When the obligor is in default or has promised to deliver the same thing to two or more persons who do not have the same interest (Art. 1165[3])

EFFECT OF FORTUITOUS EVENT

Determinate Obligation	is	Generic Obligation
Obligation is extinguished	is	Obligation is not extinguished based on the rule that the genus never perishes (<i>genus nunquam perit</i>)

Art. 1176 *The receipt of the principal by the creditor, without reservation with respect to the interest, shall give rise to the presumption that said interest has been paid.*

The receipt of a later installment of a debt without reservation as to prior installments, shall likewise raise the presumption that such installments have been paid.

PRINCIPLE IN ARTICLE 1176

- Before the presumption that a prior installment had been paid may arise, the receipt must specify the installment for which payment is made.

Art. 1177 *The creditors, after having pursued the property in possession of the debtor to satisfy their claims, may exercise all rights and bring all the actions of the latter for the same purpose, save those which are inherent in his person; they may also impugn the acts which the debtor may have done to defraud them. (1111)*

Art. 1178 *Subject to the laws, all rights acquired in virtue of an obligation are transmissible, if there has been no stipulation to the contrary. (1112)*

Art. 1191. *The power to rescind obligations is implied in reciprocal ones, in case one of the obligors should not comply with what is incumbent upon him.*

The injured party may choose between the fulfillment and the rescission of the obligation, with the payment of damages in either case. He may also seek rescission, even after he has chosen fulfillment, if the latter should become impossible.

The court shall decree the rescission claimed, unless there be just cause authorizing the fixing of a period.

This is understood to be without prejudice to the rights of third persons who have acquired the thing, in accordance with Articles 1385 and 1388 and the Mortgage Law. (1124)

Art. 1192. *In case both parties have committed a breach of the obligation, the liability of the first infractor shall be equitably tempered by the courts. 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. (n)*

REMEDIES AVAILABLE TO CREDITORS FOR THE SATISFACTION OF THEIR CLAIMS

1. Exact fulfillment of the obligation by specific or substitute performance with a right to damages in either case;
2. In case of reciprocal obligations, petition the court to resolve the contract;
3. Pursue the leviable (not exempt from attachment under the law) property of the debtor;
4. **Accion directa** (Arts. 1729 and 1652): Right of the lessor to go directly to sublessee for unpaid rents of the lessee. Right of the laborers or persons who furnish materials for a piece of work undertaken by a contractor to go directly to the owner for any unpaid claims due to the contractor
5. **Accion subrogatoria** – to be subrogated to all the rights and actions of the debtor save those which are inherent in his person

• **REQUISITES:**

- a. The debtor to whom the right of action properly pertains must be indebted to the creditor;
- b. The creditor must be prejudiced by the inaction or failure of the debtor to proceed against the third person;
- c. The creditor must have pursued first or exhausted all the properties of the debtor which are not exempt from execution;
- d. The debtor's assets are insufficient to satisfy his claims; and



- e. The right of account is not purely personal
- 6. **Accion Pauliana** – asking the court to rescind or to impugn all the acts which the debtor may have done to defraud the creditors (Arts. 1380-1389)
 - **REQUISITES:**
 - a. There is a credit in favor of plaintiff
 - b. The debtor has performed an act subsequent to the contract, giving advantage to other persons
 - c. The creditor is prejudiced by the debtor's act which are in favor of 3rd parties and rescission will benefit the creditor
 - d. The creditor has no other legal remedy
 - e. The debtor's acts are fraudulent

fulfillment of a condition or upon the expiration of a period and is demandable at once
CONDITIONAL – one whose effectivity is subordinated to the fulfillment or non-fulfillment of a future AND uncertain event or upon a past event unknown to the parties
CONDITION - Future and uncertain event or a past event unknown to the parties

	Without the fault of the debtor	With the fault of the debtor
Loss	Obligation is extinguished	Debtor obliged to pay damages
Deterioration	Impairment borne by the creditor	Creditor may choose between rescission or its fulfillment with damages in either case

- 1. **Suspensive** – happening of condition gives rise to obligation
- **Effects:**
 - a. Effectivity retroacts to the day of the constitution of the obligation
 - b. No retroactivity with reference to fruits or interest and prescription
 - c. Creditor may preserve rights
 - d. Debtor – recovery of payment by mistake or even w/o mistake

RULES ON LOSS, DETERIORATION, AND IMPROVEMENTS DURING PENDENCY OF A SUSPENSIVE CONDITION (Art. 1189)

CHAPTER 3. - DIFFERENT KINDS OF OBLIGATIONS
 See Arts. 1179 - 1230

Improvement	If by nature or by time → inures to the benefit of the debtor	If at the expense of the debtor → debtor's right is only that of a usufructuary

PRIMARY CLASSIFICATION OF OBLIGATIONS UNDER THE CIVIL CODE

- 1. **Demandability**
 - a. pure,
 - b. conditional
 - c. with a period
- 2. **Plurality of object**
 - a. simple
 - b. alternative
 - c. facultative
- 3. **Plurality of subject**
 - a. Simple
 - b. Joint
 - c. solidary
- 4. **Performance**
 - a. Divisible
 - b. indivisible
- 5. **Sanctions for breach**
 - a. with a penal clause
 - b. without a penal clause

REQUISITES FOR THE APPLICATION OF ARTICLE 1189

- a. 1. The obligation must be a real obligation
 - b. 2. The object is a specific or determinate thing
 - c. The obligation is subject to a suspensive condition
 - d. The condition is fulfilled
 - e. There is loss, deterioration or improvement of the thing during the pendency of the happening of the condition
- 2. **Resolutive** – happening of condition extinguishes obligation
 - EFFECTS:**
 - a. No retroactive effect
 - b. Obligation extinguished
 - c. Restore to each other what was received plus interest/fruits

PURE AND CONDITIONAL OBLIGATIONS (See Arts. 1179 - 1190)

PURE – one whose effectivity or extinguishment does not depend upon the fulfillment or non-

- 3. **Potestative** – dependent on sole will of 1 party; if on part of debtor and suspensive – void
- 4. **Casual** – dependent on chance or hazard
- 5. **Mixed** – chance, or any of parties
- 6. **With term**



- a. Positive – extinguished if time expires or indubitable of condition to happen
- b. Negative – effective from moment of time elapsed or evident it can't happen

IMPOSSIBLE AND ILLEGAL CONDITIONS

- **GENERAL RULE:** They shall annul the **obligation** which depends upon them
- **EXCEPTIONS:**
 - a. pre-existing obligation
 - b. if obligation is divisible
 - c. in simple or remuneratory donations
 - d. testamentary dispositions
 - e. conditions not to do an impossible thing

OBLIGATIONS WITH A PERIOD

WITH A PERIOD – An obligation which depends on a future and certain event (See Arts 1193, 1196)

WHEN STIPULATION SAYS “PAYABLE WHEN ABLE” – IT IS WITH A PERIOD, REMEDY:

1. Agreement among parties
2. Court shall fix period of payment when parties unable to agree

KINDS:

1. **Resolutive** (in diem) – demandable at once but terminates upon arrival of the day certain
 - Day certain – that which must necessarily come, although it may not be known when
2. **Suspensive** (ex die) –obligation becomes demandable on the day stipulated

contrary	
When it is left exclusively to the will of the debtor, the existence of the obligation is affected	When it is left exclusively to the will of the debtor, the obligation is void

WHEN COURTS 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
3. In case of reciprocal obligations, when there is a just cause for fixing a period
4. If the debtor binds himself when his means permit him to do so

PERIOD FOR WHOSE BENEFIT

- **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 obligation or other circumstances that the period has been established in favor of one or the other.

PERIOD FOR THE BENEFIT OF THE CREDITOR

- Creditor may demand the fulfillment of the obligation at any time but the debtor cannot compel him to accept before the expiration of the period

PERIOD FOR THE BENEFIT OF THE DEBTOR

- Debtor may oppose any premature demand of the creditor but he may renounce the benefit of the period by performing his obligation in advance (Manresa)

WHEN DEBTOR LOSES RIGHT TO PERIOD:

- Insolvency of debtor, unless security provided
- Did not deliver security promised
- Impaired security through his own acts or through fortuitous event unless he gives new securities equally satisfactory
- Violates undertaking in consideration of extension of period
- Attempts to abscond

TERM	CONDITION
Interval of time which is future and certain	Fact or event which is future or uncertain or a past event unknown to the parties
Time w/c must necessarily come although it may not be known when	Future and uncertain fact or event which may or may not happen
Exerts an influence upon the time of the demandability or extinguishment of an obligation	Exerts an influence upon the very existence of the obligation itself
Does not have any retroactive effect unless there is an agreement to the	Has retroactive effect



upon the price of any 1 of them, also with indemnity for damages.

ALTERNATIVE OBLIGATIONS (See Arts. 1199 – 1206)

FACULTATIVE - only one prestation has been agreed upon but another may be given in substitution

EFFECT OF LOSS OR DETERIORATION THRU NEGLIGENCE, DELAY OR FRAUD OF OBLIGOR:

- Of thing intended as substitute - no liability
- Of the substitute after substitution is made – with liability

ALTERNATIVE – bound by different prestations but only one is due

RIGHT OF CHOICE IN ALTERNATIVE OBLIGATIONS

- As a general rule the right of choice belongs to debtor

EFFECT OF LOSS OF OBJECTS OF ALTERNATIVE OBLIGATIONS

1. If the right of choice belongs to the debtor

- If through a fortuitous event all were lost, debtor cannot be held liable for damages
- 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 fortuitous event or fault of the debtor, creditor cannot hold the debtor liable for damages because the debtor can still comply with his obligation
- If all things, except one, were lost, the debtor must comply by performing that which remain
- If all were lost by fault of the debtor the later is liable for the value of the last thing or service which became impossible

2. If right of choice belongs to the creditor

- 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
- 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
- If all the things are lost through the fault of the debtor, the choice by the creditor shall fall

REQUISITES FOR MAKING THE CHOICE:

1. Made properly so that creditor or his agent will actually know
2. Made with full knowledge that a selection is indeed being made
3. Made voluntarily and freely
4. Made in due time – before or upon maturity
5. Made to all proper persons
6. Made w/o conditions unless agreed by the creditor
7. May be waived, expressly or impliedly

ALTERNATIVE vs. FACULTATIVE

ALTERNATIVE	FACULTATIVE
a) Various things are due but the giving principally of one is sufficient	a) Only one thing is due but a substitute may be given to render payment/fulfillment easy
b) If one of prestations is illegal, others may be valid but obligation remains	b) If principal obligations is void and there is no necessity of giving the substitute; nullity of P carries with it nullity of S
c) If it is impossible to give all except one, the last one must still be given	c) If it is impossible to give the principal, the substitute does not have to be given; if it is impossible to give the substitute, the principal must still be given
d) Right to choose may be given either to debtor or creditor	d) The right of choice is given only to the debtor

JOINT AND SOLIDARY OBLIGATIONS (See Arts. 1207 – 1222)

JOINT – presumption when two or more creditors or two or more debtors concur in one and the same obligation

EXCEPTIONS TO THE PRESUMPTION

1. when expressly stated that there is solidarity
2. when the law requires solidarity
3. when the nature of the obligation requires solidarity
4. when a charge or condition is imposed upon heirs or legatees and the testament expressly makes the charge or condition in solidum (Manresa)



5. when a solidary responsibility is imputed by a final judgment upon several defendants (*Gutierrez v. Gutierrez*)

breach, indivisibility of the obligation is terminated	debtors remains
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EFFECTS OF JOINT LIABILITY

1. Demand on one produces delay only with respect to the debt
2. Interruption in payment by one does not benefit or prejudice the other
3. Vices of one debtor to creditor has no effect on the others
4. Insolvency of one debtor does not affect other debtors

SOLIDARY – must be expressed in stipulation or provided by law or by nature of obligation

JOINT DIVISIBLE OBLIGATIONS

1. 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
2. A joint creditor cannot act in representation of the other creditors while a joint debtor cannot be compelled to answer for the acts or liability of the other debtors

1. **Active** – on the part of creditor or obligee
 - **EFFECTS:**
 - Death of 1 solidary creditor transmits share to heirs (but collectively)
 - Each creditor represents the other in the act of recovery of payment
 - Credit is divided equally between creditors as among themselves
 - Debtor may pay any of the solidary creditors
2. **Passive** – on the part of debtors or obligors
 - **EFFECTS:**
 - Each debtor may be requested to pay whole obligation with right to recover from co-debtors
 - Interruption of prescription to one creditor affects all
 - Interest from delay on 1 debtor is borne by all
3. **Mixed** – on the part of the obligors and obligees, or the part of the debtors and the creditors
4. **Conventional** – agreed upon by the parties
5. **Legal** – imposed by law
 - **Instances** where law imposes solidary obligation:
 - a. Obligations arising from tort
 - b. Obligations arising from quasi-contracts
 - c. Legal provisions regarding obligation of devisees and legatees
 - d. Liability of principals, accomplices, and accessories of a felony
 - e. Bailees in commodatum
 - **EFFECTS:**
 - a. Payment made before debt is due, no interest can be charged, otherwise – interest can be charged
 - b. Insolvency of one – others are liable for share pro-rata
 - c. If different terms and conditions – collect only what is due, later on collect from any
 - d. No reimbursement if payment is made after prescription or became illegal
 - e. Remission made after payment is made – co-debtor still entitled to reimbursement
 - f. Effect of insolvency or death of co-debtor – still liable for whole amount
 - g. Fault of any debtor – every one is responsible – price, damage and interest

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. 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

EFFECT OF BREACH

- If one of the joint debtors fails to comply with his undertaking, the obligation can no longer be fulfilled or performed. Consequently, it is converted into one of indemnity for damages. Innocent joint debtor shall not contribute to the indemnity beyond their corresponding share of the obligation.

INDIVISIBILITY	SOLIDARITY
Refers to the prestation which constitutes the object of the obligation	Refers to the legal tie and consequently to the subjects or parties of the obligation
Plurality of subjects is not required	Plurality of subjects is indispensable
In case of breach, obligation is converted into 1 of indemnity for damages because of	When there is liability on the part of the debtors because of the breach, the solidarity among the



- h. Complete/ personal defense – total or partial (up to amount of share only) if not personal to him

EFFECT OF LOSS OR IMPOSSIBILITY OF THE PRESTATION:

- 1. If without fault – no liability
- 2. If with fault – there is liability (also for damage and interest)
- 3. Loss due to fortuitous event after default – there is liability (because of default)

DIVISIBLE AND INDIVISIBLE OBLIGATIONS (See Arts. 1223 – 1225)

DIVISIBLE - obligation that is capable of partial performance

- Execution of certain no of days work
- Expressed by metrical units
- Nature of obligation – susceptible of partial fulfillment

INDIVISIBLE – one not capable of partial performance

- To give definite things
- Not susceptible of partial performance
- Provided by law
- Intention of parties

OBLIGATIONS WITH A PENAL CLAUSE (See Arts. 1226 – 1230)

WITH 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

CHARACTERISTICS OF PENAL CLAUSES:

- 1. **Subsidiary** - As a general rule, only penalty can be demanded, principal cannot be demanded, except: Penalty is joint or cumulative
- 2. **Exclusive** - takes place of damage, damage can only be demanded in the ff. cases:
 - a. Stipulation – granting right
 - b. Refusal to pay penalty
 - c. With dolo (not of creditor)

CAUSES FOR REDUCTION OF PENALTY:

- 1. Partial/irregular performance
- 2. Penalty provided is iniquitous/ unconscionable

CHAPTER 4. - EXTINGUISHMENT OF OBLIGATIONS

See Arts. 1232 - 1304

MODES OF EXTINGUISHMENT OF OBLIGATION (Art. 1231):

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

PAYMENT OR PERFORMANCE

- delivery of money and performance, in any other manner of the obligation

REQUISITES FOR VALID PAYMENT/PERFORMANCE

- 1. **With respect to prestation itself**
 - a. Identity
 - b. Integrity or completeness
 - c. Indivisibility
- 2. **With respect to parties** - must be made by proper party to proper party
 - a. **Payor**
 - i. Payor - the one performing, he can be the debtor himself or his heirs or assigns or his agent, or anyone interested in the fulfillment of the obligation; can be anyone as long as it is with the creditor's consent
 - ii. 3RD person pays/performs - only the creditor's consent; If performance is done also with debtor's consent - he takes the place of the debtor. There is subrogation except if the 3rd person intended it to be a donation
 - iii. 3rd person pays/performs with consent of creditor but not with debtor's consent, the repayment is only to the extent that the payment has been beneficial to debtor
 - b. **Payee**
 - i. Payee - creditor or obligee or successor in interest of transferee, or agent
 - ii. 3rd person - if any of the ff. concur:
 - It must have redounded to the obligee's
 - benefit and only to the extent of such benefit



- It falls under art 1241, par 1,2,3 - the benefit is total so, performance is total
- iii. Anyone in possession of the credit - but will apply only if debt has not been previously garnished

PAYMENT MADE TO AN INCAPACITATED PERSON, VALID IF

1. Incapacitated person kept the thing delivered, or
2. Insofar as the payment has been beneficial to him

PAYMENT TO 3RD PARTY NOT AUTHORIZED, VALID IF PROVED AND ONLY TO THE EXTENT OF BENEFIT; PRESUMED IF

1. After payment, 3rd person acquires the creditor's rights
2. Creditor ratifies payment to 3rd person
3. By creditor's conduct, debtor has been led to make the payment (estoppel)

PAYMENT MADE IN GOOD FAITH TO A PERSON IN POSSESSION OF CREDIT SHALL RELEASE DEBTOR; REQUISITES:

1. Payment by debtor must be made in good faith
2. Creditor must be in possession of the credit and not merely the evidence of indebtedness

- **NOTE: With respect to time and place of payment** - must be according to the obligation

WHERE PAYMENT SHOULD BE MADE

1. In the place designated in the obligation
2. If there is no express stipulation and the undertaking is to deliver a specific thing – at the place where the thing might be at the moment the obligation was constituted
3. In other case – in the place of the domicile of the debtor
 - Time of payment - time stipulated
 - Effect of payment – extinguish obligation
Except: order to retain debt

SUBSTANTIAL PERFORMANCE

Art. 1233. *A debt shall not be understood to have been paid unless the thing or service in which the obligation consists has been completely delivered or rendered, as the case may be. (1157)*

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

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

- Attempt in Good Faith to perform without willful or intentional departure
- Deviation is slight
- Omission/Defect is technical or unimportant
- Must not be so material that intention of parties is not attained

EFFECT OF SUBSTANTIAL PERFORMANCE IN GOOD FAITH

- Obligor may recover as though there has been strict and complete fulfillment, less damages suffered by the obligee
- Right to rescind cannot be used for slight breach

SPECIAL RULES/FORMS OF PAYMENT

1. **APPLICATION OF PAYMENTS** – the designation of the debt which payment shall be made, out of 2 or more debts owing the same creditor: stipulation or application of party given benefit of period – OK; to be valid: must be debtor's choice or w/ consent of debtor

REQUISITES FOR THE APPLICATION OF PAYMENT:

- a. Various debts of the same kind
 - b. Same debtor
 - c. Same creditor
 - d. All debts must be due
- **EXCEPTION:** there may be application of payment even if all debts are not yet due if:
 - a. Parties so stipulate
 - b. When application of payment is made by the party for whose benefit the term has been constituted
 - c. Payment is not enough to extinguish all debts

HOW APPLICATION IS MADE:

- a. Debtor makes the designation
- b. If not, creditor makes it by so stating in the receipt that he issues – unless there is cause for invalidating the contract
- c. If neither the debtor nor creditor has made the application or if the application is not valid, then application, is made by operation of law

WHO MAKES APPLICATION OF DEBTS



- **GENERAL RULE:** Debtor
- **EXCEPTION:** Creditor
 - a. Debtor without protest accepts receipt in which creditor specified expressly and unmistakably the obligation to which such payment was to be applied – debtor in this case renounced the right of choice
 - b. When monthly statements were made by the bank specifying the application and the debtor signed said statements approving the status of her account as thus sent to her monthly by the bank
 - d. In case no application is made:
 - Apply payment to the most onerous
 - If debts are of the same nature and burden, application shall be made to all proportionately

- d. Abandonment of all debtor's property not exempt from execution
- e. Acceptance or consent on the part of the creditors

EFFECTS OF ASSIGNMENT:

- a. Creditors do not become the owner; they are merely assignees with authority to sell
- b. Debtor is released up to the amount of the net proceeds of the sale, unless there is a stipulation to the contrary
- c. Creditors will collect credits in the order of preference agreed upon, or in default of agreement, in the order ordinarily established by law

2. DACION EN PAGO

DACION EN PAGO – mode of extinguishing an obligation whereby the debtor alienates in favor of the creditor property for the satisfaction of monetary debt; extinguish up to amount of property unless w/ contrary stipulation; A special form of payment because 1 element of payment is missing: IDENTITY

CONDITIONS FOR A VALID DACION:

- a. If creditor consents, for a sale presupposes the consent of both parties
 - b. If dacion will not prejudice the other creditors
 - c. If debtor is not judicially declared insolvent
- **NOTE: DACION** is governed by the law on sales

4. CESSION or ASSIGNMENT

CESSION/ASSIGNMENT IN FAVOR OF CREDITORS – the process by which debtor transfer all the properties not subject to execution in favor of creditors is that the latter may sell them and thus, apply the proceeds to their credits; extinguish up to amount of net proceeds (unless w/ contrary stipulation)

DATION IN PAYMENT	CESSION IN PAYMENT
One creditor	Plurality of creditors
Not necessarily in state of financial difficulty	Debtor must be partially or relatively insolvent
Thing delivered is considered as equivalent of performance	Universality of property of debtor is what is ceded
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	Merely releases debtor for net proceeds of things ceded of, assigned, unless there is a contrary intention

4. CONSIGNATION

TENDER -the act of offering the creditor what is due him together with a demand that the creditor accept the same (When creditor refuses w/o just cause to accept payment, he becomes in *mora accipiendi* and debtor is released from responsibility if he consigns the thing or sum due)

CONSIGNATION – the act of depositing the thing due with the court or judicial authorities whenever the creditor cannot accept or refuses to accept payment; generally requires prior tender of payment

KINDS OF ASSIGNMENT:

- a. **Legal** – governed by the insolvency law
- b. **Voluntary** – agreement of creditors

REQUISITES OF VOLUNTARY ASSIGNMENT:

- a. More than one debt
- b. More than one creditor
- c. Complete or partial insolvency of debtor

REQUISITES OF VALID CONSIGNATION:

- a. Existence of valid debt
- b. Consignation was made because of some legal cause - previous valid tender was



- unjustly refused or circumstances making previous tender exempt
- c. Prior Notice of Consignation had been given to the person interested in performance of obligation (1st notice)
- d. Actual deposit/Consignation with proper judicial authorities
- e. Subsequent notice of Consignation (2nd notice)

EFFECTS: EXTINGUISHMENT OF OBLIGATION

- a. Debtor may ask judge to order cancellation of obligation
- b. Running of interest is suspended
- c. Before creditor accepts or before judge declares consignation has been properly made, obligation remains (debtor bears risk of loss at the meantime, after acceptance by creditor or after judge declares that consignation has been properly made – risk of loss is shifted to creditor)

CONSIGNATION W/O PRIOR TENDER – allowed in:

- a. Creditor absent or unknown/ does not appear at the place of payment
- b. Incapacitated to receive payment at the time it is due
- c. Refuses to issue receipt w/o just cause
- d. 2 or more creditor claiming the same right to collect
- e. Title of obligation has been lost

5. LOSS OF THE THING DUE

LOSS OF THE THING DUE – partial or total/ includes impossibility of performance

WHEN IS THERE A LOSS

- a. When the object perishes (physically)
- b. When it goes out of commerce
- c. When it disappears in such a way that: its existence is unknown or it cannot be recovered

WHEN IS THERE IMPOSSIBILITY OF PERFORMANCE:

- a. **Physical impossibility**
- b. **Legal impossibility**
 - i. Directly – caused as when prohibited by law
 - ii. Indirectly – caused as when debtor is required to enter a military draft

OBLIGATION TO DELIVER A SPECIFIC THING

- **GENERAL RULE:** Extinguished
- **EXCEPTIONS:**

- a. Debtor is at fault
- b. Debtor is made liable for fortuitous event because of a provision of law, contractual stipulation or the nature of the obligation requires assumption of risk on part of debtor

OBLIGATION TO DELIVER A GENERIC THING

- **GENERAL RULE:** Not extinguished
- **EXCEPTIONS:**
 - a. If the generic thing is delimited
 - b. If the generic thing has already been segregated
 - c. Monetary obligation

OBLIGATION TO DO

- **GENERAL RULE:** Debtor is released when prestation becomes legally or physically impossible without fault on part of debtor

EFFECT OF PARTIAL LOSS

- a. When loss is **significant** – may be enough to extinguish obligation
- b. When loss **insignificant** – not enough to extinguish obligation

NOTE: judicial determination of extent is necessary

WHEN THING IS LOST IN THE POSSESSION OF THE DEBTOR

- **Presumption:** Loss due to debtor's fault (disputable)
- **Exception:** natural calamity, earthquake, flood, storm

5. REBUS SIC STANTIBUS

REBUS SIC STANTIBUS - agreement is valid only if the same conditions prevailing at time of contracting continue to exist at the time of performance; Obligor may be released in whole or in part based on this ground.

REQUISITES

- a. The event or change could not have been foreseen at the time of the execution of the contract
- b. The performance is extremely difficult, but not impossible (because if it is impossible, it is extinguished by impossibility)
- c. The event was not due to the act of any of the parties
- d. The contract is for a future prestation

6. CONDONATION



CONDONATION/REMISSION OF THE DEBT – gratuitous abandonment of debt; right to claim; donation; rules of donation applies; express or implied

REQUISITES:

- a. There must be an agreement
- b. There must be a subject matter (object of the remission, otherwise there would be nothing to condone)
- c. Cause of consideration must be liberality (Essentially gratuitous, an act of liberality)
- d. Parties must be capacitated and must consent; requires acceptance by obligor; implied in mortis causa and expressed inter vivos
- e. Formalities of a donation are required in the case of an express remission
- f. Revocable – subject to rule on inofficious donation (excessive, legitime is impaired) and ingratitude and condition not followed
- g. Obligation remitted must have been demandable at the time of remission
- h. Waivers or remission are not to be presumed generally

Forms:	Extent:	Kinds:
a. Express – formalities of donation	a. total	a. Principal – accessory also condoned
b. Implied – conduct is sufficient	b. partial	b. accessory – principal still outstanding
		c. accessory obligation of pledge – condoned; presumption only, rebuttable

REQUISITES OF IMPLIED CONDONATION

1. **Voluntary delivery** – presumption; when evidence of indebtedness is w/ debtor – presumed voluntarily delivery by creditor; rebuttable
2. **Effect of delivery of evidence of indebtedness is already conclusion that debt is condoned** – already conclusion; voluntary delivery of private document
 - a. If in hands of joint debtor – only his share is condoned
 - b. If in hands of solidary debtor - whole debt is condoned
 - c. *Tacit* – voluntary destruction of instrument by creditor; made to prescribe w/o demanding

6. CONFUSION OR MERGER

CONFUSION OR MERGER OF RIGHTS– character of debtor and creditor is merged in same person with respect to same obligation

REQUISITES:

- a. It must take place between principal debtor and principal creditor only
- b. Merger must be clear and definite
- c. The obligation involved must be same and identical – one obligation only
- d. Revocable, if reason for confusion ceases, the obligation is revived

7. COMPENSATION

COMPENSATION – Set off; it is a mode of extinguishment to the concurrent amount the obligation of persons who are in their own right reciprocally debtors or creditors

REQUISITES:

- a. Both parties must be mutually creditors and debtors - in their own right and as principals
- b. Both debts must consist in sum of money or if consumable , of the same kind or quality
- c. Both debts are due
- d. Both debts are liquidated and demandable (determined)
- e. Neither debt must be retained in a controversy commenced by 3rd person and communicated w/ debtor (neither debt is garnished)

KINDS OF COMPENSATION

- a. **Legal** – by operation of law; as long as 5 requisites concur- even if unknown to parties and if payable in diff places; indemnity for expense of exchanges; even if not equal debts – only up to concurring amount
- b. **Conventional** – agreement of parties is enough, forget other requirement as long as both consented
- c. **Facultative** – one party has choice of claiming/opposing one who has benefit of period may choose to compensate:
 - i. Not all requisites are present
 - ii. Depositum; commodatum; criminal offense; claim for future support; taxes



- d. **Judicial** – set off; upon order of the court; needs pleading and proof; all requirements must concur except liquidation
- e. **Total** – when 2 debts are of the same amount
- f. **Partial** – when 2 debts are not of the same amount

EFFECT OF ASSIGNMENT OF CREDIT TO 3RD PERSON; CAN THERE STILL BE COMPENSATION

- a. If made after compensation took place – no effect; compensation already perfected
- b. If made before compensation took place – depends
 - i. With consent of debtor – debtor is estopped unless he reserves his right and gave notice to assignee
 - ii. With knowledge but w/o consent of debtor – compensation may be set up as to debts maturing prior to assignment
 - iii. W/o knowledge – compensation may be set-up on all debts prior to his knowledge

8. NOVATION

NOVATION – extinguishment of obligation by creating/ substituting a new one in its place

- Changing object or principal conditions
- Substituting person of debtor
- Subrogating 3rd person in right of creditor

REQUISITES:

- a. Valid obligation
- b. Intent to extinguish old obligation – expressed or implied: completely/substantially incompatible old and new obligation on every point
- c. Capacity and consent of parties to the new obligation
- d. Valid new obligation

EFFECTS OF NOVATION:

- a. Extinguishment of principal carries accessory, **except** one™ and a (unzipped) decompressor
 - i. ~~Stipulation to contrary~~
 - ii. Stipulation *pour autrui* unless beneficiary consents
 - iii. Modificatory novation only; obliged to w/c is less onerous
 - iv. Old obligation is void

- b. Old obligation subsists if **new obligation** is **void or voidable** but annulled already (except: intention of parties)
- c. If old obligation has condition
 - i. If **Resolutive** and it occurred – old obligation already extinguished; no new obligation since nothing to novate
 - ii. If **Suspensive** and it never occurred – as if no obligation; also nothing to novate
- d. If old obligation has condition, must be compatible with the new obligation; if new is w/o condition – deemed attached to new
- e. If new obligation has condition
 - i. If **resolutive**: valid
 - ii. If **suspensive** and did not materialize: old obligation is enforced

KINDS OF NOVATION:

- a. **REAL/OBJECTIVE** – change object, cause/consideration or principal condition
- b. **PERSONAL/SUBJECTIVE**
 - i. **Substituting person of debtor** (passive)
 - **EXPROMISION**; initiative is from 3rd person or new debtor; new debtor and creditor to consent; old debtor released from obligation; subject to full reimbursement and subrogation if made w/ consent of old debtor; if w/o consent or against will, only beneficial reimbursement; if new debtor is insolvent, not responsible since w/o his consent
 - **DELEGACION**; initiative of old debtor; all parties to consent; full reimbursement; if insolvent new debtor – not responsible old debtor because obligation extinguished by valid novation unless: insolvency already existing and of public knowledge or know to him at time of delegacion
 - 1. Delegante – old debtor
 - 2. Delegatario - creditor
 - 3. Delegado – new debtor
 - ii. **Subrogating 3rd person to rights of creditor** (active)
 - 1. Conventional - agreement and consent of all parties; clearly established
 - 2. Legal - takes place by operation of law; no need for consent; not presumed except as provided for in law: **PRESUMED WHEN-**



- a. Creditor pays another preferred creditor even w/o debtor's knowledge
- b. 3rd person not interested in obligation pays w/ approval of debtor
- c. Person interested in fulfillment of obligation pays debt even w/o knowledge of debtor

4. Fulfill what has been **expressly stipulated**
5. All consequences w/c may be in keeping with **good faith, usage and law**
6. **Relativity** – binding only between the parties, their assigns, heirs; strangers cannot demand enforcement

EXCEPTION TO RELATIVITY:

1. Accion pauliana
2. Accion directa
3. Stipulation pour autrui

REQUISITES OF STIPULATION POUR AUTRUI

1. Parties must have clearly and deliberately conferred a favor upon a 3rd person
2. The stipulation in favor of a 3rd person should be a part of, not the whole contract
3. That the favorable stipulation should not be conditioned or compensated by any kind of obligation whatsoever
4. Neither of the contracting parties bears the legal representation or authorization of 3rd party
5. The third person communicates his acceptance before revocation by the original parties
6. Art 1312; Art 1314

REQUISITES OF ART 1312:

1. Existence of a valid contract
2. Knowledge of the contract by a 3rd person
3. Interference by the 3rd person

KINDS OF CONTRACTS

1. **As to perfection or formation**
 - a. **Consensual** – perfected by agreement of parties
 - b. **Real** – perfected by delivery (commodatum, pledge, deposit)
 - c. **Formal/solemn** – perfected by conformity to essential formalities (donation)
2. **As to cause**
 - a. **Onerous** – with valuable consideration
 - b. **Gratuitous** – founded on liberality
 - c. **Remunerative** – prestation is given for service previously rendered not as obligation
3. **As to importance or dependence of one upon another**
 - a. **Principal** – contract may stand alone
 - b. **Accessory** – depends on another contract for its existence; may not exist on its own
 - c. **Preparatory** – not an end by itself; a means through which future contracts may be made
4. **As to parties obliged**
 - a. **Unilateral** – only one of the parties has an obligations

Difference from payment by 3 rd person	Change of debtor
1. debtor is not necessarily released from debt	1. debtor is released
2. can be done w/o consent of creditor	2. needs consent of creditor – express or implied
3. one obligation	3. two obligations; one is extinguished and new one created
4. 3 rd person has no obligation to pay if insolvent	4. new debtor is obliged to pay

CONVENTIONAL SUBROGATION	ASSIGNMENT OF RIGHTS
governed by Arts. 1300-1304	governed by Arts. 1624 to 1627
debtor's consent is required	debtor's consent is not required
extinguishes the obligation and gives rise to a new one	transmission of right of the creditor to third person without modifying or extinguishing the obligation
defects and vices in the old obligation are cured	defects and vices in the old obligation and not cured
takes effect upon moment of novation or subrogation	as far as the debtor is concerned, takes effect upon notification

TITLE II – C O N T R A C T S

CHAPTER 1. GENERAL PROVISIONS

See Arts. 1305-1317
TIFF (Uncompressed) decompressor are needed to see this picture.

PRINCIPAL CHARACTERISTICS:

1. **Autonomy of wills** – parties may stipulate anything as long as not illegal, immoral, etc.
2. **Mutuality** – performance or validity binds both parties; not left to will of one of parties
3. **Obligatory Force** – parties are bound from perfection of contract:



- b. **Bilateral** – both parties are required to render reciprocal prestations

5. As to name or designation

a. Nominate

b. Innominate

- I. Do ut des – I give that you may give
- II. Do ut facias – I give that you may do
- III. Facio ut des – I do that you may give
- IV. Facio ut facias – I do that you may do

STAGES IN A CONTRACT:

- 1. **Preparation** - negotiation
- 2. **Perfection**/birth
- 3. **Consummation** – performance

CHAPTER 2. – ESSENTIAL REQUISITES OF A CONTRACT

See Arts. 1318 - 1355

ESSENTIAL ELEMENTS:

- 1. Consent
- 2. Subject Matter
- 3. Consideration

CONSENT

CONSENT – meeting of minds between parties on subject matter and cause of contract; concurrence of offer and acceptance

REQUIREMENTS:

- 1. Plurality of subject
- 2. Capacity
- 3. Intelligence and free will
- 4. Manifestation of intent of parties
- 5. Cognition by the other party
- 6. Conformity of manifestation and cognition

AUTO CONTRACTS

- made by a person acting in another's name in one capacity

COLLECTIVE CONTRACTS

- will of majority binds a minority to an agreement notwithstanding the opposition of the latter

CONTRACTS OF ADHESION

- one party has already a prepared form of a contract, containing the stipulations he desires, and he simply asks the other party to agree to them if he wants to enter into the contract
- **NOTE:** We follow the theory of cognition and not the theory of manifestation. Under our Civil Law, the offer and acceptance concur only when the

offeror comes to know, and not when the offeree merely manifests his acceptance

ELEMENTS OF VALID OFFER / ELEMENTS OF VALID ACCEPTANCE

- 1. Definite--unequivocal
- 2. Complete--unconditional
- 3. Intentional

WHEN OFFER BECOMES INEFFECTIVE:

- 1. Death, civil interdiction, insanity or insolvency of either party before acceptance is conveyed
- 2. Express or implied revocation of the offer by the offeree
- 3. Qualified or conditional acceptance of the offer, which becomes a counter-offer
- 4. Subject matter becomes illegal or impossible before acceptance is communicated

PERIOD FOR ACCEPTANCE

- 1. Stated fixed period in the offer
- 2. No stated fixed period
 - a. **Offer is made to a person present** – acceptance must be made immediately
 - b. **Offer is made to a person absent** – acceptance may be made within such time that, under normal circumstances, an answer can be received from him
- **NOTE:** Acceptance may be revoked before it comes to the knowledge of the offeror.

AMPLIFIED ACCEPTANCE

- under certain circumstances, a mere amplification on the offer must be understood as an acceptance of the original offer, plus a new offer which is contained in the amplification.

RULE ON COMPLEX OFFERS

- 1. **Offers are interrelated** – contract is perfected if all the offers are accepted
- 2. **Offers are not interrelated** – single acceptance of each offer results in a perfected contract unless the offeror has made it clear that one is dependent upon the other and acceptance of both is necessary.

Malbarosa vs. CA 2003 G.R.12576 - Offer inter praesentes must be accepted IMMEDIATELY. If the parties intended that there should be an express acceptance, the contract will be perfected only upon knowledge by the offeror of the express acceptance by the offeree of the offer. An acceptance which is not made in the manner prescribe by the offeror is NOT EFFECTIVE, BUT A COUNTER-OFFER which



the offeror may accept or reject.

RULE ON ADVERTISEMENTS AS OFFERS

- **Business advertisements** – Not a definite offer, but mere invitation to make an offer, unless it appears otherwise
- **Advertisement for Bidders** – only invitation to make proposals and advertiser is not bound to accept the highest or lowest bidder, unless appears otherwise

OPTION - option may be withdrawn anytime before acceptance is communicated but not when supported by a consideration other than purchase price: option money

- c. They were contracts for necessities such as food, but here the persons who are bound to give them support should pay therefor
- d. Minor is estopped for having misrepresented his age and misled the other party (when age is close to age of majority as in the Mercado v Espiritu and Sia Suan v Alcantara cases.

In the **Sia Suan v Alcantara case, there is a strong dissent by J.Padilla to the effect that the minor cannot be estopped if he is too young to give consent; one that is too young to give consent is too young to be estopped. Subsequently, in **Braganza v Villa-Abrille**, the dissent became the ruling. Minors could not be estopped.*

****Ang Yu v. CA (1994)** states that a unilateral promise to buy or sell, if not supported by a distinct consideration, may be withdrawn but may not be done whimsically or arbitrarily; the right of the grantee here is damages and not specific performance; **Equatorial v. Mayfair(264 SCRA 483)** held that an option clause in order to be valid and enforceable must indicate the definite price at which the person granting the option is willing to sell, contract can be enforced and not only damages; **Paranaque Kings V CA (1997)** states that right of*

DISQUALIFIED TO ENTER INTO CONTRACTS:

(contracts entered into are void)

1. Those under civil interdiction
2. Hospitalized lepers
3. Prodigals
4. Deaf and dumb who are unable to read and write
5. Those who by reason of age, disease, weak mind and other similar causes, cannot without outside aid, take care of themselves and manage their property, becoming an easy prey for deceit and exploitation

PERSONS WHO CANNOT GIVE CONSENT TO A CONTRACT:

1. Minors
 2. Insane or demented persons
 3. Illiterates/ deaf-mutes who do not know how to write
 4. Intoxicated and under hypnotic spell
 5. Art 1331 - person under mistake; mistake may deprive intelligence
 6. Art 1338 - person induced by fraud (dolo causante)
- **NOTE:** Dolus bonus (usual exaggerations in trade) are not in themselves fraudulent

Incapacity	Disqualification
Restrains the exercise of the right to contract	Restrains the very right itself
May still enter into contract through parent, guardian or legal representative	Absolutely disqualified
Based upon subjective circumstance of certain person	Based upon public policy and morality
Contracts entered into are merely voidable	Contracts entered into are void

RULE ON CONTRACTS ENTERED INTO BY MINORS

- **GENERAL RULE:** VOIDABLE
- **EXCEPTIONS:**
 - a. Upon reaching age of majority – they ratify the same
 - b. They were entered unto by a guardian and the court having jurisdiction had approved the same

CAUSES WHICH VITIATE FREEDOM

1. **Violence**
 - **REQUISITES**
 - a. Irresistible physical force
 - b. Such force is the determining cause for giving consent
2. **Intimidation**
 - **REQUISITES:**
 - a. Determining cause for the contract
 - b. Threatened act is unjust and unlawful
 - c. Real and serious



- d. Produces a well grounded fear that the person making it will carry it over

3. Undue influence

SIMULATED CONTRACTS

- Absolute** – no intention to be bound at all, fictitious only – void from beginning
- Relative** – there is intention to be bound but concealed; concealed contract binds:
 - No prejudice to 3rd persons
 - Not contrary to law, morals, etc.

OBJECT

REQUISITES:

- Within the commerce of man - either existing or in potency
- Licit or not contrary to law, good customs
- Possible
- Determinate as to its kind or determinable w/o need to enter into a new contract
- Transmissible

Absence Of Causa	Void - produce no legal effect
Illegality Of Causa	Void - produce no legal effect
Falsity Of Causa	Voidable – party must prove that cause is untruthful; presumption of validity but rebuttable
Causa Not Stated In Contract	Presumed to Exist - burden of proof is on the person assailing its existence
Inadequacy Of Causa	Does not Invalidate Contract per se Exceptions: <ul style="list-style-type: none"> fraud mistake undue influence cases specified by law - contracts entered when ward suffers lesion of more than 25%

THINGS WHICH CANNOT BE THE OBJECT OF CONTRACT:

- things which are outside the commerce of men
- intransmissible rights
- future inheritance, except in cases expressly authorized by law
- services which are contrary to law, morals, good customs, public order or public policy
- impossible things or services
- objects which are not possible of determination as to their kind

CAUSA

CAUSA

- immediate, direct and most proximate reason why parties enter into contract

REQUISITES:

- It must exist
- It must be true
- It must be licit

MOTIVE

- purely private reason; illegality does not invalidate contract except when it predetermines purpose of contract; when merged into one

Cause	Motive
Direct and most proximate reason of a contract	Indirect or remote reasons
Objective and juridical reason of contract	Psychological or purely personal reason
Cause us always same for each contracting party	The motive differs for each contracting party

- NOTE:** Legality or illegality of cause affects the existence of validity of the contract; Legality or illegality of motive does not affect the existence or validity of contract

CAUSA IN SOME CONTRACTS:

- Onerous contracts** – the prestation of promise of a thing or service by the other
- Remuneratory contracts** – the service or benefit remunerated
- Pure Beneficence** – mere liberality of the donor or benefactor
- Accessory** – identical with cause of principal contract, the loan which it derived its life and existence (ex: mortgage or pledge)

CHAPTER 3. – FORM OF CONTRACTS

See Arts. 1356 - 1358

FORM – in some kind of contracts only as contracts are generally consensual; form is a manner in which a contract is executed or manifested

- Informal** – may be entered into whatever form as long as there is consent, object and cause
- Formal** – required by law to be in certain specified form such as: donation of real property, stipulation to pay interest, transfer of large cattle, sale of land thru agent, contract of antichresis, contract of partnership, registration of chattel



mortgage, donation of personal prop in excess of 5,000

- 3. **Real** – creation of real rights over immovable prop must be written

WHEN FORM IS IMPORTANT:

- 1. For validity (formal/solemn contracts)
- 2. For enforceability (statute of frauds)
- 3. For convenience

- **GENERAL RULE:** contract is valid and binding in whatever form provided that 3 essential requisites concur

• **EXCEPTIONS**

- a. Law requires contract to be in some form for validity - donation and acceptance of real property
- b. Law requires contract to be in some form to be enforceable - Statute of Frauds; contract is valid but right to enforce cannot be exercised; need ratification to be enforceable
- c. Law requires contract to be in some form for convenience - contract is valid and enforceable, needed only to bind 3rd parties

Ex: public documents needed for the ff:

- i. Contracts w/c object is creation, transmission or reformation of real rights over immovables
- ii. Cession, repudiation, renunciation of hereditary rights/CPG
- iii. Power to administer property for another
- iv. Cession of action of rights proceeding from an act appearing in a public inst.
- v. All other docs where amount involved is in excess of 500 (must be written even private docs)

- **NOTE: RA 8792 (E-COMMERCE ACT)** – 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 useable for future reference.

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CHAPTER 4. – REFORMATION OF INSTRUMENTS

See Arts. 1359 - 1369

REFORMATION OF CONTRACTS – remedy to conform to real intention of parties due to mistake, fraud, inequitable conduct, accident

CAUSES/GROUNDS:

1. **Mutual:** instrument includes something w/c should not be there or omit what should be there

- a. Mutual
- b. Mistake of fact
- c. clear and convincing proof
- d. causes failure of instrument to express true intention

2. **Unilateral**

- a. one party was mistaken
- b. other either acted fraudulently or inequitably or knew but concealed
- c. party in good faith may ask for reformation

3. **Mistake** by 3rd persons – due to ignorance, lack of skill, negligence, bad faith of drafter, clerk, typist

4. **Others specified by law** – to avoid frustration of true intent

• **Requisites:**

- a. There is a written instrument
- b. There is meeting of minds
- c. True intention not expressed in instrument
- d. Clear and convincing proof
- e. Facts put in issue in pleadings

- **NOTE:** prescribes in 10 years from date of execution of instrument

WHEN REFORMATION NOT AVAILABLE:

- 1. Simple donation inter vivos
- 2. Wills
- 3. When real agreement is void
- 4. Estoppel when party has brought suit to enforce it

CHAPTER 5. – INTERPRETATION OF CONTRACTS

See Arts. 1370 - 1379

CHAPTER 6. - DEFECTIVE CONTRACTS

See Arts. 1370 - 1422

KINDS OF DEFECTIVE CONTRACTS:

1. **RESCISSIBLE CONTRACTS** – Those which have caused a particular economic damage either to one of the parties or to a 3rd person and which may be set aside even if valid. It may be set aside in whole or in part, to the extent of the damage caused'

REQUISITES:

- a. **Contract must be rescissible**
 - i. **Under art 1381:** Contracts entered into by persons exercising fiduciary capacity:



1. Entered into by guardian whenever ward suffers damage by more than 1/4 of value of object
 2. Agreed upon in representation of absentees, if absentee suffers lesion by more than 1/4 of value of property
 3. Contracts where rescission is based on fraud committed on creditor (accion pauliana)
 4. Objects of litigation; contract entered into by defendant w/o knowledge or approval of litigants or judicial authority
 5. Payment by an insolvent – on debts w/c are not yet due; prejudices claim of others
 6. Provided for by law - art 1526, 1534, 1538, 1539, 1542, 1556, 1560, 1567 and 1659
- ii. **Under art 1382** - Payments made in a state of insolvency
1. Plaintiff has no other means to obtain reparation.
 2. Plaintiff must be able to return whatever he may be obliged to return due to rescission
 3. The things must not have been passed to 3rd parties who did not act in bad faith
 4. It must be made within the prescribed period (of 4 years)

- e. transfer of all his property by a debtor when he is financially embarrassed or insolvent
- f. transfer made between father and son where there is present any of the above circumstances
- g. failure of the vendee to take exclusive possession of the property

Rescission in Art 1191	Rescission Proper in Art 1381
It is a principal action retaliatory in character	it is a subsidiary remedy
Only ground is non-performance of one's obligation or what is incumbent upon him	There are 5 grounds to rescind. Non-performance by the other is not important
Applies <u>only</u> to reciprocal obligation	Applies to both unilateral and reciprocal obligations
Only a party to the contract may demand fulfillment or seek the rescission of the contract	Even a third person who is prejudiced by the contract may demand the rescission of the contract.
Court may fix a period or grant extension of time for the fulfillment of the obligation	Court cannot grant extension of time for fulfillment of the obligation
Its purpose is to cancel the contract	Its purpose is to seek reparation for the damage or injury caused, thus allowing partial rescission of the contract

OBLIGATION CREATED BY THE RESCISSION OF THE CONTRACT: Mutual Restitution

- a. Things w/c are the objects of the contract and their fruits
- b. Price with interest

MUTUAL RESTITUTION NOT APPLICABLE WHEN

- a. creditor did not receive anything from contract
- b. thing already in possession of party in good faith; subject to indemnity only; if there are 2 or more alienations – liability of 1st infractor

BADGES OF FRAUD

- a. consideration of the conveyance is inadequate or fictitious
- b. transfer was made by a debtor after a suit has been begun and while it is pending against him
- c. sale upon credit by an insolvent debtor
- d. evidence of indebtedness or complete insolvency

2. **VOIDABLE CONTRACTS** – intrinsic defect; valid until annulled; defect is due to vice of consent or legal incapacity
 - **CHARACTERISTICS:**
 - a. Effective until set aside
 - b. May be assailed or attacked only in an action for that purpose
 - c. Can be confirmed (**NOTE:** confirmation is the proper term for curing the defect of a voidable contract)
 - d. Can be assailed only by the party whose consent was defective or his heirs or assigns

WHAT CONTRACTS ARE VOIDABLE:

- a. Minors (below 18)
- b. Insane unless acted in lucid interval
- c. Deaf mute who can't read or write
- d. Persons specially disqualified: civil interdiction
- e. In state of drunkenness
- f. In state of hypnotic spell



MISTAKE

- false belief into something
- **REQUISITES:**
 - a. Refers to the subject of the thing which is the object of the contract
 - b. Refers to the nature of the contract
 - c. Refers to the principal conditions in an agreement
 - d. Error as to person - when it is the principal consideration of the contract
 - e. Error as to legal effect - when mistake is mutual and frustrates the real purpose of parties

VIOLENCE

- serious or irresistible force is employed to wrest consent

INTIMIDATION

- one party is compelled by a reasonable and well-grounded fear of an imminent and grave danger upon person and property of himself, spouse, ascendants or descendants (moral coercion)

UNDUE INFLUENCE

- person takes improper advantage of his power over will of another depriving latter of reasonable freedom of choice

Martinez vs. Hongkong and Shanghai Bank, 12 Phil 252. The doctrine on **reluctant consent** provides that a contract is still valid even if one of the parties entered it against his wishes or even against his better judgment. Contracts are also valid even though they are entered into by one of the parties without hope of advantage or profit.

FRAUD

- thru insidious words or machinations of contracting parties, other is induced to enter into contract w/o w/c he will not enter (dolo causante)

KINDS OF FRAUD IN THE PERFORMANCE OF OBLIGATION OR CONTRACTS

- a. **Causal Fraud** (dolo causante) – deception of serious character without which the other party would not have entered into; contract is **VOIDABLE** (Art. 1338)
- b. **Incidental Fraud** (dolo incidente) – deception which are not serious and without which the other party would still have entered into the contract; holds the guilty party liable for **DAMAGES** (Art. 1344)
- c. **Tolerated Fraud** – includes minimizing the defects of the thing, exaggeration of its god

qualities and giving it qualities it does not have; **LAWFUL** misrepresentation

- **NOTE:**
- **Expression of an opinion** – not fraud unless made by expert and other party relied on the former's special knowledge
- **Fraud by third person** – does not vitiate consent; only action for damages except if there is collusion between one party and the third person, or resulted to substantial mistake, mutual between parties.

CAUSES OF EXTINCTION OF ACTION TO ANNUL

- a. **PRESCRIPTION** - Period to bring an action for Annulment
 - i. Intimidation, violence, undue influence - **4 years** from time defect of consent ceases
 - ii. Mistake, fraud – 4 years from time of discovery
 - iii. Incapacity - From time guardianship ceases

Carantes vs. CA, 76 SCRA 514, discovery of fraud must be reckoned to have taken place from the time the document was registered in the office of the register of deeds. Registration constitutes constructive notice to the whole world.

b. RATIFICATION

- **REQUISITES**
 - i. knowledge of reason rendering contract voidable
 - ii. such reason must have ceased, except in case of ratification effected by the guardian to contracts entered into by an incapacitated,
 - iii. the injured party must have executed an act which expressly or impliedly conveys an intention to waive his right

c. **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

- **NOTE:** Object is lost through a *fortuitous event*, the contract can still be annulled, but the person obliged to return the same can be held liable only for the value of the thing at the time of the loss, but without interest thereon.
- Ratification cleanses the contract of its defects from the moment it was constituted.

3. **UNENFORCEABLE CONTRACT** – valid but cannot compel its execution unless ratified;

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extrinsic defect; produce legal effects only after ratified

KINDS:

- a. **Unauthorized or No sufficient authority** – entered into in the name of another when:
 - i. No authority conferred
 - ii. In excess of authority conferred (ultra vires)
- b. **Curable by Ratification** - Both parties incapable of giving consent -2 minor or 2 insane persons
- c. **Curable by Acknowledgment** - Failure to comply with Statute of Frauds
 - i. Agreement to be performed within a year after making contract
 - ii. Special promise to answer for debt, default or miscarriage of another
 - iii. Agreement made in consideration of promise to marry
 - iv. Agreement for sale of goods, chattels or things in action at price not less than 500; exception: auction when recorded sale in sales book
 - v. Agreement for lease of property for more than one year and sale of real property regardless of price
 - vi. Representation as to credit of another

TWO WAYS OF CURING UNENFORCEABLE CONTRACTS:

- a. **Failure of defendant to object in time**, to the presentation of parole evidence in court, the defect of unenforceability is cured
- b. **Acceptance of benefits under the contract**. If there is performance in either part and there is acceptance of performance, it takes it out of unenforceable contracts; also estoppel sets in by accepting performance, the defect is waived

4. **VOID OR INEXISTENT** – of no legal effect

CHARACTERISTICS:

- a. It produces no effect whatsoever either against or in favor of anyone
- b. There is no action for annulment necessary as such is ipso jure. A judicial declaration to that effect is merely a declaration
- c. It cannot be confirmed, ratified or cured
- d. If performed, restoration is in order, except if pari delicto will apply
- e. The right to set up the defense of nullity cannot be waived
- f. Imprescriptible

- g. Anyone may invoke the nullity of the contract whenever its juridical effects are asserted against him

KINDS OF VOID CONTRACT:

- a. **Those lacking in essential elements**: no consent, no object, no cause (inexistent ones) – essential formalities are not complied with (ex: donation propter nuptias – should conform to formalities of a donation to be valid)
 - i. Those w/c are absolutely simulated or fictitious – no cause
 - ii. Those which cause or object did not exist at the time of the transaction – no cause/object
 - iii. Those whose object is outside the commerce of man – no object
 - iv. Those w/c contemplate an impossible service – no object
 - v. Those w/c intention of parties relative to principal object of the contract cannot be ascertained
- b. **Prohibited by law**
- c. **Those expressly prohibited or declared void by law** - Contracts w/c violate any legal provision, whether it amounts to a crime or not
- d. **Illegal/Illicit ones** – Those whose cause, object or purpose is contrary to law, morals, good customs, public order or public policy ;
Ex: Contract to sell marijuana



	CONTRACT CONSTITUTE CRIMINAL OFFENSE	DOES NOT CONSTITUTE CRIMINAL OFFENSE but is ILLEGAL /UNLAWFUL PER SE
Parties are in pari delicto	a. No action for specific performance h. No action for restitution on either side. The law will leave you where you are i. Both shall be prosecuted j. Thing/price to be confiscated in favor of government	a. No action for specific performance b. No action for restitution on either side. The law will leave you where you are c. No confiscation
Only one party is guilty	a.No action for specific performance b.Innocent party is entitled to restitution c.Guilty party is not entitled to restitution d.Guilty party will be prosecuted e.Instrument of crime will be confiscated in favor of gov't.	a.No action for specific performance b.Innocent party is entitled to restitution c.Guilty party is not entitled to restitution

KINDS OF ILLEGAL CONTRACTS

PARI DELICTO DOCTRINE

- Both parties are guilty, no action against each other; those who come in equity must come with clean hands; applies only to illegal contracts and not to in-existent contracts; does not apply when a superior public policy intervenes

- EXCEPTION TO PARI DELICTO RULE** - If purpose has not yet been accomplished and If damage has not been caused to any 3rd person

OTHER EXCEPTIONS:

- Payment of Usurious interest
- 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

- payment of money or delivery of property made by an incapacitated person
- agreement or contract which is not illegal per se and the prohibition is assigned for the protection of the plaintiff
- payment of any amount in excess of the maximum price of any article or commodity fixed by law or regulation by competent authority
- contract whereby a laborer undertakes to work longer than the maximum number of hours fixed by law
- one who lost in gambling because of fraudulent schemes practiced on him is allowed to recover his losses (Art. 313 RPC) even if gambling is prohibited.

REQUISITES OF ILLEGAL CONTRACTS:

- Contract is for an illegal purpose
- Contract must be repudiated by any of the parties before purpose is accomplished or damage is caused to 3rd parties
- Court believes that public interest will be served by allowing recovery (discretionary upon the court) – based on remorse; illegality is accomplished when parties entered into contract; before it takes effect – party w/c is remorseful prevents it

WHERE LAWS ARE ISSUED TO PROTECT CERTAIN SECTORS: CONSUMER PROTECTION, LABOR, USURY LAW

- Consumer protection** – if price of commodity is determined by statute, any person paying an amount in excess of the maximum price allowed may recover such excess
- Labor** – if law sets the minimum wage for laborers, any laborer who agreed to receive less may still be entitled to recover the deficiency; if law set max working hours and laborer who undertakes to work longer may demand additional compensation
- Interest paid in excess of the interest allowed by the **usury law** may be recovered by debtor with interest from date of payment

EFFECTS OF ILLEGAL CONTRACTS

- If one party is incapacitated, courts may allow recovery of money, property delivered by incapacitated person in the interest of justice; pari delicto cannot apply because an



incapacitated person does not know what he is entering into; unable to understand the consequences of his own action

- b. If agreement is not illegal per se but merely prohibited and prohibition is designated for the protection of the plaintiff – may recover what he has paid or delivered by virtue of public policy

1. estoppel in pais (by conduct)
 - c. estoppel by silence
 - d. estoppel by acceptance of benefits
2. Technical estoppel
 - a. Estoppel by deed
 - b. Estoppel by record
 - c. Estoppel by judgment
 - d. Estoppel by laches

MUTUAL RESTITUTION IN VOID CONTRACTS

- **GENERAL RULE:** parties should return to each other what they have given by virtue of the void contract in case
- Where nullity arose from defect in essential elements
 - a. return object of contract and fruits
 - b. return price plus interest
- **EXCEPTION:** No recovery can be had in cases where nullity of contract arose from illegality of contract where parties are in pari delicto; except:
 - a. incapacitated – not obliged to return what he gave but may recover what he has given
 - b. other party is less guilty or not guilty

TITLE 3. – NATURAL OBLIGATIONS
See Arts. 1423 - 1430

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
7. payment of legacy after will have been declared void

LACHES OR STALE DEMANDS

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; it is negligence or omission to assert a right within reasonable time warranting a presumption that the party entitled to assert it either has abandoned it or declined to assert it
- **ELEMENTS**
 1. conduct on 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 complaint seeks a remedy
 2. delay in asserting the complainant's rights, the complainant having knowledge or notice, of the defendant's conduct and having been afforded the opportunity to institute a suit
 3. lack of knowledge or notice on the part of the defendant that the complainant would assert the right on which he bases his suit
 4. injury to the defendant in the event relief is accorded to the complainant, or the suit is not held to be barred.

LACHES	PRESCRIPTION
Concerned with effect of delay	Concerned with fact of delay
Question of inequity permitting the claim to be enforced	Question or matter of time
Not statutory	Statutory
Applies in equity	Applies at law
Not based on a fixed time	Based on a fixed time

KINDS



TITLE 4. – ESTOPPEL
See Arts. 1431 - 1439

ESTOPPEL - a condition or state by virtue of which an admission or representation is redered conclusive upon the person making it and cannot be denied or disproved as against the person relying thereon.

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