

Chapter 1

OBLIGATIONS

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OBLIGATIONS, IN GENERAL

DEFINITION:

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

Juridical Necessity: Art. 1156 provides the definition of civil obligations.

Art. 1423 of the Civil Code provides that obligations are either natural or civil; Civil obligations give a **right of action to compel their performance or fulfillment**.

In this sense, there is juridical necessity to perform the obligation because it can result in judicial or legal sanction.

KINDS OF OBLIGATIONS AS TO BASIS AND ENFORCEABILITY

- a. **Civil obligations** - derive their binding force from positive law or substantive law (Civil Obligation of Parents to give support to their children under Family Code) and can be enforced by court action or the coercive power of public authority.
- b. **Natural obligations**, not being based on positive law but on equity and natural law, do not grant a right of action to enforce their performance, but after voluntary fulfillment by the obligor, they authorize the retention of what has been delivered or rendered by reason thereof. (Art. 1428, *Civil Code*)

ILLUSTRATION: X is indebted to Y, but the right of action already prescribed. Since the action already prescribed, the obligation is converted from civil to natural where there is no longer a right of action to compel the

performance. Its performance will just be dependent upon X's conscience. If still voluntarily fulfilled after the period has expired, the debtor can no longer demand the return of what has been delivered.

Examples of Natural Obligations:

- i. When without the knowledge or against the will of the debtor, a third person **pays a debt which the obligor is not legally bound to pay** because the action thereon has **prescribed**, but the debtor later **voluntarily reimburses** the third person, the obligor cannot recover what he has paid. (*Art. 1425*)
- ii. When, after an action to enforce a civil obligation has failed the defendant **voluntarily performs the obligation**, he cannot demand the return of what he has delivered or the payment of the value of the service he has rendered. (*Art. 1428*)
- iii. When a **testate or intestate heir voluntarily pays a debt** of the decedent **exceeding the value of the property** which he received by will or by the law of intestacy from the estate of the deceased, the payment is valid and cannot be rescinded by the payer. (*Art. 1429*)

ESSENTIAL ELEMENTS OF OBLIGATION

1. **Active subject** (creditor/obligee) – the person in whose favor the obligation is constituted or the one who can demand the performance of the obligation
2. **Passive subject** (debtor/obligor) – the person who is required or bound to perform the obligation
3. **Object or Prestation** – subject matter of the obligation – refers to the promise or particular conduct to be performed in the fulfillment or rendition of the obligation, which may be to give, to do or not to do.

Requisites of an Object or Prestation of an Obligation:

- i. It must be possible, physically and juridically.
- ii. It must be determinate, or, at least, determinable according to pre-established elements or criteria.
- iii. It must have possible equivalent in money

4. **Vinculum Juris/Efficient Cause/Juridical Tie** – that which binds the parties to the obligation; the reason why the obligation exists which can be any of the five sources of obligations.

ILLUSTRATION: Through an agreement, A promised to give a specific TV set to B.

In this illustration, A is the obligor/debtor or passive subject; B is the obligee/creditor or the active subject; giving the television set is the prestation; the agreement or contract is the efficient cause or juridical tie.

TRANSMISSIBILITY OF OBLIGATIONS

General Rule: all rights acquired in virtue of an obligation are transmissible.

Exceptions:

- a. When the **nature of the obligation** is that it is not transmissible: when the rights are purely or strictly personal in nature, i.e., the qualifications and skills of the person have been considered in the constitution of the contract.
- b. By **stipulation**: e.g., the right to sublease is granted by law - but may be prohibited by stipulation.
- c. By **provision of law**: e.g., heirs as to the usufruct. The law provides that the rights of a usufructuary shall not be transmitted to the heirs, unless the parties stipulate otherwise.

SOURCES OF OBLIGATIONS

1. **LAW** (*Obligations ex Lege*)
Law refers to the principles and regulations established in a community by some authority and applicable to its people, whether in the form of legislation or of custom and policies recognized and enforced by judicial decision.

Obligations derived from law are not presumed. Only those expressly determined in this Code or in special laws are demandable.

Such obligations shall be regulated by:

- a. The precepts of the law which establishes them; and
- b. As to what has not been foreseen, by the provisions of the Civil Code. (*Art. 1158, Civil Code*)

Examples of obligations arising from law are duty of support (Family Code) and duty to pay taxes (Tax Code).

2. CONTRACTS (Obligations *ex contractu*)

A contract is a meeting of minds between two persons whereby one binds himself, with respect to the other, to give something or to render some service. (Art. 1305, *Civil Code*)

Obligations arising from contracts have the force of law between the contracting parties and should be compiled with in good faith. (Art. 1159, *Civil Code*)

3. QUASI-CONTRACTS (Obligations *ex quasi-contractu*)

The juridical relation resulting from lawful, voluntary and unilateral acts by virtue of which the parties become bound to each other to the end that no one will be unjustly enriched or benefited at the expense of another.

NOMINATE QUASI-CONTRACTS:

- a. NEGOTIORUM GESTIO - refers to the voluntary management of the property or affairs of another without the knowledge or consent of the latter.

Whoever voluntarily takes charge of the agency or management of the business or property of another, without any power from the latter, is obliged to continue the same until the termination of the affair and its incidents, or to require the person concerned to substitute him, if the owner is in a position to do so. This juridical relation does not arise in either of these instances:

1. When the property or business is not neglected or abandoned;
2. If in fact the manager has been facitly authorized by the owner. (Art. 2144)

Obligation of the owner:

1. Although the officious management may not have been expressly ratified, the owner of the property or business who **enjoys the advantages** of the same shall be **liable for obligations incurred in his interest**, and shall **reimburse** the officious manager for the **necessary**

and useful expenses and for the **damages** which the latter may have suffered in the performance of his duties. (Art. 2150)

2. The same obligation shall be incumbent upon him when the management had for its purpose the **prevention of an imminent and manifest loss**, **although no benefit** may have been derived. (Art. 2150)
3. Even though the owner did not derive any benefit and there has been no imminent and manifest danger to the property or business, the owner is liable as under the first paragraph of the preceding article, provided:
 - a. The officious manager has acted in good faith, and
 - b. The property or business is intact, ready to be returned to the owner.

Obligations of the officious manager:

1. Whoever voluntarily takes charge of the agency or management of the business or property of another, without any power from the latter, is obliged to continue the same until the termination of the affair and its incidents, or to require the person concerned to substitute him, if the owner is in a position to do so. (Art. 2144)
2. The officious manager shall perform his duties with all the diligence of a good father of a family, and pay the damages which through his fault or negligence may be suffered by the owner of the property or business under management. (Art. 2145)
3. If the officious manager delegates to another person all or some of his duties, he shall be liable for the acts of the delegate, without prejudice to the direct obligation of the latter toward the owner of the business. (Art. 2146)
4. The responsibility of two or more officious managers shall be solidary, unless the management was assumed to save the thing or business from imminent danger. (Art. 2146)
5. The officious manager shall be liable for any **fortuitous event**:
 - a. If he undertakes risky operations which the owner was not accustomed to embark upon;
 - b. If he has preferred his own interest to that of the owner;
 - c. If he fails to return the property or business after demand by the owner;
 - d. If he assumed the management in bad faith. (Art. 2147)

6. Except when the management was assumed to save property or business from imminent danger, the officious manager shall be **liable for fortuitous events**:
- If he is manifestly unfit to carry on the management;
 - If by his intervention he prevented a more competent person from taking up the management. (Art. 2148)

ILLUSTRATION: For his mental health, X left his fishpond and went to Europe for a 14-day vacation. Y saw the fishes were already ready for harvest, harvested the same, and sold them to Z. Y borrowed from B Bank to prepare the fishpond for the next batch. Is there *negotiorum gestio* between X and Y?

ANSWER: None. Since the business is not abandoned or neglected, X merely left the business for vacation and will presumably have intention to return.

ILLUSTRATION: In fear of reprisals, X left his fishpond and went to Europe without any intention of returning. Y saw the fishes ready for harvest, harvested the same, and sold them to Z. Y borrowed from B Bank to prepare the fishpond for the next batch. Is there *negotiorum gestio* between X and Y? and if yes, what will be the consequences of the same?

ANSWER: Yes. There is *negotiorum gestio*. Y lawfully, voluntarily and unilaterally took over the business of X that was abandoned/neglected, and there is created a juridical relation between them where X is obliged to provide compensation to Y because if not, X will be unjustly enriched at the expense of Y. As the officious manager or the gestor, Y can validly enter into contracts in relation to the business, such as the sale to Z and the loan with B Bank, and these contracts will likewise be binding to X.

Multiple Officious Managers: are generally liable **solidarily** unless the officious management was done under imminent danger which makes their obligation merely joint.

SOLUTIO INDEBITI – the juridical relation which is created when something is received when there is no right to demand it and it was unduly delivered through mistake.

Requisites:

- There is no right to receive the thing delivered
- The thing was delivered through mistake

Multiple Payees: are liable **solidarily** for the return of the payment received by mistake.

Other example of Quasi-Contracts:

- When **funeral expenses** are borne by a third person, without the knowledge of those relatives who were **obliged to give support** to the deceased, said relatives shall **reimburse the third person**, should the latter claim reimbursement. (Art. 2165)

ILLUSTRATION: A, resident of an island struck by a storm, found a decaying body and buried the same without intention for it to be a gratuitous act. Finding X, father of the deceased, demanded reimbursement for the cost of burial. **Is there an obligation to reimburse on the part of X?**

ANSWER: Yes. There was a lawful, voluntary and unilateral act on the part of A to bury the decaying body. Since X, the father, is liable for support, he is likewise liable to shoulder the funeral expenses of his son. As such, there is a juridical relation created between A and X, where X is required to reimburse A, because otherwise, X will be unjustly enriched at the expense of A.

If A instead found C, the AUNT of the deceased, may he demand reimbursement?

ANSWER: No. Since C, the aunt is not liable for support.

- A stranger gives support to a child of another person without the knowledge of the person obliged to give support. (Art. 2166, Civil Code)
- When through an accident or other cause a person is injured or becomes seriously ill, and he is treated or helped while he is not in a condition to

give consent to a contract, he shall be liable to pay for the services of the physician or other person aiding him, unless the service has been rendered out of pure generosity. (Art. 2167, Civil Code)

d. A person saves the property of another person during fire, flood, storm or other calamity without the knowledge of the owner. (Art. 2168, Civil Code)

4. DELICT (Obligations *ex maleficio* or *ex delicto*)

Delict is an act or omission punishable by law which may be governed by the Revised Penal Code, other penal laws, or the Title on Human Relations under the Civil Code.

Every person criminally liable for a felony is also civilly liable (Art. 100, Revised Penal Code)

Note, also, that under the Rules of Court, whenever a criminal action is instituted, the civil action for the civil liability is impliedly instituted therewith.

Civil liability arising from a criminal act includes:

- Restitution - refers to restoration of the thing itself even though it be found in the possession of a third person who has acquired it by lawful means.
- Reparation of the damage caused - shall be determined by the Court taking into consideration of the price of the thing and its sentimental value.
- Indemnification for consequential damages - shall include not only those caused to the injured party but also those suffered by his family or by a third person by reason of the crime. (Art. 104, Revised Penal Code)

Proof necessary:

- Criminal liability - proof beyond reasonable doubt
- Civil liability - preponderance of evidence

Acquittal of accused:

- Acquittal because the accused **did not do the act** complained of - no civil liability
- Acquittal due to **reasonable doubt** - there can still be civil liability.

Employer's subsidiary liability: an employer engaged in any kind of industry shall be subsidiarily liable for felonies committed by their employees in the discharge of their duties. (Art. 103, Revised Penal Code)

Persons Exempt from Criminal Liability:

- An imbecile or insane person.
- A person under 18 years of age.
- Any person who acts under the compulsion of an irresistible force.
- Any person who acts under the impulse of an uncontrollable fear of an equal or greater injury.

Persons Exempt from Both Civil and Criminal Liability:

- Any person who acts in self-defense of one-self of relatives or of strangers.
- Any person who acts in the performance of his duties or obligations.
- A woman suffering from battered woman syndrome

5. QUASI-DELICTS (Obligations *ex quasi-delicto* or *ex quasi-maleficio*)

Whoever by act or omission causes damage to another, there being fault or negligence, is obliged to pay for the damage done. Such fault or negligence, if there is no pre-existing contractual relation between the parties, is called a quasi-delict. (Art. 2176, Civil Code)

Requisites:

- There is no pre-existing relation (contract) between the offender (respondent-defendant) and offended parties (complainant-plaintiff). (However, exceptional cases allow filing of civil action based on quasi-delict despite the presence of contractual relations if the act that violated the contract constitutes a tortuous act in itself.)
- There exists a wrongful act or omission imputable on the defendant by reason of his fault or negligence.
- There exists a damage or injury which must be proved by the person claiming recovery (plaintiff-complainant).
- There must be a direct causal connection or a relation of cause and effect between the fault or negligence and the damage or injury, or that the fault or negligence be the cause of the damage or injury.

ILLUSTRATION: While driving recklessly, the driver hit a pedestrian and the latter was injured.

Here the act was driving recklessly; there was negligence, since the required degree of care was not met; there was damage to the pedestrian who was injured; and the cause of the damage was the reckless driving of the driver.

Vicarious Liability: Under Art. 2180 of the Civil Code, the following are responsible for the damages caused by:

Acts done by:	Who is responsible?
Minor children who live in their company	The father, in case of his death or incapacity, the mother
Minors and incapacitated persons	Guardians
Employees in the service of the branches in which they are employed or on the occasion of their functions	Owners and Managers of establishment or enterprise
Employees and household helpers acting within the scope of their assigned tasks, even if the employer is not engaged in any business or industry	Employers
Special agent, except when the damage was caused by the official to whom the task done properly pertains	The State
Pupils and student or apprentices, so long as they remain in their custody	Teachers or Heads of Establishments of Arts and Trade

Defense: the responsibility shall cease when the persons above-mentioned prove they observed all the diligence of a good father of a family to prevent damage.

For the employer, specifically, if he is able to prove due diligence in the selection and supervision of the employee.

Note that this defense is not available against the employer's subsidiary liability arising from a delict or crime.

Quasi-Delict vs. Crime/Delict

- The right violated by a quasi-delict is a private right while the right violated by a crime is a public right.
- In quasi-delict the name of the case is Private-Plaintiff vs. Respondent or Defendant while in crime the name of the case is People of the Philippines vs. Accused.
- Every quasi-delict gives rise to liability for damages to the injured party but there are crimes from which no civil liability arises.
- Quasi-delict can be compromised but criminal liability for imprisonment and fines can never be compromised except in case of criminal negligence.
- In quasi-delict, criminal intent is not necessary, while in crime, criminal intent is necessary except in (1) criminal negligence and (2) mala prohibita or crimes where good faith is not a defense where criminal intent is not required.
- Claims arising from quasi delict must be proven by preponderance of evidence while conviction for crime must be proven by proof beyond reasonable doubt although civil damages arising from crime may be proven only by preponderance of evidence by the private offended party plaintiff or victim of the crime

MULTIPLE SOURCES OF OBLIGATIONS: a single act can be the source of multiple sources of obligations.

ILLUSTRATION: D, a taxi-driver, driving recklessly, killed X, a pedestrian, and injured P his passenger. The owner of the taxi is O (the employer of X). What are the sources of obligation that may arise?

- On the part of D, the driver, his liability will be:
 - As to X (the pedestrian)
 - Delict – for reckless imprudence resulting to homicide
 - Quasi-Delict – since all the requisites for quasi-delict are present
 - As to P (the passenger)
 - Delict – for reckless imprudence resulting to physical injuries
 - Quasi-Delict – since all the requisites for quasi-delict are present

*Contract cannot be the source of liability on the part of the D (the driver) since the contract of carriage is between P (the passenger) and O (the owner/employer). Unless the driver is also the owner of the vehicle.

2. On the part of O, the employer/owner, his liability will be:
 - a. As to X (the pedestrian)
 - i. Delict – subsidiary liability of the employer
 - ii. Quasi-Delict – vicarious liability of the employer
 - b. As to P (the passenger)
 - i. Delict – subsidiary liability of the employer
 - ii. Quasi-Delict – vicarious liability of the employer
 - iii. Contract – since the contract of carriage is between P (the passenger) and O (the owner/employer).

Double recovery not allowed: Responsibility for fault or negligence under the preceding article is entirely separate and distinct from the civil liability arising from negligence under the Penal Code. But the plaintiff cannot recover damages twice for the same act or omission of the defendant. (Art. 2177, Civil Code)

NATURE AND EFFECT OF OBLIGATIONS

CONCURRENT OBLIGATIONS IN OBLIGATIONS TO GIVE A DETERMINATE THING: The primary obligation of the debtor would be to deliver the thing, which may be either actual or constructive, and the following shall be his concurrent obligations:

1. **To take care** of it with the proper diligence of a good father of a family (*bonus pater familia*), unless there is stipulation, or the law requires another standard of care. (Art. 1163, Civil Code)
2. **To deliver the fruits** of the thing from the time the obligation to deliver it arises. Note, however, that the creditor will not acquire real rights over the fruits until it is delivered to him. (Art. 1164, Civil Code)

A **personal right** refers to a right that can be exercised **only against a specific person** thereby prohibiting an action to recover the ownership or possession of a specific thing if already with a third person but only allows action for damages against a specific person.

On the other hand, a **real right** refers to a right that can be exercised **against the whole world** thereby allowing an action to recover the ownership or possession of a specific thing regardless of who is the possessor.

ILLUSTRATION: D obliged himself to deliver to C a parcel of land with fruit-bearing trees on April 15. If the trees bore fruit on April 15, D is likewise obliged to deliver the same to C.

C has a **personal right** to demand delivery of the fruits. But he does not acquire ownership over the fruits, or **real rights** over them, until they are delivered to him. Such that, if the fruits are sold by D to a buyer in good faith, X, the latter shall have a better right over them. C's remedy is to ask for damages from D but not recovery of possession of the fruits from X.

Kind of Fruits:

- a. Natural – spontaneous products of the soil, and the young and other products of animals
- b. Industrial – those produced by lands of any kind through cultivation or labor
- c. Civil – are fruits as a result of civilization or fruit arising out of a juridical relation or contracts such as the rents of buildings, the price of leases of lands and other property and the amount of perpetual or life annuities or other similar income.

3. **To deliver all accessions and accessories**, even though they may not have been mentioned. (Art. 1166, Civil Code)

Accessions – include everything which is produced by a thing, or which is incorporated or attached thereto, either naturally or artificially.

Accessories – refer to those destined for the embellishment, use or the preservation of another thing or have for their object the completion of the latter for which they are indispensable or convenient.

NOTE: In an obligation to give a **generic thing**, no such concurrent obligations exist.

REMEDIES FOR BREACH OF OBLIGATIONS**OBLIGATIONS TO GIVE:**

1. Determinate thing - specific performance only if it is legally and physically possible. Substitute performance is not possible.
2. Generic thing -
 - a. Specific performance; or
 - b. Substitute performance - the creditor can have another person to have such kind of thing be delivered at the cost of the debtor plus damages. (Art. 1165, Civil Code)

OBLIGATIONS TO DO: If a person obliged to do something fails to do it, the same shall be executed at his cost. This same rule shall be observed if he does it in contravention of the tenor of the obligation. Furthermore, it may be decreed that what has been poorly done be undone. (Art. 1167, Civil Code).

Only substitute performance is available since forcing the obligor to comply would violate the constitutional prohibition against involuntary servitude under Art. III, Sec. 18, par. 2 of the 1987 Constitution which provides: "No involuntary servitude in any form shall exist except as a punishment for a crime whereof the party shall have been duly convicted."

OBLIGATIONS NOT TO DO: and the obligor does it, the creditor may have it undone at the expense of the debtor. (Art. 1168, Civil Code)

RESCISSON IN RECIPROCAL OBLIGATIONS: Reciprocal obligation refers to a type of obligation which arises from the same cause, and in which each party is a debtor and creditor of the other, such that the obligation of one is dependent upon the obligation of the other. Examples: Contract of sale, barter, lease, common carrier or service.

Rescission in reciprocal obligations, otherwise known as "resolution", is a primary remedy where the cause of action is substantial or fundamental breach or non-compliance. This is available once a party is ready to comply with his part of the obligation and the other is not. This does not, however, limit the remedy of the party ready to perform his part of the obligation.

General Rule: the injured party may opt to ask for the exact fulfillment or specific performance of obligation with damages, but he can no longer ask

for rescission or cancellation of obligation after initial selection of exact fulfillment.

However, if exact fulfillment or specific performance becomes legally impossible after its initial selection, the injured party may exceptionally ask for the rescission of the obligation.

However, if the injured party elected rescission or cancellation of the obligation plus damages, he is now absolutely prohibited from asking exact fulfillment of the obligation because they are inconsistent remedies.

(see also *Judicial Term, when courts are authorized to just fix a period instead of decreeing rescission*)

DAMAGES - an action for damages may be demanded in case of non-fulfillment of an obligation.

KINDS (MENTAL):

1. **Moral** - are damages awarded by reason of physical suffering, mental anguish, fright, serious anxiety, besmirched reputation, wounded feelings, moral shock, social humiliation, and similar injury. They are awarded in the following cases:
 - a. A criminal offense resulting in physical injuries;
 - b. Quasi-delicts causing physical injuries;
 - c. Seduction, abduction, rape, or other lascivious acts;
 - d. Adultery or concubinage;
 - e. Illegal or arbitrary detention or arrest;
 - f. Illegal search;
 - g. Libel, slander or any other form of defamation;
 - h. Malicious prosecution;
 - i. Acts mentioned in article 309 of the Civil Code;
 - j. Acts and actions referred to in articles 21, 26, 27, 28, 29, 30, 32, 34, and 35 of the Civil Code. (Art. 2219, Civil Code)
 - k. Willful injury to property may be a legal ground for awarding moral damages if the court should find that, under the circumstances, such damages are justly due.
 - l. The same rule applies to breaches of contract where the defendant acted fraudulently or in bad faith. (Art. 2220, Civil Code)

2. **Exemplary** – are damages imposed, by way of example or correction for the public good, in addition to the moral, temperate, liquidated or compensatory damages.

Moral and Exemplary Damages may be imposed together with the succeeding other four types of damages or may be awarded in addition to them.

3. **Nominal** – are damages adjudicated in order that a right of the plaintiff, which has been violated or invaded by the defendant, may be vindicated or recognized, and not for the purpose of indemnifying the plaintiff for any loss suffered by him.

4. **Temperate** – are more than nominal but less than compensatory damages. They may be recovered when the court finds that some pecuniary loss has been suffered but its amount cannot, from the nature of the case, be provided with certainty.

5. **Actual** – are those pecuniary losses suffered and duly proved by the plaintiff. This is the only type of damage that would require proof. Example: Legal Interest (Legal interest of 6% per annum starting July 1, 2013, and 12% before July 1, 2013)

6. **Liquidated** – are damages agreed upon by the parties to a contract, to be paid in case of breach thereof. It refers to the type of damages that is not assessed by the court but merely applied based on the contractual stipulation of the parties. This is akin to a penalty in an obligation with a penal clause.

REMEDIES OF A JUDGMENT CREDITOR IN A SPECIFIC ACTION

SUIT: a judgment creditor is one who has successfully obtained a favorable judgment in a civil action to exact fulfillment or a specific performance, will have the following remedies:

1. To levy by attachment and execution upon all the property of the debtor including garnishment of bank deposits, except those properties exempted by law from execution.
2. To exercise all rights and actions of the debtor, except those rights which are inherently personal to him. (*Accion Subrogatoria*)

Requisites of *Accion Subrogatoria*

- a. The debtor's assets must be insufficient to satisfy claims against him;

b. The creditor must have pursued all properties of the debtor subject to execution;

c. The right of action must not be purely personal; and

d. The debtor whose right of action is exercised must be indebted to the creditor.

3. To ask for the rescission or cancellation of the contracts made by the debtor in fraud of creditor's rights. (*Accion Pauliana*)
Requisites of Accion Pauliana

a. That the plaintiff asking for rescission has a credit prior to, the alienation, although demandable later;

b. That the debtor has made a subsequent contract conveying a patrimonial benefit to a third person;

c. That the creditor has no other legal remedy to satisfy his claim, but would benefit by rescission of the conveyance to the third person;

d. That the act being impugned is fraudulent; and

e. That the third person who received the property conveyed, if by onerous title, has been an accomplice in the fraud.

4. To file an action for damages against the third person who acquired the property of the debtor in *bad faith*.

SPECIFIC CIRCUMSTANCES AFFECTING OBLIGATIONS IN GENERAL

Those who in the performance of their obligations are guilty of fraud, negligence, or delay, and those who in any manner contravene the tenor thereof, are liable for damages. (Art. 1170, *Civil Code*)

1. FRAUD (DOLO)

Responsibility arising from fraud is demandable in all obligations. Any waiver of an action for future fraud is void. (Art. 1171)

Kind of Fraud:

- a. **Dolo causante** (causal fraud) – or fraud in obtaining consent, is applicable only to obligations where consent is necessary, such as a contract, and thus affects the validity thereof, making it voidable. There is fraud when, through insidious words or machinations of one of the contracting parties, the other is induced to enter into a contract which, without them, he would not have agreed to. (Art. 1338)

Under this kind of fraud, the party would not have entered into the contract were it not for the fraud; annulment is the remedy of the party whose consent was obtained through fraud.

Example: material misrepresentations made in an application for insurance.

- b. Dolo incidente (incidental fraud) – the deliberate and intentional evasion of the normal fulfillment of the obligation. This is fraud in the performance of the obligation and applicable to obligations arising from any source. This kind, however, does not affect the validity of the contract and makes the party guilty of fraud liable for damages.

Under this kind, a party would have entered the obligation with or without the fraud. The proper remedy is not the annulment of the obligation but for damages.

Example: tax evasion, where the payment of taxes is lowered through illegal means such as under-declaration of income or over-declaration of expenses.

Waiver:

- a. **Future Fraud** - Waiver of an action for future fraud is void because it is contrary to law and public policy. Such waiver will encourage commission of crime.
- b. **Past fraud** - Waiver of an action for past fraud may be considered valid on the part of plaintiff and defendant provided public interests are not involved. However, if the past fraud involves a public crime, the waiver of civil damages made by the private complainant in favor of the defendant will not bar the state from continuing the prosecution of the criminal case.

2. NEGLIGENCE (CULPA)

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. (Art. 1173, Civil Code)

Responsibility arising from negligence in the performance of every kind of obligation is also demandable, but such liability may be regulated by the courts, according to the circumstances. (Art. 1172, Civil Code)

Degree of care required:

- a. As a rule
 - i. That required by law; or
 - ii. That agreed upon by the parties.
- b. In the absence of the two above, diligence of a good father of a family.

Examples of degree of care required by law:

- a. Contract of common carrier - Extraordinary diligence on the part of common carrier.
 - i. Common carriers, from the nature of their business and for reasons of public policy, are bound to observe extraordinary diligence in the vigilance over the goods and for the safety of the passengers transported by them, according to all the circumstances of each case.
 - ii. A common carrier is bound to carry the passengers safely as far as human care and foresight can provide, using the utmost diligence of very cautious persons, with a due regard for all the circumstances.
- b. **Contract of Necessary Deposit** (Things brought in hotel or motel) - Extraordinary diligence on the part of hotel or motel or inn keeper.

The hotel business like the common carrier's business is imbued with public interest. Catering to the public, hotelkeepers are bound to provide not only lodging for hotel guests and security to their persons and belongings. The twin duty constitutes the essence of the business. The law in turn does not allow such duty to the public to be negated or diluted by any contrary stipulation in so-called "undertakings" that ordinarily appear in prepared forms imposed by hotel keepers on guests for their signature.

- c. **Banks** - Extraordinary diligence on the part of the bank. The fiduciary nature of banking requires high standards of integrity and performance.

Kind of Negligence as to SOURCE:

- a. Culpa Contractual - contractual negligence - or negligence in the performance of a contractual obligation.

ILLUSTRATION: A passenger of a jeepney is hurt because of the driver's negligence. Here, there is a contract of carriage between the passenger and the owner of the jeepney, and the negligence was in relation to the absence or lack of the diligence required of the driver (representative of the owner) by virtue of such contract. As such, the passenger can sue the owner for breach of contract through negligence.

b. Culpa Aquiliana – civil negligence or quasi-delict

ILLUSTRATION: A passer-by is hit by the same jeepney from the above illustration. Here, there is no pre-existing contractual relationship. In this case, the passer-by can sue both the driver and the owner for quasi-delict. However, the owner can raise the defense, and prove that he exercised the required diligence in the selection and supervision of the driver.

c. Culpa Criminal – criminal negligence – or that which results in the commission of a crime or a delict.

ILLUSTRATION: In the same illustration, the passenger or the passer-by can sue the driver for culpa criminal, reckless imprudence resulting to physical injuries to be exact. Note that who can be sued criminally is the driver only. However, civil damages can be recovered from the owner-employer who is considered subsidiarily liable if the driver is insolvent. Here, the defense of diligence in the selection and supervision of the driver is not available.

Negligence on the part of the supposed injured party:

a. If his negligence was the **immediate and proximate cause** of the injury, there is no recovery for damages.

ILLUSTRATION: a pedestrian, not looking where he was going, bumped into a car parked on the street. Here there is no negligence on the part of the car owner. In fact, if any damage is caused to the car, the pedestrian can be liable for such.

b. If his negligence was only **contributory** – he may still recover damages, BUT the courts can mitigate or reduce the same.

ILLUSTRATION: a pedestrian, despite the fact that the traffic light was red, crossed the street. He was hit by a car, who by all right, was moving since the traffic light was green. Here, the proximate cause of the loss is still the car hitting the pedestrian. Although the pedestrian was likewise negligent since he did not stop on the red light, his negligence was only contributory. Thus, the courts will only reduce or mitigate the damages he is entitled to.

A. DELAY

kinds of Delays

Mora Solvendi – delay on the part of the debtor, which may either be:

- i. Mora solvendi ex re: in real obligations
- ii. Mora solvendi ex persona: in personal obligations

Effects:

- i. The debtor becomes liable for damages for the delay
- ii. When it has for its object a determinate thing, the delay or default or mora places the risk of loss of the determinate thing on the debtor

Mora Accipiendi – delay on the part of the creditor

Effects:

- i. The creditor becomes liable for damages.
- ii. The debtor may relieve himself of the obligation by the consignation of the thing after a valid tender of payment.
- iii. The creditor bears the risk of the loss of the determinate thing.
- iv. The responsibility of the debtor for the loss of the determinate thing is reduced and limited to fraud and gross negligence.
- v. All expenses for the preservation of the thing after the delay or default or mora shall be chargeable to the creditor.

Compensatio Mora – delay on the part of both parties.

Effect: The delays of both debtor and creditor are compensated or offset. Therefore, no one will be liable for damages by reason of delay.

foreseen or anticipated, as is commonly believed but it must be one impossible to foresee or to avoid.

Elements: To constitute a fortuitous event, the following elements must concur:

- a. The cause of the unforeseen and unexpected occurrence or of the failure of the debtor to comply with obligations must be independent of human will;
- b. It must be impossible to foresee the event that constitutes the *caso fortuito* or, if it can be foreseen, it must be impossible to avoid;
- c. The occurrence must be such as to render it impossible for the debtor to fulfill obligations in a normal manner; and,
- d. The obligor must be free from any participation in the aggravation of the injury or loss.

General Rule: is that no person shall be responsible for those events which could not be foreseen, or which, though foreseen, were inevitable. (Art. 1174, Civil Code)

Exceptions:

- a. Declared by stipulation;
- b. When the nature of the obligation requires the assumption of risk: e.g., insurance contracts.
- c. Expressly specified by law: examples:
 - i. A possessor in bad faith. (Art. 552)
 - ii. If the obligor is already in delay or has promised the same thing to two or more persons who do not have the same interests. (Art. 1165)
 - iii. The officious manager may be liable for any fortuitous event under Art. 2147.
- d. When negligence, delay or fraud concurred with the fortuitous event.

KINDS OF CIVIL OBLIGATIONS #

AS TO PERFECTION AND EXTINGUISHMENT

- a. **PURE OBLIGATIONS:** an obligation whose performance does not depend upon a future or uncertain event, or upon a past event unknown to the parties, and is demandable at once.

WHEN CONSIDERED IN DEFAULT: General Rule: upon demand, which may be judicial or extrajudicial. (Art. 1169, Civil Code)

Exceptions:

- a. When stipulated - a due date in itself is not enough, what should be stipulated is that there is no need for demand to consider the debtor in default
- b. When the law so declares - e.g., delivery of a partner's share in the partnership
- c. 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 - e.g., a florist for a wedding
- d. When demand would be useless - e.g., when the debtor already transferred the thing to another; or had it destroyed or hidden.
- e. In reciprocal obligations, where the respective obligations must be performed simultaneously, and one party was not ready. (Art. 1169, Civil Code) Note, however, that if the parties agreed to specified due dates for their respective obligations, no delay shall set in unless there is demand.

Obligation Not To Do: there is no delay in obligations not to do.

4. ANY OTHER MANNER OF CONTRAVENTION (VIOLATIO)

This refers to an illicit act which impairs the strict and faithful fulfillment of the obligation or every kind of defective performance. It refers to the violation of the terms and conditions of obligation or defects in the performance of the obligation.

In general, every debtor who fails in performance of his obligations is bound to indemnify for the losses and damages caused thereby. The phrase "any manner contravene the tenor" of the obligation includes any illicit act which impairs the strict and faithful fulfillment of the obligation or every kind or defective performance. (*Arrieta vs. NARIC*)

5. **FORTUITOUS EVENT:** is an excuse for non-performance. Fortuitous events by definition are extraordinary events not foreseeable or avoidable. It is therefore, not enough that the event should not have been

Also demandable at once are Obligations with a resolatory condition or a resolatory term. Since the happening of the condition or the arrival of the term extinguishes the already demandable obligation.

b. **CONDITIONAL OBLIGATIONS:** In conditional obligations, the acquisition of rights, as well as the extinguishment or loss of those already acquired, shall depend upon the happening of the event which constitutes the condition. (Art. 1181, Civil Code)

Conditions: are uncertain events which wield an influence on a legal relationship.

Kinds of Conditions

as to when the obligation should be performed	Suspensive Resolatory	happening of which gives rise to the obligation (condition precedent) happening of which extinguishes the rights already existing (condition subsequent)
as to whom or where it depends on	Potestative Casual Mixed	depends on the will of the party to the juridical relation depends on chance partly depends on will of the party or partly on chance
as to capacity to be performed in parts	Divisible Indivisible	can be performed in parts cannot be performed in parts
as to number of obligations are to be performed when there are several of them	Conjunctive Alternative	all must be performed only one must be performed
as to nature	Positive Negative	act omission
as to how made known to the other party	Express Implied Possible	stated merely inferred can be fulfilled

as to whether the obligation can be fulfilled	Impossible	cannot be fulfilled either physically or legally
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POTESTATIVE CONDITION: a condition dependent solely on the will of one of the parties.

When void: if it is dependent solely on the will of the debtor and the condition is suspensive in character. (Art. 1182) This is so, because if it were allowed by law, there is a possibility that the obligation will never arise.

CONSTRUCTIVE OR PRESUMED FULFILLMENT: The condition shall be deemed fulfilled when the obligor voluntarily prevents its fulfillment. (Art. 1186, Civil Code)

IMPOSSIBLE CONDITIONS: shall annul the obligation which depends upon them. If the obligation is divisible, that part thereof which is not affected by the impossible or unlawful condition shall be valid. (Art. 1183, Civil Code)

Impossibility: can either be:

1. Physically impossible – such as a condition requiring the debtor to go to the sun; or
2. Legally impossible – such as when it is contrary to law, good customs, public policy, such as a condition requiring the debtor to kill somebody.

Effect:

1. When an impossible condition is imposed in an obligation to do, the obligation and the condition are treated as void since the debtor knows that no fulfillment can be done and therefore is not serious about being liable.
2. In obligations not to do or if the condition is negative, the impossible condition can just be disregarded, and the obligation remains.

EFFECT OF FULFILLMENT OF CONDITIONS:

General Rule: Once the condition has been fulfilled, it shall retroact to the day of the constitution of the obligation.

In *conditional obligation to do or not to do*, the courts shall determine, in each case, the retroactive effect to the fruits of the condition that has been complied with taking into account the agreement of the parties.

Except:

1. **Fruits or interests in obligations to give**
 - a. Reciprocal Obligations – the fruits are deemed mutually compensated.
 - b. Unilateral obligations: in unilateral obligations, the debtor as a rule, is entitled to the fruits, unless a contrary intention appears.

ILLUSTRATION: On January 1 20xx, S promised to sell to B his house and lot if B passed the CPA Board Exam on October 20xx. The house and lot were leased to L from Jan. 1, xx, to October 20xx. If B passed the CPALE, who shall be entitled to the rentals for the period Jan. 1, 20xx (when the obligation was constituted) to October 20xx (when the condition was fulfilled)?

ANSWER: S. Since the obligation is reciprocal, i.e., S to transfer ownership of the house and lot, and B to pay the price, the fruits (rent on the house and lot and interest on the price) are deemed mutually compensated.

2. **Period of prescription** – counted still from the time the condition was fulfilled.

CONDITION WHERE OBLIGATION IS TREATED AS ONE WITH A PERIOD: When the debtor binds himself to pay when his means permit him to do so, the obligation shall be deemed to be one with a period. (Art. 1180)

SUSPENSIVE CONDITIONS WITH A DEADLINE: The condition that some event happen at a determinate time shall extinguish the obligation as soon as the time expires or if it has become indubitable that the event will not take place.

ILLUSTRATION: I will give you my land if you marry X by December 31, 20xx.

If it is Jan. 1 of the following year, the obligation is extinguished since the time has expired or if X dies before the deadline of December 31, 20xx, the obligation is likewise extinguished since it is already indubitable that the event will not take place.

RULES AS TO IMPROVEMENT, LOSS OR DETERIORATION: Art. 1189 provides that in case of obligations to give a specific or determinate thing is subject to a suspensive condition, the following rules shall be observed in case of the improvement, loss or deterioration of the thing during the pendency of the condition:

	Without fault of the debtor	Without fault of the debtor	Obligation is extinguished
LOSS*	With the fault of the debtor	Without the fault of the debtor	Debtor is liable for damages Impairment is borne by the creditor
DETERIORATION	With fault of the debtor	Without fault of the debtor	Creditor can either: 1. Exact fulfillment and ask for damages 2. Ask for rescission and damages
IMPROVEMENT	By nature or time	At the expense of the debtor	Improvement will inure to the benefit of the creditor The debtor shall have no other right than that granted to a usufructuary, e.g., he may remove the improvement if it will not cause damage to the thing

The above rules likewise apply to obligations with a period.

The thing is considered lost when it:

1. Perishes.
2. Goes out of commerce.
3. Disappears in such a way that its existence is unknown, or it cannot be recovered.

4. Is a destroyed specific thing or determinate thing or delimited generic thing

Remedy of Creditor during pendency of the condition: Before the fulfillment of suspensive condition or during pendency of the suspensive condition, the creditor may bring appropriate actions for the preservation of his right over the determinate thing such as filing a petition before a regional trial court for the issuance of asset preservation order over the determinate thing

- c. **OBLIGATIONS WITH A PERIOD/TERM:** A period is a certain length of time which determines the effectivity or the extinguishment of the obligation. Unlike a condition, a period is certain to arrive or must necessarily come even though it may not be known when.

KINDS OF TERM:

1. Definite – specific date, e.g., Dec. 31, end of the year this year, within 6 months;
2. Indefinite – period may arrive upon the fulfillment of a certain event which is certain to happen. e.g., death.

or

3. Legal – imposed or provided by law, e.g., filing of taxes; obligation to give support – within the first 5 days of the month.
4. Voluntary – agreed upon by the parties.
5. Judicial – those fixed by courts.

As to effect, a term/period may be:

1. Ex die – a period with a suspensive effect.
2. In diem – a period with a resolutive effect.

THE COURTS CAN FIX THE PERIOD IN THE FOLLOWING CIRCUMSTANCES:

1. Under Art. 1191, par. 3: In reciprocal obligations, when one party asked for the rescission of obligation, the court shall decree such rescission claimed, unless there be just cause authorizing the fixing of a period.
2. Under Art. 1197:
 - a. If the obligation does not fix a period, but from its nature and the circumstances it can be inferred that a period was intended, the courts may fix the duration thereof.

- b. The courts shall also fix the duration of the period when it depends upon the will of the debtor. (example: when the obligation is payable when the debtor's means permit him to do so)

BENEFIT OF THE PERIOD:

General Rule: Whenever in an obligation a period is designated, it is presumed to have been established for the benefit of both the creditor and the debtor.

Exception: from the tenor of the obligation or other circumstances it should appear that the period has been established in favor of one or of the other. (Art. 1196)

Consequences of general rule:

1. The debtor cannot be made to pay before the period;
2. The creditor cannot be made to accept payment before the period.

ILLUSTRATION: D is indebted to C for P100,000 payable on or before December 31, 20xx. Can D pay before the due date?

ANSWER: Yes. Because by the tenor of the obligation, the period was constituted in favor of the debtor. As such, he can compel the creditor to receive payment even before the due date.

DEBTOR'S LOSS OF BENEFIT OF THE PERIOD: the debtor loses the right to make use of the period in the following cases:

- a. When after the obligation has been contracted, he becomes insolvent, unless he gives a guaranty or security for the debt;

ILLUSTRATION: D is indebted to C for P100,000 due on June 30, 20xx. D became insolvent on March 31, 20xx. In this case, the indebtedness is immediately demandable since D loses the right to make use of the period.

- b. When he does not furnish to the creditor the guaranties or securities which he has promised;

ILLUSTRATION: D borrowed P100,000 from C payable on December 31, 20xx, and promised to deliver his diamond ring as security therefor. However, D lost the diamond ring prior to delivery. In this case, the P100,000 is due immediately since he failed to provide the security as promised.

- c. When by his own acts he has impaired said guaranties or securities after their establishment, and when through a fortuitous event they disappear, unless he immediately gives new ones equally satisfactory:

ILLUSTRATION: D borrowed P100,000 from C payable on December 31, 20xx, and mortgaged his house as security. On June 30, 20xx, the house was destroyed by a typhoon. The debt shall be due and demandable on June 30, 20xx, unless the debtor can provide a security which is equally satisfactory.

- d. When the debtor violates any undertaking, in consideration of which the creditor agreed to the period;

ILLUSTRATION: D borrowed P100,000 from C payable on December 31, 20xx, upon the condition that D would not go to any casino. D went to a casino on March 31, 20xx. The debt shall be demandable on March 31, 20xx.

- e. When the debtor attempts to abscond.

An attempt on the part of the debtor to abscond is a sign of bad faith and intention not to comply with the obligation. What is material here is the *intent* of the debtor in absconding. Thus, if he merely went out of the country for a vacation, the debtor does not lose the benefit of the period since there was no intention to defraud the creditor.

Payment by Mistake during pendency of the suspensive condition or period:

1. If during the pendency of the suspensive condition, the debtor has paid by mistake a sum of money, the debtor can recover the sum of money, but the **interests** can be recovered **only if the creditor acted in bad faith**.

Whoever in bad faith accepts an undue payment, shall pay legal interest if a sum of money is involved.

2. If during the pendency of the suspensive period in an obligation with a suspensive period, the debtor has paid by mistake a sum of money, the debtor can recover not only the sum of money **but also additional interests whether the creditor acted in good faith or bad faith**.

Anything paid or delivered before the arrival of the suspensive period, the obligor being unaware of the period or believing that the obligation has become due and demandable, may be recovered, with the fruits and interests.

- A. If during the pendency of the suspensive condition or suspensive period, the debtor has delivered a determinate or specific thing by mistake, the debtor may file (1) an accion reivindicatoria if the thing is still with the creditor or (2) an accion for indemnification for damages if the thing is no longer with the creditor.

a. Whoever in bad faith accepts an undue payment shall be liable for fruits received or which should have been received if the thing produces fruits. He shall furthermore be answerable for any loss or impairment of the thing from any cause, and for damages to the person who delivered the thing, until it is recovered.

b. He who in good faith accepts an undue payment of a thing certain and determinate shall only be responsible for the impairment or loss of the same or its accessories and accessions insofar as he has thereby been benefited. If he has alienated it, he shall return the price or assign the action to collect the sum.

c. Anything paid or delivered before the arrival of the suspensive period, the obligor being unaware of the period or believing that the obligation has become due and demandable, may be recovered, with the fruits and interests.

AS TO PLURALITY OF PRESTATION

a. **CONJUNCTIVE** usually use the word "and" e.g., deliver a specific cow, a specific car AND a specific diamond ring. In this case, all the prestations must be complied with in order to fulfill the obligation.

b. **ALTERNATIVE** usually use the word "or" e.g., deliver a specific cow, a specific car OR a specific diamond ring. In this case, performance of one of the prestations fulfills the obligation.

- i. Where several objects are due, the fulfillment of one is sufficient.
- ii. Right of Choice: generally, it belongs to the debtor, except:
- iii. When expressly granted to the creditor, i.e., it cannot be implied; or
- iv. When the right of choice is given to a third party.
- v. The debtor's right of choice is limited in such a way that he cannot choose any prestation which is impossible or unlawful or that which could not have been the object of the obligation.
- vi. The choice, to take effect, must be communicated. The communication of the choice made is technically called "concentration."
- vii. The choice cannot be part of one and part of another.
- viii. When from all the choices, only one is practicable, the debtor shall lose the right of choice. Logically, the obligation would be to deliver that which remains.
- ix. Effect of Loss:

Right of choice belongs to:

DEBTOR	All things were lost	Fortuitous Event Fault of debtor	Extinguished Value of the <u>last</u> + Damages
	Some were lost	Fortuitous Event/Fault of Debtor	Deliver remaining
		Fault of creditor - debtor cannot make a choice	Rescission + Damages Perform + Damages

CREDITOR	All things were lost	Fortuitous Event Fault of debtor	Extinguished Value of <u>any</u> + Damages
		Fortuitous Event	Demand from remaining
	Some were lost	Fault of Debtor	Price of that which was lost + Damages Demand from Remaining + Damages

c. **FACULTATIVE:** When only one prestation has been agreed upon, but the obligor may render another in substitution, the obligation is called facultative

Right to substitute: is always with the debtor. He cannot be compelled to make the substitution.

	What is lost* is the	The obligation
BEFORE substitution	Principal	Extinguished
	Substitute	Not extinguished
AFTER substitution	Principal	Not extinguished
	Substitute	Extinguished

*through fortuitous event

AS TO RIGHTS AND OBLIGATIONS OF MULTIPLE PARTIES

a. **SOLIDARY OBLIGATION**

A **solidary obligation** is one in which each debtor is liable for the entire obligation, or each creditor is entitled to demand the whole obligation.

Solidarity arises when the obligation:

- i. **Expressly so states (stipulated):** Terms which may indicate solidarity: Mancomunada solidaria; Joint & several; In solidum; Juntos o separadamente; Individually and collectively; Individually; Collectively; Separately; Distinctively; Respectively; Severally; "I promise to pay" signed by more than one individual

ii. **When the law requires solidarity;**

- 1) When ~~two or more~~ heirs take possession of the estate, they are solidarily liable for the loss or destruction of a thing devised or bequeathed. (Art. 927)
- 2) Even when the agent has exceeded his authority, the principal is solidarily liable with the agent if the former allowed the latter to act as though he had full powers. (Art. 1911)
- 3) When there are two or more bailees to whom a thing is loaned in the same contract, they are liable solidarily. (Art. 1945)
- 4) The responsibility of two or more payees, when there has been payment of what is not due, is solidary. (Art. 2157)

- 5) The responsibility of two or more persons who are liable for quasi-delict is solidary. (Art. 2194)

iii. When the nature of the obligation requires solidarity.

ENFORCEMENT OF SOLIDARY OBLIGATIONS:

- i. The debtor may pay any one of the solidary creditors; but if any demand, judicial or extrajudicial, has been made by one of them, payment should be made to him. (Art. 1214, Civil Code)
- ii. Novation, compensation, confusion or remission of the debt, made by any of the solidary creditors or with any of the solidary debtors, shall extinguish the obligation (Art. 1215):

- 1) The creditor who may have executed any of these acts, as well as he who collects the debt, shall be liable to the others for the share in the obligation corresponding to them. (Art. 1215, 2nd. par, Civil Code)
- 2) The remission made by the creditor of the share which affects one of the solidary debtors does not release the latter from his responsibility towards the co-debtors, in case the debt had been totally paid by any of them before the remission was effected. (Art. 1219, Civil Code)
- 3) The remission of the whole obligation, obtained by one of the solidary debtors, does not entitle him to reimbursement from his co-debtors. (Art. 1220, Civil Code)

ILLUSTRATION: A, B and C, individually, are indebted to X and Y, solidary creditors, for P60,000.

- a. If C promised to X that he will paint the house of X instead of paying the P60,000, to which the latter agreed:
 - i. The entire obligation will be extinguished by novation.
 - ii. C will have a right of reimbursement from A and B for their respective share
- b. If Y condoned the entire obligation because he has a crush on A:
 - i. The entire obligation will be extinguished by remission/condonation
 - ii. C is NOT entitled to reimbursement

- iii. A solidary debtor may, in actions filed by the creditor, avail himself of all defenses which are derived from the nature of the obligation and of those

which are personal to him, or pertain to his own share. With respect to those which personally belong to the others, he may avail himself thereof only as regards that part of the debt for which the latter are responsible. (Art. 1222, Civil Code)

Examples of Total Defenses:

- 1) Payment by another co-debtor, as to a subsequent demand of a creditor;
- 2) If the contract is void,
- 3) If the obligation has prescribed.

ILLUSTRATION: A, B and C, jointly and solidarily, are indebted to X and Y, solidary creditors, for P60,000. A turns out to be a minor, B's share was condoned by X. In this case,

- a. If collection is made from A – he cannot be made to pay anything, because he can raise his minority as a total defense.
- b. If collection is made from B – he can be made to pay P20,000; his share has already been condoned and he can likewise raise A's minority as a PARTIAL defense, since this is a defense personal to A only.
- c. If collection is made from C – he can be made to pay P20,000 raising the remission of B's share and A's minority as partial defenses.

- iv. Payment made by one of the solidary debtors extinguishes the obligation. If two or more solidary debtors offer to pay, the creditor may choose which offer to accept. He who made the payment may claim from his co-debtors only the share which corresponds to each, with the interest for the payment already made. If the payment is made before the debt is due, no interest for the intervening period may be demanded. (Art. 1217, Civil Code)

- v. When one of the solidary debtors cannot, because of his insolvency, reimburse his share to the debtor paying the obligation, such share shall be borne by all his co-debtors, in proportion to the debt of each. (Art. 1217, last par., Civil Code)

ILLUSTRATION: A, B and C, jointly and solidarily, are indebted to X and Y, solidary creditors, for P60,000. A turns out to be insolvent. In this case, if B is made to pay:

1. He shall be liable to pay the entire P60,000, since the insolvency of one of the solidary debtors does not affect the obligation or the right of the creditors to enforce the same.
2. He can seek reimbursement from C, the amount of P30,000. Since C is NOT insolvent, he will be liable for his share (P20,000) plus a portion of the share of A, the insolvent debtor (P10,000).

- vi. The creditor may proceed against any one of the solidary debtors or some or all of them simultaneously. The demand made against one of them shall not be an obstacle to those which may subsequently be directed against the others, so long as the debt has not been fully collected. (Art. 1216, Civil Code)
- vii. Payment by a solidary debtor shall not entitle him to reimbursement from his co-debtors if such payment is made after the obligation has prescribed or become illegal. (Art. 1218, Civil Code)
- viii. Solidarity may exist although the creditors and the debtors may not be bound in the same manner and by the same periods and conditions. (Art. 1211, Civil Code)

b. JOINT OBLIGATIONS:

If none of the above circumstances which would give rise to solidarity, are present, the obligation is considered joint.

A **joint obligation** is one in which each of the debtors is liable only for a proportionate part of the debt or each creditor is entitled only to a proportionate part of the credit. In joint OBLIGATIONS, there are as many OBLIGATIONS as there are debtors multiplied by the number of creditors.

Each debt/credit is considered independent of each other.

EFFECTS:

- i. The demand by one creditor upon one debtor, produces the effects of default only with respect to the creditor who demanded & the debtor on whom the demand was made, but not with respect to the others;
- ii. The interruption of prescription by the judicial demand of one creditor upon a debtor does not benefit the other creditors nor interrupt the prescription as to other debtors. On the same principle, a partial payment

- or acknowledgement made by one of several joint debtors does not stop the running of the statute of limitations as to the others;
- iii. The vices of each obligation arising from the personal defect of a particular debtor or creditor does not affect the obligation or rights of the others;
- iv. The insolvency of a debtor does not increase the responsibility of his co-debtors, nor does it authorize a creditor to demand anything from his co-creditors;

ILLUSTRATION: A, B, C, D and E are liable to X and Y for P10,000.

1. Here, there is nothing in the problem which would suggest that the parties agreed to solidarity in debt or credit, nor the law or the nature of the obligation require the same. Accordingly, the debtors are joint debtors, and the creditors are joint creditors.
2. Accordingly, since there are 5 joint debtors and 2 joint creditors, there are 10 debts (5 x 2 - multiplying the number of joint debtors with the number of joint creditors), of P1,000 each as follows:

A is liable for P1,000 to	X
A is liable for P1,000 to	Y
B is liable for P1,000 to	X
B is liable for P1,000 to	Y
C is liable for P1,000 to	X
C is liable for P1,000 to	Y
D is liable for P1,000 to	X
D is liable for P1,000 to	Y
E is liable for P1,000 to	X
E is liable for P1,000 to	Y
3. Accordingly, X can only collect P1,000 each from A, B, C, D or E; or A is liable only for P1,000 to X or Y.
4. If A turns out to be a minor, this does not, in any way, affect the liabilities of B, C, D or E.
5. If A turns out to be insolvent, this does not, in any way, affect the liabilities of B, C, D or E. As such, they will not share in the debt of A.
6. If X and Y are solidary creditors, there are only 5 debts (5 joint debtors * 1 creditor) or P2,000 each (P10,000/5). As such, X or Y can collect P2,000 each from A, B, C, D or E.

7. If A, B, C, D and E are solidary debtors, there are only 2 debts (1 debtor * 2 joint creditors) of P5,000 each (P10,000/2). As such, X can collect P5,000 from any of the debtors; and any of the debtors can be made liable for the whole P5,000 debt due to X and P5,000 debt due to Y.

c. DISJUNCTIVE

This is not covered by the Civil Code. In this case, there are 2 or more creditors and 2 or more debtors, but they are named disjunctively as debtors and creditors in the alternative.

The rules on solidary obligations must apply because if rules on alternative obligations will be applied then the debtor will generally be given the choice to whom he shall give payment.

ILLUSTRATION: A binds himself to pay P100 either to X or Y; A or B will pay 100 to X.

AS TO PERFORMANCE OF PRESTATION

- a. Divisible – when the prestation is capable of partial performance
Object/Prestation deemed divisible:
- The object of the obligation is the execution of a certain number of days of work
 - When the object is the accomplishment of work by metrical units
 - When the purpose of the obligation is to pay a certain amount in installments
 - When the object of the obligation is the accomplishment of work susceptible of partial performance. (Art. 1225, Civil Code)
- b. Indivisible – when the prestation is NOT capable of partial performance
Object/Prestation deemed indivisible:
- Obligation to give definite things
 - Those not susceptible of partial performance
 - If capable of partial performance but the law or the intention of the parties treats it as indivisible. (Art. 1225, Civil Code)

Nature and Effects of Obligations: The divisibility or indivisibility of the things that are the object of obligations in which there is only one debtor and

only one creditor does not alter or modify the rules on Nature and Effects of Obligations discussed earlier.

Multiple Parties: Whenever there are multiple parties to an obligation, the rules on solidarity and joint are still observed. Thus, if the obligation involves an indivisible prestation, the liability of multiple debtors remains to be joint if there is no law or stipulation that requires solidarity or the nature of the obligation does not require solidarity.

The indivisibility of an obligation does not necessarily give rise to solidarity. It does solidarity of itself imply indivisibility. (Art. 1210, Civil Code)

a. Joint Indivisible:

If the division is impossible, the right of the creditors may be prejudiced only by their collective acts, and the debt can be enforced only by proceeding against all the debtors. If one of the latter should be insolvent, the others shall not be liable for his share. (Art. 1209, Civil Code)

A joint indivisible obligation gives rise to indemnity for damages from the time anyone of the debtors does not comply with his undertaking. The debtors who may have been ready to fulfill their promises shall not contribute to the indemnity beyond the corresponding portion of the price of the thing or of the value of the service in which the obligation consists. (Art. 1224, Civil Code)

ILLUSTRATION: A and B are jointly liable to X for the delivery of a specific TV set worth P10,000.

- Here, the obligation is indivisible, since there can be no partial delivery of the TV set.
- But the obligations of A and B are joint.
- As such, to require compliance, X must proceed against ALL debtors, and demand must be made against all of them.
- If the parties are not able to comply due to insolvency or fault of one, the obligation is converted into a monetary obligation.
- If it turns out that A is insolvent, B shall be liable only to X for his share, or P5,000 (P10,000 value of the TV divided by 2) and he is not liable for the share of A.

6. If B was ready to comply, but A was not, X is entitled to damages. But B is not liable therefor since he was ready to comply with his undertaking. B can only be made liable for his proportionate share.
7. If none was ready to comply, any of A or B can be made liable for damages.

b. Solidary Indivisible

ILLUSTRATION: if in the earlier illustration, A and B are solidarily liable, X can demand the car from either A or B, subject to reimbursement of the other.

Unlike in joint indivisible obligations, if the liability of the debtors is solidary, even the innocent debtor or the one ready to comply with his part, can be made liable for damages, but he is given the right to seek reimbursement from the debtor at fault or the one not ready to comply.

OBLIGATION WITH A PENAL CLAUSE

GENERAL RULE: the penalty shall substitute the indemnity for damages and payment of interests in case of non-compliance.

EXCEPTIONS:

1. If there is stipulation to the contrary;
2. If the debtor refuses to pay the penalty;
3. If the debtor is guilty of fraud in the fulfillment of the obligation. (Art. 1226, Civil Code)

Proof of actual damages suffered by the creditor is not necessary in order that the penalty may be demanded. (Art. 1228, Civil Code)

The nullity of the penal clause does not carry with it that of the principal obligation. The nullity of the principal obligation carries with it that of the penal clause. (Art. 1230, Civil Code)

Payment of penalty instead of fulfillment of the obligation: as a rule, the debtor cannot exempt himself from the performance of the obligation by paying the penalty, save in the case where this right has been expressly

reserved for him. Neither can the creditor demand the fulfillment of the obligation and the satisfaction of the penalty at the same time, unless this right has been clearly granted him.

However, if after the creditor has decided to require the fulfillment of the obligation, the performance thereof should become impossible without his fault, the penalty may be enforced. (Art. 1227, Civil Code)

REDUCTION OF PENALTY: the courts can reduce the penalty whenever:

1. The principal obligation has been partly or irregularly complied with.
2. The penalty is iniquitous or unconscionable. (Art. 1229, Civil Code)

OTHER CLASSIFICATIONS OF OBLIGATIONS

As to subject matter	Real – obligation to give Personal – obligation to do or not to do
As to affirmativeness	Positive – obligation to give or to do Negative – obligation not to do or not to give
As to persons obliged	Unilateral – where only one of the parties is bound Bilateral – where both parties are bound

MODES OF EXTINGUISHMENT OF OBLIGATIONS

Obligations are extinguished: *PAVO VON MÖGEN*

1. By payment or performance;
2. By the loss of the thing due;
3. By the condonation or remission of the debt;
4. By the confusion or merger of the rights of creditor and debtor;
5. By compensation;
6. By novation.

Other causes of extinguishment of obligations:

1. Annulment
2. Rescission
3. Fulfillment of a resolutive condition
4. Prescription. (Art. 1231)

These other causes are governed elsewhere in the Civil Code.

Annulment and Rescission: are modes to extinguish voidable and rescissible contracts, respectively. This will be discussed in the Chapter on Law on Contracts.

Fulfillment of the resolutive condition: as well as arrival of the resolutive period is discussed earlier under Kinds of Obligations.

Prescription: refers to the mode of extinguishment of the right to file an action or obligation by the mere lapse of time fixed by law. It converts the enforceable civil obligation into an unenforceable natural obligation.

1. 6 years for quasi contract
2. 6 years for oral contract
3. 10 years for written contract
4. 10 years for court judgment
5. 4 years for quasi-delict
6. 1 year for libel or unlawful detainer or forcible entry

Estoppel: prevents a person to claim differently from his representation or acts which was already relied upon by the other party. Which may be:

1. **Estoppel in pais** means a person is considered in estoppel if by his conduct, representations or admissions or silence when he ought to speak out, whether intentionally or through culpable negligence, causes another to believe certain facts to exist and such other rightfully relies and acts on such belief, as a consequence of which he would be prejudiced if the former is permitted to deny the existence of such facts.
2. **Estoppel by deed** occurs when a party to a deed and his privies are precluded from denying any material fact stated in the said deed as against the other party and his privies.
3. **Estoppel by laches** is considered an equitable estoppel wherein a person who failed or neglected to assert a right for an unreasonable and unexplained length of time is presumed to have abandoned or otherwise declined to assert such right and cannot later on seek to enforce the same, to the prejudice of the other party, who has no notice or knowledge that the former would assert such rights and whose condition has so changed that the latter cannot, without injury or prejudice, be restored to his former state.

PAYMENT OR PERFORMANCE

Payment means not only the delivery of money but also the performance, in any other manner, of an obligation. (Art. 1232, Civil Code)

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. (Art. 1233, Civil Code)

Substantial Performance: 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. (Art. 1234, Civil Code)

Incomplete Performance: 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. (Art. 1235, Civil Code)

Requisites:

1. The payment must be in accordance with the obligation.
2. The person paying (debtor) as well as the one receiving payment (creditor) should have the requisite capacity.
3. The payment should be made by the debtor to the creditor.
4. The payment should be made at the right time and place

Provisions related to PAYMENT OR PERFORMANCE:

1. Provisions as to the PAYOR

Payment made by a third person: (Art. 1236 and Art. 1237, Civil Code)

	With consent of the debtor/With interest in the fulfillment of the obligation	Without knowledge/consent of the debtor
Compel the creditor to accept payment	Yes	No
Subrogation to the rights of the creditor	Yes	No

	With consent of the debtor/With interest in the fulfillment of the obligation	Without knowledge/consent of the debtor
Amount reimbursement of	Full Reimbursement	Beneficial Reimbursement

Person who has interest in the fulfillment of the obligation: include those subsidiarily liable such as guarantors and co-debtors (including joint co-debtors), even third party-mortgagors whose properties secure the obligation.

ILLUSTRATION: D is indebted to C for P1,000,000 secured by a mortgage executed by M on his house and a guaranty executed by G. G offered to pay the P1,000,000. In this case,

1. G can compel C to accept payment even if the latter refuses.
2. G is entitled to reimbursement for the full amount even if D already made partial payments.
3. G is subrogated to C's rights. As such, in case D does not reimburse him, G can foreclose the mortgage on M's property.

If in the above illustration, X, a third party who has no interest in the fulfillment of the obligation, offered to pay C the P1,000,000.

1. C cannot be compelled to accept. But nothing stops him if he wants to accept the payment even without the consent of D.
2. X is entitled to reimbursement only to the extent beneficial to the debtor. Accordingly, if D already made partial payments of say P200,000, X is only entitled only to reimbursement up to P800,000.
3. X is not subrogated to B's rights. As such, he cannot foreclose on the mortgage if D failed to pay or compel G to pay.
4. If X paid with the consent of C, he shall be entitled to the rights of the third-party payor in the earlier example (third party with interest in the fulfillment of the obligation)

In either instance, the payment shall extinguish the obligation.

If a third party payor does not intend to be reimbursed: the payment may be treated as a donation. As such it is necessary that the debtor accept the same for validity.

If the debtor did not consent, there would be no valid donation, and the third party-payor can seek reimbursement from the debtor.

In any case, payment is still valid as to the creditor and the obligation is still distinguished. (Art. 1238, Civil Code)

Capacity and Free Disposal: the payor should have capacity to alienate and the free disposal of the thing due for payment to be effective. Such that minors (who don't have capacity) and those suffering the penalty of civil interdiction (no free disposal) cannot make a valid payment. (Art. 1239, Civil Code)

Provisions as to the PAYEE

Payment may be made to:

- a. Person in whose favor the obligation has been constituted – not necessarily a party to the constitution of the obligation.
- b. His successor in interest – who may not be creditors at the time of constitution but may be creditors at the time of fulfillment.
- c. Any person authorized to receive it – agents are creditors because they have the right to collect, but not in their own right. (Art. 1240, Civil Code)
- d. Third party – if it redounds to the benefit of the creditor. (Art. 1241, Civil Code)

ILLUSTRATION: D is indebted to C for P20,000. If D made payment to C Jr., C's son,

- i. There is no valid payment, since C Jr. is not the person for whose benefit the obligation was constituted, nor is he a successor in interest nor authorized to receive payment.
- ii. If C Jr. spends it partying, there is no valid payment since it did not redound to the benefit of C.
- iii. But if C Jr. spent it on his tuition fee, the payment is considered valid considering that the payment of the tuition fee is the liability of C for C Jr.'s support, or in other words, the payment redounded to the benefit of C.

The benefit to the creditor need not be proven in the following cases:

- i. after the payment, the third person acquires the creditor's rights;
- ii. the creditor ratifies the payment to the third person;
- iii. by the creditor's conduct, the debtor has been led to believe that the third person had authority to receive the payment. (Art. 1241, Civil Code)
- iv. If the third party is in possession of the credit. (Art. 1242, Civil Code)

ILLUSTRATION: if in our earlier illustration,

- i. If after payment of D to C Jr., C died and C Jr. is the sole heir who inherited the credit, the payment here is valid even if it did not redound to the benefit of C since C Jr. eventually acquired the credit.
- ii. D called C after paying C Jr., and C acknowledged payment, it will be valid even if it did not redound to the benefit of C since he ratified the payment to the third party C Jr.
- iii. D called C prior to paying C Jr., and C confirmed that D can receive the payment in his behalf, there is valid payment even if it does not redound to the benefit of C since he is already estopped by his act that led D to believe C Jr. had authority to receive payment.
- iv. Assuming the obligation is covered by a negotiable instrument in the possession of C Jr., payment to him would be valid even if it did not redound to the benefit of C.

Payment to an incapacitated person: is valid only if the incapacitated person kept the thing delivered or insofar as it was beneficial to him. (Art. 1241, Civil Code)

ILLUSTRATION: X is indebted to A for P100,000. A became insane when X paid the P100,000.

1. If after a while the money was not used by A, the payment is considered valid since A kept the money.
2. If A was fraudulently induced by Z to buy a ring for P100,000, where the ring is actually worth P20,000 only. There is valid payment up to the amount of P20,000 since this is the amount for which A benefited.

A. THING to be paid or delivered

Delivery of a specific thing: The debtor of a thing cannot compel the creditor to receive a different one, although the latter may be of the same value as, or more valuable than that which is due. (Art. 1244, Civil Code)

Delivery of a generic thing: whose quality and circumstances have not been stated, the creditor cannot demand a thing of superior quality. Neither can the debtor deliver a thing of inferior quality. The purpose of the obligation and other circumstances shall be taken into consideration. (Art. 1246, Civil Code)

Obligations to do or not to do: an act or forbearance cannot be substituted by another act or forbearance against the obligee's will. (Art. 1244, Civil Code)

Partial Performance: Unless there is an express stipulation to that effect, the creditor cannot be compelled partially to receive the prestations in which the obligation consists. Neither may the debtor be required to make partial payments. (Art. 1248)

Partial Performance: Unless there is an express stipulation to that effect, the creditor cannot be compelled partially to receive the prestations in which the obligation consists. Neither may the debtor be required to make partial payments. (Art. 1248)

LEGAL TENDER: refers to payment which the creditor can be compelled to accept. Under the New Central Bank Act, coins and currencies issued by the BSP have legal tender power. For currency notes, there is no limit as to the amount it can be used as legal tender. However, for coins, the following are the limits:

- a. P1 coins and above - shall be legal tender in amounts not exceeding P2,000 (previously P1,000);
- b. Coins below P1 ⇒ legal tender not exceeding P200 (previously P100).

Negotiable Instruments and Checks: are not considered legal tender and their acceptance is dependent on the creditor. However, should the creditor accept the same, they do not produce the effect of payment, or extinguish the obligation, until:

- a. At the time the check or other mercantile documents have been encashed,
- b. Its value becomes impaired. (Art. 1249, Civil Code)

Extraordinary inflation or deflation: of the currency stipulated should supervene, the value of the currency at the time of the establishment of the obligation shall be the basis of payment, unless there is an agreement to the contrary. (Art. 1250, Civil Code)

Presumptions: 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. (Art. 1176, Civil Code)

4. Place of payment (Art. 1251, Civil Code)

- a. Payment shall be made in the place designated in the obligation.
- b. If there was no stipulation and the obligation consists in the delivery of a determinate thing, the payment shall be made wherever the thing might be at the moment the obligation was constituted.
- c. In any other case the place of payment shall be the domicile of the debtor.
- d. If the debtor changes his domicile in bad faith or after he has incurred in delay, the additional expenses shall be borne by him.

SPECIAL FORMS OF PAYMENT

1. Dation in Payment

Dation in payment (Asset Swap in Financial Accounting) - refers to a special form of payment whereby a property is alienated to the creditor in satisfaction of a debt in money when the loan in money is already due at the time of change. (Art. 1245, Civil Code)

It may consist not only of a thing but also of rights, i.e., usufruct or credit.

This special mode of payment shall be governed by Law on Sales. If the change of prestation occurs before the maturity day of the obligation to pay a

sum of money, the proper mode of extinguishment of obligation is novation, instead of dation in payment.

Governed by the law on sales: The undertaking really partakes in one sense of the nature of sale, that is, the creditor is really buying the thing or property of the debtor, payment for which is to be charged against the debtor's debt. As such, the essential elements of a contract of sale, namely, consent, object certain, and cause or consideration must be present. (*Filinvest Credit Corporation vs. Philippine Acetylene Co., Inc.*)

Nature: there has to be delivery of the thing and prior acceptance and a consequent transfer of ownership to consider it a dation in payment. A mere promise to deliver a thing in lieu of the originally constituted subject amounts to a novation.

Extent of extinguishment: General rule: to the extent of the value of the thing delivered as agreed upon or as may be proved. Exception: if the parties consider the thing as equivalent to the obligation through an express or implied agreement or by silence.

Dacion en pago vs. Pactum Commissorium:

- a. Dacion en pago requires subsequent and voluntary agreement of the debtor and creditor while Pactum Commissorium involves automatic transfer of pledged or mortgaged property the moment the debtor defaulted in the payment of the secured loan.
- b. Dacion en pago is valid and legal while pactum commissorium is invalid for being contrary to law and public policy

2. Application of Payments

Application of Payment: is the designation of the debt which is being paid by a debtor who has several obligations of the same kind in favor of the creditor to whom payment is made.

Requisites:

- a. There is only one debtor;
- b. There are several debts;
- c. The debts are of the same kind;
- d. There is only one and the same creditor;

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e. The payment made by the debtor is not sufficient to pay off all the obligations.

Right to apply payment: generally, the debtor has the right to apply the payment at the time of making the payment, subject to the following LIMITATIONS:

- a. Creditor cannot be compelled to accept partial payment. (Art. 1248);
- b. Debtor cannot apply payment to principal if interest has not been paid. (Art. 1253)
- c. The debt must be liquidated, except when the parties agree otherwise;
- d. Cannot be made when the period has not arrived and such period was constituted in favor of the creditor, except with the consent of the creditor (Art. 1252);
- e. When there is agreement as to which debt must be paid first. (Art. 1252)

ILLUSTRATION: D is indebted to C, as follows:

- i. P120,000 payable on January 31, 20xx
- ii. P100,000, 10% interest p.a., accrued interest as of June 30, 20xx, is P5,000, payable May 15, 20xx
- iii. P100,000 plus an undetermined amount of damages payable January 31, 20xx
- iv. P100,000 collectible on or before December 31, 20xx.
- v. P100,000 payable on February 28, 20xx

On June 30, 20xx, D offered to pay P100,000. On which debt can D apply the payment?

ANSWER: D can only apply the P100,000 to the 5th obligation. The first 4 cannot be chosen by D for the following reasons:

- P120,000 payable on January 31, 20xx - the creditor cannot be compelled to accept partial payment.
- P100,000, 10% interest p.a., accrued interest as of June 30, 20xx, is P5,000, payable May 15, 20xx - the interest must be paid first, in this case, only P95,000 will be available to cover the principal, and again, the creditor cannot be compelled to accept partial payment
- P100,000 plus an undetermined amount of damages payable January 31, 20xx - the total amount of the obligation is not yet liquidated.

- P100,000 collectible on or before December 31, 20xx - The period is for the benefit of the Creditor and since the same has not yet arrived, the creditor cannot be compelled to accept payment.

If the debtor did not designate, to which debt shall payment apply? That which was chosen by the creditor as reflected in the receipt which is accepted by the debtor without protest. (Art. 1252, 2nd par.)

If debtor and creditor did not designate:

- a. If the debts are of different nature and burden - to that debt which is most onerous to the debtor;
- b. If the debts are of the same nature and burden - applied proportionately.

Payment by Cession or Assignment

Payment by Cession (akin to Corporate Liquidation in Financial Accounting) refers to a special type of payment where all the properties of the debtor are transferred to all his creditors for the latter to sell. The proceeds therefrom shall then be utilized to settle the obligations of the debtor to said creditors.

Kinds:

- a. Voluntary - Under Art. 1255, the debtor may cede or assign his property to his creditors in payment of his debts; extent of extinguishment is only up to the amount of the proceeds. (Art. 1255, Civil Code)
- b. Judicial - under the Financial Rehabilitation and Insolvency Act. Here, the court discharges the debtor of all his debts, and the obligations are extinguished.

Properties exempt from Execution: are generally not covered by cession. Except if the debtor waives such exemption.

Dation in payment vs. Cession:

Dation in payment	Cession or Assignment
Ownership of the thing is transferred to the creditor	No such transfer, only possession and administration are given to the creditors
Obligation may be totally extinguished if agreed upon by the parties or by their silence, they	Obligation is extinguished only insofar as the net proceeds (except:

Dation in payment	Cession or Assignment
consider the thing equivalent to the obligation.	otherwise stipulated or in judicial cession)
does not involve all of the creditors	involves all of the creditors
Involves a specific thing	Involves all the properties/assets of the debtor unless exempt from execution.
may be made even by a solvent debtor; merely involves a change of the object of the obligation by agreement of the parties and at the same time fulfilling the same voluntarily	supposes financial difficulty on the part of the debtor

How proceeds distributed to the creditors:

- a. Stipulation
- b. Preference of credits

4. Tender of Payment and Consignation

Tender of Payment is the manifestation made by the debtor to the creditor of his desire to comply with his obligation, with the offer of immediate performance. It is a PREPARATORY ACT to consignation and in itself DOES NOT extinguish the obligation.

Consignation shall be made by depositing the things due at the disposal of judicial authority, before whom the tender of payment shall be proved, in a proper case, and the announcement of the consignation in other cases.

The consignation having been made, the interested parties shall also be notified thereof. (Art. 1258, Civil Code)

Applies only to extinguish of obligation not to exercise a right: such that in a situation where a party would exercise his right of repurchase and the buyer refused to accept. The right to redeem is a RIGHT, not an obligation, therefore, there is no consignation that may be made. (Immaculata vs. Nazarro)

Requisites:

- a. There exists a valid debt that is due;

There is legal cause to consign. Either there has been a valid tender of payment and the creditor unjustly refuses, or even without tender of payment in any of the following cases:

- i. When the creditor is absent or unknown, or does not appear at the place of payment;
 - ii. When he is incapacitated to receive the payment at the time it is due;
 - iii. When, without just cause, he refuses to give a receipt;
 - iv. When two or more persons claim the same right to collect (this may be made through a special civil action of interpleader which is a suit pleaded between two parties to determine a matter of claim or right to property held by a third party);
 - v. When the title of the obligation has been lost. (Art. 1256, Civil Code)
- There is previous notice to consign to the persons having interest in the fulfillment of the obligation;

- a. The amount or thing due is deposited in court.
- b. After the consignation, the persons interested (creditor) were notified thereof. (2nd notice to the creditor of actual consignation to the court)

Expenses of the Consignation: shall be charged against the creditor. (Art. 1259, Civil Code)

Effectivity of the Consignation: happens either:

- a. Judicial declaration of propriety of consignation; or
- b. Creditor's acceptance.

Effects:

- a. The debtor is released in the same manner as if he had performed the obligation at the time of the consignation, because this produces the same effect as a valid payment.
- b. The accrual of interest on the obligation is suspended from the moment of consignation.
- c. The deterioration or loss of the thing or amount consigned occurring without fault of the debtor must be borne by the creditor, because the risks of the thing are transferred to the creditor from the moment of deposit or consignation to the court.
- d. Any increment or increase in value of the thing after the consignation inures to the benefit of the creditor.

Withdrawal of the Thing Deposited:

- a. **Withdrawal as a matter of right:** debtor withdraws before acceptance by the creditor or before judicial declaration of propriety of consignment. In this case, no extinguishment yet of the obligation. As such, no revival since the obligation has not been extinguished to begin with. (Art. 1260, Civil Code)
- b. **Withdrawal after acceptance or declaration:** only with the consent of the creditor. In this case,
 - i. The obligation is revived.
 - ii. The creditor shall lose every preference which he may have over the deposited thing.
 - iii. The other co-solidary debtors shall be released of their solidary obligation but not of their joint or respective shares in the obligation. It means that the solidary obligation of the other co-solidary debtors is converted into a joint obligation. However, the obligation will remain to be solidary on the part of the consigning debtor.
 - iv. The guarantors and sureties of the secured obligation shall be released from their obligation (Art. 1261, Civil Code)

LOSS OF THE THING DUE OR IMPOSSIBILITY OF PERFORMANCE

LOSS: means when the thing goes out of commerce, perishes or disappears in such a way that its existence is unknown or that it cannot be recovered.

If the loss is due to fortuitous event: generally, the debtor is not liable for damages if the thing is lost due to fortuitous event, **EXCEPTIONS:**

1. When the law so provides (such as when the debtor is already in delay or has promised to deliver the same thing to two or more persons who are not partners);
2. When by express stipulation, the debtor is made liable even if loss occurs through fortuitous events;
3. When the nature of the obligation requires the assumption of risk.
4. Obligations arising from a criminal offense, unless the creditor is in mora accipiendi.
5. Obligations to give a generic thing, except in cases of delimited generic.

Partial Loss: Partial loss may be determined by the court as so important to extinguish the obligation. In doing so, the intent of the parties must necessarily be considered. (Art. 1264, Civil Code)

The **test** is whether the parties would not have entered into the obligation without the thing that has been lost, then the obligation is extinguished.

Presumptions of fault: Whenever the thing is lost in the possession of the debtor, it shall be presumed that the loss was due to his fault, unless there is proof to the contrary.

This presumption does not apply in case of earthquake, flood, storm, or other natural calamity. (Art. 1265, Civil Code)

Remedies of Creditor: The obligation having been extinguished by the loss of the thing; the creditor shall have all the rights of action which the debtor may have against third persons by reason of the loss meaning there will be legal subrogation. It means that the creditor of the debtor may directly file an action reivindicatoria or an action for damages against the third person who caused the loss even without agreement or consent of the debtor and by virtue of legal subrogation.

IMPOSSIBILITY OF PERFORMANCE: Loss of the thing may likewise cover **impossibility of performance**, e.g., a debtor is obliged to paint a building and the building was destroyed (**physical impossibility**) or a law took effect making the obligation illegal (**legal impossibility**). (Art. 1266, Civil Code)

When: In impossibility, the law should take effect, or the impossibility happened **DURING the existence of the obligation** so as to extinguish it. If the law took effect or the impossibility arose **BEFORE** the existence of the obligation, the obligation is void.

Types of Impossibility:

1. As to nature: Physical (by reason of its nature); and Legal (through some subsequent law);
2. As to whom impossibility refers:
 - a. Objective - impossibility of the act or service itself without considering the person of the debtor;
 - b. Subjective - impossibility refers to the fact that the act or service can no longer be done by the debtor but may still be performed by another person

3. As to extent: Partial or Total;
4. As to period of impossibility: Permanent or Temporary.

Difficulty of prestation: When the service has become so difficult as to be manifestly beyond the contemplation of the parties, the obligor may also be released therefrom, in whole or in part. (Art. 1267, Civil Code)

Court action: when the performance of the obligation is difficult, it does not, on its own, warrant extinguishment of the obligation. However, when it has become so difficult beyond the contemplation of the parties, the debtor may go to court to release him from the obligation but not to modify the terms of the contract.

Right of creditor to go against third parties: The obligation having been extinguished by the loss of the thing, the creditor shall have all the rights of action which the debtor may have against third persons by reason of the loss.

CONDONATION OR REMISSION OF THE DEBT

Condonation/Remission is an act of liberality, by virtue of which, without receiving any equivalent, the creditor renounces the enforcement of an obligation, which is extinguished in its entirety or in that part or aspect of the same to which the remission refers.

Kinds of Condonation:

1. As to form:
 - a. Express – when made formally; should be in accordance with the forms of ordinary donations. (Art. 1270, Civil Code)
 - i. Movable property must comply with the form prescribed under Art. 748, i.e., if it is made orally, there must be simultaneous delivery, or if the value exceeds more than P5,000, it must be in writing.
 - ii. Immovable property must comply with the form prescribed under Art. 749, i.e., it must be in a public document, specifying the property donated.
 - iii. Acceptance, which must be in the same form as the donation.

ILLUSTRATION: D is indebted to C, his father, for P500,000. D later on paid P200,000 and on the receipt issued by C, he indicated that “the

balance of P300,000 is already condoned”. Later on, C died, and the other heirs of C sought the collection of the balance, but D claimed that such was already condoned by C. Is D correct?

ANSWER: No. There was no valid condonation. Condonation must conform to the formal requisites of a donation. While the condonation was in fact in writing, nothing in the problem would suggest that D also accepted the condonation in writing. Remember, that both the donation AND ACCEPTANCE must be in the same form to be valid.

- b. Implied – when it can be inferred from the acts of the parties:
 - i. delivery of a private document evidencing a credit, made voluntarily by the creditor to the debtor. (Art. 1271, Civil Code)
 - ii. Whenever the private document in which the debt appears is found in the possession of the debtor, it shall be presumed that the creditor delivered it voluntarily, unless the contrary is proved. (Art. 1272, Civil Code)
 - iii. As to pledge, if the thing pledged, after delivery to the creditor-pledgee, is found in the possession of the debtor, or a third person who owns the thing. (Art. 1274, Civil Code)

As to extent

- a. Total – when the whole obligation is extinguished.
- b. Partial – which may be as to the amount; as to the accessory obligation; or as to a certain amount of debt (in case of solidarity).

As to manner of remission

- a. Inter vivos – during the lifetime of the creditor.
- b. Mortis causa – will take effect upon death which must be done through a will.

Accessory Obligations: The renunciation of the principal debt shall extinguish the accessory obligations while the renunciation of the accessory obligation shall not extinguish the principal debt because accessory obligations follow the principal obligation but not the other way around.

CONFUSION OR MERGER OF RIGHTS

Merger/Confusion: The obligation is extinguished from the time the characters of creditor and debtor are merged in the same person. (Art. 1275, Civil Code)

Requisites:

- It must take place between the principal creditor and the principal debtor.
- The very same obligation must be involved, for if the debtor acquires rights from the creditor, but not the particular obligation in question, there will be no merger.
- The confusion or merger must be total or as regards the entire obligation. However, partial merger or confusion is not prohibited by law.

Examples:

- A Bank is indebted to B Bank. A Bank and B Bank entered into a merger agreement. In this case, the indebtedness of A Bank is extinguished due to the merger.
- H is indebted to his father T. When T dies and H is his only heir, the obligation becomes extinguished since H will inherit the credit. The characters of the creditor and debtor in the said obligation are merged in his person.

Guarantors: Merger which takes place in the person of the principal debtor or creditor benefits the guarantors. Confusion which takes place in the person of any of the latter does not extinguish the obligation. (Art. 1276, Civil Code) Which means, if the debt is assigned by the creditor to the guarantor, and the latter becomes the creditor of such obligation, there is no extinguishment, because the guarantor is NOT the principal debtor of the obligation.

Joint Obligors: Confusion does not extinguish a joint obligation except as regards the share corresponding to the creditor or debtor in whom the two characters concur. (Art. 1277, Civil Code)

In case of joint-solidary obligation (active or passive), confusion or merger extinguishes the obligation but only up to the extent of the joint share of confused party/ies.

In case of mixed (pure) solidary obligation, confusion or merger extinguishes the entire obligation

COMPENSATION

Compensation: a mode of extinguishment to the concurrent amount, the obligations of those persons who in their own right, are reciprocally creditors and debtors of each other. (Art. 1278, Civil Code)

Kinds of Compensation:

- As to effects/extent:
 - Total – when the two obligations are of the same amount;
 - Partial – when the amounts are not equal. This is total as to the debt with the lower amount. (Art. 1281, Civil Code)
 - As to origin/cause:
 - Legal – a compensation which takes place by operation of law because all the requisites provided by law are present for compensation by operation of law to occur;
 - Facultative – is a compensation which can be claimed by one of the parties who, however, has the right to object to it, such as when one of the obligations has a period for the benefit of one party alone and who renounces that period so as to make the obligations due.
- Example: when one of the obligations has a period for the benefit of one party alone and who renounces that period so as to make the obligation due
- Conventional – when the parties agree to compensate their mutual obligations even if some of the requisites are lacking. (Art. 1282, Civil Code)
 - Judicial – decreed by the court in a case where there is a counterclaim.

Requisites: (Art. 1279, Civil Code)

- Parties must be mutual principal debtors and creditors in their own right:**

They must be creditors in their own right – If one of the creditors is not a creditor in his own right, that is, his right to collect is because of a contract

of agency, compensation cannot take place between the debt of such agent to a party who is indebted to the principal. (*Sycip vs. CA*)

The two obligations can be simplified as follows:

- a. A (agent of P) is indebted to X
- b. X is indebted to P

2. **Both debts must be due**—does not necessitate that both debts are due AT THE SAME TIME; one debt may have been due earlier. The requirement is that at the time of the compensation, both debts are already due.

3. **Both debts must be liquidated and demandable** - Liquidated debts are those whose exact amount has already been determined. (*Asia Trust Development Bank vs. Tule, GR No. 183987, July 25, 2012*)

Compensation cannot take place where one's claim against the other is still the subject of court litigation. It is a requirement, for compensation to take place, that the amount involved be certain and liquidated. (*Solinap vs. del Rosario*)

4. **Debts must pertain to sums of money or if consumables, they must be of the same kind and quality**

5. **The claim must be clearly demandable, i.e., no controversy as to the claim.**

If the claim of one party is still contested or disputed, this requirement is not yet met. As such, this circumstance prevents legal compensation from taking place. (*International Corporate Bank Inc vs. IAC*)

Guarantors: may set up compensation as regards what the creditor may owe the principal debtor. (*Art. 1280, Civil Code*)

Rescissible or Voidable Debts: may be the subject of compensation before they are rescinded or avoided/annulled. (*Art. 1284, Civil Code*)

Assignment of credit: Even if the creditor already assigned his credit, the debtor may still invoke compensation as against the debts due to him if:

1. He had no knowledge of or did not consent to the assignment; or
2. If with knowledge or consent but reserved his right to the compensation. (*Art. 1285, Civil Code*)

ILLUSTRATION: 1st obligation: D to C; 2nd obligation C to D. C assigned his credit to A. So, the 1st obligation now is D to A. D can still set-up compensation as to the 2nd obligation (debt due to him), if he did not consent, or had no knowledge of the assignment, or reserved his right to do so.

When compensation may not be proper:

1. Depositum - as to the depository; (*Art. 1287, Civil Code*)
2. Bail - as to the bailee;
3. Support - as to the one giving support, **EXCEPT:** support in arrears and those contractual in nature; (*Art. 1287, Civil Code*)
4. Civil liability arising from a penal offense. (*Art. 1288, Civil Code*)

ILLUSTRATION: X deposited his jewelries with Y for a monthly fee of P2,000. In case X fails to pay, can Y keep the jewelries on the ground of compensation?

ANSWER: No. Legal compensation cannot validly take place on the part of the depository. Nevertheless, X can allow Y to keep the jewelries as payment of the unpaid monthly fees, since the prohibition applies only to the depository not the depositor.

ILLUSTRATION: D obtained a loan from C Bank where he also keeps his savings deposit account. Unable to pay, the Bank claimed compensation and offset the amount of the unpaid loan with D's savings deposit. Is C Bank correct?

ANSWER: Yes. A savings deposit account with a bank is in fact a simple loan or mutuum and legal compensation can validly take place since it is not really a "deposit" account where the Bank is a depository

ILLUSTRATION: C Jr. is indebted to C for P100,000. C Jr. later on sued C, his father, for legal support. The court decided in favor of C Jr. and held that C is liable for a monthly support of P10,000. Can C claim legal

KINDS OF PASSIVE NOVATION	Extent of reimbursement	Liability of Old Debtor in case of INSOLVENCY of new debtor
Expromision - without knowledge or against the will of the debtor (Art. 1293, Civil Code)	Beneficial Reimbursement	Old debtor is no longer liable. (Art. 1294, Civil Code)
Delegacion - new debtor is proposed by old debtor or substitution is with consent of the original debtor.	Full	Old debtor may still be liable if the insolvency was already existing and either of public knowledge or known to the debtor. (Art. 1295, Civil Code)
<p><i>Parties:</i> Delegante - the old debtor; Delegado - the new debtor Delegatario - the creditor.</p>		

Creditor's consent - in any case, the creditor's consent is necessary for there to be a novation in the person of the debtor. (Art. 1293, Civil Code)

ILLUSTRATION: LR, the lessor and LE, the lessee, entered into a lease contract where they agreed that LE will pay for the utilities. One night, LE left with unpaid electricity bills totaling P10,000. The electric company now collects the amount from LR who interposed the defense that LE was substituted as the debtor by virtue of their contractual stipulation. Is LR correct?

ANSWER: No. There can be no valid substitution without the consent of the creditor (electric company). Since nothing in the problem indicated that the electric company consented to the substitution, LR remained the debtor for the unpaid electric bills.

Objective or Real Novation

1. Change in the object
2. Change in the principal conditions of the obligation, which may either be:
 - a. Express - when so expressed in unequivocal terms;

b. Implied - the old and the new obligations are on every point incompatible with each other.

Implied novation requires clear and convincing proof of complete incompatibility between the two obligations. The law requires no specific form for an effective novation by implication.

The test is whether the two obligations can stand together. If they cannot, incompatibility arises, and the second obligation novates the first. If they can stand together, no incompatibility results and novation does not take place. (Millar vs. CA)

Accessory obligations: General Rule: extinguished as a consequence of novation.

Exception: insofar as *pour autrui* is concerned and the third person for whose benefit the obligation was constituted did not give his consent. (Art. 1296, Civil Code)

Conditional Obligations: If the original obligation was subject to a suspensive or resolutive condition, the new obligation shall be under the same condition, unless it is otherwise stipulated. (Art. 1299, Civil Code)

MULTIPLE CHOICE QUESTIONS

- This element of obligation is also known as the *vinculum juris* of the obligation:
 - Active subject
 - Passive subject
 - Efficient cause
 - Prestation
- Which of the following is a real obligation? ~~to give~~
 - An obligation to safekeep real property
 - An obligation to give a grand piano
 - An obligation to construct a building
 - An obligation not to marry for two (2) years
- It is defined as a juridical necessity to give, to do, or not to do.
 - Obligations
 - Contracts
 - Agreements
 - Covenants
- Which of the following obligations is compellable by judicial processes?
 - Civil obligation
 - Natural obligation
 - Moral obligation
 - Extinguished obligation
- In this kind of obligation, performance is left to the will of the debtor
 - Civil obligation
 - Natural obligation
 - Moral obligation
 - Extinguished obligation

- Jillian and Tricia entered into a written contract of loan on August 1, 2003, where Tricia borrowed P3 million from Jillian. With knowledge that the debt has prescribed, Tricia paid Jillian the P3 million plus interest on April 1, 2020. Tricia asked for your advice regarding the recovery of the amount that was paid. Can Tricia recover?
- Yes, Tricia can recover because an implied contract of deposit was constituted.
 - Yes, Tricia can recover pursuant to the principle of *solutio indebiti*.
 - No, Tricia can no longer recover because the debt is legally enforceable.
 - No, Tricia can no longer recover because Jillian has the right of retention.
- Which of the following is a negative obligation?
- An obligation not to sell a horse.
 - An obligation to give a cow.
 - An obligation to construct a house.
 - An obligation to enter into a contract of loan.
- Which of the following consists of a bilateral obligation?
- Obligations of parents under the Family Code
 - Obligations of parties in a contract of sale
 - Obligation of two co-owners to give a house under their co-ownership
 - Obligation of a tortfeasor to pay for damages caused in two installments
- Which of the following is not a source of obligation?
- Law ✓
 - Contracts ✓
 - Quasi-law
 - Quasi-contracts ✓

10. Statement 1: Obligations derived from law are not presumed. T
Statement 2: Obligations arising from contracts have the force of law between the contracting parties. T
- Only Statement 1 is true.
 - Only Statement 2 is true.
 - Both statements are true.
 - Both statements are not true.
11. It arises when there is voluntary management of the property or affairs of another without knowledge or consent of the latter.
- Solutio indebiti
 - Caso fortuito
 - Constitutum possessorium
 - Negotiorum gestio
12. Tzuyu left her home in Manila to go on a vacation in South Korea. While Tzuyu was in South Korea, she heard reports that a strong typhoon will be ravaging the Philippines. Tzuyu is worried that she left her home unattended. Tzuyu contacted her friend, Momo, to check the conditions of her house. Momo went to Tzuyu's residence and saw that Mina, Tzuyu's friendly neighbor, is already doing the necessary improvements to protect the house. Tzuyu contacted Mina and thanked her for the improvements that were introduced and asked if Mina can update her of the situation of her home from time to time. What is the juridical relation between Tzuyu and Mina?
- The quasi-contract of negotiorum gestio.
 - An implied contract of partnership.
 - A contract of agency.
 - There is no juridical relation between Tzuyu and Mina.
13. Statement 1: In a quasi-delict, there needs to be a pre-existing contractual relationship between the obligor and the obligee. F
Statement 2: Every person criminally liable is also civilly liable. T
- Only Statement 1 is true.
 - Only Statement 2 is true.
 - Both statements are true.
 - Both statements are not true.

14. Nayeon obliged herself to give the red Honda car with plate number TWC-222 to Sana. Which of the following statements is true?
- Nayeon can substitute another car even against Sana's will.
 - Nayeon can substitute another car only if Sana agrees.
 - Nayeon cannot substitute another car in any instance.
 - Nayeon will generally be liable to Sana if the car was lost through a fortuitous event.
15. Dahyun obliged herself to give an accounting book to Jeongyeon. Two days after, Dahyun bought an accounting book from the nearby bookstore with the intention to deliver the book to Jeongyeon the next day. However, a thief broke inside Dahyun's home that night and stole the accounting book. Is Dahyun's obligation extinguished?
- Yes, since the theft is a fortuitous event.
 - Yes, since the prestation is a specific thing.
 - No, since theft is not a fortuitous event.
 - No, since the prestation is a generic thing.
16. A debtor, in an obligation to give a specific thing, must take care of the thing with:
- The diligence of a father of a good family.
 - The diligence of a good father of a family.
 - The diligence of a father of a family.
 - The diligence of a good father of a good family.
17. This is defined as everything which is produced by a thing, or which is incorporated or attached thereto, excluding fruits:
- Accessions
 - Accessants
 - Accessories
 - Accessibles

18. In an obligation to give a specific thing:
- There is an obligation to deliver the fruits from the time the obligation to deliver arises.
 - there is an obligation to deliver the fruits from the time the specific thing should have actually been delivered
 - there is an obligation to deliver the fruits only if these pertain to natural fruits.
 - There is no obligation to deliver the fruits to the creditor.
19. The remedy of substitute performance is available to a creditor in an obligation to give:
- A specific thing
 - A generic thing
 - A specific or generic thing
 - Neither specific nor generic thing
20. Generally, which of the following is not a part of the duties of the debtor in an obligation to give a generic thing?
- To take care of the thing with the diligence of a good father of a family
 - To pay damages in case of breach
 - To deliver a thing of the quality intended by the parties
 - To deliver its accessories and accessories
21. If the obligation has been substantially performed in good faith, the obligor may:
- Not recover unless there had been a strict and complete fulfillment
 - Recover as though there had been a strict and complete fulfillment
 - Recover as though there had been a strict and complete fulfillment, less damages suffered by the obligee.
 - Be obligated to undo what has been done.
22. As a general rule, in order to put the debtor in delay, demand must be:
- Judicial
 - Extrajudicial
 - Either judicial or extrajudicial
 - Both judicial and extrajudicial
23. *Mora accipiendi* is:
- Delay on the part of the debtor
 - Delay on the part of the creditor
 - Mutual delay on both the debtor and creditor on separate unilateral obligations
 - Mutual delay on both the debtor and creditor on reciprocal obligations
24. Lalisa obliged herself to deliver to Jennie a wedding dress for her wedding day that is scheduled on May 9, 2020. However, on the day itself, Lalisa failed to deliver the wedding dress and instead delivered the dress two days after on May 11, 2020. Jennie sued Lalisa for damages for the legal delay in delivering the dress. Lalisa contended that there was no prior demand to put her in legal delay. Who is correct?
- Lalisa is correct. There must be a demand before Jennie can be put on delay.
 - Lalisa is correct. The fact that the wedding is scheduled is not a sufficient form of demand because demand must be judicial in nature.
 - Jennie is correct. Considering that time is of the essence, there need not be any demand to put Lalisa in delay.
 - Jennie is correct. The fact that the wedding is scheduled is a sufficient form of demand.
25. Any waiver for an action for future fraud is:
- Valid
 - Valid if agreed upon by both the debtor and the creditor
 - Voidable for it shows a vitiation of consent on the part of the party waiving
 - Void
26. Any waiver of past fraud is:
- Unenforceable
 - Valid if agreed upon by both the debtor and the creditor
 - Voidable for it shows a vitiation of consent on the part of the party waiving
 - Void

27. Jisoo borrowed P2 million from Rose for the construction of her new home. Jisoo and Rose agreed that the amount will be payable on December 31, 2021. However, due to an economic crisis brought by a pandemic, Rose asked Jisoo if she can already pay half of the loaned sum. Jisoo refused, contending that the amount, as agreed upon, is payable on December 31, 2021. Is Jisoo considered to already be in delay?

- No, because the demand made is oral.
- No, because the obligation is not yet demandable.
- Yes, because demand may be judicial or extrajudicial.
- Yes, because Rose's need is of the essence.

28. *Dolo causante* exists:

- During the time of perfection of the obligation
- During the performance of a pre-existing obligation
- During the restitution of the parties
- During the consummation of the obligation

29. This kind of fraud makes an obligation voidable.

- Dolo incidente*
- Dolo causante*
- Dolo incidente* or *dolo causante*
- Neither *dolo incidente* nor *dolo causante*

30. Statement 1: Generally, parties can stipulate a lower degree of diligence than the diligence of a good father of a family.

Statement 2: Future gross negligence may be waived.

- Only Statement 1 is true.
- Only Statement 2 is true.
- Both statements are true.
- Both statements are not true.

31. Irene obliged herself to pay Seulgi P500,000 if she passes the CPA Licensure Examination in October 2024. However, in September 2024, Irene inadvertently deposited P500,000 to Seulgi's account. Irene seeks to recover the amount paid. Can Irene recover?

- Yes, since the condition was not yet fulfilled
- No, instead an obligation on the part of Seulgi will arise to return the amounts paid if she does not pass the CPA Licensure Examination on October 2024
- No, but Seulgi will be entitled to keep the fruits
- Yes, since it has already become impossible for Seulgi to fulfill the obligation

32. Yeri obliged herself to deliver a parcel of land to Wendy on August 1, 2024, subject to the suspensive condition that Wendy will release a song. The parcel of land has a fair market value of P20,000,000 on August 1, 2024. On December 1, 2024, Wendy released a song. On the same day, the fair market value rose to P22,000,000. Yeri claims she is entitled to P2,000,000. Is Yeri correct?

- No. Because the object of the obligation is an indivisible thing.
- No. Since the land improved by its nature or by time, the improvement shall inure to Wendy.
- Yes. Since the land improved by its nature or by time, the improvement shall inure to Yeri.
- Yes. Because the object of the obligation is a divisible thing.

33. Statement 1: A suspensive condition shall be deemed fulfilled when the obligor voluntarily prevents its fulfillment.
Statement 2: The condition that some event will happen at a determinate time shall render the obligation effective from the moment the time indicated has elapsed.

- Only Statement 1 is true.
- Only Statement 2 is true.
- Both statements are true.
- Both statements are not true.

34. In an obligation between E and F, which of the following is a subject condition?
- A condition that F will marry G on or before September 1, 2020.
 - A condition that H will enter law school.
 - A condition that F will buy a car from E.
 - A condition that L will be elected as President of the Philippines and that M will be elected as Vice President.
35. Jimin obliged himself to give Jungkook P10,000,000 if Jungkook can own the planet Jupiter. Which of the following statements is true?
- The suspensive condition is impossible. Therefore, the obligation is void.
 - The suspensive condition is impossible. Therefore, the condition is void, but the obligation remains valid.
 - The suspensive condition is impossible. Therefore, Jimin is liable for damages.
 - The suspensive condition is impossible. Therefore, the obligation becomes immediately due and demandable without need of demand.
36. Due to his kindness, Chen obliged himself to give Baekhyun P100,000 when his friend dies. His friend has been reported to be terminally ill, and in order to appease Baekhyun's feelings, Chen decided to oblige himself. Which of the following statements best describe the obligation?
- The condition is void.
 - It is a valid obligation subject to a suspensive condition.
 - It is a valid obligation subject to a suspensive period.
 - The obligation is void.
37. An obligation wherein the debtor binds himself when his means permit him to do so is:
- A void obligation, since it is potestative on the part of one of the parties.
 - A valid obligation that is already due and demandable
 - An obligation subject to a suspensive condition
 - An obligation subject to a suspensive period
38. In which of the following instances does a debtor lose the benefit of the period?
- When the debtor becomes insolvent, and he gives a guaranty for the debt
 - When the creditor demands that a security be given to him, but the debtor refuses to do so,
 - When the debtor violates any undertaking, in consideration of which the creditor agreed to the period
 - When the debtor suffers civil interdiction
39. Which of the following statements is true?
- In an alternative obligation, there are two or more prestations, but only one is due; the others are considered substitutes.
 - In a facultative obligation, there is only one prestation due, but another may be rendered as a substitute.
 - In an alternative obligation, the choice belongs to the creditor as a general rule.
 - In a facultative obligation, the choice belongs to the creditor as a general rule.
40. A, B, and C issued a promissory note stating, "We promise to pay D and E P120,000 on September 30, 2020". On September 30, how much can D collect from A?
- P20,000
 - P30,000
 - P60,000
 - P120,000
41. Sehun obliged himself to deliver a 2015 phone and a charger to Kai. However, Sehun instead delivered the latest 2020 phone but without a charger. Kai accepted. Is the obligation extinguished?
- No. Kai cannot be compelled to accept a different prestation.
 - No. The subject of the obligation is a specific thing.
 - Yes. There was a novation.
 - Yes. Kai's acceptance constitutes estoppel.

42. Statement 1: If the debt produces interest, payment of the interest shall not be deemed to have been made until the principal has been covered. Statement 2: If no place for payment has been stipulated, payment must then be made at the residence of the debtor. ✓

- Only Statement 1 is true.
- Only Statement 2 is true.
- Both statements are true.
- Both statements are not true.

43. Payment to a third person is:

- Always void.
- Always valid.
- Valid only if it redounded to the benefit of the creditor. This is presumed, and the burden of proving that he has not benefited from the payment rests with the creditor.
- Valid only if it redounded to the benefit of the creditor. This is not presumed, and the burden of proving that the creditor has benefited from the payment rests with the debtor.

44. Which of the following is not a requisite for the rules on application of payments to apply?

- There is plurality of debts ✓
- Debts are owed to the same creditor and by the same debtor ✓
- All debts must be due ✓
- Payment made is sufficient to cover all debts.

45. AC owed Toni P6,000 payable on December 31, 2020, with interest at 4% per annum and P10,000 payable on January 31, 2021, with interest at 6% per annum. AC paid Toni P4,000 on February 14, 2021, and he told Toni that it shall be applied as a reduction to the debt due on December 31, 2020. Can AC do so?

- No. The January 31 debt is more onerous since it has a higher interest rate.
- No. The choice belongs to the creditor.
- Yes. The December 31 debt was the first to have become due.
- Yes. The choice belongs to the debtor.

46. Statement 1: E owed F P1,000,000. F, through his kindness, later told E that he need not pay the P1,000,000. Instead, E should just take care of F's farm for the rest of his life. E agreed. This extinguishes E's obligation to pay P1,000,000 by way of condonation. ✓

Statement 2: Condonation need not always be express but may be inferred from the conduct of the parties. ✓

- Only Statement 1 is true.
- Only Statement 2 is true.
- Both statements are true.
- Both statements are not true.

47. A, B, and C solidarily bound themselves to pay D P60,000 by way of a negotiable promissory note. Subsequently, D indorsed the note to E, who in turn indorsed the note to C. What is the effect of the indorsement to C?

- The obligation is totally extinguished without right of reimbursement on the part of C.
- The obligation is totally extinguished with right of reimbursement on the part of C.
- The obligation is partially extinguished as A and B still have to pay D.
- The obligation is partially extinguished as A and B still have to pay E.

48. Joferlyn obliged himself to pay Analyn P500,000 subject to the suspensive condition that Analyn will not leave the Philippines in ten (10) years. Subsequently, Joferlyn and Analyn novated the obligation, stating that, instead of P500,000, Joferlyn will pay Analyn P300,000 and give his car. Does the suspensive condition still apply?

- No. In novation, as a general rule, the condition is not carried over to the new obligation.
- No. In novation, the condition is not carried over to the new obligation unless specifically stipulated.
- Yes. In novation, as a general rule, the condition, whether suspensive or resolutive, is carried over to the new obligation.
- Yes. In novation, the condition is carried over to the new obligation only if the condition is suspensive.

49. Which of the following kinds of subrogation takes place by agreement of the parties?

- Legal subrogation
- Conventional subrogation
- Negotiated subrogation
- Correlative subrogation

50. Can legal subrogation exist without the debtor's knowledge?

- No.
- Yes, when a third person not interested in the obligation pays.
- Yes, when a third person pays with tacit approval of the debtor.
- Yes, when a creditor less preferred pays a creditor which is more preferred.

ANSWERS TO MULTIPLE CHOICE QUESTIONS

- | | |
|-------|-------|
| 1. C | 26. B |
| 2. B | 27. B |
| 3. A | 28. A |
| 4. A | 29. B |
| 5. B | 30. A |
| 6. D | 31. A |
| 7. A | 32. B |
| 8. B | 33. A |
| 9. C | 34. A |
| 10. C | 35. A |
| 11. D | 36. C |
| 12. C | 37. D |
| 13. B | 38. C |
| 14. B | 39. B |
| 15. D | 40. A |
| 16. B | 41. C |
| 17. A | 42. D |
| 18. A | 43. D |
| 19. B | 44. D |
| 20. D | 45. D |
| 21. C | 46. B |
| 22. C | 47. B |
| 23. B | 48. C |
| 24. C | 49. B |
| 25. D | 50. D |