1. DEFINITION

Article 1156. An obligation is a juridical necessity to give, to do or not to do.

JURIDICAL NECESSITY: Art. 1423 provides that obligations are either natural or civil. Art. 1156 provides the definition of civil obligations. Under Art. 1423, civil obligations give a right of action to compel their performance or fulfillment. In this sense, there is judicial necessity to perform the obligation because it can result in judicial or legal sanction.

2. KINDS OF OBLIGATIONS AS TO BASIS AND ENFORCEABILITY

Art. 1423. Obligations are civil or natural. Civil obligations give a right of action to compel their performance. 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. Some natural obligations are set forth in the following articles.

ILLUSTRATION: X is indebted to Y, but the debt already prescribed. Since the action already prescribed, the obligation is converted from civil to natural where X can no longer be compelled by court action to pay, only by his conscience. Note that what prescribed is the “action” and not the obligation. If still voluntarily fulfilled after the period has expired, the debtor can no longer demand the return of what has been delivered. (Art. 1428)

EXAMPLES OF NATURAL OBLIGATIONS:

a. 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)

b. 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)

c. 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he received by will or by the law of intestacy from the estate of the deceased, the payment is valid and cannot be rescinded by the payer.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)

3. ESSENTIAL ELEMENTS OF OBLIGATION

a. Active subject (creditor/oblige) – the person in whose favor the obligation is constituted or the one who can demand the performance of the obligation

b. Passive subject (debtor/obligor) – the person who is required to perform the obligation

c. Prestation – subject matter of the obligation – either to give, to do or not to do.

d. Vinculum Juris/Efficient Cause/Juridical Tie - the reason why the obligation exists which can be any of the 5 sources of obligations

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

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

Transmissibility of Obligation: all rights acquired in virtue of an obligation are transmissible, except:

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*)

   **Art. 1158.** Obligations derived from law are not presumed. Only those expressly determined in this Code or in special laws are demandable, and shall be regulated by the precepts of the law which establishes them; and as to what has not been foreseen, by the provisions of [Civil Code].

   The above article means that the obligation must be clearly set forth in the law.

   Examples of obligations arising from law are:
   
   a. Duty of support;
   b. Duty to pay taxes.

2. **CONTRACTS** (Obligations *ex contractu*)

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

   **Art. 1305.** 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.

   Once a contract is entered into, the parties are bound by its terms and cannot, without valid reason withdraw therefrom.

3. **QUASIO-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 QUASIO-CONTRACTS:**

   A. **NEGOTORIUM GESTIO** – 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 **tacitly authorized** by the owner. (Art. 2144)

   **ILLUSTRATION:** For his mental health, X left his fishpond and went to Europe for a 14-day vacation. Y seeing 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 negotorium gestio between X and Y?

   **ILLUSTRATION:** In fear of reprisals, X left his fishpond and went to Europe without any intention of returning. Y seeing 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 negotorium gestio between X and Y? and if yes, what will be the consequences of the same?

   B. **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:**
   
   1. There is no right to receive the thing delivered
   2. The thing was delivered through 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?

ILLUSTRATION 2: 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 C, aunt of the deceased, demanded reimbursement for the cost of burial.

Is there an obligation to reimburse on the part of C?

4. DELICT (Obligations ex maleficio or ex dicto)

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.

Revised Penal Code:

| Art. 100. Civil liability of a person guilty of felony. — Every person criminally liable for a felony is also civilly liable |
| 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. |

| Art. 104. What is included in civil liability. — The civil liability established in Articles 100, 101, 102, and 103 of this Code includes: |
| 1. Restitution; |
| 2. Reparation of the damage caused; |
| 3. Indemnification for consequential damages. |

Proof necessary:

a. Criminal liability – proof beyond reasonable doubt
b. Civil liability – preponderance of evidence

Acquittal of accused:

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

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

| Art. 2176. 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 and is governed by the provisions of this Chapter. |

Requisites:

a. There must be an act or omission;

b. There must be fault or negligence;

c. There must be damage caused;

d. There must be a direct relation of cause and effect between the act or omission and the damage;

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:

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

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.

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?

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)

KINDS OF CIVIL OBLIGATIONS

1. **AS TO PERFECTION AND EXTINGUISHMENT**

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.

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)

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

Kinds of Conditions

<table>
<thead>
<tr>
<th>as to when the obligation should be performed</th>
<th>suspensive</th>
<th>happening of which gives rise to the obligation</th>
</tr>
</thead>
<tbody>
<tr>
<td>resolutory</td>
<td>happening of which extinguishes the rights already existing</td>
<td></td>
</tr>
<tr>
<td>as to whom or where it depends</td>
<td>potestative</td>
<td>depends on the will of the party to the juridical relation</td>
</tr>
<tr>
<td>casual</td>
<td>depends on chance</td>
<td></td>
</tr>
<tr>
<td>mixed</td>
<td>partly depends on will of the party or partly on chance</td>
<td></td>
</tr>
<tr>
<td>as to capacity to be performed in parts</td>
<td>divisible</td>
<td>can be performed in parts</td>
</tr>
<tr>
<td>indivisible</td>
<td>cannot be performed in parts</td>
<td></td>
</tr>
<tr>
<td>as to number of obligations are to be performed when there are several of them</td>
<td>conjunctive</td>
<td>all must be performed</td>
</tr>
<tr>
<td>alternative</td>
<td>only one must be performed</td>
<td></td>
</tr>
</tbody>
</table>
as to nature  | positive | act       | negative | omission |
<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>as to how made known to the other party</td>
<td>express</td>
<td>stated</td>
<td>implied</td>
<td>merely inferred</td>
</tr>
<tr>
<td>as to whether the obligation can be fulfilled</td>
<td>possible</td>
<td>can be fulfilled</td>
<td>impossible</td>
<td>cannot be fulfilled either physically or legally</td>
</tr>
</tbody>
</table>

_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 suspensory 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)

**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)

**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.

Example: I will sell to you my land if you will not draw a circle with three sides. Here, the condition is actually always fulfilled.

Example 2: I will not sell drugs if you kill X.

**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.

**Except:**
1. _Fruits or interests_
   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, 2020, S promised to sell to B his house and lot if B passed the CPA Board Exam on October 2020. The house and lot was leased to L from Jan. 1, 2020 to October 2020. If B passed the CPALE, who shall be entitled to the rentals for the period Jan. 1, 2020 (when the obligation was constituted) to October 2020 (when the condition was fulfilled)?

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 the December 31, 2020.
If it is Jan. 1, 2021, the obligation is extinguished since the time has expired or if X dies before the deadline of December 31, 2020, 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:

<table>
<thead>
<tr>
<th></th>
<th>Without fault of the debtor</th>
<th>With the fault of the debtor</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>LOSS</strong></td>
<td>Obligation is extinguished</td>
<td>Debtor is liable for damages</td>
</tr>
<tr>
<td><strong>DETERIORATION</strong></td>
<td>Without the fault of the debtor</td>
<td>Impairment is borne by the creditor</td>
</tr>
<tr>
<td><strong>IMPROVEMENT</strong></td>
<td>By nature or time</td>
<td>Improvement will inure to the benefit of the creditor</td>
</tr>
<tr>
<td></td>
<td>At the expense of the debtor</td>
<td>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</td>
</tr>
</tbody>
</table>

The above rules likewise apply to obligations with a suspensive term/period.

**Effect of happening of a resolutory condition:** When the conditions have for their purpose the extinguishment of an obligation to give, the parties, upon the fulfillment of said conditions, shall return to each other what they have received.

**ILLUSTRATION:** X gave Y his car upon the condition that Y will not go to a casino. Y went to a casino. In this case, the obligation is extinguished and it will be as if there was obligation to begin with. Accordingly, Y is required to return to X the car together with any fruits received therefrom.

**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 resolutory 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**.

**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 ₱100,000 payable on or before December 31, 2020. Can D pay 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 ₱100,000 due on June 30, 2020. D became insolvent on March 31, 2020. 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 ₱100,000 from C payable on December 31, 2020 and promised to deliver his diamond ring as security therefor. However, D lost the diamond ring prior to delivery. In this case, the ₱100,000 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 ₱100,000 from C payable on December 31, 2020 and mortgaged his house as security. On June 30, 2020, the house was destroyed by a typhoon. The debt shall be due and demandable on June 30, 2020 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 ₱100,000 from C payable on December 31, 2020 upon the condition that D would not go to any casino. D went to a casino on March 31, 2020. The debt shall be demandable on March 31, 2020.

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.

2. AS TO PLURALITY OF PRESTATION

a. CONJUNCTIVE usually use the word “and”, e.g., deliver a cow, a car AND a 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 cow, a car OR a diamond ring. In this case, performance of the one of the prestations fulfill the obligation.

1. Where several objects are due, the fulfillment of one is sufficient.
2. Right of Choice: generally, it belongs to the debtor, except:
   a. When expressly granted to the creditor, i.e., it cannot be implied; or
   b. When the right of choice is given to a third party.
3. 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.
4. The choice, to take effect, must be communicated. The communication of the choice made is technically called “concentration.”
5. The choice cannot be part of one and part of another.
6. 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.
7. Effect of Loss:
Right of choice belongs to:

| DEBTOR | All things were lost | Fortuitous Event | Extinguished |
|        | Fault of debtor      | Value of the last + 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 | Extinguished |
|          | Fault of debtor      | Value of any + Damages |
|          | Some were lost       | Fortuitous Event | Demand from remaining |
|          | 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.

<table>
<thead>
<tr>
<th>Before substitution</th>
<th>What is lost is the</th>
<th>The obligation</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Principal</td>
<td>Extinguished</td>
</tr>
<tr>
<td></td>
<td>Substitute</td>
<td>Not extinguished</td>
</tr>
<tr>
<td>After substitution</td>
<td>Principal</td>
<td>Not extinguished</td>
</tr>
<tr>
<td></td>
<td>Substitute</td>
<td>Extinguished</td>
</tr>
</tbody>
</table>

3. **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.

Solidary obligation arises when the obligation:

1. **Expressly so states (stipulated)**: Terms which may indicate solidarity: Mancomunad 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

2. **When the law requires solidarity**;
   a. 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)
   b. 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)
   c. When there are two or more bailees to whom a thing is loaned in the same contract, they are liable solidarily. (Art. 1945)
   d. The responsibility of two or more payees, when there has been payment of what is not due, is solidary. (Art. 2157)
   e. The responsibility of two or more persons who are liable for quasi-delict is solidary. (Art. 2194)

3. **When the nature of the obligation requires solidity**

ENFORCEMENT OF SOLIDARY OBLIGATIONS:

1. 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.
2. 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:
   a. 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.
b. 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 anyone of them before the remission was effected.

c. The remission of the whole obligation, obtained by one of the solidary debtors, does not entitle him to reimbursement from his co-debtors.

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

3. 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.

Examples of Total Defenses:
   a. Payment by another co-debtor, as to a subsequent demand of a creditor;
   b. If the contract is void;
   c. 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.

4. 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.

5. 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.

6. 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.

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 do 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).

7. 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.

8. 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.

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:
1. 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;
2. 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;
3. 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;
4. 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:

<table>
<thead>
<tr>
<th></th>
<th>X</th>
<th>Y</th>
</tr>
</thead>
<tbody>
<tr>
<td>A is liable</td>
<td>P1,000</td>
<td>X</td>
</tr>
<tr>
<td>A is liable</td>
<td>P1,000</td>
<td>Y</td>
</tr>
<tr>
<td>B is liable</td>
<td>P1,000</td>
<td>X</td>
</tr>
<tr>
<td>B is liable</td>
<td>P1,000</td>
<td>Y</td>
</tr>
<tr>
<td>C is liable</td>
<td>P1,000</td>
<td>X</td>
</tr>
</tbody>
</table>

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 New 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 shall he give payment.

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

4. AS TO PERFORMANCE OF PRESTATION

Indiscretion does not necessarily connote solidarity. 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.
Obligations deemed indivisible:
1. Obligation to give definite things
2. Those not susceptible of partial performance
3. If capable of partial performance but the law or the intention of the parties treats it as indivisible.

Obligations deemed divisible:
1. The object of the obligation is the execution of a certain number of days of work
2. When the object is the accomplishment of work by metrical units
3. When the purpose of the obligation is to pay a certain amount in installments
4. When the object of the obligation is the accomplishment of work susceptible of partial performance.

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.

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.

ILLUSTRATION: A and B are jointly liable to X for the delivery of a particular TV set worth P10,000.
1. Here, the obligation is indivisible, since there can be no partial delivery of a TV set.
2. But the obligations of A and B are joint.
3. As such, to require compliance, X must proceed against ALL debtors, and demand must be made against all of them.
4. If the parties are not able to comply due to insolvency or fault of one, the obligation is converted into a monetary obligation.
5. 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.

5. 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:

a. If there is stipulation to the contrary;

b. If the debtor refuses to pay the penalty;

c. If the debtor is guilty of fraud in the fulfillment of the obligation.

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.

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

a. The principal obligation has been partly or irregularly complied with.

b. The penalty same is iniquitous or unconscionable.

6. 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 |

NATURE AND EFFECT OF OBLIGATIONS

Concurrent Obligations in Obligations to Give a Determinate Thing: To deliver the thing, which may be either actual or constructive.

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.

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.

ILLUSTRATION: D obliged himself to deliver to C a parcel of land with fruit-bearing trees on April 15, 2020. If the trees bore fruit on April 15, 2020, 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.

**Kinds of Fruits:**

a. Natural – spontaneous product of the soil, young and other products of animals

b. Industrial – those derived from human intervention, cultivation or labor

c. Civil – those derived from the juridical relation of parties.

3. To deliver all **accessions and accessories**, even though they may not have been mentioned.

**Accessories** – those joined to or included with the principal for the latter’s better use, perfection or enjoyment. Example: keys to a house.

**Accessions** – additions or improvements upon a thing which may include an alluvium and whatever is built, planted or sown on a parcel of land. Example: building constructed on land.

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 – specific or substitute performance. The creditor can have another person to have such kind of thing be delivered at the cost of the debtor plus damages.
Obligations to do: substitute performance only, since forcing the obligor to comply would violate the constitutional prohibition against involuntary servitude.

Obligations not to do: and the obligor does it, the creditor may have it undone at the expense of the debtor.

RESCISSION AS A REMEDY: TWO KINDS:
1. Rescission in reciprocal obligations, which should’ve been properly termed as “resolution”, is a primary remedy where the cause of action is substantial or fundamental breach or non-compliance.
2. Rescission under Art. 1301/1303 in rescissible contracts is a remedy of last resort where the cause would normally be lesion or economic injury to a party.

Damages; KINDS (MENTAL):
1. Moral – for mental and physical anguish
2. Exemplary – corrective or to set an example
3. Nominal – to vindicate a right when no other kind of damages may be recovered
4. Temperate – when the exact amount of damages can not be determined
5. Actual – actual losses incurred. This is the only type of damage that would require proof.

SPECIFIC CIRCUMSTANCES AFFECTING OBLIGATIONS IN GENERAL

Art. 1170. 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.

a. FRAUD

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)

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

Kinds of Fraud:
1. Dolo causante – or fraud in obtaining consent, is applicable only to contracts where consent is necessary and thus affects the validity of the contract, making it voidable.

   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 who’s consent was obtained through fraud.

   Example: material misrepresentations made in an application for insurance.

2. Dolo incidente – or 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. Remedy is damages.

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

b. NEGLIGENCE

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.

Degree of care required:
1. As a rule
   a. That required by law: e.g., a common carrier is required to exercise extraordinary care; or
   b. That agreed upon by the parties.
2. In the absence of the two above, diligence of a good father of a family.

Kinds of Negligence as to SOURCE:
1. Culpa Contractual – contractual negligence – or that which results in a breach of contract.

ILLUSTRATION: A passenger of a jeepney is hurt because of the driver’s negligence. Here, there is 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.

2. 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.

3. 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 who is considered subsidiarily liable if the driver is insolvent. Here, the defense of diligence in the selection and supervision of the drive is not available.

Negligence on the part of the supposed creditor:
1. 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.

2. 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 driver of a car, who by all right, was moving since the traffic light as to him was green. He re, 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.

c. DELAY

Kinds of Delay:
1. Mora Solvendi – delay on the part of the debtor, which may either be:
   a. Mora solvendi ex re: in real obligations
   b. Mora solvendi ex persona: in personal obligations
2. Mora Accipieni – delay on the part of the creditor;
3. Compensatio Morae – delay on the part of both parties.

WHEN CONSIDERED IN DEFAULT: General Rule: upon demand, which may be judicial or extra-judicial.

Exceptions:
1. 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
2. When the law so declares – e.g., delivery of a partner’s share in the partnership
3. 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
4. When demand would be **useless** – e.g., when the debtor already transferred the thing to another; or had it destroyed or hidden.

5. In **reciprocal obligations**, where the respective obligations must be performed simultaneously, and one party was not ready

**d. ANY OTHER MANNER OF CONTRAVENTION (VIOLATIO)**

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)*

**ILLUSTRATION:** X leased a house to Y. It turns out that the true owner of the house is A and he wants to occupy the house. Here, X can be liable for breach of contract because he failed to maintain Y in peaceful possession of the leased premises.

**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 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 personal shall be responsible for those events which could not be foresee, or which, though foreseen, were inevitable.

**Exceptions:**

1. Declared by stipulation;

2. When the nature of the obligation requires the assumption of risk: e.g., insurance contracts.

3. Expressly specified by law: examples:

   a. A possessor in bad faith. *(Art. 552)*

   b. 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)*

   c. The officious manager may be liable for any fortuitous event under Art. 2147.

4. When negligence, delay or fraud *concurred* with the fortuitous event.

**MODES OF EXTINGUISHMENT OF OBLIGATIONS**

Art. 1231. Obligations are extinguished:

(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:

a. Annulment

b. Rescission

c. Fulfillment of a resolutory condition

d. Prescription
PAYMENT OR PERFORMANCE

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

a. Provisions as to the PAYOR

Payment made by a third person:

<table>
<thead>
<tr>
<th>With consent of the debtor/With interest in the fulfillment of the obligation</th>
<th>Without knowledge/consent of the debtor</th>
</tr>
</thead>
<tbody>
<tr>
<td>Compel the creditor to accept payment</td>
<td>Yes</td>
</tr>
<tr>
<td>Subrogation to the rights of the creditor</td>
<td>Yes</td>
</tr>
<tr>
<td>Amount of reimbursement</td>
<td>Full Reimbursement</td>
</tr>
<tr>
<td></td>
<td>Beneficial Reimbursement</td>
</tr>
</tbody>
</table>

Person who has interest in the fulfillment of the obligation: include those subsidiarily liable such as guarantors and co-debtor (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.

What will be the consequences of such offer to pay?

ILLUSTRATION 2: 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.

What will be the consequences of such offer to pay?

If 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 extinguished.

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.

b. Provisions as to the PAYEE

Payment may be made to:

1. Person in whose favour the obligation has been constituted – not necessarily a party to the constitution of the obligation.
2. His successor in interest – who may not be creditors at the time of constitution, but may be creditors at the time of fulfilment.
3. Any person authorized to receive it – agents are creditors because they have the right to collect, but not in their own right. (This is relevant as to Compensation as a mode of extinguishing obligation)
4. Third party – if it redounds to the benefit of the creditor.

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

What are the consequences of such payment?
The benefit to the creditor need not be proven in the following cases:
a. after the payment, the third person acquires the creditor’s rights;
  (Art. 1241)
b. the creditor ratifies the payment to the third person;
c. by the creditor’s conduct, the debtor has been led to believe that the third person had authority to receive the payment.
  (Art. 1242)
d. if the third party is in possession of the credit.

ILLUSTRATION: if in our earlier illustration,
a. 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.
b. 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.
c. 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.
d. 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.

ILLUSTRATION: X is indebted to A for P100,000. A became insane when X paid the P100,000.
a. If after a while the money was not used by A, the payment is considered valid since A kept the money.
b. 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.

c. 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.

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.

Obligations to do or not to do: an act or forbearance cannot be substituted by another act or forbearance against the obligee’s will.

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:
  1. P1 coins and above - shall be legal tender in amounts not exceeding P1,000;
  2. Coins below P1 – legal tender not exceeding 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:
  1. At the time the check or other mercantile documents have been encashed;
  2. Its value becomes impaired.

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.

d. Place of payment

1. Payment shall be made in the place designated in the obligation.
2. 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.
3. In any other case the place of payment shall be the domicile of the debtor.
4. 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

**Dation in Payment**

*Dation in payment* is the delivery or transmission of ownership of a thing by the debtor to the creditor as an accepted equivalent of the performance of the obligation.

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

**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.

**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**:
1. There is only one debtor;
2. There are several debts;
3. The debts are of the same kind;
4. There is only one and the same creditor.

**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**:
1. Creditor cannot be compelled to accept partial payment. *(Art. 1248);*
2. Debtor cannot apply payment to principal if interest has not been paid. *(Art. 1253)*
3. The debt must be liquidated, except when the parties agree otherwise;
4. Cannot be made when the period has not arrived and such period was constituted in favour of the creditor, except with the consent of the creditor *(Art. 1252);*
5. When there is agreement as to which debt must be paid first.

**ILLUSTRATION**: D is indebted to C, as follows:
1. P120,000 payable on January 31, 2020
2. P100,000, 10% interest p.a., accrued interest as of June 30, 2020 is P5,000, payable May 15, 2020
3. P100,000 plus an undetermined amount of damages payable January 31, 2020
4. P100,000 collectible on or before December 31, 2020.
5. P100,000 payable on February 28, 2020

On June 30, 2020, D offered to pay P100,000. On which debt can D apply the 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**: 

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1. If the debts are of different nature and burden – to that debt which is most onerous to the debtor;
2. If the debts are of the same nature and burden – applied proportionately.

**Payment by Cession or Assignment**

Cession is when the debtor delivers to all his creditors all his properties for the purpose of selling and applying the proceeds to settle his obligations to them.

**Kinds:**
1. 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 upto the amount of the proceeds.

Advantages of judicial cession is that the court discharges the debtor of 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:**

<table>
<thead>
<tr>
<th>Dation in payment</th>
<th>Cession or Assignment</th>
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</thead>
<tbody>
<tr>
<td>both are substitute of performance of an obligation</td>
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</tr>
<tr>
<td>Art 1245</td>
<td>Art 1255</td>
</tr>
<tr>
<td>Ownership of the thing is transferred to the creditor</td>
<td>No such transfer</td>
</tr>
<tr>
<td>Obligation may be totally extinguished if agreed upon by the parties or by their silence, consider the thing equivalent to the obligation.</td>
<td>Obligation is extinguished only insofar as the net proceeds (except: otherwise stipulated)</td>
</tr>
<tr>
<td>does not involve plurality of creditors</td>
<td>involves plurality of creditors</td>
</tr>
<tr>
<td>Involves a specific thing</td>
<td>Involves all the properties of the debtor unless exempt from execution.</td>
</tr>
<tr>
<td>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</td>
<td>supposes financial difficulty on the part of the debtor</td>
</tr>
</tbody>
</table>

**How proceeds distributed to the creditors:**
1. Stipulation;
2. Preference of credit.

**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 is the deposit of the object of the obligation in a competent court in accordance with rules prescribed by law, AFTER the tender of payment has been refused or because of circumstances which render direct payment to the creditor impossible. It extinguishes the obligation.

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 required. *(Immaculata vs. Navarro)*

**Requisites:**
1. There exists a valid debt that is due;
2. There is legal cause to consign, that is there has been a valid tender of payment and the creditor unjustly refuses, or even without tender of payment in the following cases:
   a. When the creditor is absent or unknown, or does not appear at the place of payment;
b. When he is incapacitated to receive the payment at the time it is due;
c. When, without just cause, he refuses to give a receipt;
d. When two or more persons claim the same right to collect;
e. When the title of the obligation has been lost.

3. There is previous notice to consign to the persons having interest in the fulfilment of the obligation;
4. The amount or thing due is deposited in court.

Withdrawal of the Thing Deposited:

Withdrawal as a matter of right: debtor withdraws before acceptance by the creditor or before judicial declaration of propriety of consignation. In this case, no extinguishment yet of the obligation. As such, no revival since the obligation has not been extinguished to begin with.

Withdrawal after acceptance or declaration: only with the consent of the creditor. In this case, the obligation is revived. As such, creditor can no longer run after the guarantor, unless the latter consented. This is because the obligation has been extinguished. The revival will not revive the guaranty.

**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;
2. When stipulation so provides;
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 limited generic.

Malfunction of the break system – is not a fortuitous event since this could’ve been prevented by a regular maintenance of the vehicle.

Robbery and Theft: Robbery and Theft: a pawnshop business cannot be exempt from liability on the ground of fortuitous event of robbery if there was negligence on its part.

Partial Loss: Partial loss may be determined by the court as so important to extinguish the obligation.

In doing so, intent of the parties must necessarily be considered. E.g., A promised to deliver a cellphone with its casing. The cellphone was stolen but A managed to save the casing. Would A still be liable to deliver the casing? Yes, if the primary consideration of the creditor was to obtain the casing.

The test is whether the parties would not have entered into the obligation without the thing that have 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.

**Impotssibility 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).

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.

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.

Gratuitous: If not gratuitous, it will be considered:
1. Dation in payment – when the creditor receives a thing different from that stipulated;
2. Novation – when the subject or principal conditions of the obligation should be changed;
3. Compromise – when the matter renounced is in litigation or dispute and in exchange of some concession which the creditor receives.

Kinds of Condonation:
1. As to form:
   a. Express – when made formally; should be in accordance with the forms of ordinary donations.
      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.
   b. Implied – when it can be inferred from the acts of the parties:
      i. delivery of the promissory note to the debtor or the voluntary destruction or
      ii. cancellation of the evidence of credit by the creditor with intent to renounce the right.
      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.

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?

2. 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).
3. 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 in done through a will.

**CONFUSION OR MERGER OF RIGHTS**

**Merger/Confusion:** the meeting in one person of the qualities of the creditor and debtor with respect to the same obligation.

**Requisites:**
   a. Must take place between the credit and the principal debtor;
   b. Must involve the very same obligation;
   c. Must be total.

**Examples:**
   a. PNB is indebted to Allied. PNB and Allied Bank entered into a merger agreement. In this case, the indebtedness of PNB is extinguished due to the merger.
   b. 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. 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 he is NOT the principal debtor of the 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.

**Kinds of Compensation:**
1. As to effects/extent:
   a. Total – when the two obligations are of the same amount;
   b. Partial – when the amounts are not equal. This is total as to the debt with lower amount.

2. As to origin/cause:
   a. Legal – takes effect by operation of law because all the requisites are present;
   b. Facultative – can be claimed by one of the parties who, however, has the right to object to it.

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
   c. Conventional – when the parties agree to compensate their mutual obligations even if some of the requisite are lacking.
   d. Judicial – decreed by the court in a case where there is a counterclaim.

**Requisites:**

<table>
<thead>
<tr>
<th>Art. 1279. In order that compensation may be proper, it is necessary:</th>
</tr>
</thead>
<tbody>
<tr>
<td>(1) That each one of the obligors be <strong>bound principally</strong>, and that he be at the same time a <strong>principal creditor</strong> of the other;</td>
</tr>
<tr>
<td>(2) That both debts consist in a <strong>sum of money</strong>, or if the things due are <strong>consumable</strong>, they be of the same kind, and also of the same quality if the latter has been stated;</td>
</tr>
<tr>
<td>(3) That the two debts be <strong>due</strong>;</td>
</tr>
<tr>
<td>(4) That they be <strong>liquidated and demandable</strong>;</td>
</tr>
<tr>
<td>(5) That over <strong>neither of them there be any retention or controversy</strong>, commenced by third persons and communicated in due time to the debtor.</td>
</tr>
</tbody>
</table>
Requisites:
1. 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. Tuble, 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.

Rescissible or Voidable Debts: may be the subject of compensation before they are rescinded or avoided/annulled.

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.

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.

When compensation may not be proper:
1. Depositum – as to the depositary;
2. Bail – as to the bailee;
3. Support – as to the one giving support, EXCEPT: support in arrears and those contractual in nature;
4. Civil liability arising from a penal offense.

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?

ILLUSTRATION2: 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?

ILLUSTRATION3: 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 compensation and not pay for 10 months on the ground that C Jr. is indebted to him for P100,000?

Several debts susceptible of compensation: the rules on the application of payments shall apply to the order of compensation.
Legal compensation: takes effect by operation of law, and extinguishes both debts to the concurrent amount, even though the creditors and debtors are not aware of the compensation.

NOVATION

Requisites:
1. Previous valid obligation – if the original obligation is void, the novation is likewise void. But if it is voidable, novation is valid except when annulment has been claimed.
2. Agreement of all parties to a new contract
3. Extinguishment of old obligation
4. Validity of the new obligation - If the new obligation is void, the original one shall subsist, unless the parties intended that the former relation should be extinguished in any event.

Kinds of Novation:
1. As to nature:
   a. Subjective/Personal
   b. Objective/Real
   c. Mixed
2. As to form:
   a. Express;
   b. Implied
3. As to extent:
   a. Total;
   b. Partial.

Subjective Novation: changing the subject:
1. Active (SUBROGATION) – if a third person is subrogated to the rights of the creditor;
   a. By agreement or express – which requires the consent of the original parties and the third person to be subrogated.
   b. By law or implied – Art. 1302: It is presumed that there is legal subrogation:
      i. When a creditor pays another creditor who is preferred, even without the debtor's knowledge;
      ii. When a third person, not interested in the obligation, pays with the express or tacit approval of the debtor;
      iii. When, even without the knowledge of the debtor, a person interested in the fulfillment of the obligation pays, without prejudice to the effects of confusion as to the latter's share

Effects of subrogation: Subrogation transfers to the persons subrogated the credit with all the rights thereto appertaining, either against the debtor or against third person, be they guarantors or possessors of mortgages, subject to stipulation in a conventional subrogation.

Preference of original creditor: A creditor, to whom partial payment has been made, may exercise his right for the remainder, and he shall be preferred to the person who has been subrogated in his place in virtue of the partial payment of the same credit.

ILLUSTRATION: D is indebted to C for P500,000. X, a third party, paid P250,000 with the consent of D. In the event that D became insolvent and only has P250,000, who shall be entitled thereto?

2. Passive (SUBSTITUTION) – if a third person is substituted to the person of the debtor. In this case, it should be clear to both parties that the new debtor is in lieu of the old debtor.

<table>
<thead>
<tr>
<th>KINDS OF PASSIVE NOVATION</th>
<th>Extent of reimbursement</th>
<th>Liability of Old Debtor in case of INSOLVENCY of new debtor</th>
</tr>
</thead>
<tbody>
<tr>
<td>Exproision - without knowledge or consent of the original debtor</td>
<td>Beneficial Reimbursement</td>
<td>Old debtor is no longer liable</td>
</tr>
<tr>
<td>Decelgacion – with consent of the original debtor</td>
<td>Full</td>
<td>Old debtor may still be liable if the insolvency was already existing and of public knowledge, or known to the debtor</td>
</tr>
</tbody>
</table>

Parties:
Delegante – the old debtor; Delegado – the new debtor; Delegatorio – the creditor.

**Creditor's consent** – in any case, the creditor's consent is necessary for there to be a novation in the person of the debtor as provided under Art. 1293.

**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 totalling 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?

**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 be 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 atui* is concerned and the third person for whose benefit the obligation was constituted did not give his consent.

**Conditional Obligations**: If the original obligation was subject to a suspensive or resolutory condition, the new obligation shall be under the same condition, unless it is otherwise stipulated.

--- END OF HANDOUTS ---