

CIVIL LAW (OBLIGATIONS AND CONTRACTS)
MEMORY AID
ATENEO CENTRAL BAR OPERATIONS 2001

PART I - OBLIGATION - An obligation is a juridical necessity to give, to do or not to do

ELEMENTS:

1. Active subject (obligee/creditor) – the one in whose favor the obligation is constituted
2. Passive subject (obligor/debtor) – the one who has the duty of giving, doing or not doing
3. Object – prestation; the conduct which has to be observed by the debtor/obligor
4. Vinculum Juris – juridical/legal tie
5. Causa (causa debendi/causa obligationes) - why obligation exists

Requisites of Object:

- a. licit - if illicit, it is void
- b. possible - if impossible, it is void
- c. determinate or determinable - or else, void
- d. pecuniary value

SOURCES OF OBLIGATION:

1. **LAW (OBLIGATION EX LEGE)** - Must be expressly or impliedly set forth and cannot be presumed
2. **CONTRACT (OBLIGATION EX CONTRACTU)** - Must be complied with in good faith because it is the “law” between parties; neither party may unilaterally evade his obligation in the contract, unless:
 - a) contract authorizes it
 - b) other party assents

Parties may freely enter into any stipulations, provided they are not contrary to law, morals, good customs, public order or public policy

3. **QUASI-CONTRACT (OBLIGATION EX QUASI-CONTRACTU)** - That juridical relation resulting from a lawful, voluntary and unilateral act, and which has for its purpose, the payment of indemnity to the end that no one shall be unjustly enriched or benefited at the expense of another

2 kinds:

- a. **Negotiorum gestio** - unauthorized management; This takes place when a person voluntarily takes charge of another's abandoned business or property without the owner's authority
- b. **Solutio indebiti** - undue payment ; This takes place when something is received when there is no right to demand it, and it was unduly delivered thru mistake

4. **DELICTS (OBLIGATION EX MALEFICIO OR EX DELICTO)**

Governing rules:

1. Pertinent provisions of the RPC and other penal laws subject to Art 2177 Civil Code
 - Art 100, RPC – Every person criminally liable for a felony is also civilly liable
2. Chapter 2, Preliminary title, on Human Relations (Civil Code)
3. Title 18 of Book IV of the Civil Code – on damages

What civil liability arising from a crime includes:

- a. restitution
- b. reparation of damage caused
- c. indemnity for consequential damages

Effect of acquittal in criminal case:

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- when acquittal is due to reasonable doubt – no civil liability
- when acquittal is due to exempting circumstances – there is civil liability
- when there is preponderance of evidence – there is civil liability

5. **QUASI-DELICT/TORTS (OBLIGATION EX QUASI-DELICTO or EX QUASI MALEFICIO)** - It is a fault or act of negligence (or omission of care) which causes damage to another, there being no pre-existing contractual relations between the parties

Elements:

- a) There must be fault or negligence attributable to the person charged
- b) There must be damage or injury
- c) There must be a direct relation of cause and effect between the fault or negligence on the one hand and the damage or injury on the other hand (proximate cause)

Note:

- *The SC in Sagrada v. Naccoco implied that the sources of obligation in Art 1157 is exclusive. Many commentators believe, however that it should not be. At present, there is one more possible source of obligations - PUBLIC OFFER (Public Offer is in fact a source of obligation in the German Civil Code)*

EFFECTS OF OBLIGATION

- 1. Obligation to give - obligation to deliver the thing agreed upon
- 2. Obligation to do/not to do - obligation to do/not to do the service agreed upon

ACCESSORY OBLIGATIONS:

- 1. **Exercise diligence / Preserve the thing**
 - standard of care: that of a good father of a family – unless the law or stipulation requires another standard of care
- 2. **Delivery of fruits**
 - When does the right begin to exist : from the time to deliver arises
 - a) when there is no term/condition – from the perfection of the contract
 - b) when there is a term/condition – from the moment the term or condition arises
- 3. **Delivery of accessories & accessions (obligation to deliver determinate thing, even if the stipulation does not mention delivery of accessories & accessions)**
 - Accessories - those joined to or included with the principal for the latter's better use, perfection or enjoyment
 - Accessions – additions to or improvements upon a thing
 - When does right to fruits arise? – from the time the obligation to deliver arises
 - a) Conditional – from the moment the condition happens
 - b) With a term/period – upon the expiration of the term/period
 - c) Simple – from the perfection of the contract

FAILURE TO COMPLY WITH PERFORMANCE/REMEDIES:

3 kinds of Performance:

- 1. **SPECIFIC PERFORMANCE** - performance of the prestation itself
- 2. **SUBSTITUTE PERFORMANCE** - someone else performs or something else is performed at the expense of debtor
- 3. **EQUIVALENT PERFORMANCE** - damages

Remedies	Obligation to give (Real Obligation)		Obligations to do (Personal Obligation)	
	Specific	generic	To do	Not to do

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SPECIFIC PERFORMANCE	x	x	x	undo the things already done
EQUIVALENT PERFORMANCE	x	x	Can only be demanded if obligation is not very personal	x
SUBSTITUTE PERFORMANCE		x	x	Undo the things already done at debtor's expense
RESCISSION/CANCELLATION	x	x	x	

IRREGULARITY OF PERFORMANCE/BREACH

A. CAUSES ATTRIBUTABLE TO DEBTOR

1. Contravention of tenor

2. Delay/ Mora - Non performance with respect to time

Mora solvendi – default on the part of the debtor; 2 kinds:

- (1) Mora Solvendi Ex re – default in real obligations
- (2) Mora Solvendi Ex persona – default in personal obligations

Elements:

- (1) The obligation must be due, enforceable and already liquidated or determinate in amount
- (2) There must be non-performance
- (3) There must be a demand, unless demand is not required

When demand is not necessary:

- (1) When law declares
- (2) When obligation expressly declares
- (3) When designation of time of delivery or rendering the service was a controlling motive
- (4) When demand would be useless as when debtor has rendered it beyond his powers to perform

Effects:

- a. if determinate thing - debtor bears risk of loss (even when there is fortuitous event)
- b. debtor liable for damages/interest
- c. resolution (art 1170, in proper cases)

3. Fraud / Dolo – Voluntary execution of a wrongful act or willful omission, knowing and intending the effects which naturally and necessarily arise from such act or omission

- a. Causante (causal) - makes contract voidable
- b. incidente – (incidental) - fraud in performance of obligation; does not affect validity of obligations

Remedies of Person in fraud under obligations are:

- a. insist on specific performance (art 1233)
- b. resolve contract (art 1191)
- c. claim damages, in either case

4. Negligence /Culpa - absence of due diligence

Elements:

- a) Omission of diligence required
- b) Diligence required – per nature of obligation, circumstances of persons, time and place

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FRAUD DISTINGUISHED FROM NEGLIGENCE

FRAUD	NEGLIGENCE
There is deliberate intention to cause damage.	There is no deliberate intention to cause damage.
Liability cannot be mitigated.	Liability may be mitigated.
Waiver for future fraud is void.	Waiver for future negligence may be allowed in certain cases: a) gross – can never be excused in advance; against public policy b) simple – may be excused in certain cases

B. CAUSES NOT ATTRIBUTABLE TO DEBTOR

1. Delay/ Mora - non fulfillment with respect to time

Mora accipiendi – default on part of creditor; Creditor is guilty of default when he unjustifiably refuses to accept payment or performance at the time payment/performance can be done

Effects:

- (1) responsibility of debtor is reduced to fraud and gross negligence
- (2) debtor is exempted from risk of loss of thing / creditor bears risk of loss
- (3) expenses by debtor for preservation of thing after delay is chargeable to creditor
- (4) if obligation bears interest, debtor does not have to pay from time of delay
- (5) creditor liable for damages
- (6) debtor may relieve himself of obligation by consigning the thing

Compensatio morae – both parties are in default (in reciprocal obligations); the effect: is as if there is no default

2. Fortuitous Events - event which could not be foreseen, or which though foreseen, were inevitable

REQUIREMENTS (Nakpil & Sons vs. CA):

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

Rule on Fortuitous Event:

1. General Rule – no liability for fortuitous event
2. Exemption –
 - a) when expressly declared by law (bad faith, subject matter is generic, debtor is in delay)
 - b) when expressly declared by stipulation or contract
 - c) when nature of obligation requires assumption of risk

REMEDIES OF CREDITORS - generally transmissible (except: law, stipulation, personal obligation):

1. Exact performance - specific, substitute, equivalent
2. Attach and execute debtor's property which is not exempt (art 2236)
3. Accion subrogatoria (art 1171)

Requisites:

- a. Creditor must have right of return against debtor

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- b. The debt is due and demandable
 - c. There is a failure of the debtor to collect his own debt from 3rd persons either through malice or negligence
 - d. Debtor's assets are insufficient
 - e. The right of account is not purely personal
4. Accion directa (arts 1729 & 1652)
5. Accion pauliana
- Requisites:**
- a. There is a credit in favor of plaintiff
 - b. The debtor has performed an act subsequent to the contract, giving advantage to other persons
 - c. The creditor is prejudiced by the debtor's act which are in favor of 3rd parties and rescission will benefit the creditor
 - d. The creditor has no other legal remedy
 - e. The debtor's acts are fraudulent

DIFFERENT KINDS OF OBLIGATIONS
CATEGORIES:

- a. Demandability - pure, conditional or with a term
- b. Plurality of object - simple, alternative or facultative
- c. Plurality of subject - simple, joint or solidary
- d. Performance - divisible or indivisible
- e. Sanctions for breach - with or without a penal clause

- (1) **Pure** – demandable at once, no term, no condition
- (2) **Conditional** - A condition is a future and an uncertain event or a past event unknown to the parties

- Kinds:**
- i. **Suspensive** – happening of condition gives rise to obligation
- Effects:
- 1. effectivity is retroactive
 - 2. no retroactivity with reference to fruits or interest & prescription
 - 3. creditor may preserve rights
 - 4. debtor – recovery of payment by mistake or even w/o mistake

Rules on loss, impairment, improvement of the subject matter pending the happening of suspensive condition/ term

	Loss/ Impairment	Improvement
w/ fault or at expense of obligor/ usufructuary	Indemnity & damages	specific performance rescission & damages If it improved at the expense of the debtor, he shall have no other right than that granted to the usufructuary. (art 1189)
w/o fault or not at expense of obligor	Extinguished	Creditor to bear damages Creditor gets it

- REQUISITES FOR THE AFOREMENTIONED RULE:**
- 1. There is a suspensive condition
 - 2. There is an obligation to deliver a determinate thing
 - 3. There is loss, deterioration or improvement before the happening of the condition
 - 4. The condition happens

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ii. Resolutory – happening of condition extinguishes obligation

Effects:

1. no retroactive effect
2. obligation extinguished
3. restore to each other what was received plus interest/fruits

iii. Potestative – dependent on sole will of 1 party; if on part of debtor & suspensive - void

iv. Casual – dependent on chance or hazard

v. Mixed – chance, or any of parties

vi. With term -

a) **Positive** – extinguished if time expires or indubitable of condition to happen

b) **Negative** – effective from moment of time elapsed or evident it can't happen

vii. Impossible and illegal –

(1) To do - both the condition and the obligation are void

(2) Not to do –disregard the condition, the obligation is still valid

Impossible condition – physically not feasible

Illegal condition – prohibited by law, good custom, public policy and morals

(3) With a period – future & certain, past & uncertain, payable when able

When stipulation says “payable when able “ – it is with a period, remedy:

- a) agreement among parties
- b) court shall fix period of payment when parties unable to agree

Kinds:

a. **Resolutory** (in diem) – takes effect at once but terminate upon arrival of the day certain; *Day certain – that which must necessarily come, although it may not be known when*

b. **Suspensive** (ex die) – takes effect on the day stipulated

WHEN COURTS MAY FIX PERIOD:

- a) art 1197
- b) art 1197, 2nd paragraph
- c) art 1191, 3rd paragraph
- d) art 1687, 2nd, 3rd, 4th sentence
- e) art 1180

WHEN DEBTOR LOSES RIGHT TO PERIOD:

- a. insolvency of debtor, unless security provided
- b. did not deliver security
- c. impaired security- thru fault or fortuitous event
- d. violate undertaking in consideration of extension of period
- e. attempts to abscond

(4). Facultative – only one prestation has been agreed upon but another may be given in substitution

Effect of loss or deterioration thru negligence, delay or fraud of obligor:

- a) of thing intended as substitute - no liability
- b) of the substitute after substitution is made – with liability

(5). Alternative – bound by different prestations but only one is due

Right of choice: General rule: right of choice belongs to debtor

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a. the choice is with debtor

- (1) If only 1 is left either because of fortuitous events or due to debtor's acts, perform what is left. The effect is that the debtor loses the right of choice
- (2) if the choice is limited because of the creditor's acts, the debtor has the right of resolution and damages
- (3) if all are lost due to debtor, the creditor is entitled to damages
- (4) if some are lost, the debtor can choose from the remaining

b. the choice is with creditor

- (1) if one or some are lost due to fortuitous event, the creditor chooses the remainder
- (2) if one or some is lost because of the fault of debtor, the creditor may choose either the remainder or the value of any which disappeared, and damages in either case
- (3) if all is lost due to the debtor's fault, the creditor may choose the value of any if some is lost due to debtor's fault, the creditor chooses the remainder
- (4) if all is lost due to fortuitous event, obligation is extinguished
- (5) if all is lost due to creditor's fault, the obligation is extinguished

Requisites for making the choice:

- a) Made properly so that creditor or his agent will actually know
- b) Made with full knowledge that a selection is indeed being made
- c) Made voluntarily and freely
- d) Made in due time – before or upon maturity
- e) Made to all proper persons
- f) Made w/o conditions unless agreed by the creditor
- g) May be waived, expressly or impliedly

DISTINCTIONS BETWEEN ALTERNATIVE AND FACULTATIVE OBLIGATIONS

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

- (6) **Joint** – presumption when 2 or more creditors or 2 or more debtors concur in one and the same obligation

Effects:

- a. Demand on one produces delay only with respect to the debt
- b. Interruption in payment by one does not benefit or prejudice the other
- c. Vices of one debtor to creditor has no effect on the others
- d. Insolvency of one debtor does not affect other debtors

- (7) **Solidary** – must be expressed in stipulation or provided by law or by nature of obligation

- a. **Active** – on the part of creditor or obligee

Effects:

1. Death of 1 solidary creditor transmits share to heirs (but collectively)
2. Each creditor represents the other in the act of recovery of payment

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3. Credit is divided equally between creditors as among themselves
4. Debtor may pay any of the solidary creditors

b. **Passive** – on the part of debtors or obligors

Effects:

1. Each debtor may be requested to pay whole obligation with right to recover from co-debtors
2. Interruption of prescription to one creditor affects all
3. Interest from delay on 1 debtor is borne by all

c. **Mixed** – on the part of the obligors and obligees, or the part of the debtors and the creditors

d. **Conventional** – agreed upon by the parties

e. **Legal** – imposed by law

Instances where law imposes solidary obligation:

1. obligations arising from tort
2. obligations arising from quasi-contracts
3. legal provisions regarding obligation of devisees and legatees
4. liability of principals, accomplices, and accessories of a felony
5. bailees in commodatum

Effects:

- a. payment made before debt is due, no interest can be charged, otherwise – interest can be charged
- b. insolvency of one – others are liable for share pro-rata
- c. if different terms & conditions – collect only what is due, later on collect from any
- d. no reimbursement if payment is made after prescription or became illegal
- d. remission made after payment is made – co-debtor still entitled to reimbursement
- e. effect of insolvency or death of co-debtor – still liable for whole amount
- f. fault of any debtor – every one is responsible – price, damage & interest
- g. complete/ personal defense – total or partial (up to amount of share only) if not personal to him

Effect of loss or impossibility of the prestation:

- a. if without fault – no liability
- b. if with fault – there is liability (also for damage and interest)
- c. loss due to fortuitous event after default – there is liability (because of default)

(8) Divisible – obligation that is capable of partial performance

- a. execution of certain no of days work
- b. expressed by metrical units
- c. nature of obligation – susceptible of partial fulfillment

(9) Indivisible – one not capable of partial performance

- a. to give definite things
- b. not susceptible of partial performance
- c. provided by law
- d. intention of parties

(10) With penal clause - an accessory undertaking to assume greater liability in case of breach;

CHARACTERISTICS OF PENAL CLAUSES

1. Subsidiary - As a general rule, only penalty can be demanded, principal cannot be demanded, except: Penalty is joint or cumulative
2. Exclusive - takes place of damage, damage can only be demanded in the ff. cases:
 - a. Stipulation – granting right

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- b. refusal to pay penalty
- c. with dolo (not of creditor)

Causes for reduction of penalty:

- a. partial/irregular performance
- b. penalty provided is iniquitous/unconscionable

EXTINGUISHMENT OF OBLIGATIONS

Modes of Extinguishment of Obligation:

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

1. **PAYMENT OR PERFORMANCE** – delivery of money and performance, in any other manner of the obligation

REQUISITES FOR VALID PAYMENT/PERFORMANCE

A. With respect to prestation itself:

- (1) identity
- (2) integrity or completeness
- (3) indivisibility

B. With respect to parties - must be made by proper party to proper party

(1) Payor

- (a) Payor - the one performing, he can be the debtor himself or his heirs or assigns or his agent, or anyone interested in the fulfillment of the obligation; can be anyone as long as it is with the creditor's consent
- (b) 3RD person pays/performs - only the creditor's consent; If performance is done also with debtor's consent - he takes the place of the debtor. There is subrogation except if the 3rd person intended it to be a donation
- (c) 3rd person pays/performs with consent of creditor but not with debtor's consent, the repayment is only to the extent that the payment has been beneficial to debtor

(2) Payee

- (a) payee - creditor or obligee or successor in interest of transferee, or agent
- (b) 3rd person - if any of the ff. concur:
 - i. it must have redounded to the obligee's benefit and only to the extent of such benefit
 - ii. it falls under art 1241, par 1,2,3 - the benefit is total so, performance is total
- (c) anyone in possession of the credit - but will apply only if debt has not been previously garnished

PAYMENT MADE TO AN INCAPACITATED PERSON , VALID IF:

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

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

1. After payment, 3rd person acquires the creditor's rights
2. Creditor ratifies payment to 3rd person

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3. By creditor's conduct, debtor has been led to make the payment (estoppel)

PAYMENT MADE IN GOOD FAITH TO A PERSON IN POSSESSION OF CREDIT SHALL RELEASE DEBTOR, Requisites:

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

- C. With respect to time and place of payment - must be according to the obligation

Where payment should be made:

1. In the place designated in the obligation
2. If there is no express stipulation and the undertaking is to deliver a specific thing – at the place where the thing might be at the moment the obligation was constituted
3. In other case – in the place of the domicile of the debtor

Time of payment - time stipulated

Effect of payment – extinguish obligation

Except: order to retain debt

SUBSTANTIAL PERFORMANCE

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

Effect of Substantial performance in good faith

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

SPECIAL RULES/FORMS OF PAYMENT - Special Forms:

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

Requisites for the Application of payment:

1. Various debts of the same kind
2. Same debtor
3. Same creditor
4. All debts must be due
 - Exception: there may be application of payment even if all debts are not yet due if:
 - a) parties so stipulate
 - b) when application of payment is made by the party for whose benefit the term has been constituted
5. Payment is not enough to extinguish all debts

HOW APPLICATION IS MADE:

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

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WHO MAKES APPLICATION:

General Rule: Debtor

Exception: Creditor –

- a) Debtor without protest accepts receipt in which creditor specified expressly and unmistakably the obligation to which such payment was to be applied – debtor in this case renounced the right of choice
- b) When monthly statements were made by the bank specifying the application and the debtor signed said statements approving the status of her account as thus sent to her monthly by the bank

IN CASE NO APPLICATION HAS BEEN MADE

1. Apply payment to the most onerous
2. If debts are of the same nature and burden, application shall be made to all proportionately

- b. **Dacion en Pago** – mode of extinguishing an obligation whereby the debtor alienates in favor of the creditor property for the satisfaction of monetary debt; extinguish up to amount of property unless w/ contrary stipulation; A special form of payment because 1 element of payment is missing: IDENTITY
 - Governed by law on sales
 - Conditions for a valid dacion:
 - 1) If creditor consents, for a sale presupposes the consent of both parties
 - 2) If dacion will not prejudice the other creditors
 - 3) If debtor is not judicially declared insolvent
- c. **Cession/Assignment in Favor of creditors** – the process by which debtor transfer all the properties not subject to execution in favor of creditors is that the latter may sell them and thus, apply the proceeds to their credits; extinguish up to amount of net proceeds (unless w/ contrary stipulation)

Kinds:

1. Legal – governed by the insolvency law
2. Voluntary – agreement of creditors

REQUISITES FOR VOLUNTARY ASSIGNMENT

- a) More than 1 debt
- b) More than 1 creditor
- c) Complete or partial insolvency of debtor
- d) Abandonment of all debtor's property not exempt from execution
- e) Acceptance or consent on the part of the creditors

EFFECTS:

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

d. **Consignation**

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

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

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REQUISITES OF VALID CONSIGNATION:

- (1) Existence of valid debt
- (2) Consignation was made because of some legal cause - previous valid tender was unjustly refused or circumstances making previous tender exempt
- (3) Prior Notice of Consignation had been given to the person interested in performance of obligation (1st notice)
- (4) actual deposit/Consignation with proper judicial authorities
- (5) subsequent notice of Consignation (2nd notice)

Effects: Extinguishment of obligation

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

Consignation w/o prior tender – allowed in:

1. creditor absent or unknown/ does not appear at the place of payment
2. incapacitated to receive payment at the time it is due
3. refuses to issue receipt w/o just cause
4. 2 or more creditor claiming the same right to collect
5. title of obligation has been lost

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

WHEN IS THERE A LOSS:

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

WHEN IS THERE IMPOSSIBILITY OF PERFORMANCE

- 1) Physical impossibility
- 2) Legal impossibility :
 - (a) Directly – caused as when prohibited by law
 - (b) Indirectly – caused as when debtor is required to enter a military draft

OBLIGATION TO DELIVER A SPECIFIC THING

General Rule: Extinguished

Exceptions:

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

OBLIGATION TO DELIVER A GENERIC THING

General Rule: Not extinguished

Exceptions:

- a) if the generic thing is delimited
- b) if the generic thing has already been segregated
- c) monetary obligation

OBLIGATION TO DO

General Rule: Debtor is released when prestation becomes legally or physically impossible without fault on part of debtor

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EFFECT OF PARTIAL LOSS – (judicial determination of extent is necessary)

- a) when loss is significant – may be enough to extinguish obligation
- b) when loss insignificant – not enough to extinguish obligation

WHEN THING IS LOST IN THE POSSESSION OF THE DEBTOR

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

3. REBUS SIC STANTIBUS - agreement is valid only if the same conditions prevailing at time of contracting continue to exist at the time of performance

EFFECT OF DIFFICULTY BEYOND PARTIES' CONTEMPLATION

Rule: Obligor may be released in whole or in part

REQUISITES:

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

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

REQUISITES:

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

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

Requisites of Implied:

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

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

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REQUISITES:

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

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

REQUISITES:

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

Kinds:

- a. legal – by operation of law; as long as 5 requisites concur- even if unknown to parties & if payable in diff places; indemnity for expense of exchanges; even if not equal debts – only up to concurring amount
- b. conventional – agreement of parties is enough, forget other requirement as long as both consented
- c. facultative – one party has choice of claiming/opposing – one who has benefit of period may choose to compensate
 - not all requisites are present
 - depositum; commodatum; criminal offense; claim for future support; taxes
- d. judicial – set off; upon order of the court; needs pleading & proof; all requirements must concur except liquidation
- e. total – when 2 debts are of the same amount
- f. partial – when 2 debts are not of the same amount

Effect of assignment of credit to 3rd person; can there still be compensation

- a. if made after compensation took place – no effect; compensation already perfected
- b. if made before compensation took place – depends
 1. with consent of debtor – debtor is estopped unless he reserves his right & gave notice to assignee
 2. with knowledge but w/o consent of debtor – compensation may be set up as to debts maturing prior to assignment
 3. w/o knowledge – compensation may be set-up on all debts prior to his knowledge

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

- a. changing object or principal conditions
- b. substituting person of debtor
- c. subrogating 3rd person in right of creditor

REQUISITES:

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

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EFFECT OF NOVATION:

- a. extinguishment of principal carries accessory, except:
 - stipulation to contrary
 - stipulation pour autri unless beneficiary consents
 - modificatory novation only; obliged to w/c is less onerous
 - old obligation is void
- b. old obligation subsists if:
 - new obligation is void or voidable but annulled already (except: intention of parties)
- c. if old obligation has condition
 - if Resolutory & it occurred –old obligation already extinguished; no new obligation since nothing to novate
 - if suspensive & it never occurred –as if no obligation; also nothing to novate
- d. if old obligation has condition, must be compatible with the new obligation; if new is w/o condition – deemed attached to new
- e. if new obligation has condition
 - if resolutory: valid
 - if suspensive & did not materialize: old obligation is enforced

KINDS:

- a. **REAL/OBJECTIVE** – change object, cause/consideration or principal condition
- b. **PERSONAL/SUBJECTIVE**
 - 1. substituting person of debtor (passive)

EXPROMISION; initiative is from 3rd person or new debtor; new debtor & creditor to consent; old debtor released from obligation; subject to full reimbursement & subrogation if made w/ consent of old debtor; if w/o consent or against will , only beneficial reimbursement; if new debtor is insolvent, not responsible since w/o his consent

DELEGACION; initiative of old debtor; all parties to consent; full reimbursement; if insolvent new debtor – not responsible old debtor because obligation extinguished by valid novation unless: insolvency already existing & of public knowledge or know to him at time of delegacion

- a. Delegante – old debtor
- b. Delegatario - creditor
- c. Delegado – new debtor

- 2. subrogating 3rd person to rights of creditor (active)
 - a. conventional- agreement & consent of all parties; clearly established
 - b. legal- takes place by operation of law; no need for consent; not presumed except as provided for in law:

- presumed when-
- 1. creditor pays another preferred creditor even w/o debtor's knowledge
 - 2. 3rd person not interested in obligation pays w/ approval of debtor
 - 3. person interested in fulfillment of obligation pays debt even w/o knowledge of debtor

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

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PART II - CONTRACTS -meeting of minds bet 2 parties whereby one binds himself with respect to other to give something or render some service

PRINCIPAL CHARACTERISTICS:

1. **Autonomy of wills** – parties may stipulate anything as long as not illegal, immoral, etc.
2. **Mutuality** – performance or validity binds both parties; not left to will of one of parties
3. **Obligatory Force** – parties are bound from perfection of contract:
 - a. fulfill what has been expressly stipulated
 - b. all consequences w/c may be in keeping with good faith, usage & law
4. **Relativity** – binding only between the parties, their assigns, heirs; strangers cannot demand enforcement

EXCEPTION TO RELATIVITY:

- a. Accion pauliana
- b. Accion directa
- c. Stipulation pour autrui

REQUISITES OF STIPULATION POUR AUTRUI

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

REQUISITES OF ART 1312:

- (1) Existence of a valid contract
- (2) Knowledge of the contract by a 3rd person
- (3) Interference by the 3rd person

KINDS OF CONTRACTS

As to perfection or formation:

1. consensual – perfected by agreement of parties
2. real – perfected by delivery (commodatum, pledge, deposit)
3. formal/solemn – perfected by conformity to essential formalities (donation)

As to cause

1. Onerous – with valuable consideration
2. Gratuitous – founded on liberality
3. Remunerative – prestation is given for service previously rendered not as obligation

As to importance or dependence of one upon another

1. principal – contract may stand alone
2. accessory – depends on another contract for its existence; may not exist on its own
3. Preparatory – not an end by itself; a means through which future contracts may be made

As to parties obliged:

1. Unilateral – only one of the parties has an obligation
2. Bilateral – both parties are required to render reciprocal prestations

As to name or designation:

1. Nominate

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2. Innominate
 - a) Do ut des – I give that you may give
 - b) Do ut facias – I give that you may do
 - c) Facio ut des – I do that you may give
 - d) Facio ut facias – I do that you may do

STAGES IN A CONTRACT:

1. Preparation - negotiation
2. perfection/birth
3. consummation – performance

ESSENTIAL ELEMENTS:

1. **Consent** – meeting of minds between parties on subject matter & cause of contract; concurrence of offer & acceptance
 Requirements:
 - a. Plurality of subject
 - b. Capacity
 - c. Intelligence and free will
 - d. Manifestation of intent of parties
 - e. Cognition by the other party
 - f. Conformity of manifestation and cognition

Note: We follow the theory of cognition and not the theory of manifestation. Under our civil law, the offer and acceptance concur only when the offeror comes to know, and not when the offeree merely manifests his acceptance

ELEMENTS OF VALID OFFER

- a. definite
- b. complete
- c. intentional

ELEMENTS OF VALID ACCEPTANCE

- a. unequivocal
- b. unconditional

WHEN OFFER BECOMES INEFFECTIVE:

1. death, civil interdiction, insanity or insolvency of either party before acceptance is conveyed
2. express or implied revocation of the offer by the offeree
3. qualified or conditional acceptance of the offer
4. subject matter becomes illegal or impossible before acceptance is communicated

PERIOD FOR ACCEPTANCE

1. stated fixed period in the offer
2. no stated fixed period
 - a) offer is made to a person present – acceptance must be made immediately
 - b) offer is made to a person absent – acceptance may be made within such time that, under normal circumstances, an answer can be received from him

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

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

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PERSONS WHO CANNOT GIVE CONSENT TO A CONTRACT:

1. Minors
2. Insane or demented persons
3. Illiterates/ deaf-mutes who do not know how to write
4. Intoxicated and under hypnotic spell
5. Art 1331 - person under mistake; mistake may deprive intelligence
6. Art 1338 - person induced by fraud (dolo causante)

Note: Dolus bonus (usual exaggerations in trade) are not in themselves fraudulent

RULE ON CONTRACTS ENTERED INTO BY MINORS

General Rule: VOIDABLE

EXCEPTIONS:

1. Upon reaching age of majority – they ratify the same
2. They were entered into by a guardian and the court having jurisdiction had approved the same
3. They were contracts for necessities such as food, but here the persons who are bound to give them support should pay therefor
4. Minor is estopped for having misrepresented his age and misled the other party (when age is close to age of majority as in the *Mercado v Espiritu & Sia Suan v Alcantara* cases)

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

DISQUALIFIED TO ENTER INTO CONTRACTS: (contracts entered into are void)

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

CAUSES WHICH VITIATE FREEDOM

1. violence

REQUISITE:

- a. Irresistible physical force
- b. Such force is the determining cause for giving consent

2. Intimidation

REQUISITE:

- a. Determining cause for the contract
- b. Threatened act is unjust and unlawful
- c. Real and serious
- d. Produces a well grounded fear that the person making it will carry it over

3. undue influence

SIMULATED CONTRACTS

- a. absolute – no intention to be bound at all, fictitious only – void from beginning
- b. relative – there is intention to be bound but concealed; concealed contract binds:
 1. no prejudice to 3rd persons
 2. not contrary to law, morals, etc.

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2. **OBJECT** – The prestation

REQUISITES:

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

3. **CAUSA** – reason why parties enter into contract

REQUISITES:

- a) It must exist
- b) It must be true
- c) It must be licit

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

ABSENCE OF CAUSA	VOID - produce no legal effect
ILLEGALITY OF CAUSA	VOID - produce no legal effect
FALSITY OF CAUSA	VOIDABLE – party must prove that cause is untruthful; presumption of validity but rebuttable
CAUSA NOT STATED IN CONTRACT	PRESUMED TO EXIST - burden of proof is on the person assailing its existence
INADEQUACY OF CAUSA	DOES NOT INVALIDATE CONTRACT PER SE Exceptions: <ul style="list-style-type: none">1. fraud2. mistake3. undue influence4. cases specified by law<ul style="list-style-type: none">- contracts entered when ward suffers lesion of more than 25%

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

- a. Informal – may be entered into whatever form as long as there is consent, object & cause
- b. Formal – required by law to be in certain specified form such as: donation of real property, stipulation to pay interest, transfer of large cattle, sale of land thru agent, contract of antichresis, contract of partnership, registration of chattel mortgage, donation of personal prop in excess of 5,000
- c. Real – creation of real rights over immovable prop – must be written

WHEN FORM IS IMPORTANT:

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

General Rule: contract is valid & binding in whatever form provided that 3 essential requisites concur

Exception:

- a. Law requires contract to be in some form for validity - donation & acceptance of real property
- b. Law requires contract to be in some form to be enforceable - Statute of Frauds; contract is valid but right to enforce cannot be exercised; need ratification to be enforceable

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- c. Law requires contract to be in some form for convenience - contract is valid & enforceable, needed only to bind 3rd parties
- ex: public documents needed for the ff:
 1. contracts w/c object is creation, transmission or reformation of real rights over immovables
 2. cession, repudiation, renunciation of hereditary rights/CPG
 3. power to administer property for another
 4. cession of action of rights proceeding from an act appearing in a public inst.
 5. all other docs where amount involved is in excess of 500 (must be written even private docs)

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

CAUSES/GROUNDS:

- a. mutual: instrument includes something w/c should not be there or omit what should be there
 - mutual
 - mistake of fact
 - clear & convincing proof
 - causes failure of instrument to express true intention
- b. unilateral
 - one party was mistaken
 - other either acted fraudulently or inequitably or knew but concealed
 - party in good faith may ask for reformation
- c. mistake by 3rd persons – due to ignorance, lack of skill, negligence , bad faith of drafter, clerk, typist
- d. others specified by law – to avoid frustration of true intent

REQUISITES:

1. there is a written instrument
2. there is meeting of minds
3. true intention not expressed in instrument
4. clear & convincing proof
5. facts put in issue in pleadings

Note: prescribes in 10 years from date of execution of instrument

WHEN NOT AVAILABLE:

- a. simple donation inter vivos
- b. wills
- c. when real agreement is void
- d. estoppel; when party has brought suit to enforce it

KINDS OF DEFECTIVE CONTRACTS:

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

REQUISITES:

- a. Contract must be rescissible
 - (1) Under art 1381:
 - i. Contracts entered into by persons exercising fiduciary capacity
 - (a) Entered into by guardian whenever ward suffers damage by more than 1/4 of value of object

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

OBLIGATION CREATED BY THE RESCISSION OF THE CONTRACT: Mutual Restitution

- 1. Things w/c are the objects of the contract & their fruits
- 2. Price with interest

Note: Mutual restitution N.A. when:

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

- 2. **VOIDABLE CONTRACTS** – intrinsic defect; valid until annulled; defect is due to vice of consent or legal incapacity

CHARACTERISTICS:

- a. Effective until set aside
- b. May be assailed or attacked only in an action for that purpose
- c. Can be confirmed (**Note: CONFIRMATION IS THE PROPER TERM FOR CURING THE DEFECT OF A VOIDABLE CONTRACT**)
- d. Can be assailed only by the party whose consent was defective or his heirs or assigns

WHAT CONTRACTS ARE VOIDABLE:

- a. **THOSE WHERE ONE OF THE PARTIES IS INCAPABLE OF GIVING CONSENT TO A CONTRACT (legal incapacity)**
 - (1) minors (below 18)
 - (2) insane unless acted in lucid interval
 - (3) deaf mute who can't read or write
 - (4) persons specially disqualified: civil interdiction
 - (5) in state of drunkenness
 - (6) in state of hypnotic spell
- b. **THOSE WHERE THE CONSENT IS VITIATED BY MISTAKE, VIOLENCE, INTIMIDATION, UNDUE INFLUENCE OR FRAUD (vice of consent)**

- (1) **mistake** – false belief into something

REQUISITES:

- 1. Refers to the subject of the thing which is the object of the contract
- 2. Refers to the nature of the contract
- 3. Refers to the principal conditions in an agreement
- 4. Error as to person - when it is the principal consideration of the contract

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5. Error as to legal effect - when mistake is mutual and frustrates the real purpose of parties

- (2) **violence** – serious or irresistible force is employed to wrest consent
- (3) **intimidation** – one party is compelled by a reasonable & well-grounded fear of an imminent & grave danger upon person & property of himself, spouse, ascendants or descendants (moral coercion)
- (4) **undue influence** – person takes improper advantage of his power over will of another depriving latter of reasonable freedom of choice
- (5) **fraud** – thru insidious words or machinations of contracting parties, other is induced to enter into contract w/o w/c he will not enter (dolo causante)

PERIOD TO BRING ACTION FOR ANNULMENT

Intimidation, violence, undue influence	4 years from time defect of consent ceases
Mistake, fraud	4 years from time of discovery
Incapacity	from time guardianship ceases

EFFECTS OF ANNULMENT:

- 1. Obligation to give – mutual restitution
- 2. Obligation to do – value of service

PRESCRIPTION IN ACTION FOR ANNULMENT OF VOIDABLE CONTRACTS:

Intimidation/Violence/undue Influence	4 years from time defect of consent ceases
Mistake/Fraud	4 years from time of discovery
Contracts entered into by minors/incapacitated persons	4 years from time guardianship ceases

3. **UNENFORCEABLE CONTRACT** – valid but cannot compel its execution unless ratified; extrinsic defect; produce legal efefcts only after ratified

KINDS/VARIETIES:

- 1. Unauthorized/No sufficient authority – entered into in the name of another when:
 - a. no authority conferred
 - b. in excess of authority conferred (ultra vires)

Note: Curable by RATIFICATION

- 2. Both parties incapable of giving consent -2 minor or 2 insane persons

Note: Curable by ACKNOWLEDGEMENT

- 3. Failure to comply with Statute of Frauds
 - a. Agreement to be performed within a year after making contract
 - b. Special promise to answer for debt, default or miscarriage of another
 - c. Agreement made in consideration of promise to marry
 - d. Agreement for sale of goods, chattels or things in action at price not less than 500; exception: auction when recorded sale in sales book
 - e. Agreement for lease of property for more than 1 year & sale of real property regardless of price
 - f. Representation as to credit of another

2 WAYS OF CURING UNENFORCEABLE CONTRACTS:

- 1. Failure of defendant to object in time, to the presentation of parole evidence in court, the defect of unenforceability is cured

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2. Acceptance of benefits under the contract. If there is performance in either part and there is acceptance of performance, it takes it out of unenforceable contracts; also estoppel sets in by accepting performance, the defect is waived

4. VOID OR INEXISTENT – of no legal effect

CHARACTERISTICS:

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

KINDS OF VOID CONTRACT:

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

KINDS OF ILLEGAL CONTRACTS

	CONTRACT CONSTITUTE CRIMINAL OFFENSE	CONTRACT DOES NOT CONSTITUTE CRIMINAL OFFENSE BUT IS ILLEGAL OR UNLAWFUL PER SE
Parties are in pari delicto	<ul style="list-style-type: none">• No action for specific performance• No action for restitution on either side. The law will leave you where you are• Both shall be prosecuted• Thing/price to be confiscated in favor of government	<ul style="list-style-type: none">• No action for specific performance• No action for restitution on either side. The law will leave you where you are• No confiscation
Only one party is guilty	<ul style="list-style-type: none">• No action for specific performance• Innocent party is entitled to restitution• Guilty party is not entitled to restitution• Guilty party will be prosecuted• Instrument of crime will be	<ul style="list-style-type: none">• No action for specific performance• Innocent party is entitled to restitution• Guilty party is not entitled to restitution

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	confiscated in favor of govt	
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PARI DELICTO DOCTRINE -both parties are guilty, no action against each other; those who come in equity must come with clean hands; applies only to illegal contracts & not to inexistent contracts; does not apply when a superior public policy intervenes

EXCEPTION TO PARI DELICTO RULE

1. If purpose has not yet been accomplished & If damage has not been caused to any 3rd person
Requisites:
 - a) contract is for an illegal purpose
 - b) contract must be repudiated by any of the parties before purpose is accomplished or damage is caused to 3rd parties
 - c) court believes that public interest will be served by allowing recovery (discretionary upon the court) – based on remorse; illegality is accomplished when parties entered into contract; before it takes effect – party w/c is remorseful prevents it
2. Where laws are issued to protect certain sectors: consumer protection, labor, usury law
 - a) Consumer protection – if price of commodity is determined by statute, any person paying an amount in excess of the maximum price allowed may recover such excess
 - b) Labor – if law sets the minimum wage for laborers, any laborer who agreed to receive less may still be entitled to recover the deficiency; if law set max working hours & laborer who undertakes to work longer may demand additional compensation
 - c) Interest paid in excess of the interest allowed by the usury law may be recovered by debtor with interest from date of payment
3. If one party is incapacitated, courts may allow recovery of money, property delivered by incapacitated person in the interest of justice; pari delicto cannot apply because an incapacitated person does not know what he is entering into; unable to understand the consequences of his own action
4. If agreement is not illegal per se but merely prohibited & prohibition is designated for the protection of the plaintiff – may recover what he has paid or delivered by virtue of public policy

MUTUAL RESTITUTION IN VOID CONTRACTS

General Rule: parties should return to each other what they have given by virtue of the void contract in case where nullity arose from defect in essential elements

1. return object of contract & fruits
2. return price plus interest

Exception: No recovery can be had in cases where nullity of contract arose from illegality of contract where parties are in pari delicto; except:

- a. incapacitated – not obliged to return what he gave but may recover what he has given
- b. other party is less guilty or not guilty