OBLIGATIONS AND CONTRACTS

Title I. -- OBLIGATIONS

CHAPTER 1. -- GENERAL PROVISIONS

Balane: Observation on the title of Book IV, "Obligations and Contracts." Book IV starts with an inaccuracy. It gives the impression that obligations and contracts are of the same status, w/c they are not. A contract is only one of the sources of obligations. Book IV should have been simply titled "Obligations."

Etymology.-- The word obligation comes from two Latin words, ligare, meaning "to bind" and ob w/c is a proposition used to intensify a verb. Literally obligare means "to bind securely." In the early Roman law, the law on obligations contained a literal meaning. It meant being "bound in chains." The enforcement of credit was barbaric. If the creditor is not paid, the creditor has the right to have the debtor placed in chains and sold to slavery in the market place for three days. Proceeds of the sale will be used to pay the debt. If the debtor is not bought, the debtor will either be chopped into pieces and fed to the fishes in the river or sold to slavery across the Tiber. Little by little, the severity of the law was mitigated. In Cicero's time, there was no more "binding in chains." Rather, obligation was looked upon as "binding in law." The law has now been humanized.

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

Balane: Definition.-- Art. 1156 gives us a simple but incomplete definition. It is incomplete bec. it looks at obligation only from the point of view of the debtor. A better definition would be.

An obligation is a juridical relation (bec. there are 2 parties) whereby a person should engage or refrain from engaging in a certain activity for the satisfaction of the private interests of another, who in case of non-fulfilment of such duty may obtain from the patrimony of the former through proper judicial proceedings the very prestation due or in default thereof, the economic equivalent (damages) that it represents. (Diaz Piero.)

Now, this is a long but complete definition.

Characteristics of an Obligation:

1. It represents an exclusively private interest
2. It creates ties that are by nature transitory
3. It involves the power to make the juridical tie effective in case of non-fulfillment through an economic equivalent obtained from the debtor's patrimony.

Lines of Development in Modern Law on Obligations:

1. Progressive spiritualization of the law on obligations.-- This means that the intent of the parties is emphasized rather than the form. Spiritualized means "made abstract." The emphasis now is on the "meeting of the minds" of the parties. In the Roman law, obligations, particularly, contractual obligations, required strict compliance w/ form for validity.

2. The principle of autonomy of will is now being significantly restricted or modified.-- In Roman law, the parties can enter into any agreement that they wish. Now, they can enter into any agreement provided the same is not contrary to law, morals, good
customs, public order, or public policy. The reason for this is Social Justice and some policy considerations. It has been observed, however, that this will give a greater tendency for the govt to interfere into private affairs.

3. The mitigation of the principle that the debtor must answer with all his property for his obligation.-- In Roman law, this was absolute. Now, not all property of the debtor can be levied upon for the purpose of satisfying an obligation. Now, there are some properties (in fact, there are many) w/c are exempted from attachment or levy, like the family home.

4. Weakening of the principle that liability results from responsibility.-- This is b/c of Social Justice considerations. (kulang ito....)

5. Tendency of unity in modern legislation.-- In the ASEAN region, for instance, there are moves to standardize the rules on handling goods, letters of credit, bank transactions, etc. There is now the tendency to make these rules uniform. This is b/c. trade will always find a convenient way.

Essential Elements of an Obligation:

1. Active Subject.-- This refers to the creditor or the obligee. Strictly speaking the two are not the same. A creditor generally used in an obligation to give while obligee is used in an obligation to do.

2. Passive Subject.-- This refers to the debtor or the obligor. If you want to be a civilist, debtor is used in an obligation to give while obligor is used in an obligation to do.

On the first two elements: They must be determinate or determinable. The following are possible combinations:

a. Both parties are determined at the time of the execution of the obligation.

b. An obligation wherein one party is determined at the constitution of the obligation and the other to be determined subsequently in accordance w/ a criteria that is previously established.

c. An obligation in w/c the subject is determined in accordance w/ his relation to a thing and therefor it changes where the thing passes from one person to another. This is a property-linked obligation.

3. Object of the obligation.-- This refers to the conduct or activity that must be observed by the debtor. The object of the obligation is always an activity or conduct, the prestation.

   Requisites of an object:
   a. It must be licit.
   b. It must be possible.
   c. It must be determinate or determinable.
   d. It must have pecuniary value so that if not performed it is converted into damages.

4. Vinculum juris (legal tie).-- Upon default or refusal of the debtor to perform, the creditor can go to court. When a person says "I promise to pay you when I like to," there is no obligation here b/c. there is no vinculum juris

All these first three four elements are agreed upon by commentators as essential elements. The following two are being debated.

5. Causa debendi/ obligationes (Castan).-- This is what makes the obligation demandable. This is the proximate why of an obligation.
6. Form.-- This is controversial. This is acceptable only if form means some manifestation of the intent of the parties.

I. Sources of Obligations

Art. 1157. Obligations arise from:
(1) Law;
(2) Contracts;
(3) Quasi-contracts;
(4) Acts or omissions punished by law; and
(5) Quasi-delicts

Balane: Law as a source of obligation.-- I am under the impression that all obligations are derived from law. It is my opinion that there is an overlap in the enumeration bec. all obligations arise from law. So, what is the idea of enumerating law as only one of the sources of an obligation as if it is only one of them when the four find their sources in law? Is it true that law is the only source of obligation? Yes and No. Yes, law is the only source of obligation if you talk of it in the ultimate sense. No, if you are talking of law as a proximate source. In this case, there are five sources of obligations. Law is both the ultimate and a proximate source of obligations.

Sources of Obligations according to Sanchez Roman.-- According to Sanchez Roman, there are only 2 sources of obligations: Law and Acts. The latter are further classified, as follows: (1) licit acts created by concurrence of wills (contracts); (2) licit acts either voluntary or involuntary w/o concurrence of wills (quasi-contract); (3) illicit acts of civil character w/c are not punishable, voluntary or involuntary (torts and all damages arising from delay); (4) illicit acts w/c are voluntary and are punishable by law (crimes.)

SAGRADA ORDEN VS. NACOCO [91 P 503] - If def.-appellant (NaCoCo) is liable at all, its obligations must arise from any of the 4 sources of obligations, namely, law, contract or quasi contract, crime, or negligence. (Art. 1089, OCC.) Def.-appellant is not guilty of any offense at all, bec. it entered into the premises and occupied it w/ the permission of the entity w/ch had the legal control and admin. thereof, the Alien Prop. Admin. (APA) Neither was there any negligence on its part. There was also no privity (of contract or obligation) bet. the APA and Taiwan Tekkosho, w/c had secured the possession of the prop. from the pltff-appellee by the use of duress, such that the Alien Prop. Custodian or its permittee (def.-appellant) may be held responsible for the supposed illegality of the occupation of the prop. by said Tekkosho. The APA had the control and admin. of the prop. not as successor to the interests of the enemy holder of the title, the T. Tekkosho, but by express provision of law. Neither is it a trustee of the former owner, the pltff-appellee herein, but a trustee of the US Govt, in its own right, to the exclusion of, and against the claim or title of, the enemy owner. From Aug. 1946, when def.-appellant took possession, to the date of the judgment on 2/28/48, the APA had the absolute control of the prop. as trustee of the US Govt, w/ power to dispose of it by sale or otherwise, as though it were the absolute owner. Therefore, even if def. were liable to the APA for rentals, these would not accrue to the benefit of the pltff., the old owner, but the the US Govt.

Balane: Is the enumeration in Art. 1157 exclusive or merely illustrative? The sense that the case of Sagrada Orden tells us is
that the enumeratio is exclusive. In resolving the issue of whether the def. should be liable to pay rentals, the SC used the process of exclusion. For there to be an obligation to pay rentals, that obligation must arise from either of the five (5) sources of obligations. If it does not, then there is no obligation. The clear implication of this ruling is that, these five (5) are the only sources of obligations.

The problem w/ Art. 1157 is that it might not cover all situations. For example: Carale uses Dove as his soap. He then hears an advertisement from Proctor & Gamble that it is offering a nice tumbler for those who can collect 30 wrappers of Tide before Feb. 29, 1996. So, Carale stopped using Dove and started using Tide. He was able to consume all 30 wrappers on Feb. 29, 1996. He then went to Proctor & Gamble (P & G) to exchange the 30 Tide wrappers for a tumbler. But P & G told Carale that their tumblers run out of stock. Carale contracted a skin allergy as a result of using Tide in taking a bath. The question is: Does P & G have any obligation to Carale. If we look at Art. 1157, this situation does not fall in any of the five sources. So, we know have a problem. The German Civil Code (BGB) covers this situation. The BGB has a sixth source of obligation, the Auslobung, w/c means a unilateral offer. Art. 657 of the BGB provides:

Art. 657. Binding promise. A person who, by public notice, announces a reward for the performance of an act, in particular for the production of a result, is bound to pay a reward to any person who has performed the act, even if he did not act with a view to the reward.

Note: We now have a DTI regulation covering this situation. This is an administrative regulation w/c has the force of law. But it would have been better to have placed this rule in a law rather than in a mere administrative regulation.

Articles 1158 - 1162 specify the general principles regarding the sources of obligation enumerated in Art. 1157.

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 established them; and as to what has not been foreseen, by the provisions of this Book.

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

Balane: There are two parts in Art. 1159. The first part is that obligations derived from contract has the force of law bet. the contracting parties (jus civili.) The second part is that there must be compliance in good faith (jus gentium.)

PEOPLE'S CAR VS. COMMANDO SECURITY [51 SCRA 40] - Pltf. (People's Car) was in law liable to its customers for the damages caused the customer's car, w/c had been entrusted into its custody. Pltf. therefore was in law justified in making good such damages and relying in turn on def.(Commando Security) to honor its contract and indemnify it for such undisputed damages, w/c had been caused directly by the unlawful and wrongful acts of def.'s security guard in breach of their contract.

Art. 1160. Obligations derived from quasi-contracts shall be subject to the
provisions of Chapter 1, Title XVIII of this Book.

Art. 1161. Civil obligations arising from criminal offenses shall be governed by the penal laws, subject to the provisions of article 2177, and of the pertinent provisions of Chapter 2, Preliminary Title, on Human Relations, and of Title XVIII of this Book, regulating damages.

Art. 2177. 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. 1162. Obligations derived from quasi-delicts shall be governed by the provisions of Chapter 2, Title XVII of this Book, and by special laws.

Balane: The Code Commission did not choose to use tort. This is bec. tort does not exactly have the same meaning as quasi-delict. Tort covers intentional torts w/c in quasi-delict is considered as civil liability arising from acts or omissions punishable by law. There are some quasi-delicts w/c are not covered by tort. Dean Bocobo suggested the ancient term culpa aquiliana. But this did not merit the approval of the Code Commission.

Question: If there is a contract bet. the parties, can there be a quasi-delict committed by one against the other regarding the area covered by the contract. If you look at Art. 2176, you get the impression that if there is a contract bet. the parties, the parties cannot be liable for quasi-delict on an area covered by the contract. The case of Cangco has not really resolve this controversy.

CANGCO VS. MANILA RAILROAD CO. [38 P 768] - Balane: There are two important principles that we learn from this case: (1) The difference in concept bet. contract and quasi-delict is that in a contract, there is a pre-existing juridical tie bet. the parties. Violation of the contract gives rise to liability but not to the juridical tie. Juridical tie is not borne by a violation. In quasi-delict, it is precisely the wrongful act w/c gives rise to the juridical tie. Liability and juridical tie are simultaneous. (2) Contracts and quasi-delicts create two concentric circles w/ quasi-delict as the bigger circle.

[Note: There is a little mistake in Cangco. The SC said that the driver can be sued under culpa contractual. This is wrong. The driver cannot be sued as he has no privity of contract w/ the passenger.]

So, the question now is: Is it possible that even if there is a contract bet. the parties, a quasi-delict can still be committed by one against the other regarding the area covered by the contract? Yes, according to the case of Araneta v. de Joya, 57 SCRA 59. The same act can give rise to obligations arising from different sources.

For example, Alinea is the owner of a bus co., the Alinea Bus Co., Molina is a driver of one of the buses of Alinea Bus Co. Lagdameo rode the bus being driven by Molina. As a result of the reckless driving of Molina, Lagdameo suffered injuries. In this case, Lagdameo has a choice-- he can sue on either contract, quasi-delict or on crime. If he decided to sue on the breach of the contract of carriage, all he has to prove is the (existence of the contract) and that it was
not performed. In this case, he can sue the common carrier but not the driver because he has no contract with the driver.

If he sues on quasi-delict, he can sue both the common carrier and the driver. The defense of the driver would be diligence in driving (or fortuitous event.) The defense of the common carrier would be diligence in the selection and supervision of employees.

If he sues under crime, he has to sue the driver. In case the driver is convicted and has been sentenced to pay civil liability, the employer (Alinea Bus Co.) is subsidiarily liable. If Molina is insolvent, Alinea Bus Co. will pay.

Notice that the choice of cause of action will determine three things: the theory of the plaintiff, the defense of the defendant, and the question of whom to sue.

Again, remember that in this case, the victim has a choice. Provided that he is consistent with his theory and provided, further, that he cannot recover damages twice for the same injury.

Note: There is still a brewing controversy among civilists with regard to this question. This is only my opinion.

GUTIERREZ VS. GUTIERREZ [56 P 177] - One G, a passenger in a truck, recovers damages in the amount of P5,000 from the owner of a pvt. automobile not in the car, the machine being operated by a son 18 yrs. of age, with other members of the family accommodated therein, and from the chauffeur and owner of the truck w/c collided w/ the pvt. automobile on a bridge, causing physical injuries to G as a result of the automobile accident.

The head of a house, the owner of an automobile, who maintains it for the general use of his family, is liable for its negligent operation by one of his children, whom he designates or permits to run it, where the car is occupied and being used at the time of the injury for the pleasure of other members of the owner's family than the child driving it.

A. Quasi-Contracts

Art. 2142. Certain lawful, voluntary and unilateral acts give rise to the juridical relation of quasi-contract to the end that no one shall be unjustly enriched or benefited at the expense of another.

Art. 2175. Any person who is constrained to pay the taxes of another shall be entitled to reimbursement from the latter.

Art. 22. Every person who through an act of performance by another, or any other means, acquires or comes into possession of something at the expense of the latter without just or legal ground shall return the same to him.

Art. 23. Even when an act or event causing damage to another's property was not due to the fault or negligence of the defendant, the latter shall be liable for indemnity if through the act or event he was benefitted.

1. Benefits Conferred Voluntarily

(a) Preservation of Property or Business

(1) Negotiorum Gestio

Art. 2144. 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;

In the first case, the provisions of articles 1317, 1403, No. 1, and 1404 regarding unathorized contracts shall govern.

In the second case, the rules on agency in Title X of this Book shall be applicable.

Art. 1317. No one may contract in the name of another without being authorized by the latter, or unless he has by law a right to represent him.

A contract entered into in the name of another by one who has no authority or legal representation, or who has acted beyond his powers, shall be unenforceable, unless it is ratified, expressly or impliedly, by the person on whose behalf it has been executed, before it is revoked by the other contracting party.

Art. 1403. The following contracts are unenforceable, unless they are ratified:

(1) Those entered into in the name of another person by one who has been given no authority or legal representation, or who has acted beyond his powers;

Art. 1404. Unauthorized contracts are governed by article 1317 and the principles of agency in Title X of this Book.

Art. 2145. The officious manager shall perform his duties with all the diligence of a good father of a family, and pay the damages which through his fault or negligence may be suffered by the owner of the property or business under management.

The courts may, however, increase or moderate the indemnity according to the circumstances of each case.

Art. 2146. If the officious manager delegates to another person all or some of his duties, he shall be liable for the acts of the delegate, without prejudice to the direct obligation of the latter toward the owner of the business.

The responsibility of two or more officious managers shall be solidary, unless the management was assumed to save the thing or business from imminent danger.

Art. 2147. The officious manager shall be liable for any fortuitous event:

(1) If he undertakes risky operations which the owner was not accustomed to embark upon;
(2) If he has preferred his own interest to that of the owner;
(3) If he fails to return the property or business after demand by the owner;
(4) If he assumed the management in bad faith.
Art. 2148. Except when the management was assumed to save the property or business from imminent danger, the officious manager shall be liable for fortuitous events:

(1) If he is manifestly unfit to carry on the management;
(2) If by his intervention he prevented a more competent person from taking up the management.

Art. 2149. The ratification of the management by the owner of the business produces the effects of an express agency, even if the business may not have been successful.

Art. 2150. Although the officious management may not have been expressly ratified, the owner of the property or business who enjoys the advantages of the same shall be liable for obligations incurred in his interest, and shall reimburse the officious manager for the necessary and useful expenses and for the damages which the latter may have suffered in the performance of his duties.

The same obligation shall be incumbent upon him when the management had for its purpose the prevention of an imminent and manifest loss, although no benefit may have been derived.

Art. 2151. Even though the owner did not derive any benefit and there has been no imminent and manifest danger to the property or business, the owner is liable as under the first paragraph of the preceding article, provided:

(1) The officious manager has acted in good faith;
(2) The property or business is intact, ready to be returned to the owner.

Art. 2152. The officious manager is personally liable for contracts which he has entered into with third persons, even though he acted in the name of the owner and third persons. These provisions shall not apply:

(1) If the owner has expressly or tacitly ratified the management, or
(2) When the contract refers to things pertaining to the owner of the business.

Art. 2153. The management is extinguished:

(1) When the owner repudiates it or puts an end thereto;
(2) When the officious manager withdraws from the management subject to the provisions of article 2144;

Art. 2144. 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. xxx

(3) By the death, civil interdiction, insanity or insolvency of the owner or the officious manager.

(2) Finder of Lost Property

Art. 2171. The rights and obligations of the finder of lost personal
property shall be governed by articles 719 and 720.

Art. 719. Whoever finds a movable, which is not treasure, must return it to its previous possessor. If the latter is unknown, the finder shall immediately deposit it with the mayor of the city or municipality where the finding has taken place.

The finding shall be publicly announced by the mayor for two consecutive weeks in the way he deems best.

If the movable cannot be kept without deterioration, or without the expenses which considerably diminish its value, it shall be sold at public auction eight days after the publication.

Six months from the publication having elapsed without the owner having appeared, the thing found, or its value, shall be awarded to the finder. The finder and the owner shall be obliged, as the case may be, to reimburse the expenses.

Art. 720. If the owner should appear in time, he shall be obliged to pay, as a reward to the finder, one-tenth of the sum or of the price of the thing found.

Art. 2172. The right of every possessor in good faith to reimbursement for necessary and useful expenses is governed by article 546.

Art. 546. Necessary expenses shall be refunded to every possessor; but only the possessor in good faith may retain the thing until he has been reimbursed therefor.

Useful expenses shall be refunded only to the possessor in good faith with the same right of retention, the person who has defeated him in the possession having the option of refunding the amount of the expenses or of paying the increase in value which the thing may have acquired by reason thereof.

(b) Payments by Third Persons

Art. 2173. When a third person, without the knowledge of the debtor, pays the debt, the rights of the former are governed by articles 1236 and 1237.

Art. 1236. The creditor is not bound to accept payment or performance by a third person who has no interest in the fulfillment of the obligation, unless there is a stipulation to the contrary.

Whoever pays for another may demand from the debtor what he has paid, except that if he paid without the knowledge or against the will of the debtor, he can recover only insofar as the payment has been beneficial to the debtor.
Art. 1237. Whoever pays on behalf of the debtor without the knowledge or against the will of the latter, cannot compel the creditor to subrogate him in his rights such as those arising from a mortgage, guaranty, or penalty.

2. Benefits Involuntarily Conferred

(a) Solutio Indebiti

Art. 2154. If something was received when there is no right to demand it, and it was unduly delivered through mistake, the obligation to return it arises.

Art. 2155. Payment by reason of a mistake in the construction or application of a doubtful or difficult question of law may come within the scope of the preceding article.

Art. 2156. If the payer was in doubt whether the debt was due, he may recover if he proves that it was not due.

Art. 2157. The responsibility of two or more payees, when there has been payment of what is not due, is solidary.

Art. 2158. When the property delivered or money paid belongs to a third person, the payee shall comply with the provisions of article 1984.

Art. 1984. The depositary cannot demand that the depositor prove his ownership of the thing deposited.

Nevertheless, should he discover that the thing has been stolen and who its true owner is, he must advise the latter of the deposit.

If the owner, in spite of such information, does not claim it within the period of one month, the depositary shall be relieved of all responsibility by returning the thing deposited to the depositor.

If the depositary has reasonable grounds to believe that the thing has not been lawfully acquired by the depositor, the former may return the same.

Art. 2159. Whoever in bad faith accepts an undue payment, shall pay legal interest if a sum of money is involved, or shall be liable for fruits received or which should have been received if the thing produces fruits.

He shall furthermore be answerable for any loss or impairment of the thing from any cause, and for damages to the person who delivered the thing, until it is recovered.

Art. 2160. He who in good faith accepts an undue payment of thing certain and determinate shall only be responsible for the impairment or loss of the same or its accessories and accessions insofar as he has thereby been benefited. If he has alienated it, he shall return the price or assign the action to collect the sum.

Art. 2161. As regards the reimbursement for improvements and expenses incurred by him who unduly received the thing, the provisions of Title V of Book II shall govern.

Art. 2162. He shall be exempt from the obligation to restore who, believing in good faith that the payment was being made of a legitimate and subsisting claim,
destroyed the document, or allowed the action to prescribe, or gave up the pledges, or cancelled the guaranties for his right. He who paid unduly may proceed only against the true debtor or the guarantors with regard to whom the action is still effective.

Art. 2163. It is presumed that there was a mistake in the payment if something which had never been due or had already been paid was delivered; but he from whom the return is claimed may prove that the delivery was made out of liberality or for any other just cause.

(1) Distinguished from Natural Obligations

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.

Art. 1424. When a right to sue upon a civil obligation has lapsed by extinctive prescription, the obligor who voluntarily performs the contract cannot recover what he has delivered or the value of the service he has rendered.

Art. 1425. 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. 1428. 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. 1429. 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. 1430. When a will is declared void because it has not been executed in accordance with the formalities required by law, but one of the intestate heirs, after the settlement of the debts of the deceased, pays a legacy in compliance with a clause in the defective will, the payment is effective and irrevocable.

Art. 1960. If the borrower pays interest when there has been no stipulation therefor, the provisions of this Code concerning solutio indebiti, or natural obligations, shall be applied, as the case may be.

Art. 1956. No interest shall be due unless it has been expressly stipulated in writing.

(b) Performance of Obligations imposed by law in the interest of the public

(1) Support
Art. 2164. When, without the knowledge of the person obliged to give support, it is given by a stranger, the latter shall have a right to claim the same from the former, unless it appears that he gave it out of piety and without intent of being repaid.

Art. 2165. 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. 2166. When the person obliged to support an orphan, or an insane or other indigent person unjustly refuses to give support to the latter, any third person may furnish support to the needy individual, with right of reimbursement from the person obliged to give support. This Article shall apply particularly when the father or mother of a child under the age of majority unjustly refuses to support or fails to give support to the child when urgently needed. (Id.)

(2) Unjust refusal to support an orphan, insane or other indigent

Art. 206. When, without the knowledge of the person obliged to give support, it is given by a stranger, the latter shall have a right to claim the same from the former, unless it appears that he gave it without intention of being reimbursed. (Family Code.)

Art. 207. When the person obliged to support another unjustly refuses or fails to give support when urgently needed by the latter, any third person may furnish support to the needy individual, with right of reimbursement from the person obliged to give support. This Article shall apply particularly when the father or mother of a child under the age of majority unjustly refuses to support or fails to give support to the child when urgently needed. (Id.)

(3) Funeral expenses

Art. 2165. 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.

(4) Health or safety regulation re property

Art. 2169. When the government, upon the failure of any person to comply with health or safety regulations concerning property, undertakes to do the necessary work, even over his objection, he shall be liable to pay the expenses.

(5) Constraint of life or property on occasion of and accident or calamity

Art. 2167. When through an accident or other cause a person is injured or becomes seriously ill, and he is treated or helped while he is not in a condition to give consent to a contract, he shall be liable to pay for the services of the physician or other person aiding him, unless the services has been rendered out of pure generosity.

Art. 2168. When during a fire, flood, storm, or other calamity, property is
saved from destruction by another person without the knowledge of the owner, the latter is bound to pay the former just compensation.

Art. 2174. When in a small community a majority of the inhabitants of age decide upon a measure for protection against lawlessness, fire, flood, storm or other calamity, any one who objects to the plan and refuses to contribute to the expenses but is benefitted by the project as executed shall be liable to pay his share of said expenses.

Art. 2170. When by accident or other fortuitous event, movables separately pertaining to two or more persons are commingled or confused, the rules on co-ownership shall be applicable.

B. Quasi-delicts

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.

Art. 2177. 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. 2180. The obligation imposed by article 2176 is demandable not only for one's own acts or omissions, but also for those of persons for whom one is responsible.

The father and, in case of his death or incapacity, the mother, are responsible for the damages caused by the minor children who live in their company.

Guardians are liable for damages caused by the minors or incapacitated persons who are under their authority and live in their company.

The owners and managers of an establishment or enterprise are likewise responsible for damages caused by their employees in the service of the branches in which the latter are employed or on the occasion of their functions.

Employers shall be liable for the damages caused by their employees and household helpers acting within the scope of their assigned tasks, even though the former are not engaged in any business or industry.

The State is responsible in like manner when it acts through a special agent; but not when the damage has been caused by the official to whom the task done properly pertains, in which case what is provided in article 2176 shall be applicable.

Lastly, teachers or heads of establishments of arts and trades shall be liable for damages caused by their pupils and students or apprentices, so long as they remain in their custody.

The responsibility treated of in this article shall cease when the persons herein mentioned prove that they observed all the diligence of a good father of a family to prevent damage.

Art. 2182. If the minor or insane person causing damage has no parents or guardian, the minor or insane person shall be answerable with his own property in an action against him where a guardian ad litem shall be appointed.
Art. 2194. The responsibility of two or more persons who are liable for quasi-delict is solidary.

Art. 1728. The contractor is liable for all the claims of laborers and others employed by him, and of third persons for death or physical injuries during the construction.

Art. 1763. A common carrier is responsible for injuries suffered by a passenger on account of the wilful acts or negligence of other passengers or of strangers, if the common carrier's employees through the exercise of the diligence of a good father of a family could have prevented or stopped the act or omission.

Art. 218. The school, its administrators and teachers, or the individual, entity or institutions engaged in child care shall have special parental authority and responsibility over the minor child while under their supervision, instruction or custody.

Authority and responsibility shall apply to all authorized activities whether inside or outside the premises of the school entity or institution. (Family Code.)

Art. 219. Those given the authority and responsibility under the preceding Article shall be principally and solidarily liable for damages caused by the acts or omissions of the unemancipated minor. The parents, judicial guardians or the persons exercising parental authority over said minor shall be subsidiarily liable.

The respective liabilities of those referred to in the preceding paragraph shall not apply if it is proved that they exercised the proper diligence required under the particular circumstances.

All other cases not covered by this and the preceding articles shall be governed by the provisions of the Civil Code on quasi-delicts. (Id.)

C. Law

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 this Book.

Art. 294. The claim for support, when proper and two or more persons are obliged to give it, shall be made in the following order:

(1) From the spouse;
(2) From the descendants of the nearest degree;
(3) From the ascendants, also of the nearest degree;
(4) From the brothers and sisters.

Among descendants and ascendants the order in which they are called to the intestate succession of the person who has a right to claim support shall be observed.

Under the NCC, follow the order of intestate succession

Art. 199. Whenever two or more persons are obliged to give support, the liability shall devolve upon the following persons in the order herein provided:

(1) The spouse;
(2) The descendants in the nearest degree:
Art. 448. The owner of the land on which anything has been built, sown, or planted in good faith, shall have the right to appropriate as his own the works, sowing or planting, after payment of the indemnity provided for in articles 546 and 548, or to oblige the one who built or planted to pay the price of the land, and the one who sowed, the proper rent. However, the builder or planter cannot be obliged to buy the land if its value is considerably more than that of the building or trees. In such case, he shall pay reasonable rent, if the owner of the land does not choose to appropriate the building or trees after proper indemnity. The parties shall agree upon the terms of the lease and in case of disagreement, the court shall fix the terms thereof.

Art. 546. Necessary expenses shall be refunded to every possessor; but only the possessor in good faith may retain the thing until he has been reimbursed therefor.

Useful expenses shall be refunded only to the possessor in good faith with the same right of retention, the person who has defeated him in the possession having the option of refunding the amount of the expenses or of paying the increase in value which the thing may have acquired by reason thereof.

Art. 548. Expenses for pure luxury or mere pleasure shall not be refunded to the possessor in good faith; but he may remove the ornaments with which he has embellished the principal thing if it suffers no injury thereby, and if his successor in the possession does not prefer to refund the amount expended.

Art. 636. Easements established by law in the interest of private persons or for private use shall be governed by the provisions of this Title, without prejudice to the provisions of general or local laws and ordinances for the general welfare.

These easements may be modified by agreement of the interested parties, whenever the law does not prohibit it or no injury is suffered by a third person.

Art. 2014. No action can be maintained by the winner for the collection of what he has won in a game of chance. But any loser in a game of chance may recover his loss from the winner, with legal interest from the time he paid the amount lost, and subsidiarily from the operator or manager of the gambling house.

D. Contracts

Art. 1159. Obligations arising from contracts have the force of law between the contracting parties and should be complied with in good faith.
Art. 1306. The contracting parties may establish such stipulations, clauses, terms and conditions as they may deem convenient, provided they are not contrary to law, morals, good customs, public order, or public policy.

E. Delict

Art. 1161. Civil obligations arising from criminal offenses shall be governed by the penal laws, subject to the provisions of article 2177, and of the pertinent provisions of Chapter 2, Preliminary Title, on Human Relations, and of Title XVIII of this Book, regulating damages.

correlate this w/ Art. 100, RPC

Art. 100. Civil Liability of a person guilty of felony.-- Every person criminally liable for a felony is also civilly liable.

Art. 108. Obligation to make restoration, reparation for damages, indemnification for consequential damages and action to demand the same - Upon whom it devolves. - The obligation to make restoration or reparation for damages and indemnification for consequential damages devolves upon the heirs of the person liable.

The action to demand restoration, reparation, and indemnification likewise descends to the heirs of the person injured. (Revised Penal Code.)

Art. 89. How criminal liability is totally extinguished. - Criminal liability is totally extinguished:

1. By the death of the convict, as to the personal penalties; and as to pecuniary penalties, liability therefor is extinguished only when the death of the offender occurs before final judgment.

2. By service of the sentence;

3. By amnesty, which completely extinguishes the penalty and all its effects;

4. By absolute pardon;

5. By prescription of the crime;

6. By prescription of the penalty;

7. By the marriage of the offended woman, as provided in Article 344 of this Code. (Id.)

Art. 344. xxx In cases of seduction, abduction, acts of lasciviousness and rape, the marriage of the offender with the offended party shall extinguish the criminal action or remit the penalty already imposed upon him. The provisions of this paragraph shall also be applicable to the co-principals, accomplices and accessories after the fact of the above-mentioned crimes. (Id.)

Balane: Crime as a source of obligation.-- There are many crimes from w/c, civil liability arises in their commission, in addition to the criminal penalty attached to them. This underlines the two aspects in a crime: one, as an offense against the state, and two as an offense against the victim. It is in the latter case that civil liability is recoverable.

As far as crime is concerned, civil law is not concerned w/ the penal liability but only w/ the civil liab.
CHAPTER 2.-- NATURE AND EFFECT OF OBLIGATIONS

Articles 1163 - 1168 in relation to Art. 1156.

Balane: Three types of obligations.-- (1) obligation to give; (2) obligation to do; and (3) obligation not to do.

I. Obligation to give
   A. Specific thing
   B. Generic thing

II. To do

III. Not to do (this includes all negative obligations like obligation not to give.)

Kinds of performance.-- (1) specific performance (performance by the debtor himself); (2) substitute performance (performance at the expense of the debtor); (3) equivalent performance (grant of damages.)

Articles 1163 - 1166 cover obligation to give.

Three Accessory Obligations:
1. Art. 1163.-- To take care of the thing w/ the diligence of a good father of a family until actual delivery.
2. Art. 1164.-- To deliver the fruits to the creditor (fruits produced after obligation to deliver arises.)
3. Art. 1166.-- To deliver accessions and accessories.

Art. 1163. Every person obliged to give something is also obliged to take care of it with the proper diligence of a good father of a family, unless the law or the stipulation of the parties requires another standard of care.

Art. 1164. The creditor has a right to the fruits of the thing from the time the obligation to deliver arises. However, he shall have no real right over it until the same has been delivered to him.

Balane: From the time the obligation arises, the creditor has a personal right against the debtor as to the fruits. But he has no real right over them until actual delivery. Real right is a right w/c is enforceable against the whole world. He has only the personal right against the debtor w/ regard to the undelivered fruits. This is bec. of the principle Non nudis pactis, sed traditione, dominia rerum transferentur.” (It is not by mere agreement, but by delivery, is ownership transferred.) Personal right arises from the time the obligation to deliver arises whereas the real right does not arise until actual delivery.

Articles 1165 - 1167.-- Remedies Available to the Creditor (specific performance, substitute performance, equivalent performance.)

A. In obligations to give
   1. A determinate thing
      a. Specific performance
      b. Equivalent performance
   2. A generic thing, all remedies are available

B. In an obligation to do, make a distinction:
   1. Obligation to do w/c is purely personal, only equivalent performance is available
   2. Obligation to do w/c is not personal
      a. substitute performance
      b. equivalent performance
Note that in obligations to do, specific performance is not available. The reason for this is that specific performance will give rise to involuntary servitude.

C. Obligation not to do
   1. substitute performance
   2. equivalent performance.

In all these cases, the creditor has the option of resolution or rescission under Art. 1191. In addition, he can also claim damates.

Art. 1165. When what is to be delivered is a determinate thing, the creditor, in addition to the right granted him by article 1170, may compel the debtork to make the delivery.

If the thing is indeterminate or generic, he may ask that the obligation be complied with at the expense of the debtor.

If the obligor delays, or has promised to deliver the same thing to two or more persons who do not have the same interest, he shall be responsible for any fortuitous event until he has effected the delivery.

Art. 1166. The obligation to give a determinate thing includes that of delivering its accessions and accessories, even though they may not have been mentioned.

Art. 1167. If a person obliged to do something fails to do it, the same shall be executed at his cost.

This same rule shall be observed if he does it in contravention of the tenor of the obligation. Furthermore, it may be decreed that what has been poorly done be undone.

Art. 1168. When the obligation consists in not doing and the obligor does what has been forbidden him, it shall also be undone at his expense.

Articles 1169 - 1174.-- Irregularity of Performance.

Balane:

Two Classes of Irregularity of Performance:
I. Attributable to the debtor
   A. Fraud
   B. Negligence
   C. Delay

II. Not attributable to the debtor
   A. Fortuitous event.

Art. 1169. Those obliged to deliver or to do something incur in delay from the time the obligee judicially or extrajudicially demands from them the fulfillment of their obligation.

However, the demand by the creditor shall not be necessary in order that delay may exist:

(1) When the obligation or the law expressly so declare:
(2) 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:
(3) When demand would be useless, as when the obligor has rendered it beyond his power to perform.

In reciprocal obligations, neither party incurs in delay if the other does not comply or is not ready to comply in a proper manner with what is incumbent upon him. From the moment one of the
parties fulfills his obligation, delay by the other begins.

Balane:

When does delay set in?-- Delay sets in in the following manner:
1. For Reciprocal simultaneous obligations.-- by the readiness of one of the parties to perform and his letting the other party know; and the other party is not ready to comply in a proper manner w/ what is incumbent upon him.

2. For Reciprocal obligations w/c are not simultaneous.-- Gen. Rule: Demand is necessary (Art. 1169, par. 1.) This is called *mora solvendi ex persona*.
   
   Exception: When demand is not necessary (the exceptions are found in Art. 1169, par. 2.) This is called *mora solvendi ex re*

What kind of demand is necessary?-- Judicial or extra-judicial

Exceptions:

(1) *When the obligation or the law expressly so declare.*-- when the contract says that w/o the necessity of demand, default sets in upon the failure of the obligor to perform on due date. There must be something in the contract w/c explicitly states that the demand is not necessary in order that delay may set in.

(2) *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.*

Illustration: Bong Baylon is getting married in Valentines '96. Inno Sotto was supposed to make Ella's (the bride) wedding gown. Feb. 14 comes, no gown was delivered. Ella gets married in blue jeans and t-shirt. Finally, on Feb. 15, Inno delivers the gown. xxx Ella sues Inno for breach. Inno says there was no demand. In this case, demand is not necessary in order that delay may exist.

(3) *When demand would be useless, as when the obligor has rendered it beyond his power to perform.*-- Example is the case of Chavez v. Gonzales, *infra*.

BALANE CASES:

**AGCAOILI VS. GSIS** [165 S 1] - There was then a perfected contract of sale bet. the parties; there had been a meeting of the minds upon the purchase by Agcaoili of a determinate house and lot in the GSIS Housing Project at Nangka, Marikina, Rizal, at a definite price payable in amortizations at P31.56 per mo., and from the moment the parties acquired the right to reciprocally demand performance. It was, to be sure, the duty of the GSIS, as seller, to deliver the thing sold in a condition suitable for its enjoyment by the buyer for the purpose contemplated, in other words, to deliver the house subject of the contract in a reasonably livable state. This it failed to do.

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Since GSIS did not fulfill that obligation, and was not willing to put the house in habitable state, it cannot invoke Agcaoili's suspension of payment of amortization as cause to cancel the contract bet. them. It is axiomatic that "(i)n reciprocal obligations, neither party incurs in delay if the other does not comply or is not ready to comply in a proper manner with what is incumbent upon him."
SSS VS. MOONWALK [221 S 119] - Requisites in order that debtor ma be in default: Necessity of demand.-- To be in default "xxx is different from mere delay in the grammatical sense, bec. it involves the beginning of a special condition or status w/c has its own peculiar effects or results." In order that the debtor may be in default it is necessary that the following requisites be present: (1) that the obligation be demandable and already liquidated; (2) that the debtor delays performance; and (3) that the creditor requires the performance judicially or extrajudicially. Default generally begins from the moment the creditor demands the performance of the obligation. Nowhere in this case did it appear that SSS demanded from Moonwalk the payment of its monthly amortization. Neither did it show that petitioner demanded the payment of the stipulated penalty upon the failure of Moonwalk to meet its monthly amortization. What the complaint itself showed was that SSS tried to enforce the obligation somethime in Sept, 1977 by foreclosing the real estate mortgages executed by Moonwalk in favor of SSS. But this foreclosure did not push through upon Moonwalk's requests and promises to pay in full. The next demand for payment happened on Oct. 1, 1979 when SSS issued a Statement of Account to Moonwalk. And in accordance w/ said statement, Moonwalk paid its loan in full. What is clear, therefore, is that Moonwalk was never in default bec. SSS never compelled performance.

Art. 1170. Those who in the performance of their obligation are guilty of fraud, negligence or delay, and those who in any manner contravene the tenor thereof, are liable for damages.

ARRIETA VS. NARIC [10 S 79] - One who assumes a contractual obligation and fails to perform the same on account of his inability to meet certain bank requirements which inability he knew and was aware of when he entered into the contract, should be held liable in damages for breach of contract.

Under Art. 1170, not only debtors guilty of fraud, negligence or default but also every debtor, in general, who fails the performance of his obligation is bound to indemnify for the losses and damages caused thereby.

Meaning of phrase "in any manner contravene the tenor" of the obligation.-- The phrase includes any illicit task w/c impairs the strict and faithful fulfillment of the obligation, or every kind of defective performance.

Balane: This phrase is a catch-all provision. At worst, it is a superfluity. At best, there is a safety net just in case there is a culpable irregularity of performance w/c is not covered by fraud, negligence or delay. In this case, the SC was apparently not sure as to what category the breach fell. This phrase is not really an independent ground.

TELEFAST VS. CASTRO [158 S 445] - In the case at bar, petitioner and private respondent Sofia C. Crouch entered into a contract whereby, for a fee, petitioner undertook to send said private respondent's message overseas by telegram. This, petitioner did not do, despite performance by said pvt. resp. of her obligation by paying the required charges. Petitioner was therefore guilty of contravening its obligation to said private respondent and is thus liable for damages.

NPC VS. CA [161 S 334] - NPC cannot escape liability bec. its negligence was the
proximate cause of the loss and damage even though the typhoon was an act of God.-- It is clear from the appellate court’s decision that based on its findings of fact and that of the trial court’s, petitioner NPC was undoubtedly negligent bec. it opened the spillway gates of the Angat Dam only at the height of typhoon “Welming” when it knew very well that it was safer to have opened the same gradually and earlier, as it was also undeniable that NPC knew of the coming of the typhoon at least 4 days bef. it actually struck. And even though the typhoon was an act of God or what we may call force majeure, NPC cannot escape liability bec. its negligence was the proximate cause of the loss and damage. As we have said in Juan Nakpil & Sons vs. CA, 144 SCRA 596.

Thus, if upon the happening of a fortuitous event or an act of God, there concurs a corresponding fraud, negligence, delay or violation or contravention in any manner of the tenor of the obligation as provided for in Art. 1170, w/c results in a loss or damage, the obligor cannot escape liability. The principle embodied in the act of God doctrine strictly requires that the act must be one occasioned exclusively by the violence of nature and human agencies are to be excluded from creating or entering into the cause of the mischief. When the effect, the cause of w/c is to be considered, is found to be in part the resulf of the participation of man, whether it be from active intervention or neglect, or failure to act, the whole occurrence is thereby humanized, as it was, and removed from the rules applicable to the acts of God. Thus, it has been held that when the negligence of a person concurs w/ an act of God in producing a loss, such person is not exempt from liability by showing that the immediate cause of the damage was the act of God. To be exempt from liability for loss bec. of an act of God, he must be free from any previous negligence or misconduct by w/c the loss or damage may have been occasioned.

RCPI VS. RODRIGUEZ [182 S 889] - Resp. Rodriguez and RCPI entered into a contract whereby for a fee RCPI undertook to send the respondent's message overseas. When, therefore, resp. Rodriguez paid RCPI to deliver his message overseas by telegram, RCPI obligated itself to transmit the messages to the addressee. Clearly, RCPI reneged on its obligation when it failed to deliver the messages or to inform the sender about the non-delivery, thus making it liable for damages.

Fraud

Balane: Is it correct to say that fraud in Art. 1170 means deceit or insiduous machinations? No.

LEGASPI OIL VS. CA [224 S 213] - Definition of Fraud.-- In general, fraud may be defined as the voluntary execution of a wrongful act, or willful omission, knowing and intending the effects w/c naturally and necessarily arise from such act or omission; the fraud referred to in Art. 1170 is the deliberate and intentional evasion of the normal fulfillment of obligation; it is distinguished from negligence by the presence of deliberate intent, w/c is lacking in the latter.

Balane: Fraud as used in Art. 1170 is different from fraud as a cause for vitiation of consent in contracts (more properly called deceit w/c prevents the contract from arising; this is found in Art. 1380, et seq.)

Q: What is a synonym for fraud as used in Art. 1170?
A: Malice.
Effects of Fraud:
1. Creditor may insist on performance, specific or substitute (Art. 1233.)
2. Creditor may resolve/ rescind (Art. 1191.)
3. Damages in either case (Art. 1170.)

Negligence

Negligence is the absence of something that should be there-- due diligence.

Delay

Delay is the non-fulfillment of the obligation w/ respect to time.

Kinds of Delay:
1. Mora Solvendi -- delay in the performance (on the part of the debtor);
2. Mora Accipiendi -- delay in the acceptance (on the part of the creditor);
3. Compensation Morae -- mutual delay

Art. 1173. The fault or negligence of the obligor 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. When negligence shows bad faith, the provisions of articles 1171 and 2201, paragraph 2, shall apply.

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

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

BALANE CASE:

METROBANK VS. CA [237 S 761] - As borne out by the records, the dishonoring of the resp.'s checks committed through negligence by the petitioner bank on 4/6/82 was rectified only on 4/15/82 or nine days after receipt of the credit memo. Clearly, petitioner bank was remiss in its duty and obligation to treat pvt. resp's account w/ the highest degree of care, considering the fiduciary nature of the relationship. The bank is under obligation to treat the accounts of its depositors w/ meticulous care, whether such account consists only of a few hundred pesos or of millions. It must bear the blame for failing to discover the mistake of its employee despite the established procedure requiring bank papers to pass through bank personnel whose duty it is to check and countercheck them for possible errors. Responsibility arising from negligence in the performance of every kind of obligation is demandable. xxx

II. Diligence required

Balane:

Negligence is covered by Articles 1170, 1172 and 1173

Art. 1173. The fault or negligence of the obligor 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. When negligence shows bad faith, the provisions of articles 1171 and 2201, paragraph 2, shall apply.

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

Art. 2201. (2) In contracts and quasi-contracts, the damages for which the obligor who acted in good
faith is liable shall be those that are the natural and probable consequences of the breach of the obligation, and which the parties have foreseen or could have reasonably foreseen at the time the obligation was constituted.

In case of fraud, bad faith, malice or wanton attitude, the obligor shall be responsible for all damages which may be reasonably attributed to the non-performance of the obligation.

Balane:

Negligence is the absence of something that should be there—diligence.

Measure of Due Diligence.— There are two guides:

1. Diligence demanded by circumstances of person, place and time
2. Care required of a good father of a family (fictional bonus pater familias who was the embodiment of care, caution and protection in Roman law.)

In common law, the degree of care required is the diligence of a prudent businessman. This is actually the same as the diligence of a good father of a family.

Effects of Negligence:
1. Creditor may insist on performance, specific or substitute (Art. 1233.)
2. Creditor may resolve/rescind (Art. 1191.)
3. Damages in either case (Art. 1170.)

BALANE CASE:

JIMENEZ VS. CITY OF MANILA [150 S 510] - City of Mla. failed to exercise the diligence of a good father of a family w/c is a defense in quasi-delict.— As a defense against liability on the basis of quasi-delict, one must have exercised the diligence of a good father of a family. There is no argument that it is the duty of the City of Mla. to exercise reasonable care to keep the public market reasonably safe for people frequenting the place for their marketing needs. While it may be conceded that the fulfillment of such duties is extremely difficult during storms and floods, it must, however, be admitted that ordinary precautions could have been taken during good weather to minimize the dangers to life and limb under those difficult circumstances. For instance, the drainage hole could have been placed under the stalls instead of on the passage ways. Even more important is the fact, that the City should have seen to it that the openings were covered. Sadly, the evidence indicates that long before petitioner fell into the opening, it was already uncovered, and 5 mos. after the incident happened, the opening was still uncovered. Moreover, while there are findings that during floods the vendors remove the iron grills to hasten the flow of water, there is no showing that such practice has ever been prohibited, much less penalized by the City of Mla. Neither was it shown that any sign had been placed thereabouts to warn passers-by of the impending danger.

Extraordinary diligence required

A. Innkeeper

Art. 2000. The responsibility referred to in the two preceding articles shall include the loss of, or injury to the personal property of the guests caused by
the servants or employees of the keepers of hotels or inns as well as by strangers; but not that which may proceed from any force majeure. The fact that travellers are constrained to rely on the vigilance of the keeper of the hotels or inns shall be considered in determining the degree of care required of him.

Art. 2001. The act of a thief or robber, who has entered the hotel is not deemed force majeure, unless it is done with the use of arms or through an irresistible force.

B. Common Carriers

Art. 1733. Common carriers, from the nature of their business and for reasons of public policy, are bound to observe extraordinary diligence in the vigilance over the goods and for the safety of the passengers transported by them, according to all the circumstances of each case.

Such extraordinary diligence in the vigilance over the goods is further expressed in articles 1734, 1735, and 1745, Nos. 5, 6, and 7, while the extraordinary diligence for the safety of passengers is further set forth in articles 1755 and 1756.

Art. 1734. Common carriers are responsible for the loss, destruction, or deterioration of the goods, unless the same is due to any of the following causes only:

1. Flood, storm, earthquake, lightning, or other natural disaster or calamity;
2. Act of the public enemy in war, whether international or civil;
3. Act or omission of the shipper or owner of the goods;
4. The character of the goods or defects in the packing or in the containers;
5. Order or act of competent public authority.

C. Lessee of Agricultural land

Art. 1680. The lessee shall have no right to a reduction of the rent on account of the sterility of the land leased, or by reason of the loss of fruits due to ordinary fortuitous events; but he shall have such right in case of loss of more than one-half of the fruits through extraordinary and unforeseen fortuitous events, save always when there is a specific stipulation to the contrary.

Extraordinary fortuitous events are understood to be: fire, war, pestilence, unusual flood, locusts, earthquake, or others which are uncommon, and which the contracting parties could not have reasonably foreseen.

III. Loss due to Fortuitous Events

Art. 1174. Except in cases expressly specified by law, or when it otherwise declared by stipulation, or when the nature of the obligation requires the assumption of risk, no person shall be responsible for those events which could not be foreseen, or which, though foreseen, were inevitable.

Balane:

General Rule: The happening of a fortuitous event exonerates the debtor from liability.

Exceptions:
1. When the law so specifies.—e.g., if the debtor is already in delay (Art. 1165, par. 3.)
2. When the parties so agree
3. When the nature of the obligation requires the assumption of risk, e.g., an
insurance contract.

BALANE CASES:

NAKPIIL & SONS VS. CA [144 S 596] - Requisites for exemption from liability due
to an "act of God." -- To exempt the obligor
from liability under Art. 1174, for a breach
of an obligation due to an "act of God," the
following must concur:
(a) the cause of the breach of the
obligation must be independent of the will
of the debtor;
(b) the event must be either
unforeseeable or unavoidable;
(c) the event must be such as to
render it impossible for the debtor to fulfill
his obligation in a normal manner; and
(d) the debtor must be fee from any
participation in, or aggravation of the
injury to the creditor.
Balane: Some of the elements were
present in this case. What was absent was
the last element.

NAKPIIL & SONS VS. CA [160 S 334] - "One who negligently creates a dangerous
condition cannot escape liability for the
natural and probable consequences thereof, although the act of a third person,
or an act of God for w/c he is not
responsible, intervenes to precipitate the
loss." (citing Tucker v. Milan, 49 OG 4379,
4380.)

QUISIMBING VS. CA [189 S 605] - PAL’s
failure to take certain steps that a certain
passenger in hindsight believes should
have been taken is not the negligence or
misconduct w/c mingles w/ force majeure
as an active and cooperative cause.-- A
careful analysis of the record in relation to
the memoranda and other pleadings of the
parties, convinces this Court of the
correctness of the essential conclusion of
both the trial and appellate courts that the
evidence does indeed fail to prove any want
of diligence on the part of PAL, or that,
more specifically, it had failed to comply
with applicable regulations, or universally
accepted and observed procedures to
preclude hijacking; and that the particular
acts singled out by the petitioners as
supposedly demonstrative of negligence
were, in the light of the circumstances of
the case, not in truth negligent acts
"sufficient to overcome the force majeure
nature of the armed robbery." The Court
quite agrees, too, w/ the Appellate
Tribunal’s wry observation that PAL’s
failure to take certain steps that a
passenger in hindsight believes should
have been taken is not the negligence or
misconduct w/c mingles w/ force majeure
as an active and cooperative cause."

BACHELOR EXPRESS VS. CA [188 S 216] - The running amuck of the passenger
was the proximate cause of the incident as
it triggered off a commotion and panic
among the passengers such that the
passengers started running to the sole exit
shoving each other resulting in the falling
off the bus by passengers Beter and
Rautraut causing them fatal injuries w/c
killed them. The sudden act of the
passenger who stabbed another passenger
in the bus is w/in the context of
force majeure.
However, in order that a common
carrier may be absolved from liability in
case of force majeure, it is not enough that
the accident was caused by force majeure.
The common carrier must still prove that it
was not negligent in causing the injuries
resulting from such accident.
Considering the factual findings of
the CA-- the bus driver did not
immediately stop the bus at the height of
the commotion; the bus was speeding from
a full stop; the victims fell from the bus door when it was opened or gave way while the bus was still running; the conductor panicked and blew his whistle after people had already fallen off the bus; and the bus was not properly equipped w/ doors in accordance w/ law-- it is clear that petitioners have failed to overcome the presumption of fault and negligence found in the law governing common carriers.

The petitioner’s argument that the petitioners "are not insurers of their passengers" deserves no merit in view of the failure of the petitioners to prove that the deaths of the 2 passengers were exclusively due to force majeure and not to the failure of the petitioners to observe extraordinary diligence in transporting safely the passengers to their destination as warranted by law.

NPC VS. CA [222 S 415] - Petitioners cannot be heard to invoke the act of God or force majeure to escape liability for the loss or damage sustained by the pvt. respondents since they, the petitioners, were guilty of negligence. The event then was not occasioned exclusively by an act of God or force majeure; a human factor--negligence or imprudence-- had intervened. The effect then of the force majeure in question may be deemed to have, even if only partly, resulted from the participation of man. Thus, the whole occurrence was thereby humanized, as it were, and removed from the rules applicable to acts of God.

NPC VS. CA [223 S 649] - Petitioners have raised the same issues and defenses as in the 2 other decided cases therein mentioned. Predictably therefore, this petition must perforce be dismissed bec. the losses and damages sustained by the private resp.’s had been proximately caused by the negligence of the petitioners, although the typhoon w/c preceded the flooding could be considered as a force majeure.

A. Exceptions

1. Express Provision of Law

Depositary

Art. 1979. The depositary is liable for the loss of the thing through a fortuitous event:

(1) If it is so stipulated;

(2) If he uses the thing without the depositor’s permission;

(3) If he delays its return;

(4) If he allows others to use it, even though he himself may have been authorized to use the same.
Bailee in commodatum

Art. 1942. The bailee is liable for the loss of the thing, even if it should be through a fortuitous event:
1. If he devotes the thing to any purpose different from that for which it has been loaned;
2. If he keeps it longer than the period stipulated, or after the accomplishment of the use for which the commodatum has been constituted;
3. If the thing loaned has been delivered with appraisal of its value, unless there is a stipulation exempting the bailee from responsibility in case of a fortuitous event;
4. If he lends or leases the thing to a third person, who is not a member of his household;
5. If, being able to save either the thing borrowed or his own thing, he chooses to save the latter.

Negotiorum Gestio

Art. 2147. The officious manager shall be liable for any fortuitous event:
1. If he undertakes risky operations which the owner was not accustomed to embark upon;
2. If he has preferred his own interest to that of the owner;
3. If he fails to return the property or business after demand by the owner;
4. If he assumed the management in bad faith.

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

Payee in Solutio Indebiti

Art. 2159. Whoever in bad faith accepts an undue payment, shall pay legal interest if a sum of money is involved, or shall be liable for fruits received or which should have been received if the thing produces fruits.

He shall furthermore be answerable for any loss or impairment of the thing from any cause, and for damages to the person who delivered the thing, until it is recovered.

Lessee

Art. 1648. Every lease of real estate may be recorded in the Registry of Property. Unless a lease is recorded, it shall not be binding upon third persons.

Art. 1671. If the lessee continues enjoying the thing after the expiration of the contract, over the lessor’s objection, the former shall be subject to the responsibilities of a possessor in bad faith.

Art. 552. A possessor in bad faith shall be liable for deterioration or loss in every case, even if caused by a fortuitous event.

Independent Contractor

Art. 1727. The contractor is responsible for the work done by persons employed by him.
Art. 1728. The contractor is liable for all the claims of laborers and others employed by him, and of third persons for death or physical injuries during the construction.

Common Carrier

Art. 1763. A common carrier is responsible for injuries suffered by a passenger on account of the wilful acts or negligence of other passengers or of strangers, if the common carrier's employees through the exercise of the diligence of a good father of a family could have prevented or stopped the act or omission.

2. Mora or default

a. Mora solvendi

Art. 1165. xxx.
xxx
If the obligor delays, or has promised to deliver the same thing to two or more persons who do not have the same interest, he shall be responsible for any fortuitous event until he has effected the delivery.

Art. 1169. Those obliged to deliver or to do something incur in delay from the time the obligee judicially or extrajudicially demands from them the fulfillment of their obligation.

However, the demand by the creditor shall not be necessary in order that delay may exist:

(1) When the obligation or the law expressly so declare:

(2) 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:

(3) When demand would be useless, as when the obligor has rendered it beyond his power to perform.

In reciprocal obligations, neither party incurs in delay if the other does not comply or is not ready to comply in a proper manner with what is incumbent upon him. From the moment one of the parties fulfills his obligation, delay by the other begins.

Art. 552. xxx
A possessor in bad faith shall be liable for deterioration or loss in every case, even if caused by a fortuitous event.

b. Mora accipiendi

Art. 1718. The contractor who has undertaken to put only his work or skill, cannot claim any compensation if the work should be destroyed before its delivery, unless there has been delay in receiving it, or if the destruction was caused by the poor quality of the material, provided this fact was communicated in due time to the owner. If the material is lost through a fortuitous event, the contract is extinguished.

Art. 1504. Unless otherwise agreed, the goods remain at the seller's risk until the ownership therein is transferred to the buyer, but when the ownership therein is transferred to the buyer the goods are at the buyer's risk whether actual delivery has been made or not, except that:

(1) Where delivery of the goods has been made to the buyer or to a bailee for
the buyer, in pursuance of the contract and the ownership in the goods has been retained by the seller merely to secure performance by the buyer of his obligations under the contract, the goods are at the buyer's risk from the time of such delivery;

(2) Where actual delivery has been delayed through the fault of either the buyer or seller the goods are at the risk of the party in fault.

3. Express agreement

Art. 1306. The contracting parties may establish such stipulations, clauses, terms and conditions as they may deem convenient, provided they are not contrary to law, morals, good customs, public order, or public policy.

4. Aleatory Contract

Art. 2010. By an aleatory contract, one of the parties or both reciprocally bind themselves to give or to do something in consideration of what the other shall give or do upon the happening of an event which is uncertain, or which is to occur at an indeterminate time.

Art. 1175. Usurious transactions shall be governed by special laws.

Tolentino:

Usury.-- Usury is the contracting for or receiving something in excess of the amount allowed by law for the loan or forbearance or money, goods or chattels.

Special law on usury.-- The Usury Law was Act No. 2655. This law was repealed during the period of martial law, leaving parties free to stipulate higher rates.

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

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

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

Balane: Against what can the obligee demand performance?

1. Against non-exempt properties of the debtor.-- The debtor is liable with all his property, present and future, for the fulfillment of his obligations, subject to the exemptions provided by law. (Art. 2236.)

2. If number one is nog enought, the creditor goes to any claims w/c the debtor may have against third persons. This is called acción subrogatoria, wherein the creditor is subrogated in the rights of the debtor.

3. Acción pauliana (Articles 1387-89).-- This is the right of creditors to set aside fraudulent transfers w/c the debtor made
so much of it as is necessary to pay the debts.

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

CHAPTER 3.-- DIFFERENT KINDS OF OBLIGATIONS

Section 1.-- Pure and Conditional Obligations

Balane: Articles 1179 - 1230.-- The trouble w/ the classification is that there is no system.

Classification of Obligations:

1. According to criteria of demandability:
   a. Pure
   b. Conditional
   c. W/ a term

2. According to plurality of objects:
   a. Single
   b. Alternative
   c. Facultative

3. According to Plurality of subjects:
   a. Joint
   b. Solidary

4. According to Performance:
   a. Divisible
   b. Indivisible

5. According to Sanctions for Breach:
   a. Simple
   b. W/ a penal clause

IV. Different Types of Civil Obligations

1. As to Criteria of Demandability

A. Pure Obligation.-- A pure obligation is one w/ c is not subject to a condition or a term.

Art. 1179. Every obligation whose performance does not depend upon a future or uncertain event, or upon a past event unknown to the parties, is demandable at once.

Every obligation which contains a resolutory condition shall also be demandable, without prejudice to the effects of the happening of the event.

PAY V. PALANCA [57 SCRA 618] - From the manner in w/ c the p/n was executed, it would appear that petitioner was hopeful that the satisfaction of his credit could be realized either through the debtor sued receiving cash payment from the estate of the late Carlos Palanca presumptively as one of the heirs, or, as expressed therein, "upon demand." There is nothing in the record that would indicate whether or not the first alternative was fulfilled. What is undeniable is that on 8/26/67, more than 15 yrs. after the execution of the p/n on 1/30/52, this petition was filed. The defense interposed was prescription. Its merit is rather obvious. Art. 1179, par. 1 says so. xxx

The obligation being due and demandable, it would appear that the filing of the suit after 15 yrs. was much too late.

B. Conditional Obligations

Art. 1181. 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.
Balane: A condition is a future and uncertain event upon which an obligation or provision is made to depend. XXX Futurity and uncertainty must concur as characteristics of the event. (IV Tolentino.)

A past thing can never be a condition. A condition is always future and uncertain.

Past event unknown to the parties.-- It is really the knowledge of the event w/c constitutes the future. It is the knowledge w/c is future and uncertain. For example, when I say "I will treat you for lunch if you get the highest score in the Civil Law Final Exams (on the assumption that Prof. Balane has already finished checking the papers.)" Here, the event (getting the highest score) is already a past event, yet the knowledge is future and uncertain.

Condition compared to a term.-- As to element of futurity, condition and element are the same. They differ in the aspect of certainty-- a condition is uncertain whereas a term is certain.

Conditions can either be:
1. Suspensive condition (condition precedent) wherein the happening of the event gives birth to an obligation
2. Resolutory condition (condition subsequent) wherein the happening of the event will extinguish the obligation.

Distinguished from term or period

Art. 1193. Obligations for whose fulfillment a day certain has been fixed, shall be demandable only when that day comes.

Obligations with a resolutory period take effect at once, but terminate upon arrival of the day certain.

A day certain is understood to be that which must necessarily come, although it may not be known when.

If the uncertainty consists in whether the day will come or not, the obligation is conditional, and it shall be regulated by the rules of the preceding Section.

Balane: A term is a future and certain event upon w/c the demandability (or extinguishment) of an obligation depends.

A term or period is an interval of time, w/c, exerting an influence on an obligation as a consequence of a juridical act, either suspends its demandability or produces its extinguishment. (Manresa.)

A term can either be:
1. Suspensive condition (ex die -- from the day) or one the arrival of w/c will make the obligation demandable
2. Resolutory condition (in die -- into the day) or one the arrival of w/c will extinguish the obligation.

Kinds of Conditional Obligations

(i) Condition precedent

Art. 1187. The effects of a conditional obligation to give, once the condition has been fulfilled, shall retroact to the day of the constitution of the obligation. Nevertheless, when the obligation imposes reciprocal prestation upon the parties, the fruits and interests during the pendency of the condition shall be deemed to have been mutually compensated. If the obligation is unilateral, the debtor shall appropriate the fruits and interests received, unless from the nature and circumstances of the obligation it should be inferred that the
intention of the person constituting the same was different.

In obligations to do and not to do, the courts shall determine, in each case, the retroactive effect of the condition that has been complied with.

Balane: This article refers to suspensive condition. This article sets forth the rule of retroactivity in an obligation to give. This rule is logical but impractical. Many modern Civil Codes have discarded it.

No Retroactivity as to the Fruits.-- Notice that there is no retroactivity with respect to the fruits. The fruits are deemed to cancel out each other. If only one of the thing produces fruits, there is no obligation to deliver the fruits.

(ii) Condition subsequent

Art. 1190. 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.

In case of the loss, deterioration or improvement of the thing, the provisions which, with respect to the debtor, are laid down in the preceding article shall be applied to the party who is bound to return.

As for obligations to do and not to do, the provisions of the second paragraph of article 1187 shall be observed as regards the effect of the extinguishment of the obligation.

Art. 1187. xxx

In obligations to do and not to do, the courts shall determine, in each case, the retroactive effect of the condition that has been complied with.

Balane: Art. 1190 refers to resolutory conditions. This is just the opposite of Art. 1189.

3. Kinds of conditions

Art. 1182. When the fulfillment of the condition depends upon the sole will of the debtor, the conditional obligation shall be void. If it depends upon chance or upon the will of a third person, the obligation shall take effect in conformity with the provisions of this Code.

Balane: We are talking here of a suspensive condition.

First sentence of Art. 1182.-- The condition must be suspensive, potestative and depends on the sole will of the debtor. E.g., "I promise to sell you my car for P1.00 whenever I like."

Q: Why does it make the obligation void?

A: Bec. such an obligation lacks one of the essential elements of an obligation, the vinculum juris, the binding force-- the means by w/c it is enforceable in court. In this case, there is no binding force. There is no obligation. It is a joke.

Potestative Condition is one w/c depends solely on the will of either one party. E.g., "I will give you my plantation in Davao provided you reside in Davao permanently."

Casual Condition is one where the condition is made to depend upon a third person or upon chance. E.g., "I will give you my land in Floridablanca if Mt. Pinatubo erupts this year."

Mixed Condition is one w/c depends partly upon the will of one of the
parties and partly on either chance or the will of a third person.

Q: What if the condition is suspensive, potestative and depends solely on the will of the creditor, is the conditional obligation valid?

A: Yes. In fact, the obligation is not even a condition obligation. It is a pure obligation, binding at once.

BALANE CASES:

SMITH BELL V. SOTELO MATTI [44 P 874] - Where the fulfillment of the condition does not depend on the will of the obligor, but on that of a 3rd person who can, in no way be compelled to carry it out, the obligor's part of the contract is complied w/, if he does all that is in his power, and it then becomes incumbent upon the other contracting party to comply w/ the terms of the contract.

Effect of Impossible Condition.-- It annuls the obligation w/c depends upon them. The entire juridical tie is tainted by the impossible condition. Correlate this w/ Articles 727 and 873.

Art. 727. Illegal or impossible conditions in simple and remuneratory donations shall be considered as not imposed.

Art. 873. Impossible conditions and those contrary to law or good customs shall be considered as not imposed and shall in no manner prejudice the heir, even if the testator should otherwise provide.

According to Tolentino: In contracts, an impossible condition annuls the contract. In gratuitous dispositions, the impossible condition is simply disregarded.

The first statement is inaccurate bec. donation is a contract and in a donation, the impossible condition does not annul the contract. It is simply disregarded. The proper way to say it is that: In an onerous transaction, an impossible condition annuls the condition obligation. In a gratuitous disposition, as in a donation or testamentary disposition, an impossible condition attached to the disposition is simply considered as not imposed.

Q: Why is there a difference?

A: Bec. in a donation as well as in a testamentary disposition, the causa or consideration is the liberality of the donor.
or testator, as the case may be. Even if you take away the impossible condition, there is still a reason for the disposition to exist—liberality. They (donation and testamentary disposition) have both their underpinnings, liberality.

But in an onerous transaction, since an onerous prestation w/c is reciprocal requires concomittant performances, that impossible condition becomes part of the *causa*. Therefore, if the condition is impossible, there is failure of *causa*. In no *causa*, there is also no contract.

Paras’ outline on impossible conditions:

1. Positive suspensive condition to do an impossible/illegal thing—The obligation is void (Art. 1183, par. 1.)
2. A negative condition (not to do an impossible thing)—Just disregard the condition (Art. 1183, par. 2.)
3. A condition not to do an illegal thing (negative)—This is not expressly provided for in the provision but is implied. The obligation is valid. E.g. “I will sell you a piece of land provided you do not plant marijuana on it.”

Art. 1184. The condition that some event will not 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.

Balane: This article refers to suspensive conditions. If the condition is resolutory, the effect is the opposite.

Art. 1185. The condition that some event will not happen at a determinate time shall render the obligation effective from the moment the time indicated has elapsed, or if it has become evident that the event cannot occur.

If no time has been fixed, the condition shall be deemed fulfilled at such time as may have probably been contemplated, bearing in mind the nature of the obligation.

Balane: This article refers to a suspensive condition.

Art. 1186. The condition shall be deemed fulfilled when the obligor voluntarily prevents its fulfillment.

Balane: This article refers to a suspensive condition.

Doctrine of Constructive Compliance.—There are three requisites in order that this article may apply:

1. Intent on the part of the obligor to prevent fulfillment of the condition. The intent does not have to be malicious.
2. Actual prevention of compliance (by the obligor)

Constructive compliance can have application only if the condition is potestative. It can also apply to Mixed condition as to that part w/c the obligor should perform.

BALANE CASES:

*TAYAG V. CA* [219 SCRA 480] - Insofar as the 3rd item of the contract is concerned, xxx resp. court applied Art. 1186, NCC on constructive fulfillment w/c petitioners claim should not have been appreciated bec. they are the obligees while the *proviso* in point speaks of the obligor. But, petitioners must concede that in a reciprocal obligation like a contract of purchase, both parties are mutually obligors and also obligees, and any of the contracting parties may, upon non-fulfillment by the other privy of his part of
the prestation, rescind the contract or seek fulfillment. In short, it is puerile for petitioners to say that they are the only obligees under the contract since they are also bound as obligors to respect the stipulation in permitting pvt. resp. to assume the loan w/ the Phi. Veterans Bank w/c petitioners impeded when they paid the balance of said loan. As vendors, they are supposed to execute the final deed of sale upon full payment of the balance as determined hereafter.

Art. 1188. The creditor may, before the fulfillment of the condition, bring the appropriate actions for the preservation of his right.

The debtor may recover what during the same time he has paid by mistake in case of a suspensive condition.

Balane: This article refers to suspensive conditions.

Bring the approriate actions ...— According to Mr. Justice JBL Reyes, the phrase "may xxx bring the appropriate actions" is inaccurate. To bring action is to file a suit. But the creditor is not restricted to filing a suit. The proper verb is not "bring" but "take." For example, in a sale of land subject to suspensive condition, the creditor should have the suspensive condition annotated on the title of the land. This is not bringing an appropriate action but taking an appropriate action.

The principle in this article is: Vigilantibus et non dormientibus jura subveniunt w/c means that the laws aid those who are vigilant, not those who sleep upon their rights.

Q: Why does Art. 1188 give the creditor a recorse although technically the creditor still have no right?

A: Bec. as a matter of fact, although technically the creditor still have no right, he is already expecting a right. You cannot let the creditor sit and fold his arms and wait for his right of expectancy to be rendered illusory.

Rescission

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

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

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

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

Article 1385. Rescission creates the obligation to return the things which were the object of the contract, together with their fruits, and the price with its interest; consequently, it can be carried out only when he who demands rescission can return whatever he may be obliged to restore.

Neither shall rescission take place when the things which are the object of the contract are
legally in the possession of third persons who did not act in bad faith.

In this case, indemnity for damages may be demanded from the person causing the loss.

Article 1388. Whoever acquires in bad faith the things alienated in fraud of creditors, shall indemnify the latter for damages suffered by them on account of the alienation, whenever, due to any cause, it should be impossible for him to return them.

If there are two or more alienations, the first acquirer shall be liable first, and so on successively.

Balane:

Q: Why is this article in this Section entitled “Pure and Conditional Obligations.” Is there a connection bet. the right of rescission and Pure and conditional obligations?

A: Yes. In a reciprocal obligation, breach by one party is a tacit resolutory condition. This means that the other party who is victimized by the breach may declare the obligation resolved.

Note: Art. 1191 refers to reciprocal obligations (mutual, imples some correspondence), e.g., a contract of sale w/c is the most reciprocal of all contracts, the architype, the proto-type, the paradigm, the distillation of all reciprocal obligations.

Two requisites of a Reciprocal Obligations:

1. Both prestation arise from the same source
2. Each prestation is intended to be the counterpart or equivalent of the other (quid pro quo)

BALANE CASES:

UNIVERSAL FOOD CORP v. CA [33 SCRA 1] - Rescission for breach of contract and rescission by reason of lesion or economic prejudice, distinguished.-- A rescission for breach of contract under Art. 1191, NCC is not predicated on injury to economic interests of the party pltff. but on the breach of faith by the def., that violates the reciprocity bet. the parties. It is not a subsidiary action, and Art. 1191 may be scanned w/o disclosing anywhere that the action for rescission thereunder is subordinated to anything other than the culpable breach of his obligations by the def. This rescission is a principal action retaliatory in character, it being unjust that a party be held bound to fulfill his promises when the other violates his. As expressed in the old Latin aphorism: Non servandi fidem, non est fides servanda. Hence, the reparation of damages for the breach is purely secondary.

On the other hand, in a rescission by reason of lesion or economic prejudice under ART. 1381, et seq., NCC, the cause of action is subordinated to the existence of that prejudice, bec. it is the raison d’etre as well as the measure of the right to rescind. Hence, where the def. makes good the damage caused, the action cannot be maintained or continued, as expressly provided in Arts. 1383 and 1384. But the operation of these 2 articles is limited to cases of rescission for lesion enumerated in Art. 1381 and does not apply to cases under Art. 1191.

Rescission under the Civil Code.-- The 2 instances of rescission are
defectively termed “rescission” w/o distinction bet. then under the NCC unlike the previous OCC, that differentiated “resolution” for breach of stipulations from “rescission” by reason of lesion or damage.

Balane:

Doctines laid down in this case:

1. Resolution is not predicated on economic injury but on breach or violation
2. It is not a subsidiary remedy but a principal one w/c is retaliatory in nature.

MAGDALENA ESTATE V. MYRICK [71 P 344] - The contract of sale contains no provision authorizing the vendor, in the event of failure of the vendee to continue in the payment of the stipulated monthly installments, to retain the amounts paid to him on account of the purchase price. The claim, therefore, of the petitioner that it has the right to forfeit said sums in its favor is untenable. xxx He may choose bet. demanding the fulfillment of the contract or its resolution. These remedies are alternative and not cumulative, and the petitioner in this case, having elected to cancel the contract, cannot avail himself of the other remedy of exacting performance. As a consequence of the resolution, the parties should be restored, as far as practicable, to their original situation w/c can be approximated only by ordering, as we do now, the return of the things w/c were the object of the contract, w/ their fruits and of the price, w/ interest, computed from the date of the institution of the action.

Balane:

Doctines laid down in this case:

1. Right of resolution is implied in reciprocal contracts.

2. Once resolution is availed of, there is a duty of mutual restitution bet. the parties-- when a reciprocal obligation bet. the parties is resolved, the effect is to cancel the juridical relation. Parties should be restored to their status quo ante

UP V. DE LOS ANGELES [35 SCRA 102] - There is nothing in the law that prohibits the parties from entering into agreement that violation of the terms of the contract would cause cancellation thereof, even w/o court intervention. In other words, it is not always necessary for the injured party to resort to court for rescission of the contract.

Of course, it must be understood that the act of a party in treating a contract as cancelled or resolved on account of infractions by the other contracting party must be made known to the other and is always provisional, being ever subject to scrutiny and review by the proper court. If the other party denies that rescission is justified, it is free to resort to judicial action in its own behalf, and bring the matter to court. Then, should the court, after due hearing, decide that the resolution of the contract was not warranted, the responsible party will be sentenced to damages; in the contrary case, the resolution will be affirmed, and the consequent indemnity awarded to the party prejudiced.

In other words, the party who deems the contract violated may consider it resolved or rescinded, and act accordingly, w/o previous court action, but it proceeds at its own risk. For it is only the final judgment of the corresponding court that will conclusively and finally settle whether the action taken was or was not correct in law. xxx
Balane:

Doctrines laid down in this case:

1. Right or resolution in Art. 1191 is implied.-- It is available even if there is no stipulation in the contract. (This is not new; it merely reiterates what was laid down in Magdalena Estate v. Myrick.)
2. Right of resolution may be exercised extrajudicially and will take effect upon communication by the aggrieved party to the breaching party.
3. Exercise of this right is always subject to judicial review. It is up to the other party to go to the court.

These doctrines are implied from these rulings in this case:

a. If the aggrieved party has not yet performed his prestation, all he has to do is to refuse to perform if he resolves.
   b. If he has already performed, upon resolution, he can demand restitution. If he refuses, he can sue for recovery and not for resolution (for the return of what you gave.)

ZULUETA V. MARIANO [111 SCRA 206] - True, the contract bet. the parties provided for extrajudicial rescission. This has legal effect, however, where the other party does not oppose it. Where it is objected to, a judicial determination of the issue is still necessary. "A stipulation entitling one party to take possession of the land and building if the other party violates the contract does not ex pro prio vigore confer upon the former the right to take possession thereof if objected to w/o judicial intervention and determination."

PALAY, INC. V. CLAVE [124 SCRA 638] - reiterated the ruling in UP v. De los Angeles, supra. and Zulueta v. Mariano, supra.

ANGELES V. CALASANZ [135 SCRA 323] - reiterated the ruling in UP v. De los Angeles, supra. and UFC v CA, supra.

BOYSAW V. INTERPHIL PROMOTIONS [148 SCRA 635] - There is no doubt that the contract in question gave rise to reciprocal obligations. "Reciprocal obligations are those w/c arise from the same cause, and in w/c each party is a debtor and a creditor of the other, such that the obligation of one is dependent upon the obligation of the other. They are to be performed simultaneously, so that the performance of one is conditioned upon the simultaneous fulfillment of the other.

   The power to rescind is given to the injured party. Where the pltff is the party who did not perform the undertaking w/c he was bound by the terms of the agreement to perform, he is not entitled to insist upon the performance of the contract by the def., or recover damages by reason of his own breach."

PILIPINAS BANK V. IAC [151 SCRA 546] - Automatic rescission cannot be availed of where there is a clear waiver of the stipulated right of automatic rescission as evidenced by the many extensions granted to prvt resps. by petitioner to pay their arrearages and update their installment payment under the contract.

SONGCUAN V. IAC [191 SCRA 28] - Neither do we agree that the right of the Alviars to repurchase may be rescinded under Art. 1191. Songcuan asserts that the Oct. 10, 1966 contract he entered into w/ the Alviars created a reciprocal
obligation bet. them-- for him to reconvey the subject premises and for the Alviars to lease the realties to him-- and the refusal of the latter to fulfill their obligation gives him the right, under 1191, to rescind "the right of [the Alviars] to repurchase" the realties. The power to rescind obligations is implied in reciprocal ones, in case one of the obligors should not comply w/ what is incumbent upon him. xxx" (Art. 1191.) The cited law is not applicable in this case. Although the parties are each obligor and obligee of the other, their corresponding obligation can hardly be called reciprocal. In reciprocal obligations, the obligation of one is a resolutory condition of the obligation of the other, the non-fulfillment of w/c entitles the other party to rescind the contract. In the case at bar, there are 2 separate and distinct obligations, each independent of the other. The obligation of Songcuan to reconvey the property is not dependent on the obligation of the Alviars to lease the premises to the former. The obligation of the Alviars is not an essential part of the contract. This is evident in the wordings of the "P.S. (Additional conditions)," itself w/c states that "in the event (the Alviars) exercised the right of repurchase xxx and becomes the owner and possessor of the premises, they shall xxx be obliged to give (Songcuan) the right of lease and are xxx obliged to execute a lease contract xxx." In other words, the obligation of the Alviars to lease to Songcuan the subject premises arises only after the latter had reconveyed the realties to them.

**PRESBITERO V. CA** [217 SCRA 372] - Rescission of a contract will not be permitted for a slight or casual breach, but only for such substantial and fundamental breach as would defeat the very object of the parties in making the agreement; the question of whether a breach of contract is substantial depends upon the attending circumstances.

**TAYAG V. CA** [219 SCRA 480] - The suggestion of petitioners that the covenant must be cancelled in the light of pvt. respondent's so-called breach seems to overlook petitioner's demeanor who, instead of immediately filing the case precisely to rescind the instrument bec. of non-compliance, allowed pvt. resp. to effect numerous payments posterior to the grace period provided in the contract. This apathy of petitioners who even permitted pvt. resp. to take the initiative in filing the suit for specific performance against them, is akin to waiver or abandonment of the right to rescind normally conferred by Art. 1191, NCC.

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Indeed, the right to rescind is not absolute and will not be granted where there had been substantial compliance by partial payments. By and large, petitioner's actuation is susceptible of but one construction-- that they are now estopped from reneging from their commitment on account of acceptance of benefits arising from overdue accounts of pvt. resp.

**BINALBAGAN V. CA** [219 SCRA 777] - A party to a contract cannot demand performance of the other party's obligations unless he is in a position to comply w/ his own obligations. Similarly, the right to rescind a contract can be demanded only if a party thereto is ready, willing and able to comply w/ his own obligations thereunder.
In reciprocal obligations, the performance of one is conditioned on the simultaneous fulfillment of the other obligation.

Generally, rescission of a contract will not be permitted for a slight or casual breach but only for such substantial and fundamental breach as would defeat the very object of the parties in executing the agreement.

Habana seeks rescission of the compromise agreement under Art. 1191. However, this provision applies only to reciprocal obligations in general and not to obligations arising from a judicial compromise. Thus: Judgment upon agreement of the parties is more than a mere contract binding upon them; having the sanction of the court and entered as its determination of the controversy it has the force and effect of any other judgment.

Questions:

1. Can the parties suppress this right to resolve in Art. 1191?
2. Can they stipulate that the right of resolution must be exercised only through the courts?
3. Can the parties stipulate that there will be no mutual restitution in case of resolution?

Art. 1192. In case both parties have committed a breach of the obligation, the liability of the first infractor shall be equitably tempered by the courts. If it cannot be determined which of the parties first violated the contract, the same shall be deemed extinguished, and each shall bear his own damages.

Rescission is the only alternative remedy left. We rule, however, that rescission is only for the P63,000 loan, because the bank is in default only insofar as such amount is concerned, as there is no doubt that the bank failed to give the P63,000. As far as the partial release of P17T, w/c S. Tolentino accepted and executed a p/n to cover it, the bank was deemed to have complied w/ its reciprocal obligation to furnish a P17T loan. The p/n gave rise to S. Tolentino's reciprocal obligation to pay the P17T loan when it falls due. His failure to pay the overdue amortizations under the p/n made him a party in default, hence not entitled to rescission. If there is a right to rescind the p/n, it shall belong to the aggrieved party, that is, Island. If Tolentino had not signed a p/n setting the date for payment of P17T w/in 3 yrs., he would be entitled to ask for rescission of the entire loan because he cannot possibly be in default as there was no date for him to perform his reciprocal obligation to pay.

We rule that the liability of Island for damages in not furnishing the entire loan is offset by the liability of Sulpicio M. Tolentino for damages, in the form of penalties and surcharges, for not paying his overdue P17,000 debt (the court citing Art. 1192.)
C. Obligations with a period

1. Kinds

Art. 1193. Obligations for whose fulfillment a day certain has been fixed, shall be demandable only when that day comes.

Obligations with a resolutory period take effect at once, but terminate upon arrival of the day certain.

A day certain is understood to be that which must necessarily come, although it may not be known when.

If the uncertainty consists in whether the day will come or not, the obligation is conditional, and it shall be regulated by the rules of the preceding Section.

IV Tolentino:

Concept of Term.-- A term or period is a space of time w/c, exerting an influence on obligations as a consequence of a juridical act, suspends their demandability or determines their extinguishment. (Manresa.)

Distinguished from Condition:

1. As to fulfillment.-- A condition is an uncertain event, while a term is an event that must necessarily come, whether on a date known before hand or at a time w/c cannot be predetermined.

2. As to influence on the obligation.-- While a condition gives rise to an obligation or extinguishes one already existing, a period has no effect upon the existence of obligations, but only their demandability or performance. Bec. of this difference, a period does not carry w/ it, except when there is a special agreement, any retroactive effect.

3. As to time.-- A period always refer to the future, while a condition may refer to a past event unknown to the parties.

4. As to will of debtor.-- A condition w/c depends exclusively on the will of the debtor annuls the obligation, but a period left to the debtor's will merely empowers the court to fix such period.

Balane:

In a (suspensive) term, the obligation has already arisen except that it is not yet demandable.

Art. 1194. In case of loss, deterioration or improvement of the thing before the arrival of the day certain, the rules in article 1189 shall be observed.

Art. 1189. When the conditions have been imposed with the intention of suspending the efficacy of an obligation to give, the following rules shall be observed in case of the improvement, loss or deterioration of the thing during the pendency of the condition.

(1) If the thing is lost without the fault of the debtor, the obligation shall be extinguished;

(2) If the thing is lost through the fault of the debtor, he shall be obliged to pay damages; it is understood that the thing is lost when it perishes, or goes out of commerce, or disappears in such a way that its existence is unknown or it cannot be recovered;

(3) When the thing deteriorates without the fault of the debtor, the impairment is to be borne by the creditor;

(4) If it deteriorates through the fault of the debtor, the creditor may choose between the rescission of the obligation and its fulfillment, with indemnity for damages in either case:
(5) If the thing is improved by its nature, or by time, the improvement shall inure to the benefit of the creditor;

(6) If it is improved at the expense of the debtor, he shall have no other right than that granted to the usufructuary.

Balane: There are three requisites in order for Art. 1189 to apply—
1. There is loss, deterioration or delay
2. There is an obligation to deliver a determinate thing (on the part of the debtor)
3. There is loss, deterioration or improvement before the happening of the condition.
4. The condition happens.

Rights of a usufructuary

Art. 579. The usufructuary may make on the property held in usufruct such useful improvements or expenses for mere pleasure as he may deem proper, provided he does not alter its form or substance; but he shall have no right to be indemnified therefor. He may, however, remove such improvements, should it be possible to do so without damage to the property.

(not in Baviera's outline)

Art. 1195. Anything paid or delivered before the arrival of the period, the obligor being unaware of the period or believing that the obligation has become due and demandable, may be recovered, with the fruits and interests.

Balane: Mistaken Premature Delivery.--This article assumes 2 things: (1) the delivery was by mistake; (2) the mistake was discovered bef. the term arrives.

Both the things and the fruits can be recovered.

If the term has already arrived, the question is moot and academic. But can he recover the fruits produced during the meantime? It depends on what school of thought you follow:

1. According to one school of thought, the debtor is entitled to the fruits produced in the meantime (Tolentino.)
2. According to another school of thought, all the fruits received during the pendency of the term belong to the creditor (Caguioa.)

When fruits & interests cannot be recovered notwithstanding premature delivery:
1. When the obligation is reciprocal and there has been premature performance (by both parties);  
2. When the obligation is a loan in w/c the debtor is bound to pay interest;  
3. When the period is for the creditor's exclusive benefit;  
4. When the debtor is aware of the period and pays anyway.

2. Presumed for whose benefit

Art. 1196. 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, unless from the tenor of the same or other circumstances it should appear that the period has been established in favor of one or of the other.

Balane: General rule: If a period is attached in an obligation, the presumption
is that it is for the benefit of both parties. The consequence is that the creditor cannot compel the performance before the arrival of the term; the debtor cannot compel acceptance before the arrival of the term.

If the term is for the benefit of the creditor.-- The creditor can demand performance anytime; but the debtor cannot insist on payment before the period.

If the term is for the benefit of the debtor.-- The creditor cannot demand performance anytime; but the debtor can insist on performance anytime.

Illustrations: "I promise to pay within 60 days." This is a term for the benefit of the debtor.

"I promise to pay Clara the sum of P100,000 on or before Oct. 31, 1996." This is a term for the benefit of the debtor.

3. When period is fixed

Art. 1197. 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.

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Exceptions: (a) Art. 1682

Article 1682. The lease of a piece of rural land, when its duration has not been fixed, is understood to have been made for all the time necessary for the gathering of the fruits which the whole estate leased may yield in one year, or which it may yield once, although two or more years may have to elapse for the purpose.

Art. 1687, first sentence

Article 1687. If the period for the lease has not been fixed, it is understood to be from year to year, if the rent agreed upon is annual; from month to month, if it is monthly; from week to week, if the rent is weekly; and from day to day, if the rent is to be paid daily.

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(b) Art. 1606 in pacto de retro sale where the period is not specified by the parties

Art. 1606. The right referred to in article 1601 (the right of conventional redemption on the part of the vendor a retro), in the absence of an express agreement, shall last four years from the date of the contract.

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(c) contract of services for an indefinite term (bec. fixing of a period by the courts may amount to involuntary servitude)

2. Art. 1197, par. 2
Art. 1197. xxx
The courts shall also fix the duration of the period when it depends upon the will of the debtor.

3. Art. 1191, par. 3

Art. 1191. xxx

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

4. Art. 1687, second, third and fourth sentences

Art. 1687. xxx However, even though a monthly rent is paid, and no period for the lease has been set, the courts may fix a longer term for the lease after the lessee has occupied the premises for over one year. If the rent is weekly, the courts may likewise determine a longer period after the lessee has been in possession for over six months. In case of daily rent, the courts may also fix a longer period after the lessee has stayed in the place for over one month.

5. Art. 1180

Art. 1180. 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, subject to the provisions of article 1197.

When fixing a period is mere formality.--
Where the def. virtually admitted non-performance by returning the typewriter he was obliged to repair in a non-working condition, w/ essential parts, missing, he cannot invoke Art. 1197 of the NCC. The time for compliance having evidently expired, and there being a breach of contract by non-performance, it was academic for the pltff. to have first petitioned the court to fix a period for the performance of the contract before filing his complaint in this case. The fixing of a period would thus be a mere formality and would serve no purpose than to delay.

ENCARNACION V. BALDOMAR [77 P 470]
- The continuance and fulfillment of the contract of lease cannot be made to depend solely and exclusively upon the free and uncontrolled choice of the lessees bet. continuing paying the rentals or not, completely depriving the owner of all say in the matter. For if this were allowed, so long as defs. elected to continue the lease by continuing the payment of the rentals the owner would never be able to discontinue it; conversely, although the owner should desire the lease to continue, the lessees could effectively thwart his purpose if they should prefer to terminate the contract by the simple expedient of stopping payment of the rentals. This, of course, is prohibited by art. 1256, NCC.

ELEIZEUI V. LAWN TENNIS CLUB [2 P309] - The term of a lease whose termination is expressly left to the will of the lessee must be fixed by the courts according to the character and conditions of the mutual undertakings, in an action brought for that purpose xxx.
PHILBANKING V. LUI SHE [21 SCRA 53] - A lease to an alien for a reasonable period is valid.

LIM V. PEOPLE [133 SCRA 333] - It is clear in the agreement that the proceeds of the sale of the tobacco should be turned over to the complainant as soon as the same was sold, or, that the obligation was immediately demandable as soon as the tobacco was disposed of. Hence, Art. 1197 of the NCC w/c provides that the courts may fix the duration of the obligation if it does not fix a period, does not apply.

ARANETA, INC. V. PHIL. SUGAR ESTATES [20 SCRA 330] - xxx Art. 1197 involves a two-step process. (1) The Court must first determine that "the obligation does not fix a period." (or that the period is made to depend upon the will of the debtor)." but from the nature and the circumstances it can be inferred that a period was intended." (2) This preliminary point settled, the Court must then proceed to the second step, and decide what period was "probably contemplated by the parties." So that, ultimately, the Court can not fix a period merely bec. in its opinion it is or should be reasonable, but must set the time that the parties are shown to have intended. xxx

MILLARE V. HERNANDO [151 SCRA 484] - Par. 1 of Art. 1197 is clearly inapplicable, since the Contract of Lease did in fact fix an original period of 5 yrs., w/c had expired. It is also clear from par. 13 of the contract that the parties reserved to themselves the faculty of agreeing upon the period of the renewal contract. The 2nd par. of Art. 1197 is equally inapplicable since the duration of the renewal period was not left to the will of the lessee alone, but rather to the will of both the lessor and the lessee. Most importantly, Art. 1197 applies only where a contract of lease clearly exists. Here, the contract was not renewed at all, there was in fact no contract at all the period of w/c could have been fixed.

Art. 1180. 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, subject to the provisions of article 1197.

4. When debtor loses the benefit of period

Art. 1198. The debtor shall lose every right to make use of the period:

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

(2) When he does not furnish to the creditor the guaranties or securities which he has promised;

(3) 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;

(4) When the debtor violates any undertaking, in consideration of which the creditor agreed to the period;

(5) When the debtor attempts to abscond.

(6) Art. 2109 - If the creditor is deceived on the substance or quality of the thing pledged, he may either claim another thing in its stead, or demand immediate
payment of the principal obligation. (The sixth ground was added by Prof. Balane.)

(7) Acceleration clause

Balane: In number one, factual insolvency is enough. A judicial declaration of insolvency is not required.

2. According to plurality of objects:

A. Simple

B. Multiple

1. Conjunctive where the debtor must perform more than one prestation

2. Alternative Obligations where the debtor must perform any of the prestations

3. Facultative where only one thing is due but the debtor has reserved the right to substitute it w/ another (IV Tolentino) (Art. 1206.)

**Alternative Obligations**

Art. 1199. A person alternatively bound by different prestations shall completely perform one of them.

The creditor cannot be compelled to receive part of one and part of the other undertaking.

Tolentino: The characteristic of alternative obligations is that, several objects being due, the fulfillment of one is sufficient xxx.

Art. 1200. The right of choice belongs to the debtor, unless it has been expressly granted to the creditor.

The debtor shall have no right to choose those prestations which are impossible, unlawful or which could not have been the object of the obligation.

Balane: To whom does the right of choice belong? General rule: To the debtor (Art. 1200.)

Exception: When expressly granted to the creditor

There is a third possibility where the choice may be made by a third person upon agreement of the parties.

Q: What is the technical term of the act of making a choice in alternative obligations?

A: Concentration.

Art. 1201. The choice shall produce no effect except from the time it has been communicated.

Balane: Requirement of Communication of choice.-- If the choice belongs to the creditor, of course, he has to communicate his choice to the debtor. The debtor is not a prophet.

Q: If the choice belongs to the debtor, why require communication before performance if the choice belongs to him anyway?

A: To give the creditor an opportunity to consent to the choice or impugn it. (Ong v. Sempio-Dy, 46 P 592.)

BUT how can the creditor impugn it if the choice belongs to the debtor. The better reason would be to give the creditor a chance to prepare for the performance.

Articles 1202 to 1205 talk of the loss of some of the prestations before performance.

1. If the choice is debtor’s

a. When only one prestation is left (whether or not the the rest of the prestations have been lost through
fortuitous event or through the fault of the debtor, the debtor may perform the one that is left.-- Art. 1202.

Art. 1202. The debtor shall lose the right of choice when among the prestations whereby he is alternatively bound, only one is practicable.

b. If the choice is limited through the creditor's own acts, the debtor can ask for resolution plus damages.-- Art. 1203

Art. 1203. If through the creditor's acts the debtor cannot make a choice according to the terms of the obligation, the latter may rescind the contract with damages.

c. If everything is lost through the debtor's fault, the latter is liable to indemnify the creditor for damages.-- Art. 1204.

Art. 1204. The creditor shall have a right to indemnity for damages when, through the fault of the debtor, all the things which are alternatively the object of the obligation have been lost, or the compliance of the obligation has become impossible.

The indemnity shall be fixed taking as a basis the value of the last thing which disappeared, or that of the service which last became impossible.

Damages other than the value of the last thing or service may also be awarded.

d. If some things are lost through the debtor's fault, the debtor can still choose from those remaining.

e. If all are lost through fortuitous event, the obligation is extinguished.

f. If all prestations but one are lost through fortuitous event, and the remaining prestation was lost through the debtor's fault, the latter is liable to indemnify the creditor for damages.

g. If all but one are lost through the fault of the debtor and the last one was lost through fortuitous event, the obligation is extinguished.

2. Choice is the creditor's

Art. 1205. When the choice has been expressly given to the creditor, the obligation shall cease to be alternative from the day when the selection has been communicated to the debtor.

Until then the responsibility of the debtor shall be governed by the following rules:

(1) If one of the things is lost through a fortuitous event, he shall perform the obligation by delivering that which the creditor should choose from among the remainder, or that which remains if only one subsists;

(2) If the loss of one of the things occurs through the fault of the debtor, the creditor may claim any of those subsisting, or the price of that which, through the fault of the former, has disappeared, with a right to damages;

(3) If all the things are lost through the fault of the debtor, the choice by the creditor shall fall upon the price of any one of them, also with indemnity for damages.

The same rules shall be applied to obligations to do or not to do in case one, some or all of the prestations should become impossible.

a. If one or some are lost through fortuitous event, the creditor may choose from those remaining.-- Art. 1205 (1), supra.
b. If one or some are lost through the debtor’s fault, the creditor has choice from the remainder or the value of the things lost plus damages.-- Art. 1205 (2), supra.

c. If all are lost through the debtor's fault, the choice of the creditor shall fall upon the price of any of them, w/ indemnity for damages.-- Art. 1205 (3), supra.

d. If some are lost through the creditor's fault, the creditor may choose from the remainder.

e. If all are lost through fortuitous event, the obligation is extinguished.

f. If all are lost through the creditor's fault, the obligation is extinguished.

Facultative obligations

Art. 1206. When only one prestation has been agreed upon, but the obligor may render another in substitution, the obligation is called facultative.

The loss or deterioration of the thing intended as a substitute, through the negligence of the obligor, does not render him liable. But once the substitution has been made, the obligor is liable for the loss of the substitute on account of his delay, negligence or fraud.

IV Tolentino: Distinguished from Alternative.--

1. As to contents of the obligation: In the alternative, there are various prestation all of w/c constitute parts of the obligation; while in facultative, only the principal prestation constitutes the obligation, the accessory being only a means to facilitate payment.

2. As to nullity: In alternative obligations, the nullity of one prestation does not invalidate the obligation, w/c is still in force w/ respect to those w/c have no vice; while in facultative, the nullity of the principal prestation invalidates the obligation and the creditor cannot demand the substitute even when this is valid.

3. As to choice: In alternative, the right to choose may be given to the creditor; while in facultative, only the debtor can choose the substitute prestation.

4. As to effect of loss: In alternative, only the impossibility of all the prestation due w/o fault of the debtor extinguishes the obligation; while in facultative, the impossibility of the principal prestation is sufficient to extinguish the obligation, even if the substitute is possible.

Balane: Facultative obligations always involve choice by the debtor.

In theory, it is easy to distinguish a facultative obligation from an alternative one. But in practice, it is difficult to distinguish the two. You just have to find out what the parties really intended.

3. According to Plurality of subjects:

A. Joint and Solidary Obligations

   a. Joint Obligations

Balane: Joint Obligation.-- A joint obligation is one in w/c 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.
There are three kinds of joint obligations: (1) **Active joint** where the obligation is joint on the creditor's side; (2) **Passive joint** where the obligation is joint on the debtor's side; and (3) **Multiple Joint** where there are multiple parties on each side of a joint obligation.

**IV Tolentino:** The joint obligation has been variously termed *mancomunada* or *mancomunada simple* or *pro rata*. The phrase "We promise to pay," used by 2 or more signers, creates a *pro rata* liability.

**Effects of Joint Liability:**

1. The demand by one creditor upon one debtor, produces the effects of default only w/ respect to the creditor who demanded and the debtor on whom the demand was made, but not w/ 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;

5. In the joint divisible obligation, the defense of *res judicata* is not extended from one debtor to another. (Manresa.)

Art. 1208. If from the law, or the nature or the wording of the obligations to which the preceding article refers the contrary does not appear, the credit or debt shall be presumed to be divided into as many equal shares as there are creditors or debtors, the credits or debts being considered distinct from one another, subject to the Rules of Court governing the multiplicity of suits.

Art. 1209. 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 other shall not be liable for his share.

Art. 1210. The indivisibility of an obligation does not necessarily give rise to solidarity. Nor does solidarity of itself imply indivisibility.

Distinguished from Solidary Obligations

Art. 1224. 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.

b. Solidary obligations

Balane: Solidary Obligations.-- A solidary obligation is one in w/c the debtor is liable for the entire obligation or each creditor is entitled to demand the whole obligation. **There is only one obligation is a solidary obligation.**
There are three kinds of solidarity:

(1) Active solidarity where there are several creditors w/ one debtor in a solidary obligation; (2) Passive solidarity where there is one creditor w/ several debtors solidary bound; (3) Mixed Solidarity where there are several creditors and several debtors in a solidary obligation.

IV Tolentino: Solidary obligations may also be referred to as mancomunada solidaria or joint and several or in solidum. It has also been held that the terms "juntos o separadamente" in a promissory note creates a solidary responsibility; that where there are no words used to indicate the character of a liability, the phrase "I promise to pay," followed by the signatures of 2 or more persons, gives rise to an individual or solidary responsibility. The words "individually and collectively" also create a solidary liability. So does an agreement to be "individually liabile" or "individually and jointly liable."

Balane: When is an obligation w/ several parties on either side Joint or Solidary? The presumption is that an obligation is joint bec. a joint obligation is less onerous that a solidary one.

There is solidary obligation only in three cases: (1) when the obligation expressly so states; or (2) when the law or the (3) nature of the obligation requires solidarity.

Characteristics of Active Solidarity:

1. Since it is a reciprocal agency, the death of a solidary creditor does not transmit the solidarity to each of his heirs but to all of them taken together. (IV Tolentino);

2. Each creditor represents others in the act of requiring payment, and in all other acts w/c tend to secure the credit or make it more advantageous. Hence, if he receives only a partial payment, he must divide it among the other creditors. He can interrupt the period of prescription or render the debtor in default, for the benefit of all other creditors;

3. A credit once paid is shared equally among the creditors unless a different intention appears;

4. Debtor may pay any of the creditors but if any demand, judicial or extrajudicial is made on him, he must pay only to one demanding payment (Art. 1214);

5. One creditor does not represent the others in such acts as novation (even if the credit becomes more advantageous), compensation and remission. In these cases, even if the debtor is released, the other creditors can still enforce their rights against the creditor who made the novation, compensation or remission;
6. Each creditor may renounce his right even against the will of the debtor, and the latter need not thereafter pay the obligation to the former.

(Parts in italics were taken from IV Tolentino.)

Characteristics of Passive Solidarity:

1. Each debtor may be required to pay the entire obligation but after payment, he can recover from the co-debtors their respective shares (this is something similar to subrogation);

2. Interruption of prescription as to one debtor affects all the others; but the renunciation by one debtor of prescription already had does not prejudice the others, bec. the extinguishment of the obligation by prescription extinguishes also the mutual representation among the solidary debtors.

3. The debtor who is required to pay may set up by way of compensation his own claim against the creditor, in this case, the effect is the same as that of payment;

4. The total remission of the debt in favor of a debtor releases all the debtors; but when this remission affects only the share of one debtor, the other debtors are still liable for the balance of the obligation.

5. All the debtors are liable for the loss of the thing due, even if such loss is caused by the fault of only one of them, or by fortuitous event after one of the debtors has incurred in delay;

6. The interests due by reason of the delay of one of the debtors are borne by all of them.

(Words in italics were taken from IV Tolentino.)

IV Tolentino: When the law requires solidarity.-- The liability of joint tortfeasors, w/c include all persons who command, instigate, promote, encourage, advise, countencance, cooperate in, aid or abet the commission of a tort, or who approve of it, after it is done, if done for their benefit.

Solidarity from Nature of Obligations.-- Liability may arise from the provisions of articles 19 to 22 of the NCC. If 2 or more persons acting jointly become liable under these provisions, their liability should be solidary bec. of the nature of the obligation. xxx The acts giving rise to liability under these articles have a common element-- they are morally wrong. A moral wrong cannot be divided into parts; hence, the liability for it must be solidary.

BALANE CASES:

RONQUILLO V. CA [132 S 274] - Clearly then, by the express term of the compromise agreement and the decision based upon it, the defs. obligated themselves to pay their obligation "individually and jointly." The term "individually" has the same meaning as "collectively," "separately," "distinctively," "respectively" or "severally." An agreement to be "individually liable" undoubtedly creates a several obligation, and a "several obligation" is one by w/c one individual binds himself to perform the whole obligation.

xxx [T]he phrase juntos or separadamente used in the p/n is an express statement making each of the persons who signed it individually liable for the payment of the full amount of the obligation contained therein. xxx In the absence of a finding of facts that the defs. made themselves individually liable for the debts incurred they are each liable only for
1/2 of said amount. The obligation in the case at bar being described as "individually and jointly," the same is therefore enforceable against one of the numerous obligors.

MALAYAN INSURANCE V. CA [165 S 536] - The direct liability of the insurer under indemnity contracts against third-party liability does not mean that the insurer can be held solidarily liable with the insured and/ or the other parties found at fault. While it is true that where the insurance contract provide for indemnity against liability to 3rd persons, such 3rd persons can directly sue the insurer, however, the direct liability of the insurer under the indemnity contracts against third party liab. does not mean that the insurer can be held solidarily liable w/ the insured and/ or the other parties found at fault. The liab. of the insurer is based on contract; that of the insured is based on tort.

In the case at bar, petitioner as insurer of Sio Choy, is liable to respondent Vallejos, but it cannot, as incorrectly held by the trial court, be made "solidarily" liable w/ the 2 principal tortfeasors, namely respondents Sio Choy and San Leon Rice Mill, Inc. For if petitioner-insurer were solidarily liable w/ said 2 respondents by reason of the indemnity contract, against 3rd party liability--under w/c an insurer can be directly sued by a 3rd party--this will result in a violation of the principles underlying solidary obligations and insurance contracts.

QUISIMBING V. CA [189 S 325] - Joint obligation distinguished from solidary obligations; Concept of active solidarity--Distinguishing it from the joint obligation, Tolentino makes the ff. observation: A joint obligation is one in w/c each of the debtors is liable only for a proportionate part of the debt, and each creditor is entitled only to a proportionate part of the credit. A solidary obligation is one in w/c each debtor is liable for the entire obligation, and each creditor is entitled to demand the whole obligation. Hence, in the former, each creditor can recover only his share of the obligation, and each debtor can be made to pay only his part; whereas, in the latter, each creditor may enforce the entire obligation, and each debtor may be obliged to pay it in full.

The same work describes the concept of active solidarity thus: The essence of active solidarity consists in the authority of each creditor to claim and enforce the rights of all, w/ the resulting obligation of paying every one what belongs to him; there is no merger, much less a renunciation of rights, but only mutual restitution.

REPUBLIK PLANTERS BANK [216 S 738] - An instrument w/c begins w/ "I," "WE" or "Either of us" promise to pay, when signed by two or more persons, makes them solidarily liable. The fact that the singular pronoun is used indicates that the promise is individual as to each other; meaning that each of the co-signers is deemed to have made an independent singular promise to pay the notes in full.

In the case at bar, the solidary liability of private resp. F. Canlas is made entire compliance w/ the prestation (Art. 1207.) The creditor may proceed against any one of the solidary debtors or some or all of them simultaneously.
clearer and certain, w/o reason for ambiguity, by the presence of the phrase "joint and several" as describing the unconditional promise to pay to the order of Republic Planters Bank. xxx

CERNA V. CA [220 SCRA 517] - Only Delgado signed the p/n and accordingly, he was the only one bound by the contract of loan. Nowhere did it appear in the p/n that petitioner was a co-debtor. The law is clear that "(c)ontracts take effect only between the parties xxx" But by some stretch of the imagination, petitioner was held solidarily liable for the debt allegedly bec. he was a co-mortgagor of the principal debtor, Delgado. This ignores the basic precept that "(t)here is solidarity liability only when the obligation expressly so states, or when the law or the nature of the obligation requires solidarity.

Art. 1212. Each one of the solidary creditors may do whatever may be useful to the others, but not anything which may be prejudicial to the latter.

Balane: There is an apparent conflict bet. Art. 1212 and 1215. Art. 1212 states that the agency extends only to things w/c will benefit all co-creditors. But not anything w/c is prejudicial to the latter. In Art. 1215, he can do an acts prejudicial to the other creditors, like remission for instance.

Art. 1213. A solidary creditor cannot assign his rights without the consent of the others.

Art. 1214. 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.

Balane: General Rule.-- A debtor may pay any of the solidary creditors.

Exception.-- If demand is made by one creditor upon the debtor, in w/c case the latter must pay the demanding creditor only.

Cases:

1. Debtor upon whom demand was made pays to a creditor other than the one who made the demand in violation of Art. 1214.-- This is considered payment to a third person (Art. 1241, par. 2) and the debtor can still be made to pay the debt. The only concession given to the debtor is that he is allowed to deduct the share of the receiving creditor from the total amount due even if he paid the entire amount due to that creditor.

2. Creditor A makes demand on debtor Y. Does it mean that he cannot pay the share pertaining to creditor B? According to commentators he can. But this is dangerous bec. there may already be an agreement on the part of the creditors.

3. There are three creditors -- A, B & C and there are three debtors -- X, Y & Z. A makes a demand on Y. X pays B. This is not covered by Art. 1214.

Art. 1215. 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, without prejudice to the provisions of article 1219.

The creditor who may have executed any of these acts, as well as he who collects the debt, shall be liable to the others for the share in the obligation corresponding to them.
Art. 1219. 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.

Art. 1915. If two or more persons have appointed an agent for a common transaction or undertaking, they shall be solidarily liable to the agent for all the consequences of the agency.

Baviera: Principals are always liable solidarily; Agents are not liable solidarily unless expressly stipulated

(ii) Passive Solidarity

Art. 1216. 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.

BALANE CASES:

PNB V. INDEPENDENT PLANTERS [122 SCRA 113] - If one of the alleged solidary debtors dies during the pendency of the collection case, the court where said case is pending retains jurisdiction to continue hearing the charge as against the surviving defendants.-- It is crystal clear that Art. 1216 is the applicable provision in this matter. Said provision gives the creditor the right to proceed against anyone of the solidary debtors or some or all of them simultaneously. The choice is undoubtedly left to the solidary creditor to determine against whom he will enforce collection. In case of the death of the solidary debtors, he (the creditor) may, if he so chooses, proceed against the surviving solidary debtors w/o necessity of filing a claim in the estate of the deceased debtors. It is not mandatory for him to have the case dismissed against the surviving debtors and file its claim in the estate of the deceased solidary debtor.

Rules of Procedure cannot prevail over substantive law.-- If Sec. 6, Rule 86, ROC were applied literally, Art. 1216 would, in effect, be repealed since under the ROC, petitioner has no choice but to proceed against the estate of Manuel Barredo only. Obviously, this provision diminishes the Bank's right under the NCC to proceed against any one, some or all of the solidary debtors. Such a construction is not sanctioned by the principle xxx that a substantive law cannot be amended by a procedural law. Otherwise stated, Sec. 6 of Rule 86 cannot be made to prevail over Art. 1216, the former being merely procedural, while the latter, substantive.

OUANO V. ALEONAR [202 SCRA 619] - The creditor may proceed against any one of the solidary debtor or some or all of them simultaneously.-- If that were to happen, petitioner has only itself to blame. It allowed the period for appeal to lapse w/o appealing. Art. 1216 provides that "The creditor may proceed against any one of the solidary debtor or some or all of them simultaneously." Thus IPI, as solidary creditor, has the right to enforce the trial court's decision against petitioner OASI.

xxx
Art. 1217. Payment made by one of the solidary debtors extinguishes the obligation. If two or more solidary debtors offer to pay, the creditor may choose which offer to accept.

He who made the payment may claim from his co-debtors only the share which corresponds to each, with the interest for the payment already made. If the payment is made before the debt is due, no interest for the intervening period may be demanded.

When one of the solidary debtors cannot, because of his insolvency, reimburse his share to the debtor paying the obligation, such share shall be borne by all his co-debtors, in proportion to the debt of each.

Art. 1218. Payment by a solidary debtor shall not entitle him to reimbursement from his co-debtors if such payment is made after the obligation has prescribed or become illegal.

Art. 1219. 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 has been totally paid by anyone of them before the remission was effected.

Balane: Effect of Remission.-- Problem: Solidary debtors W, X, Y & Z are indebted to A for P12,000. A remits the share of Y (P3,000.)

Q: Can Y be sued?
A: Yes, for the P9,000 (P12,000 less P3,000 share of Y.)

Q: Supposing X is insolvent?
A: Y can still be made to contribute. Remission will benefit Y only in so far as his share is concerned. His liability in case of insolvency of one co-creditor is not affected.

Q: Can A demand the P9,000 from Y.
A: Yes. But he can recover the same from W, X & Z.

Art. 1220. The remission of the whole obligation, obtained by one of the solidary debtors, does not entitle him to reimbursement from his co-debtors.

Art. 1221. If the thing has been lost or if the prestation has become impossible without the fault of the solidary debtors, the obligation shall be extinguished.

If there was fault on the part of any one of them, all shall be responsible to the creditor, for the price and the payment of damages and interest, without prejudice to their action against the guilty or negligent debtor.

If through a fortuitous event, the thing is lost or the performance has become impossible after one of the solidary debtors has incurred in delay through the judicial or extrajudicial demand upon him by the creditor, the provisions of the preceding paragraph shall apply.

Art. 1895. If solidarity has been agreed upon, each of the agents is responsible for the non-fulfillment of the agency, and for the fault or negligence of his fellow agents, except in the latter case when the fellow agents acted beyond the scope of their authority.

Art. 1222. 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.

Balane:

Three Defenses in Passive Solidarity:
1. Those derived from the nature of the obligation is a total defense, e.g., prescription, illegality of obligation.
2. Those defenses personal to the debtor-defendant, e.g., insanity. If it involves vitiation of consent, total defense. If it involves a special term or a condition, a partial defense.
3. Those defenses personal to other debtors, e.g., partial defense, is a defense as to the share corresponding to other debtors.)

BALANE CASE:

UNIVERSAL MOTORS V. CA [205 S 448] - When the obligation of the other solidary debtors is so dependent on that of their co-solidary debtor, the release of the one who appealed, provided it be not on grounds personal to such appealing private resp. operates as well as to the others who did not appeal. It is for this reason, that a decision or judgment in favor of the private resp. who appealed can be invoked as res judicata by the other private respondents.

xxx It is obvious that the resp. court committed no error in ruling that its decision inures to the benefit of all the private resps. regardless of the fact that only one appealed. It is erroneous to rule that the decision of the trial court could be reversed as to the appealing private resp. and continue in force against the other pvt. resps. The latter could not remain bound after the former had been released; although the other pvt. resps had not joined in the appeal, the decision rendered by the resp. court inured to their benefit.

Art. 1215. 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, without prejudice to the provisions of article 1219.

The creditor who may have executed any of these acts, as well as he who collects the debt, shall be liable to the others for the share in the obligation corresponding to them.

Art. 1219. 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.

4. According to Performance:

Indivisible and Divisible Obligations

Balane: This kind of obligations has something to do w/ the prestation, not to the thing. Divisible obligation is one susceptible of partial performance. An indivisible obligation is one that must be performed in one act.

General rule: Obligation is indivisible w/c means that it has to be performed in one act singly. Why? Bec. the law provides so: Unless there is an express stipulation to that effect, the
creditor cannot be compelled partially to receive the prestation in which the obligation consists. Neither may the debtor be required to make partial payments. xxx (Art. 1248, par. 1.)

Three Exceptions to the Rule on Indivisibility:

1. When the parties so provide. (Art. 1248, par. 1.)
2. When the nature of the obligation necessarily entails performance in parts.
3. Where the law provides otherwise.

Divisibility of Obligation distinguished from divisibility of object.-- Divisibility of obligation or prestation does not necessarily mean a divisible obligation. Divisibility of object is not the same as divisibility of obligation. But the reverse is not the same. Indivisibility of object means an indivisible obligation.

Art. 1223. The divisibility or indivisibility of the things that are the object of obligations in which there is only one debtor and only one creditor does not alter or modify the provisions of Chapter 2 of this Title (Nature and Effect of Obligations).

Art. 1224. 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 pice of the thing or of the value of the service in which the obligation consists.

Art. 1225. For the purposes of the preceding articles, obligations to give definite things and those which are not susceptible of partial performance shall be deemed to be indivisible.

When the obligation has for its object the execution of a certain number of days of work, the accomplishment of work by metrical units, or analogous things which by their nature are susceptible of partial performance, it shall be divisible.

However, even though the object or service may be physically divisible, an obligation is indivisible if so provided by law or intended by the parties.

In obligations not to do, divisibility or indivisibility shall be determined by the character of the prestation in each particular case.

Art. 1209. 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.

Examples of Indivisible Obligations

(1) By virtue of its object

Art. 618. Easements are indivisible. If the servient estate is divided between two or more persons, the easement is not modified, and each of them must bear it on the part which corresponds to him.

If it is the dominant estate that is divided between two or more persons, each of them may use the easement in its entirety, without changing the place of its use, or making it more burdensome in any other way.

(2) Express provision of law

Art. 2089. A pledge or mortgage is indivisible, even though the debt may be
divided among the successors in interest of the debtor or of the creditor.

Therefore, the debtor’s heir who has paid a part of the debt cannot ask for the proportionate extinguishment of the pledge or mortgage as long as the debt is not completely satisfied.

Neither can the creditor’s heir who received his share of the debt return the pledge or cancel the mortgage, to the prejudice of the other heirs who have not been paid.

From these provisions, it is expected the case in which, there being several things given in mortgage or pledge, each one of them guarantees only a determinate portion of the credit.

The debtor, in this case, shall have a right to the extinguishment of the pledge or mortgage as the portion of the debt for which each thing is specially answerable is satisfied.

Art. 2090. The indivisibility of a pledge or mortgage is not affected by the fact that the debtors are not solidarily liable.

Art. 1612. If several persons, jointly and in the same contract, should sell an undivided immovable with a right of repurchase, none of them may exercise this right for more than his respective share.

The same rule shall apply if the person who sold an immovable alone has left several heirs, in which case each of the latter may only redeem the part which he may have acquired.

Art. 1613. In the case of the preceding article, the vendee may demand of all the vendors or co-heirs that they come to an agreement upon the repurchase of the whole thing sold; and if they fail to do so, the vendee cannot be compelled to consent to a partial redemption.

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

However, when the debt is in part liquidated and in part unliquidated, the creditor may demand and the debtor may effect the payment of the former without waiting for the liquidation of the latter.

Art. 1583. Unless otherwise agreed, the buyer of goods is not bound to accept delivery thereof by installments.

Where there is a contract of sale of goods to be delivered by stated installments, which are to be separately paid for, and the seller makes defective deliveries in respect of one or more installments, or the buyer neglects or refuses without just cause to take delivery of or pay for one or more installments, it depends in each case on the terms of the contract and the circumstances of the case, whether the breach of contract is so material as to justify the injured party in refusing to proceed further and suing for damages for breach of the entire contract, or whether the breach is severable, giving rise to a claim for compensation but not to a right to treat the whole contract as broken.

(3) Express agreement

Art. 1714. If the contractor agrees to produce the work from material furnished by him, he shall deliver the thing produced to the employer and transfer dominion over the thing. This
contract shall be governed by the following articles as well as by the pertinent provisions on warranty of title and against hidden defects and the payment of price in a contract of sale.

5. According to Sanctions for Breach:

   A. Simple

   B. Obligations with a Penal Clause

Balane:

Articles 1226 to 1230 on obligation w/ a penal clause is the same as liquidated damages found in Articles 2226 to 2228 by authority of Lambert v. Fox, 26 Phil. 588.

Penal Clause.-- A penal clause is an accessory undertaking to assume greater liability in case of breach. The purpose is to strengthen the coercive force of the obligation. When a penal clause is present, damages do not have to be proved.

Characteristics of Penal Clause:

1. Subsidiary (also called alternative) w/c means that upon non-performance, only the penalty may be demanded.

   Exception: Where penalty is joint (cumulative) - where both the principal undertaking and penalty may be demanded -- Art. 1227, second sentence: "xxx unless this right has been clearly granted him." Notice the word clearly (not explicitly) w/c means that the right can be clearly granted by implication.

2. Exclusive w/c means that a penal clause is for reparation. It takes the place of damages.

   Exception: When it is for the punishment in w/c case both penalty and damages may be demanded, namely--

(a) If there is a stipulation that both penalty and damages are recoverable in case of breach
(b) If the obligor refuses to pay the penalty
(c) If the obligor is guilty of fraud in the fulfillment of his obligation.

Art. 1226. In obligations with a penal clause, the penalty shall substitute the indemnity for damages and the payment of interests in case of non-compliance, if there is no stipulation to the contrary. Nevertheless, damages shall be paid if the obligor refuses to pay the penalty or is guilty of fraud in the fulfillment of the obligation.

The penalty may be enforced only when it is demandable in accordance with the provisions of this Code.

BALANE CASES:

BACHRACH V. ESPRITU [52 P 346] - Art. 1152 of the OCC permits the agreement upon a penalty apart from the interest. Should there be such an agreement, the penalty xxx does not include the interest, and as such the two are different and distinct things w/c may be demanded separately. The penalty is not to be added to the interest for the determination of whether the interest exceeds the rate fixed by law, since said rate was fixed only for the interest.

ROBES-FRANCISCO V. CFI [86 S 59] - Petitioner contends that the deed of absolute sale executed bet. the parties stipulates that should the vendor fail to issue the transfer cert. of title w/in 6 mos. from the date of full payment, it shall refund to the vendee the total amount paid for w/ interest at the rate of 4% p.a.,
Hence, the vendee is bound by the terms of the provision and cannot recover more than what is agreed upon. 

**HELD:** The foregoing argument of petitioner is totally devoid of merit. We would agree w/ petitioner if the clause in question were to be considered as a penal clause. Nevertheless, for very obvious reasons, said clause does not convey any penalty, for even without it, pursuant to Art. 2209 of the NCC, the vendee would be entitled to recover the amount paid by her w/ legal rate of interest w/c is even more than the 4% provided for in the clause.

Balane: The SC considered the 4% interest as not a penal clause bec. it does not strengthen the coercive force of the obligation.

**PAMINTUAN V. CA** [94 S 556] - We hold that appellant’s contention cannot be sustained bec. the second sentence of art. 1226 itself provides that “nevertheless, damages shall be paid if the obligor xxx is guilty of fraud in the fulfillment of the obligation.” xxx The trial court and the CA found that Pamintuan was guilty of fraud bec. he did not make a complete delivery of the plastic sheetings and he overpriced the same. 

*Penalty and Liquidated damages.*-- There is no justification for the NCC to make an apparent distinction bet. penalty and liquidated damages bec. the settled rule is that there is no difference bet. penalty and liquidated damages insofar as legal results are concerned and either may be recovered w/o the necessity of proving actual damages and both may be reduced when proper.

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We further hold that justice would be adequately done in this case by allowing Yu Ping Kun Co., Inc. to recover only the actual damages proven, and not to award to it the stipulated liquidated damages of P10,000 for any breach of the contract. *The proven damages supersede the stipulated liquidated damages.*

This view finds support in the opinion of Manresa that in cases of fraud the difference bet. the proven damages and the stipulated penalty may be recovered.

**COUNTRY BANKERS V. CA** [201 S 458] - A provision w/c calls for the forfeiture of the remaining deposit still in the possession of the lessor, w/o prejudice to any other obligation still owing, in the event of the termination or cancellation of the agreement by reason of the lessee’s violation of any of the terms and conditions of the agreement is a penal clause that may be validly entered into. *A penal clause is an accessory obligation w/c the parties attach to a principal obligation for the purpose of insuring the performance thereof by imposing on the debtor a special prestation (generally consisting in the payment of a sum of money) in case the obligation is not fulfilled or is irregularly or inadequately fulfilled.* As a general rule, in obligations w/ a penal clause, the penalty shall substitute the indemnity for damages and the payment of interests in case of non-compliance. This is specifically provided for in Art. 1226, par. 1. In such case, proof of actual damages suffered by the creditor is not necessary in order that the penalty may be demanded. 

But there are cases when both the penalty and the actual damages may be recovered, such as when there is a stipulation to the contrary or when the obligor is guilty of fraud.

Balane: Country Bankers case is better than Pamintuan v. CA. Both the penalty and damages are recoverable in
SSS V. MOONWALK  [221 S 119] - A penal clause is an accessory undertaking to assume greater liability in case of breach. It has a double function: (1) to provide for liquidated damages; and (2) to strengthen the coercive force of the obligation by the threat of greater responsibility in the event of breach. From the foregoing, it is clear that a penal clause is intended to prevent the obligor from defaulting in the performance of his obligation. Thus, if there should be default, the penalty may be enforced.

Art. 1227. The debtor cannot exempt himself from the performance of the obligation by paying the penalty, save in the case where this right has been expressly reserved for him. Neither can the creditor demand the fulfillment of the obligation and the satisfaction of the penalty at the same time, unless this right has been clearly granted him. However, if after the creditor has decided to require the fulfillment of the obligation, the performance thereof should become impossible without his fault, the penalty may be enforced.

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

Baviera: Courts enforce contracts according to their terms

Art. 1229. The judge shall equitably reduce the penalty when the principal obligation has been partly or irregularly complied with by the debtor. Even if there has been no performance, the penalty may also be reduced by the courts if it is iniquitous or unconscionable.

Art. 1230. The nullity of the penal clause does not carry with it that of the principal obligation.

The nullity of the principal obligation carries with it that of the penal clause.

1. Distinguished from alternative obligations

Art. 1227. The debtor cannot exempt himself from the performance of the obligation by paying the penalty, save in the case where his right has been expressly reserved for him. Neither can the creditor demand the fulfillment of the obligation and the satisfaction of the penalty at the same time, unless this right has been clearly granted him. However, if after the creditor has decided to require the fulfillment of the obligation, the performance thereof should become impossible without his fault, the penalty may be enforced.

Art. 1200. The right of choice belongs to the debtor, unless it has been expressly granted to the creditor.

The debtor shall have no right to choose those prestations which are impossible, unlawful or which could not have been the object of the obligation.

2. Distinguished from facultative obligations

Art. 1227. The debtor cannot exempt himself from the performance of the obligation by paying the penalty, save in the case where this right has been expressly reserved for him. Neither can the
creditor demand the fulfillment of the obligation and the satisfaction of the penalty at the same time, unless this right has been clearly granted him. However, if after the creditor has decided to require the fulfillment of the obligation, the performance thereof should become impossible without his fault, the penalty may be enforced.

Art. 1206. When only one prestation has been agreed upon, but the obligor may render another in substitution, the obligation is called facultative.

The loss or deterioration of the thing intended as a substitute, through the negligence of the obligor does not render him liable. But once the substitution has been made, the obligor is liable for the loss of the substitute on account of his delay, negligence or fraud.

V. 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 the creditor and debtor;
(5) By compensation;
(6) By novation.

Other causes of extinguishment of obligations, such as annulment, rescission, fulfillment of a resolutory condition, and prescription are governed elsewhere in this Code.

Balane: Art. 1231 gives us ten modes of extinguishing an obligation. One of the modes mentioned is rescission. But it does not tell us whether this is rescission under Art. 1191 (resolution) or rescission under Art. 1380, et. seq. If it means both, then we have eleven modes of extinguishing an obligation under Art. 1231.

This enumeration is not exclusive. Other modes of extinguishing an obligation are the following:
1. Death, particularly where the obligation is purely personal, e.g., death of one partner dissolves the partnership.
2. Renunciation by the creditor
3. Compromise
4. Arrival of resolutory term
5. Mutual desistance or mutuo disenso (Saura v. DBP.)
6. In some cases, unilateral withdrawal, e.g., in partnership, any partner can withdraw any time from the partnership.
7. In some cases, change of civil status, e.g., if marriage is annulled, it extinguishes obligations like the obligation to give support, among others.
8. Unforseen events (rebus sic stantibus) (Art. 1267.)
9. Want of interest

Illustration: Carale owns a restaurant. He hires Molina as a chef. In the contract of employment, there was a stipulation that if Molina resigns from Carale’s restaurant, he cannot seek employment from another restaurant for a period of five years. Subsequently, Molina resigns from Carale’s restaurant and wants to apply to Mildo’s House of Chicken. In this case, Molina cannot work with Mildo’s because of the stipulation in the contract he signed with Carale. Suppose, however, Carale, closes down his restaurant and engages in a totally different business, a construction business, for example, Molina can apply for work at Mildo’s even before the lapse of the five year prohibitive period.

In this case, Molina can make out a case of extinguishment of obligation on the ground of want of interest. The obvious purpose of the stipulation is to prevent unfair competition.
10. Judicial insolvency

BALANE CASE:

SAURA IMPORT & EXPORT BANK VS. DBP [44 S 445] - Where after approval of his loan, the borrower, instead of insisting for its release, asked that the mortgage given as security be cancelled and the creditor acceded thereto, the action taken by both parties was in the nature of mutual desistance - what Manresa terms "mutuo disenso" - w/c is a mode of extinguishing obligations. It is a concept that derives from the principle that since mutual agreement can create a contract, mutual disagreement by the parties can cause its extinguishment.

A. Payment or Performance

Balane’s Outline of the Articles on Payment:

Requisites of Payment or Performance:

I. Re: The prestation
   1. Identity
   2. Integrity
   3. Indivisibility

II. Re: The parties
    1. Payor/ obligor/ debtor
    2. Payee/ obligee/ creditor

III. Re: Time and place

I. With respect to prestation:
   1. Identity
      a. If specific prestation, this requisite means that the very thing or service must be delivered. (Art. 1244.)
      b. If generic, the requisite requires the delivery of something of neither inferior or superior quality (Art. 1246). It must be something in the middle. In case of money, there are special rules:

   (i) Governing rule:
   RA 529 as amended by RA 4100-- In case of money debts, you will have to pay in legal tender in the Philippines. This law supersedes Art. 1249.
   If the parties stipulate that payment will be made in foreign currency, the obligation to pay is valid but the obligation to pay in foreign currency is void. Payment will be made in Phil. currency.

   How do you convert?
   In case of an obligation w/c is not a loan in foreign currency, if incurred bef. RA 529, conversion must be as of the time the obligation was incurred. If incurred after RA 529 became effective, the conversion must be as of the time the obligation was incurred. (Kalalo v. Luz.) If the loan is in foreign currency, the conversion is as of the time of payment. (RA 529.)

   (ii) Payment in negotiable paper-- This may be refused by the creditor. Payment in manager’s check or certified check is not payment in legal tender. The ruling in Seneris has been reversed in the case of Bishop of Malolos. The Malolos ruling is better. I found it hard to accept that manager’s check or certified
check is good as legal tender. There are always risks to w/c cashier’s checks are subject. What if after having issued a cashier’s check, the drawee-bank closes, what happens to your cashier’s check?

In any event, payment by check can be refused by the creditor. And even if payment by check is accepted by the creditor, the acceptance is only a provisional payment until the check is (a) encashed or (b) when through the fault of the creditor they have been impaired. The case of Namarco v. Federation, 49 SCRA 238, interprets the phrase "when through the fault of the creditor, they have been impaired" as to apply only to a check used in payment if issued by a person other than the debtor. Why? Bec. if the check was issued by the debtor himself, all that the debtor have to do is to issue another check.

(iii) Revaluation in case of extraordinary inflation or deflation (Art. 1250.)-- This rule has never been used. It was only during the Japanese occupation that there was a recognition of extraordinary inflation in this country.

c. Exceptions to the requirement of identity
   (i) Dacion en pago (Art. 1245.)
   (ii) Novation

In both cases, there is a voluntary change in the object.

2. Integrity.-- There must be delivery of the entire prestation due. (Art. 1233.) The exceptions to the requirement of integrity are:
   a. In case of substantial performance in good faith (Art. 1234.) This is an equity rule.
   b. In case of waiver of obligee/ creditor (Art. 1235.)
   c. In case of application of payments if several debts are equally onerous (Art. 1254, par. 2.)

3. Indivisibility.-- This means that the obligor must perform the prestation in one act and not in parts. (Art. 1248.) There are several exceptions to this requirement:
   a. In case or express stipulation. (Art. 1248.)
   b. In case of prestations w/c necessarily entail partial performance. (Art. 1225, par. 2)
   c. If the debt is liquidated in part and unliquidated in part. (Art. 1248.)
   d. In case of joint divisible obligations (Art. 1208.)
   e. In solidary obligations when the debtors are bound under different terms and conditions. (Art. 1211.)
   f. In compensation when a balance is left. (Art. 1290.)
   g. If the work is to be delivered partially, the price or compensation for each part having been fixed. (Art. 1720.)
   h. In case of several guarantors who demand the right of division. (Art. 2065.)

(i) Dacion en pago (Art. 1245.)

(ii) Novation
i. In case of impossibility or extreme difficulty of single performance.

II. With respect to the parties

There are two parties involved:
1. Payor/ obligor/ debtor
2. Payee/ obligee/ creditor

Requirements:
1. Art. 1226 - 1238. Who should the payor be:
   a. Without need of the creditor’s consent
      (1) The debtor himself
      (2) His heirs or assigns
      (3) His agent
      (4) Anyone interested in the fulfillment of the obligation, e.g., a guarantor
   b. With the creditor’s consent -- Anyone. This is a departure from the rule in the Old Civil Code w/c did not require consent on the part of the creditor.
   c. Effect of payment by a third person:
      (1) If the payment was w/ the debtor’s consent, he becomes the agent of the debtor. The effect is subrogation (Articles 1236-1237.) Exception: If the person paying intended it to be a donation. (Art. 1238.)
      (2) If payment was without the debtor’s consent, the third person may demand repayment to the extent that the debtor has been benefited. (Art. 1236, par. 2.)

2. Who may be the payee?
   a. The obligee proper (Articles 1240, 1626.)
   b. His successor or transferee (Art. 1240.)
   c. His agent (ibid.)
   d. Any third person subject to the following qualifications:
      (1) provided it redounded to the obligee’s benefit and only to the extent of such benefit. (Art. 1241, par. 2.)
      (2) If it falls under Art. 1241, par. 2 nos. 1, 2 & 3, benefit is deemed to be total.
   e. Anyone in possession of the credit. (Art. 1242.)

In all these five (5) cases, it is required that the debt should not have been garnished. (Art. 1243.)

III. With respect to the time and place of payment

1. When payment to be made:
   When due
2. Place (Art. 1251.)
   a. Primary rule: As stipulated
   b. Secondary rule: Place where the thing was at the time the obligation was constituted if the obligation is to deliver a determinate thing.
   c. Tertiary rule: At the debtor’s domicile

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

Balane: Payment or Performance are used interchangeably. But technically, payment is used in obligations to give whereas performance is used in obligations to do. Payment/performance is the paradigmatic mode of extinguishment of an obligation. It is the only normal way of extinguishing an obligation.
Art. 1233. A debt shall not be understood to have been paid unless the thing or service in which the obligation consists has been completely delivered or rendered, as the case may be.

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

BALANE CASES:

LEGARDA HERMANOS V. SALDANA [55 S 324] - The Court’s doctrine in J.M. Tuason v. Javier is fully applicable to the present case.

J.M. TUASON V. JAVIER [31 S 829] - In the interest of justice and equity, court may grant the vendee a new term where he substantially performed in good faith according to Art. 1234, regardless of Art. 1592 of the same Code.

PRESBITERO V. CA [217 S 372] - Under Art. 1234, if the obligation has been substantially performed in GF, the obligor (private resp. Leonardo Canoso) may recover as though there had been a strict and complete fulfillment, less damages suffered by the obligee (Presbitero.) Moreover, when the obligee accepts the performance as what happened in this case, knowing its incompleteness or irregularity, and w/o expressing any protest or objection, the obligation is deemed fully complied w/.

TAYAG V. CA [219 S 480] - Both the trial court and the appellate courts were correct in sustaining the claim of pvt resps. anchored on estoppel or waiver by acceptance of delayed payments under Art. 1235 considering that the heirs of Juan Galicia, Sr. accommodated pvt. resp. by accepting the latter's delayed payments not only beyond the grace periods but also during the pendency of the case for specific performance. Indeed, the right to rescind is not absolute and will not be granted where there has been substantial compliance by partial payments. By and large, petitioners' actuation is susceptible of but one construction-- that they are now estopped from reneging from their commitment on account of acceptance of benefits arising from overdue accounts of pvt. resps.

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

BALANE CASES:

AZcona V. JAMANDRE [151 S 317] - xxx If the petitioner is fussy enough to invoke it now, it stands to reason that he would have fussed it too in the receipt he willingly signed after accepting, w/o reservation and apparently w/o protest only P7,000. Art. 1235 is applicable.

xxx

Petitioner says that he could not demand payment of the balance of P200 on 10/26/60, date of receipt bec. the rental for the crop year 1961-1962 was due on or before 1/30/61. But this would not have prevented him from reserving in the receipt his right to collect the balance when it fell due. Moreover, there is
evidence in the record that when the due date arrived, he made any demand, written or verbal, for the payment of that amount.

**PAGSIBIGAN V. CA [221 S 202]** - We hold that the payment amounting to ₱8,500 for the balance of ₱3,558.20 as of 8/26/78 plus the ₱1,000 it was asked to pay on 4/24/84 would at the very least constitute substantial performance. xxx Petitioner in this case has the right to move for the cancellation of the mortgage and the release of the mortgaged prop., upon payment of the balance of the loan. xxx

Thus, aside from the fact that the resp. bank was estopped from enforcing its right to foreclose by virtue of its acceptance of the delayed payments for a period of more than six years, the application of such payment to the interest and the principal during the first three payments constitutes a virtual waiver of the acceleration clause provided in the contract. We cannot sustain the legality of the foreclosure under the peculiar facts of this case, bec. there is substantial performance of the obligation on the part of petitioner. xxx

1. To whom payment should be made

   Art. 1240. Payment shall be made to the person in whose favor the obligation has been constituted, or his successor in interest, or any person authorized to receive it.

**BALANE CASES:**

**ARANAS V. TUTAAN [127 S 828]** - Payment by judgment debtor to the wrong party does not extinguish judgment debt.-- The burden of recovering the supposed payments of the cash dividends made by UTEX to the wrong parties Castaneda and Manuel squarely falls upon itself by its own action and cannot be passed by it to petitioners as innocent parties. It is elementary that payment made by a judgment debtor to a wrong party cannot extinguish the judgment obligation of such debtor to its creditor. xxx

**PAL V. CA [181 S 557]** - A payment in order to be effective to discharge an obligation must be made to the proper parties.-- In general, a payment, in order to be effective to discharge an obligation, must be made to the proper person. Thus, payment must be made to the obligee himself or to an agent having authority, express or implied, to receive the particular payment. Payment made to one having apparent authority to receive the money will, as a rule, be treated as though actual authority had been given for its receipt. Likewise, if payment is made to one who by law is authorized to act for the creditor, it will work a discharge. The receipt of money due on a judgment by an officer authorized by law to accept it will, therefore satisfy the debt. xxx The theory is where a payment is made to a person authorized and recognized by the creditor, the payment to such a person so authorized is deemed payment to the creditor. xxx

Unless authorized by law or by consent of the obligee, a public officer has no authority to accept anything other than money in payment of an obligation under a judgment being executed.-- In the absence of an agreement, either express or implied, payment means the discharge of a debt or obligation in money and unless the parties so agree, a debtor has no rights, except at his own peril, to substitute something in lieu of cash as medium of payment of his debt. Consequently, Unless authorized by law or by consent of the obligee, a public officer has no authority to accept anything
other than money in payment of an obligation under a judgment being executed. Strictly speaking, the acceptance by the sheriff of the petitioner's checks, in the case at bar, does not, per se, operate as a discharge of the judgment debt.

Art. 1241. Payment to a person who is incapacitated to administer his property shall be valid if he has kept the thing delivered, or insofar as the payment has been beneficial to him.

Payment made to a third person shall also be valid insofar as it has redounded to the benefit of the creditor. Such benefit to the creditor need not be proved in the following cases:

1. If after the payment, the third persons acquires the creditor's rights;
2. If the creditor ratifies the payment to the third person;
3. If by the creditor's conduct, the debtor has been led to believe that the third person had authority to receive the payment.

Baviera: Number three is Estoppel in Pais

Art. 1242. Payment made in good faith to any person in possession of the credit shall release the debtor.

(Article of Credits and Other Incorporeal Rights)

Art. 1626. The debtor who, before having knowledge of the assignment, pays his creditor shall be released from the obligation.

2. Who shall make payment

Art. 1236. The creditor is not bound to accept payment or performance by a third person who has no interest in the fulfillment of the obligation, unless there is a stipulation to the contrary.

Whoever pays for another may demand from the debtor what he has paid, except that if he paid without the knowledge or against the will of the debtor, he can recover only insofar as the payment has been beneficial to the debtor.

Art. 1237. Whoever pays on behalf of the debtor without the knowledge or against the will of the latter, cannot compel the creditor to subrogate him in his rights, such as those arising from a mortgage, guaranty, or penalty.

Art. 1238. Payment made by a third person who does not intend to be reimbursed by the debtor is deemed to be a donation, which requires the debtor's consent. But the payment is in any case valid as to the creditor who has accepted it.

(Other Quasi-Contracts)

Art. 2173. When a third person, without the knowledge of the debtor, pays the debt, the rights of the former are governed by articles 1236 and 1237.

Art. 1239. In obligations to give, payment made by one who does not have the free disposal of the thing due and capacity to alienate it shall not be valid, without prejudice to the provisions of article 1427 under the Title on "Natural Obligations."

Art. 1427. When a minor between eighteen and twenty-one years of age, who has entered into a contract without the consent of the parent or guardian, voluntarily pays a sum of money or delivers a
fungible thing in fulfillment of the obligation, there shall be no right to recover the same from the obligee who has spent or consumed it in good faith.

NOTE: age of majority is now 18.

Art. 1243. Payment made to the creditor by the debtor after the latter has been judicially ordered to retain the debt shall not be valid.

Art. 1244. 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.

In obligations to do or not to do, an act or forbearance cannot be substituted by another act or forbearance against the obligee's will.

Art. 1245. Dation in payment, whereby property is alienated to the creditor in satisfaction of a debt in money, shall be governed by the law of sales.

BALANE CASES:

FILINVEST V. PHIL. ACETYLENE [111 S 421] - We find appellant's contention devoid of persuasive force. The mere return of the mortgaged motor vehicle by the mortgagor, the herein appellant, to the mortgagee, the herein appellee, does not constitute dation in payment in the absence, express or implied of the true intention of the parties.

Dacion en pago. according to Manresa, is the transmission of the ownership of a thing by the debtor to the creditor as an accepted equivalent of the performance of an obligation. In dacion en pago, as a special mode of payment, the debtor offers another thing to the creditor who accepts it as equivalent of payment of an outstanding debt.

Dacion en pago in the nature of sale.-- 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 w/c 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.

Dacion en pago in its modern concept.-- In its modern concept, what actually takes place in dacion en pago is an objective novation of the obligation where the thing offered as an accepted equivalent of the performance of an obligation is considered as the object of the contract of sale, while the debt is considered as the purchase price. In any case, common consent is an essential prerequisite, be it sale or novation, to have the effect of totally extinguishing the debt or obligation.

CITIZENS SURETY V. CA [162 S 738] - There is no dation in payment when there is no obligation to be extinguished.-- The transaction could not be dation in payment. xxx When the deed of assignment was executed on 12/4/59, the obligation of the assignor to refund the assignee had not yet arisen. In other words, there was no obligation yet on the part of the petitioner, Citizens' to pay Singer Sewing Machine Co. There was nothing to be extinguished on that date, hence, there could not have been a dation in payment.

Art. 1246. When the obligation consists in the delivery of an indeterminate or generic thing, whose quality and circumstances have not been stated, the creditor cannot demand a thing
of superior quality. Neither can the debtor deliver a thing of inferior quality. The purpose of the obligation and other circumstances shall be taken into consideration.

Art. 1247. Unless it is otherwise stipulated, the extrajudicial expenses required by the payment shall be for the account of the debtor. With regard to judicial costs, the Rules of Court shall govern.

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

However, when the debt is in part liquidated and in part unliquidated, the creditor may demand and the debtor may effect the payment of the former without waiting for the liquidation of the latter.

BALANE CASE:

NASSER V. CUEVAS [188 S 812] - There is nothing in the cited proviso to justify the reading that the petitioner would give to it. The par. in w/c it is found does no more than establish "on all the properties of the Estate, real and personal, herein adjudicated and other properties not yet adjudicated, a charging lien xxx to secure the payment of (Canlas') attorney's fees;" this, w/ the express agreement of all the signatories. The proviso that "upon full payment of the corresponding liability of a party the lien on his/her share is extinguished." evidently contemplates the probability that the heirs obliged to pay Canlas’ fees would pay at different times, and denotes nothing more than that if one of the obligors separately pays his share in

Canlas’ fees, the lien on his share of the estate is thereby extinguished-- a quite obvious proposition, to be sure. The clause cannot be construed as granting to any of the obligors, by implication, the option to pay in installments, or as impliedly binding on the obligee to accept payment by parts. 

Art. 1249. The payment of debts in money shall be made in the currency stipulated, and if it is not possible to deliver such currency, then in the currency which is legal tender in the Philippines.

The delivery of promissory notes payable to order, or bills of exchange or other mercantile documents shall produce the effect of payment only when they have been cashed, or when through the fault of the creditor they have been impaired.

In the meantime, the action derived from the original obligation shall be held in abeyance.

BALANE CASES:

KALALO V. LUZ [34 S 337] - Under RA 529, if the obligation was incurred prior to the enactment in a particular kind of coin or currency other than the Phil. currency the same shall be discharged in Phil. currency measured at the prevailing rate of exchange at the time the obligation was incurred. RA 529 does not provide for the rate of exchange for the payment of the obligation incurred after the enactment of said Act. The logical conclusion is that the rate of exchange should be that prevailing at the time of payment for such contracts.

PONCE V. CA [90 S 533] - It is to be noted that while an agreement to pay in dollars is declared as null and void and of
no effect, what the law specifically prohibits is payment in currency other than legal tender. It does not defeat a creditor's claim for payment, as it specifically provides that "every other domestic obligation xxx whether or not any such provision as to payment is contained therein or made w/ respect thereto, shall be discharged upon payment in any coin or currency w/c at the time of payment is legal tender for public and pvt. use.” A contrary rule would allow a person to profit or enrich himself inequitably at another's expense.

NEW PACIFIC TIMBER V. SENERIS [101 S 686] - It is to be emphasized that the check deposited by the petitioner in the amount of P50,000 is not an ordinary check but a Cashier's check of the Equitable Banking Corp., a bank of good standing and reputation. It was even a certified crossed check. It is well known and accepted practice in the business sector that a Cashier's check is deemed as cash.

Moreover, since the said check has been certified by the drawee bank, by the certification, the funds represented by the check are transferred from the credit of the maker to that of the payee or holder, and for all intents and purposes, the latter becomes the depositor of the drawee bank, w/ rights and duties of one in such situation. Where a check is certified by the bank on w/c it is drawn, the certification is equivalent to acceptance. Said certification "implies that the check is drawn upon sufficient funds in the hands of the drawee, that they have been set apart fort its satisfaction, and that they shall be so applied whenever the check is presented for payment. It is an understanding that the check is good then, and shall continue good, and this agreement is as binding on the bank as its notes in circulation, a certificate of deposit payable to the order of the depositor, or any other obligation it can assume. The object of certifying a check, as regards both parties, is to enable the holder to use it as money.” When the holder procures the check to be certified, "the check operates as an assignment of a part of the funds to the creditors.” Hence, the exception to the rule enunciated under Sec. 63 of the CB Act to the effect that "a check w/c has been cleared and credited to the accoun of the creditor shall be equivalent to a delivery to the creditor in cash an amount equal to the amount credited to his account” shall apply in this case.

BISHOP OF MALOLOS V. IAC [191 S 411] - Since a negotiable instrument is only a substitute for money and not money, the delivery of such an instrument does not, by itself, operate as payment. A check, whether a manager's check or ordinary check, is not legal tender, and an offer of a check in payment of a debt is not a valid tender of payment and may be refused receipt by the obligee or creditor.

DBP V. SIMA WEI [219 S 736] - Notwithstanding the above, it does not necessarily follow that the drawer Sima Wei is freed from liability to petitioner bank under the loan evidenced by the p/n agreed to by her. Her allegation that she has paid the balance of her loan w/ the 2 checks payable to petitioner Bank has no merit for xxx these checks were never delivered to petitioner Bank. And even granting, w/o admitting, that there was delivery too petitioner Bank, the delivery of checks in payment of an obligation does not constitute payment unless they are cashed or their value is impaired through the fault of the creditor. None of these exceptions were alleged by resp. Sima Wei.
TIBAJA V. CA  [223 S 272] - In the recent cases of PAL v. CA and Roman Catholic Bishop of Malolos v. IAC, this Court held that-- "A check, whether a manager's check or ordinary check, is not legal tender, and an offer of a check in payment of a debt is not a valid tender of payment and may be refused receipt by the obligee or creditor." The ruling in these 2 cases merely applies the statutory provisions w/c lay down the rule that a check is not legal tender and that a creditor may validly refuse payment by check, whether it be a manager's check, cashier's check or personal check.

PALANCA V. CA  [238 S 593] - In the case at bar, the clear understanding of the parties is that there should be an upward adjustment of the purchase price the moment there is a deterioration of the Phil. vis-a-vis the US dollar. This is the "monetary fluctuation" contemplated by them as would justify the adjustment. Under this scenario, it is an idle task to determine whether the contract has been visited by an "extraordinary inflation" as to trigger the operation of Art. 1250. While the contract may contain an "escalator clause" providing that in the occurrence of certain events, the contract price shall be increased to a fixed percentage of the base price, still the autonomy of the parties to provide such escalator clauses may be limited by law. The petition should be dismissed on the ground that the stipulation of the parties is in violation of RA 529, as amended.

We cannot grant the petition but not on the grounds relied upon by the trial court and the CA that there should be an "extraordinary inflation" before a stipulation for an upward adjustment of the purchase price can be enforced.

1. xxx The petition should be dismissed on the ground that the stipulation of the parties is in violation of RA 529, aka, Cuenco Law.

The Court cited Sec. 1 of the said law.

xxx [T]he said law prohibits two things in all domestic contracts: (1) giving the obligee the right to require payment in a specified currency other than Phil. currency; and (2) giving the obligee the right to require payment "in an amount of money of the Philippines measured thereby."

When the parties stipulated that in the event of monetary fluctuation, the unpaid balance account of the herein vendee on the aforesaid subdivision lot shall be increased proportionately on the basis of the present value of peso to the US dolla, the obligee was given the right to demand payment of the bal. of the purchase price "in an amount of money of the Phils. measured" by a foreign coin or currency.

xxx Congress passed RA 529, having in mind the preservation of the value of the Phil. peso. A currency has value bec. people are willing to accept it in exchange for goods and services and in payment for debts. xxx If instead of the Phil. currency, the people would use a foreign currency as the mode of payment or as basis for measuring the amount of money to be paid in Phil. currency, such usage would adversely affect the confidence of the public on the Phil. monetary system.

2. The liberalization of the foreign exchange regulations on receipts and disbursements of residents arising from both non-trade and trade transactions did not repeal or in any way amend RA 529. In essence, said CB Circulars merely allowed the free sale and purchase of foreign exchange outside the banking system and other transactions involving
Art. 1250. In case an 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.

Baviera: This article applies to contracts only

EXTRAORDINARY means unusual or beyond the common fluctuation, not foreseen

BALANE CASES:

VELASCO V. MERALCO [42 S 556] - From the employment of the words "extraordinary inflation or deflation of the currency stipulated" in Art. 1250, it can be seen that the same envisages contractual obligations where a specific currency is selected by the parties as the medium of payment; hence it is inapplicable to obligations arising from tort and not from contract. Besides, there is no showing that the factual assumption of said article has come into existence.

COMMISSIONER OF PUBLIC HIGHWAYS V. BURGOS [96 S 831] - Art. 1250 does applies only to cases where a contract or agreement is involved. It does not apply where the obligation to pay arises from law, independent of contracts. The taking of private property by the govt in the exercise of its power of eminent domain does not give rise to a contractual obligation.

FILIPINO PIPE & FOUNDRY CORP V. NAWASA [161 S 32] - Extraordinary inflation Defined.-- Extraordinary inflation exists when "there is a decrease or increase in the purchasing power of the Phil. currency w/c is unusual or beyond the common fluctuation in the value of said currency, and such decrease or increase could not have been reasonably foreseen or was manifestly beyond the contemplation of the parties at the time of the establishment of the obligation.

The trial court pointed out, however, that this is a worldwide occurrence, but hardly proof that the inflation is extraordinary in the sense contemplated in Art. 1250, w/c was adopted by the Code Commission to provide "a just solution" to the "uncertainty and confusion as a result of contracts entered into or payments made during the last war." While appellant's voluminous statistics and records proved that there has been a decline in the purchasing power of the Phil. peso, this downward fall of the currency cannot be considered "extraordinary." It is simply a universal trend that has not spared our country.

DEL ROSARIO V. SHELL [164 S 556] - In the case at bar, while no express reference has been made to metallic content, there nonetheless is a reduction in par value or in the purchasing power of Phil. currency. Even assuming there has been no official devaluation as the term is technically understood, the fact is that there has been a diminution or lessening in the purchasing power of the peso, thus there has been a "depreciation" (opposite of "appreciation.") Moreover, when laymen unskilled in the semantics of economics use the terms "devaluation" or "depreciation" they certainly mean them in their ordinary signification-- decrease in value. Hence, as contemplated by the parties herein in their lease agreement, the term "devaluation" may be regarded as
synonymous w/ "depreciation," for certainly both refer to a decrease in the value of the currency. The rentals should therefore, by their agreement, be proportionately increased.

SANGRADOR V. VALDERAMA [168 S 215]
- Since petitioners failed to prove the supervening of extraordinary inflation bet. 4/6/84 and 12/7/84-- no proofs were presented on how much, for instance, the price index of goods and services had risen during the intervening period-- an extraordinary inflation cannot be assumed; consequently, there is no reason or basis, legal or factual, for adjusting the value of the Phil. peso in the settlement of respondents' obligation.

(not in Baviera's outline)

Art. 1251. Payment shall be made in the place designated in the obligation.

There being no express stipulation and if the undertaking is to deliver a determinate thing, the payment shall be made wherever the thing might be at the moment the obligation was constituted.

In any other case the place of payment shall be the domicile of the debtor.

If the debtor changes his domicile in bad faith or after he has incurred in delay, the additional expenses shall be borne by him.

These provisions are without prejudice to venue under the Rules of Court.

Four Special Kinds of Payments:

1. Dacion en pago (Art. 1245.)
2. Application of payments (Subsection 1.)
3. Payment by cesion (Subsection 2.)
4. Consignation (Subsection 3.)

Discussion:

1. Dacion en pago

Art. 1245. Dation in payment, whereby property is alienated to the creditor in satisfaction of a debt in money, shall be governed by the law of sales.

Balane: Dacion en pago (In Roman law, called "datio in solutum", in French, "dation en paiement," in Spanish, "dacion en pago.") Dation in payment is possible only if there is a debt in money. Instead of money, a thing is delivered in satisfaction of the debt in money.

Dation in payment is governed by the law on sales bec. it is as if the creditor is now the vendee, and the debtor becomes now the vendor.

Dation en pago is explained in the case of Filinvest v. Phil. Acetylene, supra.

There are two ways at looking at dacion en pago:

1. Classical way where dacion en pago is treated as a sale.
2. Modern concept w/c treats dacion en pago as a novation.

Castan has another view-- Both are wrong. A dacion en pago is not a sale bec. there is no intention to enter into a contract of sale. It is not also a novation bec. in novation, the old obligation is extinguished and a new obligation takes its place. But here, the old obligation is extinguished. What takes its place? Nothing. So what is it? It is a special form of payment w/c resembles a sale.

There are two more things to remember in the cases of Filinvest v. Phil. Acetylene, supra. and Lopez v. CA, 114 SCRA 671:

1. Dacion en pago can take place only if both parties consent.
2. To what extent is the obligation extinguished? Up to the value of the thing given (the thing must be appraised) unless the parties agree on a total extinguishment. (Lopez v. CA, supra.)

Art. 1252. He who has various debts of the same kind in favor of one and the same creditor, may declare at the time of making the payment, to which of them the same must be applied. Unless the parties so stipulate, or when the application of payment is made by the party for whose benefit the term has been constituted, application shall not be made as to debts which are not yet due.

If the debtor accepts from the creditor a receipt in which an application of the payment is made, the former cannot complain of the same, unless there is a cause for invalidating the contract.

Art. 1253. If the debt produces interest, payment of the principal shall not be deemed to have been made until the interests have been covered.

Art. 1254. When the payment cannot be applied in accordance with the preceding rules, or if application can not be inferred from other circumstances, the debt which is most onerous to the debtor, among those due, shall be deemed to have been satisfied.

If the debts due are of the same nature and burden, the payment shall be applied to all of them proportionately.

Subsection 2.-- Payment by Cession

Balane: Concept of payment by cession.-- Property is turned over by the debtor to the creditor who acquires the right to sell it and divide the net proceeds among themselves.

Why is payment by cession a special form of payment?-- Bec. there is no completeness of performance (re: integrity.) In most cases, there will be a balance due.

Balane: Application of payment (Imputacion in Spanish) is the designation of a debt which is being paid by the debtor who has several obligations of the same kind in favor of the creditor to whom the payment is made (quoting Tolentino.)

Rules where the amount sent by the debtor to the creditor is less than all that is due.

First rule: Apply in accordance w/ the agreement.

Second rule: Debtor may apply the amount (an obvious limitation bec. of the principles of indivisibility and integrity) where there would be partial payment.

Third rule: Creditor can make the application.

Fourth rule: Apply to the most onerous debt. (Art. 1252, par. 1.)

What are the rules to determine w/c is the most onerous debt?

1. If one is interest paying and the other is not, the debt w/c is interest paying is more onerous.

2. If one is a secured debt and the other is not, the secured debt is more onerous.

3. If both are interest free, one is older than the first, the newer one is more onerous bec. prescription will take longer w/ respect to the newer debt.

Fifth rule: Proportional application if the debts are equally onerous.
Difference between *dacion en pago* and *payment by cession*.— In *dacion en pago*, there is a transfer of ownership from the debtor to the creditor. In *payment by cession*, there is no transfer of ownership. The creditors simply acquire the right to sell the properties of the debtor and apply the proceeds of the sale to the satisfaction of their credit.

Does *payment by cession* terminate all debts due?— Generally, no. But only to the extent of the net proceeds. The extinguishment of the obligation is *pro tanto*. This is to be distinguished from Legal cession where the extinguishment of the obligation is total. Legal cession is governed by the Insolvency Law.

Art. 1255. The debtor may cede or assign his property to his creditors in payment of his debts. This cession, unless there is stipulation to the contrary, shall only release the debtor from responsibility for the net proceeds of the thing assigned. The agreements which, on the effect of the cession, are made between the debtor and his creditors shall be governed by special laws.

**B. Tender of Payment and Consignation**

**Subsection 3.-- Tender of Payment & Consignation**

Balane: The title of the subsection is wrong. It should have been Consignation only because that is the special mode of payment and not the tender of payment. It is a special mode of payment bec. payment is made not to the creditor but to the court.

Consignation is an option on the part of the debtor bec. consignation assumes that the creditor was in *mora accipiendi* (when the creditor w/o just cause, refuses to accept payment.)

Consequence when the creditor w/o just cause, refuses to accept payment— The debtor may just delay payment. But something still hangs above his head. He is therefore, given the option to consign. Distinguish this from BGB (German Civil Code) w/c states that *mora accipiendi* extinguishes the obligation.

Art. 1256. If the creditor to whom tender of payment has been made refuses without just cause to accept it, the debtor shall be released from responsibility by the consignation of the thing or sum due.

Consignation alone shall produce the same effect in the following cases:

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

**BALANE CASES:**

**SOCO v. MILITANTE** [123 S 160] - Consignation Defined.— Consignation is the act of depositing the thing due w/ the court or judicial authorities whenever the creditor cannot accept or refuses to accept payment and it generally requires a prior tender of payment.

Requisites of a Valid Consignation.— The debtor must show (1) that there was a debt due; (2) that the consignation of the obligation had been made bec. the creditor to whom tender of payment was made
refused to accept it, or bec. he was absent or incapacitated, or bec. several persons claimed to be entitled to receive the amount due; (3) that previous notice of the consignation had been given to the person interested in the performance of the obligation (Art. 1257); (4) that the amount due was placed at the disposal of the court (consignation proper); (5) that after the consignation had been made the person interested was notified thereof (second notice.) Failure of any of these requirements is enough ground to render a consignation ineffective.

ALFONSO V. CA [168 S 545] - Such rejection rendered the proposal of free rental w/o force and effect. Def. therefore was duty bound to pay the rentals as they fall due in order to abort any ejectment proceedings against him. If the lessor refuses to accept the payment, as in the case at bar, def. had a remedy provided for by law, namely consignation in court or deposit in a bank in the lessor's name w/ due notice to the lessor. Unfortunately, it is of record that def. did not avail of such remedy so that when plaintiffs filed the ejectment proceedings against him, the rentals corresponding the the mo. of April to July 1984 had not yet been paid by def. Tender of payment is not enough—consignation must follow in order to extinguish the debt. Otherwise, failure to comply w/ the requirements provided for under Sec. 5, par. (b), PB 25 is a ground for ejectment. Delayed consignation or deposit will not do.

TAYAG V. CA [219 S 480] - xxx Petitioners argue that there was no valid tender of payment nor consignation of the sum of P18,520 w/c they acknowledge to have been deposited in court on 1/22/81 five years after the amount of P27,000 had to be paid. xxx Against this suggestion ignores the fact that consignation alone produced the effect of payment in the case at bar bec. it was established that 2 or more heirs of Juan Galicia, Sr. claimed the same right to collect.

MANILA REMANANT V. CA [231 S 272] - xxx Upon consignation by the Ventanillas of the sum due, the trial court may enter judgment cancelling the title of the petitioner over the property and transferring the same to the respondents. This judgments shall have the same force and effect as a conveyance duly executed in accordance w/ the requirements of the law.

Art. 1257. In order that the consignation of the thing due may release the obligor, it must first be announced to the persons interested in the fulfillment of the obligation.

The consignation shall be ineffectual if it is not made strictly in consonance with the provisions which regulate payment.

Art. 1258. Consignation shall be made by depositing the things due at the disposal of judicial authority, before whom the tender of payment shall be proved, in a proper case, and the announcement of the consignation in other cases.

The consignation having been made, the interested parties shall also be notified thereof.

Art. 1259. The expenses of consignation, when properly made, shall be charged against the creditor.

Art. 1260. Once the consignation has been duly made, the debtor may ask
the judge to order the cancellation of the obligation.

Before the creditor has accepted the consignation, or before a judicial declaration that the consignation has been properly made, the debtor may withdraw the thing or the sum deposited, allowing the obligation to remain in force.

Art. 1261. If, the consignation having been made, the creditor should authorize the debtor to withdraw the same, he shall lose every preference which he may have over the thing. The co-debtors, guarantors and sureties shall be released.

C. Loss or Impossibility of Performance

Balane: Applicable provisions.-- In an obligation to give a determinate thing (Art. 1262); in an obligation to give a generic thing (Art. 1263); in an obligation to do (Art. 1266.)

There are two kinds of impossibility of performance: (1) an original impossibility and (2) supervening impossibility. The kind of impossibility talked about here is supervening impossibility. An original impossibility makes the obligation void. It will be case of an obligation w/o a cause (see Art. 1409, no. 2 "those where the cause or object did not exist at the time of the transaction"-- the phrase "did not exist at the time of the transaction" is inaccurate; it is possible to enter into contracts where the object did not exist at the time of the transaction, e.g., contract over a future thing; the phrase should have been "could not exist") A contract whose prestation is impossible at the beginning is not the concern of loss of thing due/ impossibility of performance.

Art. 1262. An obligation which consists in the delivery of a determinate thing shall be extinguished if it should be lost or destroyed without the fault of the debtor, and before he has incurred in delay.

When by law or stipulation, the obligor is liable even for fortuitous events, the loss of the thing does not extinguish the obligation, and he shall be responsible for damages. The same rule applies when the nature of the obligation requires the assumption of risk.

Balane: Art. 1262 is the same as fortuitous event in Art. 1174. The effect is the same: The obligation is extinguished if the obligation is to deliver a determinate thing. If the obligation is to deliver a generic thing, the obligation is not extinguished. Genus nunquam perit ("Genus never perishes." This is the general rule. But what is not covered by this rule is an obligation to deliver a limited generic (something in bet. specific and generic thing), e.g., "For P3,000, I promise to deliver to you one of my watches." This obligation does not really fall under either Art. 1262 or Art. 1263. But this obligation really falls under Art. 1262. In this case, the obligation may be extinguished by the loss of all the things through fortuitous event.

Art. 1263. In an obligation to deliver a generic thing, the loss or destruction of anything of the same kind does not extinguish the obligation.

Art. 1264. The courts shall determine, whether, under the circumstances, the partial loss of the object of the obligation is so important as to extinguish the obligation.
Art. 1265. 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, and without prejudice to the provisions of article 1165. This presumption does not apply in case of earthquake, flood, storm, or other natural calamity.

Art. 1165. When what is to be delivered is a determinate thing, the creditor, in addition to the right granted him by article 1170, may compel the debtor to make the delivery.

If the thing is indeterminate or generic, he may ask that the obligation be complied with at the expense of the debtor.

If the obligor delays, or has promised to deliver the same thing to two or more persons who do not have the same interest, he shall be responsible for any fortuitous event until he has effected the delivery.

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.

Art. 1266. The debtor in obligations to do shall also be released when the prestation becomes legally or physically impossible without the fault of the obligor.

Balane: Objective and Subjective Impossibility.-- In objective impossibility, the act cannot be done by anyone. The effect of objective impossibility is to extinguish the obligation. In subjective impossibility, the obligation becomes impossible only w/ respect to the obligor. There are 3 views as to the effect of a subjective impossibility: (1) One view holds that the obligation is not extinguished. The obligor should ask another to do the obligation. (2) Another view holds that the obligation is extinguished. (3) A third view distinguishes one prestation w/c is very personal and one w/c are not personal such that subjective impossibility is a cause for extinguishes a very personal obligation but not an obligation w/c is not very personal.

BALANE CASES:

PEOPLE V. FRANKLIN [39 S 363] - Appelant now contends that the lower court should have released it from all liability under the bail bond posted by it bec. its failure to produce and surrender the accused was due to the negligence of the Phil. Govt itself in issuing a passport to said accused, thereby enabling her to leave the country. In support of this contention, the provisions of Art. 1266 are invoked.

HELD: Art. 1266, NCC does not apply to a surety upon a bail bond.-- Art. 1266 does not apply to a surety upon a bail bond, as said Art. speaks of a relation bet. a debtor and creditor, w/c does not exist in the case of a surety upon a bail bond, on one hand, and the State, on the other. For while sureties upon a bail bond (or recognizance) can discharge themselves from liability by surrendering their principal, sureties on ordinary bonds or commercial contracts, as a general rule, can only be released by
payment of the debt or performance of the act stipulated.

**IMMACULATA V. NAVARRO** [160 S 211] - We hereby grant said alternative cause of action or prayer. While the sale was originally executed sometime in Dec. 1969, it was only on Feb. 3, 1974 when, as prayed for by prvt. res, and as ordered by the court a quo, a deed of conveyance was formally executed. Since the offer to redeem was made on 3/24/75, this was clearly w/in the 5-yr. period of legal redemption allowed by the Public Land Act.

**PNCC V. NLRC** [193 S 401] - *An obligor shall be released from his obligation when the prestation has become legally or physically impossible without fault on his part.*-- Petitioner cannot be held liable for breach of contract for three reasons. xxx The second reason is found in the rule that an obligor shall be released from his obligation when the prestation has become legally or physically impossible w/o fault on his part. The supervening impossibility of performance, based upon some factor independent of the will of the obligor, releases the obligor from his obligation after restitution of what he may have received, if any, in advance from the other contracting party; the obligor incurs no liability for damages for his inability to perform.

Art. 1267. 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.

Balane: *Rebus sic stantibus.*-- Literally means "things as they stand." It is short for *clausula rebus sic stantibus* ("agreement of things as they stand.") This is a principle of international law w/c holds that when 2 countries enter into a treaty, they enter taking into account the circumstances at the time it was entered into and should the circumstances change as to make the fulfillment of the treaty very difficult, one may ask for a termination of the treaty. This principle of international law has spilled over into Civil law.

This doctrine is also called the doctrine of extreme difficulty and frustration of commercial object.

It has four (4) requisites:

1. The event or change could not have been foreseen at the time of the execution of the contract.

2. The event or change makes the performance extremely difficult but not impossible.

3. The event must not be due to an act of either party.

4. The contract is for a future prestation. If the contract is of immediate fulfillment, the gross inequality of the reciprocal prestation may involve lesion or want of cause.

In the case of Naga, the court did not consider the 4th element as an element.

The attitude of the courts on this doctrine is very strict. This principle has always been strictly applied. To give it a liberal application is to undermine the binding force of an obligation. Every obligation is difficult. The performance must be extremely difficult in order for *rebus sic stantibus* to apply.

**BALANE CASES:**

**LAGUNA V. MANABAT** [59 S 650] - Art. 1680, it will be observed is a special provision for leases of rural lands. No other legal provision makes it applicable to ordinary leases. xxx
Even if the cited article were a general rule on lease, its provisions nevertheless do not extend to petitioners. One of the requisites is that the cause of the loss of the fruits of the leased prop. must be an "extraordinary and unforeseen fortuitous event." The circumstances of the case fail to satisfy such requisite. xxx [T]he alleged causes for the suspension of operations on the lines leased, namely, the high prices of spare parts and gasoline and the reduction of the dollar allocations, "already existed when the contract of lease was executed." The cause of petitioners' inability to operate on the lines cannot, therefore, be ascribed to fortuitous events or circumstances beyond their control, but to their own voluntary desistance.

xxx Performance is not excused by subsequent inability to perform, by unforeseen difficulties, by unusual or unexpected expenses, by danger, by inevitable accident, by the breaking of machinery, by strikes, by sickness, by failure of a party to avail himself of the benefits to be had under the contract, by weather conditions, by financial stringency, or by stagnation of business. Neither is performance excused by the fact that the contract turns out to be hard and improvident, unprofitable or impracticable, ill-advised or even foolish, or less profitable, or unexpectedly burdensome.

**OCCENA V. JABSON** [73 S 637] - Respondent's complaint seeks not release from the subdivision contract but that the court "render judgement modifying the terms and conditions of the contract... by fixing the proper shares that should pertain to the herein parties out of the gross proceeds from the sales of subdivided lots of subject subdivision." Art. 1267 does not grant the courts this authority to remake, modify, or revise the contract or to fix the division of shares bet. the parties as contractually stipulated w/ the force of law bet. the parties, so as to substitute its own terms for those covenanted by the parties themselves.

Balane: In this case the interpretation of the court is too literal. According to the court, it can release a debtor from the obligation but it cannot make the obligation lighter. But if you look at Art. 1267, partial release is permitted.

**NAGA TELEPHONE V. CA** [230 S 351] - *The term "service" should be understood as referring to the "performance" of the obligation.--- Art. 1267 speaks of "service" w/c has become so difficult. Taking into consideration the rationale behind this provision, the term "service" should be understood as referring to the "performance" of the obligation. In the present case, the obligation of prvt. resp. consists in allowing petitioners to use its posts in Naga City, w/c is the service contemplated in said article. Furthermore, a bare reading of this article reveals that it is not a requirement thereunder that the contract be for future service w/ future unusual change. Accdg. to Tolentino, Art. 1267 states in our law the doctrine of unforeseen events. This is said to be based on the discredited theory of rebus sic stantibus in public international law; under this theory, the parties stipulate in the light of certain prevailing conditions, and once these conditions cease to exist the contract also ceases to exist. Considering practical needs and the demands of equity and good faith, the disappearance of the basis of a contract gives rise to a right to relief in favor of the party prejudiced.

Balane: The Court went too far in this case. It even went to the extent of stipulating for the parties in the name of equity.
Art. 1268. When the debt of a thing certain and determinate proceeds from a criminal offense, the debtor shall not be exempted from the payment of its price, whatever may be the cause for the loss, unless the thing having been offered by him to the person who should receive it, the latter refused without justification to accept it.

Art. 1269. 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.

D. Condonation or Remission

Balane: Condonation or remission is an act of liberality by virtue of w/c, w/o receiving any equivalent, the creditor renounces enforcement of an obligation w/c is extinguished in whole or in part.

This has four (4) requisites:
1. Debt that is existing. You can remit a debt even before it is due.
2. Renunciation must be gratuitous. If renunciation is for a consideration, the mode of extinguishment may be something else. It may be novation, compromise of dacion en pago.
3. Acceptance by the debtor

The form of donation must be observed. If the condonation involves movables, apply Art. 748. If it involves immovables, apply Art. 749. But note that the creditor may just refuse to collect (w/o observing any form.) In this case, the obligation will be extinguished not by virtue of condonation but by waiver under Art. 6.

Art. 1270. Condonation or remission is essentially gratuitous, and requires the acceptance by the obligor. It may be made expressly or impliedly.

One and the other kind shall be subject to the rules which govern inofficious donations. Express condonation shall, furthermore, comply with the forms of donation.

1. Modes of Condonation

a. By will

Art. 935. The legacy of a credit against a third person or of the remission or release of a debt of the legatee shall be effective only as regards that part of the credit or debt existing at the time of the death of the testator.

In the first case, the estate shall comply with the legacy by assigning to the legatee all rights of action it may have against the debtor. In the second case, by giving the legatee an acquittance, should he request one.

In both cases, the legacy shall comprise all interests on the credit or debt which may be due the testator at the time of his death.

Art. 936. The legacy referred to in the preceding article shall lapse if the testator, after having made it, should bring an action against the debtor for payment of his debt, even if such payment should not have been effected at the time of his death.

The legacy to the debtor of the thing pledged by him is understood to discharge only the right of pledge.

b. By Agreement

Art. 1270. Condonation or remission is essentially gratuitous, and requires the acceptance by the obligor. It may be made expressly or impliedly.
One and the other kind shall be subject to the rules which govern inofficious donations. Express condonation shall, furthermore, comply with the forms of donation.

Art. 746. Acceptance must be made during the lifetime of the donor and of the donee.

Art. 752. The provision of article 750 notwithstanding, no person may give or receive, by way of donation, more than he may give or receive by will. The donation shall be inofficious in all that it may exceed this limitation.

Art. 750. The donation may comprehend all the present property of the donor, or part thereof, provided he reserves, in full ownership or in usufruct, sufficient means for the support of himself, and of all relatives who, at the time of the acceptance of the donation are by law entitled to be supported by the donor. Without such reservation, the donation shall be reduced on petition of any person affected.

Art. 748. The donation of a movable may be made orally or in writing. An oral donation requires the simultaneous delivery of the thing or of the document representing the right donated. If the value of the personal property donated exceeds five thousand pesos, the donation and the acceptance shall be made in writing. Otherwise, the donation shall be void.

Art. 749. In order that the donation of an immovable may be valid, it must be made in a public document, specifying therein the property donated and the value of the charges which the donee must satisfy.

The acceptance may be made in the same deed of donation or in a separate public document, but it shall not take effect unless it is done during the lifetime of the donor.

If the acceptance is made in a separate instrument, the donor shall be notified thereof in an authentic form, and this step shall be noted in both instruments.

2. Presumption of Condonation

Balane: Articles 1271 and 1272 refer to a kind of implied renunciation when the creditor divests himself of the proof credit. According to De diego, this provision is absurd and immoral in that it authorizes the debtor and his heirs to prove that they paid the debt, when the provision itself assumes that there has been a remission, w/c is gratuitous. (Tolentino.)

Art. 1271. The delivery of a private document, evidencing a credit, made voluntarily by the creditor to the debtor, implies the renunciation of the action which the former had against the latter.

If in order to nullify this waiver it should be claimed to be inofficious, the debtor and his heirs may uphold it by providing that the delivery of the document was made in virtue of payment of the debt.

Limited to Private Document.-- Art. 1271 has no application to public documents.
bec. there is always a copy in the archives w/c can be used to prove the credit.

Private document refers to the original original in order for Art. 1271 to apply. (Trans-Pacific. v. CA, supra.)

BALANE CASES:

TRANS-PACIFIC V. CA [234 S 494] - It may not be amiss to add that Art. 1271 raises a presumption, not of payment, but of the renunciation of the credit where more convincing evidence would be required than what normally would be called for to prove payment. The rationale for allowing the presumption of renunciation in the delivery of a private instrument is that, unlike that of a public instrument, there could be just one copy of the evidence of credit. Where several originals are made out of a private document, the intention of the law would thus be to refer to the delivery only of the original original rather than to the original duplicate of w/c the debtor would normally retain a copy. It would thus be absurd if Art. 1271 were to be applied differently.

Art. 1272. Whenever the private document in which the debt appears is found in the possession of the debtor, it shall be presumed that the creditor delivered it voluntarily, unless the contrary is proved.

Rule 131, Sec. 5 (b), (j), (k), Rules of Court.

Rule 131, Sec. 5. Disputable presumptions.-- The following presumptions are satisfactory if uncontradicted, but may be contradicted and overcome by other evidence:

(b) That an unlawful act was done with an unlawful intent;

(j) That a person found in possession of a thing taken in the doing of a wrongful act is the taker and doer of the whole act; otherwise, that things which a person possesses, or exercises acts of ownership over, are owned by him;

(k) That a person in possession of an order on himself for the payment of money, or the delivery of anything, has paid the money or delivered the thing accordingly;

Under the 1985 Rules of Court, as amended

Rule 131, Sec. 3. Disputable presumptions.-- The following presumptions are satisfactory if uncontradicted, but may be contradicted and overcome by other evidence:

(c) That a person intends the ordinary consequences of his voluntary act;

(f) That money paid by one to another was due to the latter;

(g) That a thing delivered by one to another belonged to the latter;

(h) That an obligation delivered up to the debtor has been paid;

(i) That prior rents or installments had been paid when a receipt for the later ones is produced;

(k) That a person in possession of an order on himself for the payment of they money, or the delivery of anything, has paid the money or delivered the thing accordingly;

3. Effect of Partial Remission
Art. 1273. The renunciation of the principal debt shall extinguish the accessory obligations; but the waiver of the latter shall leave the former in force.

(Extinguishment of Guaranty)

Art. 2076. The obligation of the guarantor is extinguished at the same time as that of the debtor, and for the same causes as all other obligations.

Art. 2080. The guarantors, even though they be solidary, are released from their obligation whenever by some act of the creditor they cannot be subrogated to the rights, mortgages, and preferences of the latter.

(Provisions Common to Pledge and Mortgage)

Art. 2085. The following requisites are essential to the contracts of pledge and mortgage:

1. That they be constituted to secure the fulfillment of a principal obligation; xxx

Art. 1274. It is presumed that the accessory obligation of pledge has been remitted when the thing pledged, after its delivery to the creditor, is found in the possession of the debtor, or of a third person who owns the thing.

Balane: The accessory obligation of pledged is extinguished bec. pledge is a possessory lien. The presumption in this case is that the pledgee has surrendered the thing pledged to the pledgor. This is not a conclusive presumption according to Art. 2110, par. 2.

Art. 2093. In addition to the requisites prescribed in article 2085, it is necessary, in order to constitute the contract of pledge, that the thing pledged be placed in the possession of the creditor, or of a third person by common agreement.

Art. 2105. The debtor cannot ask for the return of the thing pledged against the will of the creditor, unless and until he has paid the debt and its interest, with expenses in a proper case.

E. Confusion or Merger of Rights

Art. 1275. The obligation is extinguished from the time the characters of creditor and debtor are merged in the same person.

Balane: Confusion is the meeting in one person of the qualities of the creditor and debtor with respect to the same obligation.

There are two (2) requisites:
1. It must take place between the creditor and the principle debtor (Art. 1276.)
2. The very same obligation must be involved.

Rationale.-- You become your own creditor or you become your own debtor. So how can you sue yourself.

What may cause a merger or confusion?--
1. Succession, whether compulsory, testamentary or intestate; (2) Donation; (3) Negotiation of a negotiable instrument.

Because of its nature, confusion/merger may overlap w/ other causes of extinguishment. For example, I owe Ms. Olores P100,000. She bequeath to me that credit. And then she died. In this case, there is extinguishment both by merger.
But in this case, merger could overlap w/ payment.

(nor in Baviera's outline)

Art. 1276. 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.

Balane: This is perfectly in consonance w/ Art. 1275.

1. Principal Parties

Art. 1276. 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.

2. Among guarantors

(Effects of Guaranty as Between Co-Guarantors)

Art. 2073. When there are two or more guarantors of the same debtor and for the same debt, the one among them who has paid may demand of each of the others the share which is proportionally owing from him.

If any of the guarantors should be insolvent, his share shall be borned by the others, including the payer, in the same proportion.

The provisions of this article shall not be applicable, unless the payment has been made in virtue of a judicial demand or unless the principal debtor is insolvent.

3. Joint Obligations

Art. 1277. Confusion does not extinguish a joint obligation except as regards the share corresponding to the creditor or debtor in whom the two characters concur.

4. Solidary Obligations

Art. 1215. 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, without prejudice to the provisions of article 1219.

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.

Article 1219. 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.

Art. 1216. The creditor may proceed against any of one of the solidary debtors or some or all of them simultaneously. The demand made against one of them shall not be an obstacle to those which may subsequently be directed against the others, so long as the debt has not been fully collected.

Art. 1217. Payment made by one of the solidary debtors extinguishes the obligation. If two or more solidary debtors
offer to pay, the creditor may choose which offer to accept.

He who made the payment may claim from his co-debtors only the share which corresponds to each, with the interest for the payment already made. If the payment is made before the debt is due, no interest for the intervening period may be demanded.

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.

5. Indivisible Obligations

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

Art. 1224. A joint indivisible 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.

F. Compensation

Balane: Definition of Compensation.-- Compensation is a mode of extinguishing, to the concurrent amount, the obligations of those persons who in their own right are reciprocally debtors and creditors of each other. (Castan.)

Perhaps, next to payment, compensation is the most common mode of extinguishing an obligation.

Distinguished from Confusion.-- In compensation, there are 2 parties and 2 debts, whereas in confusion, there are 2 debts and only 1 party.

Art. 1278. Compensation shall take place when two persons, in their own right, are creditors and debtors of each other.

BALANE CASES:

GAN TION V. CA [28 S 235] - Award of attorney’s fees as subject of legal compensation.-- The award is made in favor of the litigant, not of his counsel, and is justified by way of indemnity for damages recoverable by the former in the cases enumerated in Art. 2208. It is the litigant, not his counsel, who is the judgement creditor and who may enforce the judgment by execution. Such credit, therefore, may properly be the subject of legal compensation. Quite obviously, it would be unjust to compel petitioner to pay his debt for P500 when admittedly his creditor is indebted to him for more than P4,000.

PNB V. ONG ACERO [148 S 166] - There is no compensation where the parties are not creditors and debtors of each other.-- The insuperable obstacle to the success of PNB’s cause is the factual finding of the IAC that it has not proven by competent evidence that it is a creditor of ISABEL. The only evidence presented by PNB towards this end consists of 2 documents marked in its behalf. But as the IAC has cogently observed, these documents do not prove any indebtedness of ISABELA to PNB. All they do prove is that a letter of credit might have been opened for ISABELA by PNB, but not that the credit was ever availed of [by ISABELA’s foreign correspondent (MAN)], or that the goods
thereby covered were in fact shipped, and received by ISABELA.

FRANCIA V. IAC  [162 S 753]  -  There can be no off-setting of taxes against the claims that the taxpayer may have against the govt. A person cannot refuse to pay a tax on the ground that the govt owes him an amount equal to or greater than the tax being collected. The collection of a tax cannot await the results of a lawsuit against the govt.

A claim for taxes is not such a debt, demand, contract or judgment as is allowed to be set-off XXX The general rule based on grounds of public policy is well-settled that no set-off admissible against demands for taxes levied for general or local governmental purposes. The reason on w/c the gen. rule is based, is that taxes are not in the nature of contracts bet. the party and party but grow out of duty to, and are the positive acts of the govt to the making and enforcing of w/c, the personal consent of individual taxpayers is not required. XXX (Republic v. Mambulao Lumber.)

In Cordero v. Gonda, we held that: "XXX internal revenue taxes can not be the subject of compensation: Reason: govt and taxpayer are not mutually creditors and debtors of each other under Art. 1278 and a "claim for taxes is not such a debt, demand, contract or judgment as is allowed to be set-off.

Art. 1286. Compensation takes place by operation of law, even though the debts may be payable at different places, but there shall be an indemnity for expenses of exchange or transportation to the place of payment.

1. Different Kinds of Compensation:

a. Legal Compensation (Articles 1279, 1290) w/c takes place automatically by operation of law once all the requisites are present.

Art. 1279. In order that compensation may be proper, it is necessary:

1. That each one of the obligors be bound principally, and that he be at the same time a principal creditor of the other;
2. That both debts consist in a sum of money, or if the things due are consumable, they be of the same kind, and also of the same quality if the latter has been stated;
3. That the two debts be due;
4. That they be liquidated and demandable;
5. That over neither of them there by any retention or controversy, commenced by third persons and communicated in due time to the debtor.

Balane:
Requisites under Art. 1279:

1. Mutual Debtors and Creditors.-- The parties must be mutually debtors and creditors (1) in their own right, and (2) as principals. There can be no compensation if 1 party occupies only a representative capacity. Likewise, there can be no compensation if in one obligation, a party is a principal obligor and in another obligation, he is a guarantor.

2. Fungible Things Due.-- The word consummable is wrong. Under Art. 418, consummable things are those w/c cannot be used in a manner appropriate to their nature w/o their being consumed. In a reciprocal obligation to deliver horses, the things due are not consummable; yet there can be compensation. (Tolentino.) The proper terminology is "fungible" w/c
refers to things of the same kind w/c in payment can be substituted for another.

3. Maturity of Debts.-- Both debts must be due to permit compensation.

4. Demandable and Liquidated Debts.-- Tolentino: Demandable means that the debts are enforceable in court, there being no apparent defenses inherent in them. The obligations must be civil obligations, excluding those that are purely natural. xxx Before a judicial decree of rescission or annulment, a rescissible or voidable debt is valid and demandable; hence, it can be compensated.

A debt is liquidated when its existence and amount are determined. xxx And a debt is considered liquidated, not only when it is expressed already in definite figures w/c do not require verification, but also when the determination of the exact amount depends only on a simple arithmetical operation. xxx

5. Debt must not be garnished.

(additional requirement)

6. Compensation is not prohibited by any provision of law like Articles 1287, 1288 and 1794.

Art. 1287. Compensation shall not be proper when one of the debts arises from a depositum or from the obligations of a depositary or of a bailee in commodatum.

Neither can compensation be set up against a creditor who has a claim for support due by gratuitous title, without prejudice to the provisions of paragraph 2 of article 301.

Art. 1288. Neither shall there be compensation if one of the debts consists in civil liability arising from a penal offense.

Art. 1794. Every partner is responsible to the partnership for damages suffered by it through his fault, and he cannot compensate them with the profits and benefits which he may have earned for the partnership by his industry. However, the courts may equitably lessen this responsibility if through the partner's extraordinary efforts in other activities of the partnership, unusual profits have been realized.

BALANE CASES:

REPUBLIC V. DE LOS ANGELES [98 S 103] - Compensation of debts arising even without proof of liquidation of claim, where the claim is undisputed.-- Proof of the liquidation of a claim, in order that there be compensation of debts, is proper if such claim is disputed. But, if the claim is undisputed, as in the case at bar, the statement is sufficient and no other proof may be required. xxx

SOLINAP V. DEL ROSARIO [123 S 640] - Petitioner contends that respondent judge gravely abused her discretion in not declaring the mutual obligations of the parties extinguished to the extent of their
respective amounts. He relies on Art. 1278 to the effect that compensation shall take place when 2 persons, in their own right, are creditors and debtors of each other. The argument fails to consider Art. 1279 w/c provides that compensation can take place only if both obligations are liquidated. In the case at bar, the petitioner's claim against the resp. Luteros is still pending determination by the court. While it is not for Us to pass upon the merits of the pltff's cause of action in that case, it appears that the claim asserted therein is disputed by the Luteros on both factual and legal grounds. More, the counterclaim interposed by them, if ultimately found to be meritorious, can defeat petitioner's demand. Upon this premise, his claim in that case cannot be categorized as liquidated credit w/c may properly be set-off against his obligation. 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.

SYCIP V . CA [134 S 317] - Compensation cannot take place where, with respect to the money involved in the estafa case, the complainant was merely acting as agent of another. In set-off the two persons must in their own right be creditor and debtor of each other.-- Petitioner contends that resp. CA erred in not applying the provisions on compensation or setting-off debts under Art. 1278 and 1279, despite evidence showing that Jose Lapuz still owed him an amount of more than P5,000 and in not dismissing the appeal considering that the latter is not legally the agrived party. This contention is untenable. Compensation cannot take place in this case since the evidence shows that Jose Lapuz is only an agent of Albert Smith and/ or Dr. Dwight Dill. Compensation takes place only when two persons in their own right are creditors and debtors of each other, and that each one of the obligors is bound principally and is at the same time a principal creditor of the other. Moreover, xxx Lapuz did not consent to the offsetting of his obligation w/ petitioner's obligation to pay for the 500 shares.

CIA. MARITIMA V. CA [135 S 593] - Compensation cannot take place where one of the debts is not liquidated as when there is a running interest still to be paid thereon.-- More, the legal interest payable from 2/3/51 on the sum of P40,797.54, representing useful expenses incurred by PAN-ORIENTAL, is also still unliquidated since interest does not stop accruing "until the expenses are fully paid." Thus, we find w/o basis REPUBLIC's allegation that PAN-ORIENTAL'S claim in the amount of P40,797.54 was extinguished by compensation since the rentals payable by PAN-ORIENTAL amount to P59,500 while the expenses reach only P40,797.54. Deducting the latter amount from the former, REPUBLIC claims that P18,702.46 would still be owing by PAN-ORIENTAL to REPUBLIC. That argument loses sight of the fact that to the sum of P40,797.54 will still have to be added the legal rate of interest "from Feb. 3, 1951 until fully paid."

INTERNATIONAL CORPORATE BANK V. IAC [163 S 296] - Requisite of legal compensation under Art. 1279.-- Petitioner contends that after foreclosing the mortgage, there is still due from prvt. resps as deficiency the amount of P6.81 million against w/c it has the right to apply or set off prvt. respondent's money market claim of P1,062,063.83. The argument is w/o merit. Compensation shall take place
when two persons, in their own right are creditors and debtors of each other. When all the requisites mentioned in Art. 1279 are present, compensation takes effect by operation of law, even w/o the consent or knowledge of the debtors. (Art. 1290.) Art. 1279 requires among others, that in order that legal compensation shall take place, 'the two debts be due' and 'they be liquidated and demandable.' Compensation is not proper where the claim of the person asserting the set-off against the other is not clear nor liquidated; compensation cannot extend to unliquidated, disputed claim arising from breach of contract. There can be no doubt that petitioner is indebted to prvt resp. in the amount of P1,062,063.83 representing the proceeds of her money market investment. This is admitted. But whether prvt. resp is indebted to petitioner in the amount of P6.81 million representing the deficiency balance after the foreclosure of the mortgage executed to secure the loan extended to her, is vigorously disputed. This circumstance prevents legal compensation from taking place.

ONG V. CA [177 S 402] - Requisites of Compensation.-- Fermin obviously cannot take refuge in Art. 1279. As the resp. Court correctly observed in holding that the above provision was not applicable: The instant case does not certainly satisfy the above because (1) appellant is not a debtor of appelle, it is only the latter who is indebted to appellant; (2) the debts, even admitting, that the delivery of the zippers to pltff. is a debt, do not both consist in a sum of money nor are they of the same quality and kind. xxx

PIONEER INSURANCE V. CA [180 S 126] - Compensation shall take place when 2 persons, in their own right, are creditors and debtors of each other. When all the requisites mentioned in Art. 1279 are present, compensation takes effect by operation of law, even w/o the consent or knowledge of the debtors. (Art. 1290.) Art. 1279 requires mong others, that in order that legal compensation shall take place, the 2 debts be due and they be liquidated and demandable. Compensation is not proper where the claim of the person asserting the set-off against the other is not clear nor liquidated; compensation cannot extend to unliquidated, disputed claim arising from breach of contract.

SILAHIS MARKETING V. IAC [180 S 21] - Compensation is not proper where the claim of the person asserting the set-off against the other is not clear nor liquidated; compensation cannot extend to unliquidated, disputed claim existing from breach of contract. xxx

Undoubtedly, petitioner admits the validity of its outstanding accounts w/ prvt. resp. in the amount of P22,213.75 as contained in its answer. But whether prvt. resp. is liable to pay the petitioner a 20% margin or compensation on the subject sale to Dole Phils., Inc. is vigorously disputed. This circumstance prevents legal compensation from taking place.

Art. 1280. Notwithstanding the provisions of the preceding article, the guarantor may set up compensation as regards what the creditor may owe the principal debtor.

Art. 1283. If one of the parties to a suit over an obligation has a claim for damages against the other, the former may set it off by proving his right to said damages and the amount thereof.

Effect of Legal Compensation
Art. 1289. If a person should have against him several debts which are susceptible of compensation, the rules on the application of payments shall apply to the order of the compensation.

Art. 1290. When all the requisites mentioned in article 1279 are present, 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.

Art. 1279. In order that compensation may be proper, it is necessary:

1. That each one of the obligors be bound principally, and that he be at the same time a principal creditor of the other;
2. That both debts consist in a sum of money, or if the things due are consumable, they be of the same kind, and also of the same quality if the latter has been stated;
3. That the two debts be due;
4. That they be liquidated and demandable;
5. That over neither of them there by any retention or controversy, commenced by third persons and communicated in due time to the debtor.

MINDANAO PORTLAND CEMENT V. CA
[120 S 930] - Automatic compensation, requisites of, present: Extinguishment of two debts arising from final and executory judgments due to compensation by operation of law.-- It is clear from the record that both corporations, petitioner Mindanao Portland Cement Corp. (appellant) and resp. Pacweld Steel Corp. (appellee), were creditors and debtors of each other, their debts to each other consisting in final and executory judgements of the CFI in 2 separate cases, ordering the payment to each other of the sum of P10T by way of attorney's fees. The 2 obligations, therefore, respectively offset each other, compensation having taken effect by operation of law and extinguished both debts to the concurrent amount of P10T, pursuant to the provisions of Art. 1278, 1279 and 1290, since all the requisites provided in Art. 1279 for automatic compensation "even though the creditors and debtors are not aware of the compensation" were duly present.

b. Facultative Compensation w/c takes place when compensation is claimable by only one of the parties but not of the other, e.g., Articles 1287, 1288.

Art. 1287. Compensation shall not be proper when one of the debts arises from a depositum or from the obligations of a depositary or of a bailee in commodatum.

Neither can compensation be set up against a creditor who has a claim for support due by gratuitous title, without prejudice to the provisions of paragraph 2 of article 301.

Art. 301. The right to receive support cannot be renounced; nor can it be transmitted to a third person. Neither can it be compensated with what the recipient owes the obligor.

However, support in arrears may be compensated and renounced, and the
right to demand the same may be transmitted by onerous or gratuitous title.

Baviera: Note that Art. 301 of the NCC is not found in FC

Balane: The depositary cannot set up compensation w/ respect to the things deposited to him. But the depositor can set up the compensation.

Art. 1288. Neither shall there be compensation if one of the debts consists in civil liability arising from a penal offense.

c. Contractual/Conventional compensation w/c takes place when parties agree to set-off even if the requisites of legal compensation are not present, e.g., Art. 1282.

Art. 1282. The parties may agree upon the compensation of debts which are not yet due.

Tolentino: Voluntary Compensation is not limited to obligations w/c are not yet due. The parties may compensate by agreement any obligations, in w/c the objective requisites provided for legal compensation are not present. xx

d. Judicial Compensation when decreed by the court in a case where there is a counterclaim, such as that provided in Art. 1283.

Art. 1283. If one of the parties to a suit over an obligation has a claim for damages against the other, the former may set it off by proving his right to said damages and the amount thereof.

Effect of Assignment of Credit

Art. 1285. The debtor who has consented to the assignment of rights made by a creditor in favor of a third person, cannot set up against the assignee the compensation which would pertain to him against the assignor, unless the assignor was notified by the debtor at the time he gave his consent, that he reserved his right to the compensation.

If the creditor communicated the cession to him but the debtor did not consent thereto, the latter may set up the compensation of debts previous to the cession, but not of subsequent ones.

If the assignment is made without the knowledge of the debtor, he may set up the compensation of all credits prior to the same and also later ones until he had knowledge of the assignment.

Balane: There are 3 situations covered in this article:

1. Assignment w/ the debtor's consent;
2. Assignment w/ the debtor's knowledge but w/o his consent; and
3. Assignment w/o the debtor's knowledge (and obviously w/o his consent.)

Rules:

1. Assignment w/ the debtor's consent.--Debtor cannot set up compensation at all unless the right is reserved.

2. Assignment w/ the debtor's knowledge but w/o his consent.--The debtor can set up compensation w/ a credit already existing at the time of the assignment.

3. Assignment w/o the debtor's knowledge.--Debtor can set up as compensation any credit existing at the time he acquired knowledge even if it arose after the actual assignment.
BALANE CASE:

SESBRENO V. CA [222 S 466] - Compensation may defeat assignee's rights before notice of the assignment is given to the debtor.-- In other words, petitioner notified Delta of his rights as assignee after compensation had taken place by operation of law bec. the offsetting instruments had both reached maturity. It is a firmly settled doctrine that the rights of an assignee are not any greater than the rights of the assignor, since the assignee is merely substituted in the place of the assingor and that the assignee acquires his rights subject to the equities-- i.e., the defenses-- w/c the debtor could have set up against the original assignor before notice of the assingment was given to the debtor. At the time that Delta was first put to notice of the assingment in petitioner's favor on 7/14/81, DMC PN NO. 2731 had already been discharged by compensation. Since the assignor Philfinance could not have then compelled payment anew by Delta of DMC PN No. 2731, petitioner, as assignee of Philfinance, is similarly disabled from collecting from Delta the portion of the Note assigned to him.

(not in Baviera's outline)

Art. 1284. When one or both debts are rescissible or voidable, they may be compensated against each other before they are judicially recsinded or avoided.

G. Novation

Concept of Novation.-- Novation is the extinguishment of an obligation by the substitution or change of the obligation by a subsequent one w/c extinguishes or modifies the first, either by changing the object of principal conditions, or by substituting the person of the debtor, or by subrogating a third person in the rights of the creditor. (Manresa.)

Novation is the most unusual mode of extinguishing an obligation. It is the only mode whereby an obligation is extinguished and a new obligation is created to take its place. The other modes of extinguishing an obligation are absolute in the sense that the extinguishment of the obligation is total (w/ the exception of compromise.) Novation, on the other hand, is a relative mode of extinguishing an obligation.

Classification of Novation:

1. Subjective (Personal) or novation by a change of subject
   a. Active subjective or a change of creditor; also known as subrogation.
   b. Passive subjective or a change of debtor

2. Objective (Real) or novation by change in the object or in the principal conditions. Novation by a change in the principal conditions is the most problematic kind of novation bec. you have to determine whether or not the change in the conditions is principal or merely incidental. For example, a change from straight terms to installment terms and a change from non-interest bearing obligation to an interest bearing one are changes in the principal conditions.

3. Mixed novation w/c is a combination of both subjective and objective novation.

Requisites of Novation:
1. There must be a previous valid obligation;
2. Agreement of the parties to create the new obligation;
3. Extinguishment of the old obligation. (I would consider this an effect, rather than a requisite of novation-- Balane);
4. Validity of the new obligation.

(Tiu Siuco v. Habana, 45 P 707.)

Art. 1292. In order that an obligation may be extinguished by another which substitute the same, it is imperative that it be so declared in unequivocal terms, or that the old and the new obligations be on every point incompatible with each other.

BALANE CASES:

FUA V. YAP [74 P 287] - Appelle obtained in the CFI-Mla. a judgement sentencing appellants to pay P1,538.04 w/ legal interest and costs. Subsequently, appellants executed a mortgage in favor of appellee, wherein it was stipulated that their obligation under the judgment was reduced to P1,200 w/c was made payable in 4 installments of P300; that to secure the payment the said P1,200, a camarin belonging to appellants was mortgaged to appellee; that in case the appellants defaulted in the payment of any of the installments, they would pay ten percent of the unpaid bal. as attorney’s fees, plus the costs of the action to be brought by appellee by reason of such default, and the further amount of P338, representing the discount conceded to appellants.

HELD: The appellant’s liability under the judgment had been extinguished by the statement evidenced by the mortgage executed by them in favor of the appellee. Although said mortgage did not expressly cancel the old obligation, this was impliedly novatged by reason of incompatibility resulting from the fact that, whereas the judgement was for P1,538.04 payable at one time, did not provide for attorney’s fees, and was not secured, the new obligation is for P1200 payable in installments, stipulates for attorney’s fees and is secured by a mortgage. The later agreement did not merely extend the time to pay the judgment, bec. it was therein recited that appellants promised to pay P1,200 to appellee as a settlement of the said judgment. Said judgment cannot be said to have been settled, unless it was extinguished.

MILLAR V. CA [38 S 642] - Where the new obligation merely reiterates or ratifies the old obligation, although the former effects but minor alterations or slight modifications w/ respect to the cause or object or conditions of the latter, such changes do not effectuate any substantial incompatibility bet. the 2 obligations. Only those essential and principal changes introduced by the new obligation producing an alteration or modification of the essence of the old obligation result in implied novation. In the case at bar, the mere reduction of the amount due in no sense constitutes a sufficient indicium of incompatibility, especially in the light of (a) the explanation by the petitioner that the reduced indebtedness was the result of the partial payments made by the resp. before the execution of the chattel mortgage agreement, and (b) the latter’s admissions bearing thereon.

SANDICO V. PIGUING [42 S 322] - Novation results in 2 stipulations-- one to extinguish an existing obligation, the other to substitute a new one in its place. Fundamental it is that novation effects a substitution or modification of an obligation by another or an
extinguishment of one obligation by the creation of another. In the case at hand, we fail to see what new or modified obligation arose out of the payment by the resp. of the reduced amount of P4,000 and substituted the monetary liability for P6,000 of the said resp. under the appellate court’s judgment. Additionally, to sustain novation necessitates that the same be so declared in unequivocal terms—clearly and unmistakably shown by the express agreement of the parties or by acts of equivalent import—or that there is complete and substantial incompatibility bet. the 2 obligations.

NPC V. DAYRIT [125 S 849] - Novation is never presumed but must be explicitly stated: No novation in the absence of explicit novation or incompatibility on every point between the old and the new agreements of the parties. -- In the case at bar, there is nothing in the May 14, 1982 agreement w/c supports the petitioner’s contention. There is neither explicit novation nor incompatibility on every point bet. the "old" and the "new" agreements.

COCHINGYAN V. R & B SURETY [151 S 339] - Novation defined. -- Novation is the extinguishment of an obligation by the substitution or change of the obligation by a subsequent one w/c terminates it, either by changing its object or principal conditions, or by substituting a new debtor in place of the old one, or by subrogating a third person to the rights of the creditor. Novation through a change of the object or principal conditions of an existing obligation is referred to as objective (or real) novation. Novation by the change of either the person of the debtor or of the creditor is described as subjective (or personal) novation. Novation may also be both objective and subjective (mixed) at the same time. In both objective and subjective novation, a dual purpose is achieved-- an obligation is extinguished and a new one is created in lieu thereof.

Novation is never presumed. -- If objective novation is to take place, it is imperative that the new obligation expressly declare that the old obligation is thereby extinguished, or that the new obligation be on every point incompatible w/ the old one. Novation is never presumed; it must be established either by the discharge of the old debt by the express terms of the new agreement, or by the acts of the parties whose intention to dissolve the old obligation as a consideration of the emergence of the new one must be clearly discernible.

If old debtor is not released, no novation occurs and the third person who assumed the obligation becomes a co-debtor or surety or a co-surety. -- Again, if subjective novation by a change in the person of the debtor is to occur, it is not enough that the juridical relation bet. the parties to the original contract is extended to a third person. It is essential that the old debtor be released from the obligation, and the third person or new debtor take the place in the new relation. IF the old debtor is not released, no novation occurs and the third person who has assumed the obligation of the debtor becomes merely a co-debtor or surety or a co-surety.

Novation is not implied when the parties to the new obligation expressly negated the lapsing of the old obligation. -- Neither can the petitioners anchor their defense on implied novation. Absent an unequivocal declaration of extinguishment of a pre-existing obligation, a showing of complete incompatibility bet. the old and the new obligation (and nothing else) would sustain a finding of novation by implication. But where, as in this case, the parties to the new obligation expressly recognize the continuing existence and validity of the old one, where, in other
words, the parties expressly negated the lapsing of the old obligation, there can be no novation. The issue of implied novation is not reached at all.

**BALILA V. IAC** [155 S 262] - Subsequent mutual agreements and actions of petitioners and private respondents allowing the former extension of time to pay their obligations and in installments novated and amended the period of payment decreed by the trial court in its judgment by compromise.-- The fact therefore remains that the amount of P84,000 payable on or before May 15, 1981 decreed by the trial court in its judgment by compromise was novated and amended by the subsequent mutual agreements and actions of petitioners and prvt. resps. Petitioners paid the aforesaid amount on an installment basis and they were given by prvt. resps no less than 8 extensions of time to pay their obligation. These transactions took place during the pendency of the motion for recon. of the order of the trial court dated 4/26/83, during the pedency of the petition for certiorari before the IAC and after the filing of the petition bef. Us. This answers the claim of the resps. on the failure of the petitioners to present evidences or proofs of payment in the lower court and the appellate court.

**PEOPLE’S BANK V. SYVEL’S** [164 S 247] - When does novation take place; Novation is never presumed.-- Novation takes place when the object or principal condition of an obligation is changed or altered. It is elementary that novation is never presumed; it must be explicitly stated or there must be manifest incompatibility bet. the old and the new obligations in every aspect. Absence of existence of an explicit novation nor incompatibility between the

**old and the new agreements.--** In the case at bar, there is nothing in the REM w/c supports appellants’ submission. The contract on its face does not show the existence of an explicit novation nor incompatibility on every point bet. the old and the new agreements as the second contract evidently indicates that the same was executed as new additional security to the CM previously entered into by the parties.

Novation was not intended in the case at bar as the REM was taken as additional security for the performance of the contract.

**BROADWAY CENTRUM V. TROPICAL HUT** [224 S 302] - We start w/ the basic conception that novation is the extinguishment of an obligation by the substitution of that obligation w/ a subsequent one, w/c terminates it, either by changing its object or principal conditions or by substituting a new debtor in place of the old one, or by subrogating a 3rd person to the rights of the creditor. xxx

If objective novation is to take place, it is essential that the new obligation expressly declare that the old obligation is to be extinguished or that the new obligation be on every point incompatible w/ the old one. xxx

Art. 1291. Obligations may be modified by:

(1) Changing their object or principal conditions;
(2) Substituting the person of the debtor;
(3) Subrogating a third person in the rights of the creditor.

**BALANE CASE:**
None of the requirements of novation either of the subject matter of the bond agreement or of subrogation of the creditor thereunder is visible in the instant case. Finally, it is not easy to understand the thrust of respondent's argument that novation had taken place in respect of their bonds when they had their registered bonds converted into bearer bonds. If respondents mean to suggest that the printed terms of the new bearer bonds were somehow novated by the notation they had inserted in the LBP Forms 64 so as to obligate the Land Bank to pay a portion of the Nov. 21, 1974 - May 20, 1975 interest not to the holder or bearer of such bonds (as required by the terms thereof) but rather to the respondents, such suggestion must be firmly rejected. None of the requirements of novation either of the subject matter of the bond agreement or of (partial) subrogation of the creditor (obligee) thereunder, is visible in the instant case. Of equal importance is the fact that the unilateral notation of the respondents was not inserted in the new bearer bond certificates. The mischief implicit in the (assumed) suggestion of the respondents is plain to see.

Subjective Novation

a. In case of active subjective novation (Art. 1300 -- subrogation):

Art. 1300. Subrogation of a third person in the rights of the creditor is either legal or conventional. The former is not presumed, except in cases expressly mentioned in this Code; the latter must be clearly established in or order that it may take effect.

(i) Legal (Art. 1302) -- In all cases of Art. 1302, subrogation takes place by operation of law.

Art. 1302. It is presumed that there is legal subrogation:

(1) When a creditor pays another creditor who is preferred, even without the debtor's knowledge;

(2) When a third person, not interested in the obligation, pays with the express or tacit approval of the debtor;

(3) 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;

(ii) Conventional/Contractual (Art. 1301) -- Consent of the 3 parties (old creditor, debtor and new creditor) are required.

Art. 1301. Conventional subrogation of a third person requires the consent of the original parties and of the third person.

Q: Is it possible for a creditor to transfer his credit w/o consent of the debtor?

A: Yes. But this is not novation but an assignment of rights under Art. 1624. Assignment is also a novation but much simpler. But is not subrogation.

(1) Kinds

(a) Legal

Art. 1302. It is presumed that there is legal subrogation:
(1) When a creditor pays another creditor who is preferred, even without the debtor’s knowledge;
(2) When a third person, not interested in the obligation, pays with the express or tacit approval of the debtor;
(3) 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;

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

(Conventional Redemption)
Art. 1610. The creditors of the vendor cannot make use of the right of redemption against the vendee, until after they have exhausted the property of the vendor.

Art. 1729. Those who put their labor upon or furnish materials for a piece of work undertaken by the contractor have an ation against the owner up to the amount owing from the latter to the contractor at the time the claim is made. However, the following shall not prejudice the laborers, employees and furnishers of materials:
(1) Payments made by the owner to the contractor before they are due;
(2) Renunciaion by the contractor of any amount due him from the owner.
This article is subject to the provisions of special laws.

(Art. 1629. In case the assignor in good faith should have made himself responsible for the solvency of the debtor, and the contracting parties should not have agreed upon the duration of the liability, it shall last for one year only, from the time of the assignment if the period had already expired.
If the credit should be payable within a term or period which has not yet expired, the liability shall cease one year after the maturity.

Art. 2207. If the plaintiff’s property has been insured, and he has received indemnity from the insurance company for the injury or loss arising out of the wrong or breach of contract complained of, the insurance company shall be subrogated to the rights of the insured against the wrongdoer or the person who has violated the contract. If the amount paid by the insurance company does not fully cover the injury or loss, the aggrieved party shall be entitled to recover the deficiency from the person causing the loss or injury.

(2) Effect
Art. 1304. 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.

Art. 1303. Subrogation transfers to the person subrogated the credit with all the rights thereto appertaining, either against the debtor or against third persons, be they guarantors or possessors of mortgages, subject to stipulation in a conventional subrogation.

(Assignment of Credits and Other Incorporeal Rights)
b. Passive Subjective Novation  
(Substitution of the debtor)

Art. 1293. Novation which consists in substituting a new debtor in the place of the original one, may be made even without the knowledge or against the will of the latter, but not without the consent of the creditor. Payment by the new debtor gives him the rights mentioned in articles 1236 and 1237.

Art. 1236. The creditor is not bound to accept payment or performance by a third person who has no interest in the fulfillment of the obligation, unless there is a stipulation to the contrary.

Whoever pays for another may demand from the debtor what he has paid, except that if he paid without the knowledge or against the will of the debtor, he can recover only insofar as the payment has been beneficial to the debtor.

Art. 1237. Whoever pays on behalf of the debtor without the knowledge or against the will of the latter, cannot compel the creditor to subrogate him in his rights, such as those arising from a mortgage, guaranty or penalty.

BALANE CASE:

RODRIGUEZ v. REYES [37 S 195] - By buying the property covered by TCT No. 48979 w/ notice that it was mortgaged, resp. Dualan only undertook either to pay or else allow the land's being sold if the mortgage creditor could not or did not obtain payment from the principal debtor when the debt matured. Nothing else. Certainly, the buyer did not obligated himself to replace the debtor in the principal obligation, and he could not do so in law w/o the creditor's consent. (Art. 1293)

The obligation to discharge the mortgage indebtedness therefore, remained on the shoulders of the original debtors and their heirs, petitioners herein, since the record is devoid of any evidence of contrary intent. xxx

Art. 1835. xxx

A partnership is discharged from any existing liability upon dissolution of the partnership by an agreement to that effect between himself, the partnership creditor and the person or partnership continuing the business; and such agreement may be inferred from the course of dealing between the creditor having knowledge of the dissolution and the person or partnership continuing the business.

Effect of insolvency of new debtor

Art. 1294. If the substitution is without the knowledge or against the will of the debtor, the new debtor's insolvency or non-fulfillment of the obligation shall not give rise to any liability on the part of the original debtor.

Art. 1295. The insolvency of the new debtor, who has been proposed by the original debtor and accepted by the creditor, shall not revive the action of the latter against the original obligor, except
when said insolvency was already existing and of public knowledge, or known to the debtor, when he delegated his debt.

Balane: Passive Subjective Novation--Articles 1293 and 1295

Art. 1293 talks of expromission (not upon the old debtor's initiative. It could be upon the initiative of the creditor or of the new debtor.)

Art. 1295 talks of delegacion (change at the old debtor's initiative.)

In expromission, the change in the person of the debtor is not upon the initiative of the old debtor, whether or not he gave his consent. As soon as a new debtor and creditor agree, novation takes place.

In both cases, the intent of the parties must be to release the old debtor.

What is the difference in effect between expromission and delegacion?

In expromission, the release of the old debtor is absolute (even if it turns out that the new debtor is insolvent.)

In delegacion, the release of the old debtor is not absolute. He may be held liable (1) if the new debtor was already insolvent at the time of the delegacion; and (2) such insolvency was either known to the old debtor or of public knowledge.

Cases of expromission are quite rare.

Effect of Novation

Art. 1296. When the principal obligation is extinguished in consequence of a novation, accessory obligations may subsist only insofar as they may benefit third persons who did not give their consent.

Balane: Effect of novation as to accessory obligations.-- Accessory obligations may subsist only insofar as they may benefit third persons who did not give their consent, e.g., stipulation pour atrui

General rule: In a novation, the accessory obligation is extinguished.

Exception: In an active subjective novation, the guarantors, pledgors, mortgagors are not released.

Look at Art. 1303, accessory obligations are not extinguished. So there is a conflict. How do you resolve? According to commentators, Art. 1303 is an exception to Art. 1296.

Art. 1297. 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.

Art. 1298. The novation is void if the original obligation was void, except when annulment may be claimed only by the debtor, or when ratification validates acts which are voidable.

Art. 1299. 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.