REGULATORY FRAMEWORK FOR BUSINESS TRANSACTIONS (RFBT)

CPALE Concept Notes

LAW ON OBLIGATIONS

Source: REO Live (Atty. Kris), ReSA Lecture (Atty. Nicko), and CPAR Lecture (Atty. Kid)

Topics Covered:

1. *Law on Business Transactions*
   - 1.1. *Obligations*
     - 1.1.1. *Definition*
     - 1.1.2. *Sources of obligations and their concepts*
     - 1.1.3. *Kinds of Obligations*
     - 1.1.4. *Specific circumstances affecting obligations in general*
     - 1.1.5. *Nature and Effects of Obligations*
     - 1.1.6. *Extinguishment of obligations*

Obligations in General

Civil Obligations

- Juridical necessity to give, to do, or not to do
- Gives a right of action against the debtor by the creditor to compel performance of the obligation

Natural Obligations

- Based on *equity and natural law*, not on a positive law
- Does not grant a right of action for the performance
- Retention may be authorized if there was already delivery or performance after obligor or debtor's VOLUNTARY fulfillment

Essential Elements of an Obligation *(ALL must be present)*

1. Active Subject *(Creditor or Obligee)*
2. Passive Subject *(Debtor or Obligor)*
3. Prestation *(Object or Subject Matter)*
   - NOT the thing itself, but the promise or particular conduct to be performed
   - To give, to do, or not to do
4. Juridical Tie *(Vinculum Juris or Efficient Cause)*
   - The tie (sources) which binds the parties to the obligation

SOURCES OF OBLIGATIONS

1. ***Law***
   - Not presumed
   - Only those expressly determined or written in the laws
   - *Example*:
     Obligation of the parents to support their children
2. ***Contracts***
   - Has the force of law between contracting parties
   - But not above the law – must not be contrary to law, morals, good customs, public order, or public policy
   - Should be complied with in good faith
     (can't contravene the tenor of the agreement)
   - *Example*:
     School's liability to a student stabbed *inside* the campus *by a stranger* in school
   - *Prescriptive Period:*
     - Oral contracts – 6 years
     - Written contracts – 10 years
3. ***Quasi-Contracts***
   - Juridical relation based on an unjust enrichment at the expense of another *(unilateral act)*
   - NOT an implied contract (no meeting of the minds)
   - *Prescriptive Period: 6 years*

Common Types:

- *Negotiorum Gestio* – voluntary management of property affairs of another without his knowledge or consent

  Requisites:
  - Property or business must be ***neglected or abandoned*** (IF NOT, it is an Unauthorized Contract, needing ratification to ask for reimbursement)
  - No consent or authority given by the owner (IF NOT, it is a Contract of Agency, which secures compensation)
- *Solutio Indebiti* – something is received when there is no right to demand it and was unduly delivered through mistake

Other Types of Quasi-Contracts (Art. 2164-2175):

- Stranger to a person obliged to give support *(for reimbursement)*
- Funeral expenses borne by third person to relatives obliged to give support to the deceased *(for reimbursement)*
- Any third person who furnished support to a needly person, to a parent obliged to support an orphan, insane, and other indigent person who unjustly refuses to support *(for reimbursement)*
- Physician and other aids to an injured or ill person he treated even without consent *(pay for the services)*
- Another person who saved another person's property from destruction during fire, flood, storm, other calamity *(for just compensation)*
- Government to any person failing to comply with property's health or safety regulations *(liable for expenses)*
- Any person to a person whose taxes were constrained to be paid by him *(for reimbursement)*

4. ***Delicts*** (Crime or Felony)
   - Civil obligations arising from a conviction of a crime:
     - Restitution (to return)
     - Reparation of Damages Caused
     - Indemnification for Consequential Damages
   - If there was *acquittal*:
     - Not the author of the crime – No Civil Liability
     - Due to reasonable doubt – Civil Liability may still exist

Obligation Arising From:	Quantum of Evidence Required
Criminal Liability	Proof Beyond Reasonable Doubt
Civil Liability	Preponderance of Evidence
Administrative Liability	Substantial Evidence

5. ***Quasi-Delicts*** (Torts, Civil Negligence, or Culpa Aquiliana)
   - Requisites:
     - An act or omission causing damages to another person
     - There being fault or negligence
     - Causal connection between the act or omission and the damages (directly caused the injury)
     - ***No pre-existing contractual relations*** between the parties (if there is, it is considered as breach of contract instead)
       - XPN: An obligation may still arise from a quasi-delict even in the presence of a contract *if the act itself that breaches the contract is a quasi-delict itself*.
   - *Example:*
     School's liability to a student stabbed inside the campus by a co-student in school
   - *Prescriptive Period: 4 years*

Situational:

A owns a taxi, with B as the taxi driver (operator). C is the passenger. Upon having C as a passenger, D, a pedestrian, was hit by B, causing injury not just to D, but also to C.

What are the sources of obligations to be raised by C and D, respectively to both the B (operator) and A (owner)?

C *(Passenger)*

- *As to B (Operator): Delict OR Quasi-Delict*
    - ***No contract***, as the contract of carriage is between the passenger and the taxi OWNER
    - Both can be filed to court or raised at the same time, but ***can only recover one damages***, whichever is HIGHER
    - No one can recover twice for the same act
- *As to A (Owner): Contract OR Delict*
    - ***Culpa contractual*** for negligence in the contract of carriage requiring extraordinary diligence
    - ***Delict as to its CIVIL aspects only***, owner is only SUBSIDIARILY liable if the operator is ***insolvent***.
    - Quasi-Delict may not be raised as there is a pre-existing contract between the parties, unless if the act itself breaching the contract is a quasi-delict

D (Pedestrian)

- *As to B (Operator): Delict OR Quasi-Delict*
- *As to A (Owner): Delict OR Quasi-Delict*
    - No contractual relation
    - ***Delict as to CIVIL aspects only***, with the owner being SUBSIDIARY liable only if the operator is ***insolvent***.
    - Quasi-Delict pertaining to the ***owner's Vicarious Liability*** *(respondeat superior – let the master answer)*

Kinds of Thing or Object

- ***Specific (Determinate) Thing*** – exact, identified, distinguished from others of its kind
  (ex. My Blue Toyota Car with Plate No. 123)
- ***Generic (Indeterminate) Thing*** – only indicated by its kind without being designated and distinguished from others of the same kind
  (ex. Blue Toyota 2025 Car)

Matters as to Obligations according to Prestation

KINDS OF OBLIGATIONS AS TO PRESTATION

- *Real Obligations* – To Give (Deliver)
    - *Specific* – determinate thing, particularly segregated or designated
    - *Generic* – indeterminate thing; class, genus, or group
- *Personal Obligations* – To Do (Perform) or not an act
    - *Positive* – To do
    - *Negative* – Not to do (prohibition)

Obligations of the Debtor under a *Real Specific* Obligation

- Items 2 to 5 are ACCESSORY obligations, which are presumed to be present even in an absence of a stipulation (inherent)

1. ***To deliver the thing itself***
2. ***To preserve the thing***
    - Preventing the loss before performance or delivery

      General Rule:

      Diligence of a ***good father of a family*** (ordinary)

      XPN:
        - *Partners agreed to a **HIGHER level** of diligence*
        - *Partners cannot agree to a LOWER level of diligence as ordinary diligence is the minimum requirement (Gray Area)*
        - *Partners also cannot agree to OMIT at least an ordinary diligence in taking care of the thing before delivery*
3. ***To deliver the fruits of the thing***
    - Parties *MAY agree* that fruits will not be delivered
    - ***Personal Right (to demand) "Jus in Personam"***
        - From the time the obligation to deliver the thing arises (in cases of sale, from the perfection of the contract)
    - ***Real Right (to ownership) "Jus in Re"***
        - Upon delivery of the thing and the fruits

   Kinds of Fruits

   a. NATURAL FRUITS
      - ***Spontaneous products*** of the soil
      - Young of the animals
      - Includes products even with intervention of human such as milk and piglets of a pig as long as it was not intervened upon creation

   b. INDUSTRIAL FRUITS
      - Products of the soil ***with human intervention***
      - *Example: Planting palay*

   c. CIVIL FRUITS
      - Produced from certain legal relationships like contracts
4. ***To deliver all accessions and accessories***
    - Parties MAY agree that accessions and accessories will not be delivered
    - ***Accessions***
        - Everything produced by a thing
        - Everything incorporated or attached to a thing, naturally or artificially
        - Without it, the **principal thing CAN STILL FUNCTION**
        - *Example: Case of a Smartphone*
    - ***Accessories***
        - Things used for the *embellishment, better use, or completion of a principal thing,* or for the *preservation of another thing*
        - Without it, the **principal thing would NO LONGER or DECREASE ITS FUNCTION**
        - *Example: Battery and Charger of a Smartphone*
5. ***To pay damages in cash of breach of obligation***

Obligations of the Debtor under a *Real Generic* Obligation

1. ***To deliver the thing at the agreed upon quality***
    - If no quality agreed upon, must be neither superior nor inferior quality
2. ***To pay damages in case of breach of obligation***

- Note: No more ordinary diligence in generic things, as loss only applies to specific things
  (Generic things can NEVER BE LOST)

Fraud, Negligence, Delay, and Contravention of the Agreement

- In cases of fraud, negligence, delay, and any contravention to the tenor of the agreement, **the party at fault is liable for damages**
- Burden of proof lays to the Plaintiff (Victim)

Damages (MENTAL)

- ***M**oral* – mental, physical anguish (reputation, feelings)
- ***E**xemplary* – to set an example (corrective)
- ***N**ominal* – a right was honored
- ***T**emperate* – indeterminate exact amount
- ***A**ctual* – requires proof; actual losses incurred
- ***L**iquidated* – pre-determined

FRAUD (DOLO)

- Deliberate and intentional evasion of obligation's normal fulfillment

- ***Dolo Causante (Causal Fraud)***
    - Fraud committed ***at the time of PERFECTION*** of an obligation
    - ***Voidable*** contract
    - May ask for annulment
    - Damages arising CANNOT be mitigated

- ***Dolo Incidente (Incidental Fraud)***
    - Fraud committed ***at the time of the PERFORMANCE*** of an obligation
    - ***Valid*** contract
    - Liable for Damages
    - Damages arising CANNOT be mitigated

Waiver of Action

- For Future Fraud – VOID, still liable for damages
- For Past Fraud – VALID, considered as condonation

NEGLIGENCE (CULPA)

- Failure to observe for the protection of the interests of another person, that degree of care, which the circumstances justly demand, whereby such person suffers injury
- Hierarchy of the proper degree of diligence required
    - As required by ***law*** *(ex. Common Carriers and Banks – Required by Law to be Extraordinary Diligence)*
    - As ***stipulated*** *(XPN: Lower than ordinary or No diligence at all)*
    - Diligence of a ***Good Father of a Family*** *(Ordinary)*
- Negligence on part of the Injured Party that was only contributory STILL entitles the same for reduced damages

Kinds of Negligence

- ***Culpa Aquiliana*** – independent of a contract *without* criminal intent
- ***Culpa Contractual*** – in the performance of a contract
- ***Culpa Criminal*** – in the commission of a crime

Waiver of Action

- ***For Future Negligence***
  General Rule: Valid
  XPNs: Void if
    - Requires extraordinary diligence, or
    - Debtor is in bad faith
- ***For Past Negligence***
    - Valid
    - Damages arising from such negligence *CAN BE MITIGATED*

DELAY (MORA OR DEFAULT)

- ***Mora Solvendi*** – delay on the part of the *debtor*
- ***Mora Accipiendi*** – delay on the part of the *creditor*
- ***Compensatio Morae*** – delay by both parties

Requisites for Mora Solvendi

- Obligation is *liquidated*, due, and demandable
- Debtor is *guilty of nonperformance*
- A *demand* was made judicially or extrajudicially
  General Rule: **No Demand, No Delay**

  XPNs:
    - When the ***law*** so provides
      (Examples: Taxes, Partnership Contributions)
    - When the ***obligation*** so provides
      (not tantamount to just fixing the due dates)
    - When ***time is of the essence***
        - A time was agreed (stipulated) for performance
        - Obligation CANNOT be performed in any other dates
        - *Example: Wedding caterers or flower decorators*
    - When the ***demand would be useless***
      (Example: Already transferred, hidden, or destroyed)
    - In case of ***Reciprocal Obligations*** (simultaneous)
        - Upon performance of one party where the other party is not yet ready to perform his part

Effects (Mora Solvendi):

- Debtor is liable for damages
- Debtor ***still liable for loss even if due to fortuitous event***
- Debtor shall bear risk of loss of determinate thing

Requisites for Mora Accipiendi

- Offer or performance by the debtor
- Refusal to accept by the creditor without justifiable cause

Effects (Mora Accipiendi):

- Creditor is liable for damages
- Creditor bears risk of loss of the thing
- Preservation expenses after delay is ***borne by the creditor***
- Consignation is available as a remedy for the injured party

CONTRAVENTION OF THE TENOR OF THE OBLIGATION (AGREEMENT)

- Illicit act impairing the strict and faithful fulfillment of the obligation
- Even without fraud, negligence, or delay, as long as the obligation was NOT performed in accordance to the agreement

Fortuitous Events (Art. 1174)

General Rule:

No person is responsible for loss due to fortuitous event; thus, the ***obligation is EXTINGUISHED*** (Debtor no longer liable)

XPNs:

Since thing is already lost, ***debtor is still liable*** but is converted into its monetary value:

- When the **law** so provides
    - Art. 1165
        - Debtor in guilty of fraud, negligence, delay, or contravention to the tenor of the agreement
        - Debtor promises to deliver the same thing to two or more persons with different interests
    - Art. 552 – A possessor in bad faith
    - Art. 1268 – Arising from criminal offenses
        - May be extinguished only if ***prior*** to the loss, the creditor refused to accept the thing WITHOUT any justifiable reason
- Thing to be delivered is a **GENERIC thing** (never perishes)
- When the **obligation** so provides (by stipulation)
- The **nature** of the obligation requires assumption of risk *(Example: Insurance)*

Legal Remedies in Breach of Obligations

GENERAL REMEDIES:

- Compulsion – compel performance
- Exhaustion of Personal Assets (public sale → proceeds)
  - Attachment (tangible personal property)
  - Levy (real property)
  - Garnishment (intangible personal property)
- Accion Subrogatoria
- Accion Pauliana (Rescission) – remedy of LAST RESORT

SPECIFIC REMEDIES AS TO TYPES OF OBLIGATIONS

- ***Real Specific Obligations***
  - Compulsion + DMGs
  - Accion Pauliana + DMGs
    - Only applies if there are debtor transfers made *in fraud of creditors* and other specific cases
  - DMGs alone
  - Substitute performance is NOT allowed

- ***Real Generic Obligations***
  - Compulsion + DMGs
  - Substitute Performance at Debtor's Expense + DMGs
  - DMGs alone

- ***Personal Positive Obligations***
  - Substitute Performance at Debtor's Expense + DMGs
    - Only if debtor was not chosen due to his "***personal***" qualifications
  - DMGs alone
  - The same remedies apply for those performed in contravention of the agreement
  - *Compulsion is not allowed* as it is tantamount to involuntary servitude
  - As to obligation ***poorly done***, remedy is to ask for it to be undone at the debtor's expense

- ***Personal Negative Obligations***
  - If possible, Undo at Debtor's Expense + DMGs
  - If not possible, DMGs alone

- ***Reciprocal Obligations***
  - Compulsion + DMGs
  - Accion Pauliana + DMGs
    (as implied in reciprocal obligations)
  - Rescission must first be declared by the court (judicial)

    General Rule: Remedies are alternative

    XPN:

    Opted for compulsion, but then becomes impossible *(Can proceed to Rescission)*

SUCCESSIVE RIGHTS OF THE CREDITOR TO SATISFY CLAIMS AGAINST THE DEBTOR (ART. 1177)

- Pursue debtor's personal properties through attachment
- Subrogatory action *(accion subrogatoria)*
- Impugn or rescind the acts of the debtor to defraud him *(accion pauliana)*

Kinds of Obligations as to Existence, Demandability, and Extinguishment

PURE OBLIGATIONS

- Without a condition or term
- Demandable at once

CONDITIONAL OBLIGATIONS

- Subject to a condition – *future and UNCERTAIN* event
- Gives rise to an obligation or extinguishes an existing obligation

Suspensive Condition
  - Fulfillment or happening CREATES the obligation
  - There is no obligation before the happening of condition

Resolutory Condition
  - Fulfillment or happening extinguishes (resolves) the obligation
  - Obligation is already demandable at once

Potestative Condition
  - Fulfillment or happening is dependently solely upon the will of ONE of the parties

Casual Condition
  - Dependent upon chance or will of a third person

Mixed Condition
  - Depends partly upon chance and partly upon will of a third person or a combination of potestative (dependent on one) and casual (dependent on third party or chance) condition

Impossible Condition
  - Cannot happen (not possible) physically or legally
  - If condition is impossible, the OBLIGATION is VOID, not just the condition, unless there is a pre-existing obligation

Positive Condition
  - Performance of an act
  - To do, to give

Negative Condition
  - Omission of an act
  - Not to do, not to give

Certain Combinations of Conditions

- **Potestative-Debtor + Suspensive Condition**
  - Renders the OBLIGATION VOID, not just the condition
  - XPN: Only condition is void and the obligation remains valid, if there is a pre-existing obligation (Example: Payment of tuition balance – existing obligation to pay)

- **Positive + Impossible + Suspensive Condition**
  - Renders the OBLIGATION VOID

- **Negative + Impossible + Suspensive Condition**
  - Renders the CONDITION as INEXISTENT
  - Obligation remains perfectly VALID

Fulfillment of Conditions

- Actual Fulfillment – Actual performance
- Constructive Fulfillment – ***Debtor voluntarily prevents*** the happening of a suspensive condition

Effects of Fulfillment of Suspensive Conditions

- Upon fulfillment, the obligation arises, but *RETROACTS* to the date of constitution as to entitlement
- ***Rights to Fruits During Pendency of Condition***

  UNILATERAL OBLIGATIONS

  General Rule:

  Debtor is entitled (benefits) to the fruits and interest

  XPN:

  Stipulation to the contrary

  RECIPROCAL OBLIGATIONS
  - Deemed to have been mutually compensated

Effects of Fulfillment of Resolutory Conditions

- Extinguishes the obligation
- Mutual restitution, including fruits and interest

Loss, Deterioration, and Improvement of the Specific Thing DURING PENDENCY OF A SUSPENSIVE CONDITION

	Without Debtor's Fault or Through a Fortuitous Event (Due to Nature or Time)	With Debtor's Fault (At Debtor's Expense)
Loss	Creditor bears the loss	Debtor bears the loss
	Obligation is extinguished	Debtor will be Liable for Damages + The Value of the Thing
Deterioration	Borne by the Creditor	Borne by the Debtor
		Creditor's Alternative Remedies: a.) Compulsion (Fulfillment) + DMGs b.) Rescission + DMGs
Improvement	Inures benefit to the Creditor	Inures benefit to the Creditor as well
		Debtor has Limited Usufructuary Rights as to: a.) Removal, only if it would not cause damage or injury to the principal thing b.) Usage c.) Offset of any possible damages

OBLIGATIONS WITH A PERIOD

- Subject to period – *future and CERTAIN* event
- Period has ***no effect upon existence*** of an obligation, but only its demandability or performance
- Includes obligations wherein the debtor binds himself to pay "***when his means permit him to do so***," "***when I have the money***," "***little by little***," among others
  - In such case, the *remedy is to ask a court to fix the period*
- If period was yet to be fixed, it is not yet demandable

Suspensive Period (Ex Die)

- Arrival or happening makes the obligation DEMANDABLE
- The ***obligation was ALREADY EXISTING***, just not demandable

Resolutory Period (In Diem)

- Arrival or happening extinguishes (resolves) the obligation
- Obligation is already demandable at once

Conventional (Voluntary) Period

- Period fixed by the parties

  General Rule:

  Period set is for the benefit of BOTH of the parties
  - Debtor cannot be compelled to pay before the period
  - Creditor cannot be compelled to accept payment before the period

  XPNs:
  - ***Stipulation***
    - *Example: Stipulated to pay "within" or "on or before"*
    - Debtor cannot be compelled to pay before the period, but the creditor can be compelled to accept early payments by the debtor
    - Benefits the Debtor only
  - If the ***Debtor Loses Benefit*** – obligation becomes *immediately demandable*
    - Debtor becomes insolvent ***after*** the constitution of the contract
    - Debtor ***fails to furnish the guaranty or security*** he promised to furnish
    - Through the *debtor's fault*, the ***security was AT LEAST IMPAIRED***, unless he gives another one equally satisfactory
    - Through a *fortuitous event*, the ***security was LOST***, unless he gives another one equally satisfactory
    - Debtor ***attempts to abscond***
    - Debtor ***violates the undertaking*** for which the creditor has given the period

Legal Period

- Period fixed by the law *(Example: NIRC tax deadlines)*

Judicial Period

- Period set by the court

  General Rule:

  Courts CANNOT set a period nor intervene with fixing of the period for obligations

  XPNs:
  - Parties ***intended*** to set a period, ***but failed*** to indicate such period
  - The duration or arrival of the period depends upon the ***exclusive will of the debtor – potestative*** *(Example: "When means permit him to do so")*

Kinds of Obligations as to Number of Prestation

SIMPLE OBLIGATIONS

- With only one prestation

COMPOUND OBLIGATIONS

- With multiple prestation

ALTERNATIVE OBLIGATIONS "OR"

- Several prestation, but the fulfillment of ONE is sufficient to fulfill the obligation

  General Rule:

  Right of choice is ***given to the Debtor***

  Limitation:

  Prestation chosen must not be unlawful (illicit), impossible, or one which could not have been the object (not in the choices)

  XPN:

  If right of choice is ***agreed (expressly granted)*** to be given to the Creditor

Effects of Loss of Prestation

- If choice is given to the ***Debtor***, the reckoning point is the *LAST prestation*
- If choice is given to the ***Creditor***, he *may still choose a prestation lost* through the debtor's fault *(Debtor will be liable to pay the value of the things + DMGs)*

Right of Choice	Extent of Loss	Due to (Reason of Loss)	Effect (Debtor's Remedy)
Debtor	All	Fortuitous Event	Obligation is Extinguished
		Debtor's Fault	Pay value of the last thing + DMGs
	Some, but not all	Fortuitous Event	Delivery ANY remaining
		Creditor's Fault	Deliver ANY remaining, or Rescission + DMGs
Creditor	All	Fortuitous Event	Obligation is Extinguished
		Debtor's Fault	Pay value of ANY that was lost through DR's fault *(chosen by Creditor)* + DMGs

	Some, but not all	Fortuitous Event	Creditor chooses from ANY remaining to be delivered
		Debtor's Fault	Either: a.) Pay value of what was lost + DMGs, or b.) Creditor chooses from any remaining to be delivered + DMGs

FACULTATIVE OBLIGATIONS

- Only one thing is due, but the debtor may render another in substitution
- Right of choice is ALWAYS given to the Debtor *(never granted to the Creditor)*

Timing	What is Due?	Loss of Principal Prestation	Loss of Substitute Prestation
Before Substitution	Principal (Original) Prestation	*Fortuitous Event:* - Obligation is ***Extinguished*** *Debtor's Fault:* - Debtor is liable to pay for its value + DMGs	No effect
After Substitution *(Ceases to be Facultative)*	Substitute Prestation	No effect	*Fortuitous Event:* - Obligation is ***Extinguished*** *Debtor's Fault:* - Debtor is liable to pay for its value + DMGs

CONJUNCTIVE OBLIGATIONS *"AND"*

- ALL prestation must be complied with to fulfill the obligation

Kinds of Obligations with Multiple Parties (Collective Obligations) and as to Divisibility

JOINT OBLIGATIONS

- As to silence, assumed to be Joint (the general rule)
- Only liable (or entitled) to a pro-rata or proportionate share
- *Synonyms*:
  - *Pro-rata*
  - *Proportionate*
  - *Mancomunada*
  - *Mancomunada Simple*
- ***As to Damages:***
  - Only the <u>*guilty party*</u> is liable for damages
- ***As to Insolvency:***
  - Other debtors are <u>*not liable to share*</u> for the insolvent debtor's proportionate debt

SOLIDARY OBLIGATIONS

- Exception to the general rule
- *Synonyms*:
  - *In Solidum*
  - *Jointly and Severally*
  - *Jointly and Solidarily*
  - *Individually and Collectively*
  - *Mancomunada Solidaria*
- ***Only*** in the following instances:
  - Law expressly provides *(officious manager, tortfeasor, etc.)*
  - Obligation so provides (stipulation)
  - Nature of the obligation requires solidarity
- ***As to Damages:***
  - <u>*All debtors*</u> are liable for damages
  - Innocent party *may ask for reimbursement* from guilty debtor
- ***As to Insolvency:***
  - Other debtors <u>*liable to share*</u> for the insolvent debtor's proportionate debt

<u>**Instances of Sharing in Joint and/or Solidary Debts**</u>

1. **Joint Debtors and Joint Creditors**
   - Each debt (credit) is <u>*independent*</u> of each other
   - Default or delay of one of the debtors is not a delay of other debtors, thus not liable for damages
   - Insolvency of one is not demandable to his co-debtors

   Case: A, B, C are indebted to D, E, F for 900,000
   - Any of the creditor may collect 100,000 from any of the debtor *(900k ÷ 3 = 300k as One Creditor's Share ÷ 3 for One Debtor's Share)*

2. **Solidary Debtors Solidary Joint Creditors**
   - A creditor (debtor) may demand (pay) to any of the party to <u>*pay the FULL amount*</u> of debt
   - Default or delay of one of the debtors is also a delay of other debtors, thus making them liable for damages
   - Debtors (creditors) must reimburse their share to each other
   - Insolvency of one is demandable and covered by his co-debtors
   - A payment to a solidary creditor who DID NOT DEMAND for payment is an INVALID payment
   - Payment made by a debtor after prescription or as it becomes illegal DOES NOT entitle him to reimbursement from his co-debtors

   Remission of Debt to Any Debtor:
   - DOES NOT entitle the debtor reimbursement from co-debtors
   - Extinguishes the obligation
   - If done only by ONE solidary creditor, WITHOUT OTHER CREDITORS' CONSENT, the obligation is STILL EXTINGUSHED, but such creditor is <u>*liable for the share of the non-consenting creditors*</u>
   - If remission is made AFTER total payment of one of the debtors, the debtor is still liable for reimbursement to such co-debtor

   Case: A, B, C are indebted to D, E, F for 900,000
   - Any of the creditor may collect 900,000 from any of the debtor, and must give his co-creditor's share *(ask for reimbursement with his co-debtors)*

3. **Solidary Debtors and Joint Creditors**
   - Creditors can <u>*collect only his pro-rata*</u> or proportionate share to ANY of the debtor

   Case: A, B, C are indebted to D, E, F for 900,000
   - Any of the creditor may collect 300,000 (his share) from any of the debtor

4. **Joint Debtors and Solidary Creditors**
   - Debtors can <u>*pay his pro-rata*</u> or proportionate part of the debt to ANY of the creditors
   - Creditors can only collect up to the debtor's proportionate share

   Case: A, B, C are indebted to D, E, F for 900,000
   - Any of the creditor may collect 300,000 from any of the debtor *(as his proportionate share)*

<u>***Solidary Creditors' Actions***</u>

- Each solidary creditor can do whatever may be USEFUL to the other creditors, but ***not anything prejudicial***

Defenses Available to a Solidary Debtor

- Nature or validity of the obligation
- Personal defense to the defendant's solidary debtor
- Co-debtor's personal defense (partial only)

  Example:

  Debtor A, B, C, wherein A is a Minor at Constitution. If total debt is 30,000, A's part (10,000) is extinguished, making the total demandable amount to 20,000 to either B or C.

DIVISIBLE OBLIGATIONS

- Capable of partial performance
- Debtor can legally perform the obligation by parts
- Creditor cannot demand single performance of the entire obligation

INDIVISIBLE OBLIGATIONS

- Not capable of partial performance
- Includes obligations to give specific (definite) things not susceptible to partial performance

  General Rule:

  Divisible Prestation = Divisible Obligation

  XPNs: Divisible Prestation may be an Indivisible Obligation
    - Law so provides
    - Intended by the parties
- Indivisible ≠ Solidary

Joint but Indivisible Obligations

- If one of the debtors refuses to comply:
    - Obligation is converted to payment of the value of the thing (monetary obligation)
    - Only the debtor at fault is liable for damages
    - Innocent debtors only comply for their pro-rata or proportional share of the thing's value

Solidary and Indivisible Obligations

- If one of the debtors refuses to comply:
    - ALL the debtors, including innocent ones, are liable for damages
    - Innocent debtors may seek for reimbursement for the debtor at fault

Obligations with a Penal Clause

Penal Clause

- Serves as an ACCESSORY obligation
- Increases the coercive force of the principal obligation
- Also serves as liquidated damages (no need to prove actual)
- Acts as ***substitute for the indemnity for damages and payment of interests*** in case of non-compliance, in the absence of a stipulation to the contrary
- Nullity of penal clause DOES NOT nullify the principal obligation, but nullity of the principal obligation CARRIES with it that of the penal clause

General Rule:

Creditor can't enforce penalty AND damages or interest at the same time (only penalty can be recovered)

XPNs:

- Obligation so provides (stipulation)
- Debtor refuses to pay the penalty
- Debtor is guilty of incidental fraud

General Rule:

Debtor can't exempt himself from the performance of the obligation by paying the penalty

XPN:

- If such right is expressly reserved to him

Courts can reduce the amount of penalty if:

- It is unconscionable or iniquitous, or
- With at least partial or irregular performance

Modes of Extinguishment of Obligations

Primary Modes of Extinguishment of Obligations

- Payment or Performance
- Loss of the Thing Due
- Condonation or Remission
- Confusion or Merger of Rights
- Compensation
- Novation

Secondary Modes of Extinguishment of Obligations

- Annulment
- Rescission
- Fulfillment of a Resolutory Condition
- Prescription
- ***Article 1266*** *(Debtor is Released):*
    - Prestation in obligations **to do** becomes legally or physically impossible ***without debtor's fault***
- ***Article 1267*** *(Debtor is Released in Whole or in Part):*
    - The service (prestation to do) has become ***so difficult*** as to be manifestly beyond the contemplation of the parties

PAYMENT OR PERFORMANCE

- Delivery of a sum of money or a thing, doing a thing, or not doing something.

Rule 1: Integrity of Performance (How?)

General Rule:

Payment or performance must be complete; thus, ***no creditor (obligee) can be compelled to accept partial performance*** *(including accepting a **thing different** from what was agreed)*

XPNs:

- Substantial compliance in good faith (obligee pays full amount less damages suffered by him for payment to obligor)
- Creditor (obligee) accepted knowingly without protest or rejection

Rule 2: Identity of Payment (What?)

- Real + Specific = The Thing Itself
- Real + Generic = Same Quality as Stipulated *(if not stipulated, medium quality)*

- Personal + Positive = The Act Itself
- Personal + Negative = The Prohibited Act

As to Monetary Obligations

Currency

- By Stipulation
- Legal Tender Rule *(in absence of stipulation)*
    - Currency which the creditor cannot refuse to accepts as payment unless for a just and lawful cause, issued by the BSP
        - *Bills / Notes* = Any Amount (Unlimited)
        - *Coins:*

          Peso (1, 5, 10, 20) = Maximum of 2,000
          Centavo = Maximum of 200

Checks and Negotiable Instruments

- Not a legal tender, thus cannot be compelled to be accepted by the creditor (unless voluntarily accepted)
- Fulfilled or equivalent to payment only at the moment
    - The check was encashed, or
    - The check was impaired due to the creditor's fault

Extraordinary Inflation and Deflation

- Extraordinary – only upon a pronouncement from an appropriate government agency, usually the BSP
- Basis of payment is still the value of the currency AT CONSTITUTION (perfection)
- Value can be computed as:
  (Value at Constitution / Value at Maturity) x Obligation

Rule 3: Place of Payment (Where?)

Hierarchy:

- Stipulation (place designated)
- If ***Real + Specific***:
  Where the thing is <u>AT CONSTITUTION</u> (perfection)
- ***Others***: *Domicile of the Debtor*

Rule 4: Payor Rule (Who Pays?)

<u>PROPER PAYORS</u>

- Creditor ***cannot refuse acceptance*** unless for just and lawful cause
- Includes the following:
  - Debtor himself
  - Third person interested in the fulfillment of the obligation (those who will benefit from the payment he made such as a guarantor)
  - Third person authorized or with the debtor's consent

Entitlement of Non-Debtor but Proper Payors (B and C)

- Full reimbursement from the debtor
- Legal subrogation

<u>IMPROPER PAYORS (Strangers)</u>

- Creditor ***cannot be compelled to accept*** payment or performance
- All other payors that are not included in the proper payors

Entitlement of Non-Debtor and Improper Payors

- Beneficial reimbursement from the debtor
- No legal subrogation

Rule 5: Payee Rule (To Whom?)

<u>PROPER PAYEES</u>

- Payment to which are ***considered valid***, and can result to full extinguishment
- Includes the following:
  - Creditor himself
  - Creditor's successor in interest
  - His heirs (only upon his death)
  - His assignee
  - Third persons authorized (by law or by both parties)

<u>IMPROPER PAYEES</u>

- Payment to which are ***generally not valid***, and may only result to beneficial extinguishment (to the extent that redounded to the creditor's benefit)
- All other payees that are not included in the proper payees

Special Modes of Payment or Performance

a. Dacion en Pago

- Debtor alienates property in favor of the creditor in satisfaction of a **monetary** obligation
- Requisites:
  - Only *one debtor and one creditor*
  - Involves *<u>only one property</u>* of the debtor
  - Acceptance by the creditor of the delivery of the property

Special Case:

If the property's fair value is given which is *<u>not equal</u>* to the monetary obligation

<u>General Rule:</u>

Entire obligation is ***extinguished*** (law on sales)

<u>XPN:</u>

Stipulation or agreement that it will extinguish only to the extent of the property's fair value

b. Payment by Cession

- Debtor transfers all his properties in favor of his creditors for them to sell and **apply the proceeds** to their credits
- No transfer of ownership, only a transfer of the right to sell
- It is NOT the properties itself that will be used to extinguish the obligation, but the PROCEEDS from the sale of such properties

  <u>General Rule:</u>

  The obligation will be extinguished ***only up to the extent of the proceeds*** from the sale

  <u>XPN:</u>

  Stipulation or agreement is made between the parties that the obligation will be fully extinguished

- Requisites:
  - One debtor but several creditors
  - Debtor is INSOLVENT (partially or completely)
  - Several *(All, except those that are exempt from execution or attachment)* properties of the debtor are involved
  - Acceptance by the creditor

As Compared to Dacion en Pago

	Dacion en Pago	Payment by Cession
What is Transferred to Creditors?	Ownership	Possession and Administration *(to sell and use proceeds)*
Plurality of Creditors	x (Specified)	✓ (All)
Insolvency of Debtor	Not Required	Required
Coverage	Identified Property	Entire (All) Properties
Extent of Extinguishment	*<u>General Rule:</u>* Up to the Value of the Thing *<u>XPN:</u>* Fully extinguished upon stipulation *(Different rule applies to FV ≠ Monetary Obligation)*	*<u>General Rule:</u>* Up to the extent of the Net Proceeds only *<u>XPN:</u>* Stipulation that it will be fully extinguished

c. Application of Payment

- Designation of the debt to which should be applied when payment is made by a debtor owing several debts to the same creditor
- Requisites:
  - Only *one debtor* and *one creditor*
  - *<u>Several debts of the same kind</u>*
  - All debts are due and demandable
  - Payment made by debtor is insufficient to pay all of the obligations due

Hierarchy of Application

- Debtor's Designation
  - Must be exercised at the time of payment
  - If not exercised at the time of payment, it is deemed as a waiver of his right

- Creditor's Designation
  - Unopposed (cannot be complained) by the debtor
- Most Onerous Debt
  - Interest bearing over non-interest bearing
  - Guaranteed debt over unguaranteed debt
  - Debt with collateral (secured) over unsecured debt
- Pro-Rata (Proportionately)

d. Tender of Payment AND Consignation

TENDER OF PAYMENT

- Manifestation (offer) made by debtor to the creditor of his willingness to comply with his obligation
- Alone CANNOT extinguish an obligation

CONSIGNATION

- Deposit of thing or money due to proper judicial authorities (not just any party, but a court)
- As a general rule, consignation alone also cannot extinguish an obligation. However, ***exceptions*** as to certain circumstances render that consignation ***alone CAN extinguish*** an obligation (no required tender of payment) under Art. 1256
  - Absent or unknown creditor
  - Incapacitated to receive payment
  - Refusal to give receipt
  - Two or more persons claim the same right to collect
  - Title of the obligation has been lost
- Expenses, when properly made, are charged against the ***creditor***

Requisites:

- Valid debt that is due
- Tender of payment is already made by the debtor (except those under Art. 1256), and refusal without justifiable cause of the creditor
- Prior notice of consignation to people interested in the fulfillment of the obligation
- Consignation of the amount or thing due to the court (placed at the court's disposal)
- Subsequent notice of consignation to persons interested in the fulfillment of the obligation

- When all these requirements are present, the debtor must move for the cancellation of the obligation, and only upon court's approval will the obligation be extinguished (not automatic)
- ***Thus, when is the obligation extinguished?***
  - Upon court's declaration of validity or approval, or
  - Upon creditor's acceptance

LOSS OF THE THING DUE

- Only applies to ***Specific Things***, lost through Fortuitous Events
- Discussed in Fortuitous Event section under Art. 1174

CONDONATION OR REMISSION

- Renouncing an obligation without receiving any equivalent as an act of liberality (gratuitous)

Implied (Passive) Condonation

- Inferred from the acts of the creditor
- No required formalities

Express Condonation

- Must comply with formalities
  - Mortis Causa – follows formal rules for wills
  - Inter Vivos – follows formal rules for donations

Personal property NOT more than 5,000	Oral or written and simultaneous delivery
Personal property More than 5,000	Written
Real property of ANY Amount	Public Instrument

**Donation and acceptance must be in the same form*

- Requisites:
  - Gratuitous *(similar to a donation)*
  - Accepted by the Debtor *(donee's acceptance)*
  - Both parties must have legal capacity *(giving consent)*
  - Not inofficious *(not affecting legal heirs' legitime)*
  - Comply with forms of donation (inter vivos) and of wills (mortis causa) – *for express condonation only*

CONFUSION OR MERGER OF RIGHTS

- Meeting in one person of the qualities or characters of the creditor and debtor with respect to THE SAME obligation
- Merger to the ***Principal Debtor*** = *Extinguished* Obligation
- Merger to the ***Guarantor*** = Obligation is *NOT Extinguished*
- Requisites:
  - Must take place between the creditor and the ***principal debtor*** *(NOT the guarantor)*
  - Involves the very same obligation
  - Covers the total or entire obligation

COMPENSATION

- Extinguishment to the concurrent amount (offset) as both parties are reciprocally the creditor and debtor of each other
- Available even to rescissible or voidable debts before its rescission or annulment
- ***Not available*** on the following debts:
  - From a depositum (depositary)
  - Form a bail (bailee/lendee)
  - Form a support due by gratuitous title (supporter)
  - Civil liability from a penal offense (accused)
- Compensation may still be invoked by the Debtor even if the creditor already assigned his credit if:
  - Debtor did not consent or had no knowledge of assignment, or
  - Debtor reserved his right to compensation *(even with consent or knowledge of assignment)*

Kinds of Compensation

a. Conventional (Voluntary) Compensation
  - By agreement of both parties

b. Judicial Compensation
  - Decreed by the court upon a counterclaim case

c. Facultative Compensation
  - One party can claim, while the other cannot

d. Legal Compensation
  - Takes place by operation of law *(not needing consent)*

Requisites for Legal Compensation:

- Mutual debtors and creditor (2 parties only)

  XPN:

  Guarantors can claim what the creditor owes to the debtor as compensation upon insolvency of the original debtor
- Both debts are monetary or be of the same kind *(and quality if such has been stated)*
- Both debts are due and demandable
- Both debts are liquidated *(known as to amount)*
- No controversy or retention *(entitlement)* to both debts
  - If violated, legal compensation is not necessary no longer applicable, but is merely "suspended"

NOVATION

- Change in the essential elements of the obligation, extinguishing or modifying the first obligation

- Requisites:
    - Previous (old) valid obligation
    - New obligation is valid
    - An agreement of all parties to the new contract
    - Extinguishment of the old contract

- The accessory obligation of the original obligation may still subsist if it benefits a third person who ***did not give their consent*** to the novation *(Article 1296)*.

- If the ***new obligation*** in a novation is ***void***, the *original obligation will subsist*, unless the parties intended otherwise *(Article 1298)*.

- If the original obligation was subject to a ***suspensive or resolutory condition***, the new obligation shall *also be under the same condition*, unless otherwise stipulated *(Article 1299)*.

Kinds of Novation

a. **Real (Objective) Novation**
    - Change in the object or principal conditions

b. **Personal (Subjective) Novation**
    - Change to the parties of the obligation
    - Substituting the person of the debtor

    i. *Expromission*
    - Change in debtor without the original debtor's knowledge or consent
      (but with creditor and new debtor's consent)
    - Original debtor would ***no longer be liable*** upon the new debtor's insolvency and non-fulfillment
    - New debtor is only entitled to ***beneficial reimbursement*** from the original debtor

    ii. *Delegacion*
    - Change in debtor initiated by the original debtor, or with his knowledge and/or consent *(all consented)*
    - ***Liability*** of the original debtor can only be revived if ***both are present***:
        - New debtor's insolvency *existed at the time of delegacion*, **AND**
        - Original debtor had *actual or constructive* (known to the public) knowledge of such insolvency
    - New debtor is entitled to ***full reimbursement*** from the original debtor

Subrogating a Third Person in the Rights of the Creditor

a. **Conventional Subrogation**
    - Creditor substitution agreed (consented) by original parties and the new creditor or third party
    - Parties can modify the effect of subrogation

b. **Legal Subrogation**
    - Creditor substitution in exception cases provided by law (by operation of law)
        - A creditor ***pays another preferred creditor*** (regardless of debtor's knowledge)
        - A ***third person interested in the fulfillment*** of the obligation pays the obligation (regardless of debtor's consent)
        - A third person not interested in the fulfillment of the obligation pays the obligation as ***consented by the debtor*** (express or implied)