

# OBLIGATIONS AND CONTRACTS

Based on positive law; Enforceable in courts of justice.	Based on equity and natural law; Not enforceable in courts of justice.
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## OBLIGATION

A legal relation established between one person and another, whereby the latter is bound to the fulfillment of a prestation which the former may demand of him (*Manresa*).

A juridical necessity to give, to do, or not to do (*Art. 1156, CC*).

## JURIDICAL NECESSITY

Obligation is a juridical necessity because in case of non-compliance, the courts of justice may be called upon to enforce its fulfillment or, in default thereof, the economic value that it represents. In a proper case, the debtor may also be made liable for damages, which represent the sum of money given as a compensation for the injury or harm suffered by the creditor or obligee for the violation of his rights. (*PINEDA, 1*).

## PRESTATION

Not the thing or object but the particular conduct of the debtor which may consist in giving, doing, or not giving, or not doing something (*TOLENTINO, 57*).

## REQUISITES OF PRESTATION [PE-CoLD]

1. Physically and juridically possible;
2. Possible equivalent in money;
3. Must be within the commerce of man;
4. Must be licit;
5. Determinate or at least determinable according to pre-established elements or criteria.

**NOTE:** Form is sometimes added as a sixth requisite of prestation but as a general rule however, it cannot be considered as essential. An obligation arising from law can be said to have no form at all (*TOLENTINO, 56-57*).

**NOTE:** Pecuniary interest need not be for the benefit of one of the parties, it may be for the benefit of a third person.

## PECUNIARY INTEREST NEED NOT BE OF AN ECONOMIC CHARACTER

It is a generally established principle that the prestation should be susceptible of pecuniary appreciation. However, it need not be of an economic character, even moral ones in view of the protection given to them by law, have some pecuniary value (*Id., 58*).

## KINDS OF PRESTATION

1. **To give** - obligation to deliver a movable or an immovable thing in order to create a real right, or for the use of the recipient or for its simple possession, or in order to return to its owner (*e.g., sale, deposit, pledge, donation*);
2. **To do** - covers all kinds of works or services whether physical or mental. It may involve some work on the part of the debtor such as in contracts of employment, or professional services, but in other cases, it may be merely the necessity of concluding a juridical operation, such as, when a person promises to give a bond;
3. **Not to do** - consists in abstaining from doing some act. This obligation includes the obligation "not to give" (*Id.*).

## TYPES OF OBLIGATION

CIVIL OBLIGATION	NATURAL OBLIGATION
It is one which has a binding force in law, and which gives to the obligee or creditor the right of enforcing it against the obligor or debtor in a court of justice;	It is one which cannot be enforced by action, but which is binding on the party who makes it in conscience and according to the natural law. A natural obligation still subsist although the civil obligation is extinguished in accordance with the statute of limitations;

## Illustration

*A has a right of action, evidence by a promissory note, to collect P1M from B, and such promissory note prescribes after the expiration of 10 years from the time it accrues, although the latter is no longer bound to pay the obligation in accordance with the statute of limitations, he is still bound to pay in accordance with equity and natural law (Agoncillo v Javier, 38 Phil. 424).*

## ELEMENTS OF OBLIGATION [PATO]

1. **Passive subject** - Known as the obligor or debtor, against whom the obligation is juridically demandable; one who is bound to perform a prestation;
2. **Active subject** - Known as the obligee or creditor, who can demand the fulfillment of the prestation; he who in his favor, the obligation is constituted or created;
3. **Juridical tie or Vinculum Juris** - Binds the parties to the obligation, and which may arise from either bilateral or unilateral acts of persons; the efficient case which creates the relation between the obligor/debtor and obligee/creditor and is established by:
  - a. Law;
  - b. Bilateral acts (contracts and quasi-contracts);
  - c. Unilateral acts (Crimes and quasi-delicts).
4. **Prestation/Object of obligation** - the particular conduct of the debtor which may consist in giving, doing, or not doing something which constitutes the object of the obligation

**NOTE:** Object of Obligation (the prestation) is different from object of prestation. The former is the conduct of the debtor as defined in Art. 1156; to give, to do or not to do. On the other hand, the latter is what constitutes the thing to give or the certain act to do or not to do (*e.g., to give a specific horse, to paint the house, not to leave the country*).

**NOTE:** Subjects pertain to both natural and juridical persons. They need not be determined in the act constituting the obligation, but they must be determinable in some manner. When either subject cannot be determined, the obligatory tie can have no effect (*TOLENTINO, 57*).

**NOTE:** The active subject may be temporarily indefinite, as the case of a negotiable instrument payable to bearer.

## CLASSIFICATION OF OBLIGATIONS

1. *Pure and Conditional (Arts. 1179-1192, CC);*
  - a. Pure - demandable at once;
  - b. Conditional - fulfillment or extinguishment depends upon a future and uncertain event.
2. *With period or term (Arts. 1193-1198, CC);*  
Its fulfillment or extinguishment depends upon a future and certain event.
3. *Alternative and Facultative (Arts. 1199-1206, CC);*
  - a. Alternative - involves multiple prestations but debtor will only perform one or some but not all, depending whose choice it is;
  - b. Facultative - multiple prestations with a principal obligation and substitute prestations choice is generally given to the obligor.
4. *Joint and Solidary (Arts. 1207-1222, CC);*
  - a. Joint - each can be made to pay only his share in the obligation;
  - b. Solidary - one can be made to pay for the whole obligation subject to reimbursement.
5. *Divisible and Indivisible (Arts. 1223-1225, CC);*  
Performance of the prestation, not to thing, whether it can be fulfilled in parts or not
6. *With Penal Clause (Arts. 1230, CC).*  
Accessory undertaking to assume greater liability in case of breach (*JURADO, 3-4*).

## SECONDARY CLASSIFICATION

1. *Legal* – arises from law (Art. 1158, CC);
2. *Conventional* – arises from contracts (Art. 1159, CC);
3. *Penal* – arises from commission of crime (Arts. 1161, CC);
4. *Real and Personal* (Arts. 1163-1168, CC);
  - a. *Real* – when the obligation consists in giving something; can be further classified as:
    - i. *Determinate or specific* – one that is individualized and can be identified or distinguished from other of its kind; its loss extinguishes the obligation;
    - ii. *Indeterminate or generic* – indicated merely by its class or genus without being designated or distinguished from others of the same kind; its loss does not extinguish the obligation for genus never perishes (*genus nunquam perit*);
    - iii. *Limited generic thing* – when the generic objects are confined to a particular class, e.g., an obligation to deliver one pig from Gem Farm Taysan, Batangas.
  - b. *Personal* – when the obligation consists in doing or not doing something.
5. *Positive and Negative* (Arts. 1167-1168, CC);
  - a. *Positive* – when the obligor is obliged to give or do something;
  - b. When the obligor must refrain from giving or doing something.
6. *Unilateral and Bilateral* (Art. 1169-1191, CC);
  - a. *Unilateral* – only one party is bound to perform an obligation;
  - b. *Bilateral* – also known as synallagmatic contracts where two parties are reciprocally bound.
7. *Individual and Collective* (Arts. 1207, 1223, CC);
  - a. *Individual* – involves only one subject;
  - b. *Collective* – involves several subjects.
8. *Accessory and Principal* (Arts. 1166, 1226, CC).
  - a. *Accessory* – existence depends upon a principal obligation;
  - b. *Principal* – exists without depending upon another obligation.

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### ART. 1157

#### Obligations arise from:

1. **Law;**
  2. **Contracts;**
  3. **Quasi-contracts;**
  4. **Acts or omissions punished by law; and**
  5. **Quasi-delicts.**
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## SOURCES OF OBLIGATION/RIGHTS

1. **Law** – when they are imposed by the law itself (e.g., *obligation to pay taxes; obligation to support one's family*)(see Art. 195 of FC);
2. **Contracts** – when they arise from the stipulation of the parties (Art. 1306), e.g., obligation to repay a loan by virtue of an agreement;
3. **Quasi-contracts** – when they arise from lawful, voluntary and unilateral acts and which are enforceable to the end that no one shall be unjustly enriched or benefited at the expense of another (Art. 2142), e.g., the obligation to return money paid by mistake or which is not due.
4. **Crimes or Acts or omissions punished by law** – when they arise from civil liability which is the consequence of a criminal offense (Art. 1161), e.g., the obligation of a thief to return the car stolen by him; the duty of a killer to indemnify the heirs of his victim.
5. **Quasi** – delicts or Torts – when they arise from damage caused to another through an act or omission, there being fault or negligence, but no contractual relation exist

between the parties (Art. 2176), e.g., the obligation of the head of a family that lives in a building or a part thereof to answer for damages caused by things thrown or falling from the same (Art. 2193); the obligation of a possessor of an animal to pay for the damage which it may have caused (Art. 2183).

**NOTE:** The list of sources of obligation/rights is exclusive (*Sagrado Orden v Nacoco*, GR No. L-3756 [30/06/1952]).

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### 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.**

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**NOTE:** In case of conflict between the Civil Code and a special law, the latter prevails unless the contrary has been stipulated.

**NOTE:** Obligations arising from law are not presumed because they are considered a burden upon the obligor. To be demandable, they must be clearly set forth in the law.

### OBLIGATIONS ARISING FROM LAW (EX LEGE)

When they are imposed by the law itself (e.g., *obligation to pay taxes; obligation to support one's family*).

The law creates obligation and the act upon which it is based is nothing more than a mere factor for determining the moment when it becomes demandable (*PINEDA*, 10). However, when the law merely acknowledges the existence of an obligation generated by an act which may constitute the other sources of obligation, and its only purpose is to regulate such obligation, then the act itself is the source of the obligation and not the law (*JURADO*, 7-8).

**NOTE:** In the other sources of obligation, there is always some individual act which gives rise to the obligation; the law intervenes only to provide a sanction or to prevent injustice.

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### ART. 1159

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

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## CONTRACT

It is a meeting of minds between two persons whereby one binds himself with respect to the other, to give something or to render some service (see Art. 1305, CC). It is the formal expression by the parties of their rights and obligations they have agreed upon with respect to each other.

## PERFECTION OF THE CONTRACT

Perfected by mere consent and from that moment the parties are bound not only to the fulfillment of what has been expressly stipulated but also to all of the consequences which, according to their nature, may be in keeping with good faith, usage, and law (see Art. 1315, CC). These contracts are commonly called consensual contracts.

Real contracts, on the other hand, are perfected at the delivery of the object, e.i., deposit, pledge, commodatum.

From the moment it is perfected, obligations which may either be reciprocal or unilateral, arise (*JURADO*, 9).

**NOTE:** Compliance in good faith means the performance in accordance with the stipulation, clauses, terms and conditions of the contract.

**NOTE:** Well-settled is the rule that in case of doubt, it is the intention of the contracting parties that prevails. If the terms of a contract are clear and leave no doubt upon the contracting parties'

intention, such terms should be applied in their literal meaning (*Sps. Dumlaw v Marlon Realty Corp., GR No. 131491 [17/08/2007]*).

**NOTE:** The form in which a contract is executed has no effect, as a general rule, upon its obligatory force, provided all of the essential requisites for its validity are present (*see Art. 1356, CC*).

#### BINDING FORCE

Once perfected, valid contracts have the force of law between the parties who are bound to comply therewith in good faith, and neither one may without consent of the other, renege therefrom.

**NOTE:** Evasion by a party of legitimate obligations after receiving the benefits under the contract would constitute unjust enrichment on his part. However, in default of an agreement, the rules found in Art. 1805, *et sequitor*, are applicable.

#### REQUIREMENTS OF A VALID CONTRACT

A contract is valid, assuming all the essential elements are present (*see Art. 1318*) if it is not contrary to law, morals, good customs, public order, and public policy.

#### COMPLIANCE IN GOOD FAITH

It is the compliance or performance in accordance with the stipulations or terms of the contract or agreement.

#### PRE-CONTRACTUAL OBLIGATIONS

It refers to the damages that are suffered by a party during the period of negotiations, and may be recovered even if the contract is not finally perfected.

Should the offer be clear and definite, and leads the offeree in good faith to incur expenses in the expectation of entering into the contract, and the withdrawal of the offer is without legitimate cause, the liability of the offeror would be as follows:

1. Offeror is guilty of fault or negligence – liability would be based on quasi-delicts (*see Art. 2176, CC*);
2. Offeror is not guilty of fault or negligence but the withdrawal was based in abuse of right – the liability would be based on Art. 19, CC.

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#### ART. 1160

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

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#### QUASI-CONTRACTS

It is the juridical relation resulting from certain lawful, voluntary and unilateral acts. It is the juridical relation resulting from certain lawful, voluntary and unilateral acts by virtue of which the parties become bound to each other to the end that no one will be unjustly enriched or benefited at the expense of another. (*Art. 2142, CC*)

A unilateral contract created by the sole act/s of the gestor; no express consent given by the other party but is provided by law through presumption (*PINEDA, 14*). This consent is referred to as presumptive consent. It gives rise to multiple juridical relations which result in obligations for the delivery of the thing or rendition of service (*Perez v Pomar, GR No. 1299 [16/11/1903]*).

In other words, the law considers the parties as having entered into a contract, irrespective of their intention, to prevent injustice (*DE LEON, 19*).

#### PRESUMPTIVE CONSENT

In contract, there is a meeting of the minds or consent. In a quasi-contract, there is no consent but the same is supplied by fiction of law. It gives rise to multiple juridical relations which result in obligations for the delivery of the thing or rendition of service. The law considers the parties as having entered into a contract, irrespective of their intention, to prevent injustice.

#### KINDS OF QUASI-CONTRACTS

1. *Negotiorum Gestio (Officious Management)* – whoever voluntarily takes charge of the agency or management of the business or property of another, without any power

from the latter, is obliged to continue the same until the termination of the affair and its incidents, or to require the person concerned to substitute him, if the owner is in a position to do so (*Art. 2144*).

#### Cases NOT considered as *Negotiorum Gestio*

- a. Property or business is not neglected or abandoned (*Arts. 1317, 1403[1], 1404*)
- b. If the gestor has been tacitly or impliedly (from actions or statements) authorized by the owner (*Title X, Book IV*)
- c. The gestor had a vitiated consent or thought that he actually owned the property or business.

#### Requisites of *Negotiorum Gestio* [No – TANOVI]

- a. No meeting of minds;
- b. Taking charge of another's business or property;
- c. Property or business must have been abandoned or neglected;
- d. The officious manages (gestor) must not have been expressly or implicitly authorized;
- e. The officious manager (gestor) must have voluntarily taken charge and must have no vitiated consent.

#### Illustration:

Lot A and B, owned by X and Y respectively, are adjacent to each other. Sometime while X is out of the country, a massive storm hit the place where the lots are, and in order to protect the two lots from erosion, Y, without consent, constructed a concrete wall around the two lots fortified with magic spells and ancient incantations. In this case, X is obliged to reimburse to Y the expenses in constructing the magical concrete wall which protected his lot.

2. *Solutio Indebiti (Payment not due)* – if something is received when there is no right to demand it, and it was unduly delivered through mistake, the obligation to return it arises (*2154*).

#### Requisites of *Solutio Indebiti* [RUN]

- a. Receipt (not merely acknowledgement) of something;
- b. Undue delivery was because of mistake;

#### Illustration:

A, a tax-exempt cooperative store, paid taxes to the City of Manila, without knowing of its tax exemption. In this case, A may recover the payment of taxes for it was made under a mistake.

3. *Other Quasi-Contracts*

- a. 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 intention of being repaid (*Art. 2164, CC*);
- b. When funeral expenses are borne by a third person, without the knowledge of those relatives who were obliged to give support to the deceased, said relatives shall reimburse the third person, should the latter claim reimbursement (*Art. 2165, CC*);
- c. 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. The provisions of this article apply when the father or mother of a child under eighteen years of age unjustly refuses to support him (*Art. 2166, CC*);
- d. 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 condition to give consent to a contract, he shall be liable to pay for the services of the physician or other person aiding him, unless the service has been rendered out of pure generosity (*Art. 2167, CC*);
- e. 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. 2168, CC*);
- f. 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 (*Art. 2169, CC*);
  - g. 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 (*Art. 2170, CC*);
  - h. The right of every possessor in good faith to reimbursement for necessary and useful expenses if governed by Art. 546 (*Art. 2172, CC*);
  - i. When a third person, without the knowledge of the debtor, pays the debt, the rights of the former are governed by Arts. 1236-1237 (*Art. 2173, CC*);
  - j. 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 benefited by the project as executed shall be liable to pay his share of said expenses (*Art. 2174, CC*);
  - k. Any person who is constrained to pay the taxes of another shall be entitled to reimbursement from the latter (*Art. 2175, CC*);
  - l. Whoever finds a movable, which is not treasured, 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 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. 719, CC*);
  - m. If the owner should appear in time, he shall be obliged to pay, as a reward to the finder, 1/10 of the sum or of the price of the thing found (*Art. 720, CC*).

**NOTE:** The enumeration of quasi-contracts in the Civil Code is not exclusive (*Art. 2143, CC*).

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#### ART. 1161

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

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**NOTE:** Also known as *ex-delictu*, *ex-maleficio* or *culpa criminal*.

#### GENERAL RULE

Civil liability is a necessary consequence of criminal liability. Every person criminally liable for a felony is also civilly liable (*see Art. 100*). May be in the form of:

1. Restitution;
2. Reparation of damage caused;
3. Indemnification for consequential damages (*Art. 104, RPC*).

**REASON** A crime has dual aspect:

1. *Criminal Aspect* – affects the social order and punishes or corrects the offender;
2. *Civil Aspect* – affects private rights and repairs the damages suffered by the aggrieved party.

**NOTE:** Defendant shall be liable for all damages which are natural and probable consequences of the act or omission complained of (*see Art. 2202*).

#### EXCEPTION

*Without civil liability:* [TRIG]

1. Treason;
2. Rebellion;
3. Illegal possession of fire arms;
4. Gambling.

*Without Criminal liability:* [IPUI]

1. Imbecile or insane person (*unless acting in lucid intervals*);
2. Person below 18 years old;
3. Acting under the impulse of uncontrollable fear of an equal or greater injury;
4. Acting under compulsion of an irresistible force.

#### RESTITUTION (*Art. 105 [2], RPC*)

“The thing itself shall be restored, even though it be found in the possession of a third person who has acquired it by lawful means, saving to the latter his action against the proper person, who may be liable to him.”

#### REPARATION (*Art. 106, RPC*)

“The court shall determine the amount of damage, taking into consideration the price of the thing, whenever possible, and its special sentimental value to the injured party, and reparation shall be made accordingly.”

#### INDEMNIFICATION (*Art. 107, RPC*)

“Indemnification for consequential damages shall include not only those caused the injured party, but also those suffered by his family or by a third person by reason of the crime.”

**NOTE:** Obligation to make and to receive reparation, restoration and indemnification devolves upon the heirs of the person liable and heirs of person injured (*see Art. 108, RPC*).

**NOTE:** Civil liability for crimes is extinguished in the same manner provided in the Civil Code for the extinguishment of other obligations.

#### ENFORCEMENT OF CIVIL LIABILITY

- *Institution of Criminal and Civil actions:*  
Civil action for recovery of civil liability arising from the offense charged is impliedly instituted with the institution of the criminal action, unless the offended party:
  1. Waives the civil action;
  2. Reserves the right to institute it separately;
  3. Institutes the civil action prior to the criminal action.
- *Independent civil actions:*  
In cases provided in Arts. 31-33 and 2177 of the Civil Code, an independent civil action entirely separate and distinct from the criminal action, may be brought by the injured party during the pendency of the criminal case, provided that the right is reserved.
- *Rules in other civil actions arising from offenses:*
  1. Criminal and civil actions arising from the same offense may be instituted separately. However, civil action cannot be instituted after the commencement of the criminal action until final judgment has been rendered;
  2. If the civil action has been filed ahead of the criminal action, and the criminal action is subsequently commenced, the civil action shall be suspended in whatever stage before final judgment it may be found, until final judgment in criminal action has been rendered. However, if no final judgment has been rendered by the trial court in the civil action, the same may be consolidated with the criminal action upon application with the court trying the criminal action. If the application is granted, the evidence prevented and admitted in the civil action shall

be deemed automatically reproduced in the criminal action, without prejudice to the admission of additional evidence that any party may wish to present. In case of consolidation, both the criminal and the civil action shall be tried and decided jointly;

3. Extinction of the penal action does not carry with it extinction of the civil, unless the extinction proceeds from a declaration in a final judgment that the fact from which the civil might arise did not exist. In other cases, the person entitled to the civil action may institute it in the jurisdiction and in the manner provided by law against the person who may be liable for restitution of the thing and reparation or indemnity for the damage suffered;
4. Judgment in civil action not a bar to a criminal action;
5. A petition for suspension of the criminal action based upon the pendency of a prejudicial question in a civil action may be filed in the office of the fiscal (prosecutor) or the court conducting the preliminary investigation. When the criminal action has been filed in court for trial, the petition to suspend shall be filed in the same criminal action at any time before the prosecution rests.

**NOTE** Damages may be increased or lessened according to the aggravating or mitigating circumstances.

**EFFECTS OF ACQUITTAL**

- Because the guilt has not been proved beyond reasonable doubt – there is still civil liability;
- Because of exempting circumstances – there is still civil liability
- Because he did not commit the offense charge proceeding from a declaration in a final judgment – no civil liability;

**EXCEPTIONS WHERE CIVIL ACTION IS ENTIRE SEPARATE FROM CRIMINAL ACTION:**

1. The civil action is based on an obligation not arising from the act or omission complain of as a criminal offense or felony;
2. Where the law grants to the injured party the right to institute a civil action which is entirely separate and distinct from the criminal action.

**NOTE** The civil liability for crimes is extinguished by the same causes provided by the civil code for the extinguishment of other obligations. Such liability continues notwithstanding the fact that the offender has served his sentence or has not been required to serve the same by reason of amnesty pardon, commutation of sentence, or any other reason (TOLENTINO, 75).

**ART. 1162**

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

**QUASI-DELICTS (CULPA AQUILIANA)**

It is an act or omission by a person which causes damage to another in his person, property, or rights giving rise to an obligation to pay for the damage done, there being fault or negligence but there is no pre-existing contractual relation between the parties (see Art. 2176).

**NOTE:** Art. 2176, CC, where it refers to fault or negligence, covers not only acts not punished by law but also acts criminal in character, whether intentional or voluntary or negligent (*Elcano v Hill, GR No. L-24303 [26/05/1977]*).

**BASIS** Principle of equity, that the consequences of the fault or negligence of a person shall not be borne by him, who, without fault or negligence, becomes the victim.

**NOTE;** Includes not only injuries to person but also damage to property.

**REQUISITES OF QUASI-DELICT [AND - CR]**

1. Act or omission by the defendant;
2. Fault or negligence of the defendant;
3. Damage or injury cause to the plaintiff;
4. Connection or direct relationship between the act or omission and the damage or injury;
5. No pre-existing contractual relation between the parties.

CRIME (Delict)	QUASI-DELICT (Culpa Aquiliana)
<i>As to Existence of Criminal Intent</i>	
There is criminal or malicious intent or criminal negligence;	There is only negligence;
<i>As to Whom it is Committed</i>	
Affects public interest;	Concerns private interest;;
<i>As to Liability</i>	
There are two liabilities: criminal and civil;	There is only civil liability;
<i>As to Purpose</i>	
The purpose is punishment or correction;	The purpose is indemnification of the offended party;
<i>As to Compromise</i>	
Criminal liability cannot be compromised or settled by the parties themselves;	Can be compromised as any other civil liability;
<i>As to Proof Required</i>	
The guilt of the accused must be proved beyond reasonable doubt;	The fault or negligence of the defendant need only be proved by preponderance of evidence;
<i>As to Scope</i>	
Not as broad as quasi-delict; can be punished only when there is a penal law clearly penalizing it;	Actionable in any act or omission wherein fault or negligence intervenes;
<i>As to Form of Redress</i>	
Form of redress is either fine or imprisonment or both;	Either by compensation or indemnification;
<i>As to Employer's Liability</i>	
Employer's liability is subsidiary. The employee must have first been convicted and sentenced to pay civil indemnity and it must be shown that he is insolvent;	Employer's liability is primary; can be sued directly by the injured party and may recover from his employee;
<i>As to Employer's Engagement</i>	
Employer is liable only when he is engaged in some kind of business or industry.	All employers whether they are engaged in some enterprise or not are liable, this includes house helpers.

(DE LEON, 21)

**FAULT OR NEGLIGENCE**

It is the failure to observe that degree of care, precaution, and vigilance which the circumstances justly demand (*PNR v CA, GR No. 157658*).

It is 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 (see Art. 1173, CC).

**TEST OF NEGLIGENCE**

Would a prudent man, in the position of the person to whom negligence is attributed, foresee harm to the person injured as a reasonable consequence of the course about to be pursued? If so, the law imposes a duty upon him to refrain from that course or take

precautions, and failure to do so constitutes negligence (TOLENTINO, 85).

**ELEMENTS OF NEGLIGENCE (ADD)**

1. Fault or negligence resulting from act or omission, whether voluntary or not, and whether criminal or not;
2. Damages and injury suffered by another;
3. Direct causal relation between the fault or negligence and damage or injury.

**PROXIMATE CAUSE**

It is that adequate and efficient cause, which in the natural order of events, necessarily produces the damages or injury complained of.

**PROHIBITION AGAINST DOUBLE RECOVERY**

Although a single act or omission may give rise to two different causes of action, the plaintiff cannot recover damages twice for the same act or omission of the defendant (see Art. 2177).

The offended party has the option between an action for enforcement of civil liability based on *culpa criminal* (see Art. 100, RPC) and an action for recovery of damages based on *culpa aquiliana* (see Arts. 1161 and 2177). The offended party cannot recover damages twice for the same act or omission under both causes. However, failure to recover in the one will not necessarily preclude recovery in the other.

**DOCTRINE OF LAST CLEAR CHANCE**

A negligent plaintiff can nonetheless recover if he is able to show that the defendant had the last opportunity to avert the injury incurred by its client simply by faithfully observing its own validation procedure (PARAS, 109).

**DOCTRINE OF IMPUTED NEGLIGENCE**

Obligations arising from quasi-delict are demandable not only from the person directly responsible for the damage incurred, but also against the persons mentioned in Art. 2180. It provides that a person is not only liable for torts committed by himself, but also for torts committed by others with whom he has certain relationships and for whom he is responsible (*Tamargo v CA, GR No. 85044 [03/06/1992]*).

**RES IPSA LOQUITOR**

Literally means *the thing speaks for itself*. In certain instances, the presence of facts or circumstances surrounding the injury clearly indicate negligence on the part of the defendant, however this presumption is rebuttable (PARAS, 118).

**REQUISITES OF RES IPSA LOQUITOR (OCWA)**

1. Occurrence of an injury;
2. The cause of injury was under the control and management of the defendant;
3. The occurrence was such that in the ordinary course of things, would not have happened if those who had control or management used proper care;
4. The absence of explanation by the defendant (*Professional Services, Inc. v Agana, GR No. 126297 [31/01/2007]*).

**KINDS OF NEGLIGENCE**

1. *Culpa Aquiliana* - quasi-delict; negligence as a source of obligation;
2. *Culpa Contractual* - negligence in the performance of a contract;
3. *Culpa criminal* - criminal negligence

As to Pre-existing Obligation		
No pre-existing obligation;	There is a pre-existing obligation which is either express or implied;	No pre-existing obligation;
As to the Weight of Evidence		
Victim has to prove the negligence of the defendant for it is based on alleged negligence on the part of the defendant;	Presumed that debtor is at fault as long as there was a contract and that it was not carried out. It is the duty of the debtor to prove otherwise;	Accused is presumed innocent until proven guilty. Prosecutor has the burden of proving negligence;
As to How it is Proved		
Preponderance of evidence;	Preponderance of evidence;	Proof of guilt beyond reasonable doubt;
As to the Applicability of the Defense of a Good Father of a Family		
The defense of a good father of a family is a proper and complete defense.	Not a proper and complete defense but may mitigate the damages.  REASON: Master and Servant Rule or <i>Respondeat Superior</i> .	Not a proper defense. The employee's guilt is automatically the employer's civil guilt if the former is insolvent.

(PARAS, 1177-1178)

CULPA AQUILIANA	CULPA CONTRACTUAL	CULPA CRIMINAL
As to Negligence		
Negligence is substantive and independent;	Negligence is merely incidental to the performance of an obligation already existing because of a contract.	Negligence is direct, substantive and independent of a contract;

## CHAPTER 2

### NATURE AND EFFECT OF OBLIGATIONS

#### 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 it arises. However, he shall acquire no real right over it until the same has been delivered to him.

#### 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 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 fortuitous event until he has effected the delivery.

#### ART. 1166

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

#### KINDS OF RIGHTS

1. *Personal Right* – a right pertaining to a person to demand from another, as a definite passive subject, the fulfillment of a prestation to give, to do or not to do. *Jus ad rem*, a right enforceable only against a definite person or group or persons.
2. *Real Right* – right pertaining to a person over a specific thing, without a passive subject individually determined against whom such right may be personally enforced. *Jus in re*, a right enforceable against the whole world.

**NOTE** The Art. 1163 refers to a real obligation of a specific or determinate thing.

#### KINDS OF REAL OBLIGATION

1. *Specific or Determinate Thing*  
Individualized and can be identified or distinguished from other of its kind. Debtor cannot substitute it with another although the latter is of the same kind and quality without the consent of the creditor.
2. *Generic or Indeterminate Thing*  
Indicated by its own kind, without being designated and distinguished from others of the same kind. Becomes determinate once delivered. The debtor can give anything as long as it is of the same kind.
3. *Limited Generic Thing*  
When the generic objects are confined to a particular class (e.g., an obligation to deliver one of my horses).

#### WHEN OBLIGATION TO DELIVER ARISES

- *For Contracts* – arises from the moment of perfection.  
Exceptions:

- Subject to a suspensive condition, it arises from the happening of the condition;
- Subject to a suspensive term or period, it arises upon the lapse of the term;
- If there is a contrary stipulation of the parties with respect to the time when the thing or fruits shall be delivered.

- *For Law, Quasi-delict, Quasi-contract or Crime* – the specific provisions of applicable law shall determine when the delivery shall be effected.

#### Illustration:

If A and B enter into a written agreement whereby the former promises to deliver a parcel of land to the latter for a price of P100,000, the obligations arise only from the moment of the perfection of the contract. As far as B is concerned, although he is entitled to all of the fruits of the land from the moment of the perfection of the contract, at most, he has only a personal right to compel A to deliver the land and such fruits in case he, himself, is also ready to comply with what is incumbent upon him.<sup>11</sup> In other words, he does not acquire a real right or right of ownership over the land and over the fruits thereof, until the same have been delivered to him.

#### DUTIES OF DEBTOR IN DETERMINATE THINGS [D-PAFA]

1. Deliver the thing itself;
2. Preserve the thing with due care;
3. Deliver the accessions and accessories;
4. Deliver the fruits;
5. Answer damages in case of non-fulfillment or breach.

#### 1.) DELIVER THE THING ITSELF

##### GENERAL RULE

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 which is due." (Art. 1244)

##### EXCEPTIONS [EAW]

1. Facultative obligations;
2. In case there is another agreement resulting in either:
  - a. Dation in payment (see Art. 1245);
  - b. Novation (Art. 1291).
3. In case of waiver by the creditor.

**NOTE** Contract of sale is perfected by the meeting of minds; ownership of the thing sold is not transferred to the vendee until actual or constructive delivery is made (see Art. 1477). *Non nudis pactis, sed traditione dominia dominica rerum transferuntur*, not mere agreement but delivery transfers ownership.

#### 2.) PRESERVE THE THING WITH DUE CARE

Expressly provided in Art. 1163 which states "take care of the thing with the proper diligence of a good father of a family".

##### DILIGENCE

That which is "required by the nature of the obligation and corresponds with the circumstances of the persons, of the time and of the place." (see Art. 1173)

It is the attention and care required of a person in a given situation and is the opposite of negligence.

##### GENERAL RULE

"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..." (see Art. 1163).

##### EXCEPTION

1. The law or the stipulation of the parties requires another standard of care (see Art. 1163).
2. Common carriers – by reason of public policy, common carriers are bound to observe utmost or extraordinary diligence in the vigilance over the goods and for the safety of the passengers transported (see Art. 1733)
3. Banks – the degree of diligence required is more than of a good father of a family but rather to treat the deposit

accounts of their depositors with the highest degree of care (*Reyes v CA, GR No. 118492*).

**BASIS** Absence of diligence would render the delivery of the obligation illusory. Failure to preserve the specific thing would give rise to liability for damages, unless due to a fortuitous event or *force majeure*.

**NOTE** If the law is silent on the degree of diligence that should be observed, that which is expected of a good father of a family shall be required (*see Art. 1173 par. 2*).

**NOTE** The parties can stipulate a different degree of diligence but not to the absolute exemption from liability due to negligence. This is a void contract for it is contrary to public policy (*Heacock v Macondray, 32 Phil. 205 [1915]*). Nevertheless, it is lawful for the parties to agree upon the diligence more than that of a good father of a family and even for liability for any fortuitous event, or for less than the diligence of a good father of a family (*see Art. 1306*).

#### KINDS OF DILIGENCE

1. Simple diligence;
2. Extraordinary or utmost diligence;
3. Diligence of a good father of a family – *bonus pater familia*; measure of prudence or activity as is properly to be expected from, and ordinarily exercised by a reasonable and prudent man under particular circumstances.

### 3.) DELIVER THE ACCESSIONS AND ACCESSORIES

#### GENERAL RULE

Obligation to give a determinate thing includes that of delivering all its accessions and accessories, even though they may not have been mentioned (*Art. 1166*).

#### EXCEPTION

By contrary intention of the parties.

#### RIGHT TO ACCESSION

Right corollary to ownership of property which gives the owner the right to everything produced by the property or which is incorporated or attached thereto, either naturally or artificially (*see 440*)

#### ACCESSIONS

It signifies all of those things which are produced by the thing which is the object of the obligation as well as all of those which are naturally or artificially attached thereto.

#### KINDS OF ACCESSIONS (*see Arts. 441-475*)

1. *Accesión discreta* (*see Arts. 442-444*);
  - a. *Natural* – spontaneous products of the soil, and the young and other products of animal;
  - b. *Industrial* – produced by lands of any kind through cultivation or labor;
  - c. *Civil* – rents of buildings, the price of leases of lands and other property and the amount of perpetual or life annuities or other similar income.
2. *Accesión industrial* – building, planting and sowing (*see Arts. 445-456*);
3. *Accesión natural* – alluvion, avulsion, abandoned river beds, and islands formed in non-navigable or non-floatable rivers (*see Arts. 457-465*);
4. *Accesión with respect to movable property* – adjunction or conjunction, confusion or commixtion, and specification (*see Arts. 466-475*).

#### ACCESSORIES

It signifies all those things which have for their object the embellishment, use or preservation of another thing which is more important and to which they are not incorporated or attached. Includes all those things which are necessary or convenient for the perfection of another thing.

### 4.) DELIVERY OF THE FRUITS

#### GENERAL RULE

The creditor has a right to the fruits of the thing from the time the obligation to deliver it arises. However, there is no real right until the *sae* has been delivered to him (*Art. 1164*).

#### EXCEPTION

Obligations arising from contracts, a stipulation as regards the fruits shall govern (*see Art. 1306*)

**NOTE:** For while a contract of sale is perfect by the meeting of minds upon the thing which is the object of the contract and upon the price, the ownership of the thing sold is not transferred to the vendee until actual or constructive delivery of the property. Hence the maxim, *non nudis pactis, sed traditione dominia dominica rerum transferuntur*, not mere agreement but delivery transfers ownership (*Heirs of Seraspi v CA, GR No. 135602 [28/04/00]*).

#### WHEN OBLIGATION TO DELIVER ARISES

- *For Contracts* – arises from the moment of perfection (*see Art. 1537, CC*). Exceptions:
  - Subject to a suspensive condition, it arises from the happening of the condition (*see Art. 1187*);
  - Subject to a suspensive term or period, it arises upon the lapse of the term;
  - If there is a contrary stipulation of the parties with respect to the time when the thing or fruits shall be delivered.
- *For Law, Quasi-delict, Quasi-contract or Crime* – the specific provisions of applicable law shall determine when the delivery shall be effected.

#### KINDS OF DELIVERY

1. *Actual (tradition)* – where physically, the property changes hands;
2. *Constructive* – that where the physical transfer is implied.
  - a. *Traditio simbolica* – as when the keys of a house are given;
  - b. *Traditio longa manu* – delivery by mere consent or of the pointing out of the object;
  - c. *Traditio brevis manu* – whereby a possessor of a thing not as an owner becomes the possessor as owner;
  - d. *Traditio constitutum possessorium* – the opposite of *brevis manu*; thus, the delivery whereby a possessor of a thing as an owner, retains possession no longer as an owner, but in some other capacity;
  - e. *Tradition by the execution of legal forms and solemnities*

#### PRINCIPAL OF BALANCING OF EQUITIES AS APPLIED IN ACTIONS FOR SPECIFIC PERFORMANCE

In specific performance equity requires that the contract be just and equitable in its provisions, and that the consequences of specific performance likewise be equitable and just. The general rule is that this equitable relief will not be granted if the result of the specific performance of the contract would be harsh, inequitable oppressive or result in an unconscionable advantage to the plaintiff (*Agcaoil v GSIS, GR No. 30056 [30/08/88]*).

#### KINDS OF FRUITS

1. *Natural* – spontaneous products of the soil, and the young and other products of animal;
2. *Industrial* – produced by lands of any kind through cultivation or labor;
3. *Civil* – rents of buildings, the price of leases of lands and other property and the amount of perpetual or life annuities or other similar income.

### 5.) TO ANSWER FOR DAMAGES IN CASE OF NON-FULFILLMENT OR BREACH OF THE OBLIGATION (*see Art. 1170*)

Liability either arises from delay, fraud, negligence or contravention of the tenor of obligation (*will be discussed in re: Arts. 1169-1173*). However, this liability does not arise if the breach is due to a fortuitous event (*will be discussed in Art. 1174*). Such liability extends only to breach which is voluntary in character, and not to one which is involuntary.

**NOTE** The third paragraph of Art. 1165 provides that 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 had effected the delivery. This rule only applies to obligations to give a determinate thing.

#### **CORRELATIVE RIGHTS OF THE OBLIGEE**

1. Right to specific performance (*Art. 1165, CC*);
2. Right to rescission of resolution;
3. Right to damages due to the following:
  - a. Fraud;
  - b. Negligence in the performance of the obligation;
  - c. Delay or default;
  - d. Any manner in contravention of the tenor of the obligation (*Art. 1170, CC*).
4. Right to the fruits and interest from the time the obligation to deliver arises (*Art. 1164, CC*);

#### **GENERAL RULE**

If the damages are due to fortuitous event, the obligor is not liable for failure to deliver (*Art. 1174*).

#### **EXCEPTIONS**

1. Law (*Id.*);
2. Stipulation to the contrary (*Id.*);
3. Nature of the obligation requires assumption of risk (*Id.*);
4. Fraud or malice (bad faith) such as when the obligor has promised to deliver the same thing to two or more persons who do not have the same interest (*Art. 1165, 3, CC*);
5. Debtor was already in delay when the fortuitous event took place (*Id.*);
6. When the object of the obligation is lost and the loss is party the fault of the debtor (*Art. 1262, CC*);
7. Obligation arises from a criminal offense (*Art. 1263, CC*);
8. When the obligation is generic (*Id.*);
9. When the obligation to deliver arises from a criminal offense (*Art. 1268, CC*);

#### **DUTIES OF DEBTOR IN GENERIC OBLIGATIONS**

1. *To deliver a thing which is neither of superior nor inferior quality (see Art. 1246) - Consequently, the creditor cannot demand a thing of superior quality, neither can the debtor deliver a thing of inferior quality. In determination of the quality of the thing which is to be delivered, the purpose of the obligation and other circumstances shall have to be taken into consideration.*
2. *To be liable for damages in case of breach of the obligation by reason of delay, fraud, negligence or contravention of the tenor thereof (see Art. 1170) - also includes obligation to reimburse all expenses incurred by the creditor in those cases where the latter avails himself of the right to ask a third person to perform the obligation at the expense of the debtor (see Art. 1165, par. 2).*

**NOTE** The provisions of Art. 1174 is not applicable to this type of obligation because *genus nunquam perit* (the genus of a thing can never perish).

#### *Illustration:*

*If a certain person promised to deliver 5,700 cavans of rice to another within a stipulated period, but due to the Super Typhoon Maverick which struck the nation with massive intensity, he was unable to comply fully with the terms of the contract, he can still be held liable.*

#### *Illustration:*

*A bound himself to deliver to B a 21-inch 1983 model TV set, and the 13 cubic feet White Westinghouse refrigerator, with Motor No. MAV-0501, which B saw in A's store, and to repair B's piano. A did none of these things.*

*B cannot compel A to deliver the 21-inch 1983 model TV set. The obligation is a generic obligation because the object is designated merely by its class or genus without any particular designation or physical segregation from others of the same class. An action for specific performance is, therefore, legally and physically impossible. Consequently, the remedy of B is to ask for the delivery of a 21inch 1983 model TV set which must be neither of superior nor inferior quality (see Art. 1246). As a matter of fact, he can even ask that the obligation be complied with at the expense of A. Additionally, he can ask for damages (see Art. 1165).*

*In the case of the refrigerator, the court may compel A to comply with the obligation specifically. The obligation is determinate. If the debtor or obligor refuses or is unable to comply with his obligation, assuming that the obligation is a determinate obligation to give, the remedy of the creditor or obligee is to bring an action against the debtor or obligor for specific performance (see Art. 1165). Additionally, he can recover damages (see Art. 1170).*

*The court cannot compel A to repair the piano. The obligation of A is an obligation to do. It falls within what commentators call a personal act, of which courts may not compel compliance as it is an act of violence to do so. The remedy, therefore, of B is to have the obligation executed at the expense of A (see Art. 1167). Additionally, he can recover damages from A (see Art. 1170).*

#### **RIGHTS OF CREDITOR IN DETERMINATE THING**

1. *To compel specific performance (see Art 1165). - if the debtor does not comply with his obligation at the time when the obligation to deliver arises or if the former insists on delivering a different one, the remedy of the creditor is to file an action against the debtor to compel specific performance.*
2. *To recover damages for breach of the obligation (see Art. 1170).*

#### **RIGHTS OF CREDITOR IN GENERIC THING**

1. *To ask for performance of the obligation - the thing to be delivered should belong to the class or genus stipulated which must be neither superior nor inferior quality (see Art. 1246).*
2. *To ask that the obligation be complied with at the expense of the debtor - if the debtor refuses or is unable to comply with his obligation, the creditor can ask that the obligation be complied with at the expense of the debtor (see Art. 1165).*

#### *Illustration:*

*If the debtor bound himself to make a cake in the shape of a "Titik O" to the creditor to be finished on or before 31 Dec 2018, and upon the arrival of the stipulated date he was unable to comply with the obligation after demand was made, the creditor can then ask a third person to make the cake and all expenses incurred shall be charged against the debtor.*

3. *To recover damages for breach of the obligation due to:*
  - a. Failure to deliver;
  - b. Fraud;
  - c. Negligence;
  - d. Delay;
  - e. Any matter in contravention of the tenor of the obligation (*Art 1170*).
4. *Right to ask for rescission.*

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#### **ART. 1167**

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

**The 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.**

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## GENERAL RULE

In obligation to do or not to do, an act or forbearance cannot be substituted by another act or forbearance against the obligee's will (Art. 1244, 2, CC).

## EXCEPTION

In facultative obligations, where the debtor reserves the right to substitute another prestation (Art. 1206, CC).

**NOTE:** If a person is obliged to do something and fails to do it, the same shall be executed at his cost. The same rule may be observed if he does it in contravention of the tenor of the obligation. Furthermore, it may be decreed that what has been poorly done be undone (Art. 1167, CC).

## DUTIES OF THE OBLIGOR

1. To do it (Art. 1167, CC);
2. To shoulder the cost if someone else does it (*Id.*);
3. To undo what has been poorly done (*Id.*);
4. To pay damages (Arts. 1170-1172, 2201-2202, CC).

## EFFECTS OF BREACH

Unlike obligations to give, in obligations to do the obligee does not possess the power to compel the obligor to comply with obligation for it would be considered an act of violence to do so. The remedy to the obligee is:

1. To have the obligation performed or executed at the expense of the obligor, a remedy, which, although irregular, is most analogous to fulfillment;
2. To recover damages.

### Illustration:

If A has an obligation to construct a house for B for P100M and he fails or refuses to construct it within the period specified in the contract, B has a right to ask another contractor to perform the undertaking even for a higher price. In such case, B can recover the difference from A.

**NOTE** The right of the obligee or creditor to have the prestation executed at the expense of the obligor cannot be availed of when such prestation consists of an act where the personal and special qualification of the obligor is the principal motive for the establishment of the obligation, *e.g.*, the talent and prestige of an artist. In such case, there is no other remedy of the obligee except to proceed against the obligor for damages under Art. 1170.

## EFFECTS OF IRREGULAR PERFORMANCE

If there has been a performance of obligation, but in contravention of the tenor thereof, the creditor has the right to:

1. Have the obligation performed or executed at the expense of the obligor (Art. 1167, par. 1);
2. Ask that what has been poorly done be undone (Art. 1167, par. 2);
3. Recover damages because of breach of the obligation (Art. 1170).

### Illustration:

A, lot owner, contracted with B, builder, to build a multi-storey building designed by C. A accepted the work and occupied the building, but within one year, it collapsed in an earthquake that destroyed only the building and not the surrounding buildings. Construction was faulty. The building cost P3,000,000.00, but reconstruction cost would reach P10,000,000.00.

A can hold B and C solidarily liable for damages. A contractor is liable for damages if within 15 years from the completion of the edifice or structure, the same should collapse on account of defects in the construction (see Art. 1723). If the engineer or architect who drew up the plans and specifications of the building supervises the construction, he shall be solidarily liable with the contractor. Acceptance of the building, after completion, does not imply waiver of the cause of action. However, the action must be brought within ten years following the collapse of the building.

A can demand reconstruction of the building. The obligation of both B and C is an obligation to do. Consequently, Art. 1167 of the Civil Code is applicable. According to this article, if a person obliged to do something does

it in contravention of the tenor of the obligation, the same shall be executed at his cost. It is obvious that B and C performed their jobs in contravention of the tenor of the obligation. As a matter of fact, had the building not collapsed, under the same article, it may even be decreed that what has been poorly done be undone. Consequently, A can now demand for the reconstruction of the building by B and C or by another at their cost.

**NOTE:** Unlike obligations to give, the obligee in obligations to do does not possess the power to compel the obligor to comply with his obligation. The law recognizes the individual's freedom and liberty to choose between doing that which he has promised to do and not doing it (JURADO, 52).

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## 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.**

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**NOTE** The very obligation is fulfilled in not doing what is forbidden. Hence, in this kind of obligation the debtor cannot be guilty of delay.

**NOTE** In obligation to do or not to do, an act or forbearance cannot be substituted by another act or forbearance against the obligee's will (see Art. 1244, par. 2)

**NOTE** The performance cannot be delegated or be performance by an agent.

**NOTE** No legal accessory obligations arise as compared to obligation to give.

## DUTIES OF THE OBLIGOR

1. Not to do what should not be done (Art. 1168, CC);
2. To shoulder the cost to undo what should not have been done (*Id.*);
3. To pay damages (Art. 1170, CC).

## REMEDIES OF CREDITOR

1. Have it undone at the expense of the debtor;
2. To ask for damages, where it would be impossible to undo what was done, either physically or legally, or because of the rights acquired by a third person who acted in good faith, or for some other reason.

### Illustration:

A sold a land in Batangas to B. It was stipulated that A would not construct a fence on a certain portion of his land adjoining that sold to B. Should A construct a fence in violation of the agreement, B can have the fence removed at the expense of A. However, if the fence constructed was fortified using some magic spells taught to A by Harry Potter himself, B can ask for damages.

**NOTE:** In negative obligations, delay or *mora* is not possible unlike in positive obligations (JURADO, 55).

## CASES WHERE THE REMEDY GRANTED UNDER ART. 1168 IS NOT AVAILABLE

In either case, the only feasible remedy is indemnification for damages.

1. Where the effects of the act which is forbidden are definite in character;

### Illustration:

A, a TV star of company ABS-ZVM, was absolutely prohibited by his contract to ABS-ZVM to appear in any programs of JMA. The effects of breach thereof can no longer be undone.

2. Where it is physically or legally impossible to undo what has been done because of the very nature of the act itself or

a provision of law, because of conflicting rights of third person.

**NOTE:** Specific performance is not a remedy in personal obligations. Otherwise, this may amount to involuntary servitude which is prohibited by the Constitution.

RIGHTS OF A CREDITOR IN POSITIVE PERSONAL OBLIGATIONS	RIGHTS OF A CREDITOR IN NEGATIVE PERSONAL OBLIGATIONS
1) Have the obligation performed or executed at the expense of the obligor, except when the prestation consists of an act where the personal or special qualification of the obligor is the principal motive for the establishment of the obligation. In such case the remedy is an action for damages;	1) Have it undone at the expense of the debtor;
2) Ask that what has been poorly done be undone;	2) To ask for damages, where it would be physically or legally impossible to undo what has been undone, because of: <ol style="list-style-type: none"> <li>The very nature of the act itself;</li> <li>Rights acquired by third persons who acted in good faith;</li> <li>When the effects of the acts prohibited are definite in character and will not cease even if the thing prohibited be undone.</li> </ol>
3) Recover damages because of breach of the obligation.	

**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:

- When the obligation or the law expressly so declares;
- 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;
- 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. 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. 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 may be regulated by the courts, according to the circumstances.

**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.

**If the law or contract does not state the diligence which is to be observed in the performance, that which is expected of a good father of a family shall be required.**

**BREACH OF CONTRACT**

The failure without justifiable excuse to comply with the terms of a contract. The breach may be wilful or done unintentionally.

It is the failure, without legal excuse, to perform any promise which forms the whole or part of the contract (*Nakpil v Manila Towers Dev. Corp.* GR No. 160867 and 160886 [20/09/06]).

**KINDS OF BREACH**

- Voluntary* – arises either by fraud, negligence, delay, and in any manner contravene the tenor of the obligation (*Art. 1170*);
- Involuntary* – arises due to fortuitous events;
- Substantial* – amounts to non-performance which is the basis for rescission and payment of damages;
- Casual* – a part of the obligation has been performed and gives rise to liability for damages.

**NOTE:** Rescission will not be permitted for a slight or casual breach, but only such breaches as are substantial and fundamental as to defeat the object of the parties in making the agreement. (*Song Fo & Co. v Hawaiian-Philippine Co.*, GR No. 23769).

**DIFFERENT MODES OF VOLUNTARY BREACH**

- Delay or Default (*Mora*);
- Fraud (*Dolo*);
- Negligence (*Culpa*);
- Contravention of Tenor.

**1.) DELAY, DEFAULT OR MORA (Art. 1169)**

It refers to the non-fulfillment of obligation with respect to time (*JURADO, 57*).

Those obliged to give or to do something incur in delay from the time the obligation judicially or extrajudicially demands from them the fulfillment of their obligations (*Art. 1169, par. 1*).

**NOTE** Delay in performance of the obligation must be either malicious or negligent. If delay is only due to inadvertence without any malice or negligence, the obligor cannot be liable (*RCBC v CA, GR No. 133107 [25/03/99]*).

**GENERAL RULE**

Without judicial or extrajudicial demand, the effect of default will not arise (*TOLENTINO, 102*).

**EXCEPTIONS (When demand is not necessary)**

- When the obligation or the law expressly so declares;

**NOTE:** The mere fixing of the period is not enough; there must be a provision that if payment is not made when due, default or liability for damages or interest automatically arise.

*Illustration:*

*A borrowed P5M from B on 1 Jan 2019. He executed a promissory note promising to pay the indebtedness on 1 Jan 2021. Upon the arrival of the designated date for payment, is it necessary that B shall make a demand upon A for payment in order that the latter shall incur in delay?*

*Evidently, such a demand is necessary. In order that the exception stated in No. 1 of the second paragraph of Art. 1169 shall apply, it is indispensable that the obligation itself must expressly declare that "demand is not necessary in order that A shall incur in delay" or that "A shall incur in delay if he does not pay the obligation upon the arrival of the designated date for payment".*

2. When the law so provides – the law itself must expressly declare that the demand is not necessary in order that the debtor shall incur in delay (*JUADO*, 59);
3. When it appears that the designation of time when the thing is to be delivered or the service to be rendered was a controlling motive for the establishment of the contract;

*Illustration:*

The contract of sale entered into between A and B there is a stipulation that the machinery which is the object of the sale was already on the way from the Cagayan to Manila, but it was actually shipped several days after the execution of the contract and, as a consequence, A was unable to deliver it within a reasonably short time to the B, it was held that the plaintiff has already incurred in delay since, undoubtedly, the representation that such machinery was already on the way was one of the determining elements of the contract. Consequently, the subsequent refusal of the B to accept the delivery is justified.

4. When demand would be useless (*Art. 1169, CC*):
  - a. Caused by some act or fault of the debtor;
  - b. Impossibility cause by fortuitous event.

*Illustration:*

If A has promised to deliver his automobile to B on 1 Jan 2019, but a few days before such date, the automobile was completely destroyed through his fault, and the fact of its destruction was known to B, demand by the latter would be useless

5. When the obligor has expressly acknowledged that he really is in default, but it should be noted that his mere asking for extension of time is not an express acknowledgement of the existence of default of his part (*PARAS*, 124).

**JUDICIAL DEMAND**

If the creditor files a complaint against the debtor for the fulfillment of the obligation.

**EXTRAJUDICIAL DEMAND**

If the creditor demands from the debtor the fulfillment of the obligation either orally or in writing.

**PURPOSE OF DEMAND**

For the presumption of good faith.

**REASON** One can never be late in not giving or doing something (*DE LEON*, 42).

*Illustration:*

On 1 Jan 2014, A borrowed P10,000 from B evidenced by a promissory note whereby he undertook to pay the indebtedness on 1 Jan 2016. On 1 June 2017, B brought an action against A for the payment of the obligation as well as legal interest from the date of maturity by way of damages. There is no evidence that any demand for payment was ever made prior to the presentation of the complaint. From what time shall the legal interest be computed – shall it be computed from 1 Jan 2016, when the obligation became due and demandable, or from 1 June 2017, when the complaint was filed? According to the decided cases, the interest shall be computed from 1 June 2017, when the complaint was filed, because it was only then that the debtor had incurred in delay.

**CESSATION OF THE EFFECTS OF DELAY (MORA)**

The benefits arising from default or delay may cease upon

1. Renunciation by the creditor;
2. Prescription.

**GRACE PERIOD**

A grace period is whereby the buyer was given an additional period within which to complete payment of the purchase price as a matter of equity and justice (*Taguba v Vda. de De Leon*, 132 SCRA 722

[1984]). It is not an obligation of the debtor, but a right (*Bricktown Dev. Corp. v Amore Tierra Dev. Corp.*, GR No. 112182 [12/12/94]).

**KINDS OF DELAY**

1. *Mora Solvendi*
2. *Mora Accipiendi*
3. *Compensatio Morae*

**A.) MORA SOLVENDI**

It is the delay on the part of the debtor to perform;

1. *Mora solvendi ex re* – obligation to give;
2. *Mora solvendi ex persona* – obligation to do.

**REQUISITES**

1. Obligation is demandable and already liquidated;
2. Debtor delays performance;
3. Creditor requires performance, judicially or extra-judicially (*Aerospace Chemical Industries, Inc. v CA*, 315 SCRA 94 [date]).

**NOTE:** A mere reminder cannot be considered a demand for performance, because it must appear that the tolerance or benevolence of the creditor must have ended. Commencement of a suit is sufficient demand (*TOLENTINO*, 102).

**WHEN DEMAND IS MADE**

If extra-judicial, date of demand and if judicial, date of filing of complaint (*Id.*, 103). Commencement of a suit is sufficient demand (*Palmares v CA*, GR No. 126490 [31/03/98]).

**NOTE:** There is no *mora solvendi* in negative obligations – one cannot be late in not doing or giving something (*PARAS*, 125). Moreover, there is no *mora solvendi* in natural obligations (*Id.*).

**EFFECTS OF MORAL SOLVENDI**

1. Debtor is guilty of breach (*Art. 1170, CC*);
2. Liable for interest in case of obligations to pay money (*Art. 2209, CC*) or to pay for damages (*Art. 1170, CC*);
3. Liable even for a fortuitous event when the obligation is to deliver a determinate thing (*Art. 1165, par. 3*). **HOWEVER:** when the debtor proved that the loss would have resulted just the same even if he had not been in default, the court may equitably mitigate the damage (*PINEDA*, 47).

**DELAY FOR GENERIC THINGS**

For generic things, debtor may still be compelled to deliver a thing of the same kind (*Art. 1163, CC*), or be held liable for damages (*Lee v De Guzman, Jr.*, GR No. 90926 [06/06/90]).

**B.) MORA ACCIPIENDI**

The delay on the part of the creditor to accept the performance of the obligation (*DE LEON*, 42).

**NOTE:** Read in relation to Arts. 1252-1261, CC (Tender of Payment and Consignation).

**REQUISITES**

1. Offer of performance by the debtor who has the required capacity;
2. Offer must be to comply with the prestation, as it should be performed;
3. Creditor refuses the performance without just cause (*TOLENTINO*, 108).

**NOTE:** If an obligation arises *ex delicto*, the debtor-criminal is responsible for loss, even though this be through a fortuitous event, unless the creditor is in *mora accipiendi* (*PARAS*, 126; see also *Art. 1268, CC*).

**Q:** What should the debtor do if the creditor refuses without just cause to accept the performance of the obligation?

**A:** 1.) Consign it to court, expenses chargeable to creditor (*Arts. 1252-1261*);

- 2.) Keep it himself, here he should still exercise diligence and care, but this time, he would not be liable for loss due to a fortuitous event.

**EFFECTS OF MORA ACCIPIENDI**

1. The creditor is guilty of breach of obligation;
2. Responsibility of the debtor for the thing is reduced and limited to fraud and gross negligence;
3. Debtor is exempted from the risks of loss of the thing, which automatically passes to the creditor (Art. 1162);
4. All expenses incurred by the debtor for the preservation of the thing after the delay shall be chargeable to the creditor;
5. The creditor becomes liable for damages;
6. The debtor may relieve himself of the obligation by consignation of the thing or sum due;
7. If the obligation bears interest, the debtor does not have to pay from the moment of the creditor's delay (TOLENTINO, 108).

**C.) COMPENSATIO MORAE**

Delay of the parties in a reciprocal obligation. In reciprocal obligations, neither party incurs 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 fulfils his obligations, delay by the other begins (Art. 1169, 3, CC).

**RECIPROCAL OBLIGATIONS**

Those which are created or established at the same time, out of the same cause, and which result in mutual relationships of creditor and debtor between the parties.

Fulfillment of an obligation by one party depends upon the fulfillment of the obligation by the other.

*Illustration:*

*In a contract of sale of a specific kalesa for P90,000, the vendor is obliged to deliver the kalesa to the vendee, while the vendee is obliged to pay the price of P90,000 to the vendor. It is clear that the vendor will not deliver the kalesa to the vendee unless the latter will pay the price, while the vendee will not pay the price to the vendor unless the latter will deliver the kalesa.*

**GENERAL RULE**

Parties in a bilateral contract can regulate the order in which they shall comply with their reciprocal prestations. Otherwise, the fulfillment must be simultaneous and reciprocal (TOLENTINO, 109).

**EXCEPTION**

Contrary stipulation.

**EFFECTS OF COMPENSATIO MORAE**

1. Delay of the obligor cancels delay of the obligee and vice versa;
2. No actionable default on the part of both parties;
3. If delay of one party is followed by that of the other, the liability of the first infractor shall be equitably balanced by courts. If it cannot be determined which of the parties is guilty of delay, the contract shall be deemed extinguished and each shall bear his own damages (Art. 1192, CC).

**2.) FRAUD OR DOLO**

It is the deliberate or intentional evasion of the normal fulfillment of an obligation.

The voluntary execution of a wrongful act, or a wilful omission, knowing and intending the effects which naturally and necessarily arise from such act or omission.

Implies some kind of malice or dishonesty and cannot cover cases of mistake and error in judgment made in good faith. In such case obligor can be held liable for damages (Solid Bank Corp. v Mindanao Ferroalloy Corp., GR No. 153535 [28/07/05]).

When, through insidious words or machinations of one of the contracting parties, the other is induced to enter into a contract which, without them he would not have agreed to (Art. 1338, CC).

**TEST:** The element of intent and not the harm done.

**EFFECT** Liability for damages (Art. 1170, CC).

**WAIVER OF FRAUD**

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

**NOTE:** The law prohibits the renunciation of action for damages on the ground of future fraud but it does not prohibit fraud already committed (PARAS, 138).

**KINDS OF FRAUD**

1. Criminal fraud;
2. Civil fraud.
  - a. In the performance of obligation (Arts. 1170-1171);
  - b. In the constitution or establishment of an obligation (Arts. 1338-1344).
    - i. *Dolo causante* or causal fraud;
    - ii. *Dolo incidente* or incidental fraud (Geraldez v CA, GR No. 108253 [23/02/94]).

Fraud in the PERFORMANCE of an obligation	Fraud in the CONSTITUTION of an obligation
Present only during the performance of a pre-existing obligation;	Present only at the time of the birth of the obligation;
Employed for the purpose of evading the normal fulfillment of an obligation;	Employed for the purpose of securing the consent of the other party to enter into contract;
Results in the non-fulfillment or breach of obligation;	It is the reason for the other party upon whom it is employed for entering into the contract, results in the vitiation of his consent;
Gives rise to a right of the creditor or obligee to recover damages from the debtor or obligor.	Gives rise to a right of the innocent party to ask or the annulment of the contract if the fraud is causal or to recover damages if it is incidental.

*Illustration:*

*If A engages to tow a boat belonging to B from Claveria, Cagayan to Basco, Batanes, using a steamer for that purpose, and on the way the boat is cast adrift and lost, Art. 1170, in relation to Art. 1171, is applicable. B can hold A liable for damages.*

*On the other hand, if a certain applicant for an insurance substitutes another person for himself during the medical examination, it is evident that there has been causal fraud or dolo causante in securing the consent of the insurance company which will entitle the latter to ask for annulment of the contract.*

DOLO CAUSANTE	DOLO INCIDENTE
Referred to in Art. 1338, CC;	Referred to in Art. 1344, CC;
Those deceptions or misrepresentations of a serious character employed by one party and without which the other party would not have entered into contract;	Those which are not serious in character and without which the other party would still have entered into the contract;
Determines of is the essential cause of the consent;	Refers only to some particular or accident of the obligation;
Results in nullification of the contract and indemnification of damages.	Indemnification of damages.

(Geraldez v CA, GR No. 108253 [23/02/94])

*Illustration:*

*When the seller, who had no intention to part with her property, was "tricked into believing" that what she signed were papers pertinent to her membership application to SSS. Such would be considered as dolo causante.*

X entered into a written agreement with Y to organize a partnership for the bottling and distribution of soft drinks. However, the partnership did not come into fruition, and X filed a complaint in order to execute the partnership. Y filed a counterclaim, alleging that the plaintiff had defrauded him because the latter was not actually the owner of the franchise of a soft drink bottling operation (*Woodhouse v Halili*, GR No. L-4811 [31/07/53]).

### EFFECTS OF FRAUD

The debtor can be held liable for damages provided that the debtor or obligor acted with malice or dishonesty. The damages which the creditor or obligee can recover shall comprehend all damages which may be reasonable attributed to the breach or non-fulfillment of the obligation, regardless of whether such consequences are natural or unnatural, probable or improbable, foreseeable or unforeseeable.

The debtor can also recover moral and exemplary damages.

### 3.) NEGLIGENCE OR CULPA

It is the omission of the diligence which is required by the nature of the obligation and corresponds with the circumstances of the persons, of the time and of the place (*Art. 1173, par. 1*).

It is the absence of due care required by the nature of the obligation (*Picart v Smith*, 37 Phil. 809 [date]).

### EFFECTS OF NEGLIGENCE

1. Damages are demandable which the court may regulate according to circumstances;
2. Invalidates defense of fortuitous event.

### KINDS OF NEGLIGENCE

1. Civil negligence;
  - a. *Culpa contractual* - fault or negligence of obligor by virtue of which he is unable to perform his obligation arising from a pre-existing contract;
  - b. *Culpa aquiliana or quasi-delict* - fault or negligence of a person, whose failure to observe the required diligence to the obligation causes damage to another.
2. Criminal negligence
  1. *Culpa criminal* - fault or negligence which results in the commission of a crime.

CULPA CONTRACTUAL	CULPA AQUILIANA	CULPA CRIMINAL
<b>As to the Character of the Negligence of the Defendant</b>		
Negligence is merely incidental to the performance of an obligation already existing because of a contract;	Negligence is direct, substantive, and independent;	Negligence is direct, substantive, and independent;
<b>As to Relationship of the Parties</b>		
There is always a pre-existing contractual relation;	There may or may not be a pre-existing contractual relationship;	No pre-existing contractual relationship;
<b>As to Source of Obligation</b>		
The source of obligation is breach or non-fulfillment of contract	The source of obligation is defendant's negligent act or omission;	The source of obligation is defendant's criminal act.
<b>As to the Proof Required for Recovery</b>		
Requires proof by preponderance of evidence;	Requires proof by preponderance of evidence;	Requires proof beyond reasonable doubt;
<b>As to Availability of Due Diligence as a Defense</b>		
Defense of a good father of a family is not a proper and complete defense, though it may	Defense of a good father of a family is a proper and complete defense;	Defense of a good father of a family is not proper. The employee's guilt is automatically the

mitigate damages;		employer's guilt if the former is insolvent;
<b>As to Presumption of Innocence</b>		
Proof of existence of a contract and breach thereof gives rise to a presumption of fault.	Plaintiff has not proved negligence of the defendant.	Accused presumed innocent, until the contrary is proved.

### Illustration:

A tricycle driver who is a member of DLSL-McDo TODA, driving recklessly along Balagtas, killed a pedestrian P and his passenger Y. Discuss the source of the obligation of A and his employer to P and to Y, and the defense available to the employer. (1977 Bar Problem)

There are 3 overlapping sources of the obligation of A and of his employer:

- 1) Under the RPC: The heirs of P and Y may proceed against A and his employer under. In this case, the source of the liability of A and of his employer is the crime committed by A (*culpa criminal*). The liability of A is direct and primary (Art. 100, RPC); the liability of his employer is subsidiary (Art. 103, RPC). The latter cannot relieve himself of liability by proving due diligence of a good father of a family because of the very nature of his obligation.
- 2) Under the Civil Code:
  - a) Heirs of P: The heirs of pedestrian P may proceed against both A and his employer, or against the latter only. In this case, the source of the liability of A and his employer is quasi-delict (*culpa criminal*) committed by A (Arts. 2176 and 2180, CC). The liability of both is direct and primary. A's employer can relieve himself of liability by proving due diligence of a good father of a family in the selection and supervision of his drivers (Art. 2180, CC).
  - b) Heirs of Y: On the other hand, the heirs of Y may proceed against A's employer only. The source of the liability of A's employer, in this case, is the breach of his "contract of carriage with Y" (*culpa contractual*). His liability is direct and primary. He cannot relieve himself of liability by proving due diligence of a good father of a family (Art. 1759, CC). This is so because under our law on common carriers, we do not adhere to the principle of "respondeat superior"; we adhere to the principle that there is always an implied duty of a common carrier to carry the passenger safely to his place of destination. However, although not available as a defense, such proof of due diligence may serve to mitigate the employer's liability.

FRAUD (DOLO)	NEGLIGENCE (CULPA)
Willingness or deliberate intent to cause damage or injury to another;	Mere want of care or diligence and not the voluntariness of act or omission;
Liability cannot be mitigated by courts;	Can be mitigated by courts;
Waiver for future fraud is void;	Waiver for future negligence: 1.) valid if simple; 2.) void is gross.
Presumed from the breach of a contractual obligation.	Must be clearly proved.

### TEST OF NEGLIGENCE

Did the defendant in doing the alleged negligent act use the reasonable care and caution which an ordinarily prudent person would have used in the same situation? If not, then he is guilty of negligence.

### EFFECT OF GOOD FAITH

Debtor shall be liable only for 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.

### EFFECT OF BAD FAITH

The provision of Arts. 1171 and 2202 (2) shall apply. Hence, the obligor can be held responsible for all damages which may be reasonably attributed to the non-performance of the obligation.

**NOTE:** The boundary lines between negligence and fraud, with regards to their effects, disappears.

#### EFFECT OF CONTRIBUTORY NEGLIGENCE

The effect is to reduce or mitigate the damages which the creditor can recover from the debtor as a result of the breach. However, if the negligent act or omission of the creditor was a proximate cause of the event which led to the damage or injury complained of, he cannot recover.

#### 4.) CONTRAVENTION OF TENOR

Includes not only any illicit act which impairs the strict and faithful fulfillment of the obligation, but also every kind of defective performance, unless excused in proper cases for fortuitous event.

#### THE FOLLOWING DO NOT EXCUSE FULFILLMENT

1. Increase in cost of performance;
2. Poverty;
3. War.

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#### ART. 1174

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

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#### FORTUITOUS EVENTS

An extraordinary event which could not be foreseen, or which though foreseen, was inevitable (*Art. 1174*). It is an event which is either impossible to foresee or impossible to avoid.

#### KINDS OF FORTUITOUS EVENTS

1. *Fortuitous event proper* – an event which is absolutely independent of human intervention;
2. *Force majeure (fuerza mayor)* – an event which arises from legitimate or illegitimate acts of persons other than the obligor;
3. *Ordinary fortuitous event* – an event which usually happens or which could have been reasonably foreseen;
4. *Extraordinary fortuitous event* – an event which does not usually happen and which could not have been reasonably foreseen.

#### REQUISITES OF FORTUITOUS EVENT [IF - ASO]

1. The event must be independent of the human will or at least of the obligor's will;
2. The event could not be foreseen (unforeseeable or inevitable), or must have been impossible to avoid (unavoidable);
3. The event must be of such a character as to render it impossible for the obligor to comply with his obligation in a normal manner;
4. The obligor must be free from any participation in, or the aggravation of the injury to the obligee.

**NOTE** It must not only be the proximate cause but it must be the only and sole cause. If the negligence was the proximate cause, the obligation is not extinguished but rather, it is converted into a monetary obligation for damages.

**NOTE** Where the accident is due to a defect of an equipment or of an appliance purchased from a manufacturer, it is not considered fortuitous event within the meaning of the law.

**NOTE** Contributory negligence of the debtor renders him liable despite the fortuitous event; courts may equitably mitigate damages.

#### EFFECT UPON OBLIGATION GENERAL RULE

If the obligor is unable to comply with his obligation by reason of a fortuitous event, he is exempted from any liability and the obligation is extinguished.

#### EXCEPTIONS

1. Such liability is expressly specified by the law;
2. When declared by the stipulation;
3. Where the nature of the obligation requires the assumption of risk;

*NOTE* It is based on the doctrine of *volenti non fit injuria* (no wrong is done to one who consents).

4. When the object of the obligation is lost due partly to the fault of the debtor;
5. When the object of the obligation is lost after the debtor has incurred in delay;
6. When the debtor promised to deliver the same thing to two or more persons who do not have the same interest; when the obligation to deliver arises from a criminal offense;
7. When the obligation is generic.

**NOTE** There must be NO concurrent or previous negligence or imprudence on the part of the obligor by which the loss or injury may have been occasioned, otherwise the defense of fortuitous event cannot be invoked.

There should have been no human participation amounting to a negligent act in order to be exempt from liability arising from a fortuitous event.

#### EFFECTS OF FORTUITOUS EVENT

1. *On determinate obligation* – the obligation is extinguished (see *Art. 1174*);
2. *On generic obligation* – the obligation is not extinguished, *genus nunquam perit* (see *Art. 1263*).

#### EFFECTS OF FORTUITOUS EVENT ON PERIOD PROVIDED

The period of time when the contract was suspended due to fortuitous event cannot be deducted from the term of the contract.

**REASON** To do so would in effect be an extension of the contract.

*Illustration:*

*A received from B a pendant with diamonds valued at P500,000 to be sold on commission basis or to be returned on demand. In the evening of Feb. 1, 2018, while walking home to her residence, two men snatched her purse containing the pendant and ran away. Subsequently, the snatchers were apprehended and charged. During the pendency of the criminal case, B brought an action against A for recovery of the pendant or of its value and damages. The latter interposed the defense of fortuitous event, but the former contends: (a) that the defense of fortuitous event is untenable because there was negligence on the part of the defendant; and (b) that if the defense is tenable, nevertheless, there must be a prior conviction for robbery before it can be availed of.*

*All the requisites of a fortuitous event are present in this case. It is undeniable that in order to completely exonerate the debtor by reason of a fortuitous event, such debtor must, in addition to the casus itself, be free of any concurrent or contributory fault or negligence.*

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#### ART. 1175

**Usurious transactions shall be governed by special laws.**

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#### USURY

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

It is the taking of more interest for the use of money, goods or chattels or credit than the law allows.

#### INTEREST

Income produced by money in relation to the amount and to the time that it cannot be utilized by the owner.

#### SIMPLE LOAN or MUTUUM

It is a contract whereby one of the parties delivers to another money or other consumable thing, upon the condition that the same amount of the same kind and quality shall be paid. It may be gratuitous or with a stipulation to pay interest.

#### LEGAL RATE (Under the Usury Law or Act No. 2655)

1. *12% per annum* (from default until fully paid) – for loan, forbearance of money, goods, or credits;
2. *6% per annum* (see Art. 2209) – not included above, e.g., indemnify for damages occasioned by an injury to a person or loss of property.

#### MAXIMUM RATE

1. *12% per annum* - if the loan is secured in whole or in part by a mortgage upon real estate with a Torrens Title or by any agreement conveying such real estate or an interest therein.;
2. *14% per annum* - if the loan is not secured as provided above;

#### MONETARY INTEREST

Interest fixed by the parties to a contract for the ease of forbearance of money.

#### REQUISITES OF MONETARY INTEREST

1. The payment of interest must be expressly stipulated (see Art. 1956);
2. The agreement must be in writing;
3. The interest must be lawful (see Art. 1957).

#### COMPENSATORY INTEREST

Imposed by law or by courts as penalty or indemnity for damages.

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#### 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.**

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**NOTE** The first paragraph is in conformity with the rule that if the debt produces interest, payment of the principal shall not be deemed to have been made until the interests have been covered.

#### PRESUMPTION

It is the inference of a fact not actually known arising from its usual connection with another which is known or proved.

#### KINDS OF PRESUMPTION

1. *Conclusive* - one which cannot be contradicted like the presumption that everyone is conclusively presumed to know the law (see Art. 3.);
2. *Disputable* - one which can be contradicted or rebutted by presenting proof to the contrary like the presumption established in Article 1176.

#### WHEN PRESUMPTION IN ART. 1176 DO NOT APPLY

1. With reservation as to interest;
2. Receipt for a part of principal;
3. Receipt without indication of particular installment paid;
4. Payment of taxes;
5. Non-payment proven

#### 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.**

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#### PRIMARY REMEDIES OF CREDITOR TO PROTECT CREDIT

1. Action for performance (Specific Performance or Substituted Performance);
2. Action for damages (exclusively or in addition to action for performance);
3. Action for rescission

#### SUBSIDIARY REMEDIES OF CREDITOR TO PROTECT CREDIT

1. Acción Subrogatoria;
2. Acción Pauliana;
3. Other specific remedies.

#### RESCISSION

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

The injured party may choose between fulfillment and rescission of the obligation, with the payment of damages in either case.

Should he choose fulfillment and the same should become impossible, the injured party may still seek for rescission.

#### CASES RESCISSION WILL NOT APPLY

1. Trivial causes or slight breaches;
2. If there be a just cause for fixing the period within which the debtor can comply;
3. If the property is now in the hand of an innocent third party who has lawful possession of the same.

#### JUDICIAL APPROVAL

- **NEEDED** - When there has already been delivery of the object, *unless* there is voluntary returning;
- **NOT NEEDED** - when there has been no delivery yet, or in case there has been delivery, the contract stipulates that either party can rescind the same or take possession of the property upon non-fulfillment by the other party.

**NOTE** The remedy granted is predicated on a breach of obligation by the other party that violates the reciprocity between them.

**NOTE** The remedy under Art. 1191 is alternative. The party seeking rescission can only elect one between fulfillment and rescission. There can be no partial performance and partial rescission.

#### BREACH BY BOTH PARTIES

- If the first infractor can be determined, his liability shall be equitably tempered by the courts;
- If the first infractor cannot be determined, the obligation shall be extinguished and each shall bear his own damages.

#### SUBSIDIARY REMEDIES

The exhaustion of all remedies by the prejudiced creditor to collect claims due him before rescission is resorted to.

#### REMEDIES OF CREDITOR TO PROTECT CREDIT

1. Exhaust the property in possession of the debtor;
2. To be subrogated to all of the rights and actions of the debtor save those which are inherent in his person (*Acción Subrogatoria*);
3. Impugn all of the acts which the debtor may have done to defraud him (*Acción Pauliana*).

#### 1.) EXHAUST THE PROPERTY IN POSSESSION

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).

The exemptions referred to are found in Sec. 12, Rule 39 of the New Rules of Court, Sec. 118 of the Public Land Law (Com. Act No. 141), and in scattered provisions of the Civil Code, such as Arts. 223, 232, 243, 302 and 1708.

## 2.) ACCIÓN SUBROGATORIA

The action which the creditor may exercise all rights and actions in place of the negligent debtor, except those inherent in the person, in order to preserve or recover for the patrimony of the debtor the product of such action, and then obtain therefrom the satisfaction of his own credit.

Also includes the right of a creditor to proceed against a third person invested as it were with the personality of the debtor.

### EXCEPTIONS

1. Inherent rights of the debtor;
  - a. Right to existence;
  - b. Right or relations of a public character;
  - c. Right of an honorary character;
  - d. Rights pertaining to the affairs of home and the family;
  - e. The right to appear in court proceedings.
2. Only those who at the time of the donor's death have a right to the legitime and their and successors in interest may ask for the reduction or inofficious donations.

**NOTE** The creditor is entitled only to do so much as is needed to satisfy his credit and any balance shall pertain to the debtor.

### REQUISITES

1. Debtor to whom the right or action properly pertains must be indebted to the creditor;
2. The creditor must be prejudiced by the inaction or failure of the debtor to proceed against a third person;
3. The creditor must have first pursued or exhausted all the properties of the debtor which are not exempted from execution.

**NOTE** A previous approval of the court is not necessary

## 3.) ACCIÓN PAULIANA

Creditors have the right to impugn the acts which the debtor may have done to defraud them.

It refers to the right available to the creditor by virtue of which he can secure the rescission of any act of the debtor which is in fraud and to the prejudice of his rights as a creditor.

Another method by which the debtor may defeat the right of the creditor is by means of a positive act whereby the latter is defrauded or prejudiced.

**NOTE** All acts of the debtor which reduce his patrimony in fraud of his creditors, whether by gratuitous or onerous title, can be revoked by this action, but payment of pre-existing obligations which are already due, whether natural or civil, cannot be impugned by this action.

### GASPERI'S VIEW ON NEW DEBTS

Debts contracted by an insolvent debtor are not included although they make the position of existing creditors worse because only acts which impair the assets of the debtor are covered by the provision and those which merely increase liabilities are not.

### RUGGIERO'S VIEW ON NEW DEBTS

Acción pauliana covers also acts of the debtor which tend to make his economic condition worse, such as when he contracts new obligation.

### REQUISITES OF ACCIÓN PAULIANA

1. Creditor has a credit prior to the alienation by the debtor, although demandable later;
2. Debtor has made a subsequent contract giving advantage to a thing person;

3. Creditor has no other remedy but to rescind the debtor's contract to the third person,
4. A third person who received the property is an accomplice in the fraud;
5. Act being impugned is fraudulent.

**NOTE** The following are presumptions of fraud provided under Art. 1387 of the Civil Code:

1. Alienation of property by gratuitous title without reserving sufficient property to pay debts prior to donation;
2. Alienation by onerous title when there is judgment or attachment.

**NOTE** Under Art. 1381, contracts entered into in fraud of creditors may be rescinded only when the creditors cannot in any manner collect the claims due them. Also, Art. 1383 of the same Code provides that the action for rescission is but a subsidiary remedy which cannot be instituted except when the party suffering damage has no other legal means to obtain reparation for the same. It is essential that the party asking for rescission prove that he has exhausted all other legal means to obtain satisfaction of his claim.

ACCION SUBROGATORIA	ACCION PAULIANA
Not essential that credit is prior to the acquisition of debtor's right;	Credit must have existed before debtor's fraudulent act;
Debtor's intent to defraud creditor is not required;	Debtor's intent to defraud creditor is required;
No period of prescription.	Action prescribes within 4 years from the discovery of the fraud.

### 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.**

### TRANSMISSIBILITY OF RIGHTS GENERAL RULE

Rights of obligations or those rights which are acquired by virtue of an obligation are transmissible in character.

### EXCEPTIONS

1. Where they are not transmissible by their very nature, such as in the case of a purely personal right;
  - a. *Contract of partnership* – two or more persons bind themselves to contribute money, property or industry to a common fund, with the intention of dividing the profits among themselves (*see Art. 1767*);
  - b. *Contract of agency* - a person binds himself to render some service or to do something in representation or on behalf of another, with the consent or authority of the latter (*see Art. 1868*);
  - c. *Contract of commodatum* - one of the parties delivers to another something not consumable so that the latter may use the same for a certain time and return it. Commodatum is essentially gratuitous (*see Art. 1933*).
2. Where there is a stipulation of the parties that they are not transmissible;
 

*When prohibited by stipulation of the parties, like the stipulation that upon death of the creditor, the obligation shall be extinguished or that the creditor cannot assign his credit to another. The stipulation against transmission must not be contrary to public policy (see Art. 1306)*
3. Where they are not transmissible by operation of law.

**NOTE** It must be observed, however, that intransmissibility by stipulation of the parties, being exceptional and contrary to the general rule, should not be easily implied, but must be clearly

established, or at the very least, clearly inferable from the provisions of the contract itself.