

Obligations-and- contracts philippine reviewer



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ATENEO CENTRAL BAR OPERATIONS 2007 Civil Law SUMMER REVIEWER

OBLIGATIONS AND CONTRACTS TITLE 1 - OBLIGATION • Art. 1156. An

obligation is a juridical necessity to give, to do or not to do. (n) • neither

party may unilaterally evade his obligation in the contract, unless: a.

Contract authorizes it b. Other party assents Parties may freely enter into

any stipulations provided they are not contrary to law, morals, good

customs, public order or public policy CHAPTER 1. - GENERAL PROVISIONS

See Arts. 1156 - 1162 ELEMENTS OF AN OBLIGATION: 1. Active subject

(obligee/creditor): one in whose favor the obligation is constituted 2.

Passive subject (obligor/debtor): one who has the duty of giving, doing or not

doing 3. Object: prestation; the conduct which has to be observed by the

debtor/obligor REQUISITES 1. it must be licit (otherwise it is void) 2. it must

be possible, physically and juridically (otherwise it is void) 3. it must be

determinate or determinable (otherwise it is void) 4. it must have pecuniary

value a. Vinculum Juris: juridical/legal tie; binds the parties to the obligation

b. Causa (causa debendi/causa obligationes): why obligation exists SOURCES

OF OBLIGATION

QUASI-CONTRACT (OBLIGATION EX QUASICONTRACTU) • Juridical relation

resulting from lawful, voluntary and unilateral acts, which has for its purpose,

the payment of indemnity to the end that no one shall be unjustly enriched

or benefited at the expense of another. • Distinguished from other Sources

1. act giving rise to a quasi contract must be LAWFUL distinguishing it from

delict; 2. act must be VOLUNTARY distinguishing it from quasi-delict which is

based on fault or negligence; 3. act must be UNILATERAL distinguishing it

from contract which is based on agreement. Tolentino, Volume IV, p. 68)

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KINDS OF QUASI-CONTRACT • *Negotiorum gestio*: unauthorized management; arises whenever a person voluntarily takes charge of the agency or management of another's abandoned business or property without the latter's authority • *Solutio indebiti*: undue payment. Arises when a person unduly delivers a thing through mistake to another who has no right to demand it (must not be through liberality or some other cause) DELICTS (OBLIGATION EX MALEFICIO OR EX DELICTO) RPC: Art. 100 Every person criminally liable for a felony is also civilly liable. GOVERNING RULES 1.

Articles 100-113 of the RPC and other penal laws subject to Art 2177 Civil Code (quasi-delict); 2. Chapter 2, Preliminary title, on Human Relations (Civil Code) 3. Title 18 of Book IV of the Civil Code on damages SCOPE OF CIVIL LIABILITY 1. Restitution Art. 1157. Obligations arise from: (1) Law; (2) Contracts; (3) Quasi-contracts; (4) Acts or omissions punished by law; and (5) Quasi-delicts. (1089a) QuickTime™ and a TIFF (Uncompressed) decompressor LAW (OBLIGATION EX TO LEGE) e. are needed see this picture • Must be expressly or impliedly set cannot be presumed forth and

CONTRACT (OBLIGATION EX CONTRACTU) • Must be complied with in good faith • it is the “ law” between parties; —Adviser: Dean Cynthia del Castillo Head: Joy Ponsaran, Eleanor Mateo; Understudy: Joy Tajan, John Paul Lim; Subject Head: Jennifer Sanchez; Pledgees: Maria Angela Alarilla, Gregorio Rafael Bueta, Kristi Fe Mari Lu Civil Law Summer Reviewer ATENEO CENTRAL BAR OPERATIONS 2007 2. Reparation for damage caused 3. Indemnity for Consequential damages EFFECT OF ACQUITTAL IN CRIMINAL CASE 1. When due to reasonable doubt - no civil liability 2. When due to exempting circumstances - there is civil liability 3.

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When there is preponderance of evidence - there is civil liability CRIMES

WITHOUT CIVIL LIABILITY 1. Contempt 2. Insults to persons in authority 3.

gambling 4. violations of traffic regulations (De Leon, 2003 ed. , p. 23)

QUASI-DELICT/TORTS (OBLIGATION EX QUASIDELICTO Or EX QUASI

MALEFICIO) • It is an act or omission arising from fault or negligence which

causes damage to another, there being no pre-existing contractual relations

between the parties • ELEMENTS: 1. There must be an act or omission 2.

There must be fault or negligence attributable to the person charged 3.

There must be damage or injury 4. There must be a direct relation of cause

and effect between the act arising from fault or negligence and the damage

or injury (proximate cause); 5. There is no pre-existing contractual relation

between the parties. NEGLIGENCE • Failure to observe for the protection of

the interests of another person, that degree of care, precaution and vigilance

which the circumstances justly demand, whereby such other person suffers

injury. (US v. Barrias, 23 Phil. 434 [1912]) CHAPTER 2. - NATURE & EFFECTS

OF OBLIGATIONS 2.

Real Obligations: obligations to give; where the subject matter is a thing

which the obligor must deliver to the obligee a. Determinate or specific -

object is particularly designated or physically segregated from all other

things of the same class b. Generic -object is designated by its class or

genus c. Limited Generic - generic objects confined to a particular class Ex:

An obligation to deliver one of my horses (Tolentino, Volume IV, p. 91; De

Leon, 2003 ed. , p. 7) EFFECT OF OBLIGATIONS DUTIES OF DEBTOR IN AN

OBLIGATION TO GIVE A DETERMINATE THING (See Arts. 1163, 1164, 1166.)

1.

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To preserve or take care of the thing due with the diligence of a good father of a family DILIGENCE OF A GOOD FATHER OF A FAMILY - ordinary care or that diligence which an average or reasonably prudent person would exercise over his own property NOTE: Rule on Standard of Care • That which the law requires; or • That stipulated by the parties; or • In the absence of the two, diligence of a good father of a family 2. To deliver the fruits of the thing: Right to the fruits of the thing from the time the obligation to deliver it arises See Arts. 1163 - 1178 are needed to see this NATURE OF OBLIGATIONS picture. 1.

Personal Obligations: obligations to do or not to do; where the subject matter is an act to be done or not to be done a. Positive - obligation to do b.

Negative - obligation not to do QuickTime™ and a TIFF (Uncompressed) decompressor WHEN OBLIGATION TO DELIVER ARISES • GENERAL RULE:

From the time of the perfection of the contract (i. e. meeting of the minds between the parties) • EXCEPTIONS a. when the parties made a stipulation as regards the right of the creditor to the fruits of the thing b. when the obligation is subject to a suspensive condition or period; arises upon fulfillment of the condition or arrival of the period PERSONAL V.

REAL RIGHT Personal Real Jus ad rem, a right Jus in re, a right enforceable only enforceable against Page 105 of 297 Civil Law Summer Reviewer ATENEO CENTRAL BAR OPERATIONS 2007 against a definite person or group of persons Right pertaining to a person to demand from another, as a definite passive subject, the fulfillment of the prestation to give, to do or not to do. the whole world equivalent performance X X Right pertaining to a

person over a specific thing, without a definite passive subject against whom the right may be personally enforced

Can only be demanded if obligation is not very personal X X 3. To deliver its accessions and accessories • Accessions – additions to or improvements upon a thing. Ex: air conditioner in a car. • Accessories – things joined to, or included with the principal thing for its better use, embellishment or completion. Ex: key of a house; frame of a picture (De Leon, 2003 ed. , pp. 37-38) 4. To deliver the thing itself 5. To pay damages in case of breach of the obligation by reason of delay, fraud, negligence or contravention of the tenor of the obligation.

DUTIES OF DEBTOR IN AN OBLIGATION TO GIVE A GENERIC THING 1. To deliver the thing which is neither of superior nor of inferior quality 2. To pay damages in case of breach of the obligation by reason of delay, fraud, negligence or contravention of the tenor of the obligation. REMEDIES OF THE CREDITOR IN CASE OF NONPERFORMANCE (See Arts 1165 – 1168) 1. Specific Performance: Performance by the debtor of the prestation itself 2. Substitute Performance: someone else performs or something else is performed at the expense of debtor 3. Equivalent Performance: damages substitute performance

X Undo the things already done at debtor's expense rescission/ cancellation

X X X BREACH OF OBLIGATIONS (See Arts. 1170 – 1174) 1. Voluntary – debtor in the performance of the obligation is guilty of: • fraud (Dolo) • negligence (culpa) • delay (mora) • contravention of the tenor of the obligation • NOTE: debtor is liable for damages 2. Involuntary – debtor is

unable to comply with his obligation due to fortuitous event/s • NOTE: debtor is not liable for damages FRAUD (Dolo) • It is the deliberate or intentional evasion of the normal fulfillment of an obligation. 8 Manresa 72) O'leary Macondray & Co. , 45 Phil. 812 [1924]- It implies some kind of malice or dishonesty and it cannot cover cases of mistake and errors of judgment made in good faith. It is synonymous to bad faith TYPES OF FRAUD 1. Causal Fraud (Dolo Causante): fraud employed 2. in the execution of the contract 3. Incidental Fraud (Dolo Incidente): fraud in performance of obligation already existing because of a contract Page 106 of 297 Remedies Real Obligations Specific Gener Personal Obligations To do Not to do specific performance QuickTime™ and a ic TIFF (Uncompressed) decompressor are needed to see this picture. X X X undo the things already done Deleted: Corliss v. Manila Railroad - The law presumes or requires a man to possess ordinary capacity to avoid harming his neighbors unless a clear and manifest incapacity is shown and the law does not hold him liable for unintentional injury unless, possessing such capacity, he might and ought to have foreseen the danger. ¶ ¶ Civil Law Summer Reviewer ATENEO CENTRAL BAR OPERATIONS 2007 • Fraud in the Performance (Art. 170) Present during the performance of a preexisting obligation Purpose is to evade the normal fulfillment of the obligation Causal Fraud (Art. 1338) Present during the perfection of a contract Incidental Fraud (Art. 1344) Present during the perfection of a contract • NOTE: Negligence can be waived except in cases where the nature of the obligation or public policy requires another standard of care. EXCEPTIONS: Nature of Obligation of a Common carrier Purpose is to secure the consent of another to enter into the contract

Results in the breach of an obligation Gives rise to a right in favor of the creditor to recover damages Results in vitiation of consent; voidable contract Gives rise to a right of an innocent party to annul the contract Purpose is to secure the consent of the other party but the fraud was not the principal inducement in making the contract Does not result in the vitiation of consent Gives rise to a right of an innocent party to claim for damages FRAUD V. NEGLIGENCE Fraud There is deliberate intention to cause damage.

Liability cannot be mitigated. Waiver for future fraud is void. Negligence There is no deliberate intention to cause damage. Liability may be mitigated. Waiver for future negligence may be allowed in certain cases NOTE: Future fraud cannot be waived. However, the law does not prohibit renunciation of the action for damages on the ground of fraud already committed. REMEDIES OF DEFRAUDED PARTY • Insist on specific performance (Art 1233) • Resolve contract (Art 1191) • Claim damages, in either case

KINDS OF NEGLIGENCE, DISTINGUISHED Culpa Aquiliana Culpa Contractual Negligence is Negligence merely an substantive and incident of performance independent of an obligation There may or may There is a pre-existing not be a pre-existing contractual relation contractual obligation Source of the Source of the obligation obligation is the is the breach of the negligence itself contractual obligation Negligence must be Proof of existing of the proved contract and its breach is prima facie sufficient to warrant recovery in the Diligence in the Diligence and selection and selection of the supervision of the supervision is not employees is a employees available as a defense defense EFFECTS OF CONTRIBUTORY NEGLIGENCE OF THE CREDITOR • GENERAL RULE: Reduces or mitigates the damages which he can recover •

EXCEPTION: If the negligent act or omission of the creditor is the proximate cause of the event which led to the damage or injury complained of, he cannot recover. DELAY (MORA) 1. Ordinary Delay - failure to perform an obligation on time 2. Legal Delay/ Default - failure to perform an obligation on time which failure constitutes a Page 107 of 297 NEGLIGENCE • Consists in the omission of that diligence which is required by the nature of the obligation and corresponds with the circumstances of the persons, of the time and of the place. are needed to see KINDS OF NEGLIGENCE this picture. 1.

Quasi-Delict (Culpa aquiliana/culpa extra contractual)- source of obligation 2. Contractual Negligence (Culpa Contractual) negligence in the performance of a contract QuickTime™ and a TIFF (Uncompressed) decompressor Civil Law Summer Reviewer ATENEO CENTRAL BAR OPERATIONS 2007 breach of the obligation. (De Leon, 2003 ed. , p. 42) REQUISITES OF DELAY 1. Obligation must be due, demandable and liquidated; 2. Debtor fails to perform his positive obligation on the date agreed upon; 3. A demand (not merely a reminder or notice), judicial or extra-judicial, made by the creditor upon the debtor to fulfill, perform or comply with his obligation otherwise, he will be in default; and 4.

Failure of the debtor to comply with such demand. KINDS OF DELAY 1. Mora Solvendi- default on the part of the debtor: • Mora Solvendi Ex re - default in real obligations • Mora Solvendi Ex persona - default in personal obligations • REQUISITES: a. The obligation must be due, enforceable and already liquidated or determinate in amount; b. There must be non-performance; and c. There must be a demand, unless demand is not required. • GENERAL

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RULE: 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. • EXCEPTIONS (no demand necessary) a.

When the obligation or the law expressly so declare; or b. 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; or c. When demand would be useless, as when the obligor has rendered it beyond his power to perform • EFFECTS: QuickTime™ and a TIFF

(Uncompressed) decompressor are a. Debtor needed to guilty picture. breach of the is see this of obligation b. Liability: If obligation to pay money- must pay interest. If no extra-judicial demand, interest runs from the filing of the complaint. In other obligations, pay damages. . Obligations to deliver a determinate thing, liable for fortuitous events. If debtor can prove that loss would have resulted even if he had not been in default, the court may equitably mitigate the damages (Art. 2215[4]) d. Resolution (Art 1170, in proper cases) 2. Mora Accipiendi - default on part of creditor when he unjustifiably refuses to accept the performance of the obligation. •

REQUISITES: a. Offer of performance by the debtor b. Offer must be to comply with the prestation as it should be performed c. Creditor refuses the performance without just cause • EFFECTS: a. Responsibility of debtor is limited to fraud and gross negligence b.

Debtor is exempted from risk of loss of thing; creditor bears risk of loss c. Expenses by debtor for preservation of thing after delay is chargeable to creditor d. If obligation bears interest, debtor does not have to pay from time

of delay e. Creditor liable for damages f. Debtor may relieve himself of obligation by consigning the thing 3. Compensatio morae - both parties are in default (in reciprocal obligations); there is no actionable default on the part of both parties • Rule in Reciprocal Obligations: 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. Performance must be simultaneous unless different dates for the performance of the obligation were fixed by the parties • CESSATION OF THE EFFECTS OF MORA: • renunciation (express or implied) • prescription •

NOTE: There is no delay in negative obligations and natural obligations.

FORTUITOUS EVENT - An event which could not be foreseen, or which though foreseen, was inevitable Page 108 of 297 Civil Law Summer Reviewer

ATENEO CENTRAL BAR OPERATIONS 2007 REQUIREMENTS: (Nakpil and Sons vs. CA): 1. The cause of the breach of the obligation must be independent of the will of the debtor 2.

The event must be either unforeseeable or unavoidable 3. The event must be such as to render it impossible for the debtor to fulfill his obligation in a normal manner 4. The debtor must be free from any participation in, or aggravation of injury to the creditor RULE ON FORTUITOUS EVENT: •

GENERAL RULE: No liability for fortuitous event • EXCEPTIONS: 1. When expressly declared by law (bad faith, subject matter is generic, debtor is in delay) 2. When expressly declared by stipulation or contract 3. When nature of obligation requires assumption of risk 4. When the obligor is in default or has promised to deliver the same thing to two or more persons who do not

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have the same interest (Art. 165[3]) EFFECT OF FORTUITOUS EVENT

Determinate Generic Obligation Obligation is not Obligation is Obligation extinguished extinguished based on the rule that the genus never perishes (genus nunquam perit) Art. 1176 The receipt of the principal by the creditor, without reservation with respect to the interest, shall give rise to the presumption that said interest has been paid. The receipt of a later installment of a debt without reservation as to prior installments, shall likewise raise the presumption that such installments have been paid. Art. 1178 Subject to the laws, all rights acquired in virtue of an obligation are transmissible, if there has been no stipulation to the contrary. (1112) Art. 1191.

The power to rescind obligations is implied in reciprocal ones, in case one of the obligors should not comply with what is incumbent upon him. The injured party may choose between the fulfillment and the rescission of the obligation, with the payment of damages in either case. He may also seek rescission, even after he has chosen fulfillment, if the latter should become impossible. The court shall decree the rescission claimed, unless there be just cause authorizing the fixing of a period. This is understood to be without prejudice to the rights of third persons who have acquired the thing, in accordance with Articles 1385 and 1388 and the Mortgage Law. (1124) Art. 1192.

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

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AVAILABLE TO CREDITORS FOR THE SATISFACTION OF THEIR CLAIMS 1.

Exact fulfillment of the obligation by specific or substitute performance with a right to damages in either case; 2. In case of reciprocal obligations, petition the court to resolve the contract; 3. Pursue the leviable (not exempt from attachment under the law) property of the debtor; 4. Accion directa (Arts. 1729 and 1652): Right of the lessor to go directly to sublessee for unpaid rents of the lessee.

Right of the laborers or persons who furnish materials for a piece of work undertaken by a contractor to go directly to the owner for any unpaid claims due to the contractor 5. Accion subrogatoria - to be subrogated to all the

rights and actions of the debtor save those which are inherent in his person •

REQUISITES: a. The debtor to whom the right of action properly pertains must be indebted to the creditor; b. The creditor must be prejudiced by the inaction or failure of the debtor to proceed against the third person; c. The creditor must have pursued first or exhausted all the properties of the debtor which are not exempt from execution; d. The debtor's assets are insufficient to satisfy his claims; and Page 109 of 297

PRINCIPLE IN ARTICLE 1176 • Before the presumption that a prior installment had been paid may arise, the receipt must specify the installment for which payment is made. QuickTime™ and a TIFF (Uncompressed) decompressor are needed to see this picture. Art. 1177 The creditors, after having pursued the property in possession of the debtor to satisfy their claims, may exercise all 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. (1111) Civil Law Summer

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Reviewer ATENEO CENTRAL BAR OPERATIONS 2007 e. The right of account is not purely personal 6.

Accion Pauliana – asking the court to rescind or to impugn all the acts which the debtor may have done to defraud the creditors (Arts. 1380-1389) •

REQUISITES: a. There is a credit in favor of plaintiff b. The debtor has performed an act subsequent to the contract, giving advantage to other persons c. The creditor is prejudiced by the debtor's act which are in favor of 3rd parties and rescission will benefit the creditor d. The creditor has no other legal remedy e. The debtor's acts are fraudulent Without the fault of the debtor Obligation is extinguished Impairment borne by the creditor With

the fault of the debtor Debtor obliged to pay damages Creditor may choose between rescission or its fulfillment with damages in either case fulfillment of a condition or upon the expiration of a period and is demandable at once

CONDITIONAL – one whose effectivity is subordinated to the fulfillment or non-fulfillment of a future AND uncertain event or upon a past event

unknown to the parties CONDITION – Future and uncertain event or a past event unknown to the parties 1. Suspensive – happening of condition gives

rise to obligation • Effects: a. Effectivity retroacts to the day of the constitution of the obligation b. No retroactivity with reference to fruits or interest and prescription c. Creditor may preserve rights d. Debtor – recovery of payment by mistake or even w/o mistake RULES ON LOSS,

DETERIORATION, AND IMPROVEMENTS DURING PENDENCY OF A SUSPENSIVE CONDITION (Art. 1189) Loss Deterioration

CHAPTER 3. – DIFFERENT KINDS OF OBLIGATIONS See Arts. 1179 – 1230

PRIMARY CLASSIFICATION OF OBLIGATIONS UNDER THE CIVIL CODE 1.

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Demandability a. pure, b. conditional c. with a period 2. Plurality of object a. simple b. alternative c. facultative 3. Plurality of subject a. Simple b. Joint c. solidary 4. Performance a. Divisible b. indivisible 5. Sanctions for breach QuickTime™ and a TIFF (Uncompressed) decompressor a. with a penal clause this picture. are needed to see b. without a penal clause PURE AND CONDITIONAL OBLIGATIONS (See Arts. 1179 - 1190) PURE - one whose effectivity or extinguishment does not depend upon the fulfillment or non-Improvement

If by nature or by time inures to the benefit of the debtor If at the expense of the debtor debtor's right is only that of a usufructuary REQUISITES FOR THE APPLICATION OF ARTICLE 1189 a. 1. The obligation must be a real obligation b. 2. The object is a specific or determinate thing c. The obligation is subject to a suspensive condition d. The condition is fulfilled e. There is loss, deterioration or improvement of the thing during the pendency of the happening of the condition 2. Resolutive - happening of condition extinguishes obligation EFFECTS: a. No retroactive effect b. Obligation extinguished c. Restore to each other what was received plus interest/fruits 3.

Potestative - dependent on sole will of 1 party; if on part of debtor and suspensive - void 4. Casual - dependent on chance or hazard 5. Mixed - chance, or any of parties 6. With term Page 110 of 297 Civil Law Summer Reviewer ATENEO CENTRAL BAR OPERATIONS 2007 a. Positive - extinguished if time expires or indubitable of condition to happen b. Negative - effective from moment of time elapsed or evident it can't happen IMPOSSIBLE AND ILLEGAL CONDITIONS • GENERAL RULE: They shall annul <https://assignbuster.com/obligations-and-contracts-philippine-reviewer/>

obligation which depends upon them • EXCEPTIONS: a. pre-existing obligation b. if obligation is divisible c. in simple or remuneratory donations d. testamentary dispositions e. conditions not to do an impossible thing contrary When it is left exclusively to the will of the debtor, the existence of the obligation is affected When it is left exclusively to the will of the debtor, the obligation is void the OBLIGATIONS WITH A PERIOD WITH A PERIOD - An obligation which depends on a future and certain event (See Arts 1193, 1196) WHEN STIPULATION SAYS " PAYABLE WHEN ABLE" - IT IS WITH A PERIOD, REMEDY: 1. Agreement among parties 2. Court shall fix period of payment when parties unable to agree KINDS: 1. Resolutory (in diem) - demandable at once but terminates upon arrival of the day certain • Day certain - that which must necessarily come, although it may not be known when 2. Suspensive (ex die) -obligation becomes demandable on the day stipulated WHEN COURTS MAY FIX PERIOD: 1.

If the obligation does not fix a period, but from its nature and circumstances it can be inferred that a period was intended by the parties 2. If the duration of the period depends upon the will of the debtor 3. In case of reciprocal obligations, when there is a just cause for fixing a period 4. If the debtor binds himself when his means permit him to do so PERIOD FOR WHOSE BENEFIT • GENERAL RULE: When a period is designated for the performance or fulfillment of an obligation, it is presumed to have been established for the benefit of both creditor and debtor. • EXCEPTION: When it appears from the tenor of the obligation or other circumstances that the period has been established in favor of one or the other.

PERIOD FOR THE BENEFIT OF THE CREDITOR • Creditor may demand the fulfillment of the obligation at any time but the debtor cannot compel him to accept before the expiration of the period PERIOD FOR THE BENEFIT OF THE DEBTOR • Debtor may oppose any premature demand of the creditor but he may renounce the benefit of the period by performing his obligation in advance (Manresa) WHEN DEBTOR LOSES RIGHT TO PERIOD: • Insolvency of debtor, unless security provided • Did not deliver security promised • Impaired security through his own acts or through fortuitous event unless he gives new securities equally satisfactory • Violates undertaking in consideration of extension of period • Attempts to abscond TERM Interval of time which is future and certain Time w/c must necessarily come although it may not be known when QuickTime™ and aan Exerts Exerts an influence sed) decompressor influence upon TIFF (Uncompres are upon the time needed to the very existence of the of see this picture. demandability or obligation itself extinguishment of an obligation Does not have any Has retroactive effect retroactive effect unless there is an agreement to the CONDITION Fact or event which is future or uncertain or a past event unknown to the parties Future and uncertain fact or event which may or may not happen Page 111 of 297 Civil Law Summer Reviewer

ATENEO CENTRAL BAR OPERATIONS 2007 upon the price of any 1 of them, also with indemnity for damages. ALTERNATIVE OBLIGATIONS (See Arts. 1199 - 1206) FACULTATIVE - only one prestation has been agreed upon but another may be given in substitution EFFECT OF LOSS OR DETERIORATION THRU NEGLIGENCE, DELAY OR FRAUD OF OBLIGOR: • Of thing intended as substitute - no liability • Of the substitute after substitution is made - with

liability ALTERNATIVE - bound by different prestations but only one is due
RIGHT OF CHOICE IN ALTERNATIVE OBLIGATIONS • As a general rule the
right of choice belongs to debtor EFFECT OF LOSS OF OBJECTS OF
ALTERNATIVE OBLIGATIONS 1.

If the right of choice belongs to the debtor • If through a fortuitous event all
were lost, debtor cannot be held liable for damages • If 1 or more but not all
of the things are lost or one or some but not all of the prestations cannot be
performed due to fortuitous event or fault of the debtor, creditor cannot hold
the debtor liable for damages because the debtor can still comply with his
obligation • If all things, except one, were lost, the debtor must comply by
performing that which remain • If all were lost by fault of the debtor the later
is liable for the value of the last thing or service which became impossible 2.
If right of choice belongs to the creditor • If 1 of the things is lost through a
fortuitous event, the debtor shall perform the obligation by delivering that
which the creditor should choose from among the remainder or that which
remains QuickTime™ 1 subsists if only and a TIFF of 1 of the things occurs
through decompressor • If the loss (Uncompressed) this picture. re needed
to see the fault of the debtor, the creditor may claim any of those subsisting
or the price of that which, through the fault of the former, has disappeared
with a right to damages • If all the things are lost through the fault of the
debtor, the choice by the creditor shall fall REQUISITES FOR MAKING THE
CHOICE: 1. Made properly so that creditor or his agent will actually know 2.
Made with full knowledge that a selection is indeed being made 3. Made
voluntarily and freely 4. Made in due time - before or upon maturity 5. Made
to all proper persons 6. Made w/o conditions unless agreed by the creditor 7.

May be waived, expressly or impliedly ALTERNATIVE vs. FACULTATIVE

ALTERNATIVE FACULTATIVE a) Only one thing is due a) Various things are due

but but a substitute may be to render the giving principally given

payment/fulfillment easy of one is sufficient b) If one of b) If principal

obligations prestations is illegal, is void and there is no others may be valid

necessity of giving the but obligation substitute; nullity of P remains carries

with it nullity of S c) If it is impossible to give all except one, the last one

must still be given c) If it is impossible to give the principal, the substitute

does not have to be given; if it is impossible to give the substitute, the

principal must still be given d) The right of choice is given only to the debtor

d) Right to choose may be given either to debtor or creditor JOINT AND

SOLIDARY OBLIGATIONS (See Arts. 1207 - 1222) JOINT - presumption when

two or more creditors or two or more debtors concur in one and the same

obligation EXCEPTIONS TO THE PRESUMPTION 1. when expressly stated that

there is solidarity 2. when the law requires solidarity 3. when the nature of the

obligation requires solidarity 4. when a charge or condition is imposed upon

heirs or legatees and the testament expressly makes the charge or condition

in solidum (Manresa) Page 112 of 297 Civil Law Summer Reviewer ATENEO

CENTRAL BAR OPERATIONS 2007 5. when a solidary responsibility is imputed

by a final judgment upon several defendants (Gutierrez v. Gutierrez)

EFFECTS OF JOINT LIABILITY 1. Demand on one produces delay only with

respect to the debt 2. Interruption in payment by one does not benefit or

prejudice the other 3. Vices of one debtor to creditor has no effect on the

others 4.

Insolvency of one debtor does not affect other debtors JOINT DIVISIBLE

OBLIGATIONS 1. Each creditor can demand for the payment of his proportionate share of the credit, while each debtor can be held liable only for the payment of his proportionate share of the debt 2. A joint creditor cannot act in representation of the other creditors while a joint debtor cannot be compelled to answer for the acts or liability of the other debtors JOINT INDIVISIBLE OBLIGATIONS 1. If there are 2 or more debtors, the fulfillment of or compliance with the obligation requires the concurrence of all the debtors, although each for his own share. The obligation can be enforced only by proceeding against all of the debtors. 2.

If there are 2 or more creditors, the concurrence or collective act of all the creditors, although each for his own share, is also necessary for the enforcement of the obligation EFFECT OF BREACH • If one of the joint debtors fails to comply with his undertaking, the obligation can no longer be fulfilled or performed. Consequently, it is converted into one of indemnity for damages. Innocent joint debtor shall not contribute to the indemnity beyond their corresponding share of the obligation. INDIVISIBILITY SOLIDARITY Refers to the Refers to the legal tie and prestation which Time™ and a consequently to the Quick decompressor constitutes the TIFF (Uncompressed) this picture. r parties of the object to subjects are needed see of the obligation obligation Plurality of subjects is Plurality of subjects is not required indispensable In case of breach, When there is liability on obligation is converted the part of the debtors into 1 of indemnity for because of the breach, damages because of the solidarilty among the breach, indivisibility of the obligation is terminated debtors remains SOLIDARY - must be expressed in stipulation or

provided by law or by nature of obligation 1. Active - on the part of creditor or obligee • EFFECTS: • Death of 1 solidary creditor transmits share to heirs (but collectively) • Each creditor represents the other in the act of recovery of payment • Credit is divided equally between creditors as among themselves • Debtor may pay any of the solidary creditors 2.

Passive - on the part of debtors or obligors • EFFECTS: • Each debtor may be requested to pay whole obligation with right to recover from codebtors • Interruption of prescription to one creditor affects all • Interest from delay on 1 debtor is borne by all 3. Mixed - on the part of the obligors and obligees, or the part of the debtors and the creditors 4. Conventional - agreed upon by the parties 5. Legal - imposed by law • Instances where law imposes solidary obligation: a. Obligations arising from tort b. Obligations arising from quasi-contracts c. Legal provisions regarding obligation of devisees and legatees d. Liability of principals, accomplices, and accessories of a felony e. Bailees in commodatum • EFFECTS: a. Payment made before debt is due, no interest can be charged, otherwise - interest can be charged b.

Insolvency of one - others are liable for share pro-rata c. If different terms and conditions - collect only what is due, later on collect from any d. No reimbursement if payment is made after prescription or became illegal e. Remission made after payment is made - codebtor still entitled to reimbursement f. Effect of insolvency or death of co-debtor - still liable for whole amount g. Fault of any debtor - every one is responsible - price, damage and interest Page 113 of 297 Civil Law Summer Reviewer ATENEO CENTRAL BAR OPERATIONS 2007 h. Complete/ personal defense - total or

partial (up to amount of share only) if not personal to him EFFECT OF LOSS OR IMPOSSIBILITY OF THE PRESTATION: 1.

If without fault - no liability 2. If with fault - there is liability (also for damage and interest) 3. Loss due to fortuitous event after default - there is liability

(because of default) DIVISIBLE AND INDIVISIBLE OBLIGATIONS (See Arts.

1223 - 1225) DIVISIBLE - obligation that is capable of partial performance •

• • Execution of certain no of days work Expressed by metrical units Nature of obligation - susceptible of partial fulfillment - one not capable of partial 1.

With respect to prestation itself a. Identity b. Integrity or completeness c.

Indivisibility 2. With respect to parties - must be made by proper party to

proper party a. Payor i.

Payor - the one performing, he can be the debtor himself or his heirs or assigns or his agent, or anyone interested in the fulfillment of the obligation;

can be anyone as long as it is with the creditor's consent RD ii. 3 person

pays/performs - only the creditor's consent; If performance is done also with debtor's consent - he takes the place of the debtor. There is subrogation rd

except if the 3 person intended it to be a donation iii. 3rd person

pays/performs with consent of creditor but not with debtor's consent, the repayment is only to the extent that the payment has been beneficial to

debtor b. Payee i. Payee - creditor or obligee or successor in interest of

transferee, or agent rd ii. 3 person - if any of the ff. occur: • It must have redounded to the obligee's • benefit and only to the extent of such benefit

Page 114 of 297 CHAPTER 4. - EXTINGUISHMENT OF OBLIGATIONS See Arts.

1232 - 1304 MODES OF EXTINGUISHMENT OF OBLIGATION (Art. 1231): 1.

Payment or performance 2. Loss of the thing due 3. Condonation or

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remission of debt 4. Confusion or merger of rights 5. Compensation 6.

Novation 7. Annulment 8. Rescission 9. Fulfillment of resolutive condition

PAYMENT OR PERFORMANCE - delivery of money and performance, in any

other manner of the obligation REQUISITES FOR PAYMENT/PERFORMANCE

VALID INDIVISIBLE performance • • • • To give definite things Not

susceptible of partial performance Provided by law Intention of parties

OBLIGATIONS WITH A PENAL CLAUSE (See Arts. 1226 - 1230) WITH PENAL

CLAUSE - One to which an accessory undertaking is attached for the purpose

of insuring its performance by virtue of which the obligor is bound to pay a

stipulated indemnity or perform a stipulated prestation in case of breach

CHARACTERISTICS OF PENAL CLAUSES: 1. Subsidiary - As a general rule,

only penalty can be demanded, principal cannot be demanded, except:

Penalty is joint or cumulative 2. Exclusive - takes place of damage, damage

can only be demanded QuickTime™ ff. cases: in the and a TIFF decompresso

a. Stipulation(Uncompressed) this right r are- granting picture. needed to

see b. Refusal to pay penalty c.

With dolo (not of creditor) CAUSES FOR REDUCTION OF PENALTY: 1.

Partial/irregular performance 2. Penalty provided is iniquitous/

unconscionable Civil Law Summer Reviewer ATENEO CENTRAL BAR

OPERATIONS 2007 It falls under art 1241, par 1, 2, 3 - the benefit is total so,

performance is total iii. Anyone in possession of the credit - but will apply

only if debt has not been previously garnished PAYMENT MADE TO AN

INCAPACITATED PERSON, VALID IF 1. Incapacitated person kept the thing

delivered, or 2. Insofar as the payment has been beneficial to him PAYMENT

TO 3 PARTY NOT AUTHORIZED, VALID IF PROVED AND ONLY TO THE EXTENT OF BENEFIT; PRESUMED IF 1.

After payment, 3rd person acquires the creditor's rights rd 2. Creditor ratifies payment to 3 person 3. By creditor's conduct, debtor has been led to make the payment (estoppel) PAYMENT MADE IN GOOD FAITH TO A PERSON IN POSSESSION OF CREDIT SHALL RELEASE DEBTOR; REQUISITES: 1. Payment by debtor must be made in good faith 2. Creditor must be in possession of the credit and not merely the evidence of indebtedness • NOTE: With respect to time and place of payment - must be according to the obligation RD • Art. 1235. When the obligee accepts the performance, knowing its incompleteness or irregularity, and without expressing any protest or objection, the obligation is deemed fully complied with. n) • • • • Attempt in Good Faith to perform without willful or intentional departure Deviation is slight Omission/Defect is technical or unimportant Must not be so material that intention of parties is not attained EFFECT OF SUBSTANTIAL PERFORMANCE IN GOOD FAITH • Obligor may recover as though there has been strict and complete fulfillment, less damages suffered by the obligee • Right to rescind cannot be used for slight breach SPECIAL RULES/FORMS OF PAYMENT 1. APPLICATION OF PAYMENTS - the designation of the debt which payment shall be made, out of 2 or more debts owing the same creditor: stipulation or application of party given benefit of period - OK; to be valid: must be debtor's choice or w/ consent of debtor REQUISITES FOR THE APPLICATION OF PAYMENT: a. Various debts of the same kind b. Same debtor c.

Same creditor d. All debts must be due • EXCEPTION: there may be application of payment even if all debts are not yet due if: a. Parties so stipulate b. When application of payment is made by the party for whose benefit the term has been constituted c. Payment is not enough to extinguish all debts HOW APPLICATION IS MADE: a. Debtor makes the designation b. If not, creditor makes it by so stating in the receipt that he issues - unless there is cause for invalidating the contract c. If neither the debtor nor creditor has made the application or if the application is not valid, then application, is made by operation of law WHERE PAYMENT SHOULD BE MADE 1.

In the place designated in the obligation 2. If there is no express stipulation and the undertaking is to deliver a specific thing - at the place where the thing might be at the moment the obligation was constituted 3. In other case - in the place of the domicile of the debtor • Time of payment - time stipulated • Effect of payment - extinguish obligation Except: order to retain debt SUBSTANTIAL PERFORMANCE QuickTime™ and Art. 1233. A debt(Uncompressed) decompressor shall not be understood to have TIFF needed to see or service in which the been paid unless are the thing this picture. obligation consists has been completely delivered or rendered, as the case may be. (1157) Art. 1234.

If the obligation has been substantially performed in good faith, the obligor may recover as though there had been a strict and complete fulfillment, less damages suffered by the obligee. (n) WHO MAKES APPLICATION OF DEBTS

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OPERATIONS 2007 • • GENERAL RULE: Debtor EXCEPTION: Creditor a. Debtor

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

In case no application is made: • Apply payment to the most onerous • If debts are of the same nature and burden, application shall be made to all proportionately d. Abandonment of all debtor's property not exempt from execution e. Acceptance or consent on the part of the creditors

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

DATION IN PAYMENT One creditor Not necessarily in state of financial difficulty Thing delivered is considered as equivalent of performance Payment extinguishes obligation to the extent of the value of the thing delivered as agreed upon, proved or implied from the conduct of the creditor

CESSION IN PAYMENT Plurality of creditors Debtor must be partially or relatively insolvent

Universality of property of debtor is what is ceded Merely releases debtor for net proceeds of things ceded of, assigned, unless there is a contrary intention

2. DACION EN PAGO DACION EN PAGO - mode of extinguishing an obligation whereby the debtor alienates in favor of the creditor property for the satisfaction of monetary debt; extinguish up to amount of property

unless w/ contrary stipulation; A special form of payment because 1 element of payment is missing: IDENTITY CONDITIONS FOR A VALID DACION: a. If creditor consents, for a sale presupposes the consent of both parties b. If dacion will not prejudice the other creditors c. If debtor is not judicially declared insolvent • NOTE: DACION is governed by the law on sales 4.

CESSION or ASSIGNMENT CESSION/ASSIGNMENT IN FAVOR OF CREDITORS - the process by which debtor transfers all the properties not subject to execution in favor of creditors is that the latter may sell them and thus, apply the proceeds to their credits; extinguish up to amount of net proceeds (unless w/ contrary stipulation) 4. CONSIGNATION TENDER -the act of offering the creditor what is due him together with a demand that the creditor accept the same (When creditor refuses w/o just cause to accept payment, he becomes in mora accipiendi and debtor is released from responsibility if he consigns the thing or sum due) CONSIGNATION - the act of depositing the thing due with the court or judicial authorities whenever the creditor cannot accept or refuses to accept payment; generally requires prior tender of payment REQUISITES OF VALID CONSIGNATION: a.

Existence of valid debt b. Consignation was made because of some legal cause - previous valid tender was Page 116 of 297 KINDS OF ASSIGNMENT: a. Legal - governed by the insolvency law b. Voluntary - agreement of creditors REQUISITES OF VOLUNTARY ASSIGNMENT: a. More than one debt b. More than one creditor c. Complete or partial insolvency of debtor QuickTime™ and a TIFF (Uncompressed) decompressor are needed to see this picture. Civil Law Summer Reviewer ATENEO CENTRAL BAR OPERATIONS 2007 unjustly refused or circumstances making previous tender exempt c.

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Prior Notice of Consignation had been given to the person interested in performance of st obligation (1 notice) d.

Actual deposit/Consignation with proper judicial authorities nd e. Subsequent notice of Consignation (2 notice) EFFECTS: EXTINGUISHMENT OF OBLIGATION

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

CONSIGNATION W/O PRIOR TENDER - allowed in: a. Creditor absent or unknown/ does not appear at the place of payment b. Incapacitated to receive payment at the time it is due c.

Refuses to issue receipt w/o just cause d. 2 or more creditor claiming the same right to collect e. Title of obligation has been lost 5. LOSS OF THE THING DUE LOSS OF THE THING DUE - partial or total/ includes impossibility of performance WHEN IS THERE A LOSS a. When the object perishes (physically) b. When it goes out of commerce c. When it disappears in such a way that: its existence is unknown or it cannot be recovered WHEN IS THERE IMPOSSIBILITY OF PERFORMANCE: a. Physical impossibility b. Legal impossibility and a QuickTime™ TIFF (Uncompressed) decompressor i.

Directly needed to see this picture. when prohibited by are - caused as law ii.

Indirectly - caused as when debtor is required to enter a military draft

OBLIGATION TO DELIVER A SPECIFIC THING • GENERAL RULE: Extinguished •

EXCEPTIONS: a. Debtor is at fault b. Debtor is made liable for fortuitous

event because of a provision of law, contractual stipulation or the nature of the obligation requires assumption of risk on part of debtor OBLIGATION TO

DELIVER A GENERIC THING • GENERAL RULE: Not extinguished •

EXCEPTIONS: a. If the generic thing is delimited b. If the generic thing has already been segregated c. Monetary obligation OBLIGATION TO DO •

GENERAL RULE: Debtor is released when prestation becomes legally or physically impossible without fault on part of debtor EFFECT OF PARTIAL

LOSS a.

When loss is significant - may be enough to extinguish obligation b. When

loss insignificant - not enough to extinguish obligation NOTE: judicial

determination of extent is necessary WHEN THING IS LOST IN THE

POSSESSION OF THE DEBTOR • Presumption: Loss due to debtor's fault

(disputable) • Exception: natural calamity, earthquake, flood, storm 5.

REBUS SIC STANTIBUS REBUS SIC STANTIBUS - agreement is valid only if the

same conditions prevailing at time of contracting continue to exist at the

time of performance; Obligor may be released in whole or in part based on

this ground. REQUISITES a. The event or change could not have been

foreseen at the time of the execution of the contract b.

The performance is extremely difficult, but not impossible (because if it is

impossible, it is extinguished by impossibility) c. The event was not due to

the act of any of the parties d. The contract is for a future prestation 6.

CONDONATION Page 117 of 297 Civil Law Summer Reviewer ATENEO

CENTRAL BAR OPERATIONS 2007 CONDONATION/REMISSION OF THE DEBT -

gratuitous abandonment of debt; right to claim; donation; rules of donation

applies; express or implied REQUISITES: a. There must be an agreement b.

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There must be a subject matter (object of the remission, otherwise there would be nothing to condone) c. Cause of consideration must be liberality (Essentially gratuitous, an act of liberality) d.

Parties must be capacitated and must consent; requires acceptance by obligor; implied in mortis causa and expressed inter vivos e. Formalities of a donation are required in the case of an express remission f. Revocable - subject to rule on inofficious donation (excessive, legitime is impaired) and ingratitude and condition not followed g. Obligation remitted must have been demandable at the time of remission h. Waivers or remission are not to be presumed generally

6. CONFUSION OR MERGER CONFUSION OR MERGER OF RIGHTS- character of debtor and creditor is merged in same person with respect to same obligation REQUISITES: a. It must take place between principal debtor and principal creditor only b. Merger must be clear and definite c. The obligation involved must be same and identical - one obligation only d. Revocable, if reason for confusion ceases, the obligation is revived

7. COMPENSATION COMPENSATION - Set off; it is a mode of extinguishment to the concurrent amount the obligation of persons who are in their own right reciprocally debtors or creditors REQUISITES: a. Both parties must be mutually creditors and debtors - in their own right and as principals b. Both debts must consist in sum of money or if consumable , of the same kind or quality c. Both debts are due d. Both debts are liquidated and demandable (determined) e.

Neither debt must be retained in a rd controversy commenced by 3 person and communicated w/ debtor (neither debt is garnished) KINDS OF COMPENSATION a. Legal - by operation of law; as long as 5 requisites

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concur- even if unknown to parties and if payable in diff places; indemnity for expense of exchanges; even if not equal debts - only up to concurring amount b. Conventional - agreement of parties is enough, forget other requirement as long as both consented c. Facultative - one party has choice of claiming/opposing one who has benefit of period may choose to compensate: i. Not all requisites are present ii. Depositum; commodatum; criminal offense; claim for future support; taxes Forms: a. Express - formalities of donation b. Implied - conduct is sufficient

Extent: a. total Kinds: a. Principal - accessory also condoned b. accessory - principal still outstanding c. accessory obligation of pledge - condoned; presumption only, rebuttable b. partial REQUISITES OF IMPLIED

CONDONATION 1. Voluntary delivery - presumption; when evidence of indebtedness is w/ debtor - presumed voluntarily delivery by creditor; rebuttable 2. Effect of deliveryQuickTime™ and a of indebtedness of evidence TIFF (Uncompressed) decompressor is conclusion that debt is are needed to see this picture. condoned - already conclusion; voluntary delivery of private document a. If in hands of joint debtor - only his share is condoned b.

If in hands of solidary debtor - whole debt is condoned c. Tacit - voluntary destruction of instrument by creditor; made to prescribe w/o demanding

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OPERATIONS 2007 d. Judicial - set off; upon order of the court; needs pleading and proof; all requirements must concur except liquidation e. Total - when 2 debts are of the same amount f. Partial - when 2 debts are not of the same amount EFFECT OF ASSIGNMENT OF CREDIT TO 3RD PERSON; CAN

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THERE STILL BE COMPENSATION a. If made after compensation took place - no effect; compensation already perfected b. If made before compensation took place - depends i.

With consent of debtor - debtor is estopped unless he reserves his right and gave notice to assignee ii. With knowledge but w/o consent of debtor - compensation may be set up as to debts maturing prior to assignment iii.

W/o knowledge - compensation may be set-up on all debts prior to his knowledge 8. NOVATION b. Old obligation subsists if new obligation is void or voidable but annulled already (except: intention of parties) c. If old obligation has condition i. If Resolutive and it occurred - old obligation already extinguished; no new obligation since nothing to novate ii. If Suspensive and it never occurred -as if no obligation; also nothing to novate d.

If old obligation has condition, must be compatible with the new obligation; if new is w/o condition - deemed attached to new e. If new obligation has condition i. If resolutive: valid ii. If suspensive and did not materialize: old obligation is enforced KINDS OF NOVATION: a. REAL/OBJECTIVE - change object, cause/consideration or principal condition b. PERSONAL/SUBJECTIVE i. Substituting person of debtor (passive) • EXPROMISION; initiative is from 3rd person or new debtor; new debtor and creditor to consent; old debtor released from obligation; subject to full reimbursement and subrogation if made w/ consent of old debtor; if w/o consent or against will , only beneficial reimbursement; if new debtor is insolvent, not responsible since /o his consent • DELEGACION; initiative of old debtor; all parties to consent; full reimbursement; if insolvent new debtor - not responsible old debtor because obligation extinguished by valid novation unless: insolvency already existing

and of public knowledge or know to him at time of delegacion 1. Delegante - old debtor 2. Delegatario - creditor 3. Delegado - new debtor rd ii.

Subrogating 3 person to rights of creditor (active) 1. Conventional - agreement and consent of all parties; clearly established 2. Legal - takes place by operation of law; no need for consent; not presumed except as provided for in law: PRESUMED WHEN

NOVATION - extinguishment of obligation by creating/ substituting a new one in its place • • • Changing object or principal conditions Substituting person of debtor rd Subrogating 3 person in right of creditor REQUISITES: a. Valid obligation b. Intent to extinguish old obligation - expressed or implied: completely/substantially incompatible old and new obligation on every point c. Capacity and consent of parties to the new obligation d. Valid new obligation EFFECTS OF NOVATION: a. Extinguishment of principal carries QuickTime™ accessory,(Uncompressed) decompressor except: and a TIFF are needed to contrary i. Stipulation to see this picture. ii. Stipulation pour autrui unless beneficiary consents iii. Modificatory novation only; obliged to w/c is less onerous iv. Old obligation is void Civil Law Summer Reviewer

ATENEO CENTRAL BAR OPERATIONS 2007 a. b. c. Creditor pays another preferred creditor even w/o debtor's knowledge rd 3 person not interested in obligation pays w/ approval of debtor Person interested in fulfillment of obligation pays debt even w/o knowledge of debtor Change of debtor 4. 5. 6. Fulfill what has been expressly stipulated All consequences w/c may be in keeping with good faith, usage and law Relativity - binding only between the parties, their assigns, heirs; strangers cannot demand enforcement

Difference from payment by 3rd person 1. debtor is not necessarily released

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from debt 2. can be done w/o consent of creditor 3. one obligation 4. rd person has no obligation to pay if insolvent EXCEPTION TO RELATIVITY: 1. Accion pauliana 2. Accion directa 3. Stipulation pour autrui REQUISITES OF STIPULATION POUR AUTRUI 1. Parties must have clearly and deliberately conferred a favor upon a 3rd person 2. The stipulation in favor of a 3rd person should be a part of, not the whole contract 3. That the favorable stipulation should not be conditioned or compensated by any kind of obligation whatsoever 4. Neither of the contracting parties bears the legal rd representation or authorization of 3 party 5. The third person communicates his acceptance before revocation by the original parties 6.

Art 1312; Art 1314 REQUISITES OF ART 1312: 1. Existence of a valid contract 2. Knowledge of the contract by a 3rd person rd 3. Interference by the 3 person KINDS OF CONTRACTS 1. As to perfection or formation a. Consensual - perfected by agreement of parties b. Real - perfected by delivery (commodatum, pledge, deposit) c. Formal/solemn - perfected by conformity to essential formalities (donation) 2. As to cause a. Onerous - with valuable consideration b. Gratuitous - founded on liberality c. Remunerative - prestation is given for service previously rendered not as obligation 3. As to importance or dependence of one upon another a. Principal - contract may stand alone b.

Accessory - depends on another contract for its existence; may not exist on its own c. Preparatory - not an end by itself; a means through which future contracts may be made 4. As to parties obliged a. Unilateral - only one of the parties has an obligations Page 120 of 297 1. debtor is released 2. needs consent of creditor - express or implied 3. two obligations; one is

extinguished and new one created 4. new debtor is obliged to pay

CONVENTIONAL SUBROGATION governed by Arts. 1300-1304 debtor's consent is required extinguishes the obligation and gives rise to a new one defects and vices in the old obligation are cured takes effect upon moment of novation or subrogation ASSIGNMENT OF RIGHTS governed by Arts. 624 to 1627 debtor's consent is not required transmission of right of the creditor to third person without modifying or extinguishing the obligation defects and vices in the old obligation and not cured as far as the debtor is concerned, takes effect upon notification

TITLE II - C O N T R A C T S CHAPTER 1. GENERAL PROVISIONS See Arts. 1305 -a1317 QuickTime™ and TIFF (Uncompressed) decompressor are needed to see this picture. PRINCIPAL CHARACTERISTICS: 1. Autonomy of wills - parties may stipulate anything as long as not illegal, immoral, etc. 2. Mutuality - performance or validity binds both parties; not left to will of one of parties 3. Obligatory Force - parties are bound from perfection of contract: Civil Law Summer Reviewer ATENEO CENTRAL BAR OPERATIONS 2007 b. Bilateral - both parties are required to render reciprocal prestations 5. As to name or designation a. Nominate b. Innominate I.

Do ut des - I give that you may give II. Do ut facias - I give that you may do III. Facio ut des - I do that you may give IV. Facio ut facias - I do that you may do STAGES IN A CONTRACT: 1. Preparation - negotiation 2.

Perfection/birth 3. Consummation - performance CHAPTER 2. - ESSENTIAL REQUISITES OF A CONTRACT See Arts. 1318 - 1355 ESSENTIAL ELEMENTS: 1. Consent 2. Subject Matter 3. Consideration CONSENT CONSENT - meeting of minds between parties on subject matter and cause of contract; concurrence

of offer and acceptance REQUIREMENTS: 1. Plurality of subject 2. Capacity 3. Intelligence and free will 4. Manifestation of intent of parties 5. Cognition by the other party 6.

Conformity of manifestation and cognition AUTO CONTRACTS • made by a person acting in another's name in one capacity COLLECTIVE CONTRACTS • will of majority binds a minority to an agreement notwithstanding the opposition of the latter CONTRACTS OF ADHESION • one party has already a QuickTime™ and prepared form of a TIFF (Uncompressed) contract, containing the decompressor stipulations he desires, are needed see this picture. and he simply asks the other party to agree to them if he wants to enter into the contract • NOTE: We follow the theory of cognition and not the theory of manifestation. Under our Civil Law, the offer and acceptance concur only when the offeror comes to know, and not when the offeree merely manifests his acceptance ELEMENTS OF VALID OFFER / ELEMENTS OF VALID ACCEPTANCE 1. Definite-unequivocal 2. Complete-unconditional 3. Intentional WHEN OFFER BECOMES INEFFECTIVE: 1.

Death, civil interdiction, insanity or insolvency of either party before acceptance is conveyed 2. Express or implied revocation of the offer by the offeree 3. Qualified or conditional acceptance of the offer, which becomes a counter-offer 4. Subject matter becomes illegal or impossible before acceptance is communicated PERIOD FOR ACCEPTANCE 1. Stated fixed period in the offer 2. No stated fixed period a. Offer is made to a person present - acceptance must be made immediately b. Offer is made to a person absent - acceptance may be made within such time that, under normal circumstances, an answer can be received from him • NOTE:

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Acceptance may be revoked before it comes to the knowledge of the offeror.

AMPLIFIED ACCEPTANCE • under certain circumstances, a mere amplification on the offer must be understood as an acceptance of the original offer, plus a new offer which is contained in the amplification. RULE ON COMPLEX OFFERS

1. Offers are interrelated - contract is perfected if all the offers are accepted

2. Offers are not interrelated - single acceptance of each offer results in a perfected contract unless the offeror has made it clear that one is dependent upon the other and acceptance of both is necessary. *Malbarosa vs. CA* 2003

G. R.12576 - Offer *inter praesentes* must be accepted IMMEDIATELY. If the parties intended that there should be an express acceptance, the contract will be perfected only upon knowledge by the offeror of the express acceptance by the offeree of the offer.

An acceptance which is not made in the manner prescribed by the offeror is NOT EFFECTIVE, BUT A COUNTER-OFFER which Page 121 of 297 Civil Law Summer Reviewer ATENEO CENTRAL BAR OPERATIONS 2007 the offeror may accept or reject. RULE ON ADVERTISEMENTS AS OFFERS • Business advertisements - Not a definite offer, but mere invitation to make an offer, unless it appears otherwise • Advertisement for Bidders - only invitation to make proposals and advertiser is not bound to accept the highest or lowest bidder, unless appears otherwise OPTION - option may be withdrawn anytime before acceptance is communicated but not when supported by a consideration other than purchase price: option money c.

They were contracts for necessities such as food, but here the persons who are bound to give them support should pay therefor. Minor is estopped for having misrepresented his age and misled the other party (when age is close to age of majority as in the Mercado v Espiritu and Sia Suan v Alcantara cases. *In the Sia Suan v Alcantara case, there is a strong dissent by J. Padilla to the effect that the minor cannot be estopped if he is too young to give consent; one that is too young to give consent is too young to be estopped. Subsequently, in Braganza v Villa-Abrille, the dissent became the ruling. Minors could not be estopped. DISQUALIFIED TO ENTER INTO CONTRACTS: (contracts entered into are void) 1. Those under civil interdiction 2.

Hospitalized lepers 3. Prodigals 4. Deaf and dumb who are unable to read and write 5. Those who by reason of age, disease, weak mind and other similar causes, cannot without outside aid, take care of themselves and manage their property, becoming an easy prey for deceit and exploitation Incapacity Restrains the exercise of the right to contract May still enter into contract through parent, guardian or legal representative Based upon subjective circumstance of certain person Contracts entered into are merely voidable Disqualification Restrains the very ri