CHAPTER 3
DIFFERENT KINDS OF OBLIGATIONS

SECTION 1
PURE AND CONDITIONAL OBLIGATIONS

ART. 1179

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

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

ART. 1180

When the debtor binds himself to pay when his means permit him to do so, the obligation shall be deemed to be one with a period, subject to the provisions of Article 1197.

PURE OBLIGATIONS

Obligations whose effectivity or extinguishment do not depend upon the fulfillment or nonfulfillment of a condition or upon the expiration of a term or period, and which is characterized by the quality of immediate demandability (*Jurado, 107*).

Obligations which contain no terms or conditions whatever upon which depends the fulfillment of the obligation contracted by the obligor.

It is one which is not subject to any condition and no specific date is mentioned for its fulfillment and is, therefore, immediately demandable (*De Leon, 97*).

NOTE: Though demandable at once, the debtor should be given a reasonable period to perform the obligation depending on the nature and complexity of such – this is called "grace period" (*see Floriano v Delgado, 11 Phil. 154*).

NOTE: A demand note is subject to neither a suspensive condition nor a suspensive period. The demand is not a condition precedent, since the effectivity and binding effect of the note does not depend upon the making of the demand.

Illustration:

A promises to pay B P5M upon receipt by A of his share from the estate of X or "upon demand of B." The obligation of A is immediately due and demandable, for B may rely on the wording "upon demand."

Illustration:

Where the debtor had executed a simple and unconditional promissory note promising to pay a certain indebtedness to the creditor without fi xing any particular date for payment, it was held that the obligation is pure and that, although the creditor can demand for the payment of the same immediately, a reasonable period of grace, which in this case was fi xed at ten days after the obligation was contracted, should be given to the debtor within which to pay.

CONDITIONAL OBLIGATIONS

A future and uncertain fact or event upon which an obligation is subordinated or made to depend. One whose effectivity is subordinated to the fulfillment or nonfulfillment of a future and uncertain fact or event (*Jurado, 108*).

Obligations in which the acquisition of rights as well as the extinguishment or loss of those already acquired, shall depend upon the happening of the event which constitutes the condition (Art. 1181).

It is one whose consequences are subject in one way or another to the fulfillment of a condition (*DE LEON, 97*).

NOTE: The event must not only be future, but it must also be uncertain (*Jurado,108*).

CHARACTERISTICS OF CONDITIONAL OBLIGATIONS
[FUn Po Will Past]

1. It is a **f**uture and **un**certain event upon which an obligation or provision is made to depend;
2. Even though the event is uncertain, it should **po**ssible;
3. The condition must be imposed by the **will** of the party and not a necessary legal requisite;
4. **Past** event but unknown to parties.

Note: The past event itself can never constitute a condition because in order that it can be classified as such, the requisites of *futurity* and *uncertainty* must be present. But the proof or ascertainment of the fact or event, as distinguished from the fact or event itself, may constitute either a condition or a term depending upon the circumstances of each case. Thus, if the proof or ascertainment of the fact or event will surely come to pass, although it may not be known when, it is clear that it constitutes a term or period (*Jurado, 108-109*).

Note: A condition really refers only to an uncertain and future event. A past event cannot be said to be a condition since the demandability of an obligation subject to a condition depends upon whether the event will happen or will not happen (*De Leon, 104*).

NOTE: When the debtor binds himself to pay when his means permit him to do so, the obligation shall be deemed to be one with a period. In this case, the creditor must first ask the court to fix the period, otherwise the action to collect the debt would be premature.

CONDITION

It is an uncertain event which wields an influence on a legal relationship (*PARAS, 188*).

It is a future and uncertain event, upon the happening of which, the effectivity or extinguishment of an obligation (or rights) subject to it depends (*De Leon, 98*).

EFFECTS OF FAILURE TO COMPLY WITH CONDITION

1. If condition is *imposed on the perfection* of a contract – results in the *failure* of the contract;
2. If condition is *imposed on the performance* of the obligation – gives the other party an option either to *refuse to proceed with the compliance* of the obligation or to *waive the condition.*

"WHEN HIS MEANS PERMIT"

Although it may seem that Art. 1180 speaks of a condition dependent exclusively on the will of the debtor, the fact remains that payment does not depend on debtor's will, for indeed he had promised payment. What depends really on him is not payment, but the *time* when payment is to be made. Hence the law under Art. 1180 considers this obligation as one with a term or period (*Paras, 190*). As the time of payment is not fixed, the court must fix the same before any action for collection may be entertained, unless, the prior action of fixing the term or period will only be a formality and will serve no purpose but delay (*Tiglao v Manil Railroad Co., 98 Phil. 181*).

PERIOD

A future and certain event upon the arrival of which the obligation subject to it either arises or is extinguished (*De Leon, 104*).

CLASSIFICATIONS OF CONDITIONS

As to effect of obligation

1. ***Suspensive*** – when the fulfillment of the condition results in the acquisition of rights arising out of the obligation; also called *condition precedent* or *condition antecedent*;

2. ***Resolutory*** – when the fulfillment of the condition results in extinguishment of rights arising out of the obligation (*Jurado, 108-109*); also called *condition subsequent*.

As to the origin of obligation (Art. 1182)

1. ***Potestative*** – when the fulfillment of the condition depends upon the *will of a party* to the obligation (*Id., 110*).;
2. ***Simple*** – presupposes not only a *manifestation of will* but also the *realization of an external act* of a 3rd party;
3. ***Purely*** – if it depends solely and exclusively upon the will of the *debtor*, it is void for the debtor cannot fulfill an obligation arising from his own choice. But it is valid if it depends on the will of the creditor;

   Note: Applicable only to suspensive condition and not to resolutory. Hence, resolutory potestative are valid if made to depend upon the debtor since the obligation is already in force.

4. ***Casual*** – depends exclusively upon *chance*, will of a 3rd person or partially by chance and partially by will of a 3rd person (*Id.*);
5. ***Mixed*** – depends upon the *will of one* of the parties and *other circumstances*, including will of 3rd person or chance (*Id.*).

As to possibility (Art. 1183)

1. ***Possible*** – when the condition is *capable of realization* according to nature, law, public policy or good customs (*Id.*);
2. ***Impossible*** – when the condition is *not capable of realization* according to nature law, public policy, morals or good customs (*Id.*).

   Note: The impossible condition must exist at the time of the creation of the obligation otherwise that would fall under Art. 1266.

   General Rule

   If the obligation is divisible the impossible conditions shall annul the obligation which depends upon them.

   Exceptions

   a. Pre-existing obligation;
   b. Divisible obligation;
   c. Negative impossible things;
   d. Testamentary deposition.

As to mode (Arts. 1184-1185)

1. ***Positive*** – condition that *some event happen* at a determinate time shall extinguish the obligation as soon as the time expires or become indubitable that the event will not take place (Art. 1184);
2. ***Negative*** – condition that *some event will not happen* at a determinate time shall render the obligation effective from the moment the time has elapsed or it has become evident that the event cannot occur (Art. 1185).

   Note: If there is no fixed in the foregoing, Art. 1185 (2) shall apply. Intention of the parties is controlling and the time shall be that which the parties may have probably contemplated, taking into account the nature of the obligation.

As to divisibility (Arts. 1223-1225)

1. ***Divisible*** – when the condition is susceptible of *partial realization* (*Id.*);
2. ***Indivisible*** – when the condition is *not susceptible* to partial realization (*Id.*).

   Principle of Indivisibility of Conditions

   The indivisibility of the condition passes to the heirs of the debtor. Hence, some heir cannot demand partial performance of the obligation by offering to fulfill part of the condition corresponding to them.

   Exceptions: Condition may be divisible

   a. By nature of the condition;
   b. By the stipulation;
   c. Law.

As to plurality of conditions

1. ***Conjunctive*** – there are several conditions which must *all be realized* (*Id.*);
2. ***Alternative*** – there are several, but *only one* must be realized (*Id.*).

As to form

1. Express
2. Implied

ART. 1181

In conditional obligations, the acquisition of rights, as well as the extinguishment or loss of those already acquired, shall depend upon the happening of the event which constitutes the condition.

SUSPENSIVE CONDITION (*condition precedent; condition antecedent*)

One the fulfillment of which will give rise to an obligation (or right). In other words, the demandability of the obligation is suspended until the happening of a future and uncertain event which constitutes the condition (*De Leon, 98*).

The obligation shall only be effective upon the fulfillment of the condition; upon constitution of obligation, and before fulfillment, obligee acquires a mere hope or expectancy, protected by law.

It is a future and uncertain event upon the happening or fulfillment of which rights arising out of the obligation are acquired. (*Jurado, 111*).

It signifies a future and uncertain event upon the fulfillment of which the obligation becomes effective.

The birth or effectivity of the obligation is suspended until the happening or fulfillment of the event which constitutes the condition (*Id.*).

BEFORE FULFILLMENT	AFTER FULFILLMENT
Obligation of obligor to comply with the prestation is held in suspense until fulfillment of condition. Anything paid by mistake may be recovered.	The obligation arises or becomes effective; obligor can be compelled to comply with what is incumbent upon him. *Results in the acquisition of rights*

NOTE: If the perfection of a contract depends upon the fulfillment of a condition, non-fulfillment thereof means the non-perfection of the contract since the suspensive condition should have been first fulfilled (*Ruperto v Kosca, 26 Phil. 227*).

NOTE: If the suspensive condition does not take place, the parties would stand as if the conditional obligation had never existed (*Gaite v Fonacier, 2 SCRA 830*).

NOTE: It must appear that the performance of an act or the happening of an event was intended by the parties as a suspensive condition, otherwise, its non-fulfillment will not prevent the perfection of a contract (*De Leon, 99*).

NOTE: There can be no rescission (see Art. 1191) of an obligation that is still non-existent, the suspensive condition not having been fulfilled (*Luzon Brokerage Co., Inc. v Maritime Building Co., Inc., 46 SCRA 381*).

Illustration:

If A bounds himself to give to B P5M if the latter gets married to C, the condition is suspensive in character. In such case, B cannot acquire the P5M unless he gets married to C.

If X bounds himself to give to Y a certain house and lot if the latter passes the bar examinations, the condition is also suspensive in character. He cannot acquire the house and lot unless the condition is fulfilled.

RESOLUTORY CONDITION (*condition subsequent*)

It is a future and uncertain event upon the happening or fulfillment of which rights which are already acquired by virtue of the obligation are extinguished or lost. Hence, when the obligation is subject to a resolutory condition, the juridical relation which is established as a result of the obligation is subject to the threat of extinction (*Jurado, 111*).

NOTE: Where a contract is subject to a resolutory condition, non-compliance with or non-fulfillment of the condition resolves the contract by force of law without need of judicial intervention (*De Leon, 109*).

BEFORE FULFILLMENT	AFTER FULFILLMENT
Rights recognized in Art. 1188, par 1 in case of a suspensive condition should likewise be available in obligations with a resolutory condition.	Whatever may have been paid or delivered by one or both of the parties upon the constitution of the obligation shall have to be returned upon the fulfillment of the condition. There is a return to the status quo. Results in the *loss of rights already acquired.*

Illustration:

If a person donates a parcel of land to the City of Tuguegarao subject to the condition that the City shall transform it into a public park within a period of one year from the time of the perfection of the donation, the condition which is imposed is resolutory in character. If the City fails to transform the land into a public park within the stipulated period, the rights which it acquired over the land as a result of the donation are resolved or extinguished altogether (Parks v Province of Tarlac, 49 Phil. 142).

NOTE: In a contract to sell on installments, upon the fulfillment of the positive suspensive condition which is the full payment of the purchase price, ownership will not automatically transfer to the buyer although the property may have been previously delivered to him. The prospective seller still has to convey title to the prospective buyer by entering into a contract of absolute sale (*Coronel v Court of Appeals, 263 SCRA 15*). The failure to fulfill the condition is not considered a breach, casual or serious, but simply an event which prevents the obligation of the seller to convey title from acquiring any obligatory force (*Rillo v Court of Appeals, 274 SCRA 461*)

SUSPENSIVE CONDITION	RESOLUTORY CONDITION
If fulfilled, the obligation arises;	If resolutory condition is fulfilled, the obligation is extinguished;
If it does not take place, the tie of law (juridical or legal tie) does not appear;	If it does not take place, the tie of law is consolidated;
Until it takes places, the existence of the obligation is a mere hope;	Until it takes places, its effects flow, but over it, hovers the possibility of termination;
It is a future and uncertain event upon the happening or fulfillment of which rights arising out of the obligation are acquired	It is a future and uncertain event upon the happening or fulfillment of which rights which are already acquired by virtue of the obligation are extinguished or lost.

De Leon, 103

NOTE: A distinction must be made between a condition imposed on the perfection of a contract and that imposed on the performance of an obligation. Failure to comply with the first condition results in the failure of a contract, while failure to comply with the second (e.g., condition that the seller shall eject the squatters on the property sold within a certain period), only gives the other party the option either to refuse to proceed with the sale or to waive the condition. (*Lim v CA, 263 SCRA 569*).

WHEN OBLIGATION DEMANDABLE AT ONCE

1. Pure (*Art. 1179, 1*);
2. Subject to a resolutory condition (*Art. 1179, 2*);
3. Subject to a resolutory period (*Art. 1193, 2*).

NOTE: What is really meant here is, *future knowledge of a past event* will determine whether or not an obligation will arise (*Paras, 188*). Hence, a condition is really "a future AND certain event," not "a future OR uncertain event" (*JBL Reyes, Observation on the New Civil Code, Lawyer's Journal, 31 Jan. 1951, p. 47; cited in PARAS, 188-189*)

Illustration:

S is the owner of a parcel of land which is being claimed by X. Last week, the Supreme Court has rendered a final decision upholding the right of S. However, S has not yet received the notice that he had won the case. Now, S obliged himself to sell the land to B for a definite price, should he win the case against X.

Under the facts, S would be bound to sell the land to B upon receipt of the notice that he had won the case against X (Id.).

ART. 1182

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

POTESTATIVE

One which depends upon the will of one of the contracting parties, it is in the power of one of the parties to realize or prevent;

1. ***Simple*** – presupposes not only a manifestation of will but also the realization of an external act of a 3rd part;
2. ***Purely***
   a. ***Void*** – If it depends solely and exclusively upon the will of the *debtor*. The debtor cannot fulfill an obligation arising from his own choice;
   b. ***Valid*** - If it depends on the will of the *creditor*.

NOTE: Applicable only to suspensive condition and not to resolutory. Hence, resolutory Potestative are valid if made to depend upon the debtor since the obligation is already in force.

EFFECTS OF POTESTATIVE CONDITIONS WHICH DEPENDS UPON THE WILL OF

DEBTOR		CREDITOR
Suspensive	**Resolutory**	
Void, for the obligation is really illusory and it cannot, therefore, be legally demanded. *Ex. I will treat you to Lomi King next year if I will pass ObliCon.* Nonetheless, if the obligation is a pre-existing one and does not depend for its existence upon the fulfillment by the debtor of the	*Valid*, although the fulfillment depends upon the sole will of the debtor. The fulfillment of the condition merely causes the extinguishment or loss of rights already acquired (*Art. 1181*). *Ex. I will treat you to Lomi King, but if we will not have a quiz in ObliCon, I will not treat you.*	Valid

potestative condition, only the condition is void leaving unaffected the obligation itself.

Ex. A borrowed P1000 from B payable within 2 weeks. Subsequently, A promised to pay B "after A finishes cleaning his room" to which B agreed. In this case, only the condition is void but not the pre-existing obligation of A to pay C.

NOTE: According to Manresa, the use of the word "exclusive" (now "sole") makes it clear that conditional obligations whose fulfillment depends partly upon the will of the debtor and partly upon the will of a third person, or upon chance are *perfectly valid*. (*Jacinto v Chua Leng, C.A. 45 O.G. 2919*)

Q: *"I will give you P1,000,000 if I can sell my land." Suppose I am able to sell my land, am I bound to give you P1,000,000?*

A: It is submitted that the answer is *Yes*. While apparently, this is a potestative condition (because I may or I may not sell) (*see Osmeña v Rama, 14 Phil. 99*), still it is not purely potestative but really a mixed one, because the selling would depend not only on my desire to sell but also on the availability and willingness of the buyer and other circumstances such as price, friendship, or the necessity of transferring to a different environment (*see Hermoso v Longara, 49 O.G. 4287, Oct. 1953; Paras, 197*).

NOTE: A condition which is both potestative (or facultative) and resolutory may be valid, even though the condition is left to the will of the obligor.

CASUAL

Depends exclusively upon chance, will of a 3rd person or partially by chance and partially by will of a 3rd person.

If the suspensive condition depends upon chance or upon the will of a third person, the obligation subject to it is valid (*DE LEON, 120*).

Illustration:

Where A, building contractor, obliges himself in favor of B owner, to repair at A's expense any damage that may be caused to the building by any earthquake occurring within 10 years from the date of the completion of its construction (*Id.*).

MIXED

One whose fulfillment depends jointly upon the will of either one of the parties to the obligation and upon chance and/or of a third person (*Jurado, 115*).

The obligation is valid if the suspensive condition depends partly upon chance and partly upon the will of a third person (*De Leon, 120*).

Illustration:

Where A obliges himself in favor of B to repair at A's expense, any damage to the building taking place after an earthquake if found by a panel of arbitrators that construction defects contributed in any way to the damage (Id., 121).

NOTE: If the compliance with the obligation depends upon that part of the condition whose fulfillment depends upon the will of the debtor, the obligation is void as it is within his power to comply or not to comply with the same.

ART. 1183

Impossible conditions, those contrary to good customs or public policy and those prohibited by law shall annul the obligation which depends upon them. If the obligation is divisible, that part thereof which is not affected by the impossible or unlawful condition shall be valid.

The condition not to do an impossible thing shall be considered as not having been agreed upon.

NOTE: Art. 1183 refers to suspensive conditions. It applies only to cases where the i*mpossibility already existed* at the time of the obligation was *constituted*. If the impossibility arises after the creation of the obligation, Art. 1266 governs (*De Leon, 124*).

POSSIBLE

When the condition is capable of realization according to nature, law, public policy or good customs (*Jurado, 122*).

IMPOSSIBLE

When the condition is not capable of realization according to its nature, or according to law, public policy or good customs (*Id., 123*).

EFFECTS OF IMPOSSIBLE CONDITION

1. If the condition is *to do an impossible or illegal* thing, both obligation and condition are *void*;
2. If the condition is *not to do the impossible*, it is disregarded and obligation is rendered pure and *valid*;
3. If the condition is *not to do the illegal*, both the condition and obligation are *valid* (*PARAS, 200*);
4. Only the affected divisible obligation is void;
5. If *obligation is pre-existing*, not depending on fulfillment of the condition which is impossible for its existence, only the *condition is void*.;
6. Condition considered not imposed – if *impossible or unlawful condition is attached to a simple or remuneratory donation* as well as to a *testamentary disposition*, condition is considered not imposed while the obligation is valid (*Jurado, 123*).

NOTE: The impossibility of the condition must exist at the time of the creation of the obligation; a supervening impossibility does not affect the existence of the obligation.

ART. 1184

The condition that some event happen at a determinate time shall extinguish the obligation as soon as the time expires or if it has become indubitable that the event will not take place.

ART. 1185

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

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

POSITIVE CONDITION

A condition is positive if it involves the performance of an act or the fulfillment of an event (*Id., 124*).

EFFECTS OF POSITIVE CONDITION

Condition that some event happen at a determinate time shall extinguish the obligation as soon as the time expires or become indubitable that the event will not take place (Art. 1184);

Obligation is extinguished as soon as:

1. The *time expires* without taking place; or
2. As soon as it has become indubitable that the *event will not take place* although the time specified has not yet expired (*De Leon, 126*).

Illustration:

If A binds himself to give to B P1,000 if the latter passes ObliCon, and B flunks the course, the obligation is extinguished.

If X binds himself to give a new iPhone X to Y if the latter gets married to Z within a period of 2 days from the time of the constitution of the obligation, and at the expiration of 2 days, Y had not yet complied with the condition, the obligation is also extinguished (*Jurado, 124-125*).

NEGATIVE CONDITION

A condition is negative if it involves the non-performance of an act or the non-fulfillment of an event (*Id., 124*).

EFFECTS OF NEGATIVE CONDITION

Condition that some event will not happen at a determinate time shall render the obligation effective from the moment the time has elapsed or it has become evident that the event cannot occur (Art. 1185).

Obligation shall become effective and binding from the moment:

1. The *time indicated has elapsed* without the event taking place;
2. It has become evident that the *event cannot occur*, although the time indicated has not yet elapsed (*De Leon, 126*).

Illustration:

If A binds himself to give P1,000 to B provided that the latter shall not get married before reaching the age of 55, the condition is negative. If B is not yet married at the time when he finally reaches the age of 55, the obligation becomes effective (*Jurado, 125*).

ARTICLE 879, CC

If the potestative condition imposed upon the heir is negative, or consists in not doing or not giving something, he shall comply by giving a security that he will not do or give that which has been prohibited by the testator, and that in case of contravention he will return whatever he may have received, together with its fruits and interests.

NOTE: The intention of the parties, taking into consideration the nature of the obligation, shall govern if no time has been fixed for the fulfillment of the condition. It is evident that the same rule can also be applied to a positive condition (*Id.*).

ART. 1186

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

Illustration:

A agreed to give B a 5% commission if the latter could sell the former's land at a certain price. B found a buyer who definitely decided to buy the property upon the terms prescribed by A. To evade the payment of the commission agreed upon, A himself sold to the buyer the property at a lower price without the aid of B (*De Leon, 127*).

REQUISITES FOR CONSTRUCTIVE FULFILLMENT OF SUSPENSIVE CONDITIONS [SuPreVol]

1. The condition is **su**spensive;
2. The obligor actually **pre**vents the fulfillment of the condition;
3. He acts **vol**untarily (*Id.*).

REASON: The law does not require that the obligor acts with malice or fraud as long as his purpose is to prevent the fulfillment of the condition. He should not be allowed to profit from his own fault or bad faith to the prejudice of the obligee. In a reciprocal obligation like a contract of sale, both parties are mutually obligors and also obligees (*Id.*).

NOTE: *see Art. 1167, par. 1.*

Illustration:

Where the conditions which are imposed by a certain company in order that its employees will be entitled to retirement benefits can no longer be complied with because the retirement or pension plan was willfully abrogated by a unilateral act of the Board of Directors of the company, it was held that such conditions are deemed complied with in conformity with Art. 1186; consequently, such employees are now entitled to retirement benefits (*PLDT v Jeturian, 97 Phil. 981*).

NOTE: Art. 1186 applies only to suspensive and not to resolutory conditions (*DE LEON, 126*). The article can have no application to an external contingency which is lawfully within the control of the obligor (*Taylor v Uy Tieng, 43 Phil. 760*).

NOTE: The mere intention of the debtor to prevent its happening or the mere placing of ineffective obstacles to its compliance, without actually preventing fulfillment is not sufficient.

NOTE: When the voluntary act of the debtor did not have for its purpose the prevention of the fulfillment of the condition, it will not fall under constructive fulfillment. The same is true when the debtor acts pursuant to a right (*Tolentino, 161*).

NOTE: Intention and prevention in the exercise of a lawful right will not render Art. 1186 applicable.

ART. 1187

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

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

ART. 1188

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

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

RETROACTIVE CHARACTER OF THE EFFECT OF THE FULFILLMENT OF THE CONDITION

The condition which is imposed is only an accidental, not an essential, element of the obligation. Once the event which constitutes the condition is fulfilled thus resulting in the effectivity of the obligation, its effects must logically retroact to the moment when the essential elements which gave birth to the obligation have taken place and not to the moment when the accidental element was fulfilled (*Id., 129*).

REASON: The condition is only an accidental, not an essential, element of the obligation (*Id.*).

NOTE: The principle of retroactivity can only apply to *consensual contracts* and not to

1. *Real contracts* – because they are perfected only by the delivery of the object of the obligation;
2. Those contracts in which the obligation arising therefor can only be *realized within successive periods or intervals* (*Id.*).

RETROACTIVE EFFECT AS TO FRUITS AND INTEREST
Obligations To Give

- *Reciprocal Obligations* – no retroactivity – deemed mutually compensated during pendency of the condition (*De Leon, 132*).

  Illustration:

  On 1 Jan. 2019, A binds himself to sell a horse to B for P100,000 should B pass ObliCon. On 11 Mar. 2019, however, the horse gave birth to a foal. It is only on 31 May 2019 that B passed ObliCon. In such case, B is not entitled to the foal and A is not entitled to any legal interests therefrom since the fruits and interests received are deemed to have been mutually compensated.

- *Unilateral Obligations* – no retroactivity because they are gratuitous – debtor shall appropriate the fruits and interest received unless the intention was other, as inferred from nature and circumstances (*Id., 132-133*).

  Illustration:

  On 1 Jan. 2019, A binds himself to deliver a horse to B should the latter pass ObliCon. On 11 Mar. 2019, however, the horse gave birth to a foal. It is only on 31 May 2019 that B passed ObliCon. In this case, B is not entitled to the foal, unless a contrary intention by A may be inferred.

Obligations To Do or Not To Do

The courts will have to determine in each case the retroactive effect of the condition that has been complied with.

- Whether the effects of the fulfillment of the condition shall retroact to the very moment of the constitution of the obligation or only to a specified date before fulfillment.
- Whether or not there will be any retroactivity of effects (*Jurado, 130*).

NOTE: This rule also applies to an obligation with a resolutory condition (*see Art. 1190, 3*).

NOTE: The debtor is also entitled to fruits or legal interest if the creditor be in bad faith, that is, if the creditor knew that payment was being made prior to the fulfillment of the condition.

SUSPENSIVE CONDITIONS BEFORE FULFILLMENT

The demandability as well as the acquisition or effectivity of rights arising from the obligation is suspended pending the happening or fulfillment of the fact or event which constitutes the condition. Creditor has only a mere hope or expectancy which is protected by law (*JURADO, 126-127*).

In the case of the obligor or debtor, his obligation to comply with the prestation which constitutes the object of the obligation is held in suspense until the fulfillment of the condition. More accurately, his obligation to comply with the prestation arises only if and when the event which constitutes the condition is finally fulfilled (*Id., 127*).

Illustration:

If A binds himself to sell a particular parcel of land to B upon the condition that B will pass ObliCon, and subsequently, before the fulfillment of the condition of passing ObliCon, A changes his mind and finally decides to sell the land to C, B can bring an appropriate action, such as a petition for the issuance of a writ of injunction, to prevent the sale in order to preserve his right (*Id.*).

SUSPENSIVE CONDITION AFTER FULFILLMENT

Obligation arises or becomes effective. The right of the creditor is perfected. It becomes effective and demandable. The debtor can thereafter be compelled to comply with what is incumbent upon him (*Id., 128*).

ART. 1189

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

1. **If the thing is lost without the fault of the debtor, the obligation shall be extinguished;**
2. **If the thing is lost through the fault of the debtor, he shall be obliged to pay damages; it is understood that the thing is lost when it perishes, or goes out of commerce, or disappears in such a way that its existence is unknown or it cannot be recovered;**
3. **When the thing deteriorates without the fault of the debtor, the impairment is to be borne by the creditor;**
4. **If it deteriorates through the fault of the debtor, the creditor may choose between the rescission of the obligation and its fulfillment, with indemnity for damages in either case;**
5. **If the thing is improved by its nature, or by time, the improvement shall inure to the benefit of the creditor;**
6. **If it is improved at the expense of the debtor, he shall have no other right than that granted to the usufructuary.**

NOTE: Art. 1189 applies only if:

1. The suspensive condition is fulfilled;
2. The object is specific or determinate;
3. The obligation is subject to a suspensive condition;
4. The condition is fulfilled;
5. There is loss, deterioration, or improvement of the thing during the pendency of the happening on one condition (*De Leon, 135*).

LOSS

A thing is lost when it:

1. *Physical Loss* – when it perishes (e.g., the house is destroyed completely by fire);
2. *Legal Loss* – when a thing goes out of commerce of men (i.e., a thing is declared by la a contraband);
3. *Civil Loss* – disappears in such a way that its existence is unknown or it cannot be recovered (*Id., 135-136*).

Debtor is without fault	Obligation is extinguished
Debtor is with fault	Obliged to pay damages

Jurado, 131-132

DETERIORATION

Any reduction or impairment in the substance or value of thing which does not amount to loss; the thing is less than its value when the obligation was constituted.

Debtor is without fault	Impairment to be borne by the creditor
Debtor is with fault	Creditor may choose between the rescission of the obligation or its fulfillment, with damages in either case

Id., 132

IMPROVEMENT

A thing is improved when its value is increased or enhanced by nature or by time or at the expense of the debtor or creditor. However, if the thing is improved at the expense of the debtor, he shall have no other right than that granted to a usufructuary.

By its nature or by time	Inures to the benefit of creditor *Ex. Alluvion, avulsion, abandoned river beds, or islands which are formed, the accession shall inure to the benefit of the creditor.*
At the expense of the debtor	Rights similar to that granted to the usufructuary are given to the creditor.

	The debtor cannot ask reimbursement for the expenses incurred for useful improvements or for improvements for mere pleasure (Art, 579, CC), but only for necessary expenses (Art. 546, CC). The debtor has the right to remove such improvements, provided it is possible to do so without damage to the thing or property (Art. 579, CC).

Id., 182.

NOTE: The above rules apply to the following:

1. Determinate things only because *genus nun quam peruit*;
2. Obligation with a period;
3. Those who have a duty to return in case of loss, deterioration or improvement of the thing in an obligation with a resolutory condition (*Art. 1190, 2*).

ART. 1190

When the conditions have for their purpose the extinguishment of an obligation to give, the parties, upon the fulfillment of said conditions, shall return to each other what they have received.

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

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

RESOLUTORY CONDITIONS BEFORE FULFILLMENT

The rights which the obligee or creditor has already acquire by virtue of the obligation is always subject to the threat of extinction during the pendency of the condition.

The debtor has a hope or expectancy during the pendency of the condition for if and when the event which constitutes the resolutory condition happens or is fulfilled, he will certainly reacquire whatever he may have paid or delivered to the obligee or creditor (*Jurado, 134*).

RESOLUTORY CONDITIONS AFTER FULFILLMENT

If the resolutory condition is not fulfilled, such rights are consolidated; in other words, they become absolute in character.

If it is fulfilled, such rights are extinguished altogether; in other words, whatever may have been paid or delivered by one or both of the parties upon the constitution of the obligation shall have to be returned upon the fulfillment of the condition. There is, therefore, a return to the status quo (*Id.*).

RETROACTIVITY OF EFFECT

In Obligation To Give

Upon the fulfillment of the resolutory condition, the parties shall return to each other what they have received (*Id., 135*).

When a party to the obligation is obliged to return whatever he may have received including the fruits thereof to the other by reason of the fulfillment of the condition, he has the right to demand reimbursement for all expenses which he may have incurred in the production, gathering, and preservation of the said fruits.

NOTE: In obligations to give subject to a suspensive condition, the retroactivity admits of exceptions according to whether the obligation is *bilateral* or *unilateral* (*see Art. 1187.*) Here, there are no exceptions, whether the obligation is bilateral or unilateral (*De Leon, 138*). This is because in obligations with a resolutory condition, the fulfillment of the condition and its retroactivity have the effect of signifying the nonexistence of the obligation and what is nonexistent must not give rise to any effect whatsoever (*Jurado, 135*).

NOTE: Under Art. 443, CC, "he who receives the fruits has the obligation to pay the expenses made by a third person in their production, gathering, and preservation.'' Consequently, when a party to the obligation is obliged to return whatever he may have received including the fruits thereof to the other by reason of the fulfi llment of the condition, he has the right to demand reimbursement for all expenses which he may have incurred in the production, gathering, and preservation of the said fruits (*Id.*).

In Obligation To Do or Not To Do

The retroactivity of effects of the resolutory condition shall depend upon the discretion of the courts, as in the case of suspensive conditions (*Id.*).

NOTE: In case of loss, deterioration or improvement of the thing during pendency, the rules in Art. 1189 shall apply.

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.

BILATERAL OBLIGATION

When both parties are mutually bound to each other. In other words, both parties are debtors and creditors of each other. Bilateral obligations may be reciprocal or non-reciprocal (*De Leon, 140*).

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 (*Jurado, 136*).

Those which arise from the same cause and in which each party is a debtor and a creditor of the other, such that the performance of one is designed to be the equivalent and the condition for the performance of the other (*De Leon, 140*)

NON-RECIPROCAL OBLIGATIONS

Those which do not impose simultaneous and correlative performance on both parties. In other words, the performance of one party is not dependent upon the simultaneous performance by the other (*Id., 141*).

Illustration:

A borrowed from B P1,000. B, on the other hand, borrowed A's laptop. The performance by A of his obligation to B is not conditioned upon the performance by B of his obligation and vice versa. Although A and B are debtors and creditors of each other, their obligations are not reciprocal. The obligation of A arises from the contract of load, while that of B, from the contract of commodatum. The obligations are not dependent upon each other and are not simultaneous (*Id.*).

NOTE: Because of the fact that in reciprocal obligations the obligation of one party is the correlative of the obligation of the other, Art. 1191, par. 1 has established the principle that if one of the parties fails to comply with what is incumbent upon him, there is a right on the part of the other to rescind (or "*resolve*" in accordance with accepted translations of the Spanish Civil Code) the obligation. Since it has the effect of extinguishing rights which are already acquired or vested, it is resolutory in character (*Jurado, 137*).

NOTE: Art. 1191 can be applied only to *reciprocal contracts* which contain *no resolutory conditions*. The use of the word "implied" in the

article supports this conclusion. The right to rescind is "implied" only if not expressly granted; no right can be said to be implied if expressly recognized (*Id., 138*).

RIGHT TO RESCIND

The right to cancel (or resolve) the contract or reciprocal obligations in case of non-fulfillment on the part of one. It is predicated on breach of faith by the defendant, which breach is violative of the reciprocity between the parties (*Paras, 215*).

If one of the parties fails to comply with what is incumbent upon him, there is a right on the part of the other to rescind or resolve the obligation.

CHARACTERISTIC OF RESCISSION UNDER ART. 1191

1. Exists only in reciprocal obligations;
2. It can be demanded only if the plaintiff is ready, willing, and able to comply with his own obligations, and the other is not;
3. The right to rescind is not absolute;
4. The right to rescind needs judicial approval in certain cases, and in others, does not need such approval;
5. The right to rescind is implied or presumed to exist and, therefore, need not be expressly stipulated upon;
6. The right to rescind may be waived, expressly or impliedly (*Id., 219-222*).

NOTE: The rescission mentioned in this article is different from the rescission in Arts. 1380-1381, which is predicated on economic prejudice or lesion to one of the parties but on breach of faith by one of them that violates the reciprocity between them (*DE LEON, 144*).

NECESSITY OF JUDICIAL ACTION

It is essential that it must be invoked judicially (*Guevara v Pascual, 12 Phil. 311*). This is because of the provision in Art. 1191, par. 3, which states that the court shall decree the rescission, unless there be a just cause authorizing the fixing of period (*Escueta v Pando, 76 Phil. 256*). Therefore, the mere failure of a party to comply with what is incumbent upon him does not ipso jure produce the rescission or resolution of the obligation (*Jurado, 137*).

WHERE JUDICIAL ACTION FOR RESCISSION IS UNNECESSARY

Where the contract itself contains a resolutory provision by virtue of which the obligation maybe cancelled or extinguished by the injured party in case of breach, judicial permission to cancel or rescind the contract is no longer necessary (*Sison v CA, 164 SCRA 339*).

NOTE: It is a right which belongs to the injured party alone. Under the rule of *exceptio non adimpleti contractus*, the party who has not performed his part of the agreement is not entitled to sue (*Marin v Adil, 130 SCRA 406*). Where the plaintiff is the party who did not perform the undertaking which he was bound to perform, he is not entitled to insist upon its performance by the defendant, or recover damages by reason of his own breach (*Seva v Berwin, 48 Phil. 581*).

NATURE OF BREACH

Rescission will not be permitted for a slight or casual breach of the contract, but only for such breaches as are substantial and fundamental as to defeat the object of the parties in making the agreement (*Song Fo & Co. v Hawaiian Phil. Co., 47 Phil 821*).

Rescission will be ordered only where the breach complained of is substantial as to defeat the object of the parties in entering into the agreement. It will not be granted where the breach is slight or casual (*Delta Motor Corp. v Gentino, 170 SCRA 29*).

NOTE: A substantial breach of a reciprocal obligation, like failure to pay the price in the manner prescribed by the contract, entitles the injured party to rescind the obligation. Rescission abrogates the contrast from its inception and requires a mutual restitution of benefits received (*Sps. Velarde v CA, GR No. 108346 [2001]*).

GENERAL RULE

The injured party may choose between one of the following and not both (*Albert v Univ. Publishing Co., 104 Phil. 1054*):

1. The specific performance with payment of damages;
2. The rescission of the obligation with payment of damages.

EXCEPTION

If after the injured party has chosen fulfilment and such fulfillment should become impossible, he can still seek the rescission or resolution of the obligation (*Art. 1191, par. 2; see also, Rios v Jacinto, 49 Phil. 1*).

DAMAGES TO BE AWARDED

In estimating the damages to be awarded, only those elements of damages can be admitted that are compatible with the idea of rescission or specific performance, as the case may be (*Jurado, 141*). Thus, in case of the rescission of a contract of lease, the lessor is entitled to be restored to the possession of the leased premises but he cannot have both the possession of the leased premises and the rent which the other party had contracted to pay. The termination of the lease has the effect of destroying the obligation to pay rent for the future (*Rios v Jacinto, 49 Phil. 1*).

REQUISITES OF RESCISSION [FRS]

1. One of the parties failed to comply with what is incumbent upon him;
2. The injured party chose rescission over fulfillment, or when performance is no longer possible;
3. The breach is substantial so as to defeat the object of the parties in making the agreement.

RIGHT TO RESCIND NOT ABSOLUTE

The court is given discretionary power to fix a period within which the obligor is default may be permitted to comply with what is incumbent upon him. But the discretionary power of the court cannot be applied to reciprocal obligations arising from a contract of lease because they are governed by Art. 1659 (*Jurado, 142*).

The right to rescind is always provisional, *i.e.*, contestable and subject to scrutiny and review by the courts (*Delta Motor Corp. v Genuino, 170 SCRA 29*).

REASON: Under Art. 1191, courts have the discretionary power to refuse the rescission of the contracts which in their judgment the circumstances of the case warrant the fixing of a term within which the obligor or debtor may fulfill his obligation while under Art. 1659, there is no such discretionary power granted to courts (*Id.*).

PROCEDURE WHERE EXTRAJUDICIAL RESCISSION CONTESTED

- *With stipulation for automatic revocation* – judicial intervention is necessary not for purposes of *determining whether or not rescission was proper*. Where such propriety is sustained, the decision of the court will be merely declaratory of the revocation, but it is not in itself the revocatory act (*Roman Catholic Archbishop of Manila v CA, 198 SCRA 300*). In case where the other party denies that rescission is justified, he is free to resort to judicial action to question the rescission (*De Leon, 168*).
- *Without stipulation for automatic revocation* – a contracting party has the power to rescind reciprocal contracts extrajudicially but, as already observed, in case of abuse or error by the rescinder, the other party is not barred from questioning in court such abuse or error. For where the extrajudicial resolution is contested, only the final award of a court of competent jurisdiction can conclusively settle whether the resolution or action taken was proper or not (*Platinum Plans Phils., Inc. v Cucueco, 418 SCRA 156*).

NOTE: Art. 1191 does not apply to the following:

1. *Contracts of partnership* where a partner fails to pay the whole amount which he has bound to contribute to the common fund;

2. *Sales* of real or personal property *by installment*;
3. Action for rescission is not required upon *breach of compromise agreement*.

Compromise

An agreement between two or more persons who, for preventing or putting an end to a lawsuit, adjust their respective positions by mutual consent in the way they feel they can live with. Reciprocal concessions are the very heart and life of every compromise agreement where each party approximates and concedes in the hope of gaining balance by the danger of losing (*Genova v De Castro, 407 SCRA 165*).

4. *Contract of lease*, Art. 1659 will be applicable.

EFFECT OF RESCISSION

The court must require the parties to surrender whatever they may have received from the other. The parties must be placed as far as practicable in their original situation without prejudice to the liability of the party who was unable to comply with what was incumbent upon him for damages (*Id.*).

NOTE: The decree of rescission shall be understood to be without prejudice to the rights of 3rd person who have acquired the thing in accordance with Art. 1385 and 1388 and Mortgage Law (*Art. 1191, par 4*). Thus, the rescission of a contract can no longer be demanded when he who demands it is no longer in a position to return whatever he may be obliged to restore; neither can it be demanded when the thing which is the object of the contract is already legally in the possession of a third person who did not act in bad faith (*JURADO, 143*).

RESCISSION	TERMINATION
The unmaking of a contract, or its undoing from the beginning;	An end in time or existence; a close, cessation or conclusion;
The parties are returned to their status *quo ante*.	It is deemed valid at its inception.

De Leon, 169-170

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.

EFFECT OF BREACH BY BOTH PARTIES

1. First infractor CAN be determined – the liability of the first infractor should be equitably reduced;
2. First infractor CANNOT be determined – the contract shall be deemed extinguished and each shall bear his own damages.

NOTE: The above rules are deemed just. The first one is fair to both parties because the second infractor also derived, or thought he would derive, some advantage by his own act or neglect. The second rule is likewise just because it is presumed that both at about the same time tried to reap some benefit (*JURADO, 146*).

SECTION 2
OBLIGATIONS WITH A PERIOD

ART. 1193

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

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

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

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

OBLIGATION WITH A PERIOD OR TERM

One whose consequences are subjected in one way or another to the expiration of said period or term (*De Leon, 175*).

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

TERM OR PERIOD

An interval of time, which, exerting an influence on an obligation as a consequence of a juridical act, either suspends its demandability or produces its extinguishment. An obligation with a period may be defined as those whose demandability or extinguishment is subject to the expiration of a term or period (*Jurado, 146*).

A term or a period consists in a space of time which has an influence on obligations as a result of a judicial act, and either suspends their demandableness, or produces their extinguishment. Obligations with a period are, therefore, those whose consequences are subjected in one way or another to the expiration of said term (*Paras, 236*).

A period is a future and certain event upon the arrival of which the obligation (or right) subject to it either arises or is terminated. It is a day certain which must necessarily come (*Art. 1193, 3*).

REQUISITES FOR A VALID PERIOD OR TERM

1. Must refer to the future;
2. Must be physical and legally possible, otherwise void;
3. Must be certain (sure to come) but can be extended (*Estate of Mota v Serra, 47 Phil. 464*).

QUESTION: If an obligation is demandable "on or about 25 Mar. 2019," when is it really demandable? A few days before or after 25 Mar. 2019, and not a date far away nor one fixed by the debtor (*Paras, 242*).

QUESTION: An obligation stated "A will give B a car the moment X becomes 30 years old." Suppose X dies at the age of 29, should A still give the donation? Yes, it would seem that the parties really intended a term, and not a condition, unless facts should exist which show that the parties intended a condition (*see Art. 606, CC, by analogy*).

WHEN PERIOD OF PRESCRIPTION BEGINS

The period of prescription commences from the time the term in the obligation arrives, for it is only from that date that it is due and demandable (*see Ullmann v Hernaez, 30 Phil. 69*).

[FIRE – Time]

TERM OR PERIOD	CONDITION
As to fulfillment	
A certain event which must necessarily come, although it may not be known when;	Future and uncertain event which may or may not happen;
As to influence on obligation	
A period merely fixes the time for the efficaciousness of the obligation, merely exerts an influence upon the time of the demandability or extinguishment of an obligation; If suspensive, it cannot prevent the birth of the obligation in due time; If resolutory, it does not annul, even in fiction, the fact of its existence.	Exerts an influence upon the very existence of the obligation itself, a condition causes an obligation to arise or to cease;
As to retroactivity of effects	

Does not have any retroactive effect unless there is an agreement to the contrary;	Has retroactive effects;
As to effect of the will of the debtor	
A period which depends upon the will of the debtor empowers the court to fi x the duration thereof;	While a condition which depends upon the sole will of the debtor invalidates the obligation;
As to time	
Refers only to the future and certain events.	Refers to future and uncertain events and to past events unknown to the parties.

DE LEON, 176

QUESTION: "I will support you from the time you marry get married." Is this an obligation with a term or a conditional obligation? This is a conditional obligation because we can not be sure whether or not you will get married. In other words, this is an obligation with a suspensive condition, not an obligation with a suspensive term (*Paras, 238*).

QUESTION: "I will begin supporting you if your father dies." Is this a conditional obligation or an obligation with a term? This is an obligation with a term *ex die* (suspensive term). Even if the word "if" was used, still there is no doubt that "your father" will die, sooner or later (*Id.*).

QUESTION: "I will begin supporting you if your father dies of malaria." Is this a conditional obligation or an obligation with a term? This is an obligation with a suspensive condition. It is true that "your father" will die sooner or later, but we are not sure whether or not he will die of malaria. Hence, we have here a condition instead of a term (*Id.*).

NOTE: Like a condition (*see Art. 1183*), a period must be possible, otherwise the obligation is void.

KINDS OF TERM OR PERIOD

As to effect

1. *Suspensive period (ex die)* – the obligation begins only from or becomes demandable only upon the arrival of a day certain upon the arrival of the period (*Art. 1193, 1*);

   Note: What is suspended is not the acquisition of the right or the effectivity of the obligation but merely its demandability. The obligation becomes effective upon its constitution, but once the term or period expires it becomes demandable.

   Illustration:

   If A donates a parcel of land to B to be delivered after his death, there is a suspensive term. The time of death of the donor is a day certain because it must necessarily come, although it may not be known when.

2. *Resolutory period (in diem)* – the obligation is demandable at once and is valid up to a day certain and terminates upon the arrival of the period (*Art. 1193, 2*).

   Illustration:

   If C donates the usufruct or use and enjoyment of a house and lot to D for 10 years, the term is resolutory. As soon as the donation is perfected, D can demand the delivery of the house and lot immediately. However, after the expiration of 10 years, he will have to return the house and lot to C.

As to source:

1. *Legal* – when it is provided for by law;
2. *Conventional or voluntary* – when it is agreed to by the parties (*see Art. 1196*);
3. *Judicial* – when it is fixed by the court (*see Art. 1197*).

As to definiteness:

1. *Definite period* – when it is fixed or it is known when it will come (*Art. 1193, 3*);
2. *Indefinite period* – when it is not fixed or it is not known when it will come. When the period is not fixed, but a period is intended, the courts are usually empowered by law to fix the same (*see Art. 1197*).

NOTE: If the happening of a future event is fixed by the parties for the fulfillment or extinguishment of an obligation, what is the nature of the obligation — is it with a term or is it conditional?

- *With a term* – if the *event will necessarily happen or come to pass*, although it may not be known when, the event constitutes a day certain.
- *Conditional* – if the uncertainty consists in *whether the event will happen or come to pass*, such event constitutes a condition (*Jurado, 148*).

EFFECTS OF FORTUITOUS EVENT

Any stipulation in the contract to the effect that in case of a fortuitous event the contract shall be deemed suspended during the term does not mean that the happening of the fortuitous event shall stop the running of the term or period (*Id., 150*).

A fortuitous event only relieves the contracting parties from the fulfillment of their respective obligations during the term (*Victoria Planters v Victorias Milling Co., 97 Phil. 318*).

Illustration:

A and B entered into a contract whereby the B agreed that the sugar cane which it will produce shall be milled by the former for a period of 30 years. It was stipulated that in case of any fortuitous event, the contract shall be suspended during the period. B failed to deliver its sugar cane to A for 6 years because of the war. After the expiration of the period, B stopped delivery of its sugar cane to A. A brought an action against B in order to compel the latter to deliver its sugar cane for 6 additional years due to fortuitous event.

In the case at bar, the effect of the fortuitous event upon the term agreed upon is not to stop the running of the term but merely to relieve the contracting parties from the fulfill of their respective obligations during the pendency of the event. Such action would in effect be an extension of the term of the contract entered into by and between the parties To require delivery of the sugar cane is to demand from the obligors the fulfill of an obligation which was impossible of performance at the time it became due. (Id.).

"WHEN HIS MEANS PERMIT"

Although it may seem that Art. 1180 speaks of a condition dependent exclusively on the will of the debtor, the fact remains that payment does not depend on debtor's will, for indeed he had promised payment. What depends really on him is not payment, but the *time* when payment is to be made. Hence the law under Art. 1180 considers this obligation as one with a term or period (*Paras, 190*). As the time of payment is not fixed, the court must fix the same before any action for collection may be entertained, unless, the prior action of fixing the term or period will only be a formality and will serve no purpose but delay (*Tiglao v Manil Railroad Co., 98 Phil. 181*).

ART. 1194

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

NOTE: See Art. 1189.

ART. 1195

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

PAYMENT BEFORE THE ARRIVAL OF PERIOD

Art. 1195 applies only to obligations to give. It is similar to Art. 1188, par. 2, which allows the recovery of what has been paid by mistake before fulfillment of a suspensive condition. The creditor cannot unjustly enrich himself by retaining the thing or money received before the arrival of the period. (*De Leon, 180*).

NOTE: If the debtor is aware that the debt was not yet due, he has the burden of proving that he was unaware of the period (*Id.*).

NOTE: Where the duration of the period depends upon the will of the debtor (*see Art. 1197, par. 3*), payment would determine the arrival of the period (*Id., 180-181*).

PREMATURE PAYMENT AFTER ARRIVAL OF PERIOD

The obligor may no longer recover the thing or money once the period has arrived but he can recover the fruits or interests thereof from the date of premature performance to the date of maturity of the obligation (*De Leon, 181*).

Illustration:

A owes B P5M which was supposed to be paid on 31 Dec 2018. By mistake, A paid obligation on 31 Jan 2018.

A can recover the P5M plus legal interest of 12%. But A cannot recover, except the interest, if the debt had already matured.

Neither can there be a right to recover if A had knowledge of the period.

NOTE: Solution indebiti will not apply.

NOTE: No recovery in personal obligations for it is physically impossible to recover the service rendered or to recover what the obligor has not done (*Id.*).

ART. 1196

Whenever in an obligation a period is designated, it is presumed to have been established for the benefit of both the creditor and the debtor, unless from the tenor of the same or other circumstances it should appear that the period has been established in favor of one or of the other.

BENEFIT OF TERM OR PERIOD

General Rule

The period designated is presumed to have been established for the *benefit of both the creditor and the debtor*. Thus, the creditor cannot demand the performance of the obligation before the expiration of the designated period; neither can the debtor perform the obligation before expiration of such period (*Jurado, 152-153*).

Exception

If it can be proved either from the tenor of the obligation or *from other circumstances* that the period or term has been *established in favor of the creditor or of the debtor*, the general rule will not apply.

- *Term is for the benefit of the debtor* – He cannot be compelled to pay prematurely, but he can, if he desires, do so (*De Leon, 185*).
    - "to be paid within one year" – The debtor can pay any time but he cannot be compelled to pay before one year.
    - "on or before 31 Dec 2019" – The payment is to be made within a stipulated date, the debtor can even pay before said date.
    - "for a term of five years counted from this date" – The debt is payable within five years.
- *Terms is for the benefit of the creditor* – He may demand fulfillment even before arrival of the term but the debtor cannot require him to accept payment before the expiration of the stipulated period (*Id.*).

NOTE: Several reasons why the creditor cannot be compelled to accept payment:

1. Payment of interest;
2. Creditor may want to keep his money invested safely instead of having it in his hands, in which case, by fixing the period, he is thus able to protect himself against sudden decline in the purchasing power of the currency loaned;
3. Under the Usury Law, there is a special prohibition of payment of interest in advance for more than one year (*Nicolas v Matias, 89 Phil. 126*).

Illustration:

On 1 Jan 2014, A borrowed P5M from B promising to pay "within 1 year from 5 May 2020. On 1 Jan 2017, A tendered payment of the principal including interest up to the date of maturity. B refused to accept the payment.

In this case, the Court rules that the refusal of the creditor to accept the tender of payment was justified in view of the fact that the term or period in this case is presumed to have been established for the benefit of both (De Leon v Syjuco, 90 Phil 311).

ACCELERATION BY DEBTOR OF TIME OF PAYMENT

Unless the creditor consents, the debtor has no right to accelerate the time of payment even if the premature tender included an offer to pay principal and interest in full (*De Leon v Santiago Syjuco, Inc., 90 Phil. 311*).

EFFECT OF ACCEPTANCE OF PAYMENT BEFORE MATURITY

The acceptance of a partial payment by a creditor amounts to a waiver of the period agreed upon. If no explanation is given why the creditor received such partial payment before the maturity of the obligation, it may be presumed that his relinquishment was intentional, and his choice to dispense with the term, voluntary. It is not a mere forbearance (*Lopez v Ochoa, 103 Phil. 950*).

ART. 1197

If the obligation does not fix a period, but from its nature and the circumstances, it can be inferred that a period was intended, the courts may fix the duration thereof.

The courts shall also fix the duration of the period when it depends upon the will of the debtor.

In every case, the courts will determine such period as may under the circumstances have been probably contemplated by the parties. Once fixed by the courts, the period cannot be changed by them.

NOTE: The period mentioned in the above provision refers to a *judicial period* as distinguished from the period fixed by the parties in their contract which is known as contractual period.

GENERAL RULE

The courts are without power to fix period (*see Tolentino v Gonzales, 50 Phil. 577*).

EXCEPTIONS

1. If obligation *does not fix a period*, but from its nature and the circumstances it *can be inferred that a period was intended* (*Art. 1197, par. 1*);
2. If the duration of the period d*epends upon the will of the debtor* (*Art. 1197, par. 2*);
3. If under the circumstances the parties have *contemplated a period* (*Art. 1197, par. 3*);
4. If the debtor binds himself *when his means permit him* to do so (*Art. 1180*);
5. In case of reciprocal obligations, when there is a just cause for fixing the period.

NOTE: Whenever the court fixes the term of an obligation, it does not thereby amend or modify the same. It merely enforces or carries out the intention of the parties (*Deudor v JM Tuazon & Co., Inc., 2 SCRA 129*). It cannot arbitrarily fix a period out of thin air for under Art. 1197, par. 3, the courts shall determine such period as may under the circumstances have been probably contemplated by the parties (*De Leon, 189*).

NOTE: Once fixed by the courts, the period cannot be changed by the parties. Neither do the courts have the power to change or modify the same. Furthermore, the court cannot fix another period (*Art. 1197, 3*).

REASON The period fixed by the court acquires the nature of a covenant; hence, it becomes a law governing their contract; consequently, the courts can have no power to change or modify the same (*Barretto v City of Manila, 11 Phil. 624*).

NOTE: Mere silence of the obligation with regard to the term or period for its fulfillment does not necessarily mean that the courts are empowered to fix the duration thereof.

THE REMEDY CANNOT BE APPLIED TO

1. Contract for services – understood to be implicitly fixed by the period for the payment of the salary of the employee (*Barretto v Santa Marina, 26 Phil. 440*);
2. Pure obligations (*Jurado, 156*).

NATURE OF ACTION

The only action that can be maintained under Art. 1197 is an action to *ask the court to fix the duration of the term or period*. It is only after the duration has been fixed by a proper court that any other action involving the fulfillment or performance of the obligation can be maintained (*Eleizegui v Manila Lawn Tennis Club, 2 Phil. 309*). The duration of the period should be fixed in an action brought for that express purpose separate from the action to enforce payment but such technicality need not be adhered to when a prior and separate action would be a mere formality and would serve no other purpose than to delay (*Concepcion v People, 74 Phil. 63*).

NOTE: No possibility of any breach of contract or failure to perform the obligation unless the period is fixed by courts (*Pages v Basilan Lumber Co., 104 Phil. 882*).

ULTIMATE FACTS TO BE ALLEGED IN THE COMPLAINT

It is not necessary that the creditor, in his complaint, must expressly ask the court to fix the duration of the term or period. Where the essential allegations of the pleadings describe an obligation with an indefinite period, the court can fix the duration although it was not asked (*Jurado, 161*). For this purpose, 2 facts should be alleged:

1. Facts showing that a contract was entered into imposing on one of the parties an obligation in favor of the other;
2. Facts showing that the performance of the obligation was left to the will of the obligor, or showing that a period was intended (*Schenker v Gempele, 5 SCRA 1042*).

WHEN HIS MEANS PERMIT"

Although it may seem that Art. 1180 speaks of a condition dependent exclusively on the will of the debtor, the fact remains that payment does not depend on debtor's will, for indeed he had promised payment. What depends really on him is not payment, but the *time* when payment is to be made. Hence the law under Art. 1180 considers this obligation as one with a term or period (*Paras, 190*). As the time of payment is not fixed, the court must fix the same before any action for collection may be entertained, unless, the prior action of fixing the term or period will only be a formality and will serve no purpose but delay (*Tiglao v Manil Railroad Co., 98 Phil. 181*).

PRESCRIPTION

The action to ask the court to fix the period may also prescribe like any ordinary civil action (*Jurado, 161*). The prescriptive period is 10 years (*Gonzales v Jose, 66 Phil. 369*).

ART. 1198

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

1. **When after the obligation has been contracted, he becomes insolvent, unless he gives a guaranty or security for the debt;**
2. **When he does not furnish to the creditor the guaranties or securities which he has promised;**
3. **When by his own acts he has impaired said guaranties or securities after their establishment, and when through a fortuitous event they disappear, unless he immediately gives new ones equally satisfactory;**
4. **When the debtor violates any undertaking, in consideration of which the creditor agreed to the period;**
5. **When the debtor attempts to abscond.**

INSOLVENCY

The insolvency need not be judicially declared in accordance with the Insolvency Law; it is any case which it would not be possible financially for the debtor to comply with his obligation. Such insolvency must be understood to have arose after the constitution of the obligation (*Jurado, 164*)

RULES ON IMPAIRMENT

1. If through the fault of the debtor, he shall lose his right to the benefit of the period;
2. If without the fault of the debtor, he shall retain his right;
3. If the guaranty or security disappears though any cause, even without any fault of the debtor, he shall lose his right to the benefit of the period (*Id., 165*).

NOTE: It is not essential that there be an actual absconding.

Q: *A sold his entire interest in 24,000 tons of iron ore to B for P75,000, P10,000 of which was actually paid upon the signing of the contract. With respect to the balance of P65,000, it was agreed that it "will be paid from the first amount derived from the sale of the ore.'' To insure payment thereof, B delivered to A a surety bond which provided that the liability of the surety liability would automatically expire after the lapse of two years. Inasmuch as the ore had not yet been sold and the surety bond had expired without being renewed and the balance had not yet been paid in spite of repeated demands, A finally brought an action against B for the recovery of said balance. B, however, interposed the defense that his obligation to pay is conditional and that inasmuch as the condition has not yet been fulfilled, therefore, it is not yet due and demandable. Is this defense tenable?*

A: No. The sale of the iron ore is not a condition precedent to the payment of the balance but only a suspensive term or period. There is no uncertainty whatsoever with regard to the fact of payment; what is undetermined is merely the exact date of payment. Normally, therefore, A will have to wait for the actual sale of the iron ore before he can demand from B for the payment of the unpaid balance. However, inasmuch as by his own act B has impaired the guaranty or security after its establishment without giving another one which is equally satisfactory, it is clear that he has now lost the benefit of the term or period. Consequently, the case now falls squarely within the purview of pars. 2 and 3 of Art. 1198 of the CC (*Gaite v Fonacier, 112 Phil. 728*).

S E C T I O N 3
ALTERNATIVE OBLIGATIONS

ART. 1199

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

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

KINDS OF OBLIGATION ACCORDING TO OBJECT

1. *Simple obligation* – one where there is only one prestation, *e.g.,* A obliged himself to deliver to B a house and lot; C promised to repair the car of D.
2. *Compound Obligation* – one where there are two or more objects or prestations:

a. *Conjunctive* – one where there are several prestations and all of them are due;
b. *Distributive* – one where one of two or more of the prestations is due.
    i. *Alternative* (Art. 1199);
    ii. *Facultative* (Art. 1206)

ALTERNATIVE OBLIGATION

One wherein various prestations are due but the performance of one of them is sufficiently determined by the choice, which, as a general rule, belongs to the debtor (*De Leon, 200*).

Comprehends several objects or prestations which are due, but it may be complied with by the delivery or performance of only one of them (*Jurado, 167*).

Illustration:

A borrowed from B P5M. It was agreed that A could comply with his obligation by giving C P5M, or a "sports car…yung red".

The delivery of the P5M, or a "sports car…yung red" is sufficient to comply with the obligation. Performance must be complete. B cannot be compelled to accept, for instance, P2.5M AND a half of the red sports car as seen in the Fita commercial.

FACULTATIVE OBLIGATION

Only one object or prestation is due, but the obligor or debtor may deliver another object or perform another prestation in substitution (*De Leon, 209*).

Comprehends only one object or prestation which is due, but it may be complied with by the delivery of another object or the performance of another prestation in substitution (*Jurado, 167*).

FACULTATIVE OBLIGATION	ALTERNATIVE OBLIGATION
As to objects due or number of prestations	
Only one object is due;	Several objects are due;
As to right of choice	
Pertains only to the debtor;	May pertain to the creditor or third person;
As to effect of fortuitous loss	
Loss or impossibility of the thing due without faulty of the debtor extinguishes the obligation;	Loss or impossibility of one of the prestations does not extinguish the obligation for it is necessary that all of the things must be lost or had become impossible in order to effect extinguishment of obligation;
As to effect of culpable loss or due to the fault of debtor	
The loss or impossibility of one makes the debtor liable;	The loss or impossibility of one does not render the debtor liable;
The loss or impossibility of one before the substitution does not render the debtor liable;	Where the choice belongs to the creditor, the loss or impossibility of one gives rise to liability;
As to nullity of prestation	
Invalidates the obligation;	Does not invalidate the other prestation;
As to compliance	
May be complied with by the delivery of another object or by the performance of another prestation in substitution of that which is due;	May be complied with by the delivery of one of the objects or by the performance of one of the prestations which are alternatively due;
As to liability of the debtor	
When substitution has been made and communicated to the creditor, the obligor is liable for the loss of the thing on account of delay, negligence or fraud;	The creditor shall have the right of indemnity for damages when, through the fault of the debtor, all the things which are alternatively the object of the obligation have been lost or the compliance of the obligation has become impossible;
As to impossibility of prestation	
If there is impossibility to deliver the principal thing or prestation, the obligation is extinguished, even if the substitute obligation is valid;	If some prestations are impossible to perform except one - this one must be delivered. If all prestations are impossible to perform, the obligation is extinguished;
As to loss of substitute	
Loss of the substitute before the substitution is made through the fault of the debtor doesn't make him liable	Where the choice is given to the creditor, the loss of the alternative through the fault of the debtor renders him liable for damages

ART. 1200

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

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

RIGHT OF CHOICE

General Rule

The right to choose the prestation belongs to the debtor.

Exception

1. *To the creditor* – when expressly granted to him (*Art. 1205*);
2. *To a third person* – when the right is given to him by common agreement (*Art. 1306*).

Illustration:

A insured his house with B, an insurance company. It was agreed that, if the house is destroyed or damaged, B may either pay the damage or loss or reinstate or rebuild the house.

Since nothing is said in the contract as to who has the right of choice, it belongs to B, as a debtor (*De Leon, 201*).

LIMITATIONS ON THE RIGHT OF CHOICE

1. Debtor cannot choose those prestations which are
    a. Impossible;
    b. Unlawful;
    c. Which could not have been the object of the obligations for such prestations are void. Art. 1200, 2 states that the right of the debtor to choose is limited to valid prestations only;
2. When only one of the prestations is practicable (*Art. 1202*);
3. The debtor cannot choose part of one prestation and part of another prestation (*see Art. 1199, 2*).

ART. 1201

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

WHEN CHOICE TAKES EFFECT

Choice takes effect upon *communication* or upon *properly notifying* the other party.

No special form is required for the communication or notification. Hence, any form may be employed provided that the other party is properly notified of the selection. Nevertheless, it is always much better to make the notification either in a notarized document or in any other authentic writing (*Jurado, 169*).

NECESSITY OF CREDITOR'S CONSENT

Consent or concurrence of the creditor to the choice or selection made by the debtor is *not necessary* before the choice or selection can produce effect. To hold otherwise would destroy the very nature of the right to select and the alternative character of the obligation for that matter (*Id., 170*).

EFFECT OF CHOICE UPON OBLIGATION

Once choice has been made, the obligation ceases to be alternative from the moment the selection has been communicated to

the other party. Both parties therefrom are bound by the selection (*Id.*). "An election once made is binding on the person who makes it, and he will not therefore be permitted to renounce his choice and take an alternative which was at first opened to him (*Reyes v Martinez, 55 Phil. 492*).

NOTE: Such choice once properly made and communicated is irrevocable and cannot be renounced (*De Leon, 203*).

NOTE: Consent or concurrence of the creditor to the choice or selection made by the debtor is not necessary before the choice or selection can produce effect (*Tolentino, 196*).

WHEN ALTERNATIVE OBLIGATION BECOMES A SIMPLE OBLIGATION

1. When the debtor has communicated the choice to the creditor;
2. When debtor loses the right of choice among the prestations whereby the debtor is alternatively bound, only one is practicable (*Art. 1202*);
3. When the choice has been expressly given to the creditor and his choice has been communicated to the debtor.

NOTE: The right of choice is not lost by the mere fact that the party entitled to choose delays in making his selection.

ART. 1202

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

Art. 1200	Art. 1202
There are more than one practicable prestations;	There is only one practicable prestation;
The obligation is still alternative because debtor can still exercise his right of choice.	The obligation is converted into a simple one because the debtor loses his right of choice.

ART. 1203

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

RESCISSION

Creates the obligation to return the things which were the object of the contract together with their fruits, and the price with its interest (*Art. 1385, 1*).

NOTE: Since the debtor's right of choice is rendered ineffective through the creditor's fault, his only possible recourse will be to bring an action to rescind the contract with damages (*Jurado, 171*).

ART. 1204

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

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

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

ART. 1205

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

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

1. **If one of the things is lost through a fortuitous event, he shall perform the obligation by delivering that which the creditor should choose from among the remainder, or that which remains if one only subsists;**
2. **If the loss of one of the things occurs through the fault of the debtor, the creditor may claim any of those subsisting, or the price of that which, through the fault of the former, has disappeared, with a right to damages;**
3. **If all the things are lost through the fault of the debtor, the choice by the creditor shall fall upon the price of any one of them, also with indemnity for damages.**

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

NOTE: Art. 1204 applies only when the right of choice belongs to the debtor, while Art. 1205 only applies to a case where the right belongs to the creditor. The first article is the general rule, while the second is the exception (*Jurado, 172*).

NOTE: When the right of choice belongs to the creditor, the debtor cannot incur in delay before the creditor makes the selection (*De Leon, 207*).

EFFECTS OF LOSS OR IMPOSSIBILITY

	RIGHT OF CHOICE BELONGS TO THE DEBTOR	RIGHT OF CHOICE BELONGS TO THE CREDITOR
	Due to fortuitous event	
Applicable provision	The provisions of Arts. 1174, 1262 and 1266 shall apply;	The provisions of Arts. 1174, 1262 and 1266 shall apply;
All are lost of had become impossible	Debtor shall be released from the obligation;	The debtor shall be released from the obligation;
Some but not all are lost or had become impossible	Debtor shall deliver that which he shall choose from among the remainder;	Creditor may choose from among the remainder or that which remains if only one subsists;
Only one remains	Deliver that which remains;	
	Due to the fault of the debtor	
Applicable provision	The provision of Art. 1204 shall apply;	The provisions of Nos. 2 and 3 of par. 2 of Art. 1295 shall apply
All are lost of had become impossible	Creditor shall have a right to be indemnified for damages based on the value of the last thing which disappeared/ last service which became impossible;	Creditor may claim the price/value of any of them with indemnity for damages;
Some but not all are lost or had become impossible	Debtor shall deliver that which he shall choose from among the remainder without damages;	Creditor may claim any of those subsisting OR he may choose any of those were lost, but it is the price/value of with right to damages that can be claimed;
Only one remains	Deliver that which remains.	Deliver that which remains. In case of fault of debtor, creditor has a right to indemnity for damages.

Jurado, 173

ART. 1206

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

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

FACULTATIVE OBLIGATION

It is an obligation wherein only one object or prestation has been agreed upon by the parties to the obligation, but which may be complied with by the delivery of another object or the performance of another prestation in substitution (*Jurado, 174*).

WHEN SUBSTITUTION TAKES EFFECT

Art. 1201 can be applied by analogy (*Jurado, 175*), hence choice takes effect upon communication or upon properly notifying the other party. Once the creditor has been notified by the debtor of the substitution, the obligation ceases to be facultative and is converted into a simple obligation to deliver or perform the prestation.

EFFECT OF LOSS OF SUBSTITUTE

Before substitution

Whatever may be the cause of the loss or deterioration of the thing intended as a substitute shall *not render the debtor liable* (*Id*.). The thing intended as a substitute is not due. The effect of the loss is merely to extinguish the facultative character of the obligation (*De Leon, 209*).

> **Reason:** The debtor can always select the principal, and not necessarily the substitute. If the loss was done with deliberate intent (through bad faith of fraud) of the debtor, he cannot still be held liable since he can always comply with the principal obligation (*Paras, 275*).

After substitution

Once the substitution has been made, the *debtor shall be liable* for the loss or deterioration of the substitute on account of delay, negligence or fraud because once the substitution is made the obligation is converted into a simple one with the substituted thing or prestation as the object of the obligation (*Jurado, 176*).

NOTE: The creditor cannot be compelled to receive part of one and part of another undertaking.