CHAPTER 4
EXTINGUISHMENT OF OBLIGATIONS

GENERAL PROVISIONS

ART. 1231

Obligations are extinguished:

1. **By the payment or performance;**
2. **By the loss of the thing due;**
3. **By the condonation or remission of the debts;**
4. **By the confusion or merger of the rights of the creditor and debtor;**
5. **By compensation;**
6. **By novation.**

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

EXTINGUISHMENT OF OBLIGATIONS [PaL C³ NARF Pre]

1. **Pa**yment or performance
2. **L**oss of the thing due
3. **C**ondonation or remission
4. **C**onfusion or merger
5. **C**ompensation
6. **N**ovation
7. **A**nnulment
8. **R**escission
9. **F**ulfillment of resolutory condition
10. **Pre**scription

OTHER FORMS OF EXTINGUISHMENT [FC – MAID]

1. Happening of **f**ortuitous event (*Art. 1174*)
2. **C**ompromise (*Art. 2028*)
3. **M**utual desistance or withdrawal
4. **A**rrival of resolutory period (*Art. 1193, 2*)
5. **I**mpossibility of fulfillment of condition (*Art. 1266*)
6. **D**eath for personal or intransmissible obli (*Art. 1311, 1*)

Illustration of Death:

On 1 Jan 2017, A promised to B the amount of P5M to be paid on 31 Dec. 2018. On 1 June 2017, A died leaving X as the only heir.

B cannot compel X to pay the debt of his father for Art. 1178 states that only rights shall be transmissible, obligation not included.

CLASSIFICATIONS OF MODE OF EXTINGUISHMENT

Voluntary

1. Performance;
   a. Payment;
   b. Consignation;
2. Substitution;
   a. *Dacion en pago* (dation or conveyance of payment)
   b. Novation.
3. By release agreement.
   a. Agreement subsequent to the constitution of the obligation:
      i. Mutual waiver;
      ii. Unilateral waiver;
      iii. Remission.
   b. Agreement simultaneous to the constitution of the obligation
      i. Resolutory condition;
      ii. Extinctive period.

Involuntary

1. By reason of the subject;
   a. Confusion;
   b. Death of the contracting parties in the cases where the obligations are personal.
2. By reason of the object
   a. Loss of the thing due;
   b. Impossibility of performance.
3. By failure to exercise (right of action)
   a. Extinctive prescription.

SECTION 1
PAYMENT OR PERFORMANCE

ART. 1232

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

CONCEPT OF PAYMENT AND PERFORMANCE

It consists in the normal and voluntary fulfillment of the obligation by the realization of the purposes for which it was constituted (*JURADO, 231*).

Consists in the delivery of money and also in giving of a thing (other than money), the doing of an act, or not doing of an act (*DE LEON, 275*).

ELEMENTS

1. Persons who may pay and to whom payment may be made; *quis et quinam*;
2. Thing or object in which payment must consist; *quid*;
3. The cause thereof; *causa;*
4. The mode or form thereof; *modo;*
5. The place and the time in which it must be made; *quo et ubi;*
6. The imputation of expenses occasioned by it; *expensae*
7. Special parts which may modify the same and the effects they generally produce; *pacta adjunta* (*Id., 275-276*).

BURDEN OF PROOF

The duty of a party to present evidence of the facts in issue necessary to prove the truth of his claim or defense by the amount of evidence required by law (*Dela Peña v Ca, 579 SCRA 396*).

BURDEN OF PROVING PAYMENT

General Rule

Devolves upon the debtor who pleads payment or offers such a defense to the claim of the creditor rather than on the latter to prove non-payment (*DE LEON, 276*).

Exception

When the debtor introduces evidences that the obligation has been extinguished, the burden shifts to the creditor.

ART. 1233

A debt shall not be understood to have been paid unless the thing or service in which the obligation consists has been completely delivered or rendered, as the case may be.

ART. 1234

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

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.

GENERAL RULE

An obligation is understood to have been paid or performed when:

1. *To give* – The debtor or obligor has completely delivered the thing which he had obligated himself to deliver.

2. *To do* – The obligor has completely rendered the service which he had obligated himself to render.
3. *Not to do* – The obligor has completely refrained from doing that which he had obligated himself not to do (*JURADO,231-232*).

EXCEPTIONS [SAC]

1. When the obligation has been ***s**ubstantially performed* in good faith (*Art. 1234*). The obligor may recover as though there has been a strict and complete fulfillment, less damages suffered by the obligee.

   Reason: In the case of substantial performance, the obligee is benefited.

   Requisites
   a. There must be substantial performance. Its existence depends upon the circumstances of each particular case;
   b. The obligor must be in good faith. Good faith is presumed in the absence of proof to the contrary (*DE LEON, 278*).

2. When the obligee ***a**ccepts the performance*, knowing its incompleteness or irregularity, and without expressing any protest or objection (*Art. 1235*).

   Reason: Base on the principle of estoppels.

   Accept
   To take as satisfactory or sufficient, or to give assent to, or to agree or accede to an incomplete or irregular performance (*DE LEON, 280*). The mere receipt of partial payment is not equivalent to acceptance of performance (*Esguerra v Villanueva, 21 SCRA 1314*).

   Requisites
   a. The obligee knows that the performance is incomplete or irregular;
   b. He accepts the performance without expressing any protest or object (*DE LEON, 280*).

   Note: To imply that a creditor accepts partial payment as complete performance, his acceptance must be made under circumstances that indicate his intention to consider the performance complete and renounce his claim arising from the defect (*Selegna Management and Dev. Corp. v UCPB, 489 SCRA 125*).

3. When the obligation to give, to do or not to do is ***c**onverted into an obligation to indemnify the obligee or creditor* because of breach or non-fulfillment and indemnity is finally paid in full (*JURADO, 232*).

NOTE: For payment to properly exist, the creditor has to accept the same, expressly or implicitly. Payment, for valid reasons, may properly be rejected.

REQUISITES OF PAYMENT [I³ FCM]

1. ***I**dentity* – only the prestation agreed upon and no other must be complied with (*Art. 1244*);
2. ***I**ntegrity/Completeness* – the thing or service must be completely delivered or rendered (*Art. 1233; Alonzo v San Juan, 451 SCRA 45*);
3. ***I**ntention* – the debtor must have the intention to fulfill the obligation;
4. ***F**ree and voluntary* fulfilled.
5. The debtor and creditor must have the ***c**apacity* to give and receive the payment respectively;
6. Must be **m**ade by the *proper payor to proper payee*.

KINDS OF PAYMENT

1. *Normal* – when the debtor voluntarily performs or pays
2. *Abnormal* – the debtor is forced by means of a judicial proceeding either to comply with the prestation or pay indemnity.

PRINCIPLE OF INTEGRITY/COMPLETENESS OF PAYMENT

For debt to have been paid, the thing or service in which the obligation consists must have been completely delivered or rendered, as the case may be.

REQUISITES

1. The very thing or service contemplated must be paid;
2. Fulfillment must be complete.

HOW PAYMENT IS MADE

DEBT	PAYMENT
Monetary	Delivery of money. The amount paid must be full, unless otherwise stipulated in the contract.
To give	Delivery of the thing/s
To do	Performance of the personal undertaking.
Not to do	Refraining from doing the action.

PARAS, 347

FORM OF PROTEST OF CREDITOR

No requirement as to particular manner or particular time; so long as the acts of the creditor, at the time of the incomplete or irregular payment by the debtor, or within a reasonable time thereafter, evince that the former is not satisfied or agreeable to said payment or performance, the obligation shall not be deemed extinguished (*Esguerra v Villanueva, 21 SCRA 1314*).

ART. 1236

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

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

ART. 1237

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

ART. 1238

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

NOTE: In case the third person acquired the consent of the debtor, there arise a new juridical relationship between the debtor and the third person.

NOTE: Extinguishment of the principal obligation gives rise to extinguishment of the accessory obligation such as mortgage, surety, and guarantee.

NOTE: If a third person intends to pay the debtor's obligation without securing first the debtor's consent, the third person shall have the right to recover insofar as the payment has been beneficial to the debtor, also known as beneficial reimbursement (*PARAS, 353*).

NOTE: Whether or not a third person secured the consent of the debtor, the obligation with respect to the creditor is validly extinguished.

NOTE: If a third person intends to pay the debtor's obligation without securing first the debtor's consent, the third person shall have the right to recover insofar as the payment has been beneficial to the debtor, also known as beneficial reimbursement (PARAS, 353).

NOTE: A third person who intends to pay the debtor's obligation must secure the debtor's consent (Art. 734) in order to eradicate the sense of obligation on the part of the debtor to return the favour owed to the third person (to avoid the so called "utang na loob").

NOTE: If the value of the donation is P5,000 or less, the donation may be made either orally or in writing. Should the donation exceed P5,000, the donation must be written in public or private document (see Art. 748).

PERSON WHO MAY PAY THE OBLIGATION

1. Debtor himself;
2. His legal representative or any person who has an interest in the obligation;
3. Any third person who has no interest in the obligation when there is stipulation that he can make payment (*Art. 1236, 1; DE LEON, 281*).

NOTE: The rule on the third person does not apply in case a third person who pays the redemption price in sales with right of repurchase (*pacto de retro*) because the vendor a retro is not a debtor within the meaning of the law (*JURADO, 233; Gonzaga v Garcia, 27 Phil. 7*).

THIRD PERSON INTERESTED IN THE PARTY

1. Co-debtor
2. Sureties
3. Guarantors
4. Owners of mortgages property or pledge
5. When there is a stipulation to the contrary (JURADO, 235)

EFFECTS OF PAYMENT

1. The obligation is extinguished;
2. The debtor is to fully reimburse the third person who is an interested party;
3. The third person interested is subrogated to the rights of the creditor.

PAYMENT OF A THIRD PERSON

WITH KNOWLEDGE AND CONSENT	WITHOUT KNOWLEDGE AND WITHOUT CONSENT
1. Third person is entitled to full reimbursement from the debtor; 2. There is legal subrogation as the third person, i.e., steps into the shoes of the creditor (*JURADO, 235*).	Third person can only be reimbursed insofar as payment has been beneficial to the debtor (*DE LEON, 282*).
X owes P100,000 to Y payable on 31 Dec. 2019. Z, the wife of X, said to her husband, "Potaena mo ka, sige, sabong pa more, inuubos mo na pera natin hayop ka. Siya, ako na lang magbabayag kay Y" and so X agreed. In this case, Z can recover from X P100,000 with all the rights of subrogation to the accessory obligations such as mortgage, guaranty, or penalty.	*X owes P100,000 to Y payable on 31 Dec. 2019. Z, the hopeless romantic guy who is totally into X, went to Y and said, "tol, ako na lang ang magbabayad ng utang ni X kaso P50,000 lang maibibigay ko. Wag mo na lang sasabihin sa kanya na ako ang nagbayad nung kalahati, shy time ako eh" and so Y agreed. In the instant case, Z can only be reimbursed insofar as payment has been beneficial to X, in this case, only P50,000.*

NOTE: The creditor may refuse to accept payment for a creditor *have a right to insist on the liability of the debtor* and the creditor should *not be compelled to accept payment from a third person whom he may dislike or distrust* or the creditor may *not have confidence in the honesty* of the third person who might deliver a defective thing or pay with a check which may be dishonoured (*Report of the Code Comission, 132; DE LEON, 281-282*).

NOTE: Some instances wherein a third person can pay the obligation of the debtor: in Arts. 94, 121, 146 of the Family Code.

SUBROGATION

The act of putting somebody into the shoes of he creditor, hence, enabling the former to exercise all the rights and actions that could have been exercised by the latter (*PARAS, 368*).

The person who pays for the debtor is put into the shoes of the creditor thereby acquiring not only the right to be reimbursed for what he has paid but also all other rights which the creditor could have exercised pertaining to the credit either against the debtor or against the third persons, be they guarantors or possessors of mortgages.

Only applies when the payment by a third person is with the knowledge of the debtor.

SUBROGATION	REIMBURSEMENT
Third person is entitled to demand reimbursement and exercise all the rights which the creditor could have exercised against the debtor and against the third persons.	A simple personal action available to the third person or payor against the debtor to recover from the latter what he has paid insofar as the payment has been beneficial to said debtor.

Illustration:

In 2018, A executed a promissory note promising to pay to B P1M within a period of 4 years. The payment of debt was guaranteed by C. In 2022, D, a third person, paid the entire amount of the indebtedness with the knowledge and consent of A.

D shall be subrogated to all the rights of B not only against A but also against C. This is so because the law expressly states that if a third person pays the obligation with the express or tacit approval of the debtor, he shall be legally subrogated to all the rights of the creditor, not only against the debtor, but even against third persons, be they guarantors or possessors of mortgages.

Illustration:

If in the above problem, B had condoned one-half of the obligation in 2021, and subsequently, in 2022, E, an epal third person, unaware of the partial remission of the indebtedness, paid, without the knowledge and consent of A, the entire amount to B, who accepted it. What would be the effect of payment of the epal third person E upon the rights and obligations of the parties?

With respect to A, the only right which E has against him is to recover P500K because, it is only to that extent that he had been benefited by the payment. With respect to C, if A cannot pay the P500K because of insolvency, E can no longer proceed against him, because payment was made without the knowledge and consent of A, and consequently, he cannot be subrogated to the rights of B against C. With respect to B, E can still proceed against him for the recovery of the P500K, applying the principle that no person can unjustly enrich himself at the expense of another.

GRATUITOUS PAYMENTS (*Art. 1238*)

1. Presumed to be a donation and must be with the consent of the debtor;
2. Once the consent of the debtor is secured, the rules on ordinary donations will apply;
3. If the consent is not secured, Art. 1236 and 1237 will apply;
4. As far as the creditor who has accepted the payment is concerned, the debtor's consent is immaterial; the payment is valid in any case.

ART. 1239

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

CAPACITY TO MAKE PAYMENT

The person who pays the obligation should have the necessary legal capacity to effect such payment; it is essential for the validity of the payment that the payor should have following (*JURADO, 239*), and the absence of one or the other will make the payment invalid. This means that the things paid can be recovered (*DE LEON, 287*).

1. Free disposal of the thing due, and

   Note: It means that the thing to be delivered must not be subject to any claim or lien or encumbrance of a third person (*Id.*).

2. The capacity to alienate it.

   Note: It means that the person is not incapacitated to enter into contracts (*see Arts. 1327 & 1329*) and for that matter, to make a disposition of the thing due (*Id.*).

NOTE: Even if the creditor has already accepted it, it may still be annulled by a proper action in court at the instance of the payor or his legal representative, unless it falls within the purview of the exception expressly provided for in Art. 1427 (*JURADO, 239*).

If the creditor refuses to accept the payment because he is aware of the payor's incapacity, the obligation still subsists (*Id.*).

ART. 1240

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

TO WHOM PAYMENT MUST BE MADE

1. The creditor or obligee;
2. His successor in interest;
3. Any person authorized (by the creditor or by law) to received it.

NOTE: The creditor referred to must be the *creditor at the time the payment is to be made* not at the constitution of the obligation (*Tuazon v Zamora & Sons, 2 Phil. 305*).

PAYMENT TO AN UNAUTHORIZED PERSON

General Rule

If payment is made at the wrong party (unauthorized person), the obligation is not extinguished as to the creditor who is without fault or negligence even if the debtor acted in good faith (*Cembrano v City of Butuan, 502 SCRA 494*).

Exceptions

1. Payment made to a third person, provided that it has redounded to the benefit of the creditor (*Art. 1241, 2*);
2. Payment made to the possessor of the credit, provided that it was made in good faith (*Art. 1242*).

ART. 1241

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

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

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

ART. 1242

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

REASON FOR THE THIRD EXCEPTION

It is because of the principle of estoppel.

NOTE: Good faith must be viewed on the part of the creditor in possession of the credit.

Illustration:

If a third person stole the note of "order" from the creditor, and the debtor paid the debt in good faith to the third person, it will be invalid for the note states "order," in which case the creditor must endorse the note to the third person.

The ruling would be otherwise if the note states that the payment should be made to the "bearer" of the note.

BENEFIT TO THE CREDITOR IS PRESUMED IN THE FOLLOWING CASES [RES]

1. If the creditor ratifies the payment to the 3rd person (**r**atification);
2. If by the creditor's conduct, the debtor has been led to believe that the 3rd person had authority to receive the payment (**e**stoppel);
3. If after the payment, the 3rd person acquires the creditor's rights (**s**ubrogation).

EFFECT OF PAYMENT TO UNAUTHORIZED PERSONS

General Rule

If the payment is made to a person other than those enumerated in Art. 1240, it shall not be valid.

Exceptions

1. To a third person, provided that it has redounded to the benefit of the creditor (Art. 1241, par. 2);

   Note: The rule cannot be invoked without conclusive proof of the benefit to the creditor. It cannot be presumed except in the three cases specified in the second paragraph of Art 1241 (*JURADO, 243*).

2. To the possessor of the credit, provided that it was made in good faith (Art. 1242).

   Note: The possession referred to in the above article is the possession of the credit, not the possession of the document evidencing it (*DE LEON, 292*).

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

PAYMENT TO INCAPACITATED PERSONS

Payment made to an incapacitated person shall be valid:

1. If he has *kept the amount* or thing paid or delivered;
2. Payment has been *beneficial* to the incapacitated person.

ART. 1243

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

PAYMENT AFTER JUDICIAL ORDER OF RETENTION

If the debtor pays the creditor after he has been judicially ordered to retain the debt, such payment shall not be valid. After the debtor has received the notice of attachment or garnishment, payment can no longer be made to the creditor whose credit has been

attached to satisfy a judgment in favour of another person. Such payment must be made to the proper officer of the court issuing the writ of attachment or garnishment (*JURADO, 244-245*).

GARNISHMENT

The proceeding by which a debtor's creditor is subjected to the payment of his own debt to another. It consists in the citation of some stranger to the litigation, who is the debtor of one of the parties to the action. By this means, such debtor-stranger becomes a forced intervenor,a nd the court, having acquired jurisdiction over his person by means of the citation required of him to pay his debt, not to his former creditor, but to the new creditor, who is the creditor

It is an attachment by means of which the plaintiff seeks to subject to his claim the property of the defendant in the hands of a third person or money owed by such third person or garnishee to the defendant (*Manila Remnant Co., Inc. v CA, 231 SCRA 281*).

It is in the nature of an involuntary novation by the substitution of one creditor for another; *see Art. 1291, 1* (*DE LEON, 294*).

Illustration:

A owes B P2M. B, in turn, owes C P1.5M. C brings an action against B, who, however, claims insolvency by admits the credit which he has over A. Before A pays B, A is summoned into the proceedings, and asked to retain the debt in the meantime. Thus, the debt is "garnished." The reason is A should not pay B, and instead he should pay C, should C really be adjudged the creditor of B. any payment made by A to B in the meantime is considered invalid under the Law (*PARAS, 375*).

INTERPLEADER

An action in which a certain person in possession of certain property wants claimants to litigate among themselves for the same (*Id.*).

Whenever conflicting claims upon the same subject matter are or may be made against a person who claims no interest whatever in the subject matter, or an interest which in whole or in part is not disputed by the claimants, he may bring an action against the conflicting claimants to compel them to interplead and litigate their several claims among themselves (*Rule 63, Sec. 1, RoC*).

Illustration:

A has in his possession some merchandise, to be delivered to the person who presents the proper receipt. B and C, each armed with a receipt, ask A to turn over the property to one of them. An examination of the receipts reveals that they are of exactly the same kind. A does not know to whom he should deliver the property. So he fi les an action in court by means of which B and C will be able to settle their conflicting rights. The court must now issue an order prohibiting payment to either B and C in the meantime. Despite the receipt of the order, A pays B, who is the brother of his (A's) sweetheart. Is said payment valid?

No. The payment here was made after the debtor had been judicially ordered to retain the debt. Reason for the law: Evidently, the debtor here (A) cannot say he paid B in good faith. He had ulterior motives for his act, otherwise he would not have disobeyed the lawful order of the court. Under the law, therefore, A is deemed to be a payor in bad faith (*PARAS, 377*).

INJUNCTION

A judicial process by virtue of which a person is generally ordered to refrain from doing something. It is *preliminary injunction* if the prohibition is during the pendency of certain proceedings (*Id.*).

Illustration:

A owes B a sum of money. When A is about to pay B, the relatives of the latter move to stop the payment on the ground that B appears to be insane. However, proceedings in court to determine B's sanity are still in progress. Seeing A's determination to pay, the relatives of B ask the court for a writ of preliminary injunction restraining A from paying B in the meantime. The injunction is granted. Would it be advisable for A to pay B despite said injunction?

No, it would not be advisable for A to pay while he is under injunction; otherwise, his payment will not be valid since this would then be payment made to the creditor by the debtor after the latter has been judicially ordered to retain the debt (*Id.*).

ART. 1244

The debtor of a thing cannot compel the creditor to receive a different one, although the latter may be of the same value as, or more valuable than that which is due.

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

ART. 1245

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

ART. 1246

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

NOTE: the rule stated in Art. 1246 is based on equity and justice.

WHAT MUST BE PAID

- If the obligation is to give and the object is a thing which is specific or determinate, the debtor cannot fulfill his obligation by delivering a thing which is different from that which is due (*JURADO, 245*).
- If the obligation is to do or not to do and the object is an act or forbearance which is specific or determinate, the obligor cannot fulfill his obligation by substituting another act or forbearance against the obligee's will (*Id*).

GENERAL RULE

In both cases above, the creditor cannot be compelled to accept the delivery of the thing or the substitution of the act or forbearance.

EXCEPTION

If the creditor accepts the same, such acceptance shall give the same effect as a fulfillment or performance of the obligation, which shall be governed by the law on sales or dation (*dacion en pago*).

OTHER EXCEPTION

Aside from dacion en pago, a debtor can compel the creditor to accept another thing or vice versa when:

1. There is an express stipulation by the contracting parties;
2. The nature of the obligation is facultative.

SPECIAL FORMS OF PAYMENT

1. Dacion en Pago
2. Application of Payment
3. Cession
4. Consignation

DATION IN PAYMENT (*Dacion en Pago*)

The delivery and transmission of ownership of a thing by the debtor to the creditor as an accepted equivalent of the performance of obligation (*Id., 246*).

It is a mode of extinguishing an obligation whereby the debtor alienates in favor of the creditor, property for the satisfaction of monetary debt (*PARAS, 378*).

NOTE: *Dacion en pago* is a special form of payment which is most analogous to a contract of sales. The law on sales shall govern with the credit as the price of the thing (*JURADO, 246*).

REQUISITES [MES]

1. Existence of a money obligation;

Note: It is precisely in obligations which are not money debts, in which the true juridical nature of dation in payment becomes manifest. The fact that there must be a prior agreement of the parties on the delivery of the thing in lieu of the original prestation shows that there is a novation which extinguishes the original obligation, and the delivery is a mere performance of the obligation (*TOLENTINO, 294*).

2. **A**lienation to the creditor of a property by the debtor with the consent of the former;
3. **S**atisfaction of the money obligation of the debtor (*DE LEON, 295*).

Illustration:

If A executed a promissory note in 2018 promising to pay to B P5M after four years from the execution of the note, and in 2021 when the obligation became demandable the two entered into an agreement by virtue of which A shall deliver his automobile to C as the equivalent of the performance of the obligation, the effect is the transformation of the previous contract into a contract of sale with the automobile as the object and the loan of P5M as the purchase price.

Illustration:

A bound himself to pay B P5M on 31 Dec. 2018. The said date arrived and A gave to B, instead of the P5M cash, a particular cellular phone which he bought in the very lucrative and luxurious Divisoria amounting to P5M. In this case, there is no dation of payment but rather novation.

LAW ON SALES GOVERNS DACION EN PAGO

Dacion en pago is governed by the law on sales for both have the same elements.

1. There is a consent on both parties;
2. There is a specific object stipulated to be delivered;
3. There is a price consideration.

SALE	DACION EN PAGO
There is *no pre-existing* credit;	There is a *pre-existing* credit;
This *gives rise* to obligations;	This *extinguishes* obligations;
The cause of consideration here is the price from the viewpoint of: • Seller – *price*; • Buyer – the obtaining of the *object*	The cause or consideration here, from the viewpoint of: • Debtor – *extinguishment* of debt; • Creditor – *acquisition* of the object offered in credit;
There is *greater freedom* in the determination of the price;	There is *less freedom* in determining the price;
The *giving of the price* may generally *end the obligation* of the buyer.	The *giving of the object* in lieu of the credit may *extinguish* completely or only partially the credit, depending on the agreement.

PARAS, 380

EFFECT IF OBJECT IS GENERIC

If there is *no precise declaration* in the obligation with regard to the *quality* and *circumstances* of the indeterminate thing which constitutes its object, the *creditor cannot demand a thing of the best quality; neither can the debtor deliver a thing of the worst quality*. However, the creditor may demand and accept one of inferior quality (*Id., 381*). If there is disagreement, the law steps in and declares whether the obligation has been complied with or not, depending upon the purpose of such obligation and other circumstances (*JURADO, 247*).

ART. 1247

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

NOTE: Payment made to the creditor by the debtor after the latter has been judicially ordered to retain the debt shall not be valid (*Art. 1243*), unless otherwise stipulated, extrajudicial expenses required by the payment shall be for the account of the debtor (*Art. 1247*)

EXPENSES OF PAYMENT

If the debtor changes his domicile in bad faith or after he has incurred in delay, the additional expenses shall be borne by him (Art. 1251).

JUDICIAL COSTS

The statutory amounts allowed to a party to an action for his expenses incurred in the action (*DE LEON, 299*).

HOW TO DETERMINE JUDICIAL COSTS

Unless otherwise provided in these rules, costs shall be allowed to the prevailing party as a matter of course, but the court shall have power, for special reasons, to adjudge that either party shall pay the costs of an action, or that the same be divided, as may be equitable (*Rule 142, Sec. 1, RoC*).

NOTE: No costs shall be allowed against the Republic of the Philippines, unless otherwise provided by law (*Rule 142, Sec. 1, RoC*).

ART. 1248

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

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

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GENERAL RULE

Art. 1248 (1) only applies to obligation where there is only one debtor and one creditor.

EXCEPTIONS (*When partial perforance is allowed*)

1. When the obligation *expressly stipulates* the contrary (*Art. 1248, par. 1*);
2. When different prestations which constitute the object of obligation are *subject to different terms and conditions* (*DE LEON, 300*);
3. When the obligation is p*art liquidated and in part unliquidated* (*see Art. 1248, par. 2*).
4. When the parties know that the obligation reasonably cannot be expected to be performed completely at one time;
5. When there is abuse of right or if good faith requires acceptance (*DE LEON, 300*).

RULES IN DELIVERY OF GENERIC THINGS

- Creditor cannot demand a thing of superior quality but, he may demand and accept one of inferior quality;
- Debtor cannot deliver a thing of inferior quality but he may deliver one of superior quality, provided it is not of a different kind.

ART. 1249

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

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

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

RULE IN MONETARY OBLIGATIONS

1. Must be made in the currency stipulated; if it is impossible to deliver such or when there is no stipulation regarding the currency, then in the Philippine currency.
2. For mercantile documents, it shall only produce the same effect only when:
    a. They have been cashed;
    b. They have been impaired by the fault of the creditor.

    Note: Art. 1249, par. 2 is applicable to instruments executed by 3rd persons, which the debtor delivers to the creditor, but also by a note executed by the debtor himself and delivered to the creditor (*Cia Gen. De Tabacos v Molina, 5 Phil. 142*).

    Reason: For the 2nd rule, the reason behind is that the creditor cannot be compelled to accept another thing other than that agreed upon.

NOTE: The impairment of the negotiable instrument through the fault of the creditor contemplated by Art. 1249 is applicable only to a document executed by a third person and delivered by the debtor to the creditor and does not apply to instrument executed by debtor himself and delivered to the creditor.

NOTE: Pending the cashing of the mercantile document, the creditor cannot bring an action against the debtor during the intervening period as the action derived from the original obligation shall be held in abeyance.

R.A. No. 529 (Sec. 1)

"Every provision contained in, or made with respect to any obligation which provision purports to give the oblige the right to require payment…other than Philippine currency…is hereby declared against public policy, and null, void and of no effect…"

NOTE: RA 529 was repealed by RA 8183. There is no longer any legal impediment to having obligations or transactions paid in a foreign currency as long as the parties agree to such arrangement. (DBP v CA, 494 SCRA 25 [2006])

LEGAL TENDER

Any currency which may be used for the payment of all debts, whether public or private. Its significance is manifested by the fact that it is such which the debtor may compel a creditor to accept in payment of the debt, whether public or private (*Sec. 54, RA 265; Sec. 1, RA 529*).

Currency which a debtor can legally compel a creditor to accept in payment of a debt in money when tendered by the debtor in the right amount (*DE LEON, 305*).

NOTE: Under BSP Circular No. 537 which took effect on 11 Aug. 2006, the maximum amount of coins to be considered legal is adjusted Sec. 25 of RA 7653 as follows:
P1,000, for denominations P1, P5, and P10;
P100, for denominations P.01, P.05, P.10, P.15 and P.25.

R.A. No. 8183

All monetary obligations shall be settled in the Philippine currency. However, the parties may agree that the obligation or transaction shall be settled in any other currency at the time of payment.

PAYMENT BY MEANS OF INSTRUMENTS OF CREDITORS

Promissory notes, checks, bills of exchange and other commercial documents are not legal tender and the creditor cannot be compelled to accept them (*Id, 306*). Nevertheless, the creditor may accept them without producing the effect of payment (*Id.*).

Illustration:

On 1 Jan. 2017, A borrowed money from B amounting to P5M to be paid on 1 Mar. 2018. Upon the arrival of the stipulated date, A gave a personal check to B to pay his debt. Is the obligation already extinguished?

No. Art. 1249 (2) provides that monetary papers shall only extinguish the obligation if it was already converted to cash. Upon the delivery of the personal check of A to B, the obligation still subsists.

NOTE: The Civil Code provisions on payment of obligation particularly Art. 1245, are applicable where what is involved is the payment of a judgment (*Biana v Gimenez, 469 SCRA 486*).

ART. 1250

In case an extraordinary inflation or deflation of the currency stipulated should supervene, the value of the currency at the time of the establishment of the obligation shall be the basis of payment, unless there in an agreement to the contrary.

REASON It is a debt in value.

INFLATION

It is caused by an increase in the volume of money and credit relative to available goods resulting in a substantial and continuing rise in the general price level.

DEFLATION

It is the reduction in volume and circulation of the available money or credit, resulting in a decline of the general price level.

EXTRAORDINARY INFLATION OR DEFLATION

It is the uncommon decrease or increase in the purchasing power of the currency which could not have been foreseen (*CAPISTRANO, 189*).

That which is unusual or beyond the common fluctuation in the value of the currency, which the parties could not have reasonable foreseen or which was manifestly beyond their contemplation at the time when the obligation was established (*TOLENTINO, 284*).

NOTE: It is extraordinary if it is one that neither party had reason to foresee when the obligation was established or manifestly beyond the contemplation as stated in Art. 1267 or similar case (*DE LEON, 314*).

NOTE: From the employment of the words "extraordinary inflation or deflation of the currency stipulated," it can be seen that the legal rule in Art. 1250 envisages "contractual" obligations where a currency is selected by the parties as the medium of payment.

REQUISITES [DAC]

1. There is an official **d**eclaration of extraordinary inflation or deflation from the BSP;
2. The parties expressly **a**greed to consider the effects of the extraordinary inflation or deflation;
3. The obligation is **c**ontractual in nature (*Id., 311*).

NOTE: Even if the price index of the goods and services may have risen during the intervening period, this increase, without more, cannot be considered as resulting in "extraordinary inflation" as to justify the application of Art. 1250. There must be a declaration of such extraordinary inflation or deflation by the Bangko Sentral.

BASIS OF PAYMENT

The value of the currency at the time of the establishment of the obligation shall be the basis of payment. The law does not say it should be the amount paid (*Id, 312*).

DEVALUATION

Involves an official reduction in the value of one currency from an officially fixed level imposed by monetary authorities (*DE LEON, 317*).

DEPRECIATION

Refers to the downward change in the value of one currency in terms of the currency of other nations which occurs as a result of market forces in the foreign exchange market (*Id.*).

ART. 1251

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

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

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

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

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

NOTE: Art. 1251 must be read with Art. 1521.

NOTE: Art. 1251 governs unilateral obligations. Reciprocal obligations are govern by special rules.

NOTE: In case there is no stipulation and the things to be delivered is generic, the place of payment shall be the domicile of the debtor. In such instance, the creditor bears the expenses in going to the debtor's place to accept payment (*DE LEON, 318*).

NOTE: The term "domicile," as used in Art. 1251, connotes "actual" or "physical" habitation of a person as distinguished from "legal" residence (*Id., 320*).

Illustration:

A and B constituted a contract binding A to pay P5M to B. A is from Cagayan and B is from Sulo. In this case, the place of payment should be in Cagayan.

Illustration:

A bound himself to give a specific motorcycle with the plate number FVCK 1111 to B on 31 Dec 2018 . At the time of the constitution of the obligation, the car FVCK 1111 was parked in San Beda University. The said date arrived and for an unknown reason, the motorcycle is now parked on the roof of the Manila City Hall. In this case, the place of payment must be in San Beda University for the law provides that payment of the determinate thing must be at the place where the thing is during the time of constitution and not the time of fulfillment of the obligation.

NOTE: In payment, any expenses incurred by the creditor must be borne by the creditor alone for it is incumbent for him to do such.

NOTE: In putting the thing to be deliverable state, the expenses must be borne by the debtor.

S U B S E C T I O N 1
APPLICATION OF PAYMENT

ART. 1252

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

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

NOTE: Art. 1252 must be read with Art. 1792.

APPLICATION OF PAYMENT

It is the designation of the debt to which the payment must be applied when the debtor has several obligations of the same kind in favour of the same creditor (*Art. 1252, 1*).

REQUISITES [12 AN]

1. There must be only **1** debtor and creditor;

   Exceptions:
   a. Obligations with solidary debtors;
   b. Obligation with a guarantor;
   c. Partnership.

   Illustration

   On 1 Jan 2017, A borrowed P5M from D payable on 1 Dec. 2018. On 5 Jan 2017, A, together with his best friends forever B and C borrowed P5M from D payable on 5 Dec. 2018. On 6 Dec. 2018, A paid P5M to D. In this case, A can designate the payment either to his debt (1 Jan 2017) or the solidary debt (5 Jan 2017).

   Same thing with respect to an obligation with a guarantor.

2. There must be **2** or more debts of the same kind; it must be identical, the same in nature or of homogenous specie.

   Exception:

   When some of the obligations are not identical specie at the time of their constitution, and at the time of designation or application is made, such obligation had already been converted into obligations to indemnify with damages by reason of breach or non-fulfillment

   Illustration:

   On 1 Jan 2017, A bound himself to give B P5M on 1 Dec 2018. On 5 Jan 2017, A bound himself again to give a specific dog named "dog" which he bought at SM Savemore for P5M on 5 Dec 2018. On 5 Dec 2018, A paid B P5M. In this case, A cannot designate the payment whether the same should be for the case or for the dog.

   Nevertheless, if on 1 June 2018, for no apparent reason A ate the dog named "dog." The obligation is thus converted into one which indemnifies the creditor. On 5 Dec 2018, A paid B P5M. In this case, A can designate the payment whether the same should be for the case or for the dog named "dog."

   Note: The determination of the nature of the obligation is determined at the time of payment and not at the time of the constitution of the obligation.

3. **A**ll of the debts must be due;
   Exception:
   a. When there is a stipulation to the contrary;
   b. The application of payment is made by the party for whose benefit the term or period has been constituted.

4. The amount paid by the debtor must **n**ot be sufficient to cover the total amount of all the debts (*JURADO, 268-270*).

APPLICATION AS TO DEBTS NOT YET DUE

The application of payments as to debts not yet due cannot be made unless:

1. There is a stipulation that the debtor may so apply;
2. It is made by the debtor or creditor for whose benefit the period has been constituted (*Arts. 1196, 1792*).

RIGHT OF DEBTOR TO MAKE APPLICATION

General Rule

Application of Payment by the Debtor – The right to designate the debt to which the payment shall be applied belongs to the debtor and is available only at the time when payment is made.

Exception

Application of Payment by the Creditor – It is merely proposal of application by giving to the debtor a receipt in which the application of payment is made subject to the express or tacit approval of the said debtor which may be accepted or rejected by the same (*JURADO, 270-271*).

NOTE: Once the receipt is accepted, the application of payment made in such receipt can no longer be impugned, unless there is a cause, such as mistake, force, intimidation, undue influence or fraud, which will invalidate the application (*Id., 271*).

RULES ON APPLICATION OF PAYMENTS

1. The *debtor has the first choice*, unless the debtor does not apply in such case will the right be granted to the creditor, which must be indicated at the time of making payment which particular payment is being paid. After applying the payment to a debt, he cannot claim that it should be applied to another debt;
2. The right to make the application once exercise is *irrevocable* unless the creditor consents to the change;
3. The debtor's right to apply payment is not mandatory but merely *directory* as evidenced by the word "may" rather than "shall" in Art. 1252;
4. If the creditor has not also made the application, or if the application is not valid (*par. 2*), the debt, which is *most onerous to the debtor* among those due, shall be deemed to have been satisfied (*Art. 1254, par. 1*);
5. If the debts due are of the same nature and burden, the payment shall be applied to all of them *proportionately* (*Art. 1252, par. 2*);
6. If neither of the party has exercised the right or if there is a *disagreement*, the *court will apply* the payment according to the justice and equity of the case, taking into consideration all its circumstances (*DE LEON, 321*).

Illustration:

A owes to B the following debts:
P1,500 payable on 1 Jan 2018;
P1,200 payable on 2 Jan 2018;
A specific table worth P2,000 to be delivered on 3 Jan 2018;
P1,000 payable on 1 Sept 2018.

On 1 June 2018, A paid B P1,500. A may apply the P1,500 to debt 1,or to both debt 1 and 2 (partial payment only, provided that B does not object).

If A paid only P1,000, he cannot choose to apply his payment to debt 1 because B cannot be compelled to receive partial payment (Art. 1248). A cannot apply his payment to debt 3 because it is not the same kind for A must deliver the thing agreed upon (Art. 1244). Neither can A apply it to debt 4 because it is not yet due, unless there is a stipulation to the contrary or he has the benefit of the period.

If A does not make a choice, B can make the designation with the consent of A ("if the debtor accepts" in Art. 1252, par 2).

If B does not make the application in the receipt or no receipt was issued b him, then the legal rules in Art. 1254 will govern.

ART. 1253

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

INTEREST EARNED PAID AHEAD OF PRINCIPAL

The payment must be applied first to the interest and whatever balance is left, must be credited to the principal. The creditor can refuse an application of the debtor made contrary to the provision of Article 1253 (*DE LEON, 324*).

NOTE: In a contract where there is instalment payments with interest against the remaining balance, it is the duty of the creditor to inform the debtor of the amount of interest that falls due and that he is applying the instalment to cover said interest (*Rapanut v CA, 246 SCRA 323*).

NOTE: A party to a contract who unqualifiedly and unconditionally accepts the settlement of his claim for damages without reservation as to interest or any other further claim from the other party is estopped from claiming interest thereafter. But accepting from a surety does not waive the right to recover interest from debtor (*Magdalena Estates, Inc. v Rodriguez, 18 SCRA 967*).

ART. 1254

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

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

RULES IN CASE NO APPLICATION OF PAYMENT HAS BEEN VOLUNTARILY MADE

1. Apply it to the *most onerous* – in case the due and demandable debts are of different natures;
2. Application shall be made to all *proportionately* – in case the debts are of the same nature and burden (*Paras, 412*) or when it is impossible to determine which debt is most onerous.

   Note: Suppose the debts are subject to different burdens that it cannot be definitely determined which debt is most onerous to the debtor. To what debt should the payment be applied? To all of them proportionately (*De Leon, 326*).

LEGAL APPLICATION OF PAYMENT

The debt which is more onerous to the debtor, among those due, shall be deemed to have been satisfied.

1. When the payment cannot be applied in accordance with the preceding rules;
2. If the application cannot be inferred from the circumstances (*Jurado, 272*).

REASON

In making the application of payment, the law considers particularly the interest of the debtor. It is assumed that if the debtor had chosen the debt to be paid, he would have relieved himself first of the most burdensome debt.

RULES WHEN DEBTS ARE NOT OF SAME BURDEN

The most onerous to the debtor shall be deemed to have been satisfied.

1. The oldest are more onerous to the debtor than the more recent ones.
2. Interest bearing debts are more onerous than those which do not, even if the latter were incurred at an earlier date.
3. As between two debts with interest, that with higher interest rate is more onerous.
4. A secured debt is more onerous than that which is not.
5. A debt in which the debtor is principally bound is more onerous than that which he is merely a guarantor or surety.
6. A debt in which he is solidarily bound is more onerous than that which he is only a sole debtor.
7. An obligation for indemnity is more onerous than that which is by way of penalty.
8. Liquidated debts are more onerous than unliquidated ones (*Jurado, 274*).

NOTE: When it is fairly *impossible to determine* which of the debts due is the most onerous or burdensome to the debtor, or when the debts due are of the *same nature and burden*, payment shall be applied *proportionately* or *pro rata*, in accordance to the general rules on payment in Arts. 1232-1251.

NOTE: If the debt produces interests, payment of the principal shall not be deemed to have been made until the interests have been covered (*Art. 1253*); applies only in the absence of an agreement to the contrary and is merely directory and not mandatory, hence, the benefits of Art. 1253 may be waived by way of stipulation.

Illustration:

The debtor owes his creditor several debts, all of them due: 1) an unsecured debt; 2) a debt secured with mortgage of the debtor's property; 3) a debt bearing interest; 4) a debt in which the debtor is solidarily liable with another. Partial payment was made by the debtor. Assuming that the debtor had not specified the debts to which the payment should be applied and, on the other hand, the creditor had not specified in the receipt he issued the application of payment, the order of payment should be: 4, 2, 3 and 1.

SUBSECTION 2
PAYMENT BY CESSION

ART. 1255

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

CESSION OR ASSIGNMENT

A special form of payment whereby the debtor abandons all of his property for the benefit of his creditors in order that from the proceeds thereof the latter may obtain payment of their credits (*Jurado, 275*).

NOTE: What is transferred in cession, unlike dacion en pago which transfers ownership, is the management and/or administration of the property in order to sell the thing of the debtor for the fulfillment of obligation.

REQUISITES [22 – IPA]

1. **2** or more debts;
2. **2** or more creditors;
3. Partial or relative **i**nsolvency of the debtor;
4. Abandonment of all debtor's **p**roperty not exempt from execution in favor of creditors, unless exemption is validly waived by the debtor;
5. **A**cceptance of the cession by the creditors.

Illustration:

A owes P5M to B payable on or before 31 Dec 2018. On 28 Feb 2018, A went to B to deliver a personal check amounting to P5M. B refused to accept the same. Can A go to court to compel B to accept the personal check?

No. (see Art. 1249).

NOTE: In case the creditors do not accept the cession, a similar result may be obtained by proceeding in accordance with the Insolvency Law, Act No. 1956.

EFFECT OF PAYMENT BY CESSION

- In the absence of contrary stipulation, the assignment or abandonment by the debtor of all his property to the creditors shall only *release him from responsibility* for the net proceeds of the property assigned. The extinguishment of his obligations will only be partial.
- It *does not transfer the ownership* of the things or objects to the creditors; what is transferred is only the possession including their administration (*Jurado, 276*).

KINDS OF CESSIONS

1. *Contractual* (Art. 1255) - Refers to voluntary or contractual assignment which requires the consent of all the creditors. It involves a change of the object of the obligation by agreement of the parties and at the same time fulfilling the same voluntarily;
2. Judicial – Regulated by Insolvency Law under Sec. 8 of Act No. 1956, as amended.

[#FOE³N]

DATION	CESSION
As to *number* of parties	
One creditor	Plurality of creditors
As to *financial condition* of parties	
Debtor is not necessarily in state of financial difficulty or insolvency.	Debtor must be insolvent.
As to *object*	
Thing delivered is considered as equivalent of performance.	Universality of property of debtor is what is ceded.
As to *effect to the obligation*	
Extinguishes obligation to the extent of the value of the thing delivered as agreed upon; implied from the conduct of the creditor.	Merely releases debtor for net proceeds of things ceded or assigned, unless there is contrary intention.
As to the *extent of properties involved*	
Does not involve all properties of debtor.	Involves all the properties of the debtor.
As to the *effect to the creditor*	
Creditor becomes owner of the property of the debtor.	The creditors only acquire the right to sell the thing and apply the proceeds to their credits pro rata.
As to *nature*	
An act of novation (Art. 1291 [1])	Not an act of novation.

NOTE: Both are substitute forms of payment or performance. They are governed by the law on sales.

SUBSECTION 3
TENDER OF PAYMENT AND CONSIGNATION

ART. 1256

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

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

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

NOTE: For the 2nd enumeration, kindly read Art. 1241.

ART. 1257

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

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

ART. 1258

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

The consignation having been made, the interested parties

shall be notified thereof.

TENDER OF PAYMENT

It consists in the manifestation made by the debtor to the creditor of his intention to comply immediately with his obligation. Even if it is valid, it does not by itself produce legal payment, unless it is completed by consignation (*Jurado, 277*).

It is the act, on the part of the part of the debtor, of offering to the creditor the thing or amount due. It is an act preparatory to consignation, which is the principal, and from which are derived the immediate consequences which the debtor desires or seeks to obtain (*De Leon, 328*).

NOTE: There must be a fusion of intent, ability and capability to make good such offer, which must be absolute and must cover the amount due.

REQUIREMENTS FOR VALID TENDER OF PAYMENT [CUA]

1. Must **c**omply with the rules on payment (*Arts. 1256-1258*);
2. Must be **u**nconditional and for the whole amount;
3. Must be **a**ctually made for manifestation of a desire or intention to pay is not enough;

PROOF OF TENDER OF PAYMENT

As tender of payment must precede consignation, the tender must be proved by the debtor in the proper case. (*Art. 1256, 1*) In other cases, when tender is not required (*Id., par. 2*), only prior notice to interested persons of the consignation need be proved (*De Leon, 334*).

EFFECTS ON INTEREST

- When a tender of payment is followed by consignation – accrual of interest on the obligation will be suspended from the date of such tender;
- When the tender of payment is not accompanied by consignation – then interest is not suspended from the time of such tender.

EXERCISE OF RIGHT OF REPURCHASE

In case of exercise of right of repurchase by tender of check, such tender is valid because it is an exercise of a right and not made as a mode of payment of an obligation. Art. 1249 is not applicable.

NOTE: Tender of payment of the amount due on a judgment into court is not the same as tender of payment of a contractual debt and consignation of the money due from a debtor to a creditor. Hence, the requirements of Articles 1256 and 1257 are not applicable. In case of a refusal of tender of payment of a judgment, the court may direct the money to be paid into court, and after this payment is done, order satisfaction of the judgment to be entered (*Del Rosario v Sandico, 85 Phil. 170*).

WHEN TENDER OF PAYMENT NOT REQUIRED BEFORE DEBTOR CAN CONSIGN THE THING DUE WITH THE COURT

1. When the creditor waives payment on the date when the payment will be due (*Kapisanan Banahaw v Dejarme and Alvero, 55 Phil 229*);
2. When the mortgagee had long foreclosed the mortgage extrajudicially and the sale of the mortgaged property had already been scheduled for non-payment of the obligation, and that despite the fact that mortgagee already knew of the deposit made by the mortgagor because the receipt of the deposit was already attached to the record of the case. (*Rural Bank of Caloocan v CA, 104 SCRA 151*).

CONSIGNATION

The act of depositing the thing due with the court or judicial authorities whenever the creditor cannot accept or refuses to accept payment. It generally requires a prior tender of payment (*Limkako v Teodoro, 74 Phil. 31*).

NOTE: Consignation, being a form of payment, presupposes that there must be a debt that must be paid. Tender of payment alone would be sufficient to preserve the right of the redemptioner or the vendee a retro.

NATURE OF CONSIGNATION

A facultative remedy which the debtor may or may not avail of.

If made by the debtor, the creditor merely accepts it if he wishes; or the court declares that it has been properly made, in either of which events the obligation is extinguished. The debtor can withdraw the thing before acceptance by the creditor or cancellation by the court.

The debtor has the right to refuse to make the deposit and has the right to withdrawal. If he refuses, the creditor must fall back on the proper coercive processes provided by law to secure or satisfy his credit.

RATIONALE OF CONSIGNATION

- Tender of payment and consignation produces the effect of payment and extinguishes an obligation in order to avoid greater liability.
- It is a facultative remedy which the debtor may or may not avail of (*De Leon,329*).
- Failure to consign, the debtor may become liable for damages and/or interest but such failure is not tantamount to a breach where by the fact of tendering payment he was willing and able to comply with his obligation (see Art. 1260).
- The matter of suspension of the running of interest on the loan is governed by principles which regard reality rather than technicality, substance rather than form. Good faith of the offeror or ability to make good the offer should in simple justice excuse the debtor from paying interest after the offer was rejected. (*Gregorio Araneta, Inc. v De Palerno, 91 Phil. 786*).

TENDER OF PAYMENT	CONSIGNATION
As to description	
Manifestation of the debtor to the creditor of his decision to comply immediately with his obligation.	Deposit of the object of the obligation in a competent court in accordance with the rules prescribed by law, after refusal or inability of the creditor to accept the tender of payment.
As to the act involved	
Preparatory act	Principal act
As to character	
Extrajudicial	Judicial

GENERAL REQUISITE OF CONSIGNATION

Refers to those requisites in connection with payment in general (Art. 1232-1251) such as person who pays, the person to whom payment is made, the object of the obligation which must be paid or performed, and the time when obligation or performance becomes demandable (*Jurado, 278-279*).

SPECIAL REQUISITES OF CONSIGNATION [VRP - PlaceS]

1. There is a **v**alid debt (*Art 1256, 1*);

2. The creditor **r**efused to accept the payment without just cause, or because any of the causes stated by law for effective consignation without previous tender of payment exists (*Id.*);

   Note: In order that consignation will be effective, there must have been a tender of payment made by the debtor to the creditor. It is required [**PUR**]

   a. That tender of payment must have been made **p**rior to the consignation;
   b. That it must have been **u**nconditional;

c. That the creditor must have refused to accept the payment without just cause

3. That previous notice of the consignation had been given to the persons interested in the fulfillment of the obligation;

Note: Lack of prior or previous notice will not make the obligation void or invalid; the debtor will bear all the expenses for the consignation was not made properly (*see Art. 1259*).

Note: The purpose of the notice is to give the creditor a chance to reflect on his previous refusal to accept payment considering that the expenses of consignation shall be charged against him (*Art. 1259*)

4. That the thing or amount due had been placed at the disposal of judicial authority;

This requirement is complied with if the debtor deposits the thing or amount, which the creditor had refused or had been unable to accept, with the Clerk of Court (*Jurado, 283*).

5. Subsequent notice made to the person interested with the fulfillment of the obligation (*Id., 279-280*).

Reason: To enable the creditor to withdraw the goods or money deposited.

Note: The court gives the subsequent notice in order to acquire the jurisdiction over the parties particularly the defendant creditor. Hence, lack of subsequent notice will render the consignation void for lack of jurisdiction of the court.

NOTE: The absence of any of the requisites is enough ground to render consignation ineffective. Compliance with the requirements is mandatory. The law speaks of "thing." It makes no distinction between real and personal property.

VALID CONSIGNATION WITHOUT PRIOR TENDER OF PAYMENT [AIR – TL]

1. Creditor is absent or unknown, or does not appear at the place of payment;

Note: Absence need not be judicially declared. He must, however, have no legal representative to accept the payment.

2. When he is incapacitated to receive the payment at the time it is due;
3. When without just cause, he refuses to give a receipt;
4. When two or more persons claim the right to collect;
5. When the title of the obligation has been lost.

NOTE: The list is not exclusive. The rule also applies if the creditor, prior to the tender of payment, intimidated that he will not accept the debtor's payment.

EFFECT OF VALID TENDER OF PAYMENT

The obligation is not extinguished, unless it is completed by consignation. It exempts the debtor from payment of interest and/or damages (*PNB v Relativo, 92 Phil. 203*).

NOTE: Consignation must be with proper judicial authority (i.e., court) and not elsewhere (e.g., bank) unless otherwise prescribed by special law.

NOTE: A written tender of payment alone, without consignation in court of the sum due, does not suspend the accruing of regular or monetary interest. Tender of payment must be accompanied or followed by consignation in order that the effects of payment may be produced.

NOTE: Property deposited with court is exempt from attachment and not subject to execution.

RETROACTIVE EFFECT

The consignation has a retroactive effect. The payment is deemed to have been made at the time of the deposit of the thing in court or when it was placed at the disposal of the judicial authority.

SUBJECT MATTER OF CONSIGNATION

Spanish commentators advance the opinion that not only movables, but even immovables may be the subject matter thereof. This is for the reason that it would allow unjust to charge the debtor indefinitely with the task of preserving the immovable property which constitutes the object of the obligation (*Jurado, 286*).

ART. 1259

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

NOTE: The consignation is made necessary because of the fault or unjust refusal of the creditor to accept payment; it is but just that the expenses should be charged against him. But it will be chargeable to the debtor if the consignation is not properly made.

NOTE: The creditor may accept the consignation with reservation or qualification; therefore, he is not barred from raising the claims he reserved against the debtor (*Riesenbeck v CA, 209 SCRA 656*).

ART. 1260

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

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

ART. 1261

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

NOTE: Kindly read alongside with Art. 1261 the provisions of Art. 2079.

WHEN IS CONSIGNATION PROPERLY MADE

- When the creditor *accepts* the thing or amount deposited as payment of the obligation *without contesting the efficacy* or validity of the consignation;
- When the creditor *contests the efficacy or validity* of the consignation and the *court finally decides that it has been properly made;*
- When the creditor *contests the efficacy or validity* of the consignation and the *court cancels the obligation* at the instance of the debtor in accordance with the provision of the first paragraph of Art. 1260 (*De Leon, 340*).

NOTE: The creditor may accept the consignation with reservation or qualification; therefore, he is not barred from raising the claims he reserved against the debtor.

EFFECTS OF CONSIGNATION

1. If the creditor accepts the thing without contesting the validity of the consignation, it is logical that the obligation is extinguished;

2. It will be litigation should the creditor contest the validity of the same, is not interested, or is unknown or absent. If during the trial, the plaintiff-debtor is able to establish that all the requisites of consignation have been complied with, the obligation is extinguished.

EFFECTS OF WITHDRAWAL

1. Before acceptance or judicial declaration of valid consignation
    a. Obligation remains in force;
    b. Withdrawal by the debtor at this stage is a matter of right because he still owns the thing.
2. With the consent of the creditor
    a. Creditor loses every preference which he may have over the thing;
    b. Solidary co-debtors, guarantors and sureties are released;
    c. Solidary debtors are released only from their solidary liability but not from their shares of their obligation;
    d. The obligation is revived but without prejudice to other interested parties.
    e. Withdrawal by the debtor at this stage is a matter of privilege (*Jurado, 287*).

Q: *Before the creditor has accepted the consignation or before judicial declaration of valid consignation, the debtor opted not to withdraw the thing. Can the creditor attach the same property since the debtor still owns the thing?*

A: No. Property deposited with court is exempt from attachment and not subject to execution; it is said to be in *custodia legis* and cannot be withdrawn without an express order from the court.

RISK OF LOSS OF THING OR SUM CONSIGNED

- To be suffered by the creditor;
  All the requisites for a valid consignation have been complied with and the debtor is without fault before the acceptance or approval of the consignation.
- To be suffered by the debtor.
  The risk of loss before acceptance or approval is mutual because if it be determined that there was no valid consignation, the loss must be suffered by the debtor. (Sia v CA, 91 Phil. 355, [1952])

NOTE: To have the effect of payment, the law requires the twin acts of tender of payment and consignation. Tender of payment without consignation only frees the debtor from the obligation to pay interest on the outstanding amount from the time the unjustified refusal takes place.

NOTE: Creditor can be held liable for damages under Art 19 for unjustified refusal to accept.

SECTION 2
LOSS OF THE THING DUE

Art. 1262

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

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

NOTE: Read alongside with the provisions of Art. 1174.

LOSS OF THE THING DUE

It means impossibility of compliance with the obligation through any cause (*see Art. 1266*). It extends to both obligations to give and obligations to do. The thing which constitutes the object of the obligation

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* – *d*isappears in such a way that its existence is unknown or it cannot be recovered (*Id., 135-136*).

EFFECTS OF LOSS IN DETERMINATE OBLIGATIONS TO GIVE

The obligation is extinguished, but the following requisites must concur: [**D FaDe**]

1. The thing which is lost must be ***d****eterminate*;
2. The thing is lost *without any* ***fa****ult of the debtor*; otherwise, it will not be extinguished but will be converted into one with indemnity for damages;
3. The debtor is not guilty of ***de****lay*.

EFFECTS OF FORTUITOUS EVENT

General Rule

If the thing which constitutes the object of obligation is lost or destroyed through a fortuitous event, the debtor cannot be held responsible ; the obligation is extinguished.

Exceptions [PLAS D TOG]

1. Loss of thing is **p**artly due to the fault of the debtor;
2. When the **l**aw so provides (*Art. 1262*);
3. When the nature of the obligation requires an **a**ssumption of risk (*Art. 1262*);
4. When the **s**tipulation so provides (*Art. 1262*);
5. Loss of the thing occurs after the debtor incurred in **de**lay (*Art. 1262*);
6. When the debtor promised to deliver the same thing to **t**wo person who do not have the same interest (*Art. 1165*);
7. When the obligation to deliver arises from a **cri**minal offense (*Art. 1268*);
8. When the obligation is **g**eneric (*Art. 1263*).

NOTE: If the loss is through theft, the debtor is considered negligent having placed the thing within the reach of thieves and not in a secure and safe place. In theft, taking is accomplished without the use of violence or force.

ART. 1263

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

GENERAL RULE

The loss or destruction of anything of the same kind even without the debtor's fault and before he has incurred in delay will not have the effect of extinguishing the obligation (*Jurado, 290*).

REASON The genus of a thing can never perish (*genus nunquam peruit*). Hence, the debtor can still be compelled to deliver a thing which must be neither of superior nor inferior quality (*Id.*).

EXCEPTION

1. Delimited Generic Thing – when there is a limitation of the generic object to a particular existing mass or a particular group of things, the obligation is extinguished by the loss of the particular mass or group or limited quantity from which the prestation has to be taken;
2. If the generic thing has already been segregated or set aside, in which case, it has become specific (*Paras, 440*).

NOTE: An obligation to pay money, such as one under a pension plan, is generic. Here failure to raise funds is not a defense (*PLDT v Jeturian, GR No. L-7756 [30.07.55]*).

ART. 1264

The Courts shall determine whether, under the circumstances, the partial loss of the object of the obligation is so important as to extinguish the obligation.

EFFECT OF PARTIAL LOSS

General Rule

Partial loss does not extinguish the obligation. There is partial loss when only a portion of the thing is lost or destroyed or when it suffers depreciation or deterioration (*De Leon, 345*).

Exception

When the partial loss or destruction of the thing is of such importance that would be tantamount to a complete loss or destruction.

Illustration:

A obliged himself to deliver to B a specific race horse. The horse met an accident as a result of which it suffered a broken leg. The injury is permanent. Here, the partial loss is so important as to extinguish the obligation.

If the loss is due to the fault of A, he shall be obliged to pay the value of the horse with indemnity for damages.

If the horse to be delivered is to be slaughtered by B, the injury is clearly not important. Even if there was fault on the part of A, he can still deliver the horse with liability for damages, if any, suffered by B.

NOTE: In case of partial loss, the court is given the discretion, in case of disagreement between the parties, to determine whether under the circumstances it is so important in relation to the whole as to extinguish the obligation. In other words, the court will decide whether the partial loss is such as to be equivalent to a complete or total loss (*Id.*).

ART. 1265

Whenever the thing is lost in the possession of the debtor, it shall be presumed that the loss was due to his fault, unless there is proof to the contrary, and without prejudice to the provisions of Art. 1165. This presumption does not apply in case of earthquake, flood, storm or other natural calamity.

RULE IF THING IS IN DEBTOR'S POSSESSION

General Rule

If the thing is lost while in the possession of the debtor it shall be presumed that the loss was due to his fault, unless there is proof to the contrary and without prejudice to the provisions of Art. 1165. In such case, the obligation is not extinguished and the debtor is still liable for damages (*Jurado, 292*).

Exception

No such presumption in case of earthquake, flood, storm or other natural calamity (*Id.*). Lack of fault on the part of the debtor is more likely. So it is unjust to presume negligence on his part (*Report of the Code Commission, 133*).

Illustration:

A borrowed a specific car from B. on the due date of the obligation, A told A that the car was stolen and that he was not at fault. That is not enough to extinguish A's obligation. It is presumed that the loss was due to his fault. Hence, he is liable unless he proves the contrary.

Suppose the house of B was destroyed because of fire. It is admitted that there was a fire and it was accidental and that the car was in the house at the time it occurred. Here, A is not liable unless B proves fault on the part of A.

ART. 1266

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

NOTE: The prestation constituting the object of the obligation must have become legally or physically impossible of compliance without the fault of the obligor and before he has incurred in delay, otherwise, the obligation shall be converted into one of indemnity for damages. Impossibility must have occurred after the constitution of the obligation; otherwise, there would be an obligation which would be ineffective from its inception (*Jurado, 292-293*).

REQUISITES IN ORDER THAT THE DEBTOR MAY NOT BE HELD LIABLE

1. The prestation became impossible *without any fault of the debtor*; otherwise, it will not be extinguished but will be converted into one with indemnity for damages;
2. The debtor is not guilty of *delay* (*see Jurado, 292*).

KINDS OF IMPOSSIBILITY

1. *Legal impossibility* – the law imposes duties of a superior character upon the obligor which are incompatible with the work agreed upon, although the latter may be perfectly licit.
2. *Physical impossibility* – arises principally from the death of the obligor, when the act to be performed requires his personal qualifications, or from the death of the obligee, when the act can be of possible benefit only to him (*Id., 293*).

NATURAL IMPOSSIBILITY	IMPOSSIBILITY IN FACT
As to the thing	
Must consist in the nature of the thing to be done and not the inability of the party to do so.	In the absence of inherent impossibility in the nature of the thing stipulated to be performed, which is only improbable or out of the power of the obligor.
As to the effect	
Renders the contract void.	Does not render the contract void.

De Leon, 355

NOTE: Natural impossibility is reckoned from the time of constitution of the obligation. Thus, the obligation remains void even if the prestation subsequently becomes possible.

NOTE: In subsequent partial impossibility, Art. 1264 applies.

NOTE: Temporary impossibility does not extinguish the obligation but merely delays its fulfillment. This presupposes that the duration of impossibility has been contemplated by the parties; otherwise, the same may extinguish the obligation under Art. 1267. In the latter case, the fact that the prestation later becomes possible does not revive the obligation.

EFFECT IN OBLIGATION NOT TO DO

The Code only speaks of legal and physical impossibility with respect to obligations to do because it is very seldom that impossibility of performance may arise in obligations not to do. There may, however, be rare or exceptional cases in which legal or physical impossibility will occur as when the obligor is compelled to do that which he had obligated himself to refrain from performing. In such cases, his obligation is extinguished applying the same principle invoked in Art. 1266 (*Jurado, 295*).

ART. 1267

When the service has become so difficult as to be manifestly beyond the contemplation of the parties, the obligor may also be released therefrom, in whole or in part.

EFFECT OF RELATIVE IMPOSSIBILITY

The impossibility is relative because the difficulty of performance triggers a manifest disequilibrium in the prestations, such that one party would be placed at a disadvantage by the unforeseen event.

Impossibility shall release the obligor. However, when the service has become so difficult as to be manifestly beyond the contemplation of the parties, the court should be authorized to release the obligor in whole or in part (*Jurado, 295*).

USE OF THE TERM "SERVICE"

Art. 1267 applies to active personal obligation to do, passive personal obligation not to do, and also to real obligation to give or deliver a thing (*De Leon, 357*). "Service" should be understood as referring to the performance of the obligation (*Naga Telephone Co. v CA, 230 SCRA 351*)

NOTE: Under Art. 1267, the remedy of the obligor is not annulment but to be released from his obligation, in whole or in part.

DOCTRINE OF UNFORESEEN EVENTS/ FRUSTRATION OF ENTERPRISE

When the service has become so difficult as to be manifestly beyond the contemplation of the parties, the court should be authorized to release the obligor in whole or in part. The intention of the parties should govern and if it appears that the service turns out to be so difficult as to have been beyond their contemplation, it would be doing violence to that intention to hold the obligor still responsible.

DOCTRINE OF REBUS SIC STANTIBUS

Things thus standing. The parties stipulate in the light of certain prevailing conditions and once these conditions cease to exist, the contract also ceases to exist (*Naga Telephone Co. v CA, 230 SCRA 351*).

EFFECT OF LOSS ON RECIPROCAL OBLIGATIONS

- If an obligation is extinguished by the loss of the thing or impossibility of performance through fortuitous events, the counter-prestation is also extinguished. The debtor is released from the liability but he cannot demand the prestation which has been stipulated for his benefit. He who gives nothing has no reason to demand.
- The loss or impossibility of performance must be due to the fault of the debtor. In this case, the injured party may ask for rescission under Art. 1191 plus damages. If the loss or impossibility was due to a fortuitous event, the other party is still obliged to give the prestation due to the other.

ON MODIFICATION OF CONTRACTS

Art. 1267 is not applicable to modification of contracts. The court shall either release or not release a party from a contract, but it cannot modify the terms thereof and order the parties to comply with the contract as modified by it (*Occeña v Jabson, 73 SCRA 637*).

ART. 1268

When the debt of a thing certain and determinate proceeds from a criminal offense, the debtor shall not be exempted from the payment of its price whatever may be the cause for the loss, unless the thing having been offered by him to the person who should receive it, the latter refused without justification to accept it.

NOTE: Kindly read alongside the provisions of Art. 552.

RULE IF OBLIGATION ARISES FROM CRIMINAL OFFENSE

Applicable not only to the case where there is an obligation of restitution of a certain and determinate thing on the part of the person criminally liable as provided for in the Penal Code, but also to the case where such obligation arises by virtue of reparation or indemnification. Also applies to the persons who are principally liable and to those subsidiarily liable (*Jurado, 296-297*).

GENERAL RULE

Debtor shall not be exempted from the payment of the price whatever may be the cause for the loss ().

EXCEPTION

When the thing having been offered by the debtor to the person who should receive it, the latter refused without justification (*mora accipiendi*).

NOTE: The offer referred in Art. 1268 should not be confused with consignation; the latter refers only to the payment of the obligation, the former refers to the extinguishment of the obligation through loss by fortuitous event (*Jurado, 297*).

NOTE: When the offer was refused to be accepted without justification, the debtor may either:

- Make a consignation of the thing and thereby completely relieve himself of further liability;
- He may keep the thing in his possession, in which the case, the obligation shall still subsist but if the thing is lost through fortuitous event, Arts. 1262 and 1265 shall govern (*Id*.).

NOTE: Art. 1268 specifically applies only to determinate things.

ART. 1269

The obligation having been extinguished by the loss of the thing, the creditor shall have all the rights of action which the debtor may have against the third persons by reason of the loss.

RIGHT OF THE CREDITOR TO PROCEED AGAINST THIRD PERSON

The creditor is given the right to proceed against the third person responsible for the loss. There is no need for an assignment by the debtor. The rights of action of the debtor are transferred to the creditor from the moment the obligation is extinguished, by operation of law to protect the interest of the latter by reason of the loss (*De Leon, 366*).

Illustration:

A is obliged to deliver his car to B. But C destroys the car. B has a right to sue C. The right is given to B instead of A because otherwise A would unduly profit in that he will gain two things:

1. *His obligation to give the car or its value is already extinguished;*
2. *He would be allowed to recover from C* (*Paras, 446-447*).