Article 1173: The fault or negligence of the obligor consists in the omission of that diligence which is required by the nature of the obligation and corresponds with the circumstances of the person, of the time and of the place. When negligence shows bad faith, the provisions of Articles 1171 and 2201, paragraph 2, shall apply.

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

Explanation: If the obligor does not perform the diligence that has been stipulated in the contract or the law, he shall be liable for damages.

And if it is not stated in the law or the contract the diligence to be observed, a good father of a family is expected.

And there are diligence that does not need to be agreed upon for it to arise. Extraordinary diligence must be observe by the obligor.

Degrees of Culpa (Negligence) under Roman law

- **CULPA LATA** – grave negligence
  - ✓ If *slight diligence* is required, it is only *grave negligence* that will make the debtor liable.
  - ✓ **Explanation**: If it is stipulated in the contract or law that slight diligence is required to deliver something, then it will take a serious negligence for the debtor to be liable.
- **CULPA LEVIS** – Ordinary negligence
  - ✓ If *ordinary diligence* is required, it is *ordinary negligence* that will make the debtor liable.
  - ✓ **Explanation**: If it is stipulated in the contract or law that ordinary diligence is required to deliver something, then an ordinary negligence of the debtor will make him liable.
- **CULPA LEVISSIMA** – slight negligence
  - ✓ If great diligence is required, even slight negligence will make the debtor liable.
  - ✓ **Explanation**: If it is stipulated in the contract or law that *great diligence* is required to deliver something, even a slight negligence will make the debtor liable

(NOTE: ABOVE CLASSIFICATION HAS NOT BEEN FOLLOWED in the Civil Code because today there are very many kinds or degrees of diligence required.)

Kinds of Diligence under the Civil Code

1. **Agreed upon by the parties**
   a. It is stipulated in the contract or by the parties the kind of diligence to be observes in the performance of the delivery or service.
2. **In the absence of (1), that required by the law (particular provisions)**
   a. There are diligences that do not need to be agreed upon or stipulate in the contract before diligence arise. The law has implemented certain diligence (Extraordinary) that should be observed.
3. **In the absence of (b), that expected of a good father of a family (bonum pater familia)**
   a. If the law or contract does not state the diligence which is to be observed in the performance, that which is expected of a good father of a family shall be required.

Article 1174: Except in cases expressly specified by the law, or when it is otherwise declared by the stipulation or when the nature of the obligation requires the assumption of risk, no person shall be responsible for those events which could not be foreseen, or which though foreseen, were inevitable.

Explanation: A debtor is not held liable for damages for a fortuitous event that is unforeseeable, or inevitable.

General Rule

"No liability for a fortuitous event that which cannot be foreseen, or which even if foreseen, was inevitable."

Exceptions: The debtor is responsible for a fortuitous event if:

- **When expressly declared by the law**
  - ✓ This is when the obligor is in BAD FAITH or is in DEFAULT.
- **When expressly declared by stipulation or contract**
  - ✓ If it is stipulated in the contract that if an unexpected fortuitous event is encountered, an *extension must be sought* to avoid liabilities.
- **When the nature of the obligation requires the assumptions of risk (Doctrine of Created Risk)**
  - ✓ This is when the person who makes a delivery, delivered an item or product which are dangerous, and by fortuitous event it cause damages to other property, the obligor shall be responsible and the owner who causes the accident would not be held liable.

Equivalent terms for Fortuitous Event

- **Caso Fortuitio (literal Translation)**
- **Act of GOD**
  - To exempt the obligor from liability for a breach of an obligation due to act of God, following must concur:
    - ✓ Cause of the breach of the obligation must be independent of the will of the debtor
    - ✓ Event must be either unforeseeable or unavoidable
    - ✓ Event must be such as to render it impossible for the debtor to fulfill his obligation in a normal manner
    - ✓ The debtor must be free from any participation in, or aggravation of, the injury to the creditor
- **Force Majeure** – like war or armed robbery
  - ✓ But if the war had already broken out before the contract was entered into, the war cannot be considered unforeseen.
- **Unavoidable Accident** – like a tire blow-out provided there are no negligence

Essential Characteristics of a Fortuitous Event

1. Cause must be independent of the will of the debtor (freedom from participation or aggravation)
2. Impossibility of foreseeing or impossibility of avoiding it, even if foreseen
3. Occurrence must be such as us to render it impossible for the debtor to fulfill his obligation in a normal manner

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Article 1175: Usurious transactions shall be governed by the special laws.

Explanation: The law has provided acceptable interest that a creditor can impose to a person who borrowed money. Not following the usury law may void the interest that have been impose, though the principal debt can be recovered.

Definition of Usury

"it is contracting for or receiving something in excess of the amount allowed by the law for the loan or use of money, goods, chattels, or credits. "

In other words, it is the exaction of excessive interest

Kinds of Interest

1. **Moratory Interest**
   a. Interest given for compensation or use of the money
   b. Ex. If I borrowed one million at 8% interest per annum for 3 years.
   c. It is regulated by the Usury law
2. **Compensatory Interest**
   a. Interest given by way of damages
   b. Ex. If I borrowed one million with no interest for 3years. If I pay at the end of 3years, I pay no interest. If I incur default, I will now be responsible for interest at rate of 6% per annum, to be counted from default.

Definition of Simple Loan

"By the contract of simple loans, one of the parties delivers money or other consumable things upon the condition that the same amount of the same kind and quality shall be paid."

Lawful and Legal Rates

1. **Lawful Rates (authorized rates)**
   a. Those allowed as maximum under the former Usury Law
      i. **12% per annum**
         1. If secured in whole or In part a mortgage upon real state, if the title of the real estate is duly recorded; or by any document conveying such real estate.
      ii. **14% per annum**
         1. If not secured as provided above
      iii. **For pawnshops**
         1. **2 ½ % a month** – is sum is less than P100.
         2. **2% a month** – P100 to P500
         3. **14% per annum** – if more than P500

(NOTE: it shall be unlawful for a pawnbroker or is agent: a) **to divide the pawn offered by a person into two or more fractions, in order to collect greater interest than permitted.** B) **Require the pawner to pay an additional charge as insurance premium for the safekeeping and conversation of the article pawned**.)

2. Legal Rate
   - ✓ Presumed by the law to have been agreed upon if the loan mentions interest but no rate was stipulated.
   - ✓ 12% per annum as directed by a Central Bank Circular.
   - ✓ NOTE: No interest (by way of compensation for its use) will be given in case it is not expressly stipulated in writing.

Secured Loans – penalizes the taking or receiving of excessive interest (not the mere agreeing)

Unsecured Loans – penalizes not only the taking or receiving, but also the demanding or the agreeing to charge an excessive rate. (In both cases, it is only the CREDITOR who is guilty)

- The Creditor can **recover the Principal debt**. The ***contract of loan with usurious interest is valid as to the loan*** and ***void only with respect to the interes***t – for ***the loan is the principal contract while the interest is merely an accessory element.***

Article 1176: The receipt of the principal by the creditor, without reservation with respect to the interest, shall give rise to the presumption that said interest has been paid.

The receipt of a later installment of a debt without reservation as to prior installment, shall likewise raise the presumption that such installments have been paid.

Explanation: Once the creditor has received the payment for the principal, it gives the presumption that the interest has been paid. And if the later installment is given it is also presumed that the prior installment had been paid by the obligor.

Example for the 1st Paragraph

A creditor of P1, 000,000, with 8% interest, received P1, 000,000 in payment of the principal. Interest was not referred to in the payment. **It is presumed that the 8% interest had already been previously paid. This is because under Article 1253, Civil Code, payment of the interest as a rule precedes payment of the principal.**

Example for the 2nd Paragraph

If a creditor receives the fourth installment of a debt, it is understood that the first three installments have been paid.

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Article 1177: The creditors, after having pursued the property in possession of the debtor to satisfy their claims, may exercise all the rights and bring all the actions of the latter for the same purpose, save those which are inherent in his person; they may also impugn the acts which the debtor may have done to defraud them.

Explanation: If the obligor was not able to pay the debt he had acquired to the creditor, and the creditor made a demand for him to pay the debt and still the obligor failed to pay, the creditor may asked for legal assistance to request that he/she can take anything to the property of the obligor to satisfy its claims.

Rights of the Creditors

1. Exact Payment
2. Exhaust debtor's properties, generally by attachment (except properties exempted by the law.)
3. **Accion Subrogatoria (subrogatory action)** – exercise all rights and actions except those inherent in the person (like parental authority, right to revoke donations on ground of ingratitude, hold office, carry out an agency.)
    a. This is not remedy of subrogation referred to in the Chapter on Novation.
4. **Accion Pauliana** – impugns or rescinds (cancel) acts or contracts by the debtor to defraud the creditors.

Article 1178: Subject to the laws, all rights acquired in virtue of an obligation are transmissible, if there has been no stipulation to the contrary.

Transmissibility of rights

- **General Rule** – Rights are transmissible
- **Exceptions:**
    1. If the law provides otherwise
    2. If the contract provides otherwise
    3. If the obligation is purely personal

Non-negotiable Promissory Note

Even if a promissory note is not negotiable, it may still be given, donated, or assigned to another. The effects will be governed not by the law on negotiation but in by the law on assignment or donations. Payment can be made to transferee, provided he is in lawful possession of the credit.

Chapter 3

Classifications of Obligations

A. Primary Classification under the Civil Code
    a. When: **PURE and CONDITIONAL** (Art. 1179-1192) time of enforceability
        i. **PURE:** demandable at once
        ii. **CONDITIONAL:** fulfillment or extinguishment depends upon a future or uncertain event
    b. When: With A **PERIOD OR TERM** (Art.1193-1198)
        i. **PERIOD:** fulfillment or extinguishment depends upon a future or uncertain event
    c. What: **ALTERNATIVE and FACULTIVE** (Art.1199-1206) multiple objects
        i. **ALTERNATIVE:** multiple prostrations but debtor will perform one or some but not all, depending on whose choice is it
        ii. **FACULTIVE:** multiple prestations with principal obligations and substitute prestations, choice is generally given to the debtor.
    d. Who: **JOINT and SOLIDARY** (Art1207-1222) multiple subjects, focuses on the tie that bonds the party
        i. **JOINT**: each can be made to pay only his share in the obligation
        ii. **SOLIDARY**: one can be made to pay for the whole obligation subject to reimbursement
    e. How: **DIVISIBLE and INDIVISIBLE** (Art. 1223-1225) performance of the prestations, not to the thing which is object thereof, whether it can be fulfilled in parts or not
    f. **WITH A PENAL CLAUSE** (Art. 1226-1230) accessory undertaking to assume greater liability in case of breach

Section I
PURE AND CONDITIONAL OBLIGATIONS

Article 1179: Every obligation whose performance does not depend upon the future or uncertain event, or upon a past event 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.

Explanation: When an obligation is a Pure Obligation not subject to any condition and no specific date, then it is immediately demandable. Like [I promise to pay you one million. This is demandable at once.)

But if an obligation contain a condition that will extinguish the obligation then it will be immediately be demandable.

Meaning of Pure Obligation: one which is not subject to any condition and no specific date is mentioned for its fulfillment and is, thereof, immediately demandable

Meaning of Conditional Obligation: one whose consequences are subject in one way or another to the fulfillment of a condition,

CONDITION

- **(Book definition)** "it is an uncertain event which wields an influence on a legal relationship
- Is a future and uncertain event, upon the happening of which, the affectivity or extinguishments of an obligation (or right) subject to it depends.

  Characteristics:
    1. Future and uncertain
    2. Past but unknown

    *A condition must not be impossible

Classification of Conditions

A.

1. **Suspensive condition** (condition precedent or condition antecedent)
    a. Fulfillment of/happening of the condition which will give rise to an obligation or right
2. **Resolutory Condition** (condition subsequent)
    a. Fulfillment of/happening of the condition which will extinguish an existing obligation or right
3. **Protestative** – depend upon the will of the debtor (Ex. I'll sell you my care if I like.)
4. **Casual** – depends on chance or hazard or the will of a third person (Ex. If I win in the lotto)
5. **Mixed** – depends partly on the will of one of the parties and partly on chance or the will of a third person (If I pass the bar)
6. **Divisible** – capable of partial performance
7. **Indivisible** – not capable of partial performance because of the nature of the thing, or because of the intention of the parties.
8. **Positive** – act is to be performed
9. **Negative** – something will be omitted
10. **Express** – the condition is stated
11. **Implied** – the condition merely inferred
12. **Possible** – capable of fulfillment in nature and in law
13. **Impossible** – not capable of fulfillment due to nature or due to the operation of the law or morals or public policy; or due to a contradiction in its term
14. **Conjunctive –** if all the conditions must be performed
15. **Alternative –** if only a few of the condition have to be performed

Distinction:

- In Suspensive an obligation arises, while in resolutory an obligation is extinguished
- If Suspensive does not take place, the tie of the law (juridical or legal tie) does not appear; if it is the other , the tie of law is consolidated
- Until the first takes place, the existence of the obligation is a mere hope while the second, its effects flow, but over it hovers the possibility of termination

When Obligation is Demandable at Once

- When:
    - When it is pure
    - When it is subject to a resolutory condition or
    - When it is subject to a resolutory period

Past Event Known to the Parties

- Since a condition refers only to uncertain and future events, a past event cannot be a condition since the demandability of an obligation subject to a condition depends on the event happening or not. The law contemplates the knowledge to be acquired in the future of a past event which is at the moment i unknown to the parties interested

Definition of a TERM or PERIOD

That which necessarily must come, whether the parties know when it will happen or not

Article 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.

Explanation: When a debtor promises to pay, it will not depend on him if he will pay or not, what depends on him is that when will he pay the said amount.

Debtor to Pay "When His Means Permit"

Although it 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 promise payment. ***What depends really on him is not payment, buy the TIME when payment is to be made.*** Hence, the law under article 11809 considers this obligation as one with a TERM or Period.

Similar Phrases

a) When my means permit to do so
b) When I can afford it
c) When I am able to
d) When I have money, etc.

How long is the Term?

- Leaving the same to the discretion of either the creditor or debtor would be unjust, therefore, Art. 1197 should be applied, ***where the Court is obliged to fix the duration of the period.***
- GENERAL RULE: ***for the creditor to ask the court first for the fixing of the term, and it is only when that term set arrives that he can demand fulfillment. Any action to recover before this is done is considered PREMATURE.***
- **PATENTE case**, the phrase was "***as soon as possible or as soon as I have money."*** The only case when the bringing of the action to enforce, before the court fixes the term, would be allowed when the prior action of fixing the term would serve no purpose but delay.

Article 1181: In conditional Obligations, the acquisition of rights, as well as the extinguishments or loss of those already acquired, shall depend upon the happening of the event which constitutes the condition.

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Explanation: if an obligation consist of a condition and fulfillment of such condition will give rise to the rights for the debtor to have it, but if the debtor was not able to perform the said condition then he will acquire no right over it.

This Article treats of:

a) Suspensive conditions

a. The happening of which will give rise to the acquisition of a right (conditions precedent or conditions antecedent)
b. **Characteristics on an obligation in Suspensive condition:** its efficacy or obligatory force is subordinated to the happening of a future and uncertain event.
c. ***If Suspensive condition does not take place, the parties would stand as if the conditional obligation had never existed.***
d. Before the writ of preliminary injuction can be granted, the posting of a bond (to answer for consequent damages) is a condition ***sine qua non (indispensable Suspensive condition or condition precedent.)***

Examples:

- A, in his will, gave some property to B, provided that A would die within a certain period. A did not die during said period. Since the Suspensive condition was not complied with, B is not entitled to inherit.
- If in a judgment by a court it is stated that unless a bond is given, the judgment can be enforced even while it is still in appeal, the giving of the bond should be considered as partaking of the nature of a Suspensive condition. If the bond be not given, enforcement or execution can issue.
- If a contract provides for arbitration prior to recourse to courts but the case was filed without such needed arbitration, the case will be suspended until after arbitration is resorted to.

b) Resolutory Conditions

a. Also called conditions subsequent
b. Right is already acquired are lost once the condition is fulfilled
c. So here before a condition can be revoked, especially in donation, If the done was b=nit able to perform such condition. Donation should be revoked first before it can be taken back by the one who did the donation.

Example:
Concepcion Cirir and James Hill donated land to the province of tarlac on condition that the latter would build upon the land a schoolhouse and a park, the work to begin within 6 months from the date the parties ratify the donation. The province accepted the donation, and the land was registered in the name of the done. Several years later, noticing that the province had not performed the conditions, the donors sold the land to Mr. Parks. Now Mr. Parks sued to recover the land from the province.

Explanation:
Parks has NO right to get the land. It is true that the donation was revocable because of breach of the conditions. But until the donation was revoked, it remains valid, and hence, Cirir and Hill had no right to sell the land to Parks. ***ONE CANNOT GIVE WHAT HE DOES NOT HAVE (NEMO DAT QUOD NON HABET).*** **What the donor should have done first was to have the donation annulled. And after that was done, they couls validly disposed of the land in favor of Parks.**

Conditional Perfection of a Contract

If the perfection of a contract depends upon the fulfillment off a condition, non-fulfillment thereof means the non-perfection of the contract since the Suspensive condition should have been first fulfilled.

Article 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.

Explanation:

This article deals with 3 kinds of conditions:

1. **Protestative** – depends on the exclusive will of one of the parties. (this is called Facultative condition)
    a. **Protestative on the part of the DEBTOR:**
        i. If also Suspensive-both the condition and the obligation are VOID, for the obligation is really illusory.
            1. Ex. I'll give you P1,000,000.00 next month if I live
        ii. If also resolutory – valid
            1. I'll employ you now as my superintendent in the factory, but it is understood that if for any reason the machinery which I ordered from US will not arrive, the employment will end.
            2. ***A condtion both Protestative and resolutory may be valid upon the will even if the condition is made depend upon the sill of the obligor.***
    b. **Protestative on the part of the CREDITOR - VALID**
        i. Ex. I'll give you my fountain pen if you desire to have it."
2. **Casual** – depends on chance or upon the will of a third party. (ex. If I win the Lotto.)

Article 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.

Explanation: if a condition is doing the illegal or an impossible thing, the obligation will be annulled. But if the obligor has the capability to perform a part of condition which is not against the law then the obligation can be valid.

Classification

1. **Impossible** [Physically – to make a dead man live; - logically – to make a circle that is at the same time a square (illogical condition)]
2. **Illegal** [prohibited by good customs, public policy; prohibited, directly or indirectly, by law, like killing X, a friend.]

Effects'

- ✓ If the condition is ***to do an impossible ot illegal thing, BOTH the condition and the obligation are VOID*** (because the debtor knows that the fulfillment can be done and therefore is not serious about being liable.)
- ✓ If the condition is ***NEGATIVE, that is, not to do the impossible, just disregard the condition BUT the obligation remains.***
    - Ex. I'll sell you my land id you cannot make a circle that is at the same time a square. (this becomes a pure and valid obligation. As a matter of fact, the conditions can always be fulfilled.)
- ✓ If the condition is ***NEGATIVE, i.e., not to do an illegal thing, both the condition and the obligation are VALID.***

Article 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

Explanation: if a condition was not able to perform in the specified determinate time, the obligation will be extinguish.

Effect if Period of Fulfillment is Not Fixed

If the period is not fixed in the contract, the court, considering the parties' intentions, should determine what period was really intended.

Article 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.

Explanation: this deals with the negative condition, omission of certain action that a person should do in able for him to have the thing the creditor had offered. For example ***"I will give you P1,000,000 if by October1, 2005 you have not yet married Maria.´ And if by said date, you are not yet married, or if prior thereto, Maria died, the obligation is effective, in the first case-from October 1, 2015; and in the second case from Maria's death.***

And if no fix time has been stipulated, and the obligor was able to perform the said condition observing the nature of the obligation, it automatically considered as fulfilled.

Article 1186: The condition shall be deemed fulfilled when the obligor voluntarily prevents the fulfillment.

Explanation; When an obligor has proven an act of preventing and cancelling an obligation, it will be consider being fulfilled by him, and he or she shall be held liable.

Rule when the Debtor Voluntarily Prevents Fulfillment of the Condition

This Article deals with Constructive or Presumed Fulfillment. ***Reason for this article: One must not probit by his own fault.***

Requisites

1. **VOLUNTARILY made –** either maliciously or not, the intent to prevent must be present. If done voluntarily for another purpose, this requisite ois not present.
2. **Actually PREVENTS** – Intention without prevention or prevention without intention is not sufficient. But intention and prevention in the exercise of a lawful right will not render the Article applicable.

Requisites (Research Base)

1. The condition is Suspensive
2. The obligor actually prevents fulfillment of the condition
3. He acts voluntarily

COSTRUCTIVE FULFILLMENT OF SUSPENSIVE CONDITION

The law does not require that the obligor acts with malice or fraud as long as the purpose is to prevent fulfillment of the condition. He should not be allowed to profit from his own fault or bad faith.

Example: S promised to sell land to Y if Y borrows money from a certain bank, S later changes his mind and tell the bank not to give Y a loan. ***The condition is .deemed complied with and liable to S, and S should not act in bad faith.***

CONSTRUCTIVE FULFILLMENT OF SUSPENSIVE CONDITION

This article also applies to an obligation subject to a resolutory condition with respect to the debtor who is bound to return what he has receive upon the fulfillment of an obligation.

Example: X obliges himself to occupy house of Y in Manila as long as X is assigned by their company to this particular province then X is transferred in Manila.

Article 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.

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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 the interests received, unless from the nature and circumstances of the obligation it should be inferred that the intention of the person constituting the sane was different.

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

Explanation:

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.

I. An obligation to give subject to a Suspensive condition is only demandable when obligation is fulfilled, then the effects of fulfillment will retroact to the day the obligation was constituted.
*Because condition is only accidental

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.

I. Example: In 1999, A agreed to sell B his land and B agreed to pay if C passes the bar of 2006. C passed. A must now give the land, and B must pay. The fruits of the land for the one year period will remain with A. A does not have to give said fruits. Upon the other hand, B will keep the 6% legal interest on his money. This is true even if the interests be greater or lesser than the fruits.

II. No retroactivity because fruits and interest received during the waiting period of the condition are mutually compensated. This is necessary for convenience since the parties would not have to render mutual accounting of what they have received. (Fruits: natural, industrial or civil)

If the obligation is unilateral, the debtor shall appropriate the fruits and the interests received, unless from the nature and circumstances of the obligation it should be inferred that the intention of the person constituting the sane was different.

I. Usually no retroactive effect since gratuitous. Debtor receives nothing from creditor thus fruits and interests belong to debtor (unless from nature, and if inferred that intention of the person consulting the same was different)
Example: Debtor has the right to keep the fruits of his delivery if he received it during pendency of condition unless a contrary intention was inferred

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

II. There is no fixed rule provided, however, this does not mean that principle of retroactivity is not applicable. Courts are empowered by sound discretion and bearing in mind intent of parties to determine retroactive effect of Suspensive condition that has been complied with. It includes when retroactive effect takes or does not take place

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Article 1188: The creditor may, before the fulfillment of the condition, bring 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.

Explanation:

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

I. The Creditor may bring appropriate actions for the preservation of his right as debtor may render nugatory the obligation upon happening of condition. He may go to court to prevent concealment of property or to have his right annotated in the registry of property.

II. ***If not appropriate action is taken, there is a danger that the creditor will receive nothing, as when the object is deliberately destroyed, or hidden, or alienated.***

III. **Appropriate Actions**
   a. Ask for security if the debtor is about to be insolvent
   b. Ask the court to prevent alienation or concealment pendare conditionae

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

I. What was paid by mistake may be recovered because, after all, the condition may not materialize. In the meantime, the debtor has lost the use of the object. It is unfair for the creditor to unjustly enriched himself. ***This is a case of SOLUTIO INDEBITI. The debtor is also entitled to fruits or legal interest. If the creditor be in BAD FAITH, that is, if the creditor know that payment was being made prior to fulfillment of the condition.***

II. *If payment was not by "mistake", can there be recovery?*
   a. *It depends*
      i. *If the condition is fulfilled, no recovery because of retroactivity*
      ii. *If the condition is not fulfilled, there should be a recovery unless a pure donation was intended.*

Article 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 extinguish;**
2. **If the thing is lost through the fault of the debtor, he sall 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 recession of the obligation and its fulfillment, with indemnity for damages in either case;**
5. **If the thing is improve by its nature, or by time, the improvement shall inure to the benefit of the creditor**
6. **If it is improve at the expense of the debtor, he shall have no other right than that granted to the usufructuary.**

Loss, Deterioration, and Improvement during the Pendency of Condition

I. The articles applies only if:
   a. the suspensive condition if fulfilled; and
   b. the object is specific (not generic)

II. 3 things that may happen to an object on an obligation pending the fulfillment of a suspensive condition
   a. May be lost
   b. May be deteriorate (value reduced or impaired)
   c. May be improved

Definition of "LOSS"

I. When it perishes
II. When it goes out of commerce
III. When it disappears in such a way that its existence is unknown
IV. When it disappears un such a way that it cannot be recovered

Effects of Partial Loss

I. That would amount to a loss important enough to be considered as complete loss (this will be determined by the courts)
II. That would merely be considered as deterioration of the thing, in which case the rules on deterioration should apply

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Article 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 aa87 shall be observed as regards the effect of the extinguishment of the obligation.

Effects when resolutory Condition is Fulfilled

1. The obligation is extinguished
2. Because the obligation had been extinguished and considered to have had no effect, the parties should restore to each other what they have received.
3. Aside from the actual things received, the fruits or the interest thereon should also be returned after deducting of course the expenses for their production, gathering and preservation
4. The rules given in Art. 1189 will apply to whatsoever has the duty to return in case of the loss, deterioration or improvement of the thing
5. The courts are given power to determine the retroactivity of the fulfillment of resolutory conditions

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Article 1191: The power to rescind obligations is implied in reciprocal ones, in case on of the obligors should not comply with what is incumbent upon him.

The injured party may choose between the fulfillment and 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

KINDS OF OBLIGATION ACCORDING TO THE PERSON OBLIGED

1) **Unilateral** - only one party is obliged to comply with a prestation
2) Bilateral - when both parties are mutually bound to each other; both are debtors and creditors

Reciprocal Obligations:

- Arise from the same cause and in which each party is a debtor and creditor of each other
- Fulfillment of other's obligation = suspensive condition tohis obligation
- Non-fulfillment of other's obligation = resolutory condition
- Gives him right to demand rescission of contract non-reciprocal Obligations
- Do not impose the simultaneous performance of both parties
- Performance of one is not dependent on simultaneous performance of the other

REMEDIES IN RECIPROCAL OBLIGATIONS

- Choice of remedies - in case one of the obligors does not comply

1) Action for specific performance (fulfillment) with damages
2) Action for rescission of obligation with damages

3) **Remedy of rescission for non-compliance** - remedy is granted because of the breach by other contracting party

COURT MAY GRANT GUILTY PARTY TERM FOR PERFORMANCE

- Court shall order rescission claimed unless guilty party needs a default period or term to fulfill obligation

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- Applies when guilty party needs time to perform, not when he doesn't want to perform

REMEDIES ARE ALTERNATIVE

Injured party can only choose one remedy
Exception: can choose rescission after asking fulfillment, if fulfillment becomes impossible, but once rescission is chosen, can't ask for fulfillment

LIMITATIONS ON RIGHT TO DEMAND RESCISSION - NOT ABSOLUTE

- Resort to the courts
- Refers to judicial rescission
- Injured party must go to the courts
- Can't decide by themselves
- Power of court to fix period
- Court has decision over giving guilty party a period wherein he can perform obligation
- Depends on circumstances
- Hindi sinadya ng debtor na hindi magawa
- Right of third person
- Rescission is not available if subject of obligation is in the hands of third person who didn't do anything wrong
- Substantial violation
- Rescission will not be granted for slight breaches of contract
- Substantial enough as if it defeats the purpose of agreement
- Waiver of right
- Right to rescind may be waived, expressly or impliedly

RESCISSION WITHOUT PREVIOUS JUDICIAL DECREE

- Where automatic rescission expressly stipulated
- Parties can, sa start pa lang, already agree that if there is a violation, cancel agad ng contract; no need for court
- Needs at least written notice to other party
- Extrajudicial rescission - party does not oppose
- If opposed, court needed to settle where contract still executory
- One has not performed, but the other is ready and willing to comply
- Willing party may declare rescission
- No need for stipulation in contract
- If such action is opposed by other party, go to the courts

Example: The remedy of "rescission" is not confined to the rescissible contracts enumerated under Article 1381.* ***Article 1191 of the Civil Code gives the injured party in reciprocal obligations, such as what contracts are about, the option to choose between fulfillment and "rescission." Arturo M. Tolentino, a well-known authority in civil law, is quick to note, however, that the equivalent of Article 1191 in the old code actually uses the term "resolution" rather than the present "rescission." The calibrated meanings of these terms are distinct.*

"Rescission" is a subsidiary action based on injury to the plaintiff's economic interests as described in Articles 1380 and 1381. "Resolution," the action referred to in Article 1191, on the other hand, is based on the defendant's breach of faith, a violation of the reciprocity between the parties. As an action based on the binding force of a written contract, therefore, rescission (resolution) under Article 1191 prescribes in 10 years. Ten years is the period of prescription of actions based on a written contract under Article 1144.

The distinction makes sense. ***Article 1191 gives the injured party an option to choose between, first, fulfillment of the contract and, second, its rescission. An action to enforce a written contract (fulfillment) is definitely an "action upon a written contract," which prescribes in 10 years (Article 1144). It will not be logical to make the remedy of fulfillment prescribe in 10 years while the alternative remedy of rescission (or resolution) is made to prescribe after only four years as provided in Article 1389 when the injury from which the two kinds of actions derive is the same.***

Article 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.

WHERE BOTH PARTIES ARE GUILTY OF BREACH

1) **First infractor known** – one party violated his obligation therefore the other party also violated part of his obligation. Liability of first infractor must then be reduced
2) **First infractor cannot be determined –** One party committed violation towards his obligation followed by another, indeterminate first infractor. Contract shall then be diminished and both parties will have ot bear their own damages

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