

o **Extinctions of Obligations**

o **Meaning of Extinction**

- Stoppage or coming to an end of contractually created obligations.

o **Grounds of Extinction**

- Performance
- invalidation
- Cancellation
- Termination
- Remission
- Novation
- Setoff
- Merger
- Limitations of actions

Performance

- The most common and most desirable way of extinctions of obligations.
- That's why the law in the very first place provide performance as a ground of obligations.
- This is the case where parties discharge their resultant obligations in accordance with their agreement and the law.
- So it is not only effect but also a ground of extinctions of obligations

o **Article 1808**

o **Two types of nullities:**

- Relative nullity (voidable contracts):
- Absolute nullity (void contracts):

o **Distinction between them:**

- Ground for nullity: (consent and incapacity for relative nullity while non-observance and form and object requirements for absolute nullity)
- Interest to be protected: in the case of relative nullity the law intends to protect the interest of the individual victim but in case of absolute nullities the interest to be protected is public interest

- Possibility of confirmation: in relative nullities confirmation is possible but not in the case of absolute nullities
 - Limitation period: the limitation period to bring action for invalidation is shorter in absolute nullities than relative nullities
 - Who has the right to require invalidation: in case of relative nullities only the victim can require invalidation but in case of absolute nullities both parties and any interested third party can apply to the court.
- o **Who is interested party?**
- Public prosecutor? Yes! But contract is a private relationship?
Article 42 of Civ. Procedure: the public prosecutor shall intervene whenever his intervention is required by law.
Question: whether the legislative requirement of “his intervention is required by law” is satisfied by the notion of “any interested party”?
 - Judge? No! but is he to tolerate before him an obviously invalid contract?
Eg. A asks B to refund him back 2000 birr which he claimed he has loaned her. B did not deny she received the money but refused to pay. In the course of examination it appears that the money was given in order to secure her consent to sexual relation. Because she decided to break off that he asked her the money out of revenge. Can the judge raise the issue of immorality and avoid the contract?
Solution: *procedural*-the judge has to bring the matter into the debate.
- o **Voidable Contracts:** a contract which has effect but is liable to be deprived of its effect at the option of the victim party. It'll have effect until invalidated.
- o **Void contracts:** incapable of having effect according to its apparent purport. It is considered to have no effect from the very inception. It does not have effect by law not by invalidation.
- o **When to ask Invalidation?**
- Where the contract is not performed: as long as the contract is not performed and the situation is unchanged there is no time limit to assert invalidity. The victim party can refuse to perform the obligation at any time.

- Where it is performed/performance is underway: Two cases
 - o Generally 2 years from the ground for invalidation disappears
 - o Unconscionable contracts: two years from the making of the contract. So the beginning of the two years period is different when the ground of invalidation is under Art. 1710 of the code
- o Ethiopian law adopts very short period of limitation. Just two years from the ground for invalidation has disappeared.
- o Rene David: this limitation period is applicable only for cases of defect in consent as this is the only case where the ground for invalidation will disappear. Other cases will be covered under Article 1845.
- o Jean Mark Baissus: there is no legal or textual ground to limit the applicability of the provision. The coming of age of a minor is for example the case where the ground for invalidation disappeared.
- o Where the contract is void the period will be governed by Art. 1845.

The fact that the contract is invalid does not mean that it will be invalidated. There are cases where the contract may be upheld. These are:

- Contract Confirmed: 1811
 - o Confirmation is where the victim party, knowing the defect, decides nevertheless to maintain the contract.
 - o It concerns defect in consent and capacity
 - o It is possible after the defect is known and has disappeared.
 - o The effect is that the defect is removed from the contract.
 - o Do you think the confirming party is entitled for damages? No!
- Partially maintained (1813)
 - o When part of the obligation is vitiated only that part will be invalidated
- Putting an end to the action (1812)
 - o Where the contract is unconscionable the other party may put an end to the action by offering to make good the injury.
 - o The door open to the plaintiff is so narrow that the defendant can close it at any time by making good the injury, for instance offering the true price or paying back the excess.

The rationale for these cases is because the legislature wants to limit the number of invalidated and cancelled contracts.

Confirmation:

Effect of Invalidation and Cancellation

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