

PART II
CONVENTIONAL OBLIGATIONS

A. Definitions of Contract, Convention, & Conventional Obligations

1. Contract

What's a "contract"? *See* CC art. 1906.

a. Nature: A Multilateral Juridical Act

Another term for the expression "agreement between two or more persons," as used in CC art. 1906, is "multilateral juridical act." What does that mean?

What's a juridical act? What's its correlative? What, then, is the significance of saying that a contract is a juridical act?

What's a *multilateral* juridical act? What's its correlative? What, then, is the significance of saying that a contract is a multilateral juridical act?

b. Effects: Creation, Modification, Extinction, & Transfer of Obligations

What juridical consequences, according to article 1906, is this multilateral juridical act supposed to produce? Is that all? Is there not yet another possible effect of contracts? What?

2. Convention

What's a "convention"? What does the title of CC, Book III, Title IV suggest?

3. Conventional Obligations

What does the expression "conventional obligation" mean? What, then, is the relationship between contract and conventional obligation?

B. Theoretical Underpinnings of Conventional Obligations

Read Trahan, Supp, 116-19.

C. Classification of Contracts

1. By the Presence or Absence of Reciprocal Obligations: Unilateral v. Multilateral (Synallagmatic) Contracts

a. Explication of the Distinction

1) Unilateral Contracts

What's a unilateral contract? *See* CC art. 1907.

CO 1. Pascal offers to give Clodice a nutria pelt on account of his affection for her. Clodice accepts. There is a contract between them. Why? Is this contract unilateral or bilateral? Why?

2) Bilateral (Synallagmatic) Contracts

What's a bilateral, or synallagmatic, contract? *See* CC art. 1908.

CO 2. Olide, who's planning a dinner party, calls Pascal, the owner of Belle Terre Vineyards and orders 10 bottles of Muscadine blush wine. Pascal accepts the order. There is a contract between them. Why? Is this contract unilateral or bilateral? Why?

CO 3. Pascal, who's about to depart on a 2-week vacation to Provence, asks Jean Sot if he'll keep his pet nutria, Mr. Nutty. Jean Sot agrees. There is a contract between Pascal and Jean Sot. Why? Is this contract unilateral or bilateral? Why?

NOTE: Do the expressions "unilateral contract" and "bilateral contract," as used in the civil law, have the same meanings as the expressions "unilateral contract" and "bilateral contract," as used in the common law? To answer that question intelligently, we must, of course, understand the meanings of those terms at common law? Do you remember? For the common lawyer, a unilateral contract is one in which "a *promise* is given in return for an *act*"; a bilateral contract, one in which "a *promise* is exchanged for another *promise*." SL § 97, at 153. Are these definitions the same as or different from the civil law definitions? Explain.

b. Significance of the Distinction

Why should anyone care whether a particular contract is unilateral or bilateral? What difference does it make, juridically speaking?

1) Putting in Default

CO 4. Olide orders 100 bottles of *vin de soco blanc* (white Muscadine wine) from Pascal at \$5 per bottle. Suppose that, thus far, Pascal has not delivered the wine to Olide and Olide has not paid the price. Though Olide hasn't paid and, in fact, lacks the funds to pay, he makes a written demand on Pascal that he turn over the wine. Pascal refuses. Olide then brings suit against Pascal, seeking not only the wine, but also moratory (delay) damages for Pascal's failure to deliver the wine after he was put in default. What result as to the demand for moratory damages? Why? See CC arts. 1989, ¶ 1, & 1993.

2) *Exceptio Non Adimpleti Contractus*

Read Trahan, Supp, 119-21 (re the *exceptio non adimpleti contractus*)

CO 5. The same as CO4. What result is appropriate for Olide's principal demand, i.e., the demand that Pascal deliver the wine? See CC art. 2487.

2. **By the Presence or Absence of an Exchange: Gratuitous v. Onerous Contracts**
3. **By the Correlativity of the Performances: Commutative v. Independent Contracts**
4. **By the Certainty of the Performances: Certain v. Aleatory Contracts**
 - a. **Explication of the Distinction**

1) Aleatory Contracts

a) Definition

What's an aleatory contract? Read CC art. 1912.

b) Classification

1] Uncertainty re Existence

What are some examples of aleatory contracts in which the very *existence* of the duty of one the parties is up in the air? See CC art. 1912 cmt. (e); CC art. 2451.

CO 6.1. The buyer promises to pay the seller, a farmer, a certain sum of money for "whatever" quantity of a certain crop may happen to be produced from the farmer's fields during a certain period. The buyer has to pay no matter what; the seller, however, has to give and deliver the agricultural products only if his fields produce a crop. Is such a contract aleatory? Why or why not?

Look at CC art. 2450. How does it compare with CC art. 2451?

CO 6.2. Suppose that the buyer and seller agree that the sale of the as yet unproduced crop is to be effective only if the crop is, in fact, produced, in other words, that payment of the price is contingent on the production of the crop. That's a contract for the sale of future things. Now, is such a contract aleatory? Why or why not?

2] Extent

CO 7. Clodice, who's getting old, promises to transfer her estate, Terre Facile, to her daughter, Tite-Fille, in return for Tite-Fille's promise to pay Clodice a monthly stipend of \$500 "for as long as Clodice shall live." Is this contract aleatory? Why or why not? If so, how so?

2) Contracts that are "Certain"

b. Significance of the Distinction

5. **By the Relation of the Obligations to Security: Principal v. Accessory Contracts**

a. Explication of the Distinction

1) Accessory Contracts

What's an accessory contract? See CC art. 1913, ¶ 1.

2) Principal Contracts

What's a principal contract? CC art. 1913, ¶ 2, sent. 2.

CO 8. Pascal loans Olide \$10,000. The debt is secured by a mortgage on Olide's estate, Terre Puante, and a suretyship agreement executed by Olide's nephew, Auguste. There are three contracts: loan, mortgage, and suretyship. Is one of them a principal contract? Why or why not? If so, which one is it? Why?

b. Significance of the Distinction

Why should anyone care whether a particular contract is a principal or an accessory contract? Read Trahan, Supp, 121-24 (*re accessorius no ducit, sed sequitur suum principale*).

6. **By the Presence or Absence of a Special Regime: Nominate v. Innominate Contracts**
7. **By the Necessity or Lack Thereof of Formality: Consensual v. Solemn Contracts**
8. **By the Presence or Absence of Overreaching: Contracts of Free Discussion v. Adhesionary Contracts**