5. **By The Number of Subjects**

Read Levasseur, Précis, 73.

a. **Pure & Simple Obligations**

b. **Obligations with Multiple Persons**

What's an obligation with multiple persons? *See* CC art. 1786.

What's so special about these obligations? There present complications with respect to (i) performance, (ii) prescription, (iii) default, (iv) insolvency, and (v) remission.

1) **Several Obligations**

Read Levasseur, Précis, 73-74.

a) **Definitions**

What's a several obligation? *See* CC art. 1787.

1] **Several Obligors (Passive Severality)**

OGH 98. Pascal decides that he'd like to hire a couple of persons, preferably a husband and wife team, to help him look after Belle Terre. After interviewing several applicants, he settles on the newly-weds Ti-Boy and Jolie. Together they execute an act, entitled "Employment Contract," in which Ti-Boy promises to "tend Belle Terre's vineyards and nutria farm" and Jolie, to "perform housekeeping services inside the manor house," both for a term of 1 year. What kind of obligation is this—several, joint, or solidary? Why?

2] **Several Obligees (Active Severality)**

What's a several obligation for the obligees? *See* CC art. 1787, ¶ 1.

OGH 99. Pascal, who's getting on in years, calls his two children, Ti-Boy and Lil-Fille, together and says, "It seems I'll be passing on soon. Before I do, I'd like to give each of you an 'advance' on your inheritance." Pascal then makes out an "Act of Donation" in which he donates $100,000 to Ti-Boy and $100,000 to Lil-Fille. What kind of obligation has Pascal undertaken—several, joint, or solidary? Why?

b) **Effects**

Why do we care whether an obligation is several? What real difference does it make? To be more precise, what are the legal consequences that result from classifying an obligation as several? *See* CC art. 1787, ¶ 3 & Levasseur, Précis, 74.

1] **For the Obligors**

OGH 100. The same as OGH 98, but with the following modifications. On April 1, 1997, before the one year term of the contract has expired, Ti-Boy and Jolie, without cause and without his permission, stop working for Pascal and go to work for Olide, who's offered them a higher price. Several years later, on May 1, 2005, Pascal brings suit against Ti-Boy for damages for breach of contract. Three years after that, on May 1, 2008, he finally brings suit against Jolie. Jolie immediately files an exception of prescription, arguing that the applicable prescriptive period—10 years—had expired on April 1, 2007, more than a year before the suit. In reply, Pascal argues that his suit against Ti-Boy, which was brought within the 10-year period, interrupted prescription not only against Ti-Boy, but also against his co-contractant, Jolie. Who wins? Why? *See* CC art. 1787 cmt. (e).

2] **For the Obligees**

OGH 101. The same as OGH 99, but with the following modifications. Time goes by, yet Pascal fails to pay the promised donations. Ti-Boy, tired of waiting and eager to get his hands on the money so that he can begin earning interest, then makes a formal for payment on dear old dad, effectively putting him in
default. Lil-Fille makes no such demand. More time goes by. Ti-Boy and Lil-Fille then file suit against Pascal, seeking payment of the money plus "moratory damages," i.e., compensation for the damages each suffered as a result of the delay (lost interest). As we'll learn later, such damages are available only if the obligor is first put in default. Now, Ti-Boy is certainly entitled to those damages, because he put Pascal in default. But what about Lil-Fille? Why or why not?

One final note before we leave several obligations. Does "several obligation," as used in our Civil Code, mean the same thing as "several obligation," as used in the common law? Why or why not? Wilks v. Allstate Ins. Co., 195 So. 2d 390 (La. App. 3d Cir. 1967) [Levasseur, Text, 85-86].

2) Joint Obligations

Levasseur, Précis, 75.

a) Definitions

What's a joint obligation? See CC art. 1788.

1) Joint Obligors (Passive Jointness)

What's a joint obligation for the obligors? See CC art. 1788, ¶ 1.

a] Of quasi-delictual origin

OGH 102. While Jean Sot is on the operating table, things go terribly awry. Thanks to a hidden defect in the device that administers the anesthetic and to the negligence of the anesthesiologist, the negligence of the surgeon, and the negligence of the attending nurse, Jean Sot ends up with permanent paralysis from the neck down (i.e., he's rendered a paraplegic). The manufacturer of the anesthetic device, the two doctors, and the nurse, you may assume, are together liable for the damages that Jean Sot sustained. How would you describe the relationship among these "tort" obligors? Is it several, joint, or solidary? Why? See CC art. 2324.A & B, sent. 1.

b] Of contractual origin

OGH 103. Pascal, in need of someone to help him extricate his bulldozer from a mudpit, drives to La Poussière, a Cajun dance hall down in Breaux Bridge. There he finds Jean Sot and Olide and offers them the job. They accept. What kind of obligation now exists between Pascal, on the one hand, and Jean Sot, on the other? Why? Is either bound for the whole? If so, why? Is it because of the nature of their relationship to each other and to the obligee? Or is it because of the nature of the object of their obligation, i.e., the performance? Explain. See CC arts.1788; 1789, ¶ 2; 1794.

OGH 104. Pascal loans $10,000 to Jean Sot. The loan, clearly enough, creates a pure and simple obligation. But then Jean Sot dies, leaving the debt to be paid by his children, Beau Sot and Meau Sot. As was true when Jean Sot was still alive, there's just one performance owed--the repayment of the money on the due date. But now that single performance is owed by two obligors. Is either bound for the whole? Why or why not? See CC art. 1416 & cmt. (a).

b) Effects

Why do we care whether an obligation is joint? What real difference does it make? To be more precise, what are the legal consequences that result from classifying an obligation as joint? See Levasseur, Précis, 76-77.

1] Divisible Joint Obligation

Read CC art. 1789, ¶ 1.

a] For the Obligors

What effects does a joint obligation have for the obligors?
OGH 106. Recall OGH 104. Suppose that on the 364th day of the third year Beau Sot, during a telephone call with Pascal, acknowledges that he and Meau owe the debt. Two days later Pascal, still not having received payments, sues Beau and Meau. Both plead prescription in their defense. In reply, Pascal argues that Beau, by acknowledging the debt, interrupted prescription. What result? Why? See CC art. 3494(3).

b) For the Obligees

What effects does a joint obligation have for the obligees?

OGH 107. Recall OGH 105. Suppose that 18 years come and go and, still, Pascal does not pay. Beau, tired of waiting and eager to get his hands on the money so that he can begin earning interest, then makes a formal demand for payment on Pascal, effectively putting him in default. Meau makes no such demand. More time goes by. Beau and Meau then file suit against Pascal, seeking payment of the money plus "moratory damages," i.e., compensation for the damages each suffered as a result of the delay (lost interest). See CC art. 1989 & cmts. As we’ll learn later, such damages are available only if the obligor is first put in default. See CC arts. 1990 & 1991. Now, Beau is certainly entitled to those damages, because he put Pascal in default. But what about Meau? Why or why not?

2) Indivisible Joint Obligation

What are the effects of a joint indivisible obligation? See CC art. 1789.

One final note before we leave joint obligations. Does "joint obligation," as used in our Civil Code, mean the same thing as “joint obligation,” as used in the common law? Why or why not? Wilks v. Allstate Ins. Co., 195 So. 2d 390 (La. App. 3d Cir. 1967) [Levasseur, Text, 85-86].

3) Solidary Obligations

a) Solidarity in General

What's a solidary obligation? See CC arts. 1790 & 1794. Saúl Litvinoff, Louisiana Civil Law Treatise: Obligations in General § 7.41, at 152 (“solidarity is a peculiar feature of some obligations that prevents their division, either at the active end [the right] . . . or at the passive end [the duty] . . . .”); Levasseur, Précis, 78.

b) Types of Solidarity

1) Active Solidarity

What is a solidary obligation for the obligees? See CC art. 1790.

OGH 108 (from Litvinoff). Pascal and Clodice, paramour and concubine, respectively, open a joint checking account at Cajun Bank & Trust, that is, a single account into which each of them deposits money. There now exists an obligation between the bank, on the one hand, and Pascal and Clodice, on the other. What kind? What duty does that obligation place on the bank? What do bankers call this kind of demand? Now for the big question: Can either Pascal or Clodice withdraw all of the funds or can each withdraw only those that he or she has deposited? Why or why not?

b) Procedural Incidents

Suppose you encounter an obligation with multiple obligees and that neither the contract that created the obligation nor any provision of law makes it clear whether the obligation is joint or solidary with respect to the obligees. In other words, the parties' intent is completely uncertain and there's no law on point. How should the obligation be classified? Why? See CC art. 1796.

c) Sources

From what sources can active solidarily, i.e., solidarity among the obligees, spring? Is CC art. 1796, sent. 2 correct? See Levasseur, Précis, 78-81.

d) Effects

Why might one care whether a particular obligation is solidary for the obligees as opposed, to say, several or joint? What difference does it make? See Levasseur, Précis, 81-83.

1) Vertical Effects: Effects as Between the Obligees & the Common Obligor

-3-
Read CC arts. 1790, 1791, 1793, 1792.

2) **Horizontal Effects: Effects as Between the Obligees Themselves**

*See Weill & Terré, Droit Civil: Les Obligations n° 928, at 1002* (the obligee who received the performance is bound to distribute it between himself and the other obligees "in proportion to their respective rights"). What does that mean?

OGH 109. Recall Pascal's and Clodice's joint checking account? Suppose that after Pascal deposits $4000 and Clodice deposits $6000, Pascal withdraws all $10,000. Is he entitled to keep all of it or must he, at some point, give part of it to Clodice? The latter. How much? What, in other words, is the "proportion of their respective rights"? He must give Clodice $6000 or 60% of the total.

2] **Passive Solidarity**

*a) Definition*

What is a solidary obligation for the obligors? *See CC art. 1794, s. 1.* Why is this kind of solidary called “passive”?


Next, read (you need not brief) *Wilks v. Allstate Ins. Co.*, 195 So. 2d 390 (La. App. 3d Cir. 1967) [Levasseur, Text, 81-90], and, in connection with that case, answer these questions: (i) what kind of relationship, according to the court, existed between the obligors (the insurers); (ii) on what basis did the court purport to justify that conclusion?

*b) Procedural Incidents*

Read CC art. 1794. You might think, if you took the language of the article at face value, that courts should not, indeed, cannot find "solidarity" unless the contract or the statute, as the case might be, comes right and out and says that the multiple obligors' liability is "solidary." But is that true? What do *Wilks, Hidalgo, Wooten, Hoefly*, and *Narcisse* teach us on this score?

*c) Sources*

From what sources can passive solidarily, i.e., solidarity among the obligors, spring? *See CC art. 1794, s. 2.*

1) **Juridical Acts**

2) **Legislation**

*a) Presumed Intent*

OGH 110. Pascal, one of the many survivors of the Great Depression who has no use for banks, ordinarily keeps his cash--about $50,000 worth--stuffed under his mattress. But now he has to take a trip up north--to Shreveport, which will keep him away from home for several days. And so he goes to his friends, Olide and Jean Sot, and asks them to hold the cash for him until he returns. They agree and receive the cash. When Pascal returns a few days later, he tracks down Olide and asks him for "the money." Olide replies, "I'll be happy to give you my half, 'cause that's what I owe you. But for the other half you'll have to look to Jean Sot." Is Olide right? Why or why not? *See CC art. 2957.*

*b) Punishment*

OGH 111. Ti-Boy and Jean-Claude, desperate for entertainment, decide on a plan. Under cover of darkness they sneak into the sacristy of the local church, "borrow" (i.e., steal) 10 bottles of sacramental wine, and proceed to get roaring drunk. When the father learns of it, he's furious and insists that the wine be replaced. How many of the bottles can he demand that Ti-Boy replace? All 10 or just 5? Why? *See CC art. 2324.A.*

*c) Guaranty of Payment*

Review the dissenting opinion in *Wooten*. On what basis did the dissenters conclude that a parent is
solidarily liable with his child for damages caused by the child's torts?

OGH 112. Ti-Boy and Jolie, who are soon to be married, sign a pre-nuptial agreement, one that creates a "separate property" regime between them. After the marriage, Jolie makes (i.e., buys) groceries (e.g., food, cleaning supplies) at Fontenot's General Store, where she runs up a modest bill. When Ti-Boy gets the bill a few weeks later, he calls Fontenot and tells him this: "I feel for you, but you'll have to talk to Jolie about the payment. You see, we have a pre-nup and, as I see it, that's her debt, not mine." Is Ti-Boy right? Why or why not? See CC art. 2372.

NOTE: Is it possible for a solidary bond to arise between two obligors even though the obligation of each springs from a different source, e.g., one from a juridical act and the other from an illicit juridical fact? See CC art. 1797.

d] Effects

Why might one care whether a particular obligation is solidary for the obligors as opposed, to say, several or joint? What difference does it make?

1} Vertical Effects: Effects as Between the Obligors & the Common Obligor

Levasseur, Précis, 83-87.

a} Consequences of the Idea that There's a Single Debt

1/ Performance

From whom can the obligee of solidary obligors demand the performance? See CC art. 1795, ¶ 1.

2/ Damages for Nonperformance

Does this effect of solidarity extend to the obligors' "incidental" duty to pay damages in the event of nonperformance (recall the explication of this notion in Johnson v. Levy)?

OGH 113. Pascal hands his pet nutria, Mr. Nutty, over to Olide and Jean Sot for safekeeping while he's away on a trip up north. Before he returns, Olide, unbeknownst to Jean Sot, skins Mr. Nutty's hide, sells the hide to a national furrier, then goes into hiding in the Atchafalaya Basin. Pascal, who has since returned and has learned what happened, wants Jean Sot to pay him damages for the loss of Mr. Nutty. Here's Jean Sot's response: "True, as co-depositary, I owed you a duty to return Mr. Nutty safe and sound, a duty to which Olide and I were solidarily bound. But that duty I can no longer perform. If you want damages, look to the responsible party, Olide." What result would you predict? Why? See CC art. 1800.

3/ Prescription

Recall Hidalgo. In that case, which involved a (tort) suit for personal injuries, the plaintiff sued the defendant more than a year after the tort. And yet the court rejected the defendant’s exception of prescription. Why? Would the result be the same under current law? Why or why not? See CC art. 1799.

4/ Default

Read CC arts. 1989-1991 (skip the comments for now).

5/ Risk of Insolvency

OGH 114. Olide talks Pascal, Clodice, and Jean Sot into joining his venture to develop and market CajunCare skin care products. But even these new investors can't give him all the capital he needs. And so Olide, with Pascal, Clodice, and Jean Sot in tow, heads down to Cajun Bank & Trust, hoping to take out a $120,000 loan. The bank agrees to extend the loan, provided that the loan is made to all of the investors personally and, further, that each of them agrees to be solidarily bound with the others. The investors agree and the deal is done. Sometime later, Jean Sot becomes insolvent, i.e., his debts outstrip his assets, rendering him incapable of contributing to the repayment of the loan. Still later, Olide misses the first installment on the loan. The bank then sues Pascal, the most financially sound of the borrowers, for $120,000. In his defense, Pascal contends that he is answerable for, at most, $90,000. His theory? Since Jean Sot is now insolvent, his share--$30,000--must be knocked off the total due. What result would you predict? Why? See CC art. 1806, ¶ 1.

6/ General Defenses
What defenses can every solidary obligor raise to defeat the obligee's demand for payment? See CC art. 1801.

a/ Nature of the Obligation
What is meant by defenses that "arise from the nature of the obligation"?

b/ Common to All Obligors
What is meant by defenses that "are common to all the solidary obligors"?

b} Consequences of the Idea That there are Multiple Legal Relations

1/ Actions

Read CC art. 1795 ¶ 2.

2/ Transmission

OGH 115. Recall OGH 114. Suppose that this time Jean Sot, instead of becoming insolvent, dies, survived by his two children, Beau Sot and Meau Sot. Even later, Olide fails to make the first installment of the loan on time. The bank then brings suit against Meau Sot, demanding that she pay the full $120,000. In his defense, Meau says he's liable for only 1/2 or $60,000. What result would you predict? Why? See CC art. 1416.

3/ Remission

OGH 116. Recall the earlier hypothetical in which Olide, Pascal, Clodice, and Jean Sot bound themselves solidarily to repay a $120,000 loan. Suppose that Jean Sot, instead of dying, simply falls on hard financial times. The bank, instead of taking him to the cleaners, executes a dation en paiement (giving in payment) with him, whereby it takes title to his land in exchange for a full remission of his debt. Sometime later, Olide fails to make the first installment on the loan on time. The bank then sues Pascal, financially the strongest of the four obligors, for the full $120,000. In his defense, Pascal contends that he owes nothing. His argument? That the remission of Jean Sot's debt extinguished the debt in its entirely and as to all of the borrowers. What result? See CC arts. 1888, 1803 & 1804 (as usual, be sure to read the comments!); Trahan, Supp, 42-48 (materials re distribution of the risk of post-release insolvency). This is very complicated and MUI IMPORTANTE!

4/ Renunciation

Like any other right, the rights that an obligee has by virtue of his obligors' solidarity, e.g., the right to demand full performance from any of the obligors, can be renounced or, to use the more common term, waived.

Is any particular form required for such a waiver? See CC art. 1802 & cmt. (b).

OGH 117. Recall the hypothetical in which Olide, Pascal, Clodice, and Jean Sot bound themselves solidarily to repay a $120,000 loan. Suppose that Jean Sot doesn't die, but that the bank sends each of the borrowers a notice that reads as follows: "We hereby notify you that we have renounced solidarity in favor of you and the other borrowers." Sometime later, Olide fails to make the first installment on the loan. The bank then sues Pascal for $120,000. In his defense, Pascal argues that he's liable for only $25,000. What result would you predict? Why?

OGH 118. The same as OGH 117, except that, this time, the bank sends the following notice to Olide alone: "Because of your longstanding relationship with the bank, we've decided to renounce solidarity as to you and, therefore, hold you responsible only for your share of the debt." Sometime later, Olide fails to make the first installment on the loan. The bank then sues Pascal for $120,000. In his defense, Pascal argues that he's liable for only $30,000. Who's right? Why?

5/ Modalities

OGH 119. Here's a variation on Hidalgo. Let's suppose, as was likely the case, that the insurance policy contained a "notice" provision that read something like this: "This insurance shall be effective as to a particular claim only if the insured provides notice thereof to the insurer within 30 days of the date on which him knew or should have known (i) that a claim might be made against him and (ii) that that claim
might be covered under this policy." How should we describe the insurer's duty to pay the tort victim? Is it pure and simple or something else? Why? And how should we describe the tortfeasor-insured's duty to pay the victim? Is it pure and simple or something else? Why? Do the differences between these duties prevent the tortfeasor-insured and the insurer from being solidary co-obligors? Why or why not? See CC art. 1798.

6/ Particular Defenses

What defenses are “particular” or “personal” to the obligors?

2) Horizontal Effects: Effects as Between the Obligors Themselves

Read Levasseur, Précis, 87-91.

a) Liability

1/ General Rule: Virile-Share Liability

Read CC art. 1803, ¶ 1, s. 1.

OGH 120. Recall the loan hypothetical, the one in which Pascal, Odile, Clodice, and Jean Sot solidarily bound themselves to repay a $120,000 loan. Insofar as the bank was concerned, how much did each of them owe? But insofar as they were concerned, how much of the did each of them owe? Explain.

2/ Exception: Full Liability

Is this "virile share" rule an absolute rule, i.e., one that applies in all situations, or is it merely a general rule, one that admits of exceptions? See CC art. 1804, ¶ 3.

OGH 121. Jean Sot's son Beau, now aged 14 years, negligently runs over Clodice on his bicycle. Who's liable? Beau Sot, for sure. Anyone else? His father, Jean Sot. On what basis? Vicarious liability under CC art. 2318. Assume that Beau and Jean Sot are solidarily bound vis-à-vis Clodice. Now, does that mean that, as between themselves, Beau and Jean are each liable for 50%? Why or why not? If not, then for how much, as between themselves, is each liable? Explain. See CC art. 1804, ¶¶ 1 & 3; read Trahan, Supp,49-51.

b) Means of Vindicating Rights

1/ Name of Action

By means of what action (i.e., what’s its “name”) do solidary co-obligors enforce their rights against each other? See CC art. 1805; Trahan, Supp, 51 (excerpts - Diggs v. Hood, 772 F.2d 190, 193 (5th Cir. 1985) (Rubin, J.)).

2/ Procedure

How does it work? See La. Code Civil Proc. art. 1111 (“The defendant in a principal action by petition may bring in any person, including a codefendant, who is his warrantor, or who is or may be liable to him for all or part of the principal demand.”); compare Fed. Rule Civ. Proc. 14.

Suppose that the common obligee remits the debt of one of the solidary obligors. If the common obligee then sues one of the remaining obligors, can that obligor then third-party the released obligor? Or, if one of the remaining obligors were to pay voluntarily, can that obligor then bring an original action against the released obligor? Explain. See CC art. 1805 cmt. (c).

Suppose that the common obligee renounces solidarity in favor of one of the solidary obligors. If the common obligee then sues one of the other obligors, can that obligor then third-party the renounced obligor? Or, if one of the other obligors were to pay voluntarily, can that obligor then bring an original action against the released obligor? Explain.

3/ Recovery

How much can the solidary obligor who's been sued and forced to pay or who voluntarily paid get from each of the other obligors in such an action, i.e., a third-party demand or an original action for contribution or indemnity? See CC art. 1804 ¶ 2.

c) Allocation of Risk of Insolvency

What happens in the event that one of the solidary obligors becomes insolvent? Who “eats” the loss?
I/ In the Absence of Renunciation or Remission

OGH 122. Recall the loan hypothetical, i.e., that in which Pascal, Olide, Clodice, and Jean Sot bound themselves solidarily to repay a $120,000 loan. Suppose that Jean Sot becomes insolvent before the loan is repaid. Now, as far as the bank's concerned, that's of no moment: it can still demand 100% of the total—the full $120,000—from any of the three remaining obligors. The loss, then, falls on the obligors, not the obligee. But as among themselves, for how much of this loss is each of the solvent obligors responsible? Why? See CC art. 1806 ¶ 1.

2/ After Renunciation or Remission

a/ Renunciation

OGH 123. The same as before, except that, this time, the bank renounces solidarity in favor of Olide before Jean Sot becomes insolvent. Is the result any different? In particular, is Olide now relieved of the duty to participate in underwriting the loss due to Jean Sot's insolvency? To put it another way, must Pascal and Clodice bear that loss without any help from Olide? Why or why not? See CC art. 1804 ¶ 2.

b/ Remission

OGH 124. The same as OGH 123, except that, this time, the bank remits the debt in favor of Olide before Jean Sot becomes insolvent. Is the result any different? Why or why not? See CC art. 1804, ¶ 1; 1803 cmt. (d).

Now, to review the principles governing solidarity, you should read Trahan 51-64. You may conduct this review at your leisure, so long as you finish it before the exam.

6. By The Number of Their Objects

Read Levasseur, Précis, 93-101.

a. Conjunctive Obligations

What's a conjunctive obligation? See CC art. 1807.

OGH 125. On January 1, 1997 Pascal leased the “back 40” of his estate, Belle Terre, to Olide of a term of one year and a rent of $1200, which was to be paid in monthly installments of $100 on the first day of each month of that one year term. Though Olide moved onto and used the back 40, he never paid any of the rent. Pascal has just filed suit against Olide, seeking to recover the entirety of the unpaid rent—$1200. In his defense, Olide contends that Pascal can recover some, but not all, of that sum. Who is right and why? See CC art. 3494(3); CC art. 1807 cmt. (e); CC art. 1807 cmt. (h).

b. Alternative Obligations

What's an alternative obligation? See CC art. 1808.

OGH 126. On February 1, 1999, Pascal entered into a “take or pay” contract with Cajun Oil and Gas Co. According to the contract, Cajun must, by each successive anniversary of the contract, either produce a certain volume of oil from his property (and then pay the stipulated royalties) or pay Pascal a fixed fee of $100. It’s now February 16, 2000 and still Cajun has done nothing. What are Pascal’s rights? Explain. See CC arts. 1809, 1810, 1812.

7. By the Divisibility of Their Objects

a. Definitions


According to the Louisiana Civil Code, an obligation is divisible when the object of the performance is susceptible of division. On the other hand, an obligation is indivisible when the object of the performance, because of its nature or because of the intent of the parties, is not susceptible of division.

It should be clearly realized that, in the intendment of the law, the word “object”
is here an integral part of the expression “object of the performance,” that is, an integral part of that which the obligor is bound to give, or to do, or not to do. In that perspective, whether the object of a performance is susceptible of division depends on whether it may be rendered or accomplished in parts. That, in turn, may depend either on the nature of the object as a physical entity, or on the intention of the parties.

b. **Sources of Indivisibility (& Divisibility)**
Read CC art. 1815 ¶ 2; Levasseur, Précis, 107-13.

1) **Indivisibility (& Divisibility) by Nature**
   a) **Natural Indivisibility**
      1] **Absolute Natural Indivisibility**
         a] Duties to Deliver or to Create Unitary Corporeal Things
         b] Duties Not to Do
      2] **Relative Natural Indivisibility**
         Read & brief *S&W Investments Co. v. Otis W. Sharp & Son*, 170 So. 2d 360 (La. Sup. 1964) [Levasseur, Text, 127-32].
   b) **Natural Divisibility**
      1] Duties to Deliver or Create Collections of Physically Distinct Corporeal Things
      2] Duties to Give

OGH 127. Pascal, the owner of Belle Terre, has decided that he'd like to sell it to his children Ti-Boy and Lil-Fille, 1/2 to each, before he dies. Is it necessary that he sell Ti-Boy his half and Lil-Fille her half at the same time? Could he give him his half today and her hers tomorrow or him his half this year and her half next year, etc.? Why or why not?

2) **Indivisibility by Intent**
Review *S&W Investments*. The court provided not one but two rationales for its decision to classify Otis' performance as indivisible. One, that the performance was indivisible by nature, we've already examined. What was the other one?

3) **Indivisibility by Law**
Read CC arts. 3280 & 652.

c. **Effects of Indivisibility (& Divisibility)**
   Why does anyone care whether a particular obligation is divisible or indivisible? What, in other words, are the consequences of classifying a particular obligation one way or the other? *See* Levasseur, Précis, 113.

1) **Effects of Divisible Obligations**
   What are the effects of divisibility? *See* Levasseur, Précis, 114.
   a) **For the Original Subjects**
      1] **Single Obligee & Single Obligor**
         Read CC art. 1816 & Saúl Litvinoff, Louisiana Civil Law Treatise: Obligations § 9.11, at 230 (even if the performance is divisible, "the obligee may not be forced to accept a partial performance"). In view of these authorities, couldn't one say that the issue presented in *S&W Investments* was illusory? Explain.
      2] **Multiple Obligees &/- Multiple Obligors**
      b) **For the Successors to the Original Subjects**
         Read CC art. 1817 & cmt. (b) & CC art. 876.

OGH 128. Olide and his sidekick Jean Sot, in need of cash for a new investment, turn to their friends Pascal and Clodice for help. After considerable cajoling by Olide, Pascal and Clodice agree to put up $12,000 each for a "loan fund," from which Olide and Jean Sot will be allowed to borrow. Pascal and Clodice put up the money and, before long, Olide and Jean Sot borrow all $12,000. But then tragedy strikes.
It seems that Clodice and Jean Sot, while gathering moss in the Marais des Larmes from Jean Sot’s pirogue, disturbed several alligators, who overturned the pirogue and gobbled the mossgatherers right up. Clodice was survived by her two children, Ti-Boy and Lil-Fille, and Jean Sot by his three children, Beau Sot, Meau Sot, and Seau Sot. (i) For how much of the $12,000 is Beau, Meau, and Seau each liable and (ii) to how much of the $12,000 are Ti-Boy and Lil-Fille entitled? Why? See CC art. 1817.

2) Effects of Indivisible Obligations

What are the effects of indivisibility? See Levasseur, Précis, 115-20; read Trahan, Supp, 64-67.

a) For the Original Subjects

What are the effects of indivisibility for the original subjects of the obligation?

1] Single Obligee & Single Obligor

2] Multiple Obligees &/- Multiple Obligors

Read CC art. 1818. What’s the significance, in terms of legal effects, of the proposition that indivisible obligations with multiple obligors are “subject to the rules governing solidary obligations”? Does the proposition mean that there are no differences, in terms of effects, between indivisible obligations with multiple (joint) obligors, on the one hand, and solidary obligations, on the other? Explain. See CC art. 1820.

OGH 129. Imagine two solidary obligors. One of them dies, survived by two children. For how much of the total debt is each of those children bound? 50%. Why? Each owes half of what his ancestor owed, which was 100%. Now, suppose that the two obligors are not solidary, but that the performance they jointly owe is indivisible. One of them dies, survived by two children. For how much of the total debt is each of those children bound? Why? See CC art. 1819.

b) For the Successors to the Original Subjects

OGH 130. Recall OGH 129. This time, however, the loan agreement stipulates that the obligation, which is joint (not solidary), "shall be indivisible for both the lenders and the borrowers." (i) For how much of the $12,000 is Beau, Meau, and Seau each liable and (ii) to how much of the $12,000 are Ti-Boy and Lil-Fille entitled? Why? See CC art. 1819.

D. Transfer of Obligations

1. In General

What do we mean by the "transfer of obligations"? Read the heading for Chapter 4 of Title III, Book III and then the headings of the sections within that chapter. See Saúl Litvinoff, Louisiana Civil Law Treatise: Obligations § 10.1, at 246 ("The transfer of an obligation is the substitution of a new person for one of those between whom the legal relation was originally established, without altering in any manner the relation itself."); Levasseur, Précis, 121.

Do the various modes of transfer referred to in those headings involve the transfer of obligations as a whole or the transfer of something else? If it’s “something else,” what is this something else? Explain.

Does Chapter 4 contain an exhaustive enumeration of modes of transferring obligations? Why or why not? If not, what’s missing?

2. Inter Vivos Transfers of Duties & Rights

a. Transfer of Duties

1) Assumption

a) Definition

What's an "assumption"? See Levasseur, Précis, 121-23.

b) Methods

Read CC arts. 1821 & 1823.

1] By Agreement Between the Obligor & a Third Person

a] Prerequisites

What are the prerequisites for the first method of effecting an assumption, i.e., agreement between obligor and third person? See CC art. 1821, ¶ 1; Levasseur, Précis, 123-26.

1} A Valid Contract

-10-
2) **Written Form**

Is any particular form required for such a contract? See CC art. 1821, ¶ 1, s. 1. Does that mean that an oral contract of this kind is completely unenforceable?

OGH 131 (loosely based on *Guaranty Income Life Ins. Co. v. Prepaid Dental Mktg. Sys.*, 551 So. 2d 769 (La. App. 1st Cir. 1989) [Levasseur, Text, 480-83]). For several years Cajun Insurance Co. sold insurance policies for dental and orthodontic services. During the latter part of that period, Cajun hired Pascal to line up dentists and orthodontists to perform services for its policyholders. Over time, however, Pascal wearied of this work and, so, transferred to Olide his obligation toward Cajun. The assumption contract was not, however, reduced to writing. Olide promptly assumed Pascal’s duties. Before long, however, Olide found that he was losing money on the deal. And so he stopped work. Pascal then brought suit against Olide for breach of contract. In his defense, Olide, citing CC art. 1821, ¶ 1, sent. 2, argued that the supposed assumption contract between Pascal and himself was unenforceable because it lacked proper form, i.e., was oral rather than written. What result? Why?

3) **Not the Consent of the Obligee**

Is the consent of the obligee required? Read CC art. 1821, ¶ 2.

b) **Effects**

What are the effects of an assumption effected by means of an agreement between the obligor and the third person?

1) **Vertical Effects: Those Between the Obligee, on the one Hand, & the Obligor & the Third Person, on the Other**

Read Levasseur, Précis, 128-29.

a) **The Third Person Becomes an Additional Obligor**

What are the effects of such an assumption between the obligee, on the one hand, and the obligor and the third person, on the other? See CC art. 1821, ¶ 3

OGH 132 (loosely based on *McCroy v. Terminix Serv. Co.*, 609 So. 2d 883 (La. App. 4th Cir. 1992) [Levasseur, Text, 477-79]). Back in 1962 Fowler, a homeowner, hired Terminix to provide "termite protection" for his residence and garage. Terminix's duties included inspecting the property for termites each year and, when necessary, applying termitecides. The contract provided that Fowler was to pay Terminix a fixed fee of $100 per year, due on December 31, and, further, that, if he failed to pay by that deadline, he would pay Terminix an additional "late fee" of $10 per month of the delay. Sometime later Fowler sold the property to the McCrorys. The McCrorys, after Fowler told them about his arrangement with Terminix, which, he said, cost him "only $100 per year," agreed in writing to "assume the terms" of Fowler's contract with Terminix. When December 31 rolled around, the McCrorys neglected to send in their $100 payment. When they received a notice from Terminix the next week alerting them that $110 was then due, the McCrorys balked, contending that they knew nothing about any late fees. To how much money is Terminix entitled from the McCrorys? Why?

b) **The Co-Obligors Become "Solidarily" Bound (Sort Of)**

What is the nature of the obligation of these co-obligors toward the obligee? See CC art. 1821, ¶ 3, & cmts. (a), (b), & (f). Are the comments correct?

OGH 133. Jean Sot borrows $5000 from Olide. Before Jean Sot repays the loan, Olide inadvertently sets Belle Terre's Muscadine vinyards on fire, destroying the entire Muscadine crop. Pascal demands that Olide make good the loss, which Pascal estimates at $7,000. When Jean Sot shows up at Olide's place to pay off the loan, Jean Sot says, "I tell you what. Instead of paying me, why don't you just assume my debt to Pascal and we'll call it even." Jean Sot agrees. Olide then draws up and both of them sign an "Act of Assumption" that memorializes their agreement. The act is straightforward and simple: "In consideration for Olide's canceling my debt to him, I, Jean Sot, agree to assume Olide's debt to Pascal." After Olide sends a copy of the act to Pascal, Pascal calls on Jean Sot and demands $7,000. Must Jean Sot pay Pascal $7,000?
Why or why not? If not, then how much must be pay? Why? *See* CC art. 1822, ¶ 1, & cmt. (b).

OGH 134. The same as OGH 133, except that this time Jean Sot agrees to assume Olide's debt to Pascal for a different reason, namely, friendship. When Jean Sot hears of his friend Olide's predicament, Jean Sot, realizing that Olide doesn't presently have the funds to pay off Pascal, offers to help by "assuming your debt to Pascal." Jean Sot even goes so far as to reduce this commitment to writing. At the time, Jean Sot doesn't owe Olide a cent. After Olide sends a copy of the writing to Pascal, Pascal calls on Jean Sot and demands $7,000. Must Jean Sot pay Pascal $7,000 now? Why or why not?

OGH 135. The same as OGH 134 (the gratuitous assumption), except as follows. When Jean Sot committed himself to assuming Olide's debt to Pascal, Jean Sot and Olide were in *Le Cadien Assoiffé* (the thirsty Cajun) and Jean Sot, who's renowned for being unable to hold his liquor, had just polished off 3 bottles of *vin de so co* (Muscadine wine). As before Pascal, upon learning of Jean Sot's commitment, demands $7,000 from Jean Sot. Must Jean Sot pay the $7,000 now? Why or why not? *See* CC art. 1918 & cmt. (b); art. 1919; & art. 1822, ¶ 2

c} The Assuming Obligor's Defenses Are Expanded

Read CC art. 1822.

2} Horizontal Effects: Those Between the Obligor & the Third Person

a} The Original Obligor & The Third Person Become Solidary Co-Obligors (Or Do They?)

Read Levasseur, Précis, 126-28.

1/ Onerous Assumptions

OGH 136. Recall OGH 133, the hypothetical in which Jean Sot, to discharge his $5,000 debt to Olide, assumed Olide's $7,000 debt to Pascal. As we noted earlier, this assumption was merely partial, in particular, bound Jean Sot only up to the amount of his debt to Olide, i.e., $5,000. Now, suppose that Jean Sot pays the $5,000. Is Olide liable to him for anything? To put it another way, can Jean Sot get anything out of him through a “contribution action” or something like it? Why or why not? *See* CC art. 1821 cmt. (c), sent. 5.

2/ Gratuitous Assumptions

OGH 137. Recall OGH 134, the hypothetical in which Jean Sot, out of the goodness of his heart, assumed Olide's $7,000 debt to Pascal. As we noted earlier, this assumption was complete, that is, bound Jean Sot to pay the full $7,000. Now, suppose he pays it. Is Olide liable to him for anything? To put it another way, can Jean Sot get anything out of him through a “contribution action” or something like it? Why or why not?

b} The Third Person's Debt to the Original Obligor (If Any) May Be Extinguished

OGH 138. Recall OGH 133, the hypothetical in which Jean Sot, to discharge his $5,000 debt to Olide, assumed Olide's $7,000 debt to Pascal. Now, suppose that Jean Sot pays Pascal the $5,000 that he owes by virtue of the assumption. What, if anything, happens to Jean Sot's debt to Olide? Why?

c} The Original Obligor May Be Able to Enforce the Assumption Contract

OGH 139. Recall OGH 133, the hypothetical in which Jean Sot, to discharge his $5,000 debt to Olide, assumed Olide's $7,000 debt to Pascal. Suppose that, though Pascal is willing to receive payment from Jean Sot, Jean Sot refuses to pay. (i) Can Olide go to court seeking specific performance, i.e., an injunction directing Jean Sot to pay? Why or why not? (ii) And if, as a result of Jean Sot's nonpayment, Pascal sustains damages and, further, forces Olide to make good those damages, can Olide recoup that loss from Jean Sot?

2] By Agreement Between the Obligee & a Third Person

a] Prerequisites

Read CC art. 1823, ¶ 1; Levasseur, Précis, 129-33.
1} A Valid Contract

Is any particular form required for such a contract? See CC art. 1823, sent. 2, & cmt. (b), & art. 1847.

2} Written Form

What about the consent of the original obligor? See CC art. 1823 cmt. (c), sent. 2.

3} Not the Consent of the Original Obligor

b) Effects

1} Vertical Effects: Those Between the Obligee, on the one Hand, & the Obligor & the Third Person, on the Other

Read Levasseur, Précis, 134-35.

a} The Third Person Becomes an Additional Obligor

What are the effects of such an assumption between the obligee, on the one hand, and the obligor and the third person, on the other? See CC art. 1822, sent. 3.

b} The Co-Obligors Do Not Become "Solidarily" Bound

Read CC art. 1823 cmt. (c).

c} The Assuming Obligor's Defenses Are Simultaneously Limited & Expanded

What defenses is the assuming obligor of this kind of assumption, i.e., one by agreement between the obligee and the assuming obligor, permitted to raise? Where, to begin with, do we find the answer? See CC art. 1824.

1/ Defense Based on His Relationship with the Original Obligor Prohibited

OGH 140. Olide, through his own fault, destroys Belle Terre's Muscadine crop, worth $7,000. Since Olide can't pay off the debt himself, he turns to his friend, Jean Sot, for help. But Jean Sot wants something in return, i.e., for Olide to "work it off" by doing odd jobs for him here and there. Olide agrees. Jean Sot then goes to Pascal and offers to "assume" Olide's debt to him. Pascal, who'd just about written off the debt, jumps at the offer. The two agree that Jean Sot will pay off the debt in installments of $1,000 per month. Things start off well: Jean Sot makes several payments, during which time Olide works for Jean Sot. But then Olide mysteriously drops out of sight. When the next installment of the debt comes due, Jean Sot refuses to pay. His theory? That since Olide has breached his duty to Jean Sot, the duty that was the "cause" of Jean Sot's assumption, Jean Sot is released from his duty to Pascal. Pascal sues Jean Sot. What result would you predict? Why? See CC art. 1824, ¶ 1.

2/ Defense Based on the Relationship Between the Obligee & Original Obligor Permitted

OGH 141. The same as OGH 140, except as follows. Olide's duty to pay Pascal $7,000 arose as a result not of an illicit juridical fact, but of a juridical act, namely, a sale of the Muscadine crop. There's just one problem: the Muscadines, as it turns out, aren't the kind that Olide thought they were. Whereas he wanted red Muscadines, so that he could make red vin de soco, Pascal's are green Muscadines. Pascal should have known this. But by the time the mistake is discovered, the assumption is already a done deal. (i) Does Olide have a defense to liability on the original contract? If so, what is it? (ii) Could Jean Sot raise this same point as a defense to liability on the assumption contract? Explain. See CC arts. 1949 & 1824, ¶ 2, sent. 1.

2} Horizontal Effects: Those Between the Obligor & the Third Person

Read Levasseur, Précis, 136.

a} Upon Performance the Third Person May be Subrogated to the Obligee's Rights

It's possible for the assuming obligor, upon performing the obligation, to become subrogated to the obligee's rights, in particular, his rights against the original obligor. Now, under what circumstances will subrogation take place?
b) The Original Obligor May Be Able to Enforce the Assumption Contract

2) Delegation
   b. Transfer of Rights: Subrogation

1) Definition

What's "subrogation"? See CC art. 1825, sent. 1. Compare Saúl Litvinoff, Louisiana Civil Law Treatise: Obligations § 10.1, at 246 (the "transfer" of an obligation is "the substitution of a new person for one of those between whom the legal relation was originally established, without altering in any manner the relation itself." Then read CC arts. 1826 & 1828 & Levasseur, Précis, 137-39.

2) Types

Read CC art. 1825, sent. 2. The two basic types of subrogation are “conventional” and “legal.” Are they mutually exclusive of each other, so that, if one can claim legal subrogation, one can’t claim conventional subrogation? Or are they potentially cumulative, so that, if the facts allow it, one could claim both? What does CC art. 1830, sent. 2 suggest? Is it that conventional subrogation is excluded if legal subrogation occurs? Or is it that, if one gets a conventional subrogation where legal subrogation would occur anyway, then, though the conventional subrogation is effective, the extent of that conventional subrogation is limited to what’s allowed under legal subrogation?

a) Conventional

Read CC arts. 1827 & 1828; Levasseur, Précis, 139.

1] By the Obligee

What are the prerequisites to conventional subrogation by the obligee? See CC art. 1827; Levasseur, Précis, 140-42.

a] A Valid Contract

b] No Particular Form

Must a conventional subrogation by the obligee be in any particular form? See CC art. 1827 cmt. (f). Must such a subrogation, however, at least be express? Why or why not?

c] At the Time of Performance

Must a subrogation by the obligee be made at any particular time, in particular, be made before, at the time of, or after the third person pays the obligee? See CC art. 1827 cmt. (f); art. 1854; & art. 1855.

Read & brief Cox v. W. M. Heroman & Co, 298 So. 2d 848 (La. Sup. 1974) (Tate, J.) [Levasseur, Text, 501-12]. Then read Weill & Terré, DROIT CIVIL: OBLIGATIONS ("Before this moment [the time of payment], it would be too soon [to consent to a subrogation]. [T]he creditor would simply be able to consent to a promise of subrogation in favor of the future solvens [third person]."); Marty, Raynaud, & Jestaz, DROIT CIVIL: OBLIGATIONS ("Certainly a subrogation could be made in view of a payment to be effectuated [later], but it would be a matter only of a promise of subrogation . . . "); then read Trahan, Supp, 67-68.

NOTE: In my judgment, whether “simultaneity” of payment & act of subrogation is required REMAINS A DISPUTED ISSUE, notwithstanding Cox. On the exam, you will be asked about this issue. And in your answer, you will be expected to show that you understand both of the competing viewpoints, not just that of the Cox majority.

d] Not the Original Obligor's Consent

Do the obligee and the third person, to effect a valid subrogation, need the original obligor's consent? See CC art. 1827 & Cox v. Heroman [Levasseur, Text, at 507-09].

e] But Notice to the Obligor (for Some Purposes)

OGH 142. Olide owes Pascal $1000. Jean Sot pays off Olide's debt to Pascal, whereupon Pascal conventionally subrogates Jean Sot to his (Pascal's) rights against Olide. But suppose that, before word of the subrogation reaches Olide, he manages to come up with some funds and makes the payment to Pascal. Can Jean Sot, as subrogee, demand that Olide pay him? Why or why not? See CC art. 1827 & cmt. (c).

2] By the Obligor
What are the prerequisites to conventional subrogation by the obligor? See CC art. 1828; Levasseur, Précis, 143-44.

a) A Valid Contract
b) Written, Express Form

Must a conventional subrogation by the obligor be in any particular form? See CC art. 1828, ¶ 2.

c) Before Payment?

Must a conventional subrogation by the obligee be made at any particular time? What does CC art. 1828, ¶ 2 imply?

d) Not the Original Obligee's Consent

Do the obligor and the third person, to effect a valid subrogation, need the consent of the obligee? See CC art. 1828, ¶ 1.

b) Legal

Read CC art. 1829; Levasseur, Précis, 144-47; Trahan, Supp, 69-75 (excerpt from Litvinoff, Louisiana Civil Law Treatise: Obligations).

1) Obligee Who Pays a Preferred Obligee

a) Explication

OGH 143. Olide wants to buy Terre Facile (an estate) from Clodice. There's just one problem: the asking price, which reflects the property's fair market value, is $250,000, yet he has only $100,000. To raise the money necessary to close that gap, Olide borrows $100,000 from Cajun Bank & Trust. The loan is secured by a mortgage on the estate. A short time later, Olide, finding himself in need of money, borrows $100,000 from Creole Bank & Trust. This loan, unlike the first, is not secured by a mortgage on the estate. And a short time after that, Olide, finding himself in need of still more money, borrows $100,000 from Bayou Bank & Trust to pay off the note to Cajun. The loan from Bayou, like the first loan but unlike the second, is secured by a mortgage (a so-called “second mortgage") on the estate. Time goes by. Then Olide defaults on the first loan, in response to which Cajun threatens to foreclose. If Cajun follows through on its threat, which of Olide’s creditors would end up getting paid? Why? See CC art. 3307, especially ¶ (3). Assume (i) that Terre Facile is Olide's only asset; (ii) that the market value of the property has now slipped to $180,000; (iii) that under the terms of the second and the third loan agreements, a foreclosure by Cajun would constitute a “default"by Olide on his loans from Creole and Bayou.

OGH 144α. The same as before (OGH 143), except that, before Cajun follows through on its threat to foreclose, Creole, whose loan officers believe that Terre Facile’s value will soon turn around and, in a year or so, may well exceed $300,000, pays Cajun off, thereby averting (i) a foreclosure by Cajun and (ii) a default by Olide on his loans from itself (Creole) and from Bayou. What, precisely, would Creole “get" from its payoff to Cajun, aside from averting Cajun’s foreclosure and Olide’s default? See CC art. 1829(1).

Would you consider Creole’s decision to be a good one from a “business” standpoint? Why or why not? As you ponder that question, consider these hypotheticals:

OGH 144β. The same as before (OGH 144α), except that one year after the payoff, Olide defaults on his loan to Bayou, in response to which Bayou forecloses. At the sheriff’s sale, Terre Facile sells for $280,000 (in other words, Creole’s prediction of appreciating value came true). Who’s entitled to that money? Why? In this case, what did Creole gain by paying off Cajun? What did it lose?

OGH 144γ. The same as before (OGH 144β), except that Terre Facile sells for $150,000 (in other words, Creole’s prediction of appreciating value did not come true). Who’s entitled to that money? Why? In this case, what did Creole gain by paying off Cajun? What did it lose?

b) Limitation

2] Purchaser Who Pays Secured Creditor with Purchase Money

OGH 145. Clodice owns Terre Facile, an estate that is subject to a $100,000 first mortgage in favor of Cajun Bank & Trust and a $50,000 second mortgage in favor of Creole Bank & Trust. Having decided that she no longer wants the property, she offers to sell it to Olide for $100,000. Olide accepts the offer. But then, instead of turning $100,000 over to Clodice to pay the price, he turns $100,000 over to Cajun to pay off the first mortgage. Why might Olide want to do such a thing? What, precisely, does it get him? Can he do it? Can't Clodice object? Didn't Olide owe her the price? And didn't Olide default on his obligation to her when he didn't pay it? So can't she sue him for it? And so, in that case, wouldn’t he end up paying twice?

Why might anyone do such a thing? Read Trahan, Supp, 75-77.

3] Obligor Who Pays Debt Owed With/For Others

a] First Requirement: Debt Owed with or for Others

1} Debt Owed with Others

OGH 146. Before Bayou Bank & Trust will approve Olide's application for a $100,000 loan, it requires that Olide come up with a financially sound "surety" or "guarantor," i.e., someone who will promise to pay the debt in the event Olide fails to do so. After considerable arm-twisting by Olide, Pascal agrees to do it. At the closing, Olide signs the loan agreement as "principal debtor" and Pascal the "continuing guaranty" agreement as surety. Time goes by and sure enough, Olide defaults on the loan. At the bank's insistence, Pascal them pays off the debt. He now wants Olide to reimburse him. Is Pascal entitled to reimbursement? Why or why not?

b] Second Requirement: Recourse Against the Others

(i) What is the requirement?

(ii) What does the requirement mean? Does the related comment – CC art. 1829 cmt. (c) – accurately explain it? Does the case cited in the comment – Gay v. Blanchard – support that conclusion? What about the treatise written by the author of the comment, i.e., Professor Litvinoff? See (again) Trahan, Supp, 73-75.

(iii) Is the requirement superfluous or at least misstated? Can you think of a case in which, though the first requirement for legal subrogation under CC art. 1829(3) is satisfied, the second is not? Won't the second requirement almost always be satisfied – automatically, as it were – anytime and every time that the first requirement is satisfied? But there will be some extraordinary cases, will there not, in which the first requirement is satisfied but the second is not? When? In view of those cases, how might the second requirement be restated to reflect its true significance more clearly and with less confusion?

c] Other Requirements?

We have seen that, at least according to the jurisprudence, legal subrogation under CC art. 1829(I) is available only if the payor is a “stranger” to the debt he pays, in other words, only if he pays a debt that is not “his.” Does the same requirement / limitation apply to legal subrogation under CC art. 1829(3), that is to say, can one claim legal subrogation under CC art. 1829(3) only if the debt one pays is not one’s own? Doesn’t the answer to this question become obvious when one considers the kinds of situations to which CC art. 1829(3) supposedly applies, i.e., passive solidarity, indivisibility, suretyship? Isn’t a solidary debt the debt of each solidary obligor (so that, as to each such obligor, the debt is “his” debt)? Isn’t an indivisible debt the debt of each indivisible obligor (so that, as to each such obligor, the debt is “his” debt)? Isn’t a debt owed by a surety “his” debt, at least once the principal obligor defaults? Wouldn’t it be the case, then, that if legal subrogation under CC art. 1829(3) were barred as to any obligor who pays his own debt, then that kind of legal subrogation would always and everywhere be impossible?
3) Effects
   a) Subrogation In General
      Read Levasseur, Précis, 147-50.

   1] Complete Subrogation
      OGH 147. Pascal loans Olide $100,000. The debt is secured by (i) a mortgage on Olide's estate, Terre Puante, in favor of Pascal and (ii) a "continuing guaranty" agreement that Clodice, acting as surety for Olide, executed in favor of Pascal. A short time later, Olide defaults on the debt. Olide can't pay, at least not yet, but Pascal needs his money right away. When he hears of their predicament, Jean Sot, noting that he can afford to give Olide more time to come up with the money, offers to pay off Pascal in full, provided that Pascal will subrogate him to his (Pascal's) rights against Olide. Pascal accepts the offer and the deal is done. Sometime later Olide defaults on the loan again. Pascal then brings suit against Olide and Clodice and, further forecloses on the mortgage? Jean Sot intervenes in the suit, contending that he, not Pascal, is entitled to assert those rights. Who's entitled to sue Olide and for what can he sue? Explain. See CC art. 1826, ¶ 1.

   2] Partial Subrogation
      a] General Rule
         OGH 148. The same as OGH 147, except that, this time, Jean Sot pays $50,000 of Olide's debt to Pascal and Pascal subrogates Jean Sot only up to that amount. As before, Olide defaults after the subrogation. Assume that his assets and those of Clodice combined amount to $90,000. Now who's entitled to sue Olide and for what? Explain. See CC art. 1826 & cmt. (e).

      b] Exception
         OGH 149. The same as OGH 147, except that the original loan agreement between Pascal and Olide provides that Olide's obligation to repay the loan shall be "indivisible." Now who's entitled to sue Olide and for what? Explain. See CC art. 1826 & cmt. (e).

   b) Legal Subrogation
      Read Levasseur, Précis, 150-55.

      OGH 150. Recall the case of Aetna Ins. Co. v. Naquin. Suppose that the Ficarras' losses had amounted to $10,000 and that the insurer, as was the case, had them paid only $7,250. Could Aetna have recovered the full $10,000 from Naquin then? Why or why not? See CC art. 1830.

      OGH 151. The same as OGH 150, except that this time the Ficarras, upon receiving payment from Aetna, execute an act of subrogation in Aetna's favor, one that purports to subrogate Aetna "to the full extent of our claim against Naquin." Can Aetna now recover the full $10,000 from Naquin? Why or why not? See CC art. 1830, sent. 2.

      OGH 152. The same as OGH 150, except that Aetna is not the Ficarras insurer. Because of some peculiar circumstances, i.e., Aetna represents certain other parties who have unrelated claims against Naquin no one of which is sufficiently large to justify suing him on it, Aetna has decided to acquire as many claims as it can against Naquin. And so, when Aetna learns of the Ficarras' claim against him, Aetna offers to pay the Ficarras $7,500 if they will subrogate Aetna to its rights against Naquin. The Ficarras, who don't want to sue Naquin and need the money right away, jump at the offer. Can Aetna now recover the full $10,000. Why or why not? See CC art. 1830, sent. 1 & cmts. (a) & (b).

E. Extinction of Obligations
1. In General
   What does the expression "extinction of obligations" mean? Vocabulaire Juridique ("Extinction of an obligation: . . . [the] undoing of the juridical link between obligee and obligor, which carries with it the liberation of the latter.") What are the different "causes" or "modes" of extinction? Read the headings of the subdivisions of CC bk. 3, tit. 3, chapter 6. Is this list complete and exclusive? See CC art. 1767, ¶ 3; CC art. 3447 & cmt. (b). See generally Levasseur, Précis, 173.

2. Modes of Extinction of Obligations Described in Chapter 6
   a. Performance
Read CC art. 1854; Levasseur, Précis, 174-80.

1) Definition
But what does "performance" mean? CC art. 1854 cmt. (b).

2) Parties to the Performance
a) Who May/Must Perform
1) The Obligor
2) Third Persons
Can a “third person” render the performance and, by so doing, extinguish the obligation?
   a) The Obligee & Obligor Both Consent
   b) The Obligee or Obligor Objects
      1) General Rule
Read CC art. 1855, ¶ 1, up to the last dependent clause.

2) Exception
Read the last dependent clause of CC art. 1855, ¶ 1. When will the obligee have an interest in the
obliger rendering the performance himself? When will the obligor have an interest in rendering the
performance himself? Read Trahan, Supp, 87 (excerpt from Litvinoff’s treatise).

b) Who May/Must Receive Performance

3) Extent of Performance
Can the obligor force the obligee to accept less that full performance?
   a) General Rule
What's the general rule? See CC art. 1861, ¶ 1.
   b) Exception
OGH 153. Olide negligently kills Pascal's pet nutria, Mr. Nutty. Pascal estimates Mr. Nutty's worth
at $1,000; Olide puts it at $100. If Olide’s willing to pay $100, must Pascal take it? Or, If Pascal's willing
to take $100, must Olide pay it? Explain. See CC art. 1861, ¶ 2.

What's the effect of the rendition and receipt of partial performance? See CC art. 1861, ¶ 3.

4) Complications of Performance
   a) Refusal of Performance: Tender & Deposit
   b) Multiple Performances: Imputation of Payment
It sometimes happens that the obligor owes the obligee more than one obligation and the performances
that are the objects of these obligations are of the same genre (e.g., multiple monetary payments or multiple
deliveries of Muscadine wine). When the obligor renders one of the performances, to which obligation
should the performance be attributed? See CC arts. 1864-1868.

b. Impossibility of Performance
Is impossibility of performance really a cause of “extinction” of obligations? Or is its effect something
else? See CC art. 1873, ¶ 1; Levasseur, Précis, 192.

1) Definitions
What does "impossibility of performance" mean?
OGH 154. Olide, after purchasing a vast tract of land covered with elm trees, opens a "cooperage"
business, i.e., one that manufactures and sells barrel hoops. Olide, like many other coopers in the area, makes
his hoops from his own elm trees. Months later, after Olide's business is well-established, Pascal places an
order for 100 hoops, an average-sized order. But then the area is beset by unusually heavy rains for months
on end, as a result of which Olide and his crews can't get to the elm trees. Olide, unable to get the raw
materials, shuts down the factory, leaving Pascal's order unfilled. Pascal sues Olide. Is Olide's
nonperformance excused on grounds of impossibility? Why or why not? See Trahan, Supp, 88-90 (excerpt
from Saúl Litvinoff, Louisiana Civil Law Treatise).

2) Rules
   a) General Rule
Impossibility of performance has the effect of extinguishing the obligation only if the impossibility has a specified cause. What is it? See CC art. 1873, ¶ 1; Levasseur, Précis, 192-95. What's a fortuitous event? See CC art. 1875. Can you think of any examples?

b) Exceptions

Does impossibility of performance due to a fortuitous event always extinguish the obligation? See Levasseur, Précis, 195-98.

1] Assumption of Risk of Impossibility

OGH 155. Pascal leases the "back forty" of Belle Terre to Jean Sot for farming cotton. The lease contract contains the following stipulations: (i) rent shall consist of 1/4 of the crop; (ii) the rent shall be payable on September 1; (iii) "Lessee shall run the risk of all the chances of all foreseen and unforeseen accidents, incidents, occurrences, events, phenomena, etc." Sometime later, after Jean Sot has harvested his crops, but before he is required to pay his rent, the skies open, producing the first deluge in the area in fifty years. As a result of the rain, the storehouse in which Jean Sot had stored the crops floods, causing the crops to be destroyed. Jean Sot, claiming that this "fortuitous event" dissolved the contract, refuses to pay his rent. Pascal then sues Jean Sot for damages (the monetary value of his 1/4 share of the lost crop). What result would you predict? Why? See CC art. 1873, ¶ 2; see also CC art. 2743, ¶ 3.

2] Impossibility After Default

OGH 156-α. The same OGH 154, except as follows. The lease contains no "assumption of the risk" clause. Before the deluge comes, the cotton is harvested and the cotton bolls are stored in Jean Sot's storehouse on Belle Terre. September 1, the date on which delivery of the "rent" is due, comes and goes. Pascal even demands delivery. But still there's no action from Jean Sot. Then comes the rain, the flood, and the destruction of the crop. What result now? Why? See CC art. 1873, ¶ 3, & 1874.

3] Impossibility Due to Fault

OGH 156-β. The same as OGH 154, except as follows. Before September 1, the date on which delivery of the rent is due, the cotton is harvested and the bolls are stored in Jean Sot's storehouse. Jean Sot, departing from customary practice among cotton farmers, then plows under the remains of the cotton plants and levels out the field, transforming it into a vast stretch of uncovered, dust-blown land. When the rains begin to fall a few days later, the waters, not surprisingly, run straight off the field and down into the bayou, where they quickly back up into the storehouse and destroy the cotton. It is later established that, had Jean Sot not cleared the field and, in so doing, reduced its potential for absorbing rainwater runoff, the storehouse would not have been flooded. What result now? Why? See CC art. 1873.

c. Novation

1) Definition

What's a "novation"? See CC art. 1879; Levasseur, Précis, 198-99; Trahan, Supp, 90-91.

OGH 157. Pascal loans Olide $500, repayable in monthly installments of $100. Before he even makes the first payment, Olide falls on hard financial times and, finding himself unable to come up with the first $100, petitions Pascal for relief. In response, Pascal offers him the following deal: "I'll cancel your debt of $500 in return for giving me 100 bottles of your best Muscadine wine. You can deliver them to me in 10 monthly installments of 10 each." Olide accepts. Has there been a novation here? Why or why not?

OGH 158. Pascal loans Olide $500, repayable in monthly installments of $100. Before he makes the first payment, Olide decides to sell his stud bull, Grand Homme, to Jean Sot for $500 payable immediately. Before the sale is passed, it occurs to Olide that he might be able to kill two birds with one stone. He calls Pascal and Jean Sot with the following proposal: "Jean Sot, instead of paying me, you pay Pascal on the same terms and according to the same schedule as I must now pay him. In return, Pascal, you release me from my debt to you." Has there been a novation here? Why or why not?

2) Prerequisites

Read Levasseur, Précis, 199-202.
a) Existence of an Obligation

1] Null Obligation

OGH 159. At a high stakes poker game at the Governor's Mansion, Jean Sot, his cash exhausted, bets his pet "chaouis", Roxanne, on his last hand. He loses to Olide. After the game is over, Jean Sot, who's now come to his senses, decides he can't bear to part with Roxanne and, so, makes Olide the following offer: "Cancel my duty to give you Roxanne and I'll execute a promissory note in your favor equal to her fair market value--$50--plus ten percent." Olide agrees. Jean Sot then signs the note. When Olide demands payment, Jean Sot refuses, saying that "gambling debts are illegal." “That may be so,” Olide replies, “but this isn't a gambling debt. The gambling debt required you to give me Roxanne. But we novated that debt, replacing it with a simple debt to pay money.” Who wins? Why? See CC art. 1883, ¶ 2; 2031, ¶ 1.

OGH 160. Olide offers to sell his accordion, which he represents was once owned by Clifton Chenier himself, to Jean Sot for $500. Jean Sot, a big Clifton Chenier fan, snaps up the offer. But then Jean Sot, after falling on hard financial times, threatens not to pay. Olide, not willing to see the deal crater, offers Jean Sot a way out: "I'll forget the $500 debt if you'll give me your stud bull, Grande Homme." "It's a deal," Jean Sot replies. Sometime later, before Jean Sot delivers the bull, he discovers that Olide lied about the accordion. When Olide demands delivery of the bull, Jean Sot refuses, arguing that Olide had defrauded him. Olide says, "Not so fast. Though your original obligation--to pay $500-- may have been vitiated by fraud, we novated that debt with another--to give the bull. Turn it over." What result? Why? See CC art. 1883, ¶ 2; 2031, ¶ 1.

2] Conditional Obligation

Can an obligation that's subject to a suspensive condition be novated, i.e., replaced by a new binding obligation? See CC art. 1883, ¶ 1.

3] Natural Obligation

What about a natural obligation? Can it be novated? See CC art. 1879 comment (b); Levasseur, Précis, 201-02; Trahan, Supp, 91-94 (“The ‘Novation’ of a Natural Obligation”).

b) Creation of a Valid Obligation

OGH 161.1. Clodice loans Olide $1000, repayable in six months. When it becomes clear to him that he won't be able to pay the money, he approaches Clodice with an offer: "Cancel my debt and I'll be your boy toy for a month." Clodice, who's always had a thing for Olide, agrees. Before Olide is to perform, the local sheriff learns of the deal and arrests Olide for prostitution. While Olide's sitting in jail, the six month term on the original loan comes and goes. Clodice then sends him a letter informing him that he's in default on the loan. He fires a letter back at her, saying that, by virtue of their agreement, his original debt had been extinguished and replaced with another. Who’s right? Why?

OGH 161.2 The same as OGH 161.1, except that the replacement obligation was merely relatively null, as would have been true, e.g., if Olide had been drunk when he incurred it or had been induced to incur it by error. What result now? Why?

c) Difference Between Obligations
d) Intent to Novate

1] Substantive Requirement

From the mere fact that the parties to an obligation have created a new obligation with structural elements different from the original, can one infer that the parties intended a novation? Why or why not?

OGH 162. Pascal loans Olide $1000, repayable in six months. Before the deadline arrives, it becomes clear to both parties that Olide may have trouble paying off the loan on time. And so Pascal demands that Olide put up some security, as is Pascal's right. Olide then delivers his bull, Grand Homme, to Pascal. Do we have a novation here? Why or why not?

OGH 163. The same as before, except that this time Pascal requests that Jean Sot, Olide's friend, agree to "pick up" Olide's debt, that is, bind himself to pay that debt. Jean Sot consents. Do we have a novation here? Why or why not?
2) Procedural Requirement

Who bears the burden of proof with respect to whether a novation has occurred? *See CC art. 1880, s. 2.*

Need intent to novate be expressed in any particular form? *See CC art. 1880, s. 1.*

Read & brief *Polk Chevrolet, Inc. v. Vicaro,* 162 So. 2d 761 (La. App. 1st Cir. 1964) [Levasseur, Text, 567-71]. Would the result have been any different if the new note had *not* said anything about its effect on the original obligation? Does the fact that the parties modified the original repayment schedule of a debt to pay money, without more, provide sufficient evidence of *animus novandi*?

3) Types

Novations, according to the Civil Code, come in two varieties. What are they? Is the list complete? Accurate?

a) Objective Novation

What's an objective novation, properly so called? *See CC art. 1881 & cmt. (c); Levasseur, Précis, 203-04.*

1) General Rules

a) Not a Mere Modification

Read CC art. 1881, ¶ 3.

Recall *Polk.* Did the original obligors, or at least one of them, execute a new writing in that case? Did that fact seem to impress the court? Should it have? No. Why not? *See CC art. 1881, ¶ 3.*

OGH 164. Olide, upon borrowing $1000 from Pascal, executes a promissory note to Pascal for $1000 plus 5% interest, which is due and payable on March 1, 1997. The note is secured by a pledge of Olide's stud bull, *Grande Homme.* Just short of five years later, the date on which prescription will run, Pascal finally demands payment. In response, Olide claims that though he can't pay the note now, he will be able to do so in six months. And so Pascal makes him this offer: "You execute a new note in may favor, in the same amount and on the same terms, due on September 1, 2002, and I won't sue your hide right now." Olide agrees. After the new note is executed, Olide sends Pascal a letter demanding that he, Pascal, return *Grande Homme* to him. His theory? That the execution of the new note effected a novation, i.e., replaced the original debt with a new one, and, in so doing, extinguished not only the original principal debt, but also all of its accessories, including the pledge. Pascal refuses to return the bull, claiming that the execution of the new note did not alter the original debt in the least. What result? Why?

OGH 165. Pascal loans Olide $1000, repayable in six months. The note is secured by a pledge of Olide's stud bull, *Grande Homme.* Before the deadline arrives, it becomes clear to both parties that Olide may have trouble paying off the loan on time. And so Pascal demands that Olide put up some additional security, as is Pascal's right. In response, Olide offers to execute a UCC security interest in his tractor in favor of Pascal. Pascal accepts. A short while later, Olide sends Pascal a letter demanding that he, Pascal, return *Grande Homme* to him. His theory? That the addition of the new security effected a novation, i.e., replaced the original debt with a new one, and, in so doing, extinguished not only the original principal debt, but also all of its accessories, including the original security, i.e., the pledge. Pascal refuses to return the bull, claiming that the addition of the new security did not alter the original debt in the least. Who wins? Why? *See CC art. 1881, ¶ 3.*

OGH 166. Pascal loans Olide $1000, which Olide is to repay to Pascal, in person and at Pascal's home, in six months. The note is secured by a pledge of Olide's stud bull, *Grande Homme.* Long before the deadline arrives, Pascal, who's since decided to take an extended vacation to southern France, calls Olide and directs him to pay Pascal's agent, Jean Sot, at Jean Sot's home. At about the same time, Olide falls on hard financial times. Through Jean Sot, Olide notifies Pascal of the situation and ask him for "additional time" within which to make the repayment. Pascal consents, notifying Olide that he may take an additional three months to pay Jean Sot. A short while later, Olide sends Pascal a letter demanding that he, Pascal or, rather, his agent, Jean Sot, return *Grande Homme* to him. His theory? That the change in the place of performance and/or the time of performance effected a novation, i.e., replaced the original debt with a new one, and, in
so doing, extinguished not only the original principal debt, but also all of its accessories, including the security, i.e., the pledge. Pascal refuses to direct Jean Sot to return the bull, claiming that the changes in question did not alter the original debt in the least. Who's right? Why? See CC art. 1881 cmt. (i).

b) Not the Performance of a Substantial Part of the Original Performance

Read CC art. 1881, ¶ 1.

OGH 167. Pascal leases the back forty of Belle Terre to Jean Sot for farming. The rent is $1000; the term, one year. The harvest, however, falls short of everyone's expectations. And so Pascal, to help his old friend out, agrees to cut the rent to $800. Has there been a novation? Why or why not? See CC art. 1881, ¶ 1, sent. 2, & cmt. (g), ¶ 3.

OGH 168. Pascal loans Olide $1000, which Olide is to repay in full plus 10% interest, in 6 months. During that period Olide, having fallen on hard financial times, petitions Pascal for relief. In response, Pascal agrees to lower the interest rate to 5%. Has there been a novation? Why or why not? See CC art. 1881, ¶ 1, sent. 2.

2] Exception

Read CC art. 1881, ¶ 2.

OGH 169. Recall the hypothetical (OGH 164) in which Pascal and Olide, after entering into a loan agreement, "renewed" the original promissory note on the eve of prescription. Suppose that, when Olide asked Pascal for additional time, Pascal had said, "If you execute a new note, then I'll cancel the original debt and release you from it." Suppose further that when Olide executed the new note, Pascal produced the old note, marked "Cancelled" on the back, and returned the old note to Olide. What result now (i.e., has there been a novation)? Why or why not?

OGH 170. Recall the hypothetical (OGH 167) in which Pascal and Jean Sot, after entering into a lease agreement, reduced the amount of the rent from $1000 to $800. Suppose that, when Jean Sot asked Pascal for some relief from the rent, Pascal had said, "OK. Let's cancel the original contract and execute a brand new lease, this one with a rent of $800." What result now (i.e., has there been a novation)? Why or why not?

b) Causal Novation

OGH 171. Pascal sells Olide 10 nutria pelts at $35/each, payable upon delivery. Pascal delivers the nutria pelts and then awaits payment. Nothing happens. When Pascal asks Olide what's up, Olide explains that he's having trouble coming up with the money. Pascal responds as follows: "That's OK. I'm prepared to loan you the money necessary to pay the debt. But I'll expect repayment in regular installments with interest 1% above prime." Sometime later, Olide defaults on a debt to Clodice, who then sues Olide, gets a judgment against him, and causes the nutria pelts to be seized for sale at public auction. Pascal intervenes in the proceedings, claiming to have a vendor's lien—a security interest—on the nutria pelts. In reply, Clodice argues that Pascal's "deal" with Olide had novated Olide's original debt to Pascal, destroying not only the original principal debt, but also all of its accessories, including the vendor's lien. What result? Why? See CC art. 1881, ¶ 1, & cmt. (c), sents. 6-7.

c) Modal Novation

Does the introduction or suppression of a condition effect a novation? See CC art. 1881 cmt. (e); Levasseur, Précis, 207-08.

d) Subjective Novation

Read Levasseur, Précis, 205-07.

1] Definition

What's a subjective novation? See CC art. 1882; art. 1881 cmt. (c), ¶ 1; art. 1882, cmts. (b) & (d); art. 1879.

2] Modes of Effecting Subjective Novation

a) With Participation of the Obligor

OGH 172. Pascal loans Olide $500, repayable in monthly installments of $100. Before he makes the
first payment, Olide decides to sell his stud bull, Grand Homme, to Jean Sot for $500 payable immediately. Before the sale is passed, it occurs to Olide that he might be able to kill two birds with one stone. He calls Pascal and Jean Sot with the following proposal: "Jean Sot, instead of paying me, you pay Pascal on the same terms and according to the same schedule as I must now pay him. In return, Pascal, you release me from my debt to you." Both Jean And Pascal agree. Has there been a novation here? If so, what kind—subjective or objective? Explain.

b) Without Participation of the Obligor

OGH 173. Pascal loans Olide $1000, which he is to repay in 6 months. As that deadline draws near, Olide falls on hard financial times. Pascal, however, is desperate for the money and, therefore, is in no position to afford Olide an extension. Enter Jean Sot, friend of Olide, who, upon hearing of predicament, decides to help him out. He goes to Pascal and makes him this offer: "Release Olide from the $1000 debt and I'll pay you the $1000 on the same terms and conditions as he was required to do." Just then Olide, who's discovered what Jean Sot's up to, breaks into the room and hollers: "Arrêtez-vous autres! Jean Sot, I can't let you do this. I won't accept your charity." Pascal, unmoved, then replies, "I accept." Has there been a novation here? If so, what kind—subjective or objective? Explain. See CC art. 1882, s. 1, & art. 1855, ¶ 1.

4) Effects

What are the effects of a novation? See Levasseur, Précis, 208-10.

a) Extinction of the Old Obligation

1) Release of Original Obligor from Original Debt

2) Release of Security for Original Debt

a) General Rule

OGH 174. Pascal loans Olide $10,000. Olide's debt is secured by (i) a mortgage on his estate, Terre Puante and (ii) a pledge of Olide's stud bull, Grand Homme. Not only that but Auguste, Olide's nephew, as surety, signs a guaranty agreement in favor of Pascal to assure repayment of the loan. Sometime later, Olide, having fallen on hard financial times, petitions Pascal for relief. In a great spirit of generosity, Pascal offers to release Olide from the original debt if Olide will agree to give him 2000 bottles of his best vin de soco. Olide agrees. Sometime later, Olide defaults on his duty to deliver the wine. Pascal then sues Olide to foreclose on the mortgage on Terre Puante and the pledge on the bull and, further, sues Auguste on the guaranty agreement. Olide and Auguste oppose the suit, arguing that the security for the original debt—the mortgage, the pledge, the suretyship—have all been extinguished by novation. What result? Why? See CC art. 1913.

b) Exceptions

1) By Agreement

Read CC art. 1884.

2) Acquisition of the Security

OGH 175. The same as before (OGH 174), except as follows. When it became clear that Olide was going to default, Olide, instead of going to Pascal for relief, decided on a different plan. He would find someone willing to buy his property—including his estate and the bull--; have the buyer "assume" his debt to Pascal, and have Pascal release him, Olide, from the debt. Olide had little difficulty finding a buyer: Jean Sot jumped at the deal. And Pascal was all for the deal, even agreeing to let Olide go. Sometime later, Jean Sot defaulted on his debt to Pascal. Pascal then sued Olide personally, sued Jean Sot personally, sued Jean Sot to foreclose on the mortgage and the bull, and sued Auguste under the guaranty agreement. Olide denied any liability, arguing that he'd been released through novation. Auguste, too, denied liability, arguing that the novation had extinguished his suretyship. Though Jean Sot admitted that he was personally liable, he denied that Pascal had any right to foreclose on the mortgage or the bull. What result? Why? See CC art. 1887.

b) Creation of a New Obligation

d. Delegation
Read Trahan, Supp, 94-97 (excerpt from Litvinoff’s treatise).

1) **Definition**
Read Levasseur, Précis, 210-11.

a) By Exposition
b) By Illustration

OGH α. Pascal, who is about to set out on an extended vacation in Provençe, France, obtains a $25,000 letter of credit from Bayou Bank. Bayou Bank, with Pascal’s knowledge, then contacts Aix-Banque, its correspondent bank in Provençe, and directs it to “honor” the letter of credit, which it agrees to do (in other words, Aix-Banque “confirms” the credit). But when Pascal shows up in Provençe, Aix-Banque refuses to give him even a franc. Pascal then flies home, storms into Bayou Bank, and demands $25,000 “plus damages.” Bayou Bank, however, refuses to give him anything. The “confirmation” of the credit by Aix-Banque, Bayou Bank argues, extinguished Bayou Bank’s obligation toward Pascal. Who is right? Why? 

See La. Rev. Stat. 10:5-107(2) Uniform Commercial Code Comment 2 (“The most important aspect of this rule is that a beneficiary who has received a confirmed credit has the independent engagements of both the issuer and the confirming bank.”)

c) By Contrast

1) **Versus Subjective Novation**
How’s delegation different from subjective novation? Read CC art. 1886, ¶ 2.

2) **Versus Assumption Between Obligor and Third Person**
How’s delegation different from an assumption between the original obligor and a third person?

2) **Effects**
Read Levasseur, Précis, 211-13.

1) **Original Obligation Not Extinguished**
2) **Limitation of Delegate's Defenses**

e. **Remission**
Read CC art. 1888.

1) **Definition**

What's a remission? See Levasseur, Précis, 213-14; CC art. 1888 cmt. (d).

2) **Prerequisites**
Read Levasseur, Précis, 214-15.

a) **Valid Contract**

Which set of “capacity rules” applies to a contrat of remission—the “general” rules for contracts found in CC art. 1918 et seq. or the “special” rules for donations found in CC arts. 1470-1477? Why?

Who, exactly, must “consent” to a remission? Can the obligee/remitter accomplish it on his own? Why or why not? See CC art. 1890.

b) **Form**

Must a remission, to be valid, be in any particular form? See CC art. 1888, s. 2.

OGH 176. Olide owes Pascal $1000. Pascal, who's just learned that Olide's farm was wiped out in a flood and has just returned from a mass in which the subject of the sermon was "love for one's neighbor," makes out a document entitled "Receipt," which reads as follows: "Debt for $1000. Paid in full. Pascal." Pascal then sends the receipt to Olide. A short while later Pascal dies, survived by Ti-Boy. Ti-Boy, who evidently didn't attend the same mass, demands payment of the debt. Olide defends on ground of remission. What result? Why? See CC art. 1889 cmt. (b).

3) **Procedural Incidents**
Read Levasseur, Précis, 216-17.

OGH 177. Pascal loans $1000 to Jean Sot, his foreman and general business manager. The debt is represented by a promissory note executed by Jean Sot in Pascal's favor. Before the debt is repaid, Pascal decides to take an extended vacation abroad. In anticipation of the trip, Pascal turns all of business papers,
including the note, over to Jean Sot for safekeeping. When Pascal returns from his vacation, he retakes his papers and, in due course, demands payment of the note from Jean Sot. Jean Sot refuses to pay, arguing that Pascal had tacitly remitted the debt. What result? Why? Be sure to consider who bears the burden of proof. See CC art. 1889.

4) Effects
What are the effects of a remission? Read Levasseur, Précis, 217-20.
   a) Remission of Principal Debt
Suppose there's a principal debt backed up by security, whether real (e.g., mortgage, pledge) or personal (suretyship) or both. What effect does remission of the principal debt have upon these accessory debts? See CC art. 1892, ¶ 1.
   b) Remission of Accessory Debt
Do these principles work in reverse? Suppose, again, a principal debt that is backed up by personal and/or real security. This time, though, the obligee releases the security rather than the principal debt. Is the principal debt affected? See CC art. 1892, ¶ 2, & 1891.
   c) Remission of Fewer Than All the Sureties
Read CC 1892, ¶ 3.

f. Compensation
1) Definition
   2) Types of Compensation
      a) Legal Compensation
Read Levasseur, Précis, 221-25.
         1) Definition
Read CC art. 1893, ¶ 1.
         2) Prerequisites
Read CC art. 1893.
   a) Reciprocity of Obligations
OGH 178. Olide and Jean Sot form a partnership between them, which they call "OJ's." OJ's borrows $10,000 from Pascal, repayable on demand. Sometime later Pascal, behind the wheel of his combine, negligently runs over Jean Sot. Jean Sot's damages are estimated at $5,000. Does compensation take place here? In particular, do OJ's debt to Pascal and Pascal's debt to Jean Sot, one of the two partners of OJ's, cancel each other out? Why or why not? See CC art. 2801, ¶1.
   b) Interchangability of Objects
OGH β. Suppose that Pascal owes Olide money and Olide owes Pascal a certain quantity of generic Muscadines, the value of which is readily fixable. One owes money to the other; the other owes fungible goods to the first. Can compensation take place? Why or why not?
      What does "fungible" mean? See J.-R. Trahan, The Classification of Things: A Précis, pt. IV, in Trahan, Supplement to Yiannopoulos’ Civil Law Property Coursebook 15-16 (3d ed. 2001) ("Two or more things are fungible vis-à-vis each other if they belong to the same genre of things and if, by virtue of their physical characteristics or the intention of those who deal with them, they are interchangeable or substitutable one for the other in view of the end for which they will be used. In commercial transactions, they are ordinarily bought and sold or otherwise traded by numbers, weight, or measure.")
      OGH 179.1. Pascal is supposed to deliver to Olide "10 bottles of red Muscadine wine." Olide is supposed to deliver to Pascal "10 bottles of white Muscadine wine." Can compensation take place? Why or why not?
      OGH 179.2. Pascal is supposed to deliver to Olide "10 bottles of red Muscadine wine vintage 1994." Olide is supposed to deliver to Pascal "10 bottles of red Muscadine wine vintage 1995." Can compensation take place? Why or why not?
What does “liquidated” mean? See Levasseur, Précis, 224.

OGH 180. Symeonides runs over Trahan in the parking lot, causing Trahan to sustain personal injuries. Trahan estimates his damages at $500,000. Symeonides, however, refuses to pay anything. Why? First, he denies any liability. On what basis? Act of God: the real cause of the accident, he claims, was a sudden gust of wind, one sufficiently strong to cause his car to veer off course and over Trahan. Second, he denies that Trahan suffered $500,000 worth of damages. Given the meagre value of Trahan's life and his equally meagre earning capacity, Symeonides estimates Trahan's damages at $100. Is Symeonides' "debt" to Trahan "liquidated"? Why or why not?

c) Liquidity

What does “liquidated” that mean? See Levasseur, Précis, 224.

OGH 180. Symeonides runs over Trahan in the parking lot, causing Trahan to sustain personal injuries. Trahan estimates his damages at $500,000. Symeonides, however, refuses to pay anything. Why? First, he denies any liability. On what basis? Act of God: the real cause of the accident, he claims, was a sudden gust of wind, one sufficiently strong to cause his car to veer off course and over Trahan. Second, he denies that Trahan suffered $500,000 worth of damages. Given the meagre value of Trahan's life and his equally meagre earning capacity, Symeonides estimates Trahan's damages at $100. Is Symeonides' "debt" to Trahan "liquidated"? Why or why not?

d) Exigibility

What does it mean for an obligation to be “presently due”? See Levasseur, Précis, 224-25.

1) Unexigible Debts

a) Suspensive Term

Recall Hibernia Bank v. D.H. Holmes. What was the obstacle to legal compensation in that case?

b) Suspensive Condition

c) Natural Obligation


2) Exigible Debts

What if the obligee or a court grants the obligor a "grace period" within which to render performance, i.e., additional time after the date on which performance was originally due? Does that render the debt not presently due? See CC art. 1893, ¶ 3.

NOTE: The Civil Code, in addition to spelling out the prerequisites for compensation, identifies certain non-prerequisites for compensation, namely, (i) identity of the sources of the debts and (ii) identity of the places of performance of the debts. Thus, compensation can occur even though one debt arise from tort and another from contract, CC art. 1894, ¶ 1, and even though one is to be performed in Gueydan and the other in Breaux Bridge, CC art. 1895.

3) Exceptions

It can happen that though two persons reciprocally owe each other liquid, presently due debts for money or fungible goods of the same kind, legal compensation nevertheless doesn't take place. Read Levasseur, Précis, 225-27.

a) Duty to Return a Thing of Which the Owner Has Been Unjustly Dispossessed

OGH 181. Jean Sot owes Olide $1000, payable on demand. Olide, however, has been having trouble getting Jean Sot to pay up. And so, late one night, under cover of darkness, Olide sneaks into Jean Sot's house and steals $1000 from Jean Sot's strong box. When Jean Sot discovers what's happened and demand his money back, Olide refuses, claiming compensation. Compensation of what? Compensation between Jean Sot's debt to repay the loan and Olide's debt to restore what he's stolen. Is Olide right? Why or why not? See CC art. 1894, ¶ 2.

b) Duty to Return a Deposited or Loaned Thing

OGH 182. H. Wainer & Co., a depositor at Canal Bank & Trust Co., borrows $20,000 from the bank. The debt is represented by a promissory note in the same amount. In the course of time, the company begins having trouble making its loan payments on time. And so the bank, on its own initiative, "sets off" the company's deposits against the outstanding indebtedness, that is, reduces the debt by the amount of the deposits. Its theory? That compensation occurred between its duty to refund the deposit and the company's duty to repay the loan. Is the bank right? Why or why not? See CC art. 1894, ¶ 2.

c) Duty to Give a Thing Exempt from Seizure

OGH 183. Jean Sot owes Olide $10,000, a sum so large he can't repay it. To prevent Olide from hauling him into court, Jean Sot agrees to assign "50% of my weekly wages to you, which I'll continue to pay
until the debt is retired." Sometime later, Olide, behind the wheel of his combine, negligently runs over Jean Sot, causing Jean Sot to sustain $10,000 in personal injuries. Olide refuses to pay Jean Sot anything for the tort, claiming compensation. Is Olide right? Why or why not? See CC art. 1894, ¶ 2, & La. Rev. Stat. 13:3881.A(1) ("The following income or property of a debtor is exempt from seizure . . . [s]eventy-five percent of his disposable earnings for any week . . . ")

4) Effects

What are the effects—the juridical consequences—of legal compensation? Read Levasseur, Précis, 227-30; then read Trahan, Supp, 97-99 (the real meaning of 1893, ¶ 1).

a) General Effects

Read CC art. 1893, ¶ 2.

OGH 184. Pascal loans Olide $10,000. The debt is secured by (i) a mortgage on Olide's estate in favor of Pascal, (ii) a pledge of Olide's stud bull, Grand Homme, to Pascal, and (iii) a suretyship agreement executed by Olide's nephew, Auguste, in favor of Pascal. Sometime later, Pascal, behind the wheel of his combine, runs over Olide, causing him to sustain personal injuries. At trial Olide's damages are fixed at $10,000. Would Olide's debt to him and his debt to Olide cancel each other out via compensation? Why or why not? See CC art. 1897, ¶ 1: "Compensation between obligee and principal obligor extinguishes the obligation of a surety."

Does this principle work in reverse?

OGH 185. Suppose that Pascal had run over not Olide, the principal obligor, but Auguste, the surety. Would compensation have taken place between Pascal's tort debt to Auguste and Auguste's surety debt to Pascal? Why or why not? See CC art. 1897, ¶ 2; then read Trahan, Supp, 99-101.

b) Special Effects

1) Where There's Solidarity

a) Passive Solidarity

Read CC art. 1898; then read Trahan, Supp, 101-07 (legal compensation & solidarity). Is the apparent “plain meaning” of article 1898 the “true” meaning?

OGH 186. Pascal loans $12,000 to Olide, Clodice, and Jean Sot collectively. The loan agreement expressly provides that the borrowers shall be "solidarily bound" for the debt. Sometime later Pascal, behind the wheel of his tractor, runs over Jean Sot, causing him to sustain personal injuries. At a trial, it's determined that Jean Sot's damages come to $4,000. Does legal compensation occur between the borrowers' debt to Pascal and Pascal's debt to Jean Sot? Why or why not?

OGH 187. The same as before (OGH 186), except that, this time, Jean Sot's damages are determined to be $1,000. To what extent is the borrowers' solidary obligation extinguished? Is it Jean Sot's virile share, i.e., $4,000? Or is it something else? Explain.

OGH 188. The same as before (OGH 186), except that, this time, Jean Sot's damages are determined to be $12,000. That, you'll recall, is the same amount as the amount of the loan. To what extent is the borrowers' solidary obligation extinguished? Is it Jean Sot's virile share, i.e., $4,000? Or is it something else? Explain.

b) Active Solidarity

2) Where Third Parties Have Acquired Rights

a) In General

1/ Compensation Barred

OGH 189. Pascal loans Olide $10,000. The indebtedness is represented by a negotiable demand note in the same amount. Before the debt is paid off, Pascal indorses the note over to Clodice for $9,500. Still later, but before the note is paid off, Pascal, behind the wheel of his combine, runs over Olide, causing him to sustain personal injuries. At trial it's determined that those injuries amount to $10,000. Still later, Clodice presents the note to Olide, from whom she demands payment. Olide refuses to pay, claiming that his debt to Pascal—the debt represented by the note—was extinguished by compensation. What result? Why? See
OGH 190. Pascal loans Olide $10,000. Olide then goes bankrupt. Still later, Pascal, behind the wheel of his combine, runs down Olide, who sustains personal injuries. The creditors' committee appointed by the bankruptcy court to administer Olide's estate then brings suit against Pascal to recover damages for Olide's personal injuries. The jury fixes the damages at $10,000. Pascal, however, refuses to pay, claiming compensation. The creditors say, "Miche en flûte!" (Trans: crap!) Who's right? Why? See CC art. 1899.

2/ Renunciation of Compensation Barred

OGH 191. Pascal loans Olide $10,000. The debt is secured by a mortgage on Terre Puante, Olide's estate. A short time later Olide borrows $5,000 from Clodice, for which he grants her a second mortgage on Terre Puante. Still later Pascal, behind the wheel of his combine, runs over Olide, causing him to sustain personal injuries. At trial Olide's damages are fixed at $10,000. Though Pascal could claim compensation, he decides not to do so and, so, pays Olide $10,000. After that Olide defaults on his loan from Clodice, prompting her to foreclose on her mortgage on Terre Puante. Pascal then intervenes in the proceedings, claiming that he's got a first mortgage on Terre Puante. In response Clodice claims that Olide's debt to Pascal and, with it, Pascal's mortgage on Terre Puante were extinguished through compensation. What result? Why? See CC art. 1899.

b) Assignment

Skipped.

b) Conventional Compensation

Read CC art. 1901; Levasseur, Précis, 231.

c) Judicial Compensation

Read CC art. 1902; Levasseur, Précis, 231-32.

Now, to review the principles governing compensation, you should read Trahan, Supp, 108-15. You may conduct this review at your leisure, so long as you finish it before the exam.

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