

EFFECTS OF OBLIGATIONS

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Obligation

Debtor



**Creditor,
Right holder**

WHAT DO WE MEAN BY PERFORMANCE

It depends on the type of the obligation

Types of Obligations (duties) : A Review

- A person maybe obligated to:
 1. Do something: التزام بعمل
 - A. Obligation to deliver goods (a very important example)
 - B. Obligation to perform a job or work
 2. Refrain from something: التزام بامتناع
 - A. Obligation to refrain from interfering with the buyer's possession of the goods
 3. Establish or transfer a right *in rem* (real right): التزام باعطاء
 - A. Obligation to transfer ownership?

Types of Obligations: Review Cont'd

1. Obligation to achieve a result: التزام بتحقيق نتيجة

Build a building, deliver goods, transport a person

2. Obligation to exercise due care: التزام ببذل عناية

A lawyer's obligation to defend at court, a physician's obligation to care for the patient

Also: things are either

Fungible : مثليات: Rice, Cars, iPhones

Or Particular: قيميات, A house, My car, My iPhone, This bag of rice

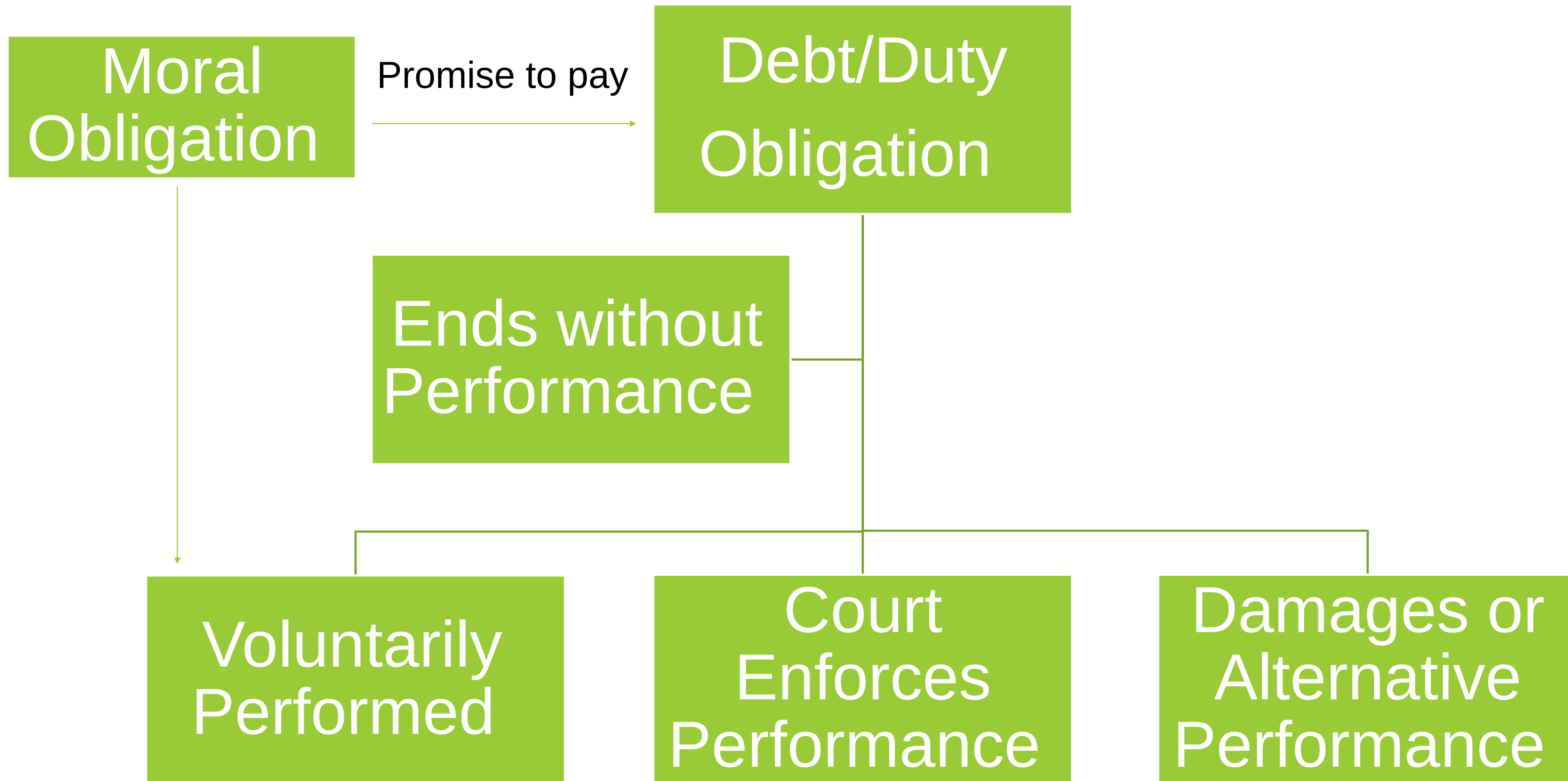
PERFORMANCE / PAYMENT

Types of Performance

1. Performing the exact thing that was agreed: Specific Performance :
التنفيذ العيني
2. Compensation: Substitute: التعويض
 1. Monetary: التعويض النقدي، او الأرش
 2. Non-Monetary: Alternative Performance: Doing something else that was not agreed upon in order to mitigate the harm from not performing: التعويض العيني
3. Voluntary Performance: تنفيذ اختياري
4. Performance enforced by the Court: التنفيذ الجبري

Effects of Obligations

1. Voluntary performance of the obligation: Without going to court
 1. Moral Obligation and its performance
 2. Specific Performance: التنفيذ العيني
 3. Damages : التنفيذ بمقابل، التعويض
2. Enforcement of performance through the judiciary
3. Termination without Performance



MORAL OBLIGATION: الواجب ديانة

Non-Enforceable Debt

الواجب ديانة

- An obligation that is missing something: that is why a court will not enforce anyone to perform.
- Examples:
 - A debt, but there is no evidence. A buys from B, does not pay the price, but there is no evidence of the sale or of the non payment. The court refused to rule on the matter. But, A, in reality is obligated to pay the price.....MORALLY

1. يجب على المدين تنفيذ التزامه عند استحقاقه

The debtor must perform his obligation once it becomes due

2. If

i. He does not perform voluntarily

ii. The conditions for forcing him are not met

iii. He remains obligated to pay ديانة morally:

i. Paying that debt is not considered as a gift or payment of something that is not due (not unjust enrichment)

Moral/Natural Obligation ديانة لا قضاء

1. The debtor Is obligated to pay
 2. Creditor cannot resort to the court for a judgement
 3. This is not just a moral obligation arising out of proper manners or etiquette, it is the result of a Source of Obligation, but is lacking the elements of Liability, because something prevents the courts from enforcing it.
 4. A Moral obligation must not be against public policy (or Islamic Law)
- (Creditor could not prove it, time limit for a claim (statute of limitations) عدم سماع الدعوى, annulled contract by a minor).

Effect of a Natural/Moral obligation

1. Paying it is not considered an action of charity or a gift.

فإذا وفاه مختاراً كان وفاؤه صحيحاً و لا يعتبر تبرعاً ولا دفعاً لما لا يستحق

The debtor must have paid voluntarily knowing that he does not have to pay, and intending to fulfill a natural obligation

2. The debtor can base a Legal obligation on it, by a unilateral declaration . (You admit it, and renew it obligating yourself to pay, and it becomes legal again).

الالتزام القائم ديانة يعتبر أساساً صالحاً لأن يبنى عليه المدين التزاماً قانونياً

Compare

- لا يسقط الحق بمرور الزمن، ولكن لا تسمع الدعوى به على المنكر بانقضاء خمسة عشرة سنة بغير عذر شرعي. (واجب ديانة لاقضاء)
- A right does not expire by passage of time, but a claim shall not be allowed upon someone who denies its existence after 15 years, unless there is a legal excuse
- كل اتفاق على مقامرة او رهان يكون باطلاً. ولمن خسر في مقامرة أو رهان أن يسترد ما دفعه خلال سنة من ابتداء الوقت الذي أدى فيه ما خسره. (لا واجب ديانة ولا قضاء)
- A contract of wager or gambling is Null. The loser who paid what he lost may recover what he paid within one year from payment

Examples from Common Law

- Wagering
- Promise based on a moral duty occurring before the declaration accompanied by a benefit received (lack of consideration in a contract)
- **Webb v. McGowin:**

Web v. McGowin

- Web was working on the roof a building and was dropping a block
- He noticed McGowin standing below, and the block was going to fall on him and injure him seriously
- Web jumped, held the block and fell with it far from McGowin. He saved McGowin but Web suffered serious injury and was crippled for life
- McGowin agreed to pay a salary to Web for the rest of his life
- When McGowin died, the heirs stopped payments, claiming there is no valid contract, because there were no consideration

It is well settled that a moral obligation is a sufficient consideration to support a subsequent promise to pay where the promisor has received a material benefit, although there was no original duty or liability resting on the promisor

QUESTIONS?

THANK YOU!