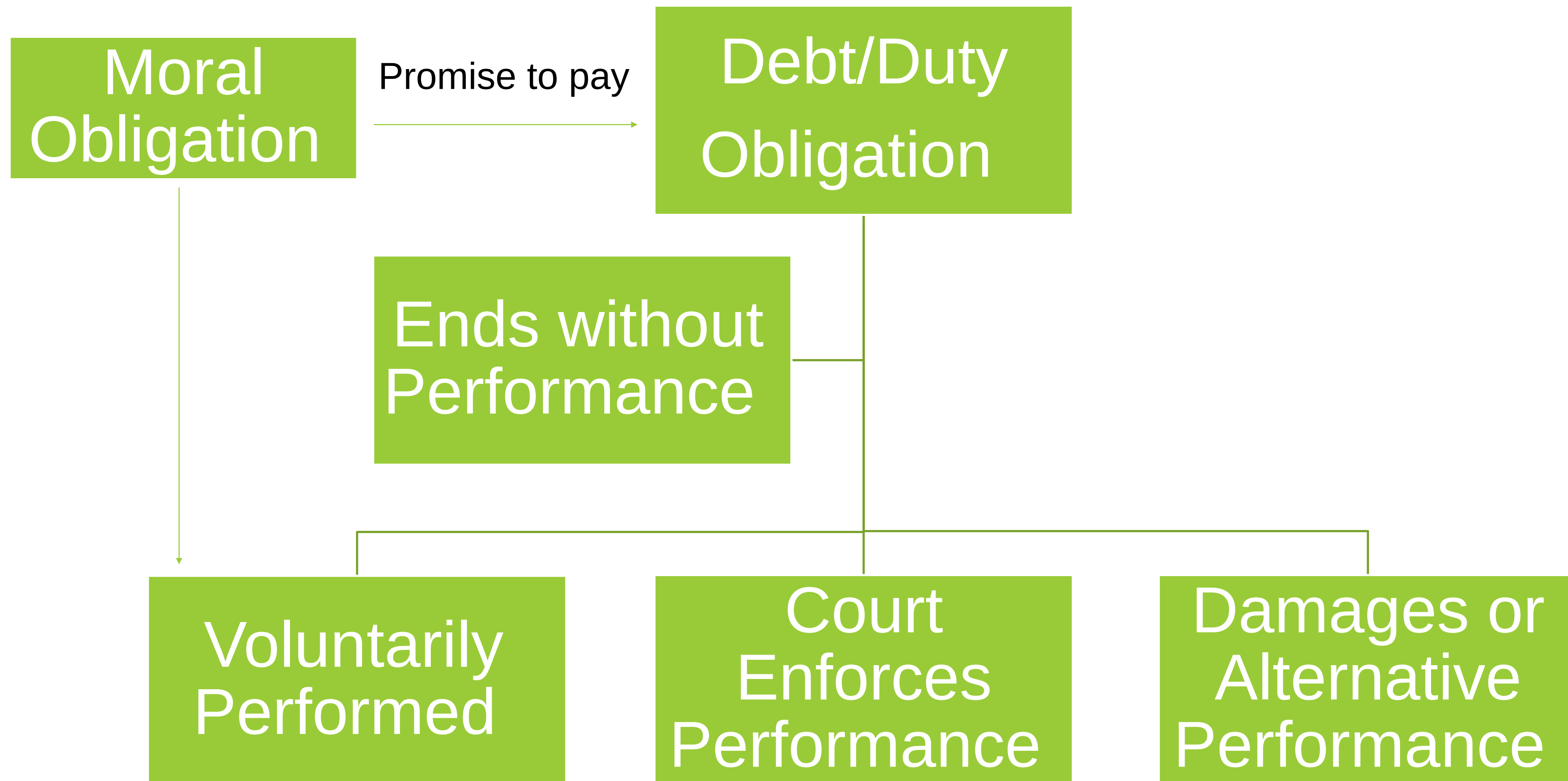


EFFECTS OF OBLIGATIONS

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PERFORMANCE / PAYMENT



ENFORCEABLE DEBTS

الواجب قضاءً

Enforceable Debts

- The rules here do not only cover enforcement by the courts, but also cover voluntary performance.
- Yet, if the debtor does not voluntarily perform, the creditor may resort to courts.

Enforcement of Obligations

Specific Performance

- The default: الأصل التنفيذ العيني
- Unless
 - Impossible
 - Useless
 - Overwhelming to bona fide debtor, and non-performance will not cause the creditor material harm

Damages : التعويض

- Last resort:
- Only if:
 - Performance is rendered Impossible or useless due to the debtor's actions
 - Performance is overwhelming to bona fide debtor, and non-performance will not cause the creditor material harm

SPECIFIC PERFORMANCE

التنفيذ العيني

RULINGS OF PERFORMANCE

احكام الوفاء

- X sells his watch to Y for a 1000 SAR:
 1. When must X deliver the watch?
 2. When must Y pay?
 3. May X deliver a different watch?
 4. May X deliver a different, but more expensive watch?
 5. May Y pay in USD?
 6. To whom should X deliver the watch? Y? his friends? His parents?
 7. Must X deliver the watch by himself?
 8. What happens if the Watch is damaged before X delivers it to Y?

Specific Performance

1. Only delivery of the thing specifically agreed is acceptable. The creditor may not be required to accept another thing, even if it is higher in value.
2. However, the creditor may choose to accept another thing.
3. If the subject of delivery is generic (fungible), then delivering any thing that meets the requirement suffices. (The creditor may not require delivery of a particular item unless mutually specified)

e.g: A contract for a Toyota, Camry, 2020, White. Delivery any car that meets the specifications should be accepted by the creditor and will release the debtor of his obligations.

Specific Performance cont'd

4. If the debtor is required to deliver a particular item, he is also required to preserve until delivery, and is liable for any damages that results from his neglect.
 - If creditor demands delivery, but debtor doesn't deliver until the item is damaged or perishes, the debtor is liable regardless of any negligence.
5. When the duty is a duty of Care: what is required is the reasonable care, regardless of the result.

Who performs:

1. The Debtor
2. His agent
3. Any person who has a legitimate interest in the performance (??)
 - A guarantor
4. A person who does not have an interest in performance (Charity!!),
 1. in this case the debtor may object,
 2. If the debtor objects, the creditor may refuse the performance
5. In case of an obligation to do a job or work, the creditor may refuse performance by anyone other than the debtor If the nature of the work requires that the debtor himself performs it.

Conditions

1. The one performing must be the owner of the thing being delivered
2. He must be a mature person. If his is a minor, his performance is pending confirmation by his guardian

Performance to whom?

1. Mature Creditor
2. His agent
3. The Guardian of a minor
4. A minor creditor , if he benefits from the performance and to the extent of that benefit
5. To any person who presents a valid receipt from the creditor
6. To an apparent creditor, if the debtor pays him in good faith
7. To whomever the Court authorizes to receive payment

Time of performance

- Immediately when the duty arises
- Unless:
 - An agreement
 - A law provision

Place of Performance

1. The place agreed upon or required by law
2. For torts: Where the illicit action took place
3. For Particular things
 1. If creditor knows its place, then at the place where the item is
 2. If creditor does not know its place, then the place where contract is concluded
4. For all other matters where the obligation arose

Costs

- The cost of performance is born by the debtor, unless otherwise stipulated by agreement or by law

Proof

- The debtor is entitled to a receipt upon performing his duties, otherwise he can refrain from performing and deposit the things due at the court

ALTERNATIVES FOR SPECIFIC PERFORMANCE

Alternatives for Specific Performance

- Alternative Performance:
التعويض العيني
- The default in Islamic Law
- Ordering the debtor to do something that would compensate the creditor for not receiving the performance:
e.g. Provide another car, Fix something that has been damaged
- Damages: التعويض النقدي
- The default in civil law and legislations based on it
- Ordering debtor to pay creditor a sum of money equal to the harm that was inflicted on him

QUESTIONS?

THANK YOU!