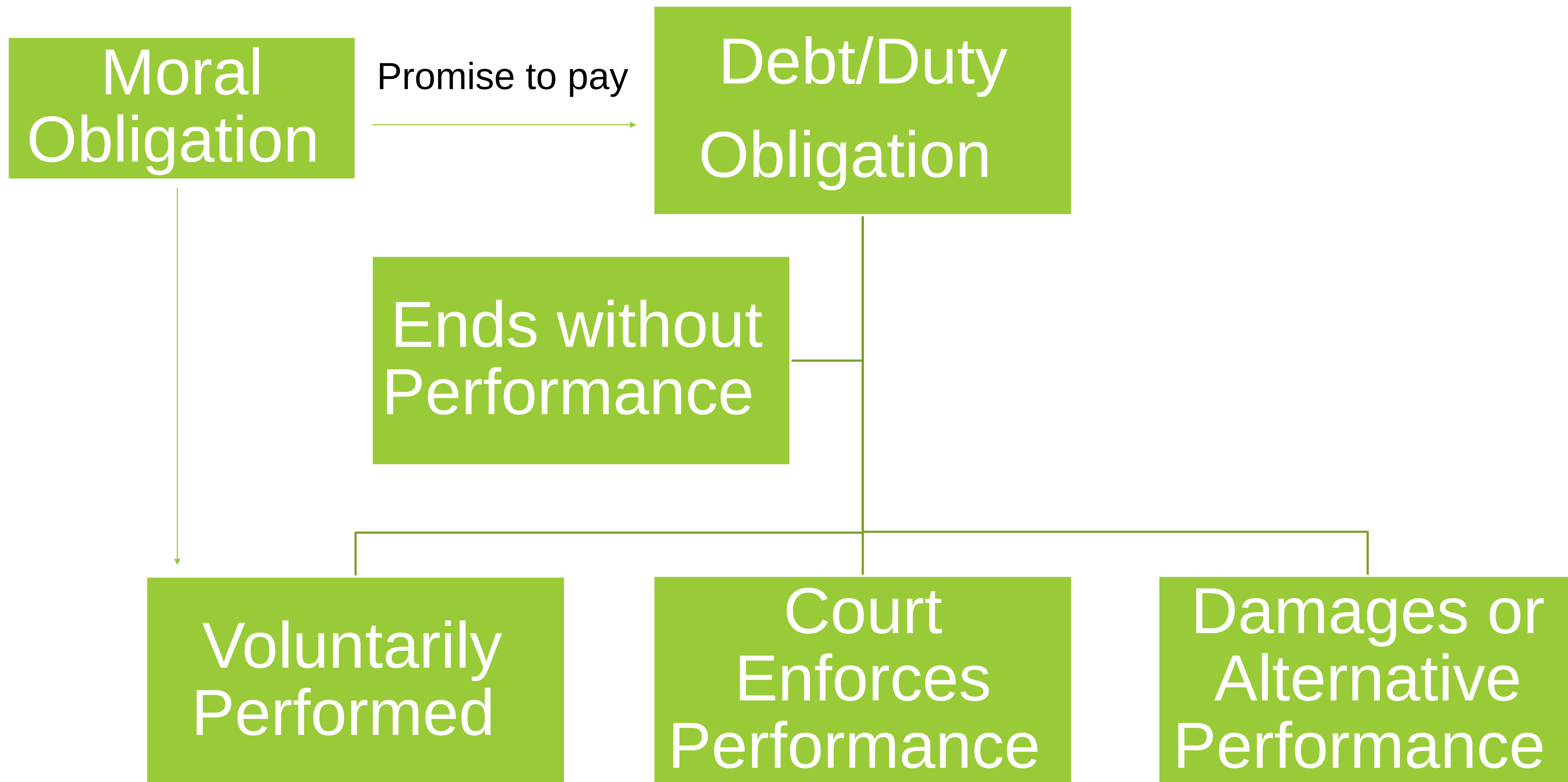


EFFECTS OF OBLIGATIONS

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PERFORMANCE / PAYMENT



Questions about Performance

- 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?

ALTERNATIVES FOR SPECIFIC PERFORMANCE

WHAT HAPPENS IF DEBTOR DOES
NOT PERFORM ?

If debtor refuses to perform

- Sometimes there are other way of getting performance without intervention by the debtor (see later).
- The court may take action to force the debtor to perform (see later)
- The court take action to perform the obligation: seizing the debtor's property and selling it in order to meet the obligation (see later)

Alternative Performance if

- 1- Specific Performance is not obtainable because it is physically impossible or legally impermissible
- OR
- 2- Specific Performance is not enough: creditor suffered harm

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 / الأرش
- 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

DAMAGES

What are damages

- Payment of money to compensate for harm caused by fault
 1. Fault (non-performance) + impossibility or uselessness of specific performance due to the debtor's action
 2. Causality
 3. Harm: Loss incurred or profit forfeited

Conditions for Damages

1. Fault (non-performance) + impossibility or uselessness of specific performance due to the debtor's action
2. Causality
3. Harm: Loss incurred or profit forfeited

1- Fault

1. Non- Performance

A. No performance at all: didn't deliver any of the goods

B. Partial performance:

A. Quantity: Delivered 50% only

B. Quality: Damaged goods

C. Late performance: Delivered all the goods but late

1- Fault

2. Non performance is due to the Debtor

Not force majeure

Note due to the Creditor's action

2- Harm

1. Loss incurred

(CL) Restitution : Putting the person in the place he was before the contract:

e.g: Buyer had to buy the goods from another seller for a higher price.

Buyer of a car needed to buy some spare part, or take car to be fixed

Buyer of a car needed to rent a car to use until car was fixed

2. Profit Missed

CL: Expectation Damages: Putting the person in the place he would have been if the contract was performed.

Missed profit ?

1. A bought goods at discount price from B (10 pcs, 500 SAR a pc)
2. Price in the market is 700
3. A expected profit of 2000 SAR (10×200)
4. B never performed.
5. A: didn't lose any money. But he didn't make the 2000 profit.

Types of damages

1. Monetary : you receive money equal to the loss
2. Alternative performance: you receive an alternative goods, an alternative apartment, a similar car to use
3. Non- Monetary Performance:
 1. Declaratory judgment
 2. Publication in a news paper.

Judicially awarded damages

1. Court case:
 - A. Judge Asserts fault
 - B. Judge Assesses harm
 - C. Judge ensure there is Causality
2. Does judge take into account the debtor's or the creditor's behavior: NO, but they maybe included as "circumstances"
3. Only Direct harm....not indirect harm that debtor could have prevented through reasonable effort
4. Only Expected (Foreseen) harm: Debtor must be aware of circumstances that may cause more harm or loss of bigger profit
5. Creditor has to prove harm

Liquidated damages: التعويض الاتفاقي

- Parties to a contracts agree to a sum of money to be paid (or an alternative performance to be undertaken (very rare) as compensation for breach of contract
- The contract sets the conditions.
- All three elements of damages need to be present (fault, harm, causality)
- Usually it is a lump sum which maybe less or more than actual harm
- Creditor does not need to prove the harm, but debtor may prove there was no harm

Liquidated damages v. Penalties

- Penalties are damages also pre-agreed by parties, but as a threat to the debtor.
- Usually they are high in amount and exceed any harm that may take place

Judges authority over LQ

- Judges may still:
 1. Refuse awarding LQ if conditions are not present
 2. May decrease them if they are exaggerated, or there is partial performance, or if they were actually penalties
 3. May increase them (rarely) if creditor committed a fault or gross negligence, or the LQ itself proved to be nominal

QUESTIONS?

THANK YOU!