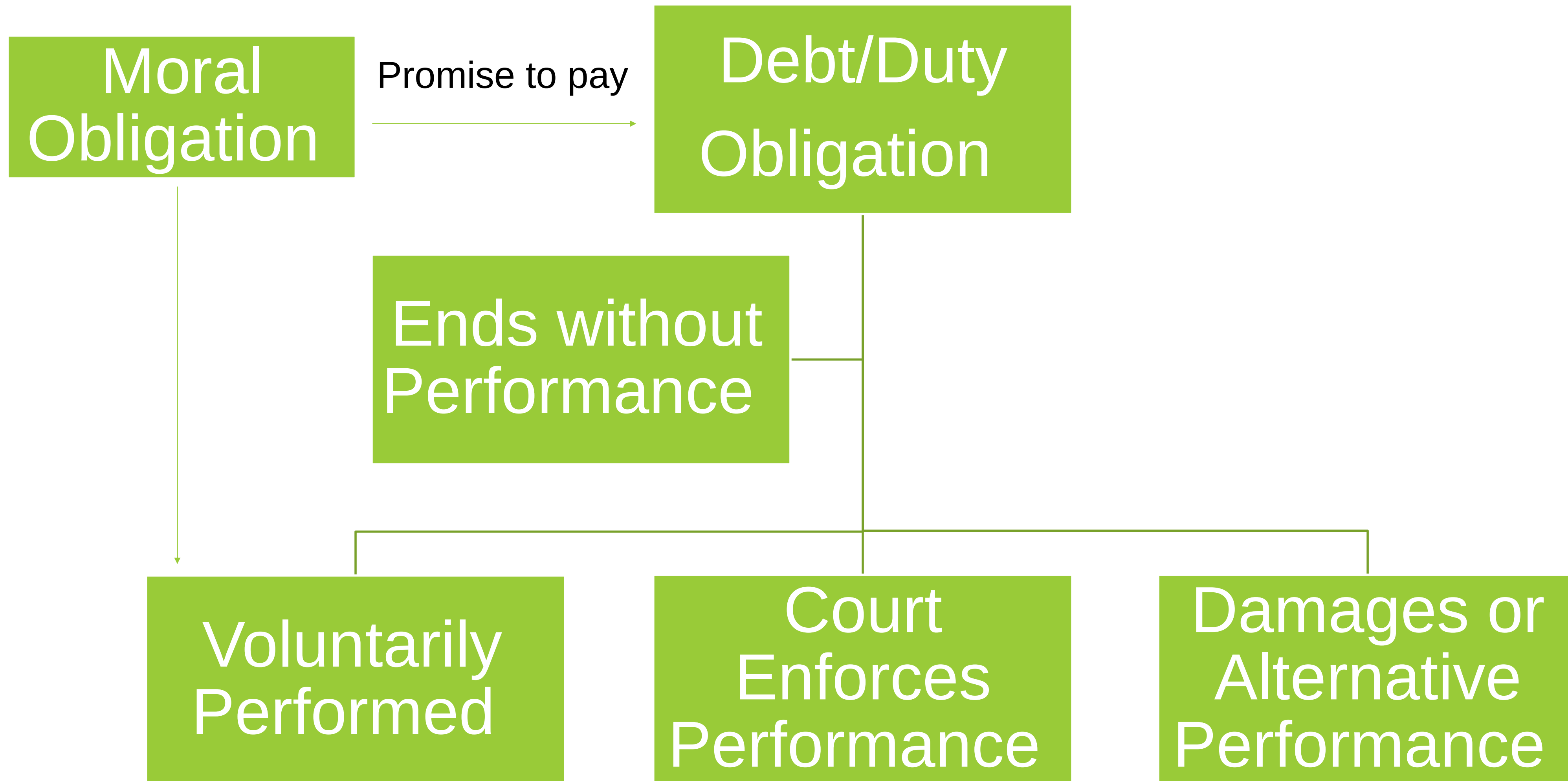


EFFECTS OF OBLIGATIONS

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END WITHOUT PERFORMANCE

Ends without Performance

1. Release / Forgiveness : إبراء
2. Impossibility : استحالة
3. Merger : اتحاد الذمة (اجتماع الدائن والمدين)
4. Statute of Limitation : التقادم/ عدم سماع الدعوى
5. Set Off/ Netting : المقاصة
6. Novation : التجديد

1- RELEASE / FORGIVENESS

End Without Performance



End Without Performance

- Forgiveness , Release



1- Release: الإبراء

1. A debtor's obligation is terminated if the creditor releases him/her from the debt.
2. Release without payment or an equivalent
3. Release is only valid if it is from an actual standing debt (not from any debts in the future)
4. Release does not require acceptance from the debtor. (it is not a contract)
5. Yet, The debtor may reject the release

6. Either expressed, or implied from clear signs (delivery of receipt).
7. Takes effect from the time the debtor knows about it.
8. If the debtor dies before accepting, the release takes effect
9. Release is considered an act of charity (benevolence, gratuity تبرع)
10. Release does not require formalities (even if the obligation itself required formality to be established) (unless law requires otherwise)
11. Maybe added to the future: in a will, in a terminable illness (مرض الموت)

Case law

1. Requires Capacity and No defects in Agreement
2. Maybe Partial or whole
3. May release the guarantor only
4. Banking Commission saw implied forgiveness in passage of time without a claim.

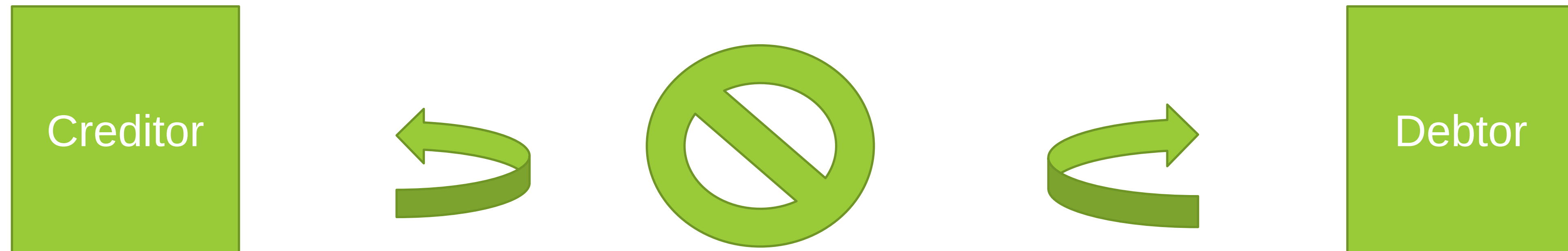
2- IMPOSSIBILITY

End Without Performance



End Without Performance

- Impossibility



- 1- Legal: Prohibition
- 2- State imposed: Confiscation
- 3- Natural: Storm
- 4- Other: Wars
- 5- Acts of Third Party

2- Impossibility:

- An obligation is terminated if it becomes impossible to perform for a reason outside the control of the debtor سبب أجنبي لا يد له فيه
- If there is counter obligation on the other party, that obligation is also terminated
- If impossibility is due to or can be attributed, partially at least, to debtor's fault, or to someone whom the debtor is responsible for, then debtor is responsible for Damages.

Judicial Example

1. Taking of land by the State, seller has to return the price, buyer only has the right to claim return of the price.
2. Impossibility of transferring ownership of a car, because there is a case against seller. Not enough, seller needs to take the necessary to remove the case and transfer the ownership.

3- TIME BAR OF CLAIMS / STATUTE OF LIMITATIONS

تقادم _ عدم سماع الدعوى

End Without Performance

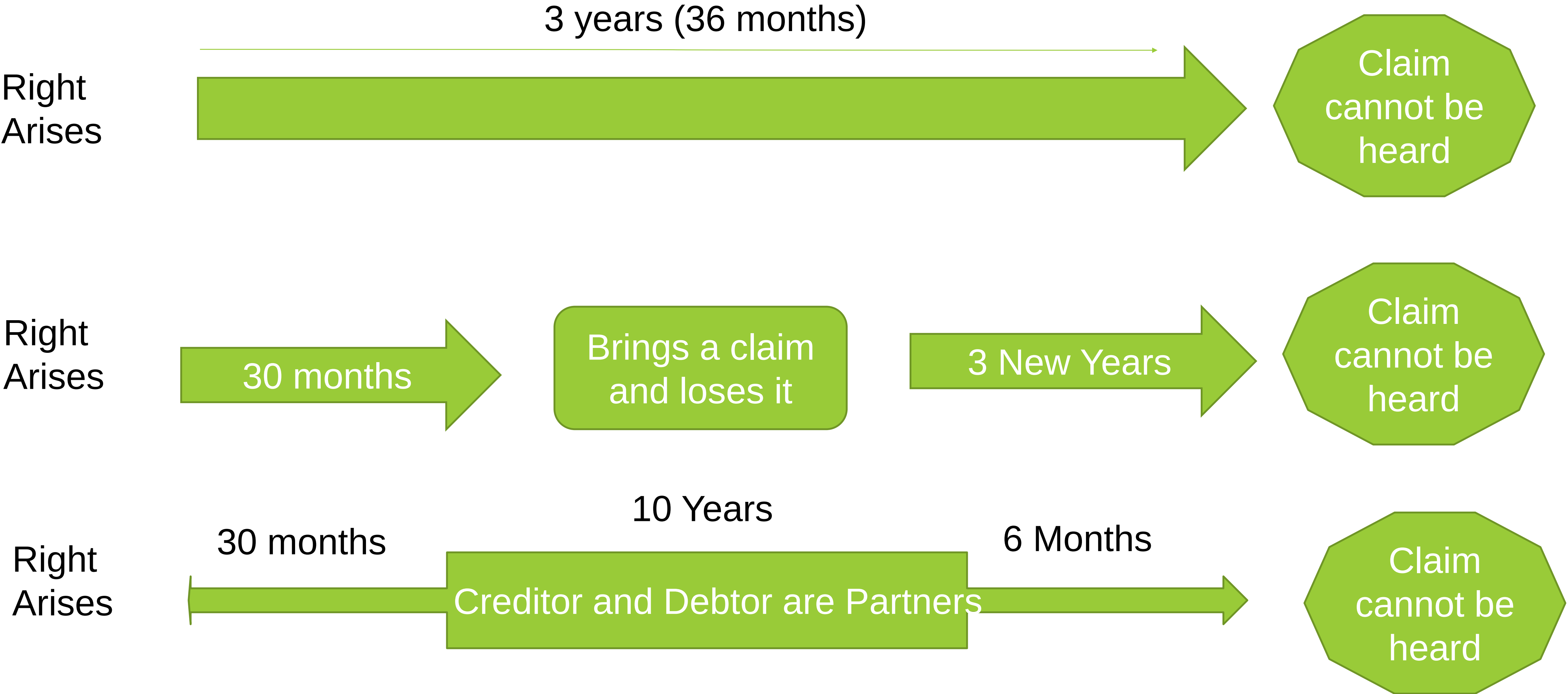
- Time Lapse: Statute of Limitation:



The Debt Remains, but cannot be enforced by the Court:

1. The debtor may admit its existence
2. The debtor may choose to perform it voluntarily

Time Limit: Interruption v. Suspension



4- Statute of Limitation

1. Time limits imposed by the Statute: 3 years in many cases.
2. Depend on the statute and type of obligation
3. Prevents the court from hearing a claim about a debt after certain period has passed
4. Only if the debtor denies the existence of the debt
5. Leaves behind a Moral Obligation to pay.

General Rules of Calculation

1. Calculation of period is suspended whenever there is an Excuse: Illness, Absence, Force Majeure (war), Relationship (Principal-Agent, Husband-Wife)
2. Calculation is restarted when creditor pursues his rights: Claim, Notice, Admission by the debtor.

Judicial Application

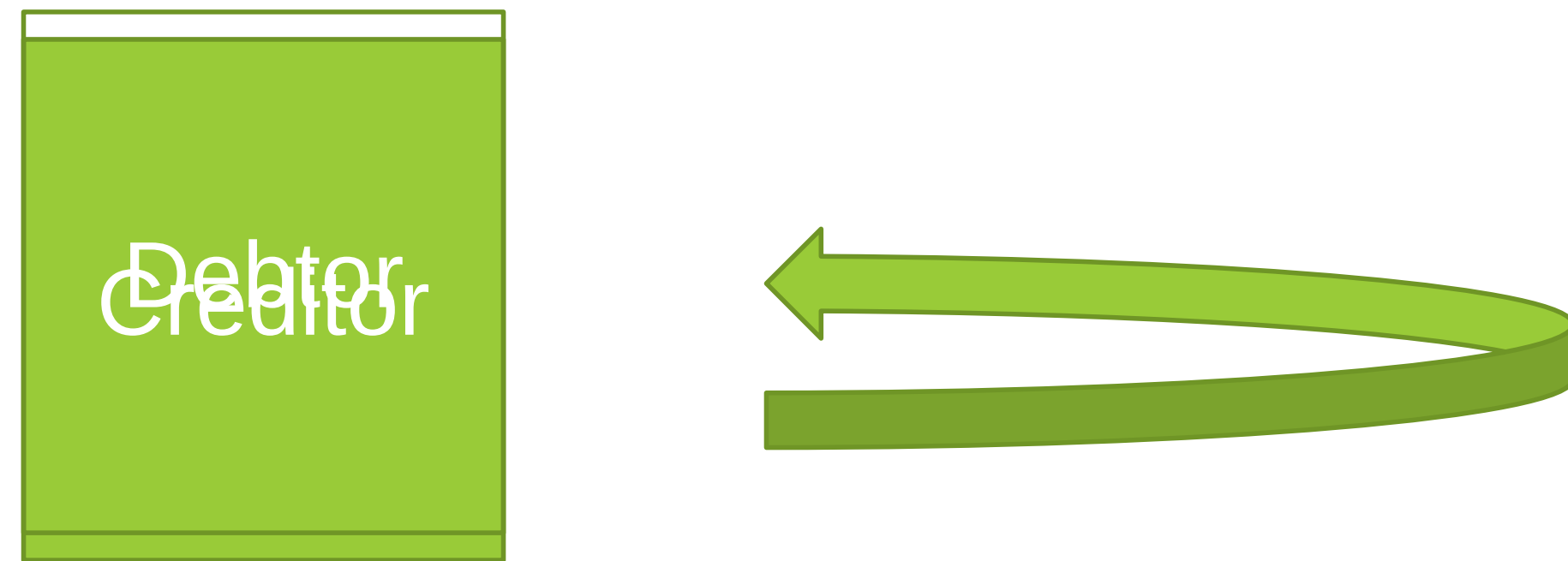
1. Judges impose تقادم even if there is no clear indication in a statute.
2. Sometimes they impose it as such , mere time barrier, or based on implied forgiveness
3. Requires:
 1. The Creditor's سكوت عن المطالبة, Not claiming his right
 2. Long time of silence
 3. No legitimate (Acceptable) Excuse for the silence

4- MERGER

End Without Performance



End Without Performance



Debtor and Creditor Become 1
Person

End Without Performance



Merger

- Merger is not actually a termination of the debt, but rather is suspension of it, because of the impossibility of someone suing himself for a debt.

3- Merger اتحاد الذمة

- If a person becomes both the debtor and creditor at the same time,
- The debt is terminated to the extent of the merger
- The debt is terminated with all its accessories (securities, for example)
- If the merger dissolves, the debt returns back. Hmmmm?
- Examples:
 1. A company that issued bonds (debts) buys back its own bonds
 2. Two companies (debtor and creditor) merge into one company
 3. A Debtor inherits his creditor.

Example 1

1. Company A issues 100,000 Bonds, each for 10 SAR. This is 1 million SAR.
2. The Company makes profits and decides to recall some of the debt. The company buys 20,000 bonds. This is 200 thousand SAR.
3. Now the company only owes the creditors (bond holders) 800,000 plus interest.
4. If the company needs money again, and the Bonds are still valid, it can resell the bonds again, and become a debtor once more

Example 2

1. A is B's Cousin.
2. A borrows from B 100,000 SAR
3. B dies and leaves 1 million SAR
4. B is inherited by his cousins (has no direct relatives)
5. A's share of the estate is 20,000 SAR
6. A is considered released from 20,000
7. A does not receive any money from the estate.
8. A must pay the Estate 80,000 SAR

NOTICE: No Merger

1. A is B's Cousin.
2. A borrows from B 100,000 SAR
3. A, the debtor, Dies.....What happens now?
4. B does not inherit A, until all of A's debts are paid. لا تركة الا بعد سداد الديون
5. All of A's debts have to be paid first, then, when there is something left, the rest go to the heirs.
6. So B, will get his debt back first, THEN takes his share of the estate, if an is left.

Notice: No Merger

- A owes Company 100,000 SAR
- A becomes partner in Company
- Company can still sue

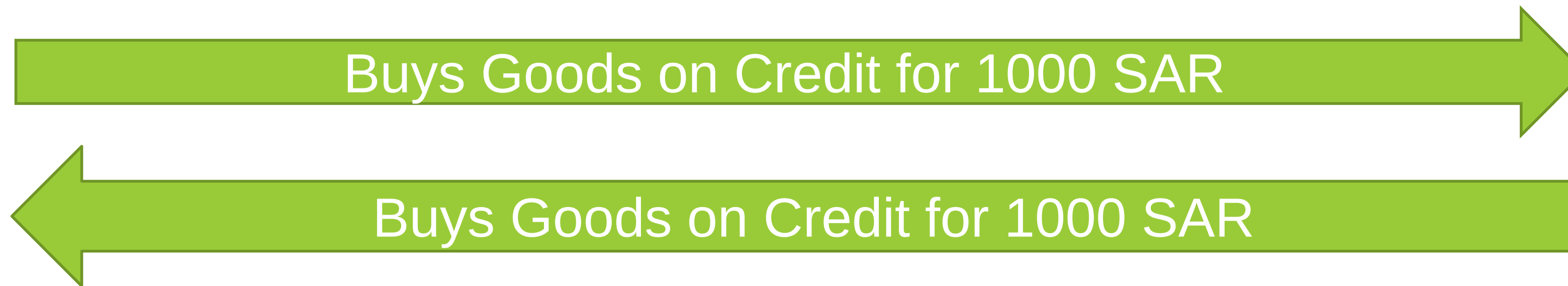
5- SET OFF / NETTING

Set off

- Termination of two debts owed by two people, each of them is both debtor and creditor to the other.

Set Off

A



B

Set Off

A



1000 – 1000 = Zero

B

Set Off

A

Buys Goods on Credit for 500 SAR

B

Buys Goods for Credit for 1000 SAR

Set Off

A



B

Types

- Obligatory: Automatic: takes place once the conditions are satisfied
- Judicial: missing a condition which gets fulfilled by the court
- Contractual: depends on the parties' agreement

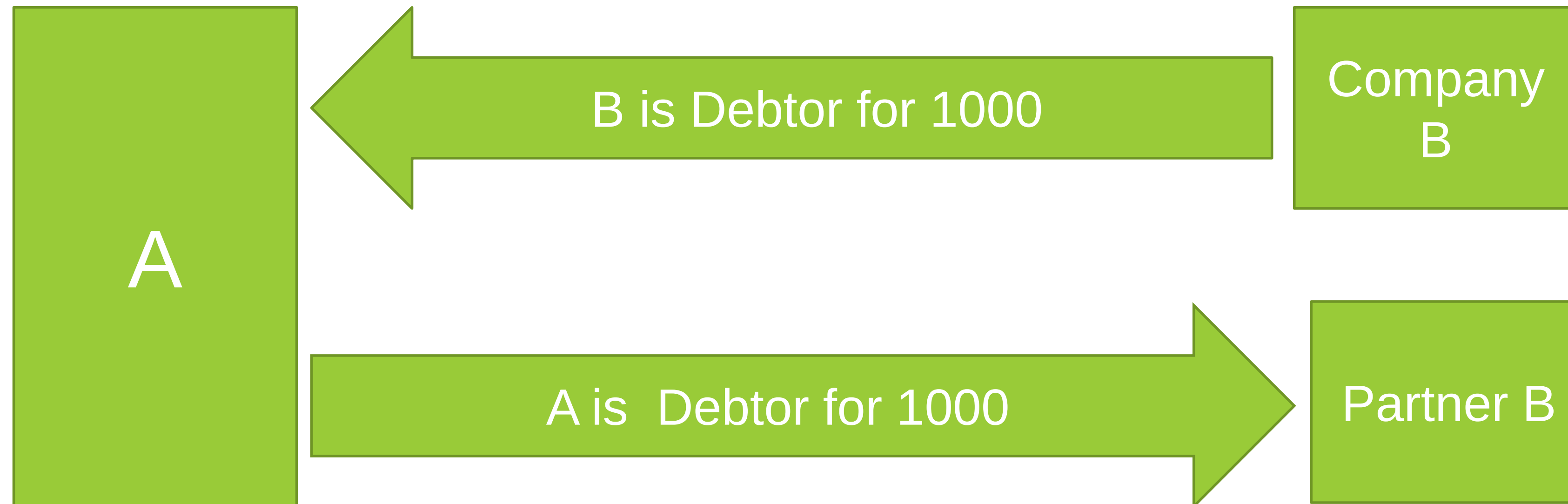
CONDITIONS OF AUTOMATIC SETOFF

Conditions

1. Each party is both a creditor and debtor to the other
2. Both debts are due
3. Both debts are similar:
4. Both debts are Undisputed

Conditions

1. Each party is both a creditor and debtor to the other
 1. Does not require legal capacity



Conditions

1. Each party is both a creditor and debtor to the other
2. Both debts are due
3. Both debts are similar:
4. Both debts are Undisputed
 1. Otherwise we need the court to solve the dispute first, regarding the existence of the debt or its value.

- Notwithstanding the Moratorium, the Creditor is entitled to demand that the Debtor repays its Debt in the event where the Debtor requests the Creditor to pay any of the remaining Debt owed to the Debtor. The Creditor shall only pay the Debtor any remaining Debt owed to the Debtor, if any, after the Creditor deducts the Debtor's outstanding Debts. If the outstanding debt owed to the Creditor exceeds those owed by the latter to the Debtor, then the Creditor shall have the right to vote on the Proposal or any decision in proportion to said outstanding Debt.

6- NOVATION

Novation

- Parties agreeing to a new agreement that creates a new debt that substitute for the old the debt.
- So the old debt ends, as if it was a release or foreignness
- A new debt is created

Novation

1. Novation by changing the debtor:
2. Novation by Changing the Creditor
3. Novation by Changing the Subject Matter
4. Novation by changing the source of the Obligation

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Novation by Changing the source of Obligation

1. Moral Obligation into Legal Obligation
2. Obligation arising out of Illicit Act to Obligation arising out Contract
3. All deposits at a Bank Account

Judicial Application

1. Admission of a debt that is evidenced in a negotiable Instrument

QUESTIONS?

THANK YOU!