

EFFECTS OF OBLIGATIONS

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QUALIFICATIONS / CHARACTERISTICS OF AN OBLIGATION

أوصاف الالتزام

Qualifications

1. Suspension or Delay of the existence of an obligation
 - A. A condition Precedent, or **Suspensive Condition**: الشرط الواقف
 - B. A condition subsequent, or **Resolutive Condition**: الشرط الفاسخ
 - C. Time Delay, Term, Maturity: الأجل
2. **Alternative or Optional Obligation**: الالتزام التخييري والبدلي
3. Solidarity
 - A. Joint and Several Liability, Solidary Obligation: التضامن السلبي
 - B. Joint Obligation: التضامن الإيجابي

SUSPENSIVE CONDITION

1- Suspensive Condition: الشرط الواقف

- **Suspensive Condition** : a condition which must be fulfilled before an obligation is enforceable
- **Condition Precedent** : a condition that must be fulfilled before performance under a contract can become due, an estate can vest, or a right can become effective
- An event that must take place first, before a contract or a certain obligation takes effect and becomes enforceable.

!!!!!!WATCH OUT!!!!!!

شروط but not Conditions

- Condition not a **Requirement** :
 - The law Requires registration of a car sale for transfer of ownership
 - The law Requires a franchise agreement to be in writing
 - The law requires a restaurant to have a license
- Condition not a **Clause**:
 - A clause in the contract requires seller to maintain the car after sale for 3 years
 - A clause in the contract requires a seller to pay in cash no with checks
- Condition not **Mutual Obligations**
 - The Buyer is obligated to Pay the Price and Seller is obligated to Deliver the goods:
if buyer does not pay, seller may withhold delivery.

1. Requirements of a Suspensive Condition
2. Effect of a Suspensive Condition

REQUIREMENTS OF A SUSPENSIVE CONDITION

Requirements of a Condition

1. A Future Event
2. Possible to Occur
 - A. Not impossible
 - B. Not Certain
3. Not against public order or Islamic Law
4. Not left to the unilateral discretion by the obligor (the debtor).

1- A future event

1. Not something that has already materialized
2. Or something that takes place at the time of contracting

Even if the parties didn't know that the event has already taken place.

I sell you my car on the condition that the mechanic is able to find the necessary spare parts to fix it.

If the mechanic has already found the spare part, then the sale is effective.

I insure my house against the risk of a fire, if the house has already burned down. !!! **Notice: exceptions in Marine Insurance**

2- Possible to Occur:

- Not Certain: if certain then it is not a condition at all, but a Term
 - I sell you my car on the condition that the mechanic ever finishes its maintenance.
 - this is not a condition, but is a term of delivery: delivery will take place once the mechanic finishes its regular maintenance
 - Life Insurance, where the Insurance company pays a sum to the heirs when the insured dies.
- Not impossible: if impossible then there is no obligation in the first place:
 - I sell you my car on the condition that you can walk to the moon! This is a joke.

3- Not dependent on the unilateral discretion of the obligor

- I buy your car, and you deliver it **if you want?**
- Dependent on a natural event: ✓ : **Insurance against earthquakes**
- Dependent on 3rd party decision: ✓ **Insurance against theft.**
- Dependent on one party's decision + a 3rd party's : I gift you my house if you married your cousin. ✓
- Dependent on an action by a party: ✓ **I will finance your project if I can obtain a loan from the bank, or If I can sell me house.**
- Dependent on a mere decision by the creditor ✓ **I will finance your project up to 100,000 SAR if you want.**
- Dependent on a mere decision by the Debtor: ✗

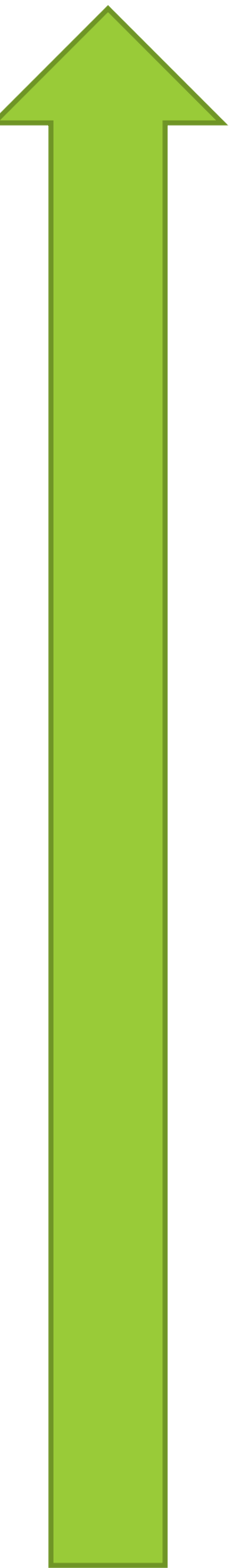
4- Not against public order or against Islamic law:

- I sell you my car if you kill A
- I sell you my car if you steal B's car for me
- Not that the condition (the event) itself is against public policy, but that the effect is against public policy

EFFECTS OF A SUSPENSIVE CONDITION

Effect of Suspensive Condition

1. The Obligation arises at the time of contracting.
2. The effect of the obligation is suspended as long as the condition has not materialized
3. The obligation becomes effective once the condition takes place
4. The obligation becomes effective **Retroactively: from the date the obligation arose.**



The Obligation is Existent

1. The obligee is a Creditor
2. Creditor can notarize his contract
3. Heirs of the Creditor inherit the right
4. Creditor can undertake some legal actions to protect his rights
(derivative action, or action claiming a fictional/apparent transaction by debtor).

The Obligation is Suspended

1. Creditor cannot enforce his right
2. Debtor cannot perform his right
3. Creditor cannot bring actions of fraudulent conveyance or insolvency or seize his debtor's assets in third party's hands.
4. Statute of limitation does not start running
5. Seller bears the risk of loss
6. Set off does not take place

Obligation Becomes Effective

1. Condition must take place exactly as stipulated
2. Exact time, unless there was no time stipulated
3. Condition is considered to have materialized, if it became impossible due to the debtor's fault .
4. Condition is considered impossible, if materializes due to creditor's fault. (Insured burns his own house).

Retroactive Effect

- Does not really apply in all cases, but sometimes it is useful:

The buyer sells the goods (that he just bought), before the condition materializes

Then the condition materializes:

The sale is valid, because we consider the buyer to have owned the goods from the earlier time

RESOLUTORY CONDITION

THANK YOU !
