

## DIVISION II. — OF SOME PARTICULAR KINDS OF OBLIGATIONS.

### [DIVISION II. — OF VARIOUS KINDS OF OBLIGATIONS.]

#### TITLE I. CONDITIONAL OBLIGATIONS.

138. — Whenever the performance or the extinction of an obligation depends either on the occurrence or on the non-occurrence of an uncertain event, the obligation is said to be conditional.

An event is said to be uncertain when there is a possibility of its not occurring.

*ILLUSTRATION. — I. — A agrees to give B a house if B marries. The performance of A's obligation depends on the occurrence of B's marriage. A's obligation is conditional.*

*II. — A agrees to give B a house if C does not marry before the 1st. of April 2455. The performance of A's obligation depends on the non-occurrence of C's marriage. A's obligation is conditional.*

*III. — A agrees to give B 2000 baht a year until B marries. The extinction of A's obligation depends on the occurrence of B's marriage. A's obligation is conditional.*

*ILLUSTRATION. — I. — A agrees to give B a house if B marries. The performance of A's obligation depends on the occurrence of B's marriage. A's obligation is conditional.*

*II. — A agrees to give B a house if C does not marry before the 1st. of April 2455. The performance of A's obligation depends on the non-occurrence of C's marriage. A's obligation is conditional.*

*III. — A agrees to give B 2000 baht a year until B marries. The extinction of A's obligation depends on the occurrence of B's marriage. A's obligation is conditional.]*

139. — An obligation subject to an unlawful condition, or to a condition contrary to public policy or to the safety of persons or property is void.

140. — If the condition afterwards becomes lawful or not contrary to public policy or to the safety of persons or property, the obligation does not become valid.

141. — If no time is fixed for the fulfilment of the condition, and it becomes certain that the condition cannot be fulfilled, the condition is deemed to be unfulfilled.

*ILLUSTRATION. — A agrees to give B a house if B marries C. C dies without being married*

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**TITLE I. — CONDITIONAL OBLIGATIONS.**

*to B. It becomes certain that the condition cannot be fulfilled. The condition is deemed to be unfulfilled. A's obligation is extinguished.*

**142. —** If the property which is the subject of the conditional obligation is lost or damaged before the condition is fulfilled, the provisions of this Code concerning non-performance shall apply.

*ILLUSTRATION. — A buys B's house subject to the condition that the sale shall be valid only if A marries. A marries, but before he marries the house is damaged by fire. A has the remedy described in Sections 257 to 272 concerning non-performance, that is to say he can claim cancellation of the contract (section 262) or he can accept the house as it is, subject to a reduction of price ( section 264). He is also entitled to compensation for non-performance, provided that the fire be not due to force majeure.*

**TITLE II.**  
**OBLIGATIONS SUBJECT TO A TIME CLAUSE.**

[47]

143. — If a time is fixed for the performance or for the extinction of an obligation, such obligation is said to be subject to a time clause.

*ILLUSTRATION.* — I. — *On the 1st. April, A agrees to deliver to B a pony on the 10th September next. The obligation of A is subject to a time clause.*

*II. — A agrees to lend to B a certain property until C shall die. The obligation of A is subject to a time clause.*

144. — If the property which is the subject of an obligation with a time clause is lost or damaged before the time has arrived, the provisions of this Code concerning non-performance shall apply.

145. — A time clause is presumed to be for the benefit of the debtor, that is to say the debtor can perform the obligation before the time has arrived, unless it appears that the time clause was also stipulated for the benefit of the creditor.

*ILLUSTRATION.* — *On the 1st of January, A borrows from B 1000 baht to be repaid on the 1st. of May next following. It is presumed that A can repay the money before the 1st. of May.*

146. — The debtor loses the benefit of the time clause if he has fraudulently concealed that securities given by him were subject to charges or to preferential rights.

[48]

*ILLUSTRATION.* — *On the 1st of January 2454, A agrees to lend 10,000 baht to B to be repaid on the 1st. of January 2455. The debt is secured by a mortgage on B's house. If B has fraudulently concealed from A that the house was already mortgaged to C, B loses the benefit of the time clause, that is to say A is entitled to claim immediate repayment of the money lent.*

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**TITLE III.  
ALTERNATIVE OBLIGATIONS.**

147. — If the prestation is to be selected from among several prestations, the obligation is said to be alternative.

148. — The right of selection is presumed to belong to the debtor.

149. — If the selection is to be made within a period of time, and the party who has the right of selection does not exercise it within such period, the right of selection passes to the other party.

150. — If no period of time was fixed, the party who has not the right of selection can notify the other party to exercise his right of selection within a reasonable time, to be fixed in such notice. [49]

If the other party does not exercise his right of selection during such time[,] the right passes to the former party.

151. — If the selection is to be made by a third person, and such person does not make it, the right of selection passes to the debtor.

In such case the provisions of Sections 146[9] and 150 apply *mutatis mutandis*.

152. — After selection is made, it cannot be changed except by mutual consent.

153. — If among the prestations one is or several are impossible, the obligation is valid as to the other prestations.

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**TITLE IV.  
PLURALITY OF CREDITORS OR DEBTORS.**

**CHAPTER I.  
GENERAL PROVISIONS.**

154. — If there are several creditors or several debtors, the obligation is presumed to be divided, that is to say, each creditor or debtor is presumed to have a separate share in the rights or liabilities arising out of the obligation. [50]

155. — The shares of each creditor or debtor are presumed to be equal.

156. — A creditor is not entitled to claim performance for more than his share.

A debtor is not bound to perform more than his share.

157. — Facts which apply to one of the creditors or debtors personally do not affect the other creditors or debtors.

158. — Joint obligations and indivisible obligations constitute an exception to the rules provided in this Chapter.

**CHAPTER II.  
JOINT OBLIGATIONS.**

**[PART] I. — GENERAL PROVISIONS.**

159. — An obligation is said to be a joint obligation if there are several creditors or debtors and each of them is either entitled to receive or bound to make performance of the whole of the obligation.

160. — There is no joint obligation unless there be an express agreement or an express provision of law to that effect. [51]

161. — If several persons are entitled to receive or bound to make performance of an obligation under one contract, they are presumed to be joint creditors or joint debtors.

*ILLUSTRATION. — I. — A has borrowed money from B, C and D under one contract. B, C and D are presumed to be joint creditors of A.*

*II. — A, B and C have borrowed money from D under one contract. A, B and C are presumed to be joint debtors of D.*

162. — The fact that an obligation is voidable as to one of the joint parties does not affect its validity as to the other parties.

*ILLUSTRATION.* — A, B and C contract jointly to lease a house from D. B is under age and has acted beyond the scope of his capacity. If the obligation of B is cancelled A and C remain liable for the whole of the tenancy.

**[PART] II. — JOINT CREDITORS.**

[52]

163. — If there are several joint creditors, each creditor can demand performance of the joint obligation, but the prestation made as performance must be divided among the several joint creditors.

*ILLUSTRATION.* — A, B and C are joint creditors of D for a sum of 1500 baht. A acting alone can demand from D payment of the 1500 baht, but A must divide the said sum with B and C.

164. — As between the joint creditors, a joint obligation is presumed to be divided into equal shares.

*ILLUSTRATION.* — A has borrowed 1500 baht from B, C and D. As between B, C and D, they are each presumed to have a share of 500 baht in the debt.

165. — If the debtor is served with a writ at the suit of one of the joint creditors, he cannot perform the joint obligation to another joint creditor.

~~Up to the time of such service, he is entitled to perform the joint obligation to any of the joint creditors.~~

[166. — Up to the time of such service, the debtor may perform the joint obligation to any of the joint creditors.]

*ILLUSTRATION.* — A has borrowed 1000 baht from B, C and D. C enters an action for repayment against A. Up to the time of service of the writ A was entitled to make payment to B, C or D. From the moment when he is served with the writ he can make payment to C only.

[53]

~~166~~[167]. — If one of the joint creditors demands performance, the debtor can set up against such creditor :

- 1) Defences which are personal to such joint creditor, and
- 2) Defences resulting from the provisions of this Part II.

*ILLUSTRATION.* — A, B and C are joint creditors of D ~~of~~[for] a sum of 1500 baht. A demands payment from D. D can set up against A :

1) Defences personal to A : for instance if A owes 1000 baht to D, D can set off that debt against his own debt, which will then be reduced to 500 baht.

2) Defences resulting from the provisions of this Part II: for instance if D had already made to B a part payment of 500 baht, he can set up that payment against A in the same way as if it had been made to A (See Sect. 167).

**167[168].** — Performance made to one of the joint creditors is equivalent to performance made to all the joint creditors.

*ILLUSTRATION.—I.* — *A, B and C are joint creditors of D for a sum of 1500 baht. D pays that sum to A. B and C cannot afterwards claim payment from D because the payment made by him to A is equivalent to a payment made to A, B and C.*

[54]

*II.* — *A, B and C are joint creditors of D for a sum of 1500 baht. D makes to A a part payment of 1000 baht. B and C cannot afterwards claim from D more than 500 baht, because the payment of 1000 baht made to A is equivalent to a payment made to A, B and C.*

**168[169].** — A deposit made for the benefit of, or a tender made to, one of the joint creditors is equivalent to a deposit made for the benefit of, or to a tender made to, all the joint creditors.

*ILLUSTRATION.* — *A, B and C are joint creditors of D for a sum of money. On the debt becoming due, D tenders the money to A. Although the tender was made to A alone, it is equivalent to a tender made to A, B and C.*

**169[170].** — If the debtor can set off an obligation against one of the joint creditors, he can set it off against all the joint creditors.

*ILLUSTRATION.* — *A, B and C are joint creditors of D for a sum of 1500 baht. A owes 1000 baht to D. C demands payment from D. D can set off against C the debt owed by A. He has to pay the balance only, viz. 500 baht.*

**170[171].** — When an interruption of prescription is made by one of the joint creditors the prescription is interrupted in favour of all the joint creditors.

[55]

*ILLUSTRATION.* — *In the year 2440 A, B and C sell jointly a house to D and deliver it. D fails to pay the price. According to law, an action for payment of the price cannot be entered later than 10 years after the date of the sale. In the year 2445 A enters an action for payment against D. Judgment is given for A and A obtains in execution part payment of the price. In the year 2452 B claims for the balance of the price. D cannot object that the rights of B are extinguished by the 10 years prescription, because the interruption of prescription resulting from the entry of an action by A in the year 2445 avails in favour of all the joint creditors.*

**171.** — ~~An admission under oath or a refusal to take an oath made on the demand of the debtor or of one of the joint creditors takes effect in favour of, or against, all joint creditors.~~

*ILLUSTRATION.* — ~~*A, B and C pretend to be joint creditors of D for money borrowed. A enters an action for payment against D. No clear evidence of the debt is produced. A declares that he will be satisfied if A swears that he does not owe the money claimed. D swears. If B subsequently demands payment of the money from D, D can avail himself of the oath taken by him in the action entered by A, even should B produce clear evidence of the debt.*~~

~~*If D had refused to swear, and if the Court had considered the refusal sufficient evidence that he was indebted to A, the refusal would also be evidence in favour of B and C.*~~

[56]

172. — When one of the joint creditors is in default. all the joint creditors are in default.

*ILLUSTRATION.* — *A, B and C are joint creditors of D for a sum of money. On the debt becoming due, D tenders payment to A. A refuses to accept payment. A B and C are in default as creditors.*

173. — When the debtor is in default as against one of the joint creditors, he is in default as against all the joint creditors.

*ILLUSTRATION.* — *A, B and C have jointly lent money to D. The money is to be repaid on demand made by any one of the creditors. A comes and demands the money from D. D does not repay it. Although A alone came and demanded the money D is in default as against A, B and C.*

174. — An extension of time granted by one of the joint creditors is presumed to be an extension of time granted by all the joint creditors.

*ILLUSTRATION.* — *A, B and C are joint creditors of D for a sum of money to be repaid on the 1st. of July 2455. A allows D to postpone repayment till the 1st. of April 2456. The extension of time is presumed to have been granted to D by A, B and C, that is to say B or C cannot claim payment before the 1st. of April 2456 unless they can prove that they did not agree to the extension.*

[57]

175. — A release granted by one of the joint creditors is presumed to be a release granted by all the joint creditors.

*ILLUSTRATION.* — *A, B and C are joint creditors of D for a sum of 1500 baht. A agrees to reduce the debt to 1000 baht. B and C are presumed to have agreed to the reduction.*

176. — Securities given by the debtor to one of the joint creditors are presumed to be securities given to all the joint creditors.

*ILLUSTRATION.* — *I. — A, B and C are joint creditors of D for a sum of money. D has given to A a pledge to guarantee his debt. It is presumed that if D does not pay the debt, the pledge may be enforced by B or C as well as by A.*

*II. — A, B and C are joint creditors of D for a sum of money. E has agreed with A to be surety for D. It is presumed that if D does not pay the debt, payment may be claimed from E by B and C as well as by A.*

177. — With the exception of the facts mentioned in Sections ~~167~~[168] to 176, facts which apply to one of the joint creditors do not affect the other joint creditors.

[58]

**[PART] III. — JOINT DEBTORS.****1. — RELATIONS BETWEEN JOINT DEBTORS AND THE CREDITOR.**

178. — If there are several joint debtors, the creditor can demand performance from all or any one of them.

*ILLUSTRATION.* — *A, B and C jointly borrowed money from D. When the debt becomes due, D can claim payment from A, B and C together, or from A, or B, or C separately, or from A and B, or from B and C, or from A and C, as he likes.*

179. — As long as the joint obligation has not been wholly performed, the joint debtors remain jointly liable for the performance.

*ILLUSTRATION.* — *A, B and C owe jointly 1500 baht to D. A makes to D a part payment of 1200 baht. A balance of 300 baht remains due. A, B and C remain jointly liable for such balance, that is to say D can claim payment of 300 baht from A, B and C together, or from A, or B, or C separately, or from A and B, or from B and C, or from A and C, as he likes.*

**[59]**

180. — If the creditor demands performance from one of the joint debtors, such joint debtor can set up against him :

- 1) Defences which are personal to such joint debtor, and
- 2) Defences resulting from the provisions of this Part III.

*ILLUSTRATION.* — *A, B and C are joint debtors of D for a sum of 1500 baht. D demands payment from A. A can set up against D:*

- 1) *Defences personal to A: for instance if D owes 1000 baht to A, A can set off that debt against his own debt, which will be reduced to 500 baht.*
- 2) *Defences resulting from the provisions of this Part III: for instance if C had already made to D a part payment of 500 baht, A can set up that payment against D in the same way as if it was a payment made by A (see Section 181).*

181. — Performance made by one of the joint debtors is equivalent to performance made by all the joint debtors.

*ILLUSTRATION.* — *I. — A, B and C are joint debtors of D for a sum of money. A pays that sum to D. D cannot afterwards claim payment from B or C because 7 payment made to him by A is equivalent to a payment made by A, B and C.*

**[60]**

*II. — A, B and C are joint debtors of D for 1500 baht. A makes to D a part payment of 1000 baht. D cannot afterwards claim from A, B and C more than 500 baht because the payment of 1000 baht made by A is equivalent to a payment made by A, B and C.*

182. — A tender or deposit made by one of the joint debtors is equivalent to a tender or deposit made by all the joint debtors.

*ILLUSTRATION.* — *I. — A, B and C are joint debtors of D for a sum of 1500 baht. On the debt becoming due, A tenders the money to D. Although the tender is made by A alone, it is*

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equivalent to a tender made by A, B and C.

II. — A, B and C are under a joint obligation to deliver a piece of jewelry to D. On the obligation becoming due, A tenders the jewelry to D. D refuses to accept it. A deposits the jewelry as provided by Section 295 to 305. Although the deposit is made by A alone, it is equivalent to a deposit made by A, B and C.

**183. —** When an interruption of prescription is made against one of the joint debtors, prescription is interrupted all the joint debtors.

*ILLUSTRATION.* — In the year 2440 A, B and C buy jointly a house from D. The house is delivered, but A, B and C fail to pay the price. The action for payment cannot be entered later than ten years after the date of the sale. In the year 2445 D enters an action against A. Judgment is given for D and D obtains in execution part payment of the price. In the year 2452 D claims the balance from B and C. B and C cannot object that the rights of D are extinguished by the ten years prescription because the interruption of prescription resulting from the entry of an action by D against A in the year 2445 operates against all the joint debtors.

[61]

**184. —** When prescription is completed in favour of one [of the] joint debtors, it is completed in favour of all the joint debtors.

*ILLUSTRATION.* — A, B and C are joint debtors of D for a sum of money which falls due on the 1st. of January 2455 and the payment of which is subject to the one year prescription. On the 1st. of January 2455, D grants to A a three months extension of time. Therefore the one year prescription would run for B and C from the 1st. of January 2455 and for A from the 1st. of April 2456. The money is not repaid. On the 15th. of January 2456, D enters an action for payment against A, B and C. The rights of D against B and C are extinguished by prescription. The prescription is deemed therefore to be also completed in favour of A. The whole claim of D against A, B and C must fail.

~~**185. —** An admission under oath or a refusal to take an oath made on the demand of the creditor or of one of the joint debtors takes effect in favour of, or against, all the joint debtors.~~

[62]

~~*ILLUSTRATION.* — D pretends that A, B and C are joint debtors for 1000 baht. D enters an action for payment against A. No clear evidence of the debt is produced. D declares that he will be satisfied if A swears that he does not owe the money claimed. A swears. If D subsequently demands payment from B, or C each of them can avail himself of the oath taken by A in the action between D and A, even should clear evidence of the debt produced against them.~~

~~If A had refused to swear and the Court had considered the refusal sufficient evidence that he is indebted to D, the refusal would also be evidence against B and C.~~

**186[185]. —** When one of the joint debtors is in default the other joint debtors are also in default.

*ILLUSTRATION.* — A, B and C are joint debtors of D for a sum of money. On the debt becoming due, D demands payment from A. If A does not pay, A, B and C are in default as debtors.

**187[186]. —** When the creditor is in default as regards one of the joint

debtors he is in default as regards all the joint debtors.

*ILLUSTRATION.* — *A, B and C have jointly sold a pony to D. The pony is to be delivered on the 1st, of May at D's residence. On the 1st. of May A brings the pony to D's house, but D refuses to take delivery of it. Although A alone brought the pony, D is in default as regards A, B and C.*

[63]

**188[187].** — An extension of time granted to one of the joint debtors is presumed to be an extension of time granted to all the joint debtors.

*ILLUSTRATION.* — *A, B and C are joint debtors of D for a sum of money to be repaid on the 1st. of October 2455. D allows B to postpone payment till the 1st. of April 2456. The extension of time is presumed to have been granted to A, B and C, that is to say D cannot claim payment from A or C before the 1st. of April 2456, unless he can prove that the extension of time was granted to B alone.*

**189[188].** — A release granted to one of the joint debtors is presumed to be a release granted to all the joint debtors.

~~If it is granted to a debtor personally, his share only in the obligation is extinguished to the extent of the release.~~

**[189. — If the release is granted to a debtor personally, his share only in the obligation is extinguished to the extent of the release.]**

*ILLUSTRATION.* — *A, B and C are joint debtors of D for a sum of 1500 baht, their share in the debt being 500 baht each. D grants to A a release of 1000 baht. The release is presumed to have been granted to all the debtors, that is to say D is presumed to have reduced the debt to 500 baht.*

[64]

*If D can prove that the release was granted to A alone, the obligation is extinguished up to the amount of A's share only, that is to say up to 500 baht. D can claim from B and C 1000 baht, and B and C have no recourse against A.*

**190.** — If performance of the obligation becomes impossible through the fault of one of the joint debtors, the creditor can claim the whole of the compensation from any one of the joint debtors.

*ILLUSTRATION.* — *A and B are under a joint obligation to deliver to D a vase of China. The vase is broken through the fault of A. D can claim from A or from B the whole of the compensation due for non-performance.*

**191.** — With the exception of the facts mentioned in Sections 181 to 190, facts which apply to one of the joint debtors do not affect the other joint debtors.

## 2. — RELATIONS BETWEEN JOINT DEBTORS.

**192.** — As between the joint debtors, a joint debt is presumed to be divided into equal shares.

*ILLUSTRATION.* — *A, B and C are joint debtors of D for a sum of 1500 baht. As between themselves A, B and C are presumed to be debtors of 500 baht each.*

[65]

193. — The joint debtor who has wholly or partly satisfied the creditor, either by performing the obligation or otherwise, is entitled to recover from every other joint debtor the proportionate share of such debtor.

*ILLUSTRATION.* — *I. — A, B and C are joint debtors of D for a sum of 1500 baht. As between themselves, their shares are equal, viz. 500 baht each.*

*a) A pays to D 1500 baht. He is entitled to recover 500 baht from B and 500 baht from C.*

*b) A was a creditor of D for 1500 baht, and there has been a set off between A and D. Set off operates as payment. A is entitled to recover 500 baht from B and 500 baht from C.*

*c) A pays to D 1200 baht. A has paid his share of 500 baht. He is **i[e]**ntitled to recover the surplus of 700 baht from B and C, provided that he does not claim more than 500 baht from B or C.*

*d) A pays to D 600 baht. A has paid his share of 500 baht. He is entitled to recover the surplus of 100 baht from B or from C or from both B and C.*

*II. — A, B and C are joint debtors of D for a sum of 3000 baht. As between themselves their shares are : A 500 baht ; B 1000 baht ; C 1500 baht.*

*a) B pays to D 3000 baht. He is entitled to recover 500 baht from A and 1500 baht from C.*

*b) C pays to D 2700 baht. He has paid his share of 1500 baht and 1200 baht more. He is entitled to recover 1200 baht from A and B provided that he does not claim more than 500 baht from A or more than 1000 baht from B.*

[66]

*c) A pays to D 1200 baht. He has paid his share of 500 baht and 700 baht more. He is entitled to recover these 700 baht from B or from C or from both B and C.*

194. — If a joint debtor is unable to contribute his share to a joint debtor who has wholly or partly satisfied the creditor, the deficiency must be borne by all the other joint debtors in proportion to their shares in the obligation.

*ILLUSTRATION.* — *A, B, C and D are joint debtors of E for 11.000 baht in which the respective shares are: A 1000 baht, B 2000 baht, C 3000 baht, D 5000 baht. E claims the whole sum from A who pays it. A having paid 11.000 baht is entitled to recover 2000 baht from B, 3000 baht from C and 5000 baht from D. B and C pay to A the sums which are due by them. D pays only 2000 baht, leaving a deficiency of 3000 baht. A, B and C must bear the deficiency in proportion to their respective shares, that is to say A must bear 500 baht, B 1000 baht and C 1500 baht. A has therefore the right to claim 1000 baht more from B and 1500 baht more from C.*

~~195. — The joint debtor who has satisfied the creditors is subrogated to the rights of creditor against the other joint debtors up to the amount due to him by the other debtors.~~

[195. — The joint debtor who has satisfied the creditor is subrogated to the rights of the creditor against the other joint debtors up to the amount satisfied by him on behalf of such other joint debtors.]

But he cannot exercise such rights to the injury of the creditor.

[67]

*ILLUSTRATION.* — *A and B are joint debtors of C for 10.000 baht, the share of each debtor being 5000 baht.*

*A pays 7000 baht to C. A has paid his share of 5000 baht and has also paid B's share up to 2000 baht. B is adjudged bankrupt. C claims from B payment of the balance of 3000 baht which is still due to him. A being subrogated to C's right claims also from B payment of the 2000 baht which A has paid on behalf of B. B's assets are 4000 baht only. A can prove against B, but only after C has been satisfied for the 3000 baht still due to him. The result is that A can get only 1000 baht from B.*

196. — If a joint debtor has not set up against the creditor defences of which he was aware and which arose out of the provisions of this Part III, the other joint debtors can set up such defences against him when he demands their shares.

*ILLUSTRATION.* — *A, B and C are joint debtors of D for a sum of 1500 baht. D claims the whole sum from A who pays it. A knew that prescription was completed in favour of B, but has not set up against D the defence resulting from Section 180. If A demands from B and C their proportionate shares of 500 baht each, B and C are entitled to set up that defence against A and are not liable to pay him anything.*

197. — The joint debtor who is sued for the performance of the whole of the obligation can summon the other joint debtors to appear in the action, in order that judgment may decide his liability to the creditor and the liability of the other joint debtors to himself.

[68]

### CHAPTER III. INDIVISIBLE OBLIGATIONS.

198. — If a prestation is by nature such that it cannot be divided, that is to say, if it cannot be partly performed to one creditor or by one debtor, the obligation is said to be indivisible.

*ILLUSTRATION.* — *A sells a pony to B and C who buy it jointly. A cannot deliver the pony partly to B and partly to C. A's obligation of delivery is indivisible.*

199. — As far as circumstances admit, the provisions concerning joint obligations apply *mutatis mutandis* to indivisible obligations.