

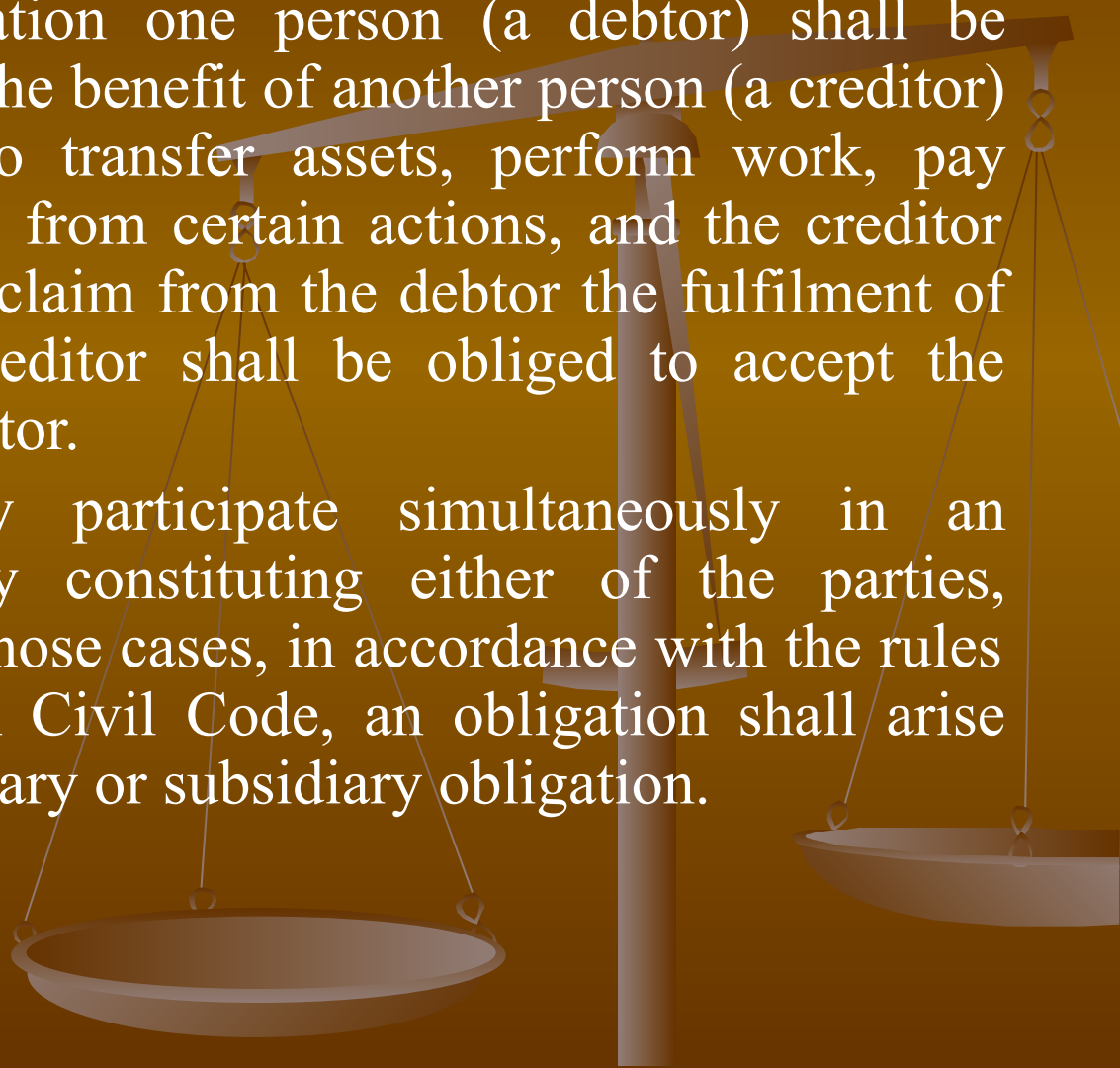
# CIVIL LAW



## Lecture 14

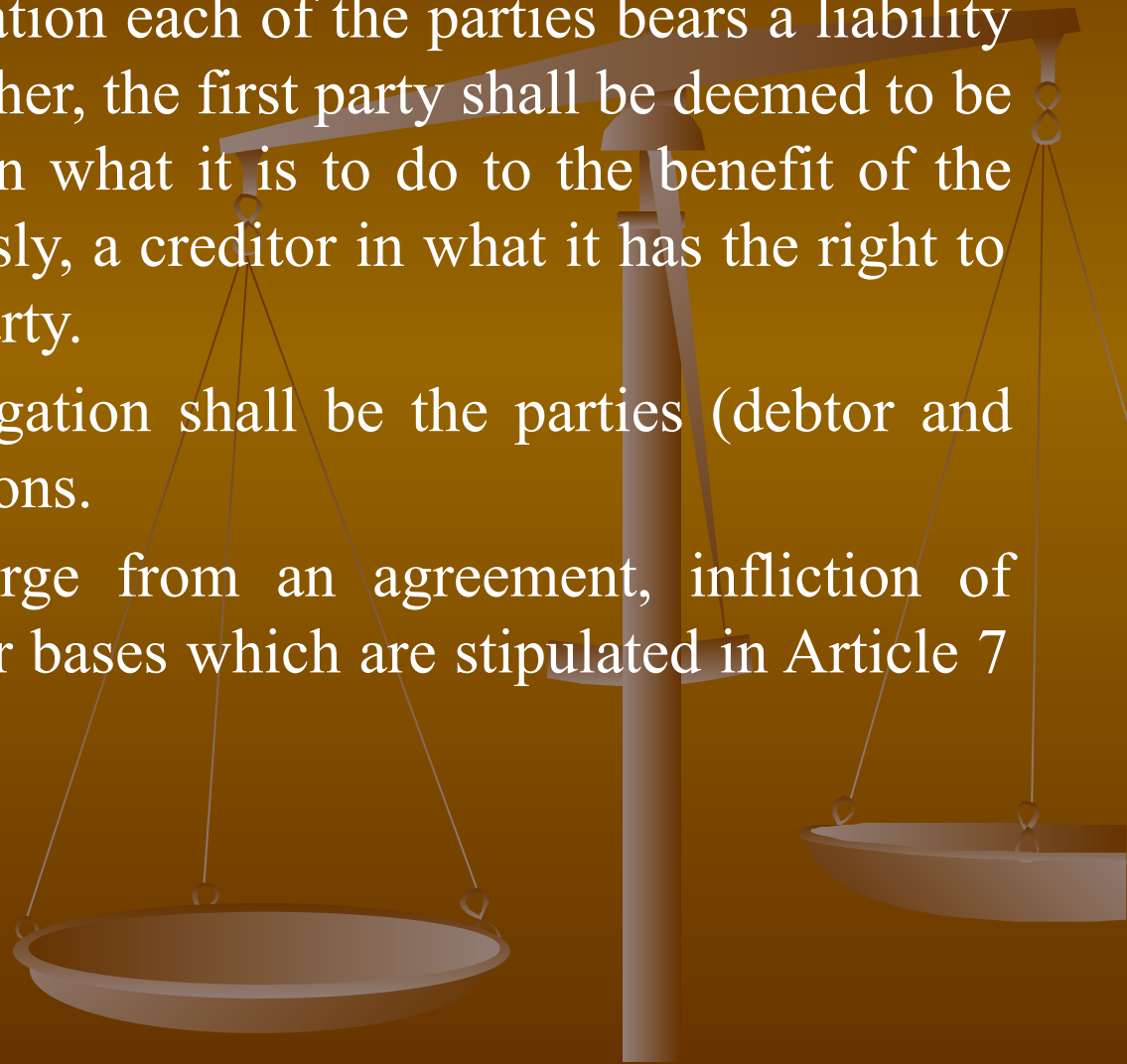
# Concept and grounds for emergence of obligations

- Pursuant to an obligation one person (a debtor) shall be obliged to commit for the benefit of another person (a creditor) certain actions, e.g. to transfer assets, perform work, pay money, etc., or abstain from certain actions, and the creditor shall have the right to claim from the debtor the fulfilment of his obligation. The creditor shall be obliged to accept the fulfilment from the debtor.
- Several persons may participate simultaneously in an obligation, collectively constituting either of the parties, creditor or debtor. In those cases, in accordance with the rules established by the RK Civil Code, an obligation shall arise which is a shared, solidary or subsidiary obligation.



# Concept and grounds for emergence of obligations

- If pursuant to an obligation each of the parties bears a liability for the benefit of the other, the first party shall be deemed to be a debtor of the other in what it is to do to the benefit of the other, and simultaneously, a creditor in what it has the right to claim from the other party.
- Participants in an obligation shall be the parties (debtor and creditor) and third persons.
- Obligations shall emerge from an agreement, infliction of damage or on any other bases which are stipulated in Article 7 of the RK Civil Code.



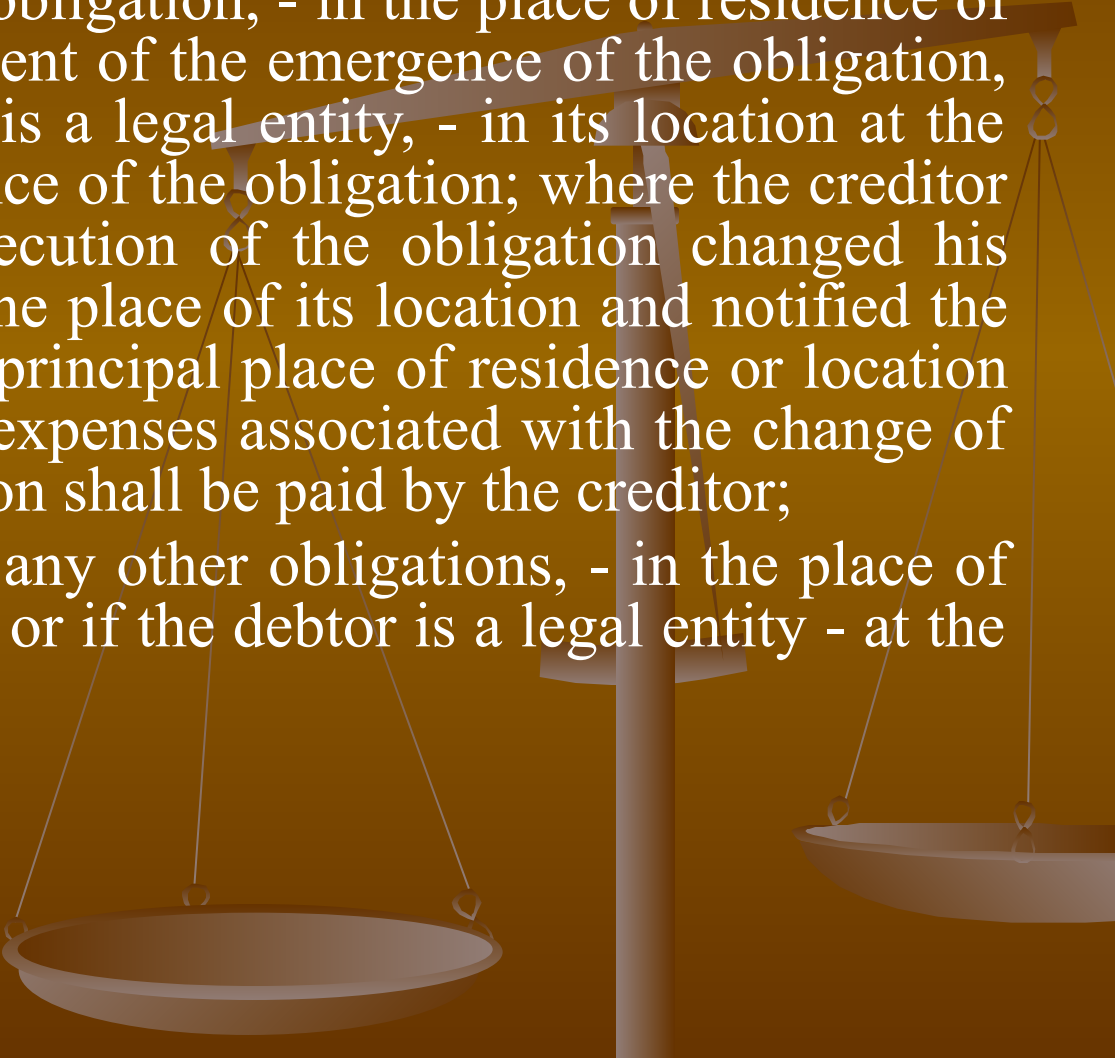
# Execution of obligation

- When an obligation stipulates or permits to identify the date of its execution or a period of time during which it must be executed, the obligation shall be subject to execution on that date or appropriately at any moment within that period.
- In the cases where an obligation does not provide for the date for its execution and does not contain any conditions which allow to identify that date, it must be executed within a reasonable period after the emergence of the obligation.
- An obligation which is not executed within a reasonable term, and equally an obligation the term for the fulfilment of which is identified as the moment of the claim, must be executed by the debtor within seven days from the date of serving by the creditor of appropriate notice, unless the duty to fulfil by any other date ensues from the legislation, the conditions of the obligation, traditions of business practice or the essence of the obligation.

# Execution of obligation

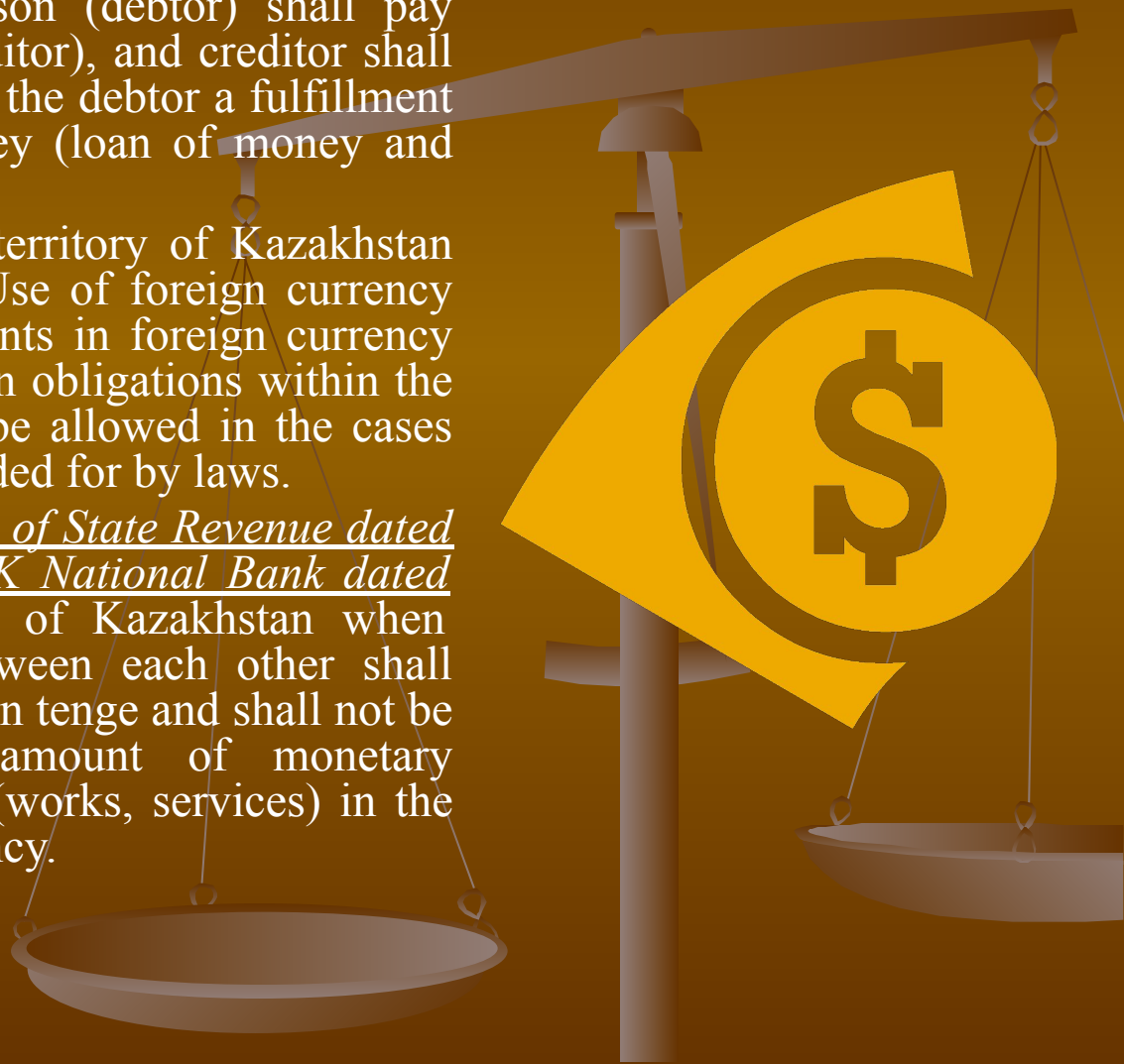
- If the place of the fulfilment is not determined by the legislation or the conditions of the obligation, and it does not clearly ensue from the essence of the obligation or traditions of business practice, the execution must be carried out as follows:
  - 1) under the obligation to transfer immovable property, - at the location of the property;
  - 2) under the obligation to transfer goods or any other properties with the use of transport, - in the place of submission of the goods to the first carrier for delivery to the creditor;
  - 3) under any other obligations of an entrepreneur to transfer goods or any other assets, - in the place of the manufacture or storage of the assets, provided that place is known to the creditor at the moment of the emergence of the obligation;

# Execution of obligation

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- 4) under the monetary obligation, - in the place of residence of the creditor at the moment of the emergence of the obligation, and where the creditor is a legal entity, - in its location at the moment of the emergence of the obligation; where the creditor by the time of the execution of the obligation changed his place of residence or the place of its location and notified the debtor thereof, - at the principal place of residence or location of the creditor, and all expenses associated with the change of the place of the execution shall be paid by the creditor;
- 5) in accordance with any other obligations, - in the place of residence of the debtor, or if the debtor is a legal entity - at the place of its location.

# Monetary Obligations

- Article 282 of the RK Civil Code: Pursuant to monetary obligation one person (debtor) shall pay money to another person (creditor), and creditor shall have the right to demand from the debtor a fulfillment of his obligation to pay money (loan of money and other obligations).
- Monetary obligations on the territory of Kazakhstan shall be expressed in tenge. Use of foreign currency and also of payments documents in foreign currency when carrying out payments on obligations within the territory of Kazakhstan shall be allowed in the cases and under the conditions provided for by laws.
- Joint Letter of the RK Ministry of State Revenue dated February 11, 2002 and the RK National Bank dated February 5, 2002: Residents of Kazakhstan when entering into agreements between each other shall indicate their obligations only in tenge and shall not be entitled to determine an amount of monetary obligations for sale of goods (works, services) in the equivalent to the foreign currency.



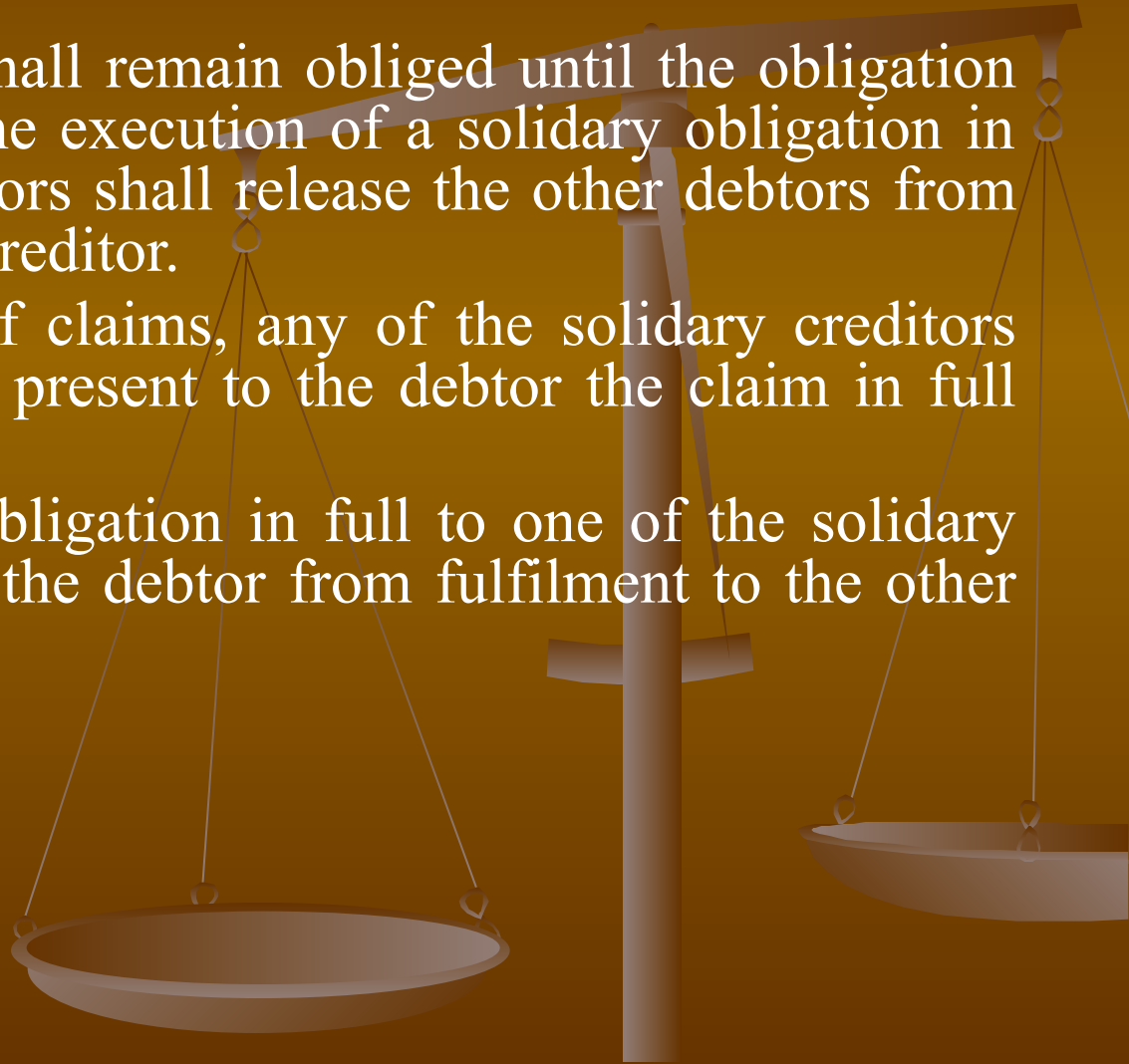
# Execution of solidary obligation

- An obligation with a number of persons, by virtue of which each creditor has the right to claim, and each debtor is obliged to execute the obligation in full, shall be recognised as a solidary obligation. A solidary obligation or a solidary claim shall arise if it is stipulated in an agreement or established by the legislative acts, in particular, where the subject of the obligation is indivisible.
- In a solidary obligation of debtors, the creditor shall have the right to claim the execution both from all the debtors and from any one of them separately, for full repayment and for part of the debt. The creditor who does not receive complete satisfaction from one of the solidary debtors shall have the right to claim the amount in default from the other solidary debtors.



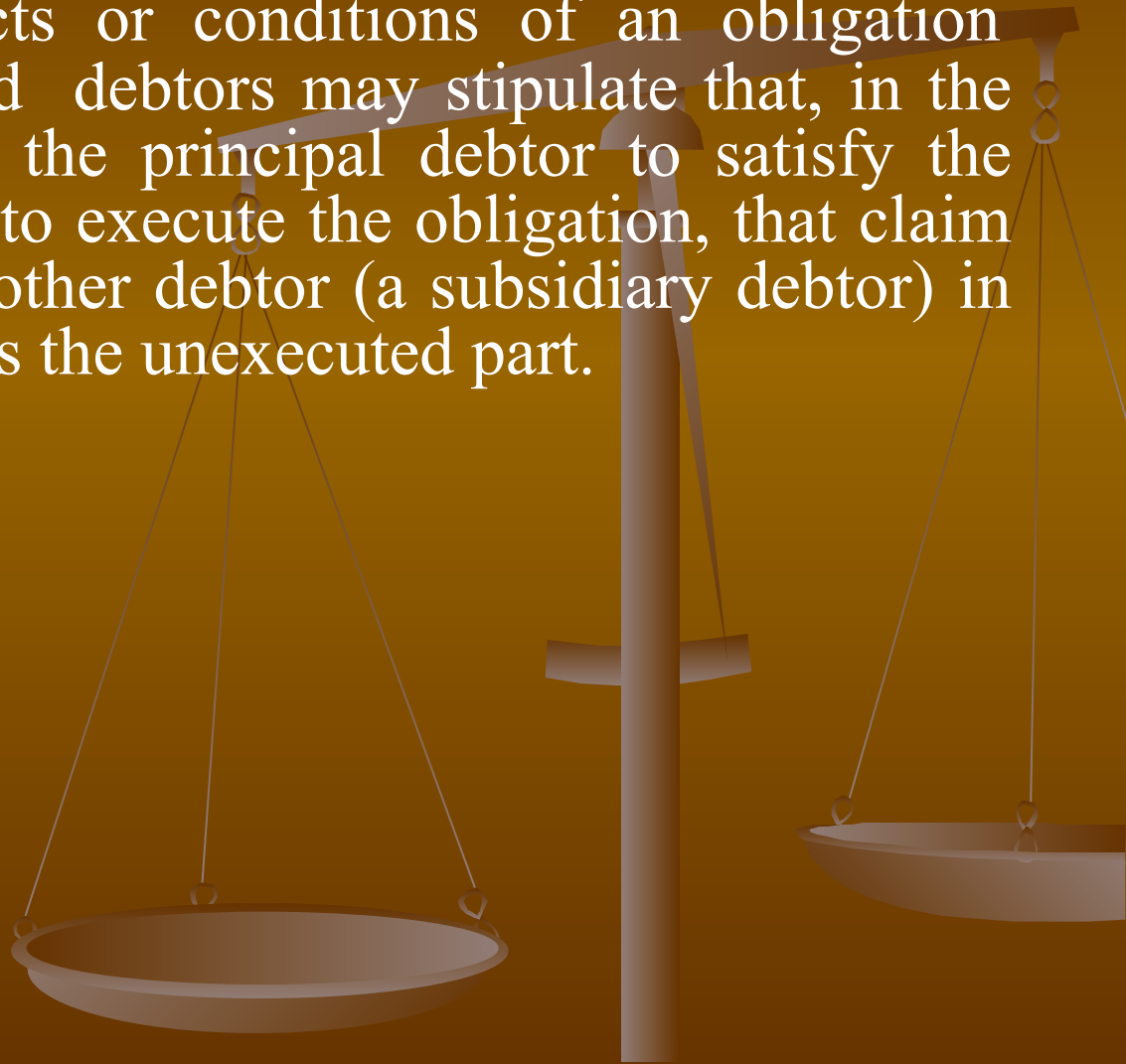
# Execution of solidary obligation

- The solidary debtors shall remain obliged until the obligation is executed in full. The execution of a solidary obligation in full by one of the debtors shall release the other debtors from their obligation to the creditor.
- If there is solidarity of claims, any of the solidary creditors shall have the right to present to the debtor the claim in full volume.
- The execution of an obligation in full to one of the solidary creditors shall exempt the debtor from fulfilment to the other creditors.



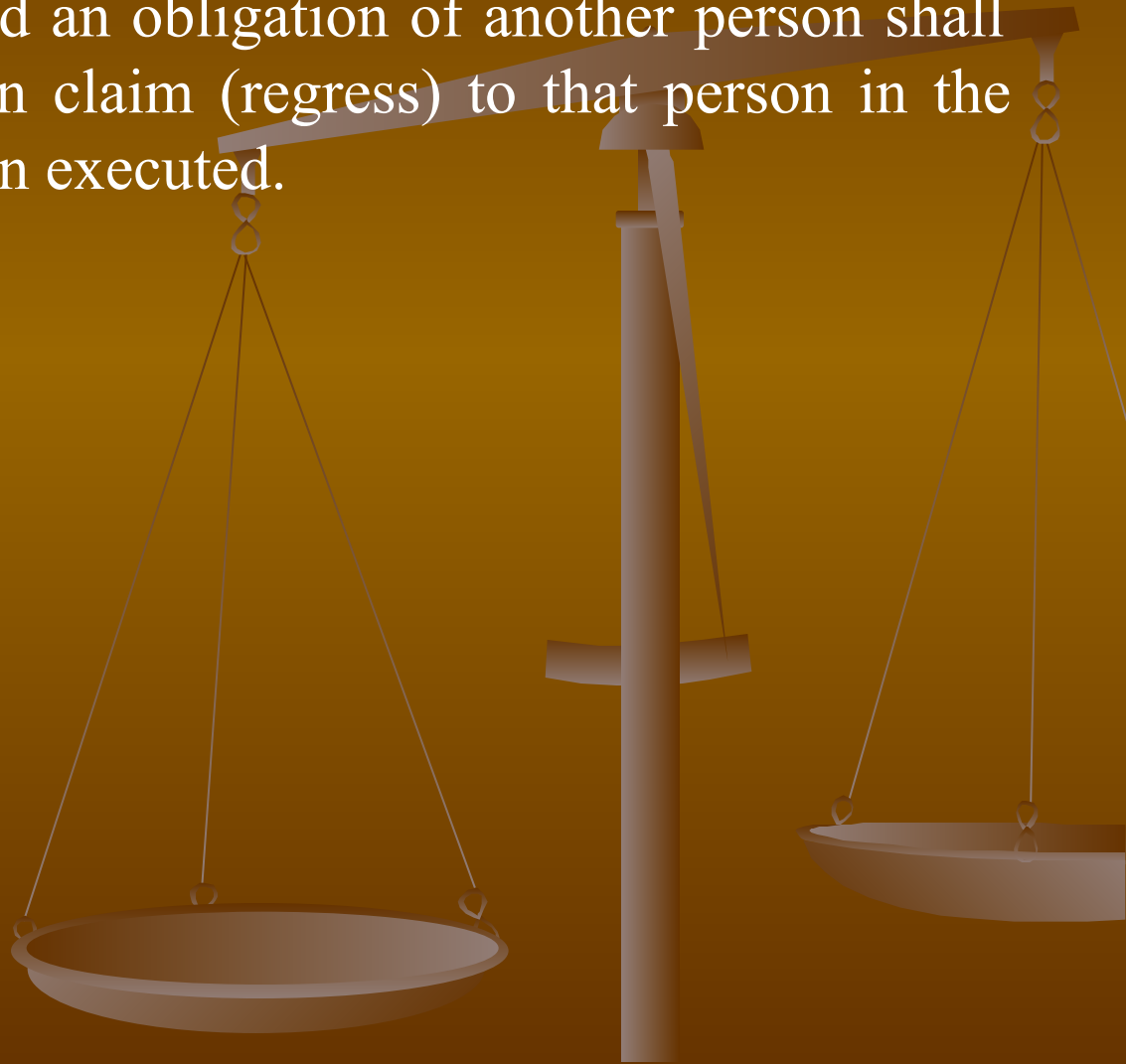
# Execution of subsidiary obligation

The legislative acts or conditions of an obligation between creditors and debtors may stipulate that, in the case of a failure by the principal debtor to satisfy the claim of the creditor to execute the obligation, that claim may be made to the other debtor (a subsidiary debtor) in as much as it concerns the unexecuted part.



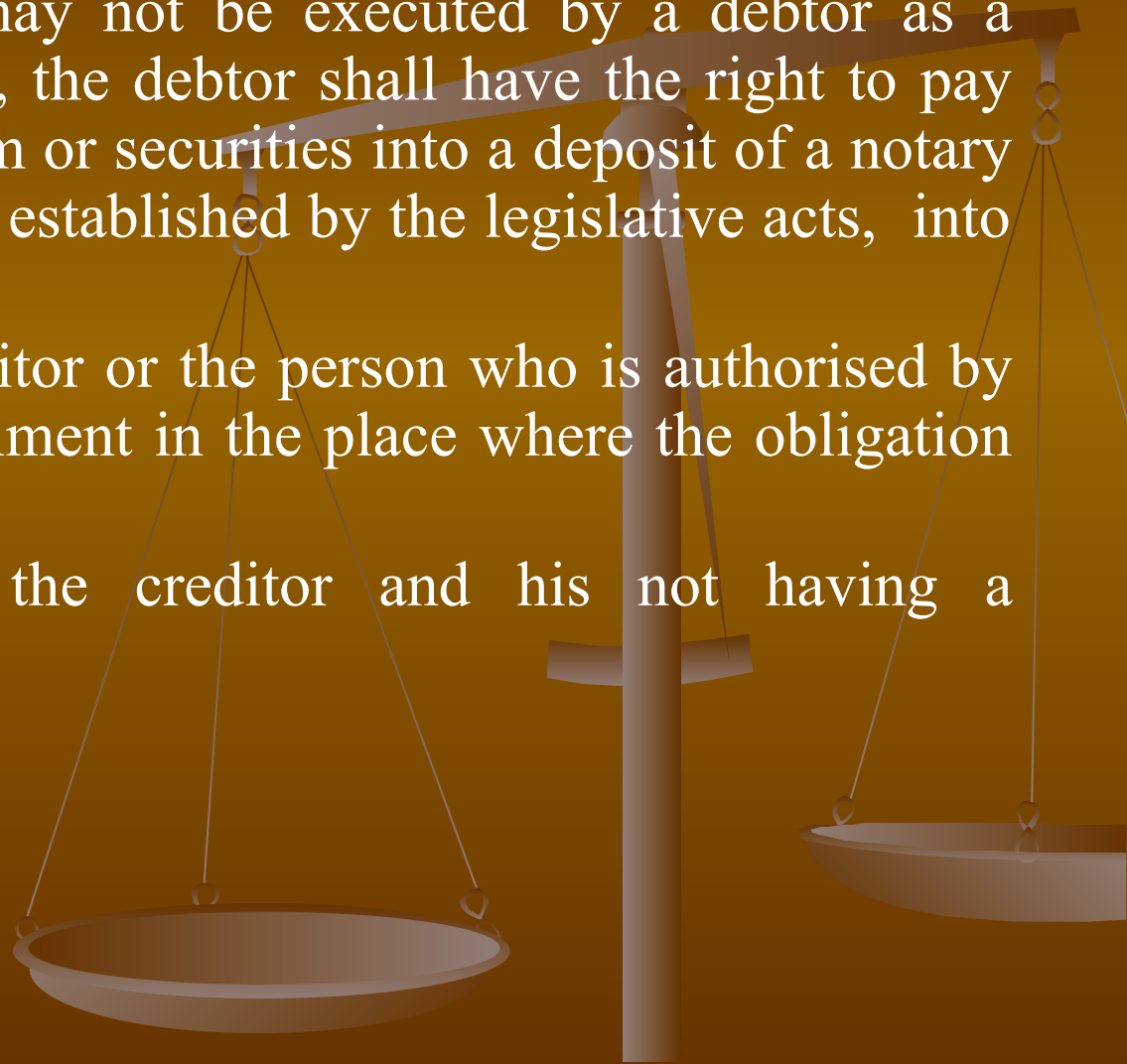
# Regress Claims

A debtor who executed an obligation of another person shall have the right of return claim (regress) to that person in the amount of the obligation executed.



# The Execution of Obligations by the Placement of a Debt into a Deposit

- When an obligation may not be executed by a debtor as a result of the following, the debtor shall have the right to pay the money owed by him or securities into a deposit of a notary office, and in the cases established by the legislative acts, into a deposit of the court :
  - 1) absence of the creditor or the person who is authorised by him to accept the fulfilment in the place where the obligation must be executed;
  - 2) incapacity of the creditor and his not having a representative;

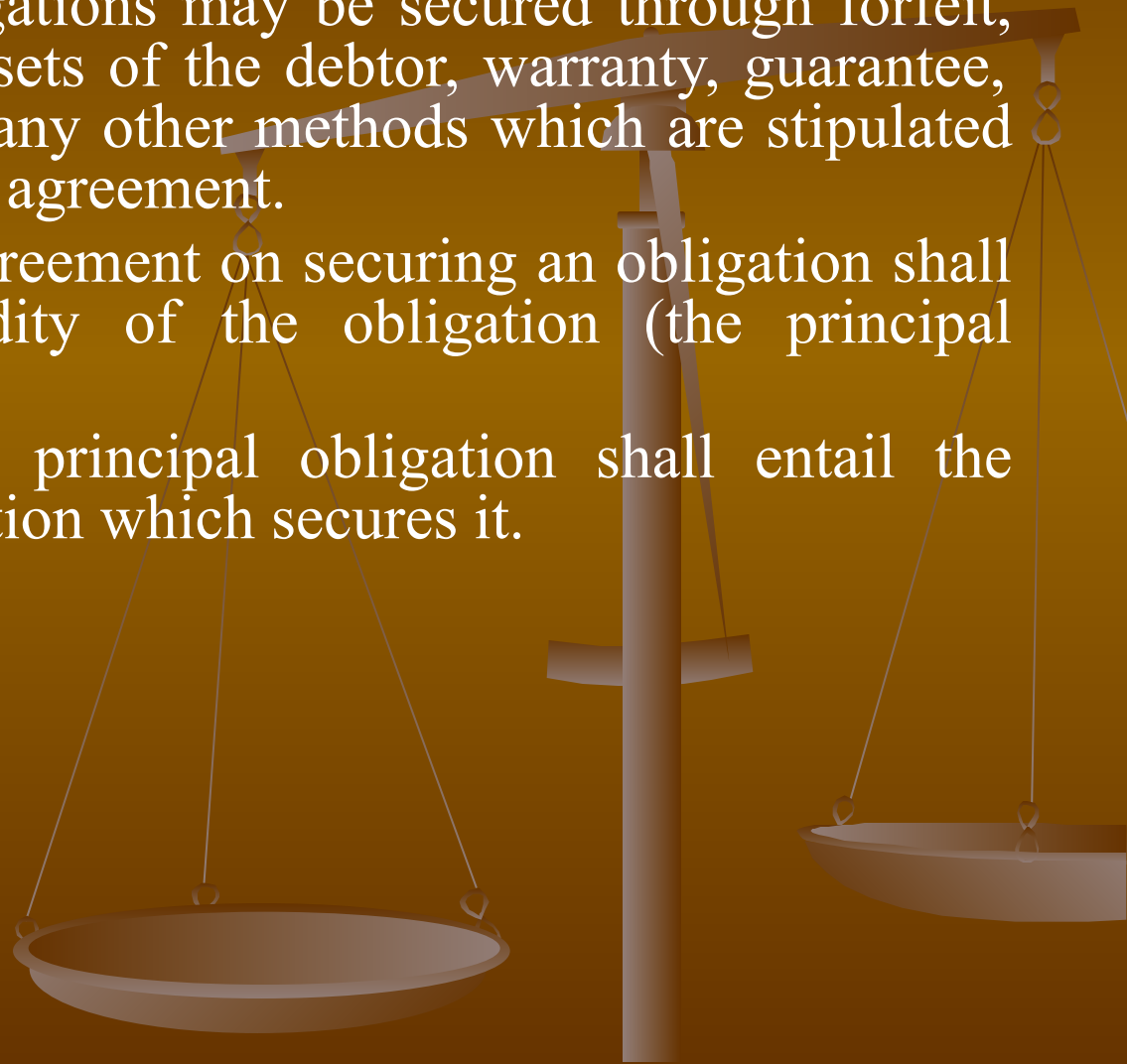


# The Execution of Obligations by the Placement of a Debt into a Deposit

- 3) an obvious absence of certainty concerning the identify of the creditor to whom the obligation is owed, particularly if there is a dispute about that between the creditor and any other persons;
- 4) evasion by the creditor of acceptance of the fulfilment, or any other delay on his behalf.
- The placement of a sum of money or securities into a deposit of a notary office or a court **shall be deemed as a fulfilment of the obligation**. The notary office or the court, into which deposit the money or securities are placed, shall notify the creditor thereon.

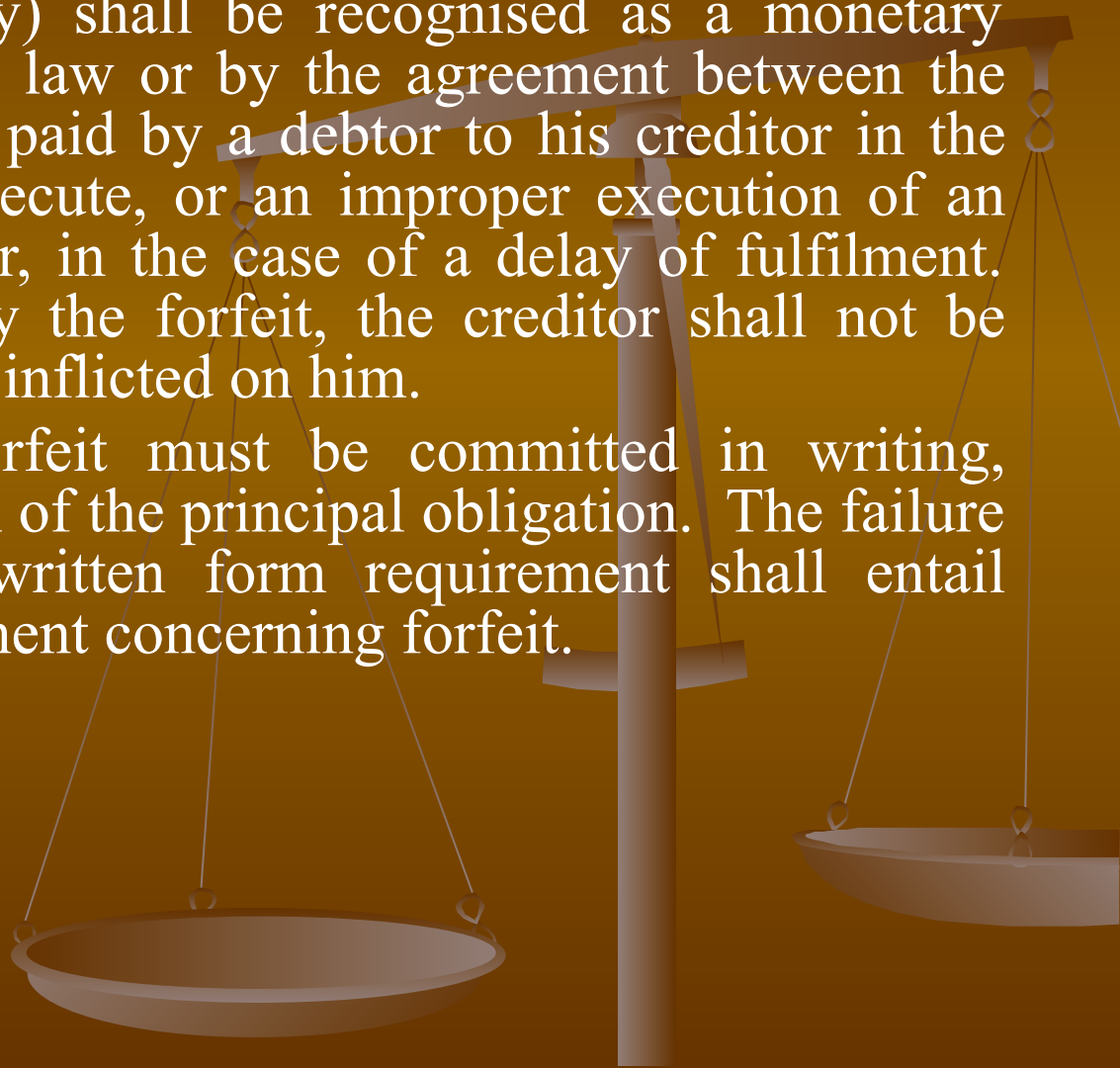
# Securing the Execution of Obligations

- The execution of obligations may be secured through forfeit, pledge, retention of assets of the debtor, warranty, guarantee, advance payments, or any other methods which are stipulated in the legislation or the agreement.
- The invalidity of an agreement on securing an obligation shall not entail the invalidity of the obligation (the principal obligation).
- The invalidity of the principal obligation shall entail the invalidity of the obligation which secures it.



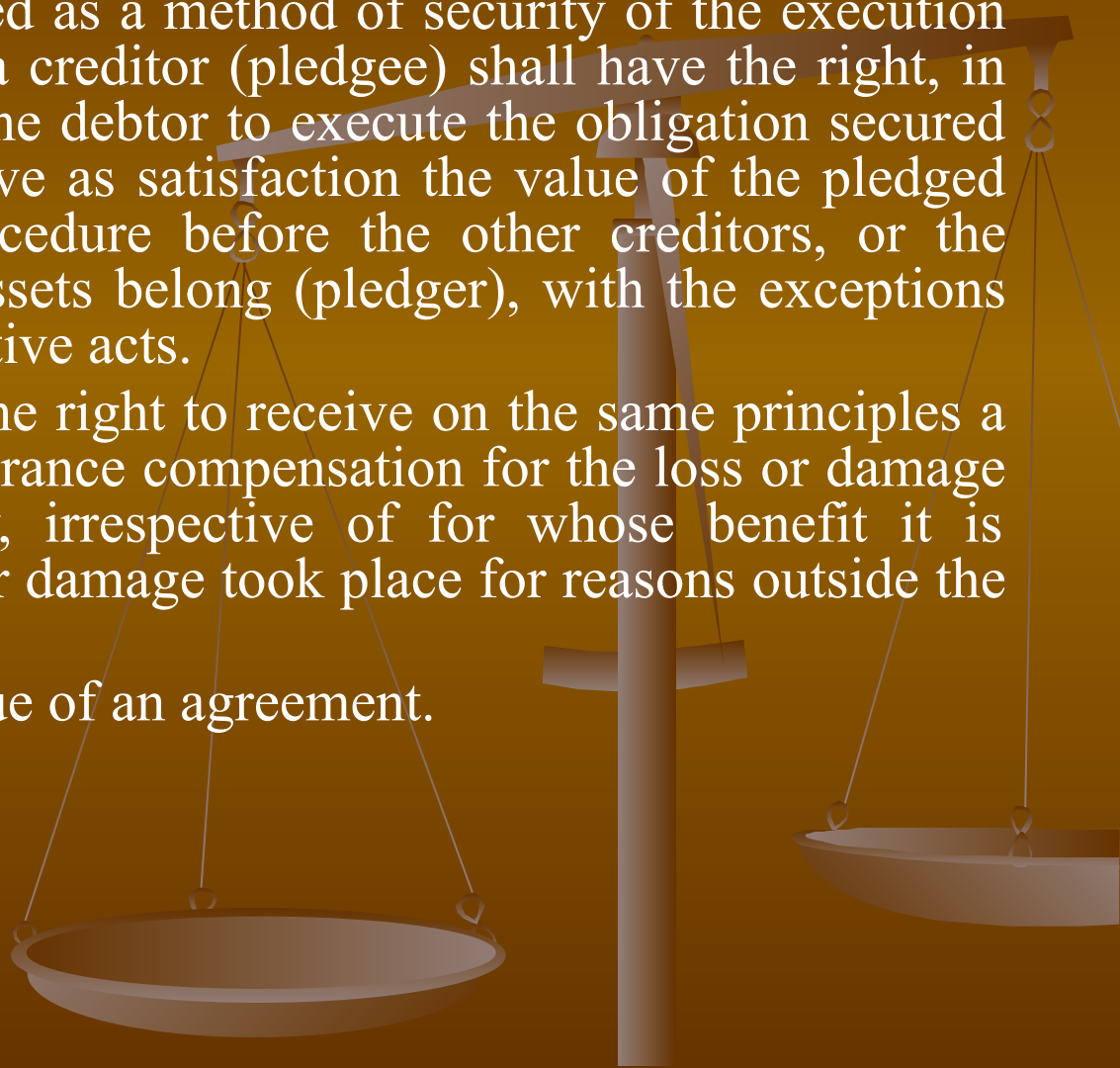
# Forfeit

- A forfeit (fine, penalty) shall be recognised as a monetary amount defined by the law or by the agreement between the parties which must be paid by a debtor to his creditor in the case of a failure to execute, or an improper execution of an obligation, in particular, in the case of a delay of fulfilment. Upon the claim to pay the forfeit, the creditor shall not be obliged to prove losses inflicted on him.
- The agreement on forfeit must be committed in writing, irrespective of the form of the principal obligation. The failure to comply with the written form requirement shall entail invalidity of the agreement concerning forfeit.



# Pledge

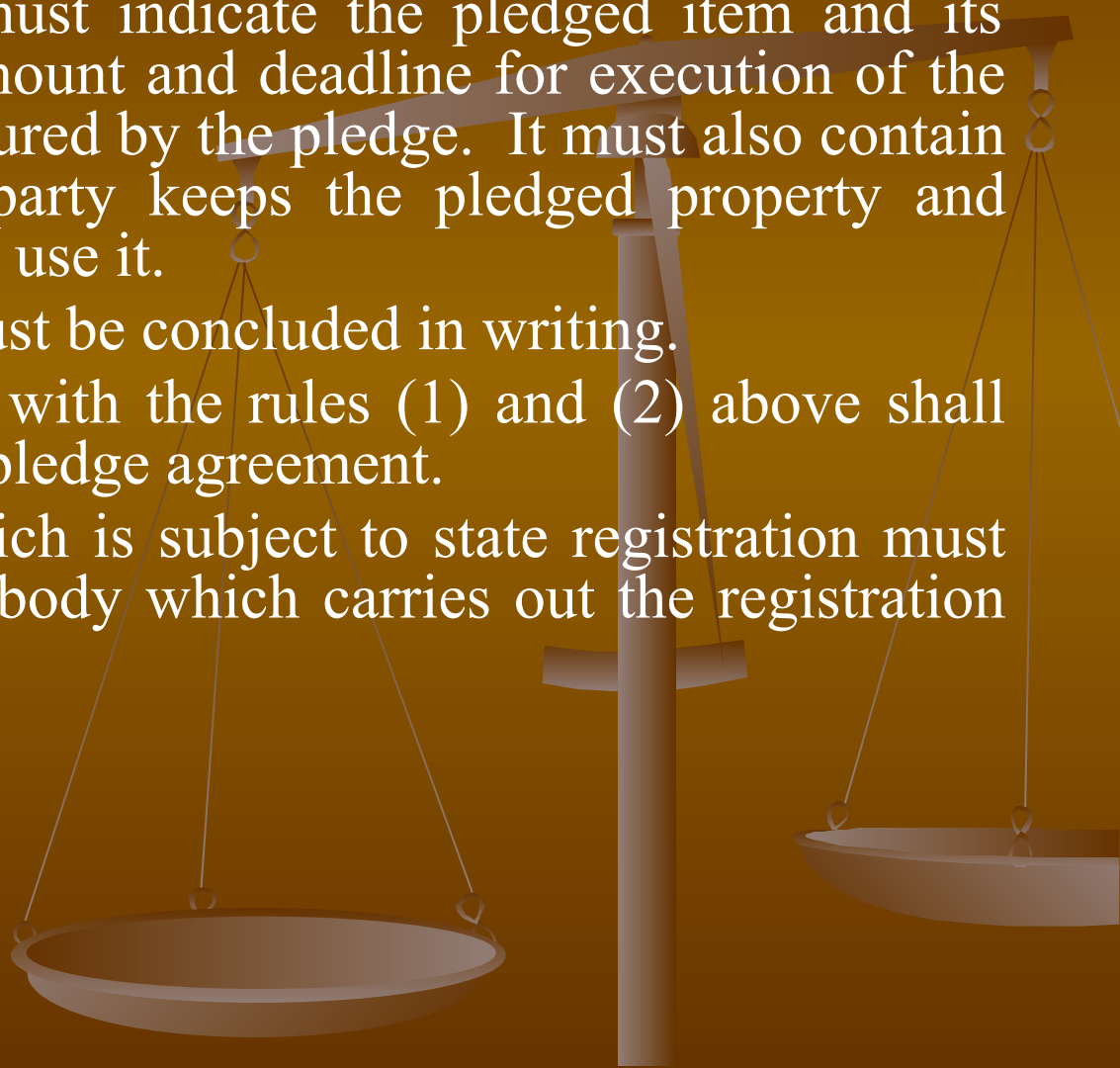
- Pledge shall be recognised as a method of security of the execution of obligation, by which a creditor (pledgee) shall have the right, in the case of a failure by the debtor to execute the obligation secured with the pledge, to receive as satisfaction the value of the pledged assets, in a priority procedure before the other creditors, or the person to whom those assets belong (pledger), with the exceptions established by the legislative acts.
- The pledgee shall have the right to receive on the same principles a satisfaction from the insurance compensation for the loss or damage of the pledged property, irrespective of for whose benefit it is insured, unless the loss or damage took place for reasons outside the control of the pledgee.
- Pledge shall arise by virtue of an agreement.





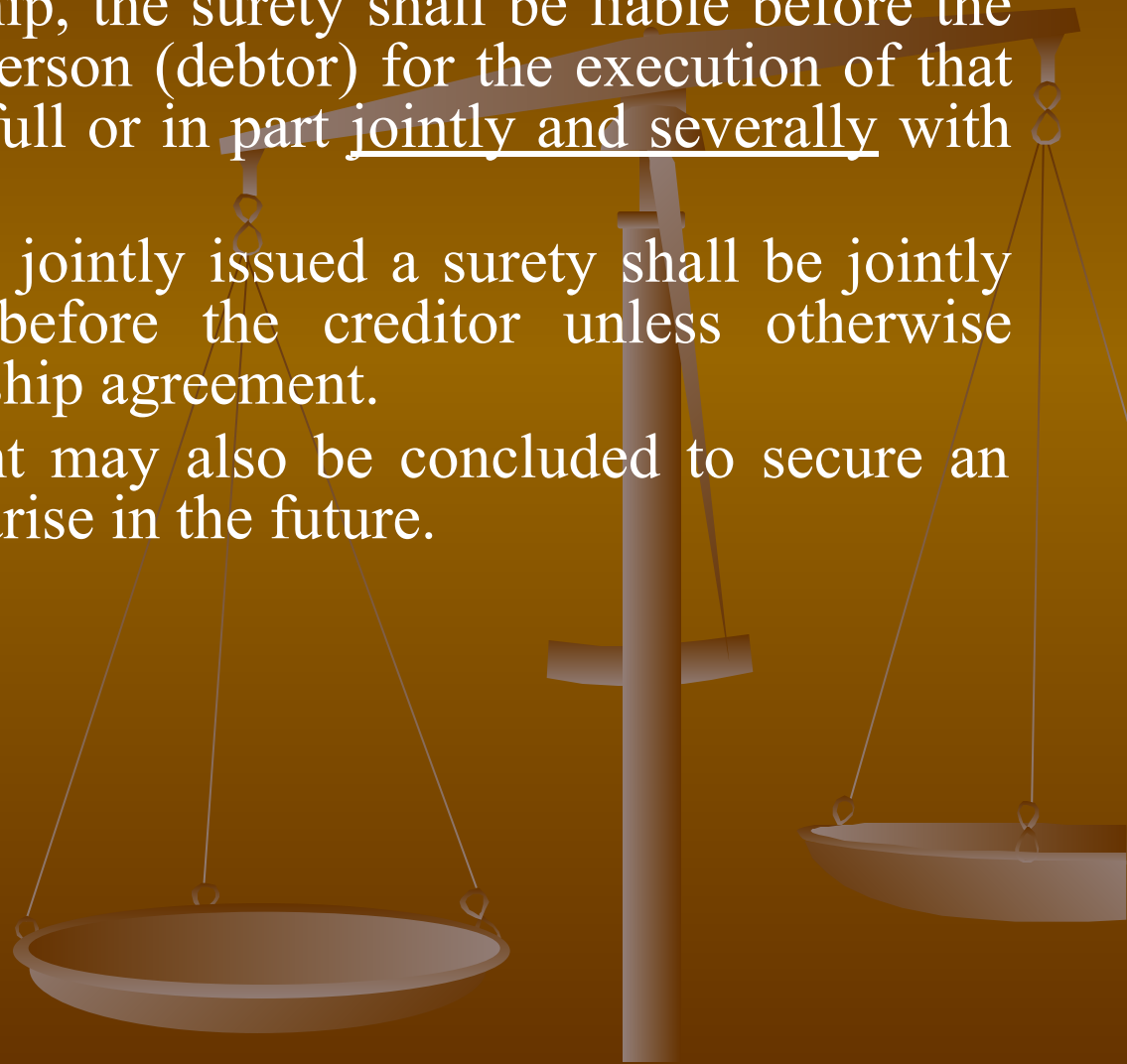
# Pledge

- 1) A pledge agreement must indicate the pledged item and its evaluation, essence, amount and deadline for execution of the obligation which is secured by the pledge. It must also contain an indication, which party keeps the pledged property and whether it is allowed to use it.
- 2) A pledge agreement must be concluded in writing.
  - The failure to comply with the rules (1) and (2) above shall entail invalidity of the pledge agreement.
  - Pledge of property which is subject to state registration must be registered with the body which carries out the registration of that property.



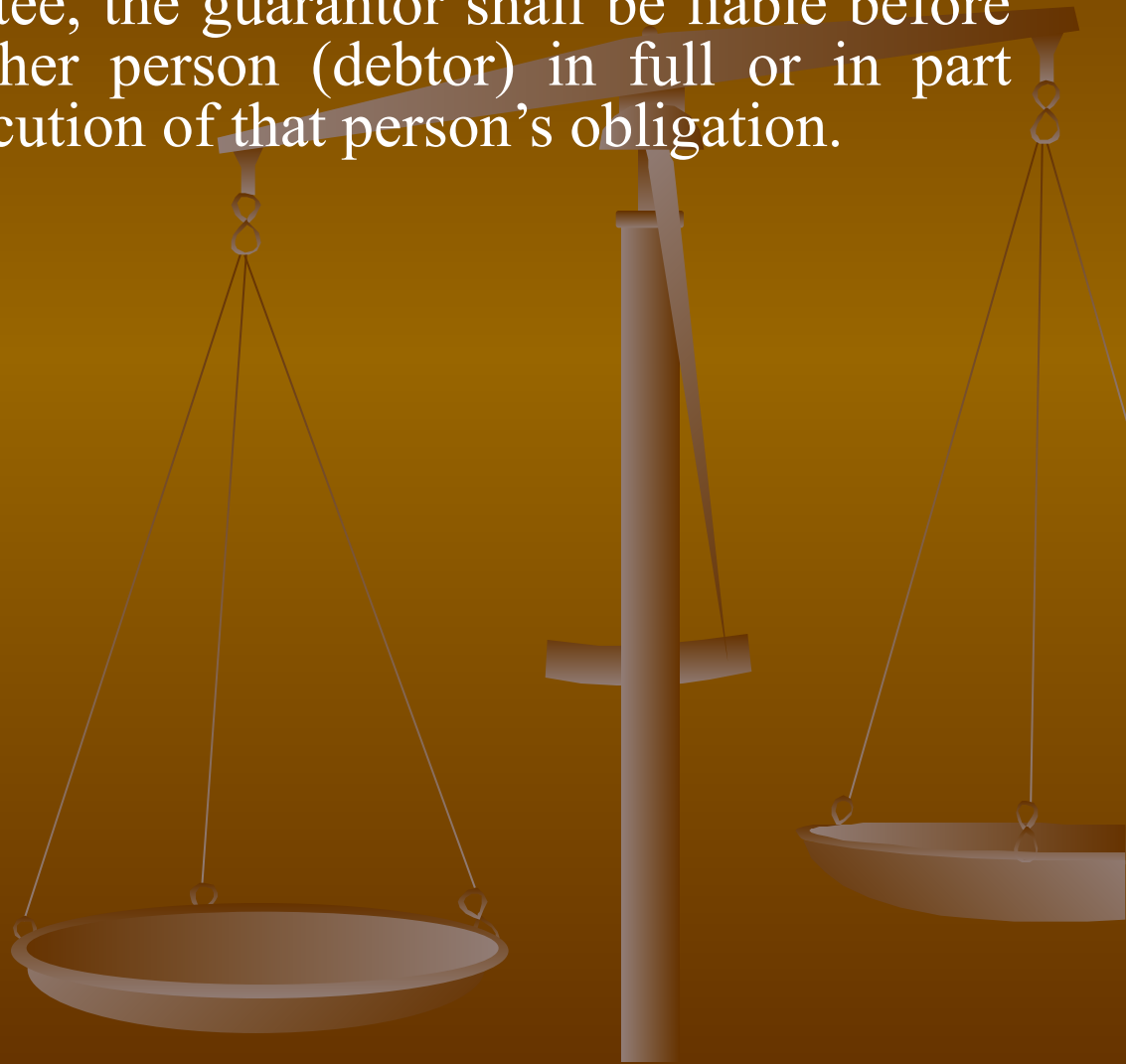
# Suretyship (гарантия)

- By virtue of a suretyship, the surety shall be liable before the creditor of any other person (debtor) for the execution of that person's obligation in full or in part jointly and severally with the debtor.
- The persons who have jointly issued a surety shall be jointly and severally liable before the creditor unless otherwise specified by the suretyship agreement.
- A suretyship agreement may also be concluded to secure an obligation which may arise in the future.



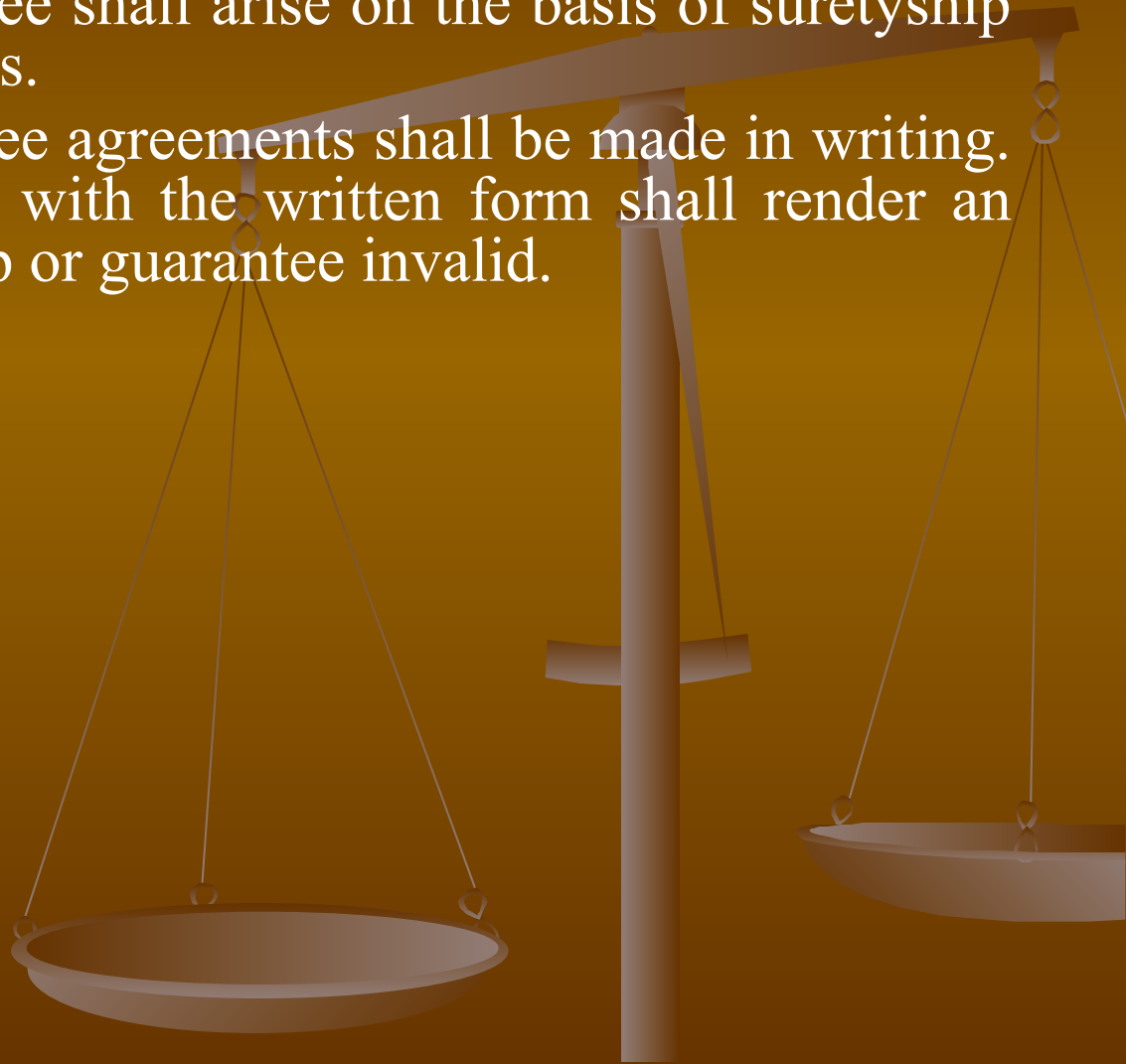
# Guarantee (поручительство)

By virtue of a guarantee, the guarantor shall be liable before the creditor of any other person (debtor) in full or in part subsidiarily for the execution of that person's obligation.



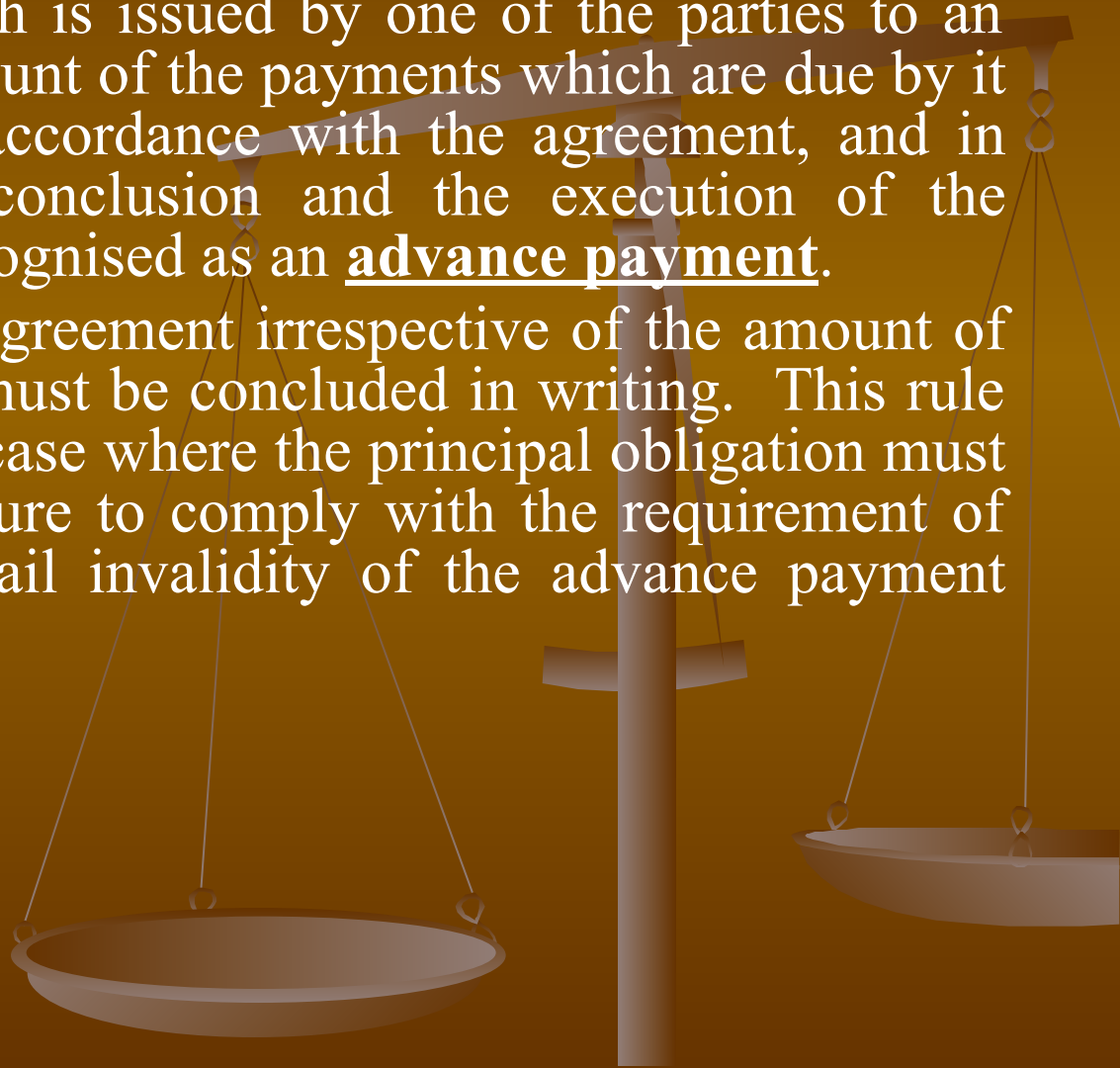
# Form of Suretyship and Guarantee

- Suretyship and guarantee shall arise on the basis of suretyship or guarantee agreements.
- Suretyship and guarantee agreements shall be made in writing. Any failure to comply with the written form shall render an agreement of suretyship or guarantee invalid.



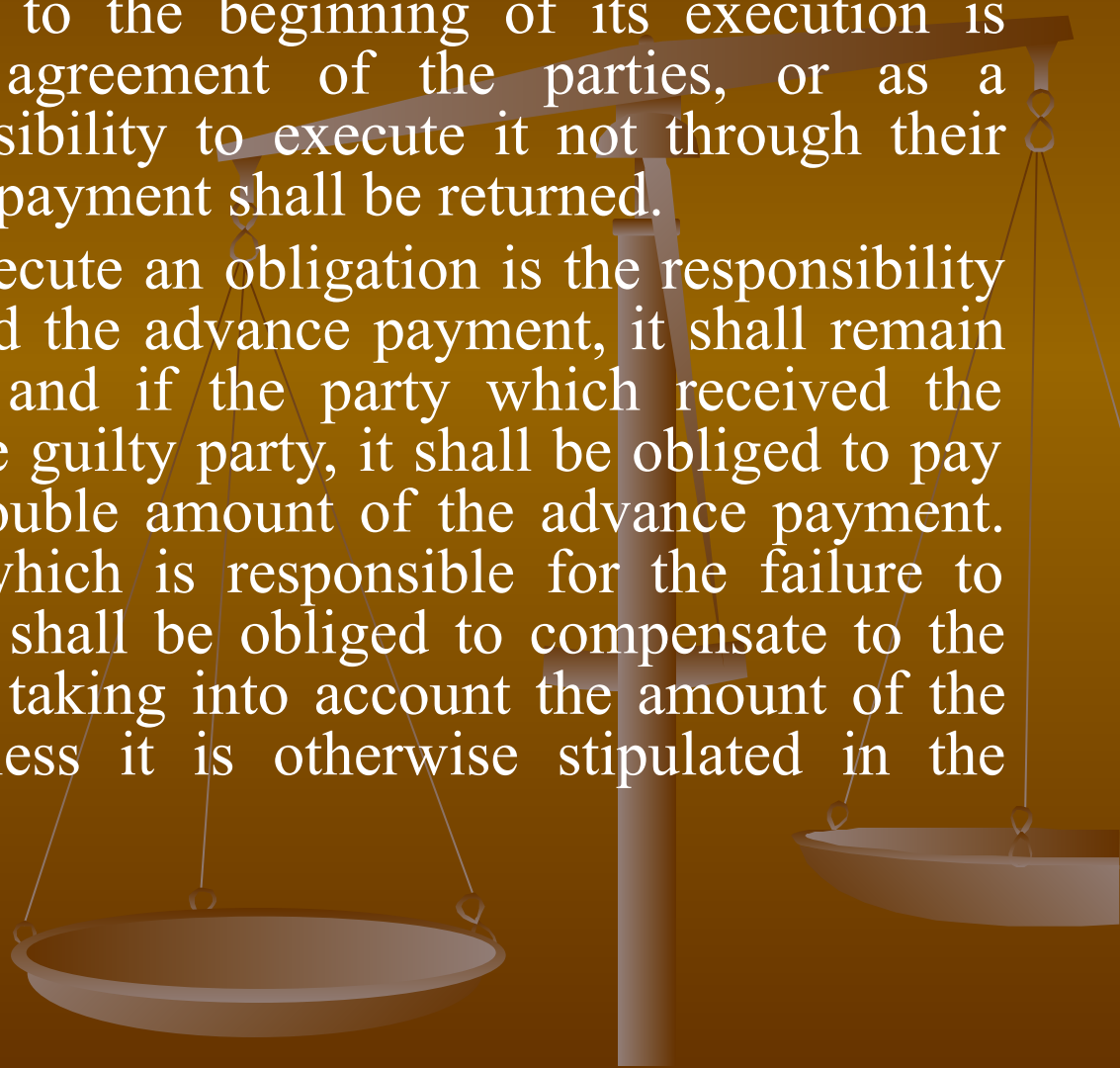
# Advance Payment

- A sum of money which is issued by one of the parties to an agreement, for the account of the payments which are due by it to the other party in accordance with the agreement, and in order to secure the conclusion and the execution of the agreement, shall be recognised as an advance payment.
- An advance payment agreement irrespective of the amount of the advance payment must be concluded in writing. This rule shall also apply in the case where the principal obligation must be notarised. The failure to comply with the requirement of written form shall entail invalidity of the advance payment agreement.



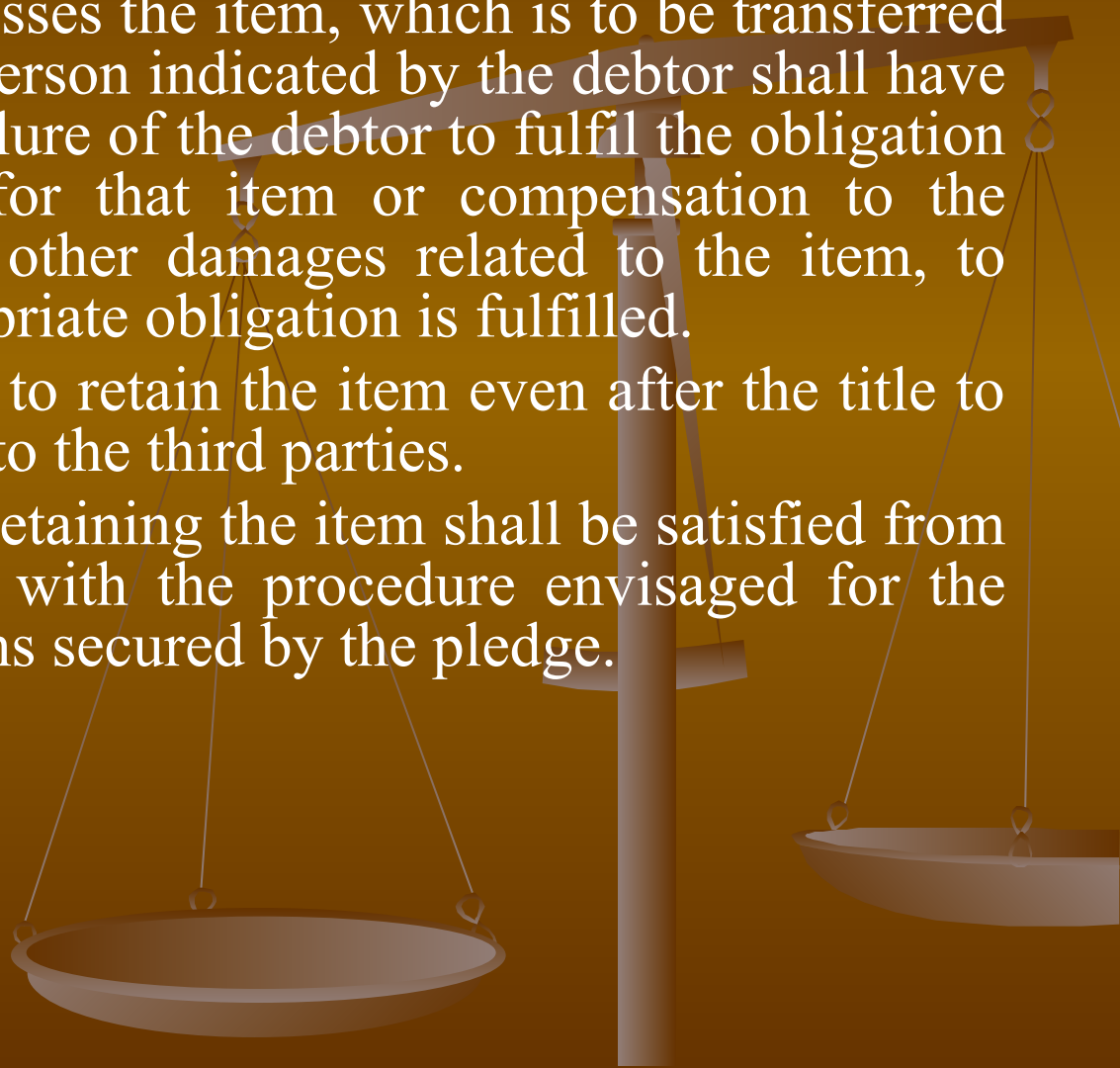
# Advance Payment

- If an obligation prior to the beginning of its execution is terminated upon an agreement of the parties, or as a consequence of impossibility to execute it not through their fault, then the advance payment shall be returned.
- When the failure to execute an obligation is the responsibility of a party which issued the advance payment, it shall remain with the other party, and if the party which received the advance payment is the guilty party, it shall be obliged to pay to the other party a double amount of the advance payment. Moreover, the party which is responsible for the failure to execute the obligation shall be obliged to compensate to the other party the losses, taking into account the amount of the advance payment, unless it is otherwise stipulated in the agreement.



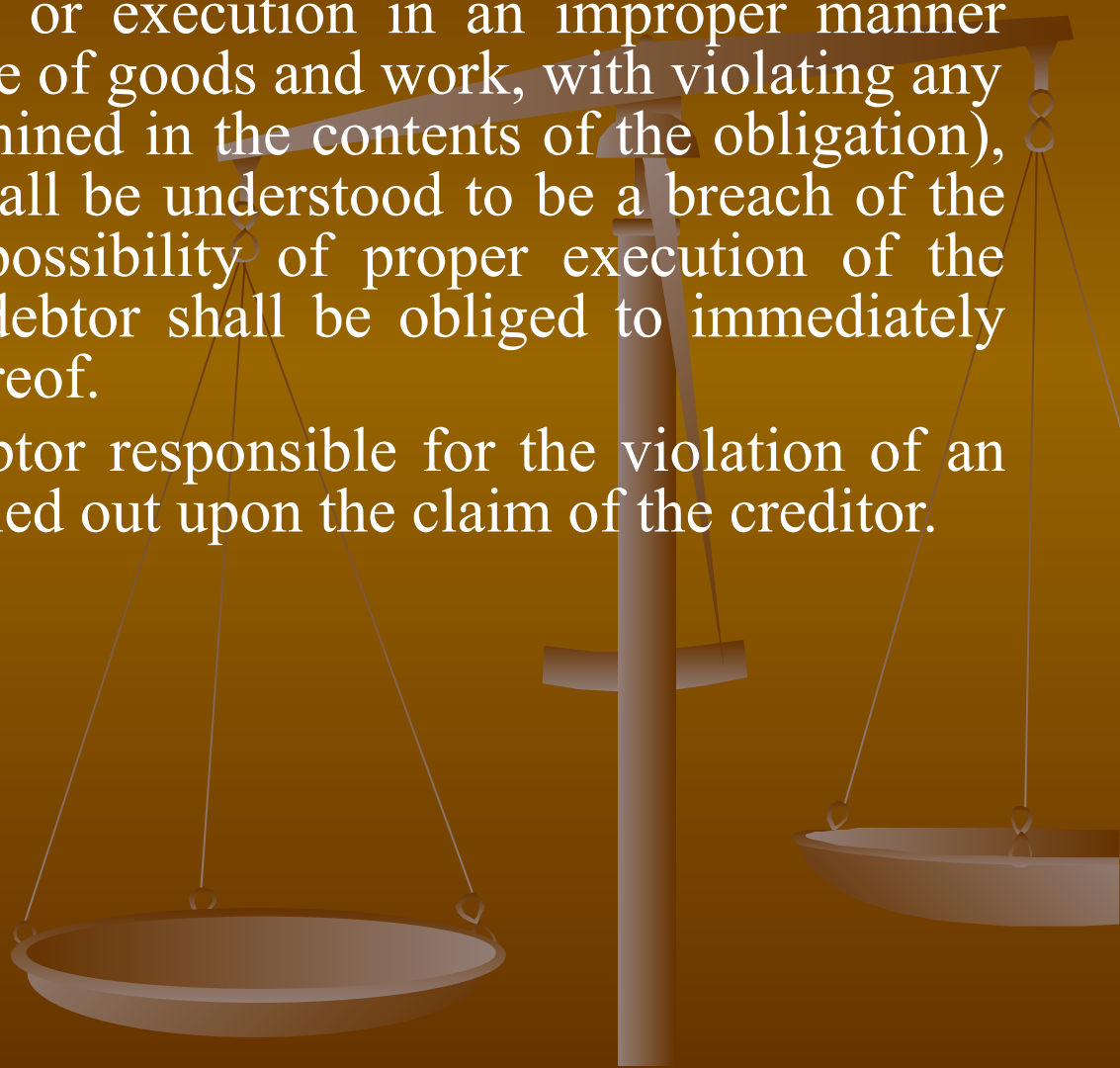
# Retention

- The creditor who possesses the item, which is to be transferred to the debtor or other person indicated by the debtor shall have the right , in case of failure of the debtor to fulfil the obligation in time on payment for that item or compensation to the creditor expenses and other damages related to the item, to retain it until the appropriate obligation is fulfilled.
- The creditor is entitled to retain the item even after the title to this item is transferred to the third parties.
- Claims of the creditor retaining the item shall be satisfied from its cost in accordance with the procedure envisaged for the satisfaction of the claims secured by the pledge.



# Liability for breach of obligations

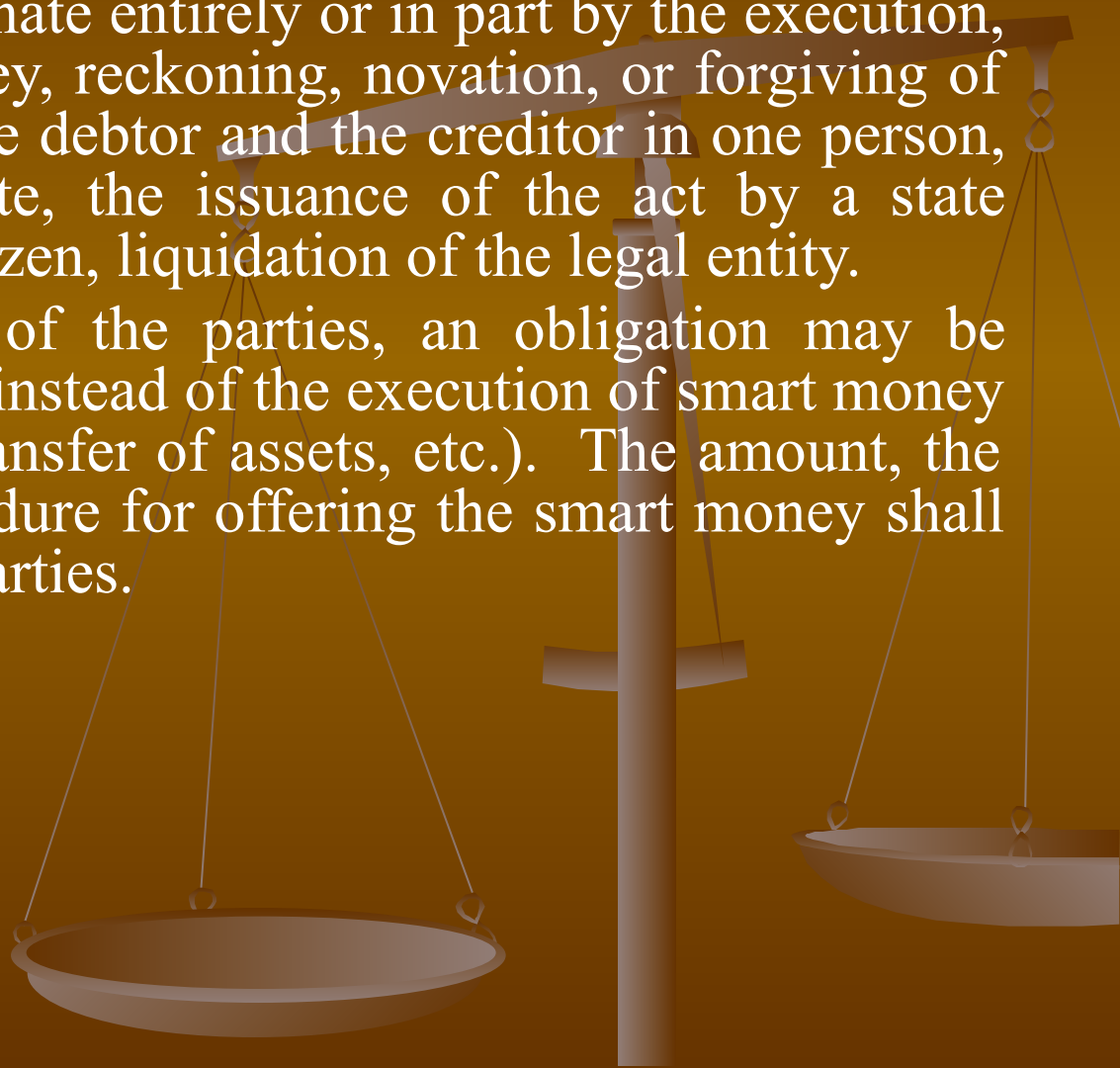
- The failure to execute or execution in an improper manner (untimely, with shortage of goods and work, with violating any other conditions determined in the contents of the obligation), improper execution, shall be understood to be a breach of the obligation. Where impossibility of proper execution of the obligation arises, the debtor shall be obliged to immediately notify the creditor whereof.
- The holding of the debtor responsible for the violation of an obligation shall be carried out upon the claim of the creditor.





# Termination of obligation

- Obligations shall terminate entirely or in part by the execution, granting of smart money, reckoning, novation, or forgiving of debt, coincidence of the debtor and the creditor in one person, impossibility to execute, the issuance of the act by a state body, demise of the citizen, liquidation of the legal entity.
- Under the agreement of the parties, an obligation may be terminated by offering instead of the execution of smart money (payment of money, transfer of assets, etc.). The amount, the deadline and the procedure for offering the smart money shall be established by the parties.



# Termination of obligation

- An obligation shall terminate pursuant to the agreement of the parties to replace the initial obligation which existed between them, by any other obligation between the same persons, which stipulates another subject or method of execution (novation).
- Novation shall not be permitted with regard to the obligations to compensate damage caused to life or health, and to pay alimony.
- Novation shall terminate any additional obligations related to the initial one, unless it is otherwise stipulated by agreement of the parties.

