

Moral code and Law



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Class Schedule

	Thur. 17 Dec. 2020	Fri. 18 Dec. 2020
14:45 ~ 16:15	<u>Self-Introduction</u>	<u>3. Bronze Rule (Case3)</u>
	<u>Aim of the Lecture</u>	<u>4. Promise Rule (Case4)</u>
	<u>Preface</u>	
16:30 ~ 18:00	<u>1. Golden Rule (Case1)</u>	Presentation of Students1,2
	<u>2. Silver Rule (Case2)</u>	Presentation of Students3,4



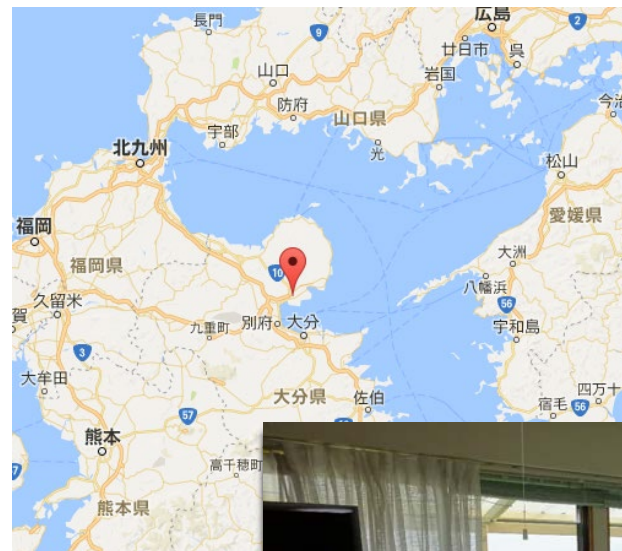
Self-Introduction (1/2)

- I am an emeritus professor of Nagoya University and Meiji Gakuin University.
- 16 years ago, I was a professor of Nagoya University.
 - During 1997-2004 I was going to Asian countries, State of Mongolia, Vietnam, Cambodia, Laos, Uzbekistan and China to cooperate development of civil law.
 - Fortunately, these activities were evaluated from this university, I became an emeritus professor of Nagoya University in 2008.
- My specialty is civil law, but I also study consumer law, legal informatics (AI & Law), law & management, and copyright law.
 - I am currently writing a book titled "Introduction to Law for Children" on legal education for young children.



Self-Introduction (2/2)

- Since retiring in 2017, I have moved to Oita Prefecture where my parents live.
- I have been conducting research on copyright law at the Graduate School of Intellectual Property Studies (correspondence course) of Kibi International University, Junsei Gakuen.
- In addition, I am an intensive lecturer of civil law for international students at Nagoya University Graduate School, and "Contract Law" at the Faculty of Law, Meiji Gakuin University.



The Aim of the Lecture

- 1. Trust in the human brain
- 2. Question about the human brain
- 3. Method for properly controlling mirror neuron
- 4. Confirmation of the problem-solving function of the law by case study
- 5. Cause of the lack of confidence in the law's problem-solving capabilities
- 6. Necessity of supplementing the function of explaining law by virtue of morality
- 7. Proper control of mirror neurons and the realization of peace through law and morality



The Aim of the Lecture

- In this lecture, I hope to restore the public's confidence in the excellent problem-solving and peace-contributing functions of the law by utilizing the excellent explanatory functions of morality.



1. Trust in the human brain

- The starting point for this lecture is trust in the human brain.
- In particular, mirror neurons (sympathetic neurons) that enable people to empathize with one another, cooperate with one another, and share the results, as in "return a smile to someone's smile".



2. Question about the human brain

- Mirror neurons, however, also react immediately to the other person's anger, causing "retaliate if one is beaten".
- The endless chain of revenge and miserable wars are also the work of human mirror neurons.



3. Method for properly controlling mirror neuron

- Therefore, if we are to prevent the chain of revenge or the horrors of war, we must not blindly follow the function of mirror neurons, but must respect the function of empathy and learn how to control the function of revenge of mirror neurons.
- The best way is, I believe, morality and law.



4. Confirmation of the problem-solving function of the law by case study

- In this lecture, we will try to clarify the superior problem-solving function of law and its contribution to peace by taking 4 cases , i.e.
 - (Case1) two women's life-saving activities on the sumo stage (Golden rule),
 - (Case2) a traffic accidents and death caused by a self-driving car (Silver rule),
 - (Case3) a payment of the other's debt by mistake (Bronze rule) and
 - (Case4) nonpayment of leave of absence allowance by employers in response to requests for voluntary restraint in the spread of new coronavirus infection (Promise rule)
- that reflect 3 moral codes and the latest events from the traditional ones.



5. Cause of the lack of confidence in the law's problem-solving capabilities

- I would like to discuss why such a well-functioning law has not yet to gain the full trust of the public.
- In this lecture, we hypothesize that the law was so focused on the combination of requirements and effects that it failed to clarify the moral reasons why the combination of requirements and effects was reasonable or ideal.



6. Necessity of supplementing the function of explaining law by virtue of morality

- In order to test this hypothesis, I would like to make it clear that the existing conflict between law and morality can be restored by supplementing the explanation of the moral reasons behind the law, which consists of a combination of requirements and effects.



7. Proper control of mirror neurons and the realization of peace through law and morality

- In this lecture, based on the above considerations, we will consider how to properly control mirror neurons in our brain by complementing the excellent conflict resolution of law with the moral explanation function.
- In other words, we will further evolve the functions of the mirror neurons, which are called "return a smile to" or "empathy function", while we will consider how to properly control the "retaliate if one is beaten" or "retaliatory function" of the mirror neurons.
- Through this, we will seek ways to realize world peace.

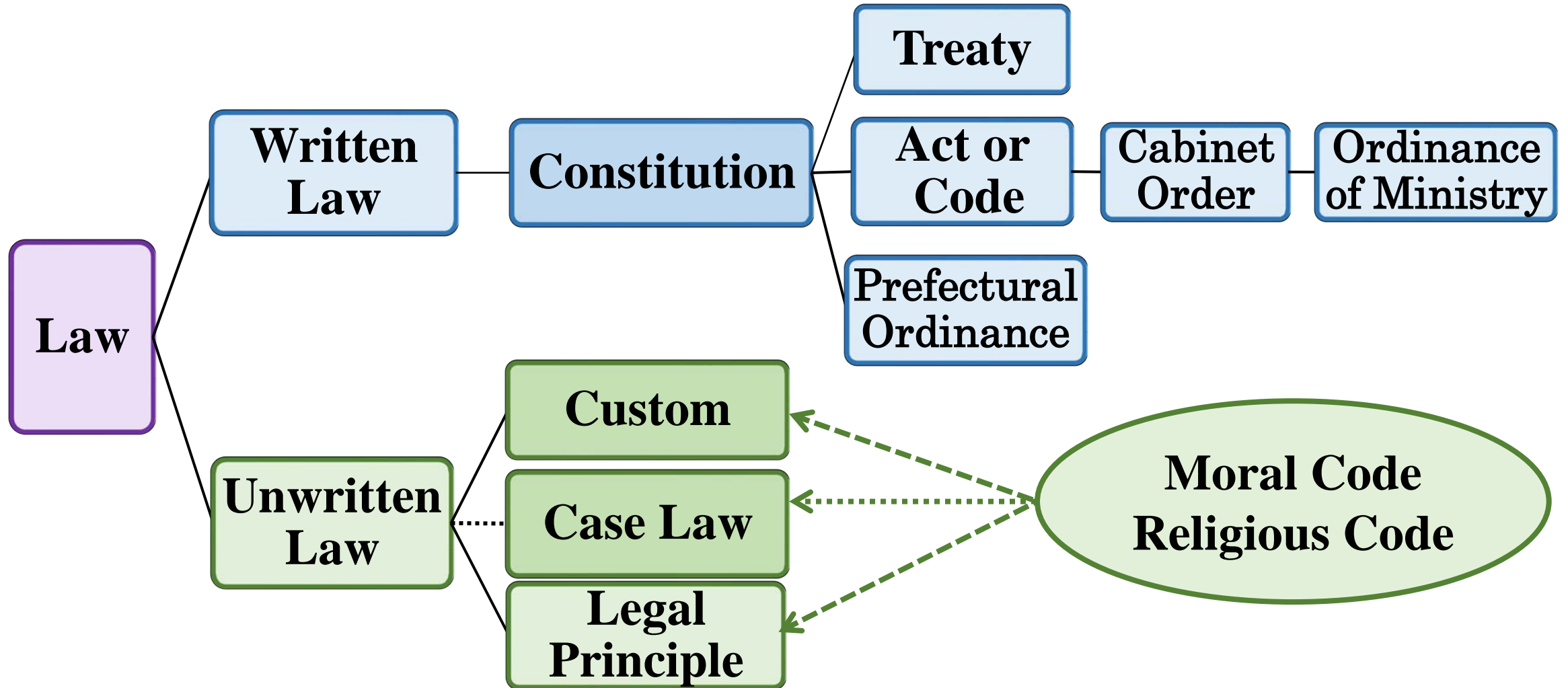


Preface

- Purpose, Method and Result of Law
- Relationship among Law, Morality and Religion



Type and source of Laws



The Purpose, Method and Result of Law

In order to achieve the peace

■ Purpose of Law

- is to resolve disputes **peacefully** before they happen or after they happen.

■ Method of Law

- must follow **peaceful** and proper procedures (ex. Toulmin's art of argument), and the result must be justice.

■ Result of the application of Law

- must be **peaceful solution**, acceptable to both of parties, experts and then public opinion(including the view point of Moral and Religion).



(1) The purpose of Law

- "The goal of the law is peace, and the means to reach it is struggle."
 - Rudolf v. Jaring, "Der Kampf ums Recht (The struggle for Right)", 1872



The goal of the law is peace, and the means to reach it is struggle.

Rudolf v. Jaring, “Der Kampf ums Recht (The struggle for Right)”, 1872



- “All the laws of the world were fought against, and all the important laws had to first be taken from the hands of those who denied them. Law is not a mere thought but a living force.
- Therefore, the goddess of justice has a measure of right in one hand and a sword in the other hand to claim it. A sword without measure is naked violence, and a measure without sword means the powerlessness of the law.
- The measure and the sword are interdependent, and the perfect state of law exists only where the power of the sword of the goddess of justice and the skill of handling the measure are balanced.”



Both Goal and means of Law are peace

- I think, however, there is no guarantee that real peace will be brought about by “struggle” by force.
- This is because there is a high risk that a solution by force will lead to repeated struggles because it will not win the consent of the parties.
- If that is the case, I believe that the means of law should be peaceful argument, as in “The goal of the law is peace”, and the means of reaching it is not struggle, but peaceful argument.



(2) The method of Law

- Legal way of Thinking
- Toulmin's Diagram

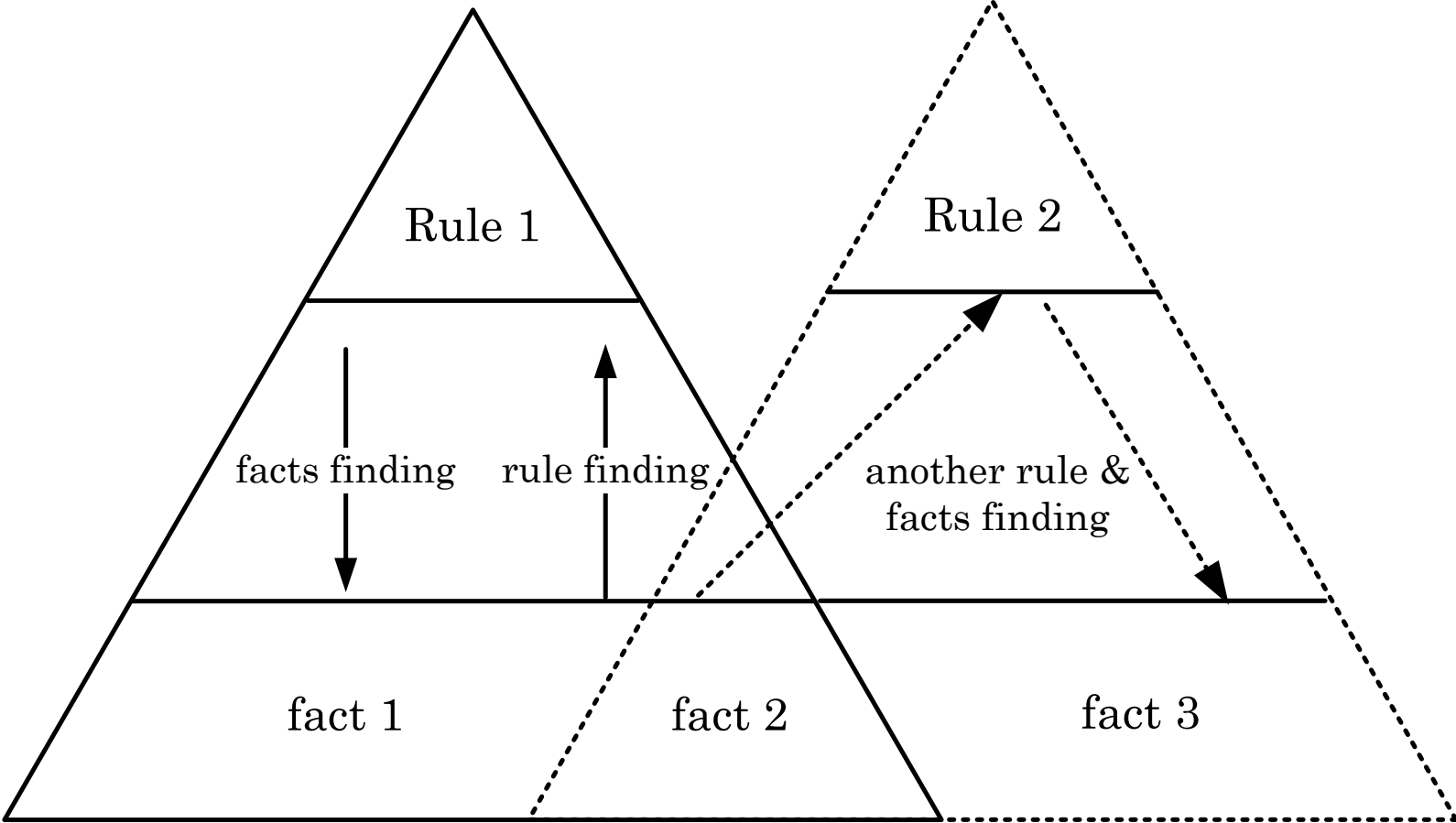


IRAC as the legal way of thinking

Analyze, argue and draw your Conclusion		
Analysis	Issue	Finding data & facts
	Rules	Finding Rules
	A	Application
Argument		Argument against / for tentative conclusions
Argument	Conclusion	Finding final conclusion



Top-down and Bottom-up way of thinking



The Myth of Judgment

Syllogism

- Major premise:
 - All men are mortal.
- Minor premise:
 - Socrates is a man.
- Conclusion:
 - Socrates is mortal.

Judgement

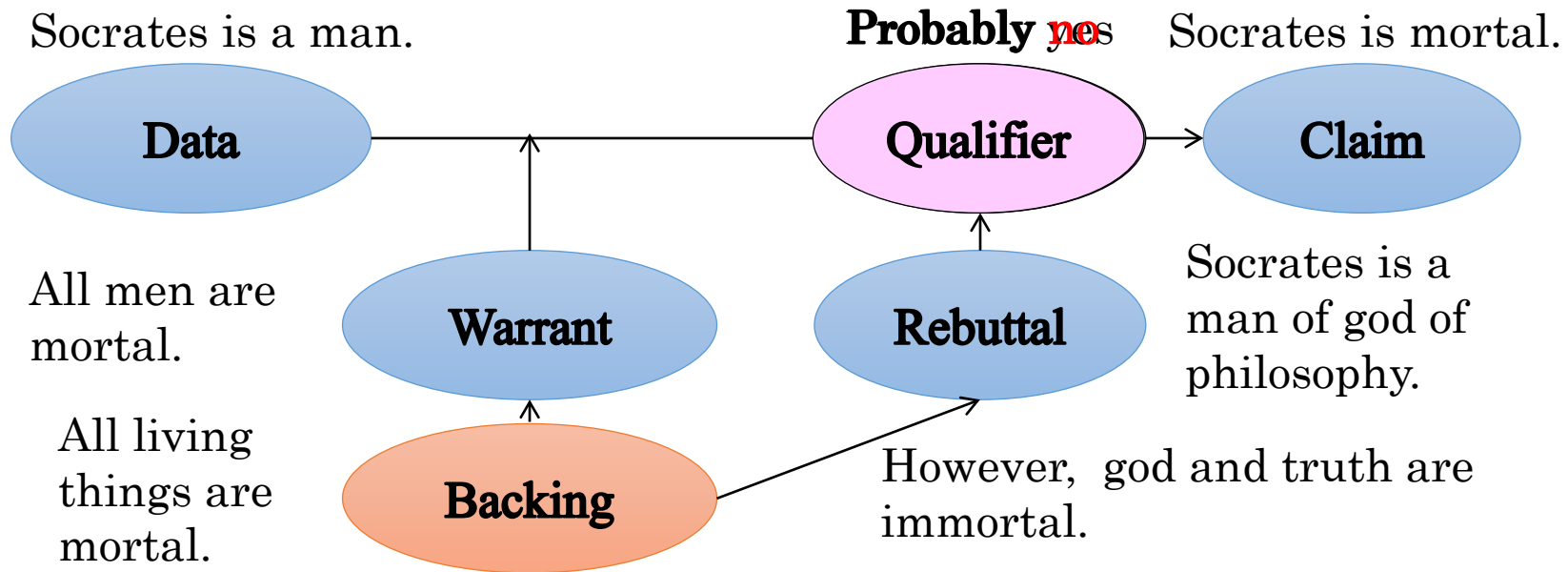
- Substantive Law
 - If tortfeasor caused damage against a victim and there is fault in his act, then he should compensate the victim.
- Fact finding
 - The victim proved the fault of tortfeasor.
- Application of law to the fact
 - The tortfeasor should compensate the victim.



From Syllogistic to Toulmin Diagram

- **Syllogism (Admit of no exceptions)**
 - Major premise: All men are mortal.
 - Miner premise: Socrates is a man.
 - Conclusion: Socrates is mortal.

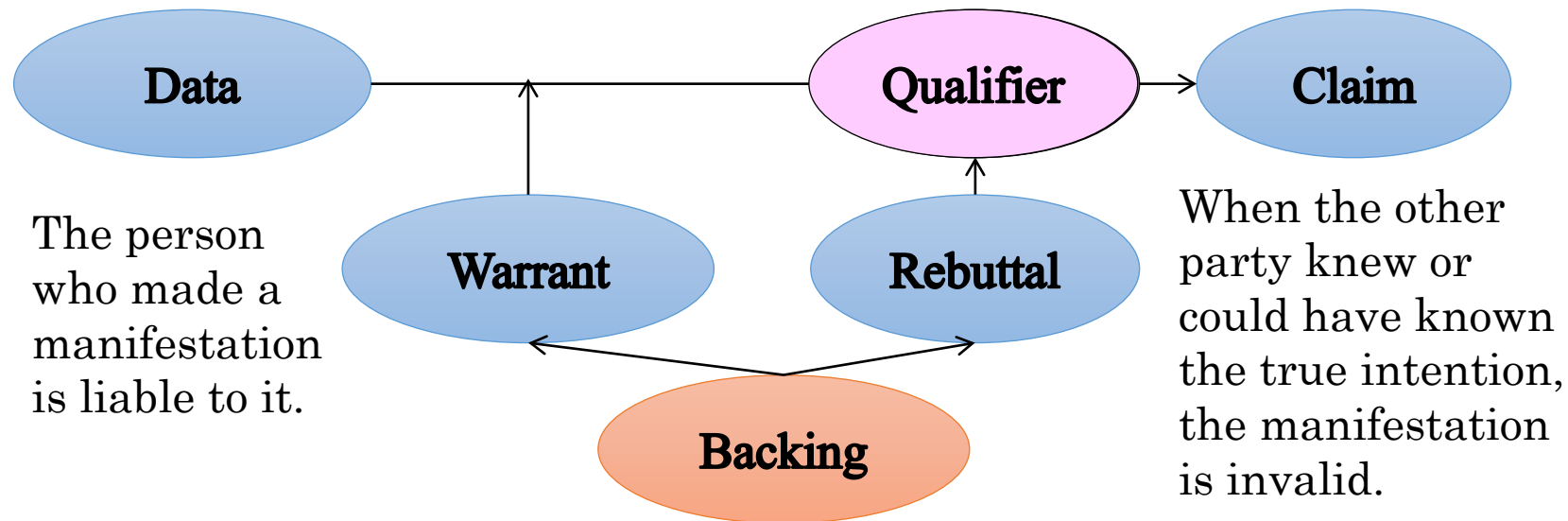
- **Toulmin Diagram (Admit of exceptions)**



Application of Toulmin Diagram to Joke

The person who made a manifestation knows that it does not reflect his/her true intention.

The manifestation is valid.



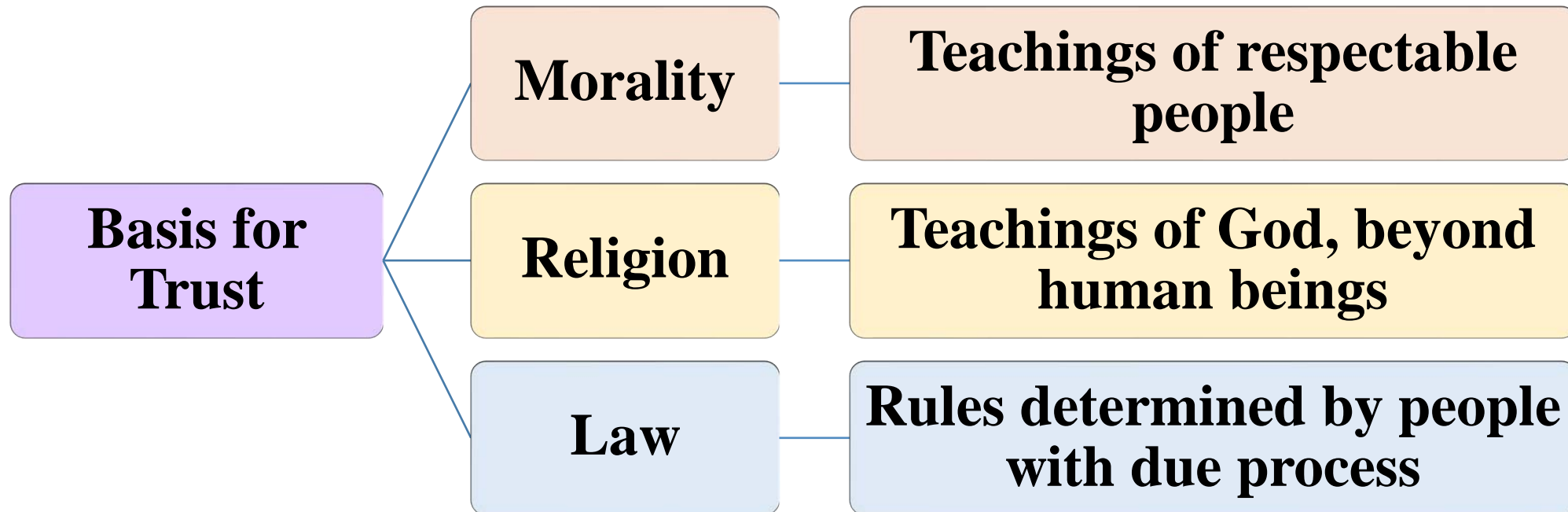
The manifestation of intention which is concealed the true intention:
It is invalid in case the other party knew or could have known.
It is valid in case the other party is didn't know and without negligence.

(3) The Result of Law

- The result of law must be acceptable to both of parties, experts and then public opinion (including the view point of Moral and Religion).



Basis for Moral, Religion and Law



Conflict between people who believe in morality or religion and those who believe in law(1/2)

- **Moral norms** are cultures that trust long-established practices and the teachings of the people they respect.
- **Religious norms** are cultures that rely on the teachings of the omnipotent God, who transcends human beings.
- On the other hand, **Legal norms** are culture that trusts rules determined by human groups with due process.



Conflict between people who believe in morality or religion and those who believe in law(2/2)

- However, the legal group also includes people they do not respect (the merchant of death, corrupt politicians, foolish people deceived by money), often resulting in rules that are immoral.
- Thus, people who place importance on morality or religion and trust in the teachings of the people they respect or Good suspect people who follow legal norms as impure people who trust rules made with money.



Need for reconciliation with people with differing grounds of trust(1/2)

- In order for human beings to be social animals and to live a peaceful and comfortable life in society, rules are necessary, and a mutual relationship of **trust** is necessary for the groups that form the premise of the rules.
- It is even more important for people to understand each other's reasons of **trust** in a society in which diverse cultures compete with each other due to the spread of human life.

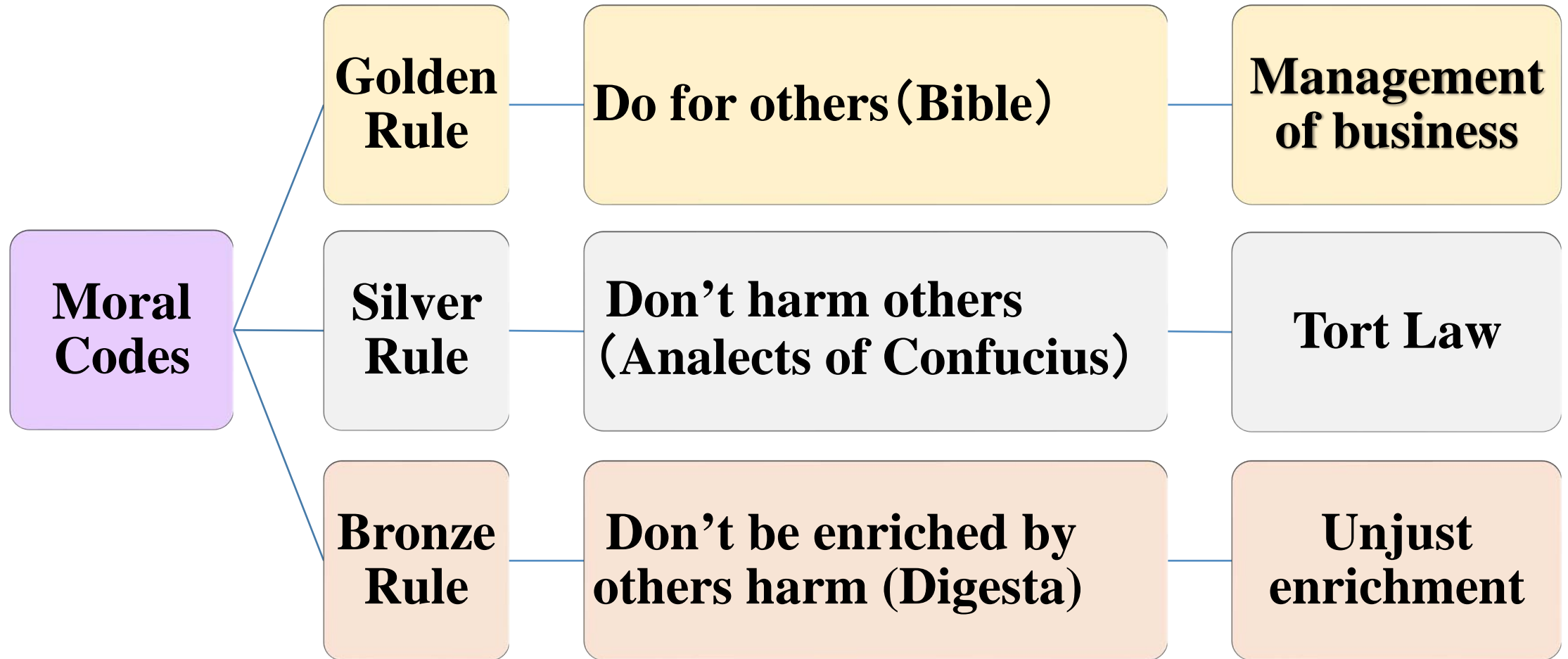


Need for reconciliation with people with differing grounds of trust(2/2)

- If you have a **person** whom you respect in common, you should respect their judgment;
- If you believe in a common **God**, you should follow the teachings of God;
- If you do not have such a common basis of trust, you should respect legal codes such as **universal laws** covering the widest area, treaties concluded between nations, national laws, and local ordinances.



Three Moral Codes



1. Golden Rule

- Do to others as you would have them do to you.
 - (Luke 6:31 (Love for Enemies))



(1) Case study1 → Applicable law

Maizuru City Grand Sumo Case (2018)

- On April 4, 2018, at the “Spring Grand Sumo Tournament” held in Maizuru City, Kyoto Prefecture, when **mayor Ryozo Tatami** was giving a speech in the Sumo stage, **he suddenly fell on his back** (Later found to be critical due to a subarachnoid hemorrhage: serious disease caused by bleeding from blood vessels in the brain).
- The hall was in an uproar, and while the people on the ring were panicking, **two women in the audience stepped into the Sumo stage for life-saving treatment**.
- When the women were immediately started artificial respiration, the event in charge of the announcement repeatedly announced to them, **"Women should get off the Sumo stage."**



After the Maizuru City Grand Sumo Case

- After the Maizuru Sumo Case, the male rescue team arrived and took over the rescue work with the two women, and the mayor was rushed to the hospital and admitted to the hospital, where he survived.
- The rescue operation of two women, ignoring the announcement "Women should get off the stage.", saved lives (The mayor of Maizuru is now recovering his health and returning to work.).
- Subsequently, President Hakkaku of the Japan Sumo Association explained that the announcement of the event was "inappropriate as an emergency response".
- On the other hand, there are opinions that the tradition of "Nyonin kinsei(女人禁制 : No women allowed in the Sumo stage)" should be respected and that announcements should be followed.



(2) Moral Code

■ Golden Rule

- Matthew 7:12 (Ask, Seek, Knock, Do for others)
- Luke 6:31 (Love for Enemies)



Golden Rule (1/4)

■ Matthew 7:12 (Ask, Seek, Knock, Do for others)

- “Ask and it will be given to you; seek and you will find; knock and the door will be opened to you. ⁸ For everyone who asks receives; the one who seeks finds; and to the one who knocks, the door will be opened.
- ⁹ “Which of you, if your son asks for bread, will give him a stone? ¹⁰ Or if he asks for a fish, will give him a snake? ¹¹ If you, then, though you are evil, know how to give good gifts to your children, how much more will your Father in heaven give good gifts to those who ask him!
- ¹² So in everything, **do to others what you would have them do to you**, for this sums up the Law and the Prophets.



Reason of Golden Rule

- **Why you could receive if you ask someone to give?**
 - Because a human has a heart to share and everyone feels happier to give something to someone than to receive something from someone.
 - **There is more happiness in giving than in receiving**
- **Acts of Apostles Chapter 20**
 - ³⁵ By every means I have shown you that we must exert ourselves in this way to support the weak, remembering the words of the Lord Jesus, who himself said, "There is more happiness in giving than in receiving."
- **Question**
 - I wonder that the meaning of "Do for others" is equal to "Do whatever you want for others". If it is right, the meaning could become "small kindness is big trouble for others". Because it is not always equal between what you want to others and what others want to you.



Golden Rule (2/4)

■ Luke 6:31 (Love for Enemies)

- ²⁷ “But to you who are listening I say: **Love your enemies, do good to those who hate you,**
- ²⁸ **ble**ss those who curse you, pray for those who mistreat you.
- ²⁹ If someone slaps you on one cheek, turn to them the other also. If someone takes your coat, do not withhold your shirt from them.
- ³⁰ Give to everyone who asks you, and if anyone takes what belongs to you, do not demand it back.
- ³¹ **Do to others as you would have them do to you.**



An interpretation of Golden Rule

- It is difficult to understand of context of 30-31 chapter 6 of the Gospel of Luke.
 - ³⁰ Give to everyone who asks you, and if anyone takes what belongs to you, do not demand it back.
 - ³¹ **Do to others as you would have them do to you.**
- However, the meaning in this case is easier to understand if we switch positions.
 - The meaning of "Do for others" in this case would be the same as **“Do to others as they would have you to do them”**.



(3) Law

■ Article 698(Urgent Management of Business)



Golden Rule (3/4) § 677 BGB

- § 677 BGB (Pflichten des Geschäftsführers)
 - Wer ein Geschäft für einen anderen besorgt, ohne von ihm beauftragt oder ihm gegenüber sonst dazu berechtigt zu sein, hat das Geschäft so zu führen, wie das Interesse des Geschäftsherrn mit Rücksicht auf dessen wirklichen oder mutmaßlichen Willen es erfordert.
- Article 677 (Duties of the voluntary agent)
 - A person who conducts a transaction for another person without being instructed by him or otherwise entitled towards him must conduct the business in such a way as the interests of the principal require in view of the real or presumed will of the principal.



Golden Rule (4/4) Civil Code of Japan

→ [Applicable Law](#)

■ Chapter 3 Negotiorum Gestio (Management of Business))

■ Article 697 (Management of Business)

(1) A person who commences the management of a business for another person without being obligated to do so ("Manager") must manage that business ("Management of Business") in accordance with the nature of the business, using the method that best conforms to the interests of that another person ("the principal").

■ (2) The Manager must engage in Management of Business in accordance with the intentions of the principal if the Manager knows, or is able to conjecture that intention.



The reason for Art. 697, Civil Code of Japan

- The spirit of the legislation of paragraph 2 of Civil Code 697 is as follows:
 - If a manager is aware of or possible to perceive the principal's intention regarding management, the manager has to do business management in accordance with the principal's intention. In this case, the manager should not manage with the method prescribed in paragraph 1.
 - Under the name of business management, a manager should not interfere in the affairs of others in vain. In addition, the manager should not be what others do not want.
 - Even if there is a benefit to a person, but if it is contrary to the person's will, the manager should not interfere with the affairs. Such a thing is, is contrary to the spirit of the legislation of business management.



(4) Applicable law to the case1

- Article 697 (Management of Business)
- Article 698(Urgent Management of Business)
- Article 700(Continuation of Management of Business by Managers)



Applicable articles in Maizuru City Grand Sumo Case (2018)

■ Urgent Management of Business

■ Article 698

If a Manager[woman] engages in the Management of Business[artificial respiration] in order to allow a principal[Mayer] to escape imminent danger to the principal's person, reputation or property, the Manager[woman] shall not be liable to compensate for damages resulting from the same unless he/she has acted in bad faith or with gross negligence.

■ Continuation of Management of Business by Managers

■ Article 700

A Manager[woman] must continue the Management of Business[artificial respiration] until the principal[the mayer] or his/her heirs or legal representatives[male rescue team] can undertake it;

- provided, however, that this shall not apply in cases where it is evident that the continuation of the Management of Business is contrary to the intentions of the principal, or is disadvantageous to the principal.



2. Silver Rule

- **Do not do unto others what you would not have done unto you.’**
 - The Analects of Confucius 15-24.



(1) Case study2: → Applicable law

A self-driving car caused death of a pedestrian

- UBER Technologies, Inc., a car-hailing company(Y) in the United States, carried out a test drive of a self-driving car made by Volvo (Z) in Tempe, Arizona, in March 2018, hit and killed a pedestrian X (Elaine Hertzberg (49)) crossing a road by pushing a bicycle.
- A safety driver in the car was charged with involuntary manslaughter in connection with the accident. At the time of the accident, Rafael Vasquez, a safety driver in a self-driving car, was watching "The Voice" according to investigators.
- In civil cases, what responsibility does the manufacturer, owner, and driver of the self-driving car assume for X's death?



<https://www.businessinsider.jp/post-214243>



(2) Moral Code

- Zi Gong asked, “Is there any words that I have to obey my whole life?” Confucius replied, “It is thoughtfulness. **Do not do unto others what you would not have done unto you.**”
 - The Analects of Confucius 15-24.



(3) Law

- French Civil Code (1804)
- German Civil Code (1900)
- Japanese Civil Code (1898)



French Civil Code(1804)

- Art. 1382 (Civil responsibility in general)
 - Any act whatever of man, which causes damage to another, obliges the one by whose fault it occurred, to compensate it.
 - Tout fait quelconque de l'homme, qui cause a autrui un dommage, oblige celui par la faute duquel il est arrivé, a le réparer.
- Characteristics
 - There is no term of right in this provision.
 - It means that all of rights and legal interests can be compensated.
 - Prerequisite is only 3: fault, damage, and causation between fault and damage.



German Civil Code(1900)

- § 823 (Duty to compensate for damage)
 - (1) A person who, wilfully or negligently, unlawfully injures the life, body, health, freedom, property or other right of another is bound to compensate him for any damage arising therefrom.
 - (1) Wer vorsätzlich oder fahrlässig das Leben, den Körper, die Gesundheit, die Freiheit, das Eigentum oder ein sonstiges Recht eines anderen widerrechtlich verletzt, ist dem anderen zum Ersatz des daraus entstehenden Schadens verpflichtet.
- Characteristics
 - Limited list of rights: Pure economic loss is excluded.

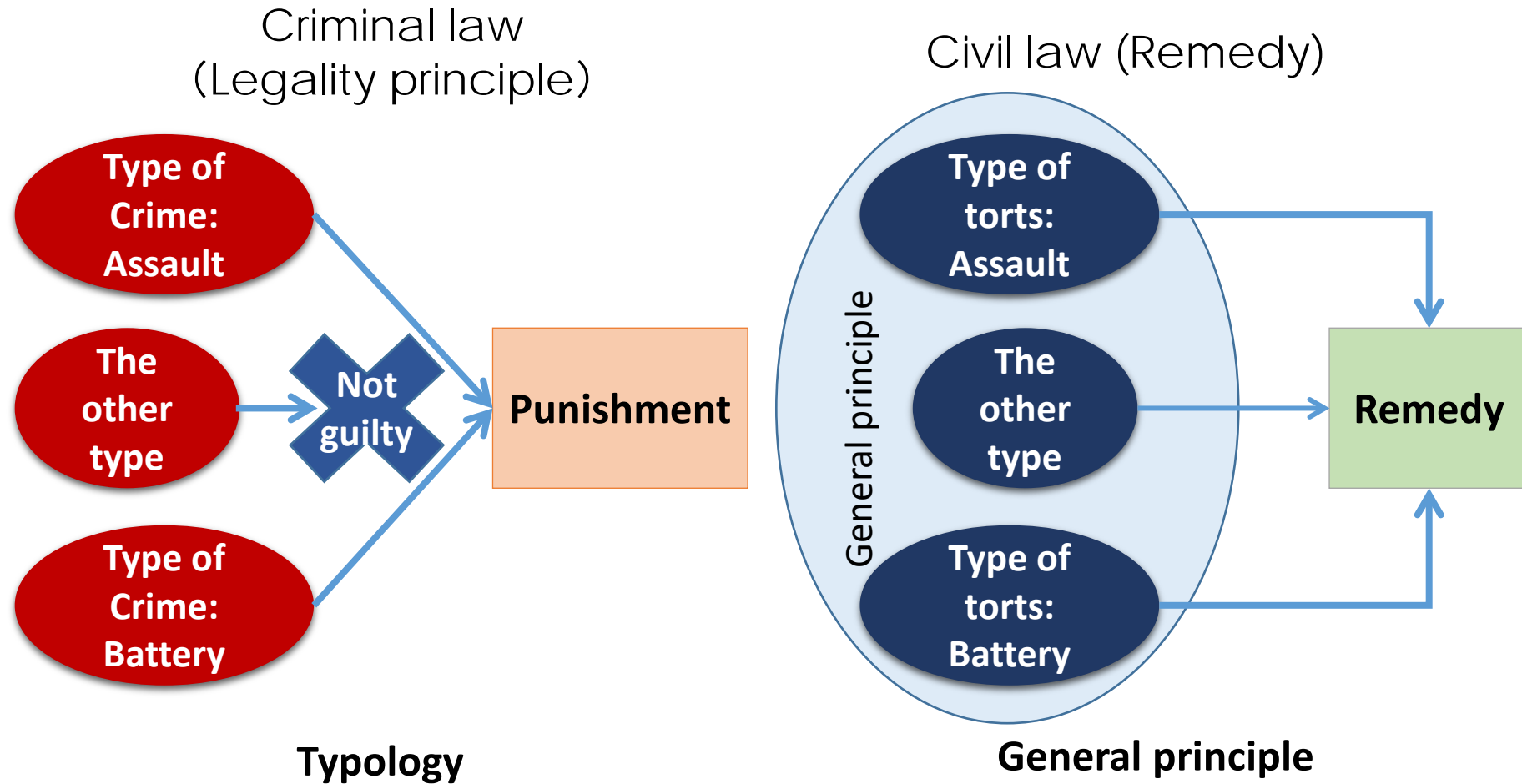


Japanese Civil Code (1896)

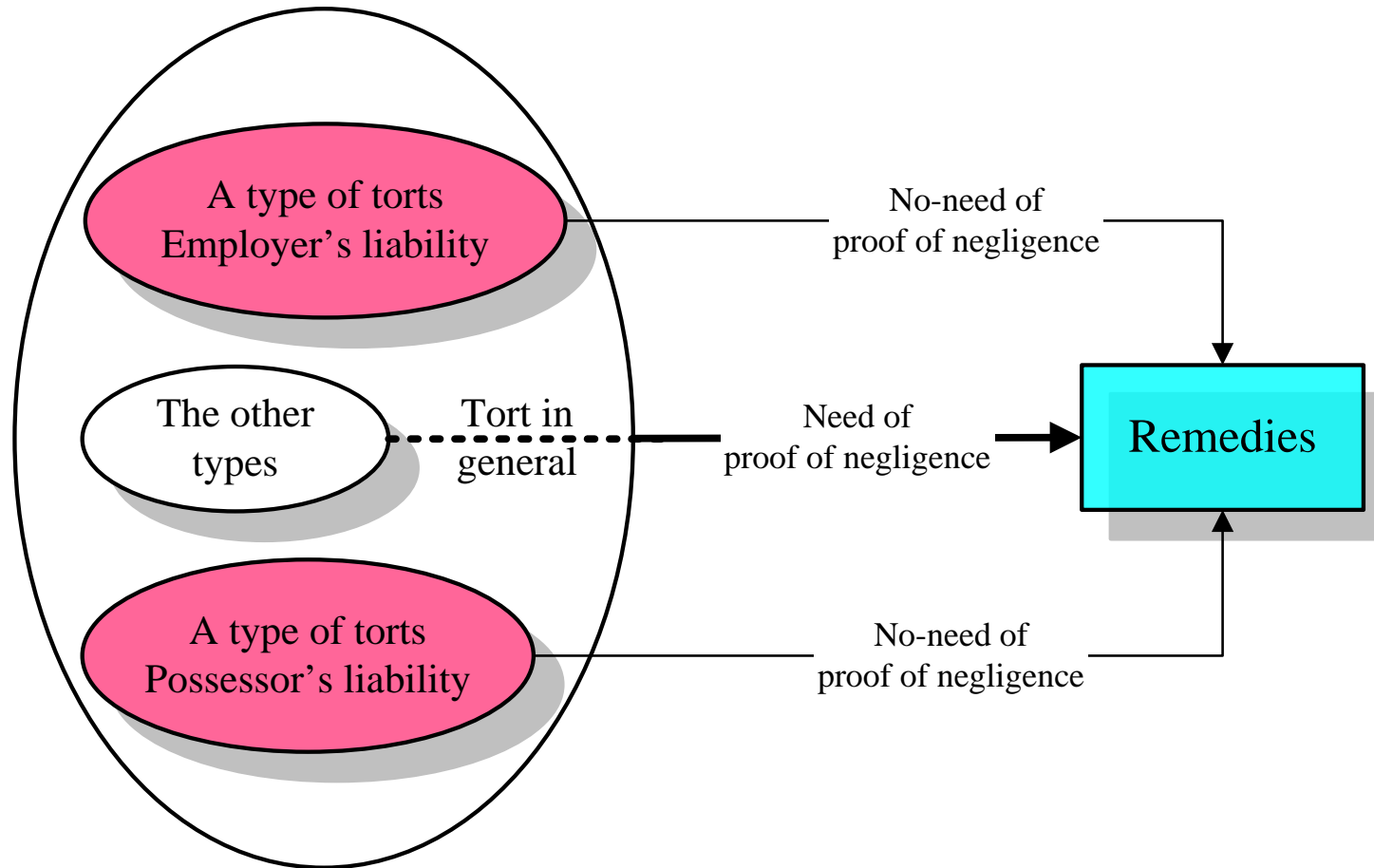
- Article 709 (Tort in general - compensation for damage)
 - A person who has intentionally or negligently infringed **any right of others, or legally protected interest of others**, shall be liable to compensate any damages resulting in consequence.



Difference between Criminal law and Civil law

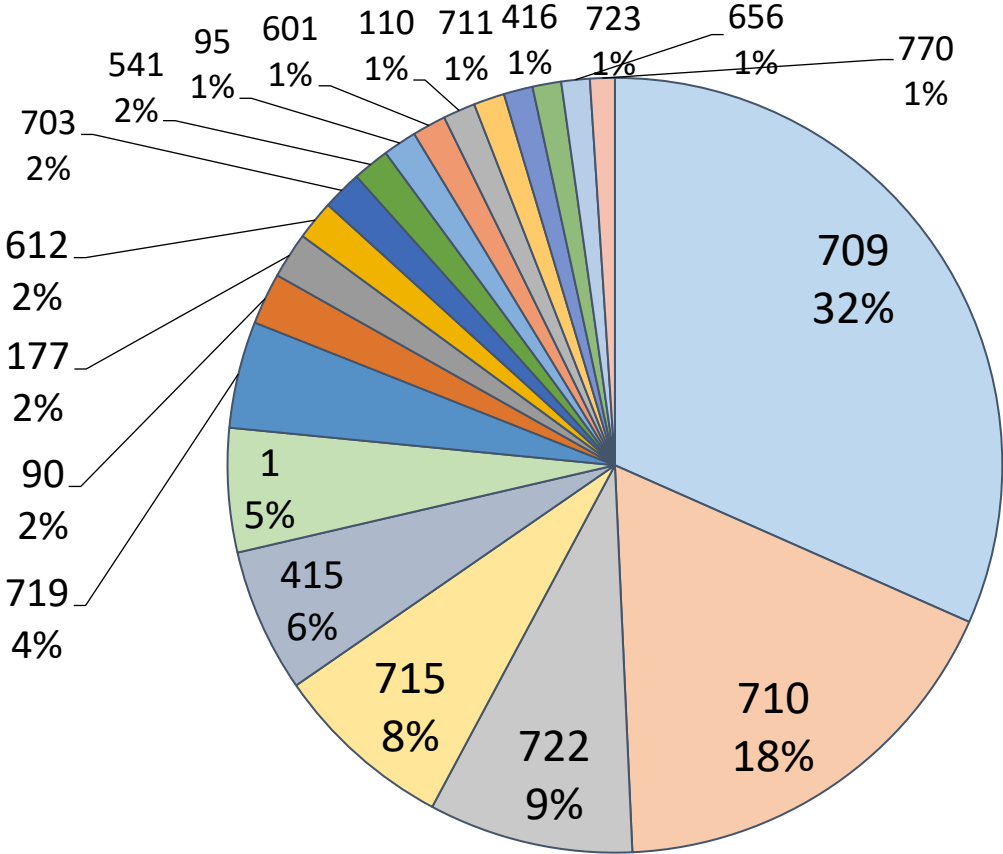


Function of special torts



Best 20 Articles of Civil Code of Japan

from the view point of frequency of application(1945-2013)

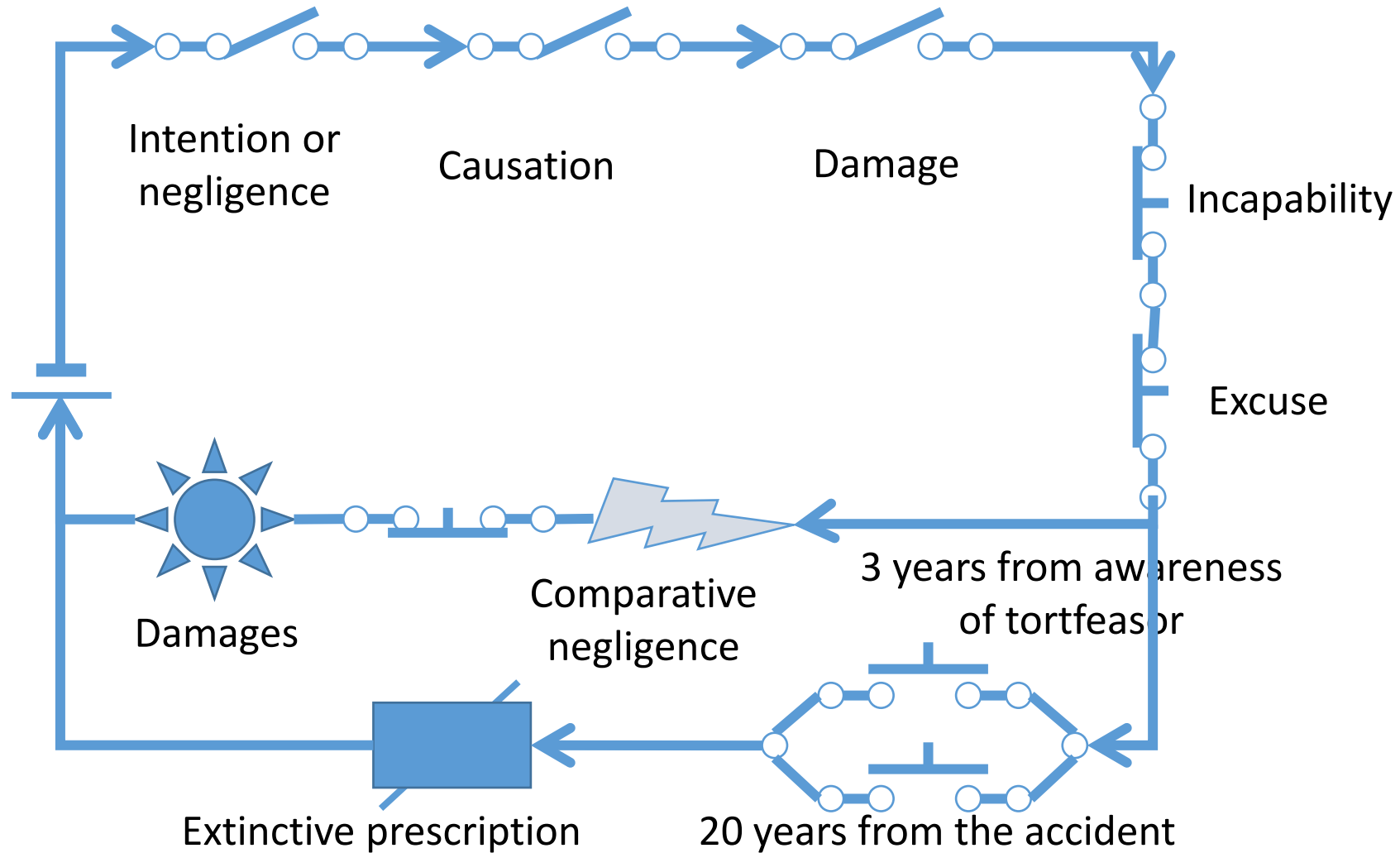


Best 30 Articles of Civil Code of Japan

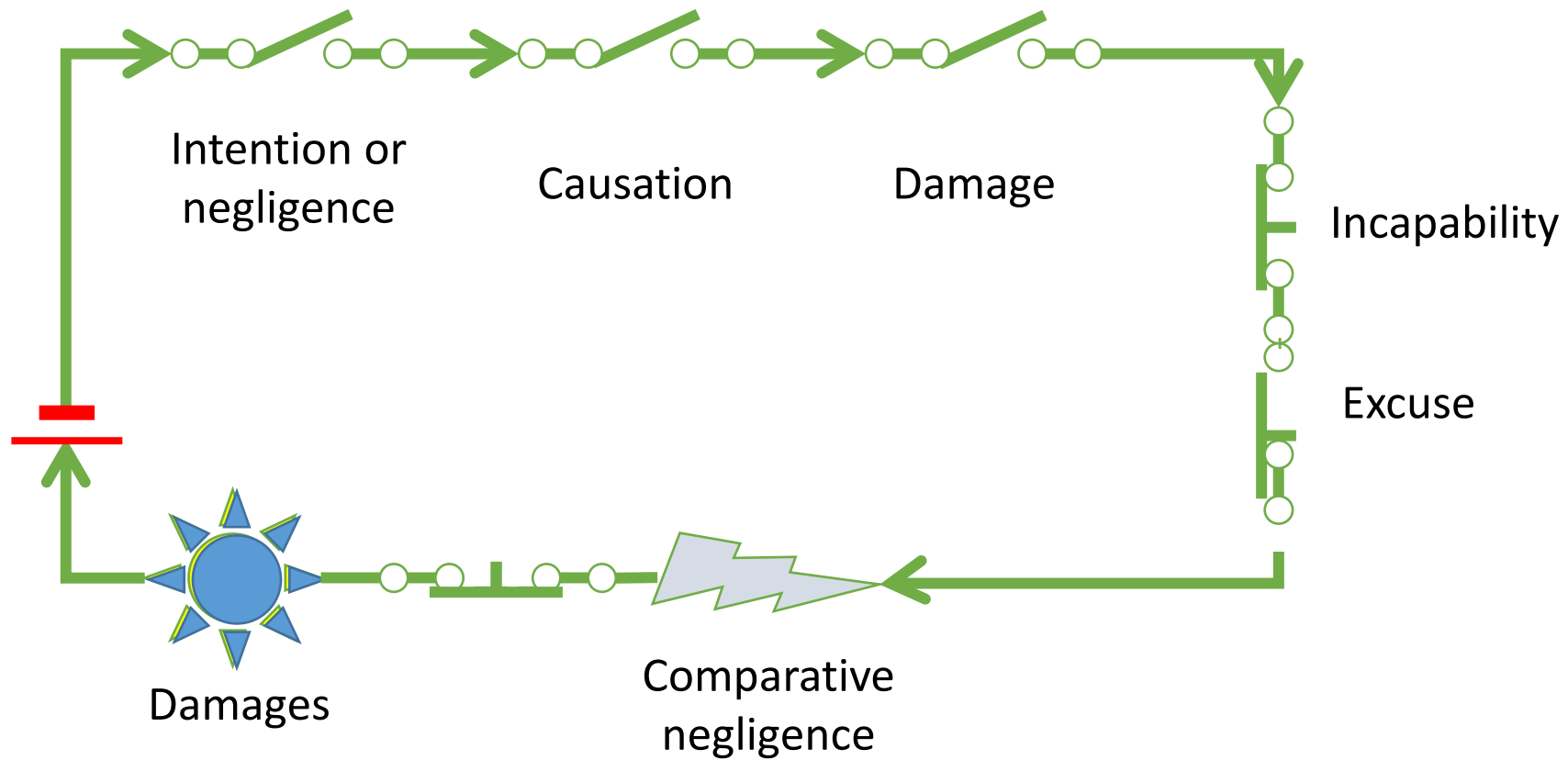
No.	Articles	No.	Articles	No.	Articles
1	General tort law	11	Unjust Enrichment	21	Liability of land
2	Compensation	12	Termination	22	Prescription of tort
3	Comparative Negligence	13	Mistake	23	Duty of Care of Mandatary
4	Employers' liability	14	Lease	24	Sale
5	Non Performance of contract	15	Apparent Agency	25	Loan for use
6	General Principles	16	Next kin's right for compensation	26	Division of Inherited Property
7	Joint tortfeasor	17	Scope of Damages	27	Action Paulienne
8	Pubic policy	18	Defamation	28	Acquisitive prescription
9	Transfer real estate and registration	19	Quasi-Mandate	29	Free of contract
10	Restriction of sublease	20	Judicial Divorce	30	Action oblique



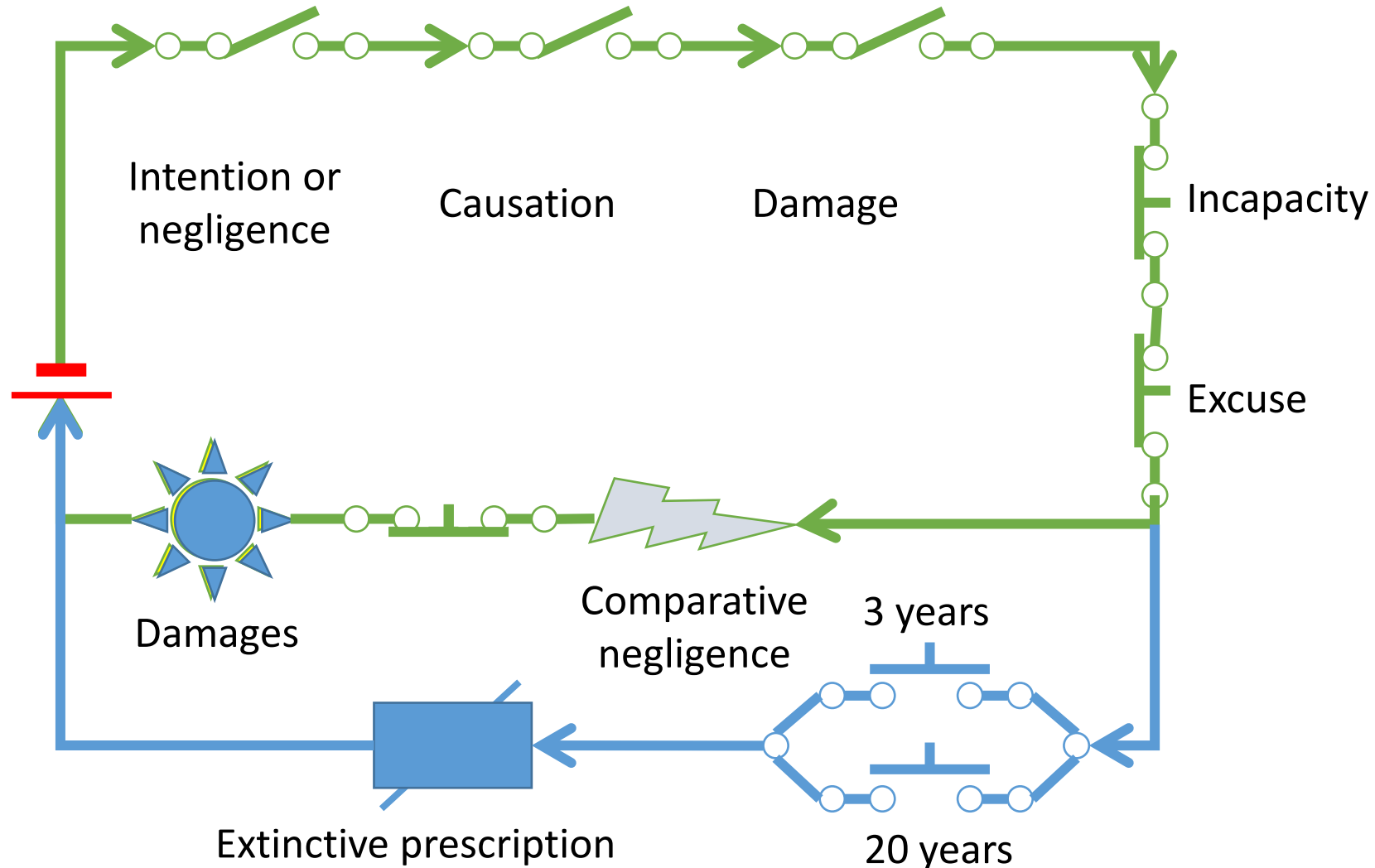
Dynamic understanding of general tort law (1/4)



Dynamic understanding of general tort law (2/4)



Dynamic understanding of general tort law (3/4)



Dynamic understanding of general tort law (4/4)

Product liability

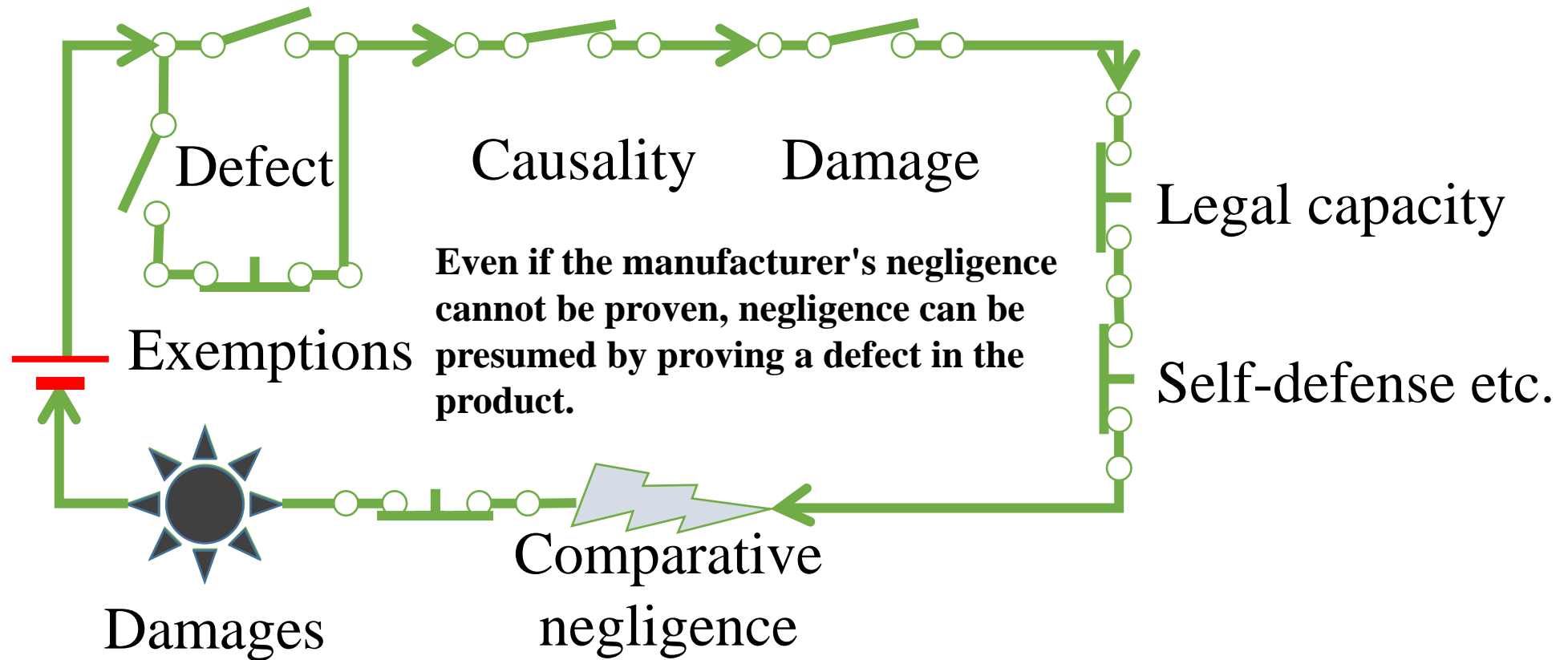
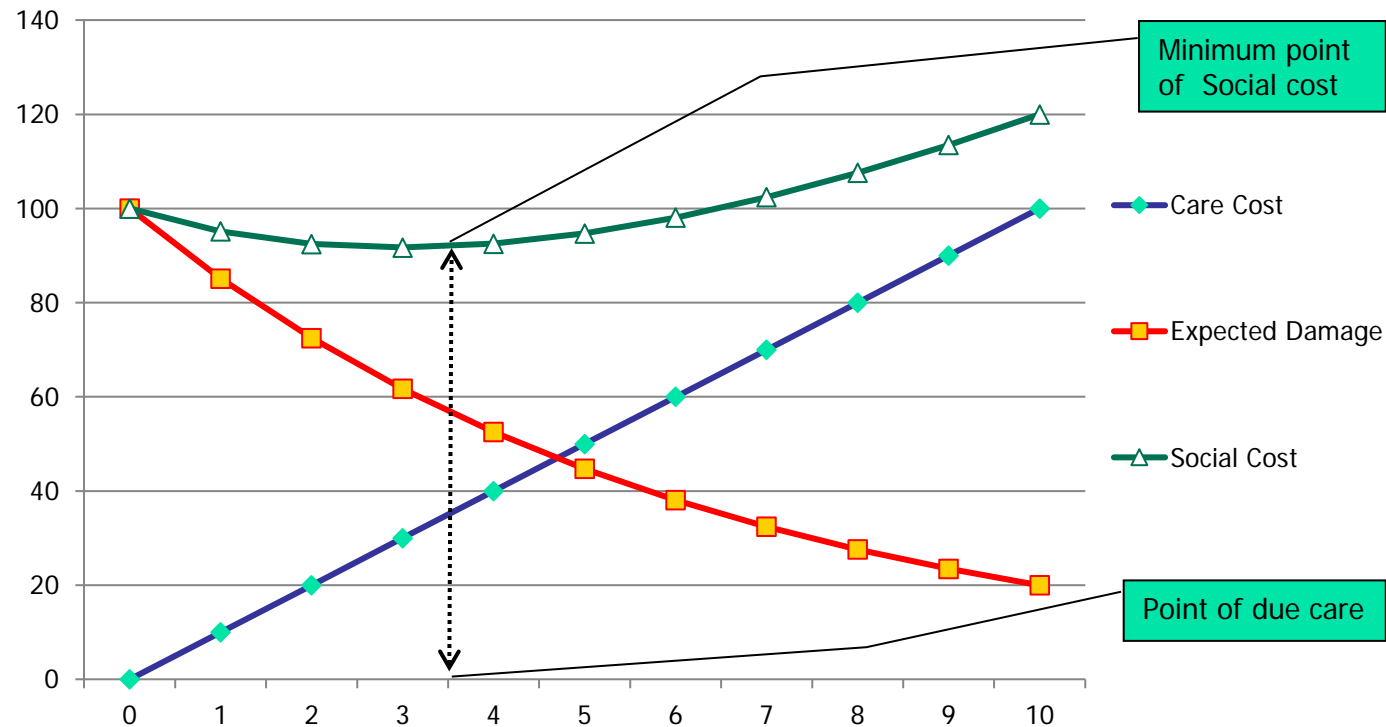
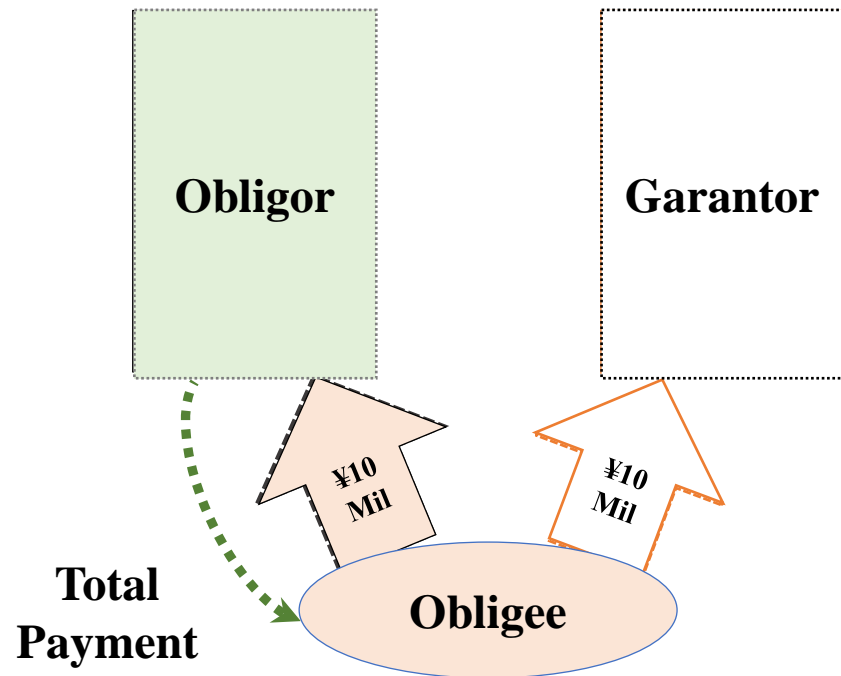


Illustration of Point of Due Care



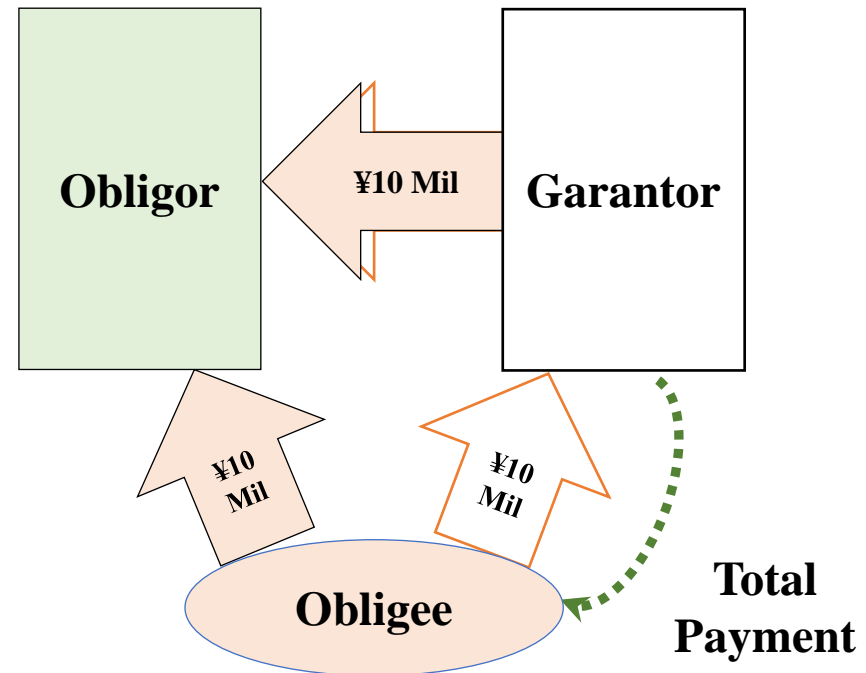
Two types of payments cause completely different results

■ Payment of obligor



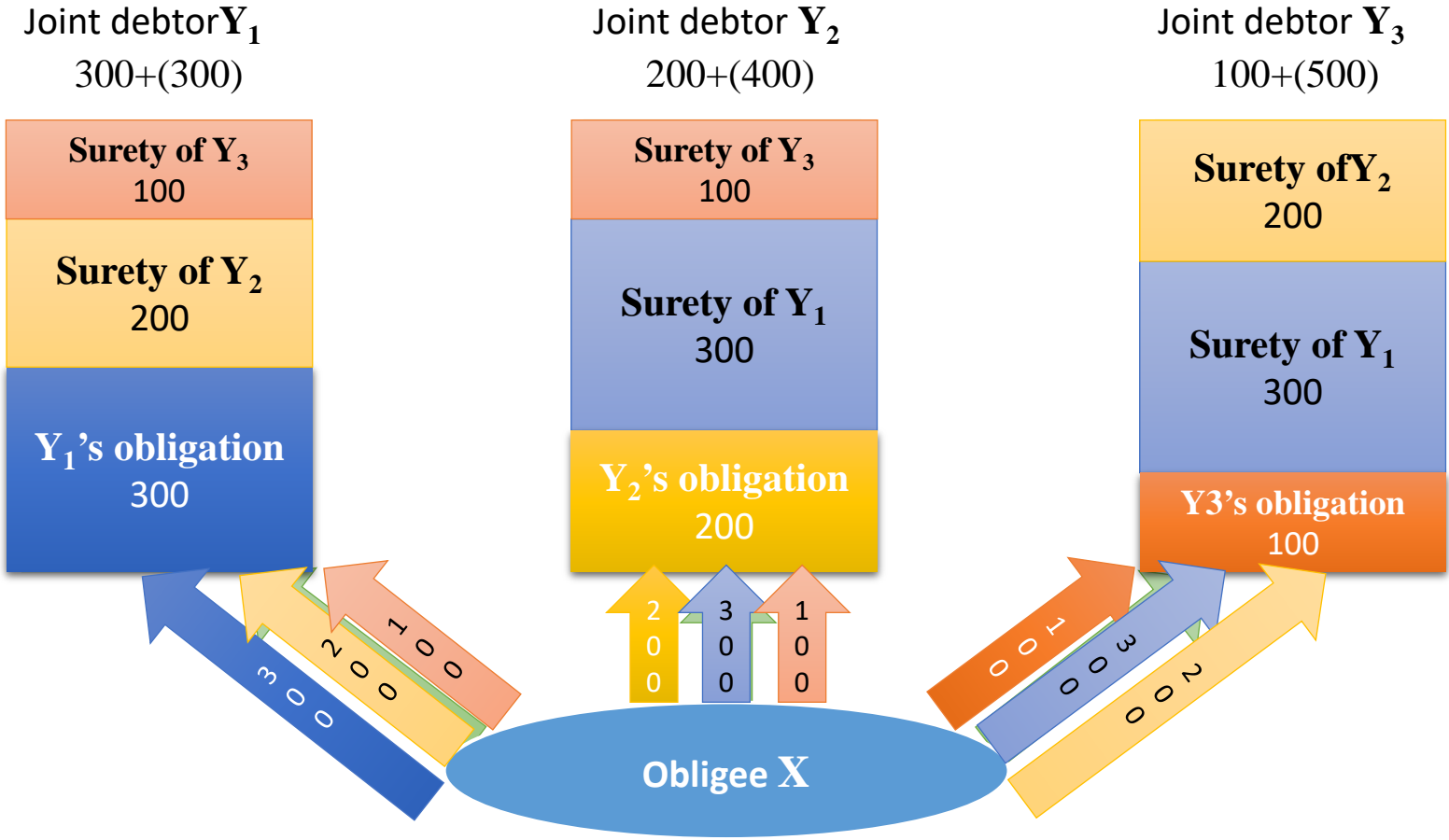
Both obligations are extinguished

■ Payment of Gurantor

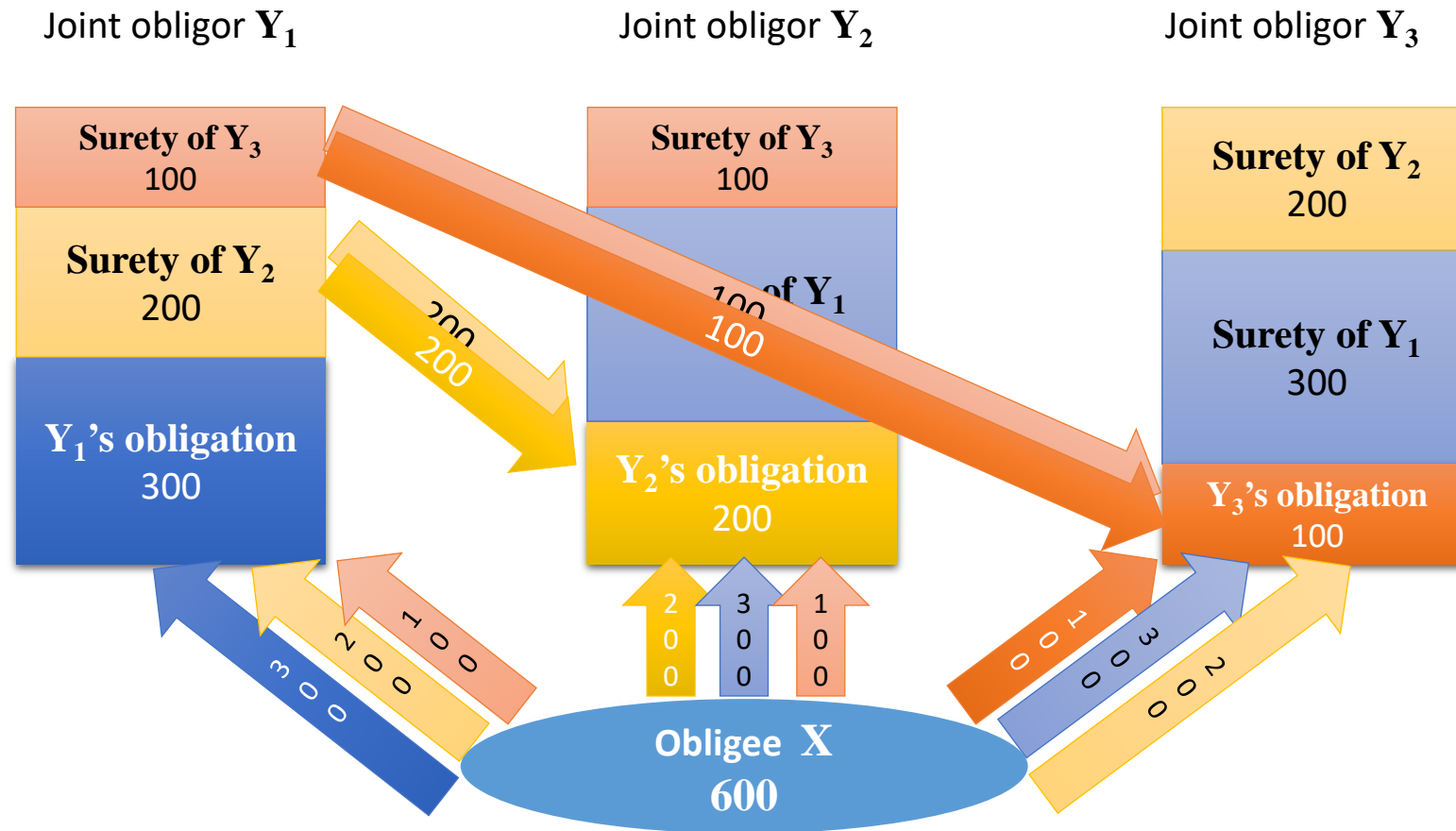


The credit move from Oblige to Garantor. Obligation of Obligor not extinguished and exist for the purpose of reimbursement.

Structure of several and joint liability



Subrogation of joint obligor by total payment



(4) Applicable Law to the case2

- Article 719(Joint and several liability of multiple tortfeasors), Civ. Code of Japan
 - Act on Securing Compensation for Automobile Accidents
 - Product Liability Act



Multiple Tortfeasors → [Case2](#)

- Article 719 (Joint and several liability of multiple tortfeasors)
 - (1) If two or more persons [Y,Z] have by their joint unlawful act caused damage to another [X], they are jointly and severally liable to make compensation for such damage; the same shall apply if it is impossible to ascertain which of the joint participants has caused the damage.
 - (2) Instigators and accomplices are deemed to be joint participants.



Act on Securing Compensation for Automobile Accidents → [Case2](#)

■ Article 3(Automobile Liability)

- A person[Y] that puts an automobile into operational use for that person's own benefit is liable to compensate for damage arising from the operation of the automobile if this results in the death or bodily injury of another person[X];
- provided, however,
 - that this does not apply if the person[Y] and the driver prove that they have exercised due care in connection with the operation of the automobile,
 - that the injured party[X] or a third party other than the driver has acted intentionally or negligently,
 - and that there was no defect in automotive structure or function.



Act on Securing Compensation for Automobile Accidents — Direct Action → [Case2](#)

- Article 16 (Filing a Claim with the Insurer for Damages)
 - (1) If a person [Y] in possession becomes liable to compensate for damage as under Article 3, the injured party [X] may file a claim with insurer for the insurer to pay the injured party damages of up to the amount of insurance coverage, pursuant to Cabinet Order.



Product Liability Act (1/2) → [Case2](#)

■ Article 3(Product Liability)

- The manufacturer[Z], etc. shall be liable for damages arising from the infringement of life, body or property of others[X] which is caused by the defect in the delivered product which was manufactured, processed, imported, or provided with the representation of name, etc. described in item 2 or item 3 of paragraph 3 of the preceding Article, provided, however, that the manufacturer, etc. shall not be liable when the damages occur only with respect to such product.



Product Liability Act (2/2) → [Case2](#)

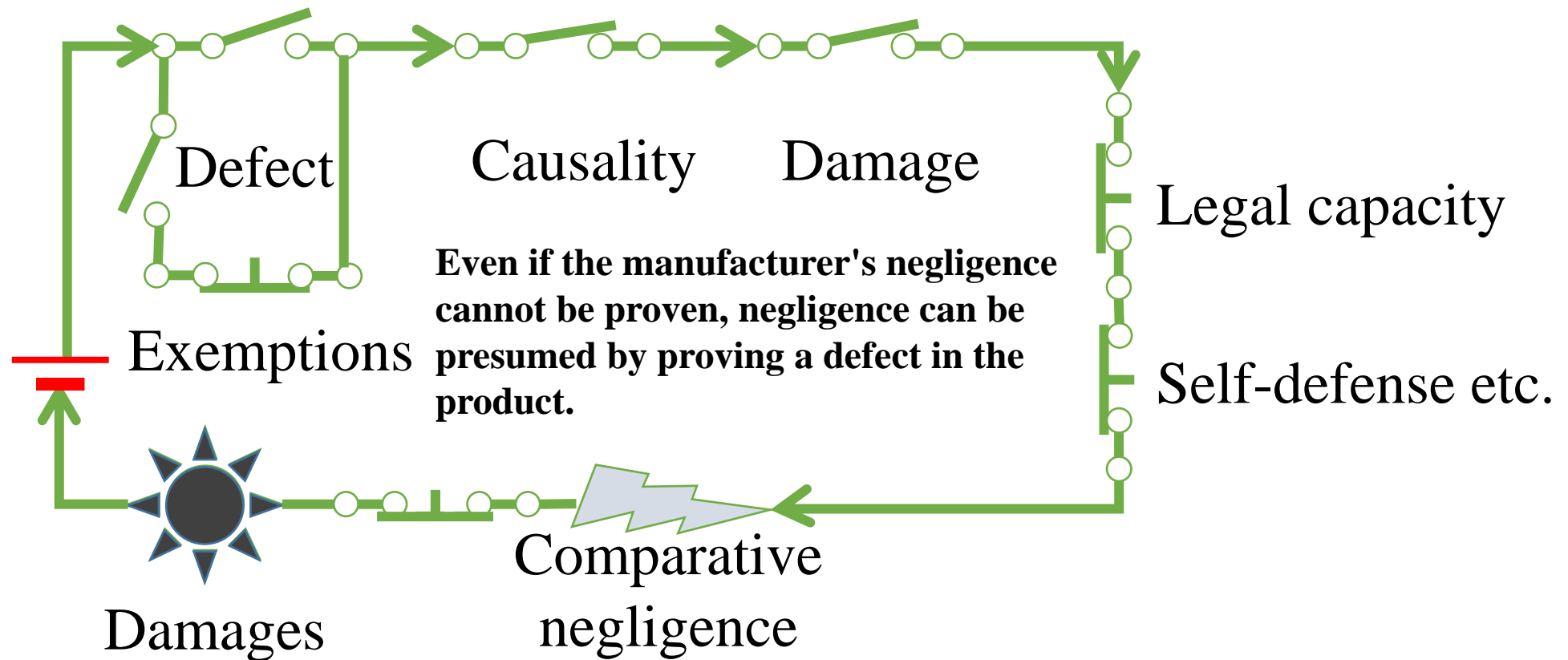
■ Article 4 (Exemptions)

- In cases where Article 3 applies, the manufacturer[Z], etc. shall not be liable as provided in Article 3 if he/she proves that:
 - (i) the defect in such product could not have been discovered given the state of scientific or technical knowledge at the time when the manufacturer, etc. delivered the product; or
 - (ii) in case where the product is used as a component or raw material of another product, the defect occurred primarily because of the compliance with the instructions concerning the design given by the manufacturer of such another product, and that the manufacturer, etc. is not negligent with respect to the occurrence of such defect.

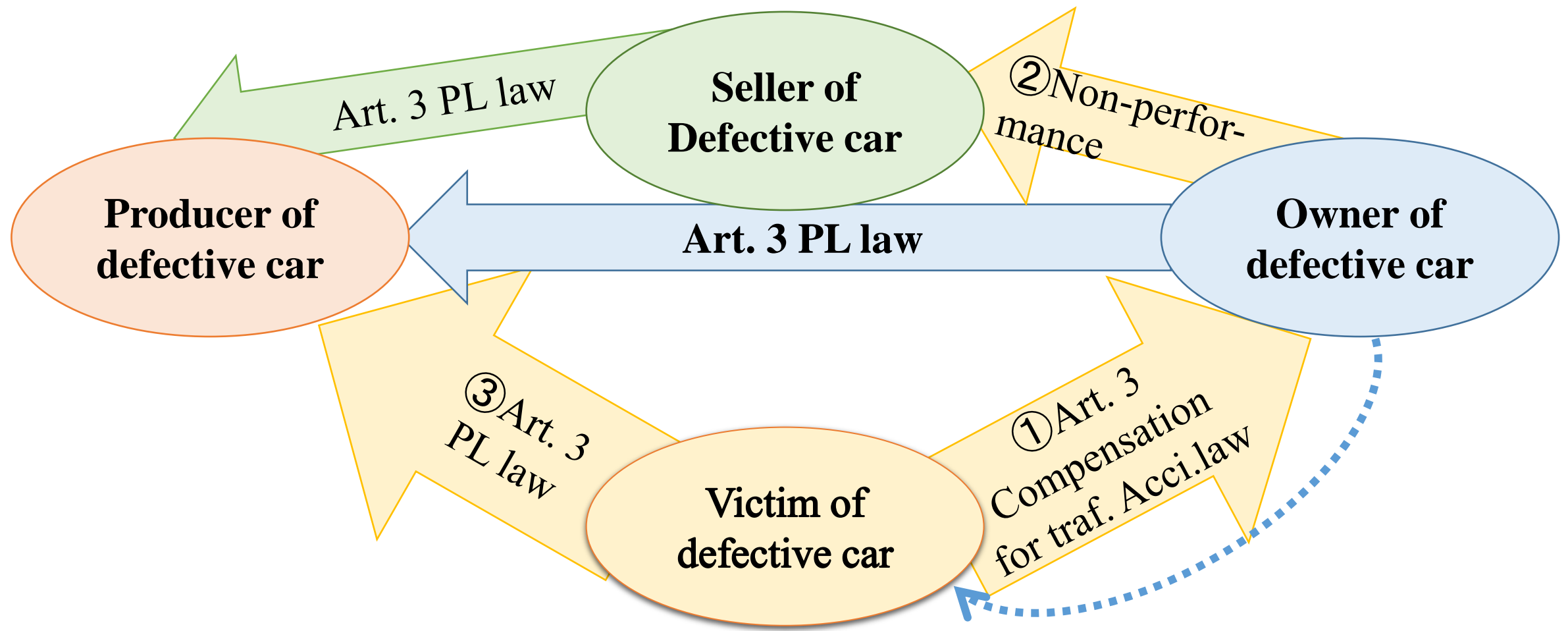


Dynamic understanding of general tort law (4/4)

Product liability → [Case2](#)



Division of responsibility of a defective car → [Case2](#)



3. Bronze Rule

- No one should be enriched by another loss or injury.
 - (D.50. 17. 206)



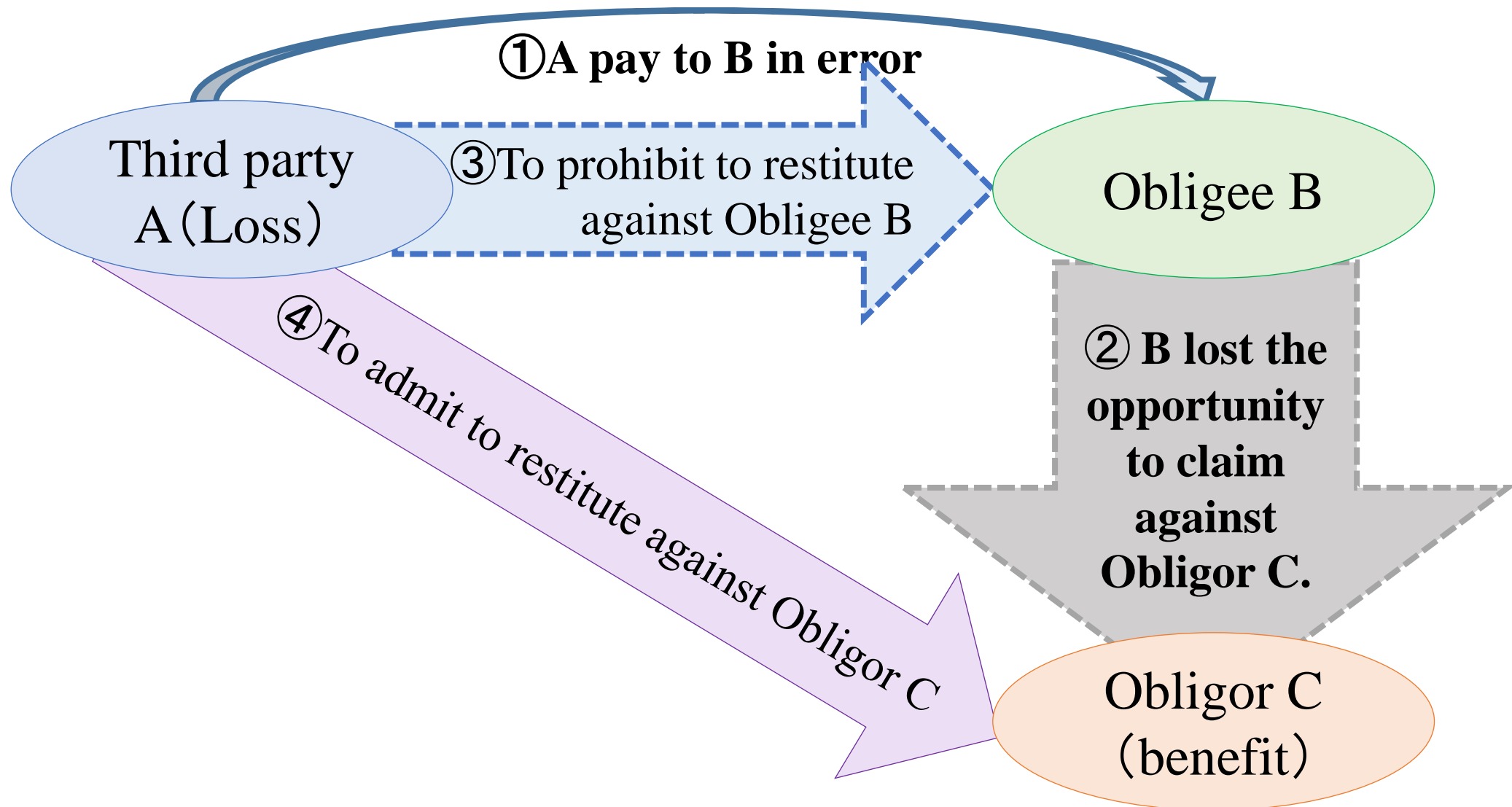
(1) Case study3: Payment by error

→ Applicable law

- Case in which a person who is neither a obligor nor an guarantor paid another person's debt by mistake
 - ① A (third party) mistakenly believed that he was the obligor C himself or his guarantor and paid the debt to the obligee B (payment by mistake).
 - ② B (creditor) considered that A's payment was due performance of C's debt and destroyed the debt instrument, or lost the opportunity to claim against the obligor after the period of prescription expired.



Case study: Payment by error → Applicable law



Case study : Payment by error

→ Applicable law

- In this case, A, who has made the payment by mistake, can claim to whom and what?
 - ③ Can A claim restitution (to return back) of amount paid against obligee B on the basis of unjust enrichment?
 - ④ Can A exercise the right to obtain reimbursement against obligor C based on substantial business management?



(2) Moral Code

- *Jure naturae aequum est neminem cum alterius detriment et injuria fieri locupletioem. (D.50. 17. 206)*
 - By natural law it is just that no one should be enriched by another loss or injury.

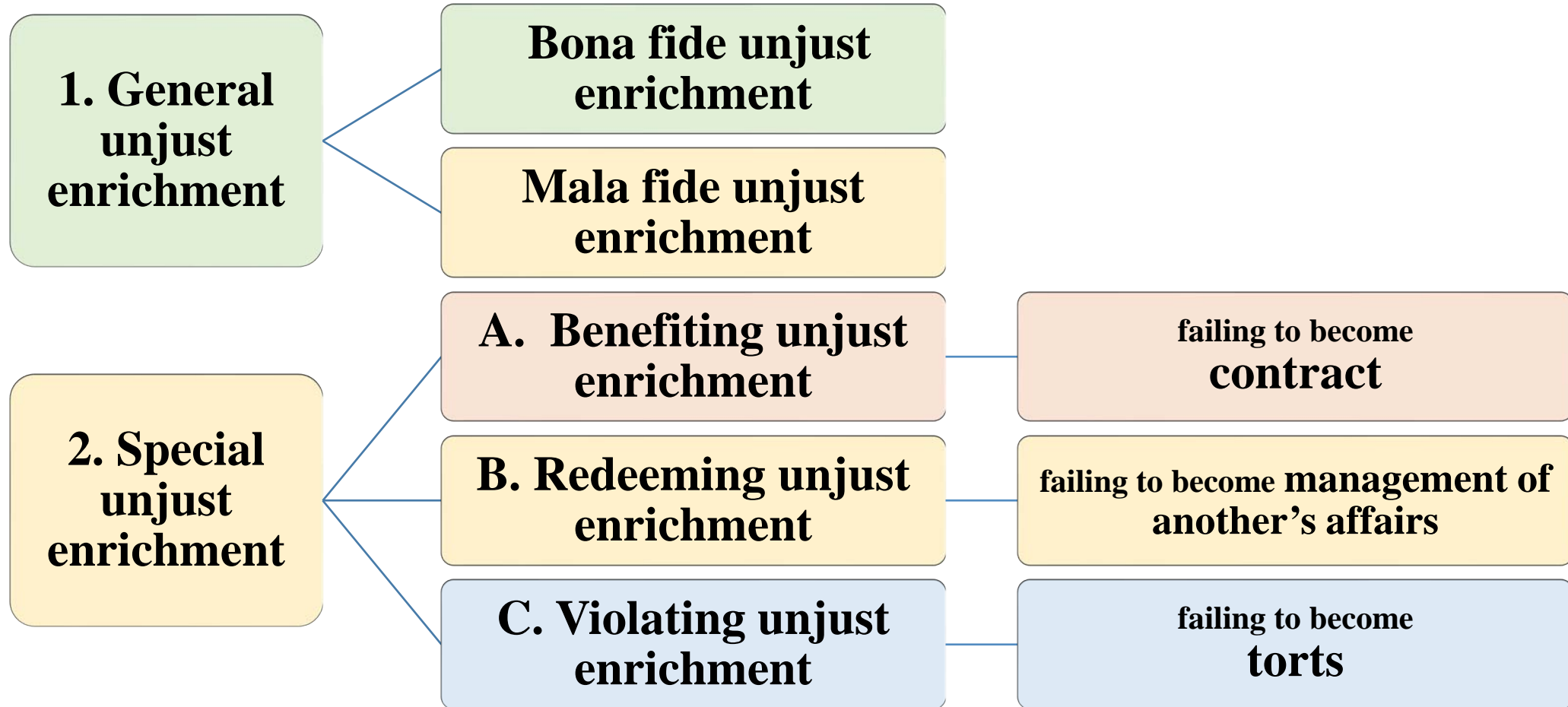


(3) Law

- Art. 703(Obligation to Return Unjust Enrichment), Civ. Code of Japan
- Art. 704(Obligation of Beneficiaries in Bad Faith to Return), Civ. Code of Japan
 - Art. 707(Performance of Obligations of Others), Civ. Code of Japan



Type of unjust enrichment



Unjust enrichment (1/3)

A. Benefiting unjust enrichment

Art. 703

(Obligation to Return Unjust Enrichment)

- A person who has benefited ("beneficiary") from the property or labor of others without legal cause and has thereby caused loss to others shall assume an obligation to return that benefit, to the extent the benefit exists.

Art. 704

(Obligation of Beneficiaries in Bad Faith to Return)

- A Beneficiary in bad faith must return the benefit received together with interest thereon.
- In such cases, if any damages still remain, the Beneficiary shall be liable to compensate for the same.



Unjust enrichment (2/3)

B. Redeeming unjust enrichment

Article 190(Return of Fruits by Possessors in bad faith)

- (1) A possessor in bad faith shall be obligated to return fruits, and reimburse the price of fruits that he/she has already consumed, has damaged due to negligence or has failed to collect.
- (2) The provisions of the preceding paragraph shall apply mutatis mutandis to persons who possess Thing through violence or duress, or by concealing the same.

Article 707(Performance of Obligations of Others by mistake)

- (1) In cases where a person who is not an obligor has performed an obligation by mistake, if the obligee has, in good faith, allowed the instrument to be lost, damaged the instrument, waived the security or lost the claim by prescription, the person who performed the obligation may not demand the return of the performance.
- (2) The provisions of the preceding paragraph shall not preclude the person who performed an obligation from exercising his/her right of subrogation against the obligor.



Unjust enrichment (3/3)

C. Violating unjust enrichment

Article 191

(Compensation for Damages by Possessors)

- If possessed Thing has suffered loss or damage due to reasons attributable to the possessor, a possessor in bad faith shall be liable to compensate the person recovering the loss for the entire loss, and a possessor in good faith shall be liable to compensate such person for the loss to the extent he/she is actually enriched as a result of such loss or damage; provided, however, that a possessor who does not have the intention of holding as owner must compensate the entire loss, even if he/she is in good faith.

Article 248(Compensation in conjunction with Accession, Mixture or Processing)

- A person who suffers loss because of the application of the provisions of Article 242 through the preceding Article (conjunction with Accession, Mixture or Processing) may demand compensation in accordance with the provisions of Article 703 and Article 704.



(4) Applicable Law to the case3

- Art. 707(Performance of Obligations of Others), Civ. Code of Japan



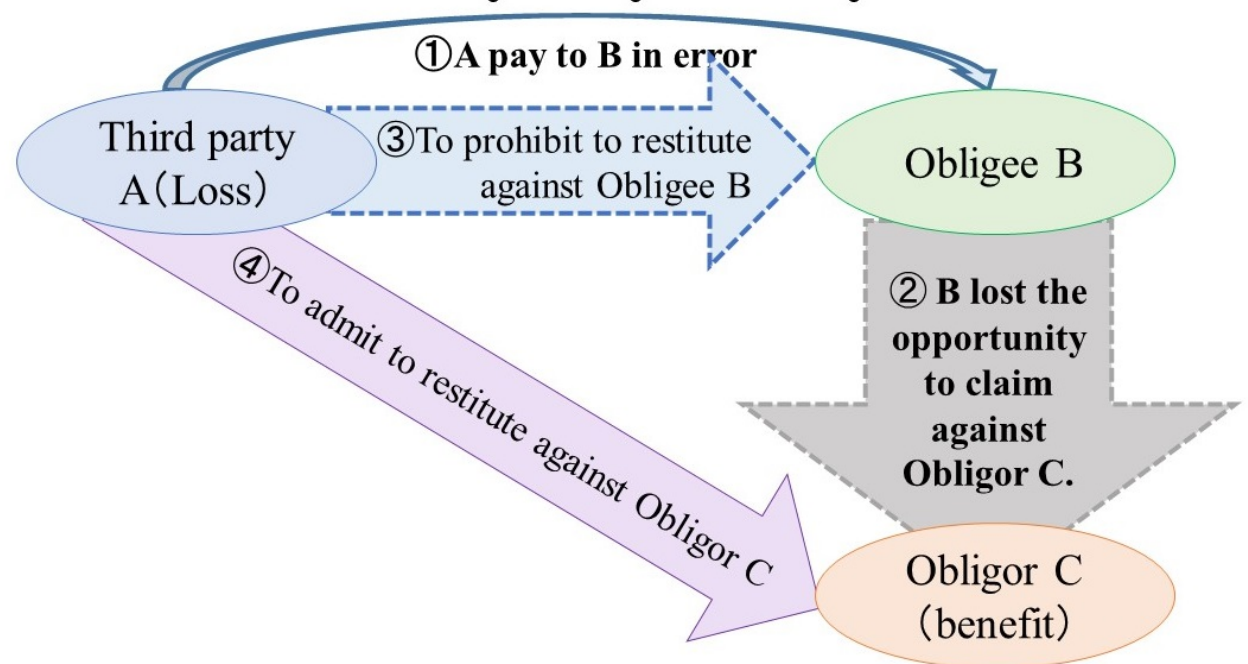
Unjust enrichment (2/2)

Applicable law to the case3

■ Article 707(Performance of Obligations of Others)

- (1) ①In cases where a person[A] who is not an obligor has performed an obligation by mistake, ②if the obligee[B] has, in good faith, allowed the instrument to be lost, damaged the instrument, waived the security or lost the claim by prescription, ③the person who[A] performed the obligation may not demand the return of the performance.
- (2) ④The provisions of the preceding paragraph shall not preclude the person[A] who performed an obligation from exercising his/her right of subrogation against the obligor[C].

Case study: Payment by error



4. Promise Rule

- Pacta sunt servanda.
- Agreements must be kept.



Case study4: Absence from work allowance due to Corona disaster Case(1/2) → [Applicable law](#)

- By the extension of the new coronavirus infection, the Japanese government requested the self-restraint of the business of various business types. Self-restraint is a non-binding request.
- Employer Y accepted the government's request and closed his business. During this period, no allowance was paid to workers X.
- Workers X et al. claimed that the reason why X et al. could not work was the absence from work due to the personal reasons of Employer Y, and requested that Employer Y pay the absence from work allowance in accordance with Article 26 (leave allowance) of the Labor Standards Act.



Case study4: Absence from work allowance due to Corona disaster Case(2/2) → [Applicable law](#)

- Employer Y, on the other hand, argues that the absence from work is based on the request of the government and is not due to reasons attributable to the employer, and that the absence from work allowance cannot be paid.
- Labor Standards Act Article 26(Assurance for Absence from work)
 - In the event of an absence from work for reasons attributable to the Employer, the Employer shall pay an allowance equal to at least 60 percent of the Worker's average Wage to each Worker concerned during said period of absence from work.
- Is it allowed to pay leave allowance? What is the reason?



(2) Moral Code

- Pacta sunt servanda
- Agreements must be kept.



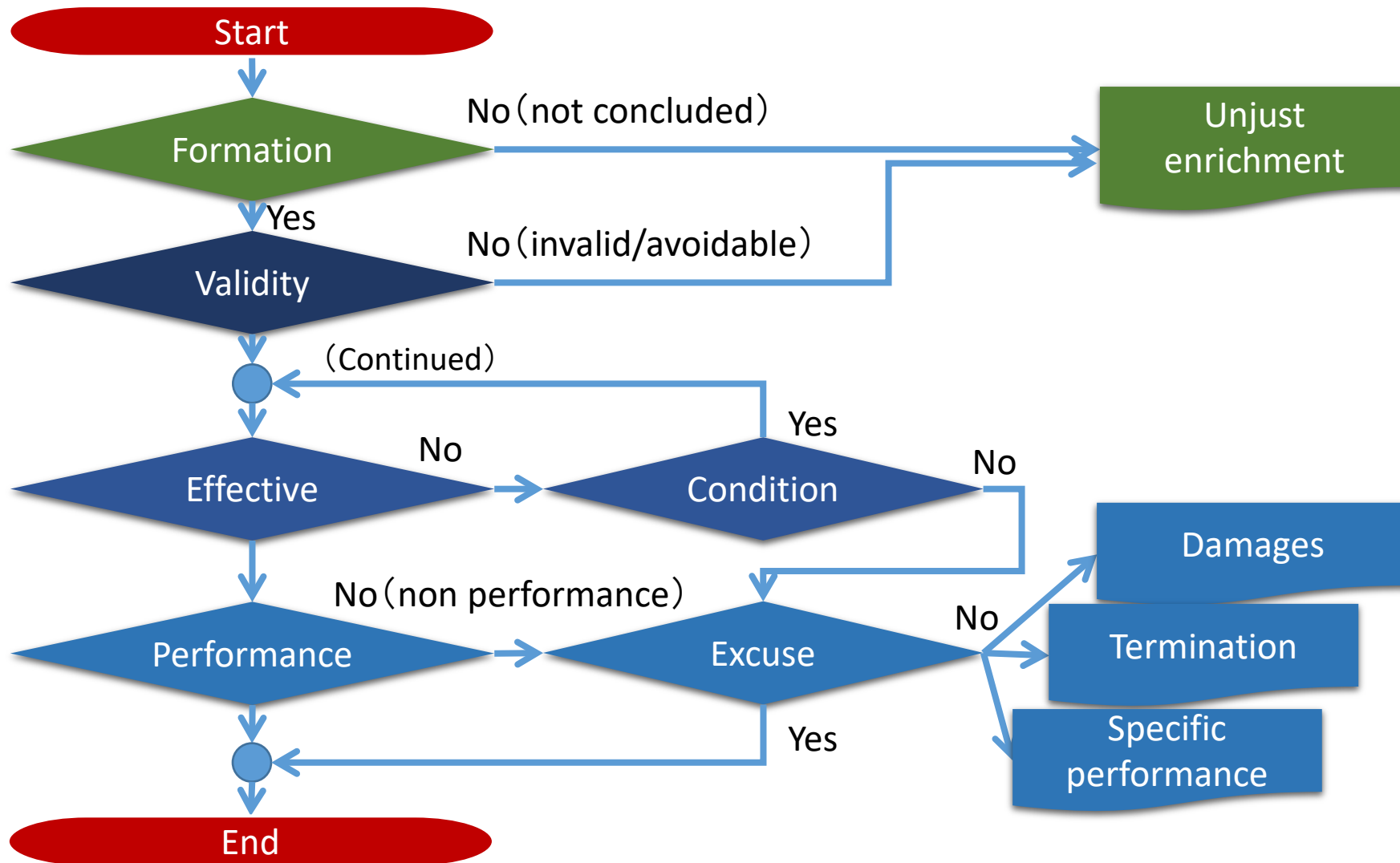
(3) Law

■ Understanding Contract

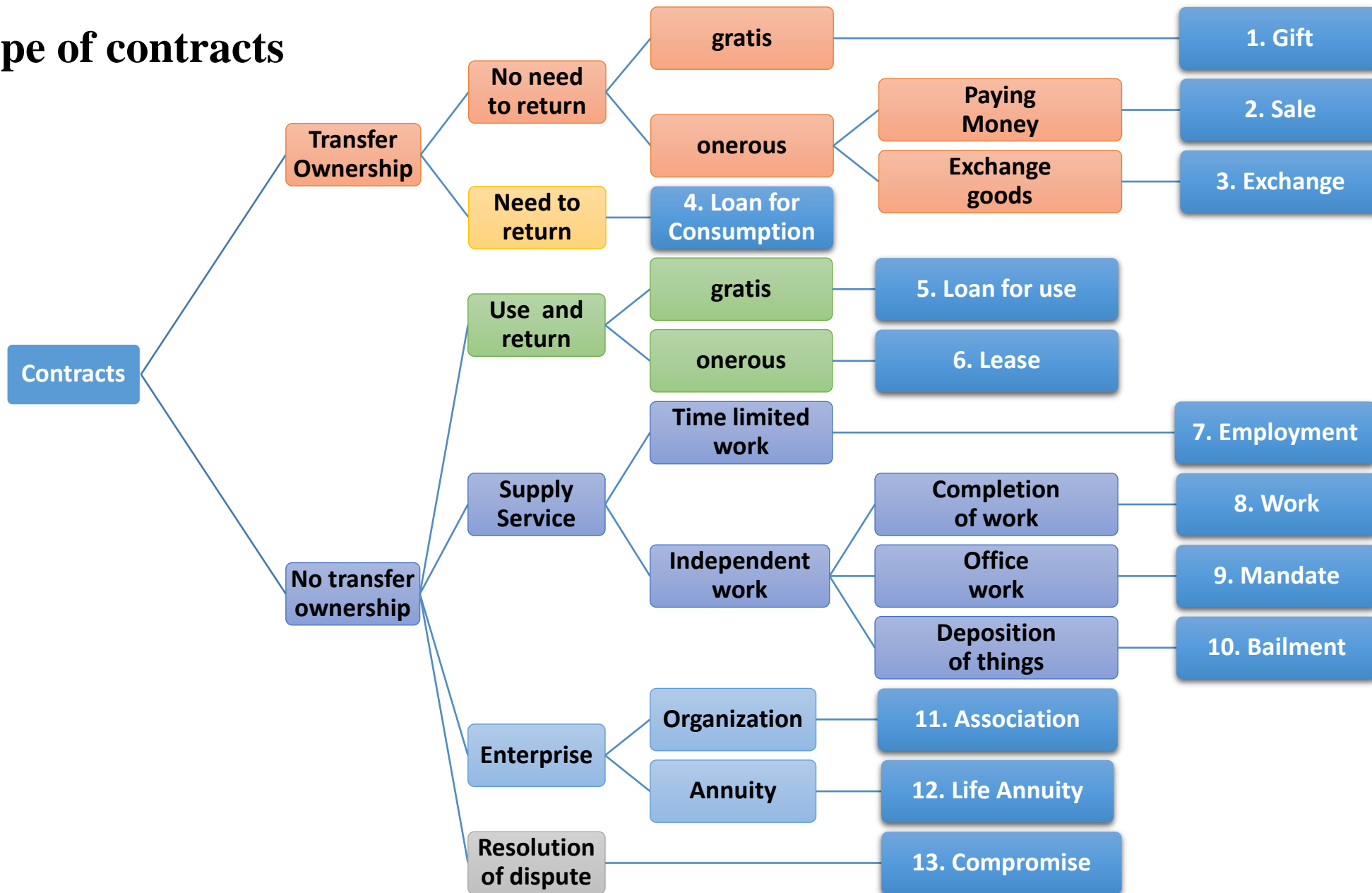
- Flow of a contract, Type of contracts, Type of obligations
 - Formation of contract, Validity of contract
 - Remedies of non-performance of contract



Flow of Contract



Type of contracts



Type of Obligations

Viewpoint	Type of obligations		comment
Origin	Express obligation		From stipulation of parties
	Implied obligation		From purpose and Nature of contract, practices and usages, good faith and fair trading, reasonableness
Execution	Obligation to give	Pay money	Easiest to execute
		Deliver things	Easy to execute
	Obligation to do or not to do		Difficult to execute: change to the damages in case of non-performance
Evidence	Obligation to achieve a specific result		Obligee should prove non-fault
	Obligation of best efforts		Obligore should prove obligor's fault

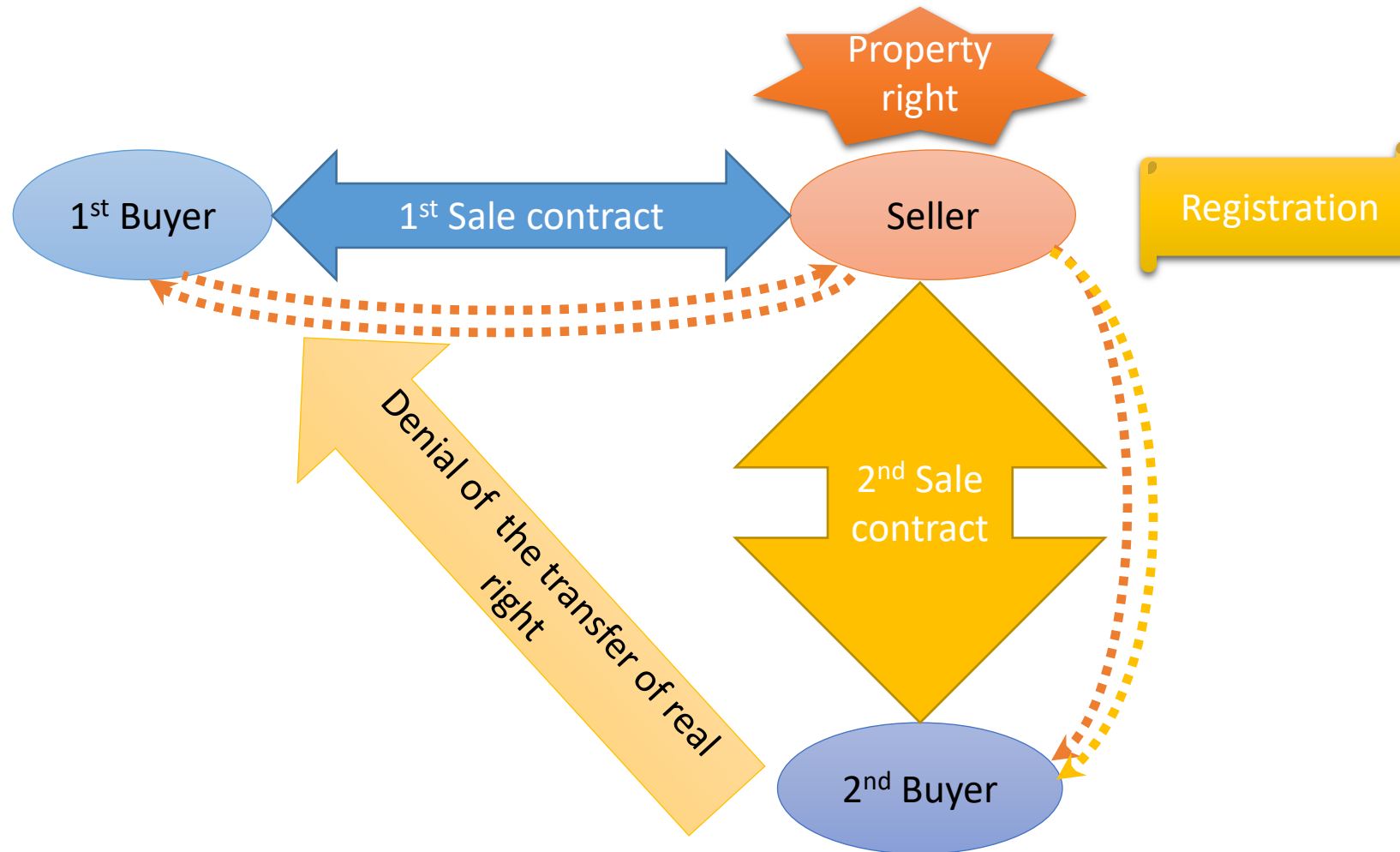


The effect of sale contract (Art. 176 Code Civil of Japan)



- **Article 176(Creation and Transfer of Real Rights)**
 - **The creation and transfer of real rights shall take effect**
 - **solely by the manifestations of intention of the relevant parties.**

The effect of the double selling of a real estate(Art. 177 Code Civil of Japan)



Condition of the validity of Contract

Condition of the validity of contract

(a) The legal capacity or with sufficient authority

(b) The representation of will is consistent with its internal will

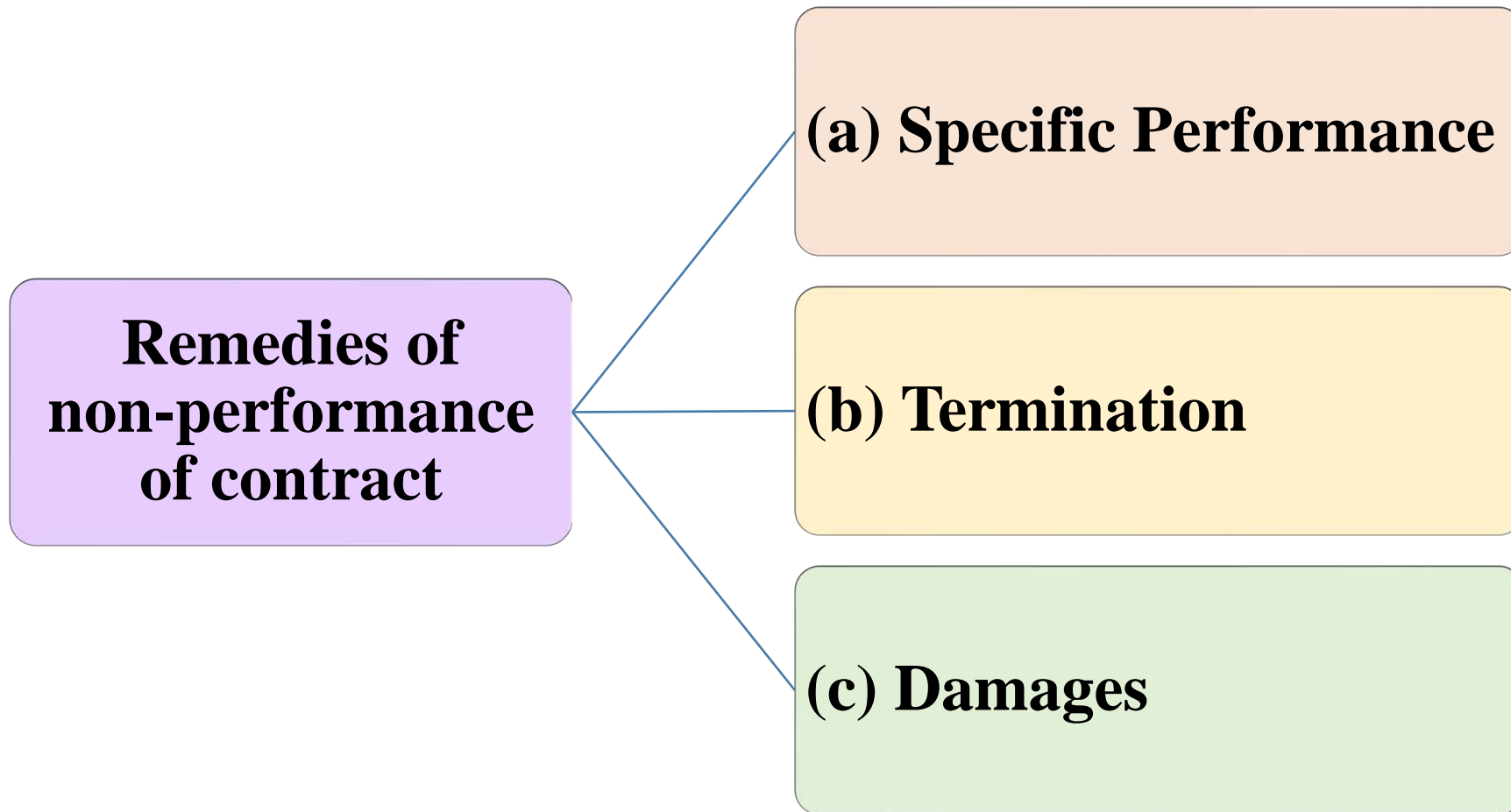
(c) Without unfair intervention to their decision making process

(d) The contents conform to the public order

(e) Following Good faith and fair trading



Remedies of Non-performance of Contract



(4) Applicable law to the Case4

- Labor Standards Act

- Article 26(Allowance for Absence from work)

- Civil Code

- Article 536(Obligors' Assumption of Risk)



Labor Standards Act → [Case4](#)

- Article 26(Allowance for Absence from work)
 - In the event of an absence from work **for reasons attributable to the Employer**, the Employer shall pay an allowance equal to at least 60 percent of the Worker's average Wage to each Worker concerned during said period of absence from work.



Civil Code → [Case4](#)

■ Article 536(Obligors' Assumption of Risk)

- (1) Except in the cases provided for in the preceding two Articles, if the performance of any obligation has become impossible due to reasons not attributable to either party, the obligor shall not have the right to receive performance in return.
- (2) If the performance of any obligation has become impossible **due to reasons attributable to the oblige**[[the employer](#)], the obligor[[the employee](#)] shall not lose his/her right to receive performance in return. In such cases, if the obligor gains any benefit as a result of being released from his/her own obligation, the obligor must reimburse the obligee for the benefit.



Payment or non-payment of absence allowance based on burden of risk → [Case4](#)

Employer who decided temporary absence from work (creditor of the burden of risk)	Applicable law	Allowance based on temporary absence from work
<p>No ground for blame (Leave of absence is due to force majeure)</p>	<p>Article 536, Paragraph 1 of the Civil Code</p>	<p>Allowance is not paid</p>
<p>With ground for blame (Absence from work is determined by the employer)</p>	<p>Article 536, Paragraph 2 of the Civil Code</p>	<p>Allowance shall be paid</p>



Civil Code - Article 415(Compensation for Loss or Damage Due to Non-Performance) → [Case4](#)

- (1) If an obligor fails to perform consistent with the purpose of the obligation or the performance of an obligation is impossible, the obligee may claim compensation for loss or damage arising from the failure;
- provided, however, that this does not apply if the failure to perform the obligation is due to grounds not attributable to the obligor in light of the contract or other sources of obligation and **the common sense** in the transaction.



Conclusion

■ For Achieving World Peace



Conclusion (1/6)

Contract and non-contractual obligations

- So far, the center of property law has been placed in contract law, and the business administration (Golden rule), tort (Silver Rule), and unjust enrichment (Bronze Rule), which were taken up at the beginning of this lecture's issues, have been placed after contracts in the our legal code as non-contractual obligations.
- And, in the ordinary lectures, it was not rare that business management, tort, unjust enrichment were lectured after the contract.



Conclusion (2/6)

Non-contractual obligations and morality

- However, when we focus on moral code, it is gradually becoming clear
 - that non-contractual obligations (business management, tort, and unjust enrichment) dealing with the Golden Rule, the Silver Rule, and the Bronze Rule are rather important,
 - and that reasonable contracts with sufficient moral code (e.g. Non-mandatory rule of contract) should be kept,
 - on the contrary that unreasonable contracts which favor only one party and impose severe responsibility on the other party need not be kept.



Conclusion (3/6)

New type of contract law

- For example,
 - Article 10 of the Consumer Contract Act, which reflects the recent theory of contract, and
 - Article 548, paragraph 2 of the Civil Code, which was revised recently, provide that
- "any clause which restricts the rights or aggravates the obligations of the other party and which is found to be unilaterally harmful to the interests of the other party, contrary to Article 1, paragraph 2 [the Rule of Faith], shall be deemed to be a failure to agree [null and void]".



Conclusion (4/6)

Contractual justice

- In other words, it has becoming clear that the business administration, tort and unjust enrichment, formed on the basis of the moral code, lie behind contracts, and that unreasonable contracts which ignore these norms are invalid and do not need to be kept.
- This trend has attracted attention as a check on the excessive “freedom of contract” from the perspective of “contractual justice”.



Conclusion (5/6)

Harmonization of Morality and Law

- In that sense, the purpose of this lecture is also an attempt to reevaluate the moral code on which the legal norm is based, and to restore and reconstruct the relationship between law and morality.
- This is because the purpose of law is the peaceful resolution of disputes, and in order for the settlement to be acceptable to both parties, to experts, and to the general public, it is ultimately necessary that the settlement also conforms to the moral code.



Conclusion (6/6)

My hope

- It is my sincere hope
 - that the world of morality and the world of law, which have been at odds with each other up until now, will come to a compromise,
 - and that various disputes will be resolved peacefully through repeated efforts to restore harmony between the moral code and the law.



Appendix

- Tips of Teaching Law
- Japanese Law Translation
 - <http://www.japaneselawtranslation.go.jp/law/>
 - [Civil Code of Japan \(Part 1-3\), Revised version](#)
 - [Civil Code of Japan \(Part 4-5\)](#)



Appendix

Tips of Teaching Law (1/2)

■ Teaching Method

- Work out your Teaching Plan.
- Reduce that plan by half.
- On half for lecture and another half for practice (ex. Students' Presentation).

■ Teaching is Learning

- You have to study before teaching.
- Teaching is equal with learning and reporting before an audience.



Appendix

Tips of Teaching Law (2/2)

- Don't teach too much.
 - Let students more practice than teach.
 - Then they will learn by themselves.
- Teach basic idea through solving one of the most difficult problems.
 - When student can solve such a difficult matter, she/he mastered basic ideas naturally.
- Try to become the most excellent teacher.
 - Imitate her/his (e.g. Prof. Kagayama's) methods first.
 - Create new methods after your experiences.



Reference

■ "A way of thinking" of lawyer

- Rudolf Von Jhering (translated by Kosuke Kobayashi and Hirosawa) "Struggle for right " , (original 1872) Nippon Hyoronsha (1978).
- Chaïm Perelman (translated by Eguchi Misumi) "Logic of lawyer - - new rhetoric-- ", Bokutaku-sha (1986).
- **KAGAYAMA Shigeru, "Modern Civil Code of Japan -- Introduction and learning method of Civil law of Japanan -- ", Shinyama-sha (2007).**

■ Approaching to human nature

- NHK Special crew, " Human -- Why do Homo sapiens become to humans? -- “, Kadokawa Shoten (2012).

■ How to debate

- Aristotle (translated by Totsuka Shichiro), "Public speaking" Iwanami (1992).
- FUKUZAWA Kazuyoshi, "Lessons of discussion " NHK life who Shinsho (2002).
- IWATA Muneyuki, "Rule book of discussion", Shincho Shinsho (2007) 206 pp.
- Stephen Toulmin (translated by Todayama Kazuhisa , Kazuyoshi translation Fukuzaw), “A technique pf discussion, (Stephen Toulmin, "The Uses of Argument", (1958, 2003)) " Tokyo Shoseki (2011).

