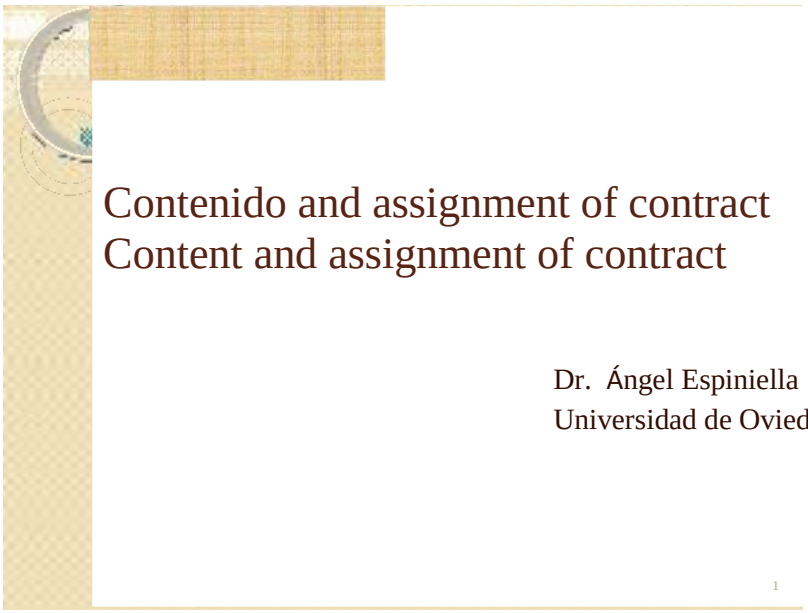
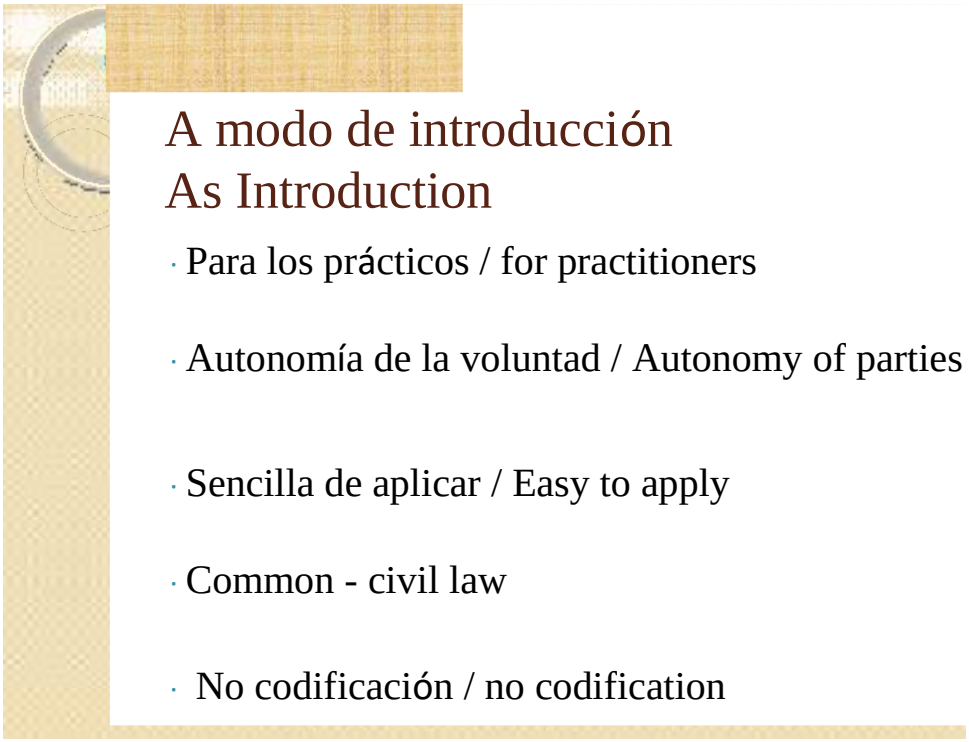


Good morning

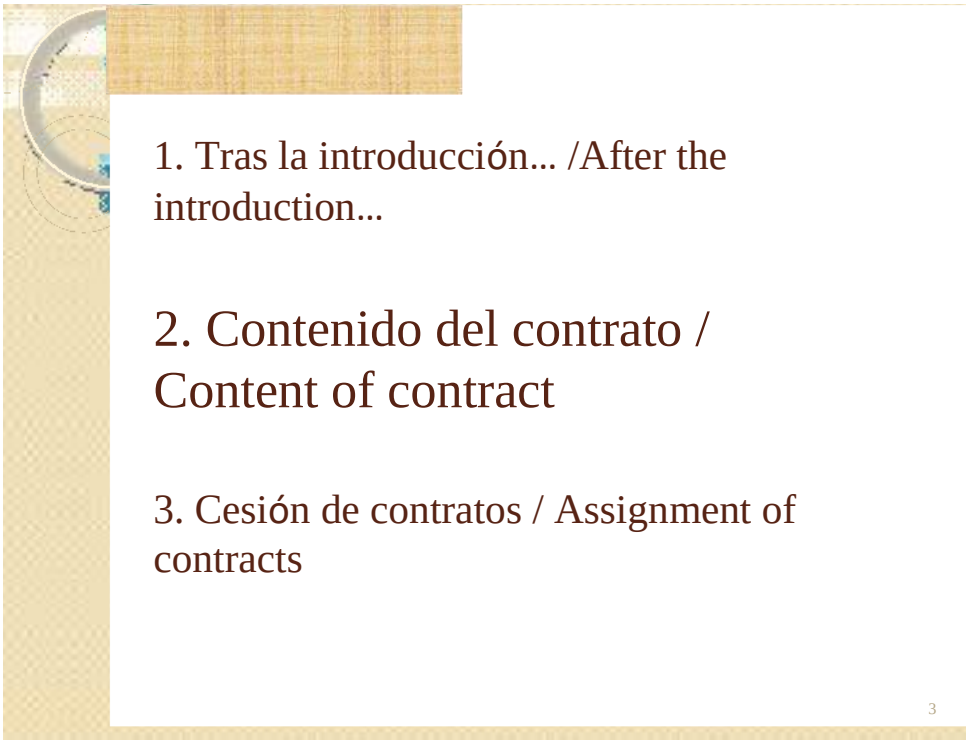
I would like to commence by offering by sincerest thanks to the organizers of this event, to the Organisation for the Harmonisation of Business Law in the Caribbean, the OHADAC, to the President of ACP Legal - Ms Sargenti, and to the Project Coordinator - Mr Penda. I am extremely honoured to be invited to this conference, which is not only of key importance for the Caribbean area but also, and I feel it important to say so, a conference that can become a global reference point for international trade and commerce given that it addresses the study of highly advanced legal texts.

I likewise wish to thank Dr Sánchez Lorenzo, as Director of the Principles, for allowing me to form part of the team. It has been been a true pleasure to work on this project. With that said, I shall now begin with my involvement in this project. Over the next few minutes, I shall address the treatment of these Principles with respect to two issues of strategic importance in the dynamics of an international contract: the content of the contract and its possible assignment to third parties.

***

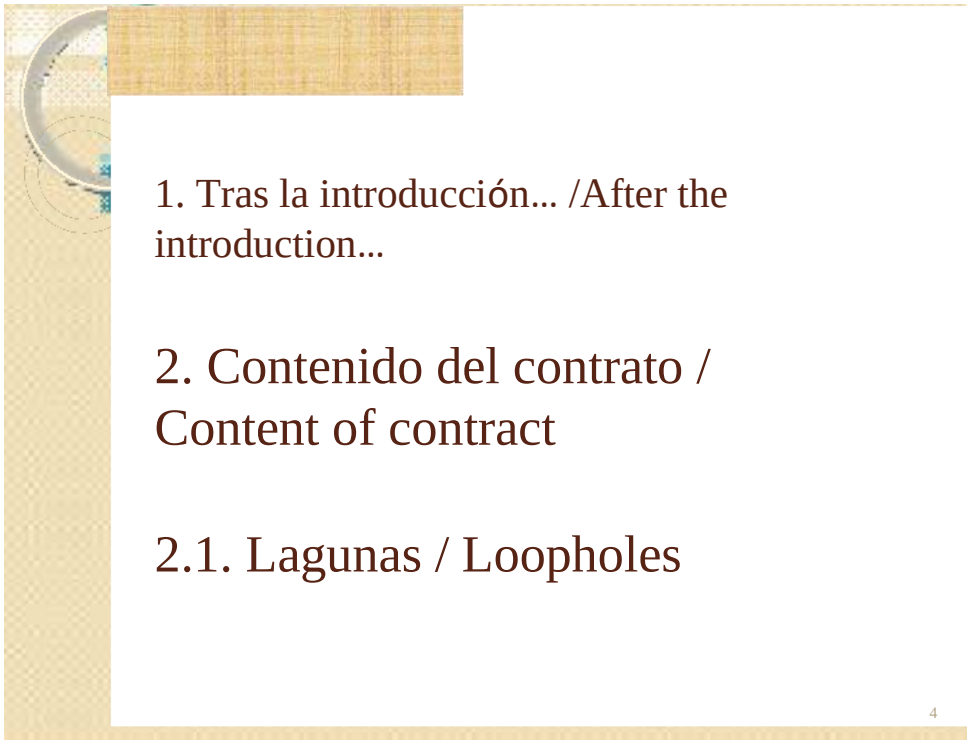


These issues are regulated, respectively, in Chapters 4 and 8 of the Principles and are a true reflection of their spirit: Regulations for practitioners, accordingly developed with the ABSOLUTE respect of autonomy of will and easily manageable REGULATIONS, in order to reduce disputes regarding a contract. Regulations that look for the meeting points between the different systems of the OHADAC and, in particular, between common and civil law; regulations which, consequently reject the idea of a Contract Law Code.



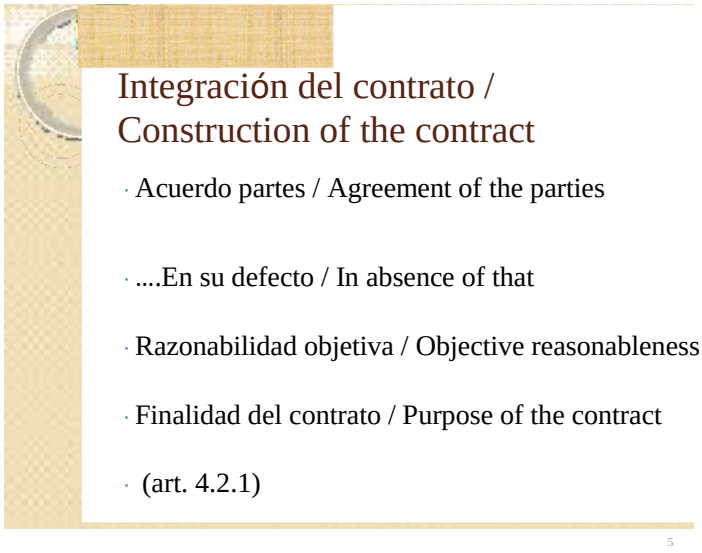
The first part of my involvement is regarding the content of the contract, regulated by Chapter 4 following contract interpretation issues.

***



Chapter 4, section 2 is of particular importance on this matter as it deals with possible legal loopholes.

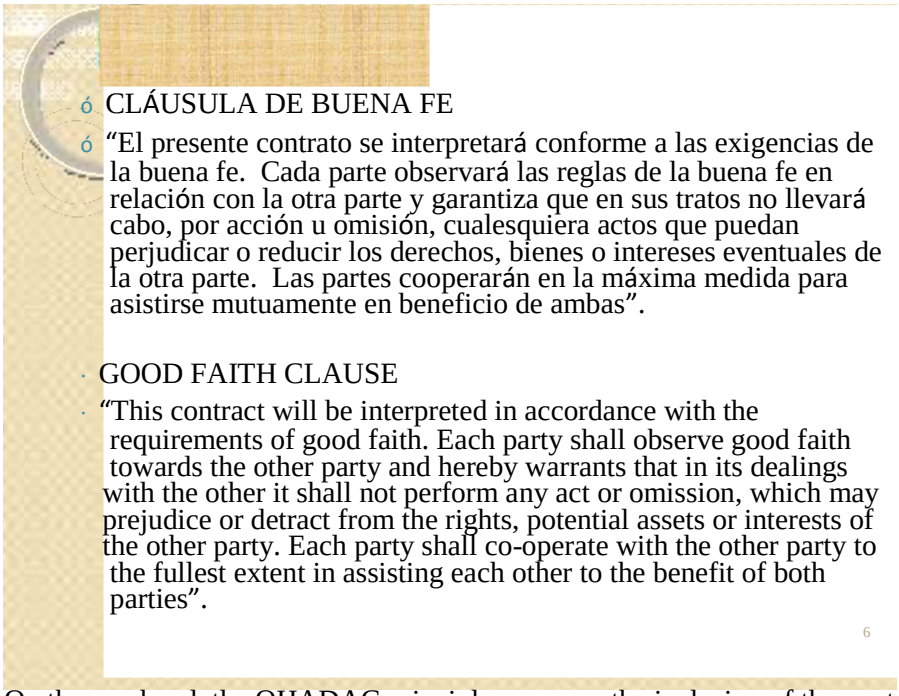
***



Here, the Principles completely respect the will of the parties, which would be the minimum consensus of the OHADAC States. In fact, the content of the contract is SOLELY that expressly agreed by the parties. What would happen if this content had not been wholly agreed? One could implicitly deduce what would have been held as reasonable from an objective viewpoint, in addition with respect to the purpose of the contract. It is
quite an open and flexible formulation due to the fact that it is one of the greatest causes of dispute between Caribbean legal traditions. In actual fact, it avoids making use of the principle of good faith, given that common law systems are extremely wary of this principle.

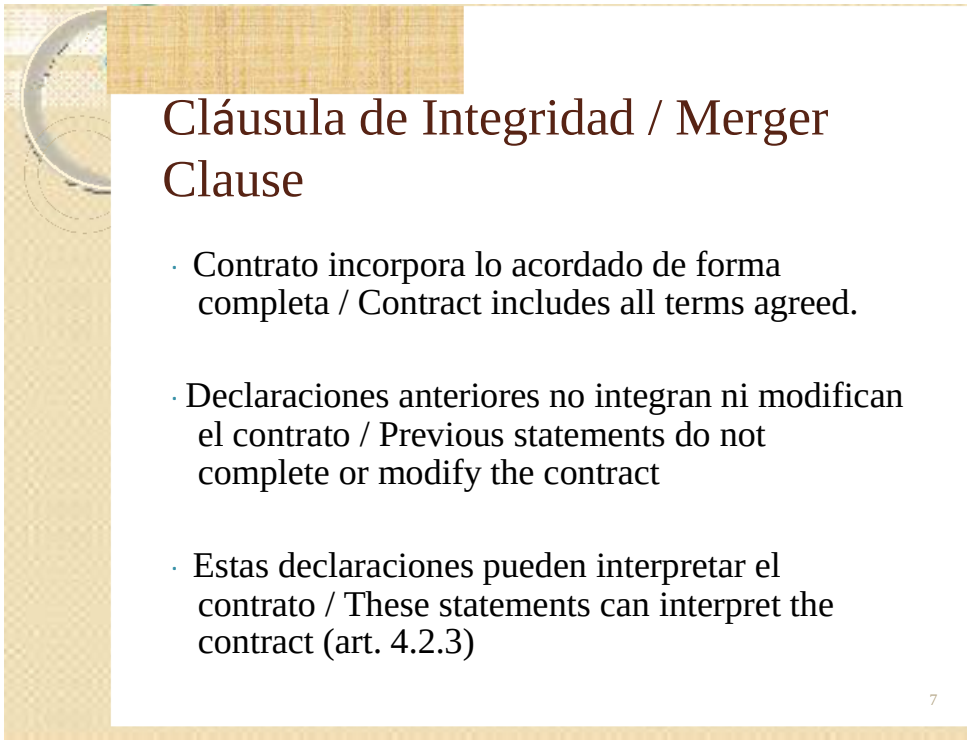
One could think: if the regulation is too open or flexible then it provides very little in the way of reducing contract disputes. This could not be farther from the truth. The OHADAC Principles are complemented by this *de minimis*
rule via two mechanisms:

***



On the one hand, the OHADAC principles propose the inclusion of the contractual clauses that best meet the needs of the parties. Thus, if the parties are interested in constructing the contract under the principle of good faith, in accordance with the Spanish or French legal traditions,
they may expressly state their wish to do so as a clause in the contract. Being a contractual clause,
its effectiveness will be accepted by common law based legal systems. I think that it is one of the greatest advantages of the OHADAC Principles - proposing model clauses that the parties can omit or incorporate as desired, but with the complete assurance that, if
they are incorporated, these clauses harmoniously fit in with the Principles and will give rise to little if not
no dispute. This methodology bears no comparison whatsoever with other European or International texts, and is a clear added value.

***



Likewise, in continuing with these examples, the parties can include the so-called merger clauses, in virtue of which they state that the contract includes ALL that agreed upon by the parties. Thus the content of the contract cannot be modified or completed by previous statements. However, such statements may be used to interpret the content of the contract.

Nevertheless, the flexibility and vagueness of the rule of the OHADAC Principles is not only complemented by the mechanism of including contractual clauses, but it also has resort to a second mechanism. It also benefits from more specific contract construction rules when the loophole concerns obligations of strategic and vital importance for the entire contract: when no price is determined, and when the quality of the service is not determined.

In these cases, without disregarding the idea of flexible and changeable rules, the parties have more precise guidelines.

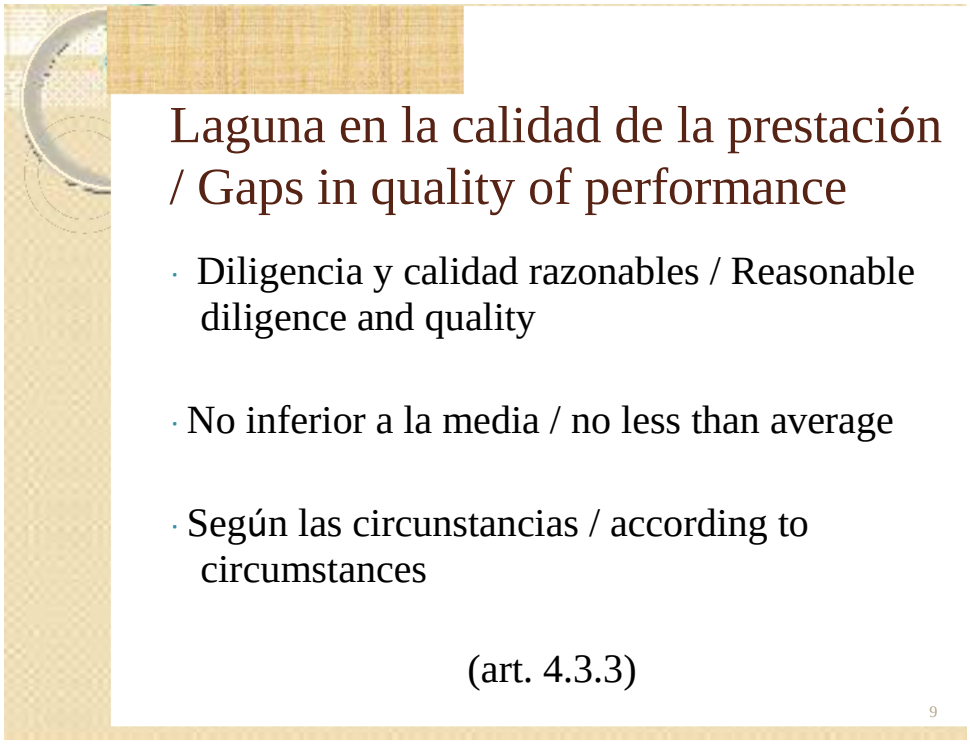
Laguna en el precio / Gaps in price

- Precio generalmente admitido / Price generally charged
- En su defecto, precio razonable / In absence of that, reasonable price
- Factores equivalentes / Equivalent factors
- No a la voluntad de una de las partes / Not at the discretion of one of the parties.

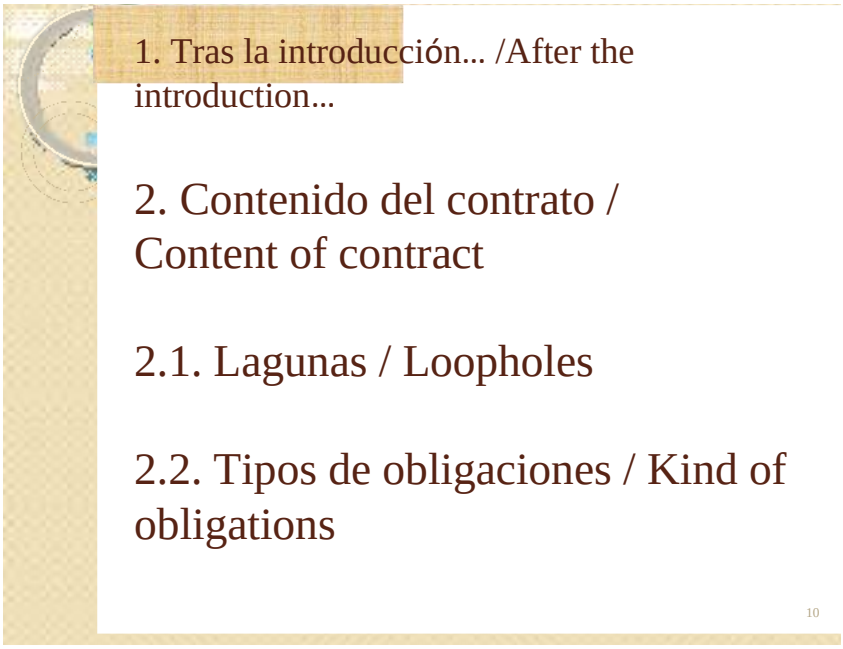
(art. 4.3.4)

8

Whether regards to no price being determined, that generally charged shall be applicable. But, what
happens if there is no such general consensus? It will be set at a reasonable price. And if the price is set
according to factors that no longer exist, the nearest equivalent factor shall be used. All of this reinforces the balance of interests between the parties to the contract, insofar as the price cannot be left to the
discretion of any one of the parties.



With regards to gaps in the quality of performance, said performance shall be of reasonable diligence and quality and not less than average in the circumstances.



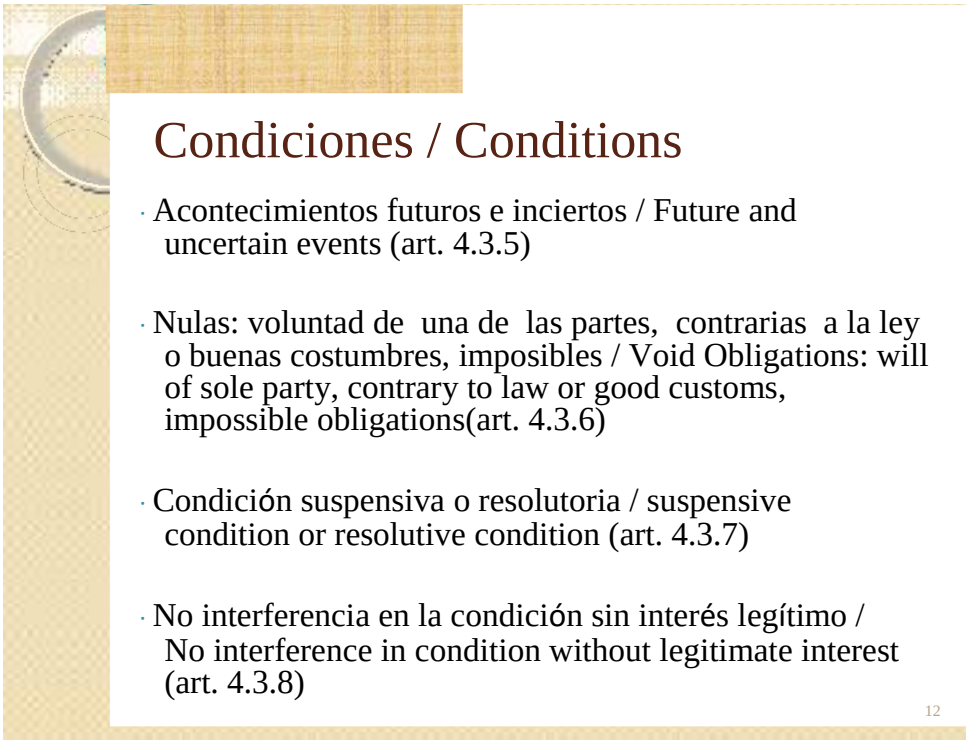
Apart from the construction of the content of the contract, the Principles in Chapter 4 also deal with the different types of obligations that have been brought to light in practise in the OHADAC States.

Duty to achieve a specific result & Duty of best efforts

- Alcanzar un resultado (art. 4.3.1) / Achieve a specific result
- Emplear los mejores esfuerzos (art. 4.3.1) /Best Efforts
- Criterios / Criteria (art. 4.3.2):
  - Cláusulas, finalidad y naturaleza, riesgo de alcanzar el resultado, influencia de la otra parte / Clauses, nature and purpose, degree of risk, influence of the other party

11

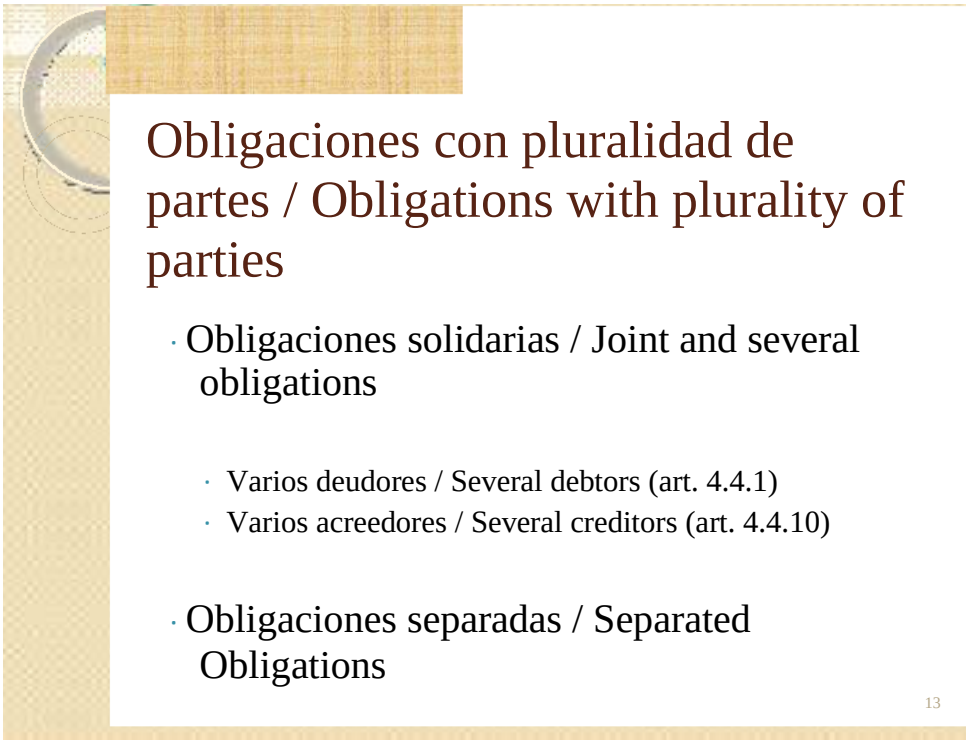
Owing to this, a meeting point has been sought between the continental systems, which distinguish
works and services contracts, and the Anglo-Saxon systems, which, although very far from this dogma, *do* recognise duties of best efforts. This meeting point leads to
the differentiation between duties to achieve a specific result and those of best efforts.
Let me illustrate this by way of example, a duty to achieve a specific result would be the case where a vendor from the Dominican Republic
undertakes to deliver merchandise to Haitian purchaser as a result of the contract. A
duty of best efforts would be the case where a broker from Saint
Martin undertakes to act on behalf of a company from Montserrat, using
its best efforts to do so, but who cannot ensure that the business transactions with potential clients of the Montserrat company are entered into.



In the same way, the Principles talk about the common practise of the OHADAC States regarding
obligations with conditions depending on future or uncertain events, that are not impossible, are not contrary to law and proper conduct, and that do not depend on the unilateral will of one of the parties. With respect to these obligations no interference from the parties may take place without legitimate interest.

It is common, therefore, that parties include resolutive conditions: a company from the French Guiana sells a machine to Cuban company, providing a one-month trial period in the contract, for the purpose of trying out the quality of the product and it appropriateness for its intended purpose. If, after the month, it is proved that the machine does not meet the needs of the purchaser, the contract will be terminated.

It is also common for suspensive conditions to be included: an Anguillian company enters into a merchandise purchase agreement with a Surinamese company, agreeing that the delivery will take place when the price of the merchandise has reached a set market price. Until this price is reached, the contract will not take effect.

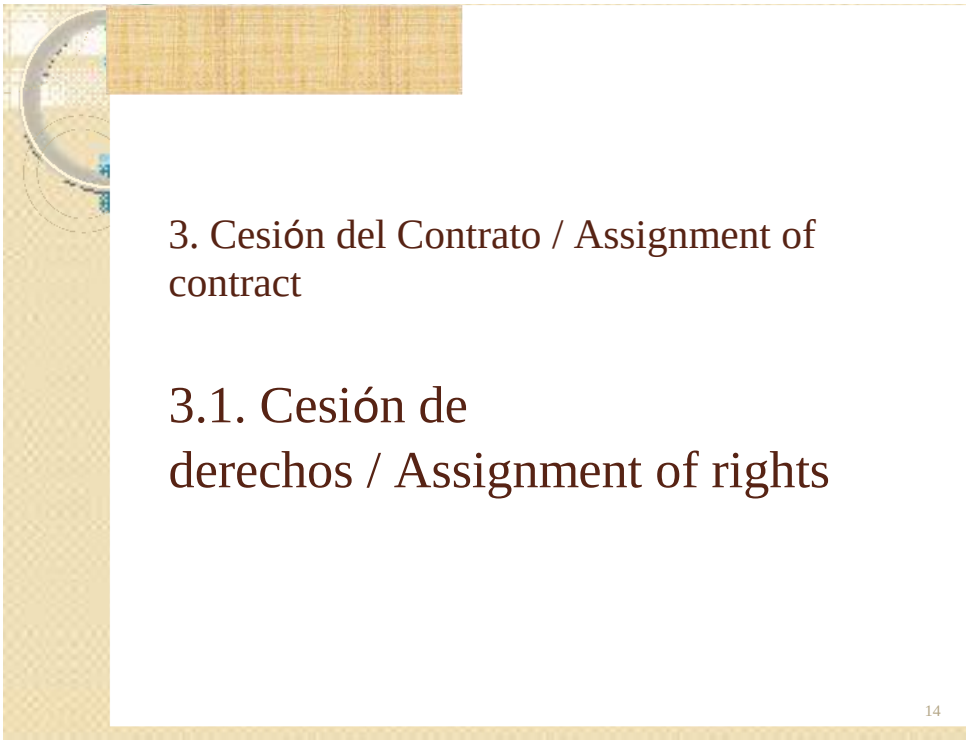


The last Section of Chapter 4 refers to when there is a plurality of obligors.

Let us imagine the case of a consortium or group of companies from Costa Rica who jointly buy merchandise from a seller from Guiana. Unless otherwise agreed, all of the companies are jointly and severally obliged to pay the price, in such a way as the seller from Guiana could demand payment from one, several or all of these companies, for part of the price or the total thereof. This does not affect the right of reimbursement that may be held by the payer with regards to the rest of the debtors, assuming, unless otherwise agreed, that each one had to pay the same percentage.

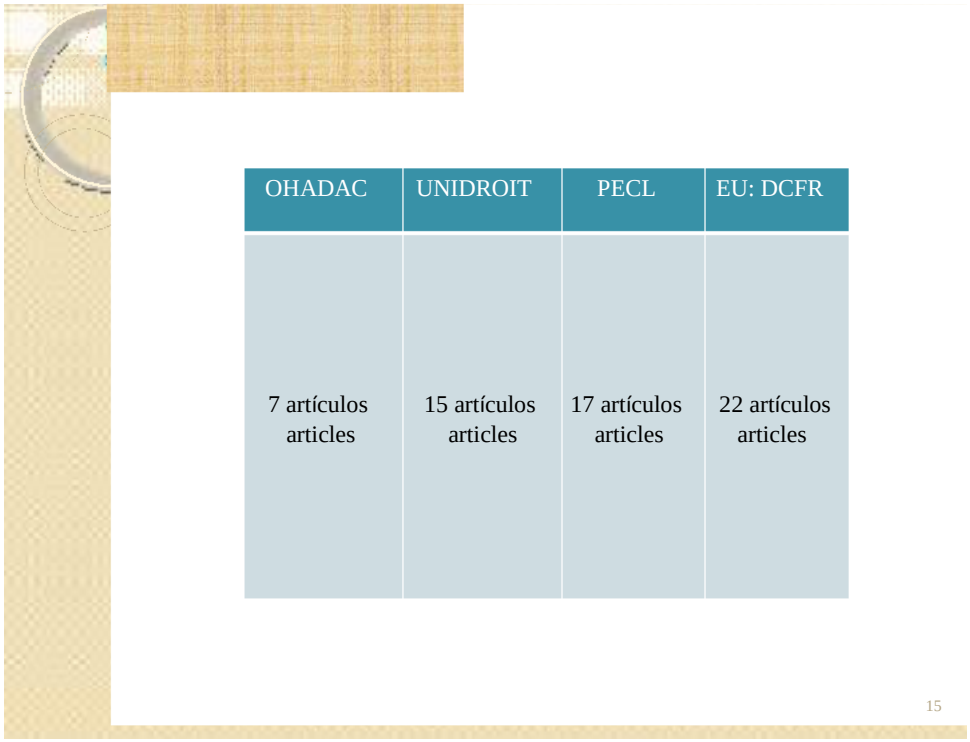
On the other hand, let us now imagine a group of companies with registered office in Honduras that has a current account held under a different name in the Bahamas. The bank is the sole debtor and any of the companies that hold the account can demand from the bank the entire bank account balance.

To sum up, after analysing the different types of obligations provided in the Principles, in addition to the construction of the contract in the event of any gap existing, one can say that the Principles as a set of regulations are going to be a useful tool to obtain practical and simple answers, reducing therein contract disputes.



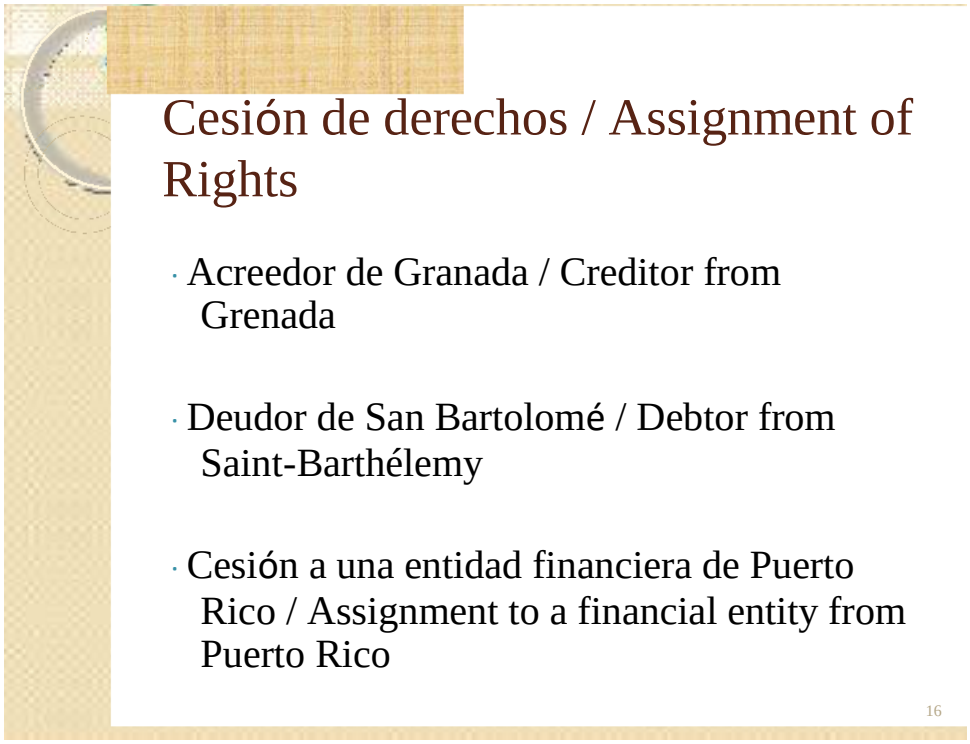
I shall now move on to the second part of my involvement, which concerns the Assignment of Contracts. This is
regulated by Chapter 8 of the Principles, comprising 3 modalities, dealt with
respectively in 3 Sections: assignment of contract rights, assignment of obligations and the assignment of the entire contract.

Let me begin with the assignment of rights, which plays a fundamental role in international commerce.



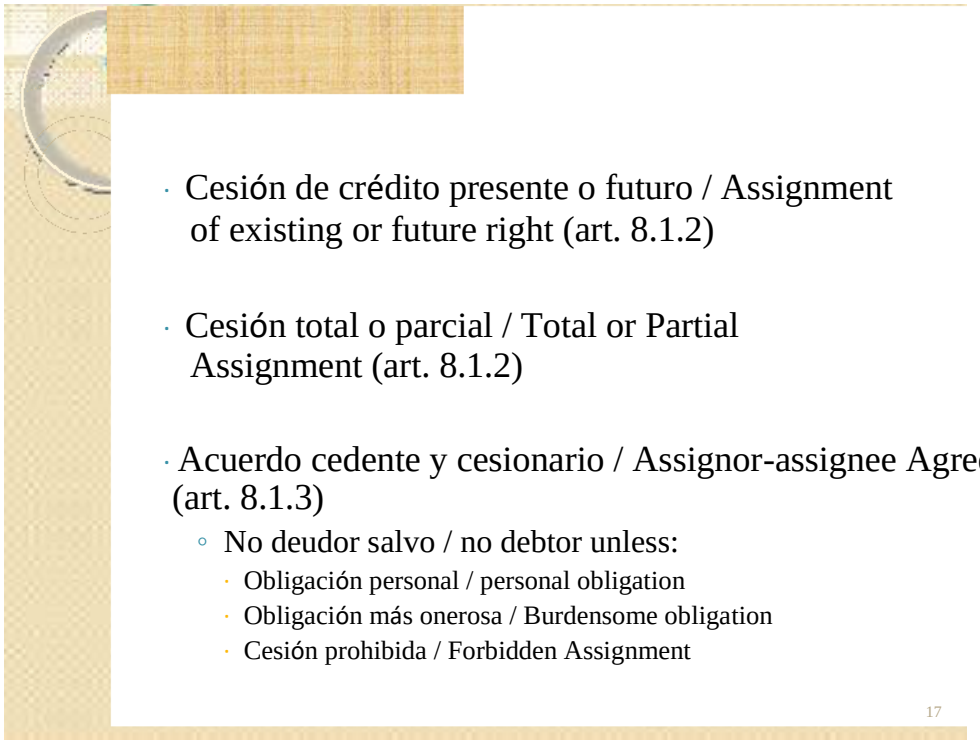
It must first be highlighted that this is one of the Sections in which one can best perceive the spirit of the Principles: manageable, simple and ideal regulations for practitioners, far from the idea of codification, and which attempts to reconcile both the common law and civil law legal systems.

Proof of this is that faced with the 22 Articles of the Common Frame of Reference Project, or the 15 UNIDROIT Principles, the OHADAC Principles contain only 7 Articles, decreasing the complexity and cause for dispute that have occurred with the other regulations. This can be seen in the following example:



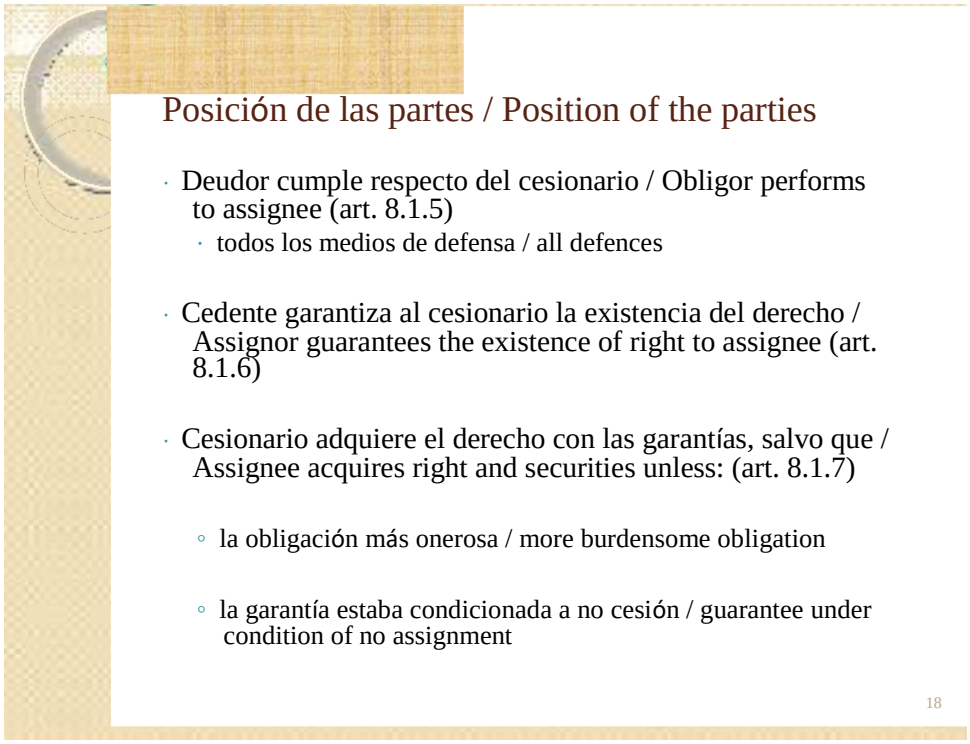
Think of a creditor company, with registered office in Grenada, holding a credit with a company with head office in Saint-Barthélemy. As the creditor needs liquidity, it assigns the credit to a
Puerto Rican financial entity - the assignee - who pays 80% of the credit up front, with the remaining 20% to be paid when it collects said credit.

***



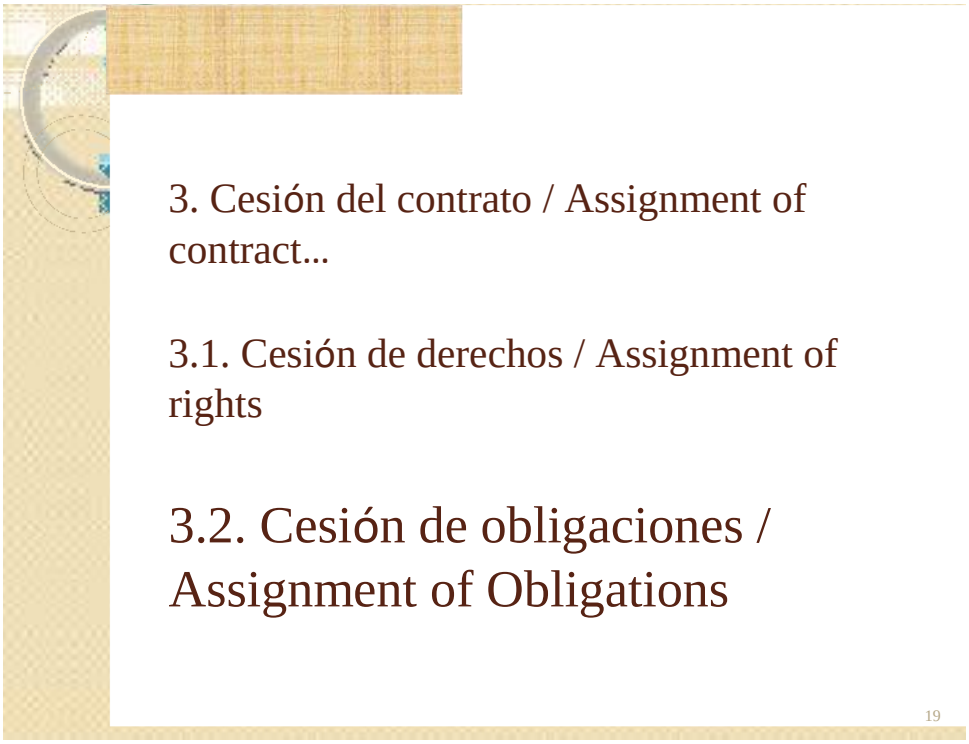
This transaction would be simple, with minimal risk and little cause for dispute thanks to the OHADAC Principles. These Principles allow the assignment of an existing or future credit , and it even allows a partial assignment if the obligation is divisible. For this, an agreement between the assignor, in our case the company in Grenada, and the assignee, in our case the financial entity in Puerto Rico, would suffice. Being a credit assignment, no consent from the debtor, in our example the company with head office in Saint-Barthélemy obliged to pay, is necessary. This consent is only necessary if so provided for in the contract, if the the assignment is prohibited if it is too burdensome - for example if the right to receive merchandise supplies is assigned to a company that needs much more supplies, or if the obligation is personal - for example, an official distributor of a manufacturer cannot transfer its right to distribute the merchandise to a third party not authorised by the manufacturer.

***

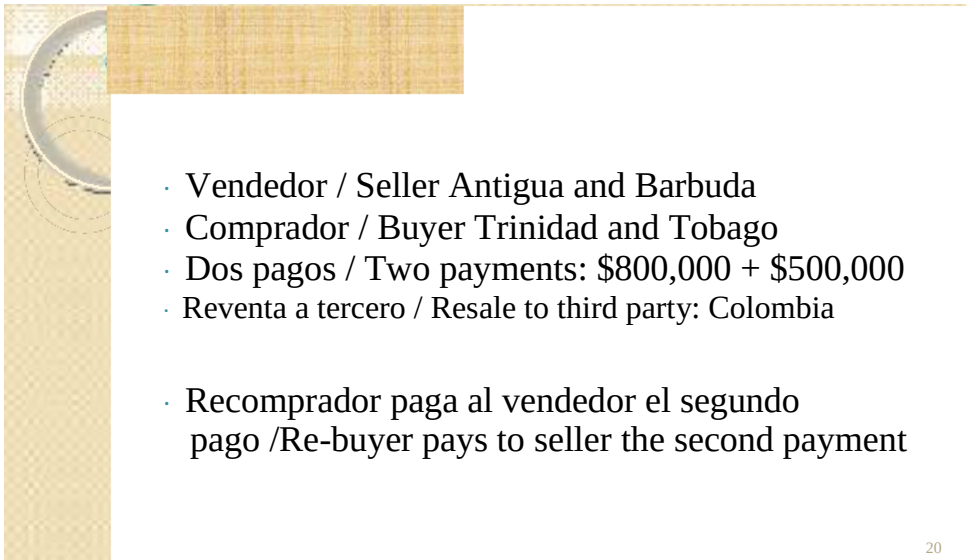


From this point, the Principles seek to find the minimum common ground between the various Caribbean systems. And to do this, they look to the position of the parties, for example:

The debtor, in our case the Saint-Barthélemy company, performs its obligations by paying the assignee, in
our case, the Puerto Rican financial entity, with respect to whom it may benefit from all the exceptions and defence mechanisms it held with the original creditor. This original
creditor, the assignor, in the example the Grenadian company, must guarantee the assignee of the existence of the right it has assigned. Last but not least, the assignee, the Puerto Rican bank, acquires the right to receive the payment in addition to all accessory rights. It even acquires the rights provided by a third party to ensure the payment, except in two exceptional cases,
which really, are common sense: the guarantor is no longer obliged to guarantee the transferred obligation if
it becomes more burdensome, or if if the contract provided that the guarantee could not be assigned.



After regulating the assignment of rights, the Principles deal with the Transfer of Obligations of a
contract. It is a technically more complex operation resolved quite efficiently by the Principles to avoid disputes between the parties.



Let us think of the following example: a seller established in Antigua and Barbuda who sells merchandise to a purchasing company in Trinidad and Tobago. Two payments of 800,000 and 500,000 dollars respectively are agreed. The buyer resells the merchandise to a third party, the Colombian company, who pays a part to said buyer and is prepared to assume the second payment of 500,000 dollars to the initial seller.

Requisitos / Requirements

- Consentimiento del acreedor si cede el deudor / Consent of the creditor if the debtor assigns

- Ningún consentimiento si cede acreedor / No consent if creditor assigns

(art. 8.2.4)

However, regardless of the original debtor from Trinidad and Tobago assigning its own obligation,
this operation requires the acceptance of the creditor of Antigua and Barbuda. Only this creditor can
authorise a third party to assume payment of the pending amount. If that
consent does not exist, the original debtor continues to be liable and obligated to make the payment.

In saying that, the contractual practise in the OHADAC States has taken upon itself to demonstrate that
three types of obligation assignment exist depending on whether the debtor is discharged from its obligation,
vicariously liable, or jointly and severally liable. The Principles include the following Models:

Modelo / Model 1:

- Liberación del deudor / Discharge of debtor (art. 8.2.5)
  - Medios de defensa del deudor pasan al cesionario / Debtor's defences transfer to assignee
  - Extinción de garantías / Discharge of guarantees

22

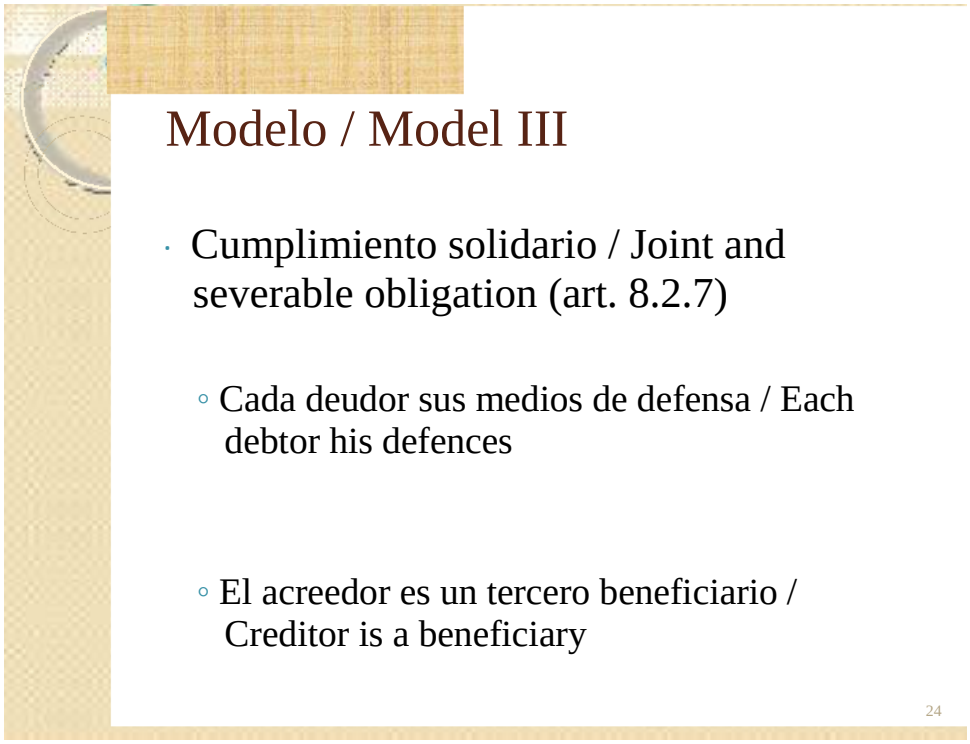
The first model implies the discharge of the original debtor, in our case the company with head office in Trinidad and Tobago. It will no longer be obliged to pay and the guarantees ensuring that payment shall be extinguished. The assignee, the new debtor, in the example the Colombian company
who finally assumes the payment of 500,000 dollars, acquires all the defence mechanisms and exceptions that the assignor held and can use these against the seller. For example, if the seller, the
creditor, does not deliver the merchandise according to the required quality enabling the initial buyer in
Trinidad and Tobago not to pay the $500,000 because of this breach, the new debtor in Colombia
will also not have to pay.

Modelo / Model II:

- Cumplimiento subsidiario / Subsidiary obligation (art. 8.2.6)
  - Medios de defensa del deudor pasan al cesionario / defences are transferred to assignee
  - Garantías solo para el del deudor originario / guarantees only for original debtor

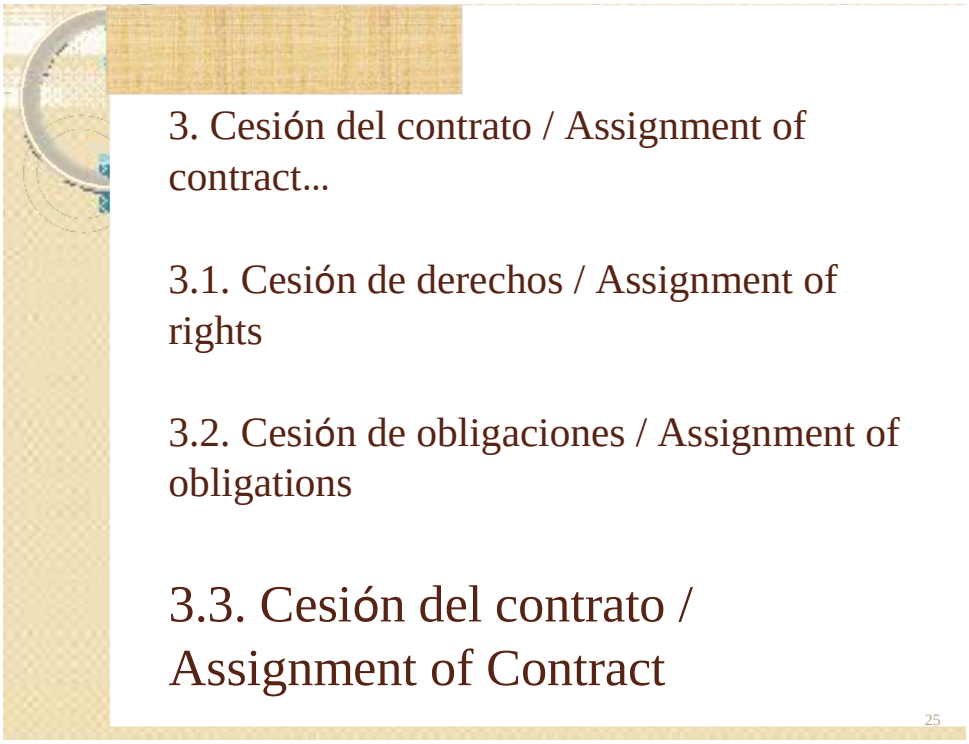
23

The second assignment model implies that the original debtor is subsidiarily liable.
That is: First level strategy - the seller will demand the payment of $500,000 dollars from the assignee, the
Colombian company. What happens if it doesn't comply? It moves on to the second level strategy - the seller
demands the payment from the original debtor, the company in Trinidad and Tobago. If it fails to comply,
there is still a third level strategy - the seller can make use of the guarantees that this original debtor held.

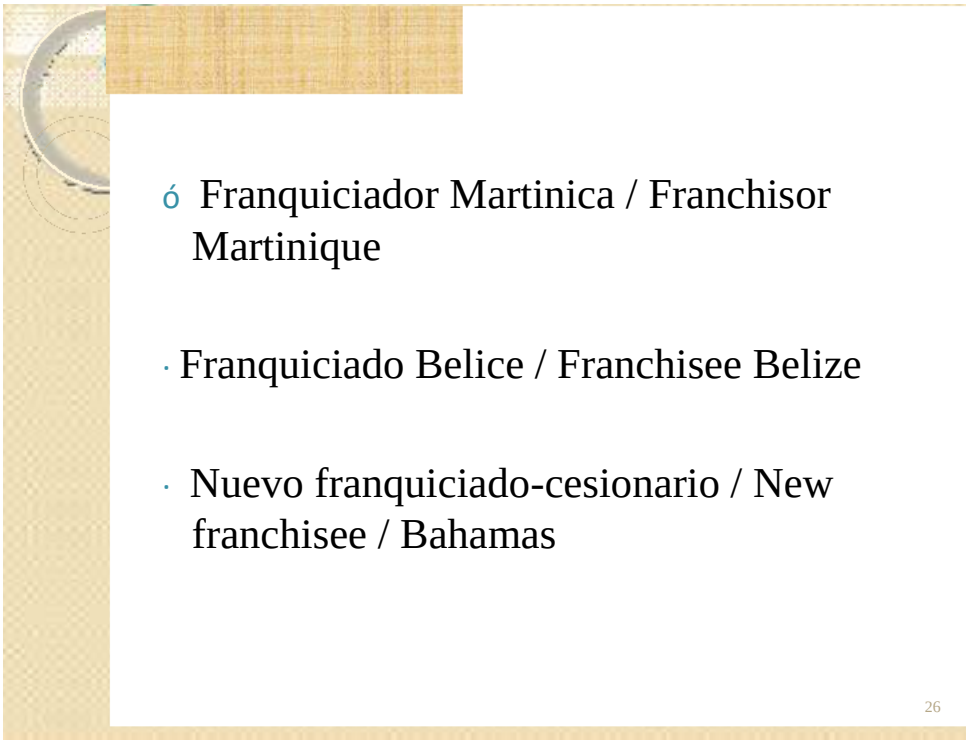


The third assignment model implies that the new debtor and the original debtor are jointly and severally liable. In our case: the seller in Antigua and Barbuda can demand the payment
of the 500,000 dollars from any of the debtors: from the original buyer in Trinidad and Tobago OR from the new debtor in Colombia. Whoever pays, discharges the obligation without affecting the reimbursement actions between the debtors. Each debtor has its own defences.

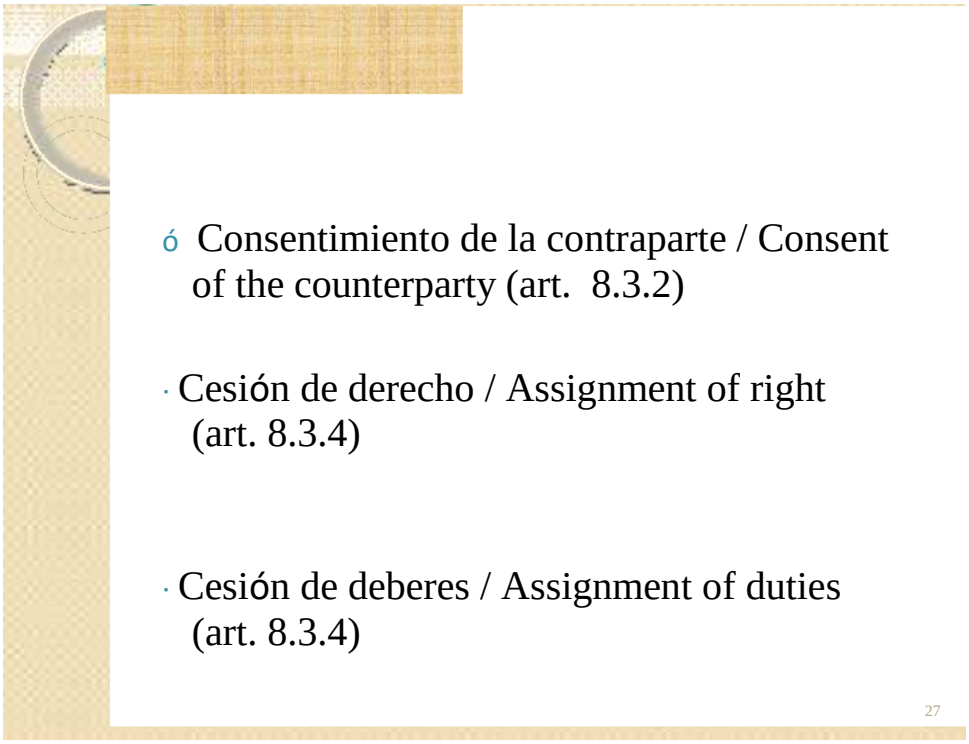
In practise, this means that the new debtor is actually included by making an agreement, in favour of the third party, with the crediting seller. And these rules will be applied so that this is the
ONLY case in which the new debtor, the Colombian debtor, can use the defences it held against the
original debtor, the debtor in Trinidad and Tobago, against the crediting seller.



After analysing the assignment of rights and obligations, the Principles deal with a relatively common practise in international commerce, the assignment of the entire contract, and it does so from the perspective that this same practise has been used in the OHADAC States, steering clear of the idea of codification.

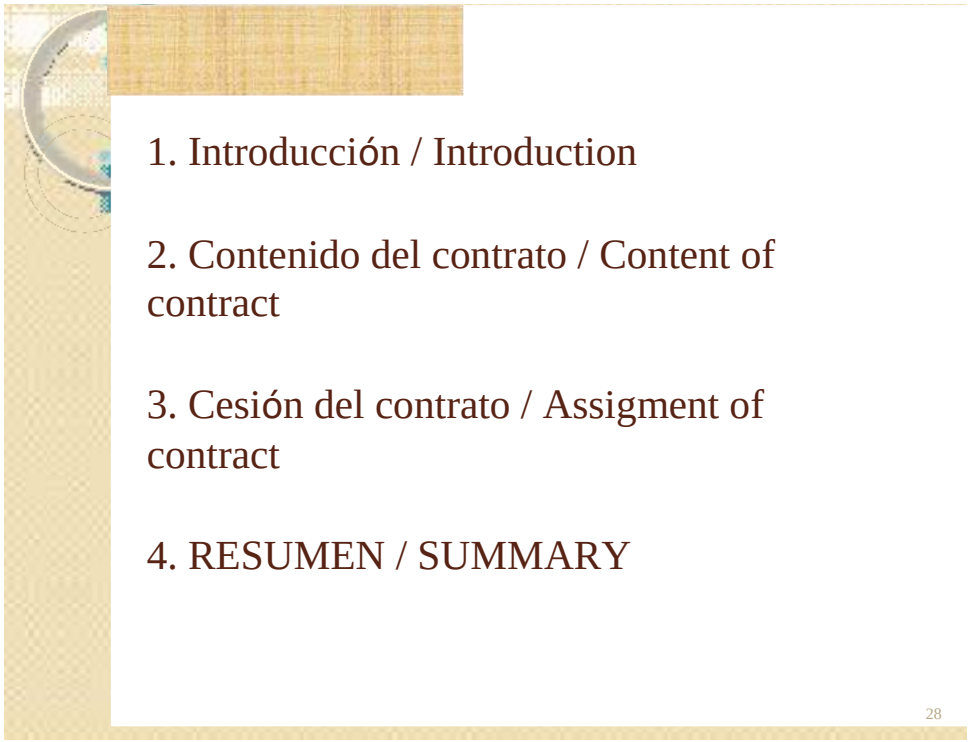


The example on the screen illustrates the operation of the Principles. Think of an international franchising contract. The franchisor has its registered office in Martinique and the franchisee has its registered office in Belize. This franchisee wishes to transfer the operation of its
franchise to a company with registered office in The Bahamas. This is, undoubtedly, an assignment
of the entire contract, that is, not only are the rights held by the franchisee assigned, but so are its obligations.



The first thing that the Principles do in this case is combine the civil law standard and common law standard -
that is the requirement of an assignment agreement by the counterparty. Why? Because, on the one hand, obligations are being assigned that are to be performed by someone else, so it is absolutely
essential that the creditor of said obligation, in our case the franchisor in Martinique, agrees. If the party who is to pay the franchise premium is going to be a third party, the franchisee must know about it and agree to become said payer because it could be a better payer, a
worse payer or the same type of payer. On the other hand, there is a second reason for requiring the consent of
the counterparty, and that is that there is not doubt that, even when assigning a right, that right has to be
able to be assigned with reference to the personal circumstances of the assignor and is untransferable
to third parties without prior agreement. For example, in our case, the assignment of a contract will involve the
transfer of the right to use the trade logos of the franchisor to a third party.
Logically, the franchisor must agree to assign these rights.

From hereon in the rule of the Principles is *de minimis.* Chapter 8 Section 1 on the assignment of
rights must be applied when it is rights that are being
transferred. Chapter 8 Section 2 on the assignment of obligations must be applied when it is duties to be performed that are being transferred. Without further complications, a simple, *de minimis* rule
that can sufficiently function and that lawyers advising on contract negotiation
are going to be very familiar with.



To sum up, after analysing the content of the contract and the assignment, regulated by Chapters 4 and 8
I'd like to end how I began, by highlighting that the Chapters of the OHADAC Principles on these
issues contain rules that can greatly facilitate the execution of these transactions
for Caribbean business.

Whilst it is true that the existing European and International texts contain more exhaustive, complex and detailed regulations that provide an answer to everything, very similar to codification, when these texts believed they held all the answers, it turned out that they changed all the questions.

This will not be the case for the OHADAC Principles because they were born with a different philosophy: To be a meeting point - a meeting point for businesses and contracting parties, a meeting point for lawyers and arbitrators, a meeting point for common law and civil law, a meeting point such as this one today for the OHADAC, Guadalupe, and this conference. Thank you very much.