

Obligations and contracts essay sample



**ASSIGN
BUSTER**

What are the essential requisites of an obligation?

ANS: An obligation has 4 essential requisites. They are:

- 1) A juridical or legal tie, which binds the parties to the obligation and which may arise either from bilateral or unilateral acts of persons;
- 2) An active subject known as the creditor or obligee, who can demand the fulfillment of the obligation;
- 3) A passive subject known as the debtor or obligor, from whom the obligation is juridically demandable; and
- 4) The fact, prestation or service which constitutes the object of the obligation.

In Obligations to give, what are the different rights which are available to the creditor?

ANS: We must distinguish between the rights which are available to the creditor when the obligation is determinate and those which are available to him when the obligation is indeterminate or generic.

If the obligation is determinate in the sense that the object thereof is particularly designated or physically segregated from all others of the same class, the rights of the creditor are:

- 1) To compel specific performance. (Art. 1165, par. 1, NCC)
- 2) To recover damages in case of breach of the obligation. (Art. 1170, NCC.)

If the obligation is indeterminate or generic, the rights of the creditor are:

- 1) To ask for performance of the obligation. (Art. 1246, NCC.)

- 2) To ask that the obligation be complied with at the expense of the debtor. (Art 1165, par. 2, NCC.)

- 3) To recover damages in case of breach of the obligation (Art. 1170, NCC.)

In obligations to give, what are the different duties or obligations which are imposed upon the debtor or obligator?

ANS: Again we must distinguish between the duties or obligations which are imposed upon the debtor if the obligation is determinate and those which are imposed if the obligation is indeterminate or generic.

If the obligation is determinate, the duties which are imposed upon the debtor are:

- 1) To deliver the thing which he has obligated himself to give.

- 2) To take care of the thing with the proper diligence of a good father of a family. (Art. 1163, NCC.)

- 3) To deliver all accessions and accessories. (Art. 1166, NCC.)

- 4) To pay damages in case of breach of the obligation. (Art. 1170, NCC.)

If the obligation is indeterminate or generic, the duties which are imposed upon him are:

1) To deliver a thing which must be neither of superior nor inferior quality.

(Art. 1246. NCC.)

2) To pay damages in case of breach of the obligation. (Art. 1170, NCC.)

“ A” borrowed P2, 000 from “ B” on December 1, 1956. He executed a promissory note promising to pay the indebtedness on December 1, 1958. Upon the arrival of the designated date for payment is demand necessary in order that “ A” shall incur in delay?

ANS: This question must be answered in the affirmative. It is obvious that the first exception is not applicable. In order that the first exception provided for in Art. 1169 of the NCC can be applied, it is indispensable that the obligation or the law should expressly add that the obligor shall incur in delay if he fails to fulfill the obligation upon the arrival of the designated date or that upon the arrival of such date demand shall not be necessary.

What is a fortuitous event? Is there any difference between fortuitous event and force majeure?

ANS: A fortuitous event is an event which cannot be foreseen, or which though foreseen, is inevitable. (Art. 1174, NCC.) Ordinarily, the terms “ fortuitous event” and “ force majeure” are used interchangeably. There is, however, a technical difference. “ Force majeure” is a term that is applicable only those fortuitous events which are dependent upon human intervention, such as wars, strikes, riots, etc., while “ fortuitous event” is the general term that is applicable regardless of whether the event is independent of or dependent upon human intervention.

What are the remedies which are available to the creditor in order to protect his rights against the debtor?

ANS: Under Art. 1177 of the NCC, there are 3 general remedies which are available to the creditor for the protection and enforcement of his right against the debtor. They are: first, to exhaust the property in possession of the debtor; second, to be subrogated to all of the rights and actions of the debtor save those which are inherent in his person; and third, to impugn all of the acts which the debtor may have done to defraud him. The second and third, however, are subsidiary to the first.

Suppose that the debtor executed a promissory note promising to pay his obligation to the creditor as soon as he has received funds derived from the sale of his property in a certain place, is the condition potestative or mixed?

ANS: The condition is mixed because its fulfillment depends not only upon the will of the debtor but also upon the concurrence of to the factors, such as the acceptability of the price and other conditions of the sale, as well as the presence of a buyer, ready, able and willing to purchase the property.

Suppose that in the above problem, the debtor promised to pay his obligation if a house belonging to him is sold, will that make a difference in your answer?

ANS: It will not makes a difference in my answer. The condition is still mixed because its fulfillment depends not only upon the will of the debtor but also upon the concurrence of other factors, such as the acceptability of the price

and other conditions of the sale, as well as the presence of a buyer, ready, able and willing to purchase the property.

The condition is potestative with respect to the debtor, but a closer perusal of the case will show that the declaration or statement was merely an assumption and the same was not the actual ruling.

Hence, the condition is valid. And it cannot be said that if the debtor so desires, he can always prevent the sale. According to the NCC (Art. 1186.), if he prevents the consummation of the sale voluntarily, the condition would be deemed or considered complied with.

Suppose that in the above problem, the debtor promised to pay his obligation as soon as he has received the funds derived from the sale of the property if he finally decides to sell it, will that make a difference in your answer?

ANS: Yes. In such case, it is evident that the condition is potestative with respect to the debtor because its fulfillment would then depend exclusively upon his will. Consequently, the condition is void. The validity of the obligation is, of course, not affected, because the rule stated in Art. 1182 of the NCC to the effect that when the fulfillment of the condition depends upon the sole will of the debtor, the conditional obligation itself shall be void, is applicable only when the obligation shall depend for its perfection upon the fulfillment of the condition and not when the obligation is a pre-existing one.

What is meant by reciprocal obligations?

ANS: Reciprocal obligations are those which are created or established at the same time, out of the same cause, and which result in mutual relationships of creditor and debtor between the parties.