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COMPLEX OBLIGATIONS UNDER THE NEW CIVIL CODE

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Abstract: *Complexity obligations is determined by the number of parties involved in the legal obligational or the number of benefits. From this perspective, the work comprises two chapters. The first is the complex obligations plurality of parts, which are obligations: divisible and indivisible solidarity and second chapter complex plurality benefit obligations, which are: main and optional alternative.*

Keywords: *duty, solidarity, divisibility, indivisibility, alternative duties*

INTRODUCTION

Complexity obligations (Art. 1421 to 1467 civil code) are determined by the number of parties involved in the legal obligations or the number of benefits².

Obligation legal relationships can be established between³ a single lender and a single borrower, legally called simple or between more lenders and / or more borrowers compared called complex legal obligations causing complex or plural birth.

MATERIAL AND METHOD

1) Complex obligations are divisible or indivisible. Divisible obligations may be conjunct or solidarity. Obligations conjunct can be established between several lenders and a cross multiple borrowers.

Obligations conjunction between several lenders has basically a common debtor and each creditor may demand from the debtor only to the debt. So divide obligation on creditors. For example, if four brothers inherit an estate (lenders obligation to pay the price) and selling to one buyer (debtor's obligation to pay) for a - split it in terms of value, each of the four brothers will claim only 25% of the property value.

Obligations conjunction between several debtors, means more borrowers on the same benefit to a single creditor. The creditor is entitled to claim from each debtor only to the debt. For example, a seller (creditor's obligation to pay) sells a property to two buyers (debtors payment obligation). The seller may claim from each, separately, by 50% of the property value.

Debtors conjunct an obligation to their creditors are held in equal parts is the example above, if the law or the contract does not provide otherwise (Article 1423 Civil Code).

Civil Code establishes the presumption of divisibility rule, with two exceptions:

- If indivisibility was not expressly stipulated times
- If the obligation is not by nature such material or intellectual division (Art. 1424 Civil Code).

a) Obligations indivisible. Indivisibility can be active - among several lenders and passive - among many borrowers.

Effects of indivisible obligation are:

- The indivisibility passive, each of borrowers or their heirs can be forced a part in the execution of all obligations, for example, the obligation undertaken by a team of builders to carry out a work or a group of actors to play a song theater, or by a music band to perform a concert etc. .
- For active indivisibility, each of their heirs or creditors may require full performance, even if the obligation is joint and several, for example, an individual couple borrowed a sum of money,

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² See Nely Militaru, Introduction to business law. Legal business report. Contract, Law Publishing House, Bucharest, 2013, page 89 et seq., Popescu Cruceru, Anca Sorina, "Elements of law applicable in the management of the organization," Artifex Publishing House, Bucharest, 2010, p 201 et seq.

³ See Popescu Cruceru, Anca Sorina, "Economic and legal competitive economy", Economic Publishing House, 2006, pp. 10 ff.

either spouse has the right to request the loan maturity or a team of builders work performed, each team member can claim full payment of its beneficial work .

Therefore indivisible obligation does not divide between debtors to creditors, or between their heirs (Art. 1425 phar. 1 Civil Code) .

Also, since it is assumed divisibility, indivisibility must either be expressly stipulated in a contract, so i t c ontractual, c onventional, s uch as t he ex amples abov e or r esulting f rom t he obligation, which by its nature can not be divided, for example, can be divided in carrying out a car, a property (land , buildings), a musical instrument, etc.

When the performance of indivisible obligation occurs in nature, each creditor may request and receive the benefit payable only in its entirety. If the same obligation will run the equivalent indivisible obligation is divisible .

b) Obligations of solidarity. Active solidarity can be established between several creditors and liabilities, among many borrowers.

As indivisibility, solidarity is not presumed⁴:

- Active solidarity must be expressly provided;
- Solidarity liability is expressly stipulated by the parties or specified by law.

Civil Code establishes a presumption of solidarity among debtors of obligations incurred in the course of an undertaking where otherwise provided by law (Art. 1446 Civil Code) .

Active Solidarity give each lender the right to demand performance of all obligations debtor (and give receipt liberating). Once the debtor has made an obligation to the creditor is free and solidarity on the other creditors. The debtor may pay, at its option, any of the solidarity creditors, thus free to all. Other creditors are entitled therefore to ask their debt to the creditor that the debtor has fully settled the obligation. I mean, other solidarity creditors retain the right of recourse against the creditor that the debtor person was extinguished the proportion of debt that is for the latter. For example, a t eam of cr aftsme n execute m ore w ork. A t t he e nd t hereof, i f pr ovided f or i n t he agreement s olidarity am ong cr aftsme n, whic hever may require full pa yment f or ex ecution of t he work from its recipient, so that, having received full pa yment cr aftsma n to pa y a su m of m oney, each cr aftsma n, proportional with the returns of each of them.

Passive solidarity implies that more borrowers are forced to the same benefit, so that each can be kept separated for the entire obligation and its enforcement by one of his debtors to exempt the ot hers c reditor. S olidarity e xists e ven i f bor rowers a re r equired i n di fferent w ays (term or condition).

In the circumstances, the lender may require full payment at any of the solidarity debtors, with payment of the legal relationship between the creditor is paid off and others debtors, the debtor pays. Solidarity debtor who has paid, is subrogated to the rights of the creditor, but can not ask his co-debtor of the debt than it is for each of them. For example, spouses who have entered into a loan agreement with the bank, it fixing them a monthly rate. Either spouse has the right to pay monthly bank rate drinkable.

Solidarity d ebtors or c reditors not a ttract its elf i ndi visibility obl igations. Creditors a nd debtors are not tied to an obligation indivisible solidarity (if there is a contrary stipulation in this regard) .

2) Obligations complex plurality of benefits. Main obligations, a lternative a nd opt ional. Obligations of the object, generally a single supply main and mandatory, for example, a recipient must stay for tourism to pay its price⁵.

The legal obligations also requires that concern several benefits:

⁴ See Camelia Florentina Stoica, Business Law, Contracts, ASE Publishing House, 2012, p 27-39.

⁵ See Crenguța Leaua, Business Law. General notions of private law. Legal Publishing House, Bucharest, 2012, p 85.

a) principal, all mandatory (ex buying an apartment, with parking, including a services for building maintenance of green space)

b) Alternatively, when covers two main benefits, and executing one of these releases the debtor from a liability. For example, in a shop organizes a raffle, after which it will provide customers gain the right to buy, at a very small choice, one of the two products, or a travel agency undertakes to make to the client already has a contract right to choose one of two locations (hotels) in the same resort⁶.

Choice of benefit that will settle the obligation lies with the debtor, unless it is given explicitly buyer (art.1462 par. 1 Civil Code). If the benefit to which he belongs choice within opts to it for that purpose, the choice will benefit the other Party.

If the debtor benefits choice if one benefits became unenforceable even his fault, the debtor is obliged to execute other benefit⁷.

Choosing benefit the execution creditor can do (for example, the choice between the two products does the store, not the client) in this case differs some situations that determine the performance of the service differently:

- If one of the benefits has become impossible to execute without being guilty of any of the parties, the lender is required to receive other;

- If the creditor is unable attributable to execute some benefits he can claim the execution of other benefits, compensating the borrower for damages it is to free it from fulfilling its obligations - whether it is attributable to the debtor's failure to perform one of the benefits, the lender may require compensation to be unenforceable performance or other benefit;

- Whether it is attributable to the debtor unable to execute both benefits, the creditor may claim compensation for any of them. If benefits are impossible to execute without fault of the debtor, and before he is in default, the obligation is extinguished.

c) be voluntary when the obligation is to one main benefit of the debtor may be free running another benefit (ex sales contract would have provided a building a studio on the first floor comfort, society can saleswoman provide instead for the same price, on the 8th floor in an adjacent block, a three-room apartment). The debtor is discharged if the main benefit is unenforceable without it due to his fault.

Thus, in the above example if the company saleswoman said can not offer for sale apartment without his fault, it is not obliged to offer for sale any bedroom apartment, where alternative obligation but, given the choice of benefit does the lender, if one of the benefits has become impossible to execute without fault of any of the parties, the lender is required to receive the other (art. 1465 civil Code). In our case the creditor is obliged to buy the two-bedroom apartment (if course requirements are alternatives).

CONCLUSIONS

The need to reform legal institutions, political and economic development has led to a modern legislative framework, UE, the New Civil Code. This is a modern instrument regulating fundamental aspects of civil legal relations, not least, in their civil obligations, UE obligations complex.

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⁶ Idem

⁷ If the same case, both benefits are impossible to execute, and failure on one of the benefits attributable to the debtor, it is bound to the creditor up to the amount of benefit that has become final unenforceable (Art. 1464 par. 2 civil Code).

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