

EFFECTS OF OBLIGATIONS

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JUDICIALLY ENFORCEABLE OBLIGATIONS

التنفيذ الجبري: الديون الواجبة قضاءً

SPECIFIC PERFORMANCE

التنفيذ العيني

ENFORCEMENT OF SPECIFIC PERFORMANCE

Next Class

A- THE CASE OF THE CREDITOR REJECTING PERFORMANCE

Creditor Rejecting Performance

1. The creditor may reject performance because there is a dispute regarding the amount for example, or the type of performance, or the place of performance or who bears the cost.
2. The debtor needs to establish that he is willing to perform (he is not in default). May also want to shift the responsibility for the goods in his possession.
3. So, we have a two steps process:
 1. Giving Notice to the creditor
 2. Performing or paying through the court

Notice:

- Some laws do not require an official notice. But giving an official notice plays a role in:
 - Evidence against the creditor that he has rejected the tender of performance
 - Proving the moment this rejection has taken place,
- Once notice takes place:
 1. The risk of loss shifts to the creditor (remember !!)
 2. The debtor may request cancellation of the contract (فسخ) in case of an obligation to perform work, for example.
 3. The debtor is entitled to damages, if he proves that he suffered harm
 4. Debtor can take steps of “Depositing”

Tender: العرض

1. Has to be official: through official process or before a court
2. Has to be to the creditor or his assignee, if in court they have to present
3. Has to be complete: Full amount due including any necessary expenses
4. If not accepted, then the court is asked for permission to Deposit

Depositing : الإيداع

- Depends on the nature of the performance:
 1. Payment of money or delivery of Movables: then deposit at the Court
 2. Real Estate: establish Custodianship حراسة
 3. Things that can go bad: Permission from the court to sell it, for market price and deposit the money

Effect of Depositing

- Depositing is considered to be a valid performance if, and only if:
 1. The creditor accepts it
 2. The court declares it valid
- Once it is considered valid, the debtor is released of his obligation retroactively from the date of the TENDER

B- THE CASE OF DELINQUENT DEBTOR

The debtor refuses to perform

If the debtor refuses to perform

1. The creditor may obtain the performance without intervention from the debtor !!!
2. The Court may take measures to force the debtor to perform
3. Or: The court may take actions to perform the obligation: ceasing the debtor property and selling, or Bankruptcy procedures.

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Performance without the debtor's consent

1. If the debt is “Money”; there is no way to obtain performance without the debtor's action. But creditor may ask the court to sell some of the debtor's property or cease the debtor's money in possession of someone else (e.g deposit in a bank)
2. Transfer of ownership:
 1. Immediate upon contract (Particulars, Real Estate in SA)
 2. Upon performance of a process (Registration: Cars in SA): Court decision suffices
 3. Upon delivery of Goods (Fungibles) See delivery of goods

- 3- Delivery of Fungible Goods:
 - Creditor may:
 - Obtain court permission to buy from market on debtor's expenses
 - Buy directly from market on D's expense, in case of emergency or when time is of the essence
- 4- Obligation to perform work:
 - You cannot force D to do the work: infringement on personal freedom and human rights
 - Court order may suffice as substitute: obligation to register, or to contract
 - If possible and acceptable: Creditor may seek work from a 3rd party on the expense of the debtor with court's permission or without it in case of emergencies

- 5- Obligation to abstain: الامتناع
 - A. Court order to remove the undesired effect (remove building) REQUIRES COURT ORDER.
 - B. Court order of Fine to force debtor to stop or remove the effects
 - i. If removal is possible (e.g. if a doctor or a lawyer revealed secrets!! Impossible to remove the effect)
 - ii. If removal is not مرهق overwhelming to the debtor

In all the previous cases, debtor has the right for **DAMAGES** if

1. Specific performance is not obtainable, because it is physically impossible or legally impermissible then
2. He suffered harm that is not removed by the specific performance only

JUDICIAL MEANS OF FORCING THE DEBTOR TO PERFORM

GENERAL CONDITIONS OF FORCED SPECIFIC PERFORMANCE

General Conditions for “Implementation”

1. The Obligation is Legal, not merely Moral
2. The sum of the debt is both
 1. Due, and
 2. Specified and agreed upon
3. The Debtor refuses to perform
4. Creditor has an Executory Note **!!!سند تنفيذي**
5. The specific performance is possible
6. Not useless
7. There is no agreement to move to damages

Measures to force performance

- **By the Creditor**

1. Right of creditor to withhold debtor's rights : الحق في الحبس
2. Right of Cancellation
3. Retaliatory non-performance

- **By the Court**

1. Deterrent Fines الغرامة التهديدية
2. Incarceration
3. Prevention from travel
4. Ordering government and financial entities not to deal with debtor

DAMAGES !

QUESTIONS?

THANK YOU!