

# Chapter TWO

## Special Provisions Relating to Contracts

# Chapter Objectives

- At the end of this module you will be able to:
  - ✓ Explain time provisions;
  - ✓ Discuss conditional contract and their types;
  - ✓ Explain alternative obligations;
  - ✓ Define earnest and its effect;
  - ✓ Discuss contractual provisions as to liability
  - ✓ Apply the rules on both hypothetical and real cases

## 2.1. Time Provisions (1858 -1869)

### A. Calculation

1. Where parties have set the time of performance in days (1858)

- The day of the making of the contract may not be included.

2. Where parties have fixed that the obligation will be due in so many weeks (1859)

3. Where the parties fix the time of performance in so many months (1860+1861)

- Contracts made in Gregorian calendar
- Ethiopian calendar

4. Where the last day is holiday (1862)

5. where the parties have agreed that the obligation is to be performed within a certain defined period of time (1863)

6. where the parties agree on an extension of the term (1864)

# Time...

## B. Benefit of Time

- The law takes a rebuttable presumption that the time is fixed for the benefit of the debtor.
- See Art. 1865
- Where the time is fixed for the benefit of the debtor (see 1867)
- Read Art. 1868&69

## 2.2. Conditions

- Contracts are not always absolute
- It can also be conditional
- What is condition?
- It is an event situated in the future but of which no one knows whether it will in fact happen or not.
- It is not just a term of no fixed date, which is sure to happen.
- A conditional contract is one whose effectivity or extinguishment is subordinated to the fulfilment or non fulfilment of an uncertain event or fact.
- It either postpones the existence of the obligation or it retroactively makes the obligation disappear

# Types of Conditions

- Conditions may be condition precedent (suspensive condition) or condition subsequent (resolutive condition).
- **A suspensive condition (condition Precedent)** is a condition or uncertain event up on the happening or the fulfilment of which a contract subjected to it becomes effective.
- It is a condition that keeps the contract in suspense until its fulfilment.
- **A condition subsequent (resolutely condition)** is a condition or an uncertain event up on the fulfilment of which the contract subjected to it extinguished.
- A contract subjected to a condition subsequent becomes effective immediately after its conclusion.
- But its effects are wiped out up on the fulfilment of the condition.

# Conditions under Ethiopian Law

- Conditional contracts are governed under articles 1869 through 1879 of the Civil Code.
- (see Art. 1869)
- A condition in the meaning of articles 1869 and following of the code affects the very existence of the obligation.
- However, a contract subjected to a condition subsequent from being a conditional contract.
- See Art 1872.
- The legislator didn't have the intention to exclude resolute conditions

# Categories of conditions

1. negative and positive conditions.
2. Suspensive (1871) and resolutive conditions (1872)
  - Effects of suspensive conditions
    - ✓ The rights is potential right
    - ✓ creditor may take preservation measures (1877)
    - ✓ The creditor cannot implement actio pauliana
    - ✓ creditor cannot ask for performance of the obligation, nor ask for termination for absence of performance.
    - ✓ Limitation periods do not begin.
    - ✓ Risks are for the debtor.
    - ✓ If a payment is made, it is an undue payment and the rules of articles 2164 and following apply.
  - After the suspensive condition is fulfilled, the contract becomes effective.

# Effects of resolutive condition

- The contract ceases to be effective if the condition is fulfilled.
- The obligation is thus only temporarily effective.
- The contract has to be performed.
- The creditor may have it enforced.
- He/she may exercise the debtor's rights and the *actio pauliana*. The creditor assumes the risks.
- Limitation periods start to run normally from the day of the contract.
- The debtor may take preservatory measure (1877)
- No principle of retroactivity

# . Categories of condition...

## 3. Independent, mixed and potestative conditions.

- Potestative condition a condition its occurrence and non occurrence is solely in the hands" of the party who assumes the obligation".
- See Article 1879
- The arbitrariness is so gross as to make the agreement inexistent.
- The potestative condition is only considered from the side of the debtor.
- The criterion is generally the situation where no outside element may come and influence the decision of the debtor

# Categories ...

- Mixed condition is a condition where the will of the debtor plays a role, but is not the sole element in the fulfilment of the condition.
- Independent condition is a condition where which is unconnected with the will of a party
- This is the case where the event only depends of fortuitous circumstances, of natural causes, or of the will or

# Requirements for Validity of Conditional Contracts

- See Art 1878