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มหาวิทยาลัยธรรมศาสตร์ THAMMASAT UNIVERSITY

II

NOTES AND QUESTIONS WHICH DID ENTAIL ALTERATIONS IN THE DRAFT 1919.

ดาวน์โหลดจากระบบ TUDC โดย Shiori Tamura หมดอายุ 14/02/2563

Section 389

Sur demande du Comité de Traduction, il a été convenu de supprimer les exemples (such as . . .) dans les paragraphes 1 et 3 de cet article.

29 août 1921

ดาวน์โหลดจากระบบ TUDC โดย Shiori Tamura หมดอายุ 14/02/2563

Note
sur le système de la Promesse de Vente dans le Code des Obligations (art. 396. 397. 398).

Le Code des Obligations a cru devoir régler la question de la Promesse de Vente dans les articles 396. 397 et 398.

L'article 396 donne la définition : " a promise of sale is a contract whereby one party agrees to sell or to buy a property, and the other party agrees that he will at his discretion either complete or not complete the sale ". La promesse de vente a l'effet d'une vente dès que la notification atteint la partie qui a fait l'offre (397). Et l'article 398 établit que si un délai a été fixé par cette dernière elle peut notifier à l'autre partie d'avoir à se décider dans un délai donné.

Au cours de l'examen de ces articles pour la rédaction en siamois, le Comité de Traduction a vivement critiqué la rédaction de l'article 396 en ces termes :

1° Dire que l'autre partie "agrees that he will at his discretion either complete or not complete the sale" est dépourvu de sens. Un engagement de ce genre n'est pas un engagement : c'est l'état normal d'une personne à qui une offre fut faite, et qui a tout naturellement à l'accepter ou à la refuser. Il y a rien d'"engagement" de la part de cette personne que le contrat de promesse de vente tel qu'il est constitué par l'art. 396 ne pourrait être autre chose qu'un contrat unilatéral, où l'on ne voit pas l'obligation de la seconde partie (celle à laquelle l'offre est faite),

2° l'article 396 fait d'ailleurs de la promesse un vente un contrat. Est-ce un contrat spécifique ? En ce cas y a-t-il des différences dans les autres Codes permettant

de Kavir-la promesse de vente pour un contrat spécifique ? Ou n'est-ce pas plutôt le régime ordinaire d'un contrat de vente conditionnelle, et où le jeu des règles générales de l'offre et de l'acceptation jouerait normalement ?

Le Comité français a été ainsi amené à examiner de nouveau la matière.

Sur le premier point, il a été dit que la rédaction de 396 est fixe et, en effet, défectueuse, et ce même en admettant que le pouvoir de vente unilatérale existe en droit suisse, la position de la seconde partie (celle à qui la promesse a été faite) est telle qu'on peut difficilement parler de gérance en ce qui la concerne.

Sur le deuxième point, un nouvel examen de la législation comparée a été fait. Il en résulte que dans les Codes suisse et allemand, la question n'est pas traitée, c'est à dire qu'elle reste réglée par les principes généraux sur les contrats conditionnels, l'offre et l'acceptation. Dans le Code Civil français, la question est bien plus délicate ; il y a un article 1589 sur lequel les auteurs combattent ; cet article, selon l'immense majorité des auteurs, ne vise nullement la promesse de vente unilatérale (c'est à dire celle où, comme dans 396 C. Obl., une partie seule est liée) mais la promesse de vente synallagmatique (c'est à dire celle où deux contractants tombent d'accord sur la conclusion d'objet et de prix d'une vente qui sera réalisée par contrat ultérieurement) ; un seul auteur, Planiol, est en opposition avec tous les autres pour trouver dans l'article 1589 une règle concernant la promesse de vente unilatérale, mais ses arguments sont très discutables et il faudrait admettre alors que la promesse de vente unilatérale en droit français est bien restreinte puisqu'elle exigerait un accord complet même sur le prix (conséquence : une "option" sans prix indiqué serait nulle) ! Aussi le Comité de Rédaction se range-t-il à l'avis de

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la majorité des auteurs est même d'avis que l'art. 1589 du Code Civil ne vise que la promesse de vente synallagmatique (cf. Capitant, vol. 2, 421-422) ; mais ceci revient à dire dès lors que la matière de la promesse de vente unilatérale n'est pas plus traitée dans le Code français que dans les Codes allemand et suisse (v. Capitant, qui en fait en effet la théorie, mais en dehors de tout texte du Code et en s'appuyant sur les principes généraux). En droit japonais, enfin, il y a bien un article 556 qui dit que "a previous promise to sell or purchase made by one party takes the effect of a sale when the other party has expressed his intention to complete such sale" ; cet article, selon le commentaire de J. E. de Becker (vol. 2 p. 154) s'applique bien à la promesse de vente unilatérale, et on trouve une référence à ce texte dans le projet de Code des Obligations édition 1910 ; seulement il est remarquable que le Code japonais quand il a réglé la matière de l'offre et de l'acceptation (art. 521 à 532) n'y a pas inséré une disposition d'ordre général analogue à celle, si utile, que nous avons mise dans cette même matière, art. section 52 Code Oblig., quand nous disons : "If an offer to make a contract is made, the contract is complete only when acceptance reaches the offeror." ; dès lors, la disposition de l'art. 556 japonais sur la promesse de vente s'explique par la volonté de régler la question, et peut-être aussi par ce fait qu'il y a une légère différence quant à la façon dont l'acceptation est formulée (556 se contente en effet d'une expression d'intention par l'acceptant, tandis que la règle générale en fait d'offre et de demande paraît bien être que le contrat se forme quand l'acceptation atteint l'offrant) ; nous n'avons aucune de ces excuses : notre article 396 règle une pure question d'offre et notre article 397 se conforme à la

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règle déjà énoncée par l'art. 52 quant à la date où le contrat se forme, date à laquelle l'acceptation atteint l'offrant.

La conclusion de tout ceci est que, pour soustraire par la section 396 C. Oblig. fait aux raisons de la promesse de vente un contrat spécifique, nous n'aurions comme référence que l'opinion de Planiol, contraire à toutes les autres, basée sur une interprétation discutable selon tous les autres [illegible] d'un article du Code français, et qui toutefois aurait l'avantage d'être rédigé en termes moins critiquables que la section 396. Cela est vraiment trop peu pour innover en cette matière. Pour dire, comme nous l'avons fait, que la promesse de vente est "un contrat", nous ne voyons pas d'autre raison que de la considérer comme un contrat de vente conditionnel. Mais dès lors nous retombons dans la théorie générale de nos contrats conditionnels, complétée par notre système de l'offre et de la demande. Et on comprend ici le soupçon des Codes allemand et suisse qui n'ont rien dit des sujets, [illegible] la réalité la séparation entre la promesse de vente et la vente

l'offre paraît bien théorique : et la seule valeur de cette distinction est que la promesse de vente, au lieu d'être [illegible] comporte une proposition, elle est généralement [illegible] sur un contrat non obligatoire (qui n'est aucunement [illegible] par une promesse de vente).

Pouvons-nous, au moins, justifier la mention des trois articles sur la promesse de vente par une différence sensible avec notre théorie générale ?

Nous avons déjà vu plus haut que nous n'avions pas la différence relevée dans le droit japonais quant à la date où se forme le contrat. Si l'on étudie le mécanisme des articles 396 à 398, et si on le compare à ceux des articles 52, 53 et 56 (offre et acceptation) nous voyons qu'en réalité, si les articles 396 à 398 n'existaient pas, tout se passerait grâce au jeu des autres de la même façon. La seule différence est que, sous l'empire des règles générales sur l'offre et la demande, s'il n'y a pas de période de temps fixée pour l'acceptation, celle "entière doit avoir lieu "within a reasonable time"

ดาวน์โหลดจากระบบ [illegible] โดย [illegible] วันที่ 14/07/2563

tel qu'il est défini par l'art. 96 ; tandis que dans la même hypothèse, sous l'empire des règles spéciales de la promesse de vente, l'offrant peut lui-même fixer ce "reasonable time" ultérieurement pour obliger l'autre partie à répondre. La différence est bien légère, d'autant mieux que rien n'oblige l'offrant à procéder ainsi (art. 398 : can fix a reasonable time) et qu'il semble lui être permis de s'en tenir aux principes généraux ? C'est cependant le seul argument qui permette de justifier le luxe des trois articles 396 à 398. Autrement, rien ne rendrait leur présence nécessaire, et nos règles sur l'offre et l'acceptation, ou sur les obligations conditionnelles (art. 138 et s.) seraient, comme en droit allemand et suisse, très suffisantes.

Il a été aussi délibéré de préciser cette position de la question dans la Commission mixte. Pour éviter toute difficulté, un remaniement des articles 396 à 398, destiné à donner satisfaction aux observations faites, tout en laissant à la jurisprudence le soin de tirer de ces articles les conséquences nécessaires, a été adopté.

5 septembre 1921

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M? Remy

Voici de bien et notre commentaire sur le Comm de Vienne et de venir en à parler prend vous avez terminé.

La note en français est pour le Comité de Rédaction et une copie sera destiné à M. Tarbox.

La note en anglais est pour la Commission mixte, j'ai me suis efforcé de la faire plus pratique et plus courte pour viser surtout les solutions.

H Pugu

5 September 1971.

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กองกรรมการชำระประมวลกฎหมาย

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Note

La promesse de vente s'analyse bien d'une avis en une convention, un accord de volonté entre les parties. Pour la promesse synallagmatique de vendre et d'acheter alors que le prix est déterminé ou peut être déterminé aucun doute. En ce qui concerne la promesse unilatérale ce qui peut soulever quelques difficultés c'est la grande ambiguïté entre l'offre et l'acceptation. Voyons les deux hypothèses.

1° Dans l'offre le choses se présente la façon suivante. A l'époque dit à B j'offre de vous vendre ma maison pour la somme de 1000 Fcs. B. peut accepter ou refuser; c'est seulement au cas où il accepte que l'offre produira ses effets donnera naissance à un rapport juridique entre les deux parties.

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9° En cas de promesse de vente il en va tout différemment. A le propriétaire s'engage vis à vis de B. à lui vendre sa chose si le dit ou si celui-ci voudra l'acheter et B accepte cet engagement quitte à le ratifier plus tard ou non. Notons tout de suite que la promesse de vente est bien une convention entre les parties qui elle fait la loi concernant l'objet d'une chose susceptible d'un contrat de bail ou lequel les parties sont d'accord

Il y a donc bien là encore un avis un contrat un accord de volontés accord dont l'objet est la promesse elle même faite par le promettant qui est lié par cette promesse acceptée par l'autre partie et dont l'inexécution donne lieu à des dommages intérets.

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3

Plus tard si l'accord a lieu définitivement entre les parties sur la chose et sur le prix la promesse de vente vaudra vente conformément à l'article 1589 du Code civil français. L'accord alors a manifesté sur les deux éléments essentiels du contrat tandis qu'auparavant l'accord ne portait que sur l'engagement de vendre c'est donc lorsque l'on a su dès qu'il y avait là un acte-contrat action qui implique nécessairement l'accord des volontés.

M. Rouy de Planter

CODE OF OBLIGATIONS.

Sections 396 to 398

When examining the Sections 396 to 398 for translation, the Committee of Translation has made a number of observations which have been carefully examined by the French Committee, the answer being as follows.

1) Section 396. Is a promise of sale a contract? The French Committee are of opinion that it would go too far to consider the promise of sale as a specific contract, this opinion being admitted by a number of French lawyers only, but not by some other or by the other Codes. The promise of sale may be taken a contract as far as considered as a conditional contract of sale, the uncertain event in the occasion being the acceptance or non-acceptance of the offeree. In this way, it is correct to say that the promise of sale is a contract (unilateral contract) as says Section 396, such a promise having to be discriminated carefully from the consensual agreement for sale which is really a sale made at once. But, to avoid any misconstruction as to the promise of sale in Section 396 being taken as a specific contract, the French Committee agree that it is better to redraft the matter

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in order to avoid the word "contract".

2) Section 396 in fine says that the offeree " agrees that he will at his discretion either complete or not complete the sale". Is not this defective, the offeree practically agreeing to nothing at all? The French Committee are also of opinion that it is advisable not to speak of agreement in the case of the offeree.

3) May not Section 396 be redrafted by using a wording near to the French Code (art. 1589) or the Japanese Code (art. 556 first paragraph)?

After an examination of these foreign Codes, the French Committee are of opinion that :

a) Section 1589 of the French Code deals only with the agreement for sale by consensual agreement before the sale itself is performed, and not with the unilateral contract of promise of sale within the meaning of Section 396 C. Oblig. (opinion of French commentators, but one),

b) Section 556 of the Japanese Code deals really with the promise of sale within the meaning of Section 396 C. Oblig.; but we call the attention upon this point that in the Japanese Code there is no general provision to say that "if an offer to make a contract is made, the contract is complete only when acceptance reaches the offerer",

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as it has been said in Section 52 C. Oblig.. Then, the Japanese Code was obliged to provide for the matter when dealing with the promise of sale. On the contrary, if we would include a provision similar to the Japanese provision in the matter of promise of sale, we would make a mere repetition of our Section 52, and I am afraid that Section 397 already is a repetition of this kind. Moreover, the system of the Japanese Code is that the contract is complete when the offeree has expressed his intention to complete the sale, whilst the system of the Code of Obligations (s. 397) is that the contract is complete when the notification of the acceptance reaches the other party what is exactly in conformity with our system on offer and acceptance and must be kept.

We are consequently of opinion that no help can be got from the French and Japanese texts. Moreover the German or Swiss Codes let the matter to the general rules on conditional contracts, offer and acceptance.

4) What redrafting may be made to keep account of the above conclusions ?

The French Committee propose :

III. Promise of sale <u>or purchase</u>.

396. - <u>There is promise of sale or purchase as soon as a person</u> agrees to sell or to buy a property <u>to or from another</u>

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person who will at his discretion either complete or not complete the sale or purchase.

397. - If the other person notifies his intention to complete the sale or purchase, the promise of sale or purchase has the effect of a contract of sale as soon as the notification reaches the first person.

398. - If no time is fixed for the notification, the person who made the promise can fix a reasonable time and call upon the other person to answer within that time whether he will complete the sale or purchase, or not.

If he does not answer within that time, the first party is no longer bound by his promise.

5th. September 1921.

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Chronique de Sèvres

(religieux)

cor: a) symbolique-typique ; b) mise-détail
ne qui n'est pas très complexe.
par reflet dans les arts-locaux,
exemple : Frères, dimension de doctrine ; 1789 ne s'explique pas
Japon : ~~pas d'affaire religieuse~~ ~~Chine~~
le code de Colbert a voulu être moderne (Louis) il a réuni d'ailleurs
à faire un choix de très mieux, mais il a le tort d'être bien
à faire d'un très grand ; on peut arriver 376 pour faire
disparaître le mot "contrat" tout en restant sur le
point, on est bien en droit civil
on peut modifier aussi sur fond de la Cité non plus en contrat
principe, mais en vente conditionnelle, vente à la condition
que le bien soit obtenu.

sur la Commune :
c'est une invention de faire un contrat
d'or. Glorieux veut bien donner par le reçu
Colbert où il dépose ~~de~~ [illegible] et Coffre-fort
les principes généraux de la convention et Coffre-fort
ici ils aboutissent au même résultat
sauf que sur ce délai non fixé le "versement
ferme" est simplement par une notification
le titre même est remis (provisoirement) à titre de garantie

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Code of Obligations.

-:-:-:-:-:-

Section 396.

A promise of sale takes place when one party agrees to sell or to buy a property to or from another party who will at his discretion either complete or not complete the sale.

Section 398 2nd.par.

If he does not answer within that time the first party is no longer bound.

23rd. September 1921.

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D'un commun accord, le texte ci-dessus a finalement été adopté :

Code of Obligations.

-:-:-:-:-:-

Section 396.

A promise of sale takes place when one party agrees to sell or to buy a property to or from another party who will at his discretion either complete or not complete the sale.

Section 398 2nd.par.

If he does not answer within that time the first party is no longer bound.

23rd. September 1921.

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Section 456

D'un commun accord, le second paragraphe est supprimé comme inutile.

28 septembre 1921

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La Prima Sezione a fait observer que la Loyer siamoise n'a qu'un seul mot pour couvrir à la fois la "hire of property" et la "charter of ships" qui correspond à notre affrètement (vulgo. frêt, location de navire).

La portée du sous titre et du "Hire of Property" ne s'applique pas au "Charter of Ships", il y a risque de confusion en siamois. Il faudrait une restriction à l'art. 487 dans un second paragraphe.

English law — A contract of affreightment is made with a shipowner for hire of his ship to carry goods. It is made by agreement in writing and a "charter-party". The ~~hirer~~ lessor is called the "charterer".

Proposal — " Contracts of affreightment of ships remain under the provisions of the maritime law so far as they are contrary to or inconsistent with the provision of the present Title."

3 November 1922

N.B. En ce qui concerne le "carriage", le réserve a été faite par l'art. §88 : " The carriage of goods by sea is governed by the laws and regulations relating thereto". — Cfr. la loi sur les chemins de fer, on a adopté une disposition (art. 50) disant que le "civil law" s'applique en général, sauf exceptions spécifiés par la loi particulière; c'est l'hypothèse prévue par §88.

ดาวน์โหลดโดย Chulalongkorn University Library 14/[illegible]

Section 487

A second paragraph is proposed, as follows:

"Contracts of affreightment remain under the provisions of the maritime law as far as such provisions are contrary to or inconsistent with the present Title".

10th. November 1922.

Note... Pour la solution de cette question voir III, ~~rapport~~ rapport de July 1923 et meetings subsequents

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"Fruits" is included in the word "profits" and has no utility (see definition of "profits" in the Draft Code of Things).

Adopted to delete the words "fruits and".

Ceci a finalement été renvoyé, à la suite de la définition du mot "fruits" devant figurer dans la partie générale sous les mots "and profits" qui ont été supprimés.

30 Août 1923

ดาวน์โหลดจากระบบ TUDC โดย Shiori Tamura หมดอายุ 14/02/2563

Section 520

Instead of "uses the property hired ...."
to read "acts ...."

21 st. October 1921

ดาวน์โหลดจากระบบ TUDC โดย Shiori Tamura หมดอายุ 14/02/2563

Section 544.

L'article 544 donne le droit au locataire de sous-louer, à moins que le contrat de bail ne lui refuse.

Cet article est conforme au droit français (art. 1717) et suiv. (1, 185).

Le Comité de Traduction a objecté que la pratique semblait contraire : le locataire n'a pas le droit de sous-louer, à moins que le contrat de bail ne lui accorde ce droit.

Il serait désirable de ne pas renverser la coutume. D'autant mieux que la pratique française est loin d'être générale. Les Codes japonais (612) et allemand (549)

Décide de soumettre le point au Ministre de la Justice, parce qu'il entraîne le remaniement d'un article.

30 septembre 1910

ดาวน์โหลดจากระบบ TUDC โดย Shiori Tamura หมดอายุ 14/02/2563

Mr. R. Guyon to H. E. Chao Phya Abhai Raja, Minister of Justice, President of the Commission of Codification.

Bangkok, 11 [illegible] October 2463.

Your Excellency,

In the course of the translation of the Code of Obligations by the Commitee of Translation, a number of minor alterations, chiefly concerning the wording, are submitted by the Committee. They are generally quite well grounded, and we agree to make the corrections proposed. I keep carefully a record of such alterations which will be finally submitted to Your Excellency, when the whole work will be completed.

However, a question is to be submitted now to the decision of Your Excellency because it is not a minor change, but entails the upset of a section.

Section 544 of the Code of Obligations (hire of property) says that, "unless otherwise provided by the lease, a lessee can sublet or transfer his rights in the whole or part of the property hired to a third person."

This solution is in conformity with the French Code (S. 1717) and the Swiss Code (S. 285).

The Committee of Translation has called my attention upon this point that this provision is contrary to the present Siamese practice, which is that a lessee cannot sublet the property without the authorisation or unless the lease grants him this right. The Committee of Translation is of opinion that it would be advisable not to

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reverse the present custom. They may rely upon the Japanese Code (S. 612) and the German Code (S. 549) which are on the same side than the Siamese practice.

I quite agree with the proposal, and propose to Your Excellency to reverse the provision which had been adopted for section 544, and to write it as follows:

"Unless otherwise provided by the lease, a lessee cannot sublet or transfer his rights in the whole or part of the property hired to a third person".

I am your most obedient servant.

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ที่ ๑๗/๒๕๖๓

กระทรวงยุติธรรม

วันที่ ๒๐ ตุลาคม พระพุทธศักราช ๒๕๐๓

แจ้งความมายัง นายอาร์.กีของ หัวหน้ากรรมการร่างประมวลกฎหมาย

ตามรายงานของท่านลงวันที่ ๑๑ ตุลาคม พ.ศ. ๒๕๐๓

หาฤๅที่จะเปลี่ยนแปลงหลักความในมาตรา ๕๐๔ แห่งประมวลเพ่งว่า

ด้วยหนี้ยะธรรม ดังมีข้อความดีสคารแจ้งในรายงานแล้วนั้น ได้ทราบ

ความมาลอดแล้ว

ถ้าท่านเห็นสมควรจะเปลี่ยนแปลงข้อความในมาตราที่กล่าว

นี้พร้อมด้วยคำแนะนำของกรรมการเช่นนั้น ข้าพเจ้าก็ไม่ขัดข้องอย่างไร

โดยโอกาสนี้ขอแสดงความนับถือมายังท่าน

เทพินทร์เทวกุล

นายกกรรมการสำระประมวลกฎหมาย

ต้องการ
มาตรา

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CODE OF OBLIGATIONS

Section 545

Instead of: "contrary to the provisions of the lease", to say: "contrary to the provisions of the foregoing section", - on account of Section 544 having been modified.

31st. October 1921.

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Sections 54 à to 58

(Hire of services and Hire of Work.)

Le Comité de traduction a demandé que, dans cette matière, le mot "remuneration" seul soit uniformément employé pour désigner soit le salaire d'un employé, soit le prix payable pour un travail effectué: comme cela a lieu dans la Loi japonaise.

Les mots "salary" et "price" traduisent difficilement leurs correspondants en siamois. De plus, le mot "price" crée une confusion (souvent artificielle) avec le prix proprement dit dans la vente.

Ces distinctions tiennent plus de la terminologie française que de l'anglais, et n'étant pas indispensable, en effet, il a été décidé d'employer partout le mot "remuneration".

Cf. Note ci-après.

4 th. November 1921

ดาวน์โหลดจากระบบ TUDC โดย Shiori Tamura หมดอายุ 14/02/2563

CODE OF OBLIGATIONS

Sections 547 to 586

The words "salary" and "price", as the case may be, to be deleted and substituted by "remuneration".

See sections 547, 548, 553, 555; and 560, 571, 573, 575, 578, 579, 580, 581, 585.

Cf. Japanese Code, s. 623 and 632.

4th. November 1921.

ดาวน์โหลดจากระบบ TUDC โดย Shiori Tamura หมดอายุ 14/02/2563

CODE OF OBLIGATIONS

Section 580

If the contract is based upon an estimate of costs without the contractor assuming that such an estimate is correct and final, and the costs for the work exceed the estimate, the following rules shall apply:

1) if the costs are not more than five per cent over the estimate, the hirer of work is bound to accept the work and pay the remuneration;

2) if the costs are more than five per cent over the estimate, the hirer of work can claim cancellation of the contract.

NOTE.

Cf. German Code, article 650.

A contraric, if the estimate is assumed to be correct and final, the contractor is in any case bound by such an estimate.

The German Code says besides that "If such exceeding of the estimate is to be expected, the contractor shall give notice to the employer without delay". This notification is necessary, in the German system,

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because they consider only the case where the work would "largely exceed the estimate" without any specification of limit. But with our system of "five per cent limit", it will happen that the contractor, if prudent, will not fail to make the notification spontaneously as soon as the exceeding will be more than five per cent, because he knows that he would be exposed to a claim of cancellation by the employer if he did proceed on with the work without notifying the latter.

28th. November 1921.

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580

~~กระทรวงการคลัง~~ กรมการคลังประมวลกฎหมาย

วัน _____ เดือน _____ พ.ศ. ๒๕๖๐

580 (cont'd) If the contract is based upon an estimate of costs without the contractor assuming ~~[illegible]~~ estimate ~~shall be finally ascertained~~, and it appears that the work ~~is finally ascertained~~ exceeds the estimate by ~~[illegible]~~ or the contract for the work [illegible] exceeds by [illegible] the estimate, [illegible] the contractor [illegible] the work [illegible] the contract [illegible] the estimate

Section 582

Il y aura probablement lieu d'ajouter à l'énumération la "Post and Telegraph Department" qui, comme "carrier", jouit de réserve pour sa responsabilité -, aux termes du Postal Act (soumis à révision en 1920).

(V. note ci-après.)

ดาวน์โหลดจากระบบ TUDC โดย Shiori Tamura หมดอายุ 14/02/2563

COMMISSION OF CODIFICATION.

NOTE

for the Committee of Translation

The Department of Post and Telegraph is preparing a new "Postal Act" which has been submitted for advice to the Commission of Codification.

According to this Act, the liability of the Department, as a carrier of postal articles (letters, parcels, etc.) has been limited. It is generally admitted, in all countries, that the Department of Post, being a public service, cannot be bound exactly by the same rules as an ordinary carrier. For instance, the Department incurs no liability for the loss, damage or delay in the transportation of ordinary letters or post cards: its liability exists in case of registered postal articles up to a certain amount fixed by the postal regulations, etc.

The Committee remembers that the position of the State Railways Department is the same, and that special provisions to that effect have been made in the Draft Law on Railways which is now under translation.

This special position has been specified in Section 588 of the Draft Code on Obligations which reads as follows:

"The carriage of goods or passengers by State Railways is governed by the regulations and bye-laws of the Royal Railways Department....."

To meet also the position of the Department of Post and Telegraph, which is the same, the Committee of

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Redaction propose to draft Section 588 as follows :

"The carriage of goods or passengers by the State Railways Department and of postal articles by the Department of Post are governed by the laws or regulations concerning such Departments".

21st. January 1921.

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CODE OF OBLIGATIONS.

Section 588, 1st. paragraph.

"The carriage of goods or passengers by State Railways and of postal articles by the Department of Post and Telegraph are governed by the laws and regulations issued thereon."

28th. November 1921.

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Section 603

Cut the word "same".

4th December 1981

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Carte des Objections

Section 288

Faute d'impression : lire "conditionnel" au lieu de "inconditionnel".
(Cf. section 720).

3 février 1922

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Section 73

—

Les mots "or order" sont une substitution à l'ancien article 16 du projet primitif qui admettait la possibilité d'un recours à la cour en interprétation. Il doivent être supprimés.

27 février 1922

ดาวน์โหลดจากระบบ TUDC โดย Shiori Tamura หมดอายุ 14/02/2563

Code of Obligations

art. 735

La Commission de ~~Législation~~ Révision a toujours manifesté sa répugnance au mot "fruits", qui, très français en langage juridique, n'est pas anglais du tout.

Les mots définis dans le Code des Biens (art. 7 à 9) sont : profits (qui renferme products et benefits) et interests, ce qui est en effet très suffisant. Toute la question est de répartir entre profits et interests les divers modes de bénéfices de la propriété; on peut discuter, notamment, le point de savoir si les loyers et fermages doivent rentrer sous la rubrique "interests" comme le dit l'art. 9, ou sous celle de "profits" (benefits). La question sera à revoir lors de la discussion définitive du Code des Biens.

En tout cas, le mot "fruits" est condamné. Article modifié en ce sens

4 février 1922

Solution renversée
Le mot "fruits" seul subsiste
Août 1923

ดาวน์โหลดจากระบบ TUDC โดย Shiori Tamura หมดอายุ 14/02/2563

M O R T G A G E

(AN ALTERATION SUGGESTED FOR SECTION 736)

No servitudes or other real rights created by agreement or will upon a mortgaged property by which the value of the property is depreciated registered after the registration of the mortgage may be set up against the mortgagee unless he has agreed to it.

Cf. 146 Draft on Things.

COMMENT. - When drafting the Book on Things, the Commission have always considered that a servitude may be created by will as well as by agreement. The words "by agreement or will" have consequently been used of in all sections concerning servitudes. It is proposed to do the same in section 736 which in the present Drafting deals with servitudes created "by agreement" only.

Otherwise the section remains the same, but the wording has been made more explanatory, because the policy for servitudes in the Book on Things allows now to do so; it may be noted especially that servitudes are void if not made in writing and registered; then the dates of registration are the

ดาวน์โหลดจากระบบ TUDC โดย Shiori Tamura หมดอายุ 14/02/2563

criterion in case of conflict between a mortgage and a servitude or other real right. However, it must be pointed out - this being a important matter of policy - that leases under three years duration are not registered according to the Draft Civil Code which follows the present practice of the Department of Land Records. If the above criterion (registration) is adopted, it will ensure that leases under three years, being not registered, can be set up against a mortgagee. This consequence seems harmless because leases under three years are unlikely to depreciate the property to the prejudice of a previous mortgagee: they are transitory and mere acts of usual management. The Commission on Codification will have to decide finally upon this policy.

The wording of the above draft is similar to the wording as amended by Dr. James.

Pour la solution de cette question, voir III (rapport de July 1923 et meetings subsequents).

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Note for the Commission of Codification
concerning alterations of wording
in Chapter VII of the Mortgage
(Registration: sections 768 to 774)

At the time when the Code of Obligations is ready for promulgation, the attention of the Committee of Redaction has been called upon the necessity to secure a close co-operation of the Ministry of Lands and Agriculture for the application of the new provisions of Civil Law concerning the registration of rights upon immovable properties.

This co-operation is quite necessary, because there are in the Code of Obligations provisions concerning the registration of Mortgage and of special preferential rights upon immovable property, and directions ought to be given by the responsible Ministry to the Land Officials. A note to that effect is consequently drafted to be submitted to the Ministry of Lands and Agriculture.

In order to secure the co-operation of the Ministry of Lands and Agriculture in the best conditions, it is necessary to impose upon them as few alterations as possible in the present practice of registration of mortgages which (as provided by the Consolidated Land Act) seems unobjectionable.

A careful examination of sections 768 to 774 of the new Code induces us to believe that there are no conflicts between the said sections and sections 49 and 54 of the Land Act. To avoid any objection, and

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in order not to interfere with the practical management of the Land Register by the Competent officials, we only suggest to take out in sections 770, 772, 775 the words "Register counterfoil" which are never used in the Land Act, and to say only "Register", the form of the said register being at the discretion of the Land Officials who have to see themselves where it is better to write the notices to be inserted therein.

7th. January 1922.

ดาวน์โหลดจากระบบ TUDC โดย Shiori Tamura หมดอายุ 14/02/2563

Section 887

=

Ajouter à la fin :

"or of the determination".

(Il y avait omission en raison de la terminologie primitive des Travaux préparatoires, qui n'envisageait parlé que de l'extinction).

24 May 1972

(devenue 888 dans le texte soumis au Plenary Committee).

CODE OF OBLIGATIONS.

Section 888

The Committee of Translation have called the attention upon some difficulties raised up by the practical application of section 888.

After having considered the point and ascertained that this provision has no precedences (in matter of Agency) in the foreign Codes, the Committee of Redaction propose to repeal section 888 as a whole.

In order to avoid a renumbering of the Code, it is proposed to cut section 882 into two sections, each including one sentence of the present section 882.

The renumbering would then limited to the following modifications :

882. - The principal can revoke the authority and the agent renounce the agency at any time.

883. - The party who determines the agency.....etc..

884. - Present section 883.

885. - Present section 884.

886. - Present section 885.

887. - Present section 886.

888. - Present section 887.

889. - No change.

ดาวน์โหลดจากระบบ TUDC โดย Shiori Tamura หมดอายุ 14/02/2563

25th. May 1922.

CODE OF OBLIGATIONS.

Sections 894 and 895

To avoid the word "cause", it is suggested to come back to the old drafting of these two sections, which was :

894. - The principal can exercise directly against the subagent the rights arising out of the subagency.

895. - The subagent can exercise directly against the principal the rights arising out of the subagency.

Or better :

894. - The principal can sue directly the subagent for any rights arising out of the subagency.

895. - The subagent can sue directly the principal for any rights arising out of the subagency.

25th. May 1922.

ดาวน์โหลดจากระบบ TUDC โดย Shiori Tamura หมดอายุ 14/02/2563

Section [redacted] 892

To say :

liable for the performance ... "

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CODE OF OBLIGATIONS.

Section 897

It is suggested to suppress the enumeration, so that the Courts will in any case consider if the party is as a fact an importation agent or not.

25th. May 1922.

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Section 897

Importation agents are personally liable for the execution of the contracts entered into by them as such.

For the purpose of the present section, importation agents include all agents, commission agents, representatives, sole representatives or otherwise, whatever may be their denomination.

NOTE. - Section 873 says that the principal only is personally liable towards third persons. Section 897 purports to be an exception in the case of importation agents, who are said to be personally liable also.

The drafting of the present section 897 is unobjectionable as far as the provision applies to agents (such as commercial agents, commission agents, etc.). But it is right to object that when section 897 enumerates also some persons who are not exactly agents, but representatives or sole representatives or deposit-sellers, etc., this provision is somewhat out of the matter of Title XIV. The difficulty is that the provision is highly interesting, in order to prevent such representatives to avoid personal liability in Bangkok,

ดาวน์โหลดจากระบบ TUDC โดย Shiori Tamura หมดอายุ 14/02/2563

NOTE

FOR THE COMMISSION OF CODIFICATION

RE:

Article 807 (Agency)

of the Civil and Commercial Code.

The Drafting Committee have examined the question concerning factors or other Commission-agents of this kind in the foreign legislations, in order to see if present section 807 of the draft is satisfactory.

In the French, Japanese and Swiss Codes, the system is practically similar, and also (though a little more explanatory) in the German Code, the English Law also follows similar rules.

It comes to this:

if a commercial agent (generally named a commission-agent or otherwise) makes some commercial bussiness in his own (or his own firm's) name, he is personally liable; if he makes the same in the name of a principal then the Codes refer to the matter of Agency, the consequence being that the principal is liable and the agent is no longer personally liable.

Present section 807 of our draft has been made purposely a little different: the idea has

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but that there is no other place in the present Draft to deal with the matter. We have tried to make the matter less dissatisfying by the above drafting.

12th. November 1922.

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been that, owing to the local conditions in Siam (where inhabitants do not know the principal firm in case of goods imported, and could not sue it), commercial agents are always personally liable as soon as their business is importation, that is to say when the principal firm is out of Siam; this rule being a general one, without having to consider if the commercial agent in Siam has disclosed or not the name of this principal abroad. The English Law favours generally a system of this kind (Lord Teuterden in thomson V. Davenport 9 B. and C. p. 87; Wilson V. Zulueta 14 Q. B. 405; Hutton V. Bulloch, E. R. 4. Q. B 572); cf. also Jenks' Digest Vol. I, p. 68 (c). And by the way it must be pointed out that the solution is the same, and the reason for it similar, in the case of exportation agents.

It seems that this policy is good. But present section 897 is too short and can be objected to as not giving a complete explanation of the system. The complete system would be as follows:

1) when both the commission- agent and the principal are in Siam (that is to say the principal easy to be known by the customers) there is no objection to apply the policy of the foreign Codes hereabove referred to, and the commission-agent will be personally liable when acting in his own name, exonerated from personal liability when disclosing to that

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effect the name of his principal so that he will come under the rules of Agency;

2) when the commission-agent is in Siam but the principal outside (that is to say in all cases of importation or exportation of goods or otherwise), the Siamese rule would be that such commission-agent is personally liable (except in course unless otherwise agreed between the commission -agent and the customer).

Chapter VII, if made so explanatory, would follow much more closely the foreign systems. Its place in the title of Agency would be less objectionable. And finally it could be titled "Commission Agency" as in the other Codes, instead of "Importation Agents".

The draft suggested is as follows:

CHAPTER VII

COMMISSION AGENCY.

897. - A Commission-agent is a person who, in the ordinary course of his business, acts in his own name or in the name of his own firm on account of another.

He is personally liable, unless he has

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especially disclosed the name of the principal in order to benefit by the provisions of Agency.

However, importation or exportation Agents, whether called agents, commission-agents, factors, representatives or otherwise are personally liable for the performance of the contracts entered into by them as such.

cf. French Commercial Code articles 94, 95
Japanese Commercial Code articles 313, 314
Swiss Code articles 430, 431.
German Commercial Code articles 383.
English Law, Factor's Act 1889.

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Explication du système pour l'art. 897

La loi française a l'article (C. co. 94, 95), qui sont une définition (le commissionnaire agit en son propre nom pour le compte d'un commettant) est un renvoi au mandat.

Nous avons fait de même implicitement dans 897 : et, en effet, nos règles du mandat sont à peu près celles du droit français. En réalité, 897 soumet donc les commissionnaires aux règles de l'Agency (si on ne l'a pas dit expressément, c'est sans doute pour ménager les coutumes de la place de Bangkok qui peuvent être différentes même avec la nationalité). Mais la grande exception est faite (aux articles 873 et 877 de l'Agency) que les "importation agents" sont toujours "personally liable", même s'ils ont donné le nom du "principal".

29 Août 1923

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Extr. a Commission
1 Septembre 1923
140

NOTE

FOR THE COMMISSION OF CODIFICATION

RE:

Article 897 (Agency)

of the Civil and Commercial Code.

The Drafting Committee have examined the question concerning factors or other Commission-agents of this kind in the foreign legislations, in order to see if present section 897 of the draft is satisfactory.

In the French, Japanese and Swiss Codes, the system is practically similar, and also (though a little more explanatory) in the German Code, the English Law also follows similar rules.

It comes to this:

if a commercial agent (generally named a commission-agent or otherwise) makes some commercial bussiness in his own (or his own firm's) name, he is personally liable; if he makes the same in the name of a principal then the Codes refer to the matter of Agency, the consequence being that the principal is liable and the agent is no longer personally liable.

Present section 897 of our draft has been made purposely a little different: the idea has

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been that, owing to the local conditions in Siam (where inhabitants do not know the principal firm in case of goods imported, and could not sue it), commercial agents are always personally liable as soon as their bussiness is importation, that is to say when the principal firm is out of Siam; this rule being a general one, without having to consider if the commercial agent in Siam has disclosed or not the name of this principal abroad. The English Law favours generally a system of this kind (Lord Teuterden in thomson V. Davenport 9 B. and C. p. 87; Wilson V. Zulueta 14 Q. B. 405; Hutton V. Bulloch, L. R. 9. Q. B 572); cf. also Jenks' Digest Vol. I, p. 63 (c). And by the way it must be pointed out that the solution is the same, and the reason for it similar, in the case of exportation agents.

It seems that this policy is good. But present section 897 is too short and can be objected to as not giving a complete explanation of the system. The complete system would be as follows:

1) when both the commission- agent and the principal are in Siam (that is to say the principal easy to be known by the customers) there is no objection to apply the policy of the foreign Codes hereabove referred to, and the commission-agent will be personally liable when acting in his own name, but exonerated from personal liability when disclosing to that

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effect the name of his principal so that he will come under the rules of Agency;

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Chapter VII, if made so explanatory, would follow much more closely the foreign systems. Its place in the title of Agency would be less objectionable. And finally it could be titled "Commission Agency" as in the other Codes, instead of "Importation Agents".

The draft suggested is as follows:

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He is personally liable, unless he has

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especially disclosed the name of the principal - in order to benefit by the provisions of Agency.

However, importation or exportation Agents whether called agents, commission-agents, factors, representatives or otherwise are personally liable for the performance of the contracts entered into by them as such.

cf. French Commercial Code articles 94,95
Japanese Commercial Code articles 313, 314
Swiss Code articles 430, 431.
German Commercial Code articles 383.
English Law, Factor's Act 1889.

Pour la solution de cette question voir III Reports July 1913 et suivants

Sections 900 and 902.

To say:
for!." A broker is not personally liable
for the performance ...

"... in performance of the contract

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Section 901

To say by the end of the first paragraph:
instead of " ... to that person "
" ... to that party.

By the second paragraph, instead of
" as an ordinary party ... "
to say
" as a party ".

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Section 903.

Modified as follows.

"A contract of compromise is void unless made in writing."

29th. May 1922.

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Sections 926 et 928

40/147

Insurance

- The party who agrees compensation is called the Insurer.
The party who agrees to pay the premium is called Assured.
The person who is to receive the compensation is called the beneficiary.

...ver tout le vote en commun

... en 928 "instead of ~~for~~ the same loss"
~~[illegible]~~ " for the same subject matter!

8 Juin 1922
(décision prise en Commission plénière)

Il y aura en commun des changements de terminologie pour les articles qui se trouvent dans les Chapitres de l'Assurance.

ดาวน์โหลดจากระบบ TUDC โดย Shiori Tamura หมดอายุ 14/02/2563

Section 930

Modification of wording
instead of:
"If a person who has insured his own property...
to say:
"If a person who has had his property insured ...."

14 th. June 1922

ดาวน์โหลดจากระบบ TUDC โดย Shiori Tamura หมดอายุ 14/02/2563

SECTION 996

I L L U S T R A T I O N

I. - A endorses to B a bill of exchange with the mention that the bill is delivered so that it be collected by B. This later has only the right to collect the amount of the bill which does not become his property and if B endorses the bill to C he can only transfer his right of collection.

II. - Suppose A endorses a bill of exchange to B "as a pledge" B does not become an owner of the said bill. If he tranfers it by way of an endorsement he will give to the transferee only a right of pledge on the bill

August 1923.

ดาวน์โหลดจากระบบ TUDC โดย Shiori Tamura หมดอายุ 14/02/2563

Code des Obligations

Section 1950

Dans la séance du 12 juin 1920, le Comité de rédaction a demandé que le mot " documentary bill " (traite documentaire) soit expliqué dans un second paragraphe ajouté à cet article.

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(section 1050
C. Obligations)

Les mots de l'article 1050 qui commencent le Traité Documentaire, in fine, ne figuraient pas dans le projet préliminaire rédigé en 1909 par M. Sadoux pour être soumis à la Commission de Codification.

Ce projet avait été précédé de notes de M. Guyon sur la matière des Lettres de Change, qui restent à nos Archives. Ci-joint un extrait de ces notes, le n° 7 indiquant comment la matière du Traité Documentaire avait été envisagée lors de ce travail préparatoire.

Les mots "except in case of a documentary bill" ont été ajoutés à l'article 1050 au cours de la discussion en Commission sur le projet préliminaire, à la séance du 19 mars 1910 (P. Verbaux). Mention en est faite, malheureusement sans explications.

Depuis ce moment, l'article 1050 est resté identique. Il figure notamment dans tous les projets imprimés (tous postérieurs à la discussion de 1910). Aucune observation n'a été proposée à son égard ultérieurement soit en Commission de Codification, soit en Commission de Révision.

Hugues

22 juin 1920

ดาวน์โหลดจากระบบ TUDC โดย Shiori Tamura หมดอายุ 14/02/2563

Note

Sur la Traite Documentaire

La Traite Documentaire ne fera que son fonctionnement a été garantie au créancier de la mise en gage au profit du tiers des marchandises dont la valeur fait l'objet de la traite et qui sont en cours de route

En cas de perte des marchandises la couverture a la valeur.

Ce droit de gage est transmis aux ~~porteurs~~ mandataires par endossement de la traite par endossement de la Lettre de change et du connaissement ainsi que par la remise des documents qui, comme la police d'assurance maritime, représentent la valeur des marchandises en cas de perte.

Le gage confère au créancier gagiste un droit de retention et en cas de non fonctionnement un droit de vente et un privilège sur le prix. Il y a lieu de croire que jusqu'au fonctionnement de la traite à l'échéance la tradition des marchandises appartiendra au porteur de la traite documentaire qui est créancier gagiste ~~qui a été mis en possession de gage~~. Tant que les marchandises sont en mer il en est fonctionnaire. Dès que elles sont arrivées à destination le tiré peut en prendre livraison, avec le concours du porteur, mais jusqu'au fonctionnement de la traite il n'en aura que simple détention la possession restant au créancier gagiste. De là le grand intérêt que présente la disposition de l'art 10 § 2 Siam. qui permet au tiré de se débarrasser de ce créancier en le forçant à accepter le fonctionnement avant l'échéance de la traite.

28 juin 1920

ดาวน์โหลดจากระบบ TUDC โดย Shion Tamura หมดอายุ 14/02/2563

Practica

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Documentary bill.

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Le gage est un contrat par lequel un debiteur ou un tiers en son lieu et place remet à son créancier un objet mobilier corporel ou incorporel affin de lui conferer le droit de le retenir jusqu'au parfaitement de la dette et, si elle n'est pas acquittée, de faire vendre cet objet pour être payé sur le prix par préference aux autres créanciers du debiteur (art. 2073, C. civ.) Le créancier gagiste a ainsi : 1° le droit de retention 2° le droit de vente, 3° un privilège.

Aux termes de l'art 91 C. Com. Haïtien Considéré qu'un gage est commercial quand il est constitué soit par un commerçant, soit par un individu non commerçant pour un acte de commerce.

D'après le Code civil, la validité du contrat de gage entre le créancier et le debiteur n'est soumise à aucune autre condition que la mise en possession du créancier gagiste toutefois les formalités légales sont exigées par la loi pour que la constitution de gage puisse être invoquée contre les tiers afin d'éviter la fraude.

Le Code civil (art 2076) exige pour ~~que le privilège~~ ~~accordé~~ sur le gage que celui-ci ait été mis ou remis en la possession du créancier gagiste ou d'un tiers convenu entre les parties. Le code de Commerce (art 92 1er al.) a prévu la même règle, dont le but principal est d'empêcher que le debiteur ne présente comme libre des objets déjà donnés en gage. La situation doit donc être telle que le debiteur soit mis hors d'état de disposer de la chose engagée ou de la soustraire pour se procurer frauduleusement du crédit. Il n'est pas nécessaire pour cela que le créancier ait la détention matérielle

du gage, il suffit que seul il soit en état dépo
à l'exclusion du débiteur. L'art 92, fait de cette idée
applications d'une grande importance pratique. Ainsi
créancier gagiste est réputé avoir les marchandises en sa
possession, lorsqu'elles sont à sa disposition dans ses magas
ou navires, à la douane ou dans un dépôt public, ou
avant qu'elles soient arrivées, il en ait reçu par un con
sement ou par une lettre de voiture.

La mise en possession du créancier gagiste est exp
Dans tous les cas (art 92) c.a.d pour le gage de celui
comme pour celui des choses consignées, le créancier ga
doit donc avoir eu sa possession le titre de créance do
en gage. (art 1607. C.civ).

Lorsque le prix des marchandises exposées a été
a été réglé en une traite avec faculté d'escompte. Si le tiré
réclame pas le connaissement à l'arrivée du navire, le po
de la traite non échue et du connaissement est fondé à
de mesure conservatoire et sous sa surveillance le tiré, à retir
connaissement de la lettre de change et à faire consigner
les marchandises dans les docks. — Rouen 17 mai 18

28 juin 1920

M.r Rémy.

Ci-joint le dernier commentaire de l'article 1050.

Voulez-vous examiner Dès à demain le projet que j'ai arrangé avec 3 illustrations, qui me semblent donner un complément commentaire de l'article.

Rémy

24 juin 1920

ดาวน์โหลดจากระบบ TUDC โดย Shiori Tamura หมดอายุ 14/02/2563

First Preliminary Draft
21 st. June 1920

155

DOCUMENTARY BILL.

1050 § 2. - A bill of exchange is said a documentary bill when it is transferred with annexed documents proving that a pledge has been put to secure either the payment of the bill on the date of its maturity, or the acceptance by the drawee.

The documentary bill is chiefly used for goods travelling on sea; therefore the annexed documents are mostly a bill of lading and a policy of maritime insurance.

ILLUSTRATION. - A, a great merchant in Bangkok, has sold goods to B in Shanghai. A draws a bill of exchange on B and he goes to C a banker to discount this bill. C accepts but on the condition that the above goods will be put in pledge to him. As it is impracticable to give him materially the goods so pledged because they are on sea, A endorses to the name of C the bill of exchange, the bill of lading and the policy of maritime insurance which are representatives of the goods or of their value in case of loss. By these indorsements C is put in possession of his pledge. C and other endorsee can do the same. When the goods will arrive at Shanghai the holder of the documentary bill if he is not paid may order to seize and sell the goods to be paid on their price by previous claim.

In case of pledge given to secure the acceptance by the drawee the bill of lading and other documents are

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entrusted with the holder of the bill of exchange only up to the moment when the acceptation of the drawee is ascertained. In return of his acceptation the documents must be given to the drawee.

(See Lyon-Caen, No. 680. - Chalmers p. 299)

ดาวน์โหลดจากระบบ TUDC โดย Shiori Tamura หมดอายุ 14/02/2563

Second Preliminary Draft

23 June 1920

1050. - The holder of a bill of exchange cannot be compelled to receive payment of it before maturity, except in case of a documentary bill.

(new) "Documentary bill" means a bill of exchange which is transferred with, and cannot be transferred without, documents constituting evidence that goods which are in transit are pledged to secure either the payment of the bill on the date of its maturity or the acceptance by the drawee.

ดาวน์โหลดจากระบบ TUDC โดย Shiori Tamura หมดอายุ 14/02/2563

Section 1050.

In their meeting 12th. June 1920 the Commission of Translation has requested the French Committee to complete section 1050 of the Draft Code on Obligations, so that the words "documentary bill" be explained.

The following is the proposal of the Commission of Redaction.

1050. - The holder of a bill of exchange cannot be compelled to receive payment of it before maturity, except in case of a documentary bill.

"Documentary bill" means a bill of exchange which is transferred with, and cannot be transferred without, documents constituting evidence that goods which are in transit are pledged to secure either the pay ent of the bill on the date of its maturity or the acceptance by the drawee.

ILLUSTRATIONS. I. - A being the drawer and B the drawee, A has indorsed to C a bill of exchange the day of maturity of which is 31st. December 2464. B cannot compell C to receive payment before 31st. December 2464.

II. - A, a merchant in Bangkok, has sold to B living in Shanghai goods which he has sent from Bangkok to Shanghai and which are now in transit by sea.

A draws a bill of exchange on B and he goes to C, a banker, to discount this bill. C accepts but on the condition that the goods will be pledged to him as security. As it is impossible to deliver to C the goods so pledged

ดาวน์โหลดจากระบบ TUDC โดย Shiori Tamura หมดอายุ 14/02/2563

because they are on sea, A endorses to the name of C. the bill of exchange together with the bill of lading and the policy of maritime insurance if any which are representative of the goods or of their value in case of loss. By these indorsements C is , as a fact, put in possession of his pledge, and he can re-indorse the bill and its annexes to further indorsers. When the goods will arrive at Shanghai the holder of the documentary bill, if not paid, can have the goods seized and sold to be paid on their price.

If A has consititutes the pledge only to secure the acceptance by B, the bill of lading and other documents shall remain in possession of C only up to the time when the acceptance of B is given. In return of such acceptance the other documents must be delivered to B.

III. - In the case of the foregoing illustration, supposing the day of maturity of the bill of exchange is 31st. December 2464, and the goods arrive in Shanghai on the 2nd. October 2464, no doubt that B has interest to take delivery of such goods as soon as possible to avoid charges, damages to the goods, etc. But he cannot do so as long as such goods are pledged to C who detains the bill of lading and other documents if any. Then in this case B is allowed to compell C to receive payment before the 31st. December 2464, so that C shall deliver to him the bill of exchange together with its annexes (bill of lading, policy, etc.)

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1053 (1)

The word "capacity" is used here in the French meaning and not in the meaning of the Code. To be changed and substituted by "right".

4 août 1912

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40/161

CODE OF OBLIGATIONS

Section 1069.

Please take notice that the references "by sections 1000 to 1010" is a misprinting and must be substituted by the words "by sections 1057 to 1067".

6 May 1920.

ดาวน์โหลดจากระบบ TUDC โดย Shiori Tamura หมดอายุ 14/02/2563

CODE OF OBLIGATIONS

Questions of delays in sections 1106 and 1107.

The Committee of Translation have called the attention upon the delays specified in sections 1106 and 1107, which are perhaps not sufficiently fit to the requirements of the country.

Recourse against the drawer and indorsers (prior parties):- According to section 1106, the holder of a cheque loses his recourse if he does not present the cheque for payment within two months from the date of drawing.

Recourse against the drawee:- According to section 1107, the holder has no recourse against the banker who refuses to pay a cheque presented for payment more than one year after the date of drawing.

If we consider how these questions are dealt with in the foreign legislations, we see from the documents and discussions in the Conference of the Hague (1912) that it was quite clear for the Governments that, in the present conditions, the delays to be specified in the cases dealt with by sections 1106 and 1107 are a pure question of local customs and have to be fixed by each national law accordingly. It was perhaps deemed desirable to

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adopt a uniform and international delay in case of cheques drawn from a country to another country (French proposal) but the point is not finally settled.

Then, if we try to find which delays are adopted in other countries, we see that they are very different.

The English Law (Bills of Exchange Act, 1882, s. 74) says that the cheque must be "presented for payment within a reasonable time of its issue", and adds that "in determining what is a reasonable time, regard shall be had to the nature of the instrument, the usage of trade and of bankers, and the facts of the particular case". This is so vague, that the English delegate to the Conference of the Hague was asked to specify what may mean "reasonable time" according to the English jurisprudence, and he did answer that the delay admitted by such jurisprudence is 24 hours, but that as a matter of fact the banks have the custom to pay cheques within six months of their issue, and even after and up to the time of prescription (that is to say six years) but then after approval of the drawer. The French Law (law 14th. June 1865) says that the cheque must be presented within five days if to be paid in the same place, and eight days if to be paid in another place; but as a fact we know that the French bankers also have the custom to extend this too short

ดาวน์โหลดจากระบบ TUDC โดย Shiori Tamura หมดอายุ 14/02/2563

delay. As a conclusion, the delay is short in law, more extersive in custom, and shall meet the special requirements of the country.

As to the recourse against the drawer and indorsers, the answer of the British Government in the Conference of the Hague has been that "the drawer of a cheque is liable thereon if it is presented for payment at any time within six years of its issue, unless he has suffered damage by reason of its non-presentment. But if the cheque is not presented or forwarded for presentment within a reasonable time after its issue, and the drawer is damaged by the delay (as for instance by failure of the bank) he is then discharged to the extent of any damage he may have suffered. The holder of the cheque, however, in that case can prove against the bank instead of the drawer (sect. 74 Bills of Exchange Act). Reasonable time for this purpose has been judicially held to be 24 hours". Again, "the holder of a cheque loses his right of recourse against the indorser unless he presents it for payment within a reasonable time; and that means that he must either present it for payment or forward it for presentment within 24 hours unless he is prevented from so doing by something in the nature of force majeure..... As regards the drawer, presentment is excused where the banker is not bound as between himself and the drawer to pay the cheque, and

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the drawer has no reason to believe that the cheque would be paid when presented (Bills of Exchange Act, sect. 46)". The answers of the other Governments are, as a rule, that the holder of a cheque not presented within the legal delay must lose his recourse against the indorsers in any case, and against the drawer when the deposit-money in bank did disappear by the fault of the drawee after the delay specified by law for the presentment to the said drawee has expired (French) or even in any case (German). As a conclusion, if the English Law makes the delay against the drawer the same as civil prescription against the holder, the general tendency is to fix a shorter delay but to let it again to the special consideration of the contry concerned.

Consequently, it appears that the delays stated in sections 1106 and 1107 can be specified in each country after due consideration of the local requirements. It belongs to the Siamese members of the Commission to examine the point and to consider if the said delays are to be extended or reduced to meet the best requirements of the country, - being understood that Siam is a country where the use of cheques is widespread (like in England or U.S.A.; and contrary to continental countries of Europe). The Committee of Redaction will have no objection to the delays proposed, so much the more if they remind that the delay of section

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1106 (two months) was of six months in the Preliminary Draft 1913.

24th. August 1922.

ดาวน์โหลดจากระบบ TUDC โดย Shiori Tamura หมดอายุ 14/02/2563

CODE OF OBLIGATIONS

Section 1110

This section provides that whoever draws a cheque against a deposit or a credit granted to him shall be punished with fine not exceeding two thousand baht. It means consequently that a drawer in good faith is punishable (with fine only).

The French Law (laws 19th. February 1874 and 2nd. August 1917) come to punish: first, the person in good faith who draws a cheque without having sufficient and disposable funds, provided that the punishment is fine only; second, the person in bad faith who "draws a cheque without sufficient and disposable funds or withdraws wholly or partly his funds after the drawing of the cheque" provided that the punishment is then imprisonment (from two months to two years) and fine (art. 6).

The English Law, according to the notice of the British Government to the Hague Conference 1912 is that " the civil consequences of drawing a cheque without sufficient funds to meet it are the same as in the care of an ordinary bill; but if a man draws a cheque on a bank where he has no account, or when he knows for certain that the cheque will not be met, he is liable criminally under the law relating to fraud. For civil purposes, it makes no

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difference whether a man has no funds to meet a cheque or whether he has only insufficient funds....." This means that the drawer in good faith is only liable to civil consequences of his mistake but that the drawer in bad faith is liable to criminal punishment.

The Swiss Law (art. 837) provides only for civil compensation in the case where "a person draws a cheque without having sufficient funds in the drawee's office", without discrimination between good and bad faith or criminal liability specified in the Civil Code of Obligations.

It must be noted that the present drafting of section 1110 was made by the Code Commissioners after the French Law but before the recent law 2nd. August 1917 which has brought the above specified alterations especially for the prosecution and punishment of drawers in bad faith.

The question for the Committee is to know:

first, if it is desirable to punish the drawer <u>in good faith</u> as made by the present section 1110 and the French Law, - or to let him subject only to civil liability as made by the English and Swiss law;

second, if it is advisable to specify the particular case of the drawer <u>in bad faith</u> and to provide imprisonment for him, as it is in the English and French law.

This is really a question of practice and local experience. I note however that criminal

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prosecution of drawers in good faith is more understandable in countries where the cheque is of un-frequent and exceptional use as in France, but perhaps a hard policy in the countries where the cheque is a popular and frequent way of payment.

24th. August 1922.

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CODE OF OBLIGATIONS.

Questions of delays
in sections 1106 and 1107.

The Committee of Translation have called the attention upon the delays specified in sections 1106 and 1107, which are perhaps not sufficiently fit to the requirements of the country.

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If we consider how these questions are dealt with in the foreign legislations, we see from the documents and discussions in the Conference of the Hague (1912) that it was quite clear for the Governments that, in the present conditions, the delays to be specified in the cases dealt with by sections 1106 and 1107 are a pure question of local customs and has to be fixed by each national law accordingly. It was perhaps deemed desirable to adopt a uniform and international delay in case of cheques drawn from a country to another country (French proposal) but the point is not finally settled.

Then, if we try to find which delays are adopted in other countries, we see that they are very different.

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As to the recourse against the drawer and indorsers, the answer of the British Government in the Conference of the Hague has been that "the drawer of a cheque is liable thereon if it is presented for payment at any time within six years of its issue, unless he has suffered damage by reason of its non-presentment. But if the cheque is not presented or forwarded for presentment within a reasonable time after its issue, and the drawer is damaged by the delay (as for instance by failure of the bank) he is then discharged to the extent of any damage he may have suffered.

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The holder of the cheque however, in that case can prove against the bank instead of the drawer (s. 74 Bills of Exchange Act). Reasonable time for this purpose has been judicially held to be 24 hours". Again "the holder of a cheque loses his right of recourse against the indorser unless he presents it for payment within a reasonable time; and that means that he must either present it for payment or forward it for presentment within 24 hours unless he is prevented from so doing by something in the nature of force majeure ..... As regards the drawer, presentment is excused where the banker is not bound as between himself and the drawer to pay the cheque, and the drawer has no reason to believe that the cheque would be paid when presented (Bills of Exchange Act, section 46). - The answers of the other Governments are, as a rule: that the holder of the cheque not presented within the legal delay must lose his recourse against the indorsers in any case; - and against the drawer when the deposit-money in bank did disappear by the fault of the drawee after the delay specified by law for the presentment to the said drawee has expired (French) or even in any case (German). - As a conclusion, if the English Law makes the delay against the drawer the same as civil prescription against the holder, the general tendency is to fix a shorter delay but to let it again to the special consideration of the country concerned.

Consequently it appears that the delays stated in sections 1106 and 1107 can be specified in each country after due consideration of the local requirements. It belongs to the Siamese members of the Commission to examine the point and to consider if the said delays are to be extended or

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reduced to meet the best requirements of the country, - being understood that Siam is a country where the use of cheques is widespread (like in England or U.S.A., and contrary to continental countries of Europe). The Committee of Redaction will have no objection to the delays proposed, so much the more if they remind that the delay of section 1106 (two months) was of six months in the Preliminary Draft 1913.

24th. August 1922.

ดาวน์โหลดจากระบบ TUDC โดย Shiori Tamura หมดอายุ 14/02/2563

CODE OF OBLIGATIONS.

Section 1110.

This section provides that whoever draws a cheque except against a deposit or a credit granted to him shall be punished with fine not exceeding two thousand baht. It means consequently that a drawer in good faith is punishable (with fine only).

The French Law (laws 19th. February 1874 and 2nd. August 1917) come to punish: first the person in good faith who draws a cheque without having sufficient and disposable funds, provided that the punishment is fine only; - second the person in bad faith who "draws a cheque without sufficient and disposable funds or withdraws wholly or partly his funds after the drawing of the cheque "provided that the punishment is then imprisonment (from two months to two years) and fine (article 6).

The English Law, according to the notice of the British Government to the Hague Conference 1912 is that "the civil consequences of drawing a cheque without sufficient funds to meet it are the same as in the case of an ordinary bill; but if a man draws a cheque on a bank where he has no account, or when he knows for certain that the cheque will not be met, he is liable criminally under the law relating to fraud. For civil purposes, it makes no difference whether a man has no funds to meet a cheque or whether he has only insufficient funds.....". This means that the drawer in good faith is only liable to civil consequences of his mistake

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but that the drawer in bad faith is liable to criminal punishment.

The Swiss Law (art. 837) provides only for civil compensation in the case where "a person draws a cheque without having sufficient funds in the drawee's office", without discrimination between good or bad faith or criminal liability specified in the Civil Code of Obligations.

It must be noted that the present drafting of section 1110 was made by the Code Commissioners after the French Law but before the recent law 2nd. August 1917 which has brought the above specified alterations especially for the prosecution and punishment of drawers in bad faith.

The question for the Committee is to know:

first, if it is desirable to punish the drawer in good faith as made by the present section 1110 and the French Law, - or to let him subject only to civil liability as made by the English ans Swiss Laws;

Second, if it is advisable to specify the particular case of the drawer in bad faith and as to provide imprisonment for him, as it is in the English and French Law.

This is really a question of practice and local experience. I note however that criminal prosecution of drawers in good faith is more understandable in countries where the cheque is of unfrequent and exceptional use as in France, but perhaps a hard policy in the countries where the cheque is a popular and frequent way of payment.

24th. August 1922.

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40/176

CIVIL CODE

Section 1106

It has been decided that in section 1106 the delay granted to the holder of a cheque will be one year.

6th. September 1922.

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40/177

CIVIL CODE

Sections 1109 and 1110.

It has been decided that the provision of section 1110, entailing criminal prosecution for the drawer in good faith who is overdraft shall be repealed, and that no special provision is necessary to specify his liability under civil law.

As to the punishment for the drawer in bad faith, the Commission have been of opinion that a provision shall be inserted in the next Revised Penal Code and not in the Civil Code.

Section 1110 being repealed, in order not to change the present numbering of the Code, it has been decided that the third paragraph of section 1109 shall become section 1110.

6th. September 1922.

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