Study Unit 19: Parties to an Agreement

Simple joint liability

Debtor: is 1 person who is obliged to perform
Creditor: is 1 person entitled to claim a performance.

Simple joint liability
1 general rule is each joint debtor is only liable for his proportionate share. Thus where 1 parties simply have made no stipulations several debtors are jointly liable for their proportionate share only. This can only arise if performance is divisible. Similarly each creditor will be liable for his proportionate share only.

Joint & several liability
Full or proportionate share
in this case each joint debtor is liable for a full amount to 1 creditor. 1 creditor can hold any one of 1 debtors fully liable or recover a portion of the debt from each creditor debtor.

Eg A & B both owe C R200, C can claim 1 R200 from either A or B or R100 from A & R100 from B. If A pays 1 full debt B is relieved of liability to 1 creditor.

Effect of remission
1 view of 1 courts is 1 if a creditor releases one of 1 debtors, this remission must be regarded merely as personal & effect of which must be to reduce 1 debt by his share and not to wipe out 1 debt as such eg. A, B & C owe R600. If A is relieved by 1 creditor & C & still owe R60
eg 3 joint debtors are jointly and severally liable for a debt to a sum of R600. If one of 1 debtors are released, the remaining R400 can be claimed from the two debtors.

Recourse. If one of 1 debtors pays the full amount of 1 debt, he obtains reversion of 1 creditors claim he can then hold 1 other debtors liable. Eg A B & C owe X R600, A pays X R600 and acquires reversion of his claim. A may then only claim R200 from each. Even without a reversion he has a similar right of recourse.

Creditor can claim whole or part of performance. In case of joint creditors, each can claim a whole or proportionate amount of 1 debt. Where a joint creditor has claimed full debt, 1 remaining creditor has a right of recourse against 1 creditor who received whole debt.

Joint or common liability. 1 debtors are only jointly liable & 1 creditors may only claim performance jointly.

Representation.

A is concluding an agreement with B in 1 name of and on behalf of C as principal. The intentions of A & B is to forge an immediate juristic bond between B & C as this agreement is formed A falls completely out of the picture. A declares this representative.
authority by reason of the office he holds eg (guardian who acts for a minor).

Stipulations for benefit of a 3rd party

Promisor acts in own name for benefit of 3rd party

A & B enter into an agreement in terms of which A undertakes as against B to perform some benefit for a 3rd party C. B does not conclude agreement in C's name but acts in his own name for benefit of C.

Acceptance of 3rd party

Our courts have held C does not acquire a right of action merely because of agreement bet A & B. C only obtains his right to claim benefit once he has accepted benefit or stipulation from A. A legal bond bet A & C only comes into existence upon C's acceptance of benefit or stipulation. We are in an extraordinary position: no acceptance is required from C, when an offer was never made to him: 3rd party must communicate his acceptance before he can claim.

INTENTION TO CREATE STIPULATION

Before 3rd party can acquire a right by "accepting," it must be clear A & B intended to create a benefit for him.
An unincorporated company

A benefit may be stipulated for a 3rd person who is not yet in existence such as an unborn child who may subsequently accept the benefit when he is born.

3. Promoters of a company not yet in existence may enter into contracts on behalf of the company, so when the company has been incorporated and registered, it may accept the benefit.