

# Study Unit 19 | Parties to | Agreement.

## Simple joint liability

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

### Simple joint liability

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

### Joint & several liability.

#### Full or proportionate share

in this case each <sup>of |</sup> joint debtors is liable for | full amount <sup>of | debt</sup> to | creditor. | creditor can hold any one of | debtors fully liable or recover a portion of | debt from each ~~creditor~~ debtor.

Eg A & B Both owe C R200, C can ~~be~~ claim | R200 from either A or B or R100 from A & R100 from B. If A Pays | full debt B is relieved of | liability to | creditor.

### Effect of remission

| view of | courts is | if a creditor releases one of | debtors, this remission must be regarded merely as personal | effect of which must be to reduce | debt by his share and not to wipe out | debt as such

~~eg A, B, C, owe DR60. If A is relieved by | creditor  
B & C still owe R40 each~~

eg 3 joint debtors are jointly and severally liable for a debt to a sum of R60. If one of the debtors are released, the remaining R40 can be claimed from the two debtors.

recourse If one of the debtors pays the full amount of the debt he obtains the cession of the creditor's claim. He can then hold the other debtors liable.

Eg A, B & C owe X R600, A pays X R600 and acquires the cession of his claim. A may then only claim R200 from each. Even without a cession he has a similar right of recourse.

Creditor can claim whole or part of performance.

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

Joint or common liability

If debtors are only jointly liable and the creditors may only claim performance jointly.

Representation

A is concluding an agreement with B in the name of and on behalf of C, the 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 derives his representative

authority by reason or  $\perp$  office he holds  
eg (guardian who acts for a minor).

### Stipulations for $\perp$ benefit of a 3rd party

Promisor acts in own name for  $\perp$  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 doesn't conclude agreement  
in C's name but acts in his own name for  $\perp$  benefit of  
C.

### Acceptance of 3rd party

Our courts have held  $\perp$  C does not acquire a right of  
action merely because of  $\perp$  agreement bet A & B.  
C only obtains  $\perp$  right to claim  $\perp$  benefit once he  
has accepted  $\perp$  benefit or stipulation from A.  
 $\therefore$  a legal bond bet A & C only comes into  
existence upon C's acceptance of  $\perp$  benefit or  
stipulation. We are in  $\perp$  extraordinary position  $\perp$  an  
acceptance is required from C, when an offer was  
never made to him.  $\perp$  3rd party must communicate  
his acceptance before he can claim.

### INTENTION TO CREATE STIPULATION

Before  $\perp$  3rd party can acquire a right by "accepting"  
it must be clear  $\perp$  A & B intended to <sup>stipulate</sup> create a benefit  
for him

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 a benefit when he is born.

\* A promoter of a company not yet in existence may enter into contracts on behalf of a co, so when a co has been incorporated & registered it may accept a benefit.