

In pari rule may sometime operate very harshly regards (plaintiff)

Relaxation of In Pari Delictum Rule

The underlying thought behind In Pari delictum rule is that a party who has acted disgracefully by executing a performance should not be allowed to recover such performance. Thus where a party to an unlawful contract has performed but his/her performance is not disgraceful/he, she can recover that which he/she has performed from the other party. In Pari delictum rule is applied as a general rule to which an exception must be made whenever simple justice bet man & man demands it.

STUDY UNIT 4

THE OBLIGATIONS OF A LESSOR

When a contract of lease is concluded, the parties are bound by those obligations which they have expressly or impliedly undertaken or which law imposes upon them in the absence of such express or implied agreement.

A lessor is obliged: (1) to make available or deliver the use or enjoyment of the property (2) to refrain from disturbing the lessee's use & enjoyment of the property (3) to place & maintain the property in the condition agreed upon (4) To warrant against eviction.

If a lessor fails to fulfil one of the above - breach of contract
Failure to deliver - Mora Debitoris

Delivery of Defective performance - positive malperformance
Delivery to someone other than the contracted lessee - Repudiation
Failure to prevent eviction - positive malperformance

STUDY UNIT 5

THE LESSOR MUST DELIVER 1 THING

1) 1 lessor must deliver 1 thing

Vacuo Possessio

1 lessor must deliver 1 thing @ 1 agreed time & place

1 lessor must make 1 thing available to 1 lessee.

Delivery must be such 1 lessee obtains

vacuo possessio (undisturbed possession) of 1 thing.

1 lessor must ensure 1 subject to an

agreement to 1 contrary No one will lawfully

or unlawfully interfere with 1 lessee's

* exercise of full & undisturbed use & enjoyment of 1 thing.

1 lessor must deliver everything for 1 thing let to function properly

WHO IS 1 LESSEE WHERE 1 LESSOR LETS 1 SAME OBJECT TO 2 DIFFERENT PARTIES, BUT ESTABLISHES NEITHER IN POSSESSION OF 1 OBJECT?

See Study Guide 19

LESSEE'S REMEDIES

Cancellation specific performance

If 1 lessor fails to deliver 1 thing, breach of contract i.e. mora debitoris if 1 contract tacitly or

expressly prescribes cancellation or a notice of rescission has been given. Normal remedy

of cancellation is available

specific performance


If \perp property let is unfit for \perp purpose for which it was let, lessee may cancel \perp contract, Action of specific performance also available

Positive Malperformance

If \perp property is delivered on \perp due date but it is defective - positive malperformance lessee can recover his loss provided it was foreseeable by means of action for damages.

applies to \perp ffg example

lessee

A \rightarrow rents guest home  From B lessor



finds \perp two rooms incomplete

* A can claim \perp loss of profit for \perp 2 incomplete rooms during \perp period in which they are being completed

if \perp parties agreed. Delivery of \perp prop on \perp due date in \perp proper condition

* If it was agreed \perp lessor needed more time to complete \perp premises \perp lessee will pay \perp rent in \perp event \rightarrow lessee has no claim