Title:
IV.6.11 - Plurality of debtors

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Two or more parties who are liable for one and the same performance are (a) joint, or (b) partial debtors. Parties are liable as joint or partial debtors when they unite in making one and the same promise under the same contract or when they are liable for the same damage unless the contract or the law provides otherwise.

(a) Joint debtors

(aa) The creditor may claim performance from any one of the joint debtors until full performance has been reached.

(bb) If one joint debtor has performed, in kind or by way of set off, the liability to the creditor of the other joint debtor(s) is discharged to the extent of such performance or set-off. The same applies if one joint debtor concludes a settlement with the creditor.

(cc) As between themselves, joint debtors are liable in equal shares unless the contract or the law provides otherwise. If a joint debtor has performed more than his share, he may claim the excess from any of the other joint debtors to the extent of each debtor’s unperformed share.

(dd) A joint debtor may invoke against the creditor any defense which another joint debtor can invoke, other than a defense personal to that other debtor. Invoking the defense has no effect with regard to the other joint debtors.

(b) Partial debtors

(aa) The creditor may claim from any partial debtor only that part of the performance for which he is liable and the partial debtor is bound to perform only to that extent.

(bb) Partial debtors are liable in equal shares unless the contract or the law provides otherwise.

Commentary:

1 The Principle deals with two types of plural obligations, those incurred by joint debtors and those incurred by partial debtors. Whether a case of joint or partial debtorship is present depends on the terms regulating the obligation. Absent such terms, the obligation of two or more debtors to perform the same obligation or to pay the same damage is a joint obligation.

2 Subsection (a) stipulates that in case of joint debtors, which are frequently encountered in practice, the creditor may claim whole performance from any of the debtors without having to involve all the debtors. The joint debtor that is approached by the creditor may invoke any defense which another joint debtor can invoke, unless such defense is linked to the person of that other debtor and may therefore not be invoked by another debtor. Performance by one debtor, either in kind or by way of set-off, discharges the other debtors to the extent of such performance or set-off. As to the internal liability among themselves, Subsection (a) (cc) provides a default rule of equal sharing, unless the parties, expressly or by implication, have provided otherwise. A rule of unequal sharing may also be provided for by the law, for example in cases of damage claims in which one debtor carries a greater degree of fault or responsibility as compared to the other debtors. If one debtor has performed more than its internal share, he may recover the excess portion of this performance from any of the other joint debtors, but only to the extent of each debtor’s unperformed share.

3 Subsection (b) stipulates that in case of partial debtors, the creditor may claim from each partial debtor only that part of the performance for which the debtor is liable. This means that the partial debtors carry separate liabilities vis-à-vis the creditor for their own shares. Non-performance by one debtor does not affect the obligations of the other partial debtors. The partial debtor may not invoke defenses which are available only to other partial debtors. Absent a contrary indication in the contract or in the law, partial debtors are liable vis-à-vis the creditor in equal shares.