The end-Cause Theory Application of the Theory of the Development of Principles

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ABSTRACT: This document is a study on the theory of final cause and the application of the theory of development of principles in contracts. The definition of cause in Roman doctrine is analyzed and the essential, natural and accidental elements of contracts are classified. The object and cause of contracts are examined, highlighting the importance of the object being possible, lawful and determined. A case of breach of a promise of purchaseand sale is analyzed and it is argued that the contract does not produce any obligation due to the lack of a term or condition that sets the precise date for the transfer of ownership. The weighing method is applied to resolve the conflict and it is concluded that the interpretation of the contract is in accordance with the logic and usefulness of the contract. The theory of principle development is discussed and it is argued that a clear and stable rule generates better conditions of practical application than an open and indeterminate principle.

I. INTRODUCTION

We begin this study by defining what the Romans conceived as Cause in the doctrine on obligations of contracts thus the concept studying the time not as Theory but as wider discussions.
That we find in Corpus Iuris Civiles has been able to point out rather the elements, particularly with reference to the stipulation, classifying them in *essential, natural and accidental.*

Essential, they are those without whose concurrence the contract cannot be conceived or come into existence, reason why they are also called requirements of the contract. If any of these is missing, the contract would not have legal existence, since as its own name indicates, they are of the essence of the act.

Natural are, on the other hand, those others which, although normally accompanying a contract and consequently contributing to characterize it, can be excluded by the contracting parties by means of an express clause. Such would be, in the sale, the seller's liability for eviction or for hidden defects of the thing sold, which is considered implicitly included in the contract, as long as the parties do not provide otherwise. As it is an element that is not of essence but of the nature of the contract, it can be excluded by an express manifestation of will of the parties. The contract of sale does not cease to be such by the fact that the seller is not obliged to guarantee the buyer against eviction or redhibitory defects of the thing sold.

Finally, **accidental elements** are those that depend solely and exclusively on the will of the grantors, who may include them to modify the natural effects of the contract. They are also called modalities and, although they can be very varied, the most frequent are the condition, the term or term and the position or modus.

Among the essential elements can be distinguished, in turn, those that are essential to all contracts, such as the

capacity and consent of the parties, the object and the cause, from those that are only required for certain contracts, such as the sacramental words in the sponsor, the inscriptions in the contrato litteris, the datio in the mutuo, the gratuitousness in the mandate, etc.1

Dealing with Object and Cause we can verify these definitions:

3º Object
It is the benefit. A single benefit in the unilateral ones, two or more benefits in the synallagmatic ones.

It can be defined as "the positive or negative act to be performed by one of the parties for the benefit of the other, or by both parties when both are creditors and debtors underthe contract".

However, not just any fact could be the object of the contract; for it to be accepted as such, it had to meet the following conditions:

a) **To be possible.** Physically and legally possible

b) **It had to be lawful.** An act prohibited by law or contrary to morality or decency, suchas murder or prostitution, could not be the object of a contract.

c) **It had to be determined.** That determination did not have to be absolute and actual;it was sufficient if it was relatively so.

4th Cause
With the development of the law and the admission of non-formal contracts, which is its consequence, the birth of the contractual obligation is subordinated to the existence andlawfulness of the cause, understood as "the immediate purpose pursued by the debtor in contracting the obligation", or to use modern terminology, the final cause.

II. DEVELOPMENT AND ANALYSIS

In order to be able to analyze in this way the term final cause and in accordance with therequested analysis we have taken the case of a breach of a Promise of Sale corresponding to a Triple Reiteration Judgment of the Supreme Court of Ecuador
...Resolution No 20-99, R.O 142 of March 5, 1999, summary verbal trial No 233'96 for Performance of Promise of Sale, C. Velasquez Cevallos and another against J Sambache and another.

The appellants, in their brief of interposition and grounds for the contested judgment, base their claim on the infringement of the following rules of the Civil Code:

Title VII of the Optional Obligations:

Art. 1522.- In an optional obligation the creditor has no right to demand anything other than that to which the debtor is directly bound; and if said thing perishes through no fault of the debtor and before the latter is in default, the creditor has no right to demand anything.

Art. 1532.- The creditor can expressly or tacitly renounce the joint and several liability, with respect to one or all of the joint debtors.
Art. 1595.- Guardians and curators legitimately receive for their respective representatives; executors who have

this special charge or the custody of the property of the deceased; parents for their children, on the same terms; tax collectors or collectors of communities or public establishments, for the Treasury or the respective communities or establishments; and other persons who by special law or judicial decree are authorized to do so.

Art. 1580.- The clauses of a contract shall be interpreted by each other, giving to each one the meaning best suited to the contract as a whole. They can also be interpreted by those of another contract between the same parties and on the same subject matter. Or by the practical application made of them by both parties, or by one of the parties with the approval of the other.

Based on the legal norms foreseen to file the Appeal of Cassation and pointing out as grounds on which the same is supported that the purchase contract executed between the appellants, promitent sellers and C. Velasquez and B. Naranjo, prominent buyers, *does not produce any obligation because it does not contain any term or condition that establishes the precise date or certain and determined time for the execution of the deed of transfer of ownership of the promised lot, and therefore the defendants have notincurred in default; they add that the contract of promise of purchase and sale whose performance has been ordered in the challenged judgment does not produce any obligation whatsoever because it would not be possible to carry out the tradition of the thing due to the express prohibition of the Municipal regulation that regulates the Urbanizations, rural subdivisions and subdivisions of that place, the regulation of the autonomous government states: "Deeds of the lots cannot be executed until the urbanization works have been completed and prior authorization of the Municipal Council has been given". Since the urbanization works have not been completed, it wouldnot be possible to obtain the authorization of the Municipal Council to execute the deeds, in the event that the validity of the contract declared valid.*

The plaintiffs, in accordance with the promise of purchase and sale, challenge the injunction that constituted them in default since, as agreed in the contract, they assumed to pay proportionally the expenses of the urbanization works, which they have not paid, and therefore, in accordance with the provisions of 1595 of the Civil Code, the action didnot proceed in the form in which the lawsuit has been proposed.

The grounds stated by the Civil Chamber of the National Court are based on the fact that the Promise of Purchase and Sale Contract must comply with the essential requirements of this contract and that without its existence there would be NO obligation whatsoever, since they are the ones that give legal form to this type of contract.

It is also mentioned that the Promise of Sale Contract has in this case an intrinsic condition precedent that must be fulfilled in time and therefore has a term defined in the same contract that allows to know how long the creditor must wait to obtain the real estate and can set the date for the execution of the public deed that gives solemnity to this purchase and sale contract.

In this Appeal, there is the dilemma of defining whether there was a legal error or an improper interpretation of the contracts.

Humberto Murcia Ballén, Colombia 1983, is quoted as stating that "the *legally executed contract is the law for the parties";* however, and although the appellant could have doneso, it does not allege this rule in its petition.

On the other hand, in the cited jurisprudence it is stated that the suspensive conditions do not have a pre-fixed time for their execution, i.e. they do not comply with the prescription of the law that states that the condition of fixing the time for the execution of the contract.

The grounds of the appeal are because the plaintiff does not establish the violation of the rules of evidence or the arbitrary conclusion or the gross violation of the rules of sound criticism.

The Tribunal simply concludes the analysis by stating that the processing and obtaining of the authorization to dispose from the Municipality had to be carried out in the minimum time necessary, that is to say, a tacit time had been agreed upon for the fulfillment of the agreed condition; and that this interpretation of the contract is in accordance with the logic according to the rule of experience and taking into account the usefulness of the contract.

Since people enter into their agreements to execute them, in good faith and with responsibility.

within the general terms and circumstances of the kind of business agreed, in a place, time and social, economic and cultural environment determined this way of seeing the contract allows its application fundamental pillar in the correct interpretation of the legal business.

III. ANALYSIS OF THE OBJECT.

In the present appeal, the breach of a Promise of Purchase and Sale Contract is raised, therefore, from this analysis we define that the object of the contract is the Promise of
Purchase and Sale made by the parties as a contractual form.

This part is proven in the first and second degree Judgment, being the object clear for the Judge of Cassation.

The object of a contract is defined in the article "Functional analysis of the essential elements of contracts" by Andrés Nicolás Beltramo*, Maximiliano Boned**, Tamara Escudero*** and Emiliano Estevarena**** Argentina, as : In practical terms, the object ofa contract is formed by the economic operation of a contract, to which the law investsthe characters of legal act, obligations, performance and interest, which, mediating valid consent between the parties and there being no limit of a legal nature, legally binds bothparties to the fulfillment of that economic operation.

In law, the contract is a legal act (bilateral and patrimonial) made up of obligations, which in turn are made up of benefits, which according to the law may consist of giving agood, doing something or not doing something, but which in contractual practice consist of the execution of an economic operation. For the purposes of this work, economic operation will refer to the exchange of goods and services, and to the liberalities of one party towards the other".

IV. IDENTIFICATION OF THE CAUSE END. -

In the same analysis of this sentence, we see in relation to the definition of the Final Cause we find that in the Doctrine and according to the above-mentioned text, we wouldefine the Final Cause as: "This controversial element at a theoretical level is multifaceted and is generally confused with elements of the object or of the consent. The final cause can be analyzed from the inter parts point of view or from the social utility of the contract. In this sense, the final cause includes: a) the particular circumstances tacit and express

(cause motive) for which the parties decide to contract, b) the practical purpose pursued by the parties in executing that economic operation, which can be related to the concept of typicality, and c) the social implications of the existence of that economic operation".

Then, with these objective points we see that in the case that is presented to us that the utility of the contract would be that the two parts wanted the one on the one hand to have the real estate and the other the money part of the purchase and sale of that real estate. In addition, if we go further we will find even the economic cause that would lead the parties tocontract and promise in the future.

V. APPLICATION OF CONFLICT RESOLUTION METHODS AVAILABLE TO THE JUDGE.

WEIGHTING. -
In the book: **Argumentación jurídica y ponderación de principios, by Gorra, DanielGustavo Argentina** we can systematize:

The weighting method would make it possible to make progress in the construction of fundamental rights as principles. Weighting, as Alex (2009) points out, is the object of the third subprinciple of the principle of proportionality -in the strict sense-, which deals with the relative optimization of legal possibilities. The object of the first two subprinciples (appropriateness and necessity) of the principle of proportionality is the relative optimization of factual possibilities. What is to be avoided in the face of a factual situation of conflict?

are the costs that may fall on the fundamental rights and the aims of the legislator? The weighting is carried out by means of the so-called "Pareto optimality".

In the present judgment, it has been verified in its text how this method in Ecuador is precisely the one applied by the Judge. In this case, the Judge gives the reason toone of the parties for the compliance simply by the application of principles that he quotes: "The debtor is established in default when he has been judicially counterclaimedby the creditor". In this quotation what we consider is that only this idea is fulfilled by oneof the parties regardless of the incidence that it will have on the economic society that develops, it matters little to know if the non-fulfillment of the promise of sale would influence in the future on the type of economy of the debtor or the economy of the creditor. Alternatively, if the non-fulfillment of the future condition was not the responsibility of the debtor but of the local administrative authority.

VI. THE THEORY OF DEVELOPMENT OF PRINCIPLES (RIGHTS). -

Finally, the Theory of Development of Principles, according to its article entitled: ***"The development of rights"*** clearly explains: "The development of each right or principle tends to establish limits and scopes of application. Let us say that a rule is a product derived from an interpretation. The good interpretation embodied in a rule is the expression of the development of rights. If this is possible (and it is, I believe, in most cases), the argumentative benefits are obvious: a) the application of a rule gives more guarantees than the application of a principle understood as an open mandate; b) a clear, concrete and understandable rule generates better conditions of practical application than an open and indeterminate principle; and c) the stability of the rule tends to its universalization and greater security".

It is important for Ecuador to be able to work on these new visions of law, for which we observe that the rules of the principle are little applied because Ecuador is currently a country where its constitutional basis is the application rather of the so-called "Neo constitutionalism".

As Dworkin would say in one of his talks at UNAM, we all want Democracy to exist, but what are the rules that will allow that democracy to be executed?

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SUMMARY

This paper is a study on the theory of cause and the application of the theory of the development of principles in contracts. It analyzes the definition of cause in Roman doctrine and classifies the essential, natural and accidental elements of contracts. The object and cause of contracts are examined, highlighting the importance of the object being possible, lawful and determined. A case of breach of a promise of sale is analyzed and it is argued that the contract does not produce any obligation due to the lack of a term or condition fixing the precise date for the transfer of ownership. The weighting method is applied to resolve the conflict and it is concluded that the interpretation of the contract is in accordance with the logic and utility of the contract. The theory of the development of principles is discussed and it is argued that aclear and stable rule generates better conditions for practical application than an open and indeterminate principle.

LAWS

Civil Code Ecuador CivilCode Argentina

Cause and effect: The theory of cause and effect in contracts is analyzed.

Essential elements: Classification of the essential, natural and accidental elements ofcontracts.
Object and cause: Importance of the object being possible, lawful and determined incontracts.
Default: Case of breach of a promise of sale.

Weighting method: Application of the weighting method to resolve contractual disputes.**Interpretation of the contract**: Conclusion on the interpretation of the contract according to logic and utility.
Theory of the development of principles: Discussion of clear and stable rules asopposed to open and indeterminate principles.