

CONFORMITY OF CONTRACT

(129) b) Effects - A private agreement in contrast to a legal document, has no executory force of its own: The executory form, namely a write of summons, cannot result from a written agreement made by private individuals.

A private agreement has a lesser probative weight than a legal document.

1 - It is not in itself evidence of its authenticity: a debtor against whom it is produced can always maintain that the writing or the signature are not his, which puts the onus of proving the contrary on the creditor, using a special procedure called handwriting authentication, (a. 1323-1324, C. C.; a. 193 s., C. Pr. C.), whereby the agreement in dispute is compared, if need be by experts. With other written documents made by the person whose writing is in dispute. (cf. a. 200, 206, C. Pr. C.). But once the written document has been legally verified or, short of this, even if it has been privately acknowledged by the alleged maker, its authenticity can no longer be put in issue. (a. 1322). Thus in acquiring for himself a private deed of agreement a creditor always retains, at least, the advantage of being able to substitute the onerous burden of proving a legal right for the easier one of proving writing.

2 - It is only evidence of its content until the contrary is proved, which as between the parties might necessitate a written agreement because of the prohibition of evidence which is external and contrary to the agreement, (a. 1341); however it will not be necessary to have recourse to the dangerous and complicated procedure involved in alleging forgery (unless one is alleging actual falsification by scratching out words and writing others over the top; a. 214, C. Pr. C.).

3 - It is only evidence of its date in relation to third parties in certain circumstances, (a. 1328), namely in order to dispel suspicions of back dating or post dating. The third party allowed to take advantage of the absence of a definite date is mainly the private purchaser who has dealt with one of the parties, (ex. a.1743; cf. no.142). The statement of the maker in relation to the goods passing can only be held against him if it was without a doubt made by him before he acquired his title to the goods - but only three events according to 1328 can remove the doubt that surrounds the date of a private agreement. Namely Registration (which is both a civil and a fiscal formality, evidenced by certification of the date); statement of the substance of the private agreement in an authenticated deed; death of one of the subscribers (be it party or witness).

B) THE LEGAL DOCUMENT

The drafting of a legal document is minutely controlled in order to guard against the forcible effects conferred on this kind of document being usurped by means of substitutions, additions and writing over etc. Additionally one can expect more from legal documents, their draftsman being a professional -

(a) Drafting

Control of drafting derives from the law of the 25th of the sixth month of the calendar of the first French Republic, year XI containing the structure of the legal profession - As a negotium, the essence of a legal document is the consent of the parties, and as an instrumentum (implement) there is the intervention of the solicitor, a public officer (c.f. a.1317) who verifies the appearance of legal documents in court and, receives the parties statements. The wishes of the parties and the intervention of the Solicitor are attested by their signatures (1.25 vent. XI, a.14). Because of an additional formality certain deeds (e.g. gifts) require the presence, in a subordinate capacity, of a solicitor or of two witnesses (a. 9-20).

The underlying principle is that legal documents are accepted in minute form (a. 20). The minute being the original retained by the solicitor. He delivers copies of the document featuring the description of the copies (the extracts are partial copies). The engrossed draft (which in days gone by was in engrossed writing) is the copy to which the executory form is affixed (a. 25, 26). Only the parties (as well as their heirs or those entitled), can obtain freely such copies. Third parties need judicial authorisation to be able to do so (a.23; cf. a.846 s., C. Pr. C.). As for the engrossment, it can only be delivered to the contracting party who, being with regard to the other party, in the position of creditor needing an executory title and he can only call for it once.

b) Effects

The intervention of a public officer acting in the name of the state confers executory force and a special probative value on the legal document.

1) Executory force - whereas a creditor who is relying on a private agreement must, if he wants to obtain execution, in the absence of voluntary performance, obtain judgment against the debtor and have an executory form pronounced against him, a creditor relying on a legal document has, in the engrossment, an executory title which enables him to have a debtor distrained directly, in default of payment (a. 545 s., C.Pr.C).

2) Probative value. - like authenticated documents, (cft. I, nos. 4767) a legal document is, in principle, self-evident until forgery is alleged, (c.f. a. 1319) - This probative force, difficult to upset (as attempts at proving forgery are seldom successful) covers the authenticity and the date of the legal document as well as part of its content.

- as for its authenticity, the legal document is self-evident, until proved to be a forgery. This means that a written document with all the appearances of a legal document, notably seals, signatures, initials and flourish of a known solicitor, carries with it the presumption that it ensues from that solicitor and that it is authentic (whereas for a private written document, the slightest denial of writing of signature puts the burden of establishing the authenticity of the document on the creditor a, 1324)

- as for its contents, distinction must be drawn between the statements made by the parties and those made by the solicitor. The former are only good evidence until the contrary is proved because they can be contested without the honour of a public officer being put into issue. The probative force of an authenticated document relates only to the facts that the solicitor himself has performed or observed with his own eyes. Furthermore the authentication must be within his capacity (e.g. his statement that the contracting parties were mentally sane is only good evidence until the contrary is proved as he is not an expert on psychiatric matters) and the judicial meaning of what he has witnessed must not have been altered by what he has not witnessed (e.g. his statement that the sale price was paid in his presence does not, without forgery being in issue, stop it being proved that, this would-be sale in fact hides an act of liberality, as the parties could pretend to be contracting and use the bank notes as props for their play acting.

- as for the date, the legal document is evidence thereof until forgery is proved, the public officer being himself able to verify it.