

## **Bill on the Hungarian Code of Private Law**

### **Part Three. Law of Obligations**

#### **TITLE TWO. The content of obligations**

##### **CHAPTER FOUR. Not performing and breach of obligations**

###### **1134. §**

The debtor, unless provided by an act or legal transaction, is responsible for his every – deliberate and negligent – culpability. Negligence is the failure to take care that an ordinary person is expected to take in the circumstances of a case. The rules on the imputability of a prohibited act (1717) – (1718) also apply here accordingly. The liability for deliberate acts shall not be neither restricted nor excluded.

[tags: liability for deliberate acts, negligence, imputability]

###### **1135. §**

The debtor is liable for the culpability of his legal representative and the person employed in the performance around the performance in the same measure as for his culpability. This liability may be excluded and restricted with a legal transaction.

[tags: liability for the act of legal representative, liability for the act of employee]

###### **1136. §**

The debtor is liable without respect of his culpability if he undertook a guarantee for the performance.

The person who is obliged to pay money or a service that requires spending money on his part is liable for his solvency, irrespective of his culpability. The same applies for a person who is obliged to supply an unspecified thing of an unspecified nature is liable for his performance unless it is no longer possible from that type.

[tags: liability of a guarantor, liability for solvency, liability for supply of unspecified things of an unspecified nature]

###### **1137. §**

If the debtor is bound by several separate obligations to supply a certain quantity of an unspecified thing as such that he shall perform his obligation from a certain narrower range of things of a certain type, for example from his own fruit (closed type

of obligation), and it becomes impossible, without the fault of the debtor, to fulfil all such obligations incumbent on him, there is a need for a proportionate reduction of the obligations assumed in each individual obligation provided that the debtor acted with due diligence in assuming the obligations.

[tags: liability for supply of certain quantity of an unspecified thing, due diligence of a debtor]

### **1138. §**

The debtor is released from the obligation to perform if, in addition to the defect in the service, due to a circumstance for which he is not responsible, it becomes impossible in general or only for him. However, he is obliged, if he is able to do so without difficulty, notify the creditor immediately of any impossibility which has come to his notice.

[tags: impossibility of performance]

### **1139. §**

If the performance becomes impossible through the fault of the debtor – based on such circumstance for which he is liable for –, he shall compensation for the damage caused to him as a result of not performing the contract.

[tags: impossibility of performance]

### **1140. §**

If, at the time of concluding the contract, one of the parties knew that the service would become impossible through the fault of the debtor, or if the debtor did not foresee this only through negligence at the time of concluding the contract: the rules on compensation for damage resulting from the conclusion of a contract for a service which is impossible from the outset (971) must be applied accordingly.

[tags: impossibility of performance]

### **1141. §**

If the service has become only partially impossible, but the performance of the possible part is not in the interest of the creditor, the creditor may refuse the partial performance and if the partial impossibility of the service was due to the debtor's fault – in accordance with the rules of the legal right of withdrawal –, the creditor may claim compensation for the non-fulfilment of the entire obligation in return for the refund of the partial service already received.

[tags: partial impossibility of performance]

### 1142. §

As to whether service has become impossible through the debtor's fault, the burden of proof lies with the debtor.

[tags: impossibility of performance, burden of proof]

### 1143. §

If the debtor has received or may claim compensation for the subject matter that he was obliged to provide on the basis of a circumstance which rendered the service impossible, the creditor may demand the payment of the compensation received or the assignment of the claim for compensation.

In the exercise of this right, the value of the compensation or assigned claim shall be included in the creditor's claim for damages, if such a claim is due to him for non-performance.

[tags: impossibility of performance]

### 1144. §

If one of several alternative obligations is impossible from the outset or subsequently becomes impossible due to circumstances for which neither party is liable, the obligation shall be limited to the other services.

In the case of a fault in the service becoming impossible, the general rules on culpability shall be applied, with the exception that if one of the services becomes impossible due to the fault of the creditor entitled to choose, the creditor shall be deemed to be satisfied; if one of the services becomes impossible due to the fault of the debtor entitled to choose, the debtor may not satisfy the creditor with compensation to replace the service which has become impossible while other services are possible.

[tags: impossibility of performance]

### 1145. §

If a service subject to a bilateral contract becomes impossible due to a circumstance for which neither party is liable, the party who was obliged to provide the service shall forfeit his right for consideration and shall be obliged to reimburse what he has already received in consideration.

The other party remains obliged for consideration if he demands compensation that replaces the object of the service (1143); but if the value of the compensation is less than the value of the service which has become impossible, the consideration is reduced in proportion to the rules on price reductions from the warranty (1395) –(1397). In the

same way, the consideration is reduced if the service has only become partially impossible; however, the other party may cancel the contract completely if it is not in its interest to perform the possible part.

[tags: impossibility of performance]

#### 1146. §

If the service to which one party is obliged under a bilateral contract becomes impossible through the fault of the other, the former retains the right for consideration, but he shall include in his claim what he saves in costs by being released from the obligation to perform and would otherwise acquire or could obtain without difficulty by selling its labour.

The same applies if, in addition to a defect in the service provided by one party, it becomes impossible at a time when the other party is in delay in acceptance of it.

[tags: impossibility of performance]

#### 1147. §

If the service to which one party is obliged by virtue of a bilateral contract becomes impossible due to his own fault, the other party may claim compensation for non-performance or cancel the contract. If the service has become only partially impossible, but the performance of the possible part is not in the interest of the other party, the other party may demand compensation for the non-performance of the entire obligation (1141) or may cancel the contract completely.

Instead of exercising these rights, the other party may request the application of those rules which shall be applied when the service becoming impossible in the fault of neither party (1145).

[tags: impossibility of performance]

#### 1148. §

If the debtor expressly refuses to perform or breaches his obligation in such a way that the service loses interest to the creditor, the creditor may, depending on whether the debtor is culpable or not, exercise the rights to which he would be entitled if the service had become impossible in or without the fault of the debtor. However, he may not exercise those rights on the basis of refusal if the debtor offers him the service before making a declaration to that effect.

If the obligation is to be performed in instalments and the debtor breaches his obligation in respect of any instalment in such a way that the additional service loses interest to the creditor, the creditor may also exercise the rights set out in the preceding paragraph in respect of the instalments due later.

If the debtor culpably breaches his obligation in any other way, he is obliged to compensate the creditor for the resulting damage.

[tags: express refusal of performance, breach of obligation, obligation performed in instalments]

#### 1149. §

Damages caused by a non-performance or breach of an obligation without his fault shall be compensated by the debtor to the creditor only to the extent that the circumstances require equity, in particular the property relations of the parties (equitable damages).

[tags: damages caused by a non-performance or breach of an obligation, equitable damages]

#### 1150. §

If, in the case of a bilateral contract, there is a profound change in the general economic conditions after the conclusion of the contract which goes beyond the normal contractual risk and which the parties could not reasonably have foreseen and as a result of which the economic balance of the service and the consideration for the parties is upset or the other assumption underlying the contract fails, so that one party makes unexpected disproportionate profits contrary to good faith and equity and the other makes the same loss would suffer (economic impossibility): the court may amend the mutual obligations of the parties in accordance with equity or may entitle one of the parties to cancel the contract, possibly by sharing the damage equitably.

A party may cancel a pre-contract even if, as a result of an unforeseen interim change in circumstances, the expressly stated or apparent purpose of the contract has failed or the party's confidence in the contract has been reasonably compromised.

[tags: profound change in the general economic conditions, rebus sic stantibus clause]