

STUDY GUIDE 79 – 80

I. Definitions

Define or give the meaning of the following.

1. Generic or indeterminate thing - A thing is generic or indeterminate when it refers only to a class or genus to which it pertains and cannot be pointed out with particularity.
2. Personal right - is the right or power of a person (creditor) to demand from another (debtor), as a definite passive subject, the fulfillment of the latter's obligation to give, to do, or not to do.
3. Legal delay or default - or mora is the failure to perform an obligation on time which failure, constitutes a breach of the obligation.
4. Fortuitous event - A fortuitous event is any extraordinary event which cannot be foreseen, or which, though foreseen, is inevitable. In other words, it is an event which is either impossible to foresee or impossible to avoid.
5. Diligence of a good father of a family - It is considered ordinary care or that diligence which an average person exercises over his own property.

II. Discussions

1. Give the rules as to the liability of a person for loss or damage resulting from a fortuitous event.

In the case of a fortuitous event, the basic rule is that there is no responsibility for loss since it is an event that cannot be foreseen. (Article 1174)

2. What rights are given by law to the creditor in case the debtor fails to comply with his obligation to deliver a specific thing?

According to Art. 1165, even the obligor was not at fault he is still liable and guilty of the delay to deliver a specific thing unless he proves the contrary.

- (1) Demand specific performance with a right to indemnity for damages
- (2) Demand rescission or cancellation with a right to recover damages.
- (3) Demand payment of damages only, where it is the only feasible remedy.

3. What are included to be delivered in an obligation to give a definite thing? Explain them.

According to Art. 1166, even if they are not specified, accessories and accessions are included in the obligation to deliver.

4. Suppose the obligation of the debtor is to do something and he fails to do it or performs it in contravention of the agreement, what are the remedies available to the creditor?

According to Art. 1167, the remedies available to the creditor are to have the obligation performed by himself, or by another, unless personal considerations are involved, at the debtor's expense; and to recover damages.