

Difference Between Dacion En Pago And Pactum Commissorium

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Understanding the distinctions between Dacion en Pago and Pactum Commissorium is essential for legal practitioners, creditors, debtors, and students studying civil law. Both concepts are related to the transfer of ownership of property as a means of settling debts, but they are fundamentally different in their legal nature, application, and implications. This article provides an in-depth analysis of these two legal doctrines, clarifying their definitions, characteristics, and key differences.

What is Dacion en Pago?

Definition of Dacion en Pago

Dacion en Pago, also known as "dacion en pago" or "dacion," is a legal concept where a debtor, with the consent of the creditor, voluntarily transfers ownership of a property or asset to the creditor to satisfy or extinguish an existing debt. This transfer is made as a means of settling the obligation, and once completed, the debt is considered paid in full.

Legal Nature and Characteristics

- Voluntary Agreement: Dacion en Pago involves mutual consent between debtor and creditor.
- Conversion of Debt: The obligation is extinguished through the transfer of ownership of the property.
- Ownership Transfer: The creditor gains ownership of the property, and the debtor is released from further liability.
- Types of Properties: Can involve real estate, personal property, or other assets, provided both parties agree.
- Not a Penalty: It is a consensual act, not a penalty or punishment for non-payment.

Legal Basis and Application

Dacion en Pago is recognized under civil law and is often used as a practical solution for debt settlement when the debtor cannot or prefers not to pay in cash. It is governed by the principles of contract law, emphasizing mutual consent and good faith.

Examples of Dacion en Pago

- A debtor agrees to transfer a house to the creditor to settle a mortgage debt.
- A borrower offers a car to pay off a loan instead of cash.
- Both parties agree that the transfer of specific assets will settle the obligation, and the creditor accepts.

What is Pactum Commissorium?

Definition of Pactum Commissorium

Pactum Commissorium is a contractual stipulation where a creditor is granted the right to sell or dispose of the debtor's property without the debtor's consent, upon default of payment or breach of contract. It is essentially a clause that authorizes the creditor to automatically acquire ownership of the collateral or property if the debtor fails to fulfill their obligations.

Legal Nature and Characteristics

- Contractual Clause: It is a stipulation within a contract, often a mortgage or pledge agreement.
- Automatic Transfer: Grants the creditor the power to sell or appropriate the property upon breach.
- No Need for Judicial Action: The sale or transfer can occur without court intervention, based solely on the contractual agreement.
- Controversial and Often Illegal: Many jurisdictions consider pactum commissorium to be against public policy, rendering it invalid or void.
- Collateral-Based: Usually associated with security interests, such as mortgages, pledges, or other forms of guarantee.

Legal Basis and Application

Historically used in various legal systems, pactum commissorium was intended to provide a quick remedy for creditors. However, modern legal systems, particularly those influenced by civil law traditions, often prohibit or restrict its use to prevent abuse and protect debtors' rights.

Examples of Pactum Commissorium

- A mortgage clause allowing the bank to sell the mortgaged property automatically if the borrower defaults.
- A pledge agreement that includes a clause permitting the pledgee to sell the pledged item without judicial proceedings upon default.

Key Differences Between Dacion en Pago and Pactum Commissorium

1. Nature of the Agreement

- **Dacion en Pago:** A voluntary, mutual agreement between debtor and creditor to transfer ownership to settle a debt.
- **Pactum Commissorium:** A contractual stipulation that grants the creditor an automatic right to sell or appropriate the property upon default, often unilaterally imposed.

2. Consent and Voluntariness

- **Dacion en Pago:** Requires the voluntary consent of both parties; the debtor willingly transfers ownership.
- **Pactum Commissorium:** Contains a clause that may be unilateral, allowing the creditor to act without the debtor's further consent once the condition (default) occurs.

3. Legal Validity and Public Policy

- **Dacion en Pago:** Recognized and valid under civil law when properly consented to; widely accepted as a legitimate means of debt settlement.
- **Pactum Commissorium:** Often considered against public policy or illegal in many jurisdictions; courts tend to nullify or restrict such clauses.

4. Procedure for Transfer

- **Dacion en Pago:** The transfer of ownership is a contractual act requiring consent and formalities, often

involving registration when real estate is involved.

- **Pactum Commissorium:** The transfer or sale can occur automatically upon default, without judicial proceedings, depending on the contractual terms.

5. Purpose and Usage

- **Dacion en Pago:** Used as a voluntary means to extinguish debt, often in cases where cash payment is not feasible.
- **Pactum Commissorium:** Designed as a security device to facilitate quick recovery of debts, sometimes viewed as an enforcement mechanism.

Legal Implications and Modern Viewpoints

Legal Implications of Dacion en Pago

- When properly executed, dacion en pago effectively extinguishes the debt.
- It provides a peaceful and consensual way to resolve obligations.
- It must conform to contractual requirements, including consent and proper documentation.
- It does not carry the risk of being invalid due to public policy concerns.

Legal Implications of Pactum Commissorium

- Many jurisdictions have abolished or restricted pactum commissorium because it can be oppressive or abusive.
- Courts may declare such stipulations void or invalidate them to protect debtors.
- Its use may lead to legal disputes, especially if the creditor proceeds to sell the property without judicial oversight.

Modern Legal Perspective

The trend in civil law jurisdictions is to discourage or prohibit pactum commissorium because it undermines fairness and due process. Instead, security interests are structured through judicial or administrative procedures, such as foreclosure or judicial sale, ensuring debtor protections.

Summary of Key Differences

Aspect	Dacion en Pago	Pactum Commissorium
Nature	Voluntary, mutual agreement	Contractual clause granting automatic sale rights
Consent	Requires debtor's consent	May not require debtor's consent at the point of default
Legality	Recognized and valid when properly executed	Often invalid or abolished due to public policy
Procedure	Formal transfer upon agreement	Automatic transfer or sale upon default
Purpose	To settle debt voluntarily	To secure debt, often viewed as enforcement

Conclusion

Understanding the difference between Dacion en Pago and Pactum Commissorium is crucial for legal clarity and protection of rights. Dacion en Pago offers a legitimate, consensual method of debt settlement that benefits both debtor and creditor when properly executed. Conversely, Pactum Commissorium, although historically used as a security device, faces significant legal restrictions and is often considered contrary to public policy in many modern legal systems.

Legal practitioners and parties involved in credit and debt transactions should be aware of these distinctions to avoid legal pitfalls and ensure compliance with applicable laws. Proper documentation, adherence to legal standards, and understanding the implications of contractual clauses are essential in managing secured transactions effectively.

In summary, while both concepts deal with the transfer of property as a means of securing or settling debts, Dacion en Pago emphasizes mutual agreement and voluntary transfer, whereas Pactum Commissorium involves an automatic, often unilateral, right granted to the creditor, which is subject to legal restrictions and scrutiny.

Frequently Asked Questions

What is the primary difference between Dacion en Pago and Pactum Commissorium?

Dacion en Pago is a consensual agreement where a debtor transfers ownership of property to the creditor to settle a debt, whereas Pactum Commissorium is a prohibited stipulation where the creditor automatically becomes the owner of the collateral if the debtor defaults, often deemed abusive or invalid under the law.

Is Pactum Commissorium legally valid in modern law?

No, Pactum Commissorium is generally considered contrary to public policy and is prohibited in many jurisdictions, including the Philippines, as it can lead to unjust enrichment and abuse of rights.

Can Dacion en Pago be utilized as a security arrangement?

Yes, Dacion en Pago can serve as a means of settling a debt by transferring property, but it is a consensual act that requires the debtor's and creditor's agreement, unlike Pactum Commissorium which often involves automatic transfer clauses.

How does the purpose of Dacion en Pago differ from that of Pactum Commissorium?

Dacion en Pago aims to amicably settle a debt through a transfer of ownership, while Pactum Commissorium attempts to automatically transfer ownership of collateral upon default, often without additional agreement or due process.

What legal remedies are available if a Pactum Commissorium clause is included in a contract?

Typically, courts consider Pactum Commissorium clauses as null and void because they violate public policy, and the parties can seek to have such clauses declared unenforceable or invalid through legal action.

Additional Resources

Difference Between Dacion En Pago And Pactum Commissorium

In the realm of civil law, particularly within contract and property law, the concepts of Dacion en Pago and Pactum Commissorium often surface in discussions pertaining to the transfer of ownership, security arrangements, and creditor-debtor relationships. While they may seem similar in that both involve the transfer or transfer-like mechanisms over property, they are fundamentally distinct in their legal nature, purpose, and implications. Understanding the core differences between Dacion en Pago and Pactum Commissorium is essential for legal practitioners, students, and parties involved in contractual negotiations to avoid misconceptions and legal pitfalls.

This article delves into the intricacies of both concepts, exploring their definitions, legal basis, characteristics, and the key distinctions that set them apart. Through a comprehensive review, the goal is to provide clarity and a thorough understanding of these two legal mechanisms.

Defining Dacion en Pago and Pactum Commissorium

What Is Dacion en Pago?

Dacion en Pago (or dacion en pago) is a contract where the debtor offers a thing different from the one owed, and the creditor accepts this alternative as full payment of the debt. Essentially, it is a consensual agreement whereby the debtor transfers ownership of a property or asset to the creditor to extinguish or settle an obligation.

Legal Basis:

In Philippine law, Dacion en Pago is recognized under the Civil Code, specifically Articles 2044 to 2047. It is considered a form of mutuum (loan with a transfer of ownership) or conventional sale depending on the circumstances, but with the distinct feature that the transfer of property is intended to satisfy an existing obligation.

Key Characteristics:

- It is a consensual contract; both parties agree voluntarily.
- It involves the transfer of ownership of a property or asset.
- The property transferred can be either movable or immovable.
- It extinguishes or reduces the debtor's obligation upon acceptance by the creditor.
- It requires the debtor to own the property transferred, and the transfer must be valid and voluntary.

What Is Pactum Commissorium?

Pactum Commissorium is a clause or agreement often embedded in mortgage or pledge contracts, which grants the creditor the right to acquire ownership of the mortgaged property without judicial proceedings if the debtor defaults on the obligation.

Legal Basis:

Historically, Pactum Commissorium was recognized in civil law but has been explicitly prohibited under modern laws, including the Consumer Act of the Philippines and Republic Act No. 11057 (an act regulating mortgage and pledge agreements). Still, understanding its nature is important for legal history, comparative law, and the distinction from legitimate security arrangements.

Key Characteristics:

- It is a stipulated provision in a security agreement.
- It permits the creditor to acquire ownership of the collateral automatically upon default.

- It bypasses judicial foreclosure or sale proceedings.
- It tends to favor the creditor's immediate acquisition rights.
- It is generally considered per se unenforceable or void under modern law because it constitutes a punitive or penalty clause rather than a security device.

Legal and Practical Implications

Legal Validity and Enforceability

Dacion en Pago:

- Legally valid when all requisites are met: mutual consent, capacity, legality of object, and possibility of transfer.
- Recognized as a legitimate means to extinguish or settle obligations.
- Courts have upheld its validity, provided it is not made to defraud creditors or violate public policy.

Pactum Commissorium:

- Historically accepted but now explicitly prohibited in many jurisdictions.
- Considered contrary to public policy because it allows automatic transfer of ownership without judicial process.
- The Revised Rules on Mortgage and Consumer Act render such clauses unenforceable and void.

Key Legal Point:

While Dacion en Pago is a contractual and consensual arrangement, Pactum Commissorium is a non-consensual, automatic transfer clause often viewed as a penalty or abusive provision.

Differences in Nature and Purpose

Aspect	Dacion en Pago	Pactum Commissorium
Nature	Contractual agreement to settle debt	Clause in a security agreement granting automatic ownership transfer
Purpose	To extinguish or reduce an obligation through transfer of property	To allow creditor to acquire ownership upon debtor's default, often as a security measure
Consent	Requires mutual agreement	Imposed as a clause, often unilateral in effect

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Nature | Contractual agreement to settle debt | Clause in a security agreement granting automatic ownership transfer |

Purpose | To extinguish or reduce an obligation through transfer of property | To allow creditor to acquire ownership upon debtor's default, often as a security measure |

Consent | Requires mutual agreement | Imposed as a clause, often unilateral in effect |

| Transfer of Ownership | Voluntary, upon acceptance by creditor | Automatic, upon default, without judicial proceedings (generally void today) |

| Legal Status | Valid and recognized | Historically recognized but now largely prohibited or void |

Key Differences in Application and Effect

Process and Formalities

- Dacion en Pago:
 - Requires mutual consent and formal agreement.
 - Usually involves delivery of the property and acceptance by the creditor.
 - The transfer is complete and effective upon delivery and acceptance.
- Pactum Commissorium:
 - Incorporated as a clause in a security instrument (e.g., mortgage or pledge).
 - Does not require additional consent at the time of default; the transfer occurs automatically.
 - No judicial proceedings are necessary for transfer, which raises legal issues.

Impact on the Obligation

- Dacion en Pago:
 - Extinguishes the obligation entirely or partially.
 - The debtor's liability is discharged upon fulfillment.
- Pactum Commissorium:
 - Does not necessarily extinguish the obligation; it is a security device.
 - The creditor's right to acquire ownership is a remedy or security, not a means of payment.

Legal Limitations and Modern Law

- Dacion en Pago:
 - Widely accepted; used as an alternative to foreclosure.
 - Subject to the usual contract requirements and legal restrictions.

- Pactum Commissorium:
- Now explicitly prohibited by law due to its potential for abuse.
- Courts have declared such clauses unenforceable, emphasizing the importance of judicial procedures in foreclosure or acquisition.

Key Distinctions Summarized

- Legal Basis:

Dacion en Pago is grounded in the Civil Code's general principles on contracts, while Pactum Commissorium was a contractual clause with legal recognition in the past but is now prohibited.

- Consent and Voluntariness:

Dacion en Pago requires mutual consent; Pactum Commissorium operates automatically upon default.

- Ownership Transfer:

Dacion en Pago involves a voluntary transfer; Pactum Commissorium involves an automatic transfer, often viewed as a penalty.

- Legal Validity Today:

Dacion en Pago remains valid; Pactum Commissorium is considered void or unenforceable in contemporary law.

- Purpose:

Dacion en Pago aims to settle debt; Pactum Commissorium functions as a security device that grants the creditor ownership rights.

Conclusion: Navigating the Legal Landscape

Understanding the difference between Dacion en Pago and Pactum Commissorium is crucial for legal clarity, particularly in debt settlement, security arrangements, and property transfers. While Dacion en Pago is a legitimate and recognized contractual mechanism for debt settlement, Pactum Commissorium has fallen out of favor and is now largely unlawful due to its potential for abuse and conflict with public policy.

Legal practitioners must ensure that agreements involving property transfers or security clauses comply with current laws and jurisprudence. Recognizing that Dacion en Pago facilitates consensual, voluntary

transfer of ownership, whereas Pactum Commissorium historically attempted to bypass judicial procedures, is fundamental in drafting, reviewing, and enforcing contractual arrangements.

In the evolving landscape of property and contract law, the key takeaway remains: legality and fairness underpin enforceability. Parties should always seek legal advice when drafting agreements involving property transfer or security clauses to avoid clauses that may be deemed void or unenforceable, ensuring that their agreements are both effective and compliant with current laws.

In summary, the Difference Between Dacion en Pago And Pactum Commissorium lies primarily in their legal nature, process, and enforceability. Recognizing these distinctions helps safeguard the rights of parties and upholds the integrity of lawful contractual practices.

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