

Two views on contribution between joint and several co-debtors under Article 1145 of the Civil Code

In both cases, these are contributions without the entire joint debt having been paid.

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1. First view

1.1. *Supreme Court Judgment 1219/2025 of 10 September*

Part payment of the debt, insofar as it involves the extinguishment of the obligation up to the amount paid, gives rise to an action for contribution in favour of the *solvens* (payor), provided that, as in the present case, the amount paid exceeds the share corresponding to the payor in accordance with the internal relationship between the co-debtors. In such a case, the payor may claim the excess amount from the other obligors, in proportion to the share corresponding to each of them

in the internal relationship derived from joint and several liability. Although this hypothesis is not expressly mentioned in Article 1145 of the Civil Code (CC), it must be deemed included within its scope, since the part payment accepted by the creditor also partially releases all the debtors and benefits those who have not paid, which justifies the contribution in terms analogous to those of full payment. In this regard, the case law of this Court — among others, judgments 1424/2023 of 17 October, 404/2020 of 7 July, and 654/2009 of 13 October— has recognised the application of Article 1145 of the Civil Code in cases of part payment of debt.

1.2. Commentary

The doctrine is correct. It is true that the co-debtor who paid part of the joint debt can still be called upon by the creditor to pay the rest, and there is no procedural default. However, the debtor who pays cannot be exposed to the burden of an interim wait in anticipation of what the creditor will

A debtor who makes a part payment cannot be exposed to the burden of an interim wait in anticipation of what the creditor will do

do. Of course, the debtor must have paid more than his share in the internal relationship. If he paid up to this limit, he paid the total amount of his internal debt, and therefore has no right to claim contribution (recourse).

2. Second view

2.1. Supreme Court Judgment 1203/2025 of 2 September

Action for reimbursement between joint and several debtors: it is necessary for the joint and several debtor who claims the corresponding part from the other joint and several debtor to have paid and extinguished the obligation. The existence of a judgment against the claimant is not sufficient if the claimant himself has not paid.

2.2. Commentary

The joint and several inheritance co-debtor who is sued for payment of inheritance debt may summon and have his co-heirs, who are also joint and several debtors (Art. 1084 CC), appear in court. However, in accordance with the limits of our procedural law, he cannot bring a counterclaim

against these co-debtors, nor can he obtain a proportional judgment for contribution in the same proceedings in which he himself is sued. And why can he not bring the action for

contribution under Article 1145 of the Civil Code when the first co-debtor has only been found liable but has not paid the debt, even by way of enforcement? In my opinion, for one reason only: the co-debtor found liable may still reach novations or settlements with the common creditor after the judgment, and these contingencies affect in principle the debt of all ("extinguish the obligation"); even, and this is possible, the creditor and the party found liable may reach partial settlements that only affect the part of the internal debt of the obligor. But even under these conditions, the party found liable has no recourse, because such settlement reduces the debt of the rest by the part settled with the joint debtor found liable.