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KEY WORD : PROBLEMS/EARNEST

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The purpose of this research is to study the concept relating to earnest and to determine the extent of the meaning given to this word as "something" which will be delivered as earnest. How is the legal status of the earnest effected if the outside creditor exercises his/her right to forfeit the earnest? What are legal remedies the party receiving the earnest should take? Is it unfair to the party giving the earnest if the law governing the earnest permits the party receiving it to forfeit the earnest regardless of the actual damages sustained by the party giving it and how may this issue be solved.

The result of the research discovered the following:

1. Having taken into consideration the interpretation of the law governing the earnest, it is found that things which can be placed as earnest under the laws must be confined to moveables and only in the nature of corporeal objects.
2. The laws regard the earnest as one kind of securities and it is a special right stipulated by laws. The legal status of the earnest is similar to the real right.
3. If the outside creditor seizes the thing placed as earnest, the party receiving it has the right to file a petition to the court for an order release the earnest because the party receiving it possesses legal right to force over the moveable property so deposited. This is pursuant to section 287 of the Civil and Procedure Code.
4. Although the law governing the earnest gives protection to the party receiving the earnest to the extent that the party receiving it is entitled to forfeit all the earnest irrespective of the actual damages suffered and regardless of the negotiation made by the contractual parties at the time of execution of the agreement, it is sometimes unfair to the party giving it and it is contrary to the basis principle of laws which purposely do not intend to give a chance to the party receiving it to exploit the party giving it. The law governing the earnest should be amended to empower the court having discretion to reduce the earnest equivalent to the damages sustained.