

CLÁUSULA PENAL

Aula 12

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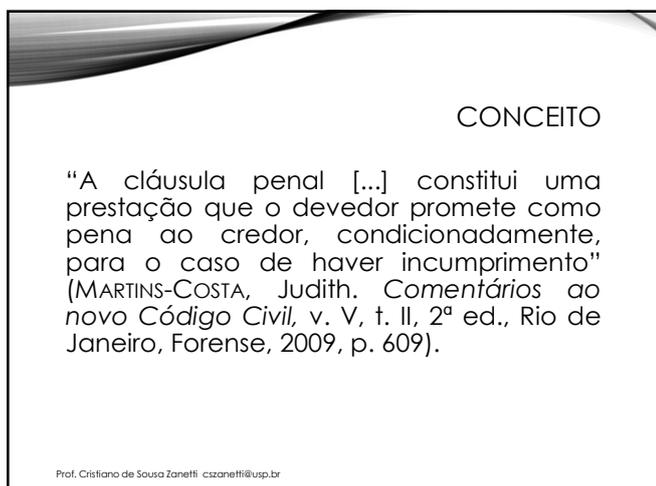
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CONCEITO

“A cláusula penal [...] constitui uma prestação que o devedor promete como pena ao credor, condicionadamente, para o caso de haver incumprimento” (MARTINS-COSTA, Judith. *Comentários ao novo Código Civil*, v. V, t. II, 2ª ed., Rio de Janeiro, Forense, 2009, p. 609).

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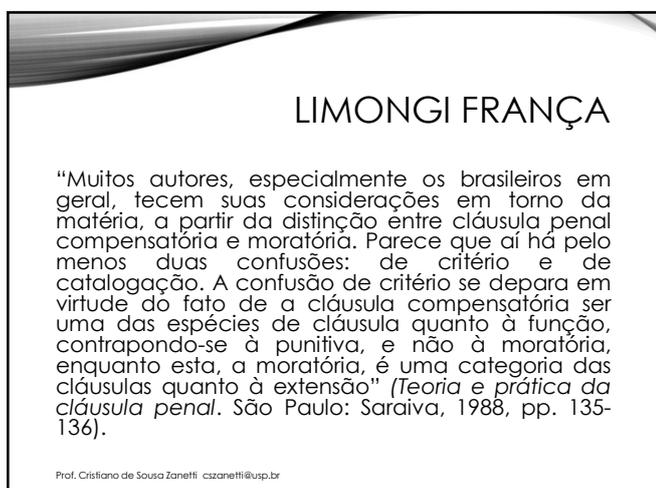
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LIMONGI FRANÇA

“Muitos autores, especialmente os brasileiros em geral, tecem suas considerações em torno da matéria, a partir da distinção entre cláusula penal compensatória e moratória. Parece que aí há pelo menos duas confusões: de critério e de catalogação. A confusão de critério se depara em virtude do fato de a cláusula compensatória ser uma das espécies de cláusula quanto à função, contrapondo-se à punitiva, e não à moratória, enquanto esta, a moratória, é uma categoria das cláusulas quanto à extensão.” (*Teoria e prática da cláusula penal*. São Paulo: Saraiva, 1988, pp. 135-136).

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QUESTÕES FUNDAMENTAIS

- Qual é o inadimplemento?
- Qual é o escopo?
- Qual é a sanção?

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ÂMBITO OPERATIVO

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graph LR; A[Inadimplemento] --- B[Modalidade]; A --- C[Extensão]; B --- D[Mora]; B --- E[I. definitivo]; C --- F[Parcial]; C --- G[Total]
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FUNÇÕES

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graph LR; A[Cláusula penal] --- B[Escopo]; A --- C[Sanção legal]; B --- D[Compensatória]; B --- E[Coercitiva]; C --- F[Substitutiva]; C --- G[Cumulativa]
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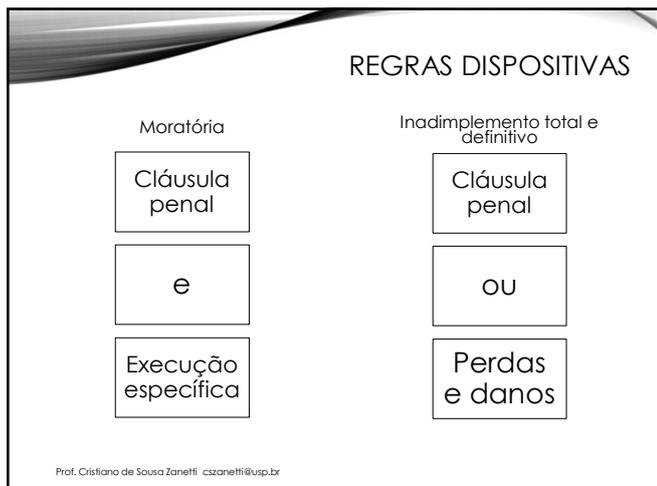
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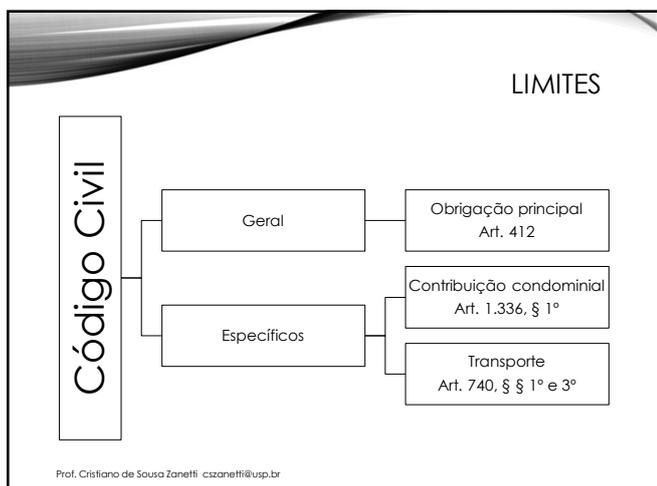
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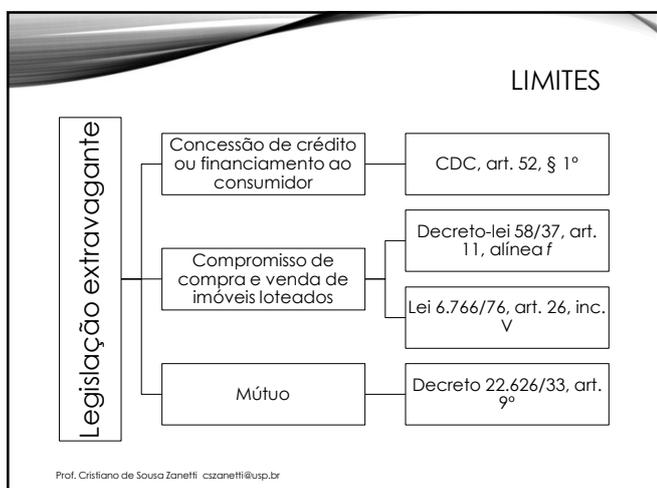
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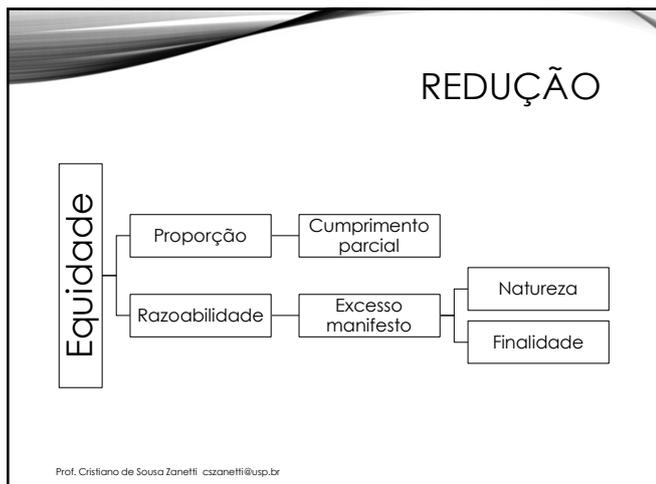
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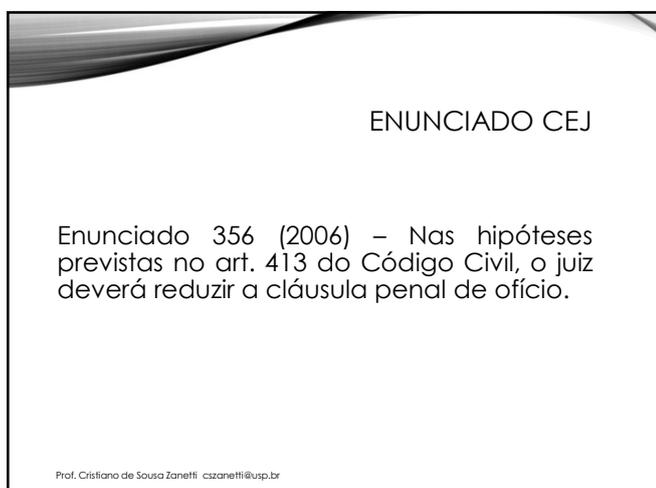
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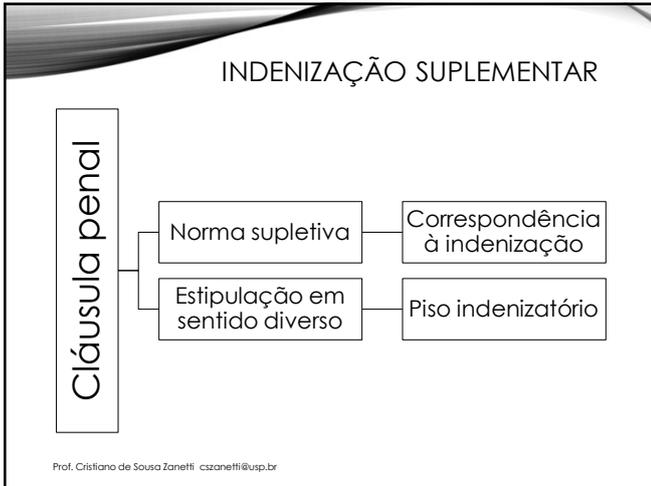
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