

Obligations and Contracts

Introduction

Our Civil Code follows the Gaian order which is of three parts: Persons, Things and Obligations.

The title of Book IV of the Civil Code is inaccurate. While the title is "Obligations and Contracts", it should only be "Obligations" since by including "Contracts" in the title, it is putting the latter on equal footing with the former; but this is not correct since contracts is only one of the sources of obligations.

Obligations is the most important, most abstract and most difficult of all of civil law. It is the entirety of private law. If you don't know obligations and contracts, you will never understand commercial law.

The term "obligations" was derived from the words "ob" and "ligare" which means "to bind or tie together". "Ligare" is the source of several common words such as "ligament" and "ligation". (Ligation and Vasectomy have the same purpose: to tie and to cut off, the fallopian tube, for the former, and the vas deferens, for the latter.)

"Obligatio" was initially a physical act of being chained (with shackles). Before, under Roman law, if the debtor cannot pay, the creditor can bring him to the magistrate and the magistrate can authorize the creditor to cuff the debtor and offer him for sale for 3 days, the proceeds of which go to the creditor. The debtor then becomes a slave. If he is not bought, the creditor can have him chopped into little pieces or have him sold to the barbarians.

As time passed, cruelty softened. By the time of Cicero, "ligatio" does not mean vinculum of chains but *vinculum juris* (bond of law). Obligation became metaphorical and not literal.

I. Obligations

A. Definition of Obligation

Art. 1156. An obligation is a juridical necessity to give, to do or not to do.

- This provision is the soul of brevity. It was borrowed from Sanchez Roman. However, many commentators say it is incomplete because the "obligation" is only from the point of view of the debtor. To make it complete, it must cover the points of view of both the debtor and creditor. Obligations are bilateral. It should include what can be required, the remedy and the means by which the creditor can take to pursue the remedy.
- An obligation is a juridical relation whereby a person should engage or refrain from engaging in a certain activity for the satisfaction of the private interest of another who, in the case of non-fulfilment of such duty, may obtain from the patrimony of the former through proper judicial proceedings the very prestation due or in default thereof, the economic equivalent that it represents (Diaz Piero).
- An obligation is a juridical relation whereby a person (called a creditor) may demand from another (called the debtor) the observance of a determinate conduct, and, in case of breach, may obtain satisfaction from the assets of the latter (Arias Ramos).

B. Characteristics of Obligations

1. It represents an exclusively private interest

The Law Of Contracts And Related Obligations

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Hillman, David A. Hoffman**



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