

Estoppel

- Litvinoff's
definition of
"obligation"

CHAPTER I GENERAL PRINCIPLES

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§ 1.1 Definition

The word "obligation" has more than one meaning. As is generally the case with words that mean more than one thing, the precise signification intended by one who speaks or writes such a word depends on the context in which it is used. Thus, in its more general acceptance, the word "obligation" means something that the law or morals command a person to do, a command that is made effective by the imposition of a sanction if the person fails to obey or comply.¹ When given that reference, the word "obligation" is made synonymous with the word "duty." In that sense it is said, for example, that all citizens of a certain age are under an obligation to fulfill their military duties, that all members of a

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1. See 1 Litvinoff, Obligations 1 (1969).

politically organized community are under an obligation to pay taxes, that all landowners are under an obligation to comply with municipal ordinances that concern their property. The same meaning is intended when reference is made to an obligation to help those in need or to pay respect to one's elders.²

In another sense, the word "obligation" means an instrument in writing, however informal, whereby one party contracts with another for the payment of a sum of money. In commercial law, for example, the word "obligation" may mean a negotiable instrument, such as a promissory note or draft, or a bond or debenture issued by a corporation or public agency.³

In the technical terminology of the civil codes, however, the word "obligation" means a legal bond that binds two persons in such a way that one of them, the creditor or obligee, is entitled to demand from the other, the debtor or obligor, a certain performance.⁴ Thus, for example, when two persons make a contract of sale, one of them, the buyer, may demand from the seller delivery of the thing sold, and the seller may demand from the buyer payment of the price.⁵ Likewise, when because of his fault a person causes damage to another, the victim of the wrong may demand reparation from the wrongdoer.⁶

The Louisiana Civil Code uses the word "obligation" in its technical meaning when it defines it as a legal relationship whereby a person, called the obligor, is bound to render a performance in favor of another, called the obligee.⁷ The same definition further explains that the performance may consist of giving, doing, or not doing something.⁸

Thus defined, it is clear that, in the technical meaning of the civil codes—the Louisiana one in particular—*obligation* means more than just duty. In a legal relation, which presupposes at least two parties, the duty is confined to one of them, the debtor or obligor, who is the one subjected, or "under," the obligation, so that his "duty" becomes strongly identified, conceptually, with the

vendae rei secundum nostrae civitatis iuris—An obligation is a legal bond which, according to the laws of the community, constrains a person to give or to pay to another that which he owes him. Familiarity with that definition is unavoidable to the civilian lawyer as the result of a centuries old tradition.

2. For further terminological discussion see 4 Carbonnier, *Droit civil—Les obligations* 13-15 (11th ed. 1982); Weill et Terré, *Droit civil—Les obligations* 1-2 (3d ed. 1980).

3. See 1 Litvinoff, *Obligations* 2 (1969).

4. The classical definition is contained in 1 Justinian's *Institutes* 3, 13 pr.: *Obligatio est iuris vinculum quae necessitate adstringimur alicuius sol-*

5. See LSA-C.C. arts. 2475 and 2549.

6. See LSA-C.C. art. 2315.

7. LSA-C.C. art. 1756.

8. *Id.*

way in which he must conduct himself in order to render that which is expected from him.⁹ At the other end, however, on the part of the creditor or obligee, there is a right that entitles him to demand performance of the duty. As an abstract bond, the obligation, the legal relation, links the right to the duty and makes those concepts correlative, so that they cannot exist—nor can they even be thought of—the one without the other.¹⁰

It can be said, in this perspective, that every obligation contains a duty as a necessary element, but that not every duty amounts to an obligation.¹¹ Thus, the existence of a duty of charity, or of social solidarity, cannot be denied in the moral realm, but the nonexistence of a right to demand charity from others clearly explains that such duty is not an obligation. Even at law, the general duties not related to a definite, particular and concrete performance, such as the duty not to cause injury to another or the duty to act with ordinary prudence, though undoubtedly "legal" in the sense that legal consequences may be attached to the dereliction of such duties, are not obligations in a technical sense.¹²

§ 1.2 Patrimonial Aspect, Credit-Right

A further restriction to the civil code concept of obligation is the connection that exists between obligation, in its technical sense, and patrimony, so that the right that an obligation gives the creditor or obligee is a patrimonial right, that is, a right the purpose of which is the satisfaction of the creditor's economic needs by means of the performance that the debtor must render.¹ If the debtor does not perform voluntarily, the creditor, through the aid of the court, may compel him so to do, and, if specific performance is not possible, the creditor's interest may be satisfied by an award of damages. For that purpose, the debtor is liable with all his patrimony, which is the common pledge of his creditors.²

The economic value of the performance a debtor or obligor must render is relevant in order to determine that a certain legal

9. See 1 Litvinoff, *Obligations* 4-5 (1969).

10. *Id.*

11. See 1 von Tuhr, *Allgemeiner Teil des Schweizerischen Obligationenrechts* 9-10 (1924); 1 Litvinoff, *Obligations* 4-5 (1969).

12. 4 Carbonnier, *Droit civil—Les obligations* 21-22 (11th ed. 1982); 1 Litvinoff, *Obligations* 2 (1969).

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1. Weill et Terré, *Droit civil—Les obligations* 4-6 (3d ed. 1980).

2. See LSA-C.C. arts. 3182 and 3183.