LOUISIANA CIVIL LAW OF OBLIGATIONS

Part I

THE LAW OF OBLIGATIONS IN GENERAL

Chapter I

INTRODUCTION

Analysis

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§ 1. Definition and Different Meanings of the Word Obligation

In its more general acceptation the word obligation designates anything that the law or morals command an individual to do. In this approach no consideration is given as to whether or not an individual is liable to another. In this sense, for instance, it is said that all the citizens of a certain age must fulfill their mil-

itary duties, or that all the landowners must comply with the municipal regulations regarding their property.[1]

In a narrower sense, the word "obligation" means all instruments in writing, however informal, whereby one party contracts with another for the payment of a sum of money or the delivery of specific goods.[2]

However, in a more technical usage, the word "obligation" means a legal bond between two persons whereby one of them, the creditor or obligee, is entitled to demand from the other, the debtor or obligor, a certain prestation.[3] Thus, for instance, if a contract of sale takes place it gives rise to two different obligations whereby the vendee may demand from the vendor delivery of the thing sold,[4] and the vendor may demand from the vendee

1. 2 Julliot de la Morandiere, Précis de Droit Civil 123 (1957).

2. Black, Law Dictionary (3d ed. 1933). In commercial law the word *obligation* is also equivalent to a negotiable instrument, bond, or debenture issued by a corporation or a public agency. In French notarial law the same word is employed meaning a deed whereby a loan secured by mortgage is evidenced. See 2 Julliot de la Morandiere, Précis de Droit Civil 123 (1957); 2 Planiol, Civil Law Treatise, Part I (An English Translation by the Louisiana State Law Institute) § 158 (1959). See also 3 Busso, Codigo Civil Anotado 9 (1949)

3. The word prestation, from the French *prestation*, is not very current in present day English. Notwithstanding, as defined in Webster, Third New International Dictionary (1961), it means a performance of something due upon an obligation. In feudal law it meant a rent or tax paid in kind or services. The same word also appears in other English technico-legal expressions such as prestation-money—a sum of money paid by archdeacons yearly to bish- Wharton, Law Lexicon (Horniman 1925).

The word equivalent to the French prestation in the German language is *leistung* which is usually translated as performance. See for instance Schuster, The Principles of German Civil Law 137 (1907). The present writer, however, does not consider prestation and performance as perfect equivalent terms. In traditional civil law theory a prestation consists of an action or an omission, since there are obligations to do or not to do, as clearly stated in LSA-C.C. arts. 1761 and 1926. The present writer's understanding is that the word prestation conveys more the meaning of "that" which is performed than performance itself. The former is the reference in which the word will be used in this text.

The classical definition is contained in Justinian's Institutes (I.3, 13 pr.): *Obligatio est juris vinculum quae necessitate adstringimur alicuius solvendae rei secundum nostrae civitatis juris* (an obligation is a legal bond which constrains us to pay anything to another in accordance with the law of our community). As the result of a long tradition, familiarity with this definition is unavoidable for the civilian lawyer.

4. LSA-C.C. art. 2439: "The contract of sale is an agreement by which one person gives, sells, or exchanges a thing to another for a price in money. The seller is bound to two principal obligations, that of delivering and that

payment of the price.[5] If a person causes damage to another, the victim of the wrong may demand reparation from the wrongdoer.[6]

It is noteworthy that the definition above is limited to a certain scope and does not encompass all the situations where a person is under a certain duty. Thus, when the law establishes the obligation for a child to obey his parents[7] it could be said that a certain relation between two determined persons has been set up whereby one of them has the right to demand from the other a certain kind of behavior, the latter being under the obligation to conform to the pattern of behavior imposed upon him. Such a characterization based on the abstract features of the legal relation might be likened to the particular kind of relation existing between the person who has loaned money and the borrower. In this situation it is also said that one of the parties, the lender, has a right to demand, and the other, the borrower, is under an obligation to perform a certain prestation. However the obligations that arise out of one and the other type of situations are very different. In the case of the child what matters is the child's conduct—that he behaves properly. In the case of the loan, what matters is a certain result—that the money be returned.[8]

The obligations that originate in the first kind of situations have been styled institutional obligations,[9] and those that arise out of situations of the second kind are designated as special or civil obligations.[10] An institutional obligation is, thus, the legal bond existing between persons that are in a certain situa-

of warranting the thing which he sells."

5. *Id.* art. 2549: "The obligations of the buyer are: (1) To pay the price of sale . . . ."

6. *Id.* art. 2315: "Every act whatever of man that causes damage to another obliges him by whose fault it happened to repair it . . . ." See 2 Colin et Capitant, Cours Elémentaire de Droit Civil Français 5-6 (10th ed. 1953).

7. See LSA-C.C. art. 217: "As long as the child remains under the . . . he is bound to obey them in every thing which is not contrary to good morals and the laws."

8. See Russo, Código Civil Anotado 11 (1949). See also Enneccerus, Lehmann, Recht der Shuldverhältnisse 5-6 (15th ed. 1958).

9. See Domóflio De Buen, Obligaciones Especiales y Obligaciones Institucionales, Revista Cubana de Derecho (1943).

10. See 8 Busso, Código Civil Anotado 11 (1949). The expression "civil obligation" usually has a special technical meaning in the terminology employed by the Louisiana Civil Code. LSA-C.C. art. . . . imperfect obligations, natural obligations, and civil or perfect obligations . . . ." (Emphasis added.)

tion within an institution. In this context, an institution is to be understood as a situation existing between individuals, or individuals and things, intended to last for a long time and regulated by the law according to ideas and patterns deeply rooted in social life.[11]

It is necessary to conclude that the word "obligation" bears at least a double meaning: "duty," on the one hand, and "legal bond" on the other. The legal bond designates the link between the parties; the duty defines what one of them, he who is subjected to the obligation, is expected to do. The double meaning of the word is reflected in two articles of the Louisiana Civil Code. According to article 1756: "An obligation is, in its general and most extensive sense, synonymous with duty." But, in the language of article 1757(3): "A civil obligation is a legal tie, which gives the party, with whom it is contracted, the right of enforcing its performance by law."

It is true that an obligation cannot be thought of without the idea of duty. But it is none-the-less true that the notion of duty does not contain the whole substance of obligation. It has been very sharply said that every *obligation* contains a *duty* as a necessary element, but that not every *duty* amounts to an

11. 1 Puig Brutau, Fundamentos de Derecho Civil, Part II 30 (1959).

In contemporary Italian civilian doctrine a difference has been introduced among the concepts of *dovere* (duty), *obbligo*, and *obbligazione*. In the three cases a certain conduct is expected from a person conforming to a certain legal precept. However, in order to understand the concept of *duty* it is not necessary to determine the person in whose interest the duty is imposed. The concept of *obbligo* applies whenever the parties bound by the particular legal relation are already determined. Finally, in the case of *obbligazione* the patrimonial kind of legal bond is added to the determination of the parties. Thus, in general terms, the Italian notion of *obbligo* is the same as "institutional obligation," and *obbligazione* appears as coextensive with credit-right. See Enneccerus-Lehmann, Recht der Schuldverhältnisse 5 (15th ed. 1958); 1 Puig Brutau, Fundamentos de Derecho Civil, Part II 31 (1959); Rotondi, Instituzioni di Diritto Privato 89 (1962). See also Buckland & McNair, Roman Law and Common Law 103 (2d ed. Lawson 1952).

In German contemporary civilian doctrine the idea of an obligatory relation connotes two different meanings. In the first and broader one, an obligatory relation is a legal one between at least two individualised parties, out of which several and distinct claims, and other rights as well, may arise for one or both of them, such as the right to terminate the legal relation. In the second and more restricted sense, an obligatory relation consists of each of the binding claims that arise out of the former and more complex relation existing between the same parties. Thus, the relation between vendor and vendee belongs to the first category, and the vendor's particular claim to collect the price belongs to the second. The latter may subsist even after the complex relation involved in a sale is extinguished, without prejudice to the consequences that non-performance may entail. See Enneccerus-Lehmann,

obligation.[12] In the first place, the duties attached to civil obligations are only "legal duties," which leaves aside those that only operate "on the moral sense." In the second, those duties of which "institutional obligations" consist, such as family duties and the general duty correlative of real rights, are also outside the law of obligations.[13]

Thus, a more technical approach to the word "obligation" was felt to be necessary.

As shown above two parties may be bound by a complex relation of an institutional obligatory kind, as in the case of husband and wife, parent and child, or involved in a purely patrimonial relation.[14] *This one* may also offer a certain complexity as in the case of lease or usufruct. Claims of one of the parties aimed at *obtaining a certain prestation of patrimonial significance* from the other may arise out of either of these situations. Thus, the father, for instance, as administrator of the child's estate, may be liable to the latter for a strictly pecuniary debt;[15] and the same may occur as a result of the relationship between the usufructuary and the owner of the property subject to the usufruct.[16] It is this particular kind of obligatory relation—the one existing between creditor and debtor whereby the former has the right to demand and the latter the duty to perform a certain

Id. at 5-6. See also 1 Puig Brutau, *id.* at 31-32.

12. 1 von Tuhr, Allgemeiner Teil des Schweizerischen Obligationenrechts 9-10 (1924).

13. The general duties of conduct not related to a definite, concrete prestation, such as the duty not to commit torts, or the duty to act as a prudent man, although "legal duties" in the sense that legal consequences can be attached to their breach, also remain outside the specific field of the law of obligations. See generally 3 Busso, Código Civil Anotado 11-12 (1949).

14. For an acconnt of the Civil Law theory of patrimony see 1 Yiannopoulos, Civil Law of Property § 73 (1966). The expression "patrimonial relation" is equivalent to patrimonial object or patrimonial content of the obligatory relation, meaning, in very simple terms, that the thing to be given by the debtor to the creditor, or the act to be done or not done is supposed to have some economic value for the parties, some financial significance.

15. See LSA-C.C. art. 221: "The father is, during the marriage, administrator of the estate of his minor children and the mother in case of his interdiction or absence during said interdiction or absence. He or she shall be accountable both for the property and revenues of the estates the use of which he or she is not entitled to by law and for the property only of the estate the usufruct of which the law gives him or her."

16. See *id.* art. 561: "If the usufructuary sell, give away or lease his right, he, as well as his security, is responsible for the abuse which the person to whom he has assigned his rights, makes of the things subject to the usufruct, and the damage he may commit on them."

prestation consisting of giving, doing, or not doing something—that delineates the subject matter of the general theory of obligations. A relation of this kind is styled a *credit-right* in modern terminology.[17] The definite character of the prestation becomes thus of primary importance in order to understand the technical meaning of obligations as credit-rights.

§ 2. The General Character of the Civil Law Theory of Obligations [18]

The civil law theory of obligations presents a remarkably general character because its principles are applicable not only to obligations arising out of contracts and torts, but to those that arise in the fields of property, family, and succession law as well. This theory does not relate only to those obligations that men create *through* the exercise of their free will, but also to those directly imposed by the law, provided that the resulting relation conforms to the pattern of a credit-right. The ultimate reason *for this is* that the law is one of the sources of which obligations may derive. Besides the province of the civil law proper, the theory of obligations extends its coverage over the vast panorama of commercial law.[19]

17. See 3 Busso, Código Civil Anotado 14–16 (1949); Enneccerus-Lehmann, Recht der Schuldverhältnisse 1 (15th ed. 1958); 1 Puig Brutau, Fundamentos de Derecho Civil, Part II 36–38 (1959). *The word credit* is here used in the same reference as in LSA–C.C. art. 2642: "In the transfer of *credits*, rights or claims to a third person, the delivery takes place between the transferrer and the transferee by the giving of the title." (Emphasis added.)

18. The expression "theory of obligations," deeply rooted in the civilian *tradition, purports to indicate the* immutability of certain principles to which the positive law would have to conform irrespective of changes and variations. The expression reveals the belief that a certain structure inspired by reason is present whenever *obligations* are subject to positive regulation: hence its "theoretical" character. Modern writers, however, have expressed a skeptical view of the alleged theoretical nature, *and it has* been said that the legal provisions relative to obligations unwarrantedly claim the name of theory. See 1 Demogue, Traité des Obligations en Général 1 (1923). *Cf.* Saleilles, Etude sur la Théorie Générale de L'Obligation VII (3d ed. 1925). This traditional designation, however, could perhaps be justified by the fact that the civil law of obligations *contains* principles of wide generality because of their applicability to practically all the fields of the law. Thus, if the word "theory" is interpreted to mean something general instead of immutable, the traditional expression is not *inaccurate.*

19. 1 Salvat, Tratado de Derecho Civil Argentino, Obligaciones en General 1-2 (1952). *A sharp distinction* between strict civil law, applicable to all persons in general, and commercial law, regulating acts of merchants, or legal acts to which at least one of the parties is a merchant, or special kinds of legal transactions, is a very *distinctive feature of the civilian tra-*

Thus, according to the tradition that this theory reflects, the law of obligations constitutes the basic law of legal intercourse among the members of a certain community, affording protection to interests of all kinds by means of securing compensation to those who are the victims of a wrong course of action taken by another.[20] Therefore, in regard to its content, the law of obligations should not be conceived of as a specific, or isolated, branch of the law since it deals with the protection of the interests of a spouse, as well as those of an heir, testator, child, owner, usufructuary, the victim of a tort, a person who has managed another's business, and the interests of all kinds of persons involved in legal relations specifically regulated by very different branches of the law.

In spite of such a wide scope of application, the uniform technical structure of the legal bond between creditor and debtor of a certain prestation—irrespective of the situation that gives rise to the bond—justifies the effort of dealing with the general theory of obligations as a unit conceptually separable, if not technically independent, of the several provinces of the law through which obligations are scattered.[21] Thus, in a systematic approach, the rules applicable to all kinds of credit relations in a strict sense are grouped together and detached from the different special fields of the civil law.[22]

As all kinds of relations lead up to the idea of obligation, the general theory of obligations is of capital importance in the civilian tradition not only from a theoretical but also from a practical viewpoint, since it is in this theory where the fundamental notions of the science of law can be found.[23] These well established views have induced many writers to consider that the best place for the general theory of obligations is the general part of the civil law.[24]

dition reflecting itself in separate civil and commercial codes, and the existence of separate and different courts, as in France.

20. 1 Puig Brutau, Fundamentos de Derecho Civil, Part II, 32 (1959).

21. See Enneccerus-Lehmann, Recht der Schuldverhältnisse 2 (15th ed. 1958).

22. 1 Puig Brutau, Fundamentos de Derecho Civil, Part II, 34 (1959).

23. For a discussion of this view see 6 Planiol & Ripert, Traité Pratique de Droit Civil Français—Obligations—Part I, 1 (2d ed. Remain 1952).

24. In the civilian tradition the general part of the civil law serves as an introduction to the study of the civil law as such, covering the very basic concepts required as a background for the understanding of each specific institution. The general theory of law, the general theory of juridical acts, persons, and other subjects of the same vast import are comprised in the general part. Planiol's treatise is a very good example.