

Chapter-1

Obligations in general

What is obligations

- There are various definitions to the concept.
- **Ancient Roman law** defines obligation as a means of an undertaking or legally binding relationships where one party promises the other party to perform some acts or to do something.
- On the other hand, classical legal scholars understood the concept of obligation as **unilateral in character and discriminatory in nature** since it imposes obligation to do, to give or to render rights only on non-roman citizens not the Romans.
- For example, **Year Gay, a Roman jurist**, defines obligation as 'a means of personal claim brought against another in order to force him before them to enable them enforce their rights.
- **Pavel year** also understood obligation as an undertaking not by Roman citizens to perform some acts or to do or to give or to render rights to non-roman citizens regarding to give, to do, or to render some rights to roman citizens
- However, the definition of obligation proposed by ancient well-known Roman lawyers was based on their personal opinion, which as a result has develop the concept of obligation.

Concept of obligation.....

- Unlike, the definition proposed by ancient roman jurists, **the institute of Justinian** defines obligation as a legally binding relations whereby Roman citizens under take to perform certain acts or to do something in accordance with the Roman law.
- This implies that, Obligation defined in the institute of Justinian, differed from the obligations defined in the classical Roman jurists in that the institute defines obligation in the aspect that Roman citizens to carry out the obligation.
- **Black's law dictionary** defines obligation as 'a legal duty or moral duty to do or not to do something.'
- **Common-law scholars such as Fredrick Pollock** defines obligation in its popular sense as merely synonym for 'duty.'
- **John Salmond (year)** defined obligation in its more general acceptation as 'something the law or morals command a person to do a command that is made effective by the imposition of sanction if a person failed to comply such a command'.
- In general, the concept of obligation can clearly be expressed as;
 - Obligation to give or not to give
 - Obligation to do or not to do
 - Obligation to render rights to others to do something.

Concept of obligation.....

What is obligation under the Ethiopian legal context?

- It is not clearly defined
- However, the Ethiopian civil code, in the book IV of the code uses the term obligations with out defining what it means. For example ,look at art.1675 of the civil code.
- Q1:- Which one of the definitions of obligation suggested above do you support? Justify your position by reasoning.

Sources of obligations

- Like its definitions, there is no single source of obligation.
- According to **Gay, Roman jurist**, the fundamental source of obligation can be categorized into two:
 - a) Contract
 - b) Beyond the contract (none contractual obligations)
- Those obligations, which arises beyond the contract, are further divided into
 - unjust enrichment (quasi-contract),art.2162 of the civil code
 - unlawful acts (delict); for instance look at art.2035 of the civil code
 - causing physical injure to the person or causing damage to property of person (quasi-delict).

Sources of obligation.....

➤ However, in the modern time, the laws of different countries including that of French civil code, clearly expresses the sources of obligations as:-

- i) Obligation that arises from contract
- ii) Obligations that arise beyond the contract
- iii) Obligation that arises from the unlawful acts
- iv) Obligations that arises from the causing of physical injure or causing material damage
- vi) Obligations arising from law

What is the source of obligations under the Ethiopian legal system?

○ Sources of obligations are not clearly stated in Ethiopian legal system.

○ Art.1675 of Ethiopian civil code generally expresses obligations as arising from contractual agreements.

Q2: Is contractual agreement the only sources of obligation in Ethiopian context?

- The close readings of the provisions of the civil code show that there are other sources of obligations-like
- Those arising from non-contractual relationships (from Art.2027-2178),
 - Those arising from unlawful acts or
 - obligation that arises from the causing of physical injure or
 - obligation arising from the causing of material damage (from Art.2027-2161) and
 - obligations arising from unjust enrichment (from Art.2162-2178).

Q3:When is an obligation said to be emanate from the law?

- ✓In situations when law imposes obligations on persons to give or not to give, to do or not to do, some acts recognized in almost all-legal systems.
- ✓This kind of obligation is unilateral in nature b/c
- ✓It is imposed on citizens or contracting parties without their consent.
- ✓It includes among other things
 - Obligation to pay income taxes
 - Obligation to render military services
 - Obligation of debtors ex. duty to give maintenance for the needy.
 - Obligations of families to their children,
 - Obligation of spouses to each other.

Types of Obligations

Q4:What is the bases for classifying obligation in to different categories?

- The nature of activities, and
- The number of parties legally bound by the obligation- are determinant factors to classify obligations in to different categories.

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- Based on the nature of activities , obligation can be:-
 - **Divisible obligation**-It is an obligation that can be performed by dividing in to parts.
 - **Indivisible Obligation**-It is an obligation that can't be performed by dividing in to parts.
 - **Positive obligation** -It is the kind of obligation that requires an action from the debtor. ex. obligation to do or to give.
 - **Negative obligation**-It is the one that requires the debtor to be abstain or refrain from doing some thing. Example. obligation not to do
 - *Based on the number of parties legally bound obligation can be divided in to:-*
 - **Unilateral Obligation**- Emanates from a contract in which two parties participate but only one of the parties is under obligation to do some thing for the benefit of other contracting party. Example donation.
 - **Bilateral Obligation**- arises from a contract entered into by two parties in which these contracting parties are bound legally to each other on equal terms.
 - **Multilateral Obligation**- This is a case where more than two persons undertake to perform an obligation.
 - Multilateral obligation further divided in to:-

- **Simple joint obligation-** As per this obligation, parties who are bound by such obligation are not jointly liable for the total debts, but each debtor is liable for its own share.
- **Joint obligation-** It emanates from the contractual obligation in which more than two parties participate and debtors are jointly liable for the debt secured as a result of the obligation entered into with the creditor or creditors.
- As per this obligation, while the number of debtors should not be less than two, the number of creditors could be one or more than one.
- **Joint and several obligation-** In this kinds of obligations the co-debtors shall be jointly and severally liable.
- unlike joint obligation where the debtors are jointly obliged to under take a given obligation, in the several and joint obligation, the creditor may require all the debtors or one of them to discharge the obligation in whole or in part.
- **Q5:- Which kind of multilateral obligation most protects the interest of creditors? Why?**

Meanings of contract and contract law

What is a contract?

- It is difficult to give definitive answer to the term.
- **Anglo-American legal systems-** defines contract as a promises or set of promises for the breach of which the law gives a remedy or the performance of which the law recognizes in some way as a duty.
- However, all promises are not a contract.
- Only those agreements/promises recognized by law as creating enforceable rights and duties are considered as a contract.
- Thus, to answer the question, what kind of agreements does the law recognize as creating enforceable rights and duties, we **need to look in the rules of each legal system, which provide their own specific definitions of the term contract and its elements.**
- For instance, article 1101 of the French civil code defines contract as an **agreement to establish, vary, and extinguish rights and obligations of the parties.**
- **Article 1675 of the Ethiopian civil code defines contract** as- 'An agreement whereby two or more persons as between themselves create, vary or extinguish obligation of proprietary nature''
- *In additions, article 1678 on elements of contract tell as in general the type of agreements enforceable by the law of contract in Ethiopian legal system.*
- ***Thus, it can be safely said that contract is an enforceable agreement.***

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What is contract law?

- Giving precise definitions of contract law is also difficult.
- It can be said that, contract law is most obviously the law relating to agreements or promises.
- It is the law that governs such questions as **which agreements the law will enforce, what obligations are imposed by the agreement in question and what remedies are available if the obligations are not performed.**
- ***Thus, it can be said, contract law is the law based on liability for breach of promises.***
- However, 'Contract law' is also used to mean the whole collections of rules, which apply to contracts, and these includes many rules, which are not contractual in the sense of being based on a promise to do something.
- Contract law is primarily concerned with supporting the social institution of exchange though it is not as broad as the institution itself.
- **Q6:-What is the advantage of defining contract and contract law?**

Purpose of contract law

- Contract law has many purposes but the central one is **to support and control the millions of agreements** that collectively make up the market economy, and hence operates in the context of dispute resolution mechanism.
- **It empowers the parties to make agreements that the law will enforce.**
- It also enables parties to the contract to make exchanges that might otherwise carry too great risk whether of disruption by some contingencies or default by the other party.
- Contract law in this respect is the most important instrument that creates smooth functioning of business transaction by creating certainty, predictability, and enforceability.
- **However, there are different approaches that determines the roles of contract law.**
- For instance, In the nineteenth century, at least in common law legal systems, the courts seemed to place great emphasis on **freedom of contract**. During this period the courts see the role of contract law as enforcing the agreement of the parties.
- **This approach is known as liberal approach** which is promoted by “libertarians” who see the individual as the best judge of his or her own interest and consider that what was freely agreed is by definition, fair.

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- The other approach is those that promotes the idea that individuals should be free to pursue their own self-interest but they recognize that in some cases 'the market' may not operate efficiently.
- For example, in cases where there is some kind of monopoly or where one party does not fully understand the contract, the law may need to intervene.
- Many such writers would say the contract law, whether we like it or not, does affect the distribution of wealth in society and that this should be recognized.
- The third approach pursues the idea that, it is no longer adequate to describe the law of contract as primarily concerned with supporting voluntary exchange in the market and correcting occasional abuses or market failures.
- According to their view, the modern law's prime concern is with controlling domination and promoting fair exchange and co-operation.

Q7:- Which of the above discussed approaches are inculcated under the Ethiopian contract law?

Q8:-In your opinion which approach best protects the interest of contracting parties? How?

Scope of Contract Law

- The scope of contract law varies from country to country and from legal system to legal systems depending on the types of obligations they govern.
- contract law may have a general or special application depending on the nature and origin of contractual undertakings at a given time.

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- Based on the scope of application of contract law, contract laws may be dissected in to two areas of applicability complementing each other.
- For instance, article 1676(1) of the Ethiopian civil code stipulates the scope of general contract to apply to contracts regardless of the nature thereof and the parties thereto.
- Thus, the general rules of contract law apply to all contracts.
- Besides, the law also stipulate that, the relevant provision of the Civil Code, Book IV title XII, shall apply to obligations notwithstanding that they do not arise out of contract.

Historical development of contract law

- The historical development of contract law can be aligned with the conceptual foundations of obligations, which was traced back to ancient and classical Roman law.
- Nevertheless, the foundation of the present day law of contract were dated back to the 19th century b/c rapid expansion of trade and industry took place in the century that in turn inevitably resulted in the increments in the volume of commercial disputes as a result, people turned to the court of law for solutions.

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- ❑ As a result, there developed a body of settled rules which reflected the disputes from which they arose the prevailing belief of the time.
- ❑ However, this rules and belief are affected by the dominant economic philosophy, the so called **the laissez-faire individualism**.
- ❑ This philosophy was mirrored in the law of contract by two **assumptions-freedom of contract and equality of bargaining power**.
- ❑ According to **freedom of contract theory** it is assumed that **every one is free to choose which contracts they entered into and the terms on which they wish to do so**.
- ❑ According to **equality of bargaining power theory**, the parties were deemed to have **equal power to bargain on their business and deemed to be of equal bargaining strength**.
- ❑ These theoretical foundations of contract law produced an acceptable legal framework for the regulation of business transaction that resulted in the crystallization or codifications of contract laws across the world.

The Economic Analysis of Contract Law

- The economic analysis of contract law provides a new paradigm into contract law in terms of both defining the concept and the economic function of contract & contract law.

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- One fundamental economic principle is that if voluntary exchanges are permitted- (if a market is allowed to operate)-resources will gravitate towards their most valuable uses.
- The exchange will make not only the parties better off but will also increase the wealth of the society, assuming that the exchange does not reduce the welfare of nonparties more than it increases the welfare of the parties.
- Hence, the basic economic function of contract law is to provide a sanction for breach of promises.
- Q8:-What is the relationship between contract law and development of economy?