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The Law of Obligations

Yvonne McLaren

On a day to day basis we are likely to engage in a variety of contractual situations whether we are aware of it or not. Think of a regular routine of stopping at the coffee shop to buy our coffee and cake for our daily treat. In a legal sense this might be defined as a consumer contract with all the corresponding rights and obligations, i.e. our right to have the products as requested, free from defect or issue, and the obligation of the seller to provide our requests. Further we have an obligation to pay for the products and the seller has a right to receive remuneration for the product given. Effectively this example provides us with an introduction to the law of contract.

In the next six chapters, we will be exploring the law of obligations. As will be seen, these range from voluntary obligations we choose to enter, to obligations we owe to our fellow citizens whether we like it or not (involuntary obligations). This chapter starts with an overview of legal obligations in general and then introduces the law of contract.

What is a legal obligation?

Effectively we can say that there is a distinction between: a legal 'duty' – owed to everybody and a legal 'obligation' – owed to a specific person. So for example, you owe a duty to take reasonable care not to injure people. If you do injure someone, you may have an obligation to compensate him or her. Historically, the Scots law of obligations came from principles of Roman law, although the increased influence of English law since the 18th century means that the law in the two countries is now very similar, but please note, not identical.

During the study of contract law, the emphasis for students is to provide authority for conclusions and assertions made. The main principles of the law of obligations have been set down and developed by judicial decisions (common law), rather than enacted by Parliament (statute law or legislation).

Categories of obligations

■ **Obligations voluntarily undertaken**

Obligations may be undertaken by one person (unilateral voluntary obligations) or be undertaken by more than one party by agreement. These we may define as contracts.

■ **Obligations imposed by law**

The law imposes some obligations on us whether we want to be bound by them or not. This includes situations where someone has benefited at someone else's expense (unjustified enrichment) and where someone has caused damage or injury to another person (delict/tort), which will be further explored in Chapters 8-10 of this book.

■ **Voluntary obligations: unilateral and bilateral, gratuitous and onerous**

Unilateral gratuitous obligations and gratuitous promises

From the introductory example we saw a situation where both parties had obligations placed upon them, and generally we can say that for every right there is a corresponding obligation and for every obligation there is a right. With a gratuitous obligation only one party is legally bound. Please note that this situation is not generally regarded as enforceable in England because of the doctrine of consideration (unless written within a deed). However they may be enforceable in Scotland if certain conditions are fulfilled:

Genuine promise

It is important that the promise is genuine and is not merely expression of intention or expectation by the party. This is best seen in the following case example.

Gray v Johnson 1928 S.C. 569**Facts of the case:**

Gray claimed that Johnston had proposed to him that, if he went to live with Johnston and looked after him, he would make Gray his heir. Gray did so but Johnston died without leaving Gray his property.

Court decision:

The court dismissed Gray's claim, saying that what Johnston had said was nothing more than an expression of intention. There was no enforceable promise.

In Scotland, a promise may be binding on the promisor and does not need to be accepted by the other party in order to be binding. It must be communicated to the other person before he can rely on it.

It must be possible to prove the existence of the promise in the required way. Under s.1(2)(a)(ii) of the Requirements of Writing (Scotland) Act 1995, writing is required for the constitution of a gratuitous unilateral obligation, except an obligation undertaken in the course of business. Here we see the Scots law dynamic at play, where the obligation is prima facie assumed to exist if it is an obligation undertaken in the course of business. Previously, gratuitous obligations could only be proved by 'writ or oath.' The common law position was established via this next case.

Smith v Oliver 1911 S.C. 103**Facts of the case:**

Trustees for a church brought an action against the executors of Mrs. Oliver for payment of the cost of structural alterations to the church. They claimed that Mrs. Oliver had urged them to have the work done and had promised to leave a bequest in her will to pay for it, but she had failed to do so.

Court decision:

The promise of the bequest could only be proved by Mrs. Oliver's writ. Lord President Dunedin said: "There is in truth no contract at all averred here, merely a promise to pay. And if that is so, I suppose that it is well settled law that a gratuitous promise to pay can be proved only by writ."