

PART B
Roman Law of Obligation
Chapter 1
“General Principles of the law of obligation”

General Introduction

The law of obligation differs from the law of things that the law of **obligation** has a **personal character**.
 Law of things - issue **right to the thing** / Law of obligation is characterised by the right to claim a **specific performance** from **specific person**. This is **personal right** that can be enforced with a **personal action**(actio in personam).
 In case of a **real action**(actio in rem) **any person** who infringes a particular right can be called to account.

1. What is an OBLIGATION?

An obligation is a legal **bond** b/n 2 or more people, one of which is the **creditor**, had a **personal right** against the other party, the **debtor**, to enforce a particular **performance**, while the debtor is under an **obligation** to the creditor to **perform**.

2. Sources of obligation

Gaius - **contracts** and **delicts**

Justinian 4 sources

- **Contracts**
- **Delicts**
- **Quasi-contracts**
- **Quasi-delict**

2.1 Contracts

- **Contact that came to about through a mere agreement (contractu consensu)**
- **As a result of uttering of certain formal words(contractus verbis)**
- **Came about after delivery of thing(contractus re)**
- **As a result of writing**

To create an enforceable cont, **an additional element** had to be present(casu contractus)

Real Contract: agreement + delivery of thing = CONTRACTUS RE

Verbal C: agreement + formal words = CONTRACTUS VERBIS, eg Stipulatio

Causa Contractus: agreement + writing = CONTRACTUS LITTERIS

Contractus Consensu(consensual agreement): agreement = CONTRACTUS CONSENSU

Eg: cont purch and sale, c of letting and hiring, mandate and c of partnership

Unilateral Contracts	Reciprocal Contract	Imperfectly reciprocal C
- Give rise only to 1 obligation - One party has the duty to perform(debtor) - The other party has the right to performance(the creditor) Eg: Stipulatio A ask to B to promise 1000 B say Yes A creditor B debtor	- Give 2 obligations - Both parties have a right to performance and duties - Both parties are creditor and debtor - One's party's right is another's duty and vice versa Eg: C of purchase and sale A sells B car for 100 OBLIGATION 1 A has the right to 100(creditor) B has a obligation to pay it (debtor) OBLIGATION 2 B has the right to the car(creditor) A has the duty to deliver the car to B(debtor)	- Unilateral in principle - The debtor may have a contract claim if he suffer damages Eg: Contract of loan for use A lend B a bicycle A creditor B debtor But if A has deliberately tampered with the brakes and B falls and is injured, B has contraclaim against A.

2.2 Quasi-contract

2.3 Delict

A delict creates an obligation b/n the victim and the perpetrator if the perpetrator's unlawful act caused damage. Perpetrator is the **debtor** and he has to **compensate** the **victim(creditor)** for the damage he has suffered.

2.4 Quasi-delict

3. Classification of obligation:

3.1 Civil obligation (obligatus civiles) ius civile; They could be enforced by means of personal action

3.2 Natural obligation Cannot be enforced by means of an action. The difference b/n a civil and natural obligation was that the civil obligation were enforceable where natural NOT

3.3 Obligation stricti iuris

3.4 Obligation bona fide Enforceable by action based on a good faith.

4. Termination of Obligation

4.1 Performance

4.2 Release

4.3 Compensation: 3 requirements: Both parties had to be **claimable**; The performance had to be of a **similar nature**; The 2 debts had to have been owed by the **same parties** to whom compensation was applied

4.4 Merger

4.5 Novation Takes place when the original obligation is **replaced** by the creation of a **new obligation** in the place of the original one.