

RMM LAW COLLEGE SAHARSA

JURISPRUDENCE

Part I

Paper -1

Topic- Obligation

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The term jurisprudence derived from latin terms Juris Prudentia which means study of law or knowledge of law. Jurisprudence is the basis of legal concepts and it clearly determines the relationship of law with society as well as other disciplines. Be it a student, a practicing lawyer or a judge, jurisprudence has an educational role to play for every person associated with legal profession. The most beautiful part of jurisprudence is that it defines the basic legal concepts in the simplest manner in order to bring clarity and remove ambiguity in interpretation of legal concepts. One such legal concept that we come across is 'Obligation' under jurisprudence.

Generally, the term obligation is used as synonym of commitment and in layman's language obligation means the state of being forced to do something because it is your duty, or because of a law, etc. or as something which you must do because you have promised, because of a law, etc. But in Jurisprudence this concept has been defined more broadly and in a different way.

To get a clear idea about the nature of jurisprudence let's have a look on the definition given by Salmond on the concept of Obligation. According to Salmond- "An obligation may therefore be defined as proprietary right in personam or a duty which corresponds to such right" In Black's law dictionary obligation means moral or legal duty to do or not to do something.

From the above two definition it can be concluded that obligation is far wider than what it is generally understood as. Accordingly, it can be summed up that obligation arises from a legal relation between two persons in which one has the right over the other who has the duty towards the former. Such legal relationship arises for proprietary rights and are right in personam i.e. right against a person. Also, elements of Obligation can also be found through definition which are:

Parties: There are two parties generally, the first party is the one who is vested with the right, second one is the one on whom a duty is vested.

Legal relationship: Parties should be in legal relationship so that there can be appropriate enforcement.

Proprietary rights: Obligation arises where there is involvement of proprietary right

Right in personam: Right in personam means right against a person and against the whole world. Under obligation, there is a right in personam.

SOLIDARY

OBLIGATION

Generally, what we see is that the obligation is between two persons but solidary obligation refers to obligation where more than two persons are involved. In solidary obligation there may be two or more parties on one hand and two or more parties on the other hand. If there are two or more people who owe their duty towards a same person, such instance is example of solidary obligation. Under such circumstance the person vested with the right can make any of the several persons who are vested with the duty to perform the duty. In other words, it can be explained by keeping creditor on one hand and several debtors on the other hand who owe same debt to one creditor then such creditor can ask to pay debt from any one of the several debtors. Solidary obligation is of three kinds: Joint solidary obligation; Several solidary obligations and Joint and several solidary obligations, what we see in India is Joint and Several solidary obligations.

SOURCES

OF

OBLIGATION

There are four sources of obligation, they are as follows:
Contractual obligation: These obligations are the one that arise from the agreement between two persons.
Delictual obligation: These obligations are the one which arise from torts
Quasi-contract obligation: These are the obligations that arise from quasi contracts.

Innominate obligation: These are the obligations that don't arise from contract, quasi contracts or are not like delictual obligations.

OBLIGATION ARISING OUT OF CONTRACTS

Contracts means agreement between persons who legally bind themselves by the terms of the agreement, such agreements are enforceable by laws and thus are termed as contracts. Section 2 (h) of Indian Contracts Act defines contract as an agreement enforceable by law. Under a contract, parties to contract have the obligation to fulfil the obligations that they have made towards each other. In a contract a party promises to or to abstain from doing something in exchange of the promise made by the other person. So, we can say that there are rights and duties from both the sides of the contract which they have obligation to perform. In cases where one party is unable to perform his obligation or willfully abstains from performing his obligations then such a situation gives rise to breach of contract and the party suffering from such breach has a right to enforce the contract forcefully by the other party through the intervention of court. Rights arising out of contract are right in personam as the remedy available against is the party to the contract who makes breach of such contracts. Contracts create mutuality of obligations as both promisor and promise perform their duty and have right against each other in a contract.

OBLIGATION ARISING OUT OF TORTS

Torts is that branch of law which is considered as civil wrong i.e. it is civil in nature. Under Torts, damages are unliquidated unlike contract where

damages are liquidated in nature. Tortious liability arises from the breach of duty towards another person. Such duty is fixed by law and people are accepted to abide by such duty when they don't abide by their duty and cause harm to other person then the person against whom tort is committed has a right to claim for unliquidated damages. Hence a wrongdoer has the obligation to pay unliquidated damages towards the person against whom he commits wrong. Unliquidated damages are the one wherein the amount of compensation is not pre decided. In torts parties also don't know each other unlike contracts where parties are well known to each other. Thus, under torts the obligation is for the payment of unliquidated towards the person against whom tort is committed and such other person has a right over unliquidated damage.

OBLIGATION ARISING OUT OF QUASI CONTRACTS

Quasi contracts are the one which are not the contracts as defined earlier. These are though similar to contracts but are still different. Quasi contracts are the one which are not created by a formal agreement by the parties through their consent, these contracts are created by the intervention of the court. A quasi contract is a contract by fiction. The reason behind implementation of quasi contract is that any person who receives any type of benefit on the cost of another person then the cost on which such benefit arose should be restored back so that no harm is suffered by any person. Quasi contracts are based on equity, justice and good concise. They resemble contracts but are not actually contract they operate only after intervention of courts. There should not be any unjust

enrichment hence the person who receives such unjust enrichment has the obligation to restore the person with the cost unjustly received.

INNOMINATE OBLIGATION

Innominate obligations are the one which do not have a specific classification or name because they are not strictly contractual, deictual or quasi contractual. Obligation under this can be the obligation of trustee towards beneficiary. A trustee has a fiduciary duty towards beneficiary. A trustee is made personally liable for breach of duty which he has towards property of the beneficiary.