

The importance of the General Theory of Obligations in legal acts and in everyday life**La importancia de la Teoría General de las Obligaciones en los actos jurídicos y en la vida cotidiana**SANROMÁN-ARANDA, Roberto^{†*}*Universidad Autónoma del Estado de México, CU UAEM Valle de México, México.*ID 1st Author: *Roberto, Sanromán-Aranda* / **ORC ID:** 0000-0002-0682-6343**DOI:** 10.35429/JLE.2022.11.6.10.14

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Abstract

The theory of obligations is fundamental for the student of the law career, and the Law Degree, as well as other disciplines. All matters related to legal science have to do with obligations; For this reason, they must be studied from their origin to the present. As well as knowing what makes up the General Theory of Obligations. A large number of legal acts also involve it, for this reason we will dedicate a reflection on its origin, elements, importance, application, among other aspects, that impact us on a day-to-day basis. As well as how important it is to relate them to the ethical aspect, unless they are applied in different legal cases.

Obligation, Legal acts, Importance, Contracts, Theory**Resumen**

La teoría de las obligaciones es fundamental para el estudiante de la carrera de Derecho, y de la Licenciatura en Derecho, así como de otras disciplinas. Todas las materias relacionadas con la ciencia jurídica tienen que ver con las obligaciones; por ello, deben ser estudiadas desde su origen hasta la actualidad. Así como conocer lo que conforma la Teoría General de las Obligaciones. Un gran número de actos jurídicos también la involucran, por ello dedicaremos una reflexión sobre su origen, elementos, importancia, aplicación, entre otros aspectos, que nos impactan en el día a día. Así como lo importante que es relacionarlos con el aspecto ético, a menos que se apliquen en diferentes casos jurídicos.

Obligación, Actos jurídicos, Importancia, Contratos, Teoría

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* Correspondence from the Author (E-mail: r_sanroman31@hotmail.com)

† Researcher contributing as first author.

Introduction

The General Theory of Obligations must be known by law students as well as by professionals, insofar as they apply it in their field they will provide better solutions to the situations that arise, as well as to day-to-day problems. It should also be known by other professions, such as accountants, to name one. To the extent that the General Theory of Obligations is applied correctly and fairly, we will be more ethical, or we will comply with our society, e.g. paying taxes to finance public expenditure. Once the reflection has been developed, we will proceed with some conclusions, and end with an opportune bibliography, so that the reader who wishes to deepen the subject has material for their expansion.

General and particular aspects of the obligation and its application

The Romans were a very prosperous civilization in engineering, military, and especially in legal science, to whom we owe our bases of law. They studied and envisioned the subject of obligations, which has been defined as follows: "It consisted of a legal bond by which they were necessarily constrained to perform a service." (Jiménez, 2013: 1) It has also been conceptualized as: "A legal bond by virtue of which a person called a creditor, an active subject, has the right to demand (constrain) from another person called a debtor, a passive subject, a specific service, which may consist of giving, doing, or not doing. Likewise, said bond gives the possibility of forcing the debtor in case of non-compliance with the obligation." (Sanromán, 2018:4)

Starting from any norm, which establishes an imperative that can fix our right and impose obligations, in other cases a duty, said relationship is justified by virtue of said norm from which secondary norms can derive, which also legitimize said relationship and generate the same obligations and rights of different subjects, whether they are creditor and debtor, to fulfill a service, that is, to carry out a specific conduct and thereby fulfill the obligation in question.

From dawn until dusk we are involved in many legal acts, which involve us with different people, whether physical or moral, whether we enter into a contract, carry out a banking transaction, some administrative procedure before a government agency, among others. Continuing with the same idea, at the moment we carry out said acts we are acquiring rights and obligations, facing a third party called creditor, who can demand a specific service from us, such as paying for the object we acquired in the case of a sale, subjecting ourselves to certain obligations with the bank when obtaining a credit card, or acquiring rights and obligations before a government agency to obtain a construction permit, as we can see we obligate ourselves to many things without being fully aware of how relevant they can be.

Undoubtedly, committing ourselves will bring us the realization of a conduct that could be the delivery of an object or money, for the sale of a television; carrying out a specific conduct, such as defending a client in a judicial process in the provision of professional services; or refraining from another e.g. an exclusive pact to sell a product in a certain area, not being able to do it anywhere else. Since we will be complying with the obligation to the extent that we do not carry out a specific conduct.

It is important to remember that the sources of obligations are found in civil legislation, which are: contracts, unilateral declaration of will, business management, illicit act, objective liability, professional risk. These sources are involved in the law career, as is the case of the civil subject in its different courses, the criminal subject which, in the case of the commission of a fraud crime, will have as a basis the illegitimate enrichment contained in the civil code and material. According to the above, other areas of law draw on the essence of obligations contained in civil legislation to be applied in their respective fields. This underscores the importance of the general theory of obligations throughout a student's legal education.

To provide a more explicit example, consider tax law. A significant portion of the population, whether domestic or foreign, natural or legal persons, is obligated to contribute to the state. Therefore, they must comply with the obligations associated with that burden, and all of its elements come into play.

This is not the only subject in which this can occur; rather, as previously mentioned, it applies to all subjects in the legal field and even in other professional disciplines.

To clarify the matter at hand, we can say that if tax law requires payment of a tax to fund public spending, the power of the state to demand that tax arises from the Constitution of the United Mexican States, which in Article 31 states: "Article 31. The Mexicans' obligations are as follows:

IV. To contribute to public spending, both the Federation and the States, the City of Mexico, and the Municipality where they reside, in the proportional and equitable manner prescribed by law."

The obligation of Mexicans is based on the preceding precept, as well as its regulatory law, which is established in the Federal Tax Code. The Code states in Article 1 that natural and legal persons are obliged to contribute to public spending in accordance with the respective tax laws. The provisions of this Code shall apply in the absence of contrary provisions in international treaties to which Mexico is a party. Only by law can a contribution be earmarked for a specific public spending.

Furthermore, Article 5 of the same Code establishes that tax provisions that impose burdens on private parties and those that indicate exceptions to such burdens, as well as those that establish infractions and sanctions, shall be strictly applied. Rules that refer to the subject, object, base, rate, or tariff are considered to impose burdens on private parties. Other tax provisions shall be interpreted by applying any method of legal interpretation. In the absence of express tax regulations, the provisions of the common federal law shall be applied supplementary when their application is not contrary to the nature of tax law.

Based on the above, we can deduce that the Constitution establishes the obligation that generates the tax burden. The Federal Tax Code as regulatory law stipulates who is obliged to pay taxes, according to Article 1, and Article 5 specifies the subjects, recognizing that there is an active subject, namely the authority, in this case, the Secretariat of Finance and Public Credit (SHCP), through the Tax Administration Service (SAT).

The passive subject is private parties and persons referred to in that provision, among others. What legitimizes the collection of the tax is contained in the same Federal Tax Code and Special Laws, depending on the type of tax involved, such as the Income Tax Law. The direct object of the obligation will be the relationship between creditor and debtor, which generates rights and obligations. As soon as I receive income, I fall within the legal framework of the law in question, in this case, the aforementioned Code, which generates the payment of the tax burden. Finally, the performance required is to pay a sum of money as tax payment based on the same Code, derived from the Political Constitution of the United Mexican States as the Supreme Law and the Federal Tax Code as the Regulatory Law, and the Income Tax Law as the Special Law. In conclusion, "Thus, the tax obligation is the duty that the tax liability holder has in favor of the treasury, which is the entity entitled to demand compliance." (Rodríguez, 1997: 1186).

In light of the foregoing, and as we have already mentioned, other examples can be presented in various examples in different subjects of the Law Degree can be found, so it is only necessary to break down the assumption to apply it and understand how important the General Theory of Obligations is for Law students and future lawyers. It is even used in the development of the Bachelor of Law and other careers where it is also utilized, for example, the Bachelor of Public Accounting.

Just as there are fiscal obligations, there are also labor, commercial, administrative, criminal, among others, and all of them take their general theory from civil law to apply it in their field, their object of study, and to ground it in the daily aspect of human relationships in accordance with their specialty and area of knowledge.

As mentioned before, being aware of the importance of celebrating any legal act, due to its implications in its field, we must understand all aspects of the General Theory of Obligations, its sources, modalities, transmission, effects, and extinction of obligations to apply them when we find ourselves in a situation and solve different problems within its legal sphere, and above all, apply justice, that is, give each person what belongs to them. In this way, its existence in the society to which it is directed is justified.

Complying with an obligation in accordance with what is agreed upon or what the law says, will be just to the extent that the agreement is fair or the law itself is fair, except for a public order law that could be unjust for one party. However, as it must benefit the community, or if a contract stipulates it as a specific obligation, the obligation imposed on the governed or the person to whom that norm is directed will be justified. For example, a worker in labor law has the obligation to attend a specific training course required by the employer, which will benefit the workers of that company, contributing to better work quality, even if the worker does not like the course. Another example is that a company has the obligation not to monopolize the entire market to sell its products since it would constitute a monopoly, which would go against the Federal Law of Economic Competition, benefiting an entire society both as a consumer and producer, commercial, or of any other kind.

I believe that every law student and professional, when applying their specialization, must keep in mind the General Theory of Obligations, seeking justice and, in some cases, equity to solve the problems or situations that arise. Obligations must be related to ethical principles, in more detail: "Therefore, we affirm that civil obligations must be united with the ethical principles and values of the professional, since in practice, they often lack these principles" (Sanromán, et al., 2015:335).

It is clear that if some universities offer only one course in obligations, they should stop at some aspects of this theory in each different course, depending on their field of study, to raise awareness among students, future lawyers, in this subject, and thus have a more complete view to give an opinion or solution to situations that arise both in the classroom and in their professional practice and in the national or international sphere.

The General Theory of Obligations is an area in which there are many treatises, however, the lack of introducing and exemplifying ethical principles in it is fundamental, since many times we comply with a norm or a contract without stopping to see the benefits that it may represent in terms of what is fair and the values being applied.

This gives greater importance in its field and awareness for those who will apply and fulfill it, as well as benefiting the contracting parties or the society that may represent a better quality of life for its inhabitants. Therefore, I also believe that the authorities should create more public policies that embody this essence, since in doing so, their existence will be justified and they will better serve the community to which they owe their service.

From all of the above, we can conclude:

- Obligation is understood as the legal link between a creditor who can demand a debtor to fulfill an obligation that can consist of giving, doing, or refraining from doing something.
- This legal link is generated by obligation, which can be created by a norm or even a legal fact, to fulfill a certain obligation.
- The General Theory of Obligations is fundamental for all subjects in the field of law, as they are applied in each of them.
- Each subject in the field of law uses the General Theory of Obligations according to their specific needs in their daily work.
- Understanding the General Theory of Obligations and being aware of the rights and obligations it generates will give us greater confidence in fulfilling them and the consequences that may arise.
- I believe that in each course in the field of law, the teacher should reflect on the importance of obligations in their respective subject, both in a national and international context.
- The more just or equitable we are in applying the General Theory of Obligations, the more ethically we will fulfill our profession.
- Paying taxes to cover public expenses is an obligation that fulfills our responsibility to society, even if it does not seem to benefit everyone in that community.

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