

OBLIGATIONS

Obligations: Law and Language is the first work of its kind to examine in depth the fundamental language used by courts, legislators, and academic commentators when describing the nature of obligations law. A comparative perspective is taken, examining the law of England, Scotland, the United States, Canada, and Australia, and an in-depth analysis is provided of the major legal commentaries, statutes, and case law from each jurisdiction. In exploring such fundamental words as obligation, liability, debt, conditional, unilateral, mutual, and gratuitous, the author examines the often confusing and contradictory ways in which basic structural language has been used, and brings clarity to a core area of legal theory and practice.

MARTIN HOGG has researched and published extensively in the field of obligations law, from both a national and comparative perspective, for over twenty years. He is the author of two monographs, the most recent being *Promises and Contract Law: Comparative Perspectives* (Cambridge University Press, 2011, reprinted 2014). He is a member of the European Centre for Tort and Insurance Law, and a former editor of the *Edinburgh Law Review*.

OBLIGATIONS

Law and Language

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PREFACE

This is a book about legal language and the way it is used to analyse and classify obligations. Some lawyers and law students have no interest in such matters – this is not a book for them. But this work is more than simply a book about legal language: it is also about the law in practice, for the linguistic and taxonomic matters with which it is principally concerned have often aided (and alas sometimes hindered) the courts in reaching decisions about when and how obligations should be enforced. The language used by lawyers is not mere semantics, and if there is one principal lesson to be drawn from the legal tale that follows, it is that lawyers need to be precise in using language, not least of all the fundamental structural language of obligations law, which is the focus of this book.

This book is frequently concerned with the obfuscation which abounds in relation to fundamental structural language. It is hoped that some of that obfuscation may have been resolved by the analysis contained within the pages of this book, and that readers will find some useful suggestions for improving the ways in which obligations are described and analysed.

This book is also historical and comparative in its scope, the comparative focus being on the law and language of England, Scotland, the United States, Canada, and Australia, in other words on those English-speaking jurisdictions of the legal world which have had the most influence on the development of the law of obligations. In addition, English language model law also offers useful material for mining, and some model codes are examined in this book. The book focuses on English language terms; the influence of non-English-speaking legal systems on the usage of English terminology has unsurprisingly been limited. But there are two important exceptions. First, the Greek and Latin origins of much of the English terms analysed makes an analysis of Greek thought and Roman law a necessary part of a historical study of the linguistic and legal development. Second, translations of some works from non-English-speaking jurisdictions have been influential in the adoption of, and

interpretation of, English language terms. The translation of Pothier's work into English is a prime example. So, an analysis of non-English language is undertaken when appropriate.

Trends in linguistic usage are traced over time, and observations made on divergent usage between jurisdictions. It is hoped that this historical and comparative approach will offer useful insights into how borrowings might continue to be made by legal systems from helpful linguistic usage in other systems, and how confusing usages might be abandoned. The reader will be the judge of the extent to which the methodology adopted is successful in aiding comparative scholarship.

In pursuing and deepening my long-standing interest in the language of the law of obligations, I have benefited over many years from discussions with my students and with colleagues at the Edinburgh Law School and elsewhere. I am in their debt. I am also in the debt of the efficient staff of Cambridge University Press, and of my copy editor, all of whom have played a part in bringing this work to fruition.

*Martin Hogg,
18 November 2016.*

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