#### CHAPITRE 1: LES SOURCES DES OBLIGATIONS

Obligation: lien de droit entre deux ou plusieurs personnes. Si l'on prend le lien entre 2 personnes, c'est le créancier (coté positif de l'obligation) et le débiteur (coté négatif de l'obligation).

Il y a 2 types d'obligations :

- L'obligation civile, signifie qu'en cas de non respect de cette obligation celle ci à vocation a être sanctionner par l'intervention judiciaire. Le créancier va pouvoir faire valoir son obligation auprès des juges.
- L'obligation naturelle, elle a cette particularité de ne pas pouvoir être sanctionner par le juge.
   Elle est très proche d'un devoir morale.

En droit il y a 5 sources d'obligations.

#### 1 / Les obligations d'origine légale

Les obligations d'origine légale sont très nombreuses et sont étudiées avec la branche du droit qui les prévoit : c'est ainsi que l'obligation alimentaire, par exemple, est étudiée avec le droit des personnes et de la famille.

#### II / Les obligations d'origine délictuelle ou quasi-délictuelle

Article 1240 : « tout fait quelconque de l'homme, qui cause à autrui un dommage, oblige celui par la faute duquel il est arrivé, à le réparer ».

Il ne faut pas confondre la responsabilité civile avec la responsabilité pénale. La responsabilité pénale a pour obj de sanctionner un comportement d'un individu, ou d'une société. L'obj de la responsabilité civile est de réparer le dommage qui a été causé à autrui.

La différence entre une responsabilité civile délictuelle ou quasi-délictuelle :

- Quasi-délictuelle : le dommage est causé de manière non intentionnelle (par imprudence, inconscience...).
- Délictuelle : le dommage causé par autrui a été provoque de manière intentionnelle.

La responsabilité civile délictuelle ou quasi-délictuelle doit être également distinguer de la responsabilité civile contractuelle.

#### III / Les obligations d'origine quasi-contractuelle

Avec le quasi-contrat, une obligation nait, pour celui qui en profite d'un fait accompli par une autre personne, en dehors de tout contrat, mais qui engendre des conséquences comparables à celles qui naitraient d'un contrat.

#### 1) La gestion d'affaire

Selon l'article 1301, « celui qui, sans y être tenu, gère sciemment et utilement l'affaire d'autrui, à l'insu ou sans opposition du maître de cette affaire, est soumis, dans l'accomplissement des actes juridiques et matériels de sa gestion, à toutes les obligations d'un mandataire. »

En outre, le gérant « est tenu d'apporter à la gestion de l'affaire tous les soins d'une personne raisonnable ; il doit poursuivre la gestion jusqu'à ce que le maître de l'affaire ou son successeur soit en mesure d'y pourvoir.» (article 1301-1).

# **Les Sources Des Obligations**

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