

**THE BASIS OF CONTRACTUAL LIABILITY IN
INDIGENOUS LAW**

by

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Summary

This study examines the basis of contractual liability in indigenous law. It concludes that contractual liability arises only from real contracts where one party has performed fully or partially in terms of an agreement. Attention is given to both the nature and concept of indigenous contracts to ascertain the function of contracts in indigenous societies in order to bring a holistic perspective to the topic.

It is demonstrated that the settlement of disputes arising out of indigenous contracts is primarily focused on the reconciliation of people and the consequent maintenance of harmony within the community. The foremost concern in indigenous law of contract is with human justice rather than with strict legal justice, and expression is thereby given to prevailing community values.

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Key terms

Indigenous law; real nature; concept of contract; social setting; relations between people; community harmony; human justice; elements of contracts; contractual liability; performance or part performance; disputes from contracts; reconciliation of people.