

# Table of Contents

|  |    |
|--|----|
| The Authors  | 3  |
| Preface to the 3rd Edition   | 5  |
| Preface to the 2nd Edition   | 7  |
| Preface to the 1st Edition   | 9  |
| List of Abbreviations  | 21 |
| General Introduction   | 23 |
| §1. THE GENERAL BACKGROUND OF THE COUNTRY                                      | 23 |
| §2. THE PLACE OF THE GREEK LEGAL SYSTEM IN THE LEGAL FAMILIES                  | 24 |
| §3. PRIMACY OF LEGISLATION AND THE POSITION OF THE JUDICIARY                   | 26 |
| §4. DISTINCTION BETWEEN PUBLIC LAW AND PRIVATE LAW<br>ADMINISTRATIVE CONTRACTS | 28 |
| §5. DISTINCTION BETWEEN CIVIL LAW AND COMMERCIAL LAW                           | 29 |
| Introduction to the Law of Contract  | 31 |
| §1. DEFINITION OF CONTRACT: THE CONTRACT AS A SOURCE OF<br>OBLIGATIONS         | 31 |
| I. Contract in General and Promissory (Obligating) Contract                    | 31 |
| II. The Contract as a Declaration of Will                                      | 32 |
| III. Accommodation Agreements: Natural Obligations                             | 32 |
| IV. The Contract as a Main Source of Obligations: The Concept of<br>Obligation | 33 |
| V. Distinction between Rights In Personam and Rights In Rem                    | 35 |
| §2. HISTORICAL BACKGROUND OF THE LAW OF CONTRACT                               | 37 |
|  | 11 |

## Table of Contents

|   |    |
|---|----|
| §3. CLASSIFICATION OF CONTRACTS                                       | 39 |
| I. Nominate and Innominate Contracts: Compound (Mixed) Contracts      | 40 |
| II. Consensual and Delivery Contracts                                 | 41 |
| III. Onerous and Gratuitous Contracts: Aleatory Contracts             | 42 |
| IV. Reciprocal (or Synallagmatic) and Unilaterally Charging Contracts | 43 |
| V. Adhesion Contracts ( <i>Contrats D' Adhésion</i> )                 | 43 |
| VI. Contracts ' <i>Intuitu Personae</i> '                             | 45 |
| VII. <i>De Facto</i> Contractual Relations                            | 46 |
| §4. CONTRACTS AND TORTS   | 48 |
| I. Tortious Liability   | 48 |
| II. Comparison with Contractual Liability                             | 49 |
| III. Concurrence of the Two Liabilities                               | 50 |
| §5. CONTRACTS AND QUASI-CONTRACTS: OTHER SOURCES OF OBLIGATIONS       | 51 |
| §6. CONTRACT AND TRUST  | 52 |
| §7. CONTRACT AND THE LAW OF PROPERTY                                  | 55 |
| I. General  | 55 |
| II. Transfer of Ownership over an Immovable                           | 55 |
| III. Transfer of Ownership over a Movable                             | 56 |
| §8. GOOD FAITH AND FAIR DEALING: THE RELATED GENERAL CLAUSES          | 57 |
| I. The Rule on Good Faith (Article 288 CC)                            | 57 |
| II. Related Provisions  | 61 |
| §9. STYLE OF CONTRACT DRAFTING  | 63 |
| §10. SOURCES OF THE LAW OF CONTRACTS                                  | 64 |
| Part I. General Principles of the Law of Contract                     | 67 |
| Chapter 1. Formation  | 67 |
| §1. AGREEMENT AND <i>QUID PRO QUO</i> (RECIPROCITY)                   | 67 |
| I. Offer and Acceptance   | 67 |
| A. General  | 67 |
| B. Offer  | 67 |
| C. Acceptance: Conclusion of a Contract                               | 70 |
| II. Intention to Create Legal Relations                               | 71 |
| III. Consideration  | 71 |
| §2. FORMAL AND EVIDENTIAL REQUIREMENTS                                | 73 |
| I. Formal Requirements  | 73 |



## Table of Contents

|   |     |
|---|-----|
| II. Evidential Requirements: Proof – Legal Presumptions                             | 74  |
| III. Burden of Proof  | 77  |
| §3. LIABILITY AND NEGOTIATIONS  | 78  |
| I. Grounds of Precontractual Liability  | 78  |
| II. Conditions of Liability: Particularly Bona Fide Conduct                         | 79  |
| III. Consequences: Negative Interest  | 80  |
| Chapter 2. Conditions of Substantive Validity                                       | 83  |
| §1. CAPACITY OF THE PARTIES   | 83  |
| I. Incapacity and Limited Capacity to<br>Conclude Juridical Acts                    | 83  |
| II. Capacity of Legal Persons   | 85  |
| §2. DEFECTS OF CONSENT  | 86  |
| I. Simulated Declaration  | 87  |
| II. Error: Dissent  | 88  |
| A. Error as to the Declaration, the Will, the Qualities                             | 88  |
| 1. Error as to the Declaration  | 89  |
| 2. Error as to the Will: Borderline Cases   | 91  |
| 3. Error as to Qualities: As to Identity  | 94  |
| 4. Preclusion of Annulment: Compensation  | 96  |
| B. Common Error: Dissent  | 97  |
| C. Conclusions: The Material Criteria of<br>the Law on Error                        | 99  |
| III. Other Defects of the Will  | 102 |
| A. Fraud  | 102 |
| B. Duress   | 102 |
| §3. OTHER CONDITIONS OF VALIDITY  | 103 |
| I. Existing and Licit Cause   | 103 |
| A. The Cause in Contracts: Freedom of Contract                                      | 103 |
| B. Non-causal (Abstract) Promissory Contracts                                       | 104 |
| C. Licit Cause  | 105 |
| II. Determined or Determinable, Possible and<br>Licit Object                        | 106 |
| III. Initial Impossibility  | 106 |
| IV. Illegality and Public Policy  | 107 |
| §4. THE CONSEQUENCES OF A DEFECT OF CONSENT OR OF A LACK OF<br>SUBSTANTIVE VALIDITY | 109 |
| I. Nullity: Voidability and Annulment – Damages                                     | 109 |
| II. Instances of Nullity: Distinctions  | 111 |
| III. Instances of Voidability   | 112 |

## Table of Contents

|  |     |
|--|-----|
| Chapter 3. The Contents of the Contract  | 113 |
| §1. THE DIFFERENT CLAUSES  | 113 |
| I. The Terms of the Contract and Their Effect  | 113 |
| II. Implied Terms: Supplementary Terms   | 113 |
| III. Exoneration Clauses   | 115 |
| IV. Penalty Clauses: Earnest   | 118 |
| A. Shared Characteristics of and Differences between Earnest and Penalty Clause                      | 118 |
| B. Forfeiture of the Earnest or Penalty  | 120 |
| C. Relation between Earnest and Penalty Clause and a Claim for Performance or Claim for Compensation | 120 |
| D. Excessive Penalty or Earnest  | 121 |
| V. Arbitration Clauses   | 121 |
| §2. INTERPRETATION OF THE CONTRACT   | 122 |
| I. The Regulation of the Civil Code: Purpose of Interpretation                                       | 122 |
| II. Method and Criteria of Interpretation  | 122 |
| III. Filling of Gaps in a Juridical Act  | 124 |
| IV. Procedural Issues  | 125 |
| §3. CONDITIONAL CONTRACTS  | 126 |
| I. Concept, Distinctions   | 126 |
| II. The Effect of a Condition  | 127 |
| III. Terms (Time Clauses).   | 129 |
| Chapter 4. Privity of Contract: The Parties of the Contractual Obligation                            | 130 |
| §1. THE CONTRACTING AND THIRD PARTIES  | 130 |
| I. The Principle and the Exceptions  | 130 |
| A. The Relativity of Obligations: Plurality of Parties   | 130 |
| B. Exceptions: Subcontracting and Other Cases  | 132 |
| II. Contracts in Favour of or Burdening a Third Party  | 136 |
| A. Contract in Favour of a Third Party   | 136 |
| 1. General: The Position in Law of the Third Party   | 136 |
| 2. The Relations between the Three Parties   | 138 |
| 3. Anomalous Development of the Contract in Favour of a Third Party                                  | 139 |
| B. Contracts Burdening a Third Party   | 139 |
| §2. TRANSFER OF CONTRACTUAL RIGHTS OR DEBTS  | 140 |
| I. Assignment of a Claim   | 140 |
| A. General: Conditions   | 140 |
| B. Effects of Assignment   | 142 |



## Table of Contents

|   |         |
|---|---------|
| II. Assumption of Debt: Liberation Promise                                      | 144     |
| A. Cumulative, Privative Assumption of Debt                                     | 144     |
| 1. General: Conditions  | 144     |
| 2. Effects  | 144     |
| B. Liberation Promise   | 146     |
| §3. <i>ACTIO PAULIANA</i> (CREDITORS' DEFRAUDING)                               | 146     |
| I. Conditions of Creditors' Defrauding  | 147     |
| II. Effects   | 148     |
| <br>Chapter 5. Performance and Termination of the Contract                      | <br>149 |
| §1. NORMAL PERFORMANCE AND TERMINATION OF THE CONTRACT                          | 149     |
| I. Place, Time of the Performance: Partial Performance                          | 149     |
| A. Place of Performance   | 149     |
| B. Time of Performance  | 150     |
| C. Partial Performance  | 150     |
| II. Suspensive Pleas of Non-performance   | 151     |
| A. Right or Plea of Retention (Lien)  | 151     |
| B. Plea 'of Unperformed Contract' ( <i>non adimpleti contractus</i> )           | 152     |
| III. Monetary Obligations   | 152     |
| IV. Termination by Payment  | 154     |
| A. Concept and Legal Nature of Payment: Payment to Third Parties                | 154     |
| B. Payment by Third Parties   | 156     |
| §2. DISCHARGE BY AGREEMENT  | 157     |
| I. <i>Actus Contrarius</i> : Release of Debt                                    | 157     |
| II. Other Performance in Lieu of Payment: Promise in Lieu of Payment – Novation | 158     |
| §3. IRREGULAR TERMINATION   | 159     |
| I. General: The Cases of Frustration, Impossibility and Breach of Contract      | 159     |
| II. Deposit with a Public Body  | 160     |
| III. Set-Off  | 161     |
| A. Types of Set-Off   | 161     |
| B. Unilateral Set-Off   | 162     |
| 1. Conditions   | 162     |
| 2. Exercise: Effects  | 162     |
| 3. Related Concepts   | 163     |
| IV. Merger  | 163     |
| V. Frustration or Achievement of the Purpose of the Obligation by Other Means   | 163     |

## Table of Contents

|  |     |
|--|-----|
| Chapter 6. Remedies in Case of Non-performance   | 164 |
| §1. GENERAL PROVISIONS: CLAIM FOR PERFORMANCE  | 164 |
| §2. THE SIGNIFICANCE OF <i>FAULT</i> IN CASES OF NON-PERFORMANCE   | 167 |
| I. The Fault Principle   | 167 |
| II. Imputability   | 168 |
| III. Negligence in Particular: Its Relation to Unlawfulness  | 169 |
| IV. Types of Negligence: Chance Events – Force Majeure   | 171 |
| V. Procedural Issues   | 173 |
| §3. BREACH OF CONTRACT   | 173 |
| I. Impossibility of Performance  | 174 |
| A. In the Case of All Obligations  | 174 |
| B. Particularly in the Case of Reciprocal Contracts  | 178 |
| II. Default of the Debtor: Delay without Fault   | 182 |
| A. In the Case of All Obligations  | 182 |
| B. Particularly in the Case of Reciprocal Contracts  | 185 |
| III. Performance Not Duly Fulfilled  | 186 |
| A. In the Case of All Obligations  | 186 |
| B. Particularly in the Case of Reciprocal Contracts  | 187 |
| IV. Rescission: Restitution  | 188 |
| A. Grounds for Rescission  | 188 |
| B. Exercise of the Right of Rescission   | 188 |
| C. Effects of Rescission: Restitution  | 188 |
| §4. DEFAULT OF THE CREDITOR  | 189 |
| I. Conditions  | 189 |
| II. Effects and Lifting of Default   | 190 |
| III. Borderline Cases between Creditor's Default and Impossibility of Performance  | 191 |
| §5. UNFORESEEN CHANGE IN CIRCUMSTANCES: THE PROBLEM OF FRUSTRATION OF CONTRACTS – TERMINATION OF CONTRACTS FOR 'SERIOUS REASON'    | 191 |
| I. Introductory Remarks: <i>Pacta sunt servanda</i> versus <i>Clausula rebus sic stantibus</i> and Restorative Contractual Justice | 191 |
| II. Greek Law  | 193 |
| A. General Remarks on the Statutory Provision on Supervening Hardship  | 193 |
| B. Conditions  | 195 |
| C. Effects   | 196 |
| D. Practical Application of the Provision  | 197 |
| E. Waiver  | 198 |
| III. German Law and the Recent Legislative Intervention  | 200 |
| IV. Termination of a Contract for 'Serious Reason' by Virtue of Article 288 CC   | 201 |



|  |     |
|--|-----|
| §6. DAMAGES  | 202 |
| I. General   | 202 |
| II. Damage and Its Varieties   | 203 |
| A. Damage as a Difference in the Status of Property: In Natura and Monetary Compensation   | 203 |
| B. Positive Damage ( <i>damnum emergens</i> ) and Loss of Profit ( <i>lucrum cessans</i> ) | 205 |
| C. Actual and Abstract Damage  | 206 |
| III. Causal Relation   | 207 |
| IV. Compensation of Damage and Profit ( <i>compensatio lucri cum damno</i> )               | 209 |
| V. Contributory (Concurrent) Fault   | 212 |
| §7. LIMITATION OF ACTIONS (PRESCRIPTION)   | 213 |
| Part II. Specific Obligations  | 217 |
| Chapter 1. Special Contracts   | 219 |
| §1. AGENCY (MANDATE: REPRESENTATION)   | 219 |
| I. General   | 219 |
| II. Mandate  | 220 |
| III. Representation  | 221 |
| A. Direct or Indirect Representation   | 221 |
| B. The Person of the Representative  | 222 |
| C. The Granting of Power of Attorney   | 222 |
| D. Lack of Power of Attorney   | 223 |
| E. Self-Contracting  | 224 |
| §2. SALE OF GOODS: EXCHANGE  | 224 |
| I. Meaning: Conditions for Sale – Exchange   | 224 |
| II. Obligations of the Vendor: His Liability for Defects                                   | 226 |
| A. Primary and Collateral Obligations: Defects in Title                                    | 226 |
| B. Defects of the Thing and Lack of Agreed Qualities                                       | 227 |
| C. Exoneration Clauses   | 230 |
| III. Obligations of the Purchaser: Time of Undertaking of the Risk by the Purchaser        | 230 |
| IV. Particular Kinds of Sale   | 232 |
| §3. CONTRACT FOR WORK  | 233 |
| I. Meaning: Kinds – Distinction from Related Contracts                                     | 233 |
| II. Obligations of the Parties   | 234 |
| A. The Contractor  | 234 |
| B. The Master of the Work: Transfer of Risks to Him  | 234 |
| III. Premature Dissolution of the Contract   | 235 |

## Table of Contents

|  |     |
|--|-----|
| §4. CONTRACTS OF LEASE   | 235 |
| I. Meaning: Principal Obligations of the Parties   | 235 |
| II. Means of Protection of the Contracting Parties   | 237 |
| III. Particular Lease Relationships and Similar Contracts  | 238 |
| A. Family Home   | 238 |
| B. Lease of a Residence  | 239 |
| C. Business and Professional Premises  | 239 |
| D. Usufructuary Lease (Lease of Agricultural Land or Other<br>Fruit-Bearing Thing and Lease of Land in Consideration of a Share<br>in the Produce) | 239 |
| E. Leasing   | 240 |
| §5. GUARANTEE CONTRACT (SURETYSHIP, PERSONAL SECURITY). REAL<br>SECURITIES: PLEDGE – MORTGAGE  | 240 |
| I. General Provisions on Guarantee   | 240 |
| II. The Relations of the Parties to the Guarantee  | 242 |
| III. Pledge, Mortgage  | 243 |
| §6. CONTRACT OF CIVIL PARTNERSHIP  | 244 |
| §7. OTHER NOMINATE CONTRACTS AND UNILATERAL ACTS   | 245 |
| I. Loan: Loan for Use  | 245 |
| II. Special Forms of Bailment (Deposit: Sequestration)   | 246 |
| III. Donation  | 248 |
| IV. Aleatory Contracts (Life Annuity: Games, Wagers)   | 248 |
| V. Compromise  | 249 |
| VI. Delegation (Instrument Ordering Payment): Bearer Bonds   | 250 |
| VII. Brokerage   | 250 |
| VIII. Public Announcement of Reward  | 250 |
| IX. Responsibility of Innkeepers   | 251 |
| Chapter 2. The So-Called ‘Quasi-Contracts’   | 252 |
| §1. UNJUST ENRICHMENT  | 252 |
| I. Basic Characteristics of the Obligation   | 252 |
| A. General   | 252 |
| B. Independence of the Obligation  | 253 |
| C. Nature of the Claim   | 254 |
| D. A General Unitary Claim   | 255 |
| E. The Subsidiarity of the Claim   | 257 |
| II. Conditions for the Claim   | 257 |
| A. Enrichment of the Defendant: Impoverishment of the<br>Plaintiff – Causal Relation   | 257 |
| B. Lack of Lawful Cause  | 258 |



## Table of Contents

|   |     |
|---|-----|
| III. Implementation of the Institution in Trilateral Relations and Reciprocal Contracts | 262 |
| A. Trilateral Relations   | 262 |
| B. Reciprocal Contracts   | 264 |
| IV. Effects   | 265 |
| §2. MANAGEMENT OF ANOTHER'S AFFAIRS ( <i>NEGOTIORUM GESTIO</i> )                        | 267 |
| I. Concept: Kinds   | 267 |
| II. Obligations and Liability of the Manager in Genuine <i>Negotiorum Gestio</i>        | 268 |
| III. Rights of the Manager in Genuine <i>Negotiorum Gestio</i>                          | 269 |
| IV. Special Cases   | 269 |
| Selected Bibliography   | 271 |
| Index   | 277 |