

Contents

<i>Table of Legal Sources</i>	xi
<i>Table of Ancient Non-Legal Sources</i>	xix
<i>Introduction</i>	xx
1. Obligations: The Conceptual Map	I
1. Definition: What is an Obligation?	2
2. Differentiation: Where do Obligations Fit in the Roman View of the Law?	5
i. The difference between rights <i>in rem</i> and <i>in personam</i>	II
ii. Differences between Gaius and Justinian	IS
iii. Outside the institutional scheme	16
3. Internal Organisation: How Are Obligations Arranged?	16
i. The classification of obligations used by Gaius	17
ii. The classification of obligations in Stair	20
Part I. Contracts	
2. The Organisation of Roman Contract	26
1. Arrangement of the List in Gaius's and Justinian's Institutes	31
2. Formal and Informal Contracts	33
3. The Contract <i>Litteris</i> and the Rôle of Writing Generally	37
1. Justinian's Contract <i>Litteris</i>	41
2. The Rôle of Writing Outside Contracts <i>Litteris</i>	42
3. <i>Arra</i>	44
4. Writing and Stipulations	49
4. Contracts <i>Verbis</i>	52
1. <i>Dotis Dictio</i> (Declaration of Dowry)	52
2. <i>Iusiurandum Liberti</i> (Freedman's Oath)	52
3. <i>Stipulatio</i> (Stipulation)	53
i. What was the formality?	53
ii. Why did stipulation not develop into a general law of contract complete in itself?	57
iii. What limits were there on the scope of stipulation?	59
iv. Special applications of stipulation	62

5. Contracts <i>Consensu</i>	65
1. <i>Emptio-Venditio</i> (Sale)	66
i. The <i>demonstratio</i>	67
ii. The <i>intentio</i>	78
iii. The action against the buyer	90
iv. Risk (<i>periculum</i>)	92
v. The passing of property	95
2. <i>Locatio-Conductio</i> (Hire)	97
i. The <i>demonstratio</i>	98
ii. The <i>intentio</i>	103
3. <i>Societas</i> (Partnership)	110
i. The <i>demonstratio</i>	111
ii. The <i>intentio</i>	113
iii. The <i>condemnatio</i>	118
4. <i>Mandatum</i> (Mandate, Commission or Agency)	118
i. The <i>demonstratio</i>	119
ii. The <i>intentio</i>	123
iii. Special applications	126
6. Contracts <i>Re</i>	129
1. <i>Mutuum</i> (Loan for Consumption)	131
2. <i>Commodatum</i> (Loan for Use)	135
i. The <i>demonstratio</i>	136
ii. The <i>intentio</i>	137
3. <i>Depositum</i> (Deposit)	142
i. The <i>demonstratio</i>	143
ii. The <i>intentio</i>	145
4. <i>Pignus</i> (Pledge)	146
i. The contract of <i>pignus</i> : the relationship between pledgor and pledgee	149
ii. The relationship between pledgee and <i>res</i>	151

Part II. Delicts

7. <i>Furtum</i> (Theft)	158
1. The Action	158
2. Paul's Definition	159
3. The Intent	161
4. The Act	165
i. What did <i>contrectatio</i> mean to the high classics?	166
ii. What did <i>contrectatio</i> mean to Justinian?	170
iii. Was there an earlier doctrine and nomenclature?	170
5. The Absence of Consent	174

6. Liability for Helping	177
7. Claiming the <i>Res</i>	180
8. A Variety of Penalties	182
8. <i>Rapina</i> (Robbery)	188
9. <i>Damnum Iniuria Datum</i> (Loss Wrongfully Caused)	192
1. The Shape of the Delict	192
2. The Statute	192
3. Interpretation in the Statutory Core	195
i. Has the plaintiff suffered loss (<i>damnum</i>)?	195
ii. Did that loss arise from a thing spoiled (<i>res corrupta</i>)?	196
iii. Did the spoiled thing belong to the plaintiff (<i>res actoris</i>)?	197
iv. Did the defendant do the spoiling ' <i>corpore suo</i> '?	198
v. Did the defendant do the harm wrongfully (<i>iniuria</i>)?	202
4. The Praetorian Periphery	210
i. Has the plaintiff suffered loss (<i>damnum</i>)?	210
ii. Did that loss arise from a thing spoiled (<i>res corrupta</i>)?	210
iii. Did the spoiled thing belong to the plaintiff (<i>res actoris</i>)?	211
iv. Did the defendant do the spoiling ' <i>corpore suo</i> '?	212
v. Did the defendant do the harm wrongfully (<i>iniuria</i>)?	212
5. The Measure of Recovery	215
i. <i>Lis crescit</i> (the suit enlarges)	215
ii. The original measure	216
iii. Full value under chapter III?	217
iv. The measure in high classical law	218
10. <i>Iniuria</i> (Contempt)	221
1. The Name of the Delict	222
2. The Action	222
3. The Measure of Recovery	224
4. The Edictal Provisions	226
i. Of <i>convicium</i> (shouted invective)	226
ii. Of affronts to sexual propriety	227
iii. 'Let nothing be done to cause infamy'	228
iv. The general edict <i>de iniuriis</i>	229
5. The Scope of the Classical Delict	230
6. The Classical Scope Re-Stated Summarily	234
7. Requirements in Relation to Intention	235
8. The History	237
i. The edictal phase	237
ii. The pre-edictal phase	240

9. Some Ancillary Features	243
i. Recollections in tranquillity	243
ii. A year to sue	243
iii. The counter- <i>iudicium</i>	244
iv. The <i>lex Cornelia de iniuriis</i>	244
v. Dependent persons	244
 Part III. Miscellaneous Other Categories	
11. The Quasi Categories	248
1. The Content of the Quasi Categories	250
2. The Ideas behind the Quasi Categories	258
 <i>Appendices</i>	
<i>Extracts from Gaius's and Justinian's Institutes</i>	264
<i>Translated by the author</i>	
<i>Questions</i>	289
<i>Further Publications by Peter Birks</i>	296
<i>Index</i>	299