

Table of Contents

Preface	ix
Acknowledgement	xv
Introduction	1
1. Chairman Mao's "Plain Paper" Theory and Legal Vacuum in China	2
2. Economic Reform and Reconstruction of Legal System	5
3. Contract Law Legislation	7
4. Enactment of the General Principles of Civil Law	9
5. The Unified Contract Law	11
6. Adoption of the Ideology of "Governing the Country by Law"	14
7. Unsolved Issue: Judicial Independence	15
Chapter I Contract Law in Chinese Tradition	25
1. Concept of Contract	26
1.1. Confucianism Tradition	27
1.2. Civil Law Influence	28
1.3. Theories of Contract Law	31
1.4. Definition of Contract	34
1.5. Application of the Contract Law	40
2. Contract and Socialist Market Economy	43
3. Contracts and State Plan	47
Chapter II Freedom of Contract in Chinese Concept	51
1. Conception of Freedom	54
2. Right of the Parties to Contract	56
3. Limitations on Party Autonomy – Bird in Cage	59
3.1. Legal Compliance	61
3.2. State Plan Mandate	62
3.3. Administrative Supervision	62
3.4. Government Approval and Other Special Requirements	64
Chapter III Enforceability of Contracts	67
1. <i>Obligatio</i> and Contract Obligations	70
2. Equality and Voluntariness	72
3. Fairness and Good Faith	74
4. Legality and Public Interests	80
5. Observance of Contract	83
6. Pre-contractual Liability	84

Chapter IV	Formation of Contracts	91
1.	Offer	92
1.1.	Offer and Invitation for Offer	94
1.2.	Legal Effect of Offer	99
1.3.	Termination of Offer	100
2.	Acceptance	103
2.1.	Requirements for Acceptance	104
2.2.	Withdrawal of Acceptance	107
2.3.	Late Acceptance	108
2.4.	Late Arrival of Acceptance	108
2.5.	Acceptance and Conclusion of Contract	109
3.	Conclusion of Contract and Effectiveness of Contract	111
4.	Formality of Contract	112
5.	Incorporation of the State Plan and Government Approval	120
Chapter V	Terms of Contracts	121
1.	Terms Generally Included in a Contract	122
2.	Interpretation of Contract	125
2.1.	Contract Interpretation Approaches	126
2.2.	Contract Interpretation Rules	128
2.3.	Contract Interpretation under the Contract Law	129
2.4.	Supplementary Agreement for Uncertain or Missing Terms	132
2.5.	Proof of the Terms of the Contract – No Parol Evidence	136
3.	Standard Terms	138
4.	Disclaimers	144
Chapter VI	Defenses to Formation of Contracts – Validity Issues	147
1.	Issues at Stake – Specially Addressed in the Contract Law	150
2.	Capacity to Contract – Effect-to-be-Determined Contract	154
2.1.	Contract by a Person with Limited Civil Capacity	157
2.2.	Contract by Agent without Authorization	158
2.3.	Right to Request Ratification or to Rescind Contract	163
2.4.	No Right to Dispose	164
3.	Void Contracts	167
3.1.	Fraud or Duress	169
3.2.	Malicious Collusion to Damage the Interests of the State, a Collective or a Third Party	178
3.3.	Use of Contract for Illegal Purpose	179
3.4.	Harm to the Social Public Interest	180
3.5.	Violation of Compulsory Provisions of Law or Regulations	181
4.	Voidable Contracts	183
4.1.	Exploitation of the Other Party's Precarious Position	184
4.2.	Material Misunderstanding	185
4.3.	Obvious Unfairness	188

5. Consequences of Void and Voidable Contracts	191
5.1. Avoidance from Very Beginning	191
5.2. Partial Avoidance not Affecting the Remaining Part of the Contract	192
5.3. Independence of Dispute Settlement Clause	192
5.4. Restitution and Compensation	193
6. Conditions Affecting the Validity of Contacts	195
Chapter VII Performance of Contracts	199
1. Complete and Adequate Performance	200
2. Good Faith Performance	201
3. Determination of Obligations to be Performed	205
4. Right of Defense to Non-Performance	207
4.1. Fulfillment Plea	208
4.2. Unrest Defense	211
5. Protective Measures for Performance	213
5.1. Right of Subrogation	214
5.2. Right of Cancellation	218
6. Guarantee of Performance	224
6.1. Suretyship	224
6.2. Security Interest	225
6.3. Money Deposit	226
6.4. Lien	226
7. Changes of Circumstances During Performance	227
7.1. Change related the Parties	227
7.2. <i>Rebus Sic Stantibus</i>	227
Chapter VIII Modification of Contracts and Assignment	231
1. Modification	231
2. Assignment	234
2.1. Assignment of Contractual Right	238
2.2. Delegation of Contractual Obligations	246
2.3. Comprehensive Assignment	254
Chapter IX Dissolution and Termination of Contracts	257
1. Dissolution	258
1.1. Dissolution by Agreement	258
1.2. Dissolution by Provision of Law	261
1.3. Dissolution for Other Reasons Provided by Law	267
1.4. Legal Consequences of Dissolution	270
2. Termination	273
2.1. Termination by Performance	275
2.2. Termination by Offset	276
2.3. Termination by Deposit	278
2.4. Termination by Exemption	284
2.5. Termination by Assumption of Contractual Rights and Obligations	286

Chapter X Breach of Contracts and Remedies	289
1. Liability for Breach: A Chinese Concept	289
2. Liability Imputation: Fault vs. Strict Liability	290
3. Breach	294
4. Remedies	296
4.1. Continuing Performance	296
4.2. Remedial Measures	303
4.3. Damages	305
5. Mitigation Duty	312
6. Exemption of Liability	313
 Chapter XI Third Parties	 315
1. Third Party Receiving Performance	317
2. Third Party Performing the Contract	320
3. Breach Caused by Third Party	322
4. Bona Fide Third Party	324
 Chapter XII International Contracts	 327
1. Choice of Law in International Contracts	328
1.1. Choice of Law by the parties	329
1.2. Application of Law Absent the Parties' Choice	337
1.3. Application of International Law	339
2. Choice of Forum in International Contracts	345
3. Dispute Settlement Mechanism	349
3.1. Reconciliation	350
3.2. Mediation	351
3.3. Arbitration	353
3.4. Litigation	356
4. Statute of Limitations	356
 Index	 361