

Contents

<i>Table of Legislation</i>	xi
<i>Table of Informational Circulars</i>	xix
<i>Table of Plenum Resolutions</i>	xxi
Introduction	1
A Note about Language	2
1 Useful Information	4
I Introduction	4
II A history of Russian contract law	4
A Prerevolutionary law	4
B 1922: First Soviet Civil Code	5
C Era of state planning	7
D Post-Stalin Fundamental Principles and the 1964 Russian (RSFSR) Civil Code	8
E <i>Perestroika</i> (Перестройка)	11
F Russia's current Civil Code	14
G Reform of civil law in the twenty-first century	15
III The Russian State and its agencies	16
A Russia's federal structure	16
B Relevant state agencies	17
IV The Russian court system	20
A General overview	20
B Structure of the courts of general jurisdiction	21
C Structure of the commercial courts	22
D Federal Constitutional Court	22
E Arbitration tribunals (третейские суды; <i>treteiskie sudy</i>)	23
V Sources of law	23
A Sources of law	23
B Sources in relation to contract law	30
C Sources of legal information	34
D Role of international law	34
E Recognition and enforcement of foreign judgments and arbitral awards	35
VI The legal profession	36
A Legal education	36
B <i>Advokatura</i> (the 'Bar')	36

C	The notariat	38
D	The judiciary	40
VII	Principles of contract law	42
A	Duality: commercial law versus civil law	42
B	Freedom of contract	43
C	Actual performance	44
D	Compensational nature and equivalence	45
E	Good faith	46
VIII	Conclusion	49
2	The Terms of a Contract	50
I	Introduction	50
II	Terms versus representations	50
III	Terms: express and implied	53
A	Distinction between express and implied terms	53
B	Types of contract	55
IV	Material terms	60
A	Definition of material terms	60
B	Subject matter as a material term	60
C	Terms mentioned in the Code or other legislation as material for the particular type of contract	62
D	Terms defined as material by the parties to the contract	65
V	Incorporation of terms	66
VI	Interpretation of contract terms	68
A	Rule 1: literal meaning	68
B	Rule 2: parties' intention	69
C	Rules from court practice	70
VII	Unfair contract terms	72
A	Controls on contracts of adhesion	72
B	Protection of consumer rights	73
C	Public contract (публичный договор; <i>publichnyi dogovor</i>)	74
VIII	Conclusion	75
3	Requirements of Form	76
I	Introduction	76
II	Types of forms of contract	76
A	Oral contracts	76
B	Written contracts	77
III	Consequences of non-compliance with the required form of contract	81
A	Prohibition against witness testimony	81
B	Non-conclusion of the contract	82

C	Invalidity of the contract	84
IV	Conclusion	85
4	Formation of Contracts	86
I	Introduction	86
II	Requirements for conclusion of a contract	86
III	Formation of a contract: offer and acceptance	87
A	Offer	88
B	Acceptance	95
IV	Formation of a contract: single written document signed by both parties	100
V	Formation of a contract: special cases	102
VI	Moment of conclusion of the contract	103
A	Real contracts	103
B	Consensual contracts	104
C	Special cases	105
D	Preliminary contract: binding 'agreement to agree'	105
E	Conclusion of a contract compared to entry into force of a contract	106
VII	Conclusion	107
5	Consideration	108
I	Introduction	108
II	Counter-performance	108
A	Definition of counter-performance	108
B	Function of counter-performance	109
C	Main characteristics of counter-performance	111
III	Counter-giving for performance	116
A	Understanding the concept of counter-giving for performance	116
B	Counter-giving for performance compared to consideration: requirements of sufficiency and adequacy	119
C	Adequacy of counter-giving as an issue in Russian commercial courts	120
D	Counter-giving in forgiveness of debt (прощение долга; <i>proshchenie dolga</i>)	123
IV	Conclusion	125
6	Factors Tending to Defeat Contractual Liability	126
I	Introduction	126
II	Invalidity of contracts	127
A	Invalidity of contracts under Russian contract law	127
B	Grounds of invalidity: void contracts	136
C	Grounds for invalidity: contested contracts	143

III	Contracts being not concluded	156
A	Performance of a 'not concluded' contract as unfounded enrichment	157
IV	Conclusion	160
7	Third Parties to the Contract	161
I	Introduction	161
II	Burdening the third party	162
III	Defining a contract for the benefit of a third party	163
IV	Variation and cancellation of contracts for the benefit of third parties	167
V	Rights of the promisee	168
VI	Defences available to the promisor	170
VII	Liability in contracts for the benefit of third parties	171
VIII	Conclusion	173
8	Assignment	174
I	Introduction	174
II	Effect of assignment	175
III	Assignment as a contract	176
A	Making a valid assignment	176
B	Notification of the debtor	179
C	Consent of the debtor	180
D	Rights which are not assignable	182
E	Form of assignment	184
F	Documents certifying the assigned rights	184
G	Objections to the demand of the new creditor	185
H	Liability of the original creditor	186
IV	Assignment by operation of law	188
A	Universal legal succession	188
B	Transfer of rights by a court decision	190
C	Performance of the debtor's obligation by his surety or by a pledgor other than the debtor	191
D	Subrogation	191
V	Conclusion	192
9	Performance	193
I	Introduction	193
II	Proper performance	193
A	Definition of performance	194
B	Understanding proper performance	194
III	Methods of ensuring performance	212

IV	Alternative obligations	214
V	Entire and severable obligations	216
VI	Partial performance	218
VII	Right to cure bad or incomplete performance	218
	A Loss of interest in performance	219
	B Explicit right of the promisee to refuse to accept bad or incomplete performance	220
	C Termination of contract due to material breach	220
VIII	Conclusion	220
10	Remedies for Breach of Contract	222
I	Introduction	222
II	Damages	223
	A Conditions for recovering damages	224
	B Types of damages claimed	233
	C Limitation of damages	241
III	Penalty (неустойка; <i>neustoika</i>)	243
	A <i>Neustoika</i> and the concept of liquidated damages	244
	B Nature of <i>neustoika</i> : compensatory or punitive?	245
	C Types of <i>neustoika</i>	249
	D Conditions for recovering <i>neustoika</i>	250
IV	Required performance	251
	A General provisions	251
	B Contracts to transfer an individually-specified thing	254
	C Required performance as remedy for breach of contracts for works and services	256
V	Specific remedies for breach of particular types of contracts	258
VI	Restitutionary awards	260
	A Restitutionary awards in case of termination of contract	260
	B Restitutionary awards as specific remedies for breaches of particular types of contracts	262
	C Recompense for goods or services	263
VII	Conclusion	264
11	Discharge of the Contract	266
I	Introduction	266
II	General rules on discharge	266
III	Discharge by agreement	268
IV	Discharge of a contract by breach	269
V	Discharge as a result of unilateral refusal to perform	273
	A Discharge of a contract due to unilateral refusal permitted by law	274

x *Contents*

B	Unilateral refusal allowed by contract	276
VI	Discharge by 'frustration'	277
A	Impossibility of performance	277
B	Consequences of impossibility	279
C	'Special' impossibility	280
VII	Discharge of a contract as a result of material change of circumstances	283
VIII	Conclusion	288
12	Conclusion	289
	<i>Index</i>	293