

# CONTRACT LAW IN THE CZECH REPUBLIC

SECOND EDITION

JOSEF FIALA  
JAN HURDÍK

# Contract Law in the Czech Republic

SECOND EDITION

JOSEF FIALA & JAN HURDÍK

Derived from the renowned multi-volume *International Encyclopaedia of Law*s, this practical analysis of the law of contracts in the Czech Republic covers every aspect of the subject – definition and classification of contracts, contractual liability, relation to the law of property, good faith, burden of proof, defects, penalty clauses, arbitration clauses, remedies in case of non-performance, damages, power of attorney, and much more. Lawyers who handle transnational contracts will appreciate the explanation of fundamental differences in terminology, application, and procedure from one legal system to another, as well as the international aspects of contract law. Throughout the book, the treatment emphasizes drafting considerations.

An introduction in which contracts are defined and contrasted to torts, quasi-contracts, and property is followed by a discussion of the concepts of 'consideration' or 'cause' and other underlying principles of the formation of contract. Subsequent chapters cover the doctrines of 'relative effect', termination of contract, and remedies for non-performance. The second part of the book, recognizing the need to categorize an agreement as a specific contract in order to determine the rules which apply to it, describes the nature of agency, sale, lease, building contracts, and other types of contract. Facts are presented in such a way that readers who are unfamiliar with specific terms and concepts in varying contexts will fully grasp their meaning and significance.

Its succinct yet scholarly nature, as well as the practical quality of the information it provides, make this book a valuable time-saving tool for business and legal professionals alike. Lawyers representing parties with interests in the Czech Republic will welcome this very useful guide, and academics and researchers will appreciate its value in the study of comparative contract law.

ISBN 978-94-035-2093-3



9 789403 520933

# Table of Contents

The Authors	3
List of Abbreviations	11
Preface	13
General Introduction	15
§1. GENERAL BACKGROUND OF THE COUNTRY	15
§2. LEGAL FAMILY AND THE CZECH LAW	16
§3. PRIMACY OF LEGISLATION IN THE CZECH LEGAL SYSTEM	16
§4. THE POSITION OF THE JUDICIARY	17
§5. DISTINCTION BETWEEN PUBLIC LAW AND PRIVATE LAW (ADMINISTRATIVE CONTRACTS)	17
§6. DISTINCTION BETWEEN CIVIL LAW AND COMMERCIAL LAW (COMMERCIAL CONTRACTS)	18
Introduction to the Law of Contracts	21
§1. DEFINITION OF THE LAW OF CONTRACTS	21
§2. HISTORICAL BACKGROUND OF THE LAW OF CONTRACT	22
§3. CLASSIFICATION OF CONTRACTS	23
§4. CONTRACTS AND TORTS	24
§5. CONTRACT AND QUASI-CONTRACT	25
§6. CONTRACTS AND THE LAW OF PROPERTY	26
§7. CONTRACT AND TRUST	26
§8. GOOD FAITH AND FAIR DEALING	26
	5

**Table of Contents**

§9. STYLE OF DRAFTING 27

§10. SOURCES OF THE LAW OF CONTRACT 28

Part I. General Principles of the Law of Contract 29

Chapter 1. Formation 29

§1. AGREEMENT AND *QUID PRO QUO* (RECIPROCITY) 29

    I. Offer and Acceptance 29

    II. Intention to Create Legal Relations 30

    III. Consideration, Gratuitous Promises, Natural Obligations 32

        A. Consideration 32

        B. Gratuitous Promises 32

        C. 'Natural Obligations' 33

    IV. Modifications of the Contract 33

§2. FORMAL AND EVIDENCE REQUIREMENTS 36

    I. Formal Requirements 36

        A. Tender 37

        B. Public Tender 37

        C. Auction 37

    II. Contract under Seal 37

    III. 'Solemn' Contracts 37

    IV. Evidence Requirement 38

    V. Function of the Notary and Notarial Instruments 38

    VI. Burden of Proof 39

§3. LIABILITY AND NEGOTIATIONS 40

    I. Pre-contractual Liability 40

    II. Breakdown of Negotiations 40

        A. Termination 40

Chapter 2. Conditions of Substantive Validity 42

§1. ESSENTIAL ELEMENTS 42

Chapter 3. The Content of a Contract 50

§1. GENERAL EXPLANATION 50

    I. Consequences 51

    II. Grounds and Consequences of Invalidity 51

§2. INTERPRETATION 58

§3. CONDITIONAL CONTRACTS 59

**Table of Contents**

Chapter 4. Privity of Contract 62

§1. THE RULE OF PRIVITY OF CONTRACT 62

    I. Third Parties and the Contract 62

    II. Contract for the Benefit of a Third Party 62

    III. Contract to the Debit of a Third Party 63

§2. TRANSFER OF CONTRACTUAL RIGHTS AND/OR OBLIGATIONS 63

§3. THE SPECIAL CASE OF A SUBCONTRACT, FOR EXAMPLE, THE (NOMI-  
NATED) SUBCONTRACTOR IN BUILDING CONTRACTS 67

§4. *ACTIO PAULIANA* 67

Chapter 5. Termination of a Contract 68

§1. DEBT FULFILMENT: PERFORMANCE AND BREACH 68

    I. Consequences of Performance 72

    II. Breach of Contract 72

§2. IMPOSSIBILITY AND HARDSHIP: UNFORESEEN IMPOSSIBILITY 73

§3. WITHDRAWAL FROM THE CONTRACT 74

§4. SETTING-OFF (UNILATERAL AND BY THE AGREEMENT) 75

§5. AGREEMENT ON CANCELLING AN OBLIGATION 76

§6. WAIVER OF A RIGHT 76

§7. REMISSION OF DEBT 76

§8. RENUNCIATION 77

§9. BY LAPSE OF TIME 77

§10. DEATH OF THE DEBTOR OR THE CREDITOR 77

§11. PRECLUSION OF RIGHTS 77

§12. DEBTOR'S DELAY UNDER 'FIXED' CONTRACT 78

§13. MERGER OF DEBTS 78

Part II. Specific Contracts 79

**Table of Contents**

Chapter 1. Consumer Contract: General Provisions	80
§1. GENERAL RULES FOR CONSUMER CONTRACTS	80
I. Distance Contracts and Contracts Negotiated Outside Business Premises	81
II. Contracts Negotiated Outside Business Premises	83
III. Financial Services	83
IV. Timesharing Contracts	83
Chapter 2. Sales	84
§1. SALE OF MOVABLE THING	85
§2. SALE OF IMMOVABLE THING	87
I. Exchange (Barter) Contract	87
II. Sale of Goods in Shops	88
III. Sale (Transfer) of the Enterprise	89
Chapter 3. Contract for Work	91
Chapter 4. Healthcare	94
Chapter 5. Licences	96
Chapter 6. Loans	98
§1. LOAN FOR CONSUMPTION	98
§2. LOAN FOR USE	98
§3. CREDIT	99
§4. CONSUMER CREDIT	100
Chapter 7. Contract of Employment	101
Chapter 8. Lease Contracts	102
§1. GENERAL PROVISIONS	102
§2. LEASE OF FLATS AND HOUSES	103
§3. LEASE OF BUSINESS PREMISES (SPACE)	104
§4. LEASE OF A MEANS OF TRANSPORT (SPECIAL RULES)	104

**Table of Contents**

§5. ACCOMMODATION	105
Chapter 9. Tenure (A Special Kind of Lease)	107
§1. AGRICULTURAL TENURE (LEASE OF A LAND)	107
§2. LEASE OF AN ENTERPRISE	107
Chapter 10. Mandate Contracts	109
§1. MANDATE	109
§2. AGENCY	110
§3. UNDISCLOSED MANDATE	111
§4. FORWARDING/SHIPPING AGENCY	112
§5. COMMERCIAL AGENCY	113
Chapter 11. Bailment (Contract on Custody, Deposit)	116
§1. BAILMENT	116
§2. CUSTODY OF SECURITIES	117
§3. STORAGE	117
Chapter 12. Transportation	120
§1. TRANSPORTATION OF PERSONS AND THINGS	120
I. Transportation of Persons (Passengers)	120
II. Carriage of Goods	121
§2. OPERATING A MEANS OF TRANSPORTATION	123
Chapter 13. Obligations from Contract of Account, One-Time Deposit, Letter of Credit, and Collection	124
§1. ACCOUNT	124
§2. ONE-TIME DEPOSIT	124
§3. LETTER OF CREDIT	124
§4. COLLECTION	125

## Table of Contents

Chapter 14. Aleatory Obligations	126
§1. INSURANCE	126
§2. WAGERING (BETTING), GAMING AND DRAWING A LOT	130
Chapter 15. Civil Partnership	131
Chapter 16. Silent Partnership	133
Chapter 17. Private Annuity	135
Chapter 18. Retired Persons' Housing and Lodging	136
Chapter 19. Public Promises	137
Chapter 20. Promise of Compensation	138
Chapter 21. Package Tours (Travel Contract)	139
Chapter 22. Contract for Inspection Activities	141
Chapter 23. Quasi-Contracts	143
§1. OBLIGATIONS ARISING FROM UNJUSTIFIED ENRICHMENT	143
I. General Outline	143
II. The Obligations Arising from Unjustified Enrichment	143
III. Legal Consequences of Unjustified Enrichment	146
§2. AGENCY WITHOUT MANDATE ( <i>NEGOTIORUM GESTIO</i> ) AND USING A THING FOR THE BENEFIT OF ANOTHER PERSON	148
Selected Bibliography	151
Index	153

## List of Abbreviations

al.	alinea (a clause within an article or within a § of a code or of a law – <i>see</i> par.)
and fol.	et sequential, et sequentes (and following)
Art.	article (also section; of a code or of a law – <i>see</i> §)
cf.	Compare
Coll.	Collection of Legal Acts of the Czech republic
e.g.	exempli gratia (for example)
etc.	et cetera (and so on)
i.e.	id est (that is)
para.	paragraph (a clause within an article or within a § of a code or of a law – <i>see</i> al.)
§	paragraph (of a code or of a law – <i>see</i> art.)

## Preface

This book is a part of the encyclopaedia of law on contracts under the editorial project IEL outlining the system of contract law in the Czech Republic and reflecting the situation in the legislation as of 1 January 2014 by the end of August 2019. The work corresponds with the framework selected by the editor; however, it inevitably reacted to specific features of the law of contracts in the Czech Republic, which brought the need to adjust some of the parts of the publication as appropriate.

The current state of contract law in the Czech Republic has several specific features that should be pointed at. First of all, the sources of (internal) contract law in the Czech Republic were till 1 January 2014 composed of two most important acts of law: The Civil Code (Act No. 40, 1964 Coll.) and the Commercial Code (Act No. 513, 1991 Coll.). Both the codes contained specific rules for both commercial and non-commercial contracts and deeds but a strict dividing line between the two of them was often missing, and thus application of a particular rule of law to a given case is governed by rather complex rules.

Another feature influencing the character of the Czech contract law is its dynamic development following the fall of the Iron Curtain and the change of the political establishment after 1989 the law of contracts has, through a number of legislative changes including Commercial Code recodification, gradually returned to democratic standards of contract relationships, leaving aside the communist experiment in law, as applied between 1950 and 1989. However, a consistent change of the system of law necessarily meant the requirement of carrying out an entire recodification of private law as a whole, including the law of contract. Since 1992, legislative activities involving the entire recodification of the Czech private law have been in progress. The aim of the recodification was a large civil code, including family law. As for the basic types of contract, the new civil code should have contained all standard contract types including employment contracts and contracts used both in commercial relationships and beyond (which implies a commercialized concept of the civil code).

After twelve years of preparatory and legislative work, a set of laws representing the basis of recodification of private law in the Czech Republic was passed by the Czech Parliament:

- Act No. 89/2012 Coll., Civil Code;
- Act No. 90/2012 Coll. on Companies; and
- Act No. 91/2012 Coll. on Private International Law and Rules of Procedure.

Subsequently, a set of laws was passed forming an accompanying legislation making it possible to put the recodification into practice.

The acts representing the re-codified private law of the Czech Republic came into force on 1 January 2014.

Due to the above-mentioned reasons, this monograph is a substantially revised version of the previous monograph contract. The Czech Republic is providing an overview of the new Czech contract law which has become a part of the re-codified Civil Code. The authors are aware of the fact that it is one of the first treatments of the new contract law of the Czech Republic which will undoubtedly be changed in the future.

The authors respect the special terminology of the Czech contract law striving at the same time to adapt it to the language standards of the 'European' English.

The authors would like to thank PhDr Anna Lysá, CSc, Department of Legal Communication, Comenius University, Bratislava, Slovakia, for the translation of the original version of the work. The authors would also like to thank Prof. JUDr et PhDr. Michal Tomášek, DrSc., Faculty of Law, Charles University, Prague and Carissa Meyer, John Marshall Law School in Chicago, for corrections of the terminology, and especially Mgr. Radek Šimek, PhD, Faculty of Law, Masaryk University, Brno, Czech Republic for the final language correction of the text and for the translation of the updated text.

This monograph has been written with the support of Faculty of Law of Masaryk University in Brno.

## General Introduction

### §1. GENERAL BACKGROUND OF THE COUNTRY

1. The Czech Republic is a unitary State created after the splitting of Czechoslovakia on 1 January 1993. The Constitution of the Czech Republic was adopted at the end of 1992, entering into force on 1 January 1993. The country is divided into fourteen regions. The capital of the country is Prague. Since 1 May 2004, the Czech Republic has been a Member State of the European Union (EU). The European law is in force in the Czech territory having supremacy over the Czech law.

The legislative power is exercised by the Parliament of the Czech Republic which consists of the Chamber of Deputies and the Senate. About 200 members of the Chamber of Deputies are elected in general and direct elections every four years. Eighty-one members of Senate are elected in general and direct elections for six years. The election takes place every two years in order to renew one-third of the Senate. Besides its legislative powers, the Parliament has also other important functions. The Chamber of Deputies must pass the annual State budget and the final account. The Senate gives its consent to the appointment of judges of the Constitutional Court. The head of the Czech Republic is the President of the Czech Republic elected directly by the citizens of the Czech Republic. The President of the Czech Republic can only be elected for two consecutive terms.

The executive power is partially vested in the Government of the Czech Republic and partially in the President of the Czech Republic. He is part of the executive power, too. He appoints the prime minister according to the result of the election to the Chamber of Deputies and appoints and dismisses each Minister of the Government on the proposal of the prime minister. The primary task of the government consists of issuing regulations and making decisions needed for implementation of laws.

The judiciary power is independent of the executive and legislative powers. The Constitutional Court has the authority to pass judgments on constitutionality of laws enacted by the legislature and on regulations enacted by the executive authorities. The ordinary law courts are organized in four degrees – district courts, regional or municipal courts, high courts and Supreme Court. Administrative courts have jurisdiction over public law controversies outside constitutional issues, in particular over challenges to administrative acts.