

TABLE OF CONTENTS

Preface	III
I. Introduction	
A. The nature of the law of obligations	1
B. Liability – obligation	4
C. The content of obligations	5
D. Types of obligations	7
Revision	9
II. Contracts	
A. General remarks	10
B. Numerus clausus of contract types and modern-day freedom of contract	11
C. Consensual, real, verbal, and literal contracts	14
D. <i>BONAE FIDEI IUDICIA AND IUDICIA STRICTI IURIS</i>	17
E. Characterisation of contracts	18
F. The stages of a contractual relationship and the possible problems connected to them	21
1. Pre-contractual obligations	21
2. Creation and fulfilment of a contract	22
3. Impairments of performance between creation of the contract and its fulfilment	25
4. Impairment through defective performance	29
5. Termination of the contractual relationship	31
G. Proprietary obligations not based on contract or delict	33
1. Unjustified enrichment	33
2. <i>NEGOTIORUM GESTIO</i> – unauthorised management of another’s affairs	34
Revision	35
III. Real contracts	
A. General remarks	37
B. The interest-free loan for consumption – <i>MUTUUM</i>	37
1. Definition and prerequisites	37

2. Actions	39
3. The basic form of the <i>MUTUUM</i>	40
4. Special forms of Roman loans for consumption	41
5. Claims resulting from delivery by an unauthorised holder	46
6. The <i>SENATUS CONSULTUM MACEDONIANUM</i>	47
Revision	49
C. The deposit (= custody, safekeeping) – <i>DEPOSITUM</i>	51
1. Definition and characteristics	51
2. Excursus: The principle of utility as a criterion of contractual allocation of risk	52
3. <i>DEPOSITUM</i> : allocation of risk	53
4. Excursus: Safekeeping and use of money	54
5. Deposit during pending litigation (sequestration) – <i>DEPOSITUM SEQUESTRE</i>	59
D. Loan for use (commodate) – <i>COMMODATUM</i>	60
1. Term and definition	60
2. <i>COMMODATUM</i> : assumption of risk	61
3. Loan by entreaty (loan on request) – <i>PRECARIUM</i>	65
4. The real contract of pledge – <i>PIGNUS</i>	66
Revision	68
Exercises	69
IV. Sale – <i>EMPTIO VENDITIO</i> (Part 1)	
A. Characterisation	75
1. Terminology	75
2. <i>EMPTIO VENDITIO</i> as a synallagmatic contract	75
3. <i>EMPTIO VENDITIO</i> as a consensual contract	75
4. <i>EMPTIO VENDITIO</i> as a set of contractual obligations	77
5. <i>EMPTIO VENDITIO</i> as a <i>BONAE FIDEI NEGOTIUM</i>	77
6. Interpretation	78
Revision	78
B. Consensus and error	79
1. The problem	79
2. Divergent declarations	79
3. Hidden dissent and error	80
4. Mistakes concerning attributes or characteristics of the object of the sale	81
5. Coercion, fear, and fraudulent intent	84
Revision	85

C. The purchase price	86
1. Purchase price in money	86
2. Price that was seriously meant – <i>PRETIUM VERUM</i>	87
3. Clearly defined purchase price – <i>PRETIUM CERTUM</i>	89
4. Lawful (“just”) price – <i>PRETIUM IUSTUM</i>	90
Revision	91
D. The goods	92
1. Species and genus	92
2. Alternative obligation	93
3. The <i>EMPTIO REI SPERATAE</i>	94
4. The <i>EMPTIO SPEI</i>	95
5. Possibility of performance	95
Revision	96
E. Initial objective impossibility	96
1. Terminology and types of impossibility	96
2. Legal consequences in case of impossibility	98
3. Partial impossibility	104
Revision	106
Exercises	107

V. Sale – *EMPTIO VENDITIO* (Part 2)

A. Auxiliary agreements	113
1. Incidental agreements (<i>ACCIDENTALIA NEGOTII</i>)	113
2. Conditions	113
3. Auxiliary agreements in case of mancipation sale	115
4. Auxiliary agreements in the case of an <i>EMPTIO VENDITIO</i>	116
4.1. The <i>LEX COMMISSORIA</i>	116
4.2. The <i>PACTUM DISPLICENTIAE</i>	117
4.3. The <i>IN DIEM ADDICTIO</i>	118
4.4. Further contractual clauses	119
Revision	119
B. Non-performance	120
1. Subsequent impossibility	120
2. Liability for non-performance	120
3. Expectation interest	121
4. Measure of liability	124
Revision	125

C. Assumption of risk	125
1. The problem	125
2. Accidental destruction – assumption of risk	125
3. Destruction due to VIS MAIOR	126
3.1. Assumption of risk in case of perfected sale: <i>PERICULUM EST EMPTORIS</i>	127
3.2. Assumption of risk in case of unperfected sale	129
3.3. Perfection	130
3.4. Excursus: perfection in the case of an alternative obligation	132
4. Loss or destruction due to lesser accidents	134
Revision	135
D. Delay/default	136
1. Debtor's delay (lack of timely performance)	136
2. Creditor's delay (default of acceptance)	138
Revision	139
Exercises	140
 VI. Sale – <i>EMPTIO VENDITIO</i> (Part 3)	
A. Warranty in general	146
1. The seller's obligations before and after delivery of the goods	146
2. Definition and characteristics of warranty	147
Revision	148
B. Warranty for defects in title (warranty of title)	148
1. Sale of third-party property	148
2. Sale of third-party property as a source of impairments of performance	149
3. Principle of eviction	150
4. Claims upon eviction	152
5. Mancipation sale	152
6. The <i>STIPULATIO DUPLAE</i>	153
7. The <i>ACTIO EMPTI</i>	154
8. Exceptions: Warranty of title regardless of eviction	155
Revision	157
C. Warranty for defects as to quality	158
1. General remarks	158
2. The edict of the curule aediles	160
3. Aedilician remedies	162

4. The <i>ACTIO EMPTI</i>	164
5. Guarantees	168
Revision	171
Exercises	172

VII. Lease, usufructuary lease, contract for work, contract of employment – *LOCATIO CONDUCTIO*

A. General remarks; types of <i>LOCATIO CONDUCTIO</i>	177
B. (Usufructuary) lease – <i>LOCATIO CONDUCTIO REI</i>	178
1. Definition and characteristics	178
2. Ending (usufructuary) lease by termination	180
3. Impairments of performance due to damage to, loss or destruction of, or dispossession of the leased property	180
C. Contract for work – <i>LOCATIO CONDUCTIO OPERIS</i>	187
1. Definition and characteristics	187
2. Contract for work and materials	188
3. Case law on defective performance	189
4. <i>LOCATIO CONDUCTIO IRREGULARIS</i>	194
D. Contract of employment – <i>LOCATIO CONDUCTIO OPERARUM</i>	195
Wage risk	196
Revision	197
Exercises	199

VIII. Contract of mandate – *MANDATUM*

A. Definition and characteristics	203
B. Management of another person's affairs	204
C. Duties of the mandatarius	205
D. Duties of the mandator	207
E. Impossibility and exceeding the mandate	208
F. Death of one of the parties	210
G. Loan mandate	210
H. Excursus: <i>CESSIO</i> , <i>NOVATIO</i> , and <i>MANDATUM IN REM SUAM</i>	212
Revision	215
Exercises	216

IX. Contract of partnership – *SOCIETAS*

A. Definition and characteristics	220
B. Contributions of the partners	220
C. Liability of the partners	221

D. Assumption of risk	222
E. End of the partnership	223
F. Partnership and joint ownership; termination and settlement of accounts	224
Revision	226
Exercises	227

X. Innominate contracts

A. General remarks	229
B. Enforcement of innominate contracts by means of court actions	231
C. Exchange agreements	232
D. Aestimaterian contracts	233
E. Analogies to nominate contracts	235
F. The function of the <i>ACTIO PRAESCRIPTIS VERBIS</i> as a subsidiary remedy	236
Revision	237
Exercises	238

XI. ACTIONES ADIECTITIAE QUALITATIS

A. The problem	241
B. The nature of the <i>ACTIONES ADIECTITIAE QUALITATIS</i>	241
C. The <i>ACTIO DE PECULIO</i>	243
D. The <i>ACTIO DE IN REM VERSO</i>	247
E. The <i>ACTIO QUOD IUSSU</i>	249
F. The <i>ACTIO EXERCITORIA</i>	250
G. The <i>ACTIO INSTITORIA</i>	251
Revision	254
Exercises	256

XII. Unauthorised management of another's affairs – *NEGOTIORUM GESTIO*

A. Definition and characteristics	260
B. Another person's business or affairs	261
C. Usefulness and reimbursement for expenses	263
D. Liability of the gestor	265
E. <i>NEGOTIORUM GESTIO</i> against the principal's will	267
Revision	268
Exercises	269

XIII. Suretyship

A. The problem	271
B. Definition and characteristics of suretyship	271
C. <i>FIDEIUSSIO</i>	273
D. Kind and amount of the guarantor's obligation	274
E. The guarantor's right of recourse	276
1. The problem	276
2. Recourse based on a mandate (<i>MANDATUM</i>)	277
3. Recourse in the case of <i>NEGOTIORUM GESTIO</i>	278
4. Recourse by means of assignment of claims (<i>BENEFICIUM CEDENDARUM ACTIONUM</i>)	279
F. Co-suretyship	280
Revision	283
Exercises	284

XIV. Claims arising from unjustified enrichment

A. General remarks	288
B. Interplay of property law and the law of unjustified enrichment	288
C. The <i>CONDICTIO</i> as a specific type of action	291
D. The <i>CONDICTIO INDEBITI</i>	292
E. The <i>CONDICTIO OB REM</i> – <i>CONDICTIO CAUSA DATA CAUSA NON SECUTA</i>	294
F. The <i>CONDICTIO OB TURPEM CAUSAM</i>	296
G. Excursus: the <i>CONDICTIO FURTIVA</i>	296
H. The <i>CONDICTIO</i> in cases of three-person relationships, especially orders to pay to a third party	297
J. <i>CONDICTIO</i> and cessation of enrichment	300
K. Other claims arising from unjustified enrichment	301
Revision	305
Exercises	306

XV. Claims arising from the infliction of harm

A. Infliction of harm – bearing of loss	309
B. Damages: foundation of claims <i>EX CONTRACTU AND EX DELICTO</i> ...	310
C. Indemnification and punitive damages	311
D. Overview: <i>INIURIA</i>	313
E. Overview: <i>FURTUM</i>	313

F. Overview: <i>DAMNUM INIURIA DATUM</i>	316
G. Overview: <i>DOLUS</i> and <i>METUS</i>	317
H. Concept of damage	319
Revision	323
Exercises	324
 XVI. The <i>LEX AQUILIA</i> and related issues	
A. General remarks	326
B. Scheme for assessing liability under the <i>LEX AQUILIA</i>	327
1. Conformity to the statutory definition	327
2. Unlawfulness (<i>INIURIA</i> in the objective sense)	328
3. Culpability (<i>INIURIA</i> in a subjective sense)	329
4. Amount of the claim	329
C. Direct infliction of harm – <i>ACTIO LEGIS AQUILIAE</i> ; no direct infliction of harm – analogous actions	330
1. <i>OCCIDERE</i>	330
2. <i>MORTIS CAUSAM PRAESTARE</i>	331
3. <i>URERE</i>	334
4. <i>FRANGERE</i>	336
5. <i>RUMPERE</i>	336
D. Excursus: causation	340
Revision	343
E. Unlawfulness	344
1. Assumption of unlawfulness	344
2. Elimination of the unlawfulness of an offence through grounds for legal justification	344
F. Grounds for legal justification	345
1. Self-defence	345
2. Necessity	348
3. Permitted self-help	350
4. Special authorisation by the legal system	351
5. Consent of the injured party	351
G. Fault	352
1. <i>DOLUS</i> (intent)	352
2. <i>CULPA</i> (negligence)	352
H. Circumstances precluding fault	355
1. Legal grounds precluding fault	355
2. Harmful carelessness on the part of the injured party	356
Revision	359

J. Amount of the injured party's claim	360
1. Wording of the <i>LEX AQUILIA</i>	360
2. Interpretation of the <i>LEX AQUILIA</i>	361
3. Case law on compensation for interest	362
K. Concurrences of claims	363
1. Concurrence with claims for breach of contract and with reipersecutory claims	363
2. Concurrence with <i>FURTUM</i>	364
3. Concurrence of claims under the first and third chapters	365
L. Claimants, defendants; noxal liability	365
1. Claimants of the <i>ACTIO DIRECTA</i> and extensions of the capacity to sue	365
2. Defendants: independent Romans (<i>SUI IURIS</i>) as perpetrators and as persons liable for those under their power	367
Revision	370
Exercises	371
XVII. Cases and solutions	378
XVIII. Cases from exams on the law of obligations	386
Index of sources	415
Index	423