

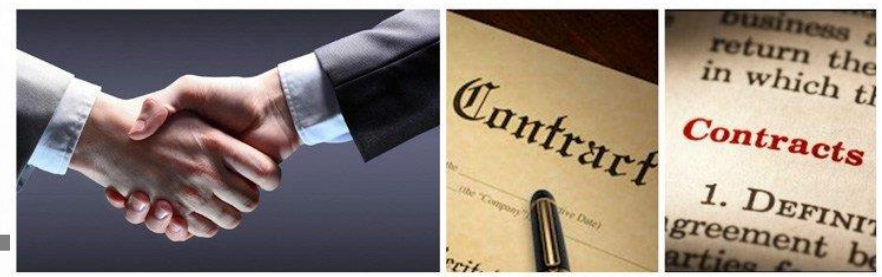


Czech Law in Global Context

Contract Law

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Contracts in your life



What was the *last contract* you concluded?

What was the *last contract* you read in its entirety? 😊

- Purpose and practical meaning of contracts
 - examples from **everyday life**?
 - examples of serious „**big contracts**“ ?

Contracts and obligations

- **Contract** ≠ **Obligation**

Contract = Judicial Act

§ 1724: By a contract, parties express their will to **create between them a mutual obligation** and adhere to the contents of the contract.

Claim = right to a particular performance
Debt = duty to perform

- How do Obligations **Arise**?

Obligation = Relationship

§ 1721: Under an obligation, a **creditor** has the right to a particular performance as a **claim** from the debtor, and the **debtor** has the duty to satisfy that right by discharging the **debt**.

- from a **contract**
- from an **unlawful act/tort** (examples?)
- another legal fact capable of creating the obligation (e.g. unjust enrichment)
- **Binding** effects of contracts; legal effects of obligations (binding = ?)
- **Form** of Contract (tacit/oral/written/notarial deed...)
 - Are also oral (or even tacit) contracts binding? (e.g.: immovables?)
 - Can we orally change written contracts?

The **structure** of CZ legal regulation



- § 1721-3024: Relative property rights
 - „**relative**“? What does it mean?

Structure:

- **general provisions** (= apply to all contracts) (§ 1721-2054)
 - **creation, changes** (in identity of parties, in content), **extinction** of obligation (discharge, set-off, withdraw, termination..., death?), **consequences of breach**
- **special provisions** (**contract types** = typical models of contractual obligations) (§ 2055-2893)
 - purchase, work, lease, insurance, mandate... -> *document*
 - obligations from unlawful acts (-> **law of damages**) and **unjust enrichment** (§ 2894-3005) ...

Further notes:

- **consumer** is highly protected - special provisions across the legal system
 - in civil code see: consumer contracts (§ 1810 – 1867); e.g. right to **withdraw in 14 days** if contract negotiated **away from business premises**; 2158-2174 (consumer purchase)...
- also the **weaker party** in general is protected – e.g. **contracts of adhesion** (§ 1798-1801), or in the case of clear and unjustified **imbalance** (§ 433)
- special provisions regarding **entrepreneurs**

European/international context?



- hard law vs. soft law + doctrine/academic level + jurisprudential convergence
- **Hard law**
 - selective sectoral approach to **EU harmonisation**
 - **directives** - e.g. harmonisation of **consumer law**; **late payments** in commercial transactions ...
 - **international agreements**
 - e.g.: **Vienna Convention on international sale of goods**; CMR; COTIF ...
 - provisions of **Private International Law** (e.g. Rome I)
 - **freedom of choice** („*A contract shall be governed by the law chosen by the parties*“)
 - rules determining the applicable law – e.g. country of the seller
- **Soft law**
 - **PECL** - Principles of European Contract Law
 - **DCFR** - Draft Common Frame of Reference
 - attempt to „European code of contract law “ – but effort discontinued
 - **PICC – UNIDROIT** Principles for International Commercial Contracts
 - **INCOTERMS** (International Commercial Terms); **FIDIC** (Conditions of Contract for Works of Civil Engineering)
 - ...

Conclusion of a contract



Two-step process:

1. **Offer** = Proposal to conclude a contract
2. **Acceptance** = an offeree indicates **consent to it** in relation to the offeror

Conclusion = when the acceptance of an offer becomes effective (= the moment the **acceptance** reaches the offeror)

- **Acceptance** of an offer (§ 1740) = **consent**; both parties **agree („mutual consent“)**
 - **Silence** or inaction **do not** themselves constitute acceptance

- Acceptance **with changes?**

- **substantial** changes = **rejection** + new offer
- **non-substantial** changes = **modified acceptance**
 - how do we recognize, which changes are substantial?

- Apart from mutual consent, what else do we have to check? e.g.:

- parties' **capacity** to sign a contract; if legal person -> rules of **representation**
- any illegal content? (wide **contractual freedom**, but
 - what can't we agree on?
- if **standard (commercial) terms** are used: is there a contract? are the parties aware of them?

- proper **interpretation** of contract – primarily according to the **intention of parties!**

§ 1731: The **proposal to conclude** a contract (hereinafter an "offer") must clearly indicate that the person making the offer **intends to conclude a particular contract** with a **person** with respect to whom the offer is made.

§ 1740/2: An expression of will which contains **addenda, reservations, limitations or other changes** constitutes a **rejection** of an offer and is considered to be a **new offer**. However, a response that defines the proposed contract in other words...

- **unless** the offeror **rejects** such an acceptance without undue delay
+ An offeror may **exclude** acceptance of an offer with an addendum or a variation **in advance** in the offer itself or in any other way which raises no doubts.

Limits:

- **good morals, public order**, law concerning the status of persons ...
- **consumer protection**, protection of **third persons**, protection of the **weaker party**
- **lesion (laesio enormis), usury**
- ...

Securing and corroboration of debts



Purpose ?

= to **strengthen the position of a creditor**
to **increase the probability** of obtaining contractual performance

A debt can be secured

- **personally** - a **person** declares that he will **satisfy the creditor** if the **debtor fails to discharge his debt**
 - **suretyship** (the person is called **surety**); or **financial guaranty** (If the issuer is a bank -> **bank guaranty**); both must be in writing;
 - **surety** has *all the defences* which a debtor would be entitled to vs. **financial guaranty** - *no defences*
- **proprietary** - if someone **provides** a creditor a **proprietary security** for the discharge of a debt
 - **by creating a pledge** (= the creditor is entitled to **satisfy his claims** from the proceeds gained **from the sale of the pledged thing**)
 - **transfer of a right as security**, incl. right of ownership (= **temporarily transferring a right** to a creditor; with a resolute **condition** that the debt will be discharged)

A debt can be corroborated

- by stipulating a **contractual penalty**
 - it does **not relieve the debtor of the duty** to discharge the debt
 - but it **relieves** the debtor of the duty to compensate for **damages !**
 - can be agreed otherwise (and often is)
- by **acknowledging the debt**
 - the debt is **presumed to exist** to the extent it was acknowledged; + **10 y limitation period !** (vs. 3 years)

Breach of a contract



„A debtor must discharge the debt at his own expense and risk, **properly and in due time.**“

- What constitutes a **breach of contract**?
 - **no performance** at all
 - of not in due time = **debtor's default** (note: What would creditor's default be?)
 - if the performance becomes **impossible** -> „Subsequent impossibility of performance“
 - **defective performance** = **not proper** performance, not according to the contract; **qualitative** or **quantitative** defects
- What are the **consequences**?
 - if the performance becomes **impossible** -> obligation is **extinguished** (But who pays the damages in that case?)
 - debtor's **default** ->
 - **compensation** for the resulting **damage** (pecuniary harm)
 - if pecuniary debt -> default **interest** (8 % + repo interest rate p.a.)
 - if default with price in B2B/B2G relationship -> 1200 CZK (40 EUR)
 - right to **withdraw** from a contract (if fundamental breach; if not - reasonable additional time)
 - if stipulated: contractual penalty (no damages then! – unless otherwise agreed)
 - **defective** performance
 - if **fundamental** breach:
 - 4 rights: new defect-free thing / repair / reasonable reduction of price / withdraw from the contract
 - if **non-fundamental** breach:
 - 2 rights: repair / reduction of price
 - only if refusal/fail to remove the defect -> right to withdraw

What if he doesn't?



Have a nice day!